

From: [Nicholas Soulos](#)  
To: [Public Administration Committee](#)  
Subject: Submission : Inquiry into Private Property Rights  
Date: Tuesday, 30 July 2019 5:00:59 PM  
Attachments: [Submission into Property Rights - Copy.docx](#)  
[WAFIC - Introduction to Fishing and Aquaculture Submission, Final for consultation 19 July.docx](#)  
[WAFIC - Property Rights and Compensation Key issues Proposed for Inclusion in the WAFIC Submission Final for consultation 4.docx](#)

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STANDING COMMITTEE on PUBLIC  
ADMINISTRATION - INQUIRY into PRIVATE PROPERTY RIGHTS

Dear Ms. Kristina Crichton,

Please accept my submission to the Standing Committee on Public Administration - Inquiry into Private Property Rights.

I would welcome the opportunity to address the Committee personally to further express and clarify my views and to address any concerns or questions the committee may have.

I am a 3rd Generation Fisherman with more than 50 years in the industry, our Son Emanuel and Grandson Tyler are also fishermen in the family business.

I am very keen to see the Fishing Industry flourish and grow in confidence and prosperity and secure better Property Rights.

Our very existence is due to the demand and willingness of the broader community to access Fresh Local Seafood, without their support we would not exist, to maintain our existence we need better and secure "Property Rights".

Yours sincerely  
Nicholas Soulos

Nicholas Soulos  
For and on Behalf of  
Leschenault Fisheries  
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Your message is ready to be sent with the following file or link attachments:

WAFIC - Property Rights and Compensation Key issues Proposed for Inclusion in the WAFIC Submission Final for consultation 4 - Copy  
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Submission into Property Rights  
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WAFIC - Introduction to Fishing and Aquaculture Submission, Final for consultation 19 July  
WAFIC - Introduction to Fishing and Aquaculture Submission, Final for consultation 19 July - Copy

Kristina Crichton  
Committee Clerk  
Standing Committee on Public Administration  
Legislative Council  
Parliament House  
PERTH WA 6000

## **Standing Committee on Public Administration - *Inquiry into Private Property Rights***

Email: [lcpac@parliament.wa.gov.au](mailto:lcpac@parliament.wa.gov.au) Telephone: 9222 7207

To the Panel,

I am firmly in support of the Western Australian Fishing Industry Council's (WAFIC) Submission.

I total agree with all the points and principles raised. Had these been adopted and implemented in the past, we would have a lot stronger Fishing Industry, with investment and financial institutions showing interest. As it is now, investment is a all time low, and Financial institutions are loath to touch our industry. All because of the lack of Property Rights.

One of many cases that have affected our Fishing Business and resulted in a lack of confidence in our industry was the implementation of the South Coast Crustacean Fishery, which commenced on the 1<sup>st</sup> July 2015.

I will give a brief outline of this lack of Property Right.

In May 2004, NE & HJ SOULOS PTY. LTD. Purchased 129 Southern Rock Lobster pots with the necessary Southern Rock Lobster Licence, Number 1173.

We paid \$688 per pot, a total of \$88,752 + GST; we paid Stamp Duty and Transfer fees as required under Western Australian law.

This was considered a viable fishing unit.

In 2013 the WA Fisheries Department Research indicated that the Fishing Effort was too high for continued sustainability, and suggested that a minimum reduction of 50% of pot numbers was required.(see Fisheries Management Paper No.232; sec,7.11; P 20)

In Zone 2 (The Windy Harbour to Bremmer Bay area)the Albany Zone, the majority of fishers supported a 50% reduction in pot numbers equally across all licences in this area.(see FMP No.232)

This would have left us with 65 pots and the chance to rebuild by buying extra pots from those fishers wishing to exit the fishery.

This would have been fair, the pot/unit allocation in the Fishery had already been made, fishers had purchase pots base on a Dollar value per pot and everyone would equally share the pain.

These type of reductions are supported and accepted by the Fishing Industry for Sustainability reasons (ie;a % reduction across the board)

This was not to be the case!

WA Fisheries Department and the Fisheries Minister decided to “Re- Allocate” the already allocated resource to achieve the 50% effort reduction.

They created a new criteria to re-allocate the resource.

Subsequently, we ended up with just 14 Southern Rock Lobster Pots, in the newly created South Coast Crustacean Fishery.

A 89% reduction of pot numbers, instead of the 50%.

This left us with no way of rebuilding to a viable Fishing Unit, it completely crushed our confidence in the industry and financial institutions would not even put a value on licences, let alone lend money to purchase additional pots.

In today’s value, the 14 pot allocation we received is valued at \$77,000(\$5,500p/pot)

A 50% reduction would have resulted in an allocation of 65 pots, at the current value(\$5,500p/pot) would have been \$357,500.(and given us the confidence and financial ability to rebuild to a viable fishing unit)

This represents a loss of (\$357K minus \$77K = \$280K)\$280,000 lost value.

If we had stronger Property Rights this situation would not have occurred.

This is only one example of how a lack of property right has severely affected us and the entire fishing industry.

I would welcome the opportunity to address your committee to discuss these issues affecting our industry and point out other examples of where a lack of credible Property Rights has damaged future opportunities.

We need strong Property Rights to rebuild confidence in all aspects of the fishing Industry.

Yours sincerely

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**For and on Behalf of**  
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## Key Points for Inclusion in WAFIC's submission.

### General Principles of Property and Compensation

Property rights underpin economic development, social justice and maintenance of a democratic society. These rights are not absolute, but where they are taken by the State compensation should be paid. Property rights and their importance are recognised in the Commonwealth Constitution and are one of the few political rights provided for in the Constitution, the basis of our national polity. In order to optimise economic, social and political outcomes the Government of Western Australia should recognise the rights to just and fair compensation in the State Constitution, at least to the extent they are recognised in the Commonwealth Constitution.

### General Principles underlying the Interest of Fishers and Aquaculture in the Marine Domain.

Living natural resources of the sea are not owned by the State, but rather are managed by the State. The essential nature of the marine domain allows for overlapping uses and users. Often uses and users (acting reasonably) co-exist and sometimes there is conflict for access or competition for the same resource. These characteristics of the marine domain does not mean that it is relatively unregulated, nor that the rights in the marine domain do not constitute property. The key difference is that the regulation of the marine domain establishes rights to **priorities in use and of access** rather than based on an assumption of, or directed to, **exclusive possession** by either the State or a private party.

Fishers and aquaculturists rights in the marine domain should be recognised as having property and compensated where there is a reordering of priorities over access and use, the re-allocation of rights of use and access to other parties or the resumption of rights by the State for its own purposes. This could be for a marine park, being allocated to a different user or where the rights are lost or diminished due to industrial development approved by the State.

### Key Issues to be raised in support of these General Principles

#### Fishing rights

- The fundamental advantage of long term and secure access fishing and marine aquaculture rights for the State and individuals (rights based management) is that they align the interests of the State and the individual optimising real economic development while supporting the long term sustainability of the resource and the productivity and diversity of the marine environment which supports it.
- Rights-based fisheries management is applied in WA which was one of the leading lights of this movement globally recognised through the United Nation convening the first major symposium on this issue in WA FishRights 99 held in Fremantle in 1999 and further examined in the United Nations sponsored "Sharing the Fish" conference in 2006 again held in Fremantle
- Clear and effective property rights can facilitate autonomous adjustment to changing market and environmental conditions through market-based mechanisms. This reduces the risk and cost to the State of being required to fund those adjustments.

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- Strong property rights for fisheries with the right incentives inclusive of market-based incentives and appropriate compensative pathways can facilitate reallocation processes and adjustments required in aquatic resource access to meet changing community expectations. Clarity in governance processes linked to effective stakeholder engagement in these processes is a key to their success in both economic and social terms.
- To gain the advantages to the state and individuals as listed above, fishing rights now have all usual characteristics of property including title, tenure, a register, ability to lease lend and mortgage, and to will rights as property as well as compensation for certain takings by government (under the *Fisheries and Related Industries Compensation (Marine Reserves) Act 1997* (WA)). Fishing rights are subject to stamp duty as are other property rights.
- **It is now appropriate to more formally recognise in legislation that fishing and aquaculturists rights are a form of property and for appropriate compensation to be paid for the loss or diminution of those rights.**

#### Allocation & Reallocation of fishing rights

- Clear property rights advance both sustainability and economic development. These rights are well accepted as the best form of natural resource management. Clear and stable rights can facilitate adjustments in fisheries management in response to changing economic, social and environmental conditions. The United Nations Conference 'Sharing the Fish 06' held in Fremantle concluded that the full specification of property rights was fundamental to promoting good fisheries management through resilient allocations. Furthermore, the incomplete specification of allocations across sectors and jurisdictions undermine allocations.
- The majority of the State's fisheries are fully utilised either by formal allocations or through implicit allocations as recognised under the 2009 IFM Policy. State policy and practice has generally recognised that where a fishery is fully utilised that re-allocations should preserve the status quo as far as reasonably possible. Moving to new management arrangements should not be used as a pretext for reallocation without compensation.
- Where rights are reallocated whether through an allocation or reallocation process compensation should be paid, this includes where rights are reallocated to 'non-consumptive' uses such as marine parks and port development.

#### Statutory Provisions for Compensation

- Compensation should be paid to a fisher or aquaculturalist where there is injurious affection to their business as a result of the State acting to re-order priorities of use and access to the marine domain. The clearest instance is where fish resources are re-allocated to other users. The importance of clear arrangements for protection of fishing rights, particularly from reallocation to other users, has been recognised in the 2002 Toohey Report,<sup>1</sup> 2009 Integrated Fisheries Management Policy and 2012 State Fisheries Policy.
- Although changes could be the result of re-allocation to another user, such as to recreational fishers, a reduction of rights can occur for other reasons such as industrial development, marine parks (largely already compensated under *FRICMA*) and harbour developments. The State Fisheries Policy of 2012 recognises the impact on fishers of other activities in the

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<sup>1</sup> John Toohey et al, 'Report to the Minister for Fisheries by The Integrated Fisheries Management Review Committee: Fisheries Management Paper 165.' (Fisheries Department of Western Australia, 2002).

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marine domain. Compensation mechanisms should also provide for recognition of the incremental impact on the marine environment and on fishing activities.

- WAFIC is not asking for flood gate of compensation. Priorities of use and access are not changed by factors such as environmental fluctuation. Fishers have an obligation to support sustainability and changes for sustainability purposes or to support the diverse marine environment off Western Australia.<sup>2</sup> Where management arrangements change within a
- fishery WAFIC recommends adoption of the Australian Fisheries Management Authority's Policy on Allocations where management arrangement changes. Adoption would make it clear that compensation would not be payable where there are changes to management arrangements within a fishery that are fairly implemented.<sup>3</sup> Effective compensation mechanisms should be implemented. The mechanism should provide for changes to management plans for fisheries to go hand in hand with compensation where there is arising risks for resource sustainability. For example, management implications of compensation for loss of rights such as shifting of effort to other fisheries or the total loss of abalone stocks from marina development (Ocean Reef).

#### Regulatory Takings

- WAFIC recognises that there can be a regulatory impact on property in WA (whether fishing rights, pastoral leases or private agriculture property) that may fall short of legal definitions required for a loss of property. WAFIC proposes to support the submission by the WA Farmers in relation to this issue having seen an early draft.

#### Recommended Actions

In addition to those highlighted in the 'Introduction' to WAFIC's submission WAFIC will proposing

- That's specific processes be incorporated in legislation and policy around reallocation or adjustment of rights of access and catch shares in Part 3 of ARMA;
- The establishment of a single authority by the Western Australian Government to centralise the procedural requirements around compensation into a single agency for all claims covering loss of property and injurious affection.
- Support for mechanisms that facilitate inter-sectoral changes in resource use independent of Government funding but properly reflected in resource management where sustainability is at risk.

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<sup>2</sup> Noting that intensive commercial fishing activity only occurs in a small percentage of the waters off Western Australian Waters. See 2008 "Bottom Trawl Fishing Footprints on the World's Continental shelves: (numerous authors) and see "Putting potential environmental risk of Australia's trawl fisheries in landscape perspective: exposure of seabed assemblages to trawling and inclusion in closures and reserves" FRDC Report 2016-039

<sup>3</sup> <https://www.afma.gov.au/about/fisheries-management-policies/allocation-fishing-concessions-management-arrangements-change>

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## Introduction: WAFIC Submission on Fishing and Aquaculture in Western Australia

WAFIC welcomes the opportunity to make a submission to the Legislative Council's Standing Committee on Public Administration in relation to their inquiry into Private Property Rights. WAFIC is the peak industry body for both Fishing and Aquaculture in Western Australia. This submission focuses on broad issues that cross these two sectors in relation to the Committee's Terms of Reference. Although not all Western Australia's fisheries are marine based this submission will concentrate on the common interests of those that are so based.<sup>1</sup>

This submission builds on a very substantive body of literature on rights-based management for fisheries [see Attachment 1 Background, to be drafted]. Research and experience has established the advantages of basing marine based aquaculture and wild fisheries management on secure, clear, divisible and tradeable rights to fish. These rights benefit both commercial fishers and Western Australia. Their importance has been recognised in Government Policies issued by both Coalition<sup>2</sup> and Labor Governments.<sup>3</sup>

### Principal Recommendations:

**That the Committee express its support for rights-based management as incorporated in existing policies. In particular, the Integrated Fisheries Management Policy of 2009 and the State Fisheries Policy of 2012.**

**That it supports that fisheries and aquaculture licences and leases should be recognised as a property rights by the State both in the *Aquatic Resource Management Act 2016 (WA) (ARMA)* and as appropriate in other legislation.**

**That it endorses the past practice of the State providing compensation for commercial fishers and aquaculturists where rights are taken by the State for its own purposes or are re-allocated by the State to other users of the marine domain.**

**That the Committee note that there are already limited compensation rights under the *Fisheries and Related Industries Compensation (Marine Reserves) Act 1997 (WA) (FRICMA)*. That the Committee recommend that rights for compensation should be extended more generally to where fishers and aquaculturists rights of access to and use of the marine domain are re-allocated to others or are removed for other purposes.**

**That given the importance of cementing policies in relation to re-allocation of rights, that it recommend that existing policies be more formally incorporated into the ARMA. Further, until**

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<sup>1</sup> In this document references to fisheries are to fisheries managed by the State of Western Australia. The boundary of the State of Western Australia ends at the low water mark. The vast majority of fisheries and marine based aquaculture that takes place in Western Australia occurs waters that are constitutionally waters of the Commonwealth of Australia. In the early 1980s the Commonwealth came to a set of arrangements with the States (and Northern Territory) over fisheries management that facilitated the management of most fisheries off Western Australia to 200n.miles offshore in the Australian Fishing Zone. The Commonwealth provided very wide powers to the States to manage 'coastal waters' extending from the low water mark out to 3 nautical miles. The ability of the Commonwealth to change its mind and unilaterally intervene and change arrangements for coastal waters is untested and uncertain.

<sup>2</sup> 2012 State Fisheries Policy.

<sup>3</sup> 2009 Integrated Fisheries Management Policy (IFM).

**these policies are so incorporated fisheries should only be moved to Aquatic Resource Management Plans and Aquatic Resource Use Plans under that Act where fishers support such a move.**

**That the Committee recommend that above be underpinned by change to the State constitution providing that Western Australian citizens have rights to compensation at least equal to that provided to citizens in the Northern Territory and Australian Capital Territory in the Constitution of the Commonwealth of Australia.**

That the Committee recommend the establishment of a single authority by the Western Australian Government to centralise the procedural requirements around compensation by Government into a single agency for all claims covering loss of property and injurious affection.

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