

AUSTRALIA'S OCEAN POLICY



Saltwater Country Aboriginal and Torres Strait Islander Interest in Ocean Policy Development and Implementation

Socio-cultural Considerations - Issues Paper 6

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EXECUTIVE SUMMARY

This information paper examines the pre-colonial, post-contact and contemporary relationships of Aboriginal and Torres Strait Islander peoples' with Australia's oceans. The concept of customary marine estates, traditionally owned and managed by Indigenous groups, is identified as a key difference from the general community's views on the ocean as an open common to be managed by governments.

The paper documents current levels of Aboriginal and Torres Strait Islander involvement in ocean management, including initiatives by indigenous groups to regain self-management of their saltwater country.

An introduction is also given to the role of Indigenous peoples in marine protected area management, the prospect of recognising native title in the sea, and international obligations for addressing indigenous peoples' rights and interests in Australia's oceans.

The paper concludes that the stewardship ethic, which remains an inherent feature of Aboriginal and Torres Strait Islander maritime cultures, can provide the basis for reconciling Indigenous and non-Indigenous perspectives on ocean management to the benefit of all Australians.

1. INTRODUCTION

Over recent decades there has been increasing recognition among the general Australian community of the importance of land in Aboriginal and Torres Strait Islander cultures. Land, particularly following the 1992 Mabo High Court decision, is acknowledged as central to Aboriginal cultural identity, as well as spiritual and economic wellbeing. Under Indigenous customary law, now recognised as part of Australian common law, particular groups of Aboriginal and Torres Strait Islander people may have inherent rights and responsibilities to particular areas of land.

Much less well understood is the relationship between Indigenous cultures and Australia's ocean environments. This information paper seeks to explore that relationship, and to assist policy-makers, managers, users and the wider community to incorporate Indigenous perspectives into the management of Australia's oceans and marine resources.

While the paper focuses on contemporary Indigenous relationships with the sea, it also examines pre-colonial Indigenous maritime cultures as the basis for understanding continuing differences in cultural perspectives of Indigenous and other Australians.

The general Australian community regard the sea as a common domain, open to all, to be managed by governments in cooperation with relevant stakeholders on behalf of the whole community. Indigenous cultures view the ocean as an extension of the land, with all the possibilities of identity, ownership, private use rights and management responsibilities that apply to land.

The paper describes how these differing cultural perspectives have become manifest in contemporary ocean management, and management conflicts in particular. In examining ways in which these conflicts can be addressed, the paper explores the concept of a stewardship ethic as a mechanism to apply Aboriginal and Torres Strait Islander peoples' cultural perspective on the sea in a contemporary context.

The information presented here is derived from statements and submissions made by Aboriginal and Torres Strait Islander individuals and organisations in recent public inquiries into coastal and marine management, as well as the work of researchers who have documented Aboriginal and Torres Strait Islander maritime cultures. A list of principle references is provided at the end of the paper.

Responses to the Ocean Policy Consultation Paper from Indigenous organisations were critical of the minor attention given to Aboriginal and Torres Strait Islander rights and interests in the document. They were also critical of the absence of a formal face to face consultative process for the development of the Oceans Policy.

Because of acute time constraints, no additional consultations with Aboriginal and Torres Strait Islander peoples were carried out in the preparation of this Information Paper. While the paper attempts to accurately represent the documented views of Indigenous peoples, it should be regarded as the author's interpretation of those views.

2. PRE-COLONIAL INDIGENOUS MARITIME CULTURES

This section seeks to summarise what is understood to have been the relationship between Australia's coastal and island indigenous peoples and the surrounding oceans prior to the British colonisation. The use of the past tense does not imply that this relationship ceased at colonisation. On the contrary, as will be described later, much of the basis of contemporary Indigenous interests in coastal and ocean management are based on continuing cultural traditions, rights and responsibilities which pre-date colonisation.

CLANS AND COUNTRY

Although there was considerable diversity between the cultures of the hundreds of Aboriginal groups around Australia's coast, there were some common factors which reflected the relationship of Aboriginal people to the sea around Australia.

The fundamental social unit around most of coastal Australia was the extended family or 'clan'. Clan membership was typically inherited from one's father, but in some parts of Australia clan membership was passed down through the maternal line. Intimately associated with each clan was their estate or 'country'. For coastal clans their country always included the adjoining estuaries, beaches, coastal waters and ocean. Groups of clans speaking a common language formed a wider social group, sharing ceremonies, belief systems, technologies and subsistence strategies.

The ocean, or saltwater country, was not additional to a clan estate on land, it was inseparable from it. As on land, saltwater country contained evidence of the Dreamtime events by which all geographic features, animals, plants and people were created. It contained sacred sites, often related to these creation events, and it contained tracks, or Songlines along which mythological beings travelled during the Dreamtime. The sea, like the land, was integral to the identity of each clan, and clan members had a kin relationship to the important marine animals, plants, tides and currents.

Most Aboriginal people with marine clan estates were coastal mainland dwellers. However, many lived exclusively or periodically on offshore islands, particularly off the Queensland, Northern Territory and Kimberly coasts. These island dwellers were particularly dependent on the subsistence resources of the sea and they maintained control of large marine estates radiating out from their island homes.

USE AND MANAGEMENT

Aboriginal peoples' relationship to their sea country brought with it a complexity of rights and responsibilities, including the right to access, use and distribute resources, and the responsibility to manage those resources through time, from generation to generation. Clan members were owners of their country, they belonged to their country, they were identified with their country and they were stewards or carers of their country

Marine environments were managed through a variety of strategies and cultural practices, including:

- Conduct of ceremonies (songs, dances, story telling and other rituals) with the purpose of nurturing the welling being of particular places, species and habitats;
- Control of entry into marine clan estates by outsiders - restricting resource use to clan members and others by agreement;
- Seasonal exploitation of particular marine resources; the opening and closure of seasons were marked by ecological events, such as the flowering of particular plants or the arrival of a migratory bird;
- Restriction on the harvesting of particular species based on age, gender, reproductive conditions, health, fat content etc of individual animals;
- Restrictions on resource use and distribution by clan members and others based on age, gender, initiation status, marital status and other factors;

- Restrictions on the use of particular animals and plants of totemic significance to individual clans; each clan usually identified closely with at least one natural element (usually animal or plant), the use of which was often highly restricted or prohibited;
- Prohibition of entry to certain areas on land and sea, often associated with storms or other sources of danger; entry and/or hunting and fishing in these areas was believed to cause severe storms or other forms of danger, not only to the intruders but also to other people in the region.

Together these strategies and practices resulted in a system of marine exploitation which was conservative and which enabled the local population to live within the carrying capacity of the local environment.

THE EXTENT OF SALTWATER COUNTRY

The extent of pre-colonial use of Australia's oceans by coastal Aboriginal groups varied through time and between regions. Aboriginal occupation of Australia extends at least 60,000 years, and possibly considerably longer. During this time sea levels have risen over 100 metres, resulting in inundation of extensive areas of coastal lands, particularly around northern Australia with a low gradient shoreline and extensive continental shelf.

Following stabilisation of the sea level at its present height, about 6,000 years ago, Aboriginal patterns of marine use observed at the time of British colonisation, began to be established. Around northern Australia, this included extended sea voyages by canoe to exploit resources and manage clan sea country, in some places out of sight of the mainland.

Off the Kimberley and north Queensland coasts, journeys to outlying reefs and islands could be achieved by stopping off at numerous islands along the way. In recent times, marine sacred sites have been recorded up to 80km off the Northern Territory sites.

MARINE TECHNOLOGIES

Throughout coastal Australia and along major river systems, logs and bark were used as floating aids for people and their possessions. In some areas more complex rafts and canoes were used, depending on availability of materials and coastal environments.

In southern coastal areas, canoes were made from single strips of curved bark, filled with mud or clay at the ends, or wrapped or tied at either end with fibre. In northern Australia canoes were made of several pieces of bark sewn together, sometimes with pole gunwales, stretchers and ties added to provide greater strength and seaworthiness.

Dugout canoes were also used in the north, made from kapok trees and other light, buoyant woods. In some areas a mast and pandanus-fibre sail were attached to dugout canoes. Both single and double outrigger canoes were used in Torres Strait and along the Coral Sea coast of Queensland.

The greater complexity of water craft in northern Australia is believed to have arisen because of the presence of offshore reefs and islands suitable for hunting, fishing and temporary habitation. It is also believed that northern technologies benefited from the interaction between the inhabitants of coastal Australia and areas to the north, in particular Melanesia.

Technologies used for hunting and fishing in the sea included fibre nets, basket fish traps, stone fish traps, spears and harpoons with detachable heads for hunting dugong and turtle.

TORRES STRAIT ISLANDER MARITIME CULTURE

The Torres Strait Islands formed when the land bridge between Australia and Papua New Guinea was flooded by rising sea levels about 6,000 years ago. The Indigenous peoples of Torres Strait have occupied the islands for at least several thousand years.

The people of Torres Strait comprise four major cultural groupings, occupying, respectively, the small volcanic eastern islands, the low-lying coral cays in the centre of the Strait, the small alluvial northern islands near the Papuan coast and the larger continental islands off the tip of Cape York Peninsula.

Though differing in language and culture, all Torres Strait peoples made extensive use of the sea. Radiating out from each island were large areas of ocean regarded as belonging to particular groups within each island. The sea country of the Miriam people of Mer (Murray Island), for example, extended over 100km southwards to Raine Island off the north Queensland coast.

Effectively all Torres Strait waters formed part of the marine estates of one or other of the island groups. Exploitation of marine resources varied across the Strait. In the shallow waters of the western Straits, Islanders engaged in extensive dugong and turtle hunting, on the eastern islands they harvested fish from extensive fish traps built on the fringing reefs. Inhabitants of the eastern Islands also embarked on long sea voyages to exploit reef resources off eastern Cape York Peninsula.

3. IMPACT OF COLONISATION

To understand the contemporary relationship between Australia's Indigenous peoples and the surrounding oceans, it is important to consider the impacts of colonisation and settlement on Torres Strait Islanders and coastal Aboriginal people.

While a great many coastal Aboriginal groups were stripped of their rights and access to their lands, their relationship with the sea could often be maintained, and was sometimes encouraged by government policy. Many early missions and government Aboriginal reserves were deliberately established on the coast to encourage self-sufficiency in food. Some of these artificially created communities became involved in commercial fisheries, and other marine industries, such as the production of dugong oil, collection of pearl shell and beche de mer or trepang in northern Australia, and whaling in some southern areas.

Many coastal Aboriginal people were kidnapped or otherwise forced to join private commercial fishing ventures. These activities were responsible for depopulating large areas of north coastal Australia, through deaths at sea and the introduction of diseases to coastal Aboriginal societies.

While the impact of these early commercial fisheries had devastating impacts on coastal Aboriginal societies, they also provided opportunities for some Aboriginal peoples to maintain contact with their marine estates, and to transmit some cultural knowledge of their saltwater country to succeeding generations

4. CONTEMPORARY INDIGENOUS RELATIONSHIPS WITH THE SEA

This section summarises the relationship of Aboriginal and Torres Strait Islander peoples with the sea around Australia in contemporary times. The following section (section 6) examines their involvement in the management of marine environments and resources.

ABORIGINAL INTERESTS IN THE SEA

As for all Australians, the relationship of Aboriginal people with the sea varies from place to place and individual to individual. In any coastal Aboriginal community there are those who are more interested in fishing, hunting and maintaining maritime cultural traditions than others. However, unlike other Australians, there are Aboriginal people, family groups and communities, whose relationship with the sea is underpinned by a tradition of rights and responsibilities which extend back to pre-colonial times.

In all coastal regions there are Aboriginal people who continue to regard the sea as part of their country (traditional clan estate), and who see the natural elements of the sea - the animals, plants, currents etc. - as part of the local kinship system as well as in utilitarian terms.

In all coastal regions of Australia there are Aboriginal families and individuals who engage in significant subsistence hunting, fishing and gathering activities in the sea. For these people, subsistence marine resources form an important part of the domestic economy, in addition to being important culturally.

This modern dependence on subsistence marine resources, is mostly clearly seen on remote, northern coastal communities where traditional activities such as hunting for turtle and dugong are widely practiced. However, subsistence fishing and shell-collecting is also widely practiced by coastal Aboriginal people in southern Australia, many of whom combine working in mainstream job and living in suburbs and small towns with maintaining these subsistence activities.

Recent research at Wallaga Lake on the New South Wales south coast has shown that over 90% of adult members of the community regularly collect fish and shellfish from the sea and sea lakes of the region. This food is shared among the extended families of the community and represents a continuation of a true subsistence economy.

CHANGING TECHNOLOGIES

Not surprisingly, contemporary marine subsistence activities often utilise contemporary technologies. For example, in northern Australia, the hunting of dugongs in pre-colonial times took place from a specially constructed wooden platform erected in shallow water, or from dugout canoes. Today, the 'platform' is usually an aluminium dinghy, powered by an outboard motor or factory-made oars. The hunting implement, a wooden harpoon with a detachable head, however, has changed little over the last 200 years. The harpoon head is now made of steel, rather than stone or shell and the rope attached to harpoon is now made of synthetic material rather than natural fibre.

Similar changes to technologies (from making fire to making clothes) have been made throughout Australian Aboriginal cultures. A 1986 study by the Australian Law Reform Commission into the recognition of Aboriginal Customary recommended that when determining whether or not Indigenous cultural practices such as fishing or hunting are 'traditional', consideration should be given to the purpose of the practice, rather than the method.

This recommendation has been broadly accepted by governments in Australia and elsewhere. Hence, dugong hunting with the aid of twentieth century technology, remains a traditional practice, provided that it is undertaken by the culturally appropriate people, in culturally appropriate places.

CONFLICTS AND COMPETING INTERESTS

Aboriginal cultural relationships with the sea are being continued in the face of a great many competing interests. In pre-colonial times, neighbouring clans respected each other's exclusive rights to use and manage marine resources, and to negotiate access to those resources by others. Today, governments have assumed ownership and management rights on behalf of the wider Australian community, and have allocated various use rights to a wide range of commercial and recreational groups.

Aboriginal people associated with marine clan estates may be endeavouring to maintain cultural practices and responsibilities over waters impacted by many other users, activities and management regimes. These could include:

- Commercial prawn fishing;
- Commercial reef fishing;
- Commercial inshore net fishing;
- Commercial tourism - including reef trips, diving tours etc.,
- Domestic and international shipping lanes;
- Marine Park zoning and management plans;
- Commercial port operations;
- Recreational fishing;
- Recreational boating;
- Naval training and patrol activities;
- Custom, immigration and quarantine surveillance.

Many of these activities from time to time come into direct conflict with Aboriginal resource use and management. Some activities, such as commercial fishing, recreational boating and marine tourism can impact negatively on subsistence resources, such as dugong, turtle, barramundi and shellfish.

All marine activities have the potential to invade the privacy of marine clan estates, and effectively limit the opportunities for Aboriginal people to maintain traditional practices. Under management provisions in parts of the Great Barrier Reef Marine Park, for example, Aboriginal people are only permitted to undertake traditional hunting and fishing out of sight of tourists.

Commercial abalone harvesting in southern Australian waters is an example of a relatively recently developed marine industry which has impacted heavily on subsistence activities by coastal Aboriginal peoples. Prior to the 1970's, when abalone began to be harvested commercially for the first time in Australia, coastal Aboriginal people continued to shallow dive for abalone as they had done for many thousands of years. Large coastal shell middens show abalone harvesting has been carried out continuously since the formation of the present coastal zone about 6,000 years ago.

Over-harvesting by the commercial sector led to a rapid decline in abalone populations, followed by strict government regulation of the fishery. The result has been the establishment of expensive, tradable licenses and quotas for the commercial sector, restricted bag limits (as low as five per person per day in some states) for recreational fishers and no specific recognition of the long standing Aboriginal abalone fishery.

In this case, the Aboriginal subsistence fishery has had to continue within the confines of the recreational fisheries regime. Frequently this has resulted in prosecutions of Aboriginal fishers for exceeding the recreational bag limit or for engaging in trade in abalone without a license.

The abalone fishery highlights several areas of concern that Aboriginal people have expressed about contemporary marine resource management in Australia. These include:

- The failure to recognise the existence of a long-established Aboriginal fishery;
- The lack of opportunity for Aboriginal input into marine resource management decision-making;
- The lack of opportunities for income generation from traditional Aboriginal resources - i.e. when a resource such as abalone becomes commercially valuable, Aboriginal people have been excluded from benefiting, in favour of other interest groups.

CONTEMPORARY USE OF MARINE RESOURCES IN TORRES STRAIT

Torres Strait Islanders continue to depend heavily on the sea for subsistence resources, particularly turtle and dugong as well as crayfish and reef fish. Many Torres Strait Islanders continue their involvement in marine industries in Torres Strait and elsewhere across northern Australia.

Today more Torres Strait Islanders live on mainland Australia than in Torres Strait. On the mainland some Torres Strait Islanders continue their association with the sea through dugong and turtle hunting. Torres Strait Islanders consider these traditional foods important components of ceremonies and celebrations wherever they are living.

5. INVOLVEMENT OF INDIGENOUS PEOPLES IN MARINE MANAGEMENT

This section summarises developments over the last decade in the involvement of Aboriginal and Torres Strait Islander peoples in the management of Australia's oceans and marine resources. These developments should be viewed in the context of the past and the differing perspectives of the relationship between Indigenous peoples and the sea.

For Aboriginal and Torres Strait Islander peoples, these developments represent small steps towards regaining some measure of the exclusive management rights and responsibilities they exercised prior to colonisation. For government marine managers and other stakeholders, these developments represent major concessions to minority groups who are widely perceived as having no more or less rights in the sea than other Australians.

FISHERIES

Until recently, Aboriginal peoples had no identified role in the management of State, Territory or Commonwealth fisheries. In some jurisdictions, notably Queensland, the Northern Territory and Western Australia, Aboriginal peoples were wholly or partially exempt from fisheries regulations under prescribed circumstances - such as being resident on an Aboriginal reserve. While exemption from regulations could be interpreted as de facto recognition of an Aboriginal fishery, it did not provide a mechanism for Aboriginal involvement in decision-making.

Consequently, while Aboriginal people may have had unregulated access to a particular fishery resource they could not participate in decisions which would effect the allocation of that resource to other stakeholders or effect management of its habitat and conservation. This system therefore provided some recognition of Aboriginal marine resource rights without recognising their resource management responsibilities.

In some States, particularly in southern Australia, no exemptions to fisheries regulations have been available to Aboriginal people - effectively denying both their rights to access the resources and their rights to be involved in the management of those resources.

Although some measures have been developed to facilitate Aboriginal involvement in commercial fisheries, such as community fishing licenses in Queensland, Aboriginal coastal licenses in the Northern Territory and special commercial trochus shell fishing permits in Western Australia, there is widespread concern among coastal Aboriginal peoples that they have been denied economic benefit from the commercialisation of fisheries resources.

TORRES STRAIT

Unlike other fisheries management regions in Australia, there is specific legislative recognition of the rights and interests of Torres Strait Islanders in the management of fisheries and the marine environment in Torres Strait. This arises from the existence of the Torres Strait Treaty, signed by the Australian and Papua New Guinea Governments. The Treaty requires that the resources and environments of Torres Strait be managed in such a way as to protect the lifestyles of the traditional inhabitants on both sides of the border.

Under the fisheries management arrangements established jointly by the Commonwealth and Queensland governments to administer provisions of the Treaty, Torres Strait Islanders are represented on fisheries advisory committees. In addition, the commercial trochus and pearl shell fisheries are reserved for Torres Strait Islanders only.

While the Torres Strait Treaty and associated legislation provides greater recognition of Indigenous fisheries interests than for other regions of Australia, many Torres Strait Islanders have expressed dissatisfaction with the current arrangements. This is because Islander involvement remains advisory rather than decision-making, and because no direct economic benefit flows to Torres Strait Islanders from the commercial fishing industry in the Strait. In particular, concern has been expressed regarding the lack of economic return to Torres Strait Islanders from the multi-million dollar prawn fishing industry.

ADDRESSING CONCERNS ABOUT INDIGENOUS FISHING INTERESTS

Concerns raised by Aboriginal and Torres Strait Islander communities and organisations have been brought to the attention of fisheries managers and policy-makers in several State and Commonwealth government reviews and inquiries in recent years, including the ESD Fisheries Working Group and the Coastal Zone Inquiry. These processes, particularly at the Commonwealth level, resulted in a series of recommendations for strategic changes to the recognition of Aboriginal and Torres Strait Islander interests in fisheries throughout Australia.

These recommendations included:

- The recognition of an Indigenous fishing sector;
- Detailed regional studies of Indigenous peoples fisheries interests;
- Training initiatives to facilitate greater indigenous involvement in commercial fishing;
- Cross-cultural training and education for fisheries managers and policy-makers to assist them to facilitate these changes;
- The development of mechanisms to incorporate customary marine tenure (traditional clan estates) into contemporary fisheries management;
- Priority to the maintenance of subsistence resources over commercial and recreation interests;
- Indigenous membership of appropriate fisheries management boards and advisory committees;
- The development of Aboriginal and Torres Strait Islander Fisheries Strategies for Australia.

While these recommendations have not been comprehensively adopted by all fisheries management agencies, there have been significant steps taken in most jurisdictions to provide some recognition of the continuing cultural and economic relationship between Indigenous peoples and marine resources.

These steps have included, for example, the establishment of regionally based Aboriginal fisheries advisory committees in the Northern Territory, and Aboriginal membership of Zonal Advisory Committees (ZAC) and species-specific Management Advisory Committees (MACs) in Queensland and elsewhere.

The Commonwealth Government has also established the Aboriginal and Torres Strait Islander Coastal Reference Group (ATSICRG), to provide advice to the Commonwealth on Indigenous issues relevant to the development and implementation of policies and programs related to coastal land and marine management. ATSICRG comprises representatives of major Aboriginal organisations with interests in coastal and marine management in each State and Territory.

Potentially the most significant development is the agreement by all Commonwealth, State and Territory fisheries ministers to the development of Aboriginal and Torres Strait Islander Fisheries Strategies for Australia. This initiative arose from a recommendation of the 1993 Final Report of the Coastal Zone Inquiry, and became a Commonwealth Government commitment in the 1995 Commonwealth Coastal Policy. In 1997 the Commonwealth Government made funds available to each State and Territory to begin the process of developing the Strategies within each jurisdiction.

It is envisaged that the Strategies will emerge from a series of regional workshops around the coast which aim to bring together representatives of Aboriginal and Torres Strait Islander communities and organisations and government policy makers and managers, as well as representatives of other stakeholder groups, especially commercial and recreational fishing interests.

The Strategy workshops will provide a forum for establishing common ground, and for concerns and conflicts to be explored. It is likely that some issues can be resolved and inscribed in the Strategy documents; for other issues, the Strategies will provide a process for ongoing negotiations. Importantly the process of developing the Strategies will establish, or in some case strengthen existing, links between Indigenous fishers, managers and other stakeholders.

Following the development of regional and State/Territory-based approaches to the issues, it is intended that the national Strategy should be based on a common set of principles and guidelines for the recognition of Indigenous peoples' rights and interests fisheries.

MARINE PROTECTED AREAS

Marine Protected Areas (MPAs) are the most intensively managed areas of Australian ocean waters. They represent an attempt by governments to provide for the sustainable use of marine resources, while also conserving through time the full range of natural and cultural values associated with a particular marine area.

If all natural and cultural values are indeed recognised, then MPAs provide an opportunity to also respect and conserve Indigenous cultural values associated with a particular marine area. Alternatively, if Indigenous cultural values are not well understood or respected, MPAs potentially represent another imposed threat to the maintenance of those Indigenous values.

The history of Marine Protected Area planning and management in Australia indicates that both positive and negative impacts have occurred and are occurring.

Australia's largest MPA, the Great Barrier Reef Marine Park, was established during the 1970's, at a time when there was less recognition of Indigenous peoples' maritime interests than there is today. While provision was made to permit a continuation of Aboriginal traditional hunting, and efforts were made to document traditional knowledge of the Marine Park, there was no formal provision for recognition of the wider Indigenous interests associated with ownership, use and management rights and responsibilities for the many clan estates which lie within the Marine Park.

Over the last twenty years, as a result of lobbying from coastal Indigenous groups themselves, several research projects which documented Aboriginal maritime culture in the area of the Marine Park, and a growing appreciation of Indigenous land and sea interests among the general Australian community, there has been a broadening of Aboriginal involvement in management.

Twenty years ago, the Great Barrier Reef Marine Park Act made no reference to Aboriginal interests in the Marine Park, there was no Aboriginal representation on either the Authority board or the Consultative Committee, there were no Aboriginal employees, and no special consultative procedures to involve Aboriginal people in decisions on the planning and management of their customary estates within the Marine Park. Torres Strait Islanders, whose customary interests were perceived to lie to the north of the Great Barrier Reef Marine Park, were also not formally involved in its management.

Recognition of Aboriginal and Torres Strait Islander interests in the Marine Park now include:

- Amendments to the Great Barrier Reef Marine Park Act providing for Indigenous representation on the Authority board;
- Aboriginal representation on the Consultative Committee;
- Aboriginal and Torres Strait Islander employees of the Authority, some of whom are employed in the Indigenous Liaison Unit;
- Training and some part time employment for Aboriginal Community Rangers located on coastal Aboriginal communities adjoining the Marine Park;
- Special consultative procedures, such as community visits and newsletters, aimed at improving communication between the Authority and Indigenous groups;
- Consultative visits to Torres Strait in recognition of customary and historic use of waters within the Marine Park by many Torres Strait Islanders;
- Assessment of potential impacts on Aboriginal cultural values of any proposed development within the Marine Park, such as the construction of pontoons for tourists on island and outer barrier reefs.

These developments fall far short of recognition of the full management and use rights of Aboriginal people over whose clan estates the Marine Park was established. However, there is a tangible acceptance by Marine Park managers that this protected area is an Aboriginal domain, whose

Aboriginal inhabitants have a legitimate claim to a special place in the management of the Marine Park.

OTHER MARINE PARKS

The Cobourg Marine Park in the Northern Territory is the first Australian marine park to be formally managed jointly by Aboriginal traditional owners and a government conservation agency. Cobourg Marine Park and the adjoining Aboriginal-owned Gurig National Park are both under the control of an eight person Board, made of up four traditional owners and four Northern Territory Government representatives. One of the traditional owners chairs the Board and has casting vote. Day to day management of both the national park and the marine park is carried out by the Parks and Wildlife Commission of the Northern Territory on behalf of the Board.

Elsewhere in Australia there is considerably less formal involvement of Aboriginal people in marine park management; there is no nationally agreed policy or guidelines for the recognition of Indigenous peoples' interests in MPA management. However, the need for such guidelines has been discussed at a recent workshop on developing Australia's system of MPAs.

NATIVE TITLE IN THE SEA

Following the Mabo High Court decision of 1992, Aboriginal and Torres Strait Islander customary rights to land are recognised as part of Australian common law. In 1993 the Native Title Act provided statutory recognition of those rights, as well as procedures for determining the continued existence of native title.

While the extent of continuing native title remains uncertain, the Native Title Act provides for the possibility of surviving native title wherever such title has not been explicitly extinguished by government action, such as the granting of freehold land. The National Native Title Tribunal has been established to process native title claims via a process of mediation with interested parties. Claims that cannot be mediated successfully are referred to the Federal Court for determination.

Although the Native Title Act provides for the possibility of marine native title claims, the legal and administrative implications of native title in the sea are currently less well understood than on land, primarily because the High Court was not required to make a determination on native title in the waters surrounding Mer (Murray Island) in the Mabo case. It has not been established, for example, if previous actions of governments in ocean and marine resource management may have extinguished or impaired native title.

Many coastal Aboriginal groups have sought recognition of their customary marine clan estates by lodging native title claims over areas of ocean as well as land. If these claims are not resolved through mediation in the National Native Title Tribunal, they will be referred to the Federal Court for formal determination. The first of these legal determinations, in relation to a native title sea claim over waters surrounding Croker Island in the Northern Territory, is anticipated during 1998.

While marine clan estates are viewed in Aboriginal customary law as similar to estates on land, it is possible that the legal determination of native title in the sea may differ in some respects from those on land. This is because of the existence of many other competing interests in the sea, such as commercial shipping and fishing, as well as a 200-year history within post-colonial Australian society of common access to the sea by all Australians. It may therefore transpire that any native title rights in the sea are limited to rights of usage and involvement in management, rather than corresponding to full ownership as on land.

However, some legal opinion suggests that more comprehensive recognition of Indigenous ownership of customary marine estates may eventuate. It should be noted that court decisions in New Zealand, Canada and the United States of America have led to settlements to the equivalent of native title claims in which Indigenous peoples have been granted equity and other interests in commercial fishing enterprises.

The Native Title Act provides for continued public access to all those beaches that were accessible to the public prior to the recognition of native title. The Act also confirms crown ownership of all minerals, including those in the sea bed.

INDIGENOUS INITIATIVES

While seeking involvement in government decision-making with respect to ocean policy and management, and seeking legal recognition of their customary rights to marine areas and resources through native title and other legal processes, coastal Indigenous groups are also involved in projects and programs aimed at regaining self management of their marine environments.

In Torres Strait, the Islander Coordinating Council, in cooperation with the Torres Strait Regional Authority and supported by the Commonwealth and Queensland Governments, has been developing a Marine Strategy For Torres Strait. Through a process of community consultations on each island, and the development of island environmental management plans, the Council aims to develop an integrated strategy for the ecologically sustainable management of environments and resources across Torres Strait and the recognition of the cultural, social and economic rights and interests of Torres Strait Islanders.

On Western Cape York Peninsula, the Kowanyama Aboriginal Community has established a Land and Natural Resource Management Office to actively manage the terrestrial and marine resources associated with that community and the region. The Office runs an independent coastal helicopter surveillance program to monitor commercial fishing and other activities in coastal and estuarine waters adjoining the Community. Kowanyama's Senior Community Ranger has been appointed a Fisheries Inspector under Queensland's Fisheries Act. The Community has also negotiated the closure of some estuaries to commercial fishing in order to conserve important subsistence resources.

Many other coastal Aboriginal communities, and some communities in Torres Strait, have employed their own Community Rangers to undertake a variety of environmental management tasks. Some of these Rangers are working with and for Government management agencies, such as the Great Barrier Reef Marine Park Authority to undertake management, planning, liaison, reporting or surveillance activities on their behalf.

Yolngu (Aboriginal) people of northeast Arnhemland, with the assistance of Commonwealth Government funding, have been developing strategies for co-management of their traditional marine estates off the coast and around islands to the north of Nhulunbuy (Gove).

Around coastal Australia and in Torres Strait Indigenous communities and organisations have enthusiastically embarked on their own coastal management projects as part of the joint Commonwealth/State Coastcare Program.

INTERNATIONAL ISSUES

The recognition of Aboriginal and Torres Strait Islander rights and interests in the ocean is not simply a matter of domestic Australian concern. International issues include cross-border issues in Torres Strait and more general international obligations to respect the cultural and environmental rights of Indigenous peoples.

Torres Strait forms an international border between Australia and Papua New Guinea, and there are legal obligations on the Australian Government under international law to respect the marine environmental and resource use and management rights of traditional inhabitants on both sides of the border.

Australia is signatory to several conventions and other legally binding international agreements that are directly relevant to the recognition of Indigenous rights and interests in the management of Australia's oceans. These include:

- **Convention on Biological Diversity**, which makes several references to protecting Indigenous cultural relationships with biological resources; for example, Article 10 of the Convention requires governments to protect and encourage customary use of biological resources in accordance with traditional cultural practices;
- **International Covenant on Civil and Political Rights**, which places obligations on governments to protect the rights of minority ethnic groups, including Indigenous peoples, to practice their culture; the right of cultural practice has been interpreted by the Human Rights Committee which administers the Convention to include the right to access hunting and fishing resources important to Indigenous peoples;
- **Convention on the Elimination of All Forms of Racial Discrimination**, requires governments to eliminate racial discrimination which may impair the enjoyment of the exercise of human rights and fundamental freedom in the political, economic, social, cultural and any other field of public life; this Convention also provides that special measures taken for the sole purpose of securing adequate advance of certain racial or ethnic groups or individuals requiring protection does not constitute racial discrimination;
- **United Nations Convention on the Law of the Sea** requires the recognition of traditional fishing rights of neighbouring States in archipelagic waters;
- **Convention on the Rights of the Child** protects the rights of children, in community with other members of their group, to enjoy his or her culture;
- **Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention)** provides for permission for the taking of migratory species by Indigenous peoples to accommodate the needs of subsistence practices;
- **Torres Strait Treaty** provides for access to traditional cultural resources within Torres Strait for traditional inhabitants from both sides of the border.
- **Convention on Conservation of Nature in the South Pacific (the Apia Convention)** recognises the special importance in the South Pacific of Indigenous customs and traditional cultural practices and allows contracting parties (governments) to make provision for customary use of areas and species in protected areas;

In addition to these legally binding international agreements, there are several international instruments that may impact on Australia's obligations in relation to Aboriginal and Torres Strait Islander rights to ocean management in the future. These include:

- **Rio de Janeiro Declaration on Environment and Development**, which declares that States should recognise and support the identity, culture and interests of Indigenous peoples and enable their effective participation in the achievement of sustainable development;
- **Agenda 21** contains a detailed program of action arising from the 1992 United Nations Conference on Environment and Development; the many references to the rights of Indigenous peoples include the provision that national and international efforts to implement environmentally sound and sustainable development should recognise, accommodate, promote and strengthen the role of Indigenous people and their communities. Chapter 17 of Agenda 21, which addresses the global protection of oceans, refers to the need to adequately consult with Indigenous people and to protect their access to traditional marine food species.
- **Caracas Declaration (Parks, Protected Areas and the Human Future)** was prepared at the Fourth World Congress on National Parks and Protected Areas, convened by the World Conservation Union in 1992. The declaration recognises that some Indigenous groups have been disadvantaged by the establishment of protected areas, and recommends that governments recognise the needs and aspirations of local communities in management of all protected areas.
- **Draft Declaration on the Rights of Indigenous Peoples** was produced by a Sub-Commission of the United Nations in 1994 and has yet to be ratified by the international body. The Draft Declaration provides for the rights of Indigenous peoples to practice their cultures, access traditional resources and control their traditional territories on land and sea; it also recognises the right of protection to Indigenous peoples from any action that may result in the destruction or degradation of their territories, including land, sea, air and wildlife or other resources.
- **South Pacific Forum Fisheries Agency Convention** In 1992 a technical sub-committee of the Forum Fisheries Agency recommended that customary resource management,

traditional knowledge concerning marine resources, customary marine tenure systems and relevant national and international law should be investigated, and policies be adopted.

6. CONCLUSIONS AND OPTIONS FOR THE FUTURE:

Reconciling Indigenous and non-Indigenous perspectives on ocean management

The preconditions for reconciling Indigenous and non-Indigenous perspectives on ocean management are recognition and respect of those differing, culturally-based perspectives.

The Oceans Policy represents an opportunity to help marine environment and resource managers and users, and the wider Australian community, to recognise the cultural, historic and economic relationship between Aboriginal and Torres Strait Islander peoples and the sea. Such recognition will not be easy to achieve because it presents a major challenge to the long-held 'certainty' in the dominant Australian culture that the sea is a common area, open to all, belonging to no one, managed by governments, with input from the whole community.

For many coastal Aboriginal people and Torres Strait Islanders, the sea is not a common, but part of a defined, inherited country for which they have inalienable rights and responsibilities to use and manage.

On the other hand, coastal and island Indigenous peoples appreciate that it is unrealistic to return to pre-colonial conditions. What they are seeking is willingness on the part of governments and other marine stakeholders, to explore ways to accommodate their continuing cultural rights and responsibilities in a contemporary context. At the very least, this will require a place at the table where decisions are being made, and the opportunity to educate others at the table about Indigenous perspectives on saltwater country.

In developing an Oceans Policy, the government is seeking to promote a stewardship ethic in all marine resource users and to avoid the 'tragedy of the commons'. One step towards that goal is to recognise the stewardship ethic which already exists in the relationship between Aboriginal and Torres Strait Islander peoples and their saltwater country. The concept of customary marine estates could become a tool for sustainable natural and cultural management, rather than being perceived as a threat to the perceived rights and interests on non-Indigenous Australians.

Until recently, national parks were regarded as necessarily common property, managed by governments on behalf of all Australians. With a growing appreciation of the importance of land to Aboriginal people, many if not most Australians now accept that Aboriginal ownership and joint management of Kakadu, Uluru and other national parks is beneficial to those places, and to the local Aboriginal cultures. Millions of tourists continue to visit these places, which contribute to make major contributions to the regional and national economies.

Recognition of Aboriginal and Torres Strait Islander's cultural rights and interests in the sea can similarly achieve mutually acceptable outcomes. The debate need not focus on 'commons versus country'. Rather, the Indigenous stewardship ethic which already exists could be recognised and nurtured to the benefit of all Australians.

Steps to achieve this process of active, constructive reconciliation could include:

- Ensuring that all marine environmental and resource management boards, authorities and advisory committees include appropriate representation of Aboriginal and/or Torres Strait Islander peoples;
- Providing training, logistical and other support for Indigenous representatives to enable them to contribute fully to decision-making and advisory processes;
- Ensuring that the conservation of all Aboriginal and Torres Strait Islander subsistence marine resources is given priority over commercial and/or recreation exploitation;
- Ensuring that Aboriginal and Torres Strait Islander communities are afforded adequate opportunities to benefit financially and in other ways from the commercial utilisation of resources within identified marine estates.
- Providing cross cultural awareness education and training to ocean managers, planners and policy makers to assist them to recognise and respect Aboriginal and Torres Strait Islander perspectives on saltwater country;

- Providing appropriate information to all users of ocean environments and resources to assist them to learn about and respect Aboriginal and Torres Strait Islander cultural, economic and legal rights and interests;
- Continuing support for existing Indigenous coastal and ocean management initiatives, including support for Aboriginal and Torres Strait Islander Community Ranger training, employment and logistical support.
- Continuing support for the development and implementation of the Aboriginal and Torres Strait Islander Fisheries Strategies, including the adequate provision of short and long term funding;
- Ensuring that all relevant Indigenous communities and organisations are adequately informed, involved in and adequately resourced with respect to consideration, planning and management of any marine protected area.
- Ensuring that every effort is made to respect and protect all continuing native title rights and interests in the sea. And substantively involve native titleholders in any decision-making relating to their customary marine estates and adjoining regions.

The steps towards respect and reconciliation suggested above would be most effective if negotiated and implemented as part of a regional, integrated package. The negotiation of regional agreements, as provided for in the Native Title Act, is one currently available mechanism for this process to occur, in a way that involves all appropriate Indigenous groups and other stakeholders.

The development of an Oceans Policy for Australia provides an opportunity for governments to encourage and facilitate the negotiation of regional agreements for the management of Australia's marine environments and resources. Regional agreements also provide opportunities to negotiate the integration of coastal land and sea management. A more holistic approach to coastal and ocean management would provide an appropriate basis for the recognition of Indigenous peoples' perspectives on saltwater country.

Whatever the legal outcomes of Indigenous peoples' native title claims in the sea, their belief in their cultural rights and responsibilities with respect to their saltwater country will continue. In order to achieve a more cooperative, equitable system of managing Australia's ocean environments, it is therefore in the interests of all ocean users and managers to engage in the process of recognition of Indigenous peoples' marine rights and interests sooner rather than later.

FURTHER READING

Cordell, J. 1991, *Managing Sea Country. Tenure and Sustainability of Aboriginal and Torres Strait Islander Marine Resources*, unpublished consultancy report on Indigenous fishing for the Ecologically Sustainable Development Fisheries Working Group, Canberra.

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