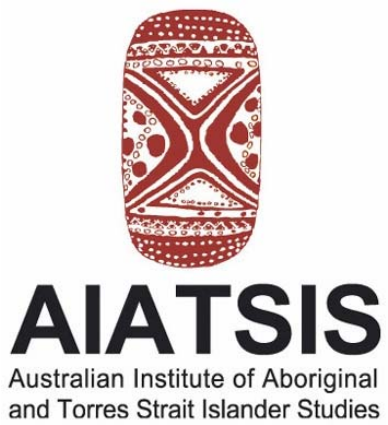
Sea countries of the south:

Indigenous interests and connections within the

South-west Marine Region of Australia



June 2006

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1 Summary

Indigenous interests in 'sea country' have been maintained by Indigenous peoples in Australia for thousands of years. Within the South-west Marine Region (SWMR), *Nunga*, *Noongar* and *Yamatji* Indigenous peoples have owned and managed this diverse and resource-rich region. While ownership and stewardship continue to be exercised by Indigenous people of the SWMR, Indigenous communities and individuals often do not have access to, or benefit from, these marine resources.

Indigenous people of the SWMR need to be more adequately consulted and included in regard to the management and protection of Indigenous natural and cultural heritage. Indigenous interests need to be included in the management, protection, development and planning of multiple uses of sea country in the SWMR. The Department of the Environment and Heritage (DEH) seeks to remedy this by directly engaging with Indigenous peoples who have interests in sea country across Australia.

The launch of *Australia's Oceans Policy* in 1998 and the subsequent creation of the National Oceans Office introduced a platform for the development of integrated bioregional planning within sea country. Indigenous interests and values have been identified as integral to this planning process. Recognition of Indigenous systems of management and protection through the documentation of integrated Indigenous uses and values in sea country is the first step. However, as former Aboriginal and Torres Strait Islander Commissioner Rodney Dillon has stated:

> despite being the subject of numerous reports and policy statements espousing principles of increased participation in both resource management and industry participation, tangible benefits for Aboriginal people have yet to be realised (Dillon 2004, p. 141).

This sea country report notes the numerous state and federal government policy statements in regard to fishing, aquaculture, cultural heritage, native title and environmental management that give voice to Indigenous interests in these areas. Importantly, the report reveals the complexity of Indigenous interests and values in the SWMR and also documents the plethora of programmes and regional management regimes that are currently in place, or being negotiated.

Indigenous peoples within the SWMR are engaged in a host of environmental, native title and regional governance structures with overlapping areas of interest and responsibility. As the leading federal agency responsible for implementing *Australia's Oceans Policy*, DEH has a key role to play in developing and supporting recognition of Indigenous interests. This will require active engagement with Indigenous peoples in the creation of a SWMR plan. Within this larger plan, sea country plans and discrete Indigenous management plans negotiated within the Indigenous Land Use Agreement (ILUA) process of the *Native Title Act 1993* (Cwlth) must specifically create tangible benefits for Indigenous peoples within the SWMR.

In 2004 the National Oceans Office became a branch of the Department of the Environment and Heritage. This creates an opportunity for the SWMR plan and regional Indigenous sea country plans to be supported and strengthened under s.306 of the regulatory framework of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act). This report is a literature review that reveals opportunities available to DEH in utilising the strength of these regulatory frameworks to engage with Indigenous peoples in effective marine planning.

This report has examined:

- Indigenous connections with the SWMR
- contemporary and historical Indigenous use of marine resources
- contemporary Indigenous interests and values in the SWMR
- contemporary natural resource and marine management within the SWMR
- native title and its implications in regard to the SWMR
- Indigenous representation and planning structures within the SWMR
- legislative structures impacting on Indigenous connections to sea country within the SWMR, and legislative reform in the area of Indigenous customary fishing in Western Australia and South Australia within the SWMR.

The following sections relate issues and challenges facing Indigenous peoples within the SWMR. Recommendations to DEH are designed to mediate a host of federal and state-based initiatives, programmes, legislative reforms and Indigenous governance structures and consultative forums within the SWMR. An overview of legislation, consultative mechanisms, regional natural resource management (NRM) boundaries and key reviews of relevance are provided within the appendices to provide an effective, efficient and pragmatic reference for users of this report.

1.2 Issues and challenges for Indigenous peoples within the SWMR

This report has identified the following issues as core concerns of Indigenous peoples based on the review, and from discussions with core Indigenous native title representative bodies (NTRBs) within the SWMR. The challenges that these issues raise have been highlighted for consideration by DEH. The recommendations provided in section 1.3 respond to these issues and challenges.

Table 1. A summary of issues and challenges for Indigenous people in the SWMR

Indigenous issues	Implementation challenges
There have been numerous reviews of Indigenous interests in sea country and they have not yielded tangible benefits to Indigenous peoples.	How to build on knowledge generated from these reviews through dissemination of this knowledge and ensuring such evidence is taken into account by government and industry.
Indigenous tourism operators have created networks and structures to represent their industries and businesses.	How to resource information sharing forums and partnerships between Indigenous ecotourism ventures and government and industry support.
Indigenous cultural heritage sites within the SWMR are at risk through the impacts of development and are not valued as assets for protection.	How to ensure recommendations from key reviews such as the 1996 *Review into the* Aboriginal and Torres Strait Islander Heritage Protection Act 1984, and the *National Aboriginal and Torres Strait Islander Cultural Industry Strategy* are implemented by government agencies.

Table 1 continued.

Not enough Indigenous people are adequately involved in actual joint management of conservation zones and protected areas.	How to negotiate the maze of conservation zone management, Indigenous protected areas (IPAs) and NRM investment strategies, voluntary caring for country and sea country plans and soon-to-be-developed Indigenous cultural fishing plans in South Australia so that long term sustainable processes are created.
Ranger programmes are not adequately supported in the SWMR and sea country rangers need to be developed in particular.	How to negotiate in South Australia under the state-wide ILUA process for greater Indigenous management of Indigenous cultural fishing zones, and in Western Australia in regard to stated policies of joint management that have not been implemented.
Indigenous people have not adequately benefited from the Natural Heritage Trust NRM planning and investment process. Sea country generally has not been invested in through these strategies.	How to focus current investment strategies and increase Indigenous involvement in relevant executive level committees as well as regional on-the-ground community based negotiations within sea country.
State agencies such as the Aboriginal Lands Trusts of South Australia and Western Australia are responsible for large Aboriginal estates, yet there is little linkage with sea country planning and national policy.	How to develop links between DEH and relevant state agencies responsible for coastal and near coastal Aboriginal estate.
Sustainability principles are being adopted by resource management agencies within a cultural framework that assumes a Western scientific primacy of value. In regard to fisheries legislative reform, nationally and in South Australia and Western Australia, sustainability principles limit Indigenous customary fishing and harvest.	How to ensure that sustainability principles adequately reflect Indigenous knowledge and values while satisfying the requirements of ecologically sustainable development principles that are being adopted.
The National Indigenous Fishing Technical Working Group (NIFTWG) principles have been adopted widely, however the body that formed them is no longer facilitated by the National Native Title Tribunal (NNTT) and there are no mechanisms to monitor and evaluate the adherence to these principles.	How to coordinate the value of Indigenous negotiated outcomes such as NIFTWG so that the network and expertise created through these processes is able to be formalised in a reflexive forum with a long range view.
Indigenous fishing funds aimed at creating Indigenous commercial fishing ventures have been supported through review of fisheries legislation in Western Australia and South Australia. These funds have not yet received a foundation of investment so as to be sustainable processes for Indigenous people to engage with.	How to create a sustainable Indigenous enterprise investment fund through negotiations between state and federal agencies with expertise through partnership with fishing and aquaculture business ventures.

Table 1 continued.

Indigenous cultural fishing plans and zones are being created in South Australia under the state-wide ILUA process and fisheries legislation reform. Similar plans are recommended within the Western Australian report *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (2003), however there is no engagement of sea country planning in this process.	How to ensure that the valuable lessons learned by DEH can be shared and developed by Indigenous people in the SWMR engaging in sea country planning.
Native title claimants are not always adequately informed of conservation planning and management on their lands.	How to consult adequately and widely with Indigenous native title claimants and/or their representative bodies.

1.3 Recommendations

The following recommendations have been designed to enable DEH to implement effective negotiation with Indigenous peoples within the SWMR. These recommendations are based on the findings of the literature review and the issues and challenges identified in Section 1.2 of this report. Beyond this process these recommendations seek to create an environment for continued sustainable engagement with Indigenous parties in the SWMR. As the national agency charged with creating a national system of marine protected areas (MPAs), DEH must take a leading role in developing direct Indigenous engagement in management and planning. The recommendations are organised below according to the section of the report they relate to.

Section 3: Indigenous connections to the South-west Marine Region

1. DEH should recognise that the findings of this and previous reviews reveal overwhelming evidence of continuing ongoing use and reliance on marine resources by Indigenous peoples. This relationship should be recognised and valued whether Indigenous people are located within sea country or maintaining strong connections with traditional sea countries of the SWMR through periodic visitation and maintenance of sites. This applies equally to highly populated areas, cities and towns on the coast such as Geraldton, as well as more remote settlements such as Yalata.
2. DEH should support the development of appropriate protocols for integrated Indigenous tourism operations through the Western Australian Indigenous Tourism Operators Committee (WAITOC), the South Australian Department for Environment and Heritage (DEH) and nationally through the Indigenous Tourism Leadership Group (ITLG).
3. Currently, Indigenous communities are often constrained in their ability to effectively engage in the protection and management of Indigenous Knowledge associated with cultural heritage sites. While the *Aboriginal Heritage Act 1988* (SA) deals specifically with the protection of such knowledge associated with Aboriginal sites, the *Aboriginal Heritage Act 1972* (WA) focuses primarily on material culture. DEH should ensure greater

Indigenous agency and access in the protection of Indigenous cultural heritage sites, and implement the recommendations of the *Review into the* Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (1996), and the *National Aboriginal and Torres Strait Islander Cultural Industry Strategy* (1997)

Section 4: Conservation programmes and management initiatives in the SWMR

1. Due to the low level of effective engagement with Indigenous peoples in conservations programmes and initiatives within the SWMR, DEH should not rely on these models in developing benchmarks for sea country plans in the SWMR.
2. DEH should develop a relationship with Indigenous coordinating committees and NRM coordinators and facilitators of the NHT-funded natural resource management catchment councils and bioregions with connections to sea country.

Section 5: Integrated natural resource management in the SWMR

1. DEH should implement a regional network engaging a number of partners that include the Natural Heritage Trust's NRM regions.
2. Consistent with the final recommendations in section 8 of this report, consultations should occur regionally with a formal approach made by DEH to the chairs and Indigenous NRM coordinators or facilitators of regional NRM bodies, or catchment councils, as they are widely known. Where there is no employed Indigenous NRM person, contact should also be made with the Indigenous Land Management Facilitator (ILMF) of the particular region.
3. Where areas within the SWMR include coastal lands vested in the Aboriginal Estate, both the South Australian and Western Australian Aboriginal lands trusts (ALTs) should be invited into relevant consultations. The ALT in South Australia in particular has a long history of developing and supporting Indigenous NRM. The Western Australian Department of Indigenous Affairs, through its Land Branch, which supports the ALT (WA), is playing more of an active role in Indigenous NRM on both ALT and non-ALT lands.
4. DEH, in developing collaborative, sustainable management approaches to the SWMR, should ensure that it both supports and works with the Western Australian and South Australian state level Indigenous NRM committees. Particularly in Western Australia, where this structure is emerging, DEH can engage with such a group through the Western Australian Natural Resource Management Council, and the Senior Officers' Group.

Section 6: Fisheries industries and Indigenous peoples within the SWMR

1. DEH should support and adopt 'The Principles Communiqué on Indigenous Fishing', agreed to in August 2004 by the Australian Government. The final agreed principles represent a commitment from stakeholders within the NIFTWG to 'recognise customary fishing as a sector in its own right; to integrate and protect customary fishing within fisheries management frameworks in a manner that protects customary fishing; to provide assistance strategies to engage Indigenous people in fisheries-related business; and to expedite processes to increase Indigenous involvement in fisheries management and vocational training'.

2. DEH should support the creation of an Indigenous commercial fishing fund in Western Australia through liaison with the Department of Fisheries, Western Australia, Indigenous Business Australia and Indigenous representative bodies including the South West Aboriginal Land and Sea Council (SWALSC) and the Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation (YMBBMAC). DEH should support the creation of a similar fund in South Australia through negotiations with the Department of Primary Industry and Resources South Australia (PIRSA) and Indigenous Business Australia (IBA).
3. DEH should support the development of Indigenous commercial fishing ventures in South Australia through negotiation with the Aboriginal Legal Rights Movement (ALRM) South Australia, PIRSA and Indigenous Business Australia as part of the Statewide ILUA Framework Agreement Process and in line with legislative changes under the *Fisheries Management Amendment Bill 2005* (SA).
4. DEH should incorporate the key findings of *A National Aquaculture Development Strategy for Indigenous Communities in Australia*, with particular reference to supporting planning mechanisms that engage regional Indigenous communities with an interest in developing such industries with mainstream industry groups and businesses. This will require an integrated approach to earmark resources for training and development of such industries while recognising Indigenous interests in the protection of cultural heritage.
5. DEH should support the establishment of an Indigenous fishing communities assistance programme, similar to the $20 million mainstream assistance programme, to create an avenue for Indigenous coastal and marine development of aquaculture, tourism and other community and commercial based enterprises.
6. The Western Australian Indigenous fishing strategy has been developed over a number of years and is currently before an expenditure review committee; DEH should engage with the proposed ministerial advisory committee on Indigenous fisheries and be aware of any legislative changes resulting from the strategy. Similarly, the provision of Indigenous cultural fishing plans and zones proposed within the *Fisheries Management Bill 2005* (SA) will necessitate DEH's engagement with the ALRM as the representative body in the negotiation of ILUA agreements that form the basis of these plans.

Section 7: Native title in the SWMR

1. DEH must consult native title groups with claims covering sea country in the SWMR under future act provisions of the Commonwealth *Native Title Act 1993* particularly in regard to management and licensing regimes.
2. DEH should consult with coastal communities whose claim area is adjacent to the SWMR in regard to management and licensing regimes.
3. DEH should negotiate with native title claimants and holders with a view to reaching agreements over joint management, representation, protection of interests and compensation for impairment of use in the development of management and licensing regimes.
4. Where possible DEH should provide security of outcomes through protecting agreements under ILUAs.
5. DEH should develop a relationship with and work through the processes established by the native title representative bodies in relation to the development of sea country plans.

6. DEH should not limit the outcomes to those achievable within the narrow framework of the Native Title Act and native title law and should always seek to meet the aspirations of Indigenous peoples of the SWMR.
7. DEH should engage primarily with those Indigenous people who have rights and interests under their own traditional laws and customs over areas included in the SWMR.
8. DEH should also engage in a consultative process with other Indigenous representative networks and alliances that assert an interest in natural and cultural resource management issues within the SWMR.
9. DEH should consider conservation agreements under s.306 of the EPBC Act, as a tool for implementing agreements with Indigenous peoples over conservation and heritage matters.

Section 9: Concluding remarks: Indigenous engagement

While recognising and mobilising existing networks, the complexity of the jurisdictional regimes requires that DEH develop a specific process of engagement with Indigenous peoples to ensure the efficient and effective development of sea country plans in the SWMR.

1. DEH should ensure adequate resources in line with *Australia's Oceans Policy* to ensure Indigenous representation on the National Oceans Advisory Group and on the SWMR Marine Plan Steering Committee, and instigate an independent National Indigenous Working Group on Marine Planning under the DEH that meets regularly to review policy and programme delivery.
2. DEH must provide adequate resources and time for the negotiation and implementation of native title and other agreements concerning planning, management and licensing within the SWMR.

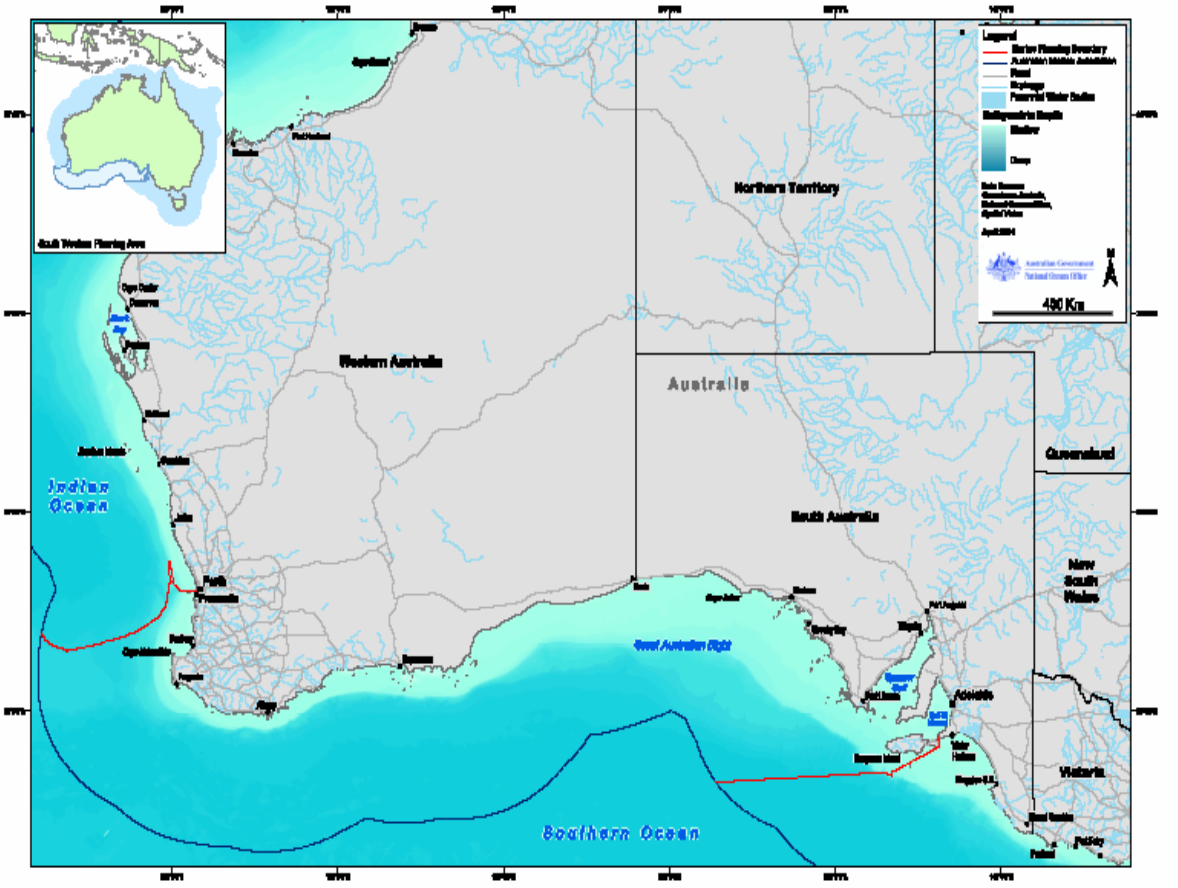

Figure 1. The South-west Marine Region planning area © National Oceans Office Replace with more recent version

2 Introduction

2.1 The South-west Marine Region

The South-west Marine Region (SWMR) begins from the mid-Western Australian coastline near Shark Bay (which is commonly referred to as the Gascoyne/Midwest region) at Cape Inscription and continues south-east to Kangaroo Island, located directly off the coast of South Australia. The SWMR extends 200 nautical miles out to sea within the Australian Exclusive Economic Zone (EEZ). This area encompasses state and federal jurisdictions and covers over 1.3 million square kilometres of sea country.

The SWMR transects Yamatji, Noongar, Mirning and Nunga peoples' countries, which represent over 30 Indigenous coastal language groups. In geographical terms, the SWMR includes the mid-north-west, the mid-west, the south-west and the Spencer regions of Australia. The region consists of 11 coastal ports operating throughout the coastal zone and a multitude of local and state government organisations.

Indigenous populations in the SWMR live in the major towns and cities, low-density rural and regional towns, as well as more remote discrete Indigenous settlements and communities. DEH estimates that 'more than 1.6 million people live alongside the coastline of the SWMR, with more than 90 per cent situated in south-west Western Australia and the greater Adelaide region' (National Oceans Office 2005, p. 2). As the region has been extended through to Cape Inscription in the north-west of Western Australia, these figures slightly underestimate the population in the SWMR.

This report forms part of the data gathering and scoping process toward the creation of a marine plan for the SWMR. It will also aid in the creation of specific Indigenous sea country plans that may be developed with discrete Indigenous groups and bodies as an outcome of national and state marine and fisheries planning processes and ILUAs. This report is the third in a series exploring Indigenous interests in the marine region nationally and complements *Sea Country: an Indigenous perspective* (2002), and *Living on Saltwater Country: Review of literature about Aboriginal rights, use, management and interests in northern Australian marine environments* (2004) (National Oceans Office, p. 1011).

This report focuses specifically on the Indigenous coastal groups found within Indigenous 'territories' in the SWMR. It identifies how they operate according to their customary obligations and responsibility in the management of country, or what is more commonly referred to today as sea country. The report does not deal explicitly with each Indigenous group found within the region. The intent of this report is to provide an overview of Indigenous peoples' sense of place, space and belonging to sea country. This overview places emphasis on the demonstrable ability of Indigenous peoples to adapt to changing socio-political environments and to continue their cultural traditions and obligations to country within a contemporary setting.

2.2 Australia's Oceans Policy

Australia's Oceans Policy was launched in 1998. It sets in place the framework for integrated and ecosystem-based planning and management for all of Australia's marine jurisdictions. The policy promotes ecologically sustainable development of marine resources , encourages internationally competitive marine industries, and ensures the protection of marine biological diversity.

At the core of *Australia's Oceans Policy* was the development of regional marine plans. The Australian Government's goals for regional marine plans were to determine the conservation requirements of each marine region identified in Australia, including the establishment of marine protected areas (MPAs); prevent potential conflict between sectors in relation to resource allocation; and, provide long-term security to all oceans users. In launching the policy, the government reinforced its commitment to the accelerated implementation of the National Representative System of Marine Protected Areas as a key component to the protection of marine biological diversity.

In May 2004, the first plan to be developed under *Australia's Oceans Policy* – the South-east Regional Marine Plan – was publicly launched. In December 2005, a draft network of MPAs for the South-east Marine Region was publicly released. Following periods of public consultation, the MPAs are due to be gazetted in late 2007.

In relation to Indigenous interests, *Australia's Oceans Policy* notes that the Government will seek to ensure:

- traditional conservation and use practices are valued
- that the reliance by many coastal Indigenous communities on marine resources is treated as an important ocean use
- that Indigenous communities are given every opportunity to take up commercial activities related to the oceans.

Australia's Oceans Policy commits the Australian Government to involving Indigenous people in the management of Australia's marine environment, including the development of Marine Protected Areas. The principles guiding development of the National Representative System of Marine Protected Areas, for example, include:

- effective and high quality public consultation with appropriate community and interest groups to address current and future social, economic and cultural issues
- recognition and incorporation in decision making of the interests Australia's Indigenous people.

The policy also notes that the Australian Government will continue to work with Indigenous communities to establish Indigenous Protected Areas (IPAs) and to support Aboriginal and Torres Strait Islander training and employment in jointly managed parks.

2.3 New focus for Australia's marine planning programme

In October 2005, the Minister for the Environment and Heritage announced that Australia's programme of regional marine planning would be brought directly under federal environment law to provide a clearer focus on conservation and sustainable management of the marine environment and offer greater certainty for industry. As a result, regional marine plans are now to be developed as Marine Bioregional Plans, reflecting the terminology of s.176 of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), under which they will be established.

Marine Bioregional Plans will become key reference documents for all marine stakeholders and give forward notice of EPBC Act matters that proponents may face in seeking approval for their activities in a marine region. The plans will draw on Australia's growing marine science and socioeconomic information base to provide a detailed picture on each marine bioregion. The plans will describe each bioregion's key habitats, plants and animals, natural

processes, human uses and benefits, and threats to the long-term ecological sustainability of the region.

Marine bioregional plans will also give details about the various conservation and heritage-related statutory obligations under the EPBC Act that are operational in any region, such as those relating to recovery planning for threatened species.

The link between Indigenous cultural values and biodiversity is well established in Australia in, for example, the EPBC Act, (and the *National Strategy for the Conservation of Australia's Biodiversity*). Marine bioregional plans prepared under s.176 of the EPBC Act are bound by the 'Objects of the Act' which recognise Indigenous people as a unique and important stakeholder group in the conservation and ecologically sustainable use of Australia's biodiversity. The relevant objects of the EPBC Act are:

> f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity
>
> g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, owners of the knowledge.

In order to achieve its objects, the Act:

> (g) promotes a partnership approach to environmental protection and biodiversity conservation through
>
> > (ii) conservation agreements with land holders
> >
> > (iii) recognising and promoting indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity
> >
> > (iv) the involvement of the community in management planning (EPBC Act, Part 1, Chapter 1).

The DEH, in administering the EPBC Act, therefore has responsibilities to promote the involvement of Indigenous peoples and their knowledge of biodiversity in developing strategies for ecologically sustainable development and biodiversity conservation, including in the development of Marine Bioregional Plans. DEH also has responsibilities under the heritage provisions of the EPBC Act to assess and manage listed Indigenous heritage values, including in the marine environment.

In making decisions under the EPBC Act the Minister for the Environment and Heritage is bound by provisions of the Native Title Act.

2.4 Tender requirements

Specifically, the requirements of the tender for this report for DEH are to investigate and report upon:

- Indigenous connections (economic, social and cultural) with the south-west's marine environment
- contemporary and historical use of marine resources of the region by Indigenous peoples
- the structure of current Indigenous governance arrangements within the region

- the key issues and challenges that may be faced by regional marine planners seeking to engage Indigenous people/representatives within the regional marine planning process
- recommendations on effective, efficient and pragmatic engagement strategies for engaging Indigenous people in the south-west marine planning process (DEH 2005).

2.5 Purpose of the report

The main purpose of this report is to provide key information about Indigenous connections within the SWMR. Ongoing consultations with the many diverse Indigenous groups and individuals with interests in the SWMR will occur during future implementation of the SWMR Plan. This report serves as a scoping document to aid DEH and interested Indigenous and non-Indigenous parties to engage in the SWMR planning process. The report was commissioned by DEH for the purpose of assisting in:

> understanding the diversity of interests/connections to Sea Country in the Region and their relative importance. The information will also provide a basis for understanding pragmatic and effective Indigenous consultation and decision making mechanisms with regard to Sea Country in the Region (DEH 2005).

2.6 Aims of the review – consultative frameworks

The aim of this review is to provide specific information about Indigenous interests, values, connections and diversity and to aid future consultation with the Indigenous people of this region. It is also an aid in the negotiation of effective and pragmatic decision-making structures and processes involving Indigenous people in the SWMR.

2.7 Methodology

This report, *Sea countries of the south: Indigenous interests in the South-west Marine Region of Australia,* is a review of the available literature into Indigenous interests in the region. The literature surveyed relates to the following:

- native title
- Indigenous uses and values
- Indigenous population and employment
- Indigenous land and sea management programmes and processes
- Indigenous involvement in conservation and land management
- Indigenous engagement with fisheries resources
- Indigenous natural, cultural and economic values within the SWMR.

Further information was obtained via discussion with Indigenous representative bodies and key leading government and non-government agencies in the region. This method was utilised to gather raw data and to verify material generated via the desktop literature review.

This review was researched and written by Jess Clements, Glen Kelly, Steve Kinnane, Donna Oxenham, Dr Colin Pardoe, Dr Lisa Strelein, and Penny Taylor. Further research was completed by Lara Wiseman. Editorial support was provided by Dr Angela Philp. The project was supervised by Dr Peter Veth. The final draft of this report was reviewed by a panel of independent peers with feedback from DEH incorporated into the final report.

2.8 Structure of the report

This report has been structured into thematic areas of investigation dealing with:

- Indigenous uses and values
- legislation and policy
- community profiles and engagement with the marine region
- Indigenous community aspirations in regard to future marine region planning.

Within each of the themes the report also focuses on core Indigenous regions, as in the case of population profiles and native title, or around bioregional boundaries and ecosystem-based regions in the case of natural resource management.

The SWMR spans Western Australia and South Australia. As such, many programmes and networks documented are state-based. Some areas within the report have been divided geopolitically to reflect this reality. Within this mediation of Western governance systems the three regional Indigenous groups engaged in the SWMR (who necessarily cross some regional/jurisdictional boundaries) – Nungas (South Australia); Noongars (south-Western Australia); and Yamatjis (mid-Western Australia) – are appropriately acknowledged.

The literature review of Indigenous interests in the SWMR has been arranged under the following sections:

Section 1 Summary

Section 1 provides a summary of key issues and outcomes of this report including recommendations to DEH to support the engagement of Indigenous issues, uses and values in the SWMR planning process.

Section 2 Introduction

Section 2 provides an introduction to the report describing the SWMR, outlining DEH policy, the methodology of the desktop review, the tender requirements from which the investigation was based and the structure of the report.

Section 3 Indigenous connections to the SWMR

Section 3 investigates Indigenous connections to the SWMR before colonisation, after colonisation and at present. Indigenous connections within the SWMR are discussed in regard to:

- Indigenous cultural heritage sites
- evidence of occupation and use of sea countries
- population structures and regional boundaries
- social, cultural and religious life
- health and wellbeing
- Indigenous concepts of, and connectedness to, sea country.

Further analysis of economic structures and practices is provided in regard to the period after colonisation to the present, including population distribution and contemporary demography. Section 3 provides a foundation of knowledge about Indigenous existence

within the SWMR in order to contextualise later sections dealing with specific policies, programmes and initiatives in regard to Indigenous people within the SWMR.

Section 4 Conservation programmes and management initiatives in the SWMR

Section 4 examines conservation policies, programmes and initiatives within the SWMR and their impact on or involvement with Indigenous people. Conservation initiatives are necessarily separated into Commonwealth and state jurisdictions in line with management boundaries and conservation regions. Conservation zones and boundaries are outlined within this section with a description of the sea country and related terrestrial zones of relevance to Indigenous people. It provides an understanding of the complexity of conservation zones and programmes operating in the SWMR that Indigenous people and Indigenous agencies must mediate, including consultative mechanisms and processes that Indigenous people engage in within the SWMR.

Section 5 Integrated natural resource management and Indigenous peoples in the SWMR

Section 5 provides a thorough review of integrated natural resource management (INRM) through the creation of NRM regions, governance structures and consultative frameworks that affect Indigenous people in the SWMR. The integrated delivery of programmes under the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality are examined through regional catchment councils in Western Australia and South Australia within the SWMR. This added layer of interconnected programme delivery and governance exists in relation to, but not always directly connected to, state and federal conservation programmes discussed in section 4. In this way section 5 reveals a complex web of NRM boundaries, programmes, investment strategies and consultative mechanisms of relevance to Indigenous people in the SWMR.

Section 6 Fisheries industries and Indigenous peoples within the SWMR

Section 6 focuses on fishing and aquaculture as the main marine industries involving and affecting Indigenous people in the SWMR. Fisheries resource management is an area in which Indigenous people have been actively negotiating customary fishing and the development of commercial enterprise. Nationally, and within the states of Western Australia and South Australia, fisheries resource management has undergone major policy and legislative review. These reviews are examined in relation to the involvement of, and impact on, Indigenous people. Section 6 examines outcomes of the National Indigenous Fishing Technical Working Group (NIFTWG), the Western Australian Aboriginal fishing strategy and the state-wide ILUA process in South Australia (in regard to the Fishing and Aquaculture Side Table (FAST) negotiations). Section 6 builds on knowledge of conservation programmes (section 4) and NRM (section 5), examining developments in fisheries management as a means of recognising customary fishing rights, and instigating Indigenous enterprise and conservation of sea country.

Section 7 Native title in the SWMR

Section 7 provides a detailed analysis of native title in the SWMR. Native title rights have been utilised by Indigenous people in the SWMR to ensure adequate consultation and

negotiation over issues affecting connection to sea country. Section 7 provides an analysis of:

- the relevance of native title in sea country
- the role of native title in conservation and resource management plans
- the prevalence of agreement-making by Indigenous people as a means of protecting rights and creating opportunities
- details of governance structures created through native title.

Section 7 reviews knowledge of conservation zones (section 4) and Indigenous negotiations in regard to the resources (section 5) and fisheries sectors (Section 6). It focuses on the relevance of native title as a right and a means for Indigenous engagement with these sectors in order to facilitate Indigenous connections with and responsibilities to sea country.

Section 8 Overview of Commonwealth and state legislation affecting sea country

Section 8 provides a summary and analysis of selected federal and state legislation affecting Indigenous people within the SWMR. Legislation discussed in this section relates directly to issues examined in sections 3–7 ranging from heritage legislation to fisheries legislation. Legislation is appropriately discussed within sections 3–7 as is relevant to analysis of the particular issues being examined. Section 8 provides a legislative summary that enables discussion and analysis within sections to focus on other relevant programme, policy and political issues. The exception to this is native title, which is examined in detail in section 7.

Section 9 Concluding remarks

Section 9 briefly summarises the findings of the report and the relevance of these findings for DEH in seeking to engage with Indigenous interests in the SWMR as part of the SWMR planning process.

3 Indigenous connections to the South-west Marine Region

For Indigenous people and others who know how to read the landscape, the south-west marine environment reveals evidence of continuous and ongoing Indigenous occupation. This is a vast area that has experienced tens of thousands of years of human history. Given the diversity of both ecosystems and Indigenous populations, any summary is prone to over-generalisation. However, there are common themes of relatedness to sea country, shared historical experiences and present needs and aspirations that give background and context to the specific thrust and recommendations of this report.

This section presents an overview of historical Indigenous connections (economic, demographic, social and cultural) with the south-west marine environment. It also summarises the impact of invasion and dispossession on Indigenous peoples of the region and addresses the contemporary status of Indigenous groups in the region and their ongoing relationship to sea country.

3.1 Indigenous ownership and use of the SWMR before colonisation

3.1.1 Archaeological, ethnographic and material evidence

Evidence of Indigenous occupation can be found all round the coastline, although density of population and sites is influenced by resources and the availability of water. Favourite residential areas were the alluvial flats where rivers and creeks entered the sea or freshwater lakes behind the dunes.

Archaeological evidence is usually restricted to those items of material culture that can survive several hundred years of exposure and weather. Therefore, although stone tools of many kinds are evident, wooden spears and handles to which they were hafted are seldom found. Similarly, although stone fish traps can still be found, woven ones are scarce as the large fishnets Indigenous people made for stretching across creeks and billabongs have eroded. However, museum collections hold many examples of the wide range of wooden, shell, string and woven items of daily life that give insights into how Indigenous people lived. A number of people also continue to practise skills such as making baskets, string bags and mats to transmit this knowledge to the next generation.

Archaeological research over the past thirty years has provided crucial evidence of Indigenous occupation of the south-western coastline that has supported Indigenous understandings and oral accounts of past times. Following the end of the last Ice Age – approximately 13 000 years ago – sea levels rose roughly 120 metres in the next few thousand years. Previously occupied coastal lands were drowned by this inundation and coastal populations would have moved inland with the encroaching shoreline. The Yamatji and Noongar regions of south-west Western Australia lost about 50 kilometres of land, and the hills to the west of Yinggarda country became the Shark Bay archipelago. Roe Plain, today a small area of land south of the Nullarbor Plain, was more than 100 km wider and extended along the coast about 500 km. Spencer Gulf was dry land, with the Nawu of Eyre Peninsula linked to the Kaurna of Adelaide and Kartan of Kangaroo Island by footpaths. The Murray River coursed a further 150 km south and west (Pardoe 1995). Underground canyons today mark the ancient course of the river.

Sea levels eventually stabilised about 6000 years ago creating the coastal marine environments and ecosystems that form the basis of Indigenous life in the region. During the last several thousand years population numbers attained their maximum. Cemeteries came into use during this time in certain areas, and large shell mounds and evidence of coordinated fishing schemes are dated to this time period (Pardoe 1995, Martin 1988).

The modern mouth of the Murray River and Lakes region had evolved by this time, with earliest archaeological evidence at 5545 years ago (Luebbers 1982). Increasingly dense occupation is recorded in the Coorong area, with mounds appearing in the last few thousand years. These mounds are evidence of more settled residential areas, hamlets or villages, in which people would reside for a significant part of the year.

Residence patterns varied. Some coastal peoples would have followed a set seasonal routine, moving along the coast or inland at specific times to exploit different food sources, to exchange and trade with neighbours, or to take part in ceremonial and social gatherings. The Kaurna of the Adelaide Plains, for instance, moved between coast in summer and plain during the wetter winter months when different resources would be available. Mounds, which are the base of village sites, occur on the coast, distributed just above the estuarine flats and clustered around streams where they enter the sea. When Kaurna people followed the trail along the Fleurieu coastline to access new resources or to collect ochre from Ochre Cove, they were tracing the route taken by Tjirbruki, an important Dreaming ancestor, whose tears at the murder of his nephew created the freshwater springs along the coast (Tindale 1987). For other groups, marine resources may have only been used seasonally by people whose main focus was inland.

Spencer Gulf, further west, became home to Indigenous groups linked by ancient association at times of lowered sea levels. All of these tribes used marine resources of fish, shellfish, beached whales, sea grasses, etc. (Martin 1988). They would spend part of the year near the coast, as can be seen in the distribution of archaeological materials (Nicholson & Cane 1991, 1994).

Moving north and west, the land of Narungga, Nukunu, Bangarla and Nawu tribes becomes progressively drier. Residence along the coast was probably of increasing importance in providing core areas for occupation. The increasingly harsh inland regions of these tribes would not sustain people during the worst droughts. Archaeological evidence for large coastal sites is found in the Eyre Peninsula (Nicholson & Cane 1991, 1994).

Evidence of early occupation of the Nullarbor Plain comes from excavations at Koonalda and Allen’s Caves, where dates of between 22 000 and 20 000 years ago for first use become more remarkable for the fact that this time was just past the height of the last Ice Age. The desert was an even more difficult place to make a living. However, people managed to mine flint cobbles from deep underground at Koonalda, at the same time making marks in the soft chalk which still rank among the oldest rock art in the country.

The large Roe Plain, lying near sea level below the cliffs and to the south of the Nullarbor Plain proper, has been largely inundated by a post-Ice Age sea level rise. Minimal archaeological investigation of this area has been conducted, but it is clear that the area, with several known large occupation sites such as Merdayerrah, would have had a larger population than the Nullarbor Plain inland.

Ooldea Soak lies 250 km north-west of Ceduna, South Australia, and about 100 km from the Southern Ocean, on the southern fringe of the Great Victoria Desert to the north and the Nullarbor Plain to the west. Archaeological investigations (Brockwell et al. 1989) provide evidence of trade from the coast that included coastal Nullarbor flint, shell and coral.

The south-western region of Western Australia is a much more hospitable environment than the Nullarbor Plain. Early and continued occupation of the area has been recorded at many locations, the best known of which is Devil's Lair, although many more sites of great antiquity are recorded (J. Dortch 2004). There is visible evidence of fish traps at Quininup Beach, Wonnerup Estuary and at the corner of Dunsborough Beach and Eagle Bay (Stewart 2003, p. 120). These fish traps are still used and valued within contemporary Noongar society. According to Wardandi Elder Bill Webb:

> …fish traps had a keyhole left up one end so when someone tried to empty the trap, the fish would swim to the keyhole and they would slash them, that's how they caught masses of them … [They] knew exactly when to look at fish traps, they'd wait to the next moon to look in them [after a full tidal range]. (Stewart 2003, p. 120)

At the end of the Ice Age sources of stone for toolmaking were used that are now covered by the ocean (Dortch 2002). This is an example of archaeological sites and items of interest ending up underwater. A site from this period provides an interesting link with the present. A small pit lined with Xanthorrhea and filled with Macrozamia nuts (cycads) is virtually identical to one recorded by Grey in 1841 (Smith, M 1982, 1996).

The use of several environments was often necessary in order to make a living and to support the larger population numbers that were noted historically. Coastal strips, estuaries and sand plains, large forests, grassy plains and fields of yams all contributed to a seasonal round that was based in part on extended residence in villages.

Historical records and archaeological investigations between the Swan River and the Murchison River show that Indigenous people settled in village life, harvesting yams as their staple, building houses and working the soil (Hallam 1975, 1984). Historical accounts from early colonisers depict a way of life with links to an archaeological record of considerable antiquity (Ferguson 1987, Dortch, C 2002, Dortch, J 2004).

The Yamatji region to the north of the south-western cultural bloc generally consists of more arid country. However, the coastal zone within the SWMR possessed particularly rich resources and settlements that an early explorer described as densely populated, with villages containing strongly built huts, plastered over with clay and clods of turf:

> [T]hese superior huts, well marked roads, deeply sunk wells and extensive warran [yam] grounds, all spoke of a large and comparatively speaking resident population. (Grey 1841 II, pp. 19–20).

In Yamatji country, there are early sites containing megafauna both inland and, to a lesser extent, on the coast at Shark Bay which indicates varied land use since the post-Ice Age epoch. Coastal sites are abundant, particularly at river mouths and along the dissected shoreline of Shark Bay.

Contemporary Indigenous association with, and maintenance of, all these coastal sites constitutes a living culture connecting these past activities through ancestral, historical and spiritual association (Stewart 2003).

3.1.2 Traditional populations and boundaries in coastal country

The size of Indigenous populations at the time of colonisation has been difficult to establish due to the nature of colonial frontiers. These frontiers, occurring at different periods for different Indigenous peoples within the SWMR, and moving at different speeds, affected Indigenous populations through disease, violent conflict, acts of dispossession and dispersal.

Therefore, estimates of Indigenous populations have been based largely on early observer accounts, ethno-history, archaeological records and surveys of Aboriginal sites.

The Australian Bureau of Statistics Year Book of Australian Population (2001) estimates the Indigenous Australian population in 1788 as lying between a minimum of 315 000 and a maximum of one million people. Based on archaeological evidence, this figure is most likely around 750 000 people.

In recent decades, people of the SWMR have identified themselves as three distinct regional groups using terms that reflect contemporary coalitions of language that share common cultural and spiritual values:

- **Nungas** (who live along the coastal zone from Adelaide in South Australia to the Western Australian border to the west)
- **Noongars** (who live in the south-west corner of the continent from the South Australian border round to north of Geraldton)
- **Yamatji** (who live in the northernmost tip of the SWMR between Geraldton and Point Inscription.

Traditionally, the SWMR supported, and still supports, a wide range of Indigenous populations that were designated ‘tribes’ in the past, most of whom spoke very distinct languages or dialects. These groups will be introduced briefly in order to give an idea of the diversity and distinctiveness of Indigenous populations before colonisation. They will also be related to today’s larger regional groupings.

Figure 2. Indigenous regional groupings within the South-west Marine Region planning area © AIATSIS

In Western Australia, the Yinggarda, Malgana, Nanda, and Naaguja language/dialect groups cover the coastal lands of the north-west (Yamatji) region from Cape Inscription in Western Australia. These are the major coastal groups from within the north-western section of the SWMR, however the Wadjarri, Widi and Badimia language/dialect groups that are adjacent to these coastal groups have established shared cultural relationships through time.

South, Yamatji territory merges into Noongar country, within which a further 12 separate Noongar (also spelt Noongar, Nyoongar, Nyungah and Nyunga) sub-groups or language groups are identified along the south-west coastal region of Western Australia. These are the Amangu, Yuat, Wajuk, Pinjarup, Kaniyang, Wardandi, Bibbulman, Minang, Goreng, Wudjari, Ngatumay and Mirning (Horton 1994:1011). However, given the extent of trade between sea country and inland peoples in the region, the number of language/dialect groups is in the vicinity of 26 separate peoples or language/dialect groups (Horton 1994, p. 1011). To the far south-east of Noongar territory, the Mirning people are represented along the Nullarbor coastline. Their territory does not stop at the South Australian border, but continues through to the Spencer region.

Within the Spencer region of South Australia there are a total of eight separate Indigenous self-identifying Nunga groups that encompass most of the South Australian coastal zone (Horton 1994, p.1016). Further west from the eastern boundary in South Australia, the Indigenous peoples or nations directly associated with sea country are the Mirning, Wirangu, Nawu, Banggarla, Nukunu, Narungga, Kaurna and Ramindjeri (who have close ties to both Ngarrindjeri and Kaurna).

3.1.3 Social, cultural and religious life

Before European colonisation of the region, Indigenous societies were structured and organised in a number of ways. Social organisation varied and still varies between regions and according to population density, but there are certain core principles. Each child born into a family was made aware of the lineages of both parents and grandparents, providing a strong network of immediate kin. Some of these kin, such as a mother's brother, would have taken particular responsibility for the growing child. A child inherited rights to country from their mother's family and/or father's family and/or grandparents' family although the rights and responsibilities might vary according to the local culture. A child also inherited rights to the country in which he or she was conceived and born as well as to country where a parent or grandparent might be buried. Not all of these rights to different areas of country would necessarily carry the same weight, nor would they all be taken up by each individual. Their value lay in giving people access to other areas of land in times of need. In addition to rights to land in general, individuals, families, clans or totemic groups might possess rights to specific watercourses, quarries of particularly good stone, or stands of trees used for making spears.

With rights came responsibility to look after their country, to stop it being misused or overexploited. People were expected to clean out waterholes, rebuild fish traps damaged by winter storms, burn off dead grasses at certain times of year to clean the country and to encourage new growth. Along with such practical responsibilities came religious ones that required people to perform 'increase ceremonies' to ensure the renewal of the plant and animal species on which they depended. Other ceremonies, large and small, were regularly conducted to honour and respect the Dreaming ancestors who had created the land and who now resided within it. Inappropriate behaviour, such as neglect of country, or trespass on to a restricted area, could anger a Dreaming ancestor and possibly lead to death or disease, not just for the offender but for the whole group. 'Caring for country' was not an optional

activity; neglect could have serious consequences. Management of Noongar land was directly related to clan and family estates in which the ‘Nyungar Boodjar of land systems was based upon clear rules of responsibility, access, use and rights of privilege such as carrying the fire stick for burning in the birok or summertime’ (Collard 1996, p. 24). According to Noongar protocols documented at the turn of the nineteenth century ‘rights over specific tracts of land were respected by visiting Nyungars.' Further, 'trespassing, theft of food or firing of other Nyungar’s country without the owners’ permission, were clear breaches of Nyungar land laws’ (Collard 1996, p. 24; Roth 1902, pp. 56–57).

Within the SWMR each territory had and still has its own associated creation stories, customary laws, cultural beliefs, management techniques and a diversity of resource economies. Indigenous creation beliefs:

> …vary from region to region, but they generally describe the journeys of ancestral beings, often giant animals or people, over what began as a featureless domain. Mountains, rivers, waterholes, animal and plant species, and other cultural resources came into being as a result of events which took place during these Dreaming journeys. (Smyth & Sutherland 1994, p. 3).

Many of these land features and cultural heritage sites of significance found within landscapes today have associations marked by physical, historical, ceremonial, religious and ritual manifestations located within Indigenous people’s cultural beliefs and customary laws. Each creation story is linked to specific tracts of land and Indigenous territories. Other Dreaming stories lay down rules of behaviour, or explained metaphysical concerns. For example, Noongar cultural beliefs designate Rottnest Island off the coast of Perth as a place where spirits of the dead are transported. For Nungas in southern South Australia and along the Murray River, Kangaroo Island is the place where human spirits go after death.

In addition to one’s immediate or ‘blood’ kin, each individual was born into a kinship system that linked every member of the group into a complex network of obligation and reciprocity. As well as a child’s own mother, a number of other women in the group would also be called ‘mother’ and would relate to the child as expected of a mother. As the child grew older, he or she would be expected to be of particular assistance to any ‘mother’ who needed help. The specific details of these kinship or section systems vary across regions and can be difficult for outsiders to learn. However, they are central to understanding the sense of relatedness between Indigenous people.

While the family and lineage might be the primary land owning group to which an individual belonged, giving rights to a number of estates, or territories, everyone also formed part of larger social groups sometimes called clans. Groups of clans that spoke the same language formed a larger group again whose people often defined themselves as ‘the people of a certain river’ or ‘the people who speak such and such a language’. Groups of people who spoke related languages might form alliances, to protect their country, or to share resources in times of need. The many layers of social organisation allowed people to identify in a number of different ways, something that continues today.

3.1.4 Health and wellbeing

Indigenous ownership and exploitation of marine resources formed part of a complex structure that embraced all aspects of social, economic, legal and religious life. This structure is underpinned and informed by the Indigenous concept of the Dreaming. Silas Roberts, first chairman of the Northern Land Council stated:

Aboriginals have special connection with everything that is natural. Aboriginals see themselves as part of nature. We see all things natural as part of us. All the things on Earth we see as part human. This is told through the ideas of dreaming. By dreaming we mean the belief that long ago, these creatures started human society. These creatures, these great creatures are just as much alive today as they were in the beginning. They are everlasting and will never die. They are always part of the land and nature as we are. Our connection to all things natural is spiritual (Rose 1996, p. 26).

Although religious beliefs and practices varied across the continent, they shared these core features. Everywhere, the physical and psychological health of Indigenous people was intrinsically related to concepts of 'country' and 'Dreaming'. Indigenous knowledge systems do not universalise, they are specific to place. An appreciation of this is central to understanding the full impact of colonial dispersals and the 'rape of the soul' that followed.

It is evident that the cohesive nature of Indigenous societies, their bonds of obligation and reciprocity, and their powerful system of beliefs and values provided psychological security, a profound sense of wellbeing, and mutual support in times of need. In South Australia, for example '[T]hey all had their own tightly woven and meticulously observed social structures providing community welfare and health care through kinship and reciprocal obligations' (Mattingly & Hampton 1992, p. 3).

Early records written by European settlers often show that on first encounter, most Indigenous people appeared to be in good health:

> Aborigines ate well except in times of drought in the more arid areas and of prolonged cold and wet in areas with substantial rainfall. In general, their environment provided the resources for a nutritious diet, the available food comprising both protein and vegetable foods with adequate vitamins and minerals. Furthermore, their diet was low in salt, sugar, and fat, and they carefully regulated the use of the few narcotics that were available. Since their lifestyle dictated frequent exercise, they were not overweight. The small group size discouraged the spread of infection (Franklin & White 1991, p. 3).

Archaeological evidence has shown that as people grew older they often suffered from arthritis, tooth abscesses were a regular problem, and children and mothers sometimes died in childbirth. The same evidence also shows a high level of care for people who suffered serious injuries and fractures.

3.1.5 Indigenous connectedness to sea country

Indigenous use, occupation and enjoyment of the coastal zone was traditionally one of socio-cultural and economic integration with the ecology of the various bioregions that existed at the fringe of land and sea, and often well into the ocean. As sea levels fluctuated over the millennia, people contributed to modification of the environment to produce what are today considered cultural ecologies. Western frameworks for understanding the coastal zone, or sea country, may fail to realise this interrelatedness of Indigenous action and creativity upon the lands and resources. The persistence of this interrelatedness into contemporary life is developed further in section 3.3.

Prior to contact, Indigenous land and seascapes were managed on a seasonal cycle so that both land and sea economies were sustained. Many coastal Indigenous communities regularly engaged in a mixed economy, enjoying both inland and sea country resources (Smyth & Bahrdt 2002). This allowed for seasonal variation in resource abundance,

regulating mobility within and between Indigenous estates, and allowing for the large gatherings necessary to cement relations between the larger groups.

The upholding of law and culture through recognition and maintenance of individual and clan rights and responsibilities geared to ecological rejuvenation was an integral part of Indigenous cultures. Indigenous occupation and use of both coastal and inland zones for economic purposes beyond group survival involved trade and exchange, which is a manifestation of customary marine tenure and a comparative advantage of particular regions and the resources they contained. This system of trade existed within a 'complex of rights and responsibilities, including the right to access, use and distribute resources through time, from generation to generation' (Smyth and Bahrdt 2001, p. 84). Within South Australia 'a well established network linked groups through trade in items not locally procurable, such as ochre, pituri [a narcotic], shell and various types of wood and stone … with technology adapted to survival in a wide range of environments' (Mattingly & Hampton 1992, p. 3).

Key practices and strategies in the pre-colonial management of sea country included:

the conduct of ceremonies … with the purpose of nurturing the wellbeing of particular places, species and habitats; control of entry to marine clan estates by outsiders and restricting resources use to clan members and others by agreement; … seasonal exploitation of particular marine resources; restriction on the harvesting of particular species based on age, gender, reproductive conditions, health, fat content; … restrictions on resource use and distribution by clan members and others based on age, gender, initiation status, marital status and other factors; restrictions on the use of particular animals and plants of totemic significance to individual clans; … and prohibition of entry to certain areas of land and sea, often associated with storms or other sources of danger (Smyth & Bahrdt 2001, p. 84).

In summary, the picture that emerges of traditional connections to sea country is one of clan-based owners of Indigenous estates operating within a complex and interrelated system of societies, spiritualities, ecologies and economies. These associations necessarily involve obligations and responsibilities to land, sea, ecology, people and place.

3.2 Indigenous occupation and use of the SMWR after colonisation

3.2.1 The impact of colonisation

First contacts between Indigenous and non-Indigenous peoples have varied across the continent from acts of open warfare to Indigenous readings of the light-skinned strangers as returned spirit beings (Collard 1996, pp. 46–47). Despite this, the impact of colonisation had broadly similar effects on Indigenous Australians. Death by disease and violence, dispossession and loss of land, loss of access to resources, and assaults on social and cultural life were common themes everywhere in Australia. There were subtle differences, however, between states and regions.

Each colony was established in a different time frame which influenced those individuals in the British Colonial Office who drafted the initial policies. Different colonies also attracted different groups of settlers, with different motivations and expectations. A major rationale for the establishment of the colony at Port Jackson in 1788 was its role as a penal settlement. However, Western Australia (settled in 1829) and South Australia (in 1836) were established as free colonies by people who were ideologically opposed to transportation. Both colonies were established with positive intentions towards local

Indigenous populations. A brief historical overview demonstrates the tragic failure of those intentions.

3.2.1.1 The early colonisation of Western Australia

The Dutch were the first Europeans to interact with Indigenous people as their ships passed along the Western Australian coast during the seventeenth century. Following the voyages of Flinders (1801) and Baudin (1803), new shipping routes to Sydney were opened up through the Bass Strait and more ships began to pass along the coast. The French showed continued interest in the area, in particular D'Urville, who led an expedition on L'Astrolabe in 1826. This prompted the British to dispatch a small garrison of forces with convict labour to secure King George Sound, a favoured anchorage, in the same year.

This garrison, which later became the town of Albany, was characterised by good relationships with Indigenous people at first contact. In part this was because Major Lockyer arrested a group of European sealers for abduction and murder of Indigenous people and assured the local inhabitants of his protection. It was due to an obviously exceptional Indigenous leader, Mokare, who established close friendships with a number of the young officers and medical staff. Green (1984, p. 45) describes the small settlement at Albany between 1826 and 1831 as 'a model of harmony' characterised by 'gracious mutual acceptance of cultural difference'. He suggests, though, that this was possible for three reasons:

- Aborigines and Europeans were not competing for resources in the area
- Europeans were not dependent on Indigenous people for either labour or knowledge of the environment
- Europeans did not exclude the locals from any part of the occupied territory.

The new colony of Western Australia was founded in 1829, and Captain James Stirling appointed as Lieutenant Governor. The early settlers in Western Australia were principally poor migrants who endured 100 days at sea to arrive with few resources, only to face a desperate struggle for survival. They had wanted to found a free colony, but ten years after first landing, there were still barely 2000 migrants and in 1850 the Western Australian Government introduced convict labour to build its much needed infrastructure of wharves, public buildings and roads.

In the initial years of colonisation, non-Indigenous settlers benefited from Indigenous knowledge of resource availability including fresh water and game. Fertile river valleys and resource-rich coastal inlets were among the first areas to be colonised and farmed to supply growing markets. Indigenous resources in the form of forests, fisheries, and coastal lands were fenced off and exploited for the production of Western agricultural products.

Early relations with Indigenous people in the colony were often harmonious. A range of documentary sources demonstrates that historical relations on the Swan coastal plain were complex and not consistently adversarial (Reece 1987). As Green observed 'contrary to popular belief the Aborigines did not regard the settlers as a common enemy, and many settlers and Aborigines established close friendships' (Green 1984, p. 77). By 1831 that harmony was drawing to a close with the introduction of three major sources of conflict:

- competition for resources
- the need for Aboriginal labour
- the fencing off of land and denial of Aboriginal access.

Competition for women was another major source of tension as Europeans, predominantly men, used their power to gain access to women. In many areas, relations remained relatively harmonious until Aboriginal people became aware that land was not being shared but appropriated. Increasingly denied access to their own land and its resources, they had little choice but to retaliate. This resulted in punitive raids and warfare and, in 1833, Indigenous leader Yagan was shot and killed and his smoked head placed on public exhibition in England. In 1835, the colonial police killed significant numbers of Indigenous fighters at the Battle of Pinjarra on the Murray River, south of what is now Perth (Toussaint 1995, p. 245).

3.2.1.2 The early colonisation of South Australia

At the time when plans were being drawn up in Britain for the colonisation of South Australia in 1836, 'the legacy of the anti-slavery campaign had "infected the British people with a responsibility for backward people"' (Reid 1990, p. 1, citing Gibb). Lord Glenelg, Secretary of State for the Colonies in 1835, was a member of the Church Missionary Society; many other abolitionists also held positions of authority. As a consequence, there was a commitment to make the colonisation of South Australia different, to maintain centralised control over the granting of land, and to ensure that Indigenous rights were safeguarded. Colonel Light was instructed that the site of the new city was to be purchased from the local inhabitants and that he had to buy any wild animals that he needed for food during his survey. The proclamation read on the beach at Glenelg in January 1836 contained positive statements about the treatment of the original inhabitants (Reid 1990, p. 3). Schools for Indigenous students were set up, first in Adelaide and later at Poonindie, and (with no appreciation of the irony) land was offered to Aboriginal people for cultivation. Despite the good intentions, and the relative lack of violence in South Australia, the Select Committee established in 1860, barely 30 years after the confident proclamation, to inquire into Aboriginal welfare and administration reported:

> All the evidence goes to prove that they have lost much, and gained little or nothing, by their contact with the Europeans; and hence it becomes a question of … compensating them for the injuries they have sustained, or of mitigating the evils to which … our occupation of the country has led' (Reid 1990, p.13).

Woods (1879, pp. x–xi) cited the census of 1876 to show that within 40 years of the first European arrivals, 'it would seem that 67 per cent of them, with all that belonged to them, have gone from the face of the earth'. He vividly described the impact of European occupation on the Indigenous peoples of the coastal plains area where he lived:

> The process of extermination, in fact, began as soon as the white men took possession of the soil. The fencing in and occupation of the territory deprived the natives of the wild animals which constituted the principal part of their daily food. Kangaroos, emus, and other mammals were killed and driven further back into places where they could remain undisturbed. The wild-fowl were scared away by the fire-arms of the settlers. The destruction of the trees consequent upon the clearing of the ground for tillage, drove away the opossums, and left little shelter for parrots and other winged creatures which resorted to them, and the people who had been disappointed were thrown back on the hunting grounds of their neighbours, or compelled to become dependent on the bounty of the white men. In the former case, wars and murders according to tribal customs were inevitable; in the latter, unaccustomed food, clothing, strong drinks, [and] the use of tobacco … made a change in their mode of life which they could not survive. The authorities who were first called upon to administer the affairs of South Australia did not recognise the fact that distinct territorial rights existed amongst the native inhabitants. Each tribe had its own country distinct from that of any other tribe. Its boundaries were known, and could have been accurately defined. The right of

> occupying, parcelling out and disposing of the soil, was asserted as the first principle of the colonisation of the country, without the slightest regard to any rights, except those which were exercised by the Crown. Without the land the aboriginal [sic] native could not exist; the land was taken from him and he ceased to exist (Woods 1879 (1997), pp. xxiv–xxv).

Over 100 years later, Reid analysed the outcome as follows:

> Aborigines in South Australia were thus dispossessed of their lands as easily as in the other colonies. But the dispossession resulted from the failure of humanitarian policy and subtle manipulation of this failure by land-hungry settlers, rather than from any policy of appropriation and subjugation, by force if necessary, as sometimes occurred elsewhere (Reid 1990, p. 9).

3.2.1.3 Nineteenth and early twentieth century European ideas and policies

The dramatic decline in Indigenous populations found explanation and legitimation in nineteenth century ideas such as the 'survival of the fittest' and Social Darwinism which assumed the inevitable disappearance of 'inferior' races when confronted by 'superior' civilisations. These ideas influenced a policy described as 'Soothing the Dying Pillow' (Haebich 1988, p. 48) which assumed that Indigenous Australians would 'die out' and that people of good will should aim to make their demise as painless as possible.

> Their doom is sealed, and all that the civilised man can do, now that the process of annihilation is so rapidly overtaking the Aborigines of Australia, is to take care that the closing hour shall not be hurried on by want, caused by culpable neglect on his part (Woods, 1879, p. xxxviii).

Many Indigenous people survived through rural employment in their traditional territories, clearing land, stripping bark, shearing, selling possum and kangaroo skins, road building and fencing. In Western Australia some Indigenous people acquired blocks of land under the 1898 Lands Act (Haebich 1988, p.28). Increased populations of Aboriginal people, many of mixed descent, often living on the fringes of towns, began to concern government officials and local authorities who determined to address the so-called 'half-caste problem'. This led to the enacting of Protection Acts first in Queensland (1897), then Western Australia (1905), New South Wales (1909), and South Australia (1911), aimed at protecting Aboriginal people from what were deemed the worst elements of European society (Haebich 1988, p. 8). Framed within a segregationist and authoritarian assumption of superiority on the part of the dominant powers, these acts only added to the burden of Aboriginal existence (Baker, Davies & Young 2001, p. 15):

> The 1905 Aborigines Act (WA) … laid the basis for the development of repressive and coercive control over the state's Aboriginal population. … It set up the necessary bureaucratic and legal mechanisms to control all their contacts with the wider community, to enforce the assimilation of their children and to determine the most personal aspects of their lives (Haebich 1988, p. 83).

Many Indigenous people in the south of the state had previously been exempt from discriminatory legislation and the new Act meant a reduction in their legal status and rights as citizens. This new legislation, which reduced Aboriginal people to the status of minors, gave government appointed officers total control over their mobility, employment, rights to marry and most other aspects of daily life. Their absolute power resulted in extensive removal of children from their parents. These children are now referred to as 'the stolen generation'.

In both states it was possible to apply for exemption from these acts. To achieve this individuals had to be of mixed descent (the exact proportions of different ancestry were

detailed in the policy), had to prove that they were ‘of good character’ and agree not to mix with other Aboriginal people. Among Indigenous people, exemption certificates were referred to as ‘dog tags’ and the Protection Board was renamed ‘the Persecution Board’.

This hated legislation formed the basis of Aboriginal policy in Western Australia until the final vestiges of the Act were removed in 1962 and policies moved from segregation through assimilation, welfare and finally to the *Aboriginal Affairs Planning Act 1972* (WA), which removed the last elements of these overtly controlling policies.

Indigenous people in South Australia also became subject to the rigors of a similarly repressive Aborigines Act in 1911 (Mattingly & Hampton 1992, p. 45). As in Western Australia, this legislation was designed to manage the Indigenous population, including their movement, their rights to property, to marry, and to associate freely. Lay mission stations were established under this regime, and included missionary activity within the SWMR at Yalata Station, Koonibba Mission, Poonindie Mission and Umeewarra Mission (Reynes 2002, p. 8). The *Community Welfare Act 1972* (WA) signalled a shift from overtly discriminatory policies of the past and laid the foundation for Indigenous-instigated political activity that created incremental change in terms of Indigenous rights and responsibilities (Reynes 2002, p. 67).

3.2.2 Changing populations and demographic patterns

Following colonisation, the Indigenous population of the country plummeted. While it is impossible to give exact figures since Aboriginal people were not included in the national census until after the 1967Referendum, all states report surviving populations as low as 10 per cent of the original estimated inhabitants. In section 3.1.2, the minimum estimated population in 1788 was given as 315 000 (Australian Bureau of Statistics 2001). It was not until the 1990s – over 200 years after European colonisation – that Indigenous population numbers returned to this original minimum figure. In 2001 the population was only 458 500, still less than half the estimated maximum figure in 1788.

Areas of territory favoured by Indigenous people were those first occupied by Europeans; availability of water, fertility of soil and richness of resources such as fish, fowl and animal life were highly prized in both economies. Section 3.2.1 discussed how people were excluded from their lands that were fenced, ploughed or turned over to grazing animals. European occupation resulted in major demographic upheaval as many Indigenous families moved across the landscape in search of food or work. Many camped on the margins of towns or stations and became beggars in their own land.

Christian missions were established in both states in order to assist displaced Indigenous people and offered a haven which attracted many families, often from far away. In many cases these missions required residents to abandon their traditional beliefs and values, to stop speaking their own languages, and to adopt Christianity.

In Western Australia, following the passing of the Aborigines Act in 1905, government funding was increasingly diverted from supporting Christian missions and orphanages into two major native settlements that were established at Carrolup and Moore River. Although set up as self-supporting agricultural settlements that would train Aboriginal people for ‘useful employment’, both were in marginal environments. The Carrolup Settlement was in the Wheatbelt, outside the SWMR. The Moore River Settlement was sited 200 km north of Perth and 50 km inland, within the SWMR. Noongars from all over the south-west and beyond were relocated in these two settlements, miles from their own territories. People speaking many different languages were brought together and forbidden to speak their own language. Children from Jigalong in the Western Desert and Yamatji children from

the Murchison district were among those forcibly brought to Moore River (Haebich 1988, p. 165).

In southern South Australia, the distribution of Aboriginal people and traditional patterns of land ownership and use had been completely disrupted by the start of the twentieth century. A significant number of the surviving population from the SWMR had moved or been moved to settlements at Point Pearce on the Yorke Peninsula and Point McLeay (now Raukkan) on Lake Alexandrina in the south-east (Brock 1995, p. 215).

Government policies in the first half of the twentieth century in both states compounded the demographic upheaval initiated by European colonisation.

3.2.3 Changing economic structures and practices

Colonisation of the south-west region of Western Australia resulted in lands being settled within the lower south-west, south along the coastal regions and inland along fertile river valleys, before settlements were built further up the coast to Yamatji country. Initially, early settlers drew heavily on Indigenous knowledge and labour to establish their enterprises (Collard 1996, p. 47, Reynolds 1990, p. 8–11).

Early colonial records document beached whales leading to great harvests and gatherings of Noongars within the Capes region of the south-west (Stewart 2003, p. 32). Aboriginal labour was used in the south-west of Western Australia in the sealing and whaling industries, without which these fledgling industries may not have been viable (Stewart 2003, p. 33, Clark 1994).

American, French and British whaling parties had been visiting the SWMR since the 1790s, however it was not until the 1830s that American whalers began serious harvesting within the area (Gibbs 1998, p. 39). American sealers, in particular, visited the south-west as early as 1826 and were quick to use Indigenous knowledge of the area to find the best hunting grounds. Exploitation of Noongar resources and abduction of Noongar women resulted in conflict with mortal consequences (Collard 1996, p. 44). As smaller seal and whale harvesting sites were developed and the industry became more widespread, Noongars were engaged as labourers and boat hands, with some women trapped in small island sealing enclaves and coastal harvesting sites (Henderson 1980, pp. 137–39). Noongar involvement in whaling increased into the 1840s. Noongar whalers ‘worked on stations for considerable periods, becoming well-known and respected identities’ receiving ‘“lays” (proportional shares of the oil) equal or comparable to the other men on the crews’ (Henderson 1980, p. 40).

Whalers and sealers also frequented Nunga territories for many years before the colony of South Australia was formed. A number had established a base on Kangaroo Island in 1803 and are known to have come to the mainland and abducted women from the south-east coast and lower Eyre Peninsula (Brock 1995, p. 212). In addition to whaling and sealing, Indigenous labour in marine industries within the SWMR included net fishing, pearling, water transport and haulage industries (Staniforth et al. 1999).

Those Nungas who managed to stay away from the government settlements survived mainly by itinerant labour, domestic service, seasonal work, trapping rabbits and water rats to sell the skins, mutton birding and a range of other forms of rural employment (Brock 1995). Indigenous labour within the SWMR, however, became marginalised as the non-Indigenous population increased. Although coastal resources continued to be a valuable source of complementary foods that supplemented low incomes and poor institutional diets, many

Indigenous communities and individuals became dependent upon rations, indentured employment, mission stations and various government institutions.

3.2.4 Health and wellbeing

Colonisation presented a three-pronged attack on the health and welfare of Indigenous people:

- it introduced new diseases (some immediately fatal, others chronic and debilitating, and yet others causing sterility)
- it took away ancestral land (causing psychological illness and spiritual despair)
- it herded Aborigines into small reserves and settlements, destroying their healthy lifestyle and substituting conditions and diet worse than those of the poorest newcomers (Franklin & White 1991, p. 5).

Indigenous people had no resistance to new European diseases such as pneumonia, typhoid fever, measles, chickenpox, whooping cough, influenza, mumps, scarlet fever, diphtheria, tuberculosis, smallpox, gonorrhoea and syphilis. Epidemics swept through Indigenous populations causing many deaths. The reserves and settlements to which many people had been forced in order to survive generally had poor facilities, poor diet and were an ideal environment for cross-infection. The impact on the survivors of losing such a large proportion of their loved ones can only be imagined. Early explorers reported that in some areas, too few people survived to bury their dead.

Loss of so many people was a serious blow to established social structures, already under threat from loss of land. Given Indigenous knowledge systems that required care of country, it was common for people to explain disease and death as a consequence of having abandoned country and so they often blamed themselves for the epidemics. The impact of loss of country on peoples whose cosmology and theology was essentially local and specific is great. Despair would have been compounded by the perceptions and attitudes of the newcomers, many of whom saw Indigenous people as sub-human or at the lowest end of the social spectrum.

Those who survived and managed to find work often lived in fear of having their children taken away. Under ‘Protection’ legislation, people were often denied permission to marry the person they loved (Kinnane 2003) or separated from their kin by barriers of ‘caste’. Those Indigenous people who took up exemption certificates to escape this authoritarian regime were required to reject their own kin and identity. Some escaped this intolerable situation by ‘passing’ or denying their Aboriginality, claiming instead to be of Greek or Indian descent. All these experiences were socially and psychologically damaging to Indigenous wellbeing.

3.2.5 Indigenous connectedness to sea country

The colonisation process within the SWMR, and the government policies that followed in the early twentieth century, removed Indigenous people from their lands and aimed to destroy languages, religious beliefs and cultural knowledge. Many languages disappeared during this historical period, along with much religious and cultural knowledge.

Many Indigenous people are today employed in mainstream society and appear to live a Western lifestyle. A large proportion of those people define themselves in the 2001 Australian census as Christian (Australian Bureau of Statistics 2004). Many people have settled in towns many kilometres from their traditional country. Since the change in policy allowing the pursuit of democratic freedoms, Indigenous people have passionately sought

to recover and reclaim what they can, to reconnect with language and country, to transmit cultural knowledge to the next generation and to interested or claimed outsiders.

Older people had preserved in silence a wealth of knowledge which is now being shared: some has been reclaimed from records of early explorers and missionaries in libraries; some is re-emerging as people visit sites and features in their landscape and re-establish links with 'country.' Many churches have encouraged Indigenous Christians to incorporate their own beliefs, values and ceremonies in church services.

Concurrently, many individuals managed to keep faith with country in scores of minor ways, through occasional visits, through song, through the hunting and gathering of bush and sea foods, through specific rituals of food preparation, the use of language terms, or through cultural practice. For example, at the Moore River Settlement, 50 km inland, people would put a baler shell on the graves of coastal people as a way of assisting their spirits to return to country (Kinnane 2003).

The next three sections provide many examples of ongoing connectedness to sea country that have both traditional resonance and contemporary relevance.

3.3 Contemporary Indigenous peoples in the SWMR

3.3.1 Population distribution and contemporary demography

The national Indigenous population was estimated at 458 500, or 2.4 per cent of the total Australian population, at the last government census in 2001. Of the two states within the SWMR, Western Australia has 14.4 per cent (65 961) of the national Indigenous population and South Australia has 5.6 per cent (25 544). A very large proportion of Indigenous people within these states live within the SWMR (Australian Bureau of Statistics 2004).

Indigenous population growth is relevant to future planning within the SWMR. Between 1996 and 2001 the overall Indigenous Australian population rose 16 per cent against a non-Indigenous population increase of 4 per cent (Australian Bureau of Statistics 2003). With current population growth trends, the Indigenous Australian population will reach a figure of 649 000 people by 2006 (Australian Bureau of Statistics 2002, Hunter 2003, p. 2). Of these, it is estimated that 66 976 will live in Western Australia and 26 633 in South Australia.

The greatest proportion of Indigenous people (30 per cent) live in major cities, with a further 20 per cent living within areas categorised as inner regional, 23 per cent in outer regional areas, 9 per cent in remote areas, and 18 per cent in very remote areas. This national regional breakdown is reasonably representative of Indigenous populations within the SWMR given the nature of Western Australian and South Australian demographic profiles, with high density urban populations seated within vast territories of low density rural and remote areas.

This demographic distribution is significantly different from the non-Indigenous pattern which shows over 80 per cent living in major urban areas and only 2 per cent living in very remote areas. Yet, within regional planning structures and regional advisory committees, Indigenous people are vastly under-represented. This lack of representation is often due to a lack of engagement with mainstream governance and commercial organisational processes and structures (Dillon 2004).

Although the biggest proportion of the Indigenous population within the SWMR lives in the two major cities of Perth and Adelaide, Indigenous residence is fairly evenly spread

across all categories from urban to very remote. Many people living in the major urban centres maintain close connections to sea country outside the towns and cities, following 'kinship runs' to regional and remote areas as part of their cultural obligations (Birdsall 1991). Although greater numbers of Indigenous people may reside in major population centres, representation and responsibility for country is best focused on Indigenous-recognised representative structures. These organisations may be regionally or remotely based, yet Indigenous community members will travel hundreds of kilometres to participate in discussions about country.

> Population mobility is another important factor to consider when linking Indigenous population distribution and the question of caring for country. Many Indigenous people are highly mobile – travelling around their country, between their country and the cities or towns where they live, and visiting other regions of Australia (Baker, Davies & Young 2001, p. 15).

There are no direct population figures for the specific boundaries of the SWMR. The most reliable sources at this time are ABS figures from the 2001 national census (Australian Bureau of Statistics 2004) which separate discrete Indigenous populations based on previous ATSIC regional boundaries. For the Western Australian component of the SWMR, this includes the following ATSIC regions: Perth (20 506); Narrogin (6960); Geraldton (5516); Esperance (369) and Dundas/Esperance (193), giving a total of 33 544 persons (50.7 per cent of the total Indigenous population of Western Australia).

The South West Aboriginal Land and Sea Council (SWALSC), which covers a large portion of the western section of the SWMR within Western Australia, estimates the Noongar population at 27 000 individuals comprising 218 family groups, and representing the greater proportion of Indigenous people in proximity to the SWMR in Western Australia (South West Aboriginal Land and Sea Council n.d.). When the figures for Yamatji country to the north are taken into account, this correlates with figures recorded in the 2001 census.

Within the South Australian component of the SWMR, the following ATSIC regions represent the estimated population of people potentially affected by the planning process: Adelaide (14 520); Ceduna (1890); and Port Augusta (6280); totalling 22 690 Indigenous people (88 per cent of the total South Australian Indigenous population) potentially affected by the SWMR.

The total estimated Indigenous population within the entire SWMR across Western Australia and South Australia is therefore 56 234 persons, or 12.2 per cent of the total Australian Indigenous population as at 2001. Two other groups have not been included: there are a number of Indigenous people living in close proximity to the coast who maintain continuing linkages to coastal regions; there are also many who live interstate yet maintain a connection with their traditional country.

A further regional breakdown of population reveals Indigenous communities existing in relatively sizeable numbers within the SWMR as opposed to other remote regions of Western Australia and South Australia. Within the Western Australian section of the SWMR at the 2001 Census, larger Indigenous coastal and inner-coastal populations were recorded in the areas of Swan (2315), Stirling (1636), Fremantle (366), Cockburn (1256), Rockingham (924), Mandurah (746), Albany (698), Vasse (293), Greater Bunbury (1173), Preston (681), Esperance (369), Dundas (193), Gascoyne (218), Shark Bay (170), Greenough (542), Geraldton (1715) and the Northern Agricultural areas (573).

Within the South Australian section of the SWMR, significant Indigenous coastal and inner coastal populations were recorded at Yorke Peninsula (468), Adelaide South (332),

Adelaide West (641), Port Adelaide (789), Port Lincoln (616), Ceduna (749), Eyre Peninsula (137), Yalata (198), Port Pirie (308), Port Augusta (1972) and Whyalla (619) (Australian Bureau of Statistics 2002).

3.3.2 Contemporary employment and income levels

In the first half of the twentieth century, Indigenous people played an important role in the Australian labour force, especially in the pastoral industry. Indigenous workers were also well represented in domestic service, forestry and fishing, land clearing, fencing, boat building, fruit picking, timber splitting and the many other jobs essential to rural Australia in the period. Under protection and native welfare policies, Indigenous education had been restricted to what was considered necessary to equip children for entry into the large unskilled labour force.

This employment pattern changed in the 1970s when mechanisation resulted in the virtual disappearance of unskilled labour in those industries where Indigenous people had traditionally worked. In the last years of the twentieth century, employment in the newly mechanised workplaces required increased levels of literacy and often specialised training. Across the country, because of their restricted educational opportunities and historical employment patterns, Indigenous people became unemployed in significant numbers in a very short period of time.

Employment in rural industries had allowed Indigenous people to stay in or close to their traditional country, to maintain their social networks, and to fulfil their cultural and religious obligations. While many non-Indigenous rural labourers were forced to move to urban centres to find work, the pull of the country as well as experience of racist attitudes in the cities have kept a much larger proportion of the Indigenous population in rural areas – in ‘country’, but unemployed (Australian Bureau of Statistics 2003).

This decline in employment opportunities is evident within marine and coastal industries where contemporary Indigenous employment figures are very low compared with the recent past as a result of the changed nature and scope of commercial fishing, farming, harvesting and processing industries. These industries have become mechanised, requiring specific educational skills and increased levels of capital expenditure on equipment and processing, reducing common pools of labour in the form of unskilled seasonal work. In this regard, Indigenous employment levels within the SWMR are generally comparable to the poor Indigenous employment figures nationally (Australian Bureau of Statistics 2003).

In considering Indigenous engagement with marine industries within the SWMR, the majority of Indigenous employment was within the private sector. Figures show 55 per cent of Indigenous persons were employed in 2001as opposed to 82 per cent for non-Indigenous persons (Australian Bureau of Statistics 2003).

Indigenous unemployment rates in 2001 (20 per cent) remained high compared with the non-Indigenous Australian population (7 per cent). Indigenous unemployment was not greatly affected by gender in 2001, although the ABS recorded slightly higher unemployment rates for Indigenous men (22 per cent) as opposed to Indigenous women (18 per cent). However, it was within the inner and outer regional areas, which constitute the major representative zone of Indigenous residence within the SWMR, where Indigenous unemployment occurred at the highest rates.

In inner regional areas, Indigenous unemployment was estimated to be 25 per cent in 2001, while in outer regional areas it was estimated at 23 per cent. The significantly lower rate of 9 per cent Indigenous unemployment in very remote areas can be largely attributed to

Indigenous participation in the Community Development Employment Programme (CDEP), as any other avenues for employment are generally limited to niche economies centred around tourism, art production and subsidised government health, natural resource management and service delivery programmes. The 2001 Census recorded a total of 17 800 Indigenous persons or 18 per cent engaged in the CDEP nationally, although ATSIC figures put this 40 per cent higher at 32 000 (Australian Bureau of Statistics 2003). This difference reflects the difficulty of accurately calculating CDEP participation due to the nature of CDEP work, movement between regions, and the nature of some short-term CDEP projects (such as those dealing with natural resource management or Caring for Country programmes).

While the proportion of Indigenous peoples employed in non-CDEP positions rose from 28 per cent to 36 per cent between 1996 and 2002, the CDEP was a major source of employment and income for Indigenous Australians, with one in four people engaged in the scheme in 1994, particularly in regional and remote areas (Linacre 2004, p. 3). It can be argued that this reflects an entrenched problem of significant Indigenous employment being limited to government-subsidised programmes. However, more positively, these programmes represent the potential for Indigenous-designed and managed investment strategies for some communities and individuals.

The majority of Indigenous workers (24 per cent) were employed as labourers and related workers in 2001, with 18 per cent employed as clerical, sales and service workers. There was also a clear urban–remote divide around the types of employment people were engaged in. In 2001, 21 per cent of Indigenous workers in major cities were employed as clerical, sales and service workers, 14 per cent in professions, 12 per cent as tradespersons and related workers, and 11 per cent as labourers and related workers; in regional and remote areas, the proportion of unskilled workers is much higher (Australian Bureau of Statistics 2003).

Indigenous engagement in regard to land use and management is often narrowly linked to conservation of cultural and natural heritage. However, Indigenous employment must be considered as an important element in any planning process within the SWMR. Indigenous custodians, while stressing the need for conservation and protection of natural and cultural heritage and ecosystem health, also repeatedly call for greater Indigenous employment in the management, planning, conservation and use of sea country (Dillon 2004).

Indigenous Australians' average gross household income was estimated in 2001 at $364 per week, which corresponded to 62 per cent of non-Indigenous household income. This average value, however, does not take into account geographic differences in overall household incomes between major cities, and regional and remote areas. There was measurable growth of approximately 11 per cent between 1996 and 2001 in average Indigenous household incomes, with non-Indigenous average household incomes rising 13 per cent, leading to a small increase in income disparity between Indigenous and non-Indigenous Australians (Australian Bureau of Statistics 2003).

In major cities average income levels of Indigenous peoples were estimated to be 1.5 times higher than for Indigenous peoples living within very remote areas. While industries such as mining, commercial fishing and coastal industrial developments are common within regional and remote areas, Indigenous people have remained largely marginalised from these industries.

As with Indigenous engagement in the negotiation of management plans within the SWMR, Indigenous engagement in marine industries needs to be considered alongside cultural

heritage protection and recognition of native title. Specific examples of successful Indigenous engagement in industries such as ecotourism, fisheries, conservation and park management are addressed in the following sections.

3.3.3 Contemporary societies and cultures

The previous sections have described some of the overlapping traditional social identities that individuals might draw on in different contexts: family, lineage, clan, totemic group, language group, or wider allegiances. Today Indigenous people draw on a range of overlapping identities that express both contemporary and traditional realities. In some contexts, Indigenous people may define themselves as being Western Australian or South Australian, or from Ceduna or Bunbury. Among themselves, though, the same people are more likely to refer to themselves as Nungas, Noongars or Yamatji, or to identify their 'country', language group or extended family. This complexity of overlapping boundaries is also found within contemporary Indigenous social structures and organisations as they relate to country and territory.

Over the years Indigenous regional boundaries and organisations have generally been imposed by outsiders, whether government officials or social scientists. Because these have often related to political representation or to service delivery, they have tended to follow contemporary demographic realities rather than Indigenous concepts of land ownership and the right to speak for country. Outsiders negotiating with contemporary Indigenous people are often faced with a wide range of overlapping structures which are examined in more detail in Section 1. However, it is the boundaries that are recognised by Indigenous people themselves today that are of most importance because they reflect Indigenous peoples' sense of identity and assertion of attachment to country.

Indigenous regions and their boundaries are still firmly established within the SWMR today. Indigenous peoples both acknowledge and value these regions and operate under Indigenous laws and customs which define peoples' rights and responsibilities on country as well as on other Indigenous peoples' lands.

Although Indigenous people in the SWMR are for the most part embedded in mainstream urban Australian life, there is a common Indigenous desire to maintain collective Indigenous identities. The *National Aboriginal and Torres Strait Islander Social Survey 2002* (2004) found that Indigenous identification with clan-based groups and maintenance of cultural responsibilities has been maintained through continued transmission of language, law and culture. There has been a general decline in the percentage of Indigenous people living in homeland or traditional country from 29 per cent in 1994 to 22 per cent in 2002. However, while these figures represent a geographic shift, continued reclamation of language and maintenance of law indicates a process of ongoing stewardship of country by Traditional Owners/custodians and responsible parties supported by frequent visits back to country (Linacre 2004).

While many young non-Indigenous people from rural areas may be forced to move to cities for education and employment, some Indigenous people's cultural obligations, practices and responsibilities may require them to remain in particular areas. Such choices may not be conducive to general prosperity in terms of income, housing, employment and education. Reduced Indigenous incomes may indicate a choice to invest in other aspects of community wellbeing (Rowse 2002). This may include language that is only able to be taught on country, continued maintenance of law and culture, investment in particular types of employment that have become marginal, such as cattle-farming, or the choice to

avoid potentially harmful impacts upon youth through relocation to larger regional towns and cities.

A total of 10 per cent of Indigenous people aged 25 years or over have indicated that they had been removed from their families and their country as children under the child removal policies of previous state regimes. This reality represents clear and significant pressures on Indigenous people attempting to retain or regain access to country in line with traditional and successional obligations and responsibilities (Linacre 2004, p. 2). It is important, therefore, to support Indigenous aspirations to engage in economic development that coincides with their cultural obligations to protect and manage country.

3.3.4 Contemporary health and wellbeing

Environmental health indicators for Indigenous communities often include infrastructure assessments of housing, water supplies, waste disposal, sanitation, domestic animal health, dust and access to services. They also include access to education, access to mainstream services and positive infrastructure such as telecommunications as well as Indigenous ownership of community development programmes. For the purposes of this report, social indicators of wellbeing, cultural continuity and community development are included. These indicators are considered highly relevant for future consultative processes regarding the management and conservation of Indigenous interests in the SWMR.

The *National Aboriginal and Torres Strait Islander Social Survey 2002* (2004) revealed that between 1996 and 2002 there was a significant shift in Indigenous persons reporting their health as being fair/poor from 17 per cent to 23 per cent. In 2001 the median age of Indigenous persons was 20.5 years, as opposed to 36.1 years for non-Indigenous peoples. This relatively youthful profile is attributable to larger families and significant declines in infant mortality rates for Western Australian and South Australian Indigenous populations between 1991 and 2002. However, a much shorter life expectancy is also responsible. Indigenous men have an average life expectancy of 59.4 years and Indigenous women 64.8 years, compared to 76.6 and 82.0 years for non-Indigenous men and women respectively. This 17-year difference represents a death rate three times that of non-Indigenous Australians between 1999 and 2003. This is a burden that reduces Indigenous capacity to benefit from engagement within the Australian economy and generally impacts upon the wider sense of Indigenous community wellbeing (Australian Bureau of Statistics 2003a).

Indigenous engagement with mainstream society is further hindered by continuing relative socioeconomic disadvantage and an ongoing lack of investment in regional infrastructure. This perpetuates a continuing and cyclical exposure to environmental health risks and related behavioural factors (Australian Bureau of Statistics 2003a). Lower Indigenous life expectancy is directly linked to the environmental health impact of lower employment rates. Low life expectancy is also linked to lower participation rates in higher education, and the general lack of engagement with appropriate government and other partnership programmes aimed at alleviating Indigenous disadvantage (Australian Bureau of Statistics 2003a). This situation is of direct relevance to Indigenous participation in ongoing use, enjoyment, management of, and benefit from the SWMR.

Stresses on health and wellbeing were identified by the *National Aboriginal and Torres Strait Islander Social Survey 2002* (2004) as:

- the death of a family member or close friend (46 per cent)
- serious illness or disability (31 per cent)
- the inability to obtain employment (27 per cent).

Within remote and very remote areas the core stresses were found to be:

- overcrowding in housing (42 per cent)
- problems related to drug and alcohol abuse (37 per cent).

Twenty-five per cent of Indigenous people in 2002 reported that they were the victim of some form of physical violence in the previous twelve months (Linacre 2004, p. 4). However statistics such as these overlook the social capital that is invested in Indigenous community resilience and cultural continuity.

Social capital is a measure of the strength of social cohesion and resilience within and between social groupings. For Indigenous Australians, social capital is realised through continued maintenance of culture and identity, and through more tangible practices such as volunteerism. The *National Aboriginal and Torres Strait Islander Social Survey 2002* (2004) found that 90 per cent of Indigenous peoples had engaged in some form of community social activity in the previous three months, and 28 per cent had participated in some form of voluntary work in the previous twelve months (Linacre 2004, p. 3). There is valuable social capital to be achieved through Indigenous management of traditional estates and territories and this should be encouraged in any future planning of natural and cultural heritage resource management in the SWMR.

3.3.5 Contemporary connectedness to and use of sea country

As discussed previously, more than 50 per cent of Australia's Indigenous population lived on or near the coast in 2001 (Baker, Davies & Young 2001, p. 65). Of relevance to the SWMR planning process, more than 30 000 Indigenous Western Australians are influenced by and, in turn, influence sea country just within the region, which represents over 50 per cent of the total Indigenous population in the state (Stewart 2003, p. 14).

As noted, most Indigenous peoples within these coastal regions live in major cities or regional towns, with some still living in remote and very remote locations on outstations and small community settlements associated with former missions and government depots. Within all these communities, fishing, hunting and the maintenance of maritime cultures is a regular practice and their relationship with the sea is underpinned by a tradition of rights and responsibilities that extend back to pre-colonial times. Marine resources are used today to put fresh food on the table and to supplement other sources of income, as well as being a way of perpetuating traditional practices. Indigenous use of coastal and marine resources constitutes an important part of a 'hybrid' economy for many Indigenous communities. Customary practices of hunting and harvesting, as well as trade within and among Indigenous communities, contribute to income and health, as well as contributing to cultural continuity and resilience (Smyth 1993, p. 19, Altman 2003, p. 2). In parts of the SWMR, expansion of tourist facilities and the building of coastal holiday homes have restricted these activities, further dispossessing people.

Since colonisation, the impact of Western development and government policies that restricted Indigenous access to and use of lands and waters have marginalised Indigenous interests and the ability to care for country. The following sections of this report describe recent government programmes aimed at engaging Indigenous knowledge in the management of national parks and conservation zones, and in efforts to reverse the degradation of Australia's natural and cultural resources. These have been eagerly taken up by Indigenous groups who are actively participating in programmes aimed at reinvigorating Indigenous knowledge as a means of countering these environmental problems. Recent shifts to include Indigenous communities and individuals in this process

are welcome and necessary. These efforts require clear communication and equal negotiation (Baker, Davies & Young 2001, p. 15).

> Managing Indigenous country in contemporary Australia poses a wide range of challenges, reflecting the diversity of people's living situations, of their access to and valuation of land and sea resources, or their priorities for management and of the institutional structures within which they function (Baker, Davies & Young 2001, p. 49).

The integrated planning approach of the DEH presents the potential for negotiated regional planning processes that take into account specific and individual Indigenous community realities. These include capacity and access to country, as well as the potential for new partnership agreements with government and industry groups that go beyond the current programme-based approach.

3.3.5.1 Relationship to country, philosophical concepts

When defining Indigenous peoples' relationship with and connection to country, or in this case sea country, it is often difficult to articulate within Western understanding how that relationship is developed, sustained and managed in contemporary contexts. Indigenous peoples' connections with sea country reach far back into collective Indigenous senses of responsibility, obligation, law, guardianship of cultural, natural and economic resources, involvement in spiritual activities and maintenance of places and sites. This holistic approach to country is based in obligatory responsibility to lands and waters as well as a collective sense of ownership (Kinnane 2005, p. 7).

The term country is used extensively by Indigenous people today to state their place, identity and sense of belonging. It is invoked to maintain connections, identity and links to places of significance. This expression can be defined more broadly as:

> a physical or metaphysical place of origin for members of an Indigenous clan, kin-based group or looser community. It includes the values, places, resources, stories, myths and cultural obligations associated with a geographical area, including land and sea (Nettheim *et al*. 2002, p. 377).

These connections are still profound for Indigenous people. For example, in regard to Noongar connections with sea country in the south-west of Western Australia:

> Noongar people still retain knowledge of names and locations of some original tribes, some myth cycles, naming practices and aspects of the spirit world. As well, they maintain a distinctive socio-cultural category, maintaining a particular system of kinship organisation (Stewart 2003, p.15).

Caring for country today is of major importance to Indigenous people. Indigenous management of sea country and the protection of cultural heritage sites are based upon principles of respect, obligation and reciprocity, derived from laws and customs that have been handed down for generations. Through obligations to care for country Indigenous peoples managed their lands and places of significance in a sustainable fashion for centuries before contact.

Today, Indigenous communities have demonstrated an ability to adapt to changing environments and have shown a deep concern for the management and sustainability of their coastal territories. Not only have they survived, but they have continued their traditions of caring for country, albeit in a contemporary manner. Major concerns expressed by Traditional Owners regarding contemporary development pressures along coastlines include:

- the potential effect of overuse of sea country resources due to overpopulation
- trampling and disturbance of habitats
- increased boat activity
- loss of biodiversity, hatchery and breeding areas
- destruction of Aboriginal sites
- depletion of reef species within the inter-tidal zone (Stewart 2003, pp.130–34).

Indigenous people are still as culturally diverse as the countries upon which they live. However, today they appear to share common philosophical understandings relating to country, which are intrinsically linked to their sense of identity. They share many historical similarities, such as the effect of colonial economies being imposed on them. Obligations and responsibility to country are still of vital importance, regardless of the fact that large tracts of the SWMR have now been occupied by non-Indigenous peoples.

3.3.5.2 Rights, obligations and responsibilities to country under Indigenous law

For outsiders to understand the notion of Indigenous rights associated with country, an understanding of the rights conferred to an Indigenous person or people over lands and seas through Indigenous law is essential. This relationship explains the belonging of Indigenous peoples to their country (see Section 3.1.3).

Indigenous rights are conferred to Indigenous people through bodies of Indigenous law. These bodies of law confer, to a person or people, their individual freedoms and societal obligations, as well as setting social norms and other factors required to ensure a functioning society. A large portion of these freedoms and obligations relate to country, what can be taken from it and when, and what obligations are required of a person or people to their country. These are expressed in ways that both reflect and are part of Indigenous culture and form the basis of a management system based on respect of country, obligation to country and reciprocity between country and people.

It is undeniable that these bodies of law have been under significant pressure since the colonisation of Australia and have, to varying degrees, been systematically dismantled from their pure ‘traditional’ form. However, while this may be the case, Indigenous people, as all people, are able to respond and adapt to pressures, and continue to apply their laws and culture in a post-colonial context. Even though Indigenous laws are not necessarily recognised within the broader legal Australian context, they are still considered to be of equal, if not greater, importance to Indigenous peoples within their own Indigenous nations:

> Indigenous peoples generally hold that even in contemporary times, they are subject to the laws and customs of their own nations prior to being subject to the laws and customs of the Australian state (Kelly n.d., p. 4).

This sense of obligation particularly relates to land and rights over it, with each Indigenous nation retaining custodianship over its own country as its law defines. Even in contemporary settings Indigenous peoples are still responsible to each other, their communities and their lands, and are bound by the laws and customs of their country.

Indigenous law also contains systems of responsibility and authority and, in relation to land, major portions of this responsibility are vested in the concept of the Traditional Owner. A Traditional Owner can be defined as:

> an Indigenous person whose rights and responsibilities for an area of country stem from traditional Indigenous law and custom. These rights and responsibilities are handed to them through customary law, and in many cases manifest as obligations

> to country as well as obligations to continue these rights and interests through customary law. Traditional owners are recognised as having a primary interest in the land and their existence is not contingent on recognition of such under white law (Western Australian Aboriginal Native Title Working Group 2002).

The roles and responsibilities of a Traditional Owner are complex and diverse. Kelly (n.d., p. 5) has analysed the above definition of a Traditional Owner and deconstructed it as follows:

> Firstly, it describes an individual who has been handed responsibilities for country and the places within it through a body of customary law. In many cases this is through family links to country and is handed via hereditary [means], either through the matrilineal or patrilineal line, depending on the particular law and custom of a particular area. This law may also dictate that a Traditional Owner can act as an [i]ndividual or must act as part of a collective.
>
> Secondly, it states that not only is this law handed to a person for a particular area of country, but part of that law is to continue its practice and fulfil the obligations to particular areas of country and to in turn pass this law on. As stated, this generally occurs through hereditary lines, although it has been known in some cases that custodianship of particular areas has been granted to individuals external to the family unit, a matter which causes some level of conflict, but such is the discretion of the Traditional Owner of country. Matters of this type begin to display the complexities of Indigenous law which simple definitions cannot capture.
>
> Thirdly, it provides details of [the] nature of the Traditional Owner in that they have a primary interest on the land. This parallels notions of land ownership that exist under the Torrens system which operates in Australia, and, while in Indigenous Traditional law land is more of a communal resource, the primary responsibility of particular areas fall to a few Traditional Owners who have particular rights under the law of the Indigenous nation they belong to. All others who are active on a particular piece of land are required to respect Traditional Owners direction and to share resources with them in recognition of their primacy on that land. Similarly, a Traditional Owner of one area may have rights to another, but does not have primacy and is therefore subject to similar conditions.

Traditional Owner responsibilities have not changed, regardless of colonial impact. Governments and their agents therefore, as well as private entities, should remain aware of the primacy of Traditional Owners in relation to country and its management. To vest power over these matters to those who do not, or should not, possess it in Indigenous law is culturally inappropriate. Such erroneous practices serve to create division and conflict within Indigenous communities, reducing the effectiveness of relationships that have been built between various parties and the Indigenous community. These issues of obligation, rights and responsibilities are discussed further in section 7 of this report dealing with native title in the SWMR.

4. Conservation programmes and management initiatives in the SWMR

Conservation zones within the SWMR range from national parks, state parks, state marine protected areas and Commonwealth MPAs through to Indigenous protected areas. This section examines the boundaries, locations and range of conservation zones within the SWMR. Overall this section provides a summary of the range of state and Commonwealth conservation zones of relevance to sea country within the SWMR.

4.1 Conservation programmes and management initiatives and their relevance to Indigenous peoples within the SWMR

An examination of conservation zones should not be considered as existing separately from commercial and other uses of sea country. However, due to the nature of separate state and federal legislative and administrative regimes, it is necessary to consider this as a distinct area of policy, legislation, regulation and management. Where appropriate in this section, reference will be made to natural resource management boundaries created under the NHT and NAP, however each of these management regimes is examined in greater detail in section 5 of this report. Similarly, where appropriate, links will be made with fisheries management policies and programmes which are examined in greater detail in section 6.

4.1.1 Indigenous protected areas and sea country

The Indigenous Protected Area Programme was formulated in the 1990s to enable Indigenous peoples to enter into voluntary agreements to manage their lands as protected areas in accordance with World Conservation Union (IUCN) guidelines. The aim of this programme is to incorporate these guidelines in the protected area estate to assist in meeting the Comprehensive, Adequate and Representative Reserve System (CAR) targets under the National Reserve System (NRS) (Smyth & Sutherland 1996). The IPA Programme is run from the Commonwealth Department of the Environment and Heritage and has been instrumental in advancing the participation of Indigenous landholders in the sustainable management of Indigenous estate. The IPA Programme contains significant opportunities for both Indigenous landowners and the Commonwealth. It allows Indigenous landowners to prepare management plans for their lands and subsequently to manage them accordingly. The programme also allows the Commonwealth to work with communities to develop the NRS. As large portions or even entire biogeographical regions are contained within Aboriginal lands, it is clear that this form of partnership approach is the only viable one through which the NRS can be achieved.

A further stream of the IPA Programme deals with cooperative management. Under this stream DEH supports Indigenous groups to develop partnerships with state or Commonwealth agencies to cooperatively manage lands that are already part of the protected area estate. This stream operates under the ideal of reciprocity, whereby governments seek Aboriginal lands to be converted to protected areas for NRS goals, and Indigenous people to seek social and cultural outcomes from their traditional lands that may have been previously converted to protected areas.

Within the study area, there is currently only one IPA project and it is on the Yalata Aboriginal Lands. The Yalata Lands, located at the Head of the Bight, are vested in the South Australian Aboriginal Lands Trust and are leased to the Yalata Community Incorporated (YCI) for a period of 99 years. They are 1000 km west of Adelaide and cover an area of around 455 000 ha. These lands were declared the Yalata IPA in 1999, and they continue to be managed according to its management plan (YCI 2000).

The most apt description of the Yalata IPA is in the management plan itself, which states that:

> the Yalata IPA contains spectacular coastal scenery with large dunes, fringing reefs and few obvious signs of human presence. The Head of the Bight public viewing area provides varied coastal scenery with views of the Nullarbor Cliffs, Twin Rocks, coastal dune fields and distant views of the eastern shore of the Bight. During the months of June to October this site also provides the best and most reliable cliff-top whale watching in Australia (YCI 2000, p. 3).

Historically, the Yalata lands were grazing leases and a Lutheran Mission. These lands are now vested in the South Australian Aboriginal Lands Trust and leased to the Yalata Community Incorporated. There are approximately 300 people living in the Yalata community, although exact population figures vary, depending on who identify as Anangu (YCI 2000). The Yalata IPA is entirely surrounded by protected areas, bounded by the Nullarbor National Park to the west, the Wahgunyah Conservation Park to the south-east, the Yellabinna Regional Reserve to the north, and the Great Australian Bight Marine Park to the south.

As outlined in the management plan, the current operation of Yalata gives consideration to community, conservation and tourism/recreation purposes. In particular, it gives significant attention to whale watching at the Head of the Bight. It also creates the potential for ecotourism activities able to be developed by the community itself, and other potential economic development opportunities that may be derived from the management of the lands under the IPA system.

To meet its stated goals the management plan uses a zoning system where land is divided and managed according to the international standards as set by the IUCN. At Yalata, these zones include:

- a hunting zone
- conservation zones
- a community conservation zone
- a public coastal zone
- culturally significant zones
- the Head of the Bight zone.

These zones are subsequently operated against a number of considerations including management of visitors, access, camping and site management, all of which can be planned in a manner consistent with the zoning.

The Yalata management plan is in its fifth year of operation. Large parts of the plan have been implemented, however difficulties in community governance have slowed its ongoing implementation and scheduled review. Currently, both the Department of the Environment and Heritage and the Office of Indigenous Policy and Coordination in Ceduna are working closely with the Yalata community and having some success in progressing community issues. The IPA and its management plan remain a significant community focus and provide an opportunity to work through some outstanding community matters. The Yalata community and the management of the IPA within this estate represent a potential focus for the DEH in regard to the development of a sea country plan.

The following sections detail regional conservation boundaries and state conservation management programmes within South Australia and Western Australia. These zones, management systems and regulations assist in understanding the complex layers of governance and management that confront Indigenous people seeking to manage and maintain their sea countries. Some zones relate to country that is far from the coast but linked in an Indigenous context of seasonal use and widespread connection.

4.2 South Australian conservation initiatives within the SWMR

4.2.1 Previous and current conservation programmes and management initiatives in relation to sea country in South Australia

Prior to a comprehensive planning exercise, MPA planning and implementation in South Australia has been ad hoc and uncoordinated in nature. Several small and discrete reserves were being created for specific purposes with design considerations that are now generally regarded as insufficient for effective MPA outcomes. This situation was by no means unique to South Australia and, accordingly, national efforts were made which sought to remedy this situation. An excellent summary of the development of MPA planning in South Australia is provided in Baker et al. (2000, 2004).

4.2.1.1 Policy development toward a system of MPAs in South Australia and Indigenous interests in sea country

In 1998 the Department of the Environment and Heritage completed a report, Our Seas and Coasts – a marine and estuarine strategy for South Australia. This document made no mention of Indigenous connections with sea country or engaged with the potential for Aboriginal involvement in the management of the proposed MPAs that were to be created under this blueprint (Smyth 2002). Further, the South Australian national parks service recognised the need for Indigenous interests to be taken into account in protected area management including ‘cultural awareness, recognition and inclusion of Indigenous knowledge’, and the provision of training and employment for Indigenous participants. However in regard to the coastal zone, Indigenous interests within South Australia at that time did not correspond directly to terrestrial interests.

With the advent of the Ocean Rescue 2000 programme of the Commonwealth Government, which began in 1991, a considerable amount of effort was put into advancing ideas of marine protection. It was within this forum that the idea of a biogeographically and ecologically representative system of marine reservation was put forward and gained acceptance as a viable means through which to establish MPAs, particularly through the Brunckhorst Report (1994).

The concept of this type of system was further advanced with the development of the National Representative System of Marine Protected Areas (NRSMPA). This system sought to:

> establish and manage a comprehensive, adequate and representative system of marine protected areas to contribute to the long-term ecological viability of marine and estuarine systems, to maintain ecological processes and systems, and to protect Australia's biological diversity at all levels (Department of the Environment and Heritage, <http://www.deh.gov.au/coasts/mpa/nrsmpa/about.html#what>).

This comprehensive, adequate and representative (CAR) marine reserves system, as with terrestrial protected areas, occurred in the context of a bioregionalisation of the relevant marine environments. This bioregionalisation was carried out during the operation of

Oceans Rescue 2000 and is referred to as the Interim Marine and Coastal Regionalisation for Australia or IMCRA (IMCRA Technical Group 1998). All of these policy and technical formulations were developed with the participation of the states.

With the Commonwealth using the marine protected areas component of the Coasts and Clean Seas programme to stimulate the states to contribute to the NRS, South Australia responded positively. The South Australian Government undertook to engage in its own planning processes according to the NRSMPA principles in order to create a CAR marine reserve system in an area which has considerable marine values.

The South Australian Government is a signatory to the Commonwealth's strategic plan of action and guidelines to achieve the NRSMPA (ANZECC 1999). Through this plan it has generated a significant amount of research in order to develop a number of its own policies through which to achieve the NRSMPA. Achieving the NRSMPA is occurring under the mantle of a programme entitled the South Australian Representative System of Marine Protected Areas, whose primary aim is to achieve a CAR reserve system for South Australia's marine environments. This approach relies on a great deal of research such as Conserving Marine Biodiversity in South Australia, parts 1 and 2 (1999a, 1999b) which reviewed the status and approach of marine biodiversity conservation and sought to identify areas of high priority for conservation. It also relies on a number of strategic and policy settings which guide its implementation and ultimate achievement.

Baker (2004, p. 7) lists four main documents that are relevant to the development of the SARSMPA. They are:

- Our Seas and Coasts: A Marine and Estuarine Strategy for South Australia (South Australian Government 1998)
- 'Marine Protected Areas: A Shared Vision' (South Australian Government 2002) which was a release in draft form. The final draft of the Marine Protected Areas policy was released in November 2004, as Blueprint for the South Australian Representative System of Marine Protected Areas (DEH 2004a)
- South Australia's Strategic Plan – Creating opportunity (2004)[1], which has a target of establishing nineteen large, multiple-use marine protected areas by 2010
- the Living Coast Strategy for South Australia (DEH 2004b) which builds on Our Seas and Coasts, and 'sets out the State Government's environmental policy directions for sustainable management of South Australia's coastal, estuarine and marine environments' which 'focuses on promoting environmental stewardship' and 'supports development of industries operating within sustainable frameworks' (DEH 2004b, p. 4).

The *Blueprint for the South Australian Representative System of Marine Protected Areas, an initiative of the South Australia's Strategic Plan – Creating opportunity* (2004), aims to create nineteen marine protected areas in South Australia by 2010. This policy aims to identify, '[I]ndigenous and other values and interests' (Natural and Cultural Heritage 2004, p. 6), as part of the management and planning of the SARSMPA. Within the area of 'Indigenous Issues' the blueprint acknowledges that Indigenous peoples within South Australia have 'close ties with the land and sea' (Natural and Cultural Heritage 2004, p. 6). The SARSMPA further states that 'appropriate consultation with Aboriginal representatives

[1] This is a web resource only, South Australian Government State Plan <www.stateplan.sa.gov.au/index.php>

will be undertaken prior to establishing an MPA', and that 'Aboriginal heritage issues and activities, such as traditional fishing rights, will be taken into consideration' (Natural and Cultural Heritage 2004, p. 6). Of greatest interest is the statement that any established MPAs 'will not extinguish native title and will be consistent with native title legislation' (Natural and Cultural Heritage 2004, p. 6).

It is not clear within the blueprint to what degree Indigenous consultation will be vested in the Marine Advisory Committee, the Scientific Working Group, or one of the short term MPA consultative committees dealing with specific local, individual or discrete concerns. Likewise, the extent to which Indigenous people will be engaged in commercial and other activities, zoning and management regimes, is not stated within the *Living Coast Strategy for South Australia*.

4.2.1.2 The *Strategy for Aboriginal Managed Lands in South Australia* and the state-wide ILUA process

Of major significance for any negotiation of Indigenous sea country within South Australia will be the *Strategy for Aboriginal Managed Lands in South Australia* (SAMLISA) (2000), currently being negotiated across the state with the Aboriginal Lands Trust of South Australia and Traditional Owners represented through the Aboriginal Legal Rights Movement (Department of the Environment and Heritage 2004, p. 2). Concurrently, the South Australian Government is negotiating with Traditional Owners within a state-wide framework agreement under the Indigenous Land Use Agreement process within the Commonwealth's *Native Title Act 1993*, aimed at establishing 'more effective processes for decisions about issues that affect all native title claims' (Smyth & Bahrdt 2002, p. 123).

These negotiations in regard to state-wide conservation management and Indigenous Land Use Agreements are taking place within a context of major policy and legislative reform in South Australia. Within this climate of consultation and negotiation to recognise native title, manage ecosystem health via the CAR system the South Australian Government is also investigating a proposal for a Biodiversity Conservation Bill and a state biodiversity strategy.

Of direct relevance to regional marine planning in the SWMR, this process includes coastal and marine environments that will necessarily require due consideration of the SAMLISA, as well as the *Aboriginal Heritage Act 1988* (SA). In regard to Indigenous involvement in this process the South Australian Government has proposed that 'strong working relationships with relevant [I]ndigenous communities will be established and maintained to support the protection of significant sites' (Natural and Cultural Heritage, 2005, p.9). This process must naturally be tied to the SAMLISA and state-wide ILUA process if it is to avoid duplication and build on already existing Indigenous representative structures. The structures, having been created through these conservation strategies, also represent the most appropriate avenue for negotiation for the DEH in regard to the SWMR.

4.2.1.3 Indigenous cultural heritage and conservation policies in South Australia

Indigenous cultural heritage is also a major consideration of the state-wide negotiations. As related in section 3 of this report, Indigenous cultural heritage, cultural practice, health and wellbeing and ecosystem health are interrelated and mutually supportive. Within South Australia, contemporary management of Aboriginal heritage sites is via National Parks and Wildlife South Australia, the Department of State Aboriginal Affairs, Traditional Owners and Aboriginal heritage committees (Smyth & Bahrdt 2002, p. 102).

This process of negotiated management of Indigenous cultural heritage within national parks and conservation zones is known as ‘cooperative management’ and was initiated in 1987 by the South Australian Department of Environment and Planning. This approach is tied closely with an Aboriginal Partnerships programme based on a mix of reconciliation principles, employment and training in the cooperative management of conservation zones, negotiation of ILUAs and supporting enterprise development in the area of ecotourism (Smyth & Bahrdt, 2002, p. 103).

4.2.1.4 The Living Coast Strategy: a key conservation policy for sea country in the SWMR

The *Living Coast Strategy for South Australia* (DEH 2004b) is an important overarching strategy document. A number of initiatives are conducted under its mantle, such as amendments to coastal and marine legislation, marine planning and the development of marine protected areas, and the development of an estuaries policy (Government of South Australia 2005). Pollution controls, coastal protection and coastal development controls are other initiatives within this strategy.

In relation to marine protected areas the Living Coast Strategy furthers the SARSMPA aims and principles, consistent with that of the NRSMPA. The Living Coast Strategy also seeks to develop a CAR system of marine reserves through a bioregional approach targeting high conservation areas within each bioregion. The IMCRA and other work in South Australia have identified eight bioregions, six of which are within the study area, as depicted in figure 3. It is within these boundaries that the South Australian Government is seeking to pursue its SARSMPA goals.

Currently, the representation of these bioregions in the reserve system is poor. However, the SARSMPA is now beginning to address, with the release of the *Blueprint for the South Australian Representative System of Marine Protected Areas* (DEH 2004a), a significant amount of research and strategic work. It is now proposed to develop MPAs in nineteen key areas, as shown in figure 4.

In order to develop the boundaries of these proposed areas, integrated planning processes with a variety of stakeholders such as industry, conservation and Indigenous people are undertaken. The first, the Spencer Gulf Marine Plan, which generated the Spencer Gulf focus document (DEH 2003a) is now nearing completion and the planning exercise for the Gulf St Vincent is set to proceed in the very near future.

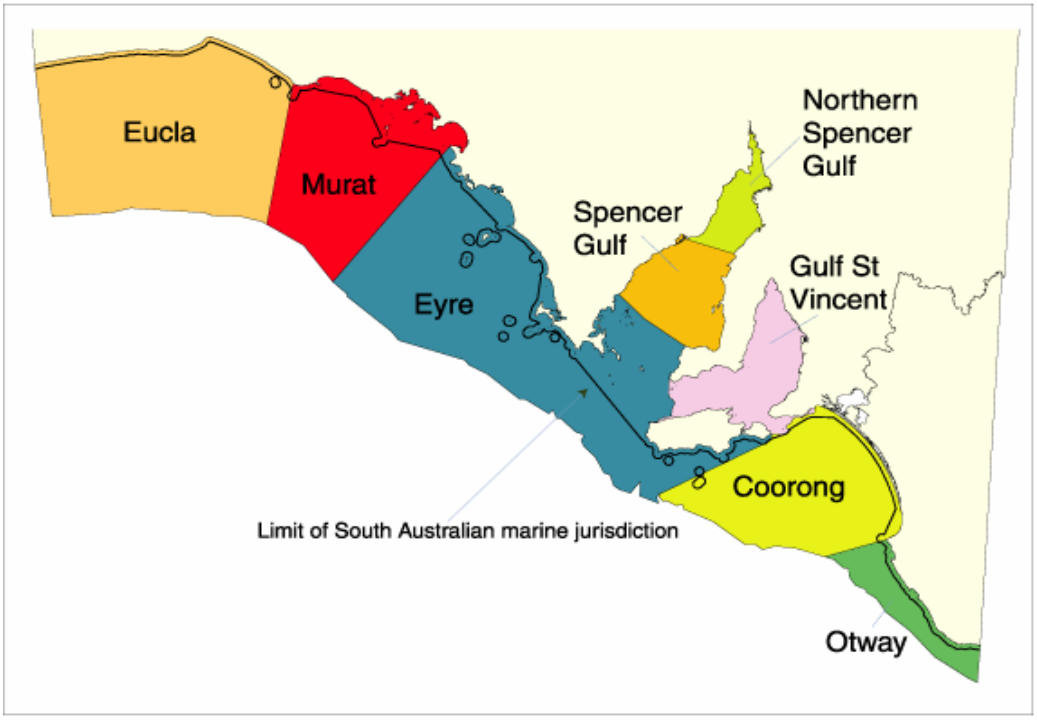

Figure 3. Marine bioregions of South Australia (source: DEH web site, <http://www.environment.sa.gov.au/coasts/marine_bioregions.html>)

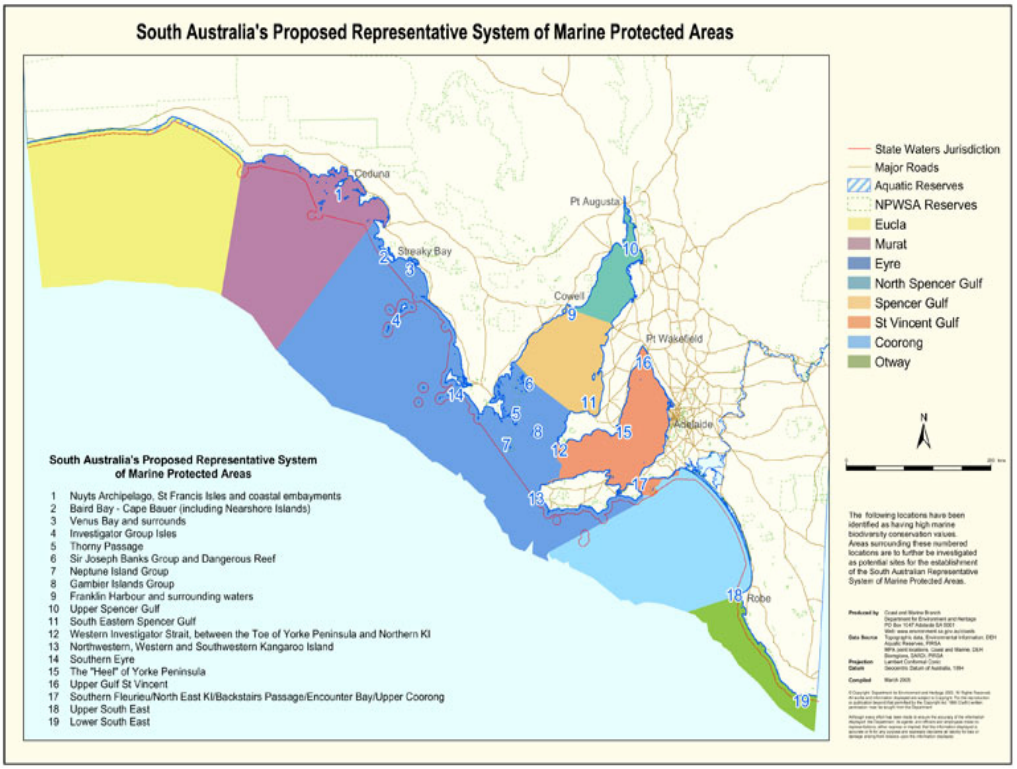

Figure 4. South Australia's proposed representative system of marine protected areas (source: DEH 2004a, p. 13)

4.2.2 Conservation zones and categories in relation to sea country in South Australia.

There are three main acts which govern the protected area system of South Australia: the *National Parks and Wildlife Act 1972*, the *Wilderness Protection Act 1992* and the *Crown Lands Act 1929*. The National Parks and Wildlife Act is the primary piece of legislation with the others having more defined roles in relation to specific land tenures. These acts are analysed in detail in section 8 of this report.

There are a number of terrestrial protected areas adjacent to the coast in the South Australian portion of the study area (see Appendix 1). These reserves are numerous but are generally small in area, with the exception of large parks such as the Nullarbor National Park in the west of the state. Many of these reserves have marine functions and extend into the marine environment, but are labelled under more generic terms, such as 'conservation park'. Proposed integrated planning processes and the gazettal of marine-specific protected areas will create specifically identified marine and terrestrial zones. However, while this may be utilised in planning between specific zones of responsibility in government, within the concept of sea country the coastal zone and marine environments should be managed in an integrated manner in regard to Indigenous interests, values and uses.

One of the other features of South Australian protected areas is the lesser use of the national park category, which contrasts sharply with its higher usage in Western Australia, even though the understanding of this category of protected area is consistent between the two jurisdictions. As a result, the majority of the protected areas in South Australia are conservation parks of lesser significance as defined in the National Parks and Wildlife Act 1972. However, these areas still contain environments and cultural landscapes of relevance to Indigenous people.

For administrative purposes, the DEH divides the state into a number of regions. Within the SWMR these regions include:

- Kangaroo Island
- Adelaide
- Northern and Yorke
- West.

Collectively, these regions represent diverse terrestrial and marine environments, and this report makes a description of the study area in South Australia following the same regions. These descriptions of ecosystems and boundaries are relevant to this report as they document a further layer of zoning and administration that Indigenous stakeholders must negotiate in reference to Indigenous connections with sea country and conservation administration regimes generally.

4.2.2.1 Kangaroo Island

Covering around 4500 square kilometres, Kangaroo Island is the third largest island in Australia. Kangaroo Island contains diverse landscapes and coastlines, with an exposed and high-energy southern coastline with coastal dunes, a northern coastline punctuated by tall limestone cliffs and sheltered shores, and smaller islands to the east (DEH 2001). While Kangaroo Island is extensively cleared, it also has a high proportion of uncleared land, and many features which have been reserved for their unique values. Kangaroo Island significantly remains free of both foxes and rabbits, making it an important area for conservation (DEH 2005a).

The coastal and marine environments of Kangaroo Island form a significant part of its value. This is evidenced by the formation of a number of protected areas, particularly Seal Bay Conservation Park which, as the name suggests, is set aside for the purpose of protecting seal habitats (namely the Australian sea lion), and the Pages Conservation Park, set aside for the protection of seal and bird habitats. Pages also contains the single largest colony of Australian sea lions, noted as one of the world's most endangered pinnipeds[2] and is also a breeding ground for the Little Penguin and other sea birds (DEH 2005b).

4.2.2.2 Adelaide

The Adelaide region encompasses the Mount Lofty Ranges, the southern part of which consists of the Fleurieu Peninsula and includes Victor Harbor (DEH 2005c). Because of its proximity to the capital, it is the area that records the highest level of visitation in the state.

The landscape near the coast, on the Fleurieu Peninsula, is described as the southern end of the Mount Lofty Ranges and is a laterised landscape forming a plateau on its southern reaches at around 350 metres above sea level. Towards the coast it is deeply dissected by rivers and creeks, and records appreciable run off with around 850 mm of rain per annum (Armstrong et al. 2003).

While the area has been significantly cleared it has important conservation values, particularly because the remnants of virgin land/uncleared land are now even more valuable because of their scarcity. This is strongly reflected in the coastal protected areas on the southern shores of the Fleurieu Peninsula, which contain unique environments. Deep Creek Conservation Park, where the ranges descend into the sea and form large and striking cliffs, interrupted by mainly rocky coves (DEH 2005d) is one such example. Newland Head Conservation Park, with longer beaches between the cliffs, and Granite Island Recreation Park which is home to a large colony of Little Penguins, are similar examples.

The western coast of the Peninsula forms the south-eastern area of the Gulf St Vincent, and is rich in marine biodiversity. Its southern tip gives way to a shoreline punctuated by low sand hills and beaches. This area has a lesser degree of conservation because, while possessing a large number of reserves, the majority are small in area. This is probably due to the large amount of agricultural clearing and subsequent urban development, which predated conservation efforts. As the area has been extensively cleared, the protected areas representing remnant landscapes contain significant values, such as Hallett Cove Conservation Park which contains sites of Aboriginal significance.

4.2.2.3 Northern and Yorke

Immediately to the north of the Adelaide region, Northern and Yorke covers the northern and western portions of the Gulf St Vincent, the eastern shores of the Spencer Gulf, north to Port Augusta and around Fitzgerald Bay to Whyalla. It also contains a number of islands in the Investigator Straight and a number of proposed marine conservation areas in the Spencer Gulf.

The Northern and Yorke region marks the transition from the more temperate and hillier regions of the Mt Lofty Ranges to a more open and undulating-to-flat landscape, particularly on the coast. It is an area of low rainfall, yet remains productive for agriculture on the Yorke Peninsula, where barley is grown, and for pastoralism in areas further to the

[2] 'Pinniped' means 'fin foot'; mammals whose feet have developed into fins to better suit their marine habitat. This group includes sea lions, seals and walrus'.

north. The northern part of the region also has declining rainfall, particularly in coastal areas, receiving only around 300–400 mm of rain annually.

Its marine and coastal environments are among the most striking features of this region. This is a region of diverse coastal landforms and marine habitats, including rocky cliffs, sandy beaches, calm water mudflats, seagrass meadows and mangrove swamps. It also supports diverse oceanographic conditions, such as a high variability in sea temperature, all of which results in a high level of marine biodiversity and a high level of endemism (Edyvane 1999a, 1999b).

In particular, the gulf systems of the Gulf St Vincent and the Spencer Gulf – both of which are characterised as inverse estuaries – contain significant marine values such as the only temperate mangrove communities in Australia. These are associated with extensive salt marsh communities and seagrass beds providing important nursery areas for a variety of other species. The northern Spencer Gulf is further characterised by its distinct marine communities containing large relict tropical elements and a high level of endemism (Edyvane 1999a). This is coupled with deeper water environments of the Investigator Straights and the coast of the tip of the Yorke Peninsula.

This region has very few protected areas in proximity to the coast. The Innes National Park at the tip of the Yorke Peninsula is one of the most significant, with the management plan stating that part of its value is conserving 'important intertidal ecosystems, beaches and dunes, coastal heathlands, mallee woodlands, salinas, and small off-shore islands'. The Innes National Park is also noted for its Indigenous cultural significance (DEH 2003b:, p. pi).

Winninowie Conservation Park is another coastal protected area which contains mangrove creeks and samphire flats typical of the region. It is noted for an abundance of marine and bird life (DEH 2003c). There are also a number of island conservation parks in the Investigator Straight which provide bird and seal habitats.

Following the identification of a high conservation value and low level of reservation in the area, the South Australian Government conducted an integrated planning exercise in the Spencer Gulf. This process also takes into account the variety of interests in the area including conservation, Indigenous, fishing and industry interests (DEH 2003d). This has resulted in several proposed marine protected areas which are currently in the approvals process. An integrated plan for Gulf St Vincent is also in the early stages of preparation.

4.2.2.4 West

The west region traverses the Eyre Peninsula, from south of Whyalla to the border. It is an area with a considerably higher level of coastal and marine reservation, although most of this occurs in the far-western portion near the Western Australian border. This region also contains a significant number of islands, many of which are reserved for a variety of purposes.

The west is an area where the agriculture of the Eyre Peninsula slowly gives way to pastoralism in the more western area of the region, and this in turn yields to open country, where these activities are not viable due to aridity. The Eyre Peninsula itself experiences a higher level of rainfall at its tip, which supports the agricultural activities of the area, as well as a significant level of commercial fishing.

This is also a region of significant environmental transition, initially traversing from the sheltered eastern coast of the Spencer Gulf to the west side of the Eyre Peninsula, which is given that it is open to prevailing conditions. The western coast of the Eyre Peninsula is

marked by its cliffs, rocky shores and rocky headlands which are interspersed with sandy beaches and dunes. A further feature of this coast is the number of large embayments, many of which provide sheltered and calm waters. This area also contains a number of offshore islands with significant populations of Australian sea lions (Edyvane 1999b).

West of Streaky Bay the rocky headlands remain, as well as the extensive embayments, but the marine environment begins to give way from a more rock and algae-based environment to one which has more seagrass and, in sheltered intertidal areas, mangroves (Edyvane 1999b). This area also corresponds to a drop in rainfall which, as mentioned, produces a transition from agriculture to pastoralism.

There is further change in the environment heading towards the Head of the Bight and the Western Australian Border, and this area is dominated by limestone cliffs, headlands and reefs, as well as a number of large dune fields. This area has very significant marine conservation values, being a major calving area for the southern right whale and an important habitat for the Australian sea lion (Edyvane 1999b).

As mentioned, there are a significant number of protected areas in this region, although the most significant level of reservation is in the regions to the far west. This is apparent by over 200 km of continuous protected area east of the Western Australian border, including the Nullarbor National Park, the Yalata IPA, the Wahgunyah Conservation Park and, in the marine area, the Great Australian Bight Marine Park in both state and Commonwealth waters.

The Eyre Peninsula is not well-represented in relation to protected areas, given that it is predominantly an agricultural zone. Many of the protected areas that are present today represent important remnants of native vegetation and coastal environments. The remnant quality of these protected areas, such as the Lincoln and Coffin Bay national parks, make them important refuge areas for rare and endangered species and are also places for conservation-based management of coastal environments.

There is a very significant marine park in this region, the Great Australian Bight Marine Park, which has been created to protect the calving areas of southern right whales. This is a significant state park, as it is contiguous and complementary to a Commonwealth Marine Park which has been set aside for similar reasons, and it is described in section 4.4.1 of this report.

4.3 Western Australian conservation initiatives within the SWMR

4.3.1 Previous and current Western Australian conservation programmes and management initiatives in relation to sea country

The Department of Conservation and Land Management's (CALM) *Report on Aboriginal interests in National Parks and other conservation areas* (1991) led to the creation of the *South Coast Regional Management Plan 1992–2002* which included some provisions to address Aboriginal interests in the preparation of management plans. However, these provisions were not rigorously engaged and the report did not enable meaningful Indigenous collaborative measures for the joint management of areas within the SWMR (Smyth 1993, p. 127; Stewart 2003, pp. 48–50).

4.3.1.1 The development of Indigenous focused policy within CALM

Since 1991, the Department of CALM has engaged in a number of forums aimed at mediating Indigenous joint management of national parks and conservation zones with little or no real engagement in sea country within the SWMR. Smyth and Sutherland noted in

1996 that Indigenous engagement in protected area management came under site management and other customary rights of the state's *Aboriginal Heritage Act 1972* (Smyth & Sutherland 1996, p. 42).

Other relevant legislation in regard to Indigenous involvement in protected areas included the *Aboriginal Communities Act 1979*, the *Local Government Act 1960* and the *Wildlife Conservation Act 1960* (Smyth & Sutherland 1996, p. 43). As Stewart notes, citing Horstman and Wightman, the Conservation and Land Management Act 1984 (CALM Act) does not 'mention Aboriginal people, let alone recognise their role in knowledge and management' (Stewart 2003, p. 50; Horstman & Wightman 2001, pp. 99–109).

Earlier attempts at Indigenous engagement with marine conservation zones in Western Australia, such as the proposed joint management of the Buccaneer Archipelago near Broome in the state's north, failed due to a lack of government, if not departmental and community support (Stewart 2003, p. 35; Yu 2000). Since that time Indigenous engagement within marine conservation zones has included:

- Aboriginal membership of the Ningaloo Marine Park Board and Cape Range National Park
- an Indigenous commercial fisherman sitting on the Shark Bay Marine Park Planning Committee
- engagement of the Yasgalah Aboriginal Corporation in the Shark Bay Marine Park in a dugong-monitoring programme in 1999 (Stewart 2003, p.35).

Recently, Indigenous input has been sought through the Department of CALM in a slate of newly proposed marine conservation areas, including within the SWMR (Stewart 2003, pp. 35–36).

In regard to Indigenous interests in Indigenous estates now bounded within the SWMR, a consultant's report to the *Resource Assessment Commission Coastal Zone Inquiry* (1993), *A Voice in All Places* (Smyth 1993), related that 'members of the Gnuraren Aboriginal Association were concerned about the destruction of coastal Aboriginal sites during mineral sands mining projects in the coastal strip east of Cape Leeuwin', that 'there were complaints about inadequate Government funding for site protection and management', and that 'people in Busselton had a strong interest in establishing Aboriginal commercial, community owned and managed commercial fisheries' (Stewart 2003, p. 43).

In 1997 the Department of CALM began a process of initiating a wider representative marine reserve system within Western Australia. Within the SWMR, this included the prioritisation of the 'Geographe Bay/Leeuwin-Naturalist/Hardy Inlet region … for the establishment of a marine conservation reserve' (Stewart 2003, p. 62; Department of CALM 1997).

In 1998, following the *Acts Amendment (Marine Reserves Act) 1997*, the Western Australian Government released New Horizons – the way ahead in marine conservation and management (Department of CALM 1998). This policy developed out of national initiatives and was designed to:

- reinforce Western Australia's high marine environment protection and management standards
- provide clear policy direction to industries in relation to marine conservation reserves

- reduce uncertainty and minimise the potential for conflict between conservation and resources development (Stewart 2003, p.25).

In Western Australia this constituted the beginning of a focus on marine conservation reserves enshrined in the CALM Act (Stewart 2003, p. 26).

Potential Indigenous community engagement with the marine conservation reserve process was via public submissions or advisory committee appointments. Likewise, in 2000, the Geographe Catchment Council related Aboriginal concerns in the region as 'the identification and management of heritage sites, native title claims processes, recreation, research and community education' (Stewart 2003, p. 44; Geographe Catchment Council 2000).

4.3.1.2 Indigenous policy in relation to sea country and the state sustainability strategy

In the same period as the development of Western Australia's *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (2003), the Western Australian Government was engaged in a state sustainability strategy. Indigenous interests within this strategy were considered via the development of regional Indigenous sustainability strategies that were to be tied to the development of mainstream regional sustainability strategies. The Indigenous component of the strategy also recommended Indigenous joint management programmes and considered the possibility of a regional Indigenous Caring for Country ranger programme in the Kimberley. However, these recommendations were not advanced by the government and neither the regional or Indigenous strategies were developed or implemented. The proposal for joint management did receive some response from the Department of CALM.

In regard to the *Hope for the Future – The Western Australian State Sustainability Strategy* (2003),, Stewart argued that in regard to sea country, the strategy the did not 'delve considerably into Indigenous Issues relating to fishing, aquaculture and coastal and marine environmental sustainability'(Stewart 2003, p. 23; Department of Premier and Cabinet 2003). The subsequent policy on joint management of national parks, state parks and conservation zones that was adopted in response to this sustainability strategy (discussed in section 4.3.1.3) did not received adequate development or support within government, nor did it result in joint management of any conservation area for Traditional Owners in terrestrial or sea country.

4.3.1.3 Proposed joint management of CALM lands

In the working paper 'Administration and Joint Management of Conservation Lands in Western Australia 2002', the Department of CALM acknowledged the need for joint management where native title is established. This is notable given the decision in *Ward v Western Australia* (1995)[3], whereby conservation zones extinguish native title in that state. The paper also addressed the need to:

- invest in Aboriginal involvement in conservation and land management
- create mechanisms for consultation with Traditional Owners
- establish councils and boards of management with a majority of Traditional Owners

[3] *Ward v Western Australia*, Federal Court, WAG 6006 of 1995, judgment 17 May 1996.

- transfer title in parks and reserves to Traditional Owners via appropriate Aboriginal corporate bodies, such as prescribed bodies corporate, established under the Native Title Act (Stewart 2003, pp. 51–52; Department of Conservation and Land Management 2002).

A further discussion paper was developed by the Department of CALM in 2003 investigating the possible changes that could be made to the CALM Act. The aim of this proposal was to enable joint management of conservation zones and national parks. It also aimed to examine future directions for engaging greater numbers of Indigenous staff, and the involvement of Aboriginal communities in the management of conservation zones (Stewart 2003, p. 53; Department of Conservation and Land Management 2003). These aims have not been realised in Western Australia at this time.

4.3.1.4 Conservation administration affecting sea country in Western Australia

The administration of the protected area system in Western Australia differs significantly from South Australia, particularly with the role of the Minister for the Environment. This relates to the acquisition, vesting and management planning for land and marine reserves – functions are actually carried out by two controlling bodies rather than the minister.

As previously stated, the system through which protected areas are vested and managed in Western Australia is set out in the CALM Act. This Act sets out the purposes for a variety of different land tenures (see Appendix 1) as well as vesting structures for reserves known as controlling bodies. In a further departure from the South Australian system, the CALM Act explicitly created the management structure for lands that it governs – the Department of Conservation and Land Management. Please see section 8 of this report for further details of the CALM Act.

The controlling body in which Western Australia's terrestrial reserves are vested is the Conservation Commission of Western Australia (CCWA) and the controlling body in which marine reserves are vested is the Marine Parks and Reserves Authority (MPRA). The MPRA has similar functions to the CCWA but with a marine focus. The operations of the MPRA are also supported by the Marine Parks and Reserves Scientific Advisory Committee, whose function it is to provide scientific advice to the Minister for the Environment.

One of the complications of developing a marine estate is the extensive inter-sectoral negotiation that is required between government, fishing (professional, recreation and customary), and other industries, such as tourism and recreation sectors. In particular, negotiations with the professional and recreational fishing sectors can be difficult, due to marine park proposals that can seek to wind back or limit these activities. In an attempt to overcome these issues, the marine protected areas section of the Department of CALM has adopted a planning process which is inclusive of a variety of sectoral interests and which is conducive to collaborative, negotiated and agreed outcomes for marine conservation.

The major feature of this collaborative approach is the establishment of advisory committees particular to each park area, which are tasked with the development of an 'indicative management plan' (as it is termed, rather than a draft plan). As required, there is also the ability to create sectoral reference groups who provide input into the planning process via the advisory committee for a particular area. Meetings of the advisory committee can occur over a lengthy period of time, although more recently, with a greater level of experience in the process, this time has been significantly reduced.

4.3.2 Conservation regions and sea country in the SWMR in Western Australia

The conservation estate in Western Australia totals around 170 000 km^2 (Crown Land: Reserves 2005). These protected areas are distributed across the nine regions that the Department of CALM uses to divide the state. There are five such zones within the SWMR, all of which hold significant areas within the conservation estate adjacent to the coast (both marine and terrestrial). These coastal and marine protected areas are listed in Appendix 2.

One of the main features of conservation zones in the SWMR within Western Australia is that the national park tenure is used to more widely. Nature reserve land tenure is also a significant feature, particularly in a large strip from the Western Australian – South Australian border to the west. Another feature of the protected areas in the SWMR is their size, with several parks and reserves in excess of 100 000 ha in size. A very large proportion of the coastline from the Western Australian – South Australian border to Busselton is reserved for conservation.

The marine reserve system in the Western Australian section of the SWMR is far less developed than its terrestrial counterpart. Relatively few marine parks and only a small proportion of the coast have been set aside for conservation. This is in strong contrast to the South Australian section of the SWMR which, although not having extensive marine reserves in the eastern portions, can boast the very significant Great Australian Bight Marine Park. In contrast to South Australia, however, marine reserves are clearly delineated in Western Australia, with terrestrial reserves extending only to the high or low water marks. This makes it necessary to separately discuss marine reserves in the regional descriptions of the Western Australian section of the SWMR.

For the purposes of this report the following regions are considered:

- South coast
- South-west
- Central forest
- Swan
- Mid-west

The coastline and protected areas will be described in the context of these regions in the following sections defining regional boundaries and issues of relevance.

Figure 5. Department of CALM regionalisation of Western Australia (source: Department of CALM web site <www.naturebase.com.au>)

4.3.2.1 South coast – terrestrial protected areas

This is a very large region which extends from the Western Australian – South Australian border to Denmark in the west. As this region traverses such a large distance, it covers a number of bioregions and sees a large transition of land and coast types.

There are a number of protected areas in this region adjacent to the coast and sea country. Many of these areas tend to be remote, particularly those in proximity to the Western Australian – South Australian border, where there are no major permanent settlements. All of the parks in this area are renowned for their remarkable level of plant and animal biodiversity. Fitzgerald River National Park, for example, contains 1800 species of plants, 62 of which are endemic to the park alone while more than 160 species of birds are found in the Cape Arid National Park (*Recreation guide to parks and forests*, South Coast 2005).

In addition to this high level of endemism, many of the parks in this region have the only remaining populations of many rare or endangered species of flora and fauna, making them internationally significant. The high species diversity and endemism displayed in these parks display the reasoning behind the South West of Western Australia being labelled one of the earths 'biodiversity hotspots' (*Biodiversity hotspots*, Southwest Australia 2005). The parks in this region, in particular the coastal parks, contribute greatly to conservation in this biodiverse region.

There are no marine parks in this area, although there have been significant areas slated for marine reservation. The Recherche Archipelago near Esperance is one such area, although efforts to commence protected area proclamation have been hindered through disagreement between conservation and fishing interests. As well as being environmentally significant,

these protected areas are also significant for Indigenous cultural values. This is reflected in the amount of work that has been performed by the Noongar communities of Esperance and Albany and the number and significance of the registered sites of the area, which are discussed in section 4 of this report.

4.3.2.2 South-west – terrestrial protected areas

This is a smaller region which extends from Denmark to the Donnelly River. It encompasses the wet sclerophyllous forests of the lower south-west, which transit to open and seasonally-inundated low-lying sand plains towards the coast. These plains are also noted for their high level of biodiversity and endemism, particularly of native fish.

The southern coastline of this area features a number of large inlets and estuaries, many of which are closed for large portions of the year. These inlets and estuaries function as important nursery areas for marine life, as do the extensive seagrass beds that are prevalent in proximity to the coast. This area also features a number of limestone cliffs and rocky headlands, the most pronounced of which is Point D'Entrecasteaux standing at approximately 110 metres above sea level. These headlands and cliff areas are interspersed with long sandy beaches.

The western coast of this region is more noted for its sand beaches, which are often 15–20 km long and broken by rivers or low rocky headlands. They are often backed by a small plain behind the fore dune system before giving way to extensive and very high Holocene dunes, over 200 m in some areas. Behind these dunes, and the lower dunes of the southern beaches, is the 15–20 km wide coastal plain which transitions to wet sclerophyllous forest.

Like the south coast region, one of the marked features of this region is the high level of conservation reservation and the low level of coastal development. This level of reservation creates a situation where the greater proportion of the coastline is reserved as a protected area, creating an intact coastline for more than 200 km, with only small pockets of development in the township of Walpole and the holiday settlements of Peaceful Bay and Windy Harbour.

There are few protected areas in this region, although, as suggested by the high level of coastal reservation, those that exist are large in size. Of particular note are the Walpole-Nornalup and the D'Entrecasteaux national parks. These parks encompass a wide variety of forest and coastal environments and are also noted for their biodiversity. These parks also contain extensive inlet and estuarine systems. The D'Entrecasteaux, as with all the parks along the coast, contains significant Indigenous values, with large site complexes associated with the coast and the coastal economy. In the D'Entrecasteaux in particular, a recent addition has been made in the Dombakup Silcrete Quarry, specifically for the protection of Indigenous cultural values.

Also of particular interest is the Shannon National Park, which almost entirely contains the catchment of the Shannon River. While this park is not adjacent to the coast, the Shannon River is the main source for a large estuarine system, Broke Inlet, which is situated within the D'Entrecasteaux National Park and is being considered for marine reservation.

4.3.2.3 South-west – marine protected areas

Marine protected areas are not represented in this region, although there is a proposed marine protected area in the Walpole-Nornalup Inlets. The planning process for this proposal began in 2003. Public meetings have been held and a community focus group has been formed whose constitution is aimed at broadening the involvement of both community members and sectoral interests in the planning process. Once put in place, this group will

become a forum to negotiate potential outcomes and to gauge issues in regard to the marine park proposal which will inform the planning process.

4.3.2.4 Central forest–terrestrial protected areas

The central forest region is more highly developed in terms of its human impact. The region contains a significant level of coastal reservation, and also has a proposed marine park in the advanced stages of planning. The region takes in the northern portion of the D'Entrecasteaux National Park in an area of high limestone hills facing a coast of sandy beaches and low limestone cliffs. A singular intrusion of Bunbury Basalt, Black Point, breaks this pattern, which is repeated to Cape Leeuwin at Augusta, on the southern end of the Leeuwin block, which also marks the end of the Southern Ocean. Augusta features the Hardy Inlet, where the Blackwood River drains into the sea, which is the most significant estuarine system from the Walpole-Nornalup.

Upon turning north, the coast becomes rocky, with significant numbers of reefs and embayments, creating sections of reef interspersed with sandy beaches and backed by low limestone hills. This changes significantly at Cape Naturaliste, where the coast turns south to form the protected embayment of Geographe Bay, which contains extensive seagrass beds and some reef. To the north, this region follows an almost north–south coastline, with mainly sandy beaches separated by rivers. There are two extensive estuary systems near Bunbury, although another Bunbury basalt headland at Bunbury itself does provide some change from the generally sandy coast.

As mentioned, this region incorporates the northern end of the D'Entrecasteaux National Park and its contiguous neighbour, the Scott National Park, both of which contain extensive coastal plain and swamplands, and hence a high level of biodiversity. The Scott National Park is the centre of the country of the Bibbulmun. Literally translated, Bibbulmun means something akin to 'those who live from the breast', or figuratively 'people with rich county'. The land of the Scott coastal plain is indeed rich, and abounds with significant wetlands and watercourses, and a high species diversity of both flora and fauna.

The Leeuwin-Naturaliste National Park, between Cape Leeuwin and Cape Naturaliste, is a further important protected area in this region. While not as biodiverse as the D'Entrecasteaux and Scott National Parks, the Leeuwin-Naturaliste National Park encompasses a number of coastal communities that would otherwise be under pressure from urban development or agriculture. The Leeuwin-Naturaliste also contains a striking coastline which attracts significant numbers of visitors to the area. Of further interest in this area are the Yalgorup and Tuart Forest national parks, which while slightly inland, have heavy coastal influences and maintain significant parts of country for Noongar people who more readily associate with the sea than with inland areas.

4.3.2.5 Central forest – marine protected areas

There are currently no marine parks in this region, though there is a proposed marine park, which has been tentatively named 'The Capes Marine Park' due to the inclusion of Cape Leeuwin and Cape Naturaliste, the two most prominent geological features in the area.

This marine park is proposed to extend from the east of Busselton in Geographe Bay, incorporating large areas of seagrass bed, around Cape Naturaliste, incorporating deepwater environments and south, incorporating diverse reef communities, to Hardy Inlet at Augusta. The proposed marine park borders the Leeuwin-Naturaliste National Park for a significant portion of its area. It is tentatively referred to as the Capes Marine Park.

This park is in an advanced stage of planning. An advisory committee was formed in 2003 and completed its cycle of meetings in 2004. Currently, the indicative plan for the area is being generated by the MPRA, and is expected to be released for public comment in the very near future. If this process is successful, it is possible that the park will be gazetted in 2007.

4.3.2.6 Swan–terrestrial protected areas

This region is centred on metropolitan Perth and the Swan Coastal Plain. It is characterised by numerous small reserves in and around urban and metropolitan areas. While small, many of the protected areas in this region contain significant environmental and cultural values, and retain some of the last examples of natural and cultural systems of the heavily disturbed Swan Coastal Plain.

Two major features of this region are estuarine systems at Mandurah – the Peel Inlet and Harvey Estuary – and at Perth itself, with the Canning and the Swan Estuaries. Both of these systems, due to the nature of their extensive sand plain, are large in surface area and shallow. Both of them also have significant conservation values.

The coast in this area is generally sandy with long sandy beaches interspersed with rocky limestone headlands. Around Perth these headlands become more prevalent, and form major reef and island systems which have high conservation values. Some of these islands are significant in size, such as Rottnest and Garden islands. The latter, a naval base, provides a large barrier from the sea and creates a significant calm water environment in Cockburn Sound. This sound was once abundant with seagrass and fish, but this is now diminished due to its use as a deepwater port for heavy industry.

On the coast, there are small limestone cliffs as well as sub-tidal and intertidal ledges. These features lend significant value to the coastline of the region and have resulted in a higher level of marine reservation than the other areas in Western Australia described to this point.

The terrestrial parks of the Swan region are also distinct, with the majority called ‘regional parks’. These regional parks are made of a number of often non-contiguous parcels of land that are vested in a variety of bodies, institutions or government agencies and have been deemed to have regionally significant conservation, recreational and landscape amenity (Department of CALM web site < http://www.calm.wa.gov.au/ > ; T Bowra pers. comm.).

While some areas of the regional parks system are managed by other agencies, the Department of CALM, as the state’s leading parks manager, coordinates the management of these areas and develops the management plans in partnership with the partner agencies. These partnerships are not based on a traditional style of agreement; the roles and responsibilities of each agency are outlined in the management plans. This is seen as an appropriate level of agreement between parties. As with other protected areas, the management plans of regional parks become statutory documents through the CALM Act, against which the management is conducted, measured and if necessary, legally enforced.

One of the few national parks of the region in proximity to the coast is the Yanchep National Park, approximately 50 km north of the Perth CBD. This park contains a number of natural attributes that are unique to the Swan Coastal Plain. Its proximity to Perth makes it ideal for natural and cultural tourism. As such, recreation and tourism have become important foci for the Yanchep National Park. This includes a centre named Wongi Mia, which is a Noongar phrase meaning ‘talking house’. The centre conducts a number of Noongar cultural tourism programmes that are particularly targeted at school children, although tourists and visitors are also catered for. Some of these programmes include

activities such as ‘Noongar Camp Life’, ‘Build a Mia’, ‘Six Seasons Bush Tucker Walk’, ‘Noongar Tool Making’ and ‘Spear and Boomerang Throwing’ (Department of CALM 2005a).

4.3.2.7 Swan–marine protected areas

There are three marine parks in this region: the Shoalwater Islands Marine Park, Swan Estuary Marine Park, and the Marmion Marine Park.

The Shoalwater Islands Marine Park, near Rockingham in the south of the metropolitan area, incorporates parts of the southern metropolitan limestone reef and island system. As well as containing significant marine values associated with the reef formations, the park also includes a number of terrestrial nature reserves over the islands within the park area. These have been declared specifically to protect the habitat of breeding colonies for a number of bird species and a colony of Australian sea lions. The Shoalwater Islands Marine Park borders the Cape Peron section of the Rockingham Lakes Regional Park.

The Swan Estuary Marine Park contains three small areas totalling around 330 ha within the Swan Estuary at Alfred Cove, Crawley and the Como foreshore (Milyu). These areas have been gazetted for the protection of bird habitat and in particular, the habitat of migratory wading birds, some of which are protected under the Japan–Australia Migratory Bird Agreement (JAMBA) and the China–Australia Migratory Bird Agreement (CAMBA).

The Marmion Marine Park was gazetted in Western Australia in 1987. It reaches approximately three nautical miles into the ocean along around 20 km of coastline in the northern metropolitan area, from Trigg Island to north of Burns Rocks. One of the park’s main features is its inshore limestone reefs and tidal limestone platforms along the shoreline. It also contains extensive offshore limestone reefs, many of which are visible through breaking waves. Marmion Marine Park is a favoured area for recreation, and is noted for its diving, fishing and surfing, all of which occur on inshore reefs and those further from the coastline.

4.3.2.8 Mid-west–terrestrial protected areas

This is a large region. However, it does not have the large number of reserves that are present in other regions. It does encompass some very large protected areas, although few of these are close to the coast. This region is the transition from the south-western temperate region to the more semi-arid and arid regions of the north. Due to the transitional nature of the region, it has an extraordinary diversity of flora and fauna, and is one of the few areas in Australia where temperate and arid bioregional convergence can be seen. This convergence creates environments where species of flora and fauna from both zones are often present in small areas. This phenomenon does occur in other areas of Australia but is not common in biophysical terms. The region is especially known for its wildflower displays, which occur seasonally towards the end of the winter and in spring.

Like the terrestrial environment, the marine environment of this region is a transition zone from the temperate waters of the south to the warmer waters of the north. This transition is further punctuated by the Leeuwin Current, a warm north to south current that particularly influences this area of coastline, and further south, in the autumn and winter months.

The Leeuwin Current is a major factor in the existence of a biological overlap zone that is considered to run between Cape Leeuwin in the south to North West Cape in the north (Department of CALM 2005) and which contributes to a high diversity of marine life and tropical marine species inhabiting latitudes in which they are not typically recorded (see for example Pearce & Walker 1991). There are few terrestrial protected areas adjacent to the

coast in this area and those that do occur are noted for both their biological and geological features. There are also significant cultural attributes for these protected areas, although these have not penetrated the management plans of each area to any significant degree.

The national parks in this area are known for their striking geological features. The Nambung National Park features the Pinnacles Desert, the Mt Lesuer National Park features a deeply-eroded lateritised landscape covered in kwongan vegetation while the Kalbarri National Park features a sedimentary landscape which is deeply dissected into multicoloured gorges.

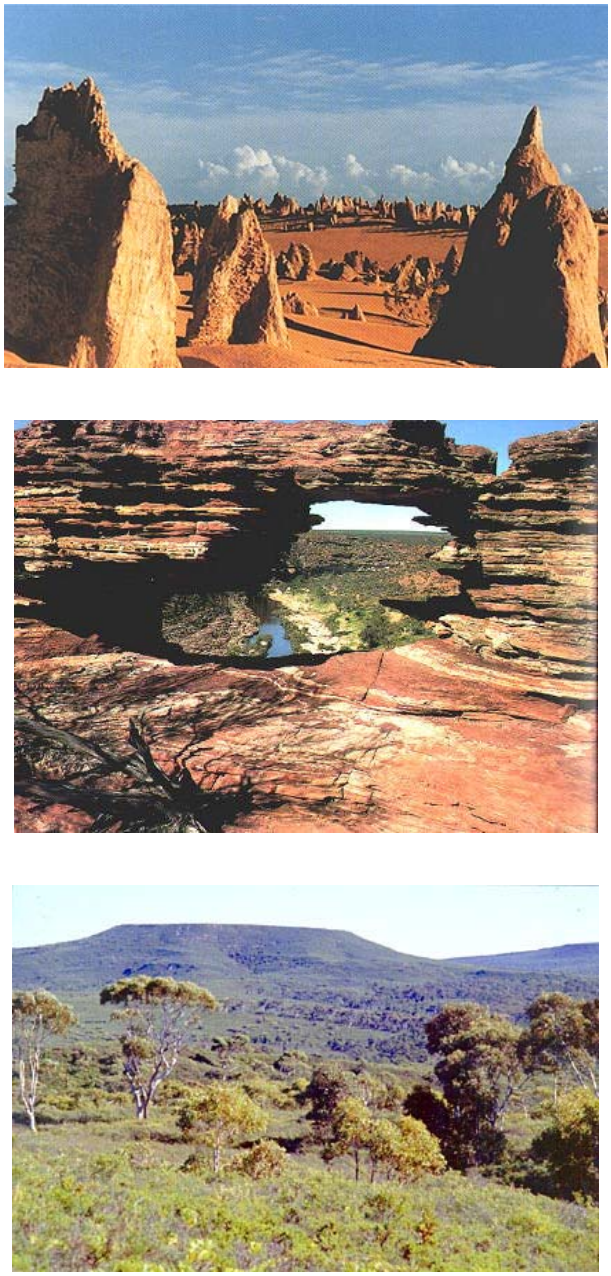

Figure 6. Top to bottom: the Pinnacle Desert, Kalbarri National Park and Mt Lesuer (source: Department of CALM web site <http://www.calm.wa.gov.au/>)

Also significant is the high level of plant diversity in these areas. In particular, the Lesuer National Park has a remarkable diversity of plants, and contains within its 27 000 ha are some 820 species, which represents 10 per cent of all of the plant species recorded in Western Australia (Department of CALM). The Kalbarri National Park (183 000 ha) is also noted for its plant diversity, and in particular its endemism, with 21 species of plant occurring in this area alone (Department of CALM).

As noted, these areas contain significant Indigenous cultural values, from the site level to landscape values. These have not yet been fully incorporated into the management plans of these national parks.

4.3.2.9 Mid-west–marine protected areas

The Jurien Marine Park, which is the region's only marine protected area, is considered to house significant elements of the marine overlap zone described above. It was first identified as an area that was likely to be representative of the marine life of the central west coast by the Marine Parks and Reserves Selection Working Group in 1986 (CALM 2005). Its values are enhanced by the systems of offshore reefs, islands and sheltered lagoons which are a unique feature of the coast in this area. It offers a wide variety of marine ecosystems in a small area of the transition zone.

The Jurien Bay Marine Park was established in 2003. It stretches over some 90 km of coastline from Wedge Island in the south to Green Head in the north with its seaward boundary extending to the three nautical mile state waters limit. While it is normal to extend the landward boundary to the high water mark 'due to constraints of the *Native Title Act 1993* (Cwlth), the marine park has initially been gazetted with its shoreward boundary to the low water mark with the intention of amending the boundary to the high water mark when these constraints are resolved' (Department of CALM 2005, p. 2).

The marine park has boundaries that are adjacent to a number of terrestrial protected areas such as Wanagarra, Southern and Beekeepers Nature Reserves and the Nambung National Park, and also contains numerous nature reserves which consist of the islands within the marine park area.

4.3.3 Non-CALM managed reserves

4.3.3.1 Rottnest Island

Covering approximately 1900 ha, Rottnest Island is a significant island 18 km west of Fremantle. It has developed an iconic status in Western Australia, and is a favoured holiday destination, with around 500 000 visitors each year (Rottnest Island Authority 2003). The island also has significant Indigenous cultural heritage values, firstly through the *Nyitting*[4] which recalls the island being connected to the mainland, and, upon its separation through glacioeustatic sea level rise, the place where the spirits of deceased people travelled, hence its Noongar name of Wadjemup, which means 'spirit place'.

The island also contains contemporary Indigenous significance, with an Aboriginal prison operating on the island in the latter nineteenth and early twentieth centuries. Aboriginal inmates from around the state were used to provide labour to construct many of the buildings that are still in use today. As a result of this prison, the island has a large

[4] The Nyungar term for what is generally termed 'the Dreamtime'. Translated, *Nyitting* means 'cold times' or 'cold place'.

Aboriginal graveyard, containing inmates who died while in custody. With its closure, attention turned to the island as a recreation destination (Rottnest Island Authority 2003).

Today Rottnest Island is an A-class reserve consisting of 1900 ha of terrestrial reserve and 3800 ha of marine reserve (including the seabed), and in its entirety is referred to as the Rottnest Island Reserve. The reserve is managed by the Rottnest Island Authority, a statutory authority codified in the *Rottnest Island Authority Act 1987* (RIA Act). The reserve is shown in figure 7.

According to the RIA Act, the functions of the authority are to control and manage the island for the purpose of enabling it:

- to provide and operate recreational and holiday facilities
- to protect the flora and fauna
- to maintain and protect the natural environment and the manmade resources of the island and repair its natural resources (to the extent that the resources of the authority allow).

The Act also necessitates the development of a management plan for the reserve. This plan has been updated on several occasions, and is currently set out in the 2003–08 Management Plan. As can be seen from figure 7, the plan sets out two marine sanctuary zones, areas where no marine take is allowed, and also establishes a spear gun-prohibited area around the island.

Much of the management of the reserve centres on mooring control for the marine portion, and visitor management for the terrestrial portion. High visitation to the island makes this a task of considerable complexity.

4.3.3.2 Houtman Abrolhos Islands

The Houtman Abrolhos, or Abrolhos Islands, are an archipelago of islands situated on the edge of the continental shelf 60 km to the west of Geraldton in Western Australia's mid-west. It consists of three island groups: Wallabi in the north, Easter in the centre and Pelsaert in the South.

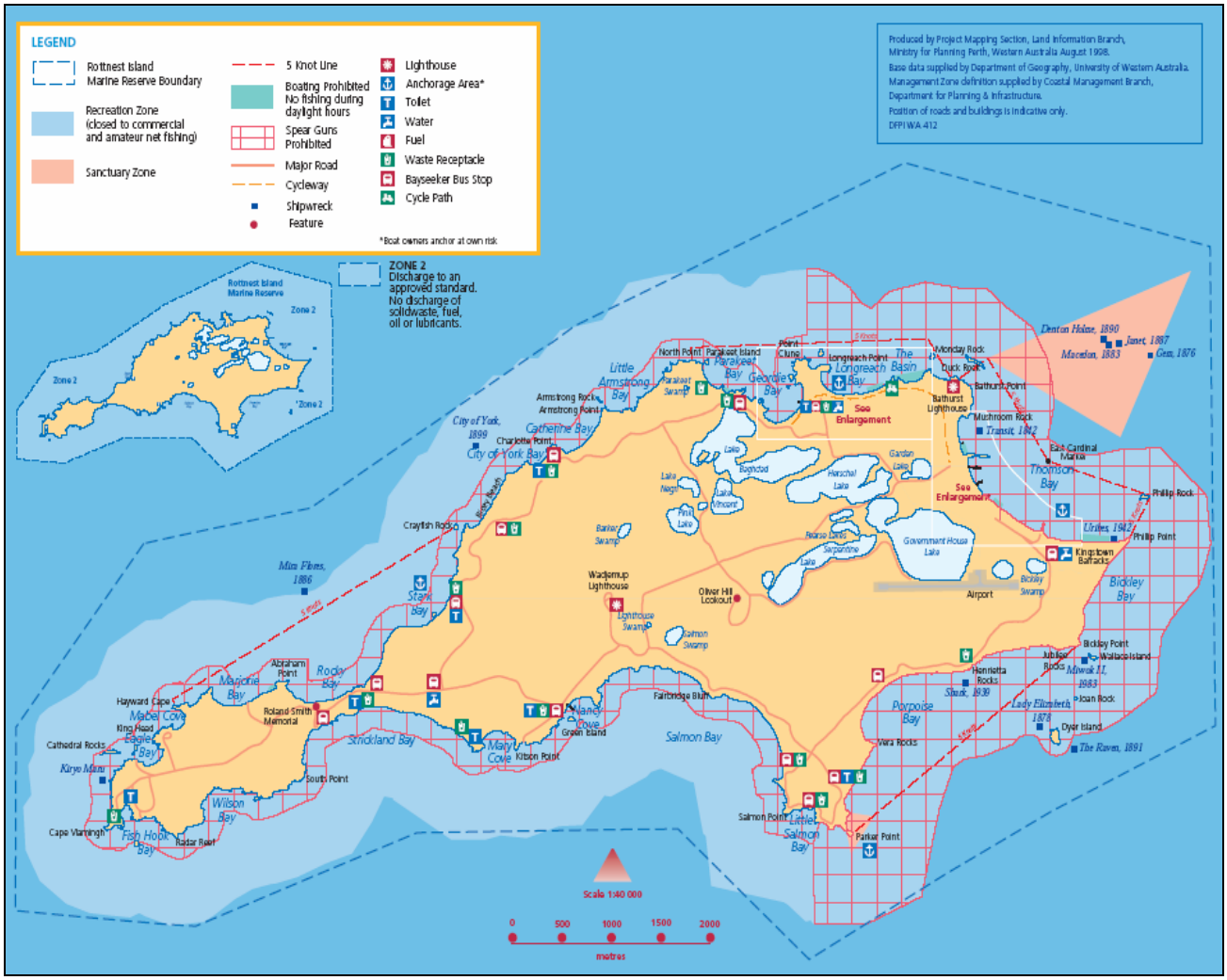

Figure 7. Rottnest Island and surrounding marine reserve vested in the Rottnest Island Authority (source: RIA 2003, p. 5)

The Houtman Abrolhos have significant natural and cultural values. In regard to natural values, the Houtman Abrolhos is noted for is geomorphological formations, particularly the presence of an internationally significant fossil site on a headland on East Wallabi Island (Nardi 1998). There is also an outlying community of the endangered tammar wallaby on the East and West Wallabi islands, and the Houtman Abrolhos is a large breeding colony for a number of bird species (Nardi 1998).

The Houtman Abrolhos is well known for its marine values, supporting a rich array of marine life which is augmented by the Leeuwin Current, which transports warm water south along the west coast in the winter months. As noted previously, the Leeuwin Current is a major transporter of biota from tropical areas, and enriches otherwise temperate marine environments with tropical species.

The Houtman Abrolhos in particular, plays host to a diverse variety of coral species for an area of such a southerly location, although the more temperate nature of the area does slow the growth of these corals. Further, the corals are often in competition with the macroalgae species, and the presence of a high level of herbivorous fish which control this macroalgae is critical for the continued viability of the coral (Nardi 1998).

One of the most well known natural attributes of the Houtman Abrolhos, however, are the finfish populations that inhabit the area. Due to the Leeuwin Current, these fish populations are enriched by tropical species; a factor that attracts a variety of commercial and charter-based fishers to the areas. The Houtman Abrolhos is also noted for its western rock lobster population and sustains a number of commercial fishers, who often live on the islands during the fishing season.

The Houtman Abrolhos contain significant non-Indigenous cultural values: it is the site of a number of historic shipwrecks. Of these, the Batavia (1629) is probably the best known due to the acts of atrocity that a faction of the survivors perpetrated on others while marooned on the islands awaiting rescue. Although there have been a number of other shipwrecks, perhaps the other of major note is the *Zeewijk* (1727).

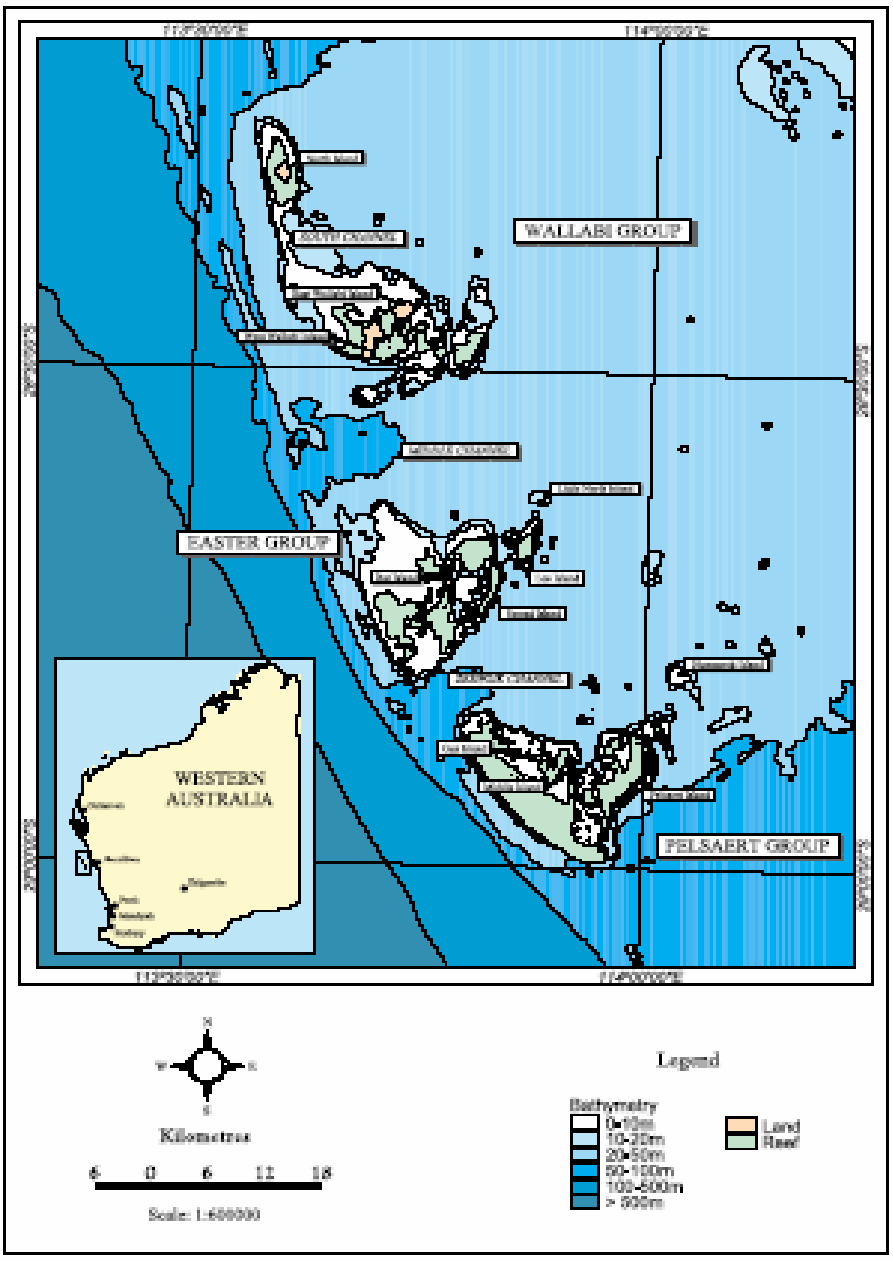

Figure 8. Map of the Houtman Abrolhos (source: Nardi, 1998, p. 14)

Nardi (1998) does not note any Indigenous values for the islands. Although Nardi (1998, p. 47) notes the existence of previous recommendations relating to the creation of formal conservation reserves, these recommendations have not been implemented. As such, there is no formal conservation reservation in the Houtman Abrolhos. Instead, terrestrial areas of the islands themselves are vested in the Minister for Fisheries as an A-class reserve for the purpose of conservation of flora and fauna, tourism and for purposes associated with the fishing industry (Nardi 1998).

The marine areas and, in particular, the state territorial waters surrounding the Houtman Abrolhos are also unvested and contain no conservation reserves, although they have now been declared a fish habitat protection area under section 115 of the *Fish Resources Management Act 1994*. These areas are set aside by order of the Minister for Fisheries and for the purposes of:

- the conservation and protection of fish, fish breeding areas, fish fossils or the aquatic ecosystem
- the culture and propagation of fish and experimental purposes related to that culture and propagation
- the management of fish and activities relating to the appreciation or observation of fish.

Fish habitat protection areas are not a means of conservation reservation as there are no vesting implications and they are not subject to the Parliament as conservation reserves are. However they do allow the formal recognition of the significance of an area, and allow for management plans to be developed and implemented. In the case of the Houtman Abrolhos, a plan developed for the Minister for Fisheries constitutes the management plan (Nardi 1998).

In a further arrangement, the Minister for Fisheries, through s.42 of the Fish Resources Management Act also has the ability to establish advisory committees to provide assistance in the management of specific areas. As such, in 1996 the minister appointed the Abrolhos Islands Management Advisory Committee (AIMAC). This committee consists of tourism, commercial fishing and user-group interests and is supplemented by members with planning and business expertise. The operation of the AIMAC is ongoing and is supported by Fisheries Western Australia.

As the islands are remote from the coast with low-level human population, they are less complex to manage than other systems. Given this, the current level of protections are likely to be appropriate for a time, although in the case of the fish management protection area can be withdrawn under the order of the minister. This is not expected however, and the development of a more formal protected area estate in and around the Houtman Abrolhos remains topical.

4.4 Commonwealth conservation initiatives within the SWMR

4.4.1 Great Australian Bight Marine Park

As related in Section 1 in regard to DEH policy, Commonwealth responsibilities within the coastal zone exist from three nautical miles to 200 nautical miles from the shore. Conservation zones affecting sea country within the SWMR are limited due to the nature of conservation and land management residing with states under Australia’s federated system of government.

There is only one Commonwealth marine park in the study area, the Great Australian Bight Marine Park. This Commonwealth marine park begins three nautical miles from the coastline, and is contiguous with a state marine park that has been created with similar goals in mind. For this reason, both of these marine parks are dealt with in this section.

This area extends east from the Western Australia – South Australia border to west of Cape Adieu and from the mean high-water mark seawards for three nautical miles. It contains three separate areas, including the Great Australian Bight Marine Park Whale Sanctuary, proclaimed via the *Fisheries Act 1982* (SA), which extends 50 km in either direction from the Head of the Bight, the northern-most point of the Bight itself. The sanctuary zone is bordered on either side by areas of marine park, declared through the *National Parks and Wildlife Act 1972* (SA). For further detail on these acts, please see section 8 of this report.

On the landward side, the marine park is bordered (from west to east) by the Nullarbor National Park, the Yalata IPA and the Wahgunyah Nature Reserve. In total, the marine park (including the Whale Sanctuary) encloses 1683 square kilometres of ocean (DEH n.d. #1).

The Commonwealth portion of this protected area is contiguous to the South Australian Park, although not extending quite as far east. The majority of the southern border runs along the 31o 47’ south latitude although one area of approximately 45 km width extends into deep waters (>4000 m) at the EEZ, 200 nautical miles from the shoreline. The Commonwealth marine park was declared and is managed via the *Environmental Protection and Biodiversity Conservation Act 1999* (DEH, 2005). Please see section 8 for more detail.

Both the state and Commonwealth parks are shown in figure 9.

The marine parks have a wide variety of bio-physical features. In particular, it has a high level of biodiversity and endemism which has been contributed to by a long period of geological isolation, wide continental shelf, a high energy coastline, warm water intrusion from the Leeuwin Current in the west, a nutrient-rich cold current from the east and, as it is in an area of very low rainfall with no surface run-off, is in a highly pristine state (see Cwlth DEH; DEH 2004; n.d. #2).

In particular, this marine park has been developed for the protection of an important habitat – a breeding and calving area for the Southern Right Whale, and the habitat of the Australian sea lion. It also caters for other marine flora and fauna species of conservation significance, as well as a representative section of seabed environment in the strip that extends to the EEZ.

The management plans of the area acknowledge, but do not make specific mention of, Indigenous values. With the Yalata IPA bordering a significant section of the marine park on the landward side, there are values which require incorporation into management, particularly with the developing Yalata community enterprise surrounding whale watching. This topic is dealt with in the following section.

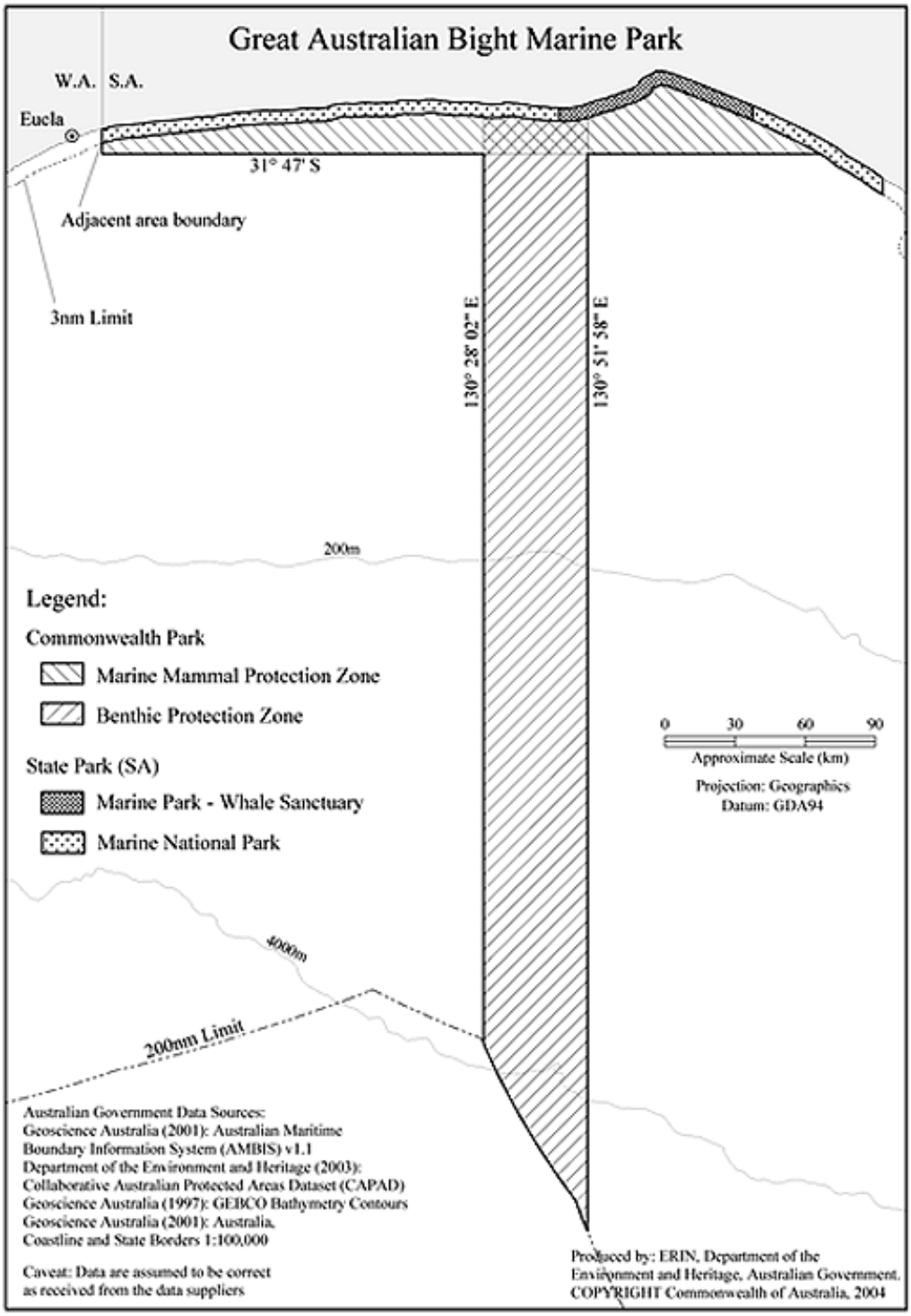

Figure 9. The South Australian and Commonwealth areas of the Great Australian Bight Marine Park (source: <http://www.deh.gov.au/coasts/mpa/gab/maps/boundary.html>)

4.5 Joint management of conservation zones

4.5.1 Joint management of conservation zones in South Australia

South Australia has codified what it terms the 'co-management' of protected areas in division 6A of the National Parks and Wildlife Act.. While there is no specific definition of the term co-management, Division 6A outlines co-management arrangements to a level of detail which supersedes the necessity of simple definition. In its essence however, co-management can be referred to as a power-sharing arrangement between the state and Traditional Owners in relation to the management of lands for both cultural and biophysical purposes. The principles of co-management arrangements are outlined in the objects of this division of the Act in s.43E, and are:

- to ensure the continued enjoyment of the parks by the relevant Aboriginal groups for cultural, spiritual and traditional uses
- to ensure the continued enjoyment of the parks by members of the public in a manner consistent with the co-management agreements for the parks
- to ensure the preservation and protection of Aboriginal sites, features, objects and structures of spiritual or cultural significance within the parks
- to provide protection for the natural resources, wildlife, vegetation and other features of the parks.

The Act also provides that the Minister must have regard to these objects in administering this division of the Act in s.43E (2).

Section 43F (1) outlines that the minister may enter into a co-management agreement over:

- a national park or conservation park to be constituted of Aboriginal-owned land
- a national park or conservation park constituted of land with which an Aboriginal group or community has a traditional association.

This means two things. The first is that co-management arrangements can be entered into on an existing conservation estate that is currently vested in the Crown and managed in accordance with the National Parks and Wildlife Act. Second, it provides for co-management of lands which are Aboriginal-held, and more specifically, it allows Aboriginal landholders to enter into an agreement with the minister to manage their lands as part of South Australia's protected area estate, and for all portions of the Act to be applied to these agreements and these lands.

This is particularly important for the enforcement provisions of the National Parks and Wildlife Act, as the parallel Commonwealth programme – the IPA Programme – lacks the means to enforce management plans. However, it is the IPA Programme that has made the necessity of this type of policy and legislative development apparent at a state level and, when implemented by the states, may provide greater impetus in attaining the relevant CAR reserve targets.

Division 6A of the Act sets out provisions for the development of co-management agreements and what these may include, such as the establishment of a co-management board, preparation of a management plan, funding arrangements, dispute resolution, park entry fees and the taking of flora and fauna by Aboriginal groups. It also sets out that a co-management agreement on Aboriginal lands can be terminated unilaterally, while on lands

that are or were Crown lands prior to a co-management arrangement, most likely existing protected areas, can only be terminated with the mutual agreement of the minister and the Aboriginal party.

This division also sets out that when a co-management board is established in an agreement, the Governor can establish this board by regulation of the Act (s.43G). These regulations must be consistent with the co-management agreement, may limit the powers of the board, may provide the board with delegation powers and may require reporting of the board to the minister. Division 6A states that when constituted in this manner, a cooperative management board is to have a majority of Aboriginal members, chaired by a person who is the nomination of the proprietor of the land (s.43G(3)). The board is also a body corporate and has the functions and powers assigned in this or other acts (s.43H), and which are defined in the co-management agreement and regulations gazetted by the Governor.

Control of protected areas is defined in a separate part of the Act where it is stated that 'the Minister has control of all reserves, other than co-managed parks, constituted under this Act' (s.35(1)). This essentially gives control of the parks to the board of management, which handles matters such as leases and licensing, and other matters as defined in a cooperative management agreement and as provided or limited in subsequent regulation.

Importantly, the management planning process is the responsibility of the board of management, as is the actual management after the planning process is complete. However, in developing a management plan, there are some differences from the process of non-cooperatively managed parks. This is usually in the part of the process in which the minister accepts and then gazettes a management plan, which can only be enacted with the agreement of the board, or where there is a cooperative management arrangement that has not created a board, in consultation with the Aboriginal party for the co-management arrangement.

While the Act codifies co-management in South Australia, it does not seek to provide a high level of detail in relation to specific matters. Rather, it concentrates on the creation of a broad system which can manifest in a variety of ways according to the agreements that have been created between the minister and the Aboriginal party, and which are subject to a variety of policy considerations.

Chief amongst these considerations is the capacity of both the state and the Indigenous party. On many occasions, there may be a need to engage in a programme of capacity building over a number of years prior to the agreement of a board of management. This has generated the idea of 'tiers' of co- management outcomes. At the time of drafting this report there were none known to the authors for the coastal zone of South Australia.

4.5.2 Joint management of conservation zones in Western Australia

Western Australia does not have a legislative system that defines a cooperative management regime. Rather, it has a policy-based approach, which, while applied only in selected circumstances, is making some progress towards the possible development of a legislated and more substantial cooperative management regime.

In 2003, the Western Australia Government publicly released a discussion paper entitled 'Indigenous Ownership and Joint Management of Conservation Lands in Western Australia' (Government of Western Australia 2003). This discussion paper outlined a number of possible outcomes on conservation reserves, with tiers of outcome proposed, dependent on the capacity of both government and the Aboriginal community in the area under consideration.

The tiers outlined in this consultative paper varied. They were characterised as:

- consultative management, whereby arrangements could be developed to ensure proper and adequate Indigenous consultation in relation to protected areas in a location or region
- co-operative management, in which an Indigenous specific advisory mechanism is developed through which to formally advise park management
- joint management, where the protected area is vested in a park council who has powers equivalent to the CCWA, and therefore has the responsibility of management planning and monitoring of day-to-day management, with the Minister for the Environment still holding final decision-making powers.

These types of outcomes were seen to be important, particularly in relation to new and proposed protected areas in regions where native title determinations had been made or were likely to be successful. Without a proper framework for negotiation with native titleholders, successful outcomes for newly protected areas are unlikely to eventuate. These arrangements also provided a framework through which other negotiations could occur, either within or outside of a native title negotiation, in order to facilitate both nature conservation and Indigenous community outcomes.

Following its release, adverse publicity has seen the Western Australia Government move away from the framework proposed in the discussion paper. Instead, it has adopted a policy-based regime which sees the individual negotiation of what the state terms ‘cooperative management arrangements’, consisting of park advisory councils – who advise the managers of the park – and the Department of CALM.

This type of arrangement maintains current statutory structures; protected areas remain vested in the CCWA, which is responsible for developing management plans and monitoring the management, while the Department of CALM remains responsible for the day-to-day management of the parks themselves.

While on the surface this may appear to be a very low level outcome, it is bolstered by the development of agreements between native title claimants or holders and the Minister for the Environment. These agreements generally see a significant level of responsibility delegated to the park advisory council, particularly in the development of the management plans, as well as overseeing the day-to-day management of the parks.

Park advisory councils are also bolstered by working arrangements between themselves and the CCWA, which has been generally supportive of such initiatives, and seek to provide assistance and advice when and where required. Working arrangements also exist with the Department of CALM, which has been investing in local training and employment to provide Traditional Owners with practical and day-to-day involvement in the management of their traditional lands. In many cases the Traditional Owners who engage in them regard these arrangements positively; however the aim of land ownership remains unaddressed.

Consultative arrangements are also common throughout the state – these generally mean a number of Traditional Owners sit in broader community consultative committees. These committees do not have the force of statute or agreement but, given the very public nature of the management of protected areas, the directions that they set often outline the basic parameters upon which the protected areas are managed.

Generally, Traditional Owners have very little power within these consultative management arrangements and can feel intimidated or alienated by the overwhelming number of non-Indigenous people on these committees. Once again, however, it is acknowledged that this

type of arrangement, although low level, is often a required step in building community capacity and knowledge in regard to the management of protected areas.

There are no joint or co-operative management programmes in the SWMR. There are a number of community consultative committees that exist, particularly in the parks of the Esperance area, the Walpole Wilderness area (incorporating several national parks around the Walpole/Nornalup area) and the Leeuwin Naturaliste National Park, however Indigenous engagement in marine park management is still in development.

Of all of these areas, it is likely that the Esperance region has the highest level of Indigenous engagement with protected areas, particularly through the Bay of Isles Aboriginal Corporation, who have been active in conducting remedial environmental and cultural works for a number of years in park areas. The Walpole Wilderness area and the Leeuwin Naturaliste have a lower level of Indigenous engagement, however efforts to improve this situation have been taking place in the past several years, and are slowly yielding positive results.

4.5.3 Ranger programmes

In both states, the only Indigenous-specific ranger programme is through the Yalata IPA. This does not preclude the existence of Indigenous rangers in other areas, however they are required, and do, graduate through the mainstream ranger programmes that are conducted by both the South Australian DEH and the Department of CALM in Western Australia.

4.5.4 Summary of conservation initiatives and Indigenous people in the SWMR

What emerges from an examination of contemporary conservation management regimes in the SWMR is the clear impact that native title, CAR and NRS management have had in creating opportunities for greater involvement of Indigenous people.

South Australia has advanced these negotiations further than Western Australia through the SAMLISA and the state-wide ILUA process. This approach has created a bedrock of Indigenous governance and representation in South Australia. Tied to native title applications and under agreement-making provisions of the Native Title Act, this approach is reinvigorating Indigenous connections to country by providing opportunities for an integrated approach to management of the conservation estate with native title as a foundation. Sea country has not received the same focus within this process as terrestrial co-management regimes, being focused on negotiations dealing with recognition of Indigenous cultural fishing, which is discussed in detail in section 6 of this report.

Western Australia, through the Department of CALM, has instigated a series of consultative mechanisms for Indigenous involvement in the conservation estate on a case-by case basis. This has created a climate of vulnerability of Indigenous engagement in this process that is less developed than in South Australia – where Indigenous rights are recognised as a core element of creating practical and pragmatic management plans. The development of NRM catchment councils represents the potential for Indigenous governance to be included in decisions effecting sea country in Western Australia, along with developments arising from the Western Australian Aboriginal fishing strategy. These developments are discussed respectively in greater detail in sections 5 and 6 of this report.

5 Integrated natural resource management and Indigenous peoples in the SWMR

Having considered Indigenous values and connections in the SWMR and Indigenous involvement in state-based conservation management programmes and management of the conservation estate, this section considers the relevance of NRM programmes implemented under the NHT and NAP. With regard to conservation zones discussed in section 4 of this report, NRM catchment areas based within bioregional planning, state and federal jurisdictions necessarily impact upon these processes.

5.1 Integrated delivery of the Natural Heritage Trust and National Action Plan for Salinity and Water Quality

The *Natural Heritage Trust Act 1997* (Cwlth) (NHT Act) established the Natural Heritage Trust (NHT), the purpose of which is to restore and conserve Australia's environment and natural resources. The NHT operates a number of programmes including the Indigenous Protected Areas Programme, which is part of the National Reserve System Programme. The programme aims to establish a network of protected areas which include a representative sample of all types of ecosystems across the country. Through the IPA Programme, Indigenous landowners are supported to manage their lands for the protection of natural and cultural features (refer to section 6.4 of this report for details about IPAs within the South-west Marine Region) (DEH 2005).

During its first phase (1997–2002), the NHT held a poor record of investment with Indigenous people, resulting in an absence of Indigenous priorities for and involvement in its delivery of regional NRM. In 2002 the NHT reformed (now commonly referred to as NHT2) and, with the National Action Plan for Salinity and Water Quality (NAP), jointly delivers funding through to the 2007–08 financial year. Over this time, the NHT has committed to funding a total of $3 billion and the NAP $1.4 billion to improve the management of Australia's natural resources (Australian Government, About Natural Resource Management <http://www.nrm.gov.au/about-nrm.html>). The programme is jointly administered by the federal departments of the Environment and Heritage (DEH) and Agriculture, Fisheries and Forestry (DAFF), and is managed by the Natural Heritage Ministerial Board (Worth 2005, p. 3).

Rather than being delivered through state-wide processes, NHT2 funding is now channelled through 56 regional natural resource management bodies according to the priorities set out in their respective regional plans. These bodies are required to develop and submit their plans for accreditation under the terms of their respective bilateral agreements, with criteria agreed to by the Commonwealth, state and territory governments through the Natural Resource Management Ministerial Council (Worth 2005, p. 3). Indigenous engagement is a requirement of accreditation and must therefore be present in the regional bodies' approaches. Management in each state and territory is overseen by an established joint Commonwealth/State Steering Committee (Worth 2005, p. 3).

The combined NHT and NAP funding is the main source for targets and actions identified in NRM strategies and corresponding investment plans. However, it is understood that the strategic direction produced in their development will enable a planned approach for attracting additional resources. These funds are expected to finance actions for the long-term management of the regions' natural resources. Additional funds will need to be sought and may be drawn through private sponsorship arrangements and agency avenues like the

NHT's *Envirofund*, the Water and Rivers Commission and the *Australian Government Water Fund*; for example, both offer grants of up to $50 000.

Outside the NHT Bilateral Agreements, the *South Australian Natural Resources Management Act 2004* clearly indicates a responsibility on the part of NRM boards from regional NRM groups to develop and include appropriate management arrangements in relation to marine resources and systems (Eyre Peninsula Natural Resource Management Group 2004, p. 75(b)(iv)). Coastal and marine NRM falls under a range of acts in Western Australia including the Department of CALM through the CALM Act, and the Department for Planning and Infrastructure (DPI) through the *Western Australian Planning Commission Act 1984* (D Crawford pers. comm. 2005). See section 8 of this report for a thorough description and analysis of relevant legislation.

5.1.1 DEH policy and the Natural Heritage Trust's delivery of NRM: cross-agency relationship in the context of the government's 'new arrangements' in Indigenous affairs

Both DEH and NHT policies identify planning and management priorities that relate to the protection and management of marine environments and resources, and the inclusion of Indigenous peoples' interests in relation to these environments. For the NHT, bilateral agreements signed between the states, territories and the Commonwealth, and the corollary accreditation of regional NRM strategies and investment plans, are the mechanisms for the delivery of integrated NRM planning, implementation and management. Western Australian and South Australian priorities identified in the bilateral agreements include a commitment to work in cooperation with '… land managers and departments that have statutory coastal planning and management responsibilities [to] encompass and address marine and coastal issues' (Australian Government 2002, p. 4; 2003, p. 5).

Both the DEH and the NHT have representative structures at federal and regional levels, and across jurisdictions. The DEH is currently negotiating memoranda of understanding between the Attorneys-General of Western Australia and South Australia to underpin and support a cooperative and integrated approach to marine planning in state and Commonwealth waters.

A range of resource management regimes establish a composite policy landscape through which Traditional Owners, and other Indigenous groups, are and will be seeking outcomes. These include:

- the NHT's approach to NRM
- the establishment of joint and cooperative planning and management arrangements of terrestrial and marine protected areas
- Indigenous protected areas
- fishing and forestry strategies
- the recognition of native title rights.

State and federal agencies share interrelated policy responsibilities, and therefore must invest in cooperative approaches if they are to live up to those responsibilities. The NHT bilateral agreements clearly state that:

> where regions have responsibilities under Commonwealth/State/Territory … marine and coastal policies and frameworks, governments will be looking at how these responsibilities are reflected in the regional plan. It is expected that actions proposed

> in the regional plan will contribute to these policies and frameworks and enable them to be taken forward and implemented at the regional level (Australian Government2003, p. 56).

The new arrangements in Indigenous affairs involve a whole-of-government approach that involves government agencies working collaboratively and directly with Indigenous communities. The Australian Public Service Commission's 2003–04 annual report defines the whole of government approach as:

> public service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Approaches can be formal and informal. They can focus on policy development, programme management and service delivery (Australian Government Public Service Commision nd, p. 38).

The Secretary of the Department of the Prime Minister and Cabinet, describes the whole-of-government mainstreaming approach as being marked by five characteristics: collaboration, regional need, flexibility, accountability and leadership (Shergold 2004, para 1). The Indigenous affairs portfolio is administered federally by the Office of Indigenous Policy Coordination (OIPC) and handled regionally through smaller Indigenous coordination centres (ICC). These arrangements provide an opportunity for marine-related resource management agencies to collaborate more effectively in order to achieve coordinated and meaningful outcomes with existing Indigenous regional representative structures. Where appropriate, this will necessarily lead to further development of those structures, and potentially the negotiated instigation of new ones.

The terms of these arrangements – including how decisions and agreements are made in the pursuit of interrelated social, economic and environmentally sustainable outcomes – are critical. It is also essential that they avoid duplication, are equitable across stakeholder groups, and empower Indigenous people in negotiating their own places within these structures, according to their own priorities. Highlighting the emerging links between NRM and the Federal Government's new approach to its administration of Indigenous Affairs, the government's NRM web site[5] provides links to the new regional, remote and urban ICCs around Australia, encouraging agreement-making and streamlined funding (Indigenous NRM, para 3). Success will in part depend upon resource management agencies' effective coordination with one another, as well as the ICCs ensuring that there is a consistent and coordinated approach to involving Indigenous people at all levels of natural resource planning, implementation and management. This is particularly relevant given that Indigenous policies will increasingly occur through the ICCs. In relation to NRM, this is already taking place in some parts of Western Australia with integration into the OIPCs and community-brokered shared responsibility agreements (SRAs) (Hawgood 2005). To date, SRAs have not been utilised widely as a means of facilitating sea country plans. Dhimurru Land Management Aboriginal Corporation in north-east Arnhem Land has been funded under an SRA to complete its *Yolnguwu Monuk Gapu Waanga Sea Country Plan* (Dhimurru 2006). It has also developed an implementation strategy for the plan through this SRA. Further details regarding SRA facilitation of such plans was not available at the time of publishing this report.

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[5] See: < http://www.nrm.gov.au/>

5.1.2 The Indigenous Land Management Facilitator Network

Funded by the NHT, the Indigenous Land Management Facilitator (ILMF) network was established in 1998 to assist in identifying Indigenous land management needs and to encourage greater access by Indigenous people to the NHT.

Working in the states and territories, the ILMFs act as conduits supporting collaboration with others involved in sustainable management of natural resources. Indigenous NRM officer positions have been funded within the regional NRM bodies. However, historical patterns of exclusion, the size of the regions, and lack of access to agencies require additional support and investment at the subregional, regional and state and territory levels to facilitate engagement (Senior Officers Group for NRM 2004).

In terms of bilateral agreements, the ILMFs and Indigenous NRM officers provide the nexus between organisation, agency and community attempts to achieve increased Indigenous participation in the management of natural and cultural resources.

5.2 Regional NHT NRM overview: Western Australia and South Australia

Of the 56 NRM regions in Australia, six are in Western Australia and eight are in South Australia. Of these, four fall within the SWMR in Western Australia and six within the SWMR in South Australia. For the purpose of this report, the South Australian NRM region of South Australian Arid Lands has not been included due to the very small area within its boundaries that takes in sea country. The NRM regions are based primarily upon the natural resource features and characteristics of the lands and waters in which they occur, as are their identified subregions.

NRM plans and implementation strategies are developed by each regional NRM representative body. These plans and strategies identify asset classes relevant to the respective region, such as water, land, air, climate, coastal and marine, people and culture, and infrastructure. Issues identified and detailed in each asset class include, but are not limited to:

- services and values (including environmental, social and economic descriptions)
- current conditions, threats and trends; technical, social and institutional issues
- current programmes and practices (covering local, regional, state and national).

The NRM regions' marine boundaries extend to three nautical miles from the coast, within state and territory jurisdictions. Delivering programmes at the regional and local level is proposed to ensure the strategies' recommendations are translated into direct and significant action. The desire is to achieve a higher rate of engagement with the people who live and work in the regions in caring for country. All the NRM groups have coastal and marine officers and support an Indigenous NRM officer position, although these are not all currently filled.

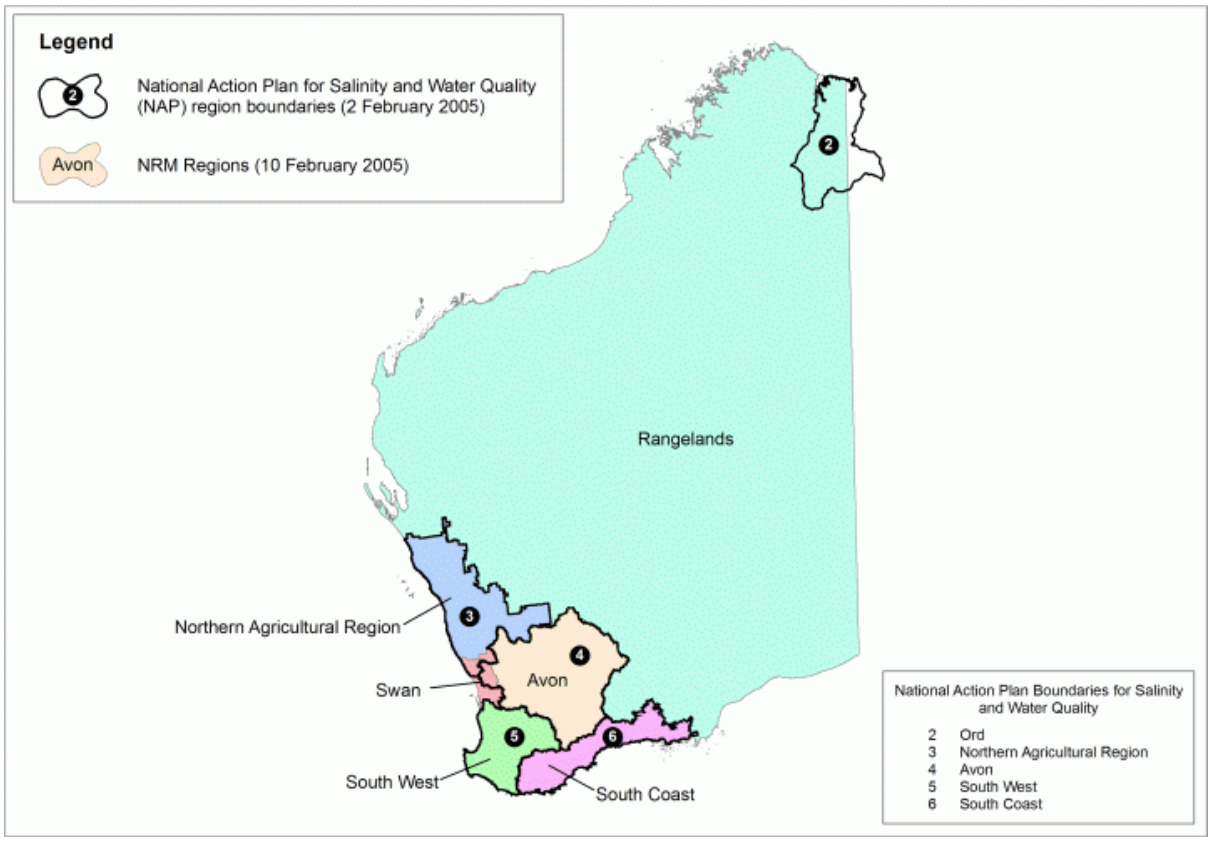

Figure 10. Western Australian NRM regions (source: <http://www.nrm.gov.au/state/wa/index.html>, accessed 26 June 2006)

5.3. Western Australia

5.3.1 Swan Catchment Council

The Swan Catchment Council's Swan Catchment Council (2004) achieved accreditation in December 2004. The Swan region takes in the five subregional groups of north, north-east, south, east and coastal marine. The region's coastline extends from north of Two Rocks to south of Rockingham and includes offshore areas such as Garden and Rottnest islands. Extending to Fremantle Harbour, the Swan-Canning river system is the major waterway in the region and connects to the Swan-Avon river system in the north-east.

In its coastal portion, 31 sub-catchments have been identified (Swan Catchment Council 2004, p. 68). The Swan Coastal Plain is punctuated by wetland features, which include large estuaries and small rivers. However, many are damaged and the majority of those once existing are lost to development (p. 29). A number of coastal terrestrial and marine reserves are in operation in the region. The aim for this is to safeguard representative and unique ecosystems, and ensure that marine uses in conservation areas are both equitable and sustainable (Government of Western Australia 2006).

The Swan region takes in the Perth metropolitan area and corresponding environmental pressures are largely associated with an increasing population, introduced marine pests, urbanisation, and industrial and tourism related activities, including commercial and recreational fisheries (*Swan Catchment Council 2004, pp. 24–34). NRM in the region is

closely linked with statutory planning due to the high demand for access to natural resources. A growing population of 1.4 million (expected to rise 60 per cent to two million by 2031) and planning that does not adequately consider environmental constraints, pose the greatest threat to the management and safeguarding of natural resources in the region (p. 25). The impact of the Western Australian Government's recent $378 million desalinisation plant will also require consideration in a sustainable resource management context and to this end the Swan Catchment Council will be an appropriate lead organisation.

With no Indigenous representation on the subregional working groups, an Indigenous advisory group comprising two representatives in each of the five subregional areas has now been established to provide input. The broader issue of Indigenous representation in the asset classes will be developed further through the work of the Indigenous NRM facilitator with this advisory group (K Giles pers. comm. 2005). The SCC subregions need to provide support to, and work with, the Indigenous NRM officer and Indigenous advisory group in establishing priorities and concomitant projects if there is to be an Indigenous presence in the SCC's approach. The subregional groups of the SCC are required to work with community in '… setting regional targets that contribute to national, state and regional outcomes within their catchment' (Swan Catchment Council 2004, p. 189).

Indigenous values and uses of sea country are described in brief throughout the cultural heritage section of the strategy, which states that 'the Swan Coastal Plain was traditionally an area with abundant water supplies and a variety of environmental zones that provide rich resources. The local Noongar people hunted and gathered and survived for many thousands of years on these resources' (Swan Catchment Council 2004, p.137). However, as yet, Indigenous peoples' knowledge of and priorities for these resources have not translated into regional-scale delivery programmes through investment. Investment strategy funding for the 2005–06 period was endorsed in June 2005, with a review due in the June 2006. The Indigenous cultural heritage section of the strategy, which forms a component of the coastal and marine section, has not been invested in directly. Financial commitments only extend thus far to the SCC coastal and marine and the Indigenous NRM facilitator positions. These positions will work collaboratively to obtain additional funding to progress Indigenous peoples' involvement in sea country related projects into the future (K Giles pers. comm. 2005). Currently, the one Indigenous representative position on the SCC management structure is occupied and is linked to working with the Indigenous NRM Officer and Indigenous advisory group (Membership Swan Catchment Council 2005).

These coordinated SCC efforts are attempting to give meaning to the stated Indigenous cultural heritage management action targets that relate largely to the Noongar Traditional Owner histories of the region. These targets include:

- greater opportunities in policy and legislation for inclusion of cultural heritage
- increased Indigenous employment and participation in NRM
- community, local government and state government inclusion of Indigenous cultural heritage
- the establishment of partnerships to further incorporate NRM principles into appropriate heritage protection.

To fulfil these targets, the SCC will need to harness Indigenous priorities and approaches to bring an Indigenous presence into the marine and coast activities identified in the investment plan. These activities include:

- resource assessment

- on-ground action and regional capacity building in the areas of terrestrial coastal habitats
- marine habitats and marine fauna protection (Swan Catchment Council 2004, pp. 88–92).

5.3.2 South West Catchments Council

The South West Catchments Council (SWCC) takes in the six subregional catchment areas of Leschenault, Peel-Harvey, Blackwood, Warren, Cape to Cape and Geographe. Its NRM strategy was accredited in June 2005. The SWCC NRM region extends from Serpentine in the north, to Walpole in the south, and east to Dumbelyung. The region is home to nine main estuaries with marine flows from the Leschenault and the Peel-Harvey Estuaries and Hardy Inlet.

The SWCC area of coastline extends from Mandurah to Walpole. These waters support diverse marine flora and fauna, including extensive beds of seagrass, starfish species, sea cucumbers, sea urchins and whale species, including the sperm, blue, pygmy blue and minke whales (South West Catchments Council 2005b, p. 97). Shipping is significant in the region and a history of oil spills (there were nine between 1988 and 1999), and other chemical pollutants from urban and industrial agricultural activities, create ongoing threats to marine life, as does the introduction of marine pests through shipping presence at major ports (p. 99). Over-fishing, both commercial and recreational, increasing coastal populations, and expanding tourism and recreational activities, all continue to place significant pressure on coastal, estuarine and marine environments and ecosystems (p. 99).

The *South West Strategy for Regional Resource Management* for the SWCC area states that the current '…. knowledge of marine species, communities, ecosystems and habits is generally poor … there is an urgent need to increase the awareness, knowledge and engagement of people and institutions within the South-West, to protect [these] species, communities and ecosystems' (South West Catchments Council 2005b, p. 97). It also notes that Indigenous groups extend 'significant value to marine areas associated with cultural practice' (p. 98). Further, in relation to the significant status Indigenous people have in natural resource management, the strategy clearly states that there is a '… diverse range of land/water/seascapes and issues that are of cultural importance to the Noongar people within the Region' (p. 125).

It is acknowledged that there are conflicting management practices between Western approaches to NRM and Indigenous traditional and ecological knowledge, and associated practices. The strategy further recognises that integration of the latter provides an opportunity for improving the management of natural resources in the region (South West Catchments Council 2005b, p.125). Associated management action targets focus on the further protection and identification of sites of cultural and spiritual significance, including those occurring on private lands, through management plans and incentive arrangements.

Also identified within the strategy is a target for increased capacity including protocols for engagement and for addressing Noongar NRM issues. Importantly, the priorities include the need for greater representation on the SWCC by Traditional Owners to effect strategic influence, as well as the need for increased awareness by the catchment council subregions of cultural practices and native title rights to land and water (South West Catchments Council 2005b, pp. A113–115).

The Regional Investment Plan for the South West NRM Region sets aside funding for Indigenous projects that have prioritised the enhanced involvement of Indigenous people in NRM, including the incorporation of Indigenous knowledge and cultural protection

practices (with projects demonstrating protocols for engagement and to address Noongar NRM issues). Also included are cross-cultural awareness training and a Preston River Indigenous River Action scoping and consultation project (South West Catchments Council 2005a, p. 17; p. 31).

Dedicated funding should increase with a cross-regional project 'Restoring Connections' in development with the neighbouring NRM region, the South Coast Regional Initiative Planning Team (SCRIPT). Because this project will be driven by community-identified priorities, there is potential for sea country-related programmes to be developed (B Bennell pers. comm. 2005). These priorities will become the focus of a subsequent management plan, which, beyond the three-year life of the project, will aim to attract further funding support. Project development is currently occurring between the Traditional Owner NRM officer and two native title working groups. Water and coastal components will feature in some of these projects (B Bennell pers. comm. 2005).

Mainstream sea country programmes detailed in the Investment Plan for 2005–06 include a programme for management and recovery of the coast and marine environments through projects that use threat-abatement plans and the application of priority management actions. A community programme is aimed at raising awareness of coast and marine environments and garnering involvement to strengthen assets and reduce threats. A component of the resources for this project is dedicated to community engagement; Indigenous people are an obvious priority target. In planning for the future of coastal and marine environments, a programme drawing on the needs identified in the strategy will see the development of management plans, advisory groups and town planning schemes. A marine reference group will be established for this purpose in the region, and will include Indigenous representation as a priority. A programme aimed at raising understanding of coastal and marine environments plans to improve resource conditions through increased identification of management actions and benchmarking. This will ultimately influence investment decision-making (Hugues Dit Ciles 2005, p. 6).

The SWCC has working relationships with the Department of CALM, the Department of Environment (DoE) (specifically the Augusta-Walpole Coastal Steering Committee), eight coastal local governments, the Department for Planning and Infrastructure, the Department of Fisheries (DoF), and DEH's bioregional marine planning process (South West Catchments Council 2005b, p. 100; South West Catchments Council 2005a, p. 8–9).

Relationship building between Indigenous groups and the SWCC through informal engagement at subregional levels has been the primary form of Indigenous consultation. However, a more structured and formal engagement with Traditional Owners is occurring mainly through native title structures via the South West Aboriginal Land and Sea Council. This is developing further through the work of the Indigenous NRM facilitator within the SWCC. The current development of a Memorandum of Understanding (MoU) between the SWCC and the native title working groups for this region will set some protocols that will apply in management of natural resources across the asset range (B Bennell pers. comm. 2005). These efforts are producing on-the-ground project direction and will fall into the relevant sections of the investment plan that respond to the strategy.

The Geographe subregion group meets annually with the Noongar community to discuss and review project ideas for the upcoming year. Meetings occur more regularly as needs associated with projects arise. Other SWCC subregional groups are endeavouring to engage Traditional Owners through the adoption of the 'Ask First Guide' (Australian Heritage Commission 2002). This guide was developed to enhance Indigenous engagement and heritage place identification and management. There is only one Traditional Owner

represented at the membership level of the Warren subregional group. This lack of representation indicates the work that needs to be done to ensure adequate representation at strategic levels within the SWCC. The Indigenous NRM officer represents Indigenous interests at the Strategic and Technical Assessment Group (STAG) and Technical Working Group (TWG), which assist in determining asset conditions and priorities. Ultimately, funding allocations are the decision of the SWCC membership, who take advice from the STAGs and TWGs. Currently, there is no Traditional Owner representation at the SWCC membership level, however the SWCC is working to remedy this (B Bennell pers. comm. 2005).

5.3.3 South Coast Regional Initiative Planning Team

The region of the South Coast Regional Initiative Planning Team (SCRIPT) begins at Walpole in the west and extends north-east to Broomehill, east to Lake King and Grass Patch, and south to Cape Arid. The regional NRM strategy received accreditation in May 2005. Of the six subregions, four fall within the marine and coastal boundaries (SCRIPT 2005, p. 13). The Kent-Frankland contains forested catchments that flow into the Nornalup and Irwin Inlets (p. 12). The Albany Hinterland contains the Denmark, Hay and Kalgan river catchments that flow south from the Stirling Range and discharge into Wilson Inlet and Oyster Harbour (p. 12). The region's coastal features comprise white, sandy beaches, granite headlands and vegetated coastal inlets (p. 10). The region takes in Recherche Archipelago islands and a number of shoals. Seventy per cent of the terrestrial coastal environment exists within the conservation estate, the remainder coming under local government management for largely recreational purposes (p. 25).

The Fitzgerald Biosphere contains the Fitzgerald River National Park where, within uncleared areas, protection of unique flora, fauna and ecosystems and tourism activities occur (SCRIPT 2005, p. 12). The Esperance Sandplain, a 40–50 km wide coastal strip, contains four main river catchments, and comprises wave-like sand plains, dune systems, and several short rivers that discharge into coastal lakes, lagoons and estuaries (p. 13).

Pressure is placed on the coastal and marine environments by:

- an identified and increasing 'sea change' population
- increasing numbers of tourists and related activities (whale watching, surfing, recreational beach use, boating)
- extensive recreational and commercial fishing (crab, lobster, abalone, scallop, cobbler, whiting, sea mullet, salmon, bream, pilchard and shark)
- a burgeoning aquaculture industry
- introduced marine pests, pollution from urban and rural activities and shipping associated with the two major ports in Albany and Esperance (SCRIPT 2005, pp. 25–26; 87–89).

Coupled with the above threats, limited information, knowledge and awareness of these environments inform benchmarking and monitoring management actions and targets. These will work towards the establishment of a marine habitat and water quality monitoring programme, a regional database documenting marine biodiversity, and further identification of sources and areas at risk from introduced marine pests. On-ground actions include projects that will improve the condition of marine fauna, maintain or improve the extent and condition of significant threatened species and ecological communities, and reduce the

extent and occurrence of ecologically significant invasive species (SCRIPT 2005, pp. 87–89).

Capacity building management across the coastal and marine asset includes the establishment of marine working groups and an aquaculture reference group. These groups have been created to support sustainable resource management, develop community educational programmes, and develop climate change and global sea level change models for better planning. The support of marine reserve planning and implementation will also support protection for these environments (SCRIPT 2005, pp. 87–89).

The SCRIPT has developed a comprehensive background paper 'Noongar Culture'. This outlines Noongar concerns for country and details some of the ways in which the added dimension of culture in country encompasses environmental values (SCRIPT 2005, p. 26). Should the information provided in this paper be developed and promoted to become integrated with mainstream development, implementation and management of NRM in the region, it will serve as a highly valuable resource. The strategy identifies Noongar Traditional Owners as having a vested interest in and knowledge of sea country that can:

> enrich non-Indigenous knowledge and attitudes. Indigenous ethno-botanical and ethno-ecological knowledge is an important component of sustainable resource management, especially for understanding, assessing and managing existing natural ecosystems … (SCRIPT 2005, p. 27).

The strategy also highlights the importance of the further identification and protection of sites of cultural-spiritual significance. It also acknowledges the correlation between caring for country, the maintenance of cultural heritage and the health and wellbeing of people. This is a critical ideological turning point for the integration of Indigenous resource management into mainstream approaches (SCRIPT 2005, p. 27). While Traditional Owner groups have distinct responsibilities to country, the strategy acknowledges that other Indigenous people of the region will also have NRM interests that need to be negotiated into NRM planning, practice and management (p. 90).

'Restoring Connections' is a cross-regional project developed through the SCRIPT and SWCC Indigenous NRM officers that aims to strengthen capacity of Indigenous people at a cross-regional level. This project further aims to increase their participation in NRM according to the priorities and approaches they identify and adopt. Management actions for 'Restoring Connections' focus on:

- the protection and identification of sites of significance
- the development of a culturally sensitive database of Noongar traditional ecological knowledge and land management practices
- the development and implementation of protocols for recognition of Noongar intellectual property
- the development of an NRM management framework for sites of high cultural heritage, linking into existing NRM plans
- the establishment of partnerships that facilitate NRM outcomes to these ends. (SCRIPT 2005, p. 90)

The Western Australian state Department of Indigenous Affairs (DIA), the South West Aboriginal Land and Sea Council, the Goldfields Land and Sea Council (GALSC), the Western Australian Heritage Council, the Australian Heritage Council, Indigenous

corporations and the Department of CALM are all identified as key stakeholders in achieving these aims (SCRIPT 2005, p. 91).

To enhance the role of the Indigenous NRM officer of SCRIPT, an Indigenous women's issues officer position was funded and established in 2005. Further opportunity for input into new investment occurs through SCRIPT work groups (benchmarking and monitoring, implementing, planning and fostering change). These groups act as conduits to harness community views that are filtered through in formalised management recommendations to the SCRIPT Regional Strategy Subcommittee, including input into investment planning.

A SCRIPT Marine Reference Working Group has been established to provide feedback to the SCRIPT work groups. This body includes representation from commercial and recreational fishing interests, the Department of Fisheries, the Department of Conservation and Land Management, the Department for Planning and Infrastructure, the Department of Environment, local government, universities and other state and Commonwealth NRM bodies. A Traditional Owner member of this group is also an elected member of the local council in Esperance and Chairperson of the Aboriginal Lands Trust. He is an ecotourism business operator and has been active over many years in coastal and marine projects, working with SCRIPT to increase Noongar participation (H Heydenrych pers. comm. 2005).

A priority of the Marine Working Group is to integrate a state Aboriginal fishing strategy into community and agency fisheries management policies, together with additional Traditional Owner input and direction (H Heydenrych pers. comm. 2005).

The draft fishing strategy was developed with an Indigenous working group comprising agency and organisational representatives and is with the Minister for Fisheries for endorsement. In addition, the SCRIPT Indigenous NRM officer is also a member of the SCRIPT Fostering Change Working Group, which looks after a small number of change management programmes, including Indigenous NRM issues in building culture and understanding in NRM, and identifying cultural values in NRM. This includes Indigenous values but also extends to wider stakeholder values.

Indigenous community members from Esperance identify strongly with sea country, and expressions of this have resulted in a variety of coastal and marine projects over the past 15 years. It is important to note, however, that other Traditional Owners, in the Bremmer Bay area, for example, will identify culturally with sea country and may not, as yet, have expressed this in the NHT NRM framework. This is part of a process of change, and as the culture of NHT's involvement in natural resource management broadens to include Traditional Owners more comprehensively, greater Aboriginal activity within its framework will be able to be realised.

The *Western Australian Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (NIFTWG 2003) has identified a need for a part-time Indigenous fisheries liaison officer position to promote and encourage greater involvement of Indigenous people in marine-based activities across the region. It is hoped that the liaison officer will be able to facilitate and strengthen existing Traditional Owner connections to sea country on the south coast, creating appropriate avenues for participation. The position would link in strongly with the Marine Working Group and would play a role in determining and integrating appropriate outcomes arising from the draft Indigenous fishing strategy (H Heydenrych pers. comm. 2005). As of June 2006, this position has not been created under the strategy or proposed amendments to the *Fish Resources Management Act 1994*, although it is being negotiated at ministerial level (B Fraser pers. comm. 2006).

Coastal and marine groups and agencies working with the SCRIPT group include alliances, volunteer and coastal community groups and individuals, the Department of CALM, DoE, DoF, DPI and local government associations (SCRIPT 2005, pp. 86–89).

5.3.4 The Rangelands NRM Co-ordinating Group

The Rangelands region takes in 90 per cent of Western Australia lands and over 75 per cent of its coastline. It is the biggest NRM region in Australia and faces significant challenges due to the sheer size of the region and the complexity of NRM-related issues within this area. The subregion relevant to the SWMR is the Goldfields-Nullarbor, with the remaining three regions comprising the Gascoyne-Murchison, Pilbara and Kimberley.

The Nullarbor coastline stretches from east of Esperance to the Western Australian border, taking in the Great Australian Bight. It is characterised by rocky cliffs and includes Recherche Archipelago islands offshore (Rangelands NRM Co-ordinating Group 2005a). The Rangelands' NRM draft strategy is currently being reviewed for accreditation, with the public comment phase having concluded on 2 June 2005. The investment plan is currently in development and will follow the strategy for accreditation and then implementation. The Goldfields-Nullarbor subregion is responding to the loss of local information in the overarching strategy by developing a Goldfields-Nullarbor local plan to implement their regional NRM priorities (S Clarke pers. comm. 2005).

The overarching draft strategy briefly describes an Indigenous presence, but does not go into any specific detail in relation to values and or uses of sea country in the Goldfields-Nullarbor subregion. This may be due to the low population density of Indigenous people resulting in limited involvement in NRM. However, Indigenous regional issues associated with NRM that are identified as requiring action to 'document and protect' Indigenous values. Actions to achieve this include:

- the maintenance and enforcement of laws, traditions and care customs
- the adoption of sites, practices and species
- the care of ceremonial sites and places
- the development of ownership and obligations for the use and enjoyment of natural resource assets (Rangelands NRM Co-ordinating Group 2005a).

The Rangelands NRM Co-ordinating Group's preferred avenue for broad community engagement occurs through community organisations in the subregions (Draft Rangelands NRM Strategy 2005, 4.4 Roles and Responsibilities for Implementation, p. 34). At an institutional level there is Indigenous representation on each of the subregional NRM groups, as well as one Indigenous representative on the Rangelands NRM Co-ordinating Group (Rangelands NRM Co-ordinating Group 2005a, p. 256). However, the strategy identifies Indigenous engagement as currently being insufficient.

Within the strategy, specific mention is made in relation to work of the Goldfield Land and Sea Council in its attempt to build its capacity to provide land management services to support the Region (Rangelands NRM Co-ordinating Group 2005a, p. 246). Although the strategy details a comprehensive list of over 15 local Indigenous councils and corporations operating in the Goldfields-Nullarbor region, no specific engagement is detailed in the Protocol for Community Engagement section (pp. 246, 272–73). Some regular liaison occurs with local families who have ties to the Nullarbor coast as well as with people at Coonana and the Western Desert Regional Council. It is hoped that discussions around coastal issues will take place in the near future (S Clarke pers. comm. 2005).

Rather than having a separate asset class for cultural heritage, the draft strategy states that the '… "management" component of natural resource management is an inherently human activity and is therefore conditioned by culture and heritage' (Rangelands NRM Co-ordinating Group 2005a, p. 26). Matters of cultural heritage are thus spread across the asset classes. The philosophy is that this motivates people's involvement in NRM in ways that respond to their cultural and heritage backgrounds and associations. While it is positive to see these issues spread across the asset classes, it needs to be noted that where minority groups are concerned, additional effort is indicated by the lack of participation. Investment is required if substantive equity is to be experienced within the region's approach.

Two universal resource condition targets guiding the Rangelands NRM Co-ordinating Group's approach to Indigenous involvement are to:

- increase capacity for greater NRM, as measured by project participation
- to conserve culture and heritage valued by the community (Rangelands NRM Co-ordinating Group 2005a, p. 6).

Evaluation measures will need to be driven primarily by Traditional Owners and other Indigenous groups in the region to ensure that findings are legitimate and to respond to Indigenous cultural imperatives.

Watercourses disappear in flat areas or shallow lakes within the Goldfields-Nullarbor subregion (Rangelands NRM Co-ordinating Groupa 2005, p. 90.). In relation to sea country, the Nullarbor coastline has been identified as less of a priority compared to the coastal areas of the north-west that fall within the Rangelands. This is primarily because the Nullarbor coast has been identified as being less impacted by population, tourism, industry and commercial industry, and is thus viewed as being in relatively pristine condition (S Clarke pers. comm. 2005). However, commercial and recreational fishing is present and includes commercial shark and abalone fishing, and snapper, trevally and salmon recreational fishing (Rangelands NRM Co-ordinating Group 2005a, p. 161). Unsustainable tourism and recreational activities and coastal and marine developments, coupled with ecological impacts caused by mining and industry, all pose threats to the coastal and marine environments in the region (pp. 141–42). Agencies and groups identified as relevant to coastal and marine resource management in the Rangelands NRM region include local governments, DPI, the Department of CALM and the DoF (p. 143).

Covering coasts, coastal waters and marine biodiversity, the Seascapes component of the draft strategy contains no description of Traditional Owner uses and values. Again, any Indigenous issues focus primarily on the north-west coastal areas that fall within the Rangelands region. Traditional Owners are included as 'potential partner groups' within the management action targets for the development of seascape priorities. These priorities include the development of Indigenous employment in coastal and marine NRM, feasibility studies for coastal community centres, and a cultural sites restoration and protection programme. Marine biodiversity priorities include formal recognition and ongoing Indigenous involvement in NRM, the development of Indigenous employment in coastal and marine NRM, and the development of education and awareness programmes in relation to cultural heritage recognition and conservation of marine and coastal biodiversity. As the marine environment is increasingly researched, Traditional Owners and other special interest groups' projects will ensure better understanding and management of coastal and marine resources and systems (Rangelands NRM Co-ordinating Group 2005a, pp. 149, 166–173).

A Goldfields-Nullarbor advisory group to the Rangelands Co-ordinating Group includes representation from the Goldfields Land and Sea Council and Western Australian Department of Indigenous Affairs. The Rangelands Co-ordinating Group has an Indigenous representative who is based in Geraldton. Indigenous representation on the group from the Goldfields-Nullarbor subregion would be appropriate in representing the subregional interests in this area.

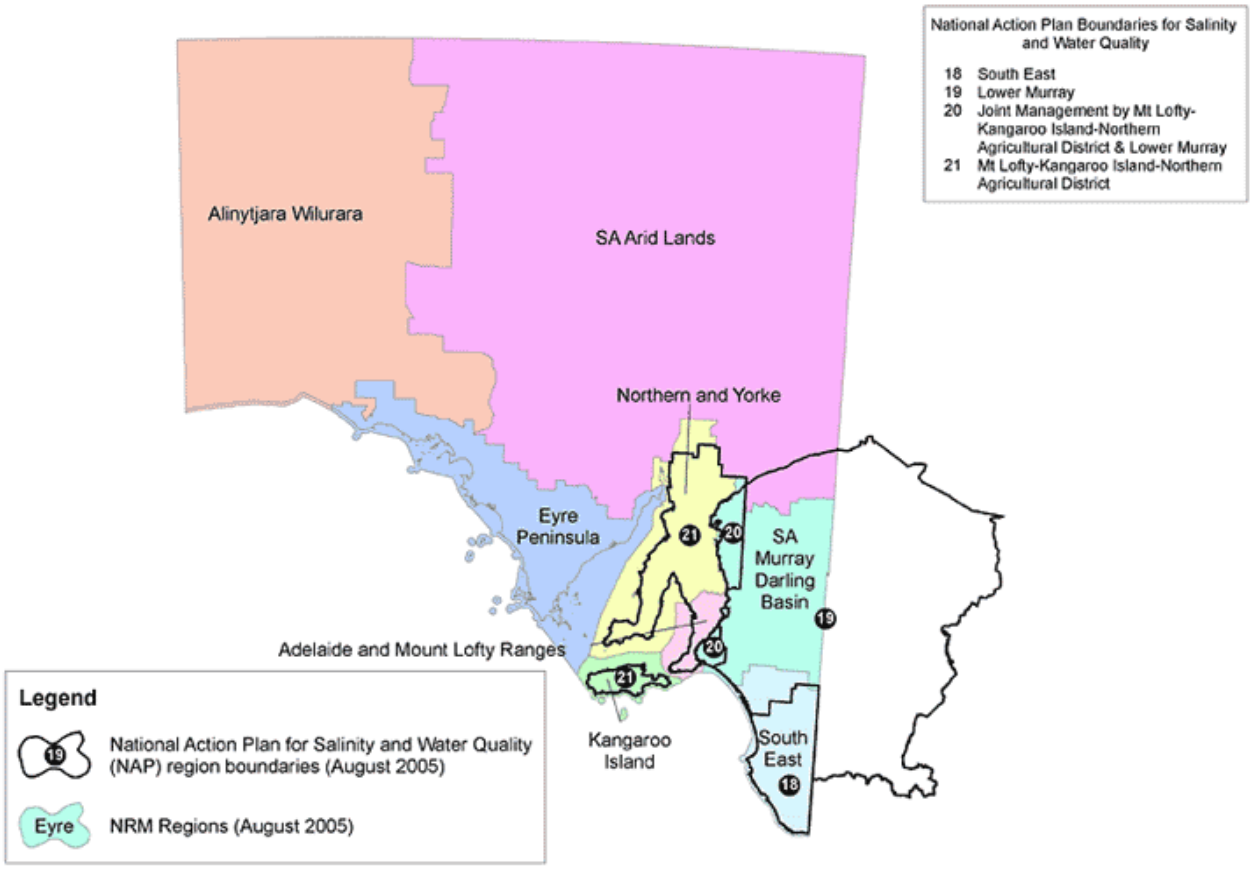

Figure 11. South Australian NRM regions (source: <http://www.nrm.gov.au/state/sa/index.html> accessed 26 June 2006)

5.4 South Australia

5.4.1 Alinytjara Wilurara Natural Resource Management Board

Currently the Alinytjara Wilurara NRM Board, as a statutory body, is in the process of taking over the Aboriginal Lands Integrated NRM Group, an incorporated body. The Alinytjara Wilurara Region covers the Yalata, Maralinga and Anangu Pitjantjatjara lands. This region comprises almost 30 per cent of South Australia, creating unique challenges in relation to management and implementation when compared with the other NRM regions of a smaller size (NRM Board for the Aboriginal Lands NRM Region 2004, p. 4). Remoteness and distance pose challenges in relation to funding and support, and this distance and

'biophysical and cultural' diversity throughout the region also poses challenges in terms of NRM prioritisation and management (Aboriginal Lands NRM Board 2004). The Integrated NRM Plan and corresponding investment strategy were accredited in July 2004, with the most recent investment strategy for 2005–08 being accredited in June 2005 (L Rosenberg pers. comm. 2005).

A programme to transfer responsibility for natural resource management activities from the Alinytjara Wilurara to the regions in which Aboriginal lands are located is currently under way and is detailed in the forthcoming investment strategy (NRM Board for the Aboriginal Lands NRM Region 2004). Coastal lands relevant to this transfer are listed below. This transition will occur over three years with Alinytjara Wilurara and the South Australian Aboriginal Lands Trust overseeing the projects until the conclusion of this time (L Rosenberg & J Chester pers. comm. 2005).

Consultation occurs through the partnerships formed between the Alinytjara Wilurara and the leading Aboriginal landholding authorities of Anangu Pitjantjatjara Yankunytjatjara, Maralinga Tjarutja and the South Australian Aboriginal Lands Trust (SA ALT). The SA ALT has played a central role for many years, and continues to in relation to building opportunities for NRM on Aboriginal managed lands throughout South Australia. Partnership arrangements also includes the ALRM Native Title Unit, State Aboriginal Heritage Committee, Indigenous Land Corporation, and the state departments for Aboriginal Affairs and Reconciliation, Environment and Heritage, Water, Land and Biodiversity Conservation, non-government organisations, and other regional Indigenous NRM groups, both intrastate and interstate (Aboriginal Lands NRM Board 2004, pp. 28–29).

Based on living in the region and/or having a strong interest in the region's natural resources and Indigenous cultures, the fifteen members of the Alinytjara Wilurara's management group reflects these partnerships. Additional places from the Aboriginal Legal Rights Movement and State Aboriginal Heritage Committee are also included for consideration (Aboriginal Lands NRM Board 2004, p. 11). Traditional cultural and environmental knowledge is as equally valued as the scientific knowledge that comprises a basis for the region's plan (p. 4). It is important to also note that the Strategy for Aboriginal Managed Lands in South Australia has greatly informed Alinytjara Wilurara's NRM approach.

The NRM plan describes each of the INRM regions and identifies the priorities and targets, and the monitoring and evaluation framework for each region. The plan is prefaced by identified Indigenous issues and values in relation to NRM, and is driven by a set of overarching principles guiding NRM-related actions on Indigenous lands. The Aboriginal lands managed through Alinytjara Wilurara that are situated in coastal geographical locations include:

- Yalata lands that fall within the Alinytjara Wilurara region
- Ceduna, taking in Dynahlind, Murat Bay, Ceduna A, Munda Munda, Kalaya Tjina Emu Farm, Koongawa Dundey, Koongawa Dundee 2, Laura Bay, Tia Tuckia, Munda and Wanna, Munda and Wanna Mar, and Streaky Bay (all fall within the Eyre Peninsula region)
- around Port Lincoln, taking in the Aboriginal-managed lands of Seaview, Poonindie and Mallee Park (all fall within the Eyre Peninsula region)
- around Port Augusta, taking in Erneroo and Davenport (in the Rangelands region), and Colebrook Community (in the Northern and Yorke region)

- Port Pirie, taking in Baroota, Waterfall and Telowie, and south to Moonta and Point Pearce, Wardang Island and Port Victoria Fish Farm (in the Northern and Yorke).

It is important to note that the above lands, excluding Yalata, all fall in geographical NRM regional structures outside of Alinytjara Wilurara. The relevance of these areas to sea country will vary, but of particular relevance within the Alinytjara Wilurara region are the Yalata lands. Apart from its geographical location, this is primarily because of the concentration of population and hence the capacity, although limited, to deliver within a framework of management of natural resources.

The Yalata Indigenous Protected Area management plan has largely informed the approach adopted by Alinytjara Wilurara for NRM on Yalata lands, which was developed by Yalata Community Incorporated (YCI). It is largely the YCI, with assistance from the South Australian Aboriginal Lands Trust, that drives the management of these lands (Aboriginal Lands NRM Board 2004, p. 131).

The Yalata IPA is owned by the ALT and is leased to Yalata Community Incorporated under a ninety-nine year lease with rights of renewal, which commenced in June 1975 (p. 133). Approximately 300 people live on the Yalata IPA with their familial and traditional ties extending outwards to the west and north of South Australia. This is in part due to the nature of colonial practices involving forced removal from homelands. However, many people have been born on Yalata lands, and community and family responsibilities and interests are of primary importance (p. 133).

Yalata lands provide a rich habitat for diverse mammal, bird and reptile species. Yalata Beach, located south-west from Yalata, is a recreational and fishing site, as is the coastal stretch north-west from Yalata Beach, which is also used for camping. Tracks running through dunes take in, and lead to, diverse sites (p. 131).

The plan states that the '…Head of [the] Bight whale-watching site and the Bunda cliffs, which run to the IPA's western boundary, are separated from the public beach area to the SE by Yalata swamp and dune system. Some existing public use occurs within this swamp/dune area. The area is culturally significant to Aboriginal people' (pp. 132–33).

In relation to sea country, the plan identifies the Great Australian Bight, off Yalata lands, as an area of potentially high economic value. There are restrictions placed on fisheries activity in the Great Australian Bight Marine Park, with the exception of line-fishing from beaches, and Yalata Beach is being increasingly accessed (Aboriginal Lands NRM Board 2005). Significantly, adjacent managed protected areas include the Nullarbor National Park, Wargunyah Conservation Reserve and the Yellabinna Conservation Reserve. Together with the IPA and Great Australian Bight Marine Park arrangements, these comprise one of the world's largest conterminous areas of land and sea managed for biodiversity conservation (Department of the Environment and Heritage, 'Yalata Indigenous Protected Area' 2005, para 1).

Tourism activity on Yalata lands is prominent with whale-watching attracting significant numbers of people and, to this end, increased resources are identified as a priority for effective management and increased ecotourism opportunity. Increased recreational fishing is occurring on Yalata Beach and, despite a permit being required and obtainable, fishing without permission is prevalent (Aboriginal Lands NRM Board 2004, pp.136–37).

Sustainable fisheries management is of high importance as seafood is an important component of the local people's diet (Aboriginal Lands NRM Board 2004, p. 138). Commercial fisheries are managed under the provisions of the Fisheries Act and include '… Southern Rock Lobster fishing, Shark gill-netting and some limited Mulloway and

Australian Salmon fishing' (p. 139). Recreational fishing is identified as requiring better management, and beach patrols are needed to control fish takes, access issues and cultural sites protection (p. 139). With diverse marine fauna it is felt further surveys are a priority in order to improve baseline knowledge and therefore to enact appropriate resource management measures (pp. 143–49). These priorities are reflected in the management action targets.

Investment in 2005–08 includes a coastal management programme that focuses on the Yalata Fishery Zone, the boundaries of which are currently being negotiated in terms of contracts for works (L Rosenberg pers. comm. 2005). Activities will address '… access, public risk, legislation, cross-agency management and marketing to outline a strategy for improving the condition of resources and for creating employment through enterprise' (Aboriginal Lands NRM Board 2005, p. 3). In relation to coastal and marine groups and agencies, the Yalata Community Incorporated has established liaison and information exchanges with the South Australian Department for Environment and Heritage's Coastal Protection Branch and Coast Care officers (Aboriginal Lands NRM Board 2004, pp. 133–34). The Yalata lands that extend outside of the IPA west to the South Australian – Western Australian border also come under the Alinytjara Wilurara region management, and it is hopeful that investment within this area will include the development of a dune management and protection programme (L Rosenberg pers. comm. 2005).

5.4.2 Eyre Peninsula INRM group

The Eyre Peninsula NRM region occupies an area roughly the size and shape of Tasmania. The region starts at the north-eastern local government boundary of the City of Whyalla and extends around the peninsula to the north-western boundary of Wahgunyah Conservation Reserve. It is bordered by Spencer Gulf in the east and Port Lincoln represents the southern point of the triangle, with the Gawler Ranges making up the northern border. Proposed group boundaries include the Western Eyre, Central Eyre, Eastern Eyre and Southern Eyre (Eyre Peninsula Integrated Natural Resource Management Group 2005). The Eyre Peninsula's Natural Resource Management Plan and Investment Strategy received accreditation in July 2004.

Due to the region's climate and possible over-exploitation of freshwater resources, there is limited surface run-off into the ocean (Eyre Peninsula Integrated Natural Resource Management Group 2004, p. 16). The Eyre Peninsula region's coast stretches from Yalata cliffs to the southern Eyre Peninsula and then north-east to the central Spencer Gulf. Features include a series of beaches, estuaries, salt lakes and rocky coastline with the Spencer Gulf offering more protected waters (Eyre Peninsula Integrated Natural Resource Management Group 2004).

A great number of South Australian marine species are found in the Eyre Peninsula region and receive some protection in offshore island habitats. Recreational fishing is prominent, and tourism, specifically ecotourism , is a growth industry in the region after agriculture, commercial fishing (the region supplies 60 per cent of South Australia's seafood) and a range of aquaculture industries (Eyre Peninsula Integrated Natural Resource Management Group 2004, p. 24). Management action targets include the development of guidelines and codes of practice for fishing, aquaculture and tourism-related activities, and the prevention of marine pollution. The development of benchmarks, targets and monitoring in relation to marine pollution and harvesting will seek to alleviate the impact and create sustainable marine uses. The development of management plans with benchmarks, targets and monitoring systems will aim to further protect coastal zones with environmental protection mechanisms through fencing, controlled access and statutory protection measures (p. 24).

In the 2005–06 investment period an NHT cross-regional project to employ a marine officer to work on the asset class across the region will lead to further creation of sea country projects (N Scholz pers. comm. 2005). Transferring from the 2004–05 investment period into the 2005-06 financial year, a White Shark Sighting and Community Education Programme provides the framework for coordinating the reporting of shark sightings and a corresponding database collection and community education and awareness programme (Eyre Peninsula Integrated Natural Resource Management Group 2004, pp. 125–137). While the project involves several key industry groups – CSIRO Marine Research, the state Department of Primary Industries and Resources, South Australia Fisheries, and the Abalone Industry Association) (p. 134) – there is no specific Indigenous engagement in this project to date (N Scholz pers. comm. 2005).

Coastal investment in the 2004–05 period, continuing into the 2005–06 period, also included on-ground work focused on access management, including track definition, erosion control, staircase and boardwalk establishment and vegetation control fencing. There is also no specific Indigenous engagement in this project area to date (N Scholz pers. comm. 2005).

Traditional Owners and other regional Eyre Peninsula Indigenous people have not been effectively engaged in this strategy to date. The strategy for investment funding, continuing from 2004–05 into 2005–06 and beyond, includes an Indigenous engagement project to address this. This approach has resulted in the establishment of the Eyre Peninsula Indigenous Focus Group. The group meets regularly to review the strategy and seek solutions for appropriate engagement in NRM in the region. Sea country projects may result according to the priorities set by those Indigenous people involved (N. Scholz pers comm. 2005).

Members of the Eyre Peninsula Indigenous Focus Group are elected by Indigenous people of the Eyre Peninsula region and are reimbursed for the time they spend participating in the Group, including travel. One of the six members of the group is also a member of the regional Eyre Peninsula NRM Board, ensuring some continuity of Indigenous representation within the management structure (Indigenous Focus Group 2005).

Seeking to support a culture of Indigenous decision-making within the Eyre Peninsula resonates with the transfer programme that is underway between Alinytjara Wilurara and the rest of the NRM regions. The aim is to have the regions work with Traditional Owners and other Indigenous people to manage the Aboriginal lands that are located within the jurisdictions for which they hold responsibility under their bilateral agreement. It is necessary that Traditional Owner groups and other Indigenous people living in the region be given the opportunity to become involved where their interest is established in the broader NRM issues of the region. Historically, the Eyre Peninsula region has gained Indigenous representation largely through recommendations received from the Alinytjara Wilurara NRM Board. The plan does identify the Port Lincoln Aboriginal Community Council as a regional stakeholder (Eyre Peninsula Integrated Natural Resource Management Group 2004, pp. 9–10).

The regional plan states in relation to Aboriginal managed lands, which are largely coastal lands, that issues such as ‘dryland salinity, soil erosion, animal and plant pests and biodiversity decline … will be addressed’ (pp. 9–10). At the time of writing the plan, issues of cultural significance in relation to sites and transference of traditional knowledge, for example, were largely identified as being best handled by the Alinytjara Wilurara region. The transfer programme between Alinytjara Wilurara and the other NRM regions, as described above, has resulted in a shift of responsibility. This, coupled with the establishment of the Indigenous focus group, will hopefully create a greater capacity for the

involvement of Traditional Owners and other Indigenous people of the region in NRM. Prioritising resources for intra-organisational education and awareness in this regard is essential. This is particularly so where many of the NRM groups, in their previous incarnations, were largely managed by and engaged in a culture of NRM.

The Eyre Peninsula INRM Group receives advice from the state Department for Environment and Heritage in relation to coastal and marine NRM issues. Identified stakeholders also include the SA ALT, the Indigenous Land Corporation (ILC), and the South Australian Boating Industry Advisory Committee (pp. 24–25). Engagement with groups and agencies involved in coastal and marine-related work generally include the Coastal Councils Group, the Eyre Peninsula Catchment Water Management Board, local Coastcare groups, local government, the Conservation Council and the Lincoln Marine Science Centre (p. 8).

5.4.3 Northern and Yorke integrated natural resource management region

The Northern and Yorke Integrated Natural Resource Management Region (NY INRM) (previously Northern and Yorke Agricultural District or NYAD) covers the Yorke Peninsula, the lower, mid and upper north, and the southern Flinders Ranges. In February 2004 the NYAD Integrated Natural Resource Management Plan, as it was known then, was approved with funding for 18 months and was announced by the state and federal governments.

Although 80 per cent of the NY INRM comprises agricultural activity, the region also takes in most of the Gulf St Vincent and the eastern side of the Spencer Gulf. The Wakefield River, Gawler River and Light River flow into the Gulf St Vincent, while the Broughton River and Mambray Creek, and its tributary Alligator Creek, flow towards the Spencer Gulf. Although there is drainage on the York Peninsula, the Winulta Creek catchment is ephemeral and many surface water catchments on the Peninsula tend to terminate in '… landlocked lagoonal features' (Northern and Yorke INRM Group 2003, p. 23). The coastal wetlands are likewise significant and are listed on the Directory of Important Wetlands in Australia (p. 30).

With increased numbers of people visiting the region, coastal ecotourism is a growth industry yielding significant economic return (p. 22). Recreational fishing, swimming, diving, surfing, sailing and water skiing are all popular at Spencer Gulf and the Gulf St Vincent. Aquaculture and commercial fishing also contribute a significant economic return to the region (p. 22). These activities all place pressure on the environments that they penetrate. Threats identified from such activities in the region include impacts on the quality of marine waters from land-based contamination, and the threat of biodiversity disruption (p. 8). A lead smelter at Port Pirie yields an economic return to the region, but its impact on coastal and marine environments is worthy of further investigation in the scope of the region's approach to NRM. This is in addition to any work being carried out in the same vein by the South Australian Environmental Protection Authority (T Stanley pers. comm. 2005).

In discussing marine NRM as a 'special case', the NY INRM plan highlights the complexities associated with marine research. These include long-distance effects of land-based operations and activities upon coastal and marine resources and the limited attention such issues receive compared to those related to terrestrial systems.

As well as a stated lack of clarity over jurisdictional responsibilities, the plan notes that:

> [I]t is therefore vital that the management of marine resource in the region be seen as an area that requires strong Commonwealth/State/Regional partnerships, with the Commonwealth and State both having a high level of responsibility for a number of aspects not readily addressed at the regional level and which require substantial attention and resources (Northern and Yorke INRM Group 2003, p. 142).

The Cultural Assets section of the NY INRM plan describes Indigenous cultures as prolific and diverse, and notes that there are many sites of cultural significance in the region. It acknowledges the complex nature of contemporary-traditional associations to and with country, indicating that these form the basis of Indigenous ideological networks (p. 40). Classifications of what might constitute objects of cultural significance to Indigenous peoples (such as shell middens and fish traps for various water systems) are also detailed.

The Cultural Assets section states that native title and heritage issues pertaining to Indigenous people need to be taken into account in the range of NRM activities taking place in the region. It further cites the Native Title Act's 'future act process' and the *Aboriginal Heritage Act 1988* (SA) as the mechanisms for protection (pp. 38–43). However, although Traditional Owner groups and their connections to country are briefly described, there is no discussion around specific regional engagement or issues in relation to Indigenous approaches to the management of natural resources. While there is close consultation with Indigenous people around some NRM programmes in the Northern and Yorke region, the plan acknowledges that there has not been, a region-wide process of consultation and involvement developed (p. 122). An Indigenous Land Use Agreement that has been negotiated for the Pt Vincent Marina on Yorke Peninsula has not seen any involvement with the NY INRM to date, but through its contacts, the NY INRM Board receives regular updates about this development (T Stanley pers. comm. 2005).

Fifteen Indigenous committees, associations and organisations are identified in the plan as having a strong interest in the protection and management of culturally significant sites in the region (Northern and Yorke INRM Group 2003, p. 40). It is stated that the 'NYAD INRM Committee Inc will work closely with the Aboriginal Lands INRM Committee on issues of relevance to Indigenous communities throughout the region' (p. 40). This indicates that for the NY region, the Alinytjara Wilurara NRM Board is their legitimate conduit for Indigenous representative groups' interests.

The NY INRM Board, as it is now known, which works informally with the AW NRM Board (T Stanley pers. comm. 2005), comprises 13 members from community, local government, agencies and other groups and organisations with NRM interests. Currently, there is no Indigenous representation on the board, but it is working to establish this engagement. The board has established skills-based focus groups in order to provide the committee with '… knowledge and experience with current activities and cost estimates' (Northern and Yorke INRM Group 2003, p. 13). These focus areas include water resources, marine and cultural issues. The investment strategy working groups initially had two Indigenous representatives on the coast and marine and cultural focus groups, but they are no longer involved.

In the management of coastal, estuarine and marine systems, benchmarking and monitoring systems are being developed and invested in over a rolling three-year period. Starting from an initial period of eighteen months to 30 June 2005 there was ongoing indicative planning and investment for the 2005–06 and 2006–07 periods (p. 7).

Projects funded over the 2005-06 and 2006-07 periods have included the development of risk assessments for marine, coastal and estuarine biodiversity and threatening processes,

and the development of management strategies that respond to these findings. These have been developed through the South Australian marine planning and the Marine Protected Areas Programme and. Investigations also included surveys of habitat requirements of sea and shorebirds, identification and protection of fish breeding habitat factors in the decline of fish stocks and marine mammals, strategies for combating and preventing marine pest incursions, and regional management plans for salt marsh, mangrove and coastal dunes, wetlands and cliff top communities (p. 104).

A review of current legislation relating to the development and management of coastal and marine areas was undertaken to identify mechanisms to support improved biodiversity conservation. This was listed as a priority in the management action targets for the region, along with a programme to encourage landholders and visitors to protect coastal and marine environments.

A major priority is for planning authorities to receive adequate support and advice on developments that impact, or potentially impact, coastal, estuarine and marine biodiversity (Northern and Yorke INRM Group 2003, p. 105). It is currently unclear whether there is any Indigenous involvement in these processes. A project contracted to the South Australian Aboriginal Lands Trust to work with groups on Aboriginal managed lands in the region deals in part with issues around NRM. A small amount of funding for on-ground works is seeing coastal weed control (of African Boxthorn) around the Yorke Peninsula, as well as capacity-building programmes to assist Traditional Owners in coastal management (T Stanley pers. comm. 2005).

The main focus of the NY INRM, as reflected in the management action targets, is to ensure that any actions do not impact negatively upon the cultural values of Indigenous peoples. The adoption of consultation and safeguards to avoid those negative impacts is also a priority. The work of the SAMLISA is cited as influencing the approach of the NY INRM region and there is a correlating intention to develop a series of protocols that better connect Traditional Owners to development groups and agencies. For the NY INRM region, this is due to the complex nature and multiple layers of legislation and administration prevalent in relation to NRM. The point of intersection or application of these protocols would focus around any change in resource use and on-ground NRM actions (Northern and Yorke INRM Group 2003, p. 123).

The NY INRM region holds that the development of such protocols should involve Indigenous representative organisations as well as community working with the NY Committee, and should necessarily be state-wide. The NY INRM region seeks to adopt protocols being developed in other regions (like the Mount Lofty Ranges) to achieve these aims (T Stanley pers. comm. 2005). Safeguarding mechanisms are focused on informal and formal agreements between parties and a better adherence to and application of relevant legislation (Northern and Yorke INRM Group 2003, p. 123). To further these ends, greater engagement with Traditional Owners will need to occur.

Groups and agencies engaged with the region in relation to coastal, estuarine and marine systems include:

- the South Australian Department for Environment and Heritage's Coasts and Marine Branch, SA Water, and the Environment Protection Authority (SA)
- local governments
- Department of Primary Industries and Resources, South Australia

- Our Seas and Coasts (a South Australian Department for Environment and Heritage initiative)
- Coastcare and local alliances (often supported by the NHT)
- the WWF (formerly known as the World Wildlife Fund)
- the Conservation Council (p. 100).

5.4.4 Kangaroo Island Natural Resources Management Board

Kangaroo Island (KI) is the third largest island off Australia's coast, with the greatest component of native vegetation remaining of all non-arid regions in South Australia. Coastlines and sandy beaches make the island one of South Australia's most popular tourist destinations (Kangaroo Island Natural Resources Board 2003, p. 5). Coastal and marine areas in the region feature diverse ecosystems, beach and dune communities, cliffs, coastal wetlands and prolific samphire and seagrass communities. The KI integrated natural resource management plan was accredited in 2003 with 18-months funding approved in February 2004, comprising part of the approved three-year rolling investment strategy.

Estuarine environments produced through drainage lines include the Cygnet, Middle, Eleanor, Rocky, Stunsail Boom, South West, Harriet, Chapman and Wilson rivers. The Cygnet, Stunsail Boom and Harriet rivers have been identified as being of exceptional environmental worth and have been recommended as wetland reserves (p. 25). Endemic marine species on KI include Verco's pipefish and eel blenny, with King George whiting and garfish supporting the fisheries industry (Kangaroo Island Natural Resources Board 2003, p. 113). Rare marine species on KI include the leafy seadragon as well as the breeding habitats of rare Australian sea lions and New Zealand fur seals. Southern right whales and other whale and dolphin species are also prevalent in KI marine waters (p. 32).

Aquatic reserves operate at Pelican Lagoon, Seal Bay, Bales Beach and the Pages. Three MPAs will be put in place over the next three years, which will absorb Pelican Lagoon and the Pages Islands Aquatic Reserves. Primary industries include farming, tourism and fishing on KI, with freshwater and marine aquaculture cited as emerging industries (p. 10).

Commercial fisheries draw on all major KI species including whiting, shark, garfish, salmon, wild abalone and lobster, and yield a significant economic return to the region. Land-based farming of oysters and greenlip and blacklip abalone is also undertaken on KI (p. 35). Apart from the pressure these activities place on coastal and marine habitats and species, major threats are mainly due to introduced marine species and diseases, water contamination, inappropriate marine development, and a lack of infrastructure to support the high visitation numbers associated with tourism (H Bartram pers. comm. 2005). Specific cliff-top and coastal dune vegetation species are endangered and seagrasses are declining in some areas with land-based contaminants identified as an influencing factor (Kangaroo Island Natural Resources Board 2003, p. 113).

The KI Natural Resource Management Board (KI NRMB) is now a community body, which has formed through the amalgamation of the KI NRMB, KI Soil Conservation Board and the Animal and Plan Control Board. Its membership consists of eight individuals with identified expertise in NRM who are appointed by the state Minister for Environment and Conservation. There are also four representatives on the board from PIRSA, DEH in South Australia, the Department of Water, Land and Biodiversity Conservation , and the KI Council. The KI NRMB now oversees the investment strategy that responds to the KI regional NRM Plan. Extensive consultation with KI residents played a significant role in this development (pp. 12–-13). The KI NRMB engage with over 20 community-based

organisations operating out of the region, but no details of engagement with Indigenous groups has been highlighted.

Key aims that are reflected in the management action targets include:

- the development of monitoring programmes and an increased knowledge base for key coastal estuarine and marine systems
- integrated marine protected area programmes for all marine activities
- linking with the SARSMPA development of management plans for areas of particular significance
- marine species and communities protection
- marine pest control programmes
- increased community awareness (Kangaroo Island Natural Resources Board 2003, pp. 8–9; 114–15).

As part of the legislative review processes to improve the condition of natural resources in the region, the plan recommends the review of provisions and associated processes of the *Coast Protection Act 1972* (p. 9). Major sea country-related projects reflected in the KI Investment Strategy include the 'Save Our Seagrass' programme, which is aimed at managing nutrient inputs into Nepean Bay, Shoal Bay and Easter Cove on KI through improved land management practices and riparian zone, urban development and infrastructure management (Adelaide-Mt Lofty INRM Group 2001,, pp. 79–131).

The 'Oceans of Blue' programme is aimed at sustainable management of KI's coastal, estuarine and marine systems through adopting monitoring systems for biodiversity and fish stocks, protected area management plans, aquaculture risks assessments, and enhanced community participation (*Here to Stay: An Investment Strategy for Kangaroo Island* 2003, pp. 177–192). Increased Indigenous involvement in coastal management is clearly warranted; limited site protection protocols have been established for the terrestrial system (P Veth pers. comm. 2005).

The KI NRM plan states that there were no Indigenous people living on the island at the time of European visits in the early 1800s. It also states that the island is described in Kaurna and Ngarrindjeri mythology, with descendants of these groups identified as KI residents. The plan states that there are Indigenous organisations that have interests in the cultural heritage (particularly sites protection) of KI, without providing any details of these groups and individuals (Kangaroo Island Natural Resources Board 2003, p. 23).

5.4.5 The Adelaide and Mount Lofty Ranges region (Previously Mount Lofty Ranges and Greater Adelaide MLRGA)

While not directly within the SWMR, the region warrants consideration due to its proximity and the nature of Indigenous engagement within these regions being more fluid than prescribed NRM, native title or conservation boundaries,.

The Adelaide and Mount Lofty Ranges NRM region received accreditation for its Integrated Natural Resources Management Plan (Commonwealth of South Australia n.d.). Funding was approved to deliver the plan in February 2004, through the investment strategy, for an initial eighteen-month period between January 2004 and June 2005. The 2005–2008 investment strategy is currently awaiting public release (S Bignell pers. comm. 2005). The region is bounded by Gawler River in the north, east of Middleton at Goolwa Beach (no longer taking in the Eastern Hills or Murray Mouth) with the west including the Gulf St Vincent, and the south taking in the Fleurieu Peninsula. The subregional catchment areas

include the Northern Adelaide and Barossa, the Patawolonga and Torrens, the Onkaparinga and the Southern Fleurieu.

Priority on-the-ground actions include programmes that are focused on the conservation and management of areas of particular biodiversity value, which include coastal, estuarine and marine ecosystems (Adelaide-Mt Lofty INRM Group 2001,, p. 10). 'Our Coast' is a three-year investment in the 2005–08 financial period, which will run protection, rehabilitation and management projects, including capacity building opportunities and on-ground works. It will engage regional communities, including universities, community groups, agencies and local government (pp. 42–43). Investment in natural resource centres, which provide resources and NRM information, will be possibly extended in the 2005–08 period to include a coastal, estuarine and marine focus with the aim of initially developing and delivering a pest awareness and education programme (p. 58). Indigenous engagement in coastal and marine programmes is occurring and will be discussed below.

As with other South Australian NRM regions, the Adelaide and Mount Lofty Ranges region plans to investigate development of risk assessment programmes for marine, coastal and estuarine biodiversity. Management plans for areas of particular conservation signficance are also a focus (Adelaide-Mt Lofty INRM Group 2001,, p. 10). In line with other South Australian NRM regions, the region is concerned about jurisdictional responsibility for coastal and marine environments, stating that there is a need to:

> …review the legislation relating to the development, management and conservation of coastal and marine areas to broaden the coverage of responsibilities, particularly in the marine area, and to meet challenges with coast and biodiversity values (p. 10).

Further, the plan states that where marine natural resources have not received the same consideration as terrestrial resources '… many marine issues need to be handled chiefly at the Commonwealth and State level, rather than regional' (p. 11).

A brief description of Indigenous groups highlights the Kaurna people of the eastern shore of the Gulf St Vincent and north to Crystal Brook. Likewise, a brief discussion of the Ngarrinderji people associated with Lake Albert and Lake Alexandria and along parts of the Murray and Coorong Rivers indicates fishing and associated practices for dietary intake and trading purposes (p. 20). Despite this regional-specific overview, the Indigenous Cultural Heritage section of the plan largely duplicates word for word the same section of the NY INRM plan. This may indicate the comparatively scanty attention Traditional Owners' and other Indigenous stakeholders' involvement in NRM of the regions are receiving. Again, the section describes protection mechanisms extended through the 'future act process' and the *Aboriginal Heritage Act 1988* (SA), but does not go into any great detail in terms of any identified, regional-specific Indigenous NRM priorities (p. 36).

The plan acknowledges Indigenous people are involved in NRM programmes, but that there is a need to garner region-wide processes of engagement. The region's stated goal is that cultural values will be recognised and safeguarded in NRM programmes and it wishes to do this by undertaking site-related on-ground actions that focus on identification, recording, restoration, monitoring and protection.

On-ground actions are aimed at:

- increasing Indigenous land management skill-sets
- identifying, raising awareness of, and marking NRM actions towards Indigenous cultural values
- increasing Indigenous input into relevant NRM actions

- developing better protocols for engagement between Indigenous and non-Indigenous community members (Adelaide-Mt Lofty INRM Group 2001, pp. 119–121).

What is deemed relevant will depend to a large degree on how well the region engages with Traditional Owners, and other Indigenous people and groups, in seeking their determination of NRM priorities and concomitant projects. The Department of State Aboriginal Affairs is the agency stakeholder identified in fulfilling these actions.

A 2005–06 investment project entitled 'Empower Indigenous Groups to be active partners in Natural Resource Management' has seen the NRM group working with various Indigenous groups to establish protocols for non-Indigenous parties to engage with them appropriately. Equally, this is working to increase Indigenous participation in regional NRM. While there is limited engagement in terms of sea country projects driven specifically by Traditional Owners and other Indigenous regional groups and individuals, community coast and marine workshops that have taken place this year have included a Kaurna elder who is now the Indigenous representative on the NRM board. In building a culture of engagement, there have been discussions between stakeholders who work in coastal and marine and Indigenous parties identified with the Kaurna Reconciliation Agreement, and specifically with four southern coastal councils. Indigenous engagement will become a specific focus of future workshops (S Bignell pers. comm. 2005).

A coastal and marine officers' forum is working to facilitate more effective communication and information exchange between stakeholders, including ongoing links with coast care and dune care groups and including the Conservation Council and Urban Forests Biodiversity (S. Bignell. pers. comm. 2005). More specifically, an investment project, Bashams Beach Recreation Park Cultural and Environmental Restoration Project, began in this 2005–06 period, continuing for six months into the following financial year. As part of the project, revegetation works to dunes and excavation has revealed material cultural objects, which offer insights into pre-contact trading routes and enhance relationships between Traditional Owner groups. A native bush-foods trail is also being established in the nearby recreation park. Involvement from Ngarrindgeri Nation people and local Indigenous students has been critical to the project, which involves working with local Coastcare groups (S Bignell & P Minnards pers. comm. 2005).

5.5 Summary of emerging issues surrounding NHT and NAP within the SWMR

Within the integrated NHT and NAP delivery of NRM in the SWMR, there is a demonstrable lack of significant Indigenous involvement planning, implementation and management of sea country. There are many reasons for this, some of which go beyond the structural domain of the NHT regime, reflecting broader systemic dysfunction. Some reasons relate to the fact that within government there are often poorly developed understandings of Indigenous perspectives around notions of country, and what it means to have cultural obligations and responsibilities for its care.

In many cases these are far more complex than Western associations with land and sea. This dearth of knowledge within government is particularly prevalent given the recent abolition of the Aboriginal and Torres Strait Islander Commission, creating a vacuum in terms of an Indigenous knowledge base. This arguable dysfunction can result in a lack of respect for Indigenous peoples' knowledge and authority in relation to the management of natural resources. This often leads to insufficient investments being made (time, funding and personnel, for example) in negotiating an Indigenous presence. The historical exclusion of

Indigenous peoples from many planning instruments within Australia since occupation has resulted in a range of socio-political and economic realities that contribute to a lack of access to mainstream services and programmes more generally.

The NRM plans' aspiration statements, resource condition targets and management action targets are often based on expert knowledge, with some Indigenous community input. However, in the main, this knowledge has been driven by largely Western paradigms. Unless there is Indigenous representation at the planning stage (and particularly around investment), strategic directions will fail to include and implement Indigenous NRM priorities.

There are remedies, however. Because investment will occur through the period up until 2007–08, opportunities exist for identified gaps to be filled. It is the philosophy of the NHT2 that strategies are to operate as 'living documents' reflecting the reality that people, their circumstances and the environments in which they live are not static, but are in a constant state of dynamic tension and flux and need room for new developments.

In Western Australia, NRM regions within the SWMR have stated they wish to achieve greater Indigenous representation in NRM. To achieve such outcomes the NRM regions aim to:

- create protocols for addressing Indigenous NRM issues
- create databases that contain traditional ecological knowledge
- adopt protocols for the recognition of Indigenous intellectual property
- develop increased identification and protection of sites of cultural-spiritual significance
- enforce Traditional Owners' laws, traditions and customs
- increase Indigenous employment in coastal and marine management
- establish coastal and marine centres
- support education and awareness-raising programmes in relation to Indigenous
- cultural heritage values and the conservation of coastal and marine environments.

Projects that are taking place within these regions include:

- the development of heritage trails
- protocols for engaging and addressing Indigenous NRM issues (the development of memoranda of understanding, for example)
- an inter-regional programme to increase Indigenous participation through Indigenous-identified and pursued NRM projects
- Indigenous 'gap projects' for pending development that which will be negotiated into a management plan to attract further funds
- the establishment of Indigenous and coastal and marine-specific focus groups.

In South Australia, NRM regions within the review area have stated targets to achieve:

- the integration and application of traditional knowledge in NRM

- increase identification and protection of sites of cultural-spiritual significance
- develop and adopt protocols for appropriate Indigenous engagement
- increase Indigenous land management skill sets
- increase Indigenous participation in coastal and marine NRM
- raise mainstream awareness of Indigenous cultural values and practices.

Programmes and projects arising in these South Australian regions include:

- a fisheries zone project on Indigenous-held lands
- cross-agency management and marketing to create employment through enterprise
- the establishment of an Indigenous focus group
- greater Indigenous representation on coastal and marine working groups
- a cultural and environmental restoration project that is undertaking revegetation works to dunes (developing a native bush foods trail and, through excavation works, uncovering material cultural objects revealing previous trading routes).

Indigenous representative groups have formed or are being established within the regions. However, there is still a need to achieve greater representation within the regional NRM bodies' management structures, and at state levels. As Indigenous representation at strategic levels is important to drive the greater participation of Indigenous priorities and aspirations in NRM, it is relevant to note recent developments the Natural Resources Management Act 2004 (WA).

A state-wide Indigenous advisory committee has been established as a sub-committee to advise the state's Natural Resources Management Council. The requirement to establish this committee as an advisory body to the Natural Resources Management Council is enshrined in the regulations of the NRM Act. Membership is being developed in two stages. Stage one comprises the current Aboriginal Lands Integrated Natural Resources Management Group and other select individuals being identified in order to ensure appropriate state wide representation and agency support; this commenced in October 2004.

Stage two will see nominated Alinytjara Wilurara NRM board members and representatives from each of the other NRM regions selected to comprise the Aboriginal Statewide Advisory Committee (ASAC). Representatives from the NRM regions may be Aboriginal NRM board members or representatives from the mechanisms for engagement for the respective region. Stage two will also include appropriate agency participation. Meetings will take place quarterly and run concurrently with the meetings of the Alinytjara Wilurara NRM Board (Natural Resources Management Council 2005).

The work of the ASAC will involve compiling a project brief that outlines the scope and overview of cross-cultural awareness training for NRM board members. This project will also investigate professional development requirements of Indigenous appointed members. Further, the project will undertake:

- a review of current Indigenous NRM programmes
- provide strong input into the development of programmes to ensure Indigenous community involvement
- undertake a review of engagement processes employed by NRM regions

- participate in the development of an economic development strategy.

This work intends to promote the development of robust structures for engagement and increased Indigenous participation in the planning, implementation and management of natural resources in their respective regions. Funding will come from the Department of Water, Land and Biodiversity Conservation, but in order to support greater, and perhaps more appropriate, staffing levels it will need to be extended through alternative funding sources. This provides a promising opportunity to prioritise investments at a more strategic level in bringing Indigenous approaches to the NHT's programme for NRM. The committee will only be able to fulfil its functions thoroughly, if it is adequately resourced both financially and with personnel (Natural Resources Management Council 2005).

Similarly, in Western Australia, a state-wide Indigenous NRM group has been proposed to provide high-level policy advice and is to be a conduit for government to engage with Indigenous communities on NRM matters. It is proposed that the State Indigenous NRM Committee (SINRMC) will provide a coordinated Indigenous perspective on NRM and associated policy issues. Further, this body is proposed to:

- promote Indigenous engagement in NRM processes
- ensure that Indigenous issues penetrate all levels and are incorporated in the development and provision of high level policy advice to government
- assist the NRM groups in meeting Indigenous-agreed management action targets from investment plans
- strengthen existing networks within the state
- develop a productive information exchange.

The SINRMC would comprise chairs or delegates from NRM Indigenous advisory groups (IAGs), which are to be established. The composition of the IAGs is seen to involve the Indigenous NRM officers and/or the Indigenous land management facilitators. Five to eight people with NRM experience in their regions would be selected. This would be a short-term model that leads to advertisements and expression of interest through local networks. Criteria would also make room for Traditional Owners and other Indigenous people in the region with historical links to place. Gender balance and youth balance have also been identified as critical to appropriate representation. To date, the composition of these regional advisory groups has tended to be based upon Traditional Ownership or custodianship of country, historical links, and experience and interest in the area of natural and cultural resource management.

It was hoped that by March 2006, each NRM region would have an established Indigenous advisory group in place, with establishment of the SINCRM to follow. The Swan Catchment Council and the South West Catchment Council are the only regions to have established such advisory groups. As at June 2006, the SINCRM had not been implemented and further negotiations were taking place between Department of Indigenous Affairs and state NRM committees towards its establishment. Funding for these bodies is proposed as a joint NHT/state government investment with possible links to the DIA. If adequately resourced this structure provides a good opportunity for greater Indigenous involvement (State Indigenous Natural Resource Management Committee 2005).

It is critical to note that both of these state proposals 'speak to' and provide an opportunity to make a reality the Australian Government's seventh national NHT objective: 'to promote Indigenous community participation in planning and delivery of regional NRM outcomes'.

Specifically, the NHT hopes to achieve this objective through:

- identifying and documenting current community engagement arrangements
- articulating specific actions and plans supporting improved Indigenous participation
- adopting participatory strategies and membership rules (at board and/or advisory group level) appropriate to address Indigenous community issues
- establishing processes relevant to continuing or improving cross-cultural understanding, cooperation and relationship development.

There is also the need for greater intra-organisational education and awareness within the NRM regions and subregions in the SWMR. This is particularly the case where NRM groups in their previous incarnations were largely managed by and engaged in an NRM culture that uses, and has been predominantly informed by, Western knowledge systems. Several of the staff members interviewed for this report felt that this educational investment was sorely needed if operational approaches were to change towards being more inclusive and result in active pursuit of Indigenous-negotiated participation.

Relationship building is the cornerstone of working partnerships. Caring for county or natural resource management is no exception. This culture of change is unfolding, however, and it will take time. Some regions are more progressive than others. However, if funding is extended this approach provides great opportunities for sustainable resource management and the people who are working to make it a reality.

The identification and protection of cultural sites and places is a prominent feature when discussing Indigenous interests within the discourse of NRM plans and investment strategies. The safeguarding of sites of cultural-spiritual significance is an articulation of the ongoing pursuit of cultural protection and reinvigoration. Sites remain a prominent issue for Indigenous people precisely because the issue of their safeguarding remains, largely, inadequately addressed. Therefore, it is logical that the strategies call for further identification of sites; for management plans of, and remedial works to, those sites; and for a greater acknowledgement of sites both from the wider community as well as through better protection and application of relevant cultural heritage legislation.

Government agencies that have a responsibility for ‘caring for country’ need to engage with Traditional Owners and other regional Indigenous peoples in ways that respect and make room for their knowledge of land and sea management. This knowledge has the potential to become, and is, in some cases, a valued and added dimension to current management practices. Exemplary cases that the DEH could investigate are the Wet Tropics Cultural NRM Plan, and the Saltwater Country Coastal Project located on the Kimberley coastline from the Buccaneer Archipelago to Wyndham.

6 Fisheries industries and Indigenous peoples within the SWMR

This section considers Indigenous involvement and engagement with fisheries industry management and commercial enterprise within the SWMR. The impact of native title and the foundational *Resource Assessment Commission Coastal Zone Inquiry* (Coastal Zone Inquiry) (Commonwealth of Australia 1993) began to take hold in the states of Western Australia and South Australia in the late 1990s. Negotiation of native title procedural rights, coupled with developments in integrated Natural Resource Management and planning, resulted in key reviews of Indigenous interests in fisheries management and legislation in Western Australia and South Australia. These reviews have resulted in the Western Australian *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (Franklyn 2003), the draft *Fisheries Management Bill 2005* (SA), a slate of legislative review and negotiated recognition of Indigenous customary fishing in both states within the SWMR. Nationally, these processes have occurred concurrently with the development of the National Indigenous Fishing Technical Working Group's 'Principles Communiqué on Indigenous Fishing' (NIFTWG 2005). These contemporary developments are examined in the context of programmes and reviews into Indigenous people and the coastal zones since 1990.

6.1 Overview of Commonwealth and state management of fisheries in Australian waters

The current Australian Fishing Zone (AFZ) extends 200 nautical miles from the Australian coastline out to sea. It was established in 1979, covers nine million square kilometres and constitutes the world's third largest fishing zone. In 1979 the Offshore Constitutional Settlement was established at the Premiers' Conference and responsibility for fisheries management was agreed to be shared between the Commonwealth, states and Northern Territory. It is under this agreement that the states and the Northern Territory were granted jurisdiction and title over fishing and other marine resources, from within the seabed to three nautical miles from the low tide mark.

The Commonwealth is responsible for all waters from three nautical miles to 200 nautical miles within the AFZ. However, provision for the establishment of joint fisheries management in specific areas within the three nautical miles and in regard to specific marine resources has resulted in greater cooperation between state and federal authorities in the management of these zones. Smyth and Bahrdt (2002, p. 132) relate how this has led to the creation of:

> …joint authority management where the Commonwealth and one or more states can form a single legal entity which manages a fishery under a single law, either Commonwealth or state/Commonwealth management … where a fishery is adjacent to more than one State, the fishery can, by agreement between all parties, be managed by the Commonwealth status quo management (where state laws control fishing in coastal waters under three nautical miles from the shore) and Commonwealth laws control fishing beyond the three mile line to the 200 mile limit of the Australian Fishing Zone.

Under these arrangements the Australian Fisheries Management Authority (AFMA) is the Commonwealth statutory authority responsible for fisheries management within the 200

nautical mile AFZ. Within the three nautical mile limit fisheries are managed by states and territories, unless otherwise specified by agreement between the states and Commonwealth. Each state and the Northern Territory has their own fisheries and resource management legislation and statutory authorities responsible for management of fisheries within their jurisdiction (Smyth & Bahrdt 2002, p. 133). Within the SWMR these responsibilities are managed by the Department of Fisheries in Western Australia under the *Fish Resources Management Act 1994* and by the Department for Primary Industry and Resources in South Australia under the *Fisheries Act 1982*. Fisheries legislation is currently under review in South Australia and Western Australia and the impact and import of these changes is discussed in section 6.3 in regard to management, and section 8 of this report in regard to legislation.

6.2 Indigenous involvement in fishing and aquaculture industries

6.2.1 Key reviews of national initiatives in relations to sea country

A comprehensive review of national initiatives in relation to sea country was performed by Smyth and Bahrdt (2002) in the development of the South-east Regional Marine Plan for the DEH in 2002, which was in turn adapted from a paper entitled 'Fishing for recognition: the search for an Indigenous fisheries policy in Australia' by Smyth (2000). This short section reiterates this work, specifically, Smyth and Bahrdt (2002), and developments since 2002 in Western Australia and South Australia regarding the relationship between recognition of customary fishing, conservation and the development of Indigenous commercial fishing ventures:

- 1991: the Commonwealth Government instigated the Ecologically Sustainable Development Working Group on Fisheries which included representatives from government, academia, industry and recreational fishers, but did not include Indigenous fishers. The working group did, however, commission a report on Indigenous fisheries and made several progressive recommendations to the government.
- 1993: The *Resource Assessment Commission Coastal Zone Inquiry* (Coastal Zone Inquiry) was convened and conducted by the Resource Assessment Commission. This was a major and well-resourced initiative inquiring into the management of Australia's coastal zone, and was able to commission further work in relation to Indigenous interests in the coastal zone (Smyth 1993). The Coastal Zone Inquiry occurred when the Mabo decision was handed down, making Indigenous interests in land and sea one of the most topical and divisive political issues for some time. The report of the Coastal Zone Inquiry, which made some acknowledgement of Indigenous interests in the coast, also made key recommendations, some of which have been acted upon, while others have not. The Coastal Zone Inquiry was important in creating a context in which Indigenous interests were increasingly recognised and this has had a significant impact in subsequent work. This inquiry resulted in the creation of the Aboriginal and Torres Strait Islander Coastal Reference Group in 1994, which was was later disbanded.
- 1995: The *Commonwealth Coastal Policy* was launched in 1995, largely as a result of the Coastal Zone Inquiry. This policy mentioned Indigenous interests in the coastal zone and committed the Commonwealth to several initiatives for the development of an Aboriginal and Torres Strait Islander Fishing Strategy, the

formation of an Indigenous Coastal Reference Group, the development of an Indigenous Communities Coastal Management of the Coastcare programme and other complementary recommendations.

- 1995: The *Our Sea, Our Future: the State of the Marine Environment Report for Australia* was released as a result of the Ocean Rescue 2000 programme. This report, which is a comprehensive scientific description of Australian marine environments, also acknowledges Indigenous interests in the coasts as well as some of the issues that Indigenous people face in relation to their coastal interests.
- 1997: The House of Representatives Standing Committee on Primary Industries, Resources and Rural and Regional Affairs conducted a review on the management of Commonwealth fisheries. It made no mention of Indigenous interests in the SWMR study area, but did acknowledge some interests in the Torres Strait. It also made limited recommendations concerning the interests of traditional fishers being incorporated into the management of Commonwealth fisheries.
- 1997: The *National Aboriginal and Torres Strait Islander Rural Industry Strategy* was announced and contained a number of commitments in relation to Indigenous fisheries issues. These related to subsistence fishing, codes of practice, increasing Indigenous participation, buyback of licences, market opportunities and the development of infrastructure. However, little progress has been made in implementation due to resource constraints, jurisdictional limitations and reorganisation of responsibilities within the Commonwealth.
- 1998: *Australia's Oceans Policy* was launched by the Federal Government and contains a broad recognition of Indigenous interests in the coastal zone relating to areas of social, cultural and economic interest. This policy has given rise to a more inclusive approach to Indigenous interests in the management of both marine resources and fisheries interests. It is strongly reflected in the advent of sea planning and the consideration of Indigenous interests within ongoing planning processes.
- 1999: *The Strategic Plan of Action for the National Representative System of Marine Protected Areas: A guide for action by Australian Governments* (ANZECC Task Force for Marine Protected Areas) outlines strategies for the development of a Comprehensive, Adequate and Representative (CAR) marine reserve system using a bioregional approach to reserve planning. This strategy, while it contains an acknowledgement of Indigenous interests in the planning and implementation of MPAs, is essentially scientifically and environmentally driven. Still, the methodologies that have arisen from this initial strategic plan have begun to incorporate Indigenous interests at Commonwealth and state levels, although the efficacy of these methodologies varies between jurisdictions.
- 2000: *The Fisheries Research and Development Corporation Research and Development Plan 2000–2005* was released in 2000 and is an important recognition of 'traditional' fisheries, along with the commercial and industrial sectors. While this initial recognition held no real structural solutions to resolving traditional fisheries questions, it has led to broader consideration of traditional interests in the planning of ecologically sustainable fisheries across jurisdictions. This is now evident, for example, in the draft Western Australian Indigenous Fisheries Strategy.
- 2001: *A National Aquaculture Development Strategy for Indigenous Communities in Australia* was funded by Agriculture, Fisheries and Forestry Australia (AFFA), now the Department of Agriculture, Fisheries and Forestry (DAFF), to develop a

framework to increase Indigenous involvement in aquaculture as well as the economic independence of Indigenous communities through agriculture. This strategy made a number of key recommendations while also developing an understanding of the work required for a viable Indigenous aquaculture sector. However many of these recommendations included the involvement of the now-defunct Aboriginal and Torres Strait Islander Commission (ATSIC), and the responsibility for implementation now rests with DAFF.

- 2000: The *ATSIC Review of Indigenous Commercial Fisheries Rights and Interests* was conducted in response to many rights-based issues identified in both Australia and the international arena. It particularly discussed the interests of Indigenous peoples in relation to the commercial fishing industry and the fact that discussion has previously focused on subsistence fisheries rather than the commercial nature of traditional Indigenous economies. It concluded that there is a need to advance these discussions and to introduce legislative and policy-based initiatives to improve Indigenous access to commercial fisheries.
- 2001: *The National Objectives and Targets for Biodiversity Conservation*, while broader than coastal management, made recommendations which can impact on Indigenous coastal interests and knowledge (the legitimacy of which is increasingly recognised, particularly in protected area development and management).
- 2002: *The review of the South Australian Fisheries Act (1982)* was instigated through the release of a Green Paper in November 2002. Community consultation continued until February 2003 and involved 26 community meetings attended by 610 people.
- 2003: Western Australia's *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* aimed to involve Indigenous peoples in a state wide consultation process to engage them in negotiating amendments to the state's Fish Resources Management Act (1994).
- 2003: The Indigenous Fishing Rights: Moving Forward Conference was held in Fremantle Western Australia and resulted in the establishment of the National Indigenous Fishing Technical Working Group (NIFTWG). NIFTWIG began a process of negotiating a set of principles between government, NTRBs and industry groups that would influence policy and legislation development in coming years.
- 2003: The Indigenous Aquaculture Unit was established in the Australian Government agency AFFA under the *National Aquaculture Development Strategy for Indigenous Communities in Australia*. The aim of the unit is to assess the potential for new Indigenous aquaculture sites to be developed, while supporting current Indigenous aquaculture ventures.
- 2004: NIFTWIG developed the *The Principles Communiqué on Indigenous Fishing* which was adopted by state and federal governments, NTRBs and government agencies. These Principles have influenced policy and legislation developments on a broad scale and represent a major development in the recognition of Indigenous customary fishing rights as a sector in its own right. The Principles also seek to provide assistance to Indigenous groups, integrate customary fishing within state legislation, and further develop Indigenous fishing business enterprise.
- 2005: The *Draft Fisheries Management Bill 2005 (SA)* was completed as a result of the review of the Fisheries Act 1982 (SA). This Bill is currently under review before

being presented to the South Australian Parliament in late 2006. If passed, as expected, this Bill will be instigated in July 2007.

- 2006: The Sharing the Fish Conference was held in Fremantle in Western Australia in March, 2003. This conference considered allocations across jurisdictions, regional and multilateral users and allocation between sectors and within sectors. The conference considered Australian Indigenous fisheries allocation issues with a focus on Indigenous, recreational & commercial allocation issues.

6.2.2 Turning points in sea country management initiatives

Indigenous involvement in fisheries industries has received increased prominence in recent years. The completion of *The National Aboriginal and Torres Strait Islander Rural Industry Strategy* (Aboriginal and Torres Strait Islander Commission, Dept. of Primary Industries and Energy 1997) and the document, *Towards Greater Indigenous Participation in Australian Commercial Fisheries: Some Policy Issues* (ATSIC 2000) commissioned by the now defunct Aboriginal and Torres Strait Islander Commission (ATSIC), signalled an era of serious examination and consultation regarding Indigenous interests in fishing policy and regulation.

Indigenous participants in these reviews, consultations and policy negotiations have expressed the disappointment of Indigenous Australians with the pace of reform (Dillon 2004, p. 141). This problem of Indigenous consultation not being followed with appropriate action was also noted in Western Australia's *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (Franklyn 2003). The Strategy acknowledged that 'Aboriginal people have been raising the issue of recognition and the opportunity to be included in the fishing sector for decades without any significant action on the part of fisheries authorities' (Franklyn 2003, p. 20)

However, recent developments in Western Australia, South Australia and nationally, indicate a policy shift toward the recognition of customary fishing. These changes are characterised by a partnership approach between government, Indigenous peoples and industry in the development of Indigenous commercial fishing ventures. This represents a positive movement toward Indigenous aspirations for greater recognition and involvement in this area (B Fraser pers. comm. 2006). These developments are further detailed in sections 6.6 and 6.7. To understand the relevance of this policy shift it is necessary to understand the development of this policy through consultation and key reviews since the *Resource Assessment Commission Coastal Zone Inquiry* (Resource Assessment Commission 1993).

6.3 Fisheries and aquaculture policy development from the early 1990s to 2000

The consultant's report to the Coastal Zone Inquiry, *A Voice in All Places* (Smyth 1993), found that key issues for Indigenous engagement in regard to management of the coastal zone fell into three categories of concern. These were:

- the failure of government decision-making processes to meaningfully include Indigenous peoples
- the inadequacy of government policy and programme responses to effectively engage Indigenous interests to any meaningful degree that truly represents Indigenous approaches to natural and cultural resource management

- the lack of any reasonable or meaningful return to Indigenous communities in economic terms with regard to commercial utilisation of Indigenous natural and cultural resources (Smyth 1993, p. 59).

For Smyth (1993) the essential nature of these failures was the inability of governments to recognise Indigenous peoples as the holders of special rights and relationships with sea country. Smyth found that governments saw Indigenous peoples simply as another interest group with no greater claim or relationship with marine regions. Further, governments operated on the understanding that they were the honest broker, the final decision-makers on all matters through the mantle of (majority) representation, rather than recognising that Indigenous interests are special interests that operate within a multitude of interests outside of a simple civic society equation or rights (1993, p. 59). Since 1993, one of the major impacts upon this position has been native title and provisions for the right to negotiate within section 2.11 of the Native Title Act. For a detailed examination of native title and its impact please see section 7 of this report.

Concerns raised by Indigenous people within *A Voice in All Places* included:

- competition between commercial fishing and subsistence fishing
- the use of Indigenous estates within the marine region and coastal regions by commercial fishers without Indigenous consent
- lack of enforcement of fisheries regulations to protect Indigenous resources in remote regions
- no real engagement between Traditional Owners of sea country and the commercial fishing industry (Smyth 1993, p. 60).

Such concerns were raised in light of the evident decline noticed by Traditional Owners of sea country in their customary fish take and the belief that this impact was due to poor and wasteful practices of commercial fishers. Smyth noted that 'in southern Australia Aboriginal people face the additional problem that their subsistence fishing activities are not generally regarded by fisheries management agencies in any way distinct from recreational fishing by the community in general, and hence not deserving of any special consideration in the management of the resource' (Smyth 1993, p. 62).

In reporting for the Coastal Zone Inquiry, Smyth (1993, p. 29) pointed to Indigenous cultural relationships within the coastal zone as representing a form of management whereby the maintenance of culture through the 'participation in ceremonies, hunting, fishing and gathering, respecting customary laws regarding access to resources, controlling commercial exploitation of resources and joint management of national parks' were all examples of Indigenous management of natural and cultural resources.

The Coastal Zone Inquiry sought the input of Indigenous communities nationally, however there was comparatively little engagement from Indigenous groups within South Australia and Western Australia within the SWMR. The findings in regard to subsistence activities in fisheries management were focused on the prevalence of such activities within northern Australia, however Smyth found that 'true subsistence fishing continues to exist within most coastal regions of Australia, including waters adjacent to urban environments in every state' (Smyth 1993, p. 29).

Indigenous responses within the consultant's report to the *Resource Assessment Commission Coastal Zone Inquiry* stated that the hope for the future was one of 'recognition [of Indigenous peoples] as legitimate participants in fisheries management and beneficiaries

of the commercial utilisation of their traditional resource' (Smyth 1993, p. 68) Baker, Davies & Young (2001) found that Indigenous involvement in marine industries increased from 1991 to 2001 and that initiatives, strategies, programmes and concessions (such as license concessions) while welcome, represented a small shift in comparison with the 'exclusive management rights and responsibilities exercised prior to colonisation'. Almost ten years previously, Smyth (1993, p. 23) noted that there were a small number of licensed Indigenous commercial fishers. This situation in the early 1990s was at odds with Indigenous involvement in fisheries industries prior to the 1960s when regulatory regimes increased. Indigenous engagement, according to Smyth was clearly more evident in southern states.

As a result of the Coastal Zone Inquiry, the Aboriginal and Torres Strait Islander Coastal Reference Group was established in 1994 to 'advise the Federal Government on Indigenous and coastal marine policies' (Baker, Davies & Young. 2001, p. 69). This group was later disbanded. However, while this shift to include some form of Indigenous consultation and engagement in fisheries policy was welcomed by Indigenous interests, it was often made within the context of it being a concession to a minority that is generally perceived as not having any greater claims or rights to coastal resources than any other group (p. 68).

In his article 'Aboriginal Peoples and Oceans Policy in Australia – An Indigenous Perspective', Dillon has described this situation as being one in which 'governments and industry groups who, by ignoring Aboriginal interests in marine environments, have been able to exploit the resources that we have always managed' (Dillon 2004, p. 141). Dillon reasoned that Indigenous engagement in marine industries is a relevant issue for Indigenous communities and individuals. However, part of the problem of real engagement is the Western focus on Indigenous natural and cultural resources not adequately taking into account the cultural components of the relationships that are at the core of Indigenous engagement and management. In this sense, Dillon held the view that, in regard to Indigenous participation in the management of marine resources, 'Aboriginal people will be unable to benefit from measures designed to increase their involvement in those processes, unless they are adequately resourced to participate in those processes' Dillon (2004, p. 151). He stated that 'despite being the subject of numerous reports and policy statements espousing principles of increased participation in both resource management and industry participation, tangible benefits for Aboriginal people have yet to be realised' (p. 141).

However, while tangible benefits are yet to be yielded by Indigenous peoples from these negotiations and consultations, recent shifts in policy and legislation in South Australia and Western Australia provide a valuable foundation to realise Indigenous aspirations compared with the previous ten years. In particular, the consultative processes engaged in since 2000 through the development of the Western Australian *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (Dept of Fisheries 2003) and the state-wide ILUA process in South Australia, have resulted in the clearest gains and recognition of Indigenous customary fishing and the development of Indigenous commercial fishing enterprise to date.

6.4 Indigenous engagement with fisheries from 2000 to 2006

Conservation and marine industry management operate through separate legislation, policy and programmes devoted to the management and consultation processes within each activity. Increasingly, sustainability principles and aims in natural and cultural resource management have influenced a greater integration of conservation and marine industry planning. This is particularly evident in regard to recognition of Indigenous interests in conservation management and industry regulation surrounding fisheries. This process is

referred to as integrated fisheries management (IFM) within the Proposed Amendments to the Fish Resources Management Act 1994 (WA) in the Fisheries Management Paper 208 (Department of Fisheries Western Australia 2006, p. 11) and represents a more reflexive approach to resource management that seeks to engage Indigenous interests, in particular, Indigenous customary fishing.

In 2000, while some exemptions of Indigenous customary fishing had been granted nationally, there were no mechanisms for the management of customary fishing and neither were such practices recognised in legislation. Under specific state legislation some community fishing licenses were created in Queensland and the Northern Territory. There were also special commercial licenses in Western Australia for the harvesting of trochus shells (Baker, Davies & Young 2001, p. 70). However, within the SWMR there were no specific agreements of this nature. Further, the lack of facilitation of such agreements constituted an impediment to Indigenous engagement in commercial ventures in regard to marine resources (p. 70).

Since 2000 the development of Indigenous engagement in marine industries has included the development of *A National Aquaculture Development Strategy for Indigenous Communities in Australia* (2001) and Western Australia's *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (Franklyn 2003). Also in 2003, the Indigenous Fishing Conference resulted in the establishment of the National Indigenous Fishing Technical Working Group (NIFTWG). This body negotiated a set of principles between government, NTRBs and industry groups known as the NIFTWG Principles within the National Indigenous Technical Working Group's 'The Principles Communiqué on Indigenous Fishing'. The NIFTWG principles were endorsed by the Commonwealth, Western Australian and South Australian governments, NTRBs and industry groups in August 2004. These principles were influenced by review processes in South Australia and Western Australia into Indigenous fishing practices and engagement of Indigenous peoples within these states (B Fraser pers. comm. 2006).

The national process enshrined within NIFTWG and the state processes of review through the review of the *Fisheries Act 1982* (SA) in 2003 and the Western Australian Aboriginal fishing strategy were conducted in a climate of increased national, state and industry participation facilitated by the impact of native title procedural rights enshrined in the Native Title Act. The NIFTWG process and the review processes contributing to Western Australia's Aboriginal Fishing Strategy and the review of the Southern Australian Fisheries Act are discussed in greater detail within this section. These processes are mentioned here within this overview of fisheries policy affecting Indigenous peoples in the SWMR. (For further detail regarding the relevance of native title in the SWMR, see section 7, and for further information regarding fisheries legislation in Western Australia and South Australia, see section 8.)

In South Australia Indigenous people have been engaged through both the Statewide Framework Agreement and the Indigenous Land Use Agreement (ILUA) processes negotiated with the Aboriginal Legal Rights Movement (ALRM) and in the review of the Fisheries Act. This has led to the creation of the draft *Fisheries Management Bill 2005* (SA). This Bill is currently being reviewed before being presented to the South Australian Parliament in late 2006. It is expected that the Bill, when passed, will become effective from July 2007 (K Crosthwaite pers. comm. 2006). In this manner, Indigenous representation in negotiation with government and industry in South Australia is closely tied to the state-wide ILUA negotiations being conducted by the ALRM.

In Western Australia the engagement of Indigenous peoples in the development of the *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (Franklyn 2003) has resulted in proposed amendments to the state's *Fish Resources Management Act 1994*. This strategy was not negotiated as part of an ILUA process. Negotiations and consultations in Western Australia were conducted widely with Indigenous groups and NTRBs and were understood to have wide support from Indigenous people (B Fraser pers. comm. 2006). The legislative reviews and amendments within South Australia and Western Australia are discussed in greater detail in section 8.

6.5 Recent national developments in regard to Indigenous interests in fishing industries within and customary rights within the SWMR

6.5.1. The Aquaculture Industry Action Agenda

Throughout the mid-1990s until June 2004 when the Federal Government began dismantling it, ATISIC was a leading agency advocating Indigenous partnerships with industry and other government instrumentalities toward greater Indigenous engagement in the marine industries. The now defunct ATSIC was actively engaged in partnership strategies and was previously a member of the Prime Minister's Science, Engineering and Innovation Council, as well as the National Aquaculture Council and the Aquaculture Industry Action Agenda Implementation Committee.

In 2003–04, Indigenous interests were allocated $250 000 of the $2.5 million allocated nationally for an action agenda on aquaculture, in order to, 'assist in developing the industry in Indigenous communities' (Economic Development 2005, para 1). This resulted in the creation of an Indigenous Aquaculture Unit in 2003 which was to assess the potential for the development of new aquaculture sites, as well as assessing current Indigenous aquaculture ventures and ways in which mainstream industries could support this development (Economic Development 2005, para 1).

The aim of the Indigenous Aquaculture Unit, which was established within the AFFA through negotiation with ATSIC, was to 'enhance the growth of the aquaculture industry by improving the opportunities for Indigenous Australians to contribute to, and participate in, its sustainable development' (DAFF 2001, para 2). In 2001 there were 28 aquaculture ventures in Australia that contained Indigenous involvement at some level, and the aim of the Indigenous Aquaculture Unit was to increase the level of Indigenous involvement against this benchmark through the implementation of A National Aquaculture Development Strategy for Indigenous Communities in Australia.

6.5.2 The National Fishing Indigenous Technical Working Group

Since the mid 1990s ATSIC was instrumental in pursuing linkages with commercial and other government agencies as part of developing Indigenous participation in national marine industries. The aim was to create a national Indigenous fishing strategy that would enable the continuation of fishing for customary purposes, but also the development of Indigenous commercial fishing licenses and businesses. This resulted in negotiations between ATSIC and the AFFA (now DAFF) for the inclusion of Indigenous fishing interests within the Australian Government's Fishing Policy, and for the Australian Fisheries Management Agency to research and develop a national Indigenous fishing strategy. However, while this strategy did not eventuate, a significant outcome of the Indigenous Fishing Conference in 2003 was the creation of the National Indigenous Fishing Technical Working Group. This

group is made up of key stakeholders including the National Native Title Tribunal and the Seafood Industry Council (National Native Title Tribunal (online) 2003, para 5).

The NIFTWG is responsible for the development of Indigenous fishing strategies and policy at the national, state and local level by identifying appropriate pathways that would:

a) promote the collection, interchange and dissemination of information about issues

b) provide analysis and detail of the identified pathways to achieve the resolution

c) encourage the use of, and where necessary adaptation of, appropriate structures to facilitate the resolution

d) provide a report regarding its initial deliberations to conference delegates by 31 December 2003 and a further report following a two-day workshop on 2–3 March 2004

e) carry out such other activities as may be necessary for the working group to achieve its purpose as defined above (Terms of Reference – National Indigenous Fishing Technical Working Group).

The aims of NIFTWG, in accordance with the final resolution of the Indigenous Fishing Conference, were to work with, 'Commonwealth and State Government, industry partners, Indigenous fishing interests and the recreational sector to develop agreement on a National approach seeking equitable outcomes for all stakeholders beyond the highly technical area of Native Title law' (National Native Title Tribunal (online) 2003).

Initial discussions revealed three potential pathways to the implementation of the principles of the original recommendations of the Indigenous Fishing Conference. Pathway one considered an approach to, 'extend rights that are analogous to minor commercial fishing with Indigenous primacy in the allocation of resources.' Pathway two recommended 'Defined customary fishing rights that exclude commercial activity, but includes mechanisms that facilitate [Indigenous] involvement in the commercial fishing industry.' Pathway three considered a litigious approach whereby individual claims under the Native Title Act would be pursued with the outcomes of these cases, 'referenced by existing laws in each State and Territory'(National Native Title Tribunal 2005b). Pathway two was the favoured approach (ibid; see table 2 below).

Table 2. NIFTWG recommended pathways matrix to implementation of the principles of the Indigenous Fishing Conference 2003 <http://www.nntt.gov.au/publications/data/files/Recommended%20Pathways%20Matrix.pdf accessed 31 October 2006>

Attachment A

PATHWAY 1: Customary fishing rights that include the right to take fish for family, and extend to rights that are analogous to minor commercial fishing with Indigenous primacy in the allocation of fish resources.	PATHWAY 2: Defined customary fishing rights that exclude commercial activity, but includes mechanisms that facilitate involvement in the commercial fishing industry.	PATHWAY 3: Current system which relies on the continued implementation of the Native Title Act to settle individual claims over water with those outcomes referenced by existing laws in each State or Territory.
• "Primacy" equates to recognition of an implicit indigenous cultural right to take fish. • Recognition would translate into an explicit share of managed fisheries, prior to quotas for recreational and industrial fishers, governed by the same sustainability limits. • Includes non-commercial (family, ceremonial) elements extending to customary forms of take that are analogous to minor commercial activity. • Right would have primacy in terms of regulated resource allocation and require automatic reduction to commercial and recreational takes where the combined take would exceed sustainable limits. • There would be a mechanism to identify who has access to these rights in any particular location and a means of enforcement if people misrepresent their rights.	• "Primacy" recognized but does not automatically translate into an explicit share of managed fisheries. • Definition of customary fishing rights to exclude commercial activity must be combined with provision for indigenous involvement in the commercial fishing industry. • Rights would be limited to personal, subsistence fishing for communal and non-commercial use. • Acknowledges that allocations since European settlement have restricted the development of indigenous participation in the fishing industry. This drives the decision to improve access to the commercial sector (employment, training, enterprise development, commercial licenses, etc).	• Indigenous people would have access to fishing as a cultural right to the extent that they could prove they have native title rights (which are limited by other inconsistent rights) under the Federal Court system and negotiate agreements accordingly. • The system then reacts to different decisions (i.e. native title decisions on a case-by-case basis) • There are basic protections under the the Native Title Act. • Further legislative protections and recognition may be established on a state by state, region by region, or even community by community approach. • Governments need to explore whether the NTA can be amended or enhanced to be more effective relative to indigenous aspirations linked to fishing.

In June 2004 the NIFTWG proposed that the planned national Indigenous fishing stakeholders' meeting take place in 2006. The NIFTWG's core role was to monitor and implement 'The Principles Communiqué on Indigenous Fishing'. The final agreed principles represent a commitment from stakeholders within the NIFTWG to:

- recognise customary fishing as a sector in its own right
- integrate and protect customary fishing within fisheries management frameworks in a manner that protects customary fishing
- provide assistance strategies to engage Indigenous people in fisheries-related business
- expediate processes to increase Indigenous involvement in fisheries management and vocational training (Indigenous Fishing Bulletin 2005).

The original 'The Principles Communiqué on Indigenous Fishing' as endorsed by the NIFTWG indicates the following principles:

1. Indigenous people were the first custodians of Australia's marine and freshwater environments: Australia's fisheries and aquatic environment management strategies should respect and accommodate this.

2. Customary fishing is to be defined and incorporated by Governments into fisheries management regimes, so as to afford it protection.

> 3. Customary fishing is fishing in accordance with relevant Indigenous laws and customs for the purpose of satisfying personal, domestic or non-commercial communal needs. Specific frameworks for customary fishing may vary throughout Australia by reference, for example, to marine zones, fish species, Indigenous community locations and traditions or their access to land and water.
>
> 4. Recognition of customary fishing will translate, wherever possible, into a share in the overall allocation of sustainable managed fisheries.
>
> 5. In the allocation of marine and freshwater resources, the customary sector should be recognised as a sector in its own right, alongside recreational and commercial sectors, ideally within the context of future integrated fisheries management strategies.
>
> 6. Governments and other stakeholders will work together to, at minimum, implement assistance strategies to increase Indigenous participation in fisheries-related businesses, including the recreational and charter sectors.
>
> 7. Increased Indigenous participation in fisheries related businesses and fisheries management, together with related vocational development, must be expedited (National Indigenous Fishing Technical Working Group 2005).

The Communiqué was endorsed by all members of the NIFTWG including:

> Indigenous bodies, including Native Title Representative Bodies and Aboriginal and Torres Strait Islander Commission (ATSIC) Commissioners, most State and Territory Governments, National commercial fisheries interests; and National recreational fisheries interests (Indigenous Fishing Bulletin 2005).

The Western Australian and South Australian governments have endorsed the principles of the communiqué, as have the SWALSC, the Yammatji Land and Sea Council and the ALRM. Indigenous negotiations within Western Australia were represented by the SWALSC through agreement with other relevant NTRBs. The Kimberley Land Council declined to participate in the process (T Weaver pers. comm. 2006). The thrust of this approach by the NIFTWG was to develop policies based upon:

- defined customary fishing rights that exclude commercial activity
- mechanisms that facilitate Indigenous involvement in marine and fisheries related businesses (National Native Title Tribunal 2006).

The NIFTWG principles are focused on customary fishing and commercial fishing as two distinct sectors. The principles apply equally to aquaculture and fishing related ecotourism ventures. This represents a clear policy-driven approach to engaging Indigenous peoples in the fishing industry in Australia, as opposed to litigation and compensatory-based acts, as has been the strategy in New Zealand. It does not mean that Indigenous peoples do not reserve the right to pursue these options, but as is evident within section 7 of this report, the current provisions for Indigenous enjoyment of commercial benefits from native title rights in Australia are limited to customary and recreational rights. This does not preclude the enacting of appropriate policy in regard to extending the provision of rights obtained under the Native Title Act, hence the current focus on achieving a policy-focused and partnership-resourced approach to Western Australian and South Australian legislative reform of fisheries.

The development of a national Indigenous fishing strategy was discussed in 2005 as part of the NIFTWG aims to develop Indigenous engagement with commercial fishing industries.

The development of the current 'The Principles Communiqué on Indigenous Fishing' (NIFTWIG 2005) became the most favoured staged outcome from the process. This process of working to core agreed principles was designed in order to create an environment of negotiated development and engagement between diverse interests and responsibilities of the various parties. This enables the engagement of Indigenous stakeholders, industry, conservation and government organisations to maintain individually negotiated plans and business ventures within agreed NIFTWIG principles.

The NIFTWIG principles are essentially those endorsed at the Indigenous Fishing Conference 2003. The proposed national Indigenous fishing strategy initiated by ATSIC in 2003 has not eventuated. However, the NIFTWG principles have been taken up at national, state and regional levels and represent a negotiated framework that is being embraced through policy and legislative reform, particularly in Western Australia and South Australian territories of the SWMR.

This approach of providing negotiated and agreed frameworks from which new legislative and management regimes can be reformed is in line with *Australia's Oceans Policy*, aimed at removing barriers to 'Indigenous involvement in commercial fisheries, and to encourage Indigenous participation in fisheries and marine management' (Baker, Davies & Young 2001, p. 70). Australian fisheries management is based within separate state and federal jurisdictions, with bilateral agreements on management and conservation, partnership and negotiated agreements to implement specific plans. The NIFTWG principles provide a consensus of principles from which representative stakeholders can build effective and coordinated plans for the management of fisheries within sustainability principles, and through recognition of Indigenous customary rights.

Information about the NIFTWG is available on the National Native Title Tribunal (NNTT) web site[6]. The NNTT produces a regular Indigenous Fishing Bulletin providing updates on the implementation of the principles. The NIFTWG principles have now been incorporated by the states into their own fisheries planning and legislative reviews. The NIFTWG is no longer supported via the National Native Title Tribunal and talks are underway with the Fisheries Research Development Corporation to facilitate the continued work of NIFTWG on a needs basis (T Weaver pers. comm. 2006).

6.6 Recent developments in regard to Indigenous interests in fishing within the SWMR in South Australia

Indigenous interests in the SWMR in South Australia have been the subject of two integrated processes of review, negotiation and planning affecting Indigenous rights and interests in sea country. First, Indigenous interests have been considered within a review of the *Fisheries Act 1982* (SA) which as led to the creation of the draft Fisheries Management Bill 2005 (SA). This review is discussed in greater detail in section 6.6.1 of this report. Second, the Aboriginal Legal Rights Movement has been engaged in state-wide Indigenous land use negotiations with the South Australian Government and other stakeholders. In regard to Indigenous interests in fisheries, ALRM has been negotiating a state-wide fishing and aquaculture Indigenous land use template as part of the Fishing and Aquaculture Side Table (FAST) (Aguis et al. 2006, p. 1). These two processes are linked through the South Australian Government's intention to negotiate Indigenous interests through native title under an ILUA process as opposed to litigation. Within this context, legislative changes

[6] National Native Title Tribunal <http://www.nntt.gov.au/> under Current Projects: Fishing, n.d.

recommended within the draft Fisheries Management Bill toward the creation of Indigenous cultural fishing plans are uniquely tied to the ILUA process and has been negotiated through the ALRM representing Indigenous interests.

The following sections consider the review of the *Fisheries Act 1982* (SA) (the draft Fisheries Management Bill (SA) (which is discussed in greater detail in section 8.2.7 of this report) and the outcomes of the FAST.

6.6.1 Review of the *Fisheries Act 1982*

The review of the South Australian Fisheries Act was instigated in July 2002. A Green Paper was released for public comment in November 2002. This was followed by extensive consultation which continued until February 2003 and constituted by 26 community meetings attended by 610 people. The consultation process resulted in the Review Steering Committee receiving 154 submissions in response to the review of the Act (Department of Primary Industries and Fisheries South Australia (PIRSA 2003, p.8). Indigenous community participation took place through the involvement of the ALRM and the Aboriginal Cultural Development Foundation (p. 57). This review generated 209 recommendations for changes to the Act. These changes ranged from instilling sustainability principles into the framework of the Act, to increasing penalties. For the purposes of this report all recommendations dealing specifically with Indigenous issues will be considered briefly to provide the context and provenance of the resultant draft Fisheries Management Bill, discussed in sections 6.6.2 and 8.2.7 of this report.

Under the heading ‘Statement of Principles’, ESD principles were strongly recommended as an overall framework for the review of the Act. Within the premise of fair and equitable access, Indigenous fishing was highlighted as a unique sector along-side commercial and recreational fishing and requiring ‘equitable access to the aquatic resources’ (Recommendation 12) (PIRSA 2003, p. 13). This is a common theme of fisheries policy within the SWMR in line with DEH policy, the NIFTWG principles and the Western Australian Aboriginal Fishing Strategy. Indigenous interests and rights are recognised, but limited equally against sustainability principles. An interesting consideration in this regard is what agreed sustainability principles are adhered to amongst a divergent field of stakeholders. However, the reflexive nature of current planning being aimed at regional and local cultural fishing management plans lends itself to allowing greater negotiation of these principles at the regional level.

Recommendations 26 and 27 called for the recognition and appropriate mechanisms required not to limit or interfere with native title, and to ensure that any effect on native title require that ‘consultative mechanisms be built into the Act to provide adequate opportunities for comment upon those proposals’ (PIRSA 2003, p. 17). Indigenous fishing, which was not recognised under the 1982 Fisheries Act and was recognised as being under review in Western Australia, was supported via recommendation 28:

> [T]he Minister be given power in the Fisheries Act to create, within a framework of sustainable fishing practices, classes and access to fisheries. Such classes of access may include recognising both Indigenous cultural fishing and Indigenous commercial fishing in addition to classes of access for charter fishing, commercial fishing and recreational fishing (p. 18).

In recognising the need for integrated fisheries management within the principles of ESD, Indigenous interests in customary fishing are being recognised generally, but separated from any commercial activities and mediated through discrete plans. These plans are being negotiated within the ILUA process in South Australia and through a less formalised

regional process in Western Australia. This approach is supported within the review under the heading 'Fisheries Management Planning' in which recommendation 87 calls for transparent planning processes that include Indigenous stakeholders, and recommendation 89 holds that 'statutory fishery management plans should recognise Indigenous fishing interests' (PIRSA 2003, p. 30).

Indigenous fishing is also recognised in recommendations 43 and 45 as requiring Indigenous input in the management and dispersal of two recommended funds, one being the Fisheries Research and Administration Fund, and the other the Fisheries Development Fund (PIRSA 2003, p. 21). Similarly, recommendation 61 aims to ensure appropriate consultation with relevant Indigenous interest groups in the proclamation of aquatic reserves (p. 25). In regard to management, Indigenous interests are recognised in allocations of fish take shares via recommendation 105 that requires Indigenous expertise be included on any panels dealing with allocations (p. 33). Recommendation 124 cements this approach stating that:

> Indigenous participation in fishery management decision-making structures and processes will better protect Indigenous interests and bring to the co-operative management process another perspective on how fisheries may be viewed and valued (PIRSA 2003, p. 37).

The review's focus on recognition of Indigenous fishing, increased Indigenous consultation and negotiated Indigenous planning through the ILUA process has been embraced within the draft Fisheries Management Bill (2005). This represents a clear shift in Indigenous policy and regulation in fisheries management expressed in South Australia though the influence of native title and the negotiation of a state-wide ILUA.

6.6.2 Fisheries Management Bill 2005

Written in response to the review of the Fisheries Act, the South Australian Government has recently released the draft Fisheries Management Bill 2005, which is intended to eventually replace the existing Act. Amendments include new offences, heavier penalties and the establishment of a new fisheries council. It is proposed that the fisheries council will have between six and 11 members who must collectively have expertise in the following areas: fisheries management, commercial fishing and fish processing, recreational fishing, Indigenous fishing, research and development relevant to the fishing industry, economics and business, conservation of aquatic resources and law. The council will be responsible for preparing and reviewing management plans, promoting fisheries co-management and advising the minister on a range of policy issues (PIRSA 2005a).

Under this proposed legislation the content of and process for developing management plans will be prescribed in section 42 of the Act and these plans will be statutory instruments. Section 42 provides that a plan must define the fishery; set out the management objectives for the fishery and strategies for achieving those objectives; describe the biological, economic and social characteristics of the fishery; identify the impacts or potential impacts of the fishery on its associated ecosystem; identify ecological factors that impact on the performance of the fishery; include a risk assessment of these impacts to determine the most serious risks; specify the methods for monitoring the performance of the fishery and the effectiveness of the plan; and identify research needs, priorities and resources required to implement the plan (PIRSA 2005b, pp. 25–26).

The Fisheries Management Bill also includes provisions relating to Indigenous cultural fishing, enabling the minister to enter into an ILUA with a local native title claim group. Under the ILUA, it is agreed that Indigenous cultural fishing activities will be undertaken in

an area of waters identified in the agreements in accordance with an Indigenous cultural fishing management plan. Such a plan may identify exclusive Indigenous cultural fishing zones and will recognise Indigenous cultural fishing as a separate type of fishing (PIRSA 2005b, pp. 38–39).

The Bill was released for public comment, with written submissions due by 31 March 2006. The draft Fisheries Management Bill 2005 is currently in the process of revision. In regard to Indigenous interests however, the Bill will not changed greatly. In recognition of Indigenous native title and customary fishing in sea country, the draft Fisheries Management Bill 2005 will require that Indigenous customary fishing be recognised and managed via individual agreed ILUAs. This will require the suspension of native title through agreement on management processes and plans created to regulate, facilitate and implement Indigenous practice in regard to sea country.

Within this process PIRSA will facilitate a fund to enable Indigenous individuals or groups to invest in commercial fishing ventures. Similar to Western Australia, this fund is being negotiated with Indigenous Business Australia. However, whereas the Western Australian fund is more formalised through the Western Australian Aboriginal Fishing Strategy, the South Australian fund is as yet not clearly structured within PIRSA management practices. The first of individual management plans that will be recognised under revised fishing legislation in South Australia is being negotiated via ALRM on behalf of the Narungga community. These negotiations are confidential at this time. It is expected that the draft Fisheries Management Bill 2005 will be placed before the South Australian Parliament by September 2006 for implementation in July 2007 (K Crosthwaite pers. comm. 2006).

For further information regarding the draft Fisheries Management Bill 2005, please see section 8.2.7 of this report.

6.6.3 State-wide fishing and aquaculture Indigenous Land Use Agreement negotiations in South Australia

The state-wide Indigenous Land Use Agreement process was initiated in South Australia via discussions between the Aboriginal Legal Rights Movement Native Title Unit (ALRM – NTU), the South Australian Government, the South Australian Farmers Federation (SAFF) and the South Australian Chamber of Mines and Energy (SACOME). Agius (2003, p. 4) acknowledges that for parties other than native title claimants the process ‘offered a means of addressing the uncertainty surrounding native title’. However, for the ALRM – NTU the process of a state-wide ILUA process was ‘an avenue to rebuild the state, with native title built in’. For detailed information regarding ILUAs, types of ILUAs, the Statewide Indigenous Land Use Agreement negotiations in South Australia, and specific ILUAs negotiated in South Australia, see section 7 of this report.

Beyond the main table negotiations, ‘side tables’ were created to deal with specific issues requiring particular expertise and considered focus. The Fishing and Aquaculture Side Table (FAST) was established in 2002 with the inclusion of the South Australian Fishing Industry Council and the Seafood Council of South Australia (Agius 2003, p. 5; Crosthwaite 2006, p. 3). The FAST was established:

1) To resolve fishing and aquaculture issues with respect to native title issues.

2) To develop a state-wide ILUA template, that can be used as the basis for Indigenous fishing negotiations at a local level.

3) To assist in the identification of issues that will address the special needs of each party involved in the negotiations (FAST 2004, p. 3).

Agius (2006, p. 5) defined the FAST's role as being to provide support to 'on the ground local level negotiations – as has been the case with the recent Narungga pilot fishing negotiations – whilst also being informed by such negotiations in efforts to improve the fishing template'.

Indigenous representation via the ALRM was through the Aboriginal Fishing Congress. The Aboriginal Fishing Congress was established by the ALRM to deal with fishing and aquaculture issues through the FAST. The Aboriginal Fishing Congress consisted of representatives of native title claims within the state-wide ILUA process with links to sea country and specific interests in and knowledge of fishing and aquaculture. Specifically, the Aboriginal Fishing Congress consisted of up to eight members who met on a needs basis to provide input to the FAST about fishing and aquaculture in South Australia. The Aboriginal Fishing Congress is currently inactive as the FAST process has been concluded and a template agreement is being finalised. Therefore, any queries regarding fishing and aquaculture in relation to Indigenous agreements and plans in South Australia should be referred to the ALRM (B Lena pers. comm. 2006).

Although the final template negotiated under the FAST is not available due to in-confident negotiations, a discussion paper produced as part of the FAST indicates the range of issues considered within it. The *Statewide Indigenous Land Use Agreement Negotiations in South Australia: Issues for Consultation* (FAST 2004) indicates that the template agreement covers areas including:

- traditional fishing definitions, quantum, methods, practitioners, protected areas, management practices and species use
- marine protected areas
- new and developing fisheries
- commercial access to aquaculture, wild catch and charter boats considering Aboriginal aspirations and existing parameters
- sustainability
- the resolution of native title and consent determinations (FAST 2004, p. 9).

The template for the Fishing Indigenous Land Use Agreement that was negotiated by ALRM as part of the FAST process has been agreed by all parties, but has not yet received final sign off. The template is being utilised in current negotiations for a number of Indigenous groups represented by ALRM. Under individual ILUA processes native title is agreed to be suppressed in exchange for negotiated Aboriginal traditional fishing rights. Currently, Yorke Peninsula has been finalised, but not signed and the Eyre Peninsula Agreement is being concluded. In all cases the ALRM should be the first point of contact as the NTRB negotiating the state-wide ILUA process. Individual native title claimant management committees are the constituents who will then be contacted regarding any plans proposed on their sea country. Once the ILUA template is in place the FAST will no longer operate. At this point, the template will be utilised at the local level to negotiate ILUAs and management plans (O Lind pers. comm. 2006).

The FAST process and completion of the ILUA Template Agreement has taken place parallel to the review of the Fisheries Act and the drafting of the state's Fisheries Management Bill 2005. The draft Fisheries Management Bill is being finalised and currently local Indigenous management plans tied to ILUA agreements are still core elements of the Bill (K Crosthwaite pers. comm. 2006). If the Bill is passed in 2006 and is

implemented in its current form this will result in a conjunction of the FAST ILUA Template Agreement process being utilised as a means to create Indigenous fishing management plans under the new legislation (FAST 2004, p. 1). This is the result of the South Australian Government, the ALRM and industry groups working through complex negotiations toward an integrated management process that will enable Indigenous interests to be recognised and supported at local, government and industry levels.

Crosthwaite sees this development as 'an opportunity to establish a tool [Indigenous fishing management plans] in the fisheries legislation for managing fishing rights that have been recognised and codified in an ILUA' (Crosthwaite 2006, p. 3). Further, Crosthwaite finds that 'the negotiation process provides the opportunity to make agreements about the use of fisheries resources in the future,' offering long-term beneficial outcomes not likely to be achieved through a litigious process (p. 3). In summing up the results of the FAST, Agius concluded that:

> [T]he FAST represents just the beginning of a commitment to cross-cultural planning and investigation that has the potential to shape the future management of South Australia's fisheries (Agius 2003, p. 11).

Negotiated through ILUAs and framed within proposed state fisheries legislation, Indigenous fisheries management plans provide for sustainable management of fisheries and recognition and support of Indigenous customary fishing.

6.7 Recent developments in regard to Indigenous interests in fishing within the SWMR in Western Australia

6.7.1 Western Australia's *Aboriginal Fishing Strategy*

Western Australia's *Aboriginal Fishing Strategy – Recognising our past, fishing for the future* (the Aboriginal Fishing Strategy) (Franklyn 2003) was developed within the Western Australian Department of Fisheries with the recognition that 'despite the development of many reports about indigenous [sic] fishing issues in the past, there seems to have been few significant outcomes for Aboriginal people' (Franklyn 2003, p. 7). The Ministerial Council for Forestry, Fisheries and Aquaculture was established in 1997 in Western Australia to initiate recommendations from the *Resource Assessment Commission Coastal Zone Inquiry* (1993), particularly the recommendation for the creation of the Aboriginal Fishing Strategy (p. 18).

The Strategy was also implemented within the context of recommendations from reports including the *Royal Commission into Aboriginal Deaths in Custody* (1991), and in light of the recognition of native title rights under the Native Title Act. The Strategy was also created through recognition that Indigenous fishing practices were not adequately dealt with under the state's *Fish Resources Management Act 1994* (FRMA) (Franklyn 2003, p.20).

Under current Western Australian fisheries laws, Indigenous fishing is partly exempt from the provisions of the FRMA. This exemption does not relate to any form of commercial fishing practices, only to recreational or customary use and enjoyment. This is in line with section 201 of the Native Title Act allowing for Indigenous customary fishing and harvesting, but not exempting Indigenous peoples from all other aspects of fisheries law (Baker, Davies & Young 2001, p. 69). These concessions have a historical basis in prior Western interpretations of Indigenous fishing and harvesting as constituting subsistence use of resources, rather than any real recognition of Indigenous rights to such resources, or Indigenous trade in these resources for customary purposes.

The process for developing the Aboriginal Fishing Strategy (Franklyn 2003) was established in 2000 and chaired by the Hon. EM Franklyn. In drafting the Strategy, the Aboriginal Fishing Strategy Working Group consulted widely within Indigenous groups and individuals throughout the state. The Working Group included representatives of:

- the Aboriginal and Torres Strait Islander Commission
- the Western Australian Commission of Elders
- the Conservation Council of Western Australia
- the Department of Fisheries
- the Department of Indigenous Affairs Western Australia
- the Indigenous Land Corporation
- the Office of Aboriginal Economic Development
- Recfishwest
- the Recreational Fishing Advisory Committee
- the Western Australian Industry Fishing Council
- the Western Australian Native Title Working Group (Franklyn 2003, p. 18).

The core objectives of the Strategy were to ensure:

- the inclusion of traditional and cultural fishing practices within a framework of planned sustainable use of fish and fish habitat
- greater involvement of Aboriginal people in the fisheries sector, including commercial fishing, aquaculture, the aquatic charter industry; and fisheries management (p. 19).

These two core objectives reflect that the Strategy has been framed within two important developments. First, a complex integrated fisheries management approach that is consistent with sustainability principles was successfully implemented as a result of changing attitudes to natural resource management nationally. Second, native title interests in sea country needed to be addressed in a manner that is 'consistent with the existing legal, social and political systems in Western Australia, but not directed to the exclusion of native title rights under the Native Title Act' (Franklyn 2003, p. 19). Fraser (2003, p. 2) noted the role of the Croker Island Case (*Commonwealth of Australia v Yarmirr* (2001) 184 ALR 113) in raising the issue of native title, if not requiring state agencies to change their management practices. This is discussed further in section 7 of this report in relation to native title and sea countries within the SWMR.

In light of these major shifts in management and legislation, the Aboriginal Fishing Strategy (Franklyn 2003) for Western Australia was framed within IFM principles, which seek to include a wide range of users of the resource, including Indigenous peoples, yet places sustainability as the unifying ethic (B Fraser pers. comm. 2006). Fraser (2006, p. 1) describes the core focus areas of the Western Australian Aboriginal Fishing Strategy as being:

- defining and managing customary fishing
- assigning priority to customary fishing
- capacity building for Indigenous peoples

- allocating commercial fishing access to Indigenous people utilising market processes.

Key principles adopted in the creation of the strategy were to influence the NIFTWG process that took place as a result of the Indigenous Fishing Conference in 2003. The core principles, reflecting past strategies, reports and assessments in this area, included:

- sustainability and biodiversity objectives are paramount. The recognition of Aboriginal fishing rights and practices does not exceed the obligation to protect fish for future generations
- Aboriginal people have continuing rights and responsibilities as the first people of Western Australia, including traditional ownership and connection to land and waters strategies must be consistent with the objects of the FRMA, the Pearling Act 1990 (WA) and the Native Title Act
- strategies must be consistent with a holistic, integrated approach to fisheries management and be accountable within an ecologically sustainable development reporting framework
- strategies must be practical and able to be implemented within the existing legal, political and social structures of Western Australia (Franklyn 2003, p. 21).

These principles were adopted as means of ensuring that any future strategies operate within the scope of existing state laws, and toward the two stated objectives of recognition of customary fishing and the adherence to sustainability principles.

The consultation process for the strategy was undertaken from March 2001 to July 2002 and included Indigenous organisations, Indigenous communities and individuals. The results of these consultations in the form of a general summary of Indigenous aspirations and core issues raised by community members were as follows:

- To be recognised by fisheries managers as more than just another stakeholder group and as having distinct and unique interests in fisheries including traditional ownership, traditional knowledge and customary stewardship responsibilities.
- To protect and maintain fish stocks from the effects of overfishing, pollution and habitat degradation.
- To have traditional knowledge recognised, respected and included within fisheries management and research.
- To have traditional fishing activities recognised.
- To have the importance of fish to Aboriginal people (including health, financial, educational, spiritual, cultural and ceremonial values) recognised by the broader community and fisheries managers.
- To be recognised and included in fisheries management through effective and appropriate consultation programmes and representation within the Department of Fisheries.
- To have opportunities for involvement and employment in fisheries management, research, education and compliance programmes.
- To not be subject to fishing rules inconsistent with customary practices so as to prevent Aboriginal people being penalised for exercising traditional fishing practices.

- To maintain and reclaim access to fish resources for food and other customary uses.
- To protect important cultural heritage places from fishing activities.
- To derive economic development and employment benefits from access to fishing authorisations.
- To have access to training, business planning and other resources that allow for Aboriginal interests to develop the necessary capacity to be competitive in the commercial fishing, aquatic tour and aquaculture industries (Franklyn 2003, p. 24).

The Strategy produced 39 recommendations within the framework of sustainability principles and native title rights requiring the recognition and management of customary fishing, and the stated aspirations of Indigenous people. These recommendations were divided into three areas: customary fishing, involvement in fisheries management and economic development (pp. 9–16).

Within the area of customary fishing the recommendations included:

- defining customary fishers and customary fishing (Recommendation 1)
- that customary fishing includes barter and exchange between Indigenous groups (Recommendation 2)
- that customary fishing be considered a separate form of fishing so as to be more appropriately managed, requiring amendment to the Fish Resources Act 1994 (WA) (Recommendation 4)
- the provision of education awareness programmes so that the wider public are aware of the nature and scope of customary fishing (Recommendation 10)
- that access to waters for the purpose of customary fishing be adequately negotiated so as to exempt customary fishers from fee requirements and or access permission requirements (Recommendation 11).

Within the area of involvement in fisheries management recommendations included:

- recognition of Aboriginal fishers as a distinct fishing sector (Recommendation 12)
- the need to utilise existing Indigenous community organisations and networks in any negotiations regarding fisheries management (Recommendation 13)
- recognition of customary fishing as having primacy in any allocation processes (Recommendation 16)
- that resources be provisioned to ensure that Aboriginal interests in marine use planning, consultative mechanisms and government submissions be included (Recommendation 20)
- that the Department of Fisheries develop an Aboriginal employment strategy that takes into account regional and proportional representation, the development of future managers and leaders within the DoF, a pilot Aboriginal fisheries warden programme in the Kimberley, and includes training, capacity building and career development (recommendations 21 and 22) .

In the area of economic development, the recommendations included:

- coordinating Indigenous involvement in fishing and aquaculture through funding support, business development, training and other economic opportunities within the open market (recommendations 28–30)
- the creation of an Indigenous fishing fund that would be created within government with the support of Indigenous Business Australia, but would be utilised to assist Indigenous enterprise through the purchase of licenses and authorisations (recommendations 31–32).

In essence the aim of these recommendations is threefold. First, the recommendations seek to bring about recognition of customary fishing through amendments to the Fish Resources Management Act. These changes include detailed discussion about the creation of Indigenous fishing wardens, Indigenous rangers and the creation of management plans for discrete Indigenous communities and identification of Indigenous fishers.

Second, these recommendations seek Indigenous engagement with commercial fishing through direct funding, training and development and provision of fishing licenses, aquaculture leases and investment in equipment.

It would be difficult to achieve immediate entry of Indigenous interests, via government-allocated licenses, into commercial fishing industries that are currently heavily regulated as they require high start-up costs and a high level of technical expertise. However the Aboriginal Fishing Strategy (Franklyn 2003) recommends that Indigenous interests be engaged in commercial fishing through the support of partnerships developed through the Western Australian Government and the NIFTWG process, with the support of Indigenous Business Australia and state and federal government agencies. This is the most pragmatic and potentially sustainable facilitation of Indigenous commercial fishing and charter venture aspirations.

Third, the Strategy proposes a slate of training and employment strategies as a means of increasing Indigenous employment, but more importantly, creating Indigenous capacity within the administration and management of fisheries as well as the fishing industry itself (B Fraser pers. comm. 2006).

The following sections discuss these three core aims of the Aboriginal Fishing Strategy (Franklyn 2003).

6.7.1.1 Recognition of customary fishing

An important element of the Aboriginal Fishing Strategy (Franklyn 2003) is the separation of Indigenous customary fishing from recreational fishing, and the primacy recommended for customary fishing over commercial and recreational fishing in the consideration of fisheries allocations. Due to the smaller size of the Indigenous customary fishing sector it could be argued that this primary allocation of shares may have little effect. However, in areas with a predominantly Indigenous population and utilising a highly prized resource (such as Barramundi in the Kimberley region), this policy direction could have significant implications for Indigenous fishers. Under the Strategy, Indigenous customary fishing is still required to be managed within an IFM framework in which it is understood that ‘conservation and sustainability principles represent a legitimate limitation on the rights of Indigenous peoples to fish’ (Fraser 2006, p. 4; B Fraser pers. comm. 2006).

IFM principles and share allocation are currently being utilised in the western rock lobster fishery and the abalone fishery. These fisheries will be the first to include Indigenous customary fishing allocations. As identified within the Strategy, knowledge of Indigenous customary fishing practices is inconclusive. The Strategy recommends further research into

the practices of customary fishing to enable evidence-based management decisions. However, as this knowledge is not available for the current allocation of abalone and lobster shares, the Department of Fisheries has a staged approach in negotiating the allocation, through a process of:

- acknowledgement of customary fishing as a new allocation category that has been and is taking place, and as such will not require a re-allocation from current categories of recreational and commercial fishing
- acknowledgement that Indigenous people engage in recreational fishing and not all Indigenous fishing is customary fishing, which is noted as being specific to customary practice
- estimation of Indigenous customary fishing based on recreational fishing allocations and Indigenous population proportions
- assumptions of Indigenous customary fishing, as opposed to recreational fishing, as being 10 per cent for Lobster and 25 per cent for Abalone based on anecdotal evidence
- re-adjustment of the initial allocation as further information about customary fishing becomes available (Fraser 2006, p. 5).

Noting the need for flexibility, Fraser (2006, p. 6) reiterates the recommendations of the Aboriginal Fishing Strategy (Franklyn 2003) for further research into customary fishing as being crucial. In this regard the Yamatji Land and Sea Council is developing specific coastal connection programmes aimed at generating further information about Indigenous uses and values in sea country. It is also educating the wider public about Indigenous connections with sea country (C Lewis pers. comm. 2006).

The Saltwater Country Project of the Kimberley Land Council's Land and Sea Management Unit provides an excellent model for future development of such research into customary fishing. The Saltwater Country Project is designed around a series of ‘return to country’ trips with Traditional Owners. The Project maps the uses and values of sea country for respective Indigenous groups and documents the present, past and planned uses by Traditional Owners. The Project also creates structures for future negotiation with government and industry bodies in regard to Indigenous interests and values in the region. Traditional Owners’ aspirations toward the management of sea country, the development of management plans, permit systems and visitor awareness programmes is also within the scope of this project. The establishment of an Indigenous sea country ranger programme is being investigated within this process. It a model that could easily be applied within the SWMR through negotiations with the Yamatji Land and Sea Council and the South West Aboriginal Land and Sea Council (T Vigilante pers. comm. 2006).

Research and development is clearly an area of investment in which the National Oceans Office could invest through the implementation of the Western Australian Aboriginal Fishing Strategy (Franklyn 2003). A pilot programme for the SWMR similar to the Saltwater Country Project of the Kimberley Land Council would be the perfect means to achieve what Fraser describes as the ‘need for adequate representative and consultative frameworks for Indigenous people to engage in allocation processes’ (Fraser 2006, p. 6). This would also satisfy the Strategy’s recommendation to negotiate within existing Indigenous consultative and representational structures.

Presently, initiatives in Western Australia include the establishment of a management advisory committee to the Minister for Fisheries on issues relating to Indigenous people and

recommendations for employment of Indigenous people within the DoF as both an employment and liaison strategy (Fraser 2006, p. 6). Recognition of customary fishing within the proposed amendments to the FRMA will be discussed in subsequent sections. What is clear is that recognition is a major step forward in meeting Indigenous aspirations voiced since the *Report of the Coastal Zone Inquiry* (Resource Assessment Commission 1993). The mechanisms and processes by which this activity and right is managed will necessarily require consideration of the Native Title Act, but more importantly, investing in Indigenous governance, consultative and management structures to give action to the negotiated and well-stated intentions.

6.7.1.2 Development of an Indigenous commercial fishing sector in Western Australia

The Western Australian Government's Aboriginal Fishing Strategy (Franklyn 2003) considered two options for the greater engagement of Indigenous people in the commercial fishing sector. These were directly in line with Indigenous aspirations to participate in this industry. These options were to 'buy back' commercial leases to be allocated directly to Indigenous interests, or to purchase commercial licenses on the 'open market'. Both options involved investment from government, yet the Strategy found these options to have two distinctly different outcomes.

The Strategy found buyback not to be a preferred option as licences are usually 'bought-back' from the market as a means of reducing commercial harvest so as to maintain the ecosystem health of fish stocks. To reallocate these licenses would, in essence lead to managing the fisheries unsustainably. Similarly, to simply create more licenses for the purpose of allocating them to Indigenous fishers would possibly impact on the sustainability of the stock. This approach also would impact on the value of other commercial licences already allocated (being potentially litigious), and if conducted on a voluntary basis, would most likely result in the purchase of the least valuable licenses in the market (Franklyn 2003, p. 88).

Purchasing licenses on the open market is therefore considered in the Strategy as a potentially more successful and desirable option for engaging Indigenous people in commercial fisheries. This option does not impact on the number of licenses operating within a management area, placing less pressure on the specific fisheries. Such an approach would not be seen by other commercial fishers as being non-commercial as it would be operating in line with the current economic activities of the industry. Open market purchase would necessarily be more costly than simply allocating new licenses. However, this approach creates value in a license as an investment that can grow for those Indigenous owners, as well as enabling attraction and negotiation of partnerships with existing commercial fishers (Franklyn 2003, p. 89). This allows for two streams of investment: the increasing value of a license and the potential employment and income through developing skills around the implementation of the license activities. Likewise, appropriate utilisation of training and development programmes through government-coordinated schemes would increase the capacity of Indigenous ventures and act as a form of investment in any proposed businesses (B Fraser pers. comm. 2006).

Currently the Department of Fisheries in Western Australia is conducting negotiations with Indigenous Business Australia (IBA) to invest in the Indigenous Fishing Fund. As recommended within the Aboriginal Fishing Strategy (Franklyn 2003), this fund will be utilised to purchase commercial fishing licenses. These negotiations toward an Indigenous fishing fund through joint investment from the State and Commonwealth are described as

being ‘well advanced’ (Fraser 2006, p. 8), and consideration of a similar fund with PIRSA forms a potential parallel business development throughout the SWMR.

6.7.1.3 Employment

Employment programmes within the Department of Fisheries (DoF) in Western Australia are seen as an important area of development by the Indigenous people consulted for the development of the Aboriginal Fishing Strategy (Franklyn 2003), and as a recommended outcome of fisheries reform. This approach is understood to be both an employment strategy and a capacity building exercise for the DoF. It is a means of increasing Indigenous engagement with the Department and fishing industry as a whole, but is also a means for knowledge transfer toward future liaison and negotiation in the management of Indigenous interests in fisheries (B Fraser pers. comm. 2006).

An important element of future Indigenous employment is the development of Indigenous fisheries ranger programmes. Based on fisheries officers and wardens, an Indigenous sea rangers programme is being investigated by the DoF. There are a number of potential models that could be utilised. One approach is to employ Indigenous community members as fisheries officers. In this role they would undertake the responsibilities of fisheries officers, including tasks such as enforcement of fisheries regulations. Alternatively, or concurrently, positions for contracted sea country rangers could be developed within Indigenous communities as a means of managing and promoting Indigenous customary fishing. Responsibilities of contracted sea rangers could include:

- the monitoring and evaluation of fisheries
- conducting specific research into fish harvest and impacts of fishers within remote regions
- educating the wider public about Indigenous customary fishing
- making other fishers aware of relevant issues for Indigenous peoples such as avoidance of places of significance and the need to consider Indigenous values when fishing in waters and coastal areas deemed Aboriginal land via native title determinations or Aboriginal Lands Trust leases.

As there are currently approximately 100 fisheries officers employed across the state, the creation of Indigenous fisheries officers will not generate a great amount of employment. Similarly, pilot ranger programmes alone will not generate a large amount of employment. However, such programmes will create tangible benefits in the form of on-the-ground management, protection and monitoring of Indigenous issues and values in sea country, and the development of Indigenous regional networks in the management of sea country. In this regard, development of a commercial Indigenous fishing sector is more likely to yield employment opportunities for Indigenous people, but unless accompanied with appropriate training and capacity building, will not lead to any meaningful employment pathways beyond manual labour.

6.7.2 The *Fish Resources Management Act 1994* and proposed amendments

The *Fish Resources Management Act 1994* (FRMA) was implemented on 1 October 1995. Indigenous interests in fisheries in regard to the FRMA are discussed in section 8.3.3 of this report. Primarily, Indigenous customary fishing is allowed under section 6 of the Act as long as fish are taken for individual, family or customary, but not commercial, use. On 2 December 2005 the Minister announced a review of the FRMA. The review was overseen by south-west MLC Matt Benson and was directed to inquire into and report on: the

effectiveness of the FRMA in conserving, developing and sharing the fish resources of the state for the benefit of present and future generations; the effectiveness of the FRMA in the protection of fish habitats and aquatic biodiversity; and any other matters of significance arising from the review process (Government of Western Australia 2005).

The review is considering recommendations contained in the Aboriginal Fishing Strategy (Franklyn 2003). A discussion paper *Proposed Amendments to the Fish Resources Management Act 1994* (Fisheries Management Paper No. 208) – was released by the Ministerial Review Committee to the Western Australian Department of Fisheries in April 2006 for public comment and feedback to the Committee by July 2006. Final results of this review are expected to be made public in late 2006 (B Fraser pers. comm. 2006).

Amendments to the FRMA were considered necessary based on the need for changing definitions, the modification of existing sectors and enhancement of offences. However, an important consideration in the review of the Act was to ensure that fisheries legislation reflected 'policy modifications and new policies that have developed over time in response to changing community expectations, and environmental conditions (e.g. Integrated Fisheries Management, customary fishing)' (Ministerial Review Committee 2006 p. 7). Within the review, Indigenous issues are raised specifically in relation to the Aboriginal Fishing Strategy (Franklyn 2003) in regard to the need to recognise customary fishing. This focus is placed within the context of other areas that relate to the practice in formalising this recognition through 'regionalisation of recreational fishing management and the IFM strategy' (p. 8).

IFM principles will inform all aspects of fisheries management in Western Australia and as such it is important to consider how these principles will impact on customary fishing practice and engagement with the commercial fishing sector. Specifically the review is working to IFM principles of:

- setting sustainable harvest levels for ecosystem health
- allocation of catch shares between commercial, recreational and customary fishers
- monitoring and evaluation of harvests
- management of each sector within the allocated shares
- developing reallocation mechanisms between sectors as necessary (Ministerial Review Committee 2006, p.12).

The Indigenous sector is considered throughout the review where Indigenous interests and customary fishing allocations apply. Specific Indigenous issues outlined within *Proposed Amendments to the Fish Resources Management Act (1994)* (Fisheries Management Paper No. 208) (Ministerial Review Committee 2006) have been summarised in Table 3. The proposed amendments to the FMRA relate directly to customary fishing being allocated shares, and the ability to define and manage customary fishing as a distinct fishing sector within IFM principles. In regard to other core recommendations of the Aboriginal Fishing Strategy, development of an Indigenous commercial fishing sector is affected through the same amendments being created to enable the implementation of IFM overall.

Beyond recognition of customary fishing rights, important changes for Indigenous peoples in the SWMR relating to the FRMA include the provision for management plans under the proposed amended legislation. There is no indication as yet how these management plans will be developed, managed and monitored, but they will be statutory plans under the Act. The extent of negotiation with Indigenous interests on a regional basis will depend on the

groups involved, their representative structures and knowledge of customary fishing practices. Unlike South Australia, in Western Australia these plans are not based in an ILUA process with recognised Traditional Owners representing relevant regions. A format for negotiations such as this for Western Australia would, however, be consistent with the recommendations of the Western Australian Aboriginal Fishing Strategy (Franklyn 2003) and previous negotiations at state and federal levels to engage NTRBs in this process. Native title rights do not require that states negotiate over sea country within the SWMR. However, developments in recent years toward the negotiation of the strategy reveal that NTRBs and structures of Indigenous governance created through, and in response to, native title, provide the clearest avenue for future negotiations.

Table 3. Issues and proposed changes to the FRMA related in the *Proposed Amendments to the Fish Resources Management Act (1994)* (Fisheries Management Paper No. 208) (Miniserial Review Committee 2006)

Issue	Proposed Change
The FRMA provides no powers to the Executive Director to determine fishing periods for customary and recreational fishing, or for management plans for commercial fishing. (This requires a new section to be created within the FRMA.)	'Provide for a power in all subsidiary legislation that allows for delegation for the Executive Director to determine (and publish) the length of fishing periods and the opening and closing dates' (*Proposed Amendments to the Fish Resources Management Act 1994 – Discussion paper* 2006, p. 27).
Management of fisheries only refers to commercial fisheries and under IFM principles all fishery sectors require management. (This requires a change to Part 6 of the FRMA.)	'Customary fishing access right will be given priority over all other fishing access' and 'appropriate management structures and processes will be introduced to manage each user group within their prescribed allocation (*Proposed Amendments to the Fish Resources Management Act 1994 – Discussion paper* 2006, p. 27).
There are no provisions to enable the allocation of shares to different fishing sectors including customary fishing. (This requires a new section to be created within the FRMA.)	Create a head power for the Minister to allocate, or to reallocate shares to various sectors. Create a head power for regulations to prescribe the process for the allocation, or reallocation of shares to different sectors by the Minister (*Proposed Amendments to the Fish Resources Management Act 1994 – Discussion paper* 2006, p. 28).
Within the context of management plans there are currently no provisions under the FRMA 1994 to develop management plans for all sectors of fishing, including customary fishing. (This will require amendment of Section 56 of the FRMA.)	'Provide powers for Management Plans to be developed for each sector, multi-sectors, a single species or multi-species, a region, or a number of regions. Provide that a Management Plan may include provisions to modify fishing activity for biodiversity conservation' (*Proposed Amendments to the Fish Resources Management Act 1994 – Discussion paper* 2006, p. 28).
There is no provision for the recognition of Customary Fishing authorisations within the creation of Management Plans. (This will require amendment of Section 56 of the FRMA.)	'Provide that a recreational fisheries Management Plan can prohibit the transfer of authorisations. Include a provision that allows the Executive Director to issue authorisations for the purpose of managing customary fishing' (*Proposed Amendments to the Fish Resources Management Act* 1994 – *Discussion paper* 2006, p. 28).
There is no provision for licensing of customary fishers in the current act. (This will require amendment of Section 257 of the FRMA.)	'Include powers for regulations for the licensing of customary fishing, and for persons engage ed in diving for the purposes of aquaculture, commercial fishing or ecotourism' (*Proposed Amendments to the Fish Resources Management Act 1994 – Discussion paper* 2006, p. 28).

7 Native title in the SWMR

Native title impacts all aspects of Indigenous connections and values in the SWMR in regard to issues examined in this report. This section considers native title in detail. It examines the relevance of native title in sea countries within the SWMR generally, and its specific evidence and efficacy in the form of negotiated agreements and consultative forums.

7.1 Native title issues

7.1.1 Native title rights and interests in sea country

The rights of Indigenous peoples to their lands and waters are recognised and made enforceable in Australian law through the legal device of native title. It is a limited device in many respects as the legal requirements for establishing native title have become increasingly stringent. Nevertheless, Indigenous peoples in many areas of Australia have successfully navigated the legal hurdles and there are now 48 determinations that native title exists registered on the National Native Title Register (National Native Title Tribunal 2006).[7]

Native title is a limited mechanism for protection and recognition of Indigenous peoples' rights. Numerous native title determinations have recognised the right of native titleholders to hunt and fish and utilise the natural resources and engage in cultural practices over their sea country in accordance with their laws and customs. There are 679 applications remaining to be resolved and 119 of these include sea country (National Native Title Tribunal 2005).[8] This section will provide an overview of native title in the South-west Marine Region including a discussion of the nature of native title, how native title over sea country is recognised, the extent of current claims, and the implications for the development of management plans.

7.1.1.1 The recognition and protection of native title

While there are many instances in legal and policy frameworks where Indigenous peoples' rights and interests in their country have been recognised or respected, native title is perceived differently, as it is not dependent upon the will of government. Rather, the rights and interests recognised by native title are inherent to Indigenous peoples by virtue of their status as first peoples. Native title, if it exists, exists without requiring an application or determination. Legally it is a right that has existed from the time of colonisation. It is not a new right created in 1992 (by *Mabo v Queensland* [No 1], (1988)), by the Native Title Act in 1993 or by a determination. While there are numerous decisions that discuss this matter, including the *Mabo* case itself, the Act also reflects this principle.

Recognition of rights over sea country was not directly considered in *Mabo.*[9] It was not until the High Court decision in *Yarmirr*, in 2001, that it was put beyond doubt that native

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[7] National Native Title Tribunal <http://www.nntt.gov.au/applications/determinations.html>, accessed 22 August 2005.

[8] National Native Title Tribunal <http://www.nntt.gov.au/applications/determinations.html>, accessed 22 August 2005. This figure includes all applications lodged with the Federal Court. Not all of these have passed the registration test.

[9] Those elements of the case were dropped at an early stage to allow a less complex case to be argued in the first instance.

title extends to territorial waters (*Yarmirr v Commonwealth*; *NT v Yarmirr*, 2001).[10] The Native Title Act referred to 'land *and* waters' and to 'fishing rights' within the definition of native title in s.223. Section 6 of the Native Title Act also says that:

> This Act extends to each external Territory, to the coastal sea of Australia and of each external Territory, and to any waters over which Australia asserts sovereign rights under the *Seas and Submerged Lands Act 1973*.

The High Court in *Yarmirr* concluded that, apart from an important qualification in relation to exclusivity, the assertion of sovereignty in relation to the territorial seas showed no 'necessary inconsistency' with the continued recognition of native title rights and interests. There being no inconsistency, the common law recognises native title offshore and gives it effect (Y*armirr v Commonwealth*; *NT v Yarmirr*, 2001).[11]

The High Court stated that the common law would only recognise non-exclusive native title over the sea, as it was bound by the customary international law which guaranteed the right of innocent passage. Moreover, the common law contains public rights to navigation and the right to fish, which were held to be inconsistent with any right under traditional law and custom to control access (*Yarmirr v Commonwealth*; *NT v Yarmirr*, 2001).[12]

The Native Title Act declares that native title is recognised and protected according to the Act and cannot be extinguished except according to the procedures set out in the Act (ss.10–11). The Act provides for the Federal Court to make determinations as to whether native title exists (ss.13–15), and Indigenous peoples who make an application for determination must establish their claim according to the elements of proof captured by the definition set out in s.223(1).[13]

The Native Title Act was amended in 1998 to 'confirm' certain Crown ownership rights. Of relevance, s.212 confirms existing rights, or allows state legislation to confirm ownership of natural resources and ownership and access to beaches, waterways, foreshores and coastal waters. Such legislation has been passed in South Australia and Western Australia.[14]

7.1.1.2 Native title rights and interests

While on land native title in many instances approaches full ownership, native title over sea country has been held to be recognisable to the common law only as a non-exclusive title. Therefore, general rights to determine use and access that may apply over land would not generally apply to offshore areas. Each native title determination differs with respect to the rights and interests that are held by members of the native title group under their traditional laws and customs. This means that what is recognised and protected for one group may be outside the scope of native title recognised in another. Many determinations limit the right to hunt and fish to ceremonial, individual and communal purposes – that is, not commercial use or trade.

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[10] (2001) 56 HCA. (11 October 2001). Territorial sea extends to 12 nautical miles.
[11] Ibid., joint reasons at [42].
[12] Ibid., at [61].
[13] Note s. 62 also sets out certain particulars to be contained in the application for the purposes of registration which are expressed in similar though not identical terms.
[14] See the *Native Title (South Australia) Act 1994* online at: http://www.austlii.edu.au/au/legis/sa/consol_act/ntaa1994318/

As an example, a recent determination in the north of Western Australia recently recognised the scope of rights of the Bardi and Jawi people to their offshore country's intertidal zone as the non-exclusive:

- right to access, move about in and on, and use and enjoy the zone, the reefs and the associated waters
- right to hunt and gather, including for dugong and turtle
- right to access, use and take any of the resources therefore (including the water of the intertidal zone) for food, trapping fish, religious, spiritual, cultural ceremonial and communal purposes.

'Communal purposes' clearly indicates something greater than personal or family use and may therefore allow a relatively larger quantity for 'harvest'.

In the Western Yalanji native title determination (see Commonwealth of Australia 2006) (which concerned land only) the court confirmed a consent determination that recognised rights to:

- use the determination area and its natural resources for social, cultural, economic, religious, spiritual, customary and traditional purposes
- carry out economic life, including the creation, growing, husbanding, harvesting and exchange of natural resources and that which is produced by the exercise of native title rights and interests.

This extension of rights to include economic rights is an aspect of many determinations in Cape York and the Torres Strait.

That determination also recognised native title rights to conserve the natural resources of the determination area, and to safeguard the resources for the benefit of native titleholders. This may translate as the rights to take for artistic purposes in relation to some resources. The Torres Strait regional sea claim is likely to test the scope of rights and interests recognisable over sea country under Australian law (see Torres Strait Regional Authority 2006).

The rights and interests set out in a determination of native title under s.225 are not necessarily exhaustive, particularly where the determination recognises exclusive possession. However, in relation to sea country, it is more likely that the scope of rights and interests outlined in the determination are the limits of the rights and interests that can be exercised under the protection of native title. This has not yet been tested.

7.1.1.3 Exercising native title

The common law accepts that the manner in which native title rights and interests are exercised will develop and change over time. Since the *Mabo* case, the High Court has firmly stated that it does not expect that the laws and customs that sustain native title will be frozen in time or reflect some arcane notion of 'traditional' as reflecting 'pre-contact' activities. Native title rights and interests are regulated by law and custom internal to the group and their exercise may change and evolve as the society changes and evolves.

For this reason native title rights and interests should not be limited to those activities and uses that are identified at the point of determination (Branson & Katz 2002).[15] Law and

[15] *Yorta Yorta appeal* per Branson and Katz JJ at [139].

custom, therefore, regulate the exercise of native title internally and provide the limits on the kinds of 'privileges' of ownership that can be exercised.

As a corollary, there is no prescription on the methods employed in the exercise of native title. It is generally accepted, for example, that modern methods will be employed in hunting and fishing. As Gummow noted in the Yanner decision[16] and Lee observed in *Ward* [17]at first instance, it does not matter that fishing is undertaken from an outboard-motored dinghy.[18]

7.1.1.4 Regulation of the exercise of native title rights and interests

Native title, or the exercise of native title rights and interests, is susceptible to regulation. Laws that regulate fishing and hunting do not extinguish native title. However, these laws may limit the exercise of native title rights and interests. In some instances, regulation may be so strict that it effectively extinguishes any rights associated with native title. This was the case in *Ward*[19], in relation to the *Rights in Water and Irrigation Act 1914* (WA), which absolutely prohibited interference with, or the taking of, flora and fauna. This is in contrast to instances where a licensing regime exists.

The public right to fish, as noted in the *Yarmirr* decision, is a right that can be rescinded or regulated within the law. Australia has a complex legislative regime concerning the division of jurisdiction over the territorial waters as a result of the Offshore Constitutional Settlement.

This complex regime of legislation at the Commonwealth and state levels for the management of oceans and fisheries regulates the issue of commercial and recreational licences, the development of conservation and environmental management regimes, fishing methods and species-specific regimes, as well as regimes concerning particular areas or species. For example, South Australia's *Fisheries Act 1982* states its purposes in its long title:

An Act to provide for the conservation, enhancement and management of fisheries, the regulation of fishing and the protection of certain fish; to provide for the protection of marine mammals and the aquatic habitat; to provide for the control of exotic fish and disease in fish, and the regulation of fish farming and fish processing; and for other purposes (*Fisheries Act 1982*).

Many fishing regimes provide for Indigenous people to take fish without a licence for personal or cultural use (*Fish Resources Management Act* 1994 (WA)).[20] Such provisions

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[16] A 1999 High Court decision (*Murrandoo Bulanyi Mungabayi Yanner v Graeme John Eaton* (1999) 201 CLR 351; (1999) 166 ALR 258) (the Yanner decision) confirmed that Aboriginal and Torres Strait Islander people may claim a right under native title to hunt living resources according to local customary law. The outcome of the Yanner case has resulted in most jurisdictions recognising Indigenous rights to obtain and consume traditional marine foods (Commonwealth of Australia 2001).

[17] *Ward v Western Australia*, Federal Court, WAG 6006 of 1995, judgment 17 May 1996.

[18] *Yarmirr*, per Gummow J [68]. See also *Campbell v Arnold* (1982) 565 FLR 382 (NTSC), concerning the *Crown Lands Act 1978* (NT) regarding the use of firearms in hunting.

[19] *Ward v Western Australia*, Federal Court, WAG 6006 of 1995, judgment 17 May 1996.

[20] *Fish Resources Management Act 1994* (WA), s. 6 'Application of Act to Aboriginal persons', states that 'An Aboriginal person is not required to hold a recreational fishing licence to the extent that the person takes fish from any waters in accordance with continuing Aboriginal tradition if the fish are taken for the purposes of the

are generally accepted to be recognition of rights rather than an extinguishment. The High Court in *Yanner* explained that:

Regulating the way in which rights and interests may be exercised is not inconsistent with their continued existence. Indeed regulating the way in which a right may be exercised presupposes that the right exists (Yanner [37]).

The High Court in *Yarmirr* dealt specifically with legislation asserting or allocating sovereign rights over the seas. It was determined that the *Seas and Submerged Lands Act 1973* (Cwlth), state powers acts and state titles acts were merely an assertion of sovereignty, not ownership and did not impair native title (*Yarmirr* [76]).

7.1.1.5 Prioritisation of native title rights and interests

Section 211 of the Native Title Act seeks to clarify the operation of licensing or permit regimes in relation to native title rights to hunt, fish, gather and carry on cultural and spiritual activities. Laws that restrict activities other than under a licence or permit do not apply to native titleholders, as their right to carry on such activities is held from their native title. Thus, the provision creates a statutory priority for native title rights over state legislation.[21] This means that the relevant law is still valid but its operation is suspended in relation to the exercise of native title rights and interests.[22]

The exemption from licensing regimes under s.211 is limited to personal, domestic, communal, but non-commercial, needs, in the exercise or enjoyment of any native title rights and interests. The treatment of harvest for economic purposes has not been considered in this context. 'Economic' can have many facets: from subsistence or barter, through to commercial activities.

The exemption from licensing regimes does not apply to those restrictions that have been introduced for the purpose of limiting the activity to environmental, research or public health and safety purposes. Nor does it apply to regimes that are solely aimed at conferring rights for the benefit of Indigenous peoples. Thus, where a licensing arrangement exists for conservation purposes only, native titleholders may be required to acquire a licence to undertake certain activities. It could be argued that the EPBC Act fits this category as the Act's objectives are protecting biodiversity and natural heritage. The EPBC Act prohibits the killing or taking of varieties of certain species unless a license is acquired for the purpose of conservation or maintenance of Indigenous traditions or the control of pathogens (EPBC Act s.201).

The EPBC Act contains a clause that preserves the operation of the Native Title Act's s.211. The provision is somewhat confusingly headed 'native title rights not affected'. The note to the section states that s.211 'provides that holders of native title rights covering certain activities do not need authorisation required by other laws to engage in those activities'. However, the provision itself states only that 'nothing in [the EPBC Act] affects the operation of section 211 of the Native Title Act 1993 in relation to a provision of this Act'

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person or his or her family and not for a commercial purpose'. See also Tasmania's *Living Marine Resources Management Act 1995*, s. 60(2)(c).

[21] Presumably also Commonwealth legislation unless later legislation which is clearly inconsistent and overriding the Native Title Act. This does not create a priority over other interests but ensures co-existing rights are enjoyed by native titleholders.

[22] See (1995) 183 CLR 373 at 474.

(EPBC Act, s.8). This does not clearly demonstrate an intention to protect all native title rights and interests or to exempt native titleholders from the licensing regime in s.201.

There is a difficulty in assessing the objective of legislation in relation to fisheries between the conservation of heavily burdened fisheries and the efficient allocation and management of scarce and valuable resources. Addressing this difficulty may require consideration of the link between the justification for regulation and the allocation of priorities in the fisheries, and the involvement of native titleholders in decision-making over conservation measures.

Best practice for this situation would take into account the Sparrow principles (*R v Sparrow* (1980).[23] In the 1990 Canadian-Aboriginal fishing rights case, it was held that conservation measures could be justified to take priority over Aboriginal fishing rights because they are inherently consistent with the protection of native title for future generations and the maintenance of the connection that sustains the underlying title. This assumed that the titleholders had been consulted (and not just informed) and were unable or unwilling to implement appropriate measures themselves.

In addition, the test assumes that conservation objectives could only be achieved by restricting the rights of Indigenous peoples and not by restricting other users. The Aboriginal right to fish takes precedence over the rights of others and should occasion as little interference as possible to achieve the regulatory objectives. In *Jack v R* (1979)[24,] a case which predates the enactment of s.35 of the Canadian Constitution, the Court suggested that 'priority ought to be given to the Indian fishermen subject to the practical difficulties occasioned by international waters and the movement of the fish themselves'.[25]

These principles are not yet established in law in Australia but are consistent with the preservation of native title rights in s.211 and the 1984 recommendations of the Australian Law Reform Commission. The inclusion of cooperative conservation principles in the objects of the EPBC Act and the management tools such as conservation agreements arguably go some way to meet these standards of practice.

7.1.2 Native title as it applies to conservation regimes within sea country

7.1.2.1 Procedural rights of native title claimants and holders

In carrying out activities protected by s.211 of the Native Title Act, the native titleholders are subject to the laws of general application. Therefore, it is possible that activities may be regulated to the point where related native title rights and interests are unable to be exercised. (This may or may not extinguish native title rights. It may then carry consequences in relation to compulsory acquisition and compensation (Native Title Act, s.24NA).)

Section 24HA of the Native Title Act, introduced in 1998, gives governments greater autonomy in the 'management and regulation' of 'water', including living aquatic resources. This means that any future acts that affect native title – such as new legislation or grants pursuant to legislation – are valid but may be subject to compensation.

Despite being valid, the requirement for notification and the opportunity to comment remain. In addition, the non-extinguishment principle applies – that is, native title is not extinguished. If the act is wholly or partly inconsistent with native title then the native title

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[23] *R v Sparrow* (1980) 1 SCR 294 at 313
[24] *Jack v R* (1979) (100 DLR (3d) 193)
[25] *R v Sparrow* (1980) 1 SCR 294 at 313.

rights and interests affected have no effect. However, the native titleholders remain the native titleholders of the affected area and if the act is removed or changes, the native title will again have full effect (Native Title Act, s.238).

Notifications are required to include a 'clear description of the area that may be affected' and 'a description of the general nature of the act' (Native Title (Notice) Determination, 1998). Recent cases however have revealed that the courts will not require authorities to clearly inform native titleholders of the precise area affected, and acts that fail to comply with these requirements will not be invalidated (*Harris v Great Barrier Reef Marine Park Authority* (1999)[26]).

It was held in *Lardil*[27] that failure to notify in relation to offshore future acts did not invalidate those acts, although their effect may be compensable. In that case a full Federal Court confirmed that, when future acts over offshore areas where there was no determination of native title, native title applicants and determined native titleholders had limited procedural rights. The courts reasoned that the possibility that an act might affect native title if the existence of native title is established does not give claimants an enforceable right to seek an injunction against the act. That is, an act is not a future act because it might affect native title, only if it does affect native title. As a result, in order to legally petition to halt the act, the applicants would have had to prove their native title. Therefore, while the procedural rights apply to registered native title applicants, they are not enforceable, and failure to comply does not have any impact on the validity of the act. Moreover, the right to comment, even when it can be enforced, does not mean that the comments must be dealt with in a particular way, only that they be given consideration.

In particular, a decision-maker is not required to minimise the impact on native title (*Harris v Great Barrier Reef Marine Park Authority* (1999)). As always, any impact on native title remains compensable. It should be noted that in other circumstances, for example in relation to a stronger right to negotiate procedural requirement, failure to comply results in the invalidity of the act.

The capacity to 'avoid' the obligations under the Native Title Act does not compel the government to fail to comply. It was noted by the Court in *Harris v Great Barrier Reef Marine Park Authority (*1999)[28] that the purpose of the notification and comment were 'precautionary'. This is sufficient justification for the extension of the practise to those who assert native title. Where it is considered likely that native title will be affected by an act, the specified persons should be notified and given an opportunity to comment: they are the Commonwealth Minister, relevant NTRBs, prescribed bodies corporate (PBCs) and registered claimants.

The definition within the Native Title Act of 'offshore' places is important in determining the application of the future acts regime; specific procedural rights attach to native title offshore while other procedural rights apply only to 'onshore' places. 'Offshore places' are any land or waters to which the Act extends, other than land or waters in an onshore place. An 'onshore place' in contrast is defined to mean land and waters within the limits of a state or territory.

The future act regime applicable to water management, including the issuing of fishing licences, is contained in Subdivision H of the Native Title Act. All other offshore acts are

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[26] *Harris v Great Barrier Reef Marine Park Authority* [1999] 165 ALR234; [1999] FCA 1070
[27] *Lardil, Kaiadilt, Yangkaal and Gangalidda Peoples v State of Queensland* [2001] FCA 414.
[28] *Harris v Great Barrier Reef Marine Park Authority* [1999] 165 ALR234; [1999] FCA 1070

considered under Subdivision N of the Act. The Native Title Act requires that all future acts affecting native title must comply with the procedures set out in the Act. If an act is done without complying with these procedures it will be invalid to the extent that it affects native titleholders (although it may still operate against third parties). The procedural rights required for a future act under Subdivision H specify only that native titleholders must receive notice of the act, and be provided an opportunity to comment (Native Title Act, s.24HA, p. 7). For all other offshore acts, the procedural rights are those that would apply to any 'corresponding non-native title rights and interests'. This is a difficult test to apply when assessing what kinds of interests, especially offshore interests, 'correspond' to the unique form of title recognised by the High Court in *Yarmirr v Commonwealth*; *NT v Yarmirr* (2001) 56 HCA.

7.1.2.1.1 Compensation

Past acts that have extinguished, impaired or regulated native title, through legislation or grants of interests to third parties, may have been invalid as a result of the recognition of native title and the operation of the *Racial Discrimination Act 1975*. The Native Title Act validated titles granted prior to the passing of the Act. The 1998 amendments validated further grants of freehold, certain leases and public work[29] granted up until the High Court's decision in the *Wik* case[30]. In both instances, overriding the Racial Discrimination Act allowed state governments to pass similar legislation validating titles granted by them (Division 2, ss. 14, 19). Past acts in relation to offshore areas are likely to be Category D past acts and therefore the non-extinguishment principle applies.[31]

Native titleholders whose rights have been affected by past acts are entitled to compensation under the Native Title Act (ss. 17, 20 ,22D, 22G). Under common law, the High Court held in Mabo that governments were free to discriminate against Indigenous peoples in the arbitrary extinguishment of their interests in land without compensation, despite the Constitutional, statutory and common law protection afforded to non-Indigenous interest holders.[32] However, they recognised that such practices were racially discriminatory and therefore prohibited by the Racial Discrimination Act introduced in 1975. From that time, just terms provisions and compulsory acquisition laws were to apply equally to native title (*Mabo v Queensland* [No 1] (1988)).

The validation of past acts relating to offshore areas under the Native Title Act, while ensuring their validity, gives rise to compensation. The compensation is payable by either the Commonwealth or the state, depending on who the act is attributed to, but not by any third party who acquired an interest as a result. Compensation, if not specifically provided for in the relevant division of the past acts provisions, is provided for in Division 5 of the Native Title Act and is determined, under s.51, on the basis of 'just terms' if it relates to a compulsory acquisition or otherwise in accordance with the principles set out in any relevant compulsory acquisition legislation. Section 51A seeks to limit compensation to the value of a freehold estate. This principle would be difficult to apply to offshore acts, although the operation of the provision is unclear as it is subject to the 'just terms' test.

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[29] Division 2A ss 21, 22A, 22 F. These are called intermediate period acts. Although not technically the same category of acts, for general purposes throughout this text they are included in the term 'past acts.

[30] High Court - *Wik Peoples v Queensland* (1996) 187 CLR 1 (Wik)

[31] Category D past acts is any act that is not a category A, B or C past act, which cover certain grants of freehold, certain leases, and mining leases.

[32] This assessment of the ratio of *Mabo* depends on the statement of Mason, CJ and McHugh summarising the Court's finding, at 15–16.

The Act also provides for non-monetary compensation. In formal hearings of a determination of compensation, requests for non-monetary compensation may be made to the Federal Court, including the transfer of property or the provision of goods and services. The request must be considered and may be recommended by the Court. This also applies to the future act compulsory acquisition processes. If just terms compensation is payable in accordance with compulsory acquisition legislation, requests for non-monetary compensation must be considered and negotiated in good faith. These provisions apply to offshore acts (Native Title Act, s.24NA (5)). They may also be relevant to onshore compensation negotiation where native titleholders may be seeking outcomes involving offshore interests, such as commercial fishing ventures or management and conservation outcomes in relation to the coastal waters or territorial seas.

7.1.2.1.2 The creation of parks, conservation areas or management plans

A future act under the Native Title Act includes an act that validly affects native title in relation to land or waters to any extent, according to s.223(1)(c)(i). That is, if the act extinguishes native title rights and interests or if it is otherwise wholly or partially inconsistent with their continued existence, enjoyment or exercise (Native Title Act, s.227).

The creation of parks or protected areas is a future act if it affects native title, including restricting the manner and exercise of native title rights and interests. If it is the type of act described in s.24HA (2), which includes the granting of a lease, licence, permit or other 'authority' in relation to the management of water or aquatic resources, then the Native Title Act requires prior notification, and the opportunity to comment. However, the notification requirements do not apply to the passing of legislation (s.24 HA (1)). Any other act that affects native title to offshore areas must comply with any procedural rights that would be available to any other equivalent interest holder, for example, someone holding a lease or licence (Native Title Act, s.24NA(8)). The non-extinguishment principle applies and any effect may be compensable.

It should be noted that if a failure to comply with the future act process occurred on land, as was the case in Northern Territory post Ward[33] the creation of the parks may be considered illegal and void. The substandard treatment of sea country (specifically, marine areas as sea country includes coastal land and marine areas), means that failure to comply will not result in the invalidity of the act. However, such an approach misses the opportunity for engagement and involvement of native titleholders in the design of management plans that they, once native title is determined, will need to be included in.

Pre-existing parks and protected areas may be validated by the Native Title Act as past acts or intermediate period acts. They would be non-exclusive and would therefore be subject to the principle of co-existence. That is, native title would only be affected to the extent of the inconsistency between the rights and interests conferred by the act that created the park or protected area, and the rights and interests asserted under traditional law and custom. Only those rights and interests that are not inconsistent will be recognised and protected by native title.

If the bioregional marine plans purport to regulate or restrict the exercise of native title rights of Indigenous people they should comply with the processes under the Native Title Act. To say that the acts are valid under s.24HA or s.24NA does not exhaust the requirements of the Act. The intention to introduce a plan that may impact the use of native

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[33] *Ward v Western Australia*, Federal Court, WAG 6006 of 1995, judgment 17 May 1996.

title waters or impact the exercise or enjoyment of native title rights and interests should be notified to all registered native title claimants and the Native Title Representative Body (or equivalent) for the area. In the latter case, native titleholders may exist at common law although they have not registered a claim. A native title claim may be lodged in response to the notification. Native titleholders should be provided with a specific avenue for comment, which is guaranteed under the Native Title Act, and any impact may be compensable.

Any restriction on the exercise of native title by such plans does not remove the native titleholders, according to the the non-extinguishment principle. They remain the native titleholders for the area so long as the restrictions are in place and therefore any future plans or other acts that affect native title will be future acts and will be required to comply with the same provisions in relation to notification and comment. On the expiry or removal of any restrictions, the native title rebounds.

The development of management plans for marine zones is a legitimate exercise of executive power by the Commonwealth and does not contravene s.211 of the Native Title Act. However, any restriction on the exercise of hunting and fishing or access rights may have a specific impact on the manner and exercise of native title rights and should be considered a future act. The framework should take into consideration the procedural rights of all native titleholders, claimants and common law holders in developing procedures for notification and comment on plans and agreements developed. It imports the principles of prioritisation and partnership in managing resources over which Indigenous peoples assert rights.

7.1.2.1.3 Native title as a defence

While there is now a comprehensive statutory framework surrounding native title, at its base native title is a right at common law and can be used as a defence to prosecution for alleged unlawful acts such as fishing, hunting, accessing land and waters, etc. outside any determination of native title. This interpretation of the law is confirmed by the High Court in *Yanner*[34]. Although native title is a communal title, the communal laws and customs may bestow rights and interests on individuals within the group. These may be general rights enjoyed by all members of the group or may be site/individual-specific rights, akin to individual proprietary interests or responsibilities.

A defendant may have to establish a *prima facie* ('open-and-shut') case for being part of a native title group, or a reasonable standard of proof to support their defence.[35] For example, the individual may need to establish that they are part of a society that is connected to the area in question through traditional laws and customs, that this was the same society in existence at the time sovereignty was asserted by the British, and that by those laws and customs, the person is entitled to undertake the activity that is being called into question.

7.1.3 Native title representative bodies and boundaries

There are four NTRBs within the SWMR: the Aboriginal Legal Rights Movement in South Australia; the Goldfields Land and Sea Council; the South West Aboriginal Land and Sea Council; and Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation in Geraldton, Western Australia. Figure 6 outlines the native title representative body areas.

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[34] *Murrandoo Bulanyi Mungabayi Yanner v Graeme John Eaton* (1999) 201 CLR 351; (1999) 166 ALR 258

[35] See *Derschaw v Sutton*, (unreported Full Court, SCW 16 August 1996), *Dillon v Davies* (1998) TASSC (20 May 1998).

The functions of NTRBs are specified in Part 11 Division 3 of the Native Title Act and include the following:

- the facilitation and assistance functions referred to in s.203BB
- the certification functions referred to in s.203BE
- the dispute resolution functions referred to in s.203BF
- the notification functions referred to in s.203BG
- the agreement making function referred to in s.203BH
- the internal review functions referred to in s.203BI the functions referred to in s.203BJ and such other functions as are conferred on representative bodies by this Act.

7.1.3.1 Aboriginal Legal Rights Movement

The Aboriginal Legal Rights Movement (ALRM) is a body corporate established under the *Associations Incorporation Act 1985* (SA) and is the native title representative body for the entire area of South Australia, including waters adjacent to South Australia's coastline. The ALRM is governed by a ten member board. Nine of these positions are selected from the three (former) ATSIC regions in the state by a selection committee. The Chairperson is selected independently. The board provides policy direction to ALRM on native title matters with professional support from ALRM's Native Title Unit. ALRM's Native Title Unit is located in Adelaide.

Each native title claim in South Australia is managed by a native title management committee (NTMC), comprising native title claimants from particular claim areas. As at 6 May 2002 there were 23 NTMCs in South Australia. These committees subsequently formed a state-wide representative body called the Congress of South Australian Native Title Management Committees which enables native title claimants to be directly involved in the state-wide negotiation process. Consultations about native title matters in South Australia have proceeded through the negotiation of a framework Statewide Indigenous Land Use Agreement. For further information refer to the SA ILUA Statewide Negotations web site (<http://www.iluasa.com.au/index.asp>) developed by the parties involved in these state-wide ILUA negotiations.

7.1.3.2 Goldfields Land and Sea Council

The Goldfields Land and Sea Council (GLSC) is an association of Aboriginal people from Western Australia's goldfields region. The council was established in 1984 as the peak Aboriginal land and heritage body in the region. The GLSC is the native title representative body for an area that extends from the Western Australia – South Australia border in the east to just west of Esperance and north to Wiluna (on the edge of the Great Central Desert). The GLSC has jurisdiction over the sea adjacent to its south coast boundary, extending to the edge of Australia's EEZ.

The GLSC has a governing committee of 13 members who are elected at the council's annual general meeting. Information about the council is available on their web site at <http://www.glc.com.au/>.

7.1.3.3 South West Aboriginal Land and Sea Council

The South West Aboriginal Land and Sea Council (SWALSC) is the native title representative body for the south-west region of Western Australia, extending from Jurien Bay in the north to Hopetoun on the south coast.

The SWALSC Full Council has fifty-six members who represent 14 wards (Perth East, Perth North, Perth South East, Perth South, Moora, Northam, Brookton, Merredin, Busselton, Pinjarra, Bunbury, Manjimup, Gnowangerup and Albany). Each ward has four members on the full council (an executive committee member, a ward representative, a women's representative and an older person). The executive committee has fifteen members. Fourteen are elected from the general membership and represent each of the 14 wards. The Chairperson is elected by the full council.

In September 2003 SWALSC lodged the Single Noongar Claim extending from Jurien in the north through to Dalwallinu, Merredin and Hopetoun in the east, down to Albany, and including all coastal areas throughout the south-west. SWALSC has identified 218 core family groups that form the Noongar country group. The claim is governed by equal representatives from all families across the region, forming six regional working parties. Further information about SWALSC is available on their web site at: <www.noongar.org.au>.

7.1.3.4 Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation

Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation (YMBBMAC) is the native title representative body for both the Pilbara and Geraldton regions. YMBBMAC is incorporated under the *Aboriginal Councils and Associations Act 1976* (Cwlth). In the Geraldton region it operates as Yamatji Land and Sea Council (YLSC).

YMBBMAC has a governing committee of 12 members, comprising six members each from the organisation's two regional committees. Members of the YLSC Regional Committee are elected from the eligible YLSC membership. YMBBMAC has also established native title claimant working groups to provide instructions to YMBBMAC staff regarding the management of their claims. The YMBBMAC Head Office is located in Geraldton with other offices in Perth, Karratha, South Hedland and Tom Price.

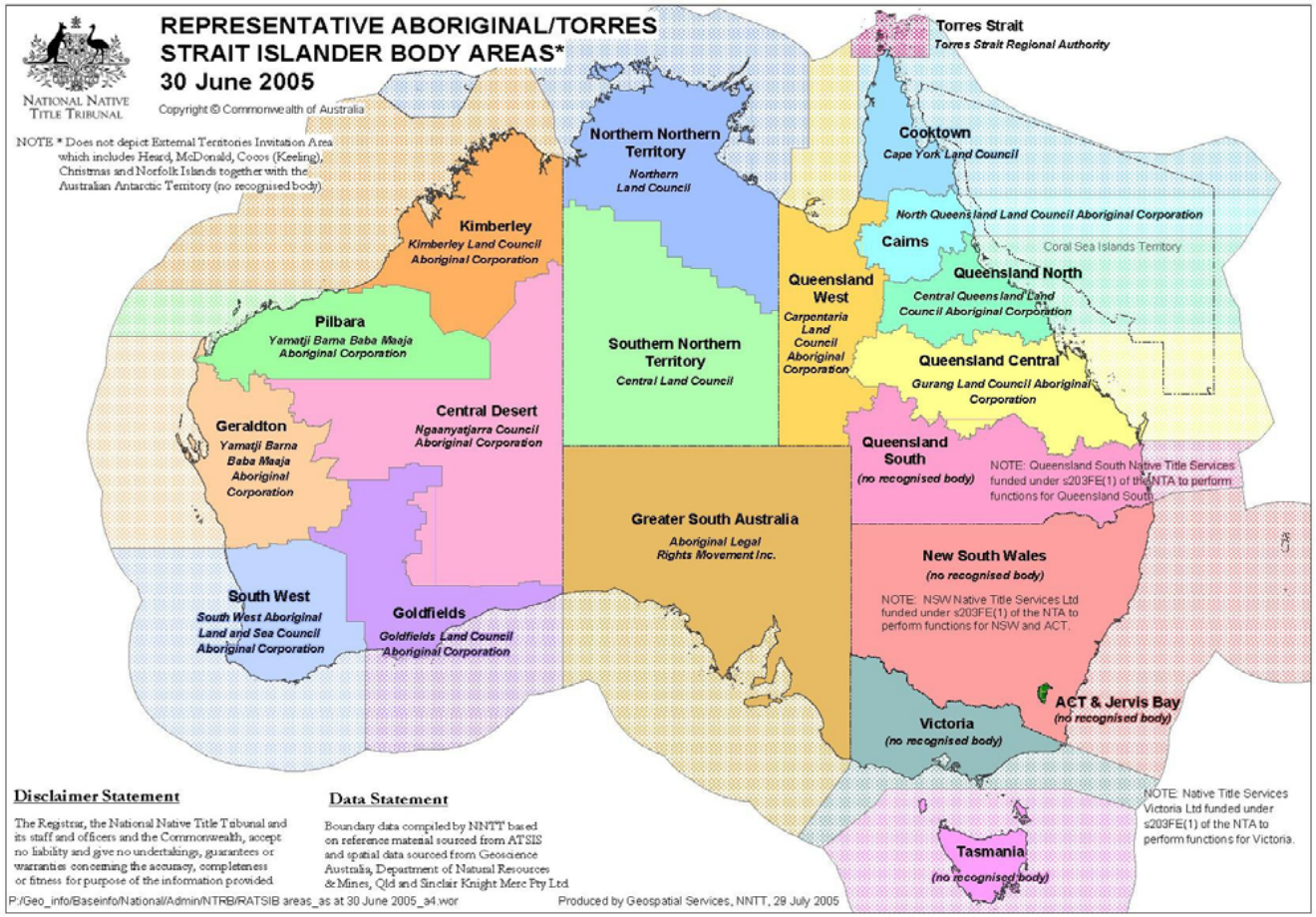

Figure 12. Native title representative body areas (source: <http://www.nntt.gov.au/publications/data/files/RATSIB.jpg> accessed 17 November 2005)

7.1.4. Traditional Owner claimant groups and native title claims

As at 30 September 2005 there were a total of 32 native title applications including areas of the SWMR as per the Federal Court's Schedule of Applications. Eight of these are in South Australia and 24 in Western Australia. A list of these applications, ordered by date of application and sorted by the relevant native title representative body area, is provided below. A map showing the areas covered by these applications is shown on page 160 (figure 13).[36]

Table 4. ALRM representative body area (South Australia) (source: <http://www.nntt.gov.au/publications/data/files/Sea_Schedule_NNTR_stats.pdf> at 30 September 2005)

NNTT FILE NO.	FEDERAL COURT FILE NO.	NAME NNTT	REGISTRATION STATUS	ZONE LWM[37]	ZONE 3NM[38]	ZONE 12NM[39]	ZONE 24NM[40]	ZONE EEZ[41]
SC96/4	SAD6011/98	BARNGARLA NATIVE TITLE CLAIM	ACCEPTED	YES	YES	YES	NO	NO
SC96/5	SAD6012/98	NUKUNU NATIVE TITLE CLAIM	ACCEPTED	YES	YES	NO	NO	NO

[36] For the most up-to-date information on sea claims, refer to the National Native Title Tribunal web site: <http://www.nntt.gov.au/publications/data/files/sea_RNTC_stats.pdf> and <http://www.nntt.gov.au/publications/data/files/Sea_Schedule_NNTR_stats.pdf>

[37] Zone LWM: Determination includes an area of sea that is bounded by the mean high water mark and the low water mark.

[38] Zone 3NM: Determination includes an area of sea that is bounded by the low water mark and the limit of coastal waters (generally three nautical miles).

[39] Zone 12NM: Determination includes an area of sea that is bounded by the limit of coastal waters (generally 3 nautical miles) and the limit of the territorial sea (generally 12 nautical miles).

[40] Zone 24NM: Determination includes an area of sea that is bounded by the limit of the territorial sea (generally 12 nautical miles) and the limit of the contiguous zone (generally 24 nautical miles).

[41] Zone EEZ: Determination includes an area of sea that is bounded by the limit of the contiguous zone (generally 24 nautical miles) and the exclusive economic zone limit (generally 200 nautical miles).

Table 4 continued

SC97/6	SAD6019/98	WIRANGU NO. 2 NATIVE TITLE CLAIM	ACCEPTED	YES	NO	NO	NO	NO
SC97/8	SAD6021/98	NAUO-BARNGARLA NATIVE TITLE CLAIM	ACCEPTED	YES	YES	YES	NO	NO
SC98/4	SAD6027/98	NGARRINDJERI AND OTHERS NATIVE TITLE CLAIM	ACCEPTED	YES	YES	NO	NO	NO
SC00/1	SAD6001/00	KAURNA PEOPLES NATIVE TITLE CLAIM	ACCEPTED	YES	YES	NO	NO	NO
SC01/1	SAD6008/98	FAR WEST COAST NATIVE TITLE CLAIM	NOT YET TESTED	YES	YES	YES	NO	NO
WC95/13	WAD6016/98	MIRNING PEOPLE	ACCEPTED	YES	YES	NO	NO	NO

Table 5. GLSC representative body area (Western Australia) (source: <http://www.nntt.gov.au/publications/data/files/Sea_Schedule_NNTR_stats.pdf> at 30 September 2005)

NNTT FILE NO.	FEDERAL COURT FILE NO.	NAME NNTT	REGISTRATION STATUS	ZONE LWM	ZONE 3NM	ZONE 12NM	ZONE 24NM	ZONE EEZ
WC96/64*	WAD6097/98	THE ESPERANCE NOONGARS	ACCEPTED	YES	YES	YES	YES	YES
WC96/105*	WAD6130/98	WOM-BER	NOT ACCEPTED	YES	YES	YES	YES	YES
WC97/105	WAD6221/98	NGADJUNNGARRA	ACCEPTED	NO	YES	YES	NO	NO
WC01/1	WAD6001/01	WA MIRNING PEOPLE	ACCEPTED	YES	YES	YES	NO	NO
WC99/2	WAD6020/98	NGADJU	ACCEPTED	YES	NO	NO	NO	NO

*Also listed below, extends into the SWALSC representative body area.

Table 6. SWALSC representative body area (Western Australia) (source: <http://www.nntt.gov.au/publications/data/files/Sea_Schedule_NNTR_stats.pdf> at 30 June 2005)

NNTT FILE NO.	FEDERAL COURT FILE NO.	NAME NNTT	REGISTRATION STATUS	ZONE LWM	ZONE 3NM	ZONE 12NM	ZONE 24NM	ZONE EEZ
WC95/46	WAD140/98	SWANBOURNE	NOT ACCEPTED	YES	YES	NO	NO	NO
WC95/86	WAD149/98	BALLARUKS PEOPLES	NOT ACCEPTED	YES	YES	YES	YES	NO
WC96/41	WAD6085/98	HARRIS FAMILY	ACCEPTED (SUBJECT TO REVIEW)	YES	YES	NO	NO	NO
WC96/64*	WAD6097/98	THE ESPERANCE NOONGARS	ACCEPTED	YES	YES	YES	YES	YES
WC96/105*	WAD6130/98	WOM-BER	NOT ACCEPTED	YES	YES	YES	YES	YES
WC96/109	WAD6134/98	SOUTHERN NOONGAR	ACCEPTED	YES	NO	NO	NO	NO
WC97/71	WAD6192/98	YUED	ACCEPTED	YES	YES	YES	NO	NO
WC98/58	WAD6274/98	GNAALA KARLA BOOJA	ACCEPTED	YES	YES	NO	NO	NO
WC/98/63	WAD6279/98	SOUTH WEST BOOJARAH	ACCEPTED	YES	NO	NO	NO	NO

Table 6 continued.

WC98/70	WAD6286/98	WAGYL KAIP	ACCEPTED	YES	NO	NO	NO	NO
WC03/6	WAD6006/03	SINGLE NOONGAR CLAIM (AREA 1)	ACCEPTED	YES	NO	NO	NO	NO
WC03/7	WAD6012/03	SINGLE NOONGAR CLAIM (AREA 2)	ACCEPTED	YES	NO	NO	NO	NO

* Also listed above, extends into the GLSC representative body area.

Table 7. YMBBMAC representative body area (Western Australia) (source: <http://www.nntt.gov.au/publications/data/files/Sea_Schedule_NNTR_stats.pdf> at 30 June 2005)

NNTT FILE NO.	FEDERAL COURT FILE NO.	NAME NNTT	REGISTRATION STATUS	ZONE LWM	ZONE 3NM	ZONE 12NM	ZONE 24NM	ZONE EEZ
WC96/93	WAD6119/98	MULLEWA WADJARI COMMUNITY	ACCEPTED	YES	NO	NO	NO	NO
WC97/28	WAD6161/98	GNULLI	ACCEPTED	YES	YES	YES	NO	NO
WC97/73	WAD6194/98	NAAGUJA PEOPLES	ACCEPTED	YES	YES	YES	NO	NO
WC98/17	WAD6236/98	THE MALGANA SHARK BAY PEOPLE'S APPLICATION	ACCEPTED	YES	YES	YES	NO	NO
WC98/57	WAD6273/98	ARNOLD FRANKS	ACCEPTED	YES	YES	YES	YES	NO
WC00/1	WAD6001/00	HUTT RIVER	ACCEPTED	YES	YES	YES	NO	NO
WC00/13	WAD6136/98	NANDA PEOPLE	ACCEPTED	YES	YES	YES	NO	NO
WC01/4	WAD6006/01	TAYLOR GROUP	NOT ACCEPTED	YES	YES	YES	NO	NO
WC04/2	WAD6002/04	AMANGU PEOPLE	ACCEPTED	YES	YES	YES	NO	NO

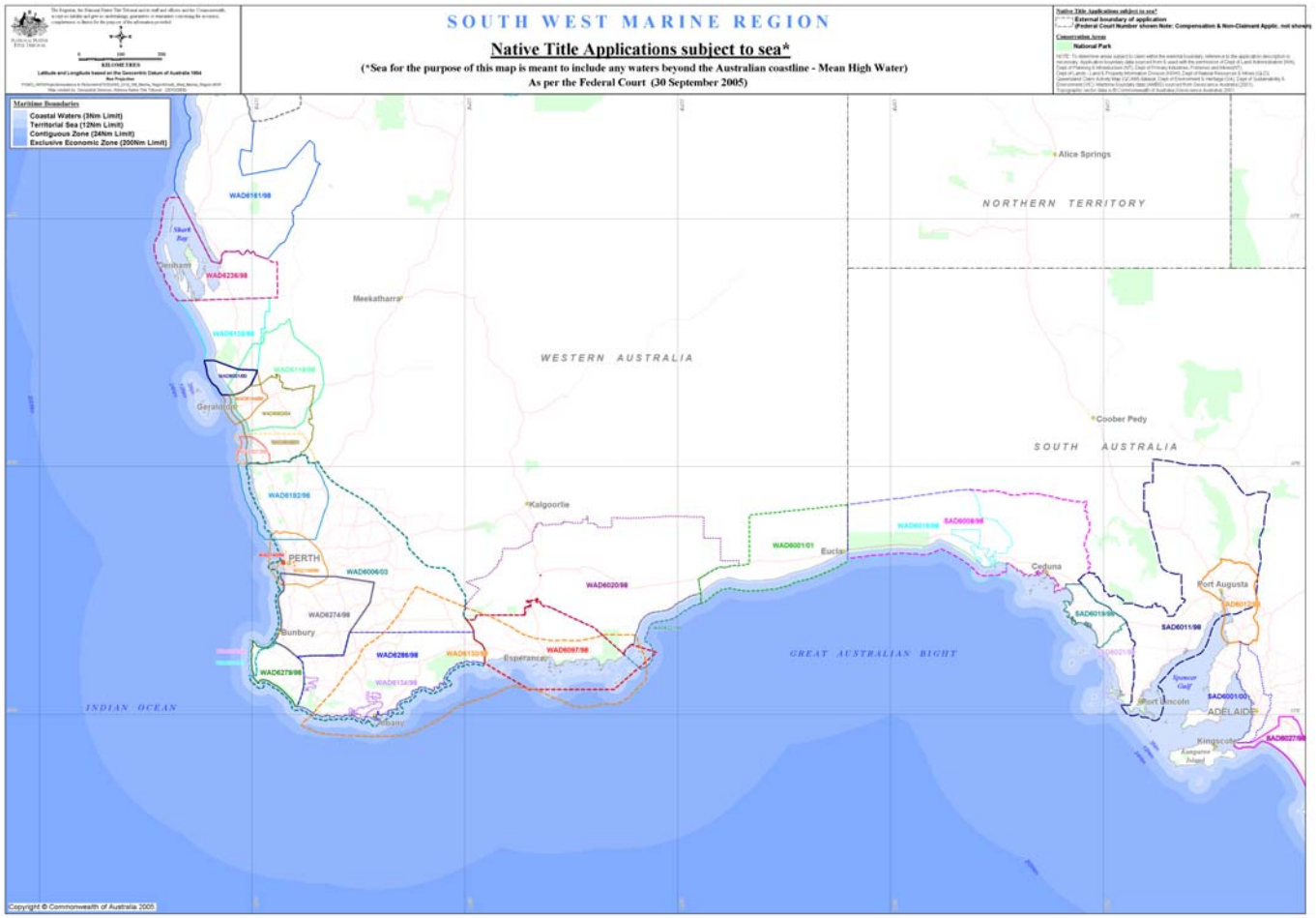

Figure 13. Native title applications subject to sea within the South-west Marine Region (source: map produced on request by the National Native Title Tribunal)

7.1.5 Native title and agreement making

7.1.5.1 Indigenous Land Use Agreements

ILUAs may be entered into over any area and may concern the manner of exercise of native title rights and interests. An ILUA may be entered into with any or all registered native title claimant groups or prescribed body corporates (the holders of native title once determined) or with any person who claims to hold native title, and the NTRB for the area. ILUAs can be entered into over marine areas.

ILUAs may contain provisions relating to the validation of future acts or the manner and exercise of native title rights and interests. Registered ILUAs are binding to all native titleholders. They have their own notification processes. Where these measures are agreed to, compensation is not payable to native titleholders who are party to the agreement or receive the benefits of the agreement (Native Title Act, s.23EB). This protection does not apply to any other form of agreement entered into that affects native title rights and interests.

The subject matter over which an ILUA can be reached is broad enough to encompass most land and water management issues and commercial developments. Nationally, there are now over 30 ILUAs registered with the National Native Title Tribunal, and hundreds are currently being negotiated through the tribunal processes.

ILUAs can contain an agreement to change the effect of an act on native title, for example to provide for non-extinguishment or surrender where it would not otherwise be a consequence of the proposed act. They can define the relationship between native title and other rights and how the respective rights are exercised, and can also determine compensation for past or future acts. As a result, a number of ILUAs are being negotiated to provide access to country and co-existence of interests on pastoral leases. ILUAs are also being used for the co-management of national parks, and the use of sea resources.

The Native Title Act provides for three different types of ILUAs, depending upon the subject matter of the agreement, the parties to be involved and the procedures for registration.[42] ILUAs are primarily being used to validate future acts that would otherwise be invalid because they have not gone through the procedures set out in the Act, whether those acts have already been done or may be done in the future. Of these, the majority concern mining proposals or local developments such as infrastructure or tourism projects.[43]

The three types of ILUAs are:

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[42] For greater detail see Smith, D 'Indigenous Land Use Agreements: New Opportunities and Challenges under the Amended Native Title Act', *Land Rights Laws: Issues of Native Title* Regional Agreements Paper no. 7, December 1998. See also, Lane, P 'A Quick Guide to ILUAs', in Keon-Cohen, Bryan (ed), *Native Title in the New Millennium*, Aboriginal Studies Press 2001 (also available at <http://www.nntt.gov.au>)

[43] See Joint Parliamentary Committee on native title and the Aboriginal and Torres Strait Islander Land Fund, *Inquiry into Indigenous Land Use Agreements*, September 2001.

1. Body Corporate Agreements: These are agreements with one or more PBCs which cover the whole area under consideration. The government must be a party if the extinguishment/surrender of native title is required. These kinds of agreement can only be made where a formal determination of native title has been made and the PBC established. Any other person, including the government, may be a party.

2. Area Agreements: These agreements can be made over areas where native title has not yet been determined. The parties must include the native title group, defined under the Act at s.24CD to include any registered native title claimants, and registered native title bodies for the area, and any other Indigenous person who asserts common law native title. These agreements must be authorised by the native title group, either through certification by the NTRB that all potential native titleholders have been identified by or by the parties certifying that 'all reasonable efforts' have been made to identify the native titleholders. Native Title Services performing functions under s.203FE cannot provide certification, although none of these bodies exist in the South-west Marine Region. Again, any other person, including the government, may be a party and the government must be a party if the surrender of property by the government to a native title claimant is required.

3. Alternative Procedure Agreements: An alternative procedure agreement can be made where there are no PBCs covering the whole area and may therefore be entered into prior to a determination of native title. Alternative procedure agreements may include any of the matters under s.24DB of the Act but may also concern a framework for developing other agreements. These agreements cannot provide for extinguishment of native title because they do not necessarily require all native titleholders to be parties. They do require all relevant PBCs and native title representative bodies to be a party and all relevant governments.

The following sections provide some examples of existing agreements.

7.1.5.2 Agreements concerning waters

Traditional Owners in the Croker Island/Cobourg Peninsula region of the Top End signed the Northern Territory's first seas-only native title pearling agreement with Broome Pearls Pty Ltd. The four-year agreement allows Broome Pearls to establish pearl farming operations free of native title concerns on three Crown leases over seabeds near Valencia Island, in Mountnorris Bay and Malay Bay. In return, native titleholders will have extra rights to ensure environmental and sacred sites rules are upheld, and will also receive royalty payments, as well as training and employment opportunities (Broome Pearls Native Title Pearling Agreement (18 November 2003) 2005).

7.1.5.3 Agreements concerning coastal land and adjacent waters

There have been agreements concerning coastal land abutting commercial fishing and tourism ventures in South Australia. The Narungga people's[44] agreement over the development of a marina at Port Vincent in South Australia provides one such

[44] Narungga people have always lived on Yorke Peninsula. Their country extends as far north as Port Broughton and east to the Hummock Ranges. (See http://www.yorke.sa.gov.au/history/indigenous.html).

example. The agreement recognised the attachment of the Narungga to the land and waters of the Yorke Peninsula and provided protection for cultural heritage in the development of the marina. The potential for flexible compensation outcomes may mean that ILUAs developed in relation to land may have implications for fisheries management. Many seafaring and coastal communities will be interested in the development of commercial fisheries or joint management arrangements and may wish to include these outcomes in negotiations involving developments on lands and coastal areas.

7.1.5.4 Agreements over mining and resource development

The Minerva Gas Fields Agreement between the Kirrae Whurrong Native Title Group, the Victorian government, the NTRB for Victoria, Mirimbiak Nations Aboriginal Corporation, Framlingham Aboriginal Trust and BHP was signed in November 1999. The agreement required a cultural heritage survey and cultural heritage plan. It deals mostly with coastal heritage but, given the recognition of greater rights over places of significance in territorial waters, may provide a model for exploration offshore. The agreement allows BHP Petroleum to construct a pipeline from the Minerva Gas Field (10 km south of Port Campbell in the Southern Ocean) to the coast passing through the Port Campbell National Park to a gas plant north-west of Two Mile Bay. For local Aboriginal people, the agreement provides heritage protection and management, employment opportunities and financial benefits. The agreement does not extinguish native title (NNTT Press release PR99/31, 14 July 1999).

7.1.5.5 Agreements concerning conservation and national parks

The Broome Coastal Park Agreement between the Broome Shire Council and the Rubibi Working Group (representative of the Yawuru, Djugun and Goolarabooloo peoples) provides for land surrounding the Dampier Peninsula to be set aside as a coastal park and managed equally by the shire and the Rubibi Working Group (*Rubibi Interim Agreement with the Shire of Broome (1 May 1996)*, 2005).

An ILUA between the Arakwal People of northern New South Wales and the State Government over land at Cape Byron was the first ILUA to involve a state government and the first to establish a national park. The agreement also involved the National Parks and Wildlife Service, the Department of Land and Water Conservation, the NSW Aboriginal Land Council, the Byron Shire Council and many local and regional interest groups. The New South Wales Government reached an agreement in 1999 with the NSW Aboriginal Land Council that recognised that the state had created national parks in land and waters which may be subject to native title and pledged to enter into ILUAs regarding their ownership and management (*Bunjalung of Byron Bay (Arakwal) Indigenous Land Use Agreement (ILUA) (28 August 2001)* 2004). The South Australian government is currently negotiating agreements for specific national parks and improvements to heritage protection schemes.

7.1.5.6 Agreements outside the native title process

The right of Indigenous peoples to harvest, use and manage the resources of their sea country is an inherent right sourced from a legal system and normative society that

exists parallel to the Australian legal system (regardless of whether the Australian common law recognises these differences). Only to some extent do we acknowledge these rights, formally through native title or exemptions under natural resource management legislation, or informally through policies and programmes that involve Indigenous peoples in the management of country. It is important to seek measures that accommodate Indigenous peoples' rights and practices, particularly their right to be involved in decision-making, instead of making the practice of culture and tradition illegal.

Governments may restrict the exercise of native title rights in the interests of conservation. However, any time a government acts to restrict native title rights, there is now an expectation of engagement, reinforced by various procedural rights and agreement mechanisms, in particular the future act provisions of the Native Title Act. The recognition that native title exists offshore, despite the limitations as to exclusivity, recognises the legitimate interests of Indigenous peoples to be involved in decision-making over their sea country. The recognition of native title in individual cases will provide some limited procedural rights in the face of proposed developments or management proposals. However, there is a more general recognition of Indigenous peoples as stakeholders in the management and exploitation of the marine environment.

Native title and other mechanisms can be used to engage Indigenous peoples in:

- area management
- the protection of sites of cultural and spiritual significance
- the incorporation of cultural knowledge into management practices
- species management
- involvement in the management of commercial and recreational fishing and tourism
- involvement in proposals and development of new marine parks and management plans
- recognition of native title over and joint management of existing marine parks and other protected areas
- priority or special consideration in the issuing of future commercial licences.

7.1.5.7 Conservation agreements

Conservation agreements are a concept in the EPBC Act that allow the relevant minister to enter into an agreement with a person, such as an Indigenous person or incorporated or statutory Indigenous body that has usage rights over the area. Native titleholders would fall under this provision as they hold a legal estate in the land (alternatively, under the Racial Discrimination Act they should be treated as the equivalent of legal estate holders). Conservation agreements can be entered into for the protection and conservation of biodiversity or heritage places or values and may include the protection, conservation or management of listed species, ecological

communities or their habitats. Conservation agreements can be entered into in relation to marine areas (although this reference is only contained in s.304; s.305 refers only to land and s.306, which deals with the content of the agreement, refers to 'places' over which agreements are reached).

Section 306 refers to 'owners' of places, who may be required under the agreement to undertake certain activities, such as implementing certain policies, plans or programmes to promote the biodiversity or heritage values that are the subject of the agreement. Native titleholders should be considered owners for this purpose.[45]

Agreements entered into voluntarily by native titleholders do not affect their underlying title. For this reason entering into agreements for the conservation and preservation of endangered species meets best practice principles by allowing Indigenous peoples themselves to take measures for environmental self-regulation before imposing legislative or regulatory regimes that are inconsistent with the use and enjoyment of native title. By providing opportunities for the exercise of traditional hunting and fishing rights on a sustainable basis within a conservation framework, such agreements ensure that Indigenous peoples' rights are not unnecessarily restricted.

Agreements made outside the native title processes, using other tools available, are a positive development given the constraints of native title law. If the agreement is with an Indigenous community that is not a native title group, and the agreement purports to bind all Indigenous persons within the area (including therefore native titleholders) and restrict their activities such as hunting or fishing, it may be necessary to comply with the notification and comment processes under the Native Title Act.[46]

If a native title group were to object or renege on the agreement and the measures were enforced by the Commonwealth, state or authority through other means, the future act provisions, including compensation provisions, may apply. An agreement with a group of Indigenous people, Traditional Owners or groups, that applied only to those groups who were a party to the agreement and was not otherwise binding on native titleholders in the exercise of their native title rights, may not be considered a future act.

7.1.6 Current ILUAs within the SWMR

As at 30 September 2005 there were two registered Indigenous Land Use Agreements (ILUAs) including sea areas located within the SWMR; both of these are in South Australia. As this time there were no registered ILUAs including sea areas within the SWMR of Western Australia. Information about these ILUAs is available on the Agreements, Treaties and Negotiated Settlements Database (<http://www.atns.net.au>) and the National Native Title Tribunal web site (<http://www.nntt.gov.au>). A map produced by the National Native Title Tribunal on the following page shows the location of these ILUAs.

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[45] See *Ward v Western Australia* regarding the operation of the *Racial Discrimination Act 1975* (Cwlth)
[46] This was the case in relation to activities of the Torres Strait Islands Community Councils wishing to construct public works on native title land: *Erebum Le*.

Table 8. ILUAs with sea areas data sources (source: <http://www.nntt.gov.au/publications/data/files/ILUA_reg_sea_A4.pdf> at 30 September 2005)

NAME ATNS	NNTT FILE NO. NNTT	TYPE	DATE	SUBJECT MATTER
PORT VINCENT MARINA	SIA2000/001	AREA AGREEMENT	18/07/2001	DEVELOPMENT
NARUNGGA LOCAL GOVERNMENT	SI2003/004	AREA AGREEMENT	06/10/2005	CONSULTATION PROTOCOL

7.1.6.1 Port Vincent Marina

The Port Vincent Marina Indigenous Land Use Agreement covers an approximate area of 21.4 ha located about 1 km north of Port Vincent township on the foreshore. The area falls partly within the District Council of Yorke Peninsula.

According to the Agreements, Treaties and Negotiated Settlements Project:

> The Port Vincent Marina Indigenous Land Use Agreement enables a marina to be developed at the town of Port Vincent on South Australia's Yorke Peninsula.

Under the Agreement the local Indigenous Narungga People 'acknowledge' that the necessary activities required for the marina development will extinguish native title and they 'surrender any native title rights and interests they may hold in the land.' Without this Agreement, the development would have been invalid and the right to negotiate provisions of the Native Title Act 1993 (Cth) (NTA) would apply. Under the NTA any activity, such as the development, that may affect native title rights is defined as a 'future act' and must otherwise comply with the future act provisions of the NTA in order to be valid.[47]

7.1.6.2 Narungga Local Government

The Narungga Local Government is also known as the Yorke Peninsula Indigenous Land Use Agreement. According to the Agreements, Treaties and Negotiated Settlements Project. The Yorke Peninsula Indigenous Land Use Agreement was signed between the Narungga Nation, the South Australian Government and four Yorke Peninsula Councils following 18 months of negotiations. The ILUA clarifies the way that native title interacts with local government in the Yorke Peninsula region.

The agreement recognises the Narungga People as traditional owners in the Yorke Peninsula region and outlines a compensation package.

The ILUA creates a regime for when and where acts can be done which may affect native title and cultural heritage. This relates especially to the development of infrastructure. The ILUA also includes an Aboriginal heritage protection protocol.

Under the ILUA, a committee to work on local issues for the Narungga Nation has been created. Employment, economic development, cultural recognition and service delivery in the region are all part of the Committee's mandate.

The Yorke Peninsula ILUA was the first South Australian Indigenous Land Use Agreement between an Indigenous group and local governments. As such, it may form the basis for future agreements in local government areas.[48]

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[47] The Agreements, Treaties and Negotiated Settlements Project web site <http://www.atns.net.au/biogs/A000785b.htm> accessed 20 September 2005

[48] The Agreements, Treaties and Negotiated Settlements Project web site http://www.atns.net.au/biogs/A002277b.htm accessed 3 November 2005

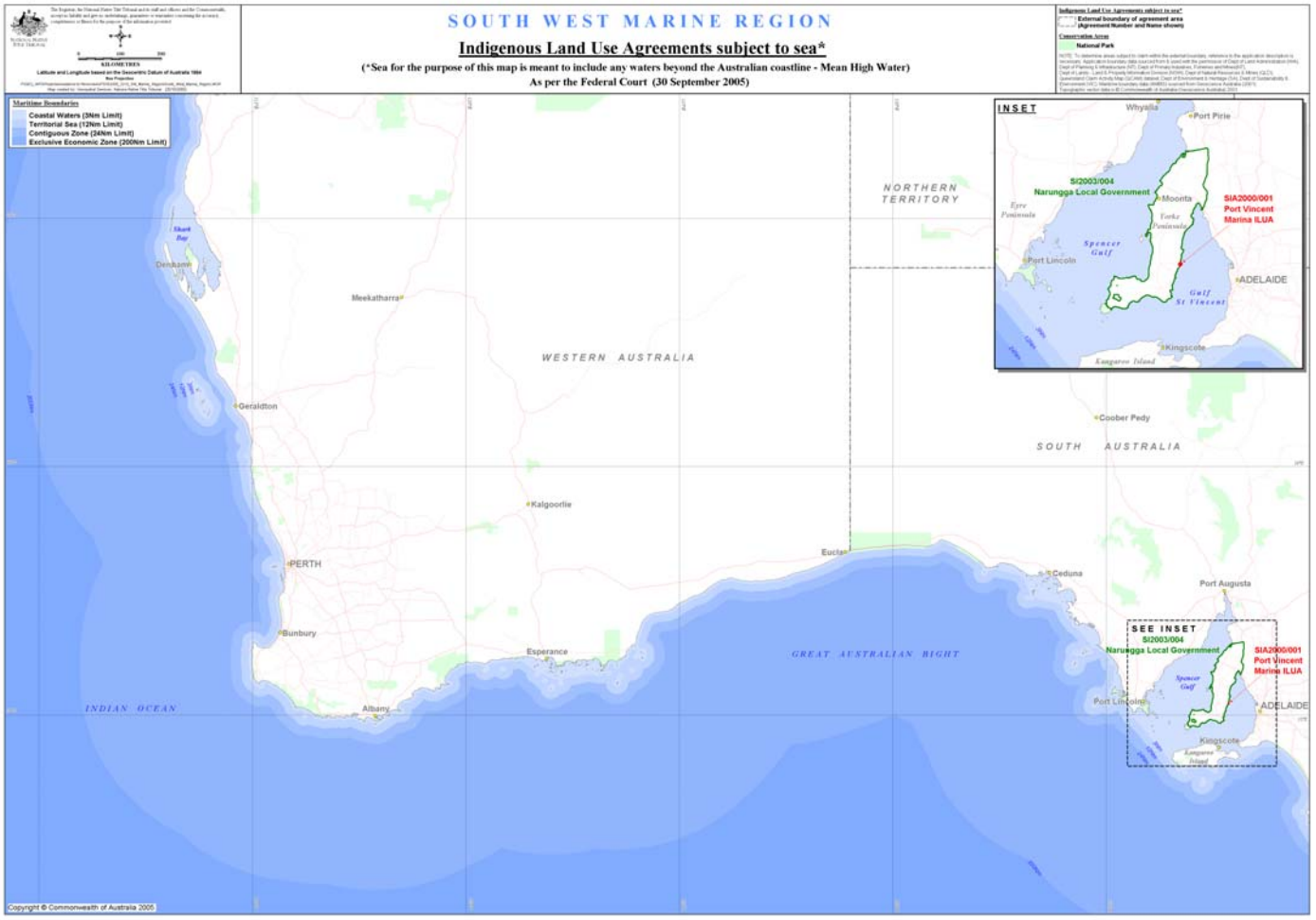

Figure 14. Indigenous Land Use Agreements subject to sea within the SWMR (source: map produced on request by the National Native Title Tribunal)

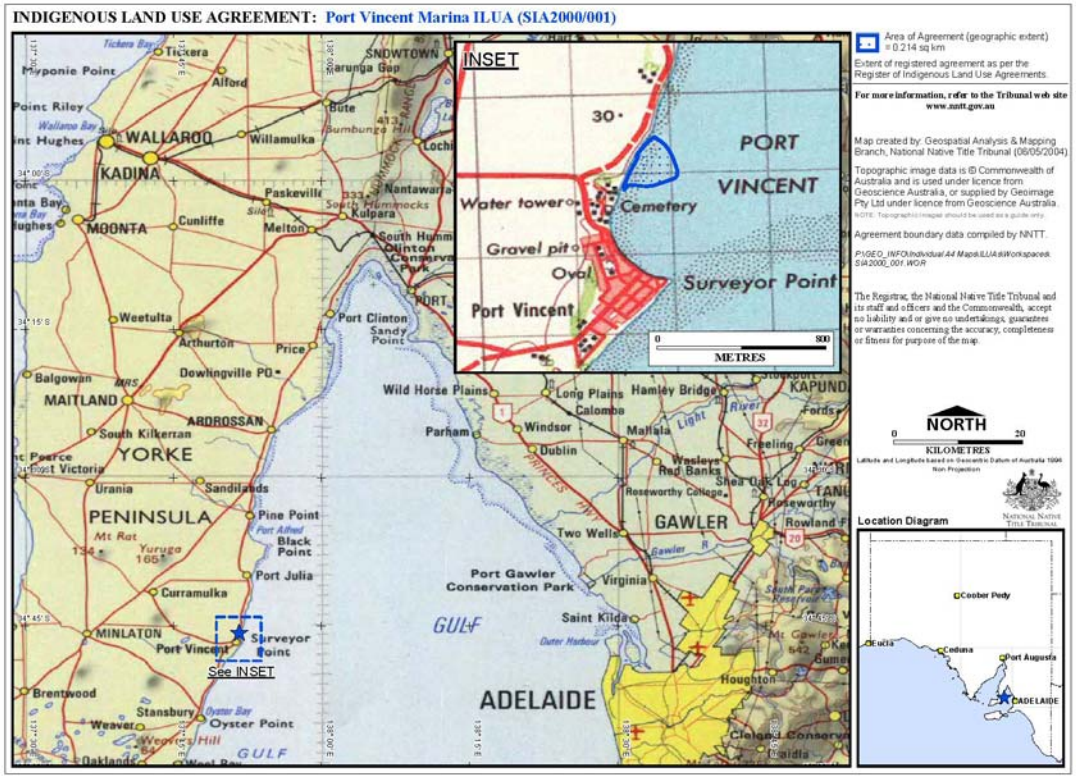

Figure 15. Detail of the Port Vincent Indigenous Land Use Agreement (source: <http://www.nntt.gov.au/ilua/SIA2000_001_MAP.jpg> accessed 17 November 2005)

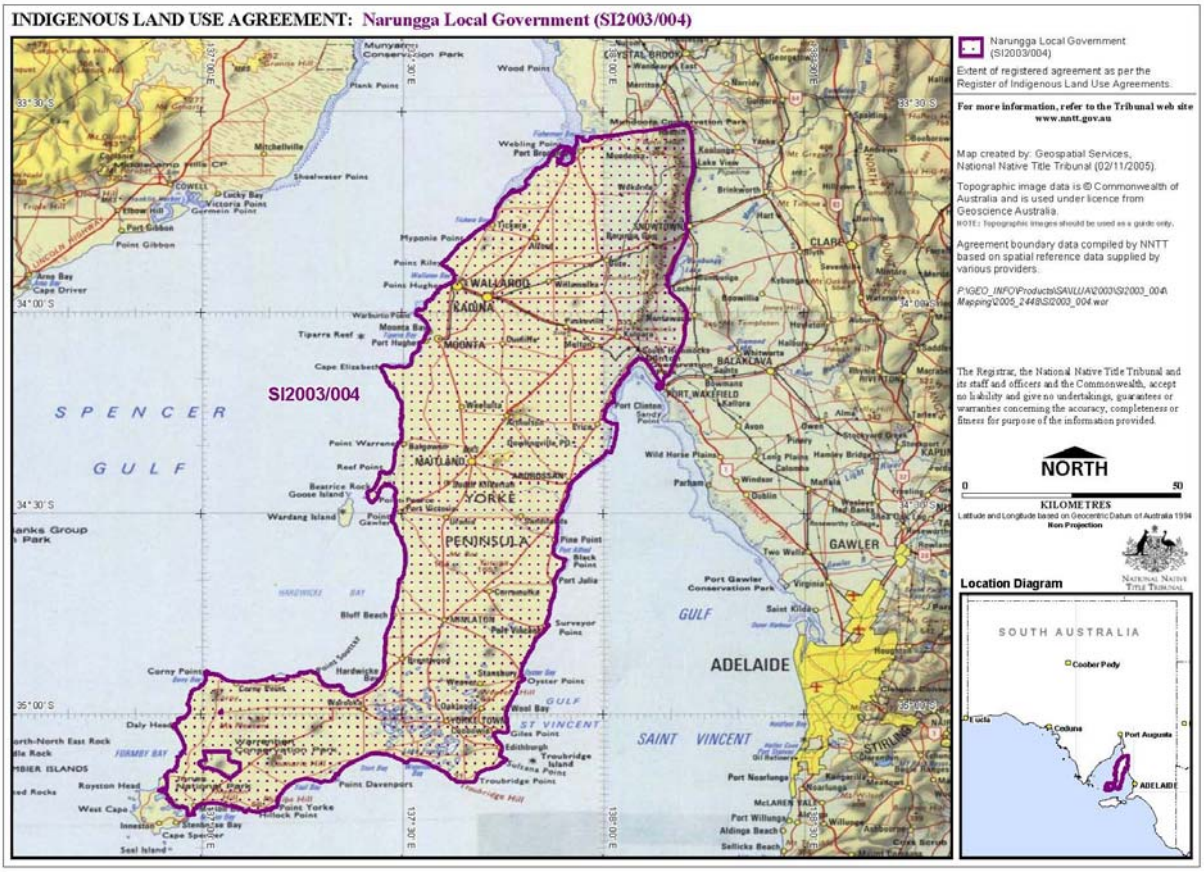

Figure 16. Detail of the Narungga Local Government ILUA (source: <http://www.nntt.gov.au/ilua/SI2003_004.jpg> accessed 17 November 2005)

7.2 Indigenous regional governance structures

7.2.1 Intra-Indigenous alliances between NTRBs

There is only one native title representative body in South Australia and, as indicated earlier, all negotiations relating to native title in South Australia occur within the framework of the state-wide ILUA negotiation process. There are not currently any formal alliances between NTRBs in Western Australia. There was formerly a federation of NTRBs and ATSIC representatives known as the Western Australian Aboriginal Native Title Working Group (WAANTWG). However, the WAANTWG ceased operations in 2003.

As discussed in section 6, the National Indigenous Fishing Technical Working Group involves technical experts from government agencies, industry, recreational fishers and NTRBs (including Yamatji Land and Sea Council and the ALRM), which is facilitated by the National Native Title Tribunal. The NIFTWG was established as an outcome of the Indigenous Fishing Rights Conference convened in Fremantle, Western Australia on 27–28 October 2003 which addressed Indigenous peoples' fishing rights. For further information regarding NIFTWIG, see section 6.5.2 of this report.

7.2.2 Agreements between Indigenous representative bodies and other parties

Indigenous groups within the South-west Marine Region have entered into a wide range of agreements with various parties. Further information about the agreements listed below is available on the Agreements, Treaties and Negotiated Settlements (ATNS) web site (see <http://www.atns.net.au>). While not all of these agreements are directly relevant to the work of the DEH, they provide an overview of the range of agreements entered into by Indigenous groups or their representative organisations within the region. The type of agreement is specified with reference to the ATNS definitions.

7.2.2.1 South Australia

Far West Coast (SA) Agreement (1997)

(Exploration Agreement)

This agreement was negotiated between 14 mining companies and five Aboriginal groups and provides access for exploration to the far west region of Australia. Under the agreement clearance work was funded by the exploration companies (*Far West Coast (SA) Agreement (1997)* 2004).

South Australian Statewide Framework Agreement (2000)

(Framework Agreement)

This agreement sets out a framework for native title negotiations in South Australia, identifying what issues the parties should consider, how to organise meetings and who to talk with. Parties involved in this agreement are the Aboriginal Legal Rights Movement, the Local Government Association of South Australia, South Australian Fishing Industry Council, Seafood Council (SA) Ltd, South Australian Government, South Australian Farmers Federation and the South Australian Chamber of Mines and Energy. For more

information refer to the *South Australian Statewide Framework Agreement (2000)* and SA ILUA Statewide Negotiations web site at <http://www.iluasa.com.au/index.asp>.

Mineral Exploration Template Indigenous Land Use Agreement (ILUA) (2004)

(Framework Agreement & Template Agreement)

This agreement applies to mineral exploration throughout South Australia and provides an alternative to the 'right to negotiate' procedures set out in Part 9B of the *Mining Act 1971* (SA). Parties to this agreement are the South Australian Government, the Aboriginal Legal Rights Movement and the South Australian Chamber of Mines and Energy (*Mineral Exploration Template Indigenous Land Use Agreement (ILUA)* 2004).

Far West Coast (SA) Working Group Agreement

(Framework Agreement & Indigenous Partnership)

The Far West Coast Working Group was formed following the signing of this negotiating agreement between five groups representing Aboriginal communities in the region (Yalata, Maralinga Tjarutja, Mirning, Wirangu and Yabi Dinah Native title claimant groups). The Aboriginal Legal Rights Movement is also a signatory to the agreement. The agreement covers administrative, research, funding and management matters and states that if any individual community is approached, the matter should be referred back to the working group (*Far West Coast (SA) Working Group Agreement* 2005).

Yalata Financial Assistance Agreement

(Funding Agreement)

This agreement relates to the provision of funding by the Commonwealth Department of the Environment and Heritage for the planning and management of the Yalata Indigenous Protected Area (*Yalata Financial Assistance Agreement* 2005).

7.2.2.2 Western Australia

Amity Oil Limited and the Nyoongar Community Agreement (16 May 1997)

(Exploration Agreement, NTA)

This agreement between the Noongar community of Busselton and Amity Oil Limited relates to exploration of one of Australia's largest offshore gas deposits in return for undisclosed compensation. The agreement also refers to site protection (*Amity Oil Limited and the Nyoongar Community Agreement (16 May 1997)* 2004).

Goldfields Heritage Protection Protocol (15 August 2001)

(Frame work Agreement)

This agreement establishes as a set of principles to relating to cultural heritage protection processes and measures and is designed to guide prospectors, explorers and native title claimants seeking to negotiate about future uses of areas within the Goldfields region. The protocol was signed by representatives from the Goldfields Land Council, the

Amalgamated Prospectors and Leaseholders Association and the Association of Mining and Exploration Companies and endorsed by the Western Australian Deputy Premier on behalf of the State Government *(Goldfields Heritage Protection Protocol (15 August 2001)* 2005*, and Goldfield Regional Heritage Protection Protocol,* n.d.).

Burrup and Maitland Industrial Estates Agreement Implementation Deed (January 2003)

(Future Act Agreement)

This agreement consolidates the Implementation Deed and the Burrup and Maitland Industrial Estates Agreement. It was made between the State of Western Australia, the Western Australian Land Authority and native title parties (the Wong-Goo-Tt-Oo, Ngarluma Yindjibarndi and Yaburara Mardudhunera peoples). Under the agreement native title parties surrendered their native title on the Burrup and Maitland Estates industrial land and the land required by the state for residential and commercial purposes in Karratha in exchange for receipt of a number of substantial benefits including a visitors/cultural/management centre, land transfers, compensation payments, education and training resources (*Burrup and Maitland Industrial Estates Agreement Implementation Deed (January 2003),* 2005).

Hutt Lagoon Aquaculture Project Agreement (28 August 1998)

(Future Act Agreement & Land Use Agreement)

This agreement between the Nanda and Naaguja Peoples and Betatene Pty Ltd provides for Traditional Owners to receive compensation in exchange for the expansion of the algae farm on Hutt Lagoon (*Hutt Lagoon Aquaculture Project Agreement (28 August 1998)* 2005).

Memorandum of Understanding between the City of Geraldton, Shire of Greenough and the Aboriginal Communities of Geraldton-Greenough (2003)

This memorandum of understanding (MoU) between the City of Geraldton, Greenough Shire and the local Aboriginal communities provides a framework for partnership by acknowledging the contribution and histories of Indigenous peoples. Specifically, the Geraldton and Greenough councils commit to promoting and supporting Aboriginal events, celebrations and culture. The MoU commits the parties to encouraging participation and to promoting Aboriginal employment (*Memorandum of Understanding between the City of Geraldton, Shire of Greenough and the Aboriginal Communities of Geraldton-Greenough (2003)* 2005).

Memorandum of Understanding between the South West Aboriginal Land and Sea Council and the Department of Industry and Resources (8 October 2003)

This MoU relates to the implementation of action plans and activities to increase employment and economic development opportunities for Noongar people in south-west Western Australia. The MoU includes a commitment to further develop a Noongar Aboriginal Economic Development Strategy (*Memorandum of Understanding between the South West Aboriginal Land and Sea Council and the Department of Industry and Resources (8 October 2003),* 2005).

Memorandum of Understanding between the South West Aboriginal Land and Sea Council and Western Australian Local Government Association (8 July 2003)

This MoU establishes a basis upon which the SWALSC and the WALGA will work together to develop template agreements enabling local governments to progress land management and land use objectives. The template agreements will address such issues as heritage protection, economic and social development, Noongar peoples' involvement in local government elections, and consultation processes (*Memorandum of Understanding between the South West Aboriginal Land and Sea Council and Western Australian Local Government Association (8 July 2003),*2005).

Goldfields Pastoral Access Principles (2004 -)

(Policy/Strategy)

These principles were agreed between the Pastoralists and Graziers Association and the Goldfields Land and Sea Council. The principles outline a set of guidelines for negotiating harmonious access to pastoral leases in the Goldfields by Aboriginal people and for good neighbourly relations between pastoralists and Traditional Owners. The agreement preamble acknowledges the importance of co-existence, noting that pastoralists and Aboriginal people share the same land. The principles address the rights of both groups including the rights of pastoralists to graze commercial livestock, protection of Aboriginal sites of significance, recognition of the traditional responsibilities of Aboriginal people to look after country, and acknowledging the need for orderly processes for resolving access disputes (*Goldfields Pastoral Access Principles (2004 -),* 2005).

Heritage Protection Agreement

(Template Agreement)

This template agreement relates to the South West Aboriginal Land and Sea Council representative body area and is intended to be used where a mining company has applied for the grant of a mining tenement in relation to land over which a native title claim has been made. The agreement seeks to facilitate the protection of Aboriginal cultural heritage and the grant of mining tenement(s) without objection from SWALSC or native title parties (*Heritage Protection Agreement,* 2005).

8 Selected overview of relevant commonwealth and state legislation affecting sea country in the SWMR

This section provides a selected overview of relevant Commonwealth, South Australian and Western Australian legislation relating to the sea country rights and interests of Indigenous Australians within the South-west Marine Region. As noted in section 6 with respect to fishing responsibilities, under the Offshore Constitutional Settlement the Commonwealth granted title and legislative power to the states for the area extending from the low water mark to three nautical miles off shore. The Commonwealth is responsible for the management of the area from three nautical miles to the outer limit of the Australian Fishing Zone.

8.1 Commonwealth legislation

8.1.1 Commonwealth heritage legislation

Indigenous cultural heritage, economic activities and conservation of cultural material and ecological sites are interlinked and interdependent. National Indigenous cultural heritage and conservation operates within the three-tier system at the heart of Australia's federated system of government. Legislation affecting Indigenous cultural heritage between states and territories creates overlapping responsibilities and jurisdictions. However, Indigenous cultural heritage within the SWMR is largely managed and protected at the local level through state legislation and its attendant responsibilities.

Within the SWMR, Indigenous cultural heritage is managed at the national level by the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cwlth), and at the state level by the *Aboriginal Heritage Act 1972* (WA) and the *Aboriginal Heritage Act 1988* (SA).

8.1.1.1 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cwlth)

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHPA) is intended to preserve and protect places, areas and objects in Australia and Australian waters that are places, areas or objects of particular significance to Aboriginals in accordance with Aboriginal tradition (s.4). The Act defines 'Australian waters' as:

a) the territorial sea of Australia and any sea on the landward side of that territorial sea

b) the territorial sea of an external Territory and any sea on the landward side of that territorial sea

c) the sea over the continental shelf of Australia.

A 'significant Aboriginal area' means:

a) an area of land in Australia or in or beneath Australian waters

b) an area of water in Australia

c) an area of Australian waters

being an area of particular significance to Aboriginals in accordance with Aboriginal tradition.

Under the Act an area or object is deemed to be injured or desecrated if it is used or treated in a manner inconsistent with Aboriginal tradition; by reason of anything done in, on or near the area; if the use or significance of the area in accordance with Aboriginal tradition is adversely affected; or passage through or over, or entry upon the area by any person

occurs in a manner inconsistent with Aboriginal tradition. Aboriginal tradition is defined as ‘the body of traditions, observances, customs and beliefs of Aboriginals generally, or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or places’.

Within the SWMR it is through the ATSIHPA that Aboriginal heritage is protected within Australian territorial waters beyond the limit of three nautical miles. Within three nautical miles and on land, Aboriginal heritage is protected by the *Aboriginal Heritage Act 1972* (WA) and the *Aboriginal Heritage Act 1988* (SA). Specifically the ATSIHPA is ‘not intended to exclude or limit the operation of a law of a state or territory that is capable of operating concurrently with this act with the exception of specific Victorian Aboriginal heritage legislation that does not apply to the SWMR’ (ATSIHPA 1984, s.8).

The Act was reviewed in 1996 by the Hon. Justice Elizabeth Evatt (Evatt 1996). The 117 recommendations contained within the Evatt review were based on national consultations with Indigenous communities and 69 written submissions, and were primarily aimed at greater inclusion of Indigenous peoples in the decision-making process in regard to future heritage processes and regulation in Australia. The resultant *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998* was heavily amended by the Senate and the subsequent refusal of the Federal Government to accept these amendments led to the Bill lapsing in 2001 when Federal Parliament was dissolved for the federal election (Cf. Smyth & Bahrdt 2002, p. 130). Smyth and Bahrdt (2002, p. 130), noting Evatt (1996), described the ATSIHPA as having ‘limited effectiveness, particularly in its failure to adequately protect confidential information, spirituality and beliefs,’ and that it gave ‘inadequate recognition to indigenous organisations’ wishes to be involved in negotiation and decision-making about their heritage’.

The Evatt review recommended the creation of Indigenous advisory councils at state and territory levels with this network supported by the creation of an Aboriginal Cultural Heritage Advisory Council. This council was proposed to provide advice to the minister and to independent Indigenous heritage bodies that were to be created as a means of implementing Indigenous heritage protection. Of particular relevance to contemporary Indigenous concerns regarding the protection of Indigenous cultural heritage was the recommendation within the Evatt review that the definition of ‘tradition’ be changed to ‘extend to areas and objects of significance to Aboriginal people in accordance with tradition, including traditions which have evolved from past traditions. It should also extend expressly to historic and archaeological sites’ (ATSIHPA 1984, s.3).

8.1.1.2 *Australian Heritage Council Act 2003* (Cwlth)

The *Australian Heritage Council Act 2003* (Cwlth) establishes the Australian Heritage Council; it was created on 19 February 2004 and replaced the Australian Heritage Commission. It sets out the structure of the council and states the council’s functions in relation to maintaining the Register of the National Estate. The Australian Heritage Council advises the Australian Government on national heritage management and conservation. The chief role of the council is to assess nominations for the National Heritage List and the Commonwealth Heritage List.

The Heritage Council continued the Australian Heritage Commission’s role to act as an independent advisory body to the Minister for the Environment and Heritage, to identify places worthy of listing on the Register of the National Estate, and to be responsible for taking actions to ‘improve and present the national estate’, (Smyth 2002, p. 130). The

Australian Heritage Council (Transitional and Consequential Provisions) Act 2003 provided for the transition to this new heritage regime.

The Australian Heritage Council's key responsibilities include:

- assessing whether a place meets the National Heritage criteria or the Commonwealth Heritage criteria
- advising the minister on conserving and protecting places included, or being considered for inclusion, in the National Heritage List or Commonwealth Heritage List
- inviting public comment on whether a place meets any of the National Heritage criteria or Commonwealth Heritage criteria and whether a place should be included in the National Heritage List or Commonwealth Heritage List
- promoting the identification, assessment, conservation and monitoring of heritage
- keeping the Register of the National Estate
- preparing reports on any matters related to the functions of the council
- a duty not to disclose the Council's assessments and advice until such time as is appropriate (Australian Heritage Council 2006).

Under this Act when a place that may have Indigenous heritage values is nominated to the national or Commonwealth heritage lists, the Australian Heritage Council must seek the views of Indigenous people with rights or interest in the place on its listing, as part of its assessment. The Australian Heritage Council includes two Indigenous members, at least one of whom must represent the interests of Indigenous people.

Under the new heritage regime (see also section 8.1.2.1, the EPBC Act) there are penalties for anyone who takes an action that results, or will result, in a significant impact on the national heritage values, to the extent they are Indigenous heritage values, of a place. The laws also enable Indigenous people to seek Federal Court injunctions against any activities that have a significant impact on the national Indigenous heritage values of a listed place. Indigenous people will be involved in developing management plans for places with Indigenous heritage significance on the national or Commonwealth heritage lists. National heritage places on Indigenous land will be managed through conservation agreements, which will operate in the same way as Indigenous Protected Areas.

8.1.1.3 *Environment and Heritage Legislation Amendment Act (No. 1)* 2003 (Cwlth)

Other amendments to heritage legislation affecting sea country within the SWMR include the *Environment and Heritage Legislation Amendment Act (No.1) 2003* (Cwlth) and the *Australian Heritage Council (Consequential and Transitional Provisions) Act 2003* (Cwlth). These acts must also be considered with regard to their engagement with the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

Passed in September 2003, the Commonwealth described this slate of laws as 'new heritage legislation that identifies, conserves and protects places of national heritage significance, provides for the identification and management of Commonwealth heritage places, and establishes an independent expert body to advise the minister on the listing and protection of heritage places' (Department of the Environment and Heritage <http://www.deh.gov.au/heritage/laws/overview.html>, accessed 4 February 2006).

In particular, the Environment and Heritage Legislation Amendment Act (No. 1) amended the EPBC Act, creating a new national heritage framework. Specifically the Environment and Heritage Legislation Amendment Act (No. 1) has been created to link cultural heritage management networks across the range of national cultural heritage agencies under the Department of the Environment and Heritage. The Act is specifically designed for:

- entering places on the National Heritage List and the Commonwealth Heritage List
- the management of national and Commonwealth heritage places
- designing requirements for impact assessment of development proposals involving National Heritage Places
- requirements for Commonwealth agencies in relation to the management and protection of Commonwealth Heritage Places
- designing and prescribing criteria for the listing and management of heritage places on the National Heritage Places and Commonwealth Heritage Places lists (Department of the Environment and Heritage 2006)

8.1.2 Commonwealth environmental and resource management legislation

8.1.2.1 *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)

The objectives of the EPBC Act are to provide for the protection of the environment, especially in matters of national environmental significance; promote ecologically sustainable development and the conservation of biodiversity; promote a cooperative approach to the protection and management of the environment involving governments, the community, landholders and Indigenous peoples; assist in the cooperative implementation of Australia's international environmental responsibilities; recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.

The EPBC Act established processes for assessment and approval of certain actions, particularly those which are likely to have a significant impact on a matter of national environmental significance. It also established regimes for the conservation of biodiversity including the listing of nationally threatened species, ecological communities, migratory and marine species and the preparation of national recovery plans and wildlife conservation plans for listed species. The matters of national environmental significance identified in the Act as triggers for the Commonwealth assessment and approval regime are national and World Heritage properties, Ramsar wetlands, nationally threatened species and ecological communities, migratory species, Commonwealth marine areas and nuclear actions (including uranium mining).

As noted in 8.1.1.2, the *Environment and Heritage Legislation Amendment Act (No. 1) 2003* amended the EPBC Act and established a new Commonwealth heritage regime. Places of significance to Indigenous people may be included on the national or Commonwealth heritage lists.

The EPBC Act also established the Indigenous Advisory Committee (IAC) to advise the Minister for the Environment and Heritage on the operation of the EPBC Act, taking into account the significance of Indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity (see ss. 505A–505B). Members are appointed to the committee by the minister on the basis of their expertise in Indigenous

land management, conservation and cultural heritage management. They are not representatives of particular regions or organisations. The IAC meets at least twice a year. The IAC is currently reviewing the following issues:

- proposed regulations relating to access to biological resources in Commonwealth areas
- directions in ethnobiological research
- bilateral agreements between the Commonwealth and state and territory governments concerning environmental impact assessment
- Indigenous involvement in the management of World Heritage Areas.

Under the Act, boards of management with majority Indigenous membership may be created to manage Commonwealth reserves, including marine reserves (see ss. 343–352). Co-management arrangements are not available under the Act, and co-management provisions may only apply where the minister and the relevant land council agree to such arrangements and the Commonwealth reserve is located wholly or partially on Indigenous-held land that is leased to the Director of National Parks (see ss. 374–383 and EPBC Regulations part 11).

8.1.2.2 *Fisheries Administration Act 1991* (Cwlth)

The *Fisheries Administration Act 1991* (Cwlth) established the Australian Fisheries Management Authority. AFMA has responsibility for the efficient management and sustainable use of Commonwealth fish resources; ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development; and ensuring that the exploitation in the Australian Fishing Zone meets obligations under international agreements.

Functions of the AFMA include developing management regimes; consulting and cooperating with industry and members of the public in relation to the activities of the Authority; allocating fishing rights and establishing priorities in respect of research relating to fisheries managed by the Authority and arrange for the undertaking of such research.

Twelve management advisory committees have been established under the Act, however Indigenous peoples' interests are not represented in the membership of these committees. Indigenous input into Commonwealth fisheries management may occur through the process for assessment of actions in fisheries managed by the Commonwealth established under s.10 of the EPBC Act.

8.1.2.3 *Fisheries Management Act 1991* (Cwlth)

The *Fisheries Management Act 1991* (Cwlth) established a series of statutory fishing rights and permits which authorise the taking of fish from a particular fishery (see ss. 21, 32). The Act does not contain any provisions regarding the rights and interests of Indigenous people.

8.1.2.4 Natural Heritage Trust of Australia Act 1997 (Cwlth)

The *Natural Heritage Trust of Australia Act 1997* (Cwlth) was established by the Commonwealth in response to the need to redress the '… current decline … and further decline, in the quality of Australia's natural environment … [and to] … improve the management of Australia's natural resources' by a coordinated effort with the states

through intergovernmental agreements (Natural Heritage Trust of Australia Act). The Act is anchored to the government's stated belief that:

> Australia's natural environment is central to Australia's and Australians' health and non-material well-being and to Australia's present and future economic prosperity. Accordingly, present and future generations of Australians will benefit from the ecologically sustainable management of the natural environment (Natural Heritage Trust Act).

Under the Act, the meaning of natural resource management (NRM) relates to:

a) any activity relating to the management of the use, development or conservation of one or more of the following natural resources: (i) soil; (ii) water (iii) vegetation

b) any activity relating to the management of the use, development or conservation of any other natural resources for the purposes of an activity mentioned in paragraph (a) (Natural Heritage Trust Act).

8.1.3 Native title

8.1.3.1 *Native Title Act 1993* (Cwlth)

Native title has a direct and significant effect on the potential future protection and management of Indigenous interests and values within the SWMR. Native title claims, processes and relevance within the SWMR are covered in greater detail in section 7.

8.2 South Australian legislation

8.2.1 *National Parks and Wildlife Act 1972*

As the primary legislation in relation to protected areas, the *South Australian National Parks and Wildlife Act 1972* constitutes a number of arrangements including the tenures of land it applies to, the roles and responsibilities of various parties and the management planning process. An important additional feature of this Act is that it sets out provisions for the cooperative management of national parks with Indigenous peoples, which is discussed in section 4 of this report.

There are five tenure types set out in the National Parks and Wildlife Act, which are, along with their stated purpose, as follows:

- National parks – areas considered to be of national significance due to wildlife, natural features of the land or Aboriginal or European heritage
- Conservation parks – areas that are protected for the purpose of conserving wildlife or the natural or historic features of the land
- Game reserves – areas set aside for the conservation of wildlife and the management of game for seasonal hunting
- Regional reserves – areas proclaimed for the purpose of conserving wildlife or natural or historical features while allowing responsible use of the area's natural resources
- Recreation parks – areas managed for public recreation and enjoyment in a natural setting (South Australian Department for Environment and Heritage <http://www.environment.sa.gov.au>, accessed 2005).

One peculiarity of this Act is that there are no specific provisions for land tenures such as nature reserves, a commonly used land tenure in other jurisdictions that denotes a very high level of protection for particular species or landscapes. Even so, the Act allows for the creation of sanctuaries within a protected area, or on lands that are not protected areas (Division 7), and the creation of zones within protected areas (s.39) which are required to be managed according to the conditions of the management plan. These conditions can include those akin to the nature reserve category that is used in other jurisdictions.

The Act does not stipulate that South Australia's protected areas are vested in a particular body, rather, in s.35(2), it states that all protected areas, aside from those that are constituted of Aboriginal lands, are vested in the Crown. Following this, the instrument of the Crown, for the purposes of this Act and the management of these lands, is the minister, currently designated as the Minister for Environment and Conservation, who is constituted as a 'corporate sole' (s.6) and who is capable of acquiring, holding and disposing of land, as well as issuing leases and licences for a variety of purposes within these lands. Any land that is acquired and held (via the procedures of the *South Australian Land Acquisition Act 1969*) for the purposes of the Act is made subject to its provisions.

While the minister is the agent of the Crown and may act as a corporate entity, s.12 allows the minister to delegate any of the powers he/she holds under the Act to the chief executive officer or director within the Department for Environment and Heritage, or to the statutory entities of the National Parks and Wildlife Council or an advisory committee. Under the same section, the chief executive and the director can also delegate powers of the Act that have already been delegated to them, with the permission of the minister. This ability to delegate is an important feature of the Act, as it provides it with an increased level of workability through empowering government officers and statutory committees.

A further feature of the Act relates to the boards and committees that it establishes. In particular, the National Parks and Wildlife Council, which is established under Division 2 of the Act, has been provided with broad functions designed to improve the efficacy of the Act and the management and management planning of the lands which are subject to it. The functions of this council are to:

1) provide advice to the minister at the minister's request or on its own initiative on any matter relating to the administration of this Act (s.19C(1)(a))
2) undertake such other functions as are set out in this Act (s.19C(1)(b)).

While these functions are broad, there is further guidance for the council in the following section of the Act which sets out that, without limiting functions of s.19(c)(1), the council can advise the minister on other matters relating to the management of the act such as:

a) planning in relation to the management of reserves
b) the conservation of wildlife
c) funding (including matters relating to sponsorship) and the development and marketing of commercial activities
d) community participation in the management of reserves and the conservation of wildlife
e) the development of policy
f) existing or proposed national or international agreements relating to the conservation of animals, plants and ecosystems

g) the promotion (including public education) of the conservation of wildlife and other natural resources

h) the council's assessment of the performance of the department in administering this Act

i) any other matter referred to the council by the minister or on which the council believes it should advise the minister.

In particular, s.19C(2)(a), pertaining to planning in the management of reserves, is relevant to the management planning process and creates an important role for the council in advising the minister in relation to the development and gazettal of management plans. This management plan development, discussed below, is one of the main functions of this Act, so this role is not to be underestimated.

There is no specific provision for Indigenous membership on the council, however there is one Indigenous member on the council under the provision that a member must have qualifications or experience in organising community involvement in conservation (s.15(4)(d)).

The Act also sets out the provision for the development of advisory committees (Division 2A) to advise the minister on any matter that relates to the Act, as well as consultative committees (Division 2B) that represent community interests in the management of reserves and on conservation matters. The Indigenous representative member is an employee of the Department for Environment and Heritage.

As mentioned, management planning is one of the major features of this Act, and as such, it has established that following the gazettal of a protected area through its provisions (and in consultation with the structures set out in the *South Australian Development Act 1993*), the minister is required to prepare a management plan, which is performed by the DEH. When a draft of the plan is complete, it is advertised in the Government Gazette and made available for public comment for a period of three months.

After public submissions are made, the minister refers the plan and the submissions to the National Parks and Wildlife Council, which, considering the public submissions, makes recommendations to the minister in regard to draft changes. The minister then has the power to adopt the draft plan, with or without changes, and it is publicly notified in the Gazette and becomes legally enforceable. There are specific provisions in the case of reserves that are cooperatively managed; these are discussed in section 8.1.2.

8.2.2 *Wilderness Protection Act 1992*

The *Wilderness Protection Act 1992* ‘provides for the protection of wilderness and the restoration of land to its condition before European colonisation. The intention of the Act is to provide strong protection for relatively unmodified environments against any form of negative impact by modern technological society’ (DEH 2003a, p. 1). This Act is additional to the land categories as defined in the National Parks and Wildlife Act, and its development seems to reflect the popularisation of the wilderness concept in Australia throughout the 1980s and 1990s.

To manage the wilderness areas of South Australia, the Wilderness Protection Act first prescribes criteria against which land is assessed in order to determine whether an area should be regarded as wilderness. These criteria, as set out in s.3(2) are:

- the land and its ecosystems must not have been affected, or must have been affected to only a minor extent, by modern technology

- the land and its ecosystems must not have been seriously affected by exotic animals or plants or other exotic organisms.

To conduct these assessments, and to undertake a number of other associated tasks, including commissioning research and advising the minister, this Act creates the Wilderness Advisory Committee (Division 2). It also prescribes that a wilderness code of management be set out by the committee at the commencement of the Act (Division 3) against which wilderness areas are to be managed. This code sets out the objectives of wilderness management, and includes such matters as protection of sites of Aboriginal cultural significance, and sets out general policies for access to cultural heritage sites, access to wilderness areas, fire management and other land management issues (DEH 2004).

Through the Act, the Governor of South Australia can, on the recommendation of the minister, proclaim any reserves or crown lands, or any other lands providing agreement with the landholder is reached, to be a wilderness protection area or wilderness protection zone (s.22). After this proclamation, the Act sets out that a management plan is required, which is prepared in a similar fashion to management plans under the National Parks and Wildlife Act, though it differs in that it is the Wilderness Advisory Committee that views the plan and public comments following the public consultation phase, and makes recommendations to the minister in relation to the plan, rather than the National Parks and Wildlife Council.

Other features of this Act are that it identifies specifically prohibited activities in wilderness areas or zones, particularly mining (s.25). Other prohibitions can be set out in management plans, and these generally seek to minimise mechanised access and building.

While ‘wilderness’ is a lesser-used land tenure in the study area, it is still relevant as a number of wilderness areas are adjacent to the coast in the area being considered. They are listed in Appendix 1.

8.2.3 *Crown Lands Act 1929*

The *Crown Lands Act 1929* sets out the land administration system of South Australia. Within it are powers to set land aside for conservation of natural and cultural features independent of other Acts within the state. These lands are generally referred to as conservation reserves.

These conservation reserves are managed by the Department for Environment and Heritage, and come under the auspices of the Minister for Environment and Conservation.

8.2.4 Administration across the *National Parks and Wildlife Act 1972*, the *Wilderness Protection Act 1992* and the *Crown Lands Act 1929* in South Australia

Rather than establish separate entities to administer each of these acts, the provisions are contained in the *Public Sector Management Act 1995*. Specifically, this is referred to in Part 3 of the Act, which deals with public service structure.

Under Part 3 of the Public Sector Management Act, it is the Governor who proclaims the establishment of administrative units of the South Australian public sector and provides a name for these units. In South Australia, there are a number of administrative units, which operate under the mantle of the DEH, the primary department dealing with natural resource management.

The DEH has carriage of a number of Acts, and among them are the National Parks and Wildlife Act and the Wilderness Protection Act. The department also 'manages the State's public land, which is land held in the conservation reserve system and as Crown lands' and states that it 'has a primary role in environment policy, biodiversity conservation, heritage conservation, environmental sustainability and animal welfare, and is a custodian of information and knowledge about the State's environment'(DEH 2005).

8.2.5 *Aboriginal Heritage Act 1988*

The *Aboriginal Heritage Act 1988* (AHA SA) provides for the protection and preservation of Aboriginal heritage including sites, objects and remains. Within the Act's interpretation of sites of cultural significance, sea country is referred to as 'land' being any 'land lying beneath inland waters or the sea' (s.3). In the Act, Aboriginal sites are thus described as an area of land:

(a) that is of significance according to Aboriginal tradition

(b) that is of significance to Aboriginal archaeology, anthropology or history

(c) includes an area or an area of a class declared by regulation to be an Aboriginal site but does not include an area or an area of class excluded by regulation from the ambit of this definition' (s.3, Clause 3).

An Aboriginal Heritage Committee is required under s.7 of the AHA SA to 'represent the interests of Aboriginal people throughout the state in the protection and preservation of the Aboriginal heritage', and is able to establish subcommittees to investigate and report to the Aboriginal Heritage Committee 'on any matter' (s.7 Clause 2, 5).

Of particular relevance for future negotiations over cultural heritage management in the SWMR, the Aboriginal Heritage Committee is responsible for advising the minister on a range of issues including Aboriginal Heritage Agreements and agreement-making (s.8.1(a) iiia). As with the Western Australian Aboriginal Heritage Act, the AHA SA covers all material culture existing within the state's jurisdiction as well as protection of Aboriginal tradition, the practices associated with the use and maintenance of particular cultural material, places of significance and ritual relevance. Further, as with Western Australian heritage legislation, the AHA SA operates under the advice of an Aboriginal Heritage Committee which provides advice to the Minister of Reconciliation and State Aboriginal Affairs who makes the final decision in regard to all matters concerning Aboriginal heritage in the state. Similar to Western Australia, the relevant minister can act against the direct advice of the Aboriginal Cultural Materials Committee in deciding whether development applications can take place on or near Indigenous cultural heritage sites (Smyth & Bahrdt 2002, p. 144).

In regard to the Register of Aboriginal Sites and Objects required to be kept under Section 9 of the AHA SA, the information contained within this register is strictly protected and confidential. Unlike the National Heritage Database and the Western Australian Register of Aboriginal Sites, South Australia does not allow open public access to site information, requiring under Section 10 that 'the confidentiality of information entered in the central or local archives that relates to an Aboriginal site or object must be maintained unless:

(a) the traditional owners of the site or object have approved disclosure of the information

(b) where all reasonable steps have been taken to consult the traditional owners but the Minister or organisation keeping the archives is satisfied

that there are no traditional owners or that they cannot be identified or located, the Committee (in the case of the central archives), or the organisation keeping the archives (in the case of local archives), has approved disclosure of the information

(c) the information is made available by the Minister in response to an application under section 12' (s.10.1).

Indigenous cultural heritage sites situated within state parks in South Australia are managed by the National Parks and Wildlife Service in consultation with the Department of Aboriginal Affairs and Reconciliation, formerly the Department of State Aboriginal Affairs. Heritage site management involves fencing, revegetation, interpretation and education of visitors about Aboriginal cultural heritage sites.

The *Aboriginal Heritage Site Conservation Strategy* for South Australia has not led to any direct changes to the AHA SA. However the strategy resulted in the verification of 31 per cent of documented sites held in the central archive by December 2002. At the verification rate of 300 sites per year and a further 3212 sites awaiting documentation in 2002, it was not expected that revisiting and verifying all the sites would be complete until 2012 (DEH <http://www.environment.sa.gov.au/reporting/heritage/heritage.html>, accessed 30 December 2005).

8.2.6 *Fisheries Act 1982*

The *Fisheries Act 1982* provides for the conservation, enhancement and management of fisheries, the regulation of fishing and the protection of certain fish, the protection of marine mammals and the aquatic habitat, the control of exotic fish and disease in fish, the regulation of fish farming and fish processing, and other purposes. One of the objectives of the Act is to ensure 'through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited'. The Act also aims to achieve 'the optimum utilisation and equitable distribution of those resources' (PIRSA Fisheries, *The Fisheries Act 1982 – A Brief Overview,* n.d.*).*

Related fishing regulations prescribe Schemes of Management for the various commercial fisheries (including prawn, rock lobster, abalone and blue crab, River Murray, Lakes and Coorong, marine scalefish, charter boat and miscellaneous fisheries) and give legal effect to management policies for a particular fishery.

The declaration and management of protected areas such as aquatic reserves and marine parks is also provided for under the Fisheries Act. Currently there is only one marine park in South Australia, the Great Australian Bight Marine Park (GABMP), which extends into Commonwealth waters and comprises three parts declared under different legislation:

- The Great Australian Bight Marine National Park, established under the National Parks and Wildlife Act
- The Great Australian Bight Whale Sanctuary, established under the Fisheries Act
- The Great Australian Bight Marine Park (Commonwealth Waters), established under the *National Parks and Wildlife Conservation Act 1975* (Cwlth), but now managed under the EPBC Act.

The GABMP is located within the South-west Marine Region and is adjacent to the Yalata Indigenous Protected Area (see section 4).

8.2.7 Draft Fisheries Management Bill 2005

The draft Fisheries Management Bill 2005, once passed by the South Australian Parliament, will replace the existing Fisheries Act. The draft Fisheries Management Bill 2005 is currently being reviewed. Under the Bill Indigenous fishing will be recognised where Indigenous land Use agreements under the Statewide Indigenous Land Use Agreement Framework are negotiated. Within the Bill, Indigenous Fisheries Management Plans will become statutory agreements by which sea country is managed within the ILUA process.

Indigenous interests in the draft Fisheries Management Bill are specifically outlined in Division 3. Section 63 of the Bill specifically refers to ILUAs and native title groups in line with the Act's recognition of Indigenous cultural fishing and linkage with the state-wide ILUA process in South Australia discussed in section 6 of this report.

Under Part 7 Division 3 Section 64:

> (1) The Minister may enter into an agreement with a native title group under which it is agreed that [I]ndigenous cultural fishing activities will be undertaken in an area of waters identified in the agreement in accordance with a management plan (an *[I]ndigenous cultural fishing management plan).*

Indigenous cultural fishing management plans must then adhere to a set of requirements under s.64(2)(a)(ii) 'with any ILUA that relates to [I]ndigenous cultural fishing activities in the waters to which the plan applies'.

Further, indigenous cultural fishing management plans are required under Part 7 Division 3 Section 64 (2) to include objectives of the plan (b), specify management tools to achieve the objectives (c), specify performance indicators, targets and monitoring methods (d), identify areas of water (e), fisheries in relation to those waters (f), specify the practices authorised under the plan (g), identify how Indigenous fishers will be identified (h), and provide how indigenous cultural fishing will be distinguished from other fishing activities (i).

Under Part 7 Division 3 Section 64 (3) exclusive indigenous cultural fishing zones can be identified and include provisions for restrictions and prohibitions (a), and regulate and manage a permit system for this purpose (b).

Unlike Western Australian reforms of fisheries legislation, the Bill clearly regulates Indigenous cultural fishing plans within a tight framework of ILUAs and clearly defined planning processes.

8.3 Western Australian Legislation

8.3.1 *Aboriginal Heritage Act 1972*

Aboriginal cultural heritage is managed within Western Australia under the *Aboriginal Heritage Act 1972* (AHA WA). This Act applies to places or objects of sacred, ritual, spiritual or ceremonial significance to people of Aboriginal descent, or made or used for any purpose connected with traditional cultural life. The Act established a register of all protected areas, all Aboriginal cultural material, and all other places and objects to which this Act applies.

Within the Western Australian Aboriginal Heritage regime, Aboriginal cultural material relates to 'objects and class of objects that are:

(a) of sacred, ritual or ceremonial importance

(b) of anthropological, archaeological, ethnographical or other special national or local interest

(c) of outstanding aesthetic value' (AHAWA, s.40).

Aboriginal sites are referred to as places under the Act and within Section 5 the Act applies to:

(a) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with traditional cultural life of the Aboriginal people, past or present

(b) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent

(c) any place which, in the opinion of the committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the state

(d) any place where objects to which this Act applies are traditionally stored, or to which, under provisions of the Act, such objects have been taken or removed (s.5).

As with the AHA SA, the AHA WA requires that a register be kept of all 'places in Western Australia of traditional or current sacred, ritual or ceremonial significance to persons of Aboriginal descent' (Agreements, Treaties and Negotiated Settlements Project <http://www.atns.net.au/biogs/A001674b.htm>, accessed 3 February 2006). However, unlike in South Australia, the Western Australian Register of Aboriginal Sites and Surveys is available (in summary form) online and information is only restricted on the advice and request of Traditional Owners. Where such requests are made the specific location of the site is blocked within a ten kilometre square area to ensure the site's location is protected (Department of Indigenous Affairs <http://www.dia.wa.gov.au/Heritage/>, accessed 30 December 2005). The register is managed under Section 38 of the AHA WA and contains information regarding over 22 000 Aboriginal sites within Western Australia, including within the SWMR. Information listed includes a description of the site, the informants for that site, the site boundaries, location and a map of the site (Department of Indigenous Affairs <http://www.dia.wa.gov.au/Heritage/SitesSurveys.aspx>, accessed 30 December 2005).

Traditional use of Aboriginal cultural heritage by Traditional Owners forms the basis of the Act's identification of practice and value in regard to Indigenous representation and interest. Traditional use is defined within the Act 'in relation to a person of Aboriginal descent who usually lives subject to Aboriginal customary law, or in relation to any group of such persons' (s.7.1). Further, the Act does not seek to be construed:

(a) to take away or restrict any right or interest held or enjoyed in respect to any place or object to which this Act applies, in so far as that right or interest is exercised in a manner that has been approved by the Aboriginal possessor or custodian of that place or object and is not contrary to the usage sanctioned by the Aboriginal tradition relevant to that place or object

(b) to require any such person to disclose information or otherwise to act contrary to any prohibition of the relevant Aboriginal customary law or tradition (s.7).

Similar to the AHA SA, the AHA WA makes provision for the minister to devolve powers to other individuals and groups. It also provides for heritage agreement-making and the creation of protected areas and covenants with particular owners of the land or area in question, for the protection and preservation of Aboriginal cultural heritage sites and materials. Also in line with the AHA SA, is the role of the Aboriginal Cultural Material Committee in advising the minister on matters of importance with regard to Aboriginal cultural heritage protection within the state.

The Aboriginal Heritage Committee under the AHA SA 'consists of Aboriginal persons appointed, so far as is practicable, from all parts of the state by the Minister to represent the interests of Aboriginal people throughout the state in the protection and preservation of the Aboriginal heritage' (s.7.2). However, the AHA WA seeks specifically identified expertise irrespective of Indigenous representation, but with specific knowledge on matters of Indigenous cultural heritage. In particular, the Aboriginal Cultural Material Committee is made up of one member with specific knowledge in the field of anthropology. Other members will have 'special knowledge, experience or responsibility which in the opinion of the Minister will assist the Committee in relation to the recognition and evaluation of cultural significance of matters coming before the Committee' (ss. 28.3–4). There have now been several Indigenous people permanently on that committee since the 1990s.

8.3.2 *Conservation and Land Management Act 1984*

State conservation estates are managed within Western Australia under the *Conservation and Land Management Act 1984* (CALM Act). The diversity of land tenures managed by the Department of Conservation and Land Management is available in Appendix 1. The CALM Act is explicitly managed via the controlling body of the Conservation Commission of Western Australia (CCWA).

The operations of the CCWA are outlined in sections 18–26 of the CALM Act. The functions of the CCWA include, but are not limited to:

- the care, control and management of lands whose tenure is vested under the Department of CALM
- developing and submitting proposed management plans for protected areas to the Minister for the Environment
- developing guidelines for monitoring and assessing the implementation of the management plans by the Department of CALM as well as setting performance criteria for assessment and auditing of the performance of both the Department of CALM and the Forest Products Commission in carrying out and complying with management plans
- developing policy on a variety of environmental, biodiversity and conservation matters and advising the minister on these and other policies relating to conservation and management of biodiversity and throughout the state
- advising the minister on the application of the principles of ecologically sustainable forest management in the management of state forest and timber reserves and on forest produce throughout the state
- inquiring into and advising the minister on any matter on which the minister requests and, with the approval of the minister, to instigate study or research (s.19).

For marine reserves the controlling body is the Marine Parks and Reserves Authority (MPRA). The MPRA operates in a similar manner to the CCWA. Specific functions of the MPRA include, but are not limited to:

- having the care, control and management of relevant marine reserves and lands which are vested in it
- submitting proposed management plans to the minister for land and waters vested in it and developing guidelines for monitoring the implementation of the management plans, setting performance criteria for and conducting assessment of the implementation of the management plans by the Department of CALM
- developing policies to preserve the natural marine and estuarine environments of the state
- enquiring into and advising the Minister for the Environment on any matter on which the minister requests advice, or other relevant matters, and with approval of the minister, to instigate study or research
- promoting appreciation of marine and estuarine flora and fauna and natural marine and estuarine environments (s.26B).

The operations of the MPRA are also supported by the Marine Parks and Reserves Scientific Advisory Committee, whose function it is to provide advice of a scientific nature to both the Minister for the Environment and the MPRA to assist decision making and management of marine areas (s.26F–H).

These controlling bodies have been separated from the management body to provide a clear delineation between the vesting and management entities, and to reduce possible conflicts of interest, either pecuniary or otherwise. To do this, the CALM Act establishes the Department of Conservation and Land Management (s.32), whose specific functions include:

- managing land to which the CALM Act applies and the associated forest produce, fauna and flora
- providing the CCWA, MPRA and the Marine Committee with the assistance they may require to perform their functions (s.33).

The development and implementation of management plans is one of the most important functions of the CALM Act and its structures, and the development of management plans is the main function for both the CCWA and the MPRA. The process, however, differs significantly between the terrestrial and marine protected areas.

In terrestrial protected areas, it is the responsibility of the CCWA to prepare plans for presentation to the minister. In practicality, this preparation is performed by the Department of CALM according to the requirements of the CALM Act. In many cases, community advisory committees are formed to guide the preparation of the management plan and to assist in the negotiation of major issues. When finalised, these plans are scrutinised by the CCWA and, if approved, they are referred to the minister for public release. They are then released for a period of three months, although this can be extended, during which time members of the public are asked to make comments.

These comments are forwarded to the department and analysed by the CCWA. If necessary, changes are made. When finalised, and with the concurrence of the relevant minister, the Governor is requested to place an order in the Government Gazette, and thus the plan is tabled before both houses of parliament for a period of 14 sitting days. Once this period has passed, the management plan can then be accepted as a statutory document

which can be enforced by those officers who are empowered to do so under the CALM Act.

While the final gazettal process is the same for marine parks, albeit through the MPRA rather than the CCWA, the processes that lead up to the development of the plan are markedly different. This has come about as a result of marine protected areas not being as well developed in Western Australia as its terrestrial counterparts, and there is a need for particular strategies to overcome this situation.

Management of protected areas, as well as the operations of the controlling bodies and the Department of CALM are also required to adhere to all legislation that affects the management of natural and cultural resources, including acts such as the state's *Environmental Protection Act 1986*, *Aboriginal Heritage Act 1972*, *Wildlife Conservation Act 1950* and the *Bushfires Act 1954*. Where there are World Heritage Areas, Ramsar-listed wetlands and other matters of national and international significance, management of these lands is also required to adhere to the Commonwealth EPBC Act.

8.3.3 *Fish Resources Management Act 1994*

The *Fish Resources Management Act 1994* seeks to conserve, develop and share the fish resources of Western Australia for the benefit of present and future generations. In particular the objectives of this Act are to:

(a) conserve fish and protect their environment

(b) ensure that the exploitation of fish resources is carried out in a sustainable manner

(c) enable the management of fishing, aquaculture and associated industries, aquatic ecotourism and other tourism reliant on fishing

(d) foster the development of commercial and recreational fishing and aquaculture including the establishment and management of aquaculture facilities for community or commercial purposes

(e) achieve the optimum economic, social and other benefits from the use of fish resources

(f) enable the allocation of fish resources between users of those resources

(g) provide for the control of foreign interests in fishing, aquaculture and associated industries

(h) enable the management of fish habitat protection areas and the Abrolhos Islands reserve (s.3).

The Act includes provisions relating to management plans, fishing zones, licensing, penalties, protected areas and advisory committees. Under this Act an Aboriginal person is not required to hold a recreational fishing licence to the extent that the person takes fish from any waters in accordance with continuing Aboriginal tradition if the fish are taken for the purposes of the person or his or her family and not for a commercial purpose (s.6).

The Act does not include any special provisions relating to customary fishing and does not generally address the aspirations of Aboriginal people in Western Australia to be involved in fisheries management. In response to these issues raised by Indigenous Western Australians, the Western Australian Department of Fisheries developed an Aboriginal Fishing Strategy (2003) which is currently being considered by the Minister for Fisheries (B Fraser pers. comm. 2006) and is discussed in greater detail in section 6 of this report.

Section 9 Concluding remarks

This literature review documents a range of consultative processes that are attempting to deal with Indigenous interests in sea country within the SWMR. From recognition of native title claims and negotiated agreements over cultural heritage, to MoUs regarding regional governance and representation, the picture that emerges is one of active engagement by Indigenous peoples in industry, government and conservation forums.

Indigenous aspirations to adhere to principles of obligatory responsibility to sea country are expressed through this constant engagement. It is an immutable right of Traditional Owners to utilise and enjoy sea country. It is a responsibility to ensure that it is properly managed in accordance with culturally specific practices located within Indigenous Law. It is an obligation to ensure that the protection of this country occurs for future generations through the transmission of Indigenous ecological knowledge. However, the ability of Indigenous groups to meaningfully engage with this process has been hindered by past policies of exclusion and the inability of government and industry to move beyond consultation into effective management regimes.

Since the completion of the two National Oceans Office publications, *Sea Country: an Indigenous perspective* (National Oceans Office 2002) and *Living on Saltwater Country: Review of literature about Aboriginal rights, use, management and interests in northern Australian Marine environments* (National Oceans Office 2004), there have been a number of significant policy and legislative reviews at the national and state level.

At the Commonwealth level, one of the most interesting aspects of the report is the investment in natural resource management through the NHT and integrated bioregional catchment planning across a range of institutional and jurisdictional boundaries. As with the previous reports into Indigenous interests in sea country in the south-east and north, Indigenous interests in the SWMR are revealed to be intimately interwoven with environmental protection, natural and cultural heritage management and cycles of economic development.

Within the framework of national policy and legislation the impact of the Commonwealth Native Title Act, through the use of ILUAs and regional framework agreements between states and NTRBs, has created an environment of Indigenous consultation and negotiation in regard to customary fishing and commercial Indigenous enterprise. This is particularly evident in regard to proposed changes to the South Australian Fisheries Act via the *Fisheries Management Bill* (2005) and the proposed amendments to the Western Australian *Fish Resources Management Act* (1994). Concurrently, the NIFTWG Principles Communiqué on Indigenous Fishing which was formally endorsed by the Commonwealth, the South Australian Government, the Western Australian Government and Indigenous NTRBs within the SWMR, provides the clearest indication of developments between governments, industry and Indigenous peoples with regard to Indigenous connections with sea country. Legislative reforms in South Australia and Western Australia have shown that these principles have been adopted within a process of recognising Indigenous customary fishing as an integral element of sea country management, while seeking to develop commercial Indigenous fishing enterprises against sustainability principles on the open market.

Until these legislative reforms in South Australia and Western Australia were negotiated with Indigenous communities, Indigenous engagement in consultation processes did not

follow through to the implementation of effective planning in management. This reality was highlighted by Rodney Dillon in his statement that with regard to *Australia's Ocean Policy* in 2004 when he noted that:

> Aboriginal people will be unable to benefit from measures designed to increase their involvement in those processes, unless they are adequately resourced to participate in those processes (Dillon 2004, p. 151).

With regard to Indigenous interests in the SWMR, this report reiterates previous calls for Indigenous interests in sea country to be adequately recognised. This report also supports Indigenous calls for resources to enable the completion of appropriate development and conservation plans within s.306 of the EPBC Act and the need to support current Indigenous regional networks. These represent Indigenous interests in sea country through native title, natural resource management and community development initiatives.

Within the current whole-of-government approach, this report, *Sea countries of the South*, recognises the constraints placed upon the DEH, especially given the cross-jurisdictional boundaries that exist within sea country. This review finds that the National Oceans Office is uniquely placed within the Department of the Environment and Heritage to support Indigenous participation at all levels of industry, heritage conservation, environmental management and economic development in the SWMR. Through the support and development of discrete sea country plans that can be exercised under the regulatory framework of s.306 of the EPBC Act (in regard to conservation agreements), DEH must consult with native title claimants and Indigenous coastal communities towards joint management of discrete regions in the SWMR as well as continuing consultation on a regional basis for issues affecting Indigenous interests.

Indigenous interests in the SWMR have been best reclaimed in South Australia through negotiations of SAMLISA within mechanisms for joint management of protected areas instigated by Department of Heritage and Environment South Australia. Current practices within this state represent a benchmark of negotiated outcomes that seek to engage Indigenous interests beyond consultation, through to management and implementation of Indigenous governance in relation to conservation, heritage and development. Likewise, the development of Indigenous commercial enterprise, and the development of Indigenous regional management plans through negotiation with discrete Traditional Owners within South Australia through the ALRM, represents a practical recognition of Indigenous customary rights in sea country through legislative reform.

The development of sea country plans, whether through state fisheries departments with the support of the DEH, or via Indigenous community groups and NTRBs with the support of the DEH, provides a means of moving from consultation to the implementation of Indigenous aspirations. This report recommends that the DEH develop such plans in consultation with the ALRM under the state-wide framework agreement process embedded in the ILUA process. Further, South Australia's policy focus on Indigenous joint management of conservation zones, the negotiation of a state-wide framework agreement and the instigation of a National Representative System of Marine Protected Areas is conducive to the development and implementation of sea country plans with DEH support.

For Western Australia the employment of Indigenous NRM coordinators and facilitators within regional NRM bodies has outpaced reform for co-management regimes under the CALM Act. Indigenous regional representation being developed within the Western Australian NRM Council and through the Senior Officers' Group has the potential to provide an integrated NRM-based representative structure with direct interest in the development of the SWMR plan. When included with Traditional Owner networks

through NTRBs, this forms an interrelated web of Indigenous bodies focused on natural and cultural resource management.

The DEH is well placed to negotiate with AFMA during the Commonwealth Government's restructuring of the commercial fishing industry. In particular, DEH can support Indigenous calls for appropriate reallocation of Commonwealth fishing licences as part of a resource benefit sharing process, as well as negotiating the development of business and training packages for Indigenous entry into the industry. Included in this engagement with industry is the recognition of 'The Principles Communiqué on Indigenous Fishing' developed by NIFTWG to: recognise customary fishing as a sector in its own right; to integrate and protect customary fishing within fisheries management frameworks in a manner that protects customary fishing; to provide assistance strategies to engage Indigenous people in fisheries-related business; and, to expedite processes to increase Indigenous involvement in fisheries management and vocational training NIFTWG 2003).

At the core of these findings is the issue of appropriate allocation of resources to Indigenous programmes, plans and management structures. The instigation of Indigenous representation on the National Oceans Advisory Group and on the SWMR Marine Plan Steering Committee is a central issue. The instigation of national NHT funding programmes and bioregional investment structures, as well as the implementation of Indigenous joint management programmes in South Australia, represent the potential to break through this 'consultative merry-go-round'.

Appendix 1

Protected areas adjacent to the coast in the South Australian portion of the study area

CONSERVATION PARKS

CP202	Acraman Creek
CP180	Aldinga Scrub
CP102	Althorpe Islands
CP116	Avoid Bay Islands
CP109	Baird Bay Islands
CP223	Baudin
CP097	Beatrice Islet
CP117	Bird Islands
CP098	Busby Islet
CP108	Cap Island
CP064	Cape Gantheaume
CP062	Cape Torrens
CP224	Cape Willoughby
CP123	Carribie
CP058	Clinton
CP075	Deep Creek
CP089	Eba Island
CP081	Fort Glanville
CP144	Franklin Harbour
CP094	Gambier Islands
CP124	Goose Island
CP111	Greenly Island
CP153	Hallet Cove
CP093	Investigator Group
CP092	Isles of St Francis
CP010	Kellidie Bay
CP067	Kelly Hill
CP201	Lake Newland
CP206	Lashmar
CP190	Lathami

CP131	Laura Bay
CP225	Lesueur
CP193	Leven Beach
CP103	Lipson Island
CP195	Marino
CP176	Moana Sands
CP112	Mt Dutton Bay
CP160	Munyaroo
CP141	Nepean Bay
CP101	Neptune Islands
CP179	Newland Head
CP228	Nicolas Baudin Islands
CP091	Nuyts Archipelago
CP110	Nuyts Reef
CP104	Olive Island
CP114	Pelican Lagoon
CP115	Pigface Island
CP187	Point Davenport
CP133	Point Labett
CP069	Port Gawler
CP100	Pullen Island
CP105	Rocky Island (North)
CP106	Rocky Island (South)
CP088	Seal Bay
CP107	St Clair Island
CP095	Sir Joseph Banks Group
CP045	Sleaford Mere
CP099	The Pages
CP018	Torrens Island
CP170	Troubridge Island
CP084	Tumby Island
CP147	Venus Bay
CP066	Vivonne Bay
CP219	Wahgunyah
CP113	Waldegrave Islands

CP090	West Island
CP065	Western River
CP096	Whidbey Isles
CP197	Winninowie
CP039	Wittelbee

CONSERVATION RESERVES

CR013	Chadinga
CR015	Fowlers Bay
CR006	Laura Bay
CR021	Munyarroo
CR037	Nullarbor
CR033	Point Bell
CR039	Sceale Bay
CR058	Simpson
CR027	Venus Bay

NATIONAL PARKS

NP010	Coffin Bay
NP007	Flinders Chase
NP004	Innes
NP001	Lincoln
NP009	Nullarbor
NP017	Onkaparinga River

RECREATION PARKS

RP022	Granite Island

WILDERNESS AREAS

WA001	Cape Bouguer
WA002	Cape Gantheaume
WA003	Cape Torrens
WA008	Memory Cove
WA004	Ravine des Casoars
WA005	Western River

Appendix 2

Protected areas adjacent to the coast in the Western Australian portion of the study area

NATIONAL PARKS

24047	Cape Arid
22795	Cape Le Grande
36996	D'Entrecasteaux
36205	Eucla
31738	Fitzgerald River
31737	Fitzgerald River
42471	Francois Peron
27004	Kalbarri
7406	Leeuwin-Naturaliste
8427	Leeuwin-Naturaliste
8429	Leeuwin-Naturaliste
8430	Leeuwin-Naturaliste
8694	Leeuwin-Naturaliste
8768	Leeuwin-Naturaliste
10922	Leeuwin-Naturaliste
12507	Leeuwin-Naturaliste
13404	Leeuwin-Naturaliste
15633	Leeuwin-Naturaliste
21451	Leeuwin-Naturaliste
30826	Leeuwin-Naturaliste
32376	Leeuwin-Naturaliste
28393	Nambung

32590	Stokes
24258	Torndirrup
31362	Walpole-Nornalup
27502	Waychinicup
25865	Waychinicup
26177	West Cape Howe
24482	William Bay

NATURE RESERVES

25869	Bald Island
11648	Barrow, Middle, Boodie, Double
26411	Beagle Island
24496	Beekeepers
24869	Bernier & Dorre Island
38728	Boodie, Double, Middle islands
29251	Boullanger, Favorite Osprey, Tern, Whitlock Islands
29252	Buller, Whittell & Green Islands
27614	Breaksea Island
26646	Carnac Island
29253	Cervantes Island
33828	Charlie Island
31904	Chatham Island
14944	Cheyne Island
8185	Creery Island
23516	Doubtful Islands
44683	Escape Island
44686	Eclipse Island
29257	Essex Rocks
29256	Fisherman islands
39421	Flinders Bay
26004	Freycinet, Double islands
33829	Friday Island

31909	Glasse Island
24808	Green Island
41901	Hamelin Island
36056	Investigator Island
33901	Koks Island
32339	Lake Shaster
24979	Lancelin, Edward Islands
44678	Lesueur Island
29259	Lipfert, Orton, Milligan
30049	Michealmas Island
144	Mistaken Island
36028	Mt Manypeaks
23825	Mullet Lake
31781	Nilgen
27632	Nuytsland
44077	Port Kennedy Scientific Park
25027	Quagering
33842	Quarrum
22796	Recherche Archipelago
36056	Rocky islets
29260	Ronsard Rocks
25646	Saint Alouarn Island
29255	Sandland Islands
25645	Seal Island
32199	Seal Island
30885	Sedimentary Deposits Reserve
31908	Shelter Island
24204	Shoalwater Bay Islands
27956	Two Peoples Bay
31675	Wannagarren
29259	Snag, Drummond, Webb
36053	Southern Beekeepers
31634	Sugarloaf Rock
29254	Wedge Island
39435	Woody Island

34771	Zuytdorp
27888	unnamed
43903	unnamed

CONSERVATION PARKS

42443	Shell Beach
42470	Leschenault Peninsula
17073	Penguin Island

Appendix 3

Western Australian Protected Area tenure descriptions[49]

National parks

National parks are of national significance for scenic, cultural or biological values. They are managed to conserve wildlife and the landscape, for scientific study and to preserve features of archaeological, historical or scientific interest. National parks also provide for recreation that does not adversely affect ecosystems.

Conservation parks

Conservation parks have regional or local significance. They are set aside to conserve wildlife and the landscape, for scientific study, and to preserve features of archaeological, historical or scientific interest. Conservation parks also provide for recreation that does not adversely affect ecosystems.

Nature reserves

Nature reserves are set aside for the conservation and restoration of the natural environment, the protection, care and study of indigenous flora and fauna, and the preservation of any feature of archaeological, historic or scientific interest. Only low-impact recreation may be permitted, and this only providing it does not adversely affect ecosystems.

Marine parks

Marine parks allow for recreation that is consistent with conservation and restoration of the natural environment, the protection of Indigenous flora and fauna and the preservation of any feature of archaeological, historic or scientific interest.

Marine nature reserves

Marine nature reserves are set aside for the conservation and restoration of the natural environment, the protection care and study of indigenous flora and fauna, and the preservation of any feature of archaeological, historic or scientific interest. Only low-impact recreation may be permitted and this only providing it does not adversely affect ecosystems.

State forest

State forest is managed for recreation and nature conservation, to protect water catchments, and to provide for sustainable resource use (e.g. timber production, wildflower picking).

Timber reserves

Timber reserves are set aside primarily for timber production.

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[49] Sourced from CALM web site <http://www.naturebase.net/national_parks/management/man-tenure_defns.html> accessed 7 November 2005

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<http://www.nntt.gov.au/applications/claimant/SC97_6.html>

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