

Submission
on the
review of the
Northern Territory Fisheries Act

June 2006

Northern Territory
Seafood Council

Summary

The present Fisheries Act contains a mixture of provisions, several of which should be in regulations, not the Act. By developing a new Act rather than trying to amend the present one, the Government has the chance to introduce a piece of legislation that can positively drive the development of the commercial industry, clearly define parameters within which other sectors which utilise aquatic resources under the management of the Northern Territory can operate, where possible be descriptive rather than prescriptive, while at the same time allowing for a precautionary approach which underpins the ecologically sustainable development of industries based on Northern Territory wild catch fisheries. The details contained within this submission are based on these premises.

The term “ecosystem based management” is one sometimes referred to as the panacea for fisheries management. To be useful in a practical sense, such an approach requires a huge amount of information about interactions within ecosystems, information that the Northern Territory does not have and is unlikely to have to any degree in the foreseeable future. Because of this the Seafood Council’s submission is based on the principles of “ecologically sustainable development”. This does not mean that an ecosystem approach should be totally discarded, but rather provides a practical and achievable basis for the new legislation using present knowledge and focused future research results.

The Northern Territory Seafood Council strongly supports the policies of its Pearl aquaculture and non Pearl aquaculture licensee members that each of those sectors should have their own Acts. Each Act should be administered by Fisheries in addition to the Fisheries Act itself.

From a commercial industry perspective, that is, for those who actually create wealth by investing in wild catch, aquaculture and processing ventures, it is crucially important that the recommended Acts provide a significant strengthening of property rights inherent in licences.

By adopting this as a formal policy the Government can then establish a regulatory regime that can be less prescriptive, more descriptive, more flexible and lead Australia in the protection of aquatic resources while providing for the sustainable utilisation of them. Such an outcome benefits the whole community. The quantum leap in investment value in the industry between that applying in the late nineteen eighties when the present Act was developed and today is very high. In 2005 the Seafood Council prepared an

estimate for the Northern Territory Cabinet which put investment in the seafood industry based in the Northern Territory at approximately \$1.4 billion. As a significant wealth producer within the Northern Territory economy, the development of new legislation provides the Government with an opportunity to promote further strategic investment in the seafood industry to the overall benefit of the Northern Territory community and economy.

While a draft timetable for the review was provided in the discussion paper released by the Government, it has already become obvious that the steps contemplated in that timetable need to be revised. The Seafood Council believes that two extra steps are required in the process.

The first is that following the Government's announcement of its policies in various areas, a second round of submissions should be called for based on detail to be associated with those policies. This is a vital step to ensure that the resulting draft Acts have been through broad community consultation phases.

The second is to then prepare a timetable for the development of the new regulations which will provide the details of the policy parameters enshrined in the Acts, to ensure that those regulations are introduced into Parliament at the same time as the Acts. The Victorian Government did not do this and the regulations were passed by its Parliament some years after the introduction of the new Act. Advice from both the Victorian Government and industry is that this situation should be avoided at all costs in other jurisdictions.

The Seafood Council has been seeking a review of the Fisheries Act for many years and certainly does not want to see the final outcome unduly delayed. However, it is strongly submitted that if the process recommended is not implemented, industry, the Government, the community and the Northern Territory economy will be significantly worse off.

Introduction

As the new Fisheries Act will determine how the management of aquatic resources in the Northern Territory will be governed for at least ten years after its enactment, it is vitally important to ensure that its provisions allow as much flexibility as possible to accommodate the significant changes that can be anticipated during that period.

The Seafood Council strongly supports the Government's decision to develop a new Act rather than revamp the present one. The present Act is essentially an administrative document containing within it a certain amount of detailed regulatory material which should be transferred to regulations and management plans. The new Act should focus on providing the framework and parameters within which the details of specific regimes are developed.

The Seafood Council is concerned that, at this stage, there is a lack of clarity as to the specific steps the Government intends to take following the submission period.

It is strongly recommended that, following discussion with the key major stakeholders on the results of the submission period, the Government decides its specific policies in regard to the management of aquatic resources and announces these publicly. Following this, a second submission period should be programmed to allow recommendations of details based on these policies to be prepared by stakeholders.

This submission has been structured to highlight the major regimes that the new Act should address. A number of the issues contained in the Act Review Discussion Paper are really matters that should more properly be considered either in regulations or management plans. In addressing the major regimes, such issues are identified. Where applicable, detail is contained in the submission. However, in several areas it is believed that significant detail is not appropriate until the Government's policy positions have been decided.

1 Interpretations

1.1 “Fishing”

In the present Northern Territory Fisheries Act ...*“fishing” means the catching, taking, or harvesting of fish or aquatic life and includes any other activity which may reasonably be expected to result in the catching, taking, or harvesting of fish or aquatic life and also includes any action taken in support of or in preparation for an activity specified in this definition...*

In recent years there have been suggestions that this definition includes such things as the planning for a trip in a licensee’s residence in days prior to actually going on a trip. To remove the ambiguity in the present NT interpretation it is recommended that the definition of *“fishing”* be that contained in the WA. Fish Resources Management Act as follows;

“fishing” or “fishing activity” means –

(a) searching for fish;

(b) attempting to take fish;

(c) taking fish; or

(d) engaging in any other activity that can reasonably be expected to result in the taking of fish

- 1.2 While there is a definition of *“amateur fishing”* in the present Act, there is no definition of *“commercial fishing”*. This should be included in the new Act.
- 1.3 There is no definition of *“marine protected area”* in the present Act, but a definition should be included in the new Act. This definition should be the same as that used in the NT Parks and Wildlife Conservation Master Plan.
- 1.4 With the provision in the new Act for the introduction of vessel monitoring systems, the definition of *“vessel monitoring systems”* should be included in the Interpretations section.
- 1.5 There should be a definition of what resources are excluded from the definition under the new Act of the *“aquatic resources”* the legislation applies to (eg. dugong, turtles, crocodiles, cetaceans). It is very important that the scope of the aquatic resources that the

Fisheries Act is responsible for is spelt out as this is very vague in the present Act.

- 1.6 Similarly, there should be a definition of ***“aquatic habitat”*** in the new Act to define the application of the Act in regard to this.
- 1.7 As the new Act should provide for the introduction of ***“quota”*** where applicable, the definition of this should be included in the Interpretations section.
- 1.8 Consideration should be given to replacing the term ***“amateur fishing”*** with ***“recreational fishing”***. The latter is the term commonly used within the community and in a lot of promotional material produced by Government.
- 1.9 ***“sector catch share”*** needs to be defined as it is submitted that this should be specifically provided for in the new Act.
- 1.10 ***“structural adjustment”*** needs to be defined as this should also be specifically provided for in the new Act.
- 1.11 The definition of ***“co-management”*** should be included as this is a notable omission from the present Act.

2 Scope

2.1 The provisions within the present Fisheries Act are broad enough to accommodate indigenous fishing area-based and sector management issues. One law should apply to all Northern Territory citizens in the new Act, irrespective of ethnic, cultural or economic background. In the present Act, indigenous people have exactly the same access to commercial fishing licences as those from other cultural groups. This should be preserved in the new Act.

Similarly, the provision in section 53 of the present Act which exempts indigenous people from the need for bag limits or commercial licences when utilizing aquatic resources for traditional ceremonial and subsistence uses should also be specified. **(issue 3,4).**

2.2 The new Act should specify its application in regard to the management of aquatic resources in marine protected areas. The scope of the new Act in regard to other issues in the discussion paper that are not covered in the present Act should also be made clear **(issue 43).**

2.3 The new Act should have the capacity to set out a process of determining entitlements and compensation should future decisions be made to reduce fishing effort or other permitted activities in particular areas. Structural adjustments are a fact of life in the management of aquatic resources and it is very important that the principles and guidelines associated with these are clearly spelt out. The details of these will need to be developed once Government policy on this matter has been decided **(issue 41).**

2.4 With the increasing number of national arrangements being entered into for such issues as aquatic pests, it is important that the new Act provides a head power for such arrangements to be specified in the regulations **(issue 25).** However it should also explicitly provide power to the NT Government to make regulations in regard to the import of such species as green prawns to the Northern Territory to prevent the introduction or spread of diseases that can impact on Northern Territory resources.

2.5 The Seafood Council is concerned about the impact that illegal foreign fishing is having on aquatic resources managed by the

Northern Territory. The escalation of illegal foreign fishing over the past two to three years has been extraordinary, yet there seems to be no provision in current Northern Territory legislation that can protect the investments of licensees or provide for equitable structural adjustments if a Commonwealth agency such as the Department of the Environment and Heritage deems that a reduction in Northern Territory fishing effort must take place if a fishery is to receive future export accreditation.

The scope of the new Fisheries Act should specify the powers that the Northern Territory Government has in regard to the effects of illegal foreign fishing on management arrangements under the Act.

It should also specify the responsibilities of the Northern Territory Government in regard to structural adjustments, should an outside body such as DEH deem that a reduction in NT licensed effort in a fishery must take place to receive future export accreditation.

3 Objectives

- 3.1** In the present Act the objectives are rather clumsily worded and do not address a key fundamental issue of the need to strengthen property rights inherent in a licence. Strong property rights lead to greater security of access to resources for licence holders, more confidence in financial investment in the industry by both financial institutions and licensees and promote more minimalist management arrangements which can result in financial savings to Government and eventually can also lead to greater self-management by licensees.

There are a number of ways in which property rights can be strengthened, but before these are explored in detail it is strongly recommended that the Government makes a very clear policy statement on this issue.

- 3.2** The present Act states that one of its objects is to...*manage the “aquatic resources” of the Territory...* but what these are not made clear. This should be corrected in the new Act.
- 3.3** In the new Act, management of aquatic resources under the principles of *“ecologically sustainable development”* (ESD) should

be explicitly stated and the list of those underlying principles included. It is recommended that the principles listed in the Commonwealth's Environmental Protection and Biodiversity Conservation Act are used, ie;

- *decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;*
- *if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
- *the principle of intergenerational equity, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;*
- *the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;*
- *improved valuation, pricing and incentive mechanisms should be promoted.*

3.4 In regard to an ecosystem based approach to the management of Northern Territory aquatic resources (**issue 2**), the minimal amount of information available does not allow such an approach to be practical. It is submitted that the ecologically sustainable development approach as the basis for management strategies will provide the best outcomes for the Northern Territory.

3.5 In its discussion paper on proposed amendments to the WA Fish Resources Management Act, the Western Australian Government is recommending a number of secondary objectives for inclusion in that Act. Among these are;

- *to foster appropriate levels of development for each of the user groups of the aquatic resources*
- *to enable the allocation and reallocation of fish resources between users of those resources*

It is submitted that these two key areas need to be reflected in the new NT Fisheries Act. The present Act has very little emphasis on development.

4 Management regime

- 4.1 A central tenet of the management regime should be the implementation of sector catch shares in each fishery where there is more than one significant user group (**issue 40**).

In the new Act there should be specific provision for the Minister to determine sector allocations, together with a specific provision for the establishment of reallocation mechanisms for the transfer of allocations between sectors and intra sector.

- 4.2 The new Act should enable the creation of “*sector fishery advisory committees*” to allow each sector to provide specific advice to the Director on the management of its share. This would get over the increasing concern among several licensee groups in the wild catch sector over recent years about the effectiveness and balance of the management advisory committee structure provided for in the present Act, as only representatives of the sector involved would be members of the “*sector fishery advisory committees*”.

- 4.3 In recent years the principle of “*co-management*” of fisheries, that is, a formal partnership approach between Government and stakeholders, seems to have become increasingly blurred. In a number of instances this has led to communication breakdowns and an increasingly widespread feeling of isolation from the decision-making processes within industry. To ensure that this process is reversed, it is important to specifically state in the new Act that a co-management approach will underpin decisions on the future arrangements for various fisheries.

- 4.4 The nature of management controls and how they are imposed have an important impact on the effectiveness and efficiency of the control’s use. Controls should not compromise the conservation or economic objectives of them. The administration of management should ensure the following;

- *Economic efficiency. Controls should not influence investment decisions in any particular direction, because to do so would interfere with economic efficiency.*
- *Social equity. Management should not discriminate on the basis of the type of ownership of a licence, e.g. owner-operator, partnership, company. People in similar circumstances should receive similar treatment.*
- *Administrative transparency and simplicity. It is important that the administration of the management regime provided for in the Act is clear and as cost-effective as possible.*
- *The new Act should provide for the management regime to be flexible within clear guidelines in order to be able to effectively respond to the ever-changing biological, ecological, economic and social conditions that are part of fisheries management. A clear principle of adaptive management contained in the Act will allow stakeholders to maximise economic opportunities as well as make timely and effective readjustments in times of difficulty. While the details of the management regime should be contained within the regulations and management plans, without specific guidance in the Act regarding flexibility of these, the inflexibility of the present legislation will be perpetuated.*
- *The decision-making regime provided for in the Act should be strong and clear enough to ensure that ministerial intervention is needed only in exceptional circumstances. This would allow the day to day decision making processes to progress at arm's length from political processes. However, it does not lessen the right of the Minister or the Government to set policy and make resource allocation decisions as they consider necessary.*
- *Under the present Fisheries Act the Director has almost unfettered powers to make decisions which can adversely impact on the viability of a seafood business when the effect on financial viability is not fully considered as a formal mandatory part of the decision making process.*

Recent events in the crab fishery, where Fisheries advice to the Minister was given without any discussion whatsoever with industry about the impact on the financial viability of the industry of that advice, should never be able to be repeated again.

The new Act should spell out the requirement for the Director to make a comprehensive investigation of the impact on financial viability of businesses involved with a fishery, in close consultation with industry itself, before a final recommendation or decision is made by the Director.

5 Licensing

- 5.1 As already submitted in the Scope section, the various licensing provisions of the present Fisheries Act should be compressed into a general head power in the new Act, providing the legal basis for all licensing aspects/matters currently expressed in both the present Act and regulations. As a general principle, the details of these aspects/matters should be exercised by regulation (**issue 10**).
- 5.2 The new Act should allow for the issue of licences in perpetuity, subject to periodic payments by relevant annual due dates. This will promote a greater security of tenure among licence holders and financial institutions, while at the same time ensuring the timely payment of fees.
- 5.3 The new Act should specifically provide for the Director to approve all classes of persons involved in a harvesting operation, including Assistants (crew) (**issue 9**). The lack of ability of the Director to do this under present legislation has created a number of difficulties for both industry and Government over many years.
- 5.4 Sections 12a, 14 and 14a of the present Fisheries Act (**issue 8**), should not be replicated in the new Act, but the new Act should provide a head power to allow the description of the detail of linkages between these various classes of people in charge of harvesting operations to be contained in the regulations. The simplifying of this matter will benefit all stakeholders.

The Seafood Council is mindful of the enforcement requirements to ensure that it is clear which person is in charge of a licence for harvesting operations at any given time is clear. However the Council does not support the current situation whereby a licence owner who is on holiday on the other side of the world for six months or so can be linked back to a temporary holder of that licence and be charged with not being in direct control of a

harvesting operation if the temporary licensee is found guilty of such an offence. It is simply not feasible to have two people able to be in charge of a harvesting operation at any one time.

- 5.5** The new Act should make provision for appropriate identification requirements for people engaged in commercial fishing activities, including fishing tour operators and other groups who access aquatic resources. The Act should not specify details as these may be required to change over time. The regulations should contain the details (**issue 12**).
- 5.6** Section 17 of the present Act relates to scientific permits. The new Act should empower the Director to issue permits for a variety of scientific and exploratory activities as long as they do not impinge on the existing rights of existing licence holders. These should not be limited to a list in the new Act (**issue 13**) but allow the Director the ability to be flexible within general guidelines as developments evolve.

6 Penalties

- 6.1** There should be no provision in the new Act for the compulsory cancellation of a licence or permit if a specified number of prescribed offences are committed under that licence or permit in a specified time period (**issue 11**). The thrust of the Seafood Council's submission is to increase the property rights inherent in a licence, not weaken them further.
- 6.2** The Seafood Council supports provision in the new Act for the power of the Director to suspend a person's ability to be in charge of or work under a licence or permit if that person is convicted of a specified number of prescribed offences in a specified time period (**issue 11**). The number should be three prescribed offences within any three-year period and the period of suspension should be two years (**issue 19**).

The prescribed offences should not be contained in the Act, but in either the regulations or the relevant management plan, as these can change from fishery to fishery. Furthermore, the Act should make it clear that the prescribed offences should only be decided upon after close consultation with the industry licensee group involved. The

prescribed offences should be the only ones taken into account for any suspension of right to work in the industry for a given period.

- 6.3** A person found guilty of an offence under the new Act should not face an additional penalty equal to a multiple of the prescribed value of any fish or aquatic resources, subject to that offence. There should be a single maximum level of penalty and that should adequately reflect the degree of seriousness of the offence (**issue 16**).
- 6.4** In regard to recreational fishers, the range of penalties for exceeding possession limits or minimum size limits should accurately reflect the degree of seriousness of the particular offence or offences (**issue 17**).
- 6.5** Recreational fishers found guilty of significantly exceeding personal possession limits for managed species should be deemed to have engaged in commercial fishing activities and thus become subject to penalties applying to the commercial sector. However, in the Act the word significantly should not be used as it is subjective, not objective. The Act should specify at what level over the personal or boat possession limits people are deemed to be engaging in commercial fishing activity (**issue 18**).

7 Structural adjustment

- 7.1** The new Fisheries Act should specify the processes to be followed in the event that resource reallocation occurs, be the reasons Government decisions on allocation between sectors, loss of access and resultant displacement of effort due to exclusion zones such as those within marine protected areas, or the declaration of sacred sites under the NT Sacred Sites Act

8 Availability of commercial information

- 8.1** The confidentiality and security of logbook data protected under section 34 of the present Act should remain. However, the current stipulation that a minimum of five licences must have worked in an

area in a particular time period before that information can be released needs to be reviewed.

There have been instances over the past few years where this stipulation has caused difficulty for both industry and the Government. While unable to be prescriptive at this stage, the Seafood Council needs to consult with its members prior to recommending a specific way forward on this matter. This will be done by the end of August 2006.

- 8.2** The Director should be provided with powers under the new legislation to use and release information obtained using Vessel Monitoring System technology, but there should be safeguards enshrined in the legislation which reflect those in other jurisdictions regarding VMS material (**issue 22**). It is recommended that the Northern Territory work through the Commonwealth VMS system and reflect the VMS provisions in the Commonwealth Fisheries Act in the new Northern Territory Act.
- 8.3** In regard to Fisheries Enforcement accessing Vessel Monitoring System information for the purpose of undertaking investigation and prosecution activities (**issue 23**), the Act should reflect the practices and formal agreements between enforcement and management in other fisheries management jurisdictions. There are well established protocols in the jurisdictions that have VMS and, as far as possible, there should be a uniform reflection of these protocols nationally.
- 8.4** While the provision in section 34(3) of the present Fisheries Act (that is, the Director can release information if it is to be used expressly for the purposes of prosecution) should be reflected in the new Act, the Police should not have the ability to access such information at will for the purpose of conducting investigations. The new Act should provide a clear and stringent mechanism for the evaluation of such requests from Police, should they be received by the Director (**issue 24**).

9 Aquatic pests

- 9.1** The new Fisheries Act should specifically provide for the NT to participate in national arrangements with respect to undertaking management, surveillance, emergency response and cost sharing

arrangements for aquatic pests (**issue 25**). While it is the responsibility of Government to draft such provisions, wide consultation with key stakeholders such as the commercial seafood industry should be undertaken prior to the provisions being finalised. The national arrangements should apply to both fresh and salt water aquatic pests (**issue 26**).

- 9.2** While the new Act should provide for the listing of aquatic species of concern, they should not be specified in the Act itself but rather as a schedule to the regulations (**issue 27, 29**).
- 9.3** In regard to a proposal for a new role of Inspector of aquatic life, the Seafood Council is not in a position to comment as it has no detail about why this issue has been raised (**issue 30**).

10 Aquaculture

- 10.1** Both Pearl aquaculture licensees and non Pearl aquaculture licensees wish to have their own Act for each sector. The Seafood Council supports this (**issue 5,6**). Because of the Pearl Industry Advisory Committee deliberations in the Northern Territory, this submission will not deal in detail with what the pearl industry wishes to see in its own Act. However, as Seafood Council members that licensee group has the full support of the Seafood Council for what it wants to achieve in the new legislation.

In regard to the aquaculture sector other than Pearl, there are a number of key elements that need to be addressed in new legislation.

- 10.2** The new legislation should contain a clear mechanism to enable the declaration of prohibited species specific to the NT to be made (**issue 28**). There should also be explicit provision in regard to mutual recognition of species risk assessments at the national and NT levels and this provision should specify that wherever possible, such mutual recognition should be accepted when the national and NT risk assessment processes are the same.

There are three key areas of risk which are of concern to aquaculturists and wild catch licensees alike;

- the potential for imported aquarium and farmed species to escape or be released into the wild
- the potential for imported water plants to enter the environment
- the potential for exotic diseases to be transmitted to both farmed and wild stocks through the use of product such as imported green prawns for bait and burley in the recreational and tour operator sectors

10.3 The Darwin Aquaculture Centre is a key resource for both present and future aquaculture in the Northern Territory. The Seafood Council supports whatever the appropriate action is to ensure that the DAC remains intact, viable and able to carry out the range of activities in research, development and commercial production which will benefit the Northern Territory aquaculture industry (**issue 31, 32**).

10.4 In the new legislation there should be specific provisions to cover the impacts on “the public estate” that may arise from an aquaculture operation (**issue 33**).

10.5 There should be specific provisions for a compensation mechanism in the event that an aquaculture business is severely financially disadvantaged or even bankrupted as a result of being forced to destroy stock in order to protect “the public estate” (**issue 34**).

10.6 The new legislation should specifically provide for permanent tenure of an aquaculture licence associated with the land that is used for aquaculture. The one licence should cover all areas of aquaculture operations, including waste issues, water use issues etc. The current system is onerous, time-consuming and is an unnecessary burden on both Government and business. The Darwin Aquaculture Centre should become the one-stop shop for such activities, which would significantly streamline the present cumbersome and often disjointed processes that industry has to work with.

10.7 Aquaculturists should not be required to post bonds to assist in dealing with any significant detrimental environmental outcomes that may arise as a result of undertaking aquaculture activities (**issue 38**).

- 10.8** How capital is raised for any venture is a commercial business decision that should not be dictated in any way in fisheries legislation (**issue 39**).
- 10.9** Dialogue must be ongoing between the commercial aquaculture sector (Aquaculture Licensee Committee) and Government in order that the new Act will be drawn up to foster the growth of a sustainable and vibrant aquaculture industry in the Northern Territory.