



30 July 2019

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Standing Committee on Public Administration – Inquiry into Private Property Rights

Geraldton Fishermen's Co-operative (GFC) 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.

GFC's submission focuses broadly on the Committee's Terms of Reference with particular reference to item (c) which has the greatest effect on our Members.

- (c) Recognises the property rights of government-issued licences and authorities including commercial fishing.

GFC believe amendments to *Aquatic Resource Management Act 2016 (WA)* (ARMA) are required in order to safe guard the access rights of Fishermen, Managed Fishery License (MFL) holders as well as to protect the sustainability of the industry.

Living natural resources of the sea are not owned by the State, but managed by the State. Fishers have an obligation to support sustainability and changes for sustainability purposes and support the diverse marine environment off Western Australia. The essential nature of the marine domain allows for overlapping uses and users. This does not mean that it is relatively unregulated, or that the rights in the marine domain do not constitute property. Fisher's 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. Clarity in governance processes linked to effective stakeholder engagement in these processes is a key to their success in both economic and social terms.

The fundamental advantage of long term and secure access fishing rights for the State and individuals 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. 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.

It is now appropriate to more formally recognise in legislation that fishing rights are a form of property and for appropriate compensation to be paid for the loss or diminution of those rights. 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. 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.

Previous instances of changes to catch limits including the introduction of Total Allowable Catch (TAC) and quota management resulted in major industry restructure with over two thirds of lobster fishermen leaving the industry. No government financial assistance supported these changes which led to significant social and economic hardships on individuals and coastal communities.

In today's modern economy where growth and sustainability are critical, it is unreasonable for the Western Australian Government to burden lobster fishermen, with the costs of loss of property value for Government reasons or public benefit.

The Government's recent attempt to "nationalise" (allocate resource access for Government purposes) a portion of the commercial lobster industry created significant uncertainty regarding the management of fisheries and the values tied to the present rights of resource access attributed to fishing licenses within managed fisheries. The strong industry reaction was unsurprising as this proposed change went against best practices in fisheries management in Australia and across the world.

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 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.

GFC would like the Legislative Council's Standing Committee to:

- Support fisheries licences and leases being recognised as a property right by the State both in the *Aquatic Resource Management Act 2016 (WA)* (ARMA) and as appropriate in other legislation.
- Ensure specific processes be incorporated in legislation and policy around reallocation or adjustment of rights of access and catch shares in Part 3 of the ARMA.
- Ensure clear and consistent policies in relation to resource re-allocation of rights are more formally incorporated into the ARMA. Until these policies are so incorporated, fisheries should not be moved to Aquatic Resource Management Plans and Aquatic Resource Use Plans.
- Endorse the practice of the State providing compensation for commercial fishers 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.
- Suggest the state aligns the Western Australian Constitution with that of the Commonwealth Constitution with respect to providing the same rights of compensation for the loss of property where it has been taken by Government for the benefit of societies use.

- Develop a more comprehensive compensation pathway for MFL holders and Fishermen. It is imperative that compensation and market options are a fundamental requirement to ensure industry are aligned with reallocation of access and loss of TAC for greater societal benefit.
- Recommend the establishment of a single authority by the Western Australian Government to centralise the procedural requirements for all claims covering loss of property and injurious affection.
- GFC seeks the establishment of an expert group to assist government with the following:
 - Developing principles, policies and processes for resource access re-allocation;
 - Develop supporting legislation to achieve outcomes under the ARMA and *Fisheries Adjustment Schemes Act (FASA)*;
 - To provide vision and direction for the future and likely outcomes from:
 - Changes in aquatic resource use;
 - Protection of fisheries access;
 - Industries property rights; and
 - Compensation processes.

Yours faithfully,



Matt Rutter
Chief Executive Officer