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The Honourable John Mansfield AM QC  
Aboriginal Land Commissioner  
Office of the Aboriginal Land Commissioner  
Level 4, Jacana House, 39-41 Woods Street  
DARWIN NT 0800

Via email: [AboriginalLandCommissioner@network.pmc.gov.au](mailto:AboriginalLandCommissioner@network.pmc.gov.au) / [elena.zola@network.pmc.gov.au](mailto:elena.zola@network.pmc.gov.au)

Dear Commissioner


**Invitation to participate: Review of detriment issues – Lower Daly River Land Claim No. 68**

I refer to your letter dated 5 January 2018 and to subsequent correspondence in relation to this matter regarding the provision of detriment comment on behalf of the Northern Territory of Australia by 8 March 2018.

Please find attached Detriment Review Table prepared by this Office in relation to this land claim including detriment submissions on behalf of the various NT Government agencies received by this Office.

Please do not hesitate to contact me if you have any queries.

Yours sincerely



**Kalliopi (Poppi) Gatis**  
Senior Lawyer  
8 March 2018

Attached (\*) Detriment review Table for Land Claim No. 68

cc. Mr David Avery, Northern Land Council  
via email: [david.avery@nlc.org.au](mailto:david.avery@nlc.org.au)



**DETRIMENT REVIEW: LOWER DALY REGION LAND CLAIM NO. 68, REPORT NO. 65**

**UPDATED DETRIMENT AND PROPOSED PATTERNS OF LAND USAGE INFORMATION ON BEHALF OF  
THE NORTHERN TERRITORY OF AUSTRALIA FOR CONSIDERATION OF THE ABORIGINAL LAND COMMISSIONER**

**Key**

**NTP = NT Portion No.**

**CLP = Crown Lease in Perpetuity**

**PPL = Perpetual Pastoral Lease**

**VCL = VCL**

**ALT = Aboriginal Land Trust land held under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (ALRA)***

<b>LOWER DALY LAND CLAIM NO. 68, Report No.65</b>	
<b>Item</b>	<b>Olney J detriment findings and any additional detriment per ALC letter of 15.12.17</b>
	<p>LC 68 consists of a claim to the beds and banks of, and islands in all those parts of the Daly River in the Northern Territory of Australia lying west of the northern prolongation of the western boundary of Pastoral Lease 820 (Elizabeth Downs) and being the area shown hatched on the map attached to this Application including all that parcel of land in the mouth of the Daly River in the Northern Territory of Australia containing an area of 410 ha more-or-less being the whole unnamed island which lies above below (sic, presumably low) watermark EXCEPTING any land on which there is a road over which the public has a right of way; and any land that is not unalienated Crown land. This land has been surveyed and defined as NT Portion 6343 per approved survey plan S2004/186.</p>
	<b>Additional/new detriment information</b>
1.	<p>The NT Government Department of Primary Industries and Resources (DPIR) advise:</p> <p><b>PART 1: FISHERIES</b></p> <ul style="list-style-type: none"> <li>a. DPIR areas of responsibility in the Northern Territory business sector are mines and energy, fisheries and product integrity, primary industry development and the NT Geological Survey. It assists in driving economic development in relation to land and coastal and inland waterways.</li> <li>b. DPIR compiles information relating to existing fishery interests and practices in the NT to regulate activities under the <i>Fisheries Act (NT)</i> (the Act). The Act provides for</li> </ul>

	<p>conservation and management by regulation of all fish and aquatic life in NT waters including rivers, and waters overlying the intertidal zone along the NT coast. This is done to ensure sustainable utilisation by all interested use groups including traditional Aboriginal usage. The Act endeavours to ensure equitable and optimal use of these resources to the benefit of the Territory community.</p> <ul style="list-style-type: none"> <li>c. Save for aquaculture, fish and aquatic life are deemed to be the common property resources managed and conserved under the Act for the Territory community as a whole.</li> <li>d. All coastal and inland waters of the NT, including waters that overlie Aboriginal land and the use of fish and aquatic life is a regulated activity administered under the Act.</li> </ul> <p><u>Commercial Fishing</u></p> <ul style="list-style-type: none"> <li>e. No commercial fisheries have been identified in the claim area.</li> </ul> <p><u>Recreational Fishing</u></p> <ul style="list-style-type: none"> <li>f. The Daly, within the boundaries of LC68, is a high value recreational fishing area.</li> <li>g. The most recent data on recreational fishing was the 'Survey of Recreational Fishing in the NT 2009-10'. During the 2009-10 survey, specific accommodation based surveys were conducted on the Daly River to provide an estimate of recreational fishing effort for both NT residents and visiting anglers between 1 April and 30 November 2009. The survey estimated that during this 8 month period, a total of 17,026 days fished were spent on the Daly River from the Daly crossing to the mouth of the river.</li> <li>h. Fisheries have no specific estimate of activity that occurred within the claim area. Nonetheless, it is patently clear that the lower sections of the river are very popular for recreational fishing, particularly during the run-off period from February to June. The creeks in and around Palmerston Island, the Reynolds River and Anson creek just north of Cliff Head are all heavily utilised by anglers.</li> <li>i. Additionally, the claim area is extremely important for fishing tour operators with a number of licence holders anchoring motherhips in the area behind Palmerston Island and accessing all the creeks within the vicinity for remote area sportfishing.</li> <li>j. The claim area is also a high-value location for competitive fishing, and plays part to two commercially and regionally valuable fishing competitions each calendar year: the 'Barra Classic' (Darwin Game Fishing Club) and the 'Barra Nationals' (Palmerston Game Fishing Club).</li> </ul>

Fishing Tour Operators

- k. NT Fisheries collects data from Fishing Tour Operators about where they have conducted their operations. Fishing Tour Operators are highly likely to fish in more than one 'data-collection grid' section on the Daly, and so a single operator may be present in more than one grid.
- l. Data currently available shows the number of Fishing Tour Operators active (by year) in the Daly River.

Year	No. licences that worked in the area
2008	1
2009	1
2010	1
2011	2
2012	1
2013	1
2014	1
2015	3
2016	4
2017*	4

Data for 2017 remains incomplete.

- m. Fishing tourism generates a significant amount of localised economic activity in the region, and if access arrangements are modified this may have adverse impacts on expenditure and on individual business operations.

Scene Setting: access negotiations

- n. The Blue Mud Bay decision essentially provides that any Aboriginal land covered from time to time by tidal waters is subject to the permission to enter the area by way of either a permit under the *Aboriginal Land Act* (NT) or agreement with the traditional owners under s19 ALRA.
- o. Since the High Court decision on Blue Mud Bay, the NT Government has been negotiating access arrangements for access to affected tidal waters overlying Aboriginal land. Many previous land grants have been made to the “mean low water mark” which is not defined on nautical charts which creates difficulties in regulation and enforcement. The Blue Mud Bay decision has created considerable uncertainty for commercial and recreational fishing sectors over access to waters. While seven agreements have been reached to date including in relation to the upper Daly river where held by the Malak Malak Aboriginal Land Trust and parts of the lower Daly held by the Port Leats/Daly River Aboriginal Land Trust, the agreements are of limited duration. Further, the negotiation process has been time consuming and resource intensive for Land Councils, and despite significant efforts, progress has been slow regarding negotiating agreements over remaining areas comprising existing land trust land.
- p. In relation to the claim area and surrounding claimed areas, there is no certainty that a future access agreement for mid-long term usage would be reached for fishing in the claimed waters in which case neither recreational or commercial fishers would have any access to the waters overlying the claimed land.
- q. The effect of the Blue Mud Bay decision, in combination with the existing areas granted as Aboriginal land down to low water mark along the NT coastline, and the 12 beds and banks claims heard by Olney J as former Commissioner and the 10 outstanding beds and banks claims to be heard by the current Commissioner gives rise to a strong risk that proposed patterns of land usage associated with recreational and commercial fishing will be detrimentally impacted upon if widespread access is withdrawn or restricted.
- r. Even if agreement is reached, it might not be over a sufficient term to provide certainty and security for commercial development in the areas. Agreements have an ongoing cost for the Territory Government and taxpayers, as well as resourcing implications for Government agencies and Land Councils to review and renegotiate agreements on an ongoing basis.

Importance of whole of fishery approach to fisheries management

- s. Approximately 78% of the coastline of the NT is Aboriginal land down to low water mark. If all outstanding claims to river and intertidal zones resulted in grants as Aboriginal land this figure would increase proportionately.
- t. There is also the potential for sea closure applications under s12 of the *Aboriginal Land Act (NT)* to be pursued which may result in the closure of seas adjacent to Aboriginal land extending 2 kilometres seaward from the mainland grant.
- u. The Northern Territory Fisheries Harvest Strategy is a policy document that integrates the ecological, social and economic dimensions of fisheries management into a single operational framework for decision making. In its simplest form, a harvest strategy provides a framework to ensure that fishery managers, fishers and other stakeholders have a shared understanding of the objectives of using a specific resource and work together to consider and document a response that will be applied to various fishery conditions (desirable and undesirable) before they occur. This provides greater certainty and avoids ad-hoc decision making.
- v. Harvest strategies are considered to represent a best-practice approach to operational fisheries management and they have been widely adopted nationally and internationally. Harvest strategies identify clear objectives of how a given fishery resource is to be used to optimise benefit. They put in place measurable indicators of performance to ensure the fishery moves towards meeting the objectives and specific management actions that will be implemented if reference points are met to ensure that the fishery stays on track.
- w. The adoption of a consistent approach to the development of a harvest strategy is expected to lead to better managed fisheries and encourage responsible fishing, as decisions on harvest levels are forecast and will be made in a more transparent, predictable and timely manner. Harvest strategies will also provide adaptability to social, economic and ecological change and create a level of transparency and reporting that will foster greater community confidence in the way fisheries are managed.
- x. In carrying out the objectives of the Fisheries Act and the Harvest Strategy, it is critical that the impact of reduced or modified access is understood as it relates to overall management of fisheries as a natural resource.
- y. A number of pre-requisites exist for the development and management of aquatic resources. The Harvest Strategy names the following as a pre-requisite for effectively managed fisheries:

*1. A fishery specific management framework that contains:*

	<p><i>1.1. Long term conceptual objectives including ecological, and where appropriate, economic, social and customary objectives that define how the fishery is carried out to the benefit of the community; and</i></p> <p><i>1.2. Resource access and allocation arrangements between commercial, recreational, customary and fishing tourism).</i></p> <p><i>2. An Ecologically Sustainable Development risk assessment to identify and prioritise the full suite of ecological, economic, social and customary issues in the fishery.</i></p> <p>z. Notwithstanding that the Fisheries Act and the Harvest Strategy would continue to apply regardless of tenure, the granting of 'Beds and Banks' claims on a wide scale amounts (in a cumulative sense) to an additional management regime over Territory waterways - an access regime notionally founded upon either permit-based access or agreements for commercial activity under Section 19 of the <i>Aboriginal Land Rights Act 1976</i>.</p> <p>aa. Historically, impediment to or obstruction towards an aquatic resource (whether through regulatory, access or environmental factors) has served to displace fishing effort, rather than remove it. This displacement has the more than likely effect of concentrating co fishing effort. It also remains at odds with the overall aims and goals of the <i>Fisheries Act</i> and the Harvest Strategy, which aims to promote and enhance informed, evidence-based fisheries management decisions.</p> <p>bb. In the McArthur River Region Land Claim (184) Report of March 2002 the then ALC, Justice Olney, at paragraph 169, makes a strong comment on the need to treat river and sea access and the issues arising there from on a global basis:</p> <p><i>"It is likely that the pending claims identified in in this statement will give rise to similar, if not identical, issues as have been raised in previous Land Claims in relation to access to rivers and the sea, and to the management of both marine resources and the coastal ecosystem. The evidence is very strongly against dealing with these issues on a purely local, rather than a regional or even a Territory-wide basis. It would seem that a final resolution of these claims may be dependent upon the resolution of outstanding legal questions concerning the rights which attach to Aboriginal ownership of tidal rivers and the bed of the intertidal zone and also the larger question of whether the seabed beyond the low water mark is susceptible to claim under the Land Rights Act. Ultimately legislative action on the part of both the Commonwealth and the Northern Territory may be required to achieve an acceptable result."</i><u>(Emphasis added).</u></p>	
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cc. In the Lower Roper River Land Claim (70) Report of 7 March 2003 Justice Olney, at paragraph 112, returned to this theme and commented:  
*There have been a number of land claim reports in recent years in which recommendations for the granting of title have been made in respect of areas of the inter-tidal zone and tidal rivers in the Gulf region. Most, if not all, of those reports have been referred to above. In each, one of the concerns expressed is that if by reason of a grant of title access to waters of the ocean and rivers by commercial and/or recreational fishers is prohibited or restricted, there is likely to be a corresponding increase in fishing effort in other areas. This reasoning has not been challenged. In these circumstances it would seem logical that the recommendation in this report should not be considered in isolation from those contained in the other reports in question but rather, a regional, if not Territory wide, approach should be adopted in considering whether, and to what extent, the recommendations should be given effect to.* (Emphasis added).

dd. Of further significance to whole-of-fisheries management is that displaced fishing effort may very well be displaced to further areas where access may be conditional or denied altogether – creating, in effect, regional level disruption of fisheries management (i.e. the Harvest Strategy) rather than localised.

Enforcement of catch limits

ee. The Northern Territory has strict possession limits and gear restrictions in place for recreational fishers and a range of effort and gear restrictions in place for the commercial fishery. The numbers of commercial fishers and fishing tour operators is controlled via the issue of licences to undertake that activity. Compliance involves two key measures; education and enforcement. Education measures include brochures, signage and a NT fishing application that allow smart phone users to understand and be aware of the various fishing rules in place including the ban on the take of protected species.

**PART 2: MINERALS AND ENERGY**

a. The DPIR administers and regulates petroleum exploration, production and transportation (via pipeline) activities in the Northern Territory on shore and to 3nautical mile limit (3nM).

Applications, petroleum interests and pipeline interests

- b. In respect of petroleum interests under the *Petroleum Act* (NT) and *Petroleum (Submerged Lands) Act* (NT) relevant related legislation (including subordinate legislation):
- c. an exploration permit for petroleum is an exploration licence as defined in the *Aboriginal Land Rights (Northern Territory) Act* (Cth) 1976 (ALRA);
- d. a retention licence for petroleum is an exploration retention licence as defined in the ALRA;
- e. a production licence for petroleum is a mining interest as defined in ALRA;
- f. neither renewal of a mining interest nor granting of an exploration retention licence requires compliance with Part IV of the ALRA;
- g. granting of an exploration licence or a mining interest requires compliance with Part IV of the ALRA;
- h. in respect of pipeline interests under a law of the Northern Territory, neither a pipeline permit nor a pipeline licence is an exploration licence, exploration retention licence or mining interest as defined in the ALRA;
- i. a person that holds a pipeline licence under s15 of the *Energy Pipelines Act* (NT) (pipeline licence) cannot exercise their rights under the pipeline licence if they interfere with those of an underlying landowner or interest holder, meaning that a licence holder will often need landowner/interest holder consent or an interest in the underlying land such as an easement, lease or licence in addition to a pipeline licence;
- j. interests held under the *Petroleum (Submerged Lands) Act* (NT) (which include pipeline licences as well as interest for the exploration and mining of petroleum) are only granted within the 'adjacent area', being an area seaward of the Territory coastline at the mean lower water mark, whereas grants of Aboriginal land abutting coastal and tidal waters extend to the low water mark;
- k. seas adjacent to Aboriginal land can be 'closed' under the *Aboriginal Land Act* (NT) such that entry to those seas would require a permit from the relevant Land Council.

Petroleum Interests in and adjacent to the Claim Area

- l. There are no granted petroleum titles within or abutting the claim area.
- m. There are petroleum title applications abutting and over most of the claim areas. Exploration Permit (Application) 218 lies over most claim area. EP (A) 175 abuts the south western boundary of the claim and EP (A) 287 lies immediately seaward of the mouth of the Daly River. EP (A) 175 is on ALRA land and EP (A) 287 is on Native Title affected Land.

<p>n. On 17 March 2011, EP (A) 218 was made by Arafura Oil Pty Ltd. The application was on hold due to the appeal in "<b>Pavalina Henwood vs Ors vs Northern Territory and Ors</b>". On 27 November 2017, the Full Court of the Federal Court dismissed the appeal. The decision does not prevent future applications over the areas.</p> <p>o. On 07 December 2017, EP (A) 287 was made by Arafura Oil Pty Ltd. EP 287 is also subject to Aboriginal Land Claim 189 that includes islands, the bed of any bay or gulfs of the islands or the mainland, sandbars, islands, islets, reefs, rocky areas and other formation on shown on the map attached to the application for the claim.</p> <p>p. On 20 January 2010, EP (A) 175 was made by Bonaparte Oil Pty Ltd. On 17 Sept 2010, the Territory Minister gave the applicant Consent to Negotiate with the relevant Land Council and it is understood that preliminary negotiations have taken place. Current consent to negotiate period is due to end 31 October 2018.</p> <p>q. In January 2016, Arafura Oil Pty Ltd and Bonaparte Oil Pty Ltd became subsidiaries of Australian Gas and Oil Pty Ltd.</p>	<p>r. <u>Access Negotiations</u> Before grant of a petroleum permit, the DPIR must have evidence that the applicant and either the registered native title parties or the traditional owners of any ALRA land, (whichever is applicable) have reached formal agreement between them. The DPIR is not privy to these agreements, but understands that the agreements commonly deal with environmental and cultural matters and how activities are conducted. This could include activities like transport a petroleum resource via pipeline or to conduct environmental studies, including sampling and geophysical surveys.</p> <p>s. The Petroleum Act requires that the holder of a granted EP must carry out works in such a way as to cause as little disturbance to the environment as practicable. Additionally, exploration activity is subject to the requirements of the Petroleum (Environment) Regulations (PER), for which an environment management plan must be approved (an approved plan under the PER) before activity be undertaken. For those reasons, DPIR does not generally approve drilling programs within 100 metres of a river or inland water body. Therefore, a grant of Aboriginal Land over the areas claimed may not directly affect tenement holders' exploratory drilling.</p> <p><u>Geological Survey</u></p> <p>t. There are two mineral occurrences within the area of Land Claim No. 68. One is a heavy mineral sands occurrence called Cliff Head containing ilmenite as 25-30% of total weight fraction and zircon as 20% total weight fraction reported in CR19730055 (Nixon and Hurst 1973). This information was derived from exploration activity</p>
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		<p>undertaken by Endeavour Oil Company in 1972/73. These concentrations of titanium (within the ilmenite) and zircon were considered a significant mineral occurrence and possibly of economic importance at the time. No further investigations have taken place.</p> <p>u. The second is a coal mineral occurrence called Cliff Head Coal identified during exploration and drilling by Utah Development Company in 1971 (Utah Development Company 1972). At the time the coal was deemed of no economic interest. No further investigations have taken place.</p> <p>v. Land Claim No. 68 is located within the on shore Bonaparte Basin, a Phanerozoic Basin considered to have some potential for conventional hydrocarbons (Munson 2014). However the area of the Basin covered by Land Claim No. 68 is unexplored, is not considered the most prospective part of the basin and is likely to be too insignificant an area to substantially impact on any potential future exploration.</p> <p>w. Existing evidence suggests it is possible that Land Claim No. 68 area could have some potential for minerals and petroleum, however the lack of recent exploration or geological studies precludes definitive advice.</p>
<p>2.</p>	<p>The NTG's submission also expressed concern that pastoral operations may be affected, as the rights of the owner of Litchfield Station to access Daly River may be extinguished in the event of a grant of title: refer Report No.65, at [90].</p>	<p>Department of Environment and Natural Resources (DENR) advise:</p> <p><u>Rangelands</u></p> <p>a. NT Portion 2681, subject to Perpetual Pastoral Lease (PPL) 1006, Litchfield Station is owned by the Boolamani Corporation and Branir Pty Ltd. PPL 1006 it is adjacent to the whole of the right bank of the claimed section of the River. This title extends to the top of the bank of the Daly River.</p> <p>b. Rangelands Unit of the DENR administers the <i>Pastoral Land Act</i> (NT) (PLA);</p> <p>i. The NT pastoral industry is a substantial contributor to the NT economy being a key contributor to the agribusiness industry underpinning the Developing the North Plan through job creation and economic growth.</p> <p>ii. The object of the PLA requires a pastoral lessee to prevent or minimise degradation of or other damage to the land and its native flora and fauna;</p> <p>iii. The lessee is required to control feral animals and weeds including those on the beds and banks of any waterways as there are often high weed incursions within those waterways;</p> <p>iv. Access must be allowed in order to control any incursions and prevent widespread weed problems throughout the lease and any neighbouring land.</p>

<p>V. The lessee's, their staff and visitors may access the waterways, including the beds and banks of the rivers/coastline for camping, fishing and other recreational purposes.</p> <p>vi. Under Part 6 section 79 of the PLA, the general public has the right to access waterways.</p> <p>vii. Future diversification activities may require the use of the bed and banks of the river and any restrictions imposed on accessing this area may impede on pastoralists future to generate an alternative source of income; Such uses may be tourism, fishing tours, agriculture (requiring water from the river for irrigation etc); and</p> <p>viii. The lessee has the right to graze and water cattle on his land adjoining waterways pursuant to the <i>Water Act</i> (NT) and may take water for domestic purposes, drinking water for grazing stock on the land and may wish to install pipes or pumps in the claim area for accessing the water supply in the future.</p> <p><u>Water Resources</u></p> <p>c. Access to undertake water monitoring duties is provided under s20(1) and (2) of the <i>Water Act</i> (NT).;</p> <p>d. Whilst there are no active assets (water monitoring infrastructure) within the claim area, future water investigations for planning and development may necessitate access by Water Resources staff on to the claim area as directed by the Department (there is currently no monitoring or studies in progress within the claim area).</p> <p>e. Historical monitoring sites are no longer used however the infrastructure remains and can be re-established as gauging stations as new water investigations require;</p> <p>f. Data collected by gauging stations provides continuous record of river height and flow to improve the understanding of the hydrology, water quality and geomorphology of the river and key elements of water management.</p> <p>g. the replacement value of a typical gauging station is approximately \$150k.</p> <p>h. Surface water extraction licenses may be issued to specific land holders bordering the river who meet the application requirements and assessment conditions of the <i>Water Act</i>.</p> <p>i. Land holders will maintain pumping infrastructure on the river bank to access water. Department staff inspect the pumping infrastructure annually to ensure it conforms with relevant standards and to validate meter readings.</p> <p>j. There are no surface water extraction licenses associated with the claim area (NT Portion 6343).</p> <p>k. The claim area is outside the Daly Roper Water Control District.</p>	
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		<p>l. Provided there is direct access to the rivers, extraction from the rivers for stock and domestic use is permitted. Extraction of water for any other purpose is not permitted without a water extraction licence;</p> <p>m. There has been significant monitoring undertaken within the claim area in the past for various studies in the Daly River Estuary, and it is likely that Water Resources staff will need to access the claim area into the future for further studies.</p> <p>n. Detriment would result if the Water Resources Division and its contractors could not continue to freely access the claim area for the purpose of water monitoring and installing, maintaining and operating water monitoring infrastructure.</p>
3.	N/A	<p>The Department of Tourism and Culture (DTC) advise:</p> <ol style="list-style-type: none"> <li>a. The NT's rivers are of vital importance in attracting tourists (including recreational fishers) to visit the Top End with tours and visits to these areas being a highly sought after experience. As one of the largest rivers in the NT, the Daly River is well known for its fishing (largely Barraumundi) and boating. People also undertake camping on the banks of the river.</li> <li>b. The Daly River hosts two major annual fishing competitions:       <ol style="list-style-type: none"> <li>i. The Barra Classic; and</li> <li>ii. The Barra Nationals.</li> </ol> </li> <li>c. The beds, banks and intertidal zones within the claim area have significance from a tourism perspective with the claim area being utilised by tourism operators and visitors.</li> <li>d. There are various tourism operators who either utilise the region within the claim area as part of their operations or are based further inland from the claim area but rely on it as a drawcard for visitors.</li> <li>e. For the year ending March 2017, visitor estimates for the region are 81000 people:       <ol style="list-style-type: none"> <li>i. Domestic overnight visitors – 76,000; and</li> <li>ii. International visitors – 5000.</li> </ol> </li> <li>f. More than a quarter (28%) of domestic overnight visitors and 13% of international visitors to Katherine Daly Region had an overnight stopover in the Daly Region. There are approximately 28 tour operators that utilise the area under claim. Details of these operators can be provided if required.</li> <li>g. The claim area is accessed infrequently by the Crocodile Management Unit (CMU) to conduct saltwater crocodile population surveys with the DENR however on occasion</li> </ol>

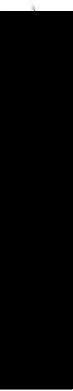
		the CMU may be required to capture and remove a problem saltwater crocodile in the area.
4.		<p>The Department of Trade and Business Innovation (DTBI) advise:</p> <ul style="list-style-type: none"> <li>a. That whilst it has no assets, infrastructure or activities within the claim area, the Department concurs with the submissions of the NT Government lodged during the original inquiry concerning public rights that may be affected in relation to fishing, camping and access to the Daly River; as well as concerns that pastoral operations in the area may be affected.</li> </ul>
5.	N/A	<p>The Department of Infrastructure, Planning and Logistics advise that:</p> <ul style="list-style-type: none"> <li>a. The 2001 advice that there are no current Transport Infrastructure assets or interests within the Claim area remains.</li> <li>b. However, whilst there are no marine navigational aids or infrastructure located within the Claim area, future development could see the need arise for such infrastructure to be established in the area including beds and banks of the Daly River and Palmerston Island.</li> <li>c. In order to protect the safety of navigation, DIPL needs the ability to establish, dis-establish, move, alter and/or maintain aids to navigation of waterways of the Northern Territory.</li> </ul>
<p><b>CONCLUSION:</b></p> <p>We adopt the words of the former Aboriginal Land Commissioner, the Honourable Justice HW Olney at paragraph 91 of Report No. 65, to note that the above submissions "do not raise any issue that is unique to the present claim ... [as these] matters have been canvassed in" previous claims involving tidal rivers. The issues therein referred to relate to those as discussed in his earlier land claim reports involving intertidal zone and/or beds and bank areas of rivers such as in Report numbers 61, 62, and 63.</p> <p>It is the submission of the Northern Territory that the comment function of the Commissioner under section 50 (3) (b) and (c) ALRA requires, where appropriate, the Commissioner to take a broad view that the effect of acceding to a claim may have. As noted at item 1, Part 1, paragraph (bb)-(cc), we adopt and endorse the comment of the former Commissioner Olney J in Report No. 62 regarding the McArthur River Region Land Claim No. 184 at paragraph 169 and at paragraph 112 of the Commissioner's report no. 65 regarding the Lower Roper River Land Claim No. 70 and go further.</p>		

Your Honour observed in discussion in Legune Area LC 188 and Gregory NP/ Victoria River LC 167 (transcript of land claim call over on 22.01.17 at p. 8.22-27) that "...it's not just enough to say, well, we won't be able to get water from the river. It's a question of whether there's any other water or anywhere else, or whether there's other means of access, or whether there's difficulties which are being experienced..." By parity of reasoning it is not enough to say (indeed it is a nonsense to say) that recommending a grant that if acceded to would prevent entry on or fishing of these (claimed) waters is of no consequence because there are other waters that might be fished or entered on when it is known that every area of water that is presented as an alternative is claimed or recommended for a grant. The evidence regarding cumulative detriment presented in the inquiry for the Fitzmaurice River Region Land Claim 189 and Legune Area Land Claim No. 188/167 of Mr Sarib (exhibit NT7 LC 189; NT18 in LC 188/167) and Mr Ian Curnow (Exhibit NT9 in LC 189 being exhibit NT19 in LC 188: see also exhibit NT explain this issue. Thus as one by one Claims are heard and recommended there is a cumulative effect such that the throw away idea that people can fish or otherwise access and/or enjoy the waterways somewhere else becomes unrealistic.

The detriment is not just one more River or intertidal zone area. The pattern of land usage ceases to be achievable. Unless the Minister is assisted by a comment that recognises this reality he or she cannot understand the global effect of acceding to each claim. It may be that the Minister may wish to accede to a Claim regardless of the detriment or effect on existing or proposed patterns of land use but he or she needs to know where this is heading. Thus we submit cumulative detriment is a valid and proper matter for comment.

Finally, we note that the Northern Territory may seek leave to provide further detriment submissions where required arising from any detriment submissions provided by other parties the subject of this detriment review

**Table/comments prepared by:**

  
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**Date: 8 March 2018**



*Aboriginal Land Rights (Northern Territory) Act*

**Review of Detriment Issues – Lower Daly Land Claim No. 68**

**Submissions of the Northern Territory in Reply**

**26 July 2018**

1. By letter dated 5 January 2018, the Aboriginal Land Commissioner (“ALC”) invited the Northern Territory of Australia (“NTA”) to participate in the Review of Detriment Issues – Lower Daly River Land Claim No. 68 (“the Review”) being conducted by the ALC under Terms of Reference issued by the Federal Minister pursuant to section 50(1)(d) of the *Aboriginal Land Rights (Northern Territory) Act* (“ALRA”).
2. On 8 March 2018, the NTA filed a document entitled “Detriment Review: Lower Daly Region Land Claim No. 68, Report No. 65 – Updated Detriment and Proposed Patterns of Land Usage Information on behalf of the Northern Territory of Australia for consideration of the Aboriginal Land Commissioner” (“the first NTA Submissions”).
3. It is noted that five other parties also filed submissions in respect of the Detriment Review in respect of the Land Claim, namely; (i) AFANT on behalf of recreational fishermen, (ii) Shannon Latham, Fishing Tour operator, (iii) Daly River Barra Resort, (iv) Tipperary Group of Stations Pty Ltd on behalf of Litchfield Station partners and (v) NTCA with respect to pastoral interests.
4. On 8 June 2018 Mr David Avery as Solicitor for the Claimants in the Lower Daly Land Claim No. 68 (“the Land Claim”) filed a document entitled “Review of detriment issues – Lower Daly Land Claim No. 68 – Submissions on behalf of the Claimants” (“the Claimants’ Submissions”). In his covering letter Mr Avery, inter alia, notes “As I mentioned in my earlier communication to your office a substantial component of these submissions addresses matters that are generally applicable to the other land claims under review in the fishing and pastoral areas in particular.”
5. By letter dated 29 June 2018, the ALC agreed to the NTA providing a Reply to the Northern Land Council’s (NLC) submissions by 26 July 2018. As noted above, the Claimants’ Submissions are filed on behalf of the claimants in the Land Claim (rather than the NLC) and the Submissions of the NTA in Reply are made on that basis.
6. The Submissions of the NTA in Reply below address specific numbered paragraphs of the Claimants’ Submissions. Where a specific paragraph of the Claimants’ Submissions is not addressed it is either on the basis that the respective paragraph

relates to another party or the NTA has nothing further to add from what was contained within the first NTA Submissions.

### **NTA SUBMISSIONS IN REPLY RESPONDING TO NUMBERED PARAGRAPHS OF THE CLAIMANTS' SUBMISSIONS**

The following numbering refers to the paragraph number in the Claimants' Submissions.

3. The submission refers to the Survey of Recreational Fishing in the Northern Territory 2009 – 2010 ("the Survey") and notes that the Survey has not been specifically provided to the Review by any party, although the Survey was tendered as Exhibit A12 in the Legune Land Claim No. 188/Gregory National Park/Victoria River Land Claim No. 167.

The NTA adopts the position, for the purposes of these Submissions in Reply, that documents referred to (other than Land Claim Reports) are annexed regardless of whether or not they are exhibits in other land claims.

***The Survey is annexed at Schedule NTA 1.***

The submission refers to an agreement known as the Anson Bay Deed. This is a reference to the Settlement Deed between Northern Territory of Australia and Daly River/Port Keats Aboriginal Land Trust and Northern Land Council executed by the Northern Territory on 12 March 2014 and by the Land Trust and the NLC on 15 August and 7 August 2015 respectively ("the Anson Bay Deed").

***The Anson Bay Deed (with financial figures redacted) is annexed at Schedule NTA 2.***

4. The submission refers to a separate agreement entered into by the Malak Malak Aboriginal Land Trust to enable licensing of access on the same terms to the Daly River as it traverses the area owned by that land trust. This is a reference to the Settlement Deed between Northern Territory of Australia and Malak Malak Aboriginal Land Trust and Northern Land Council executed by the Northern Territory on 12 November 2014 and the Land Trust and the NLC in August 2014 ("the Malak Malak Deed").

***The Malak Malak Deed (with financial figures redacted) is annexed at Schedule NTA 3.***

5. The submission advises that:

“The NLC has recently met with the group found to be the traditional owners of the claim area. The group has advised that it would be comfortable with an agreement that would permit access to and fishing in the claim area. Alternatively, 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. Given the goodwill demonstrated by the making of the two agreements referred to above this is also a realistic option to provide ongoing access for recreational fishing in the claim area.”

The NTA welcomes this advice that the claimants would be comfortable with an agreement and takes no issue with the fact that goodwill was demonstrated in the negotiation of the existing two agreements referred to.

Graeme Neate in his book, *Aboriginal Land Rights Law in the Northern Territory*<sup>1</sup>, describes access issues as they arose in the Daly River Malak Malak Land Claim No. 7;

“In one case, for example, counsel for the claimants assured the Commissioner that the interests of land-holders in gaining access to a river whose bed and banks had been claimed would be accommodated. He submitted that it was only the machinery, rather than the principle, that needed to be identified. The Commissioner took this to be an acknowledgement by the claimants that the Minister would be justified in deferring a grant of the land recommended until rights of access to the river had been satisfactorily resolved. It was a matter for the Minister to consider, if possible in light of an agreed approach by all concerned including the Government of the Northern Territory.”<sup>275</sup> <sup>2</sup>

At a meeting of the NLC in March 2017 (Second Sea Country Negotiation Committee) the CEO of the NLC advised Northern Territory Government officials that the NLC had not been negotiating, and would not negotiate, any new “Blue Mud Bay” agreements under the current arrangements. The NLC also made it clear at this meeting that permits would be introduced.

On 15 November 2017, the NLC publicly issued a document entitled “Information Sheet - Access to Tidal Waters on Aboriginal Land NLC waives requirement for a permit until 31 December 2018” (“the Information Sheet”).

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<sup>1</sup> Graeme Neate, *Aboriginal Land Rights Law in the Northern Territory* © 1989, published by Alternative Publishing Co-operative Ltd (APCOL)

<sup>2</sup> Ibid. at page 340. Footnote 275 refers to Daly River Malak Malak Land Claim No. 7 Report at paragraph 210.

The Information Sheet referred to “Permitted Access Areas” as being those five areas subject to 20 year access agreements and one area subject to a one year access agreement and the Kenbi Open Area along with identifying “Access Not Permitted Areas”.

With respect to “Access Requirements for Other Areas” the Information Sheet advises:

“For the rest of the Northern Territory, permission to access tidal waters over Aboriginal land will be mandatory in accordance with the requirements of the *Aboriginal Land Act* as of 1 January 2019.”

With respect to “Commercial Operators” the Information Sheet advises:

“Commercial Operators seeking to access tidal waters over Aboriginal land where an access agreement is not in place will be required to hold a licence issued through the NLC as of 1 January 2019.

Permission is granted through a section 19 Land Use Agreement (s19 LUA) under the *Aboriginal Land Rights (Northern Territory) Act*.

Please note that the time frame for an assessment of s19 LUA expression of interest and the subsequent consultation with Traditional Owners can take a minimum of 6 months to progress. In these cases, the NLC makes no guarantee on time frames given that each interest will vary depending on the type of interest and the region.”

With respect to “Recreational Fishers” the Information Sheet advises:

“Anyone seeking to fish recreationally in tidal waters over Aboriginal land where an access agreement is not in place will be required to get permission from land owners through the NLC as of 1 January 2019.

Permission is granted through a permit. An application for a permit can be found on the NLC web site at [www.nlc.org.au/articles/cat/work-transit-tourist-permits](http://www.nlc.org.au/articles/cat/work-transit-tourist-permits)

Please allow a minimum of 10 days to process applications.”

#### **The Information Sheet is annexed at Schedule NTA 4**

On 25 June 2018, Mr Kane Bowden gave evidence in the Fitzmaurice Region Land Claim No. 189, the Legune Area Land Claim No. 167 and the Gregory

National Park/Victoria River Land Claim No. 188 and his Statement dated 29 May 2018 was tendered in those Inquiries as Exhibits A33 and A37 respectively.

Mr Bowden gave evidence that he has been engaged by the NLC as the Permit Reform Manager and that he has responsibility for the management of the Permit Reform Project which involves the timely development and implementation of an updated Permit Management System including comprehensive policy framework and guidelines for permit approval, management and compliance. It is estimated that the updated Permit Management System will be ready for implementation by 31 December 2018.

Mr Bowden also gave evidence that:

“The implementation of automatic entry permits is dependent on areas nominated through consultation and agreement with traditional Aboriginal owners. Until this occurs, the current process for permit applications will continue.”

“Consultations will begin in 2018 with traditional owners of various intertidal areas of Aboriginal land to brief them on the nature and purpose of the reformed permit system and to come to an agreement as to the terms and conditions upon which the NLC may issue permits.”<sup>3</sup>

### **The Statement of Mr Kane Bowden is annexed at Schedule NTA 5**

In cross-examination Mr Bowden agreed that the consultations with traditional owners were confined to presentation of the proposed permit system and that no other options, such as access agreements, were being put to the traditional owners.<sup>4</sup>

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 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

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<sup>3</sup> Statement of Kane Bowden dated 29 May 2018 in Fitzmaurice Region Land Claim No. 189, Legune Area Land Claim No. 167 and Gregory National Park/Victoria River Land Claim No. 188, paragraphs 13-14.

<sup>4</sup> Transcript of hearing on 25 June 2018, Fitzmaurice Region Land Claim No. 189, Legune Area Land Claim No. 167 and Gregory National Park/Victoria River Land Claim No. 188 at page 11.

ensure that 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?

KANE BOWDEN: Correct.

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

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 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?

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

There appears to be a disconnect between what is submitted in paragraph 5 of the Claimants' Submissions and the matters set out above and addressed in the Information Sheet and Mr Bowden's evidence.

On the one hand it is implicit in paragraph 5 that the group found to be traditional owners of the Claim Area have been consulted on the option of an access agreement, presumably along the lines of the access agreements entered into by their neighbouring traditional owners (annexed as NTA 2 and NTA 3), and it is noted that they have advised that they would be comfortable with such an agreement that would permit access and fishing in the claim area.

On the other hand it appears that the NLC policy position is that, with the exception of the "Permitted Access Areas", that is those the subject of the six existing access agreements, and the "Kenbi Open Area", anyone seeking to fish recreationally in tidal waters over Aboriginal land will be required to get permission from land owners through the NLC's proposed permit system as of 1 January 2019.

It is possible that the apparent discrepancy may arise from one or both of the following factors (a) the NLC policy position on permits relates only to existing Aboriginal land, as opposed to land recommended for grant and land under claim and/or (b) as Mr Avery makes clear, the Submissions are filed on behalf of the claimants in the Land Claim and represent the views and position of those claimants as opposed to the apparent NLC position.

6. The submission notes, from the fourth sentence of that paragraph, that:

“It is a core function for Land Councils to consult with traditional owners and negotiate agreements concerning 3<sup>rd</sup> party use of Aboriginal land. It may be anticipated that now that the basic terms of such agreements are agreed, any subsequent agreements should be documented more readily.”

The NTA, of course, accepts the stated function of the NLC and welcomes this indication that the NLC anticipates that subsequent access agreements should be documented more readily.

The NTA will seek clarification from the NLC as to whether the submission in paragraph 6, albeit contained in submissions on behalf of the claimants, represents a change in the NLC policy referred to in paragraph 5 above. It may then be appropriate to provide any response received in clarification to the ALC in the context of the current Detriment Review.

7. The submissions at paragraphs 7 to 12 inclusive are a critique of the revenue raising policies of the Northern Territory Government and, in our submission, irrelevant to any function to be performed by the ALC.
12. The second sentence in this paragraph reads “In our submission the statement about the ongoing cost of the access agreements for taxpayers, apparently adduced as part of the Territory’s argument that access agreements are an inferior response to provide access, should be read in that light”.

The NTA has never suggested that “access agreements are an inferior response to provide access” and quite the contrary is the case.

The NTA’s position in this regard, which also sets out the history since the negotiations which resulted in the six access agreements entered into in 2014, is set out below.

- 12.1 The Northern Territory Government and the NLC had previously identified key commercial fishing areas for the next round of negotiations, all of which are in Arnhem Land. The Northern Territory Government drafted the initial offers but never had the opportunity to undertake consultations due to the NLC not arranging meetings with Traditional Owners from these areas. Effectively this negated the

opportunity for Traditional Owners to be presented with the Northern Territory Government offer and allow them to determine if they wished to accept or reject the offer.

- 12.2 The NLC has not facilitated the involvement of the Northern Territory Government in any new negotiations with Traditional Owners/Land Trusts in the last 4 years.
- 12.3 The negotiation meetings held in the first round between Traditional Owners and Northern Territory Government officers, and arranged by the NLC, were essential to ensure all parties had a clear understanding of the legal position post the Blue Mud Bay decision, the extent of affected waters in that area, compliance difficulties in enforcing an undefined line over water, local management issues as well as detailed discussions around the various elements of the Government offer. This allowed Traditional Owners to consider the merit of the Government offer along with other options available to them such as a permit system or no access. Through this process the six Agreements were reached.<sup>5</sup>
- 12.4 While acknowledging concerns from some Traditional Owners in other areas that there has been no progress, successive Northern Territory Governments have remained committed to a policy position of 'giving all Traditional Owners in areas affected by the Blue Mud Bay decision, the opportunity to hold discussions and consider the Government's proposal for permit-free access to the inter-tidal waters overlying Aboriginal land'.
- 12.5 The Northern Territory Government has committed significant resources to this process, dedicating a team of senior government officials to this task. This Government has also cemented the commitments contained in our offer by establishing dedicated funding in the budget for the existing and future agreements, resourcing marine ranger training programs in enforcement and research, funding a commercial fishing mentoring program and amending the *Fisheries Act* (NT) to provide powers to marine rangers and to ensure legal recourse under fisheries legislation for breaches of ALRA or sacred site offences.
- 12.6 Successive Chief Ministers and Ministers for Fisheries have written to the NLC on several occasions noting its desire to present its offer to Traditional Owners for their consideration and negotiation as a matter of priority and that government officials were available to attend. Government has specifically identified that the next priority areas for negotiation should be Banyala (Blue Mud Bay), Castlereagh Bay, Arnhem Bay, Buckingham Bay, Boucat Bay and Roper/Limmen areas. The Government policy position across successive governments has

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<sup>5</sup> See Exhibits A28 in Fitzmaurice Region Land Claim No. 189 and Exhibit A32 in Legune Area Land Claim No. 167 and Gregory National Park/Victoria River Land Claim No. 188



remained 'Traditional Owner's should have the opportunity to consider the Government offer'.

13. The submissions at paragraphs 13 to 19 inclusive respond to the AFANT Submission and the NTA understands that AFANT will be provided with an opportunity to file a submission in reply. The NTA, however, does wish to respond to paragraphs 18 and 19 as follows.
18. In referring to submissions about cumulative detriment the Claimants' Submissions assert that "Words and phrases such as 'iconic' (it seems every fishing spot is 'iconic'), 'special', 'the experience as a whole', 'social and lifestyle values of recreational fishing experiences', 'enjoying space on water', 'social and amenity values' are very subjective and essentially unanswerable. In that sense they are virtually meaningless to support a claim of 'detriment'. Being unanswerable because they cannot be quantified they should be disregarded."

The submission that something which cannot be quantified cannot be detriment and should be disregarded is rejected out of hand by the NTA.

In this regard see *Neate* at page 309 where, commenting on the meaning of 'detriment' he notes:

"In his first land claim report Toohey J wrote, 'Detriment is not defined but must bear its ordinary meaning of harm or damage which need not be confined to economic considerations any more than the reference to "advantaged" on para. (a) need be so confined [Borrooloola Land Claim at para 137]. So, for example, 'social detriment' may be suffered where people who have used an area for recreational purposes are denied access to it.<sup>6</sup>

19. It is noted in the Claimants' Submission that "Paragraphs 52 and 53 of Mr Ciaravolo's statement refer to the co-operation with the Malak Malak and Water Rangers on a recent study into potential fishing related erosion and a Code of Conduct. Both the erosion study and the Code of Conduct were mandated by Schedule 1 Part B clauses 2 and 4 respectively of the Malak Malak Deed referred to in paragraph 4 above and reflect concerns of the traditional owners expressed in the original negotiation proves..."

It is clear that the activities and benefits referred to derive from the access agreements referred to above and, in this case, the Malak Malak Deed annexed at Schedule NTA 3.

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<sup>6</sup> See also Limmen Bight Land Claim Report, 30 December 1980, at paragraph 161.

Such activities and benefits would not derive from the proposed permit system.

In addition, as Mr Bowden says at paragraph 4 of his Statement, “Permits are not intended to generate revenue for traditional owners and in most cases there is no charge for a permit.”

## **Fisheries Management**

25-27. Clarity needs to be achieved with regard to the placement of a ‘harvest strategy’ within the broader framework of fisheries management as it currently appears to be referenced as the ‘mainstay’ of all management practice. A harvest strategy, as developed under the (regularly referenced) policy and guidelines is the operational component of a ‘management framework’ and is intended to direct the day-to-day activity within a fishery as a functional part of a broader management plan that sets out the longer term management arrangements and ‘rules of the road’ of a fishery (e.g. what gear can be used where and by whom). It is for this reason that explicit reference is made in documents guiding development of a harvest strategy that important pre-requisites must be in place (e.g. access and allocation decisions) so that a harvest strategy can operationalise harvest based on what is appropriate from a management perspective.

With regard to fisheries management objectives, a tiered approach is taken where high level (legislative) objectives need to be translated into conceptual (management plan level) objectives for a fishery and then specific operational objectives (for a harvest strategy) are derived to manage harvest-related risk proactively. Therefore it is incorrect to assume that a harvest strategy would be developed to be adaptive to circumstantial change that operates at a management framework level (e.g. access and allocation). Changes to access and allocation will necessitate a revision of existing harvest strategies to ensure the harvest strategy is appropriately designed with regard to access and allocation.

Referencing ‘whole of fishery’ management is a way of referencing the broader management framework level and how the fishery exists as an entity with regard to any overlap/juxtaposition with other fisheries and other resource uses/activities (e.g. energy, conservation, transport). The reason for separating out core components of management as pre-requisites to harvest strategy development is that operational certainty is important from a sectoral/individual use perspective (for example for businesses to invest with confidence).

Therefore, from a fisheries management perspective access is an influential pre-requisite of a harvest strategy and can either impede development, or trigger the review, of a harvest strategy as the operational plan for the fishery (or component areas/sectors thereof).

These observations are also relevant to respond to paragraphs 31 and 32 where the Claimants' Submission confuses broader management context with operational harvest strategy development and where/how access/allocation fit).

28. Achieving “fairness, equity and access to aquatic resources by all stakeholder groups...” is indeed complex. Hence considering this as a pre-requisite to more specific management of harvest activity is an important and detailed step in fisheries management planning.

Procedural fairness needs to be treated as a cornerstone of the planning process whereby administrative decision-making is done fairly – i.e. the fairness of the decision making process is paramount. A decision in itself may be contestable with regard to its fairness in a substantive sense (which is complex to determine when comparing social, cultural and economic issues at multiple scales within and between sectors).

The Northern Territory Fisheries Resource Sharing Framework provides a guide to decision-making processes that need to determine how to attribute use of resources to different purposes. In fisheries management generally, how and/or where resources can be accessed and how the overall harvest is shared amongst user groups is a source of contestation by those users. Procedural fairness and transparency in decision-making are essential to meeting an objective to “maintain stewardship” and “promote fairness, equity and access”. How access arrangements are made and how a given resource is shared amongst user groups needs to recognise existing/established entitlement relevant to the fishery being managed.

30. Despite the assertions made on behalf of the claimants with reference to paragraph [169] of the McArthur River Region Land Claim Report, it would seem that Commissioner Olney’s comments in that paragraph, as extracted below, are still valid:

“It is likely that the pending claims identified in paragraph 47 will give rise to similar, if not identical, issues as have been raised in this inquiry in relation to access to rivers and the sea, and to the management of both marine resources and the coastal ecosystem. The evidence is very strongly against dealing with these issues on a purely local, rather than a regional or even a Territory-wide basis...”

33. The response on behalf of the claimants appears to take a simplistic approach to displaced effort and whether impact may manifest from it. Paragraph 33 states that “the re-location of fishing effort should not be regarded as detriment per se. It is not necessarily a matter of detriment that increased numbers of fishers frequent a particular location”. At face value the first part of that statement may appear valid in that relocating fishing effort is not an

absolute source of detriment in itself each time. However, the second part of the statement is simplistic. Shifting effort and aggregating activity in sequentially refined spatial areas may have impact to individuals, sectors or multiple sectors depending on how impacts manifest and integrate with other issues confronting the fishery (the whole of fishery matter addressed later in these submissions). Those impacts may be related to the area lost or to concentration of effort in the area where fishing is relocated to.

The displaced individual/individuals may have no (or limited) knowledge of how to fish the area to which they relocate, whereas the lost area may represent a place where fishing patterns were well established and predictable for that individual. From a commercial perspective this can have acute short term and/or chronic long term economic impacts particularly if the place no longer available formed a reliable base for harvest activity. This could translate to a tourism fishing operation as relevantly to a commercial harvest operator.

Intra- and inter-sectoral conflict may emerge from increased competition for space (and the harvestable resources available in that space across seasonal/weather/tidal windows – i.e. the issue is spatially and temporally complex). Experiential issues are also important and relate to the submission that detriment isn't necessarily a quantifiable outcome.

From a fisheries management perspective, displacement of effort and effort concentration matters with regard to the total volume of activity and the extractive carrying capacity of a place (as influenced by population dynamics and distribution as well as environmental drivers such as food availability and wet season quality).

The risk of displaced effort creating impacts is a complex matter that should not be disregarded. Careful assessment of whether/how detriments may occur and how they may superimpose on other issues confronting the fishery would require careful assessment at multiple levels.

36. Reference to “whole of fishery” issues relates to considering the fishery in its entirety (i.e. at the Northern Territory scale or beyond for inter-jurisdictionally shared resources) and is acknowledged at paragraph [169] of the McArthur River Land Claim Report that “the evidence is very strongly against dealing with issues on a purely local, rather than a regional or even a Territory-wide basis”.

The statement regarding displaced effort being displaced into ‘areas where access may be conditional or denied’ is intended to highlight the risk of sequential/cumulative impact where changes to access may follow the user/user group around and be sequentially implemented – i.e. the statement of denied access is meant to be read as that place then subsequently being

subject to denied or changed access so the single changes aggregate into multiple change that erodes certainty (a real business issue) and can disrupt a fishery as a whole over time. Hence the need to take a regional/Territory-wide perspective as well as a longer term view of issues. The 'knock on' or 'ripple effects' of a single decision or outcome is the issue requiring consideration here.

From an operational perspective, fishing a smaller area harder (i.e. with concentrated effort/more fishers per area) can trigger need to change how the fishery is managed that has ripple effects across the fishery as fishing moves on again – or is confronted by another decision to close another area for other reasons as discussed above.

Real complexity comes from the fact that fisheries are subject to natural world/environmental drivers that can change how a fishery can operate in any given place by month, season or year. For example, Barramundi and Mud Crab are strongly driven by wet season rain sequencing (periodicity/regularity/volume). How environmental drivers interact with how resources are shared and where they are best harvested is dynamic.

Disruption of fisheries management planning is a risk when sequential/iterative change occurs without bearing in mind what that change may mean to the fishery in general and with regard to the complexity of how dynamic fisheries production can be at different spatial and temporal scales.

42. The NTA does not accept the assertions that its submissions relating to pastoral matters are “not necessarily entirely accurate, nor the complete picture” nor does it accept that “The inaccuracies either assert a detriment where there is none, or in some way serve to exaggerate an asserted detriment.”
44. Paragraph 44 of the Claimants' Submissions states that there is no direct requirement on the pastoral lessee to observe the object of the *Pastoral Land Act* (the **PLA**), particularly section 4(b)(ii) – not being conditions of a pastoral lease. The claimants claim that the object falls to the Pastoral Land Board under section 29(e) and (f) and Part 5 of the PLA.

Although section 4(b) of the PLA makes no reference to the pastoral lessee, section 6 of the PLA supports the view that the pastoral lessee is required to observe this object of the PLA. Section 39 of the PLA also provides that the pastoral lease is subject to the condition that the lessee will take all reasonable measures to conserve and protect features of environment, cultural, heritage or ecological significance. In addition, section 76(9) requires the lessee to implement an approved remedial plan. Failure to do so without reasonable excuse constitutes a breach of the conditions of the pastoral lease. A remedial plan details the proposed management of the pastoral land,

and may provide for the prevention or minimisation of degradation of or other damage to the land. However, we acknowledge the limitations for rectification of certain damages under section 77 of the PLA.

The Claimants' Submission that "The Pastoral Land Board has no functions with respect to Crown land adjoining a pastoral lease" is incorrect. The functions of the board are set out in section 29 of the PLA. Section 29(m) provides that the Board can exercise other functions as imposed on it by or under this or any other Act or as directed by the Minister.

Under section 65, the Minister may invite lessees to apply for a lease of an area of Crown land adjoining a pastoral lease. Where there are more than 2 applications, the Board may make a recommendation as to how the land should be dealt with. The board therefore has a function in respect of assisting the Minister with decisions about dealing with Crown land adjoining a pastoral lease.

- 45-46. The Claimants' Submission asserts that there is no specific obligation to control feral animals in the absence of a direction and that any direction would not apply to adjoining land – for example, the lessee is not required to control feral animals on Crown land not forming part of the pastoral lease area.

This assertion is incorrect. The pastoral lessee does have an obligation to control feral animals in the absence of a direction. Section 39 of the PLA sets out the conditions relating to land management. The pastoral lessee is also obliged pursuant to section 6(b) of the PLA to participate to a reasonable extent in the monitoring of the environmental and sustained productive health of the land. Although the term "monitor" is not defined in the Act, s 73 is under Part 5 of the Act with the heading "Pastoral land monitoring". Section 55(1) of the *Interpretation Act* provides that the heading to a Part of an Act forms part of the Act. This suggests that the pastoral lessee's duty to 'monitor' includes controlling feral animals on the land. However, we acknowledge that there is no duty for the pastoral lessee, nor can they be required under section 73 of the PLA or section 49 of the *Territory Parks and Wildlife Conservation Act*, to control feral animals on land not forming part of the lease area.

47. Paragraph 47 of the Claimants' Submissions states that the Territory may contract any person to undertake control measures but there does not appear to be any entitlement in a neighbouring landowner to enter Crown land voluntarily and undertake those measures. It also provides that s101(2) enables the Minister to authorise a person to destroy pigs trespassing on Crown land. Under section 99(3) of the *Crown Lands Act*, the Minister may contract any person to undertake control measures (eg sell unbranded cattle/ dispose) but this must be done via public auction or by tender. We agree that the Minister may authorise a person to destroy pigs trespassing on Crown land, but this is pursuant to section 100(2), not 101(2) of the *Crown Lands Act*.

48. At paragraph 48, the claimants submit that a pastoral lessee is not required to control weeds on the bed and banks of any waterways (outside the area of the lease). The owner of the area under claim is the Crown and thus it is responsible for weed control. Section 9 of the *Weeds Management Act* (NT) provides that weed control is the responsibility of the owner or occupier.
49. Paragraph 49 of the Claimants Submission provides that the right of the owner or occupier of land including family and employees, but not visitors, of land immediately adjacent to the banks of a waterway, to access the banks and waterway, derive from section 13 of the *Water Act* (NT) and the public's right, to access waterways within and adjoining, and the sea adjoining, a pastoral lease, which probably includes the visitors referred to by the NT in its submissions, derive from section 79 of PLA. This interpretation is correct.
53. It is an offence under section 44 to take or use water except in accordance with a licence, except where the Administrator has made a declaration under s 44(3). A licence is thus not required for taking or use of water declared by the Administrator under s 44(3).
- 54-55. Paragraph 54 of the Claimants' Submissions invites the NTA to clearly state the inference it draws regarding the use of Crown Land for commercial purposes and by members of the public. The example referred to (paragraph 2. B. vii. and viii of the NTA Submissions) is part of the Rangelands submissions in relation to the pastoral lessees seeking future diversification activities which may require use of the river beds and banks.

The proper and correct inference to be drawn is that members of the public have a privilege or liberty to enter upon and enjoy Crown land unless restricted or prohibited by the Crown. The public may reasonably use Crown land for activities that are not:

- (a) prohibited under the *Crown Lands Act* (NT) (the **CLA**), or otherwise at law including under the *Trespass Act* (NT), the *Territory Parks and Wildlife Conservation Act* (NT), and the *Soil Conservation and Land Utilisation Act* (NT); or
- (b) restricted by notice from the Crown, (the **Low Impact Activities**).

Activities prohibited under the CLA include any of the following carried out without a licence;

- (a) depasturing cattle or buffalos (section 101));
- (b) felling or damaging trees or saplings (section 102(a)) or cutting, removing or selling timber (section 102(b));
- (c) extracting minerals (section 102(c)); and

- (d) taking or removing any other substance or article the property of the Territory (section 102(d)).

Activities that are generally regarded by the Crown as Low Impact Activities include fishing, bushwalking, picnicking, bird-watching, bike riding, walking the dog etc.

In respect of commercial or large organised activities on Crown land, the current Crown land management practice is to require the operator to obtain a licence or an appropriate form of tenure generally under the CLA or the *Mineral Titles Act* (NT). Where activities involve the erecting of infrastructure or other alterations to the land, the operator is required to obtain a licence or lease under the CLA.

There may be circumstances where clients of a tourism operation undertake Low Impact Activities incidental to the commercial tourism activity (which a member of the public has the liberty to exercise). For example, guests of tourism accommodation on a pastoral lease may enter upon Crown land adjacent to the lease to walk along the river, fish from the bank, undertake bird-watching, wildlife viewing etc. These activities could also be incidental to tourism accommodation along the Lower Daly River.

If the claim area is granted as Aboriginal land and access is restricted, the public's privilege to enter upon and enjoy Crown land for Low Impact Activities will cease.

- 56. Paragraph 56 of the Claimants' Submissions provides that it is uncontentious that the lessee has the right to graze and water cattle on 'his land' (the pastoral lease area) adjoining waterways. That right arises from the PLA and the lease, not the *Water Act*. It should be noted that sections 10 and 11 of the *Water Act* provide as follows:

**10. Public Right to take water for domestic and stock purposes**

- (1) Subject to section 99, a person may take water for domestic purposes, or for watering travelling stock, from a waterway.
- (2) Nothing in subsection (1) shall be construed as authorising a person to enter or remain on land to which the person does not otherwise have legal access.

**11. Rights of owners or occupiers of land in contact with waterway to take water for certain purposes**

- (1) Subject to section 99, the owner or occupier of land on or immediately adjacent to which there is a waterway may take water from that waterway for:
  - (a) the use of the owner or occupier or the owner's or occupier's family and employees, for domestic purposes;
  - (b) drinking water for grazing stock on the land; or



- (c) irrigating a garden, not exceeding 0.5 ha, which is part of the land and used solely in connection with a dwelling.

The submissions at paragraphs 58 to 64 inclusive respond to the submissions of the Tipperary Group of Stations Pty Ltd on behalf of Litchfield Station partners and the NTA understands that the Tipperary Group will be provided with an opportunity to file a submission in reply. The NTA, however, does wish to respond to paragraphs 62 follows.

- 62. The NTA welcomes the apparent practicality and goodwill shown in respect of the possibility of a licence as proposed.

In this regard, and subject to any matters raised in submissions by the Tipperary Group, the NTA refers again to the matters raised in paragraph 5 above and, in particular, the passage quoted from the Daly River Malak Malak Land Claim No. 7 Report at paragraph 210.

The submissions at paragraphs 65 to 66 inclusive respond to the submissions of the NT Cattlemen's Association and the NTA understands that the NT Cattlemen's Association will be provided with an opportunity to file a submission in reply.

- 67. The specific tourism data quoted in Part 3 (page 12) of the first NTA Submissions was for the Daly region which includes the claim area. The data quoted did not include visitors to the Katherine region. The data is sourced from Tourism Research Australia, which is a branch of the Australian Government. The data is sourced through the National and International Visitor Surveys, which are conducted under contract by independent market research company ORC International.<sup>7</sup>

The figures set out below are provided to distinguish between the figures for both the Katherine/Daly region (combined) and the figures for the Daly region only. The data referred to in the NTA's detriment submissions was in respect of the Daly region only.

**Katherine/Daly region (combined) overnight visitors for the year ending March 2017:**

Domestic overnight visitors: 274,000

International visitors: 43,000

Total visitors: 317,000

**Daly region (only) overnight visitors for the year ending March 2017 (as referenced in the NTA's submissions):**

Domestic overnight visitors: 76,000

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<sup>7</sup> See [www.orcinternational.com](http://www.orcinternational.com)

International visitors: 5000  
Total visitors: 81,000

Paragraph 67 of the Claimant's Submissions provides that the first NTA submission that 28 tour operators use the area under claim should not be accepted in the absence of further details, particularly in light of the figures provided at page 3 in relation to 'Fishing Tour Operators'.

The figures provided in relation to Fishing Tour Operators was derived by data from one sub-grid which only formed part of the claim area and resulted in a significant under-estimation of the true effort. Grid code 1330 is an area covering the Daly River but forms a larger area than the Lower Daly claim area. However, it could be assumed that many of these operators will periodically fish the claim area.

Year	FTO Licence numbers active in grid 1330
2006	26
2007	21
2008	24
2009	20
2010	23
2011	23
2012	30
2013	33
2014	30
2015	32
2016	28
2017	36

It should also be noted that in recent years, Fishing Tour Operators have been required to report fishing area to much smaller sub-grids to provide finer spatial scale data. An extraction of data where FTOs have reported fishing in sub-grids 8, 14 and 15 (generally consistent with the area encompassed by Land Claim 68) is as follows;

Year	FTO Licence numbers (sub grids 8, 14 and 15)
2013	8
2014	8
2015	4
2016	11
2017	14

The table below contains details in relation to the tour operators within the Daly River region. The operators are either accommodation providers, fishing tour operators or booking agents for fishing charters in the region. Visitation to the Daly River region is primarily orientated towards fishing for barramundi

or other fish in the Daly River which includes the claim area. This list is non-exhaustive and relies on information readily available within the Department of Tourism and Culture's customer relationship management systems.

Tourism Operator	Contact Details	Operations
Banyan Farm Tourism Park	Kerri Lee & Walter Draper - (08) 8978 2461 <a href="mailto:Banyanfarm1@bigpond.com.au">Banyanfarm1@bigpond.com.au</a> <a href="http://www.banyanfarm.com.au/">www.banyanfarm.com.au/</a>	Provide accommodation and fishing tourism operations.  The Banyan Farm tourist park is located on the banks of the Daly River with the primary attraction for visitors to the business being to stay and fish the Daly River. This is evidenced by their references to fishing on their website and the notation on their website that they are the 'preferred location for two Daly River fishing competitions – The Daly Barra Classic and the Barra Nationals.
Barra Boat Hire and Fishing Charters	Lincoln – (08) 7978 8147 or 0419 916 638 <a href="http://www.barraboathire.com.au/daly-river">http://www.barraboathire.com.au/daly-river</a>	Hire boats and conduct fishing charters in the Daly River.
Phil's Affordable Barra Tours	<a href="http://www.barratours.com.au/html/daly_river.html">www.barratours.com.au/html/daly_river.html</a> <a href="mailto:phil@barratours.com.au">phil@barratours.com.au</a> 0404 485006	Booking agent: offering 'The Daly River' fishing tour and contracts out to Fishing Tourism operators
Barrability Fishing Charters	Neville Burton - 0409 340 184 <a href="mailto:barrability@bigpond.com">barrability@bigpond.com</a> <a href="http://www.barrability.com.au/">www.barrability.com.au/</a> <a href="https://www.facebook.com/Barrability-fishing-charters-140522467038/">https://www.facebook.com/Barrability-fishing-charters-140522467038/</a>	Fishing tourism operator - operates exclusively on the Daly River offering fishing tours. The Barrability Facebook page is highly active with photos of a Daly River fishing charter posted on 6 July 2018.
Daly River Barra Resort  AND  River Barra Charters	Stu and Marni - (08) 8978 1193 / 0427 262 337 <a href="http://www.dalyriverbarra.com.au/">http://www.dalyriverbarra.com.au/</a>  <a href="mailto:stu.marn@mcmedia.com.au">stu.marn@mcmedia.com.au</a>	The Daly River Barra Resort is 250 kilometres from Darwin and 260 kilometres from Katherine, has direct access to the Daly River and operates to provide accommodation for fishing visitors (including self contained units and powered/unpowered camp sites), boat hire and local fishing knowledge of the Daly River.  This operator additionally conducts fishing charter operations exclusively on the Daly River
Daly River Inn	Email: <a href="mailto:daly.river.pub@bigpond.com">daly.river.pub@bigpond.com</a> (08) 889 782 418 (08) 889 782 787 <a href="http://dalyriverinn.com.au/">dalyriverinn.com.au/</a>	Offer accommodation, restaurant, bar and beer garden  Quoted from the business website <a href="http://www.dalyriverinn.com.au/">www.dalyriverinn.com.au:</a>

		<p>“The Daly River Roadside Inn is located on the banks of the magnificent Daly River, NT, the renowned premiere barramundi fishing destination, and is located about 224 kilometres south west of Darwin.”</p>
Daly River Mango Farm	<p>(08) 8978 2464  <a href="http://www.mangofarm.com.au/BarraFishingNT/Welcome.html">http://www.mangofarm.com.au/BarraFishingNT/Welcome.html</a></p>	<p>Information sourced from the business website:</p> <p>“The Daly River Mango Farm is a small quiet family owned caravan park located on the banks of the remote Daly River 250km southwest of Darwin. To the traveler it is an oasis to relax, unwind and even catch a barramundi or two.”</p> <p>Facilities include:</p> <ul style="list-style-type: none"> <li><a href="#">Accommodation</a></li> <li><a href="#">Caravan and camping sites</a></li> <li>Boat hire and guided fishing</li> <li>Licensed bar and bistro</li> <li>Boat ramp &amp; pontoons</li> <li>Pool and barbeques</li> <li>Camp kitchen</li> <li>Bird watching</li> <li>Nature walks</li> <li>Historical sites”</li> </ul>
Humbug Fishing	<p>Scott and Lorna  <a href="mailto:scott@humbugfishing.com.au">scott@humbugfishing.com.au</a>          Wauchope - 0438 026 873  <a href="http://www.facebook.com/HumbugFishing/">www.facebook.com/HumbugFishing/</a></p>	<p><a href="http://fishingcharterdarwin.com.au/">http://fishingcharterdarwin.com.au/</a></p> <p>Offers extended Guided Fishing tours of the Daly River Mouth from February to June for the seasonal Daly River Barramundi Run Off. Humbug Fishing’s operation also includes a live-aboard mothership that is anchored in the Land Claim area and utilised by Humbug Fishing’s fishing charter visitors, accommodation only users and other fishing tourism operators.</p> <p>Humbug Fishing provided the letter dated 18 July 2018 to inform the Inquiry in relation to its operations in the claim area.</p> <p><b>The letter is annexed at Schedule NTA 6.</b></p>
Lee and Jenny’s Bush Camp	<p>Lee - 0488 98 0300  <a href="http://www.facebook.com/Lee-Jennys-Bush-Camp-767522379972953">www.facebook.com/Lee-Jennys-Bush-Camp-767522379972953</a></p>	<p>Lee and Jenny’s Bush Camp Facebook page: “Caravan and camping grounds on the banks of the Daly River. Northern Territories Number one Barramundi fishing destination”</p>
Mount Nancar Wilderness Retreat	<p>0427 014 714  <a href="mailto:Mount.nancar@gmail.com">Mount.nancar@gmail.com</a>  <a href="http://mountnancarwildernessretreat.com.au/">mountnancarwildernessretreat.com.au/</a></p>	<p>Information available on their website: Located on the banks of the Daly River. This business offers camp sites, ablutions, drinking water, a boat mooring pontoon for guests to use their own boats and a boat hire service as well as arrangement of fishing charters and boat tours of the Daly River.</p>
Mousies Barra and Bluewater	<p>Shannon Latham - 0488 770 073  <a href="http://mousiesbarra.com.au/">mousiesbarra.com.au/</a></p>	<p>This operator exclusively offers fishing tourism operations on the Daly River including in the Land Claim area.</p>

Fishing Charters	Daly River 0822, PMB 213, Winnellie, Winnellie Northern Territory 2261 Australia	<p>Quoted directly from the Mousies Barra website: <a href="http://mousiesbarra.com.au/index.php/fishing-charters">http://mousiesbarra.com.au/index.php/fishing-charters</a></p> <p>“When you come fishing for Barramundi with us, on the magnificent Daly River, we can arrange your trip in a number of ways. We do ½ day charters, full day charters and package deals. The Daly River is renowned as the best river for Barramundi Fishing in the Northern Territory. On our charters, you can sit back, relax and enjoy your day on this beautiful river, while being surrounded by beautiful birdlife, prehistoric crocodiles and huge Barra. The scenery is just breathtaking, and one thing we can guarantee, is that you’ll catch yourself a memory of a lifetime.</p>
Woolianna on the Daly	Adrian & Georgia Koenen – (08) 8975 2478 <a href="mailto:wooliana@bigpond.com">wooliana@bigpond.com</a> <a href="http://www.woolianna.com.au">www.woolianna.com.au</a>	<p>Located on the banks of the Daly River, Woolianna offers a variety of accommodation types for a visit to the Daly River with accommodation consisting of: 2 villas, a Fisherman’s lodge which contains 2 units, and 48 powered campsites</p> <p>Facilities include; Guests Private Boat ramp, with pontoons sufficient to accommodate 35 boats. Fish Cleaning Table, Scaling Table, River maps and river information and "hot spots" provided free of charge.</p>
Perry's on the Daly	Dick and Carol Perry (08) 8978 2452 <a href="http://dalyriver.com/">http://dalyriver.com/</a>	<p>Accommodation provider and fishing tourism operator located on the banks of the Daly River and offering fishing charters on the river. This operator has a long term connection to the tourism industry and the Daly River. Further information on their website.</p> <p>From the website: “As a result of this long attachment to the NT and fishing tourism, "PERRY'S ON THE DALY P/L" was established. The opportunity to purchase 1000 acres right on the banks of the Daly River in 1993, was too good to miss as Dick and Carol had formed a love of the area and the "Mighty Daly River””</p>
Bare Foot Fishing Safaris, and Darwin Sport Fishing Safaris	Glenn Watt - 0417 272 871 <a href="mailto:info@barefootfishingsafaris.com.au">info@barefootfishingsafaris.com.au</a> <a href="http://barefootfishingsafaris.com.au/">barefootfishingsafaris.com.au/</a>	<p>Offers fishing tours in the Daly river as well as other rivers across the NT with demand been particularly high during the run-off season towards the end of the wet season</p> <p>From the website: “As the massive floodplains of the Northern Territory iconic Barra fishing locations such as the Mary, Daly, Finnis, South and East Alligator rivers start to subside, millions of bait fish and other Barra treats have nowhere else to go but downstream. If a Barramundi is on your bucket</p>

		list a Darwin Barra Fishing Charter at this time of year should be high on your list of priorities. This creates a barra fishing heaven as big hungry barra gather to gorge themselves on the tasty tucker flowing off the floodplains”.
Darwin Barra and Crab	Carl and Renee Skyring - 0427 522 764 / 0410 214 568 <a href="mailto:carl@darwinbarraandcrab.com">carl@darwinbarraandcrab.com</a> <a href="http://www.darwinbarraandcrab.com/">www.darwinbarraandcrab.com/</a>	From February until June Darwin Barra and Crab operate fishing charters in the Daly river from their vessel the “Granny Smith” which is licensed for 6 guests. They fish within the lower Daly for the run-off period, fishing in the river and creeks (such as Clear Creek) within the Land Claim Area.
Dean Jackson Guided Tours	Dean Jackson – 0427 790 004 <a href="mailto:admin@deanjacksonsportfishing.com.au">admin@deanjacksonsportfishing.com.au</a> <a href="http://www.deanjacksonsportfishing.com.au/tours">http://www.deanjacksonsportfishing.com.au/tours</a>	Offers fishing tours to the Daly River both departing from the Dundee Boat ramp through the blue water to the creeks in the Daly Mouth around Anson Bay and fishing tours of the Daly River.
Darwin Bluewater Fishing	Mal Miles - 0418 859 686 <a href="http://darwinbluewater.com.au/">http://darwinbluewater.com.au/</a>	Offer extended 6 day fishing charters that includes a day fishing the creeks around the mouth of the Daly and Anson Bay.
Sinclair's Daly River Fishing Retreat	Harold & Val Sinclair – (08) 8978 2267 6226 Wooliana Road Daly River <a href="mailto:sinclairsdalyr@bigpond.com">sinclairsdalyr@bigpond.com</a>	This operator has been in business on the Daly River for many years and offers accommodation including self-contained units and camping.
Daly River Wildlife and Adventure Lodge	774 Wooliana Road, Daly River 0448 846 823 <a href="mailto:info@dalyriveradventurelodge.com.au">info@dalyriveradventurelodge.com.au</a> <a href="https://www.facebook.com/dalyriveradventurelodge/">https://www.facebook.com/dalyriveradventurelodge/</a>	Accommodation provider on the Daly River

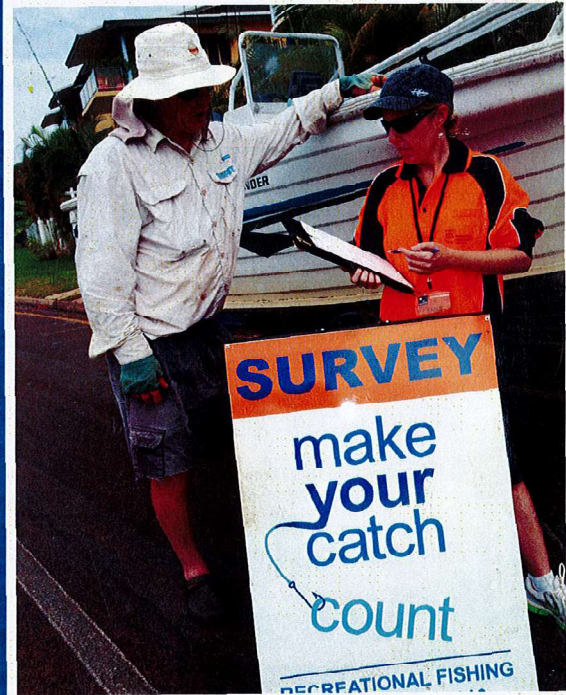


Northern  
Territory  
Government

# Survey of Recreational Fishing in the Northern Territory

2009–10

NTA 1



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## SUMMARY

### Background

This study represents the third comprehensive assessment of recreational fishing in the Northern Territory (NT). The previous two surveys were conducted in 1994-95 (*Fishcount*) and in 2000-01 (The National Recreational Fishing Survey (NRFS)). In each of these studies, the main survey instrument has been the same: an off-site telephone/diary survey with stratified random sampling from telephone listings in the White Pages and expansion of all survey results to Australian Bureau of Statistics (ABS) estimates of the non-indigenous resident population. Fishing activity by interstate and overseas visitors has also been assessed in these surveys. A comprehensive assessment of interstate fishing activity was a major feature of the NRFS telephone/diary survey. However, in both *Fishcount* and the latest survey only limited information was obtained on visitor fishing activity through on-site surveys (e.g. at boat ramps and accommodation establishments) for selected key catchments.

### Survey Methods

In the present survey, participation rates and demographic profiles of resident recreational fishers were assessed through a regionally stratified random telephone survey of almost 2600 NT households, comprising close to 6000 non-indigenous residents aged five years and older. This Screening Survey was followed by a Diary Survey, in which the fishing activities of over 700 households, with an intention to do some recreational fishing in the NT, were monitored in detail between April 2009 and March 2010. Fishing activities and related expenditure were recorded through regular telephone contact with diarists and close to 10 400 person-based fishing events were reported by over 1000 recreational fishers. A Wash-up/Attitudinal Survey was conducted at the final contact with diarists to collect additional expenditure information, details of boat ownership and fishers' opinions and attitudes to various fishing-related matters. Also, a sample of households from the Screening Survey that reported no intention to fish in the coming year was re-contacted at the end of the diary period in a Non-intending Fisher Follow-up Survey to identify and account for any unexpected fishing. Response rates across all survey components were exceptionally high (generally in excess of 90%), confirming both the high levels of interest and cooperation by recreational fishers and the performance standards of the survey instrument. By calibrating against ABS population benchmarks and applying non-response adjustments, all survey results (including participation, effort, catch and expenditure) have been expanded to represent the non-indigenous resident population of the NT, aged five years and older.

In the absence of a repeat of NRFS, a limited assessment was undertaken of fishing activity by interstate and overseas visitors through on-site surveys conducted in the peak period of April to November, 2009. For selected areas in and around Darwin, boat ramp surveys were conducted during daylight hours to assess the proportions of fishing effort and catch attributable to NT residents compared with visitors. In the more remote areas, surveys of accommodation establishments were conducted to collect this information for three of the key catchments.



## **Key Results – NT Residents**

### ***Participation***

In the 12 months prior to April 2009, an estimated 31 790 non-indigenous NT residents aged five years and older fished at least once in the NT, representing a participation rate of 22% or more than one in five residents. Whilst the majority (79%) of fishers resided in the 'Darwin and Rural' stratum, residents of the 'Other coastal' stratum had the highest participation rate (38%), with the lowest rate in the 'Hinterland' stratum (3%). Males accounted for two thirds of recreational fishers with a participation rate of 29%, compared with 15% for females. Although the highest number of recreational fishers was in the 30 to 44 years age group (almost 10 000 persons), children (5 to 14 years) had the highest participation rate (28%). Persons in the 60 plus age group had the lowest rate of participation (11%).

### ***Effort***

During the 12 months between April 2009 and March 2010, an estimated 30 538 non-indigenous NT residents fished in the NT, slightly but not significantly less than in the previous 12 months. These fishers accounted for over 150 000 fisher days of effort, or an annual average of close to 5 days per fisher. However, as with most recreational fisheries, the distribution of fishing effort was highly skewed, with a relatively small number of fishers (20%) accounting for a high proportion (almost 60%) of the total effort.

Over 80% of recreational fishing activity occurred in marine waters – primarily estuaries, followed by inshore and offshore waters. Freshwater fishing was almost exclusively restricted to rivers, with negligible activity in lakes and dams. Boat-based fishing dominated over shore-based activities in all water body types, with line-fishing by far the most common fishing method (95% of fisher days). The use of pots or traps and cast nets was comparatively minor. Regionally, Darwin Harbour attracted over a quarter (27%) of NT-wide fishing effort, with zones immediately adjacent to Darwin (Darwin Surrounds and Bynoe/Finniss Area) attracting a further 28%. The Mary/Alligator Rivers accounted for a further 17% of the effort, while the more remote zones accounted for less than 10% of resident effort in each case.

### ***Catch***

Resident recreational fishers captured a diverse range of scalefish, elasmobranchs (sharks and rays), crustaceans, molluscs and other taxa, with over 770 000 organisms caught during the 12-month survey period. Of the total catch, more than 350 000 (46%) were retained and almost 420 000 (54%) were released or discarded. Fish (scalefish and elasmobranchs) dominated the catch (almost 90% of the total), followed by crustaceans (7%) and cephalopods (2%). Barramundi was the most commonly caught fish species (147 393) and represented 21% of the total fish catch, followed by golden snapper (80 530), small bait fish (55 854), catfish (40 186), saddletail/crimson snapper combined (36 730), and mullet (36 260). Mud crabs (44 634) dominated the crustacean catch, followed by cherabin (8196).

Overall, 58% of all fish caught were released or discarded. There was a low rate of release (<25%) for species such as mullet; an intermediate release rate (25-50%) for black jewfish, blue threadfin, king threadfin and mangrove jack; a moderate release rate (51-75%) for barramundi, golden snapper, saddletail/crimson snapper, pikey bream, rock cods and groupers, grass emperor, queenfish, Spanish mackerel, javelin fish and tarpon; a high release rate (>75%) for catfish, sharks and rays, stripey snapper and giant trevally. 'Too small' was reported as the main reason for releasing many species, including barramundi, pikey bream, javelin fish, black jewfish, mullet, various tropical snappers, blue threadfin and king threadfin. Catch and release fishing was also cited as an important reason for releasing barramundi, pikey bream, queenfish, saratoga and tarpon. Catfish, moonfish, sharks and rays were most often released or discarded as unwanted or undesirable species. Around one third of all mud crabs caught were released, mainly due to being too small.

A high level of fishery specialisation emerged for such species as barramundi, mullet and mud crabs, which were taken mostly as targeted, rather than non-targeted or incidental catch. By contrast, such species as catfish, rock cods and groupers, grass emperor, sharks and rays, trevally and javelin fish were rarely reported as target species.

Tropical snappers (golden, saddletail/crimson and stripey) and grass emperor were the most frequently captured species in offshore waters, with tropical snappers and barramundi being key components of the inshore catch. Barramundi dominated catches in estuarine waters, with golden snapper, mullet and catfish of lesser significance. Barramundi was also the predominant species caught in freshwater, followed by catfish, sooty grunter, tarpon and saratoga.

The vast majority (81%) of the recreational catch was taken by line fishing, with cast nets contributing a further 11% and pots and traps 7%. Barramundi and golden snapper were the most common species taken by line fishing, with mullet and small baitfish dominating the cast net catch, while mud crabs and, to a lesser extent, cherabin were the main components of the pot or trap catch.

Catch and effort data for the key species were examined in detail (based on region, method, fishing platform, water body and seasonality) and the regional fisheries were characterised (effort by where fishers resided, fishing platform, water body and catch composition). The West Coast and Mary/Alligator River zones were particularly significant regions for barramundi, whereas the Bynoe/Finiss Area and Darwin Surrounds zones were significant for such species as golden snapper, saddletail/crimson snapper, rock cod and groupers, black jewfish and Spanish mackerel. Darwin Harbour represented an important region for catches of golden snapper, rock cod and groupers, and mud crabs, with the Darwin Surrounds zone also representing an important region for the latter species. Catches of blue threadfin and king threadfin were concentrated in the Darwin Surrounds and Mary/Alligator River zones, while the North Coast was a significant region for saddletail/crimson snapper. Grass emperor catches were significant in many of the coastal zones and especially in the East Coast/Gulf Area. The West Coast and Darwin Surrounds zones, followed by Central/Inland and the East Coast/Gulf Area, were important regions for cherabin.

In general, catches for most of the key species were highest during the April-September period (dry season) and then fell between October and March. Exceptions to this pattern included barramundi, where catches peaked between April and June but were relatively stable during the remainder of the 12-month survey period; for tropical snappers (golden and saddletail/crimson) catches remained quite stable between April and December and then declined during January-March. The observed seasonality in the fisheries reflected a combination of seasonality in the intensity of fishing effort and presumably the availability of the key species.

Regionally, residents of the 'Darwin and Rural' stratum accounted for the majority of the fishing effort in zones within relatively close proximity, namely Darwin Harbour, Darwin Surrounds, Bynoe/Finniss Area, West Coast and Mary/Alligator Rivers zones. However, residents of the 'Other coastal' stratum were the main contributing group to the fisheries in the North Coast, East Coast/Gulf Area and Central/Inland zones.

The West Coast and Mary/Alligator River fisheries were concentrated in estuarine waters and freshwater rivers, with barramundi the most common catch. In each of the other zones, apart from the Central/Inland zone (freshwater rivers), fishing was mainly focussed in estuarine and inshore waters, with golden snapper and/or barramundi being the main species caught.

### ***Expenditure***

NT residents spent an estimated \$51 million on goods and services related to recreational fishing during the 12-month survey period, of which \$47 million (92%) was directly attributable to recreational fishing – an average of over \$1500 per fisher. Annual attributable expenditure on boats and trailers represented the largest expenditure category (\$33 million), followed by travel expenses (\$7 million) and fishing/diving gear (\$3 million). The vast majority of all fishing-related expenditure (93%) occurred within the NT.

### ***Boat Ownership***

Over half (58%) of all resident fishing households reported boat ownership during 2009-10, representing almost 10 800 vessels, the majority of which (92%) were used for recreational fishing. Most of the fishing vessels were powered/trailer boats, between 4-6 m in length, with echo sounders and GPS units. The estimated total market value of the recreational fishing fleet in 2009-10 was \$194 million – an average of around \$18 000 per boat.

### **Comparisons with Previous Results – NT Residents**

Although information collected in this survey is highly comparable with the NRFS data, a re-analysis of the latter is required to enable a direct comparison of the results for two reasons. Firstly, since NRFS, a customised analysis system was developed for surveys of this kind and this *RecSurvey* package has been employed in the current analysis. Secondly, the NRFS data included a number of indigenous NT residents, not covered by the separate NRFS survey component, which assessed indigenous fishing activity in coastal communities across northern Australia. The NRFS data and population benchmarks will therefore need to be amended to exclude indigenous residents before re-analysis using the *RecSurvey* package. However, as discussed in Section 1.2 of this report, the amended NRFS data are likely to result in an overall reduction of around 5% in published estimates of the numbers of resident fishers, fishing effort, catch and expenditure.

Based on this assumption, the estimated 31 790 non-indigenous NT residents aged five years and older who fished in the NT in the 12 months prior to April 2009 represent a decrease of around 17% over the likely/ultimate NRFS estimate. In terms of participation rates, a greater decrease of around 23% can be expected due to population growth between the surveys, i.e. 29% of NT residents fished during NRFS compared with 22% in the current survey. Residents of the 'Darwin and Rural' stratum have been identified as accounting for the majority of this decrease, which is consistent with declining participation rates in other capital cities around Australia.

Very similar estimates of average days fished annually (close to 5 days per fisher) were recorded in both NRFS and the current survey. Therefore, the estimate of total resident fishing effort in 2009-10 (over 150 000 fisher days) is likely to represent a similar proportional decrease to the numbers of fishers (around 17% less).

However, overall catch estimates from the current survey are likely to represent a greater proportional decrease compared with revised NRFS estimates – more than a third less for all species, both in terms of the numbers kept and the numbers released/discarded. However, as discussed in Section 1.2, a range of information (including commercial fisheries data) has suggested that the 12-month period of NRFS was one of the 'best' years, due to the magnitude and extent of previous wet seasons. Also, varying levels of decreased catch have emerged from preliminary comparisons for key species. For example, current harvest estimates for barramundi and golden snapper are likely to be around one third less than revised NRFS estimates, whereas greater decreases are likely for black jewfish and mud crabs, with both at around 50% less.

By contrast, estimated total expenditure on fishing-related goods and services by NT residents in 2009-10 represents a substantial increase (around double) compared with revised NRFS estimates. Increased expenditure in relation to boats and trailers has been identified as a major factor here, both in absolute and proportional terms, where the current estimate of such expenditure (\$33 million) well exceeds the total for all goods and services from NRFS. Also, when average annual expenditure per fisher is considered, an increase of well over double is likely, i.e. over \$1500 for 2009-10 compared with around \$600 for NRFS.

NT resident fishing households reported owning close to 10 000 boats that were used for recreational fishing during 2009-10, representing an increase of around 2000 fishing vessels when compared to revised NRFS estimates (around 8000 fishing vessels).

### **On-site Surveys – Visitor Fishing Activity**

Whereas fishing activity by NT residents in 2009-10 represents a decrease compared with NRFS data, results from the recent on-site surveys have revealed an opposite trend for interstate visitors. Surveys conducted at 16 boat ramps in the Darwin and Bynoe Harbour areas in the period April to November 2009 estimated a total of around 17 000 fisher days by visitors from interstate or overseas (the latter being a small minority). Compared with relevant guideline data from NRFS, this represents a substantial increase (over double), although standard error calculations from the NRFS re-analysis will be required to assess the significance of this change (along with comparisons of the associated catch data). Also, surveys conducted at just two boat ramps on the Mary River during this time showed similar estimates of total fisher days by visitors to guideline NRFS estimates, which included all boat ramps/access points on the Mary River.

Surveys of accommodation establishments in more remote areas have shown a significant increase in fishing effort by visitors, very few of whom were from overseas. For the Daly River, a total of close to 15 000 fisher days was estimated for the period April to November 2009 from five of the eight accommodation establishments in the area which were included in the survey. When all facilities are considered, a total approaching 20 000 fisher days have been estimated, representing a four-fold increase over guideline NRFS estimates. A total of 33 000 fisher days by visitors were estimated for the McArthur River during the same period, representing an increase of two and a half times the NRFS estimate. By contrast, a slightly lower estimate (over 5000 fisher days) was recorded for the lower reaches of the Roper River, although this is unlikely to represent a significant difference from the NRFS estimate. In all three of these remote catchments, high catch levels were recorded for various species

and comparisons with re-analysed NRFS data are likely to show a significant increase for the Daly and McArthur Rivers.

Finally, a combined total of over 77 000 fisher days were estimated for visitors from the recent boat ramp and accommodation surveys, compared with around 40 000 from comparable guideline NRFS data – and an overall total of 113 000 fisher days by interstate visitors on an NT-wide annual basis for NRFS (Coleman 2004). Importantly, this estimate for visitors (77 000 fisher days) represents around half of the total annual fishing effort by NT residents for 2009-10 (around 150 000 fisher days), i.e. for all fishing methods, platforms and catchments. Although there is no information available for visitor activity in other catchments, it seems likely that significantly higher proportions of total fishing effort and catch by interstate visitors would have occurred in 2009-10, compared with published estimates from NRFS (38% and 30%, respectively).