

# **RECFISHWEST SUBMISSION TO THE ABORIGINAL FISHING STRATEGY, DRAFT REPORT.**

## **INTRODUCTION**

Recfishwest is the peak representative body for recreational fishing in Western Australia. It represents the interests of more than 600,000 Western Australians who go fishing and is recognised in this capacity by the Government of Western Australia, the WA Department of Fisheries and other government departments and authorities.

This submission constitutes Recfishwest's response to the Aboriginal Fishing Strategy (AFS) developed under the auspices of Hon. E. M. Franklyn QC, Chairman, Aboriginal Fishing Strategy Working Group.

Recfishwest notes Justice Franklyn's foreword to the Paper in that the report's outcomes do not represent the consensus views of those participating in the Working Group, of which Recfishwest was a member. Recfishwest was happy to participate on the Working Group and had separately provided a submission to the Group that is herewith appended.

## **GENERAL PRINCIPLES**

Prior to commenting on those recommendations of particular relevance to the recreational fishing community, we would like to make a number of general observations that will assist in providing context to the recommendations commentary below.

### **Aboriginal Aspirations.**

Recfishwest considers that the AFS has fairly recorded the aspirations of those individuals and representative organisations with which it has consulted and that, within this limited group, it has consulted in-depth. While this is a strength at that level, it does mean however that the suite of recommendations, now enter the broad community in the context of possibly being construed as an 'ambit claim' without wider views having been previously sought.

This may not be the case, but it will be up to the Aboriginal community and not necessarily government interests to strongly advocate, including thorough separate consultation, the more controversial recommendations of the AFS if these are to obtain consensus support.

In this respect we note that those consulted have expressed concerns that the AFS might engender community discontent, represent a tenuous precedent, and hence lead to a reluctance to support implementation. Recfishwest feels that the consequence of the adoption of the most controversial recommendations will inevitably cause conflict if implemented in the forms recommended. To that extent Recfishwest is not able to offer full support for those elements without significant caveats as detailed below.

### **Sources of Funding.**

We note that implementation of many of the Paper's recommendations will require additional and often substantial monies. Recfishwest will strongly oppose requisite funding being sourced from funds that are currently allocated against other Department of Fisheries

programs having implications for recreational fisheries management and conservation issues.

Recfishwest has already, in other forums, expressed its very strong concerns that major recent initiatives including the wetfish review, integrated management, as well as the West Coast and Gascoyne recreational fishing reviews, are seriously under-resourced and consequently at risk of failing.

For these reasons Recfishwest insists that any funding to flow to the AFS must be sourced from 'new monies'.

### **ESD and FMRA 1994.**

Any actions taken to implement AFS recommendations must not compromise ecological sustainability or adversely affect biodiversity, and must be consistent with the Fisheries Resources Management Act 1994. Recfishwest is pleased that these key considerations underlie the report outcomes. We also note that the report requires that actions must be practical and be implemented within the existing legal, political and social structures of Western Australia.

### **Native Title 'Rights'.**

Recfishwest recognises that Native Title has not yet been fully or at all articulated for most Aboriginal peoples and that other actions need to take place in the short term if Aboriginal fishing aspirations are to be given effect. However, while conceding that 'native title' considerations are likely to be persuasive in the north of the State, we would prefer to see the implications of successive native title outcomes and agreements realised prior to engaging in a significant set of affirmative actions in the State's southern regions. Recfishwest does not think that the AFS has made a very strong *prima facie* case for major differential treatments south of the 26th parallel.

For example, the observations at p33 in support of customary fishing being different to recreational fishing seem to us to be 'plain silly'. Many Australians, not just Aboriginal, have strong cultural, social and in cases, spiritual links to the coast and its resources. Witness for instance the numerous annual 'blessing of the fleet' ceremonies as well as the influence of millions of immigrants from maritime cultures with eons long histories of fishing. Trite and superficial attempts to delineate between customary fishing and the wider population are unhelpful in creating the consensus necessary for the AFS to be successful.

Recfishwest does not think that, at least for the southern regions of the State, there is a significant amount of sympathy amongst our stakeholders for major differences in management for Aboriginal people vis a vis broader society. As such our comments in relation to relevant recommendations are likely to be 'socially conservative'; but we will support those recommendations that give effect to Aboriginal community aspirations which will not give rise to significant perceptions of 'iniquitous' outcomes.

### **Integrated Management.**

With reference to the impending integrated fisheries management initiatives, Recfishwest strongly opposes a generic set of allocations to be made for customary fishing (see below for detailed argument). However, we are not opposed to 'case by case' allocations on a species by

region basis, providing that such cases can be transparently seen to be supported by pre-existing practices as well as meeting sustainability principles. We believe that such outcomes would be unusual but may be justified for several northern species and possibly marron in the south west.

Recommendations. Recfishwest has not commented below on all the recommendations of the AFS; only those on which we wish to put a position or could usefully add comment. Please note that where 'support' is indicated without supplementary comment, such is done specifically on the basis outlined in the AFS. That is, Recfishwest reserves the right to modify its views as wider consultation results in further Strategy development.

### **Recommendation 1- Customary Fishing Defined.**

While Recfishwest accepts the broader notion of customary fishing it has several concerns with the definition contained in this recommendation.

The term 'non-commercial communal needs' evokes concern that catch levels could become excessive without a mechanism for total catch control. We believe that the implementation of the proposed possession limit is essential to ensure this concern is addressed.

Recfishwest believes that if fishing is for 'personal' reasons only, then there is no reason why ordinary recreational prescriptions should not apply. The general argument for the recognition of customary fishing is predicated on broad 'community' obligations. We believe that an emphasis on 'personal' use is unlikely to engender wider audience sympathies or support.

### **Recommendation 2 -Customary Fishing includes elements of Barter.**

Recfishwest supports the concept of 'barter' or exchange of fish to the extent that it is limited to the proposed Aboriginal Fishing Area 1.

We believe that there is a need to define 'limits' for this activity to void potential oversupply and possible circumvention of the intent of this proposal. (ie. a single Aboriginal community becoming the fish supplier for a wide geographic area.)

### **Recommendation 3 -Customary Fishing Methods.**

Recfishwest supports this recommendation in principle but believe that there must be a clear definition on appropriate fishing gear. For example, we believe that it would not be appropriate to use commercial fishing gear or methods such as demersal longline or trawl nets. We suggest that the gear limit include all current accepted recreational fishing gear plus demonstrated traditional gear.

Recfishwest strongly believes that the use of poisons should be banned. The AFS acknowledges that poisons are "very effective in catching fish, even more so than modern fishing techniques...". Recfishwest feels that the cost to Aboriginal fishers of foregoing this method is now completely outweighed by benefits flowing from their take-up of modern technologies. While not a topic covered directly by the AFS, Recfishwest also notes the growing community concern with regard to unsustainable Aboriginal hunting of protected marine species. In such a context banning the use of poisons would have the particular social

utility of demonstrating goodwill in respect of the concerns expressed by many fishers to the wide ranging recommendations generally of the AFS.

The issue of Aboriginal gill netting remains highly contentious and must be resolved. The current situation is exacerbating racial tensions which is not in the best interests of the community.

We note that the qualifying sustainability clauses are of critical importance. Measures and actions that threaten sustainability will not have our support and will rapidly erode the credibility of the AFS in the wider community.

#### **Recommendation 4 - Customary Fishing to be Managed Separately.**

Recfishwest supports this recommendation principle. However, any measures proposed that differentiate management of customary fishing from other regulated fishing activities will need to be negotiated on their merits following reasonable consultation. With respect to the preamble to 2.3.2.1 for this recommendation, Recfishwest notes the various national, international and State conventions and policies, but as a stakeholder, does not consider itself bound by them in principle or in fact unless those conventions and policies are underpinned by legislation.

We also wish to point out that while the preamble to 2.3.2.1 for this recommendation states that customary fishing may apply to less than 1% of the States population, application of this recommendation should not be allowed to result in a grossly disproportionate share of the catch being taken by Aboriginal persons.

#### **Recommendations 5 and 6 -Those able to Fish Customarily and Proof of Identity.**

Recfishwest considers that Aboriginal persons wishing to undertake customary fishing (that is the taking of fish in excess of, or outside of the recognised fishing rules on behalf of their community) should be identifiable in some way. Option 3 contained within the preamble 2.3.3.1 describes the requirement for notification by way of a permit for such activities to be undertaken.

Recfishwest supports the implementation of such a notification system, and supports this concept being developed and administered wholly within each Aboriginal community. An exception to this requirement should be where clear native title rights are granted by the courts in a Native Title determination.

#### **Recommendation 7 - Customary Fishing to be Managed on a 'Dual Area' Basis (Aboriginal Fishing Areas 1 and 2).**

Supported.

#### **Recommendation 8 - Customary Fishing Management Framework.**

Recfishwest believes as a first principle that bag limits should apply across the board except where notification of customary fishing on behalf of a community is issued.

If the need for customary fishing notification is not eventually adopted then Recfishwest

believes that bag limits must apply in Aboriginal Fishing Area 2. Recfishwest suggests that, if the broader recommendations of the AFS gain government endorsement, a broad-based working group be convened to recommend specific management measures on a methodology and species basis for this area.

Recfishwest does not support differential management measures for customary fishing for AFA2, and in this regard continues to maintain the position conveyed to the Working Group in its letter of 13 July 2001. That is:

"Recfishwest has recently made a submission to the current Fisheries WA review, 'A Quality Future for Recreational Fishing on the West Coast'. Our formal submission to this review endorsed the Review's draft proposal number 18 in relation to its "position statement on recreational fishing by Indigenous people" which is reiterated here:

**Proposal 18** - It is recognised that in the past members of the Aboriginal community have collected fish to provide food for their community, and there should be provision to allow this custom to continue in the future. In certain circumstances - such as Aboriginal ceremonies - members of the Aboriginal community should be allowed to collect fish for the whole community. Where these activities involve the possibility of exceeding the daily bag limit, such fishing should be carried out only with prior written approval from Fisheries WA. In the interests of preserving fish stocks, no-one should be allowed to keep undersize fish, use illegal fishing gear or fish outside approved times or in waters closed to fishing."

Allowing barter of undersized fish between communities will greatly complicate compliance. As most size limits are applied for biological reasons, Recfishwest believes a strong case exists for then to apply to all members of the community.

It is important to recognise that direct interaction between aboriginal and non-aboriginal fishing activities in areas such as jetties or near large towns, where different rules may apply, could lead to conflict and anti social behaviour. While this is recognised by the exclusions within AFS Area 1 it is important for Aboriginal persons to recognise that flaunting their special management rules to some elements of the community will be counter-productive.

While Recfishwest is not in a position to provide specific solutions we would be happy to participate in negotiations. It would be most unfortunate if individual conflicts in areas of high interaction were to undermine the cultural intent of the Aboriginal Fishing Strategy.

#### **Recommendation 10 - Education Measures.**

Strongly supported. Recfishwest is very concerned that significant numbers of fishers are not at all convinced of the merits of customary fishing, at least in the south of the State. Consequently, it will be vital to provide public information so as to mitigate the ill feeling that could develop from an 'us and them' mentality.

#### **Recommendation 11 - State Negotiations for Customary Fishing Access in Tenured Lands.**

This recommendation is supported by Recfishwest provided it is applied where relevant, such as in publicly held lands such as national parks. Involvement from other stakeholders must be sought.

Noting this support we stress that common courtesy's should still apply, such as informing pastoral station lessees wherever possible and respecting other fishers that may be fishing the same area.

**Recommendation 12 - Aboriginals to be recognised as a separate Stakeholder Group for consultative and management processes.**

Recfishwest supports this recommendation. However it must be recognised that Aboriginal representation on a number of committees has been sporadic and non-representative which makes the task of considering Aboriginal issues much more difficult.

Recfishwest, as a key stakeholder, would appreciate advice on Aboriginal communities expectations with respect to consultation and how it proposes to ensure meaningful engagement on their behalf.

**Recommendation 13 - Consultation Media and funding of an Aboriginal Liaison Officer.**

Recfishwest believes that Aboriginal peak bodies should nominate appropriate representatives for consultation purposes as is done by other sectoral interests. The extent to which these representatives will be responsible for the consequences of decisions resulting from their deliberations will require formal resolution.

The establishment of a liaison officer is strongly supported, subject to funding concerns expressed above.

**Recommendation 14 - Aboriginal Interests to be involved in AFS Area1 Fishing Management Decisions.**

Supported.

**Recommendations 15 and 16 - Customary Fishing to be given priority over Recreational and Commercial Fishing Allocations awarded through Integrated Management Processes.**

Recfishwest strongly objects to this very broad and important recommendation. Except in the limited cases covered under recommendation 37 re Aboriginal Community Fishing Licences Policy, and possibly for some specific instances yet to be argued for in AFS Area1, we believe no case whatsoever has been made for this recommendation by the AFS.

If specific allocations are able to be demonstrated as being necessary, they should be considered on a case by case basis with all stakeholders involved. In all other cases the prescriptions recommended elsewhere should satisfy community aspirations for reasonable access to resources.

This becomes obvious when the population data contained at 2.3.2.2 are considered. Given that Aboriginal people comprise a small proportion of the population it is highly unlikely that there will arise instances when any allocations specifically made for Aboriginal access would not be 'swamped' by sustainability measures in those cases where such measures would need

to be applied.

As such, allocating 'in principle' superordinate quotas would result in realising symbolic importance only. While Recfishwest acknowledges such symbolism may be important for the Aboriginal community, we believe that the resulting benefits will be completely overwhelmed by the broader community antagonism that will inevitably result.

Quite simply, specific customary fishing allocations are unnecessary and will be highly provocative. Access to resources can be better effected by the measures proposed under recommendation 8, notwithstanding our previously identified caveats.

If our position above is not taken into account, then we will require clear definition on what construes a 'substantial proportion' and the basis by which all sectors will take reductions necessary to ensure sustainability.

### **Recommendation 17 - Customary fishing Surveys**

Recfishwest supports that a survey of customary fishing be conducted in AFS Area1. However we believe that such a survey is not necessary in AFS Area2 and for cost effectiveness it should be incorporated into the general recreational fishing surveys that are carried out.

### **Recommendation 18 - Development of Policy Guidelines for protected areas.**

Although Recfishwest is not in a position to comment on this recommendation at this stage, we believe that as a key stakeholder group we must be involved in discussions in the management considerations as they arise.

### **Recommendation 19 - Protection of Aboriginal Sites and Reserves**

This recommendation must incorporate the need for negotiation with recreational fishing stakeholders. This will ensure that options and alternatives to fishing in identified culturally sensitive areas are explored to ensure that appropriate protection of sites and reserves can be imposed without unnecessary or undue restriction of recreational fishing activity.

### **Recommendation 20 - Customary fishing Surveys**

Recfishwest reiterates that funding for initiatives under this recommendation must be sourced from 'new monies' and not drawn from the existing recreational fishing funds. We encourage that Aboriginal groups work closely with Recfishwest on initiatives of mutual interest.

### **Recommendation 21 - Aboriginal Employment Policy**

Recfishwest recognises the need for Aboriginal persons to play an important role in education and compliance. However we do not support prescribed affirmative action. We believe that Recommendation 26 should be the principal focus for aboriginal fishing programs.

### **Recommendations 22 and 23**

Supported by Recfishwest

### **Recommendation 24 - Cultural Awareness Training**

This recommendation is supported. However, it is important that the Aboriginal community itself needs to ensure that the matters raised during training reflect the views and customs of the wider Aboriginal community.

### **Recommendation 26**

Recfishwest supports this recommendation.

### **Recommendation 29**

This recommendation is supported. However the granting of additional commercial fishing access in areas of significant pre-existing recreational fishing use and outside of the customary fishing definitions may have a significant negative impact on both sustainability and needs of recreational fishing.

Recreational fishing needs must be considered prior to the granting of any new commercial fishing licences.

### **Recommendation 30**

Recfishwest strongly objects to this recommendation on the basis that it does not recognise the rights and needs of recreational fishing and is totally predicated on an assumption that the existing allocations are sustainable and correct.

### **Recommendation 37**

Recfishwest cannot offer support for this proposal at this stage as there has not yet been any critique of the existing policy or rationale given to support the view presented in the draft strategy that the current policy has failed.

We do not support the proposed unilateral reallocation of the mud crab fishery without strong justification for the shift and the development of management arrangements that ensure compatible co-existence of recreational fishers with aboriginal commercial fishing practices. This is particularly important in areas adjacent to key population centres such as Broome, Derby and Wyndham.

Recfishwest does not necessarily accept that the mud crab fishery is currently under utilised. Without research data and management information that demonstrates that this is the case Recfishwest would not support the allocation of additional commercial mud crab fishing licences.