Factors that contribute to the establishment of marine protected areas in Western Australia

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5. PLANNING AND PUBLIC PARTICIPATION PROCESSES

5.1. INTRODUCTION

Documentation for the five MPA case studies was reviewed and issues relating to planning and public participation processes were recorded. Following this review, a questionnaire was distributed and interviews undertaken with selected stakeholders and agency representatives to test the outcomes of the documentation review. This chapter summarises the results of the documentation review, combining these with stakeholder responses where appropriate. References are provided to assist in identifying sources where appropriate.

The CALM Act imposes requirements for public participation prior to any legislative action to create an MPA and to amend a boundary or management plan for an existing MPA. The Act includes the following statutory requirements:

- Public release of an IMP.
- Publication of a NOI in the Government Gazette, and local and state newspapers outlining proposed boundaries, zoning, classification as ‘A class’\(^i\), as well as access to maps and plans and the public submission review process.
- Written advice to relevant local government authorities seeking comment.
- A three-month minimum period for public review and submission of written comments on the proposal (Government of WA 1984).

The CALM Act is not prescriptive on how an IMP is developed, who is to be consulted and what type of consultative mechanisms are used, apart from the statutory release of draft or IMPs for public comment. Public participation in development of these draft plans is optional, and the Act is not prescriptive of the detail contained in IMPs.

All MPA processes included community engagement before the statutory consultative requirement to provide opportunities for community concerns and aspirations to be considered. The public involvement undertaken (i.e., time, breadth and types of participatory mechanisms) was an agency decision based on the resources and time available, and a consideration of the costs and benefits.

\(^i\) NB The ‘class’ relates to the legal security of the tenure of MPAs, and Class A is the most secure form of Government reserves.
The MPA planning processes reviewed involved four major phases:

- **Phase 1**: The ‘pre-planning’ information gathering and community information process (optional).
- **Phase 2**: Direct community engagement to develop proposed boundaries, MPA type and management arrangements (optional).
- **Phase 3**: Agency finalisation and ministerial approvals to release an IMP (statutory requirement).
- **Phase 4**: A formal three-month public submission period, review of public submissions, government approvals and legal establishment (statutory requirement).

### 5.2. Jurien Bay

#### 5.2.1. Background

The process to consider the proposed Jurien MPA commenced in 1997 following a seven-year hiatus in the MPA programme in WA, and culminated in the establishment of the Park in 2003. The six-year process was characterised by strongly polarised stakeholder positions, which led to delays in establishment and generated a wider debate on state-wide MPA policy. This was despite the MPA proposal being supported by a government regional planning framework (WA Planning Commission 1996), a local community broadly receptive to the idea of an MPA in the area, strong political support, and sound knowledge, expertise and resources to support the public participation process.

Jurien was the first MPA to be considered in WA following the 1997 amendments to the CALM Act, which significantly changed the planning and legal establishment processes, formed the Marine Parks and Reserves Authority, and incorporated the release of an IMP for public comment before MPA creation. This was a significant change from the original legislative framework, which established legal boundaries of multiple-use MPAs with specific management arrangements (e.g., zoning, regulatory measures) determined sometime after the creation of the MPA. For example, the Shark Bay Marine Park was created legally in 1990; however, the management plan and zoning was not finalised until 1996.
An initiative of the government’s *New Horizons* policy was to bring a greater degree of marine science expertise to MPA establishment through the creation of a dedicated Marine Conservation Branch (Government of WA 1998). These changes, and additional resourcing, raised stakeholder expectations for the Jurien process. Central to the public participation process was the establishment of an advisory committee to facilitate community development of the proposal (i.e., boundaries, MPA type, zoning and IMP) for consideration by the Marine Authority and government.

### 5.2.2. Committee establishment

The government announced its intention to establish an advisory committee to consider the proposed Jurien Bay MPA on 3 January 1997. The conservation agency requested nominations for representatives of key marine stakeholders, agencies and local government to participate in the committee. The Minister subsequently appointed members and announced the formation of the committee in August 1997. The committee was chaired by the conservation agency; the fisheries agency was represented, and members were appointed as formal representatives of particular sector groups and hence were expected to represent the view of that sector and provide a degree of ‘sign off’ on the proposal.

### 5.2.3. Public participation

The committee met seven times between October 1997 and August 1999, for a total of 11.25 meeting days over approximately two years before providing its advice to the Minister for the Environment on 11 February 2000. The committee first considered the type of MPA and proposed outer boundaries. Committee recommendations to significantly expand the MPA (i.e., the ‘southern extension’) created complications with respect to the adequacy of the planning information and community engagement. This triggered the need to solicit political support from the Minister for Fisheries before the process could progress, creating government debate on the committee’s role, function and spatial bounds. While this was resolved it complicated the process and caused delays.

The committee process was structured to provide opportunities for stakeholders to nominate how they believed the park should be designed (i.e., MPA boundaries and zoning). The conservation agency worked with members and their stakeholder
groups to determine possible zoning options they believed would be appropriate. This established fixed positions that were highly polarised (Figure 9), with zoning varying from large proportions of high protection to no restrictions. These fixed and widely divergent stakeholder aspirations were irreconcilable, and further progress on achieving a consensus position could not be achieved, effectively stalling the committee process.

To address this impasse the conservation agency developed a ‘compromise zoning scheme’ as a starting point for committee discussions, which included proposed no-take zones representative of marine habitats and large enough to be effective and enforceable (8 per cent of total area), buffered by special protection zones (22 per cent of total area) incorporating key ecological features and processes. Recreational and commercial activities were considered, and where possible the zoning was configured to minimise impacts on these activities (Figure 10, September 1998).

The conservation agency undertook stakeholder meetings and workshops to discuss issues and potential amendments and identify areas of concern and to develop stakeholder support. There was strong opposition by commercial fishing interests to the proposed no-take zones, due to perceived impacts on rock lobster fishing. An option suggested was that as an alternative to no-take zones, areas could become ‘special purpose zones’ that allowed rock lobster fishing but excluded all other extractive activities, therefore becoming finfish no-take areas that allowed fishing for one species only. The conservation agency established a working group of commercial rock lobster fishers that identified potential areas of the proposed MPA that could be established as no-take areas with acceptable economic impacts on the fishing industry.

The conservation agency presented a significantly amended zoning scheme (Figure 10, February 1999) that addressed commercial fishing objections to no-take zones and the alternative option of large special purpose zones that excluded all fishing except rock lobster fishing (23 per cent of total area); and presented a number of small no-take zones (3 per cent of total area) that were also supported by commercial rock lobster fishers.
Figure 9 Committee member/stakeholder positions for commercial fishing sector (left panel) and conservation sector (right panel)

Note the polarised positions on open access areas in blue (fishing >99 per cent) and brown (conservation 25 per cent) and no-take areas in pink (conservation 40 per cent; fishing <1 per cent). Stakeholders zoning position maps for Jurien Bay Marine Park were accessed electronically from DEC digital records.
There was significant objection to this by the committee’s conservation representative because of the low proportion of no-take zones proposed, and rather than be increased, as recommended by the Conservation Council, the no-take zones had been reduced from 8 per cent to 3 per cent. They highlighted that the no-take zones were not representative of the area’s marine habitats, which was a valid criticism as most of the proposed no-take zones were generally not located in the major adult rock lobster habitat (i.e., high aspect reef habitat). The majority of the committee did not support the conservation representative’s position. This resulted in the resignation of the conservation representative and the conservation NGOs played no further part in the committee processes.79

Fundamental policy differences emerged with conservation stakeholders believing that fisheries restructuring and triggering of a compensation mechanism was a viable and appropriate strategy to achieve significant conservation outcomes. The conservation NGO stakeholders were critical of the conservation agency and the Marine Authority for not promoting this option.80

Recreational fishing representatives also believed that their user group was being affected more than commercial fishers, and there was considerable concern about this perceived inequity. The proposed plan treated all fishers equally—where a fishing activity was proposed to be prohibited this applied to both recreational and commercial fishing. However, the perceived inequity related to the large closures to line fishing for finfish (i.e., special purpose zones), which was of more significance to recreational fishing interests than commercial fishing (who were primarily focused on rock lobster fishing). Therefore, recreational fishing representatives believed they were giving up more than commercial fishers, with rock lobster fishers dominating the process.81

Following the sixth committee meeting (February 1999) a conservation NGO (the Conservation Council) lobbied against the Jurien process and outcomes, meeting with the key government agencies, ministers and other groups. The Council fundamentally opposed the approach being taken and outcomes that that delivered a small percentage of ‘no-take’ areas. They wrote to the Marine Authority, the conservation agency, the fisheries agency, and Minister for the Environment outlining their concerns and lobbying for a significant change in MPA process and policies to deliver significantly increased conservation outcomes.82 The Council
raised objections to the outcomes believing that the proposed zoning scheme lacked ‘...conservation and scientific credibility’ and the outcome reflected a ‘failure in the process’. The Council cited the following concerns:

- **The committee structure is biased.**
- **The committee process is inequitable, unbalanced, unguided and parochial.**
- **The conservation agency’s role (NB: facilitator rather than conservation advocate).**
- **The process lacks an adequate framework of principles, objectives and criteria.**
- **Lack of transparency, accountability and responsibility.**

Following the final advisory committee meeting, the Conservation Council continued to oppose the proposal with a letter to the Minister for Environment and a media release (with Australian Marine Conservation Society and Wilderness Society WA) on 12 October 1999 ‘Marine Reserves Process Has Lost the Plot: Conservation Sector Withdraws!’ The release stated:

> The establishment of an adequate and representative system of marine reserves was being impeded by flawed Marine Reserves legislation, a lack of whole-of-government approach and absence of genuine public participation. All political parties need to evaluate the approach to marine conservation in the lead up to the next government election.

The committee endorsed its advice, including a draft IMP for the proposed MPA on 19 August 1999. The local professional fisherman’s association provided a formal statement supporting the proposed MPA, which was believed to be a key element to ensuring support of the state-wide fishing bodies, the fisheries agency and the Minister responsible for fisheries. While they had concerns about the resourcing for management they believed the proposed zoning was ‘reasonable, workable and acceptable’. Figure 10 shows the evolution of management zoning from the compromise zoning scheme developed by the conservation agency in September 1998 to the final advisory committee endorsed zoning in September 1999.

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1 Under the CALM Act the Minister for Fisheries must provide formal concurrence before MPAs can be legally gazetted.
Figure 10 Zoning iterations for the proposed Jurien Bay Marine Park (sourced from CALM)
The Marine Authority considered the Jurien Bay draft IMP and formalised its advice to the Minister for the Environment on 7 March 2000, recommending the release of the IMP developed by the advisory committee with some minor changes.\textsuperscript{86}

\textbf{5.2.4. Government approvals}

Between April and August 2000, government approvals were obtained for the release of the IMP and NOI as required under the CALM Act, and on 3 October 2000 a NOI to create the Jurien Bay Marine Park was published and the IMP released for public comment, together with a range of activities to promote the proposals and seek community comment.\textsuperscript{87}

The Marine Authority considered the issues raised in the submissions and debated the way forward (April 2001), with a key consideration being the concerns of the conservation sector with respect to the small proportion and inadequate habitat representation of no-take zones. The Authority believed that to address this concern would require significant increases in no-take zones, resulting in a major impact and dislocation of commercial rock lobster fishing, as well as other commercial and recreational fishing activities.\textsuperscript{88} This was likely to generate local community opposition, given the socio-economic importance of the rock lobster fishery, and had significant compensation implications for government.

The Marine Authority acknowledged the ecological shortcomings, but felt that addressing the conservation sectors’ concerns would result in a protracted debate, loss of fishing, local government and community support, and ultimately place at risk the likelihood of the government establishing the MPA. While no-take zones were problematic, the Marine Authority believed the proposed special purpose (scientific reference) zones had value in protecting biodiversity, given their size and habitat coverage, and that these zones were an pragmatic alternative to no-take zones in the short- to medium-term.\textsuperscript{89} The Marine Authority subsequently recommended the establishment of the MPA with no significant amendments.\textsuperscript{90}

The CALM Act requires the concurrence of the Minister for Fisheries and the Minister for Mines to establish MPAs. This approval was not forthcoming, with significant lobbying by the conservation sector and the recreational fishing sector between the release of the IMP (October 2000 to July 2002), who were displeased with the Jurien outcomes. This lobbying targeted conservation and fisheries agencies,
and relevant government ministers with respect to Jurien (i.e., zoning), as well as the general policy approach, which the conservation sector believed needed radical change. In particular, the conservation sector made a concerted push for the government to restart the Jurien process with a revised approach that included prescriptive targets to drive no-take zone outcomes.

This policy debate was of heightened political importance, given that the State Government was approaching an election (subsequently held in February 2001). Correspondence to government from stakeholders, and the inability of government to make a decision on Jurien, indicated a reluctance to proceed with the MPA. This was most likely due to the potential backlash from stakeholders if they proceeded with the MPA in the face of significant opposition by two key marine stakeholders (i.e., conservation and recreational fishing groups).

At this time, community debate over logging of native forests was a major political issue with the opposition party (Labor) developing a strong conservation stance on forests policy, with an election platform that committed to ending ‘old growth’ logging. The link between forest policy and MPAs was drawn by the Conservation Council in a media release on 12 October 1999 attacking the Jurien process, stating: ‘The marine reserves issue was beginning to resemble that other bone of contention around the so-called 'multiple-use' management of forests.’

Approaching the 2001 State election the opposition Labor Party included a number of specific election commitments on MPAs. While they committed to create four new MPAs, there was no specific commitment to proceed with creation of the Jurien MPA, despite the MPA being ready for gazettal. They did, however, commit to ‘review the government’s proposal for a Jurien Bay Marine Park to ensure proper and meaningful community consultation,’ which further indicated the government’s sensitivity to criticism of the process.

The Conservation Council took the unusual step of writing to the Minister for Fisheries asking that he withhold concurrence on the Jurien Bay proposal. This was an interesting tactic, as if it was supported, the Council would have succeeded in stopping the creation of the first state MPA in 13 years. This was despite criticism of the slowness of the government MPA programme and historical opposition to the inclusion of ‘concurrence’ powers for the Minister for Fisheries (and Minister for
Mines) in the earlier amendment of the CALM Act in 1997, as well as attempts to have amendments in 2002 to remove the concurrence powers of the Ministers for Fisheries and Mines. The Hon Christine Sharp stated in Parliament that:

No new marine parks have been established in WA since 1990, despite the fact that the Marine Parks and Reserves Authority has been in place for five years and is already up for review. The contention that I am making to the House is that one of the most significant reasons for this appalling lack of progress is that the Marine Parks and Reserves Authority is consistently undermined by the exact requirement that proposals for marine parks need the consent of the Minister for Fisheries.94

The pressure exerted by the conservation NGOs exposed inconsistencies in the government’s policy position on the Jurien Bay MPA. The Council indicated that it had obtained tacit support from the fisheries portfolio, with the Council letter to the conservation agency stating: ‘The Fisheries Department has indicated to us that it is willing, if requested, to assist CALM [the conservation agency] in this matter should deliberations regarding establishment of a marine reserve at Jurien necessitate restructuring and assessment of compensation’ and concluded that ‘we see no legal, technical or equity impediment to pursuing the option of fisheries restructuring to allow establishment of substantial sanctuaries within the Jurien reserve.’95 They then referred to the ability of the fisheries portfolio to look at potential closures and compensation for Jurien Bay MP.

The fisheries agency response to the Council’s letter did not declare support for the MPA planning outcomes, did not oppose the sort of outcomes suggested by the Council and offered information on the potential mechanisms to deal with potential fishing closures decided by government, thus possibly providing a perception that the outcomes sought by the Council were potentially achievable.96

This issue was an underlying and fundamental factor in the Jurien Bay process. While the general view of the conservation agency and the Marine Authority97 was that MPA zoning having significant impacts on commercial fishing would be untenable to government, due to the employment and economic impacts and associated compensation liability, this was never formally stated by government. This allowed a situation where conservation stakeholders believed this option was
viable and should be pursued, when the conservation agency and Marine Authority believed that there was a fundamental requirement to establish commercial fishing support to ensure the MPA would be created. The economies of coastal communities relied heavily on the fishing industry, and local government did not support MPA zoning that limited commercial fishing in a significant proportion of the MPA. The concurrence of the Minister for Fisheries was required to establish the MPA, and this approval would be strongly influenced by the degree of support of the commercial fishing industry for the proposed MPA.

Another issue raised by the fisheries portfolio was the financing of park management. This concern was raised specifically for the Jurien proposal, but also in regard to the broader financial liability for the state and the fisheries portfolio of the state-wide network. While this was an important strategic issue to be dealt with by government, the timing at this point in the Jurien Bay process provided an additional concern about the relative cost and benefits of MPAs, and provided further impetus against obtaining government support for the MPA.

Legal issues in respect to the obligations of the Native Title Act 1994 were also raised at this stage by the State Solicitor’s Office, which needed to be addressed to facilitate the legal creation of the MPA. The Jurien MPA was the first MPA considered since the enactment of the national native title legislation and hence there were a number of legal matters that needed to be clarified and new approaches devised.

The State election was held on 10 February 2001, with the Labor Party winning government. As mentioned above, the incoming government was committed to ‘review the government’s proposal for a Jurien Bay Marine Park to ensure proper and meaningful community consultation’. The Marine Authority, on 8 May 2001, provided its statutory advice required under Section 14(6)(c) of the CALM Act, recommending the creation of the MPA. The Marine Authority advised that the consultation process had not raised any new issues of consequence and that there was ‘almost universal support for having a marine park in the area’. They noted the conservation and recreational fishing sectors’ concerns about the zoning arrangements but believed that the option of going through a new round of participation was not desirable option as it ‘would not resolve the issues but would foster further and possibly more intense controversy.’

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During this period the Marine Authority became increasingly frustrated that the proposal had not been progressed, and wrote to the Minister for the Environment on 18 January 2002 expressing concern about the lack of progress, and again on 15 April 2002 reiterating their support and belief that it was important that government establish the MPA.

Government approvals were eventually obtained to create the MPA, taking a year and involving extensive government meetings, direct lobbying by stakeholders, and correspondence in respect to potential ways of addressing the concerns of conservation and recreational fishing stakeholders, including a proposal for establishment of a new recreation zone. During this time the Marine Authority conducted a workshop to review the Jurien process, developing a range of changes for the upcoming Pilbara MPA proposals.

An order legally creating the MPA was subsequently published on 26 August 2003 with government approving the MPA with no significant amendments. To address the concerns of the conservation and recreational fishing sectors three initiatives were announced:

- Establishment of a working group to consider the proposal for a recreation zone off the Jurien townsite.
- Research and monitoring of the ecological impacts of rock lobster fishing in the Marine Park, which would be used to assist in a review of the park’s zoning scheme.
- Funding for a doctoral research project through a WA university to address the design and effectiveness of no-take zones in the State’s marine parks and reserves.

The announcement that the park had been created, along with approval of zoning and management arrangements, met with support from commercial fishing groups; however, there was strong criticism from recreational fishing and conservation groups. Conservation and recreational fishing NGOs held a joint press conference criticising the creation of the park. The alliance between recreational fishing and conservation interests opposing the MPA was an unusual situation, and was criticised by commercial fishing interests who referred to the alliance as a ‘Faustian pact.’
In accordance with the CALM Act, the gazettal order was tabled in Parliament. This legislative process provides the opportunity of either House of Parliament to vote to disallow the order, therefore annulling the creation of the MPA. The Greens Hon Giz Watson put forward a *Motion for Disallowance* on 12 November 2003 in the Legislative Council. This motion was on the basis that the park did not deliver *‘significant conservation benefits’*.

The Greens MP identified problems with the MPA outcomes and process, citing the need for independent chairs of advisory committees, the role of the conservation agency as facilitator rather than a conservation advocate and the lack of criteria to drive conservation outcomes and promoted the need for a new approach.\(^\text{107}\) The disallowance motion was not carried.

The Jurien process highlighted the underlying priorities for government to gazette an MPA in accordance with their policy commitments, the *New Horizons* policy, and the MPRSWG Report recommendations. Creating the MPA realised these government commitments, irrespective of the conservation outcomes.

The conservation sector argued that the Jurien MPA was a failure, given the low proportion of no-take zones, suggesting the zoning scheme was not sufficient to achieve the MPA’s ecological objectives. This highlighted a fundamental opposition to the multiple-use model, which conservation interests believed was *‘equivalent of multiple-use State Forests which allow mining and logging’*, not effective in conserving biodiversity, and demonstrated the need for a new MPA policy focused on a system of no-take zones.\(^\text{108}\) The recreational fishing sector believed the proposal was inequitable and lacked social balance.\(^\text{109}\)

The conservation agency, Marine Authority and some marine scientists accepted that the MPA was not ideal. However, they expressed the view that the MPA represented an adequate first step that could be improved over time. Dr Graham Edgar, a renowned Australian marine scientist well versed in MPA science, undertook an independent assessment of the proposal to establish the Jurien Bay Marine Park and wrote; *‘...the proposal as presently described will create the best marine protected area in southern Australia— with a long gap to second place’*.\(^\text{110}\)

The conservation sector, along with some marine scientists, had expectations that the Jurien MPA would be established with a zoning design that had a strong emphasis on
marine conservation (i.e., a significant proportion of representative no-take areas). Government MPA policy did not prescribe specific management targets or objectives with respect to the achievement of the ecological objectives in the MPA, and, based on the final decisions, government expectations were strongly focused on establishing an MPA to satisfy their policy commitments with minimal socio-economic impact. The conservation sector believed the MPA would provide little benefit for biodiversity conservation and did not support the notion that the MPA could be established and the zoning improved over time.\textsuperscript{111}

Despite the concerns of stakeholders, the government considered the establishment of the Jurien MPA a success. This focus on establishment rather than management outcomes (i.e., zoning) contrasts with the stakeholder views that judged the merits of the MPA primarily on the MPA design.

### 5.3. Montebello Complex

#### 5.3.1. Background

The Montebello/Barrow islands MPA proposal commenced in 2000, with the adoption of an agreed ‘study area’ and consultative mechanisms to support the planning process by the Marine Authority and the Ministers for the Environment, Fisheries and Mines (MPRA 2000b). Defining an agreed study area was a new step undertaken to avoid difficulties encountered with the Jurien MPA and provide guidance for the advisory committee on the notional area that should be considered.

The socio-economic settings associated with the Montebello/Barrow Islands MPA process were characterised by:

- Absence of a local residential community that utilised or had strong social and economic connections with the area.
- Remote offshore area with difficult access and low recreational use.
- No direct Indigenous connections or issues relating to native title.
- Extremely high economic values in particular the petroleum industry (and to a lesser degree the pearling industry).
5.3.2. Committee establishment

The Minister requested nominations for participation in an advisory committee for the proposed MPA in May 1999. The membership of the committee differed from the Jurien model as follows:

- Members were ‘non-representative’; i.e., they were not appointed to represent a particular sector but on the basis of their experience, knowledge and expertise.
- An independent non-government chair person.
- Representatives of government agencies were not appointed to the committee.
- Preference was given to selection of members who lived in the local area.

The Montebello/Barrow Islands Advisory Committee was announced by the Minister for the Environment in June 2000, and included members with expertise in one or more key areas (i.e., conservation, the petroleum industry, commercial fishing, recreational fishing, pearling, tourism or science). Despite the desire to have ‘local’ members, the committee was largely comprised of capital city-based members, as there were no local towns or communities and the principal knowledge and expertise comprised people who were based in Perth. The absence of a local community was a unique social setting not found in other MPA proposals. The Marine Authority provided guidance to the committee and a representative attended meetings as an observer.

5.3.3. Public participation

The committee commenced in 2000 and met five times (a total of 8.5 meeting days) in developing proposed MPA categories, boundaries, zoning and a management plan. To facilitate wider community participation, the conservation agency identified SRGs, which were kept abreast of committee outcomes and provided with opportunities to provide input. In parallel with the committee meetings, the conservation agency also undertook a limited public participation programme to raise community awareness, encourage community discussion and to facilitate input into the committee. This included the distribution of information and presentations to

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1 Note: SRGs were a consultative mechanism established by the conservation agency, and comprised people with a common stakeholder interest (e.g., petroleum, commercial fishing, tourism etc.), and included representatives of the various affiliated interest groups and bodies, plus individuals with an interest in the proposal.
The committee worked constructively and efficiently to develop the proposal; however, the absence of clear government policy and precedence hampered the committee’s ability to finalise its recommendations and triggered additional processes to resolve these matters. The first issue related to the type of MPA that was most appropriate for the area. The CALM Act has three potential categories, but one category (MMA) was added to the Act in 1997. No MPAs of this type had been created in the State and there was no precedence or clear policy on its application. In particular, there was some confusion over how the MMA category varied from the marine park MPA category. This absence of clear policy and guidance hampered committee deliberations, and a policy had to be developed to provide this guidance to the committee (see Chapter 6.3.3).

The second issue related to the operation of the petroleum industry in an MPA, with respect to how environmental approvals processes would differ from normal processes under the Environmental Protection Act 1986. There was also uncertainty as to the application of the quantitative ecological management targets specified in the MPA management plan. Without resolution of these matters, the necessary support of the petroleum industry for creation of the MPA was unlikely to be forthcoming as evidenced by an article in the petroleum industry’s Flowline magazine in January 2002:

> APPEA considers it premature to finalise recommendations for a reserve, zoning and management plan for the Montebello/Barrow islands area until the bigger issues of improved environmental management processes are resolved. Government has given assurances that there will be opportunities to address industry concerns before a final decision on a reserve is made.

In response, a new working group comprising government and petroleum industry representatives was formed in 2002 to clarify and, where appropriate, streamline administration of industry activities in MPAs. It was formed following a meeting held on 27 November 2001 and attended by the Chairs of the EPA and Marine Authority, heads of conservation and resources agencies, senior representatives of

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1 APPEA-Australian Petroleum Production & Exploration Association
the Australian Petroleum Production and Exploration Association (APPEA) and representatives of petroleum companies operating in the area. The working group commenced on 15 March 2002 and held six meetings, with the final meeting held on 27 May 2003. The working group’s objectives were to:

- Clarify government regulations and approvals processes for the petroleum industry in relation to MPAs.
- Identify and recommend improved environmental approval processes.
- Finalise draft management targets relevant to the petroleum industry for the Montebello/Barrow Islands MPA proposal, consistent with the broad outcomes of the committee process.¹¹⁶

A draft Memorandum of Understanding (MOU) between the EPA and the mines agency was developed with input from the working group to clarify the approvals process for the petroleum industry in MPAs and, where possible, streamline these processes. Amendments were also made to the draft IMP, with a copy of the draft MOU included as an appendix to the plan.

The issue of quantitative ecological management targets related to the specification in the MPA management plan of specific and measurable targets for ecological values that quantified the level of disturbance or impact that was considered ‘acceptable’ to maintain biodiversity values. Ecological management targets were part of a revised management plan structure that was outcome-based. Outcome-based management plans facilitate MPA performance assessment (Lloyd et al. 2004). The petroleum industry was uncertain how this would impact on environmental approvals and regulation of their activities. Potential technical difficulties were identified, particularly in relation to habitat disturbance; such as measurability and natural variation, competing interests with other sectors and responsibility for monitoring.

The concern by industry representatives was that without clarification of these issues, the setting of quantitative targets for habitat disturbance may have unreasonably constrained future industry activities. The conservation agency produced a discussion paper that addressed the issues raised by the industry to clarify how this approach would be implemented and to try and achieve industry support (Simpson 2002).
The working group finalised a position for all management targets except those concerning habitat disturbance and resolved that the advice to the Marine Authority would be that:

- Habitat targets in the draft IMP should be expressed in a qualitative manner initially.

- Quantitative targets for habitat disturbance should be developed prior to the finalisation of the management plan, or at some point soon after gazettal of the reserve, provided this is technically feasible.\(^{117}\)

Once the working group resolved these issues to the satisfaction of the industry, the committee formalised its advice to the Minister for the Environment, which included a revised draft IMP incorporating changes as a result of the working group’s discussions.\(^{118}\) The working group was an unscheduled and time-consuming part of the MPA process and resulted in a delay of approximately 18 months in provision of the committee’s advice to the Marine Authority. This part of the process was, however, instrumental in obtaining petroleum industry support.

Advisory committee member surveys on completion of this part of the process showed that members were generally positive about the committee process, believing that appropriate information had been provided and that the conservation agency had provided good support and direction, although one member felt they had ‘steered’ the outcomes. Members felt that having an independent chair worked well, and that a non-representative committee membership contributed positively to the outcomes, given that members were knowledgeable about the area. Some members commented that despite the non-representative nature of appointment, members had difficulty not reverting back to a ‘representative’ role. A weakness mentioned by many was the lack of, or unclear, policy directions provided at the start of the process, particularly with respect to the MMA category (NB: this was developed during the committee process). Two members commented that conservation interests were poorly represented on the committee. Members believed that the SRG mechanism was a strength of the process.\(^{119}\)

The Marine Authority considered the advice of the committee and working group and provided formal advice under s14 of the CALM Act to the Minister for the
Environment on 24 July 2003, recommending that formal public comment be sought.\(^\text{120}\)

5.3.4. Government approvals

While this proposal was being considered, the government were also considering a proposal for a major gas development (the Gorgan project), which involved extraction from a sub-sea reservoir located west of the Montebello Islands with gas processing on Barrow Island. This was relevant, as the proposal included new port facilities, major dredging operations and installation of pipelines that overlapped the proposed MPA. Government support for the proposed development was formalised in the signing of a *State Agreement for the Gorgon Joint Venture* with the joint venture parties on 9 September 2003, meaning that the MPA proposal would need to be compatible with the project.

On 17 February 2004 the NOI and IMP were released for formal public comment in accordance with the CALM Act. Also finalised soon after was the *Memorandum of Understanding between the Department of Industry and Resources and the Environmental Protection Authority for Offshore Exploration and Production* (3 June 2004). This policy effectively addressed concerns and hence removed a key obstacle to industry support for the MPAs.

The Marine Authority considered the public submissions to the IMP and on 12 August 2004 provided a report in accordance with 14(6)(a) of the CALM Act, recommending the creation of the three MPAs. The Marine Authority recommended several changes to the IMP:\(^\text{121}\)

- Minor changes to the boundary of the Barrow Island Marine Park.
- Removal of inter-tidal areas from the proposed MPAs where these were already vested as terrestrial conservations areas (NB: this was a legal issue that precluded the gazettal of these areas as originally proposed).
- Removal of the Barrow Island and Lowendal ports gazetted under the *Shipping and Pilotage Act 1967* from the areas proposed to be vested.\(^1\)

\(^1\) Government legal advice in July 2004 recommended against an overlap of MPA and ports gazetted under the *Shipping and Pilotage Act 1967*. 97
The Barrow Island MMA, the Montebello Islands Marine Park, and the Barrow Islands Marine Park were legally established on 10 December 2004. ¹²²

In the final government approval several significant changes were made to the proposal recommended by the Marine Authority. This included the complete removal of the proposed Barrow Shoals conservation area (18,860 ha and the second largest no-take area proposed for all three proposed MPAs) and reduction of the proposed Northern Montebello no-take zone (by 1,116 ha or 18 per cent).

5.4. DAMPIER ARCHIPELAGO

The Dampier MPA proposal commenced in 2000 with the adoption of an agreed ‘study area’ and consultative mechanisms to support the planning process by the Marine Authority and the Ministers for the Environment, Fisheries and Mines (MPRA 2000a). Defining an agreed study area was a new step in the MPA process undertaken to specifically avoid difficulties encountered with the Jurien model and provide guidance for the advisory committee on the area for potential MPA vesting. Before the public participation process commenced three key issues arose in respect to the setting of a study area (discussed below).

5.4.1. Study area

5.4.2.1 Nickol Bay

Nickol Bay is a large bay on the eastern side of the Dampier Archipelago, and is the focus of the Nickol Bay commercial prawn trawling operation worth between $1.2–1.4 million annually (CALM 2000a). The conservation agency proposed a study area that included Nickol Bay; however, the fisheries agency opposed its inclusion on the basis of the high fisheries value, opposition by the commercial groups concerned, and concern that this would be a major issue and distraction in the planning process. ¹²³ After further discussions, a compromise was reached whereby the study area was amended to include a coastal strip (given the important inter-tidal habitats and mangroves), but the remainder excluded minimising overlap with the trawl fishery. While this appeared to be a sensible decision at the time, it later emerged as an ongoing and unwanted distraction during the planning process.

5.4.2.2 Dampier Port

When the study area was being set (1999), there had been little consideration of the potential legal and management implications of an overlap between MPAs and port
waters gazetted under the *Port Authorities Act 1999*. The 1994 MPRSWG recommendations avoided an overlap; however, a subsequent expansion of the port created a significant overlap and incorporated important marine habitats. There was no definitive legal position on whether MPAs could overlap with gazetted ports and the study area included the Dampier Port. While this was accepted at the time as a starting position, the issue of the overlap between ports and MPAs quickly emerged as a significant issue in the planning process.

### 5.4.2.3 Cape Preston

The conservation agency believed that it would be sensible to include the Cape Preston area (a separate area proposed under the MPRSWG), given that they were geographically close, had similar stakeholders and two MPAs could be dealt with simultaneously, thus saving agency resources. The fisheries agency was not supportive of this on the grounds that it was a low priority and would be an unnecessary distraction in the planning process.\(^{124}\) Despite these concerns, Cape Preston was included and while this was logical, the inclusion of Cape Preston eventually became problematic due to industry development proposals for the area.

#### 5.4.2. Committee establishment

The Minister requested nominations for an advisory committee in May 1999.\(^ {125}\) The membership of the committee was ‘non-representative’, had an independent non-government chair, no government representatives and preferential appointment of local people. The selection of members for the committee was complex, given the wide range of issues, users and interests, with issues arising in Indigenous, agency and peak stakeholder bodies.

The matter of Indigenous representation was problematic, as at the time there were four claims lodged under the *Native Title Act 1993* awaiting mediation by the Federal Court that overlayed the study area, with significant overlaps between individual claims. If native title had been resolved committee membership would have included the nominated representative(s) of the registered native titleholder(s). However given the disputed claims this was not possible (i.e., therefore needing multiple representatives from conflicting claimant groups). Native title was unlikely to be resolved in the life of the MPA process, and appointing multiple claimants had the potential to cause division, conflict and be a major distraction. In the face of these
issues, and limited practical alternatives, the then Minister for the Environment appointed a single non-aligned Indigenous person with knowledge, expertise and understanding of Indigenous values.

The policy of government agencies not being represented caused agency concern. This issue was resolved by confirming that government representatives would be invited to meetings as observers, provision of access to all committee outputs and a commitment to form a ‘Government Representatives Group’ that would be regularly informed of progress, outputs and provide a mechanism for agencies to provide feedback.

Issues arose with the membership policy of appointing locally-based people rather than state-wide sectoral interests. The agency response to this was that state-wide peak bodies could attend meetings as observers and provide input directly to the committee via SRGs or directly to the Department. All outputs and minutes of the committee would be provided to ensure transparency. Local recreational fishers were appointed in preference to state-wide recreational fishing representatives (i.e., Recfishwest), which was an ongoing issue.

The formation and membership of the Dampier Archipelago/Cape Preston Advisory Committee was formally announced by the Minister for the Environment in June 2000. The committee included members who had expertise in one or more of the following areas: conservation, shipping and ports, Indigenous issues, petroleum, commercial fishing, recreational fishing, aquaculture/pearling, tourism and science.

5.4.3. Public participation

The committee met for the first time in August 2000, and met a total of nine times to develop a draft IMP. The committee met for a total of 14 full meeting days over a three-year period in developing the proposal. They provided their advice in June 2003, and met one final time following the release of the IMP to consider formal public comment.

The three-year committee process was supported by:

- SRGs for the major marine stakeholders.
- The government agency reference group.
- Local communication programmes (e.g., media, public displays and presentations).

- Three rounds of non-statutory public submission on the proposed zoning.

The committee provided its advice to the Minister for the Environment on 3 June 2003, including the provision of a draft IMP. This highlighted the extensive input from SRGs and the broader community to develop consensus, but that it was a difficult and complex process, with specific mention of the difficulty in engaging the Indigenous community, the complexities due to native title negotiations and the need for further consultation. The committee also raised boundary issues, believing that the port should have been included, but given the government advice they accepted the need to excise it from the proposed MPA. However, they highlighted the importance of these waters to the local community and recommended the integration of the port and MPA management. On the issue of Nickol Bay, they advised that the local community believed this area should be included; however, the committee could not reach consensus on this matter and recommended further consideration by the Marine Authority and government. They also highlighted the critical importance of appropriate management resources for future management, given the high use of the area.\textsuperscript{127}

The Marine Authority provided its statutory advice on 29 August 2003, supporting the draft zoning scheme developed by the committee and stating that the Marine Authority believed that this was ‘a good balance’ and noting concerns from recreational fishers: ‘\textit{It needs to be said that some of the local recreational fishing community did not support this scheme. Some even objected to designation of no-take zones at all.}’\textsuperscript{128} The Marine Authority highlighted other issues, including ecological management targets, Indigenous consultation, recommending that the Dampier Port boundary be amended as negotiated with the conservation agency and that the issue of the placement of the boundary in Nickol Bay be reviewed during the public submission period.

From late 2003 to the end of 2004, the government considered a range of issues and concerns raised by marine stakeholders, local political representatives, ministers and agencies in respect to the proposal. The delay in approving the MPA proposal to be released for formal public comment highlighted the concerns regarding public
reaction to the proposal, particularly of the local recreational fishing community, who voiced concerns with respect to the proposed zoning and the adequacy of consultation.

The Minister for the Environment considered the advice of both the Marine Authority and the committee, and then directed the conservation agency to undertake an additional round of consultation with the SRGs prior to government approval of the IMP for public comment. The conservation agency sought this feedback on 6 November 2003, requesting comment on any issues that had not been resolved/addressed and were still of concern. Following this extra round of consultation, the Marine Authority reconsidered the proposal and provided unchanged advice to the Minister for the Environment on 4 February 2004.129

Following extensive consideration, government decisions were made with respect to the proposed zoning scheme that would be released for public comment. These decisions were made immediately prior to the State Government election, and were announced by the Minister for Fisheries and the Local Member for Burrup on 10 December 2004. The media release stated that: ‘Further consultation with recreational fishing groups held throughout this year has resulted in changes to the zones originally proposed by the advisory committee.’130

The NOI to create the Dampier Archipelago Marine Park and Cape Preston MMA was subsequently published in the Gazette (11 January 2005), with the release of the IMP for the statutory three-month public comment period.131 The government made significant changes to the proposal recommended by the committee and Marine Authority, with no consultation on these amendments with either body prior to its release.132 These changes were introduced following consultation with local recreational fishing representatives, and included removal of three no-take zones (changed to special purpose zones that allowed recreational fishing); exclusion of most forms of commercial fishing from the western part of the Archipelago and prohibiting prawn trawling within 1 nm of the Nickol Bay coast.133

There was criticism of these changes and the reasons for them, with the WA Fishing Industry Council (WAFIC) expressing concern that government changes were ‘the result of last minute negotiations between the previous Minister for Fisheries, the Minister for the Environment, local Labor politicians and recreational fishing
representatives’ and that they assumed that the changes were for ‘short-term political gain at significant expense to the commercial fishing industry’. WAFIC concluded that the plan was a ‘blatantly inequitable discriminatory document against the fishing industry’.¹³⁴

While definitive conclusions cannot be made about the reasons behind the changes, media quotes below suggest the view of some that with the State Government election imminent, changes were made to avoid negative impacts on the re-election prospects of the sitting Local Member, and as a trade-off for significant increases in no-take zones in NMP to win more of the ‘green’ vote.

The State Government has defused one political time bomb but detonated another with plans for another round of restrictions in popular fishing areas off the coast. It solved one problem in a marginal electorate by cutting proposed sanctuaries from 28 per cent¹ to just 7 per cent in the Dampier Archipelago.

Conservationists are also unhappy claiming good science has been sacrificed for political gain in the Dampier Archipelago and that such a small no-take was of little value.

The decisions to cut proposed sanctuaries there was made after locals told Labor MP [name excluded] he faced a big backlash if fishing was banned in popular hotspots like Rosemary Island and South-West Regnard Island. “We went to [name excluded] and put heavy pressure on to make changes which were more acceptable to the general public” Game Fishing Association President [name excluded] said.¹³⁵

The view that decisions were politically motivated was reiterated by the Recreational Fishing Alliance, as quoted in the Pilbara News on 23 February 2005:

The alliance said the government will only close small areas in the Dampier region to recreational fishers to ensure it is re-elected in a marginal seat, but may introduce further no-fishing zones after the election.¹³⁶

At the request of the Minister for the Environment, the advisory committee re-convened in February 2006 to review the public submissions received and provide

¹ NB this figure was incorrectly quoted; it should have stated 10 per cent.
advice on the submissions. The committee advised that no new issues had been raised that changed their original recommendations and on 10 April 2006 reiterated their original advice, recommending that the zoning be returned back to what they had originally recommended. They also expressed concern about the planning process and changes that were made to the committee’s original recommendations. The Marine Authority considered the advice from the committee and supported gazettal, but recommended the zoning scheme be amended consistent with the committee recommendations.

The five-year period from 2006 to 2011 involved further work and government consideration of a range of tenure matters related to the establishment of the MPA, including:

- Potential conflicts with the State Agreement Act for the Cape Preston Iron Ore project requiring major boundary amendments to facilitate the project.
- Proposed boundary amendments of the Dampier Port and Port Walcott.
- Development of a MOU with the Dampier Port Authority.
- Technical descriptions and mapping of areas under discussion.
- Proposed developments at Dixon Island and the Maitland industrial estate.
- Policy, legislative and boundary issues related to the Native Title Act.

Since 2006, no statutory actions had been undertaken to further progress the establishment of the MPA, even though the government remains committed to establishing the proposed MPA.

5.5. Ningaloo Marine Park

5.5.1. Background

NMP was established in 1987 and a management plan approved in 1989. The CALM Act provides for 10-year management plans (s.55[1][a]); however, the Act does also state a management plan remains in force if it is not formally revoked (s.55[2]). This means that while there is a general intent to review management plans every 10 years, this is not a legislative requirement.

In the expectation of the review of the NMP Plan becoming a priority, the conservation agency began consultation and information gathering in 1999. There
was, however, no government commitment to commence the process, with the only reference to Ningaloo in the 2001 Labor policy platform being a commitment to seek World Heritage Listing of the Park.\textsuperscript{140}

The 1994 MPRSWG Report recommended extending the NMP to encompass the complete Ningaloo Reef within the marine park (an approximate 60 km extension). The Marine Authority provided advice to the Minister for the Environment in 1998 supporting the consideration of the extension as a high priority.\textsuperscript{141} In April 2001 the Marine Authority resolved to formally support the review of the NMP management plan, and to recommend consideration of a southern extension to the Park.\textsuperscript{142}

No decisions were made to progress the NMP process between 2001 and mid-2003 while government considered issues associated with the broader MPA programme. Following resolution of a number of cross-government MPA issues, including agreement to proceed with the creation of the Jurien MPA in 2003, formal support for commencing the Ningaloo process was provided in April 2003.

The Ningaloo Coast was a major focus of the State Government during its 2001–2005 term of government. Key political influences on the NMP process were the events associated with the proposed Maud’s Landing development (adjacent to the NMP). The proposal to develop a large commercial tourist and residential complex and marina at Maud’s Landing was endorsed by government in 1989 subject to the environmental and planning approvals. In 1997 the Minister for the Environment rejected the development as outlined and a revised proposal was given conditional approval by Cabinet in 1999.\textsuperscript{143} In 2000 the EPA set the highest level of environmental assessment and the proponent commenced the assessment process.\textsuperscript{144} The proposal was strongly opposed by conservation groups and triggered the formation of the Save Ningaloo group—a coalition of environmental groups and individuals opposed to the development. Save Ningaloo were well organised, and actively campaigned to oppose the coastal development, building significant community support as evidenced by a public rally opposing the development in Fremantle in December 2002, where an estimated 15,000 people attended.\textsuperscript{145}

The EPA released its advice on the proposed development in October 2002, recommending against the development proceeding unless ‘the government is able to develop sustainable planning processes and commit the necessary resources for the
protection of the environmental values of surrounding marine and coastal areas.\textsuperscript{146}

The public attitudes to the Ningaloo development were evidenced through a newspaper poll, which found that about 60 per cent opposed the Maud’s Landing development and 54 per cent opposing any further development.\textsuperscript{147} The government subsequently rejected the development on the 4 July 2003.

The Save Ningaloo group then moved to campaigning on broader protection issues; specifically, the Ningaloo Coast Planning Strategies and the NMP management planning process. This was a significant factor for the MPA planning process, as it focused an established conservation support base and established campaign networks to increasing protection of the Ningaloo Reef and established a broad constituency and political support for the protection of NMP.

The WA Planning Commission undertook a major regional planning exercise that culminated in the release of a regional coastal strategy for public comment in May 2004. This was finalised in August 2004, with the approval of the \textit{Ningaloo Coast Regional Strategy Carnarvon to Exmouth} (WA Planning Commission 2004). This strategy focused on land-based coastal development and management issues (adjacent to the NMP) for the area, with particular detail on the location, scale and type of tourism and infrastructure developments that would be allowed in the future. It also committed government to new governance arrangements for planning and development control through the establishment of a statutory authority with development control powers, a new Ningaloo Sustainable Development Office and a statement of planning policy (the highest order of planning policy in WA) to guide future development (Western Australian Planning Commission 2004). The government was elected in 2001, with an election commitment to nominate the Ningaloo Region for World Heritage listing.\textsuperscript{148}

\section*{5.5.2. Public participation}

The public participation process for the review of the NMP included a ‘Have Your Say’ advertisement (December 1999) seeking public input on the future upcoming review. Over a two-year period the conservation agency collated and analysed a range of biophysical and social information and undertook an internal review of the 1989 management plan to determine the extent of implementation and relevance for the revised management plan.\textsuperscript{149} While government approval to commence was in
limbo (i.e., in 2000–2003) the conservation agency undertook informal consultation with stakeholders and agencies with regard to the upcoming process.

With government support provided in April 2003, the conservation agency formally commenced the preparation of the draft management plan for NMP and proposed extension of the Park. The Marine Authority released a ‘framework’ document for public comment. This document was to ‘provide the Department [CALM], the CCPAC and key community stakeholders with guidance as to the broad direction the MPRA believe the planning process should take.’ (MPRA 2003). This included a suggested vision, strategic and management objectives, operational targets and positions on key issues likely to be controversial, such as the revised zoning scheme, recreational and commercial fishing, recreation and tourism, access for the petroleum industry, management of boating at Coral Bay and the southern extension of the Park (MPRA 2003). The Marine Authority highlighted that no-take zones were unrepresentative and did not meet the minimum recommended dimensions or size as prescribed by the Representative Areas Programme (RAP) for the GBRMP Authority (Day et al. 2000). This set a clear ‘top-down’ priority on amending the zoning scheme to increase the number and size of no-take zones to meet the RAP criteria, which were considered by the Marine Authority as the currently accepted scientific criteria.

This was the first time in WA where the criteria and targets for zoning were prescribed prior to the public participation process. In previous processes the zoning and associated criteria were developed largely within the community process, and this was a significant driver for the re-zoning process. In the absence of a government policy prescription this set a clear conservation priority.

The CCPAC was already established to provide community input into the management of the NMP and the Cape Range National Park. The membership was revised to ensure it was appropriate for the NMP review, and a new committee appointed with an amended terms of reference to provide community input and feedback on the review of the NMP management plan and proposed extension. The revised CCPAC met for the first time in July 2003 and considered issues associated with the Ningaloo review. The conservation agency subsequently undertook local consultation including open days, presentations and displays.
In December 2003 the conservation agency released the *First Draft of the Proposed Zoning for NMP and the Proposed Additions to the Reserve System* for public comment for two months, providing a starting point for community discussions on zoning amendments to meet the Marine Authority’s requirements while minimising where possible the impacts on existing activities, such as fishing. Submissions were received and summarised by the conservation agency in February 2004\textsuperscript{151} for consideration by the CCPAC. The majority of submissions received related to the proposed new no-take zones and extensions to existing zones. In summary:

- Government agency submissions supported the zoning scheme, although the fisheries agency was concerned about the marking and enforcement of seaward boundaries.

- Seventy-two per cent of group submissions had no objection or suggested an increase in no-take zones, while 28 per cent suggested less area.

- Forty-four per cent of individual submissions had no objection or supported a greater area of no-take, while 56 per cent of individual respondents supported a reduction in the area of proposed no-take.

- The majority of submissions supported the southern extension of the NMP.\textsuperscript{152}

In March 2004 the committee considered the submissions and provided advice to the agency and Marine Authority generally supporting the draft proposals, except for some specific changes to some zones and highlighting some zones for which the committee could not reach consensus.\textsuperscript{153} This completed the CCPAC’s role in providing advice, having met for four days over a period of only eight months.

The public participation process for Ningaloo contrasted with other MPA case studies reviewed. The Marine Authority and the conservation agency were pivotal in driving the process, seeking comments and preparing management options, as well as in preparing the draft management plans (i.e., more of a ‘top-down’ process). The committee was used primarily as a source of community input rather than the central mechanism to develop the proposals. Analysis of records\textsuperscript{154} suggests that while the CCPAC did influence various finer details of the zoning, their role was much less influential in respect to MPA zoning outcomes compared to other MPA processes. The Marine Authority provided their statutory advice to the Minister, recommending release of the draft management plan for public comment in May 2004.\textsuperscript{155}
Ministerial approvals were obtained in July 2004 and the release of plans for the statutory three-month public comment occurred on 26 July 2004.

5.5.3. Government approvals

The government made no changes to the proposals recommended by the Marine Authority. The key recommendations of the draft management plan were:

- Extension of the marine park to the south to incorporate the whole reef, increasing the size of the park (state waters) from approximately 225,000 ha to 263,000 ha.
- A threefold increase in the area of no-take zones in the existing park, from 21,875 ha (10 per cent of the park) to 73,243 ha (28 per cent of the extended park).
- Expanded commitments for research, monitoring, education and public involvement.
- Improved management integration with the adjoining coastal lands.
- Establishment of a MMA for the Muiron and Sunday Islands (new, but not adjacent to the park) (MPRA and CALM 2004).

During the three-month public submission process (July–October 2004) the conservation agency undertook a range of activities to encourage submissions including; advertisements, media releases, website, ‘Have Your Say’ brochures, circulation of plans to all stakeholders, government agencies and a local community information programme (media, shopping centre displays, talks to key community groups, face-to-face discussions with campers).156

The statutory public submission period closed on 29 October 2004 and a total of 5,148 submissions were received. The majority were pro forma submissions, prepared by the Save Ningaloo conservation group and submitted by individuals, with other pro forma submissions from fishing groups and other conservation groups. The response was by far the most significant for a WA MPA (Jurien had 81 public submissions), and there were a significant number of interstate and international submissions, reflecting the high public interest in NMP (and perhaps the change to allow electronic submissions).

Submissions were highly polarised, with the conservation movement promoting a further extension of the no-take zones (despite these already being increased from 10
per cent to 28 per cent) and fishing interests believing the proposed zoning was far too restrictive, not supported by science and that there was no demonstrated need for such closures (MPRA and CALM 2005a). The key issues arising from the submissions were:

- Polarised views on the extension of the park either strongly supported (conservation) or opposed (fishing interests).

- Recommendations to significantly reduce the no-take zone on the basis that recreational fishing activities did not impact the marine environment and were sustainable; insufficient justification/evidence that sanctuaries were needed; that these zones were too large and/or located in areas that significantly impacted existing fishing.

- Recommendations to significantly increase no-take zones to a minimum 30–50 per cent of the Park to maintain biodiversity and be consistent with international scientific benchmarks; and because current use, particularly fishing, was impacting on the environment and not sustainable.

- Comments on specific zones—either supporting or not supporting; should be bigger/smaller; changes to proposed boundaries and identifying impacts on users (MPRA and CALM 2005a).

With a State Government election expected in late 2004 or early 2005, the government was keen to see the Ningaloo process finalised and the Marine Authority was encouraged to expedite their advice. The public submissions closed on 29 October, with the Authority providing its formal advice on 8 November 2004, supporting the plan with some minor changes to the zoning scheme to provide concessions and address recreational fishing concerns. This expedited process was not ideal and did not allow a thorough review of the submissions. The perception of fishing stakeholders was that the rapid review reflected a flawed process, with Recfishwest claiming that marine scientists had hijacked the process: ‘Public submissions closed on a Friday, they had the meeting on Tuesday and rejected any changes. What does that tell you about the consultation process?’ WAFIC also claiming a lack of proper process.

Final consideration of the extension and the management plan generated significant differences in the views of government agencies and ministers. While these policy
differences had been apparent for some time, the public interest in Ningaloo MP, and the awareness that the decisions would be made quickly prior to the election, providing limited time for stakeholders to lobby government, resulted in this policy divide and the different viewpoints moving into the public domain. The Member for Burrup publicly criticised his own government’s plan for Ningaloo through a radio news item on 11 November 2004, with a local newspaper quoting the member’s concern on 30 November 2004:

He also believes Premier Geoff Gallop has made a mistake to boost no-take zones to 34 per cent of the marine park and that “His biggest regret was he had not had the time to convince the government that 34 per cent was excessive for no-take zones and would not be supported by local people” and that [name removed], who moves from a safe margin of 15 per cent to 5.4 per cent in the new seat of North-West Coastal, which takes in Carnarvon and Exmouth, said he would not resign from the party over his disagreement, despite suggestions that it would cost him his seat.158

Following the final government decisions the Save Ningaloo group showed its support:

The Save Ningaloo Campaign today welcomed the government’s decision to increase protection at Ningaloo Reef. The outcome goes a long way to fulfilling the aspirations of many tens of thousands of people who have called for better protection of Ningaloo. By placing 34 per cent of Ningaloo Reef in no-take zones, the WA Government has heeded the call of the community and the advice of the world’s leading coral reef scientists.159

It should be noted here that there were concurrent government decisions on the Dampier MPA to reduce no-take zones to obtain the support of local recreational fishers (see Section 5.4).

Orders amending the boundary of the NMP were gazetted on 30 November 2004 together with a joint announcement by the Premier, Minister for the Environment and the Minister for Fisheries of the government decisions on zoning for the Park.160 The media statement quoted the Premier’s reasons for the changes post the Marine Authority advice (i.e., 26 per cent no-take zones recommended); ‘In response to
independent scientific advice, we will also increase the area of no-take zones to 34 per cent of the park. At this point the NMP zoning decisions publicised by the government had no statutory approval under the CALM Act and the detailed boundaries had not been formally agreed. This was publicised by way of a full page map in the state newspaper on 3 December 2004 showing the changes to the proposed zoning. Ministerial concurrence followed on 7 December 2004.

Significant changes were made by government on the management arrangements for the NMP after the formal public submission period and advice of the Marine Authority (i.e., between 8 November and 3 December 2004; see Table 5). Government endorsed major changes to increase the proportion of no-take zones from 26 per cent to 34 per cent, with the addition of new no-take zones that had not previously been considered during the planning process.

Conservation NGOs welcomed the announcements, which were consistent with their position that between 30–50 per cent of the Park should be set aside as no-take areas, with the proposed zoning consistent with the benchmark set through the GBRMP rezoning (i.e., 33 per cent). The NMP announcements were roundly criticised by fishing groups in the media, triggering a campaign against the government decisions and the MPA planning process in general, focusing on the designation of new no-take areas without community consultation. Almost daily media articles in this period reflected these concerns, and the subsequent public debate that unfolded between 30 November 2004 and the State Election in February 2005 reflected the highly polarised and political nature of the debate on NMP.
### Table 5 Development of management zoning for the NMP

<table>
<thead>
<tr>
<th>Zoning Iteration</th>
<th>No-take (per cent)</th>
<th>Rec. (per cent)</th>
<th>Special Purpose (per cent)</th>
<th>General Use (per cent)</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989 NMP management plan</td>
<td>10</td>
<td>24</td>
<td>0</td>
<td>66</td>
<td>Marine Authority review and identify ecological inadequacies and aspirations</td>
</tr>
<tr>
<td>First proposed zoning scheme (December 2003)</td>
<td>29</td>
<td>21</td>
<td>0</td>
<td>50</td>
<td>Developed by the conservation agency after initial consultation with stakeholders. Released for public comment and CCPAC provides advice to Marine Authority</td>
</tr>
<tr>
<td>Marine Authority recommendations (May 2004)</td>
<td>28</td>
<td>18</td>
<td>0</td>
<td>54</td>
<td>Marine Authority makes minor amendments following consideration of public comments and CCPAC advice</td>
</tr>
<tr>
<td>Draft plan released for statutory comment (July 2004)</td>
<td>28</td>
<td>18</td>
<td>0</td>
<td>54</td>
<td>Government releases draft plan for statutory public comment with no changes from that recommended by the Marine Authority</td>
</tr>
<tr>
<td>Marine Authority advice post-public submission period (November 2004)</td>
<td>26</td>
<td>18</td>
<td>2</td>
<td>54</td>
<td>Marine Authority considers public comments and makes several amendments to reduce impacts on recreational fishing</td>
</tr>
<tr>
<td>Government’s final decisions (December 2004)</td>
<td>34</td>
<td>14</td>
<td>2</td>
<td>50</td>
<td>Final government decisions made after ministerial discussions to increase sanctuaries by 8 per cent</td>
</tr>
</tbody>
</table>

An article in the *West Australian* on 9 December 2004 contained quotes from a senior fisheries agency staff member criticising the Marine Authority and the government’s proposed plan for NMP. The article stated the extended no-fishing zones were a ‘wrong decision based on bad advice from the Marine Parks and Reserves Authority’ and that ‘Wider fishing bans could devastate stocks in nearby waters as fishers crowd the few remaining spots along the coast’ The article also stated that: ‘The [Fisheries] Department claims there is no evidence that sanctuaries improve biodiversity.’

This criticism by a senior public servant and experienced fisheries scientist undermined the government’s position and provided support for opponents of the NMP proposals. This period also saw the formation of a political group to protect the
interest of recreational fisheries (the Recreational Fishing Alliance), who subsequently campaigned against the government in the 2005 election, with a media campaign criticising government MPA policy and decisions.

Following government announcements the opposition (Liberal) party developed a policy position (publicised on 10 December 2004) that the Ningaloo sanctuaries should be in a ‘similar range’ to the 28 per cent recommended in the draft management plan but allowing recreational fishers back into popular areas or allowing for certain recreational fishing activities in areas closed to fishing. This attempted to win pro-fisher voter support by being ‘less green’ than the government; however, it is interesting that this position was still supporting significant increases in no-take zones from the original management plan (10 per cent), and was essentially supporting the Marine Authority position, which had been soundly criticised by recreational fishing groups.

The view that the opposition party feared a political backlash was further enhanced when, just five days prior to the State election, a local candidate (Liberal party) publicly stated his view that if the Liberal Party were elected they would significantly reduce the level of no-take zones from 35 per cent to 11 per cent. The Liberal Party immediately rejected that this was their policy the day before the State election. This apparent sensitivity to community views on the protection of Ningaloo showed its state-wide political importance, and adds to the view that despite the ability to win local community (and some state-wide) support for a pro-fishing stance, there was a greater and stronger desire to capture the strong state-wide support for protection of NMP.

The management plan was formally gazetted by the Minister for the Environment on 14 January 2005. The statutory decisions on the Ningaloo MP resulted in a further wave of community response either praising the government’s decisions or protesting the decisions and their validity, with lobbying of Members of Parliament to have the decisions overturned or amended. There were also subsequent threats of legal action against the State Government by the WA Game Fishing Association on 13 January 2005, Ombudsman complaints, and questions in Parliament.

The new boundaries of the Ningaloo MP were gazetted on 30 November 2004 and the management plan formally gazetted by the Minister for the Environment on 14
The legal orders to implement the new zoning arrangements were gazetted on 21 January 2005 and legal orders implementing the new restrictions applying to recreational and commercial fishing were gazetted on 9 September 2005. The establishment of the legal framework was exceptionally rapid due to firm government commitments to have the park extended and the management plan approved before the February 2005 election.

When the approval of the management plan was announced, the Minister for the Environment declared that $8.5m would be allocated to the conservation and fisheries agencies over four years for the management of the expanded marine park. Research and monitoring was allocated a significant component ($5m) in response to criticism that there was insufficient scientific data to base the NMP zoning changes. This funding allocation was considerable, contrasting with previous MPAs where there was no allocation (e.g., Shark Bay Marine Park) and the Jurien MPA, which was allocated with a budget an order of magnitude less than that of NMP.

5.6. CAPES

5.6.1. Committee establishment

The conservation agency recommended to government that an advisory committee be formed to consider the Capes MPA proposal, noting the Marine Authority’s support in March 2002. By October 2002 ministerial support (from the ministers responsible for fisheries and state development) had been received, and in March 2003 the Minister for the Environment announced the intention to form the committee and announced the formation of the committee in August 2003.

The committee membership drew criticism from some state-wide stakeholder groups who applied but were not appointed to the committee. This decision was based on the policy of preferentially appointing local people to committees, rather than representatives of state-wide sectoral groups, adopted following a review of the operation of the Jurien process. This was a point of contention primarily with state-wide fishing organisations who believed they should have had a greater role in the committee process.
5.6.2. Public participation

Government’s goal was to release the IMP before the election, which was ambitious and placed considerable time constraints on the public participation process, particularly the committee process, where the expectation was to provide their advice in six months (NB: most other committee processes had taken two to three years).

The advisory committee met for the first time on 3–5 September 2003 and met eight times (15 meeting days) over a 12-month period to develop the MPA proposal. The committee worked progressively through the development of the proposed boundaries, zoning and management plan, with zoning the most difficult issue, requiring four committee meetings and input from SRGs and stakeholder representatives. Significant issues related to the justification for no-take zones, the appropriate design criteria for temperate no-take zones, and consideration of impacts and compensation of commercial fishers.

The Capes MPA process was strongly supported by SRGs, which were active in holding meetings, discussing positions and providing regular feedback into the committee process with significant support by the conservation agency. These groups were very successful in ensuring a wider network of information dissemination and in developing sectoral positions. This supported the committee by providing a clear view of the breadth of stakeholder views and enabling members to make informed decisions, and ensured that the proposal was more widely understood by the community and helped developed greater community ownership.

The committee provided its advice to the Minister for the Environment on 18 August 2004, recommending the creation of a marine park over the area in accordance with a draft IMP and zoning scheme developed by the committee. The committee met a further two times to inform the committee members of the impending IMP release (September 2006), and for a further meeting to review the public submissions process and provided further advice on recommended amendments (March 2007).

This compressed process allowed limited time between meetings to consult with the broader community, and consider committee papers, submissions and outputs. To complete the proposal in this time was a major achievement given the high level of public and local community interest. Notwithstanding this success, analysis of the documentation highlighted issues that complicated the committee process:
• Concerns from State Government agencies and key marine stakeholders with regard to membership of the committee and opportunities for input.

• The compressed period to develop the proposal and the limited time between meetings to consult with the community and stakeholders, as well as the perception of members and the community that the deadlines set by government were inappropriate and forced the process.

• Absence of clear guidance from government on the proposed zoning outcomes expected, particularly with respect to the extent to which the committee should pursue the CAR principle for no-take zones, given these related compensation implications.

The Marine Authority reviewed the committee’s advice and, at the request of the Minister, undertook an additional round of consultation with key marine stakeholder groups (9 September 2004) to assess the degree of stakeholder and community support. Key marine stakeholders presented their views to the Marine Authority and raised the following issues: 178

1. The planning process:

• Timing was considered too fast by fishing stakeholders and adequate by all other stakeholders.

• Representation of the advisory committee, including peak body representation (fishing stakeholders).

• Suggestions to change some aspects of the planning process (fishing stakeholders), including the timing of resource analysis and economic considerations (commercial fishing).

• The view that the Marine Authority were not in a position to make judgments on economic implications, but need to demonstrate that economic implications are understood and have been considered.

2. Insufficient scientific rationale and justification for no-take zones.

3. Disagreement with the use of no-takes zones in MPAs, with polarised views ranging from no-take zones being too big and unnecessary, with others
suggesting they were too small to be effective and not representative of marine habitats.

The Marine Authority provided its formal advice recommending release of the IMP for public comment (30 September 2004) and supporting the recommendations of the committee, with several minor amendments. It noted the strong support of the community and the need to proceed quickly:

*We stress that we believe there is strong community support for this proposal, especially in the Capes area itself and there is a strong expectation that the government’s stated intention to create a marine park in the Capes region will be brought into effect as an outcome of the extensive community consultation that has taken place. A lengthy delay in implementation would be very undesirable and cause loss of much of the goodwill that has been established.*  

At this point in time the conservation agency had resource limitations due to commitments for the resolution of planning and legal processes for a number of other MPA establishment activities prior to the State Government election (February 2005). This limited the capacity to prepare plans and legal documents for the release of the MPA proposal, and the Capes MPA proposal was subsequently deferred pending the election and other higher priority MPA establishment processes.

### 5.6.3. Government approvals

Following the election on 27 June 2005, the Marine Authority wrote to the Minister for the Environment recommending that priority be given to the consideration and release of the Capes proposal. Potential impacts on commercial fishing and uncertainty over the potential government liability for compensation to commercial fishing interests were major issues and obstacles to the progression of the proposal. The major focus and concerns related to the abalone fishery, given the high commercial value of the fishery and its focus on the shallow waters encompassed by the MPA proposal and proposed no-take zones.

Notwithstanding industry participation in the planning process and their input to reduce impacts on the fishery, there were still zones proposed that impacted on the fishery and the following concerns were raised:

- Impacts on their day-to-day activities.
• Whether they would be paid compensation for this impact, the methodology for estimating fishery impacts and compensation and how compensation would be paid (and to whom).

• The potential impact of closures on the sustainability of the fishery, including management changes required to ensure sustainability (e.g., reduced quotas).

The uncertainty around potential impacts, future fishery management and compensation was heightened by the fact that the government had yet to deal with any claims for compensation by commercial fishing interests under the state *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* (FRICMR Act). While the creation of the Jurien MPA in 2003, and the subsequent extension and amendment of the NMP, had some minor impacts on commercial fishing activities, the Capes proposal was the first MPA in the state where a significant and readily identifiable financial impact on commercial fishers was likely. There was no precedent in the State as to how claims would be handled, how compensation would be calculated and how it would be paid, nor were there policy or administrative guidelines to guide the implementation of the compensation legislation.

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The abalone fishery is a ‘quota managed fishery’, with a small number of commercial fishers with fishing units (i.e., quotas) that have an identifiable market value. Given the very localised and habitat-dependent nature of abalone, the fishers could make a direct case for compensation due to impacts of spatial restrictions. This contrasted with the complexities of determining the potential fishery impacts for input controlled commercial finfish and rock lobster fisheries targeting mobile species.

The absence of an informed and quantitative estimate of the potential compensation liability was a key factor with commercial fisheries representatives, fisheries agencies, conservation agencies and other representatives all having opinions on what this could be. Fisheries interests had incentives to over-estimate compensation, to facilitate large payments if the MPA was established, or creating a situation where government abandoned the MPA proposal or removed fishing closure areas due to the expected compensation cost of implementing the MPA. In contrast, the conservation agency and conservation stakeholders had incentives to underestimate compensation (and hence socio-economic impact) to increase the overall
The attractiveness of the MPA proposal to government. The result was an unresolvable debate over the potential cost of implementing the MPA with wide-ranging upper and lower limits of compensation.

The Chair of the advisory committee noted that the compensation issue was a key matter that affected the ability of the committee to develop a draft zoning scheme and in particular, to meet the objective of implementing a system of CAR no-take zones. He stated that:

*The advisory committee did extensively discuss the issue of compensation. However, advice from yourself [the Minister for the Environment], the Executive Director of CALM and the Executive Director of Fisheries, felt it was most appropriate to highlight the issue for consideration by government.*

He also recommended that based on the Capes experience, that:

*...for future planning processes, provide more guidance on the matter of compensation before commencing such a process.*

Following inter-agency discussions through the newly formed Inter-Departmental Committee on MPAs (IDC), government marine agencies resolved to undertake actions to address the lack of general guidelines for compensation claims, as well as address the information needed to quantify potential claims in the Capes proposal. These actions are listed below.

1. Formation of a working group in 2005 to develop administrative guidelines for the administration of claims under the FRICMR Act. This group developed draft guidelines that were provided to the Executive Director of the fisheries agency in January 2006. The policy guidelines and an operational framework were approved by the Minister for Fisheries in November 2006.

2. The fisheries agency engaged an economist to estimate the potential compensation liability for affected fisheries. This consultant delivered confidential compensation estimates in January 2006.

3. The conservation and fisheries agencies agreed to jointly fund a field survey of abalone abundance in proposed no-take zones to provide a more definitive and defendable estimate of actual impacts. This survey was conducted in the summer/autumn of 2007, and a summary of the results was presented to abalone.
fishers on 17 August 2007, and a report produced summarising the results (Hesp et al. 2008).

4. Consultation occurred with key fishing stakeholders between 2005 and 2008 through the working group and specifically with the Abalone Association over survey methodology and the involvement of fishers in providing data to assist in determining impacts, potential compensation, administrative processes and determining if fishery management changes were required as a consequence of the implementation of the MPA.

Government discussions followed between the conservation and fisheries agencies (via the IDC) with respect to the compensation issues, and the detail of the draft IMP in respect to operational issues (e.g., compliance boundaries). A key issue for government was whether to put the Capes establishment on hold while the compensation issues were resolved, or proceed with statutory consultation and resolve issues with respect to fisheries compensation in parallel.

On 10 April 2006 the conservation and fisheries agencies agreed that the issues associated with compensation for commercial abalone fisheries had been sufficiently addressed and provided a joint response to progress the proposal. The government process to consider this matter had taken over 18 months (since the committee provided its advice) and this delay caused concern from some stakeholders, who were keen to see the MPA progressed. The Chair of the committee wrote to the Minister for the Environment on 10 April 2006, expressing disappointment that the Capes IMP had not been released.

The then Minister for the Environment obtained final approvals for public notification of the proposal on 22 May 2006 and subsequently the committee met (August 2006) to be informed about adjustments made to the proposal. The NOI and IMP were release for the statutory public submission period on 6 September 2006.

The public submission period closed on 15 December 2006 and 257 submissions were received. There was strong support for the reservation of the area as a marine park and vision for the park; however, there were a range of views on the management regime recommended. As with other MPAs reviewed, the proposed zoning arrangements were the principal point of contention. The summary states that ‘submissions were generally supportive of the zoning scheme and zones were needed,
well thought out and fair, and accommodated all stakeholders’ (DEC 2007). There were, however, submissions opposing the proposed no-take zones on the basis that there was limited justification, there was an oversimplified use of the precautionary principle,¹ and the view that the proposed MPA will result in greater impact on fish stocks (in particular abalone) due to displaced fishing effort.

The advisory committee met on 30 March 2007 to consider the key issues arising from the public submissions, including the proposed zoning scheme, moorings management, the Augusta Port and related boundary issues and issues associated with the Port Geographe marina.¹⁸⁸ The advisory committee were informed that it was the government’s intention to create the Capes Marine Park by the end of 2007.¹⁸⁹

In its advice the committee wrote that:

The Advisory Committee was pleased to see that the public submissions indicated a high level of overall support for the proposed zoning scheme and management plan with approximately 46 per cent of respondents indicating a good balance had been achieved between biodiversity conservation and sustainable use objectives. From the submissions a further 36 per cent of respondents stated that they would have liked more or significantly more emphasis on biodiversity conservation while 18 per cent of respondents indicated they would have liked more emphasis on greater use and access.¹⁹⁰

The Chair concluded that:

The public submissions reinforced our view that there is strong underlying community support for the conservation objectives for the proposed marine park while still providing for sustainable use.¹⁹¹

The Marine Authority received advice from the advisory committee on 9 May 2007 and provided its formal advice recommending the creation of the park and approval of the management plan on 7 August 2007. In the 7 August letter, the Marine Authority made specific reference to the following issues:

- Naming of the park.

¹ The precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage (Environmental Protection and Biodiversity Conservation Act 1999, section 391[2]).
• General configuration of zoning and specific zone proposals.
• Mooring, marina and jetty management.
• Management resourcing for the proposed park.\textsuperscript{192}

Of particular note were the Marine Authority’s comments on the zoning and potential compensation issues. They stated that the proposed zoning scheme attempted to meet ‘appropriate design principles for comprehensive, adequate and representative protection of marine biodiversity’, but noted the limitations of the end result in respect under-representation of some habitats, stating that: ‘The overall proportion of the proposed no-take zones within the marine park (approximately 11 per cent) also falls well below “best practice”....’ The Marine Authority also stated that they ‘would be concerned and disappointed if the proportion of no-take zone was further reduced as a result of compensation issues related to provisions under the Fishing and Related Industries Compensation (Marine Reserves) Act 1997.’\textsuperscript{193}

The compensation issue was a key obstacle to government approvals, as shown by the IDC minutes of 30 October 2007, which note that ‘further steps in the statutory process would be delayed until the conclusion of the survey of abalone distribution and abundance had been finalised.’\textsuperscript{194} Following consideration of the progress on this matter the fisheries agency further advised that ‘concurrence requests could be initiated now’

The work to address compensation issues were completed by 2007; however, as at December 2011, the government had not taken the statutory steps to create the Capes MPA (NB: the Ngari Capes Marine Park was established on 12 June 2012; however, this was outside the timeframe of this research).