

**Sustainable Harvest of Marine Turtles and
Dugongs in Australia –
A National Partnership Approach
2005**

Introduction

In January 2004 the Marine And Coastal Committee (MACC), a body of the Natural Resource Management Ministerial Council¹, established a Taskforce on Marine Turtle and Dugong populations. The purpose of the MACC Taskforce was to develop a national partnership approach to assist Indigenous communities to achieve sustainable harvests of turtles and dugongs. The membership of the Taskforce is provided in Appendix I.

In developing this *Approach*, and responding to the submissions received from over 30 Indigenous bodies, land councils, conservation organisations, researchers, academics, animal welfare groups and individuals on the draft *Approach*, the Taskforce had regard to the following key points:

- not all elements of this *Approach* are likely to be relevant in all areas where turtles and dugongs can be found or for all coastal Indigenous communities and there is no intention that the *Approach* be imposed, in part or in its entirety, on any Indigenous community. However, the Taskforce hopes this *Approach* will contribute to the protection and management of turtles and dugongs in a manner that complements a range of other government approaches such as, the marine debris threat abatement plan, the turtle recovery plan and fisheries bycatch action plans;
- it is possible that in some areas of Australia harvest may be occurring at sustainable levels but in other places harvest may be occurring at unsustainable levels;
- many Traditional Owner groups, community based rangers and Native Title Representative Bodies are already involved in community created, owned and driven initiatives to achieve effective and long term arrangements for the sustainable management of turtles and dugongs. Examples of such initiatives include: the development of Regional Action Plans by Indigenous communities across north Australia as part of a NHT funded initiative; self imposed moratoria on take of dugong where numbers have substantially declined; marine debris surveys and clean-ups; community involvement in turtle and dugong tagging programs; and communities who are proactive in addressing illegal take such as poaching; and
- nothing in this *Approach* can affect the operation of Section 211 of the ***Native Title Act 1993***, which operates to protect the rights of Indigenous peoples with a native title right to hunt, gather, collect and fish or conduct a cultural or spiritual activity. Nor is anything in this *Approach* intended to be inconsistent with the Objects of the ***Environment Protection and Biodiversity Conservation Act 1999*** (EPBC Act) (S.3).

¹ The Natural Resource Management Ministerial Council is the peak body of all Australian, State and Territory Ministers with responsibility for natural resource management, including environment and fisheries ministers

Indigenous Involvement in the Monitoring, Management and Sustainable Harvest of Marine Turtles and Dugongs in Australia –

A National Partnership Approach

Why do we need a Partnership Approach to Indigenous harvest of turtles and dugongs?

Marine turtles and dugongs are of economic, cultural, and spiritual importance to Indigenous Australians. Indigenous people have had close associations with turtles and dugongs for millennia. The animals have economic value because they provide sustenance, particularly for remote and isolated communities where alternative sources of protein may not be readily available or affordable. Turtles and dugongs play a significant role in the customary economy of many communities. The spiritual and cultural significance of these animals is illustrated in the stories, traditions and contemporary activities of many coastal Indigenous communities and acted out in numerous ceremonies.

Along with the importance turtles and dugongs have for Indigenous Australians, these animals are also highly regarded by all Australians for the important place they have in Australia's rich and unique marine biodiversity.

Unfortunately populations of turtles and dugongs are under threat from many human activities including:

- by-catch in fisheries
- predation of turtle eggs by native and introduced animals
- coastal development
- deteriorating water quality
- marine debris
- loss of habitat
- boat strike
- illegal, unregulated and unreported take (animals and/or eggs) by Indonesian fishers in Australian waters
- unquantified and potentially unsustainable harvest by PNG communities
- activities in other range states such as hunting in the Solomon Islands and New Caledonia

These threats have prompted the development and implementation of a number of actions by governments, including legislative approaches and other policy and program approaches such as:

- fisheries reducing interactions with turtles through the adoption of Turtle Excluder Devices (TEDs), and research into alternative gear and bait types to reduce the incidence of turtle bycatch in longline fisheries and to improve their survival rate post capture,
- feral animal control programs to minimise or halt predation of turtle eggs,

- implementation of Threat Abatement Plans for the European Red Fox and Feral Pigs,
- the development of a Threat Abatement Plan to address marine debris with a particular emphasis on minimising impacts on turtles and dugongs,
- environmental impact assessments under the EPBC Act,
- establishment of Dugong Protection Areas which include, for example, regulations that govern the types of fishing gear that may be used in these areas; and
- spatial closures to help protect important habitat such as the closures of seagrass beds to trawling in the Gulf, the Great Barrier Reef, and in Torres Strait.

However, to date limited resources have been directed towards assisting Indigenous communities so that they can actively increase their role in protecting turtles and dugongs – a fact recognised by the Indigenous Advisory Committee which noted in its comments during the consultation period on the previous draft *Approach* released for public comment that “*Indigenous people have been calling for governments, at all levels to support them in actively managing these animals in the context of community based and driven management for a very long time*”. These limited resources are particularly of concern given that Indigenous people have customary obligations to manage these animals. These obligations are recognised in the Objectives of the EPBC Act which “*recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia’s biodiversity...*”.

Indigenous harvest

Indigenous harvest of turtles and dugongs involves an extremely complex interaction of economic, social, and cultural factors, all of which need to be considered when managing the sustainable harvest of these animals. For example, Indigenous harvest is important for maintaining family relations (kinship) and social structure, and has important ceremonial and community purposes and for some communities is also important in supplying food.

Indigenous harvest of turtles and dugongs is generally managed through customary law. However in a number of Indigenous communities, changes in technology and the disruption of Indigenous culture are a growing challenge to this management. In addition, fluctuations in income of members of Indigenous communities may affect the intensity of subsistence harvest.

Policy Context

Aware of the economic, cultural, and social factors that influence Indigenous harvest, the overarching policy of this *Approach* is to ensure the conservation and protection of turtles and dugongs now and into the future for among other reasons, to ensure the continuation of the relationship between Indigenous peoples and these animals.

It is vital that this *Approach* is further developed and implemented in partnership with Traditional Owners and Indigenous communities; that it informs and provides support to Indigenous communities to sustainably manage turtles and dugongs in their sea

country; and ensures that there will be robust populations of marine turtles and dugongs in the future to support a continuation of Indigenous harvest; as well as other broader beneficial environmental outcomes.

Biology of Turtles and Dugong

Turtles and dugongs are slow to mature and have low birth rates, or in the case of turtles, low hatchling survival rates. This life history means that turtles and dugongs are particularly vulnerable to anthropogenic impacts. As turtle and dugong are migratory species, impacts at a local level have the capacity to affect the species' population across its entire range.

Legal Status of Turtles and Dugong

Turtles are listed as threatened under the EPBC Act, with loggerhead and olive ridleys listed as endangered, while green, hawksbill, leatherback and flatbacks are listed as vulnerable. Dugongs and these turtles are also listed as both migratory and marine species under the EPBC Act. There is also State/Territorial legislation in place to protect turtles and dugongs – see Appendix II for a fuller description of the range of legislative protection in place and how it operates to protect turtles and dugongs.

Legal Harvest

Section 211 of the *Native Title Act 1993* provides that, where a law prohibits or restricts an activity from being carried out by persons except in accordance with a licence, permit or other instrument granted or issued to them under the law, native title holders do not need such a licence, permit or other instrument to engage in certain native title activities. Indigenous communities and individuals with a native title right (determined or common law) to hunt, gather, collect and fish or conduct a cultural or spiritual activity may do so for their personal, domestic or non-commercial communal needs without the permit or license required by non-Indigenous people, or Indigenous people who are not native title holders.

However, there are situations when section 211 does not provide protection to native title holders when they hunt or fish without a licence. They include:

- hunting or fishing by native title holders outside of their traditional sea country;
- hunting or fishing for commercial purposes;
- where the relevant licence or permit regime is restricted to research, environmental protection, public health or public safety purposes; and
- where the relevant licence or permit regime is one that grants rights and interests exclusively for the benefit of Indigenous peoples.

Compliance

Where illegal take is occurring, enforcement and compliance actions should be pursued. The challenges for effective compliance through conventional means includes the dispersed nature of many Indigenous communities, particularly in remote areas of northern Australia, the practical difficulties of ensuring compliance at sea and identifying whether particular individuals have a legal right to hunt. Indeed, across much of the range of turtles and dugongs, Indigenous people make up the majority of the resident population (across north Australia), and are therefore best placed to act in an enforcement role. This *Approach* seeks to encourage, and enable, Indigenous communities to help end illegal take, also known as poaching.

The Approach

At the core of the *Approach* is the overarching policy of ensuring the conservation and protection of turtles and dugongs so as to, among other benefits, enable the continuation of sustainable Indigenous harvest now and into the future. This policy is further articulated by five goals and a number of guiding objectives outlined in this *Approach*.

The enhancement and detailed development of the *Approach*, and guidance on its implementation, will be the responsibility of the *Approach's* Partnership Group that will replace the MACC Taskforce that developed this broad framework.

The *Approach* does not propose new or separate legislation – rather it pulls together the current mechanisms available to create a framework for the sustainable management of Indigenous harvest of turtles and dugongs.

In developing the *Approach*, the Taskforce has had regard to:

- the conservation of turtles and dugongs, including the need to act to protect these species before their conservation status worsens;
- the economic, spiritual and cultural importance of turtles and dugongs to Indigenous peoples;
- the importance of turtles and dugongs as part of Australia's unique marine environment to all Australians;
- ensuring consistency with Indigenous people's legal rights pursuant to s211 of the Native Title Act and other relevant legislation;
- the wider context of social issues facing Indigenous communities, such as isolation and poverty, the maintenance of culture, and the role that turtle and dugong harvesting often plays in remote communities where nutritious diets are often difficult to otherwise obtain;
- the need for the best possible information on which Traditional Owners and government agencies can base management decisions;

- the need to better support and resource Indigenous communities to sustainably manage turtles and dugongs;
- the recognition of the range of impacts adversely affecting turtles and dugongs such as adverse interactions with fisheries, marine debris, and habitat destruction;
- existing measures to address threats to turtle and dugong such as recovery plans, policies and legislation already in place;
- the legal parameters surrounding Indigenous harvest – such as the EPBC Act, the *Native Title Act 1993*, *Great Barrier Reef Marine Park Act 1975*, *Torres Strait Fisheries Act 1984*, the *Community Services (Aborigines) Act 1984 (QLD)*, the *Community Services (Torres Strait) Act 1984 (QLD)*, the *Nature Conservation Act 1992 (QLD)*, the *Territory Parks and Wildlife Conservation Act 2001 (NT)*;
- the need for jurisdictions to cooperate in a meaningful manner with one another and with those Indigenous communities with sea country where harvest occurs;
- that a regulatory approach would be difficult and expensive to enforce, and may have limited impact; and
- the success of this *Approach* will be dependent on the provision of the necessary resources to Indigenous communities by all levels of government to increase the sustainable management of turtles and dugongs.

Further Development, Implementation and Review of the Approach

In order to ensure the best possible uptake of the *Approach* and to encourage ownership of it by Indigenous communities, the oversight of the further development, implementation and review of this *Approach* should be informed by the groups most likely to be affected by actions to improve the sustainability of Indigenous harvest of turtles and dugongs. Thus a ***Partnership for Sustainable Indigenous Harvest of Turtles and Dugong*** is created which will advise the NRM Council on this *Approach*.

The members of the ***Partnership*** are: Indigenous representatives from coastal northern, eastern and western Australia within the range of turtles and dugongs; two representatives from the Indigenous Advisory Committee; one representative from TSRA; one representative from the GBRMPA; and one government representative from each relevant government jurisdiction (Australian, Queensland, Northern Territory and Western Australian governments). The ***Partnership*** is to be chaired by the Chairman of the Indigenous Advisory Committee. The Australian Government Department of the Environment and Heritage will provide the Secretariat to the ***Partnership***.

The ***Partnership*** should establish and use task specific working groups and enable other expertise (eg., scientific and hunters) to be available to it as required.

The ***Partnership*** will, at its first meeting, draft its Terms of Reference and a 12 month workplan which it will forward to the Natural Resource Management Ministerial Council for endorsement.

The Partnership Approach to Sustainable Harvest of Marine Turtles and Dugongs in Australia by Indigenous Communities

In recognition that this *Approach* only sets out the policy context, goals and objectives to ensure that Indigenous harvest of turtles and dugongs is sustainable, no prescribed actions are included. Rather, a number of mechanisms, activities and actions that could be used are suggested.

Goal 1

Improve the information base available to Indigenous communities for managing the sustainable harvest of turtles and dugongs

The purpose of this goal is to improve the level of information about issues such as the population status and trends of turtles and dugongs and the level and nature of Indigenous harvest of these animals in Australian waters and to make this information more widely available, particularly to Indigenous managers.

Collecting and maintaining baseline population information for turtles and dugongs throughout their range will enable a better understanding of population trends for the species, and the extent to which Indigenous harvest may be affecting populations relative to other mortality factors. Where possible this information needs to be collected across the entire range of stocks found in Australia in order to factor in the impact of activities on these populations in neighbouring countries such as PNG and Indonesia.

The information gathered should be drawn from both traditional Indigenous knowledge and other scientific sources, and should be readily accessible, so it can underpin implementation and monitoring of sustainable harvest.

Indigenous communities, scientists and managers should also be aware of the range of mortality sources and other research data for turtles and dugong populations that include Australian waters in their range, and through access to these data, the implications they have for sustainable Indigenous harvest.

Guiding Objective 1: Design and implement a transparent process for addressing issues of ownership and use of information.

This objective could be achieved through developing a process that identifies and agrees on the information to be collected, how it is to be collected, how it can be used, ownership of information.

Guiding Objective 2: Collect and maintain baseline population information for turtles and dugongs.

This objective could be achieved through a number of ways including:

- identifying and collating existing published and un-published information on turtle and dugong species, including Indigenous knowledge.
- identifying information gaps relating to population information and establishing appropriate projects and programs to address them in an ongoing manner.
- promoting and supporting the collection of comprehensive population data at ecologically relevant scales and ensuring it remains ongoing and coordinated.
- establishing and maintaining a national meta-database on population information for turtles and dugongs.

Guiding Objective 3: Determine the level and causes of mortality, including of harvest of turtles and dugongs across northern Australia and where possible in PNG and Indonesia, and the impact of this on the species populations and ensure this information is available to Indigenous communities, scientists and managers.

Examples of how this objective could be achieved include:

- identifying and collating existing information on the level and causes of mortality of turtles and dugongs, including levels of harvest of these animals in Australian waters by Indigenous peoples, PNG and Indonesian peoples.
- identifying information gaps and establishing and supporting appropriate projects and programs to address any gaps in an ongoing manner, recognising the importance of developing agreed methods for information collection that are acceptable to both Indigenous and scientific communities.
- incorporating population monitoring data and data on harvest levels into the development of models for sustainable harvest.
- supporting ongoing collection, analysis and appraisal of information on turtle and dugong mortality, including Indigenous harvest levels by encouraging Indigenous communities to record deaths of animals, including from harvest.

Guiding Objective 4: Gather all information on relevant management practices from Indigenous and non-Indigenous sources relevant to the conservation of turtles and dugongs.

This could be achieved by collecting, collating and summarising existing information on Indigenous and non-Indigenous management practices aimed at achieving sustainable harvest of turtles and dugong and making this information freely available for use by Indigenous and non-Indigenous people and managers.

Goal 2

Respect for Indigenous and non-Indigenous knowledge and management

Indigenous knowledge and management practices have developed over a long association and connection with sea country. Non-Indigenous turtle and dugong managers operate within a framework of policy, scientific knowledge and research. If Indigenous and non-Indigenous knowledge and management practices are fully respected, the base from which management occurs will be greatly enriched.

Promoting opportunities for Indigenous and scientific communities to meet and exchange information and experiences will encourage a better understanding of the different perspectives on how to best manage turtles and dugongs, and potentially lead to more effective management. In addition, Indigenous people also aspire to pass on their knowledge of turtle and dugong to their own children through, *inter alia*, schools in communities.

Management of turtles and dugongs must still recognise that Indigenous people on country are often best placed to carry out on-ground activities that address adverse impacts on turtle and dugongs populations, for example, removing marine debris from sea country, or feral animal management. Implementing cooperative management arrangements will require adequate resources and capacity building within Indigenous communities.

Guiding Objective 1: Encourage greater respect of both Indigenous and non-Indigenous knowledge, management practices and customs relevant to achieving sustainable harvests of turtles and dugongs.

Possible ways to achieve this objective include:

- utilising appropriate fora and/or meetings at the regional level to share knowledge and experiences across cultures.
- encouraging research partnerships between Indigenous communities, scientists, non-government environment organisations and managers with a view to improving overall management capacity.
- identifying training and/or education (two-way learning) opportunities to facilitate cooperative approaches research (e.g. language, scientific techniques, etc.).
- develop the capacity for communities to formulate and then seek to answer their own research questions.
- developing community management plans and/or agreements with Indigenous communities that incorporate appropriate elements of Indigenous and non-

Indigenous knowledge and management approaches to ensure the protection of turtles and dugong.

- supporting collaborative on-ground activities by or with Indigenous communities to reduce threats to dugong and turtle populations.
- identifying training and/or education requirements to assist in the development of integrated management initiatives (e.g. language, and governance arrangements, etc.)

Goal 3

Improve Education and Awareness

There is a need for two-way education and awareness raising between Indigenous and non-Indigenous Australians in relation to turtle and dugong management.

Indigenous people desire to pass their knowledge and management of turtles and dugongs to their own children. Also they are interested in educating non-Indigenous people about how management on country is occurring and their efforts to ensure resources are managed now and for the future benefit of their children. Non-Indigenous people, particularly researchers and scientists wish to impart their understanding of the biology and ecology of turtles and dugongs to add to the body of Indigenous knowledge.

Guiding Objective 1: Increase awareness within the wider Australian community of Indigenous management activities and the significance to Indigenous communities of turtles and dugongs.

There are many ways in which this objective could be implemented, including:

- continuing to develop and distribute a variety of educational materials targeted to a range of audiences.
- using a range of fora through which information on the importance of Indigenous harvest can be shared with the wider Australian community.
- using facilitators or intermediaries to enhance communication between Indigenous communities, scientists, natural resource managers and the wider Australian community.

Guiding Objective 2: Increase awareness within the scientific community and among natural resource managers about Indigenous management activities and the significance to Indigenous people of turtles and dugongs.

This objective could be met through using a variety of mechanisms including:

- cultural awareness training programs.
- using a range of fora through which Indigenous managers can share information with scientists and natural resource managers.
- using educational material focusing on Indigenous management activities that can contribute towards the sustainable management of turtles and dugongs.
- fostering collaboration between Indigenous communities, scientists and resource managers.

Guiding Objective 3: Increase access by Indigenous communities to information collected/developed through research into the biology and migratory nature of turtles and dugongs.

This objective could be achieved through cooperative actions including:

- developing and supporting training/education programs within Indigenous communities – e.g. on-country experience, training, workshops and conferences.
- using appropriate and targeted media to disseminate scientific findings about the biology, distribution and movements of turtles and dugongs.
- increasing understanding within schools about the biology and migratory nature of turtles and dugongs.
- Developing protocols to ensure that researchers undertaking turtle and/or dugong research on sea country do so with the permission of the relevant Indigenous community.
- suitably trained and able members of Indigenous communities should be offered employment opportunities to assist in fieldwork.
- researchers providing regular reports on research activities and outputs to relevant Indigenous communities in appropriate formats.

Guiding Objective 4: Increase awareness within Indigenous communities of the range of mortality factors affecting turtle and dugong populations, including the potential impact of unsustainable harvest by Indigenous communities.

A range of mechanisms could be utilised to achieve this objective including:

- documenting and communicating to Indigenous communities how mortality factors such as marine debris, boat strike, fisheries interactions, unsustainable harvest etc. impact on populations of turtles and dugongs.

- providing information to communities on the range of activities, programs and projects currently underway to mitigate mortality factors and how to increase their involvement in these activities.

Goal 4

Identify the economic, social and cultural factors that may contribute to unsustainable harvest levels and identify and implement measures to address them

Hunting of turtles and dugongs and the harvest of turtle eggs take place in a complex context and decisions to hunt are influenced by many issues, including economic, social and cultural factors, the abundance of target and alternative species and the weather. For example, reduction in levels of harvest in one species may result in increases in the targeting of another species.

Turtles and dugongs are an important source of protein for some indigenous communities. If the level of harvest of these animals in these communities is unsustainable, an alternative source of food will need to be found before the level of harvest can be reduced. This can be difficult in remote areas where alternatives lack the cultural significance and individual prestige associated with being a successful hunter. Additionally alternatives are often expensive and may require impractical storage requirements. Any replacement sources of food should have equivalent health benefits as dugong and turtle and thus not lead to adverse health outcomes.

Guiding Objective 1: Identify the hunting interactions that occur when harvesting turtles and dugongs (individually or together) and develop management options to address any negative interactions.

Ways in which this objective could be achieved include:

- identifying the key hunting interactions, and the economic, social and cultural forces that underpin them within and between communities/regions.
- reviewing existing management measures in light of known hunting interactions.

Guiding Objective 2: Encourage the development of approaches that provide economic opportunities and benefits to Indigenous communities.

This objective could be achieved in a number of ways, including:

- further development of ecologically and culturally sustainable ventures run by Indigenous communities (eg., tourism, aquaculture, agriculture, etc).
- ensuring Indigenous organisations are aware of sources of funding that can be accessed to conduct on-ground activities to reduce threats to turtles and dugongs

(e.g. marine debris surveys, monitoring nesting beaches, feral animal control or eradication).

- providing on-going support to Indigenous employment programs, eg., NT sea ranger programs, with the aim of providing as much continuity of employment as possible.
- research partnerships can provide for paid involvement of community members to carry out research and other tasks.
- encourage Indigenous participation in natural resource research and management that provides both public interest benefits and benefits to Indigenous communities, including income.

Goal 5

Protecting Sea Country Resources

Turtles and dugongs span across the sea country boundaries of many Indigenous groups. Effectively preventing illegal take (poaching) is important in ensuring sustainable populations of these animals.

Activities that encourage compliance with legal frameworks (both formal and customary) can be effective in preventing illegal activity for a large proportion of the population, and are a less resource-intensive way of delivering positive outcomes than reliance on enforcement. The first step in encouraging compliance is to understand why non-compliance occurs. In some instances, for example, illegal take may be occurring due to ignorance of the law and the threatened status of target species, and could be addressed through the provision of appropriate information about legal requirements and the status of the populations and threats. The use of boats with outboard motors allowing greater access to others' traditional sea country, combined with insufficient capacity on the part of many communities to manage their sea country, may also be contributing to illegal take. Improving compliance capacity and activity is one effective way of helping to protect sea country resources.

Experience shows, however, that there will always be a proportion of the population that will engage in illegal activities regardless of compliance efforts. For these members of the population, enforcement activities will be necessary to help protect sea country resources. Successful prosecutions may have the effect of communicating the message that illegal take of turtles and dugongs will not be tolerated. Enforcement agencies and Traditional Owners should be encouraged to work together to ensure compliance with customary and statute law. Effective measures will require adequate resourcing.

Guiding Objective 1: Encourage compliance with the existing legal framework

The ways in which this objective could be implemented include:

- identifying illegal hunters and beneficiaries of illegal hunting and developing effective ways of communicating with them about the adverse impact illegal hunting of turtles and dugongs is having on declining populations.
- providing information to potential illegal hunters and potential beneficiaries of illegal hunting (eg members of black market trades) about legislative responsibilities and penalties for non-compliance.

Guiding Objective 2: Provide Indigenous owners of sea country with the resources and responsibilities to enforce legislation and management frameworks to prevent illegal takeing of turtles and dugongs

Mechanisms that could be used to achieve this objective include the following examples:

- appropriate training and education for Indigenous rangers and Indigenous owners of sea country.
- providing Indigenous rangers with legal powers to enforce relevant legislation, and the capacity to undertake this action.
- providing appropriate and practical tools needed for enforcement on country (e.g. boats, vehicles, fuel, radios).
- using traditional mechanisms on country for ensuring compliance with species management arrangements.
- supporting Indigenous peoples to progress prosecutions through the legal system.
- supporting the collection of evidence on illegal take (poaching) and mechanisms for sharing this information with relevant enforcement agencies.

Who developed the National Partnership Approach?

The MACC Taskforce on Dugong and Marine Turtle Populations has developed this *Approach*. The Taskforce membership included representatives from Australian Government, State and Territory agencies with responsibility for turtle and dugong management. Agencies represented on the Taskforce were:

Australian Government

- Australian Fisheries Management Authority
- Department of Agriculture, Fisheries and Forestry
- Department of the Environment and Heritage
- Great Barrier Reef Marine Park Authority
- Torres Strait Regional Authority

State and Territory

- Northern Territory Department of Business, Industry and Resource Development – Fisheries Group, Northern Territory Department of Infrastructure, Planning and Environment - Parks and Wildlife Service
- Queensland Environment Protection Agency, Queensland Department of Primary Industries and Fisheries
- Western Australian Department of Conservation and Land Management

The Australian Government Department of Environment and Heritage chaired the Taskforce and provided its Secretariat.

State/Territory Legislation and Policies Relevant to Legal Harvest of Turtles and Dugong

Australian Government

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

Under the EPBC Act, turtles are listed as threatened, with Loggerhead and Olive Ridleys listed as endangered, while Green, Hawksbill, Leatherback and Flatbacks are listed as vulnerable. Dugongs and the six species of turtles occurring in Australian waters are also listed as both migratory and marine species under the EPBC Act. It is an offence to kill, injure, trade, take, keep or move a species listed as threatened, marine and/or migratory under the EPBC Act without a permit.

While it is generally an offence under the EPBC Act to harvest turtles and dugongs, s.8 of the EPBC Act recognises the operation of s.211 of the *Native Title Act 1993* and that nothing in the EPBC Act affects the operation of s.211 of the *Native Title Act 1993*. Nothing in this *Approach* intended to be inconsistent with the Objects of the EPBC Act (s.3).

Great Barrier Reef Marine Park

Under the *Great Barrier Reef Marine Park Zoning Plan 2003*, dugongs and turtles are considered Protected Species and the take of such species requires the written approval of the Great Barrier Reef Marine Park Authority. Nothing in the *Zoning Plan* is intended to extinguish any native title rights and interest nor is it intended to affect the operation of section 211 of the *Native Title Act 1993* in relation to any provision of the *Zoning Plan* (s1.7).

The Zoning Plan also establishes a mechanism for managing the traditional use of marine resources (including dugong and turtle) with Traditional Owners through the development and implementation of Traditional Use of Marine Resources Agreements (TUMRAs). A TUMRA outlines how Traditional Owners will manage their use of marine resources. TUMRAs are voluntary agreements developed by Traditional Owners and accredited by the Great Barrier Reef Marine Park Authority. Once accredited, a TUMRA is enforceable under the *Great Barrier Reef Marine Park Act 1975*. The requirements for the content, accreditation and review of a TUMRA are set out in the *Great Barrier Reef Marine Park Regulations 1983*. Complementary provisions for TUMRAs are contained within Queensland's *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004*.

Torres Strait

There are several "Fishery Management Notices" (FMN) declared under the *Torres Strait Fisheries Act 1984* which 'regulate' hunting of turtles and dugongs in the Torres Strait Protected Zone and adjacent "outside but near" areas that extend the "fisheries" for these species to waters south of the Protected Zone. These are listed:

FMN 65 prohibits the taking of dugong in the area of the dugong fishery except in the course of “traditional fishing”, as defined in the Torres Strait Treaty, and explicitly prohibits the take and or carrying of dugongs on vessels (licensed for commercial fishing under the Traditional Inhabitant boat licence system) larger than 6 metres, and further restricts traditional fishing to the use of a spear (wap) thrown by hand. The Notice also specifies the area of the dugong sanctuary.

FMN 66, like FMN 65 limits the taking of turtles to traditional fishing and restricts the take and carriage of turtles on TIB vessels to those less than 6 metres. It is acknowledged that the section 211 provisions of the Native Title Act may invalidate the fisheries management notice 64 and 66 in some circumstances.

Also in the Torres Strait, dugong and turtles have been declared an *Article 22* traditional fishery under the *Torres Strait Treaty 1985* between Australia and Papua New Guinea (PNG). Traditional inhabitants harvest dugong and turtles as part of their traditional way of life and livelihood, which is protected by the Treaty. Under the Treaty, traditional inhabitants means, in relation to Australia, persons who (i) are Torres Strait Islanders who live in the protected zone or the adjacent coastal area of Australia, (ii) are citizens of Australia, and (iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities. A further purpose of the Treaty is to protect and preserve the marine environment as per *Article 10.4*.

Queensland

The Queensland *Nature Conservation Act 1992* (NCA) provides for the listing of dugong and turtles as vulnerable species and creates offences for taking, keeping or using these species (or products from these species) without authority. However the Queensland *Community Services (Aborigines) Act 1984* (CSAA) and *Community Services (Torres Strait) Act 1984* (CSTSA) authorises residents of Deeds of Grant in Trust areas (DOGITs) to take marine products or fauna for use on the DOGIT.

Due to the vulnerable species listing, permits are not granted under the NCA for hunting of dugong or marine turtle. Accordingly take, keep and use can only lawfully occur under a traditional right by a traditional owner or by a community member under the CSAA and CSTSA.

Complementary provisions for TUMRAs are contained within Queensland’s *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004* including the requirements for the content, accreditation and review of a TUMRA.

Northern Territory

Dugongs and turtles are protected wildlife in the Northern Territory under Section 43 of the *Territory Parks and Wildlife Conservation Act 2001* (TPWCA). Section 66 of the Act prohibits the taking, interference with, possession, control or movement of protected wildlife, unless authorised to do so under the Act. The maximum penalty for breaches of these provisions is 500 penalty units (currently \$50,000) or five (5) years

imprisonment for a person or 2500 penalty units (currently \$250,000) for a body corporate.

Section 122 of the Act recognises the rights of Aboriginal peoples who have traditionally used an area of land or water to continue to use that area for traditional hunting, food gathering (other than for sale) and for ceremonial and religious purposes. Traditional hunting of dugongs and turtles by Aboriginal people is covered by Section 122 and is therefore authorised under Section 66 of the Act. Such authorisation does not permit the utilisation of dugongs and turtles in other than and in accordance with Aboriginal tradition.

Western Australia

The Western Australian Department of Conservation and Land Management (CALM) has legislative responsibility to conserve wildlife on CALM managed lands and waters under the Conservation and Land Management Act 1984 and to conserve and protect flora and fauna throughout the State under the Wildlife Conservation Act 1950. Pursuant to the Wildlife Conservation Act, dugongs are listed under the Wildlife Conservation (Specially Protected Fauna) Notice 2005 as specially protected fauna and the six species of marine turtles (Loggerhead, Green, Hawksbill, Leatherback, Flatback and Olive Ridley's) are listed as fauna that is rare or is likely to become extinct.

Section 23 of the Wildlife Conservation Act provides for Australian Aboriginals and Torres Strait Islanders to harvest marine fauna (and flora) from Crown land, except nature reserves and wildlife sanctuaries, and any other land (includes waters), provided that where it is occupied it is with the consent of the occupier, for food for themselves and their families, but not for sale. CALM managed land is occupied land. While Wildlife Conservation Regulation 63 indefinitely suspends section 23 in relation to "Specially Protected Fauna" an exemption is in place in relation to dugong and the six turtle species.