



Cape York Land Council Aboriginal Corporation
ICN 1163 | ABN 22 965 382 705

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AFMA
Torres Strait Office
PO Box 376
Thursday Island QLD 4875

Email: FisheriesTI@afma.gov.au

Dear AFMA

Re: TSPZ Fisheries Management

Cape York Land Council (CYLC) functions as the Native Title Representative Body (NTRB) for the Cape York region. In that NTRB role we fulfil statutory functions under the *Native Title Act 1993* (Cth). In our broader Land Council role we support, protect and promote Cape York Aboriginal peoples' interests in land and sea to positively affect their social, economic, cultural and environmental circumstances and aspirations. In this capacity CYLC welcomes the opportunity to comment on AFMA's draft harvest strategies for the Torres Strait Protected Zone (TSPZ) Tropical Rock Lobster (TRL) and proposed removal of the "western line closure" in the TSPZ Finfish Fishery.

CYLC has an interest in management of Torres Strait fisheries for a number of reasons including that:

- we support the aspirations of Torres Strait Islanders for greater control over their traditional resources and their participation in mainstream commercial activity;
- the Cape York region adjoins Torres Strait and management of Torres Strait fisheries may set precedents for management of Cape York fisheries;
- Cape York Aboriginal people hold similar aspirations for greater control over their traditional resources and participation in mainstream commercial activity to support their social and economic development;
- many Cape York communities have many families with strong traditional and historical ties to Torres Strait communities and families;
- southern sections of TSPZ fisheries extend into waters that are the traditional country of Cape York Aboriginal people, and this southern TSPZ area is within the area of a CYLC native title sea claim, so Cape York Aboriginal people have plausible, and soon to be determined, rights to fisheries resources in this area;
- prospective Aboriginal holders of native title sea rights and interests will include some people who are currently eligible for access to TSPZ commercial fishing rights, but far from all of these prospective native title holders will have access to the TSPZ fishing rights in their traditional waters. Conversely, the current TSPZ Indigenous commercial fisher arrangements create rights for Indigenous people who will not be identified as native title holders through Cape York sea claims;
- AFMA must review the current TSPZ fisheries arrangements to ensure Cape York Aboriginal native title holders have a recognised interest in and access to the fisheries for those sea

areas where they hold or will hold native title, and that agreements are in place between Cape York Aboriginal native title holders and other parties who access fisheries in the seas where Cape York Aboriginal people hold native title rights.

TRL Fishery

CYLC is concerned that the objectives of the draft TRL harvest strategy, and the decision rules designed to achieve these objectives, may result in unsustainable levels of harvest that will cause a long term decline in TRL populations.

Because the TSPZ TRL fishery extends into the traditional waters of Cape York Aboriginal people, and they have aspirations to commercially harvest TRL, Cape York Aboriginal people have a strong interest in the sustainability of the TRL populations and submit that:

- the objectives of the draft TRL Harvest Strategy should be amended to seek to return the stock to 90 per cent of the original unfished size of the TRL spawning stock in 1973, and to maintain TRL stock above a lower limit of at least 50 per cent of the original unfished size; and
- Decision Rule 1 should set a maximum catch limit of 250 tonnes per season so that the above TRL population objectives may be achieved.

CYLC also supports the aspirations of traditional inhabitants to own 100 percent of the Torres Strait TRL Total Allowable Catch, as outlined in the 2014 Roadmap Agreement signed by TSRA, and that this target is achieved as soon as possible. AFMA should consider how the harvest strategy could be utilised to accelerate the transition to 100 per cent ownership of the TAC by traditional inhabitants.

CYLC also advocates that a native title corporation should hold, manage and allocate the Total Allowable Catch for TRL and other species for the Traditional Inhabitants Boat sector. The right of traditional inhabitants to take TRL for commercial purposes is partly based on their native title rights, so the Malu Lamar (Torres Strait Islander) Corporation, as the Registered Native Title Body Corporate (RNTBC), should be the management entity because it holds and manages Torres Strait Islander native title rights and interests.

CYLC is interested in management arrangements for the Torres Strait TRL fishery because similar arrangements should also apply to Queensland's east coast TRL fishery which operates almost exclusively on Cape York's east coast north of Cape Melville. However, unlike the Torres Strait TRL fishery, AFMA and other fisheries regulators responsible for Cape York waters have not established a TRL fishery management plan that allocates a Total Allowable Catch quota to the Cape York Traditional Inhabitants Boat sector. Consistent with the transition to 100 per cent ownership of the TSPZ TRL Total Allowable Catch quota by traditional inhabitants, the Cape York TRL Total Allowable Catch quota should be 100 per cent owned by Cape York traditional owners.

If such an arrangement existed for Cape York it would provide desperately needed opportunities for Aboriginal people to participate in this commercial fishery in their traditional waters. In the absence of such an arrangement the allocation of Cape York's allowable catch is effectively limited to large non-Indigenous fishing companies and Cape York Aboriginal people are effectively excluded.

Given that CYLC has registered native title claims over northern Cape York seas, and further sea claims will be lodged in the near future, AFMA must recognise that it must start working with other fisheries regulators to develop a Cape York TRL fishery management plan that reserves 100% of the Total Allowable Catch quota for Cape York Aboriginal people. CYLC requests that AFMA and other fisheries regulators meet with CYLC as soon as possible to discuss how to progress this important matter.

Western line closure for finfish

CYLC is very concerned about the proposed removal of the western line closure so that commercial line fishing may be undertaken for finfish species in western Torres Strait waters. We note comments in AFMA's Discussion Paper that the existing closure is based on a historic management boundary, and not a specific management need for the fishery. However, CYLC is concerned about widespread and consistent anecdotal evidence that TRL populations, and therefore the TRL commercial fishery, are negatively affected by the introduction of commercial line fishing.

Because of the possible risk to the TRL commercial fishery, the importance of this fishery to Traditional Inhabitant fishers, and because the TSPZ western fin fishery extends into the traditional waters of Cape York Aboriginal people, CYLC considers that more research and further consultation must be done before the closure can be removed to clearly ascertain and settle the current questions from fishers about the relationship between commercial line finfishing and TRL populations. CYLC submits that the precautionary principle must be applied in this situation and that the western line closure for finfish remain in place.

CYLC supports that access to the commercial line fishery, within the existing open area, is limited to Traditional Inhabitants because this arrangement makes an important contribution to Indigenous employment and economic development opportunities. However, as proposed by CYLC for the TRL fishery and other fisheries, the Total Allowable Catch for the finfish line fishery should be held, managed and allocated by the Malu Lamar (Torres Strait Islander) Corporation. If this was the arrangement then CYLC would also support the participation of non-Traditional Inhabitant fishers in the fishery through leasing of a temporary licence from Malu Lamar because the benefits from this arrangement would be redistributed to Malu Lamar's native title holder members. This will not be the case if the TSRA continues to manage licences for the Total Allowable Catch for the Traditional Inhabitant Boat sector.

Issues with TSPZ fisheries management plans

As outlined above, CYLC supports that AFMA's TSPZ management plans provide greater commercial opportunities for Torres Strait Islander fishers in Torres Strait Islanders' traditional waters through the allocation of 100 per cent of total allowable catches to traditional inhabitants and the management of fishing allocations by the Malu Lamar RNTBC.

However, CYLC is concerned that management plans for TRL, finfish and other species provide rights for non-traditional owners in the traditional waters of Cape York Aboriginal people without their consent. This issue will become more critical as Cape York native title sea claims are determined and confirm the rights of Cape York Aboriginal people in these waters. AFMA must commence a process immediately to establish agreements between the traditional owners of these claimed waters and the parties who are accessing the fisheries in these waters.

Attachment 1 shows where native title has been determined to exist in Torres Strait, and Attachment 2 shows where native title has been claimed in Cape York seas. AFMA fisheries management plans must be more cognizant of these legally recognised rights and interests of native title holders and plans amended accordingly and agreements negotiated where necessary.

This issue would be partially resolved if AFMA and other fisheries regulator relevant to Cape York seas prepared fisheries management plans for a range of Cape York commercial species, whereby the Cape York fisheries management plans provided that:

- 100 per cent of the Total Allowable Catch is allocated to the Traditional Inhabitants Boat sector for each Cape York fishery;
 - the Total Allowable Catch for the Traditional Inhabitants Boat sector is held, managed and allocated by the relevant RNTBC. For example, for waters within the amalgamated Cape York Aboriginal people's native title sea claim the relevant RNTBCs will be the Ipima Ikaya
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Aboriginal Corporation RNTBC and the Kaurareg Native Title Aboriginal Corporation RNTBC. Further south, the Kuuku Ya'u Aboriginal Corporation RNTBC should hold and manage Total Allowable Catches for the waters where it holds native title. As other Cape York native title sea claims are lodged and determined the ensuing RNTBC should hold and manage fishing allocations for their relevant waters;

- for Cape York waters where a native title claim has not been lodged or determined, the CYLC has interim responsibility to hold, manage and allocate licences to the Traditional Inhabitants Boat sector, and to hold benefits from the allocation of licences pending transfer to the RNTBC upon establishment;
- eligibility for a Traditional Inhabitants Boat licence is restricted to the Aboriginal Traditional Owners of those waters;
- if the Total Allowable Catch has not been fully allocated to Traditional Owners, and no further expressions of interest are received from Traditional Owners, then non-Traditional Inhabitant fishers may lease a temporary licence from the RNTBC with the consent of the Traditional Owners;
- Traditional Owners are identified by the RNTBC for determined waters, and the TOs are identified by CYLC anthropology processes for claimed and unclaimed waters; and
- the RNTBC distributes benefits from the allocation of fisheries licences to the native title holder members of the RNTBC.

By implementing these proposed arrangements AFMA would make a significant contribution to the participation of Cape York Aboriginal people in mainstream economic activity, and help close the gap on Aboriginal socio-economic disadvantage.

CYLC requests that AFMA makes arrangements to meet with CYLC to discuss the matters raised in this submission with a view to progressing these proposals.

In the meantime, if you wish to discuss any matter raised in this submission please do not hesitate to contact me.

Yours sincerely



Richie Ah Mat
Chair
Cape York Land Council
