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The Environment Centre NT

A WAY FORWARD ON DEVELOPING A LIVING RIVERS PROGRAM FOR THE NORTHERN TERRITORY

WWF-Australia and The Environment Centre NT

June 2006



A way forward on developing a Living Rivers Program for the Northern Territory

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Front cover image

Daly River, courtesy The Environment Centre NT

About WWF-Australia

WWF-Australia is part of the WWF International Network, the world's largest and most experienced independent conservation organisation. It has close to five million supporters and a global network active in more than 100 countries.

WWF's mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature, by:

- Conserving the world's biological diversity;
- Ensuring that the use of renewable natural resources is sustainable; and,
- Promoting the reduction of pollution and wasteful consumption.

With over 87, 000 supporters, and active projects in Australia and Oceania, WWF works to conserve and sustainably manage Australia's biodiversity and ecosystems. In Northern Australia, WWF is working to conserve and sustainably manage the region's 1.9 million square kilometres of tropical savannas and 1 million kilometres of rivers and creeks. Key threats include water resource development, broad scale land clearing, inappropriate mines and industrial development, altered fire regimes, weeds and feral animals, and over-grazing. We work to address such threats through on-ground work in partnership with communities and landholders, developing policy proposals for government and industry, and advocacy.

For more information regarding this proposal or WWF's work in Northern Australia, contact the WWF Darwin office on tel 08 8941 7554, or visit wwf.org.au.

About The Environment Centre Northern Territory

The Environment Centre Northern Territory (ECNT) is the peak non-government environment group in the Territory. Established in 1983, ECNT has played a crucial role in improving environmental protection and management throughout the Territory.

ECNT works to promote environmental awareness, involve the public in conservation issues and lobby government and industry to improve their environmental performance.

We have a well-established record of advocacy for the protection and sustainable management of freshwater and saltwater ecosystems in the Northern Territory. In recent years in particular, we have made a significant contribution towards the community campaign to protect the Daly River from the threats of large-scale land clearing and water extraction.

We rely heavily on our members, both to help direct and run The Environment Centre's activities and for the contribution that membership subscriptions make to our limited resources.

For more information please visit our website www.ecnt.org.

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Part A. Context for a living rivers program

1. Introduction

WWF-Australia and The Environment Centre NT developed this document to provide the Northern Territory Government with information and suggestions to inform the process as Government moves forward fulfilling commitments made during the June 2005 election campaign¹ in relation to a Living Rivers Program.

WWF-Australia and The Environment Centre NT are keen to be engaged in the development of such a program. Both organizations have considerable experience in river conservation and are keen to provide input, particularly during the development and establishment of key elements of a framework for implementing the Northern Territory's Living Rivers Program.

2. Territory rivers – valuable assets of Territory, their national and global value

River systems in the Northern Territory are some of the most significant aquatic assets in Australia.¹ The Australian Tropical Rivers Group states that

*Australia's tropical rivers are unique and form one of the last great river networks in less-impacted condition in the world today.... Targeted protective management is required for rivers, river reaches, floodplains, wetlands and estuaries that are particularly valuable assets.*²

Most of the Territory's rivers flow through catchments that have experienced little land clearing and are free of weirs and dams. Around 140,000 km of rivers and creeks in the Territory were identified as being largely undisturbed in the late 1990s (see Figure 1).³

River systems provide important free ecosystem goods and services which underpin the Territory's economy and unique lifestyle and which help support the natural resource base of social and economic development.

Ecosystem goods include clean water, fish, prawns, crabs, turtles, water plants and waterbirds. Ecosystem services include water purification, tourism, recreation, flooding of pastures for grazing, medicinal resources, and beauty.

Rivers in good ecological condition have important intrinsic values⁴ that are not easily measured or costed, but provide great enjoyment and peace-of-mind to Territorians and visitors from around the world.

Rivers and associated wetlands, floodplains and estuaries, are highly significant cultural and economic assets to Indigenous people, landholders, fishers and the tourism industry.

¹ Key public statements made by the Northern Territory Government regarding the Living Rivers program are provided in Appendix A
WWF-Australia and The Environment Centre NT

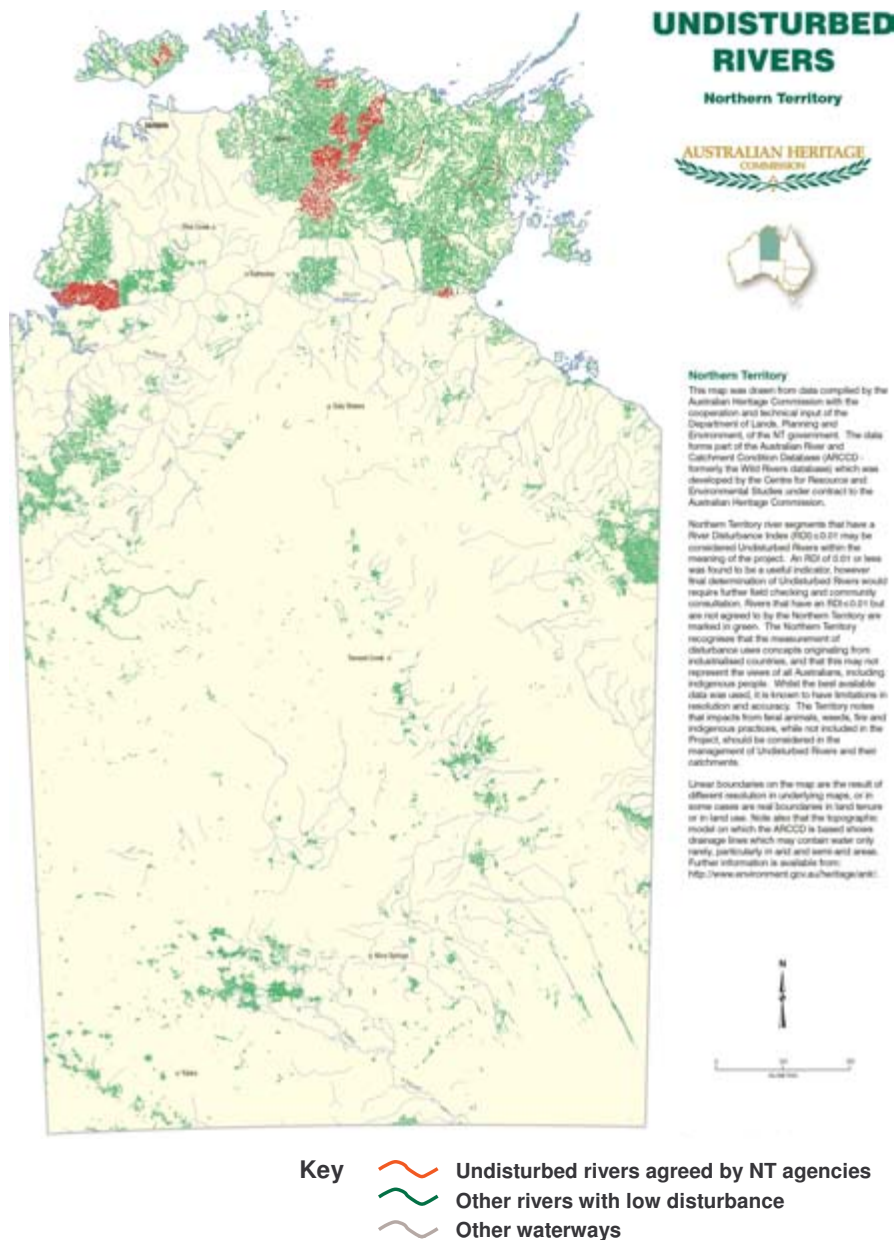


Figure 1 Rivers with low disturbance in the Northern Territory identified by the Australian Heritage Commission’s *Wild Rivers* project.⁵ Adapted from a map produced by the AHC of undisturbed rivers in the Northern Territory.⁶

Rivers that support important ecological values almost always also support significant cultural and recreational values for traditional owners, fishers and tourists.

3. National policy context

As a signatory to the National Water Initiative the Northern Territory is required to identify, manage, protect and enhance its high conservation value rivers, wetlands and groundwater ecosystems.⁷

Guidance for actions that will build greater national consistency amongst jurisdictions for the protection of high conservation value aquatic ecosystems, can be found in WWF's recent report *Key steps to securing Australia's natural water infrastructure assets*.⁸

The \$200 M Raising National Water Standards Programme, part of the Australian Government Water Fund established to assist implementation of the National Water Initiative, provides significant opportunities for assisting implementation of the Living Rivers Program through funding improved knowledge and understanding of rivers. Under the Programme, investments are sought explicitly in relation to "improve understanding and management of northern tropical rivers".⁹

4. An Investment in the Future: Maintaining river health is cheaper than restoration

The costs of repairing degraded natural ecosystems has been assessed by the Prime Minister's Science, Engineering and Innovation Council to be ten to one hundred times as much as maintaining good quality ecosystems.¹⁰

Maintaining the health of rivers that are least disturbed was found to secure the highest number of species per dollar invested and amongst the highest cost:benefit return for other ecosystems services, such as erosion control.¹¹

Part B. Legislative reform to create a *Living Rivers Act*

5. A window of opportunity for legislative reform

River health may be affected by the operation of many Territory statutes. In order to create an overarching policy framework for a comprehensive and effective Living Rivers program, the maintenance of river health should be enshrined in all relevant Territory laws, policies and processes.

As part of the ongoing review of natural resource and environment statutes, the Government should identify and address potentially conflicting or poorly integrated statutory provisions relating to the maintenance of river health.

To ensure ongoing political and public support for the Living Rivers Program attention should be directed at identifying specific opportunities for strengthening legislation with regard to increasing public participation in natural resource and land

use planning, ensuring culturally appropriate engagement with Indigenous communities, and enhancing transparency in decision making.

As an overarching principle in all decisions pertaining to rivers, the maintenance of river health and protection of ecological, cultural and recreational values should be seen as an overarching principle.

6. Specific recommendations for elements of a *Living Rivers Act*

WWF and ECNT recommend that a *Living Rivers Act* be developed, and fast-tracked to be approved by the final session of Parliament in 2007, to provide a framework for protecting natural, cultural and recreational values of Living Rivers.

Stand-alone river conservation laws exist in Victoria¹² and Queensland,¹³ as well as overseas.¹⁴ Western Australia has an administrative program for protecting almost 50 wild and high conservation value rivers.¹⁵

WWF and ECNT believe that a *Living Rivers Act* should contain the following core components:

Guidance for declaring Living Rivers

- Create a transparent, consultative and participatory process for nominating, evaluating, and designating individual rivers as Living Rivers by regulation;
- Adopt the principle that Living Rivers boundaries should be designated using catchment boundaries, wherever possible;
- Consider establishing more than one class of Living River to reflect the values of a Living River, level of protection and condition of a river system;

Protecting significant environments and values

- Establish ecological, cultural and recreational criteria for assessing the eligibility of rivers for consideration as Living Rivers;
- Create provision for zoning of management and protection levels within catchments, including comprehensive protection from major extractive use for particularly high conservation value rivers, creeks, floodplains, wetlands, groundwater systems and linkages, estuaries and riparian zones;
- Create provision for zoning a catchment according to the level of protection to be provided from particularly damaging forms of development, particularly rivers and wetlands that support significant ecological values;
- Ensure that other NT natural resource management legislation is consistent with the *Living Rivers Act*. Where there is a conflict between existing NRM legislation and the new Act the *Living Rivers Act* should prevail. This would reflect the legislative hierarchy established by similar statutes, such as the *Environment Protection Act* (WA) and *Wild Rivers Act* (Qld).
- Support the systematic appraisal and inventory of 'unique values' for each Living River and subsequent allocation of special management and protection;

Processes for prohibiting and regulating different forms of development, as appropriate

- Prohibit, or set maximum levels of, specific classes of development in areas of a Living River catchment zoned as special management areas, such as dam construction, clearing native vegetation, introduction of exotic fish and weeds, and instream mining. Prohibitions of some activities may be extended to the entire Living River catchment where appropriate. Prohibiting, as opposed to regulating, specific environmentally damaging activities and developments will provide greater certainty to landholders and financiers, reducing transaction costs for developers, as well as minimising administrative burdens upon government. Various precedents exist for prohibiting certain types of development in the Territory, such as political and administrative prohibitions on dams and cotton in the Daly. Providing a statutory basis for such prohibitions would provide greater clarity regarding the long term management of Living Rivers for all Territorians;
- Shift the burden of proof to developers to demonstrate if a proposed development or activity is likely to have a significant impact upon a declared Living River;
- Mandate stringent forms of environmental impact assessment and Environment Protection Authority approval for all activities in the catchment of a Living River, including mandatory public notification and opportunity to comment on proposed developments;
- Establish a moratorium on processing development applications and approvals during the period in which the declaration of a Living River is being considered;

Enhancing community involvement in decision making

- Require regular monitoring and public reporting on the condition of Living Rivers and progress towards achieving management targets;
- Include participatory consultation and culturally appropriate engagement, particularly with Indigenous communities and Native Title claimants;
- Create a transparent, consultative and participatory process for public nomination of individual rivers for consideration for designation as Living Rivers;
- Provide third party appeal rights, not just for neighbours, against decisions relating to Living Rivers;
- Provision for incentives to encourage active community involvement in management and protection of Living River values;

Protecting Indigenous peoples' rights and interests, facilitating development of livelihoods and sustainable development

- Provide protection for the legal rights and interests of Indigenous traditional owners to water and access to rivers in declared Living Rivers;
- Assist the development of livelihoods and capacity to manage country amongst Indigenous communities living or managing land within a Living River catchment;

Strong penalties for damaging a Living River

- Provide a clear enforcement and compliance regime, and provide monitoring and evaluating resources for assessing impacts on a Living River;

Parliamentary consent for revoking a Living Rivers declaration

- Provide legislative safeguards to prevent the winding back of Living River designations such as by requiring support by two-thirds of the Legislative Assembly for revocation of a declaration.

During the development of *Living Rivers Act*, valuable lessons may be drawn from approaches tackling similar issues or similar legislation. Examples include Wild Rivers (Queensland¹⁶, Western Australia¹⁷, New South Wales¹⁸), Heritage Rivers (Victoria¹⁹, Canada²⁰, US²¹), National Parks, Ramsar sites, Heritage sites, World Heritage sites, Marine Protected Areas, multiple- or sustainable-use forms of protected areas, and Shorebird Network sites.

Part C. Supporting arrangements and institutional reforms

7. Governance and administrative arrangements

WWF and ECNT propose that the provisions of a *Living Rivers Act* should be administered by the Department of Natural Resources, Environment and the Arts. The Environment Protection Authority and other relevant agencies would be expected to be involved on specific aspects, such as assessments, reporting, enforcement and compliance.

Given the multi-faceted nature of managing the values of Living Rivers, an interdepartmental committee and stakeholder reference group should be established. The interdepartmental committee should be vested with an appropriate authority and mandate to facilitate the implementation of the new legislation and to bring advice and expertise on specific issues.

8. Territory Rivers Assessment

The condition, values, threats and uses of Territory rivers should be assessed to provide a basis for designating Living Rivers. Cultural and recreational values could be ‘overlaid’ on ecological values to assist in choosing rivers for consideration as Living Rivers.

Various reports and databases already exist assessing, either directly²² or indirectly,²³ the ecological values of Territory rivers and associated wetlands and estuaries. As an example, WWF-Australia, Charles Darwin University and The Environment Centre NT released a report assessing the conservation value of aquatic environments in the Daly River catchment in late 2005.²⁴ Additional knowledge being generated from current programs will also yield potentially useful information in the near future, such as Land and Water Australia’s Tropical Rivers Program.

The catchments of approximately 36 river basins occurring wholly or predominantly within the Territory. With the vast majority being in relatively intact ecological condition, WWF and ECNT consider the declaration of 10 river systems, or about one-third of the number of catchments, as Living Rivers to be a realistic and appropriate indicative goal for the Northern Territory to achieve by 2010.

9. Protection for transboundary Wild/Living rivers and transboundary river management agreements

Rivers do not necessarily follow political borders. In fact many of the worlds greatest rivers pass through multiple countries or have catchments that cross a range of jurisdictional units. The situation is no different in Northern Australia, with several significant rivers crossing into Queensland or Western Australia. As an extension of its election pledge, the Northern Territory Government should provide a high profile to those Living Rivers that cross in to Queensland or Western Australia and work with those states to ensure complementary protection along the length of a river system. .

In the case of Queensland, the *Wild Rivers Act 2005* (Qld) states that the Queensland Government should work with other States to encourage the ‘preservation of the wild

ivers' values in the other State' where that river crosses a border.²⁵ The Queensland Government is proposing to declare Settlement Creek, which crosses the NT/Queensland border, as a wild river. The Queensland Government listed the Nicholson and Gregory Rivers as indicative wild rivers in 2004. The Georgina River may also be considered for declaration as a Wild River.

The Keep River that crosses the NT/WA border should be assessed for potential declaration as a Living River. Declaration would assist in protecting the ecological, cultural and recreational values of the river, and enhancing community involvement in decision making, with increasing pressure for clearing and irrigation in the catchment as part of the Ord River Irrigation Area Stage 2 proposal.

The Territory should seek to enter into transboundary river management agreements with these governments in relation to any transboundary river listed as a Living or Wild River in either jurisdiction. Precedents for such agreements exist for the Paroo²⁶ and Lake Eyre Basin²⁷ transboundary rivers.

10. Community consultation

Effective engagement of communities will be essential to the long-term success of a Living Rivers effort. Community consultation, communication and participation should be integral components of any programs designed to protect and manage the natural resource base of social and economic development. Valuable lessons may be learned from the experience in Queensland, in regard to consultation over the development of the *Wild Rivers Act 2005* (Qld) and from engaging with Indigenous traditional owners through the Daly Aboriginal Reference Group.

One option is to establish an advisory committee, such as a Water Advisory Committee under the *Water Act NT* (s23), to provide a forum for peak stakeholder groups to be consulted, provide advice and inform their member

11. Natural Resource Management investment in Living Rivers

One option for linking a Living Rivers to existing investments in natural resource management is to prioritise identified rivers for investment in on-ground works and planning through natural resource management processes.

For example, projects identified in the Northern Territory Integrated Natural Resource Management Plan relevant to Living Rivers could be prioritised for funding over the life of the strategy.

12. Research, Indigenous Knowledge and Monitoring

One option to strengthen a broad base of support for protection and management of Living Rivers is to establish partnerships formed between governments, researchers, knowledge providers, landholders, traditional owners, tourism operators and fishers.

In relation to the Daly River, the Douglas/Daly Research Farm could easily be expanded into a sustainable catchment management research centre by greatly strengthening ecological and sustainable land management research.

13. Tourism, Marketing and Communications

Living Rivers represent an immense tourism asset for the Northern Territory which should be marketed as an increasingly unique experience and opportunity. Opportunities exist for the development of nature and culture trails, tourism infrastructure and web-based communications materials for listed Living Rivers to influence individual choice in tourism destination. For example, web-based information could be developed for each Living River indicating sites of interest for tourism, such as protected areas open to the public, camp sites, bird-watching areas, boat ramps and sites of cultural significance. Up-to-date contact details and information regarding nature and culture-based tour operators could be provided.

A single Living Rivers web portal should be developed to assist tourists, fishers, traditional owners and other landholders, and the general public to access information regarding Living Rivers. Such a portal would assist interstate and international visitors to quickly and easily locate relevant information.

Appendix 1: “Living Rivers” references by the Territory Government

During the Territory election campaign in June 2005, the Northern Territory Labor Party committed to introducing “...a new ‘Living Rivers’ program and legislation to give special status to the management of our icon rivers providing them with greater protection...” and “...the Daly will be managed as part of a new and innovative ‘Living Rivers’ program. New legislation will give special status to our icon rivers, for the benefit of all users...”

Since then the Minister for Natural Resources, Environment and Heritage Marion Scrymgour has made the following comments regarding the Living Rivers program.

1. Ms SCRYMGOUR, Minister for Natural Resources, Environment and Heritage
Question time, Northern Territory Legislative Assembly, 17/08/2005

“Territorians do not want a repeat of the mistakes of the Murray River, and we have a wonderful opportunity to get the management right. We already have a number of existing programs and legislation that can be applied to our rivers. The Living Rivers program will not do away with these controls, but it does recognise that our current processes do not always work well in an integrated way to give the best results.

Central to our approach, Living Rivers will establish the maintenance of river health as a core goal in relevant laws and processes. By way of example, this may mean that we need to do more, comprehensively, to recognise the value of vegetation along rivers. Not every river will be managed as a living river. There will be a process of setting priorities in which the view of the community will be important. The significance of the Daly River has already become clear, and the Daly will, therefore, be the first river to be managed as part of the Living Rivers program - and there will be legislation.

The Living Rivers program is a new and integrated way of looking at planning and management of our key rivers. By prioritising the river system in the most need of better planning and management in an open and consultative way, Living Rivers will help us secure federal funding and support. It will also help us to better protect our icon rivers which are so important to our lifestyle, environment, economy and tourism....”

2. Ms SCRYMGOUR, Minister for Natural Resources, Environment and Heritage:
Ministerial Statement, Northern Territory Legislative Assembly, 17/08/2005

“The Living Rivers program will draw on experiences in the Daly River to provide a statutory and administrative framework for focused planning and management for Territory rivers. It will:

- 1. establish maintenance of river health as a core goal in all relevant Territory law and processes for land and resource management;*
- 2. set standards, criteria and processes for maintaining the ecological, culture and recreational values of the river;*

3. *recognise and provide for the maintenance of the full range of ecosystem services provided by rivers that contribute so much to the wellbeing of Territorians;*
4. *accord special status to rivers that are particularly valued by the Territory community and demand additional level of protection for the unique values;*
5. *provide for use of waters for domestic consumption and economic production consistent with maintenance of ecological and cultural values;*
6. *recognise proper management of groundwaters and vegetation corridors along rivers as essential for maintaining river health; and*
7. *provide mechanisms for genuine community involvement in setting and achieving targets for maintaining the character and functions of our rivers.*

Government will be seeking strong public participation in refining these ideas and identifying the most effective ways of implementing our new Living Rivers program....”

¹ Australian Tropical Rivers Group (2004). *Securing the north: Australia's tropical rivers*. A statement by the Australian Tropical Rivers Group. Published by WWF-Australia, Sydney, 4pp.

² *Ibid*

³ Australian River and Catchment Condition Database (formerly Wild Rivers). See database for Northern Territory rivers listing lengths of individual rivers with low disturbance levels. See <http://www.heritage.gov.au/anlr/code/arc.html> Accessed 15 February 2006).

⁴ Millennium Ecosystem Assessment, 2005. *Ecosystems and Human Well-being: Synthesis*. Island Press, Washington, DC, Preface, page v.

⁵ Environment Australia 1998. *Conservation guidelines for the management of wild rivers values*. Commonwealth of Australia, Canberra, 44 pp.

⁶ Australian Heritage Commission, 1996. Undisturbed rivers of the Northern Territory. Map available at http://www.heritage.gov.au/anlr/code/idmaps/nt_id_anno.html (Accessed 19 May 2006).

⁷ Intergovernmental Agreement on a National Water Initiative, paragraphs 25(x) and 79(i)(f).

⁸ Blanch, S (2006). *Key steps to securing Australia's natural water infrastructure assets*. Proposal summary. WWF-Australia, Sydney, 4 pp. The summary and full report, *Securing Australia's natural water infrastructure assets. Solutions for protecting high conservation value aquatic ecosystems*, are available for download at www.wwf.org.au.

⁹ National Water Commission, *Raising National Water Standards Programme Investments*, See http://www.nwc.gov.au/water_fund/rnws_investment.cfm (Accessed 23 February 2006).

¹⁰ Morton, S., Bourne, G., Cristofani, P. Cullen, P., Possingham, H. and Young, M. (2002). *Sustaining our Natural Systems and Biodiversity*: an independent report to the Prime Minister's Science, Engineering and Innovation Council. CSIRO and Environment Australia, Canberra, p14.

¹¹ Possingham, H., Ryan, S., Baxter, J. and Morton, S. (2002). Setting Biodiversity Priorities. A paper prepared in producing the report 'Sustaining our Natural Systems and Biodiversity' for the Prime Minister's Science, Engineering and Innovation Council in 2002. DEST, Canberra, pp21-22.

¹² *Heritage Rivers Act 1992* (Vic), See http://www.austlii.edu.au/au/legis/vic/consol_act/hra1992171/

¹³ *Wild Rivers Act 2005* (Qld). See

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WildRivA05.pdf>

¹⁴ *Wild and Scenic Rivers Act 1968* (US). See <http://www.nps.gov/rivers/wsraact.html>

¹⁵ Personal communication, Verity Klem, Western Australian Department of Environment, Perth, June 2005.

¹⁶ *Wild Rivers Act 2005* (Qld). See

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WildRivA05.pdf>

¹⁷ Western Australia has identified about 50 wild and high conservation value rivers across land tenures through an administrative program These rivers receive no legal protection.

¹⁸ National Parks and Wildlife Act 1974 (NSW), wild river provisions (ss 61 and 61A), see http://www.austlii.edu.au/au/legis/nsw/consol_act/npawa1974247/.

¹⁹ *Heritage Rivers Act 1992* (Vic), See http://www.austlii.edu.au/au/legis/vic/consol_act/hra1992171/

²⁰ *Canadian Heritage Rivers System*, See http://www.chrs.ca/Main_e.htm

²¹ *American Heritage Rivers*, See <http://www.epa.gov/rivers/>

²² For example, the Australian River and Catchment Condition Database (formerly Wild Rivers). See <http://www.heritage.gov.au/anlr/code/arc.html> Accessed 15 February 2006).

²³ For example, wetlands of national or international significance listed in the *NT Parks and Conservation Masterplan* (draft September 2005), p 15.

²⁴ Blanch, S, Rea, N and Scott, G, 2005. *Aquatic conservation values of the Daly River Catchment, Northern Territory*. A report prepared by WWF-Australia, Charles Darwin University and The Environment Centre NT, Darwin, 28pp.

²⁵ *Wild Rivers Act 2005* (Qld), s5(3)(f).

²⁶ *Intergovernment Agreement for the Paroo River between New South Wales and Queensland*, 18 July 2003, Agreement between Queensland and New South Wales. See

http://www.nationalparks.nsw.gov.au/PDFs/Paroo_River_agreement.pdf (Accessed 15 February 2006)

²⁷ *Lake Eyre Basin Intergovernmental Agreement. Agreement Between the Commonwealth of Australia and the State of Queensland and the State of South Australia, 21 October 2000*. See

<http://www.deh.gov.au/water/basins/lake-eyre/agreement.html> (Accessed 15 February 2006).