



Yamatji Marlpa

ABORIGINAL CORPORATION

Our Ref: GEN033
Office: Perth

25 March 2015

Mr Peter Cochrane and Professor Colin Buxton
Co-Chairs, Bioregional Advisory Panels
Commonwealth Marine Reserves Review
C/o Department of the Environment
Reply Paid GPO Box 787
CANBERRA ACT 2601

By email: haveyoursay@marinereservesreview.com.au

Dear Sirs

Submission to the Commonwealth Marine Reserves Review

Thank you for the opportunity to provide a submission in response to the Commonwealth Marine Reserves Review (the Review) and in particular to both the North-west and South-west Bioregional Advisory Panels.

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB) for the Pilbara, Murchison and Gascoyne regions of Western Australia. The organisation has a representative area of almost one million square kilometres and represents 24 native title claimant groups, each with their own language, culture and traditions.

YMAC is a not-for-profit organisation run by a Board of Directors comprising 12 Traditional Owners; six drawn from the Pilbara region and six from the Yamatji region. YMAC provides a range of services to its members including legal representation throughout the native title claim process and future act negotiations, community and economic development, and natural resource management.

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The Review's terms of reference

Due to the nature and history of YMAC's work, we do not express an opinion about each one of the Review's Terms of Reference, but instead we make the submissions in this document in response to the two following terms of reference:

- recommendations for improving the inclusion of social and economic considerations into decision-making for marine reserves, with particular regard to their management; and
- suggestions for ongoing engagement of regional stakeholders.

High-quality previous work is available to this Review

YMAC urges the Review to consider the substantial previous work done around Australia on the topic of better involvement of Aboriginal and Torres Strait Islander Peoples in Sea Country management, particularly that done in 2012.

Key events and documents include:

- formation of the North Australia Indigenous Land and Sea Management Alliance (NAILSMA);
- Report of NAILSMA's National Indigenous Sea Country Workshop (Mary River, NT; mid-2012); and
- Commonwealth Marine Reserves Indigenous Forum Outcomes Report (Darwin; December 2012).

The Review can find a useful (although no longer comprehensive) list of events, reports and other matters relating to this area in a NAILSMA publication called *Timeline of Significant Events in Indigenous Sea Country Management: 1975 to 2012*.

YMAC's view on Australian best practice for Aboriginal engagement

In our view the best practice concepts and recommendations relating to Aboriginal Western Australians can be found mostly in the *Commonwealth Marine Reserves Indigenous Forum Outcomes Report* mentioned above.

In addition to expressing our broad support for that Report, YMAC highlights and underlines our support for the following extracts in particular. Even though some of the quotes below arose specifically in the context of that report, in our view they remain generally relevant to all current and planned work in this area.

Page 12:

Representatives of Land Councils and other peak Indigenous organisations made it clear that they were not in a position to speak on behalf of Indigenous people directly associated with sea country. ...

The very short timeframe for developing management plans, particularly over the summer holiday period, does not allow for appropriate consultation of Traditional Owner groups and other Indigenous people potentially affected by Commonwealth marine reserves in or adjacent to their sea country. [our emphasis]...

Indigenous people are not “stakeholders”. Indigenous engagement processes should recognise that Indigenous people associated with sea country have nationally and internationally recognised rights for participation and benefit which are separate and distinct from the interests of “stakeholders”. [our emphasis]...

Recognition of Indigenous objectives, values, rights and interests should be reflected where appropriate throughout management plans, not just within a separate Indigenous statement or strategy. [our emphasis]...

Management plans should specify what level of cultural heritage protection is provided by Commonwealth marine reserves.

Page 13:

Coastal Indigenous groups have different current capacities to be involved in the management of Commonwealth marine reserves. Some groups have a well developed capacity, including well resourced and well-trained sea ranger groups, and are in a position to be actively engaged in management of the reserves immediately. Other groups have considerably less capacity and will require training, investment and other support to become engaged in managing the Commonwealth marine reserves.

Indigenous employment opportunities, which should be negotiated locally, should include a wide range of roles, including rangers, scientists, managers etc. as well as a diversity of capacity-building pathways (e.g. scholarships). ...

Preferential Indigenous employment provisions should be included within network and reserve management plans, with detailed Indigenous strategies and actions to be negotiated locally for each Commonwealth marine reserve. [our emphasis]

Page 14:

Consideration should be given to allocating Aboriginal or Torres Strait Islander names to Commonwealth marine reserves if requested by local Indigenous groups. ...

Investing in understanding and supporting Indigenous values, interests and capacity-building in Commonwealth marine reserves will be rewarded by improved environmental, social, cultural and ‘closing the gap’ outcomes. [our emphasis]...

[the Department of the Environment] should develop a comprehensive Indigenous engagement strategy to support Indigenous input into the planning and management of Commonwealth marine reserves, in addition to Indigenous engagement strategies attached to individual management plans.

Indigenous engagement processes should reflect the complexity and diversity of Indigenous cultural, social, legal and other interests in sea country.

Indigenous engagement strategies should clearly explain the threshold level of Indigenous engagement required under various statutory provisions, consistent with Australia's national and international obligations.

Page 15:

Indigenous engagement needs to include direct engagement with local Indigenous groups and organisations in areas potentially affected by Commonwealth marine reserves.



[the Department of the Environment] can obtain advice from peak Indigenous organisations with statutory responsibilities for native title and other forms of Indigenous tenure regarding which Indigenous groups and organisations to engage with. These organisations include:

- Land Councils (State/Territory, and Local);
- Native Title Services organisations;
- Registered Native Title Bodies Corporate (also known as 'Prescribed Bodies Corporate' or PCBs); [sic]
- Land Trusts;
- Community Councils.

[the Department of the Environment] needs to have a clear understanding of the role and responsibilities of the various local, regional or State/Territory Indigenous organisations referred to above.

How the above compares to the current (but suspended) North-west and South-west Management Plans

Simply put, in relation to Aboriginal Peoples and their interests, the processes leading to, and the content of, these two Management Plans fell well short of the best practice principles above. We can of course provide more detail about those problems if requested.

For now, we note that one of the difficulties with the processes leading to these two Management Plans was that what consultation there was occurred only through YMAC as the NTRB, not with the claim groups directly. If the consultation process was longer, YMAC may have been able to perform that role, but the timeframe was quite insufficient in this case.

For future reference, we provide the following information about existing YMAC-represented Native Title determinations and claims which might be affected by future North-west and South-west Commonwealth Marine Reserves:

No native title interests represented by YMAC, i.e. Ngarla, Ngarluma/Yinjibarndi, Nyangumarta) in the Pilbara region are directly affected by the proposed Marine Reserves.

In the Yamatji region, the following claim areas overlap with Commonwealth Marine Reserves:

- Abrolhos CMR: Nanda claim and a small part of the Naaguja claim;
- Shark Bay CMR: Malgana Shark Bay People claim; and
- Ningaloo CMR: Gnulli claim.

Some of the above will need law reform

Although the following may be clear from the 'best practice' extracts above, YMAC takes this opportunity to make the following law reform recommendations:

- substantially increase (from 30 days) the statutory minimum comment period for the process where the Director of National Parks publishes a notice about the proposal to prepare a draft management plan;
- alternatively, very substantially increase (from 30 days) the statutory minimum comment period where the above kind of notice is published during December or January, those



being months where there weather and/or cultural reasons for effective consultation with Aboriginal or Torres Strait Islander Peoples needing more time;

- similarly, substantially increase (from 30 days) the statutory minimum comment period for the draft management plan itself.

Recent viewpoints from some Pilbara Traditional Owner groups

In recent years YMAC has helped facilitate the expression of the Sea Country aspirations of a number of its Traditional Owner groups.

In the Pilbara, that work led to the March 2010 publication of a Pilbara Sea Country Plan, a copy of which we attach to this submission.

By way of summary, this earlier Pilbara work is entirely consistent with the national 'best practice' extracts we have now provided above.

Joint Management considerations

In accordance with the *Conservation and Land Management Act 1984 (WA)*, as amended in 2012, the Department of Parks and Wildlife (DPaW) has recently embarked on negotiating formal Joint Management Agreements with Traditional Owners in Western Australia.

For example, in December 2014, the Nyangumarta Warrarn Aboriginal Corporation and DPaW signed a Joint Management Agreement for Eighty Mile Beach Marine Park (Nyangumarta part). Under the agreement, decision-making is jointly shared by the two parties through a Joint Management Body. The mandate of this Body even extends beyond the Native Title determination area, which goes up to the Lowest Astronomical Tide mark, and encompasses the sea country up to the boundary of State waters.

A similar arrangement has been signed with the Ngarla Traditional Owners for their section of the Marine Park. The management plan for Eighty Mile Beach Marine Park, along with the Joint Management Agreements, is available on DPaW's website:

<http://www.dpaw.wa.gov.au/parks/management-plans/approved-management-plans>

We strongly encourage the Review to recommend adopting similar management arrangements for any Commonwealth Marine Reserve that is adjacent to a State marine park or marine reserve, extending therefore the principle of collaborative governance between Traditional Owners and Commonwealth and State agencies.

Should you have any questions about this submission, please contact David Garner on dgarner@ymac.org.au or 08 9268 7000.

Yours faithfully

MICHAEL MEEGAN
PRINCIPAL LEGAL OFFICER