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## Pearl Oyster (*Pinctada maxima*) Resource Allocation Report : Prepared by the Integrated Fisheries Allocation Advisory Committee

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Department of  
**Primary Industries and  
Regional Development**

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**Fisheries Management Paper No. 289**

**Pearl Oyster (*Pinctada maxima*)  
Resource Allocation Report**

Prepared by the Integrated Fisheries Allocation  
Advisory Committee

June 2018

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### **Important disclaimer**

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## **FOREWORD FROM THE CHAIR OF THE INTEGRATED FISHERIES ALLOCATION ADVISORY COMMITTEE**

In August 2013 the Minister for Fisheries asked the Integrated Fisheries Allocation Advisory Committee (Allocation Committee) to examine the allocation issues associated with the pearl oyster fishery for the species *Pinctada maxima*.

This allocation report is the result of the Allocation Committee's consideration of the Department of Primary Industries and Regional Development Integrated Fisheries Management Report on the *Pinctada maxima* resource, scientific reports on the resource, consultation with the peak stakeholder bodies and a period of public consultation to allow commercial licence holders, recreational fishers and other interested persons the opportunity to provide comment.

This report documents the Allocation Committee's final position and recommendations on the allocations for the *Pinctada maxima* resource and has been prepared for consideration by the Minister for Fisheries to determine the allocation of the *Pinctada maxima* resource.

The views expressed in this allocation report are the views of the Allocation Committee and do not necessarily reflect the position of the Department of Primary Industries and Regional Development or the Minister for Fisheries.

Ian Longson  
Chair  
INTEGRATED FISHERIES ALLOCATION ADVISORY COMMITTEE

## **1 Committee Recommendations**

1. *The allocation of the pearl oyster fishery should cover the Pinctada maxima fishery in the area of the fishery covered by the Pearling Act, 1990 (North West Cape to the Northern Territory Border).*
2. *Customary fishing should continue in accordance with existing Customary fishing rights and no specific allocation should be made.*
3. *There should be no allocation for the recreational sector.*
4. *The total allowable catch of the Pinctada maxima resource should be allocated to the commercial sector.*
5. *There should be specific policy provisions developed to manage the incidental take of Pinctada maxima by the public.*

## 2 Introduction

Integrated Fisheries Management (IFM) is an initiative aimed at addressing the issue of how fish resources in Western Australia should be shared between competing users within the broad context of “Ecologically Sustainable Development”, or ESD, so that they can be managed to a sustainable allowable harvest level.

The Minister for Fisheries (Minister) established the Integrated Fisheries Management Allocation Advisory Committee (Allocation Committee), under Section 42 of the *Fish Resources Management Act 1994* (FRMA), in 2004 to investigate IFM resource allocation issues and make recommendations to him on optimal resource use.

This report documents the Allocation Committee’s final position and recommendations on the allocations for the *Pinctada maxima* resource and has been prepared for consideration by the Minister to determine the allocation of the *Pinctada maxima* resource.

This report follows the Allocation Committee’s investigation of the *Pinctada maxima* resource sharing issues and consultation with the Western Australian Fishing Industry Council (WAFIC), the Pearl Producers Association (PPA) and Recfishwest as the peak stakeholder bodies.

Under the IFM policy a draft report is required to be released for a public comment period to facilitate discussion and encourage comment on how the *Pinctada maxima* resource should be shared between competing users. The Draft Allocation Report Pearl Oyster (*Pinctada maxima*) Resource was released for public comment on 8 November 2016 and the public comment period ended on 31 January 2017. The Allocation Committee has taken into consideration the matters raised through the public submissions in finalising its advice to the Minister on allocations for the *Pinctada maxima* resource.

Following the receipt of the Allocation Committee’s advice, the Minister, consistent with the Government’s policy, will determine the allocations to the sectors.

### **3 Background**

The IFM policy was adopted in 2004. In summary, IFM involves:

- setting the total allowable harvest level of each resource that allows for an ecologically sustainable level of fishing;
- allocation of explicit proportional catch shares for use by commercial, recreational and Customary sectors;
- continual monitoring of each sector's catch;
- managing each sector within its allocated catch share; and
- developing mechanisms to enable the reallocation of catch shares between sectors.

#### **3.1 The Allocation Committee**

The members of the Allocation Committee who prepared this report are Mr Ian Longson (Chair), Mr Norman Halse, Ms Elizabeth Woods and Mr Steve Lodge. In addition, the Director of Aquatic Management is a non-voting member of the Committee. This position was occupied by Dr Lindsay Joll.

Mr Ian Longson was appointed Chair of the Allocation Committee on 1 December 2009. Mr Longson has had a distinguished career in both the private and public sector. He is currently a business development consultant. From 1995 to 2009 he was on the executive management team of the Department of Agriculture and Food, finishing up as the Director General for the last five years of this time. He has previously worked as a senior consultant and manager of the Perth Office of ACIL Consulting (now ACIL Allen), the Dairy Industry Authority of Western Australia, and the Asian Development Bank.

Mr Norman Halse is a keen recreational fisher, conservationist and researcher. Mr Halse worked for WA's Department of Agriculture for 40 years, his career culminating as that department's Director General. His conservation interests included serving as past President of the Conservation Council of WA, as Chairman of the National Parks and Conservation Authority and as a member of the Environmental Protection Authority. Mr Halse has a strong interest in recreational



fishing, which is demonstrated by his service as a past Chair, and board member, of peak body Recfishwest.

Ms Elizabeth (Libby) Woods is Deputy Chief Magistrate. Ms Woods chaired the Wetline Review Commercial Access Panel which recommended the commercial access arrangements for the West Coast Demersal Scalefish Fishery.

Mr Steve Lodge owns the Geraldton Fish Markets and the Shark Bay Fish Factory. He also has interests in the rock lobster fishery, other processing establishments and owns Goldenwest Ice. Mr Lodge was a member of the West Coast and Gascoyne Management Planning panel that recommended management arrangements for the West Coast Demersal Scalefish Fishery and was a member of the Purse Seine Management Advisory Committee. Mr Lodge is currently a member of the Abrolhos Islands Management Advisory Committee.

#### *3.1.1 Disclosure of Interest*

If a member had an interest in any matter to be considered by the Allocation Committee, the member disclosed the interest, the disclosure was recorded in the minutes of the Committee and the member did not vote on the matter. Mr Lodge has an interest in the processing sector of this fishery and Mr Longson is a non-executive director of Western Australian Resources Ltd, which has an interest in the land-based aquaculture venture.

#### *3.1.2 Guiding principles*

Following a review of the 2004 Integrated Fisheries Management Policy during 2009, the Minister provided the Allocation Committee with the following *Guiding Principles and Terms of Reference* (**Appendix 1**).

The Allocation Committee should ensure that any advice to the Minister is consistent with these principles:

- i) Fish resources are a common property resource managed by the Government for the benefit of present and future generations.
- ii) Sustainability is paramount and ecological requirements must be considered in the determination of appropriate harvest levels.

- iii) Decisions must be made on best available information and where this information is uncertain, unreliable, inadequate or not available, a precautionary approach adopted to manage risk to fish stocks, marine communities and the environment. The absence of, or any uncertainty in, information should not be used as a reason for delaying or failing to make a decision.
- iv) A harvest level, that as far as possible includes the total mortality consequent upon the fishing activity of each sector, should be set for each fishery<sup>1</sup> and the allocation designated for use by the commercial sector, the recreational sector, the Customary sector, and the aquaculture sector should be made explicit.
- v) The total harvest across all user groups should not exceed the allowable harvest level. If this occurs, steps consistent with the impacts of each sector should be taken to reduce the take to a level that does not compromise future sustainability.
- vi) Appropriate management structures and processes should be introduced to manage each sector within their prescribed allocation. These should incorporate pre-determined actions that are invoked if that group's catch increases above its allocation.
- vii) Allocation decisions should aim to achieve the optimal benefit to the Western Australian community from the use of fish stocks and take account of economic, social, cultural and environmental factors. Realistically, this will take time to achieve and the implementation of these objectives is likely to be incremental over time.
- viii) It should remain open to government policy to determine the priority use of fish resources where there is a clear case to do so.
- ix) Management arrangements must provide sectors with the opportunity to access their allocation. There should be a limited capacity for transferring allocations unutilised by a sector for that sector's use in future years, provided the outcome does not affect resource sustainability.

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<sup>1</sup> Fishery is defined under the FRMA as one or more stocks or parts of stocks of fish that can be treated as a unit for the purposes of conservation or management; and a class of fishing activities in respect of those stocks or parts of stocks of fish.

Additional principles to provide further guidance around allocation decisions may also be established for individual fisheries.

### *3.1.3 The Allocation Committee's Terms of Reference*

Taking into account the principles detailed above, the Allocation Committee is to investigate fisheries resource allocations issues, and make recommendations to the Minister on matters related to optimal resource use, and in particular provide advice on:

- i. Allocations between sectors, now and into the future;
- ii. Strategies to overcome allocation and access issues arising from temporal and spatial competition for fish at a local /regional level;
- iii. Allocation issues within a sector as referred by the Minister;
- iv. Principles to provide further guidance around allocation and reallocation decisions for individual fisheries; and
- v. Other matters concerning the integrated management of fisheries as referred by the Minister.

The IFM Government Policy released in October 2004 and amended in December 2009 (**Appendix 1**) is the principal source of guidance for the Allocation Committee in developing its recommendations on sectoral allocations. The Minister also provided the Allocation Committee with additional advice on various IFM issues, which it has taken into account in its deliberations. These issues are discussed in section 4.2.

Under the IFM Government Policy (Paragraph 12, **Appendix 1**), the Minister determines the process and timeframes for resolving allocation issues in each fishery based on the advice of the Deputy Director General of the Department of Primary Industries and Regional Development and the Allocation Committee. The Minister has approved a four-stage IFM allocation process developed by the Allocation Committee. The four stages involve:

- A. Determining the need for a formal allocation process in a fishery;
- B. Development of an Integrated Fisheries Management Resource Report by the Department of Primary Industries and Regional Development;
- C. The integrated fisheries allocation process, which includes;  
Step 1. Investigation of the allocation issue;

Step 2. Allocation Committee settling a draft allocation report and releasing it for public comment;

Step 3. Allocation Committee recommending allocations to the Minister for Fisheries;

Step 4. The Minister determining allocations; and

D. Determining mechanisms for future allocations between sectors.

To date the Allocation Committee has been requested to provide advice and has made recommendations on allocations for west coast rock lobster, abalone (with emphasis on the Perth metropolitan region), and west coast demersal scalefish (such as dhufish, baldchin groper and pink snapper). The outcomes of these allocations have been Ministerial determinations to allocate the western rock lobster resource with 5% to the recreational sector, 95% to the commercial sector and 1 tonne to the Customary sector. 40 tonnes of metropolitan Roes abalone was allocated to the recreational sector, 36 tonnes to the commercial sector and 500 kgs to the Customary sector. The recreational sector was allocated 36% of the west coast demersal scalefish resource and 64% was allocated to the commercial sector.

In August 2013, the Minister referred the pearl oyster (*Pinctada maxima*) resource to the Allocation Committee for advice on its allocation.

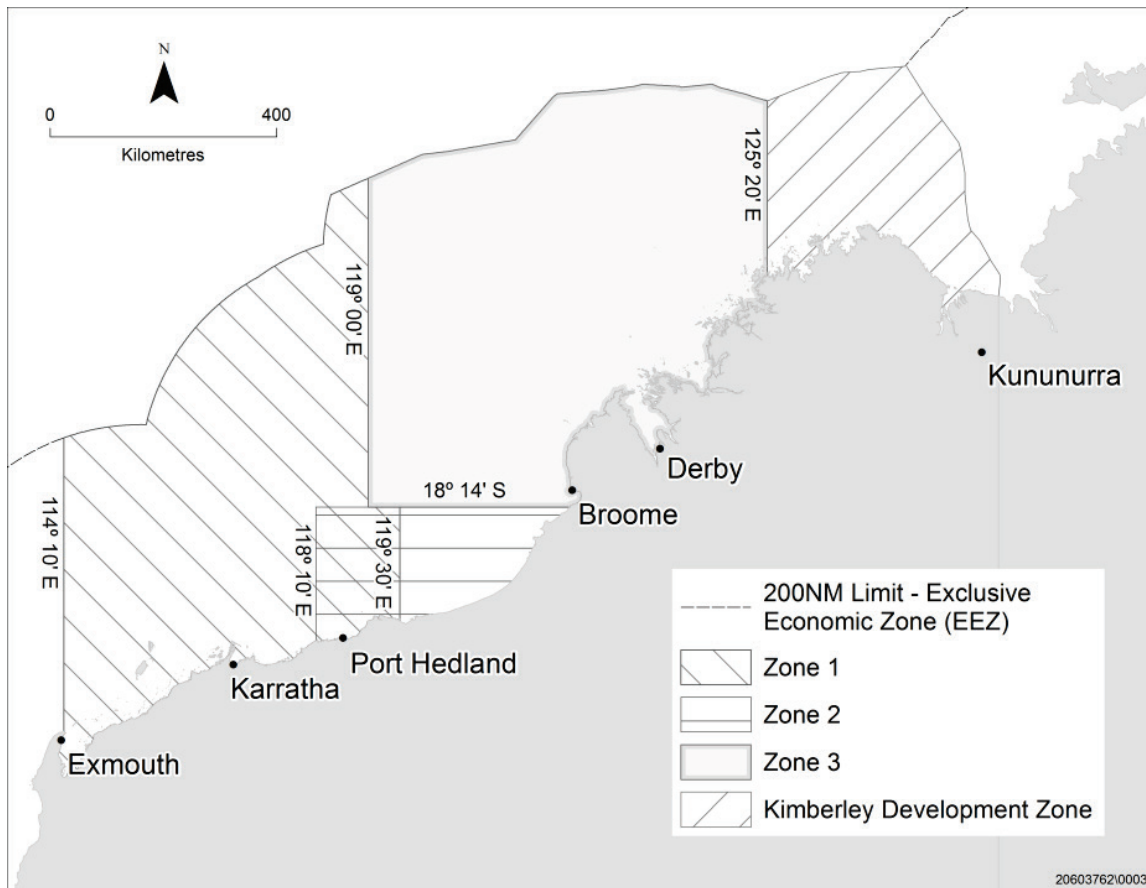
### **3.2 Ministerial Advice**

#### *3.2.1 Allocation to the non-fishing sector*

The Minister has advised the Allocation Committee that the IFM initiative was designed to determine allocations between commercial, recreational (including charter) and Customary fishing sectors that are extractive users, and that recommendations are not required from the Allocation Committee on allocations to non-extractive users of the resource (**Appendix 2**).

### **3.3 Scope of the Allocation**

The Minister has asked the Allocation Committee to examine allocation issues associated with the pearl oyster fishery for the species *Pinctada maxima* and the Committee has confined itself to examining the issues related to this fishery in the area covered by the *Pearling Act, 1990* (Figure 1).



**Figure 1: Catching zones for *Pinctada maxima***

### Recommendation 1

*The allocation of the pearl oyster fishery should cover the *Pinctada maxima* fishery in the area of the fishery covered by the Pearling Act, 1990 (North West Cape to the Northern Territory Border).*

### 3.4 Additional Guiding Principles Adopted by the Allocation Committee

The Allocation Committee will, in accordance with its terms of reference, make recommendations on initial proportional allocations for the pearl oyster (*Pinctada maxima*) resource to the extractive sectors. Other allocation principles that the Allocation Committee has considered or that have been brought to the Allocation Committee's attention, in addition to those referred to previously (sections 4.1 and 4.2) that have a bearing on its deliberations, are discussed below.

The Allocation Committee has adopted the following principles for all the fisheries it has considered and it considered them relevant in relation to this resource.

1. The approach should be pragmatic and incremental;
2. There was a need to make explicit allocations (as distinct from making a general statement of principle about how allocations should be made);
3. Allocations should not have the effect of merely deferring a decision indefinitely; and
4. That until there are re-allocation mechanisms, the Allocation Committee should be cautious in making recommendations that would have the effect of immediately and significantly impacting on a sector.

Guiding policy vii (see section 4.1.2) of the IFM Government Policy states:

*Allocation decisions should aim to achieve the optimal benefit to the Western Australian community for the use of fish stocks and take account of economic, social, cultural and environmental factors.*

The Allocation Committee recognises that optimising community benefit is one of the most important issues in the allocation of fish resources. While noting that there is no recent objective information for this particular fishery (the most recent being a report prepared in 2002) and substantial social and economic benefits of the recreational sector were difficult to measure, the Allocation Committee believe it is important to take these issues into account.

The Allocation Committee has been briefed by two experts on socio-economic matters, Dr Jacki Schirmer of the Australian National University and Dr Daryl McPhee of Bond University, to underpin further consideration by the Allocation Committee as to how these issues should best be addressed.

Recreational fishers stress the importance of recreational fishing to lifestyle and associated tourism and service industries (such as accommodation, fuel and tackle businesses) in local and regional economies.

On the other hand, commercial operators point out that it has been Departmental policy for a considerable period of time that no pearling licences would be issued for

a recreational purpose, and there have been no applications under the Pearling Act for a licence to take *Pinctada maxima* for recreational purposes. They also note that pearl oysters are a valuable resource, which brings employment opportunities and economic benefits to the State's north-west.

Consistent with Principle 4 in Section 4.1.2, the Allocation Committee considers that the initial allocation should take account of both the historical shares of the fishery but also consider Principle 7, which takes account of economic, social, cultural and environmental factors.

## 4 Description of the Fishery

The fishery extends from North-West Cape to the Northern Territory border (Figure 1). *Pinctada maxima* is a tropical species of bivalve, filter-feeding mollusc. It is the largest species of pearl oyster and is widely distributed from the Bay of Bengal in the west to the Solomon Islands in the east. It inhabits areas of the seabed where there is a relative flat, hard rock substratum with small crevices on which individual oysters attach themselves. These areas are also occupied by ascidians and sponges referred to by pearl divers as “potato bottom”, while assemblages of hydroids, sponges, ascidians, soft corals, sea pens and crinoids are called “garden bottom”.

*Pinctada maxima* change sex from male to female after initial maturation. Primary spawning occurs between October and December. Females produce millions of eggs, but less than one per cent of fertilized eggs survive the free-living larval stages. After the 28-day larval stage, during which time they are distributed by wind and currents, they settle onto the sea floor and change into oyster “spat”.

Survivability is dependent on where larvae settle and the abundance of suspended food particles in a particular location has a major influence on growth rates and population density.

### 4.1 The Customary Sector

Archaeological evidence shows that Indigenous groups of the west Kimberley coast have harvested *Pinctada maxima* for at least 20,000 years. Communities from that area harvested the plentiful pearl shell from the shallow waters of the north west coast and had well established traditional trading networks for pearl shell that extended throughout Australia (Figure 2). Aboriginal communities ate the pearl meat, used the shell for decoration and other cultural purposes and the pearl shell has important cultural significance. The shells were collected, cleaned, shaped and often decorated with designs that were worn for ceremonial occasions.

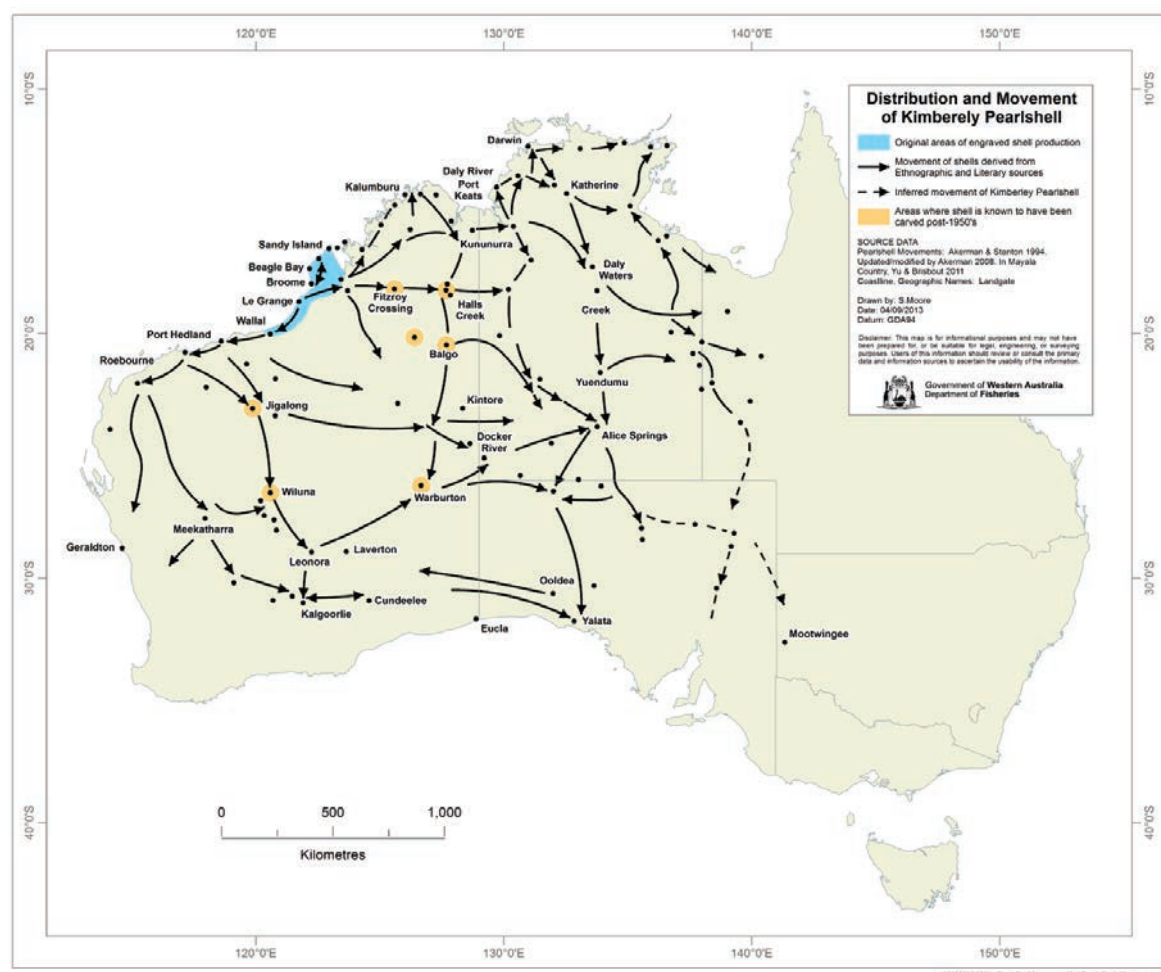
Customary fishing activities for *Pinctada maxima* have been recognised in Native Title determinations and negotiated agreements, but the size of the Customary catch is unknown as the Department of Primary Industries and Regional Development does not record Customary catch. The Department’s Customary fishing policy is at

### Appendix 3.



This policy is formalised in S 6 of the FRMA which states:

*“An Aboriginal person is not required to hold a recreational fishing licence to the extent that the person takes fish from any waters in accordance with continuing Aboriginal tradition if the fish are taken for the purposes of the person or his or her family and not for a commercial purpose.”*

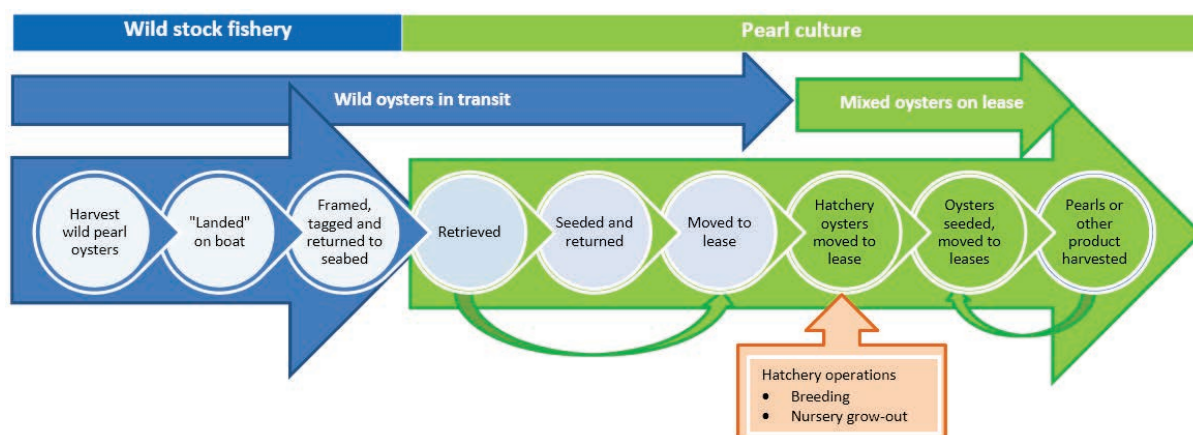


**Figure 2: Distribution and movement of pearl shell by indigenous communities<sup>2</sup>**

<sup>2</sup> Taken from Akerman, K. with Stanton, J (1994) *Riji and Jakoli: Kimberley Pearl shell in Aboriginal Australia*, Northern Territory Museum of Arts and Sciences, Darwin.

## 4.2 Commercial Sector

The pearling industry is vertically integrated, from the wild oyster fishery, through seeding to pearl production (Figure 3). In recent decades the production of oyster spat from hatcheries has become an increasingly important component of the oyster supply for pearl seeding. The end product from the industry is primarily high quality pearls, with a small number of oyster meat and mother-of-pearl (MOP) shell products.



**Figure 3: The Pearling industry is vertically integrated from wild oyster harvest to pearl production**

The wild harvest fishery is the largest sustainably managed fishery for this species in the world.

The commercial pearling industry is managed under the provisions of the *Pearling Act 1990* (Pearling Act) and the *Pearling (General) Regulations 1991*. The definition of *Pinctada maxima* in the Act includes any hybrids of *Pinctada maxima* that may be produced through laboratory technology.

Ministerial Policy Guideline (MPG) No. 17, “Pearl Oyster Fishery”, provides the management framework of the pearl oyster fishery and deals with pearl oyster fishing, the establishment of zones in the fishery, quota allocation, the take of pearl oysters for research purposes and transfer of pearl oyster, as well as the “farming” of pearl oysters. Issued pursuant to Section 24 of the Pearling Act, MPG 17 sets out the management objectives for the pearling industry as:

- a) a control on the collection of pearl oysters from the wild stocks;
- b) the orderly development of pearl farms;

- c) the vertical integration of the industry;
- d) an approach to the growth in production of pearl oysters determined by industry, and based on sensitivity to markets;
- e) market stability; and
- f) the retention of the pearling industry in Australian hands.

The Deputy Director General of Department of Primary Industries and Regional Development grants leases, licences and permits under Section 24 of the Pearling Act, subject to conditions being satisfied and having regard to MPG 17.

Annual individual quota is authorised by condition on the licence. The allocations are in quota units with approval to take the quota in zones, which have been established by a Notice under the Pearling Act.

Ministerial Policy Guideline 8 (MPG 8) deals with the process of obtaining a marine lease area for pearling, outlines the process required for lease applications (including public and interdepartmental consultation), site environmental impact assessment and the appeals process.

Subject to the proposed *Aquatic Resources Management Act* (ARMA) being enacted, the *Pearling Act 1990* will be repealed when the ARMA is declared. This is expected to occur in 2018.

#### **4.3 The Recreational Sector**

Under S 7 of the Pearling Act a person must hold a pearling licence or pearling permit to collect *Pinctada maxima* in Western Australian waters.

It is the Allocation Committee's understanding that no applications have been made to date to the Department of Primary Industries and Regional Development to catch *Pinctada maxima* recreationally under the Pearling Act.

## 5 Allocation Issues

### 5.1 Customary Sector Catch

Under the current IFM policy the Allocation Committee is required to consider an allocation of the available fishery resource to the commercial, recreational and Customary catch sectors.

The Customary catch is, in most cases, small when compared to the commercial and recreational sectors and there is a lack of quantitative information on which to make informed decisions for an allocation.

A recent Australian High Court decision, *Karpany and Another v Dietman (2013) High Court Appeal 47*, related to the application of State fisheries law to native title holders fishing for abalone in their local area in South Australia. The decision concluded that the State Fisheries Law did not extinguish native title rights to fish and the section 211 Native Title Act defence was applicable.

Native Title determinations are already in place with respect to the pearl oyster fishery. Native Title determinations do not provide for the taking of *Pinctada maxima* while using artificial breathing apparatus, recognising that Customary take is different from the commercial sector's catch, purpose and methods, and effectively removing Customary take from the area where the commercial sector operates.

In considering the matter of pearl oyster allocations for customary fishing purposes, the Allocation Committee has further considered the nature of customary fishing rights and how those rights are to be addressed in current and future allocations.

Based on advice provided by the Department of Primary Industries and Regional Development the Allocation Committee formed the view that:

- Customary fishing rights pre-date the introduction of common law (and property concepts) to Australia. As a result, the underlying nature of customary fishing/native title fishing rights is fundamentally different to the commercial and recreational fishing property (access) rights enjoyed under Australian common law;
- the nature of customary fishing rights (i.e. non-property rights) precludes them from being:

- traded
- used for commercial gain, or
- quantified within a harvest limit or “total allowable catch”;
- conservation principles/sustainability requirements represent a legitimate limitation on customary fishing rights; and
- management or allocation decisions must not unnecessarily restrict customary fishing rights (unless required for conservation / sustainability purposes).

The Allocation concluded that customary fishing rights are not property rights and therefore cannot be included in a quantified “total allowable catch” or be traded in the same manner as commercial or recreational fishing access rights.

In light of these considerations, and in relation to pearl oyster, the Allocation Committee has taken the view that it should not recommend a specific allocation for customary fishing.

Any future allocation recommendations by the Allocation Committee relating to customary fishing will be consistent with this principle.

## **Recommendation 2**

*Customary fishing should continue in accordance with existing Customary fishing rights and no specific allocation should be made.*

## **5.2 Recreational Sector Catch**

The *Pinctada maxima* resource differs from all other Western Australian-managed fish resources because there is no common law right to take pearl oysters under the Pearling Act.

Consequently, no legally recognised recreational fishery exists for pearl oysters and therefore there was no historic recreational catch information for the Allocation Committee to consider. However, anecdotal evidence indicates a low level of take by the public, usually of beach-strewn shell.

## **Recommendation 3**

*There should be no allocation for the recreational sector.*

### **5.3 Commercial Sector Catch**

The Allocation Committee acknowledges the valuable commercial nature of the end product of the *Pinctada maxima* resource and, except for Customary take, the taking of pearl oysters is currently restricted to those holding a commercial licence.

The Second Reading Speech of the Pearling Act dealt with the commercial management of the pearling industry and no mention was made of any other sectors that might access the resource.

Section 109 of the previous *Western Australian Pearling Act 1912* permitted the issue of commercial beach-combers licences, which were issued to give “a general but not an exclusive right to collect and remove pearl-shell from such portions of the sea-shore of Western Australia North of the Tropic of Capricorn as shall not for time being be included in a pearl-shell area or be subject to an exclusive license.” In practice, these were often issued after a cyclone and allowed for the collection of dead *Pinctada maxima* along the sea-shore to the low tide mark. These licences were considered to be no longer needed when the current Pearling Act was introduced.

### **Recommendation 4**

*The total allowable catch of the Pinctada maxima resource should be allocated to the commercial sector.*

### **5.4 Incidental Take**

As the Allocation Committee understands there is a known incidental take of pearl oyster (albeit small and no impact on sustainability), it would be remiss of the Committee to ignore this issue and considers it within scope to provide advice on this matter.<sup>3</sup>

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<sup>3</sup> With specific reference to section 4.1.3 Terms of Reference iv and v, to provide advice on the principles to provide further guidance around allocation and reallocation issues, and other matters concerning the integrated management of referred fisheries.

The Allocation Committee considered that making a specific allocation to recreational fishers to provide for this incidental take would involve considerable cost.

Throughout consultation with the PPA and WAFIC, concerns were raised on this matter, principally that recommending specific legislative provisions for the public take of pearl oysters would create a right that did not already exist and result in security issues for pearl farms. In addition, they considered that this was outside the Allocation Committee's *Terms of Reference* and *Guiding Principles*. Terms of Reference state "the Allocation Committee is to investigate resources allocations and make recommendations to the Minister on matters related to optimal resource use, and in particular provide advice on ...(iv) more specific principles to provide further guidance around allocation and reallocation decisions to individual fisheries".

While understanding the concerns of the PPA and WAFIC for the potential illegal take of farmed pearl oysters the Allocation Committee considers recognition of the small incidental take by the public does not increase the security risk.

The Allocation Committee also considers that, in recognising the small incidental take by the public, it does not create a de facto allocation to the recreational sector. Rather the intent is to develop a pragmatic means to deal with this reality.

The Allocation Committee recommends that there should be specific policy provisions developed to manage the small incidental take of *Pinctada maxima* by the public.

### ***Recommendation 5***

*There should be specific policy provisions developed to manage the incidental take of Pinctada maxima by the public.*

## REFERENCES

- Akerman, K. with Stanton, J (1994) *Riji* and Jakoli: Kimberley Pearl shell in Aboriginal Australia, Northern Territory Museum of Arts and Sciences, Darwin.
- Bach, J.P.S., (1955) The Pearling Industry of Australia: An account of its Social and Economic Development, Department of Commerce and Agriculture, NSW University of Technology, Newcastle, New South Wales
- Blainey, G. (1975). Triumph of the nomads: a history of ancient Australia.
- Department of Fisheries (1998). Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia. Fisheries Ministerial Policy Guideline No 8. Department of Fisheries, Perth Western Australia.
- Department of Fisheries (2001). Pearl Oyster Fishery. Ministerial Policy Guideline 17. Department of Fisheries, Perth, Western Australia
- Edwards, K (1996) Pearling Act Review. Department of Fisheries, Perth, Western Australia.
- Taylor, M.L. (1985) The Pearling Industry of Western Australia 1850-1985, Fisheries Education Publication Number 3, Department of Fisheries and Wildlife, Perth Western Australia
- Wells, F.E., and Jernakoff, P., (2006). An assessment of the environmental impact of wild harvest pearl aquaculture (*Pinctada maxima*) in Western Australia. Journal of Shellfish Research, Vol. 25, No. 1, 141-150.
- Yu, S and Brisbout, J. with Tigan, A. (2011) In Mayala country with Aubrey Tigan. Report to Department of Sustainability Energy Water Populations and Communities.



## **Appendix 1 – Guiding Principles and Terms of Reference**

### **Integrated Fisheries Management**

#### **Government Policy**

**2009**

#### **General**

1. The Government is committed to the implementation of an integrated management system for the sustainable management of Western Australia's fisheries.
2. The integrated management system will be open and transparent, accessible, inclusive and flexible.

#### Information requirements

3. The development and funding of an appropriate research and monitoring program encompassing all sectors is essential to provide the necessary information for sustainability and allocation issues to be addressed under an integrated policy. This policy will continue to be progressively developed and phased-in over a number of years.
4. The Department of Primary Industries and Regional Development will, in consultation with sectors, investigate options for standardising catch information between sectors, noting that the scale for data collection and reporting must be appropriate for each particular fishery.

#### Guiding principles for management

5. The following principles will be adopted (by incorporating them into either legislation, Ministerial Policy Guidelines or Government policy as appropriate) as the basis for integrated fisheries management policy.
  - i) Fish resources are a common property resource managed by the Government for the benefit of present and future generations.
  - ii) Sustainability is paramount and ecological impacts must be considered in the determination of appropriate harvest levels.
  - iii) Decisions must be made on best available information and where this information is uncertain, unreliable, inadequate or not available, a precautionary approach adopted to manage risk to fish stocks, marine communities and the environment. The absence of, or any uncertainty

in, information should not be used as a reason for delaying or failing to make a decision.

- iv) A harvest level, that as far as possible includes the total mortality consequent upon the fishing activity of each sector, should be set for each fishery<sup>4</sup> and the allocation designated for use by the commercial sector, the recreational sector, the customary sector, and the aquaculture sector, should be made explicit.
- v) The total harvest across all sectors should not exceed the allowable harvest level. If this occurs, steps consistent with the impacts of each sector should be taken to reduce the take to a level that does not compromise future sustainability.
- vi) Appropriate management structures and processes should be introduced to manage each sector within their prescribed allocation. These should incorporate pre-determined actions that are invoked if that group's catch increases above its allocation.
- vii) Allocation decisions should aim to achieve the optimal benefit to the Western Australian community from the use of fish stocks and take account of economic, social, cultural and environmental factors. Realistically, this will take time to achieve and the implementation of these objectives is likely to be incremental over time.
- viii) It should remain open to government policy to determine the priority use of fish resources where there is a clear case to do so.
- ix) Management arrangements must provide sectors with the opportunity to access their allocation. There should be a limited capacity for transferring allocations unutilised by a sector for that sector's use in future years, provided the outcome does not affect resource sustainability.

More specific principles to provide further guidance around allocation decisions may also be established for individual fisheries.

## Harvest levels

- 6. A sustainability report will be prepared for each fishery to be considered under the IFM Policy in accordance with the 'Policy for the implementation of ecologically sustainable development for fisheries and aquaculture in Western Australia'.
- 7. The Deputy Director General, Department of Primary Industries and Regional Development, will approve a sustainability report for each fishery, which provides

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<sup>4</sup> Fishery is defined under the *Fish Resources Management Act, 1994* (the Act) as one or more stocks or parts of stocks of fish that can be treated as a unit for the purposes of conservation or management; and a class of fishing activities in respect of those stocks or parts of stocks of fish.

advice on appropriate harvest level(s), taking into account sustainability and other objectives, such as stock rebuilding, maximising economic yields and amenity values.

## Effective management of each sector

8. The Government is committed to introducing more effective management across all fisheries. The implementation of more effective sectoral management in which the catch of a sector can be contained is an essential first step in the introduction of a new integrated management system within which allocation issues may be addressed. In the interim, each sector will continue to be managed responsibly within current catch ranges and should the catch of a sector alter disproportionately to that of other sectors, the Minister will take appropriate management action to address this.
9. It is important to formalise existing shares not only as a basis for future allocation discussions, but as a basis for insuring the safe harvest level. These will be formalised on the basis of proportional catch shares using the best information available at the time the Integrated Fisheries Allocation Advisory Committee starts its process (see below).

## Allocation processes

10. An Integrated Fisheries Allocation Advisory Committee has been established under s42 of the *Fish Resources Management Act 1994* (the Act) to investigate resource allocation issues and make recommendations on optimal resource use to the Minister for Fisheries including:
  - i) allocations between sectors, now and into the future;
  - ii) strategies to overcome allocation and access issues arising from temporal and spatial competition at a local/regional level;
  - iii) allocation issues within a sector as referred by the Minister for Fisheries;
  - iv) more specific principles to provide further guidance around allocation and reallocation decisions for individual fisheries; and
  - v) other matters concerning the integrated management of fisheries as referred by the Minister for Fisheries.
11. The Minister will be responsible for determining the process and timeframes for resolving allocation issues in each fishery based on advice from the DDG of the

12. The Minister will provide a statement of decision on announcement of his determination in an allocation matter.

The Minister may make public the Committee's report at the same time his statement of decision is released.

## Compensation

13. Where a reallocation of resources from one sector to another results in demonstrable financial loss to a licensed commercial fisherman or licensed aquaculture operator, in principle there should be consideration of compensation.
14. Cases for compensation should be assessed on their merits.
15. Priority will be given to investigating the potential development of market based systems to achieve reallocations, along with due consideration of social equity considerations, as soon as practical. Clearly, consideration of any market-based system will be based on its merit.
16. No compensation should be payable where adjustments are made for sustainability reasons.

## Funding

17. The Government will consider seeking contributions from all sectors over time corresponding to the cost of managing the resource and providing access for each sector.

## Appendix 2 – Minister's letter to the Allocation Committee

Ref: 28-02830

COPY



Mr Jim McKiernan JP  
Chairman  
Integrated Fisheries Allocation Advisory Committee  
C/- Department of Fisheries  
168-170 St George's Terrace  
PERTH WA 6000

Dear Mr McKiernan

Thank you for your letter of 8 May seeking my views on the role of the conservation sector in the Integrated Fisheries Management (IFM) allocation process for the west coast demersal scalefish resource and any other future allocation processes.

I have examined the letter provided to you by my predecessor and would like to confirm the continuation of the policy that the IFM initiative is designed to determine allocations between commercial, recreational (including charter) and customary fishing sectors that are extractive users.

I am not seeking a recommendation from the Integrated Fisheries Allocation Advisory Committee on allocations to non-extractive users of the resource.

Yours sincerely



Hon Norman Moore MLC  
MINISTER FOR FISHERIES  
27 MAY 2009

4th Floor, 216 St George's Terrace, Perth Western Australia 6000  
Telephone: +61 8 9422 3000 Facsimile: +61 8 9422 3001 Email: Minister.Moore@dpc.wa.gov.au

## Appendix 3 - Customary Fishing Policy Statement



Government of Western Australia  
Department of Fisheries

*Fish for the future*

CUSTOMARY FISHING POLICY

### POLICY STATEMENTS

1. Sustainability and biodiversity objectives are paramount in the operation of this policy.
2. Customary fishing applies, within a sustainable fisheries management framework, to persons:
  - of Aboriginal descent;
  - fishing in accordance with the traditional law and custom of the area being fished; and
  - fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs.
3. Customary fishing encompasses the elements of barter or exchange of fish as long as it occurs within or between Aboriginal communities, is for other food or for non-edible items other than money, and if the exchange is of a limited and non-commercial nature, consistent with the traditional practice of those communities.
4. Customary fishing is not limited to “traditional” fishing gear, species or methods, but any fishing gear or methods of fishing that are destructive or threaten sustainability (whether traditional or contemporary) and the take of threatened species must be accountable within a sustainable fisheries management framework.
5. Customary fishing is to be articulated and clearly separated from other forms of fishing in fisheries legislation and policy to allow for the development of appropriate management arrangements that reflect customary fishing access rights, practices and sustainability requirements.
6. Educational information promoting and raising awareness in the broader community about customary fishing access rights, responsibilities, rules and practices must accompany changes to the management of customary fishing.
7. Pearling legislation pertaining to *Pinctada maxima* to include capacity for the Minister for Fisheries to allow for the use of that pearl oyster species for customary fishing purposes.

21 December 2009