

## BEFORE THE ABORIGINAL LAND COMMISSIONER

### ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

#### LOWER DALY RIVER LAND CLAIM NO. 68 (REVIEW)

Statement of David Ciaravolo, Executive Officer, the Amateur Fishermen's Association of the Northern Territory (AFANT), PO Box 40694, Casuarina NT 0811.

1. I was appointed as the Executive Officer at AFANT in February 2017. Prior to that I worked as the Executive Director at RecFish SA, the South Australian recreational fishing peak body, for a period of 2 years.
2. As Executive Officer of AFANT, I have responsibility for the achievement of AFANT's mission/objectives and the management of AFANT's operations. I work with the Committee on the development and achievement of agreed strategy, and I represent AFANT on government and non-government committees, groups and projects.
3. AFANT was formed in 1980 to represent NT recreational fishers on all matters of importance to recreational fishing. This includes fisheries management, development strategies, access to areas for the purpose of recreational fishing, and responding to project proposals which may influence the quality or access for recreational anglers in the NT.
4. This statement is intended to, update issues raised in correspondence sent by AFANT to the previous Aboriginal Land Commissioner (Olney) in 2002. This updated statement is intended to provide the most contemporary evidence available to the Commissioner for consideration, and to bring focus to the matters AFANT now views as most relevant, particularly those arising by effect of the decision of the High Court of Australia in Northern Territory of Australia v Arnhem Land Aboriginal Land Trust [2008] HCA 29 on 30 July 2008 (the Blue Mud Bay decision)
5. The immediate effect of a grant of this Claim, without a negotiated open access agreement, would be that the lands and waters of the Claim area would become Aboriginal land and that access to the waters overlying those lands would be prohibited, in the absence of a permit.

#### **Recreational Fishing in the Northern Territory**

6. Recreational fishing is an important social and cultural component of the Northern Territory lifestyle, as well as being a major tourism drawcard and a significant contributor to the economy.
7. The 2010 NT Recreational Fishing Survey (West *et al.*, 2012) indicates that more than 30,500 Non-Indigenous Territory residents went fishing in 12 months

between April 2009 – March 2010. The Tourism NT, Fishing Segment Profile documents that there were over 40,000 fishing visitors to the NT in 2014 ([http://www.tourismnt.com.au/~media/files/corporate/marketing/fishing-segment-profile\\_northern-territory-australia.ashx](http://www.tourismnt.com.au/~media/files/corporate/marketing/fishing-segment-profile_northern-territory-australia.ashx)).

8. NT Government Recreational Fishing Development Plan (2012-2022), provides that 70% of recreational fishing in the Northern Territory occurs in regional areas, where it is often the primary economic and development driver.
9. In the 2010 NT Recreational Fishing Survey (West *et al.*, 2012), annual resident fisher expenditure was estimated at \$51M.
10. The Fishery Status Reports 2012 (NTG, 2014) estimates the NT guided fishing industry to contribute \$26M annually to the NT economy.

### **Recreational fishing in the region**

11. While the 2010 NT Recreational Fishing Survey report references the collection of finer scale data, this data is not presented in the report and as such, the relevant data referred to in this statement relates to the West Coast Region; where the Daly river is arguably the major fishing location, although certainly not the only one.
12. The West Coast region where the Daly river is located accounted for approximately 10% of all fishing effort by NT Residents in 2009/10. (West *et al.* 2012. p.33)
13. The west coast region where the Daly river is located accounted for approximately 23% of all Barramundi caught by NT Residents in 2009/10. (West *et al.* 2012, p.47)
14. A trend of increasing fisher visitation to the Daly River was measured in 2009 (April-Nov), with between 15,000 – 20,000 fisher days from non- resident visitors fishing there. This represents a four-fold increase from the earlier National Recreational and Indigenous Fishing Survey in 2000/2001. (West *et al.*, 2012)

### **Recreational Fishing in the Claim Area**

15. Recreational Fishing is currently permitted in the Claim Area without the need to obtain a permit or individual permission. Future fishing access is agreed and ensured by a 20-year agreement between the Northern Territory Government and the Daly River Port Keats Aboriginal Land Trust.
16. The Southern Bank of the Lower Daly River is vested with the Daly River Port Keats Aboriginal Land Trust. It appears likely that if Land Claim No.68 is granted, the current access agreement will no longer be sufficient to provide open, permit-free access to recreational fishers.

17. Access to the Daly River upstream of the Claim Area, is also enabled and ensured by a 20-year fishing access agreement between the Northern Territory Government and the Malak Malak Aboriginal Land Trust. This agreement, as well as the one in place with the Daly River Port Keats Aboriginal Land Trust (2 of only 5 current for all the NT), are evidence that access for recreational fishers to the Daly river system has been prioritised by the NT Government in recognition of the importance of this area to the fishing community, as well as the status of the area as drawcard for interstate and international fishing visitation.

### **AFANT's Community consultation to inform evidence of fishing activity and potential detriment issues in the Lower Daly River Claim Area**

18. While agreeing that they are statistically robust, AFANT are of the view that to inform usage and potential detriment issues, the results from the 2010 NT Recreational Fishing Survey may be complimented by contemporary data collected about fishing activity at a finer scale; specifically, about fishing within the Claim Area.
19. Owing to the high importance of this area to NT recreational fishers, AFANT conducted a community consultation survey, the "AFANT - Lower Daly River Land Claim Survey" (Appendix A) to ask recreational fishers about their activities in the Lower Daly River Claim Area. Due to time and human resource constraints, the opportunity to participate in the survey was made available to fishers for only a 7-day period. It was sent to Members and made available online via AFANT's social media accounts.
20. The lower Daly River (Claim Area) hosts a high quality, popular recreational fishery, and 748 individual recreational fishers responded to the AFANT community consultation for the Lower Daly River Land Claim over a 7-day period.
21. Of these respondents, 84.9% identified as residing in the Northern Territory and 706 (97%) self-identified as having fished within the Claim Area (Shown on a map for clarity).
22. Respondents who said they had not fished the claim area were automatically excluded from providing evidence about fishing in the Claim Area.
23. With 706 respondents identifying as recreational fishers who have fished within the Claim Area, we suggest that the AFANT - Lower Daly River Land Claim Survey is a useful representation of recreational fishing in the area. References

in this statement to the data collected are provided to offer a snapshot, and in some cases, a representation of recreational fishing activity in the claim area.

24. The AFANT - Lower Daly River Land Claim Survey was not designed or intended to be taken an estimate of total recreational fishing activity in the claim area.
25. Most fishers who took part in the AFANT consultation said they fished within the Claim Area 2- 6 times per year, with a significant number (28.45%) fishing the area more than 6 times per year.

ANSWER CHOICES	RESPONSES	
At least once a year	12.63%	87
2-3 times per year	24.82%	171
3-6 times per year	22.50%	155
More than 6 times per year	28.45%	196
Most years, but not every year	5.81%	40
Only some years	5.37%	37
I only pass through this area	0.44%	3

26. While some land-based fishing by recreational fishers occurs within the Claim Area (15.5% of AFANT - Lower Daly River Land Claim Survey respondents do, or have done so), most fishers do their fishing from a boat (97.5% of respondents do, or have done so).
27. The AFANT Survey provides that when fishing within the Claim Area, most fishers launch their boats upstream at the Wooliana Public Boat Ramp, with a significant proportion also launching from one of the private ramps at the accommodation facilities along the river. Launching from either Dundee or Channel Point Boat Ramps, and then traveling along the coast and up the Daly River through the river mouth, has also been identified as an important way that fishers access the Claim Area.

ANSWER CHOICES	RESPONSES	
Launch at the Wooliana (public) Boat Ramp	82.50%	561
Launch at a private property/business/accommodation upstream of the Claim Area	21.91%	149
Launch at Channel Point and travel up from the River mouth	31.91%	217
Launch at Dundee and travel up from the River mouth	41.47%	282

28. When fishing from a boat in the Lower Daly River (Claim Area), anchoring and tying up near the bank is common practice (Over 80% of AFANT - Lower Daly River Land Claim Survey respondents indicated they anchor, and almost 69% of respondents indicated they tie up). If the effect of a Grant or future access arrangements is to limit or prevent these actions, it reasonably follows that the

quality of the fishing experience would be impacted. This would result in detriment through the significant loss of amenity, and social value.

29. Due to the distances travelled by car, boat, or both; camping in on the river overnight is an important part of recreational fishing in the Lower Daly River Claim Area. In the AFANT - Lower Daly River Land Claim Survey, only 11% of respondents said they did not usually stay overnight, with most fishers (70%) camping on their boats on the river. Almost 17% of respondents said they usually stay in paid accommodation upstream. If the effect of a Grant or future access arrangements, is to limit or prevent these actions, it reasonably follows that the quality of the fishing experience and potentially the viability of visitation would be impacted. This would result in detriment through the significant loss of amenity, and social value.

### **Special significance of the Claim Area for recreational fishers**

30. The Lower Daly River is an iconic and special fishing location for many recreational fishers. It's significance as a fishing location is highlighted when we consider the potential social impacts of a loss of access. It is our contention that a loss of access to the Lower Daly River claim area would likely impact upon many people's overall enjoyment of fishing in the Northern Territory.
31. Evidence for the potential impact comes from the AFANT - Lower Daly River Land Claim Survey, where 655 people (97% of respondents) who fish in the waters overlying the Claim Area, said that their enjoyment of fishing in the Northern Territory, would as a whole, suffer if they could not fish in the Lower Daly River Claim area in future.
32. The fishing experience in the Lower Daly River is special and is not provided by fishing in other areas. This is evidenced by the views of 646 (95.5%) individual respondents to the AFANT - Lower Daly River Land Claim Survey, who said that the fishing in this area is unique and cannot be replaced by fishing in another location.

### **Cumulative Impacts**

33. It has been raised by AFANT in response to other Land Claims (167, 188, 189), that there is potential for cumulative detriment to arise/accrue as a result of the granting of a number of Bed and Bank, and Intertidal Zone Land Claims.
34. It has been put forward that cumulative detriment may occur should a system of permits be introduced resulting in the need for fishers to expend time and money obtaining permits for different areas. In addition, we have contended that either the introduction of permits, or the closure of areas to recreational fishing, could put pressure on the resources, and by extension, the fishing experiences in other areas. In our view, this consideration is also relevant to Claim no.68.

*Cumulative (effort related) impacts;*

35. The Daly river is a very popular fishing location, accounting for tens-of-thousands of Fisher Days annually (West *et al.*, 2012). It is logical to expect that if this fishing effort was disrupted or relocated, that there would be increased pressure in other fishing areas.
36. The vast majority of respondents to the AFANT - Lower Daly River Land Claim Survey (644 individuals / 95%) agreed that the fishing in other areas would be likely to be impacted through increased fishing pressure, if people could not fish in the Lower Daly River Claim area.
37. The AFANT - Lower Daly River Land Claim Survey offered respondents the opportunity to leave a comment about their views on the potential for other areas to impacted should access be lost to the Lower Daly River Claim area. Written comments were received from 192 respondents, of these comments, 181 (94.2%) referred to a belief that other areas would necessarily be impacted as a direct result of displaced fishing effort.
38. Issues raised in the comments included; the potentially large numbers of people who could be affected, existing constraints on access to some areas, concerns about the impacts of other Land Claim grants, and future permits in other areas as a result of the Blue Mud Bay case. Twenty-eight comments referred specifically to concerns about effort being transferred to the already-busy Mary River/Shady Camp; the bed, banks and intertidal zone of which, is presently the subject of a Land Claim (No.192).

*Cumulative (Social) impacts*

39. The enjoyment of recreational fishing is about much more than just the catching of fish; for participants the activity is about the experience as a whole. The enjoyment, social and lifestyle values of recreational fishing experiences can be impacted by informal competition with, or the presence of, other fishers on the water. This is especially the case in regional settings where enjoying space on the water is usually an intrinsic part of the visitation experience.
40. Increased competition/ the presence of others, is one way that cumulative detriment from more fishers being squeezed in to fewer locations may be seen to extend beyond resource sustainability/availability, and to also impact upon on social and amenity values (the availability of a valued experience).
41. Impacts on amenity values, along with other social values are typically difficult to measure directly, however a relevant example is that in the AFANT - Lower Daly River Land Claim Survey, only 36% of fishers said the presence of others does not impact on their enjoyment of fishing, while 27.4% said it "yes" it does and 36.24% said it does "sometimes" impact on their enjoyment of fishing.
42. It is reasonable to expect that increased pressure on existing infrastructure would also occur if more fishers are concentrated into fewer areas as the result of a loss of access or changed (less favourable) access conditions to a popular fishing area (such as the Claim area).

43. Congestion of limited infrastructure may also cause detriment through the cost of time, as well as through the impact on the social value/ enjoyment of a fishing trip. As an example, in the AFANT - Lower Daly River Land Claim Survey, only 35.5% of respondents said that their fishing experiences were unaffected by waiting to use infrastructure like boat ramps, while 30% said “yes” waiting does affect their enjoyment of a fishing trip, and 34% said it “sometimes” impacts their enjoyment of a fishing trip.

### **Economic considerations**

44. Recreational fishing activity in the Lower Daly River Claim Area delivers economic benefits to businesses in the region. In the AFANT - Lower Daly River Land Claim Survey, 344 respondents (50.4%) said that they usually visit a regional (business) campground, kiosk or bistro. A further 195 respondents (28.5%) said they sometimes visit a regional business, with only 144 (21%) saying they never visit regional businesses when fishing the Lower Daly River.
45. Fishing tourism in the Northern Territory was valued at \$26M in 2012, and of that \$15M was spent directly with Fishing Tour Operators (FTO's) (NT Fishery Status Report 2012, Report No.113). The NT Tourism – Fishing Segment Profile highlights Barramundi fishing tour operations in the Daly River as an option for Darwin based, or lodge based fishing tours.
46. Fishing the Lower Daly River with a Fishing Tour Operator is an important way that many recreational fishers access the Claim area. Approximately 21.5% (147) of respondents to the AFANT - Lower Daly River Land Claim Survey said they have previously fished the area with an FTO.

### **Permits & Planning**

47. With respect to this Claim, and for other Claims before the Commissioner (167, 188, 189) it is AFANT's position that the financial cost, as well as the time taken to apply for and receive a permit may result in detriment. It is also contended that delays in processing a permit could, and the refusal of a permit certainly would, result in detriment to recreational fishers.
48. AFANT have said in statements for other Land Claims (188, 189), that many fishing trips are planned with short notice, often in response to good fishing reports and weather conditions, and that there is potential for detriment should permits for access result in delays or cost time.
49. It is our view that trips planned with little notice are especially relevant for the Lower Daly River Land Claim. Many fishers (336 or 48% of AFANT Lower Daly River Land Claim Survey respondents) self-reported that recent reports of good fishing, either on social media, or other media, influenced their decisions to visit the Lower Daly River to fish.

### **Traveling through the Claim Area**

50. The Lower Daly River Claim Area covers a section of river that is important for fishers to access and travel through when visiting other fishing areas.
51. Examples include the Malak Malak section of the Daly river (upstream) and the Moyle River (down the coast) vested with the Daly River Port Keats Aboriginal Land Trust (for both locations there is a current 20-year fishing access agreement in place between Traditional Owners and the Northern Territory Government). In the AFANT - Lower Daly River Land Claim Survey 663 respondents (98%) said that their fishing experiences would suffer if they could not move through the claim area (to / from the river mouth) in their boat.

### **Invitation to comment on relations with Local Aboriginal Communities**

51. AFANT is not aware of any contact or relationship with the Claimants.
52. AFANT has a constructive relationship with the upstream Malak Malak community, for example collaborating with Rangers and researchers on the steering committee for a recent study into potential fishing related erosion in the upper Daly River.
53. The Malak Malak Land and Water Rangers have developed a Daly River Recreational Fishing Guide and Code of Conduct. AFANT stocks this document, and from our office, via mail and at community events, we provide this to educate and inform fishers intending to go fishing in the Daly River.
54. AFANT would be happy to engage with Aboriginal Communities in the Claim Area. This includes to work constructively on developing a Code of Conduct for respectful access and fishing practices, as well as to work together on any other matter relevant to recreational fishing or the aquatic environment.

I DECLARE that I have read this statement carefully before signing it, and that I believe it to be true and correct,

Signed



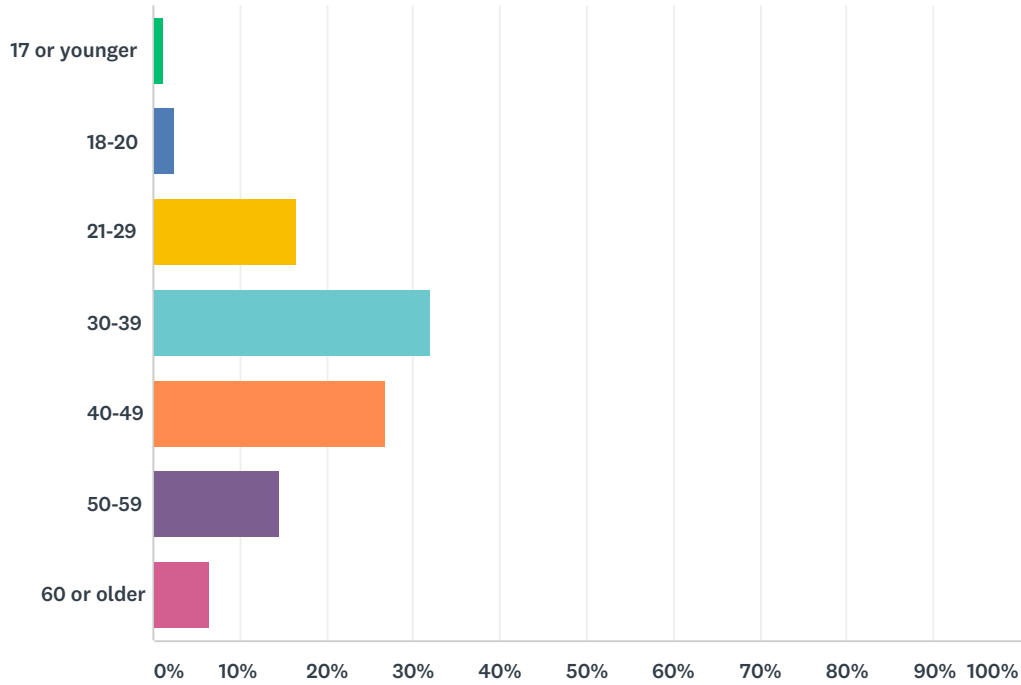
David Ciaravolo

Date: 8/3/2018



# Q1 What is your age?

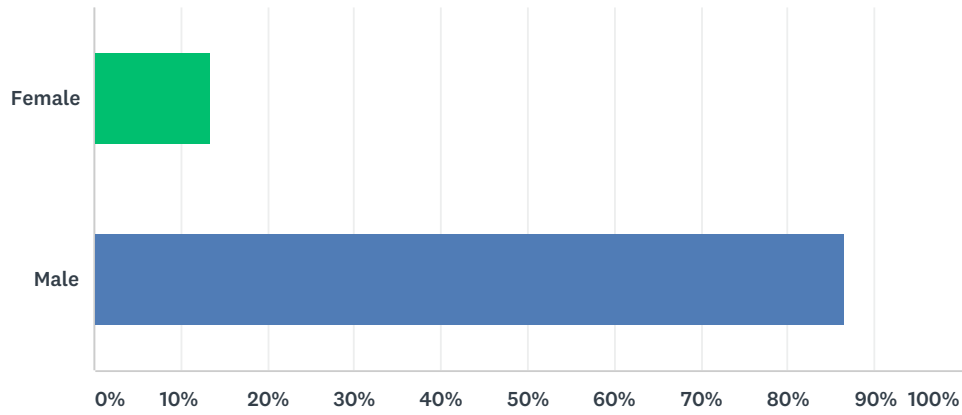
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ANSWER CHOICES	RESPONSES
17 or younger	1.20% 9
18-20	2.54% 19
21-29	16.58% 124
30-39	31.95% 239
40-49	26.74% 200
50-59	14.57% 109
60 or older	6.42% 48
<b>TOTAL</b>	<b>748</b>

## Q2 What is your gender?

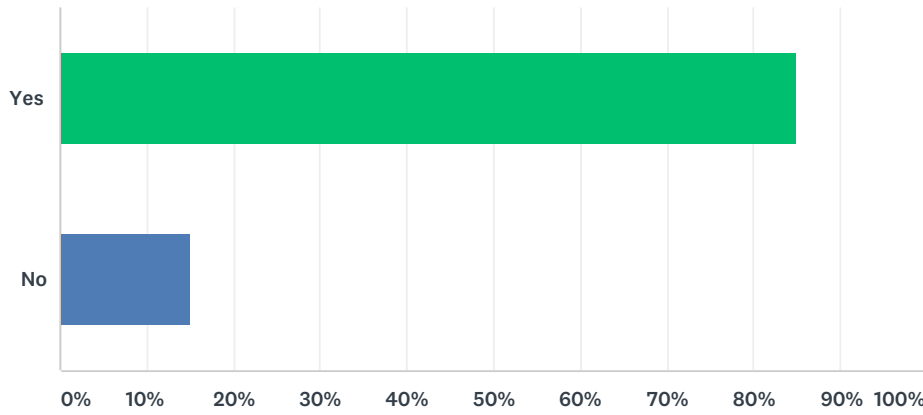
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ANSWER CHOICES	RESPONSES	
Female	13.37%	100
Male	86.63%	648
TOTAL		748

### Q3 Are you a resident of the Northern Territory

Answered: 748 Skipped: 0



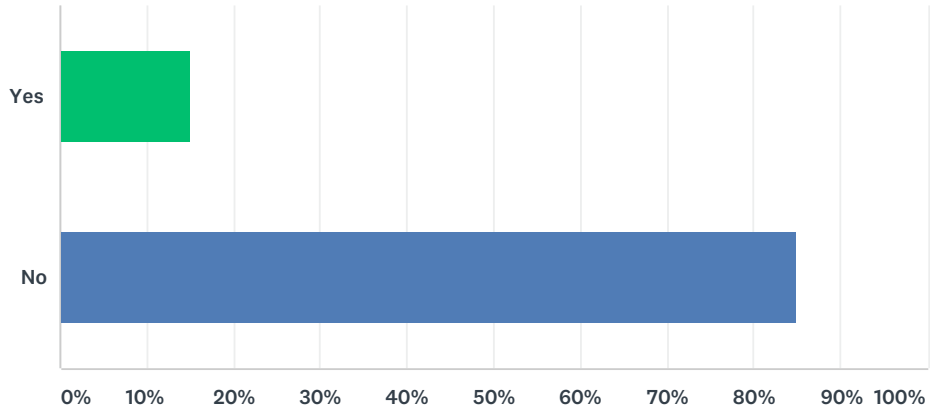
ANSWER CHOICES	RESPONSES	
Yes	84.89%	635
No	15.11%	113
TOTAL		748

## Q4 In what postcode is your home located?

Answered: 748 Skipped: 0

### Q5 Are you an AFANT Member

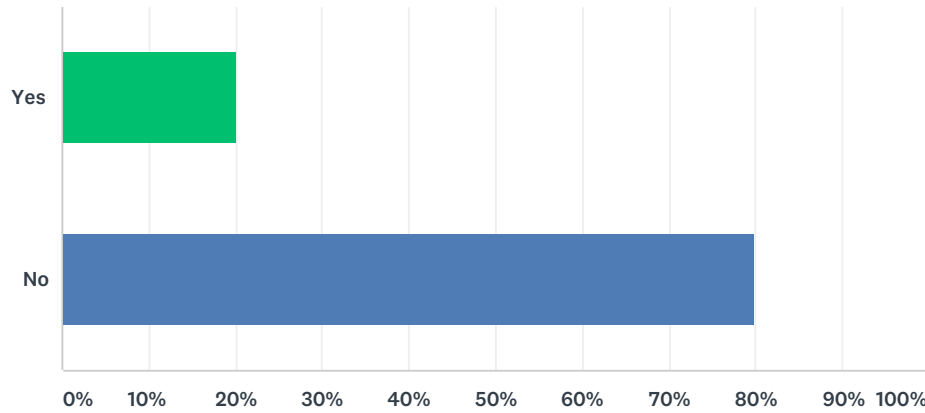
Answered: 748 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	15.11%	113
No	84.89%	635
TOTAL		748

### Q6 Are you a member of a fishing club (eg Darwin, Palmerston or Katherine Game Fishing Club) - affiliated with AFANT

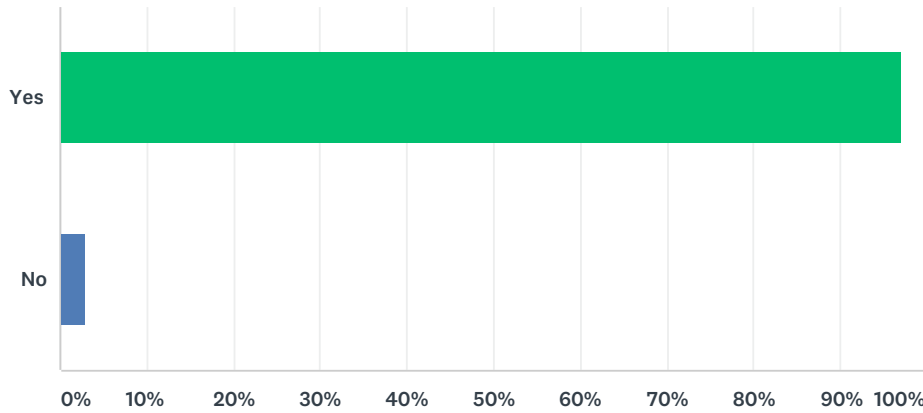
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ANSWER CHOICES	RESPONSES	
Yes	20.05%	150
No	79.95%	598
TOTAL		748

### Q7 Do you or have you, fished the Lower Daly River Land Claim area shown above (including if you pass / have passed through while fishing)?

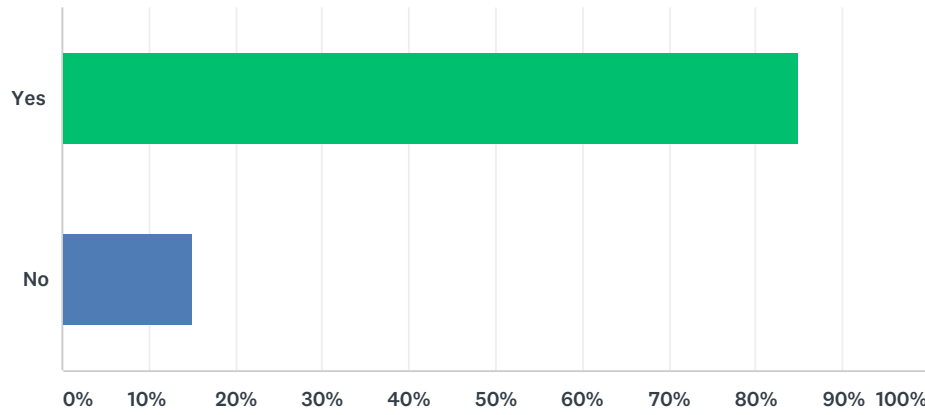
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ANSWER CHOICES	RESPONSES	
Yes	96.98%	706
No	3.02%	22
TOTAL		728

### Q8 Do you plan to fish the Lower Daly River?

Answered: 20 Skipped: 728

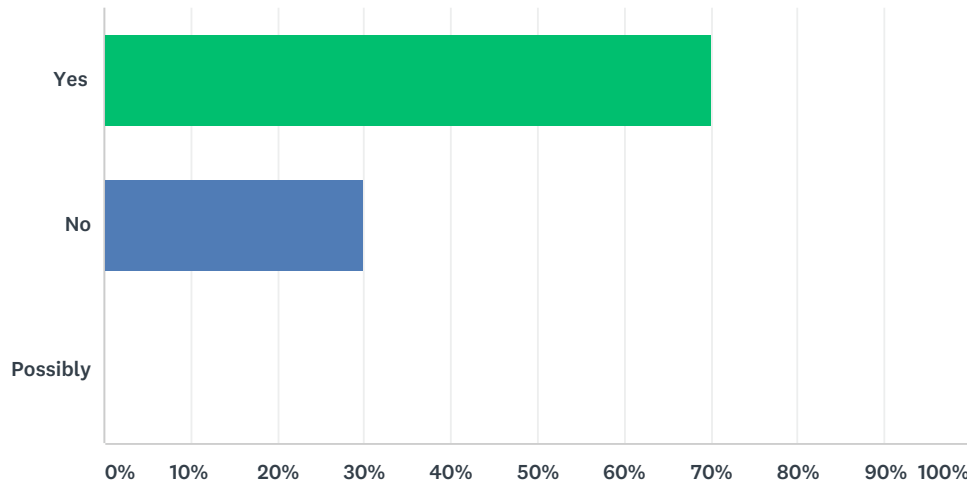


ANSWER CHOICES	RESPONSES	
Yes	85.00%	17
No	15.00%	3
TOTAL		20



### Q9 Even though you have not fished there yet, do you feel like your future fishing could suffer if access to all or parts of the Lower Daly river is changed or restricted?

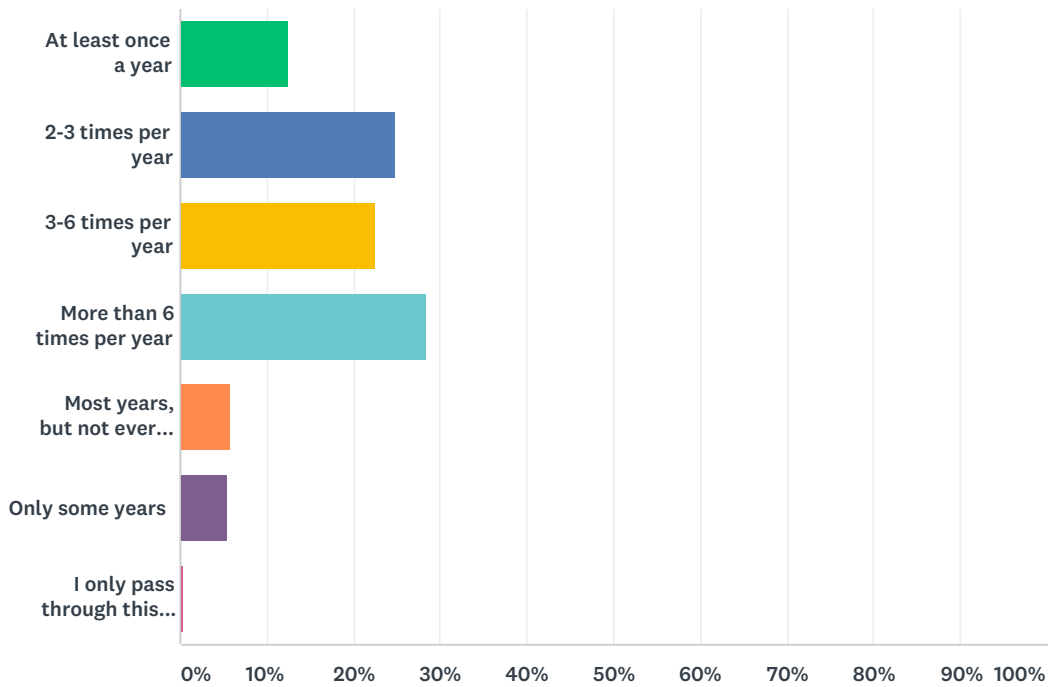
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ANSWER CHOICES	RESPONSES	
Yes	70.00%	14
No	30.00%	6
Possibly	0.00%	0
TOTAL		20

### Q10 Which of the following most accurately describes how often you go fishing in the area?

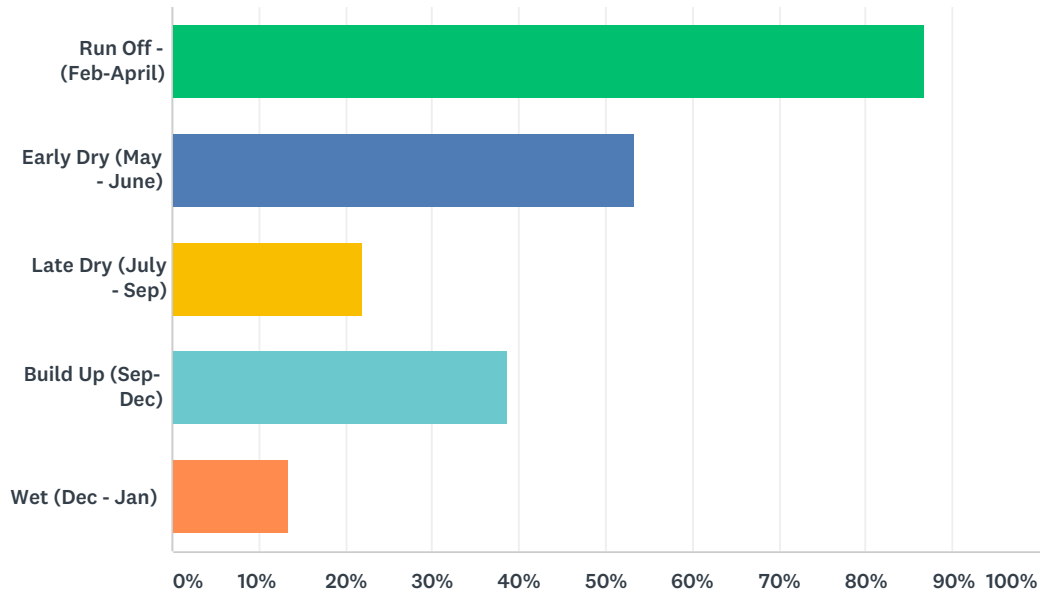
Answered: 689 Skipped: 59



ANSWER CHOICES	RESPONSES	
At least once a year	12.63%	87
2-3 times per year	24.82%	171
3-6 times per year	22.50%	155
More than 6 times per year	28.45%	196
Most years, but not every year	5.81%	40
Only some years	5.37%	37
I only pass through this area	0.44%	3
<b>TOTAL</b>		<b>689</b>

### Q11 Which of the following describes the time(s) of the year when you fish/access the Lower Daly River Claim area (can choose multiple)

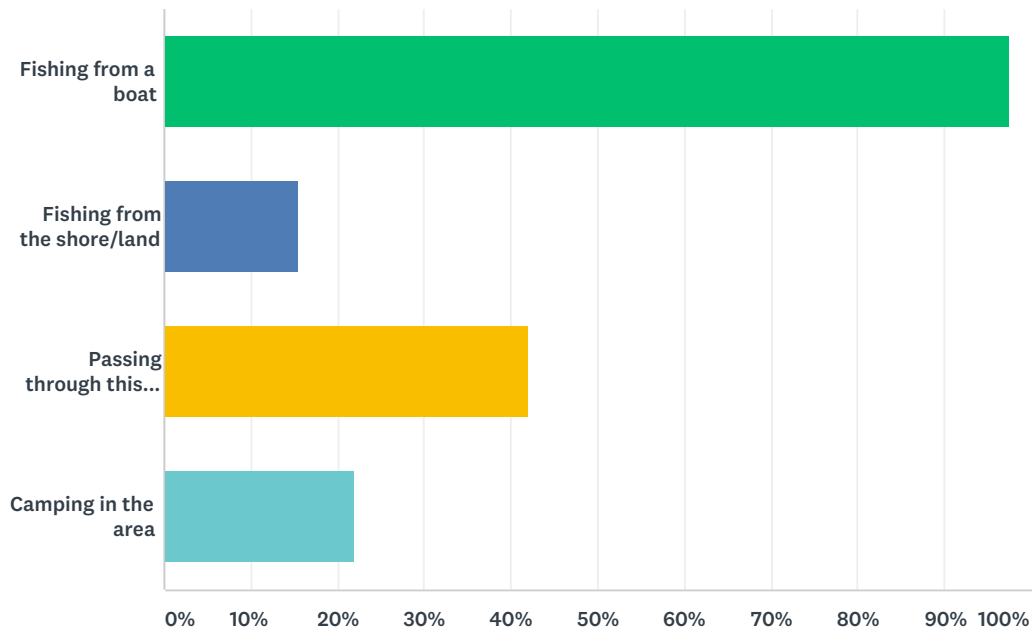
Answered: 689 Skipped: 59



ANSWER CHOICES	RESPONSES
Run Off - (Feb-April)	86.79% 598
Early Dry (May - June)	53.41% 368
Late Dry (July - Sep)	22.06% 152
Build Up (Sep- Dec)	38.75% 267
Wet (Dec - Jan)	13.35% 92
Total Respondents: 689	

### Q12 Which of the following describes activities you do, or have done in the Claim area (can choose multiple)?

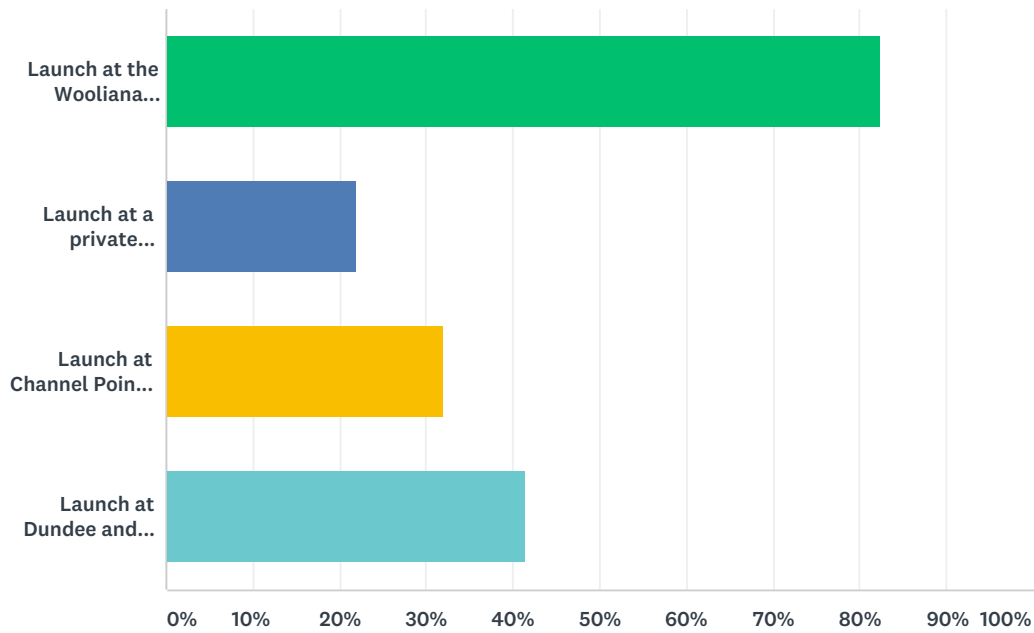
Answered: 689 Skipped: 59



ANSWER CHOICES	RESPONSES	
Fishing from a boat	97.53%	672
Fishing from the shore/land	15.53%	107
Passing through this area on a fishing trip	42.09%	290
Camping in the area	22.06%	152
Total Respondents: 689		

### Q13 How do you access the Lower Daly River Claim area (can choose multiple)?

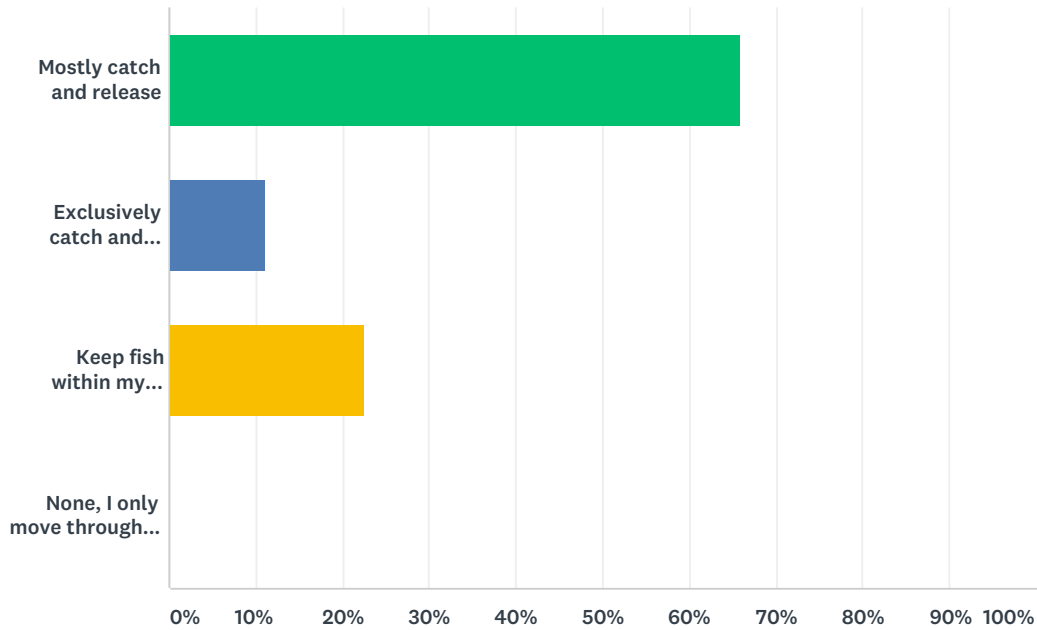
Answered: 680 Skipped: 68



ANSWER CHOICES	RESPONSES	
Launch at the Wooliana (public) Boat Ramp	82.50%	561
Launch at a private property/business/accommodation upstream of the Claim Area	21.91%	149
Launch at Channel Point and travel up from the River mouth	31.91%	217
Launch at Dundee and travel up from the River mouth	41.47%	282
Total Respondents: 680		

### Q14 What kind of fishing do you do in the Claim Area?

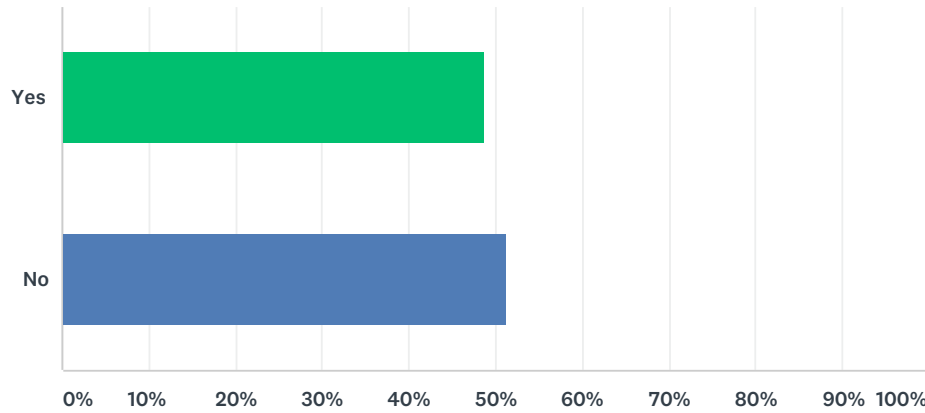
Answered: 689 Skipped: 59



ANSWER CHOICES	RESPONSES
Mostly catch and release	65.89% 454
Exclusively catch and release	11.18% 77
Keep fish within my possession limit	22.64% 156
None, I only move through this area	0.29% 2
TOTAL	689

### Q15 Do recent reports of good fishing either on social media or other media, influence your decision to visit the Lower Daly River to fish?

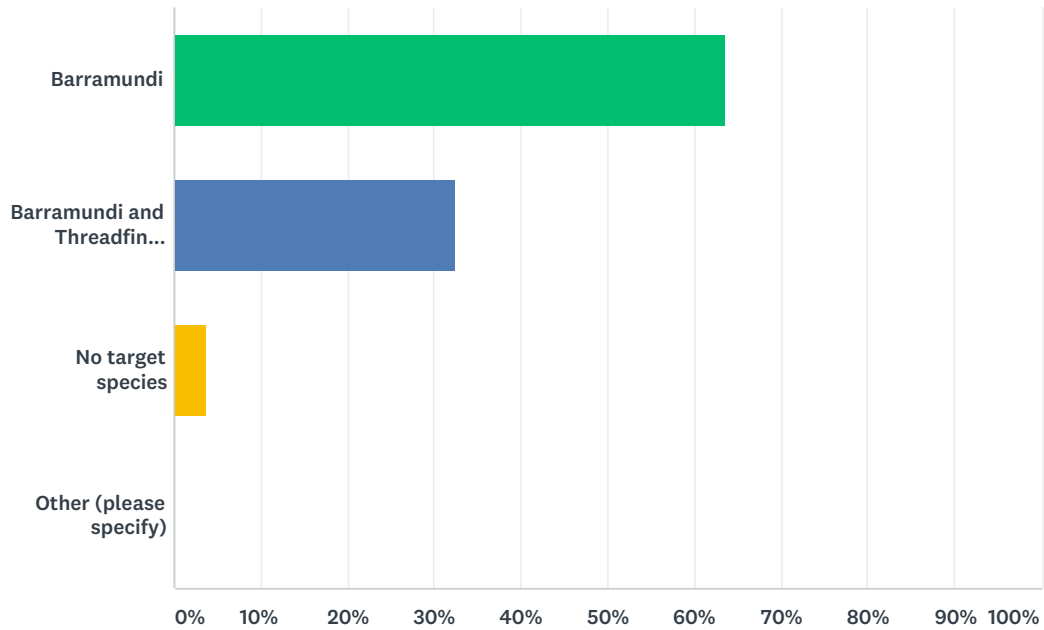
Answered: 689 Skipped: 59



ANSWER CHOICES	RESPONSES	
Yes	48.77%	336
No	51.23%	353
TOTAL		689

### Q16 What species do you target when fishing the Daly river?

Answered: 689 Skipped: 59

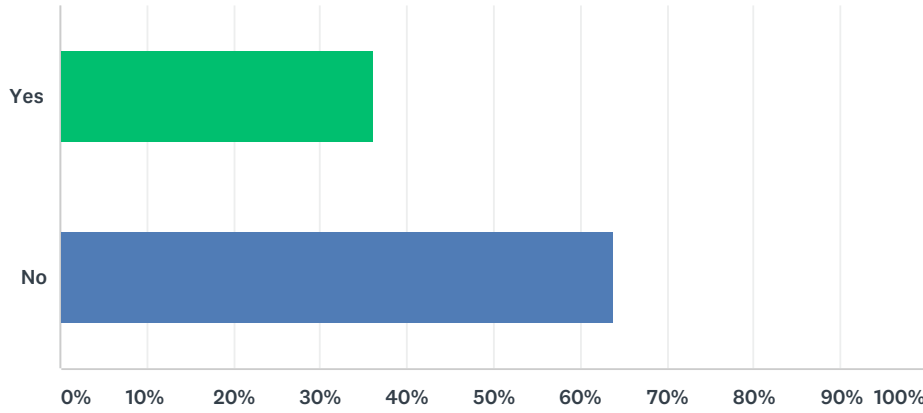


ANSWER CHOICES	RESPONSES
Barramundi	63.57% 438
Barramundi and Threadfin Salmon	32.37% 223
No target species	3.77% 26
Other (please specify)	0.29% 2
<b>TOTAL</b>	<b>689</b>



### Q17 Have you ever fished in a competition held on the Daly River?

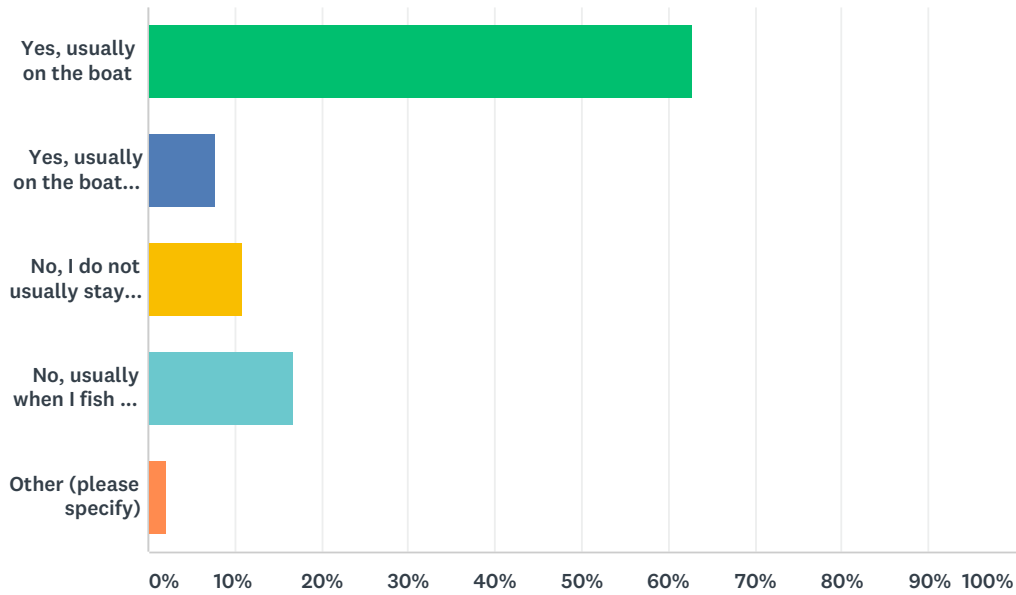
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ANSWER CHOICES	RESPONSES	
Yes	36.14%	249
No	63.86%	440
TOTAL		689

### Q18 Do you ever camp/ sleep overnight in the Claim area?

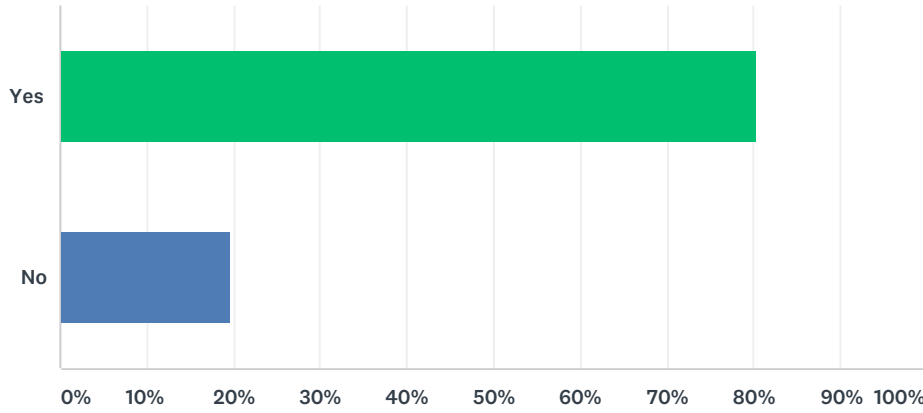
Answered: 683 Skipped: 65



ANSWER CHOICES	RESPONSES	
Yes, usually on the boat	62.66%	428
Yes, usually on the boat rafted (tied up) with other boats	7.76%	53
No, I do not usually stay overnight	10.83%	74
No, usually when I fish the Daly river, I camp/overnight at a campground/accommodation up stream	16.69%	114
Other (please specify)	2.05%	14
<b>TOTAL</b>		<b>683</b>

### Q19 In the Lower Daly River Claim area, do you ever anchor?

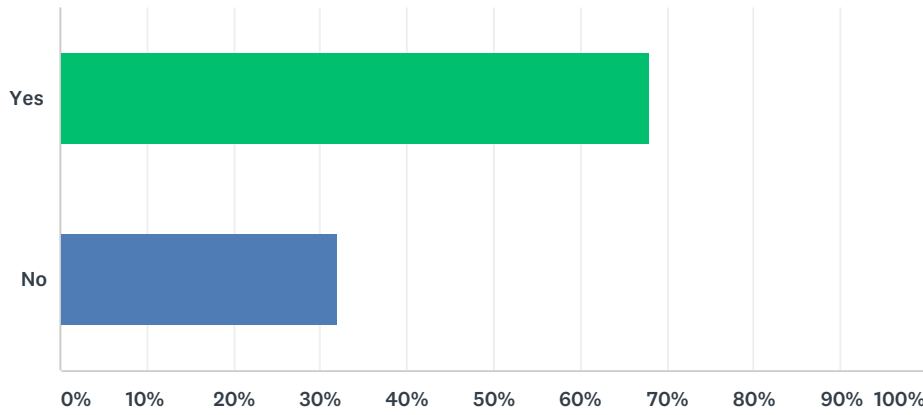
Answered: 683 Skipped: 65



ANSWER CHOICES	RESPONSES	
Yes	80.38%	549
No	19.62%	134
TOTAL		683

### Q20 In the Lower Daly River Claim area, do you ever tie up to the bank?

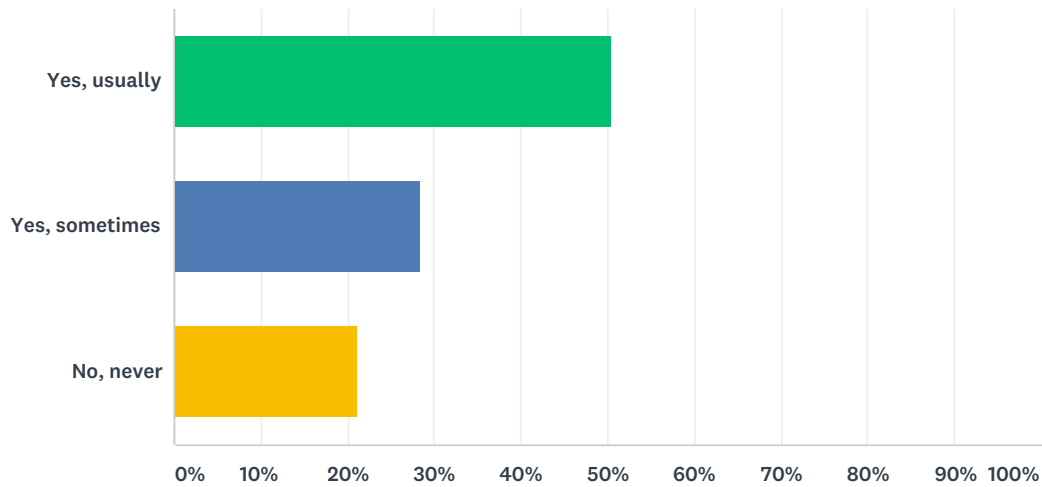
Answered: 683 Skipped: 65



ANSWER CHOICES	RESPONSES	
Yes	67.94%	464
No	32.06%	219
TOTAL		683

### Q21 When visiting to fish the Lower Daly River do you visit a regional business (campground, kiosk, bistro)?

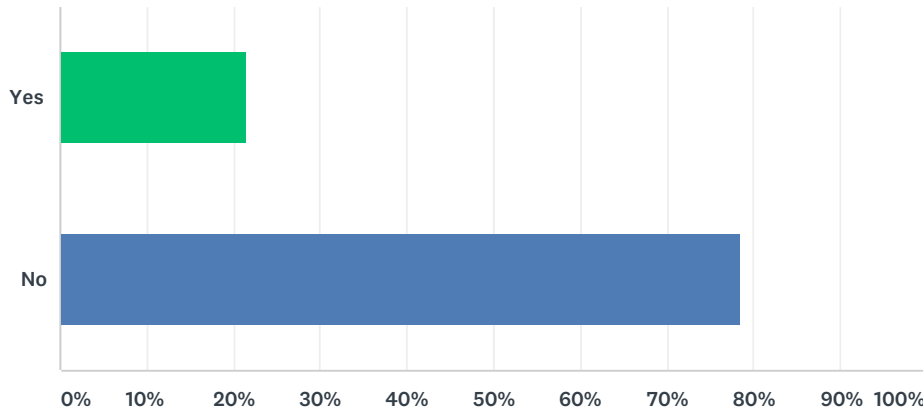
Answered: 683 Skipped: 65



ANSWER CHOICES	RESPONSES
Yes, usually	50.37% 344
Yes, sometimes	28.55% 195
No, never	21.08% 144
TOTAL	683

## Q22 Do you/have you ever fished this area with a Fishing Guide (Fishing Tour Operator)?

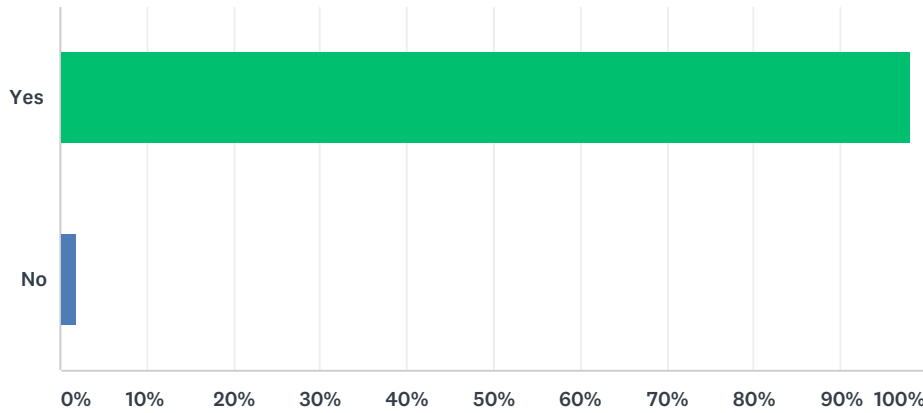
Answered: 683 Skipped: 65



ANSWER CHOICES	RESPONSES	
Yes	21.52%	147
No	78.48%	536
TOTAL		683

### Q23 Would your fishing experiences suffer if you could not move through the claim area in your Boat (eg to move upstream to/from the mouth)?

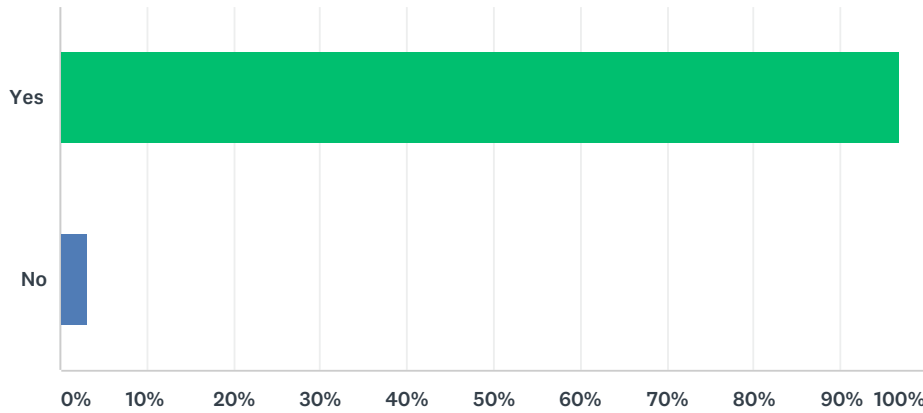
Answered: 676 Skipped: 72



ANSWER CHOICES	RESPONSES	
Yes	98.08%	663
No	1.92%	13
TOTAL		676

### Q24 Would your enjoyment of fishing in the NT (as a whole) suffer if you could not go fishing in the Lower Daly River Claim area?

Answered: 676 Skipped: 72

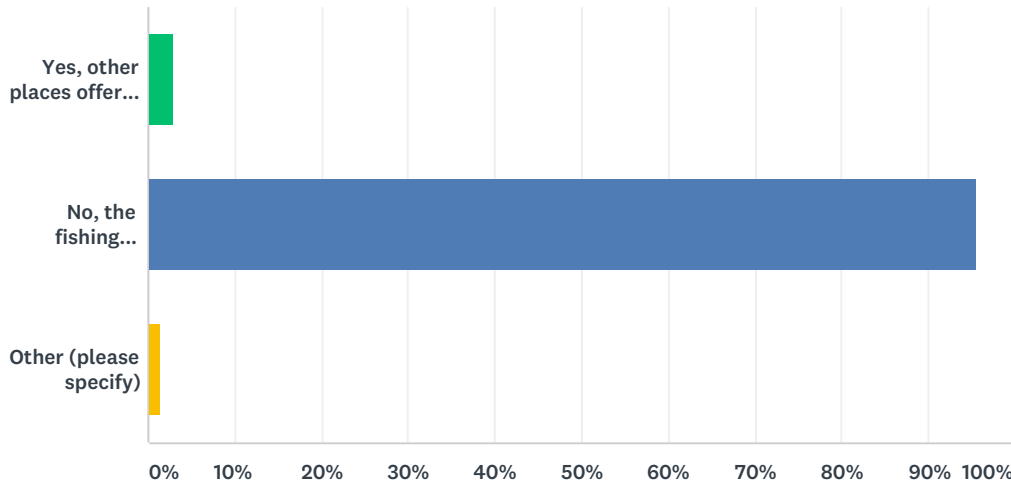


ANSWER CHOICES	RESPONSES	
Yes	96.89%	655
No	3.11%	21
TOTAL		676



### Q25 If access was changed/denied in the future, do you think the fishing experience in the Lower Daly River can be replaced by another location?

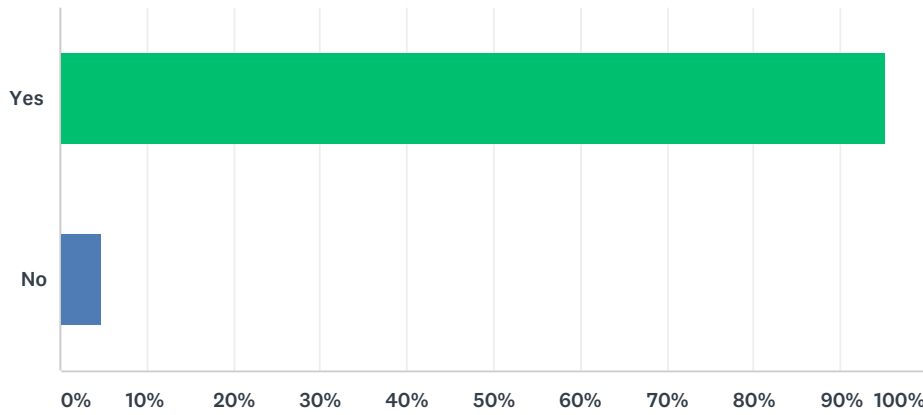
Answered: 676 Skipped: 72



ANSWER CHOICES	RESPONSES	
Yes, other places offer similar experiences	2.96%	20
No, the fishing experience is unique and cannot be replaced	95.56%	646
Other (please specify)	1.48%	10
<b>TOTAL</b>		<b>676</b>

### Q26 Do you think that fishing in other areas would be likely to be impacted through increased fishing pressure, if people could not fish in the Lower Daly River Claim area in the future?

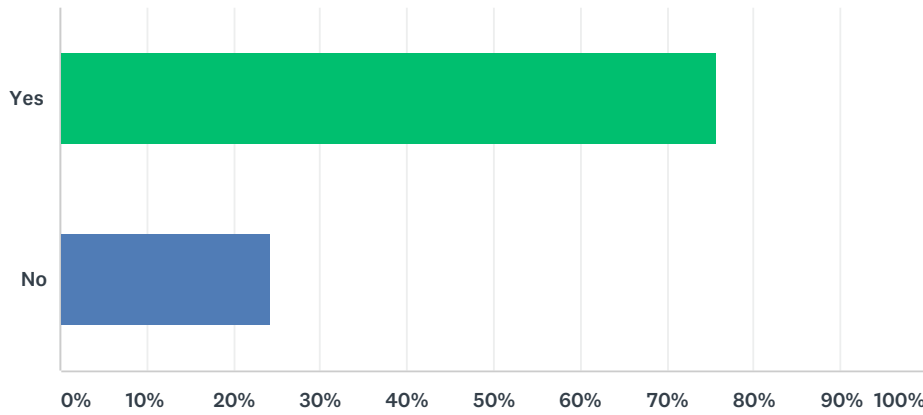
Answered: 676 Skipped: 72



ANSWER CHOICES	RESPONSES	
Yes	95.27%	644
No	4.73%	32
TOTAL		676

### Q27 Generally are you satisfied with the level of access to good fishing areas within a reasonable distance of where you live? [NT RESIDENTS ONLY]

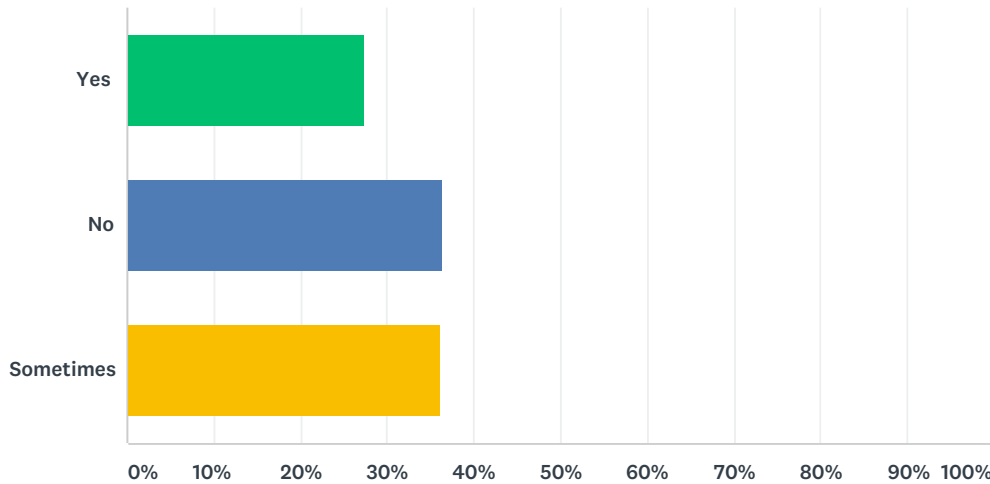
Answered: 626 Skipped: 122



ANSWER CHOICES	RESPONSES	
Yes	75.72%	474
No	24.28%	152
TOTAL		626

### Q28 Excluding organised events, does competition from / the presence of other recreational fishers on the water impact upon your enjoyment of recreational fishing?

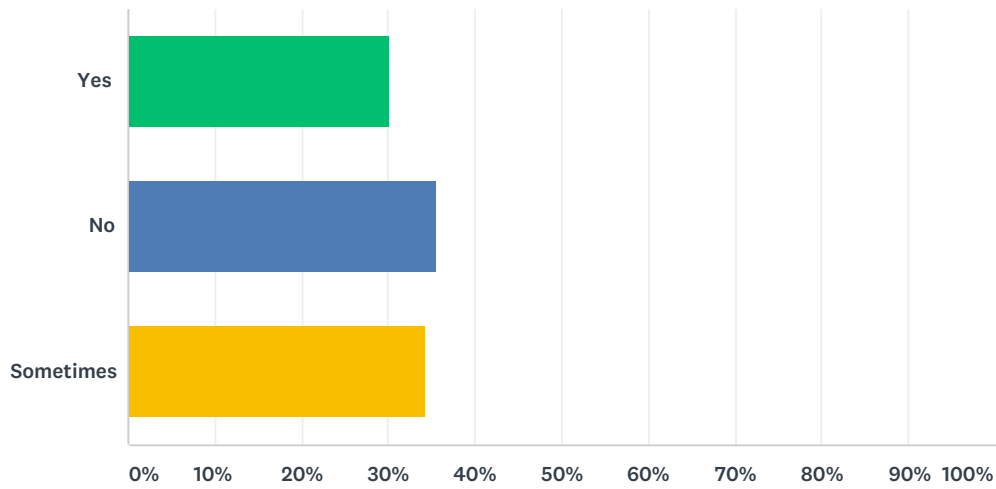
Answered: 676 Skipped: 72



ANSWER CHOICES	RESPONSES	
Yes	27.37%	185
No	36.39%	246
Sometimes	36.24%	245
TOTAL		676

### Q29 Does waiting to use infrastructure, eg. to launch or retrieve a boat, impact upon your enjoyment of a fishing trip?

Answered: 676 Skipped: 72



ANSWER CHOICES	RESPONSES	
Yes	30.18%	204
No	35.50%	240
Sometimes	34.32%	232
<b>TOTAL</b>		<b>676</b>

### Q30 Get the news from AFANT!

Answered: 210 Skipped: 538

ANSWER CHOICES	RESPONSES	
Name	100.00%	210
Company	0.00%	0
Address	0.00%	0
Address 2	0.00%	0
City/Town	0.00%	0
State/Territory	0.00%	0
ZIP/Postal Code	0.00%	0
Country	0.00%	0
Email Address	99.52%	209
Phone Number	0.00%	0

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Leon Loganathan  
Ashley Heath  
Michael Grove  
Teresa Hall  
Kaliopi Hourdas

**Consultants:**

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Our ref: 20181343:BST

19 July 2018

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Aboriginal Land Commissioner  
Office of the Aboriginal Land Commissioner  
GPO Box 9932  
DARWIN NT 0801

Dear Commissioner Mansfield

**RESPONSE TO SUBMISSIONS ON BEHALF OF THE CLAIMANTS:  
LOWER DALY LAND CLAIM NO. 68**

Pursuant to your correspondence to Mr David Ciaravolo of the Amateur Fishermen's Association of the Northern Territory (**AFANT**) dated 11 July, please find below the following responses provided on behalf of AFANT.

**Introduction**

On 11 July 2018, the Aboriginal Land Commissioner (**Commissioner**) provided AFANT with eight (8) day to provide responses to submissions provided by NLC on behalf of the claimants. Additionally, the Commissioner asked for responses to specific requests he posed to AFANT regarding whether AFANT believes 'an agreement for access and recreational fishing, like that suggested by the NLC, is a workable and reasonable arrangement' and AFANT's position 'on the workability of the new permit system that is being developed by [NLC], which addresses some of the concerns outlined in AFANT's detriment submissions, such as the time taken to apply for permits'.

Eight days is an inadequate time frame in which to adequately respond. We acknowledge that the timeframe of the Detriment Review does not allow the Commissioner to grant any time extensions; however, NLC was apparently granted an extension of three weeks – for a total of over nine weeks – in which to provide responses to the submissions on the Lower Daly Land Claim No 68 (**LC 68**), including comments addressing the claimed detriment interests, the relevance of any timing issues in relation to when such detriment interests were acquired, and proposals to address the claimed detriment interests. In creating such a time frame, AFANT has been significantly damaged in its ability to properly respond to significant and substantial submissions.

AFANT has nevertheless endeavoured to respond below as fully as possible. Please note that some of the responses will refer to relevant testimony in the

hearings on the Peron Island Area Land Claim No 190 (**Peron Island**) and Woolner/Mary River Region Land Claim No 192 (**Mary River**). Copies of relevant transcripts have been attached. Any reference to transcripts in this reply is a reference to the transcripts of those hearings and we respectfully request they be incorporated by reference.

NLC submission [5]

At the outset here, we recognize that the Terms of Reference for the Detriment Reviews does not allow the Commissioner to refuse to accept written submission received in respect to the review. Based on the Commissioner's evidentiary rulings in Peron Island and Mary River land claims, however, NLC's hearsay statements must be disregarded and given no weight. Fairness and consistency across all land claims, (both those undergoing detriment review and those going to hearing), dictates this result.

In the Peron Island and Mary River land claims, Claimant's counsel objected to the tender of AFANT's Shady Camp, Mary River, Wildman River & Channel Point/Peron Coast Land Claim Survey (**fisher survey**) in large part on hearsay grounds, grounds that are at least implicit in the Commissioner's sustaining the objection and refusing to enter the survey into evidence. Hearsay was also the basis of Claimant's counsel's objection to much of the testimony of Valerie Smith of the NT Department of Tourism and Culture (**NT Tourism**) in the Peron Island Claim with regard to the operations of numerous Fishing Tour Operators, many of whom had provided information to NT Tourism in the mistaken belief that letters sent directly to the Commissioner would be rejected if they were unable to appear at hearing. Again, many of the objections were sustained on hearsay grounds.

In light of this, the only portion of [5] for which the Commissioner should have regard is '...the NLC is presently developing a permit system with one objective being provision for applicants to obtain a permit and licence online for areas that are popularly used for recreation, such as the Daly River, based on standing instructions from the traditional land owners'. That no regard should be had for the remainder of the paragraph is reinforced by the contradictory testimony provided by Claimant's witness in the Peron Island and Mary River hearings Kane Bowden, that there are no negotiations being undertaken for open access recreational fishing, only consultations as to the introduction of NLC's permit system. See transcripts of 25.06.2018 at P-4 and P-11.

With regard to [5], the Commissioner has also provided the following:

I bring your attention to paragraph [5] of the submissions on behalf of the claimants. The Detriment Review is not the place to discuss the details of such proposals. However, I do request AFANT's response as to whether an agreement for access and recreational fishing, like that suggested by the NLC, is a workable and reasonable arrangement. If AFANT does not believe that it is, I request a brief explanation for why that is.

Presently, as the waters overlaying LC 68 are over Crown Land, recreational fishers enjoy the legal right to fish in the claim area. In order to resolve the significant detriment issues to fishers, AFANT favours long term / permanent fishing access agreements between the Northern Territory (on behalf of fishers) and Traditional Owners.



Agreements such as that between the Northern Territory and the Port Keats / Daly River Aboriginal Land Trust are preferable to any permit system, as permit systems are characterised by uncertainty. However, it must be distinguished that such fishing access agreements are/were a product of necessity and relate to waters that immediately became Aboriginal Land following High Court's 2008 Blue Mud Bay decision.

The present situation is significantly different to the context of the agreements referred to in the submissions in that the lands and waters under Claim in LC 68 are not presently Aboriginal Land. The Minister must clearly understand that the respective negotiating positions are different. Presumably, any talk of agreement is based upon the acceptance that the granting of the claim would result in detriment to recreational fishers. The Minister therefore has the responsibility and the opportunity to seek an optimal outcome and to set certain conditions that should be met before the claim is granted, if it is to be granted.

AFANT contends that in the case of LC 68, the Minister should seek to settle provisions for ongoing perpetual rights of access for recreational fishers. This should take place prior to any decision to grant of the claim (as was the case for the Kenbi Land Claim). In addition, with the benefit of having the experience of the Kenbi Land Claim settlement process and subsequent implementation, the process prior to grant should also necessitate the issuance of any Sacred Sites Certificates for the claim area, inclusive of any negotiated conditions of avoidance and access.

The Commissioner has also requested:

AFANT's response on the workability of the new permit system that is being developed [by NLC], which addresses some of the concerns outlined in AFANT's detriment submissions, such as the time taken to apply for permits. If AFANT does not believe this to be a reasonable arrangement if implemented, then I also request an explanation for why that is.

By way of response, AFANT first directs the Commissioner to the cross-examination testimony of Mr Ciaravolo on 26.06.2018 at P-214 to P215 (lines 1-12), P-219, and P-225 (lines 44-46) to P-226. Copies of those pages are attached for convenience.

The new permit system has been outlined in theory only. To put it mildly, it is simply a bridge too far to accept the assertions of the NLC in relation to the operation of the future permit system, however well intentioned. To be more direct, the testimony of Kane Bowden (transcript of 25.06.2018 at P-21) advising the Commissioner that the NLC seeks secure standing orders from 100 Traditional Owner Clan Groups in six-months is as alarming as it is naïve.

In any event, while the new permit system outlined by the NLC may (where standing orders are eventually received) reduce the time taken to apply for and receive a permit, this is hardly the major issue when it comes to claims yet to be granted. The permit system outlined is not any kind of long-term agreement recognising the detriment to fishers should they be excluded from the areas to which they currently enjoy legal access. There is no guarantee or even any assurance, that permits would be offered for areas that fishers want to access, nor can there be any certainty that if offered, the permits will continue to be available into the future.

The NLC has suggested that the permits will be free for three (3) years. Presumably this means that Traditional Owners must forego the financial benefits they may otherwise be able to access through fishing access agreements / settlements with the NTG, in favour of the NLC permit system. We first question whether the Traditional Owners have been advised of this in consultations with the NLC. This also raises serious concerns about the long-term viability of the permit system, not just from an operational point of view but in terms of offering Traditional Owners the opportunity to benefit from their ownership of Sea Country.

It is AFANT's contention that free permits are most unlikely to continue into the future and if we take the Dhimurru example; a yearly family permit for access to a relatively limited recreation area is \$160. AFANT's concern is that the permit system has potential to become a patchwork of access that comes at considerable cost. Or worse, access permits could be sold on the basis of exclusivity to the highest bidder. There is simply no guarantee of what the permit system will look like after three years.

AFANT does not consider the permit system outlined as an adequate or appropriate mechanism to address the detriment issues raised with respect to this claim.

NLC submission [13]

The AFANT – Lower Daly River Land Claim survey is useful and reliable for what it purports to be, a snapshot of the self-reported fishing activities and opinions of persons who fish the Lower Daly. The accounts were self-reported by AFANT members and recreational fishers. An invitation to participate in the survey was sent to 500 recipients on the AFANT mailing list and was posted and promoted on social media accounts (Facebook & Instagram). On Facebook, the post inviting participation in the survey reached 32,196 people (Facebook "reach" relates to the number of individual people that have seen a post at least once; so in this case over 32,000 different people saw the invitation and had the opportunity to do the survey.<sup>1</sup>

Over the 7-day period that the survey was open, 748 people participated. The survey was designed to only capture the reports of people who have fished the Claim Area (shown on a map in question 7). Twenty (20) respondents said that they had not fished the area. The survey logic filtered out these 20 participants and delivered them to questions 8 & 9 (about future intention to fish) and then delivered them to an early exit from the survey. Questions 8 & 9 were essentially polite exit questions designed to exclude these participants from the results while thanking them for their time.

NLC posits that self-reported surveys are *per se* invalid because those who self-report cannot be trusted to answer truthfully. AFANT categorically rejects this contention and draws attention to the fact that self-reports are commonplace in the collection of fisheries data. In addition, '[m]uch of social science relies on self-reported information. Because of this, there has been extensive research regarding the validity of self-reported data. Researchers have found that self-reported data are accurate when individuals understand

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<sup>1</sup> [https://www.facebook.com/business/help/710746785663278?helpref=faq\\_content](https://www.facebook.com/business/help/710746785663278?helpref=faq_content)

the questions and when there is a strong sense of anonymity and little fear of reprisal'.<sup>2</sup> The questions in the AFANT – Lower Daly River Land Claim survey are easy to understand and sufficient anonymity exists to provide respondents with a high enough level of comfort to provide honest answers. The degree to which dishonest answers may be a problem varies with the topic of the questionnaire; respondents are less likely to be fully truthful about measures relation to matters seen as socially unacceptable, like underage drinking or illicit drug use.<sup>3</sup> Those concerns are simply not present here.

AFANT, of course, is relying on the honesty of those responding. This is not meant, however, to assert 100% truthfulness; every survey has some margin of error. The results of the AFANT – Lower Daly River Land Claim survey, however, provide data of sufficient accuracy for the purpose for which it has been used; to support the professional knowledge of AFANT regarding fishing in the Claim Area.

NLC submission [15]

Claimant' counsel mischaracterises Mr Wilson's testimony in the Peron Island claim hearing, which Mr Wilson clarified during cross-examination. Firstly, visitors to Channel Point cannot book reservations twelve months in advance. Reservations can only be made three months in advance.<sup>4</sup> Secondly, Mr Wilson clarified his statement on cross-examination to note that people may plan vacations to Channel Point a year in advance because of factors unique to Channel Point. Access is seasonal, there is extremely limited supply (only 10 cars or 50 people per day, whichever comes first), and a person may only hold one reservation at a time.<sup>5</sup>

NLC submission [16]

AFANT does not accept NLC's contention that planning required for fishing at Channel Point can be extrapolated to all fishers. AFANT has acknowledged that people need to plan to go fishing at Channel Point. See cross-examination testimony of Mr Ciaravolo on 26.06.2018 at P-219 (lines 6-10). The situation at Channel Point, however, is unique based on seasonal limitations, limited supply of camping permits, and distance from population centres. The AFANT - Lower Daly River Land Claim Survey indicated that almost 49% of respondents answered yes to the question 'Do recent reports of good fishing either on social media or other media, influence your decision to visit the Lower Daly River to fish'. While NLC challenges the statistical rigor of the survey, the question is actually quite straight forward and provides general evidence that many decisions to fish are much more 'spur of the moment' than planning a vacation at Channel Point.

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<sup>2</sup> D Steslow, N Lasher, S Kong, 'Closing the Loop or Jumping Through Hoops: The Impact of Assessment on the Legal Studies Curricula' (2016) 33 *Journal of Legal Studies Education* 97, 103-104.

<sup>3</sup> N Brener, J Billy, W Grady, 'Assessment of Factors Affecting the Validity of Self-Reported Health-Risk Behavior Among Adolescents: Evidence From the Scientific Literature' (2003) 33 *Journal of Adolescent Health* 436, 436.

<sup>4</sup> <https://nt.gov.au/leisure/parks-reserves/permits-for-parks/bookings-channel-point> (accessed 12 July 2018)

<sup>5</sup> Ibid.

It should also be noted that the Channel Point boat ramp is not the most popular way that people access the LC 68 claim area for fishing. It is common knowledge in the fishing community that the Daly River boat ramp (Wooliana) and Dundee beach boat ramps are the locations that most people launch at to fish the lower Daly River. This should be obvious given the restrictions on access at Channel Point and is well supported by the self-reports in the AFANT - Lower Daly River Land Claim survey where launching at Channel point was the only the 3<sup>rd</sup> most popular launching option for fishers visiting the Claim Area - at 32%. The Wooliana ramp, by contrast, was reported by 82% of the 680 participants who answered the question.

NLC submission [17]

We draw the Commissioners attention to NLC's statement addressing AFANT's mention of the Malak Malak and Daly River/Port Keats Land Trusts agreements, '...the agency of traditional owners in these highly beneficial access agreements is not recognised as informing the likelihood that a future access agreement in this area, or an acceptable permit access regime, could be readily achieved'. We do so because we are unsure of the comment's meaning.

Mr Ciaravolo's statement at [17] and [51] simply pointed to the Malak Malak and Daly River / Port Keats agreements as evidence 'that access for recreational fishers to the Daly river system has been prioritised by the NT Government in recognition of the importance of this area to the fishing community,'<sup>6</sup> In providing the comment as a response to Mr Ciaravolo's statement, NLC appears to be lowering expectations and suggesting an unwillingness on its part to provide open access agreements like Malak Malak as an option in consultations with Traditional Owners. Is that the case?

NLC submission [18]

Claimant's counsel asserts that because subjective detriment cannot be quantified it must be disregarded. There is no such restriction in section 50(3)(b) of the *Aboriginal Land Right (Northern Territory) Act 1976* and such a cramped interpretation of detriment would essentially write the recreational fishing community, through its peak body, out of the ability to provide comment on detriment pursuant to sections 50(3)(b) and 50(3)(c).

The Commissioner also rejected this assertion in the Peron Island and Mary River claims hearings. Even in sustaining objection to the tender of AFANT's fisher survey, the Commissioner noted:

I accept what Mr Torgan said, that the complaint – or the concern, not complaint – the concern of AFANT on behalf of recreational fishermen or fishers is not an economic one, not a financial one, but a value-based potential loss of what he called an experiential detriment, a subjective detriment of the joys of fishing in these areas.

See transcript of 26.06.2018 at P-196 (lines 13-17). A copy that page is attached.

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<sup>6</sup> Statement of David Ciaravolo, 03.08.2018, at [17].

NLC submission [34]

The NLC submission confuses overfishing (depletion of stock) with the social amenity of recreational fishing. The cumulative detriment that comes from crowding more recreational fishing into a smaller area is not primarily about depletion of stock to unsustainable levels, and no evidence has been provided to the contrary. The detriment that occurs from crowding more fishers into a smaller space is detriment to the social amenity and experiential value of recreational fishing. This was pointed out in [39]-[40] and [42]-[43] of Mr Ciaravolo's statement on behalf of AFANT:

39. The enjoyment of recreational fishing is about much more than just the catching of fish; for participants the activity is about the experience as a whole. The enjoyment, social and lifestyle values of recreational fishing experiences can be impacted by informal competition with, or the presence of, other fishers on the water. This is especially the case in regional settings where enjoying space on the water is usually an intrinsic part of the visitation experience.

40. Increased competition [and] the presence of others, is one way that cumulative detriment from more fishers being squeezed in to fewer locations may be seen to extend beyond resource sustainability/availability, and to also impact upon on social and amenity values (the availability of a valued experience).

...

42. It is reasonable to expect that increased pressure on existing infrastructure would also occur if more fishers are concentrated into fewer areas as the result of a loss of access or changed (less favourable) access conditions to a popular fishing area (such as the Claim area).

43. Congestion of limited infrastructure may also cause detriment through the cost of time, as well as through the impact on the social value/ enjoyment of a fishing trip...

NLC's proposal to address this detriment – desisting from promotional efforts to increase fishing efforts in the Northern Territory, and depressing the economic benefit that come with it – is not credible and should be disregarded.

We thank you for your consideration in this matter.

Yours faithfully  
**WARD KELLER**

  
**BRADLY TORGAN**  
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Attachments

# Transcripts

MR AVERY: Oh.

COMMISSIONER: - - - which doesn't have her by name but has AFANT/NTSC provisional.

05

MR AVERY: Oh, I see.

COMMISSIONER: And I think that refers to her.

10 MR AVERY: Yes, correct.

COMMISSIONER: But she did have some health problems, and I think there was an issue about when she was available and whether she should be brought forward and things like that.

15

MR AVERY: Yes, I'm sorry, I overlooked that.

COMMISSIONER: So, we had to deal with that, and I said what I would do with her evidence in – or her proposed evidence, by listing it at the end of Mr Bowden and Mr Curnow's time, whatever it may take today.

20

MR AVERY: So, it's Mr Bowden now?

COMMISSIONER: Yes.

25

**<KANE BOWDEN, SWORN**

**[1.36pm]**

30 COMMISSIONER: Thank you. Now, Mr Bowden, have you got a copy of your statement?

KANE BOWDEN: I do, your Honour.

35 COMMISSIONER: Alright. Well, I'll leave it to you, Mr Avery, to lead whatever evidence you want to.

MR AVERY: Thank you, your Honour.

40

**<EVIDENCE-IN-CHIEF BY MR AVERY**

**[1.36pm]**

MR AVERY: Mr Bowden, in a statement that is not yet exhibited that has  
45 been provided by Mr Curnow, the Director of Fisheries, in paragraph 4 he says that your statement suggests negotiations with traditional owners are continuing. Could you have a look at the statement please?



KANE BOWDEN: Right here?

05 MR AVERY: Yes. Can you see anywhere where you suggest that?

KANE BOWDEN: Where consultations are continuing?

MR AVERY: Yes, negotiations, negotiations.

10 KANE BOWDEN: Well, there's nothing on negotiations.

MR AVERY: Right. Now, at paragraph 6 you talked about consultations.

15 KANE BOWDEN: That's right.

MR AVERY: What are they about?

20 KANE BOWDEN: They're about consulting with the traditional owners in the NLC regions as to the introduction of a permit system to help them understand it and inform it.

MR AVERY: Right. And you also mention at paragraph 4 in the last paragraph you again mention consultations?

25 KANE BOWDEN: That's right, yes.

MR AVERY: And is that for the same purpose?

30 KANE BOWDEN: Absolutely, yes. And a lot of this reform depends on the consultations with traditional owners to ensure that they're aware of what's been put in place on their behalf, and to seek their instructions on the permit system.

35 MR AVERY: So, those consultations are required under the Aboriginal Land Act as far as permits are concerned?

KANE BOWDEN: They are, yes.

40 MR AVERY: Thank you. That's all I have, your Honour.

COMMISSIONER: Now, that statement which is dated 29 May, have I received that yet or do you want me to - - -

45 MR AVERY: I think - - -

MR WALSH: Yes, you did, your Honour.

Yes. Now, Mr Avery touched on this: in paragraph 5 there appear to be six agreements that have been negotiated to date. Following the Blue Mud Bay decision the NLC and various land trusts entered into agreements with the  
05 Northern Territory Government over six high valued fishing areas. Are you aware that these agreements were completed between approximately 2012 and July 2014 and that there have been no agreements since that time?

KANE BOWDEN: The timing is not – I don't have that in front of me, but I  
10 am aware that's around about the timing.

MR WALSH: Thank you. And in paragraph 6, and again you spoke to Mr – spoke with Mr Avery about this where you say, while consultations continue over the remaining intertidal zones, etcetera, you are distinguishing  
15 consultations from negotiations, I think in your answer to Mr Avery. Is that - -  
-

KANE BOWDEN: Yes, there have been no negotiations. I'm not empowered or don't have in my remit any negotiations. My remit is to ensure that  
20 consultations are carried out with every clan group wishing to introduce the permit system.

MR WALSH: And you said in answer to Mr Avery that the consultations with traditional owners were concerning the introduction of a permit system?  
25

KANE BOWDEN: Correct.

MR WALSH: So, there were no other options put to the traditional owners other than the current system?  
30

KANE BOWDEN: Oh, no, and this starts with traditional owners wanting a permit system, so my understanding is it came from traditional owners and it went to a full council meeting in 2017, and it was made a priority project for the Northern Land Council and that's why we're – I'm sitting here today  
35 talking to you.

MR WALSH: But to your knowledge the consultations that you refer to in your statement have been with traditional owners about the introduction and perhaps the nature of a permit system?  
40

KANE BOWDEN: They have, and the consultations that I have personally been involved in have commenced.

MR WALSH: Yes. Now, in paragraph 7 you talk about the design of an updated permit management system which is not yet complete. And I think  
45 you've already given some evidence about how far it's progressed, but when you say "not yet complete", what is the intended timeframe from here on?

However, they have each of them integral duties committed to the permit reform project.

05 MR TORGAN: Has an allocation of – has a general allocation of time percentage wise been made to work as a policy officer?

10 KANE BOWDEN: The policy officer is 100 percent for the first six months of their role, and the business system administrator would be 50 percent, give or take, and the data analysts will be 50 percent.

MR TORGAN: Moving to a couple of questions on paragraph – focusing on paragraph 12 – actually your statement in paragraph 14 refers to various intertidal areas. Is there – how are the various areas being prioritised?

15 KANE BOWDEN: Mostly where the highest volume of fishing is occurring.

MR TORGAN: I guess could you forgive my ignorance, but how many different groups and different clans do you have to consult with over the course of developing the system?

20 KANE BOWDEN: And that's a very good question. We've got 12 priority areas, and there are close to 100 clan groups that need to be consulted before the end of the year.

25 MR TORGAN: That's all I have, your Honour.

COMMISSIONER: Thank you. Now, Mr Avery.

30 MR AVERY: Well, I'll get back to where I was.

**<RE-EXAMINATION BY MR AVERY**

**[2.15pm]**

35 MR AVERY: Yes, I'll just take you back. You were asked about eligibility criteria. If I could perhaps suggest things. So, a fairly common form would require your licence number, driver's licence number and your name, address and I forget - - -

40 KANE BOWDEN: That's right.

MR AVERY: Hey?

45 KANE BOWDEN: That's right, yes.

They may have to get permits. I don't know. All of that is somewhat speculative, but it is not capable of being perceived from the survey, and the answers, without the necessary expertise, and perhaps even more expertise in the formulation of the questions, to say, "Well, there's a lot of people who fish here and they're pretty keen on keeping going fishing". Beyond that, I'm not sure that the survey can fairly be used for any purpose and, because that is not, on the evidence as it now stands, a matter of fact which is really likely to be contested – that is, that there are a lot of people who fish these areas at present and have done for a long time and would like to continue to do so.

10 Beyond that, I just don't think that, if it's received, the weight that might be given to it for more extensive purposes can fairly be given to it. I accept what Mr Torgan said, that the complaint – or the concern, not complaint – the concern of AFANT on behalf of recreational fishermen or fishers is not an economic one, not a financial one, but a value-based potential loss of what he called an experiential detriment, a subjective detriment of the joys of fishing in these areas. But that is, in a sense, precisely why I think the survey, if it is intended to do that, should not be allowed to be used for that purpose in the particular circumstances.

20 So I don't propose to receive that part of the – that – that annexure to Mr Ciaravolo's affidavit – or his statement. I will receive the balance of his statement, save for those parts which either go to the proof of the document or which comment upon it in an interpretive way or use its contents as part of the persuasive case which Mr Ciaravolo, understandably, wants to put on behalf of his members. Obviously, those excluded paragraphs – in particular, I think, paragraphs 7 to 9 – would be available for the purposes of – identifying them as evidence which was relied upon for the purposes of having me consider and receive the survey, which I have declined to do.

30 Alright. That's the ruling. So where do we go from there?

MR TORGAN: I do have some further direct, your Honour.

35 COMMISSIONER: Oh, you can still tender the statement, excluding - - -

MR TORGAN: I - - -

40 COMMISSIONER: - - - those paragraphs that – they might take a few minutes to get the right paragraphs.

MR AVERY: May I suggest that after today – this evening, I could – I could interline on the statement the bits that I think are purely reliant on the appendix 1, then send it to Mr Torgan for consideration, and it might assist your Honour so that you don't have to do the job yourself.

COMMISSIONER: Well - - -

The \$50 million you mentioned when you gave evidence in – I think it was in Fitzmaurice.

05 DAVID CIARAVOLO: Yes. So I think there are already allocated to commercial.

MR AVERY: So you – you'd go cap in hand for some more money to put more boat ramps in.

10 DAVID CIARAVOLO: Well, not necessarily. I mean, look, recreational fishers don't like ways used in infrastructure that can impact upon the experience. That's certainly one of the – one of the concerns. But a place like the – particularly the Shady Camp system. It is so large that it does allow people to get on the water and spread out a little bit.

15 MR AVERY: So just getting – moving on to another topic: permits. So your recreational fisherman – I've put this proposition to you in a previous week – wakes up in the morning, turns on the radio, the fish are biting out at – at the Mary River, and he's in his – jumps in his car and he drives out to go fishing.  
20 Hasn't got time to apply for a permit online, as suggested in the evidence of Kane Bowden yesterday.

DAVID CIARAVOLO: Ten days in advance and - - -

25 MR AVERY: No. No - - -

DAVID CIARAVOLO: - - - in which he gets a response.

MR AVERY: No. Kane Bowden said, if they – they're developing an online  
30 app you download and you go clickety-click.

DAVID CIARAVOLO: Mm.

MR AVERY: And once they get those instructions you can get your permit.  
35

DAVID CIARAVOLO: Once – once Kane's able to get standing instructions from the (TUI).

MR AVERY: Yes.

40 DAVID CIARAVOLO: Potentially.

MR AVERY: Okay. That – no, that's right. So – but your eager fisherman has arrived now at the boat ramp at Shady Camp and there's a hundred cars in  
45 front of him. So could he have just spent two or three minutes getting his permit?

DAVID CIARAVOLO: I think if there were standing orders from the traditional owners to allow that kind of access – this remains to be seen, although is an objective of Kane Bowden – then, yes, that – he potentially could. However, that remains to be seen. This is the – this is the tricky part. I think we've never said that the technology doesn't exist to have a working permit system, but establishing, essentially, nominated area for access is very different.

But I also note that you introduced some distinctions between this point in time now, when we're dealing with – we don't have traditional owners in this area, so we don't really know what their views are about that.

MR AVERY: No. Right. No. I mean, I was going to comment that one of the traditional owners operates a tourism venture, and you probably know him. So we might be anticipating his views - - -

DAVID CIARAVOLO: One of the claimants or - - -

MR AVERY: One of the claimants, yes.

DAVID CIARAVOLO: - - - because there's not traditional owners in this area at the moment, under the Aboriginal Land Act.

MR AVERY: Well, they are if we're doing an 11A agreement. They're called traditional owners. 11As are agreements where you make an anticipation of . . .

DAVID CIARAVOLO: Perhaps I misunderstood the distinction when we were talking about it yesterday.

MR AVERY: Yes. No, you're – you're right. You're right and you're wrong. That's alright. So but we're – you know, I just mention that. One of our senior claimants operates a tourism business – actively operates a tourist business. Anyway, we'll get to that another day.

DAVID CIARAVOLO: Well, he should be looking to applying for one of the recreational fishing grants they fought so hard for to have avail to traditional owners looking to open up that country.

MR AVERY: Oh, right. Now, getting to the permits and Peron Islands, you mentioned that, in the wet, or the runoff, people put their boats in at – well, the Daly River, which I think's Wooliana.

DAVID CIARAVOLO: No, I said – I corrected myself and said - - -

MR AVERY: Dundee.

DAVID CIARAVOLO: - - - at – at Dundee.

MR AVERY: Yes, you get your money back, but you've got to put it upfront. So you have to put \$150 plus your per night camping fee upfront before you go down there. So that sort of tells you that fishermen are prepared to put the money where – where they need to.

05

DAVID CIARAVOLO: I haven't contested at any point that people need – people need to plan to go fishing at Channel Point. I'm not sure, sort of, where you're going with it, because what I've said is that people will often go fishing in the Mary River claim area at short notice in response to fishing reports, but I haven't said that about Channel Point.

10

MR AVERY: And the – the 10 vehicle limit sort of implies that at any one time you're probably only going to have a maximum of 10 boats that you can launch from that ramp on – in the reserve, unless someone's leaving the gate open.

15

DAVID CIARAVOLO: Yes. Potentially less - - -

MR AVERY: Less, yes. Maximum - - -

20

DAVID CIARAVOLO: . . . of the beach.

MR AVERY: Yes. Yes. Okay. Yes.

25 DAVID CIARAVOLO: You know, it doesn't – it's not going to satisfy a lot of people – a lot of people who would love to go down there and have that experience and miss out.

MR AVERY: Now, you heard Kane Bowden say yesterday that they wish to consult stakeholders and reveal the nature of the permit system they're developing and ask for input?

30

DAVID CIARAVOLO: I heard that he wishes that, yes.

35 MR AVERY: Yes. And you're – you're willing to participate?

DAVID CIARAVOLO: Yes. He should pick up the phone - - -

MR AVERY: Hey?

40

DAVID CIARAVOLO: He should pick up the phone.

MR AVERY: Yes. No, that's right. But you're willing to participate.

45 DAVID CIARAVOLO: Well, of course we would - - -

MR AVERY: Because you're a primary stakeholder – you're – you – on behalf of your members.

05 DAVID CIARAVOLO: Indeed. Yes. Of course. And we would like to try to ensure, insofar as possible, that the objectives of our stakeholders are – are integrated into the permit system and we have real concerns that, with only six months to go, the standing orders that are in place to meet the objectives of our stakeholders are going to be impossible to meet.

10 MR AVERY: Yes. And you heard him also say that they are currently funded, that permits would be fee-free for three years from the inception.

DAVID CIARAVOLO: Mm.

15 MR AVERY: Right? You heard him say that?

DAVID CIARAVOLO: I did, yes.

20 MR AVERY: Are you prepared to disabuse those people who seem to be picking up from social media that this is a greedy grab by blackfellas, to post that on your social media, so they're correct in their perception. Are you prepared to do that?

25 DAVID CIARAVOLO: Oh, I think – I think what you're putting to me is a lot of speculation. We don't have a permit system in place right now that is – is – the system that you're talking about, in addition to which a lot of the comments that we – we have gone to with our concerns around the permit system is that there is a lack of certainty. I mean, essentially, if there is a – a declared open access area as a result of a claim being granted, or if there is a  
30 long-term access agreement, there is – there are certain degrees of certainty there.

35 With a permit system, there are – the only certainty people have that they're going to get access is when they are issued with their permit, and that opportunity could be revoked at any time and, of course, one of the – the real concerns for us is that those standing orders in place to issue one of those permits is not going to be there. So I would really have to be going out on a limb and basically, you know, channelling the single point of your contention and say that to my members, and I think that would be misleading at this point  
40 in time.

MR AVERY: And your members all respect sacred sites and, when they're aware of them, will stay clear of them when they're fishing? Is that correct?

45 DAVID CIARAVOLO: Well, our members are availed, for example, in the areas that have recreational fishing – recreational fishing – access agreements with a code of conduct – code of practice which outlines those. I think sometimes people aren't necessarily aware of where sacred sites are but, of



jurisdictions do not face. It is an entirely separate cost to managing a fishery.  
It's - - -

05 COMMISSIONER: I'm not sure how much further I'm going to be helped by  
this, Mr Avery.

MR AVERY: No. It's a – not going anywhere. Yes. I think I'll just – I'll  
leave it there. So we've got permits. We're back where we were on permits.  
10 You've heard Mr Bowden's evidence about that. You – you adopt a wait and  
see. Did you hear the remarks yesterday about the timing for grant of land  
from any recommendation to when it actually might happen?

DAVID CIARAVOLO: Mm.

15 MR AVERY: You heard that?

DAVID CIARAVOLO: Mm.

MR AVERY: And did you understand the exchange we had about the role of  
20 the Minister in determining whether land should be granted?

DAVID CIARAVOLO: I'm – I'm very well aware of that.

MR AVERY: Right.  
25

DAVID CIARAVOLO: And I know he's eager to learn the results of our  
survey.

MR AVERY: Yes, well, send it to him. The – so the Minister's agency in  
30 this is – is to read the report and the comments.

DAVID CIARAVOLO: Of course.

MR AVERY: And then he can make a decision, which may actually be  
35 reviewable by a party who's not satisfied.

DAVID CIARAVOLO: Yes. Look, I – I understand – I understand the  
process. I understand the role of – of the Commissioner. I understand,  
obviously – I've read the reports of the previous Commissioner, and I have –  
40 I've – I've familiarised myself with the – the context of that and I'm aware of  
the passage of time since the recommendation of the last grant and detriment  
review. So I feel fairly – I'm fairly well across that.

MR AVERY: So even the time it took for those processes to run, Mr  
45 Bowden's system is online, you would be able to see it and know what you  
would be able to say about it, whether it's workable for your members.

DAVID CIARAVOLO: Yes and no. I mean, I think – I think it kind of misses the point. I mean, I think if the traditional owners were coming to the Minister and saying, “Well, this is the area that we want to nominate as an open access area and this is the conditions”, whether it's open access or open  
05 access by a permit and whichever way they wanted to agree to that, that's a different scenario.

I'm not sure that Mr Bowden's going to, you know, solve all of the issues of getting claim agreements on different fishing areas through his electronic  
10 design. I think – I think that – that's a long way down the road.

MR AVERY: So if, on the Peron Islands or the Woolner area, the claimants were minded to – to agree with a proposition for one of those access agreements that have been done previously for Aboriginal land, would AFANT  
15 be happy about that? You wouldn't be paying the cost.

DAVID CIARAVOLO: I think our preference would be, where it's possible, to have the area – areas that report recreational fishing to be declared as open areas under the Indigenous – under the Aboriginal Land Rights Act. If they  
20 were – if the claim was going to be granted.

MR AVERY: Thank you. That's all.

COMMISSIONER: Thank you.  
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MR WALSH: Just a couple of points of clarification, if I may be permitted, your Honour.

COMMISSIONER: Yes.  
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**<CROSS-EXAMINATION BY MR WALSH [4.19pm]**

35 MR WALSH: Mr Avery referred to bag limits. It's correct to say, isn't it, that bag limits relate to the – the matter of the number of fish kept, not the number of fish caught?

DAVID CIARAVOLO: Absolutely. Absolutely.  
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MR WALSH: And, secondly, the concept known as catch and release is – is commonly practised by NT recreational fishers?

DAVID CIARAVOLO: It's – it's very – it's very common. I can't say the  
45 number right now because, normally, my statement would refer to the – the report in the government's research, which – and I used the one that was in my – in my survey, which I'm not allowed to talk about. But, certainly, you could