



# Northern Land Council

ABN 56 327 515 336

Address all correspondence to:  
CHAIRMAN  
GPO Box 1222  
DARWIN NT 0801

45 Mitchell Street, Darwin NT 0800  
Phone: (08) 8920 5100  
Fax: (08) 8920 5255  
Free Call: 1800 645 299

## **Submission to the Environment and Communications Committee:**

### **Current and future impacts of climate change on marine fisheries and biodiversity**

Due 14 November 2016

Submissions to [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au) or [seniorclerk.committees.sen@aph.gov.au](mailto:seniorclerk.committees.sen@aph.gov.au)

#### **Terms of Reference**

On 14 September 2016, the Senate referred the following matters related to the Environment and Communications References Committee for inquiry and report by 30 June 2017:

The current and future impacts of climate change on marine fisheries and biodiversity, including:

- a. recent and projected changes in ocean temperatures, currents and chemistry associated with climate change;
- b. recent and projected changes in fish stocks, marine biodiversity and marine ecosystems associated with climate change;
- c. recent and projected changes in marine pest and diseases associated with climate change;
- d. the impact of these changes on commercial fishing and aquaculture, including associated business activity and employment;
- e. the impact of these changes on recreational fishing;
- f. the adequacy of current quota-setting and access rights provisions and processes given current and projected climate change impacts;
- g. the adequacy of current and proposed marine biodiversity protections given current and projected climate change impacts;
- h. the adequacy of biosecurity measures and monitoring systems given current and projected climate change impacts; and
- i. any other related matters.

*'Governments need to adopt best practice approaches by full and effective participation of Aboriginal and Torres Strait Islander peoples ... to enhance existing processes. With this, we require Governments to review current legislation, policies, practices, and new and emerging initiatives to identify obstacles, and remove impediments, with the view of fully involving Aboriginal and Torres Strait Islander people in the control and management of the marine environment and associated biological resources and systems. In accordance with the Convention on Biological Diversity, Indigenous peoples must have a central role in development, implementation, evaluation of policy and legislation or administrative measures that may affect our Estate'.*

National Indigenous Sea Country Statement, 2012.

## Executive Summary

The Northern Land Council (NLC) welcomes the opportunity to inform the inquiry and advocate the rights and interests of Aboriginal people relevant to the impacts of climate change on marine fisheries and biodiversity.

In the Top End of northern Australia Aboriginal people continue to argue, the same as Indigenous nations across the country, for their engagement in policy decisions that affect their interests in the management of land and sea country. Aboriginal people not only have significant property rights in the Top End, but have maintained continued use and management regimes of their lands, waters and resources that have supported their culture and livelihoods for millennium. Climate change will inevitably impact Aboriginal people's livelihoods and cultural practices, which are protected under native title laws. The inquiry's view is narrow in not recognizing the broader impacts to social and cultural values relevant to Aboriginal livelihoods and customary practices that are reliant on marine natural resources.

This submission attempts to bring attention to the participatory role of Traditional Owners, through their own governance and management regimes, in determining and delivering research and policy directions to mitigate impacts of climate change and offers recommendations toward enabling engagement.

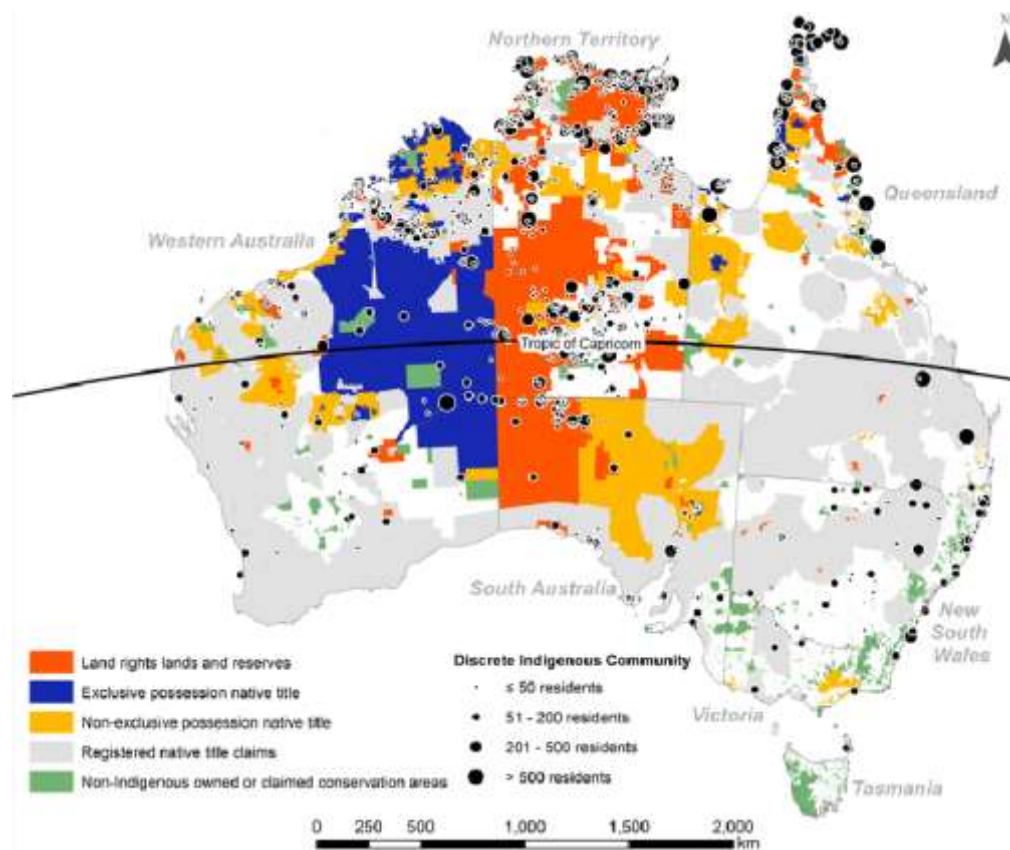
## Introduction

The NLC is an independent statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) and a Native Title representative body for the purposes of the *Native Title Act 1993* (NTA).

NLC's vision is for a territory in which the rights and responsibilities of every Traditional Owner are recognised and in which our communities can prosper economically, socially and culturally from the secure possession of their lands, seas and intellectual property. Our mission is to assist Aboriginal people in the northern region of the Northern Territory (NT) to acquire and manage their traditional

lands and seas through strong leadership, advocacy, access to expertise and engagement with industry and in developing management frameworks.

The NLC region covers inclusively land, freshwater and sea country. Traditional Owners have property rights to greater than 55% of land in the Top End of the NT with vested interests in well over 80%. Access to over 84% of culturally, environmentally and economically rich intertidal waters is controlled by Traditional Owners, as affirmed in 2008 by the High Court's decision on the 'Blue Mud Bay'<sup>1</sup> case. Traditional Owners also control access to a number of closed seas, enjoy benefits from sea country native title determinations, protect registered sea country sacred sites, are pursuing joint management of marine parks, and are growing an extensive network of Indigenous Protected Areas (IPAs) that extend beyond Territory waters and provide job security for Aboriginal Rangers.



Map showing Aboriginal land holdings and demographics. In the Northern Territory most communities live on the coast and on Aboriginal owned land (Altman & Markham 2015).

The proportion of Aboriginal people living and occupying the NLC region is around 50% and growing, with greater percentages living in remote areas. The majority of those are located in coastal areas (Altman, 2014 & Altman & Markham, 2015). Communities in the Top End are not only best placed to directly deal with impacts of climate change, relevant to their demographic and existing infrastructure (such as Ranger programs) and governance frameworks, to implement adaptive

<sup>1</sup> *Northern Territory of Australia v Arnhem ALT 2008 236 CLR 24* relevant to the issuing of fishing licences under the *Fish and Fisheries (Northern Territory) Act 1979* and subsequent to preceding case *Gawirrin Gumana & Ors v Northern Territory* lodged in the Federal Court 2007 referring to ALRA.

management strategies, but can also contribute a deep knowledge of sea country to any monitoring measures, as well as, being at greatest risk to climate change in terms of direct impacts to localised economies and cultural practices.

### **Recognition and protection of rights and interests.**

Aboriginal people recognise themselves not as stakeholders, but as owners, managers and major investors in policy and programs relevant to their social, cultural, economic and political interests (NAILSMA<sup>2</sup>, 2014). From this premise, Traditional Owners must be engaged in setting policy and programs to deliver adaptive management strategies through research and practice to ensure local resilience of their communities in dealing with direct impacts to their communities from the influences of climate change on their marine resources.

Key needs and challenges are toward the fundamental recognition and protection of Traditional Owner's property rights and interests.

Fundamentally, the NLC upholds the principles of the United Nations Declaration on the Rights of Indigenous People 2007 (UNDRIP), relevant to its statutory role, specifically the right of free prior and informed consent. UNDRIP principles, as adopted by the Australian Government in 2009, are intended to guide Governments in recognising the rights of Indigenous people on any issue affecting them. The impacts of climate change will not only affect industry, but profoundly the rights and interests of Aboriginal people who rely on marine resources and have a deep understanding of and connection to the natural environment as maintained through lore and practices for sustainable management (Brewer, 2016).

Any activity and access to tidal waters over Aboriginal Land in the Top End of Australia is controlled by Traditional Owners, as provided under ALRA, which accounts for over 84% of the intertidal area. The *Aboriginal Land (NT) Act 1978* provides Traditional Owners control of access to seas adjacent to their land and 2km seaward of the low tide mark. Two closed seas are gazetted in the NT. The NTA provides recognition that Aboriginal people have rights and interests to their lands and waters that come from their customary lore and practice.

Obvious opportunities arising from having these rights are deriving social and economic benefits and maintaining culture and livelihoods from the harvesting of marine resources and management of sea country. Without proper provisioning of protective and inclusive engagement measures, the benefits of Traditional Owner rights could be diminished by poor policy directions on climate change.

Aboriginal people must have a central role in the development, implementation, evaluation of policy and legislation or administrative measures that effect their estates. This precedence should be set by the Commonwealth in adopting standards for a national approach to adaptive management strategies for climate change on marine fisheries and biodiversity and enabled at state and territory levels.

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<sup>2</sup> North Australia Indigenous Land and Sea Management Alliance

## Engagement

### *Traditional Knowledge*

The following excerpt is taken from the National Indigenous Sea Country Statement (May 2012).

‘As a signatory to the Convention on Biological Diversity (CBD) through the Environmental Protection and Biodiversity Conservation Act (EPBC Act) we urge Governments to acknowledge and give full account of the following:

In accordance with the CBD, Indigenous peoples must have a central role in development, implementation, evaluation of policy and legislation or administrative measures that may affect our Estate. Of key importance is Article 8 ‘In-Situ Conservation’ and in particular Article 8(j) which states:

*Subject to National legislation, respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.’*

Engagement of Traditional Knowledge in research and policy, alongside western science, is necessary to monitoring and measuring impacts of climate change.

### *Research and Development*

Impacts of climate change on marine resources must be tied to fisheries harvest strategies, water planning and management practices, mining and agricultural development, which are interrelated with the abundance and health of fish stocks and other species dependent on environmental fresh water flows and water quality. For example, the NT Government Department of Primary Industry and Resources (DPIR) reported that Mud Crab and Barramundi stocks show positive correlations with environmental factors such as rainfall and surface temperature (DPIR, 2013). The Mud Crab harvest in 2014 during average seasonal rainfall was almost double (219 tonne) that for 2015 (120 tonne), which had below average seasonal rainfall (DPIR, 2015). Mud Crab stocks show a transitional depletion in the Gulf of Carpentaria relevant to low rainfall and subsequent low recruit.

Potential impacts of climate change are already apparent in the NT through cases of severe dieback of mangroves in the Gulf of Carpentaria and coral bleaching in coastal areas of east Arnhem. Both mangroves and coral reefs provide necessary environments to a range of species that community and industry rely. The economic cost of bleaching of high retail value Giant Clams in Anindilyakwa is not yet apparent to an emerging Aboriginal aquaculture business. Issues of climate change can be localised as in the examples provided above and requires a community engagement approach to define research needs and approaches to deal with local issues.

### *Traditional Owners*

Enabling the role of Aboriginal people in the development and delivery of monitoring and evaluation and management is essential. Complementary to this must be a tangible and pragmatic approach to policy and program development that supports community capacity in providing services that deliver jobs, resilience and sustainability in remote communities, as well as, raising awareness and understanding of local issues.

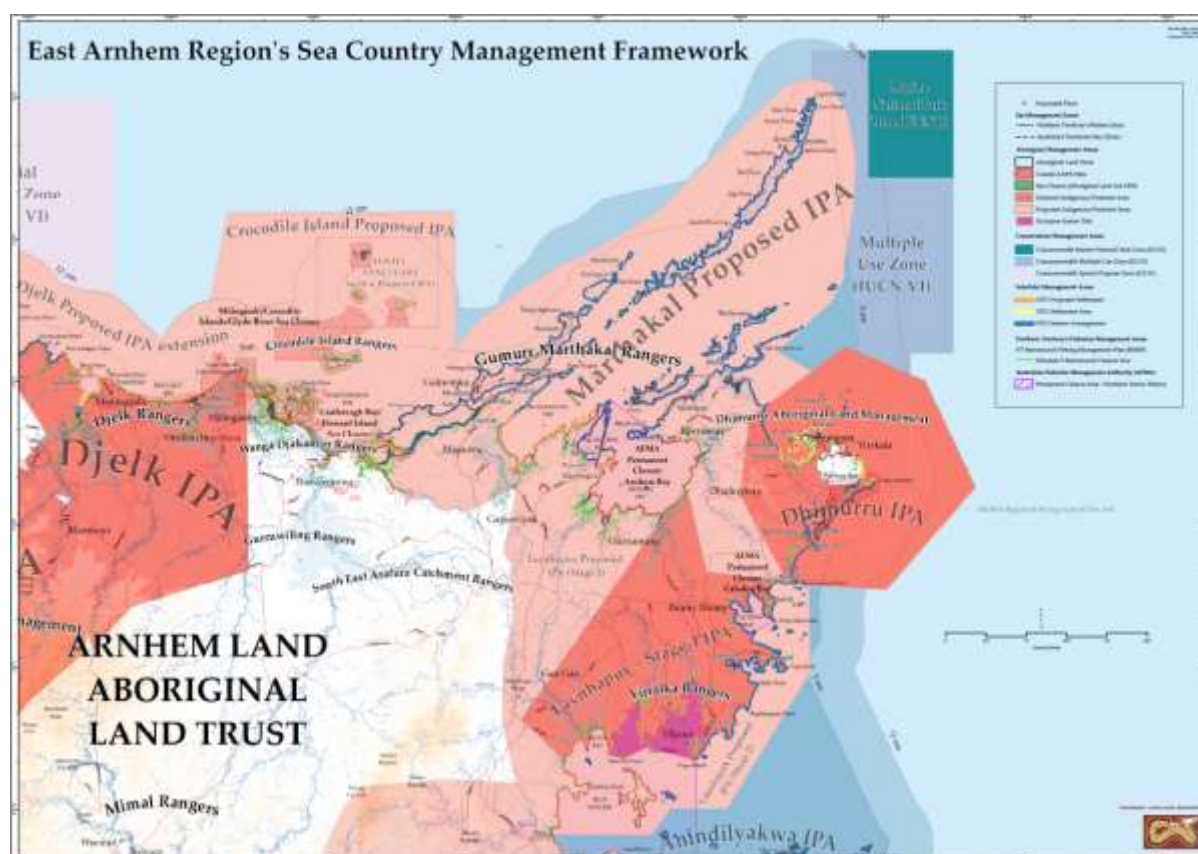


## Governance

Traditional Owners leadership in the management of sea country is already apparent by the growing numbers of IPAs extending into sea country.

In the IPA process, as a case study; Traditional Owners enter into an agreement with the Australian Government to promote biodiversity and cultural resource conservation relevant to the EPBC Act to meet international conservation standards. IPAs are recognised by Governments in making a significant contribution to Australian biodiversity conservation and make up over a third of Australia's National Reserve System.

Only recently have IPAs extended to sea country. To date, one IPA over sea country is recognised in the NT; the Dhimurru IPA. However IPAs over sea country areas are in the process of being developed for South East Arnhem Land, Marthakal, Crocodile Islands and Maningrida, which account for a significant area of east Arnhem Land coastal waters inclusive of both Territory and Commonwealth waters.



Map of East Arnhem showing 100% ownership of land inclusive of the intertidal area, native title determination over sea country, sea closures, IPAs and CMRs. Northern Land Council © 2016.

IPAs involve Aboriginal people managing a range of activities within a defined boundary of marine environment; provide a framework for Aboriginal communities to work with stakeholders who also have interests and use the marine environment, such as fishing, mining, and tourism sectors; and enable a framework for groups to work together toward effective conservation and management. The establishment of an advisory group under this charter ensures a clear process for multi-stakeholder interests to discuss localised issues and agree on a management plan that integrates approaches with relevant government agencies.

The IPA framework is exemplary of Aboriginal community participation toward achieving local interests that is inclusive of Aboriginal aspirations, culture and heritage. The IPA area and criteria for management is determined by Aboriginal people, which make them culturally appropriate frameworks for implementing management regimes. Management plans for sea country already recognise the need to consider potential impacts of climate change on natural resources in management plans. The Dhimurru IPA Sea Country Management Plan (2013) gives high priority to developing monitoring, research and management initiatives to take account of climate change impacts to ensure protection of conservation values and enduring sustainable use of resources that local people rely on.

The role of Traditional Owners, using existing governance frameworks, to inform management regimes to monitoring and evaluate climate change interests is obvious in the NT. The construct of IPAs provides a working, tested and robust model in which to engage a range of stakeholders to develop adaptive management strategies (SVA, 2016).

### Practice

Over the course, Traditional Owners have positioned Rangers as providing services to look after country. As in other submissions<sup>3</sup>, NLC strongly advocates the role of Ranger Programs in delivering services to support management, research, monitoring and evaluation to mitigate climate change impacting on valued marine natural resources, as determined by local governance frameworks.

Over 30 Ranger groups operate across the Top End delivering services such as monitoring, surveillance, compliance and research (NAILSMA 2012). Ranger activity in providing a range of services toward land and sea management is slowly advancing seaward under the construct of IPAs and meets both international conservation standards and localised cultural values and interests. However, many remote areas in the NT are still without services of dedicated Ranger programs; a concern consistently raised by Traditional Owners.

The role of Rangers as being integral to adaptive management practices is consistent with other Government policies, such as Closing the Gap in providing jobs and building local capacity. A strategic national approach is required from Governments to set this benchmark in sea country management.

### Recommendations

NLC is primarily concerned that customary practices and traditional economies will be unsubstantiated in government policy and programs for climate change adaptation.

Formulating and resourcing an appropriate engagement framework is imperative for Traditional Owners to inform policy and programs respective of their rights, interests and knowledge of marine

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<sup>3</sup> To Australian Government Department of the Environment on North Commonwealth Marine Reserves Network Management Plan March 2015

To Northern Territory Government Department of Primary Industries and Fisheries on Northern Territory Biosecurity Strategy September 2015

To Northern Territory Government Department of Land and Resources on Balanced Environment Strategy March 2016

To Australian Government Productivity Commission on Inquiry into Marine Fisheries and Aquaculture April and October 2016.

fisheries and biodiversity. Resources should provide necessary expertise to inform management practices and support existing or the establishment of Traditional Owners governance frameworks to engage in this issue.

The Australian Government should set targets to meet needs for

- Free, prior and informed consent of Traditional Owners on any policy and programs developed relevant to climate change impacts on fisheries and biodiversity;
- The rights, aspirations and values of stakeholders and Traditional Owners utilising marine and other natural resources and associated environments are identified and recognised in the construct of management practices or protective measures;
- A comprehensive strategy to engage Traditional Owners in decision making processes and a communication strategy to raise awareness and participation of the wider community;
- Enable leadership of Traditional Owners through existing governance systems;
- Resource expertise from research, industry, government and other agencies to adequately inform decision making processes relevant to policy, research and development;
- All major stakeholders being genuinely engaged in any management structure or arrangements;
- A strategic policy framework that
  - builds on existing knowledge systems (traditional and western sciences) and national and international experiences and policy standards,
  - identifies and considers gaps and impediments,
  - incorporates customary and livelihood values,
  - clearly defines decision making processes,
  - enables regionalisation of issues where determined, and
  - sets agreed priorities to meet local needs, rights and interests;
- Commitments from Commonwealth and Territory Governments to resource both strategic planning and policy implementation;
- Appropriate resourcing for the effective and efficient operation of all management, monitoring and compliance measures including local capacity of relevant organisations and groups; and
- Management frameworks are resourced and be implemented through services of Ranger Programs as the best fit model for sea country management.

### **Conclusion**

Traditional Owners must be fully engaged in the directives for climate change adaptation relevant to the management of marine estates. Using and supporting existing Aboriginal governance frameworks to inform policy and programs is paramount to recognising the rights and interest of Aboriginal people who have significant property rights. Their role must be to provide advice to the relevant regulatory bodies on a range of marine resource related matters, including fisheries, environment/biodiversity, climate adaptation, mining and water planning issues and to deliver management practices through existing local infrastructure, such as Ranger Programs.

The NLC hopes our recommendations contribute to the purposes of this Inquiry.



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## Acronyms

ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>
CBD	Conservation Biological Diversity
DPIR	Northern Territory Department of Primary Industry and Resources
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act</i>
IPA	Indigenous Protected Area
NAISMA	North Australian Indigenous Land and Sea Management Alliance
NLC	Northern Land Council
NT	Northern Territory
NTA	<i>Native Title Act 1993</i>
Traditional Owner	Traditional Owner as defined by section 3 of the <i>Aboriginal Land Rights Act</i> ALRA is the requirement that a local descent group of Aboriginals have – “...common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land”