

## SECTION 4: IMPROVING RELATIONSHIPS

The need for improved relationships between Aboriginal and Torres Strait Islander peoples and the wider community has been a theme at some conferences and workshops in recent years on fisheries issues. Many Aboriginal and Torres Strait Islander people consider that they have been treated unfairly under fisheries laws when their customary rights and important heritage areas are not recognised, and they consider that the hurdles for recognition of their native title are overly stringent. Many Aboriginal groups in New South Wales were disappointed by the failure of a native title defence in the abalone case of *Mason v. Tritton*.<sup>265</sup> The apparent inability of the wider community to understand some Aboriginal and Torres Strait Islander peoples' diverse interests in their 'sea country' also causes concern.

Many Aboriginal and Torres Strait Islander peoples' organisations suggest that reconciliation will only be possible if the wider community recognises indigenous Australians' cultural practices, and aspirations to maintain those practices, in an environment of mutual respect and equitable access to resources. Moreover, if traditional ecological knowledge regarding fisheries were to be better documented and integrated within fisheries planning and monitoring processes, that may be one means for generating mutual respect and improved relationships in the fisheries sector. Job creation for indigenous fisherpersons in the sector can also alleviate the despair and discrimination associated with long-term unemployment.

Many Aboriginal and Torres Strait Islander fisherpersons and commentators are concerned that commercial interests are given priority over indigenous interests, and that some particular fishing practices, such as trawling, can cause habitat degradation and undue stock decline. The Aboriginal and Torres Strait Islander Social Justice Commissioner, Michael Dodson, for example, has criticised the provisions of the *Native Title Act 1993 (Cwlth)* (NTA) for the priority they accord to existing and future commercial fishing interests, stating:

The NTA offers only limited protection for the fishing rights of Indigenous peoples. The principal ways in which the NTA affects Indigenous fishing rights are:

- (1) it allows for validation of invalid fishing leases and licences;
- (2) where validation occurs, native title holders may be entitled to compensation;
- (3) the principle of non-discrimination applies to future grants of fishing interests; and
- (4) s.211 provides protection for some subsistence fishing rights.

As far as interference with the present operations of commercial fishermen is concerned, the limited protection that is available to native title holders does not impair the existing activities of the fishing industry...

[T]he NTA does not provide substantial protection for native title and it does not interfere with past grants or seriously impact on the grant of new rights. Notwithstanding this, a considerable amount of concern over the operation of the NTA has been voiced by commercial fishermen. The primary concerns of the industry appear to be that, first, they are concerned that their licences may be impaired or devalued; second, they may be excluded from certain areas; and third, they are opposed to ownership of waters whether they be inland waters or offshore.

I believe that some of this criticism is premised on a misunderstanding of the provisions of the NTA and their potential impact.<sup>266</sup>

On the other hand, many non-indigenous Australians consider that Aboriginal and Torres Strait Islander peoples should be subject to exactly the same fisheries laws as they are, and that to create special rights or exemptions for indigenous Australians is discriminatory, as noted above.

### Relevant Federal Legislation and Policies

Many Federal, State and Territory agencies are likely to offer cross-cultural awareness training for staff involved in fisheries issues and Aboriginal and Torres Strait Islander communities, but time constraints precluded an exhaustive identification of these. As one example, the Australian Nature Conservation Agency

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<sup>265</sup> [1994] 34 NSWLR 572

<sup>266</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report*, pp.153-154.

(ANCA) has a requirement that all new staff working in protected areas and in contact with Aboriginal and Torres Strait Islander communities and colleagues undertake a cross-cultural training course. Most are offered in-house, and are part of the on-going human resources development calendar. ANCA has also funded the production of a series of posters, leaflets and calendars which promote a positive image of Aboriginal and Torres Strait Islander peoples and their use of natural and cultural resources.<sup>267</sup> The Great Barrier Reef Marine Park Authority integrates information on Aboriginal and Torres Strait Islander peoples' cultures within many of its programs.<sup>268</sup>

Cross-cultural awareness materials are also being developed with funding provided under Ocean Rescue 2000. These include videos explaining the common interests of Aboriginal and Torres Strait Islander peoples and commercial fishers. At least three videos have been produced for Victoria, one for Western Australia, and several for Queensland communities.<sup>269</sup>

There has been a suggestion that the Australian Maritime College in Launceston should include courses designed to educate fisheries managers<sup>270</sup> about Aboriginal and Torres Strait Islander peoples' interests in the coastal zone.

It has been suggested by the Australian Fisheries Management Authority manager of the Northern and Pelagic fisheries that 'substantive interaction' between indigenous land owners and the fishery has improved relations, and has resolved some issues which were causing concern to Groote Eylandt landowners, such as the alleged infringement of landing privileges by some trawler operators. Those interactions have not yet 'addressed questions like the impact of fishing on dreaming paths or sacred sites', however.<sup>271</sup> It has been argued by the general manager for the Northern and Pelagic fisheries of the Australian Fisheries Management Authority that for stakeholders in general, representation on management advisory committees and in other consultative arrangements for fisheries management will not necessarily resolve conflicts and ensure the promotion of particular interests, and that effective representation and communication is essential.<sup>272</sup>

The Council for Aboriginal Reconciliation (CAR), which was established in 1991, is attempting to facilitate reconciliation between indigenous and non-indigenous Australians — to achieve 'a united Australia which respects this land of ours, values the Aboriginal and Torres Strait Islander heritage, and provides justice and equity for all'. The CAR has identified eight key issues:

- understanding country — promoting a greater understanding of the importance of land and sea in Aboriginal and Torres Strait Islander societies;
- improving relationships — bettering relationships between indigenous and non-indigenous Australians;
- valuing cultures — promoting a recognition that Aboriginal and Torres Strait Islander cultures are a valued part of Australian heritage;
- addressing disadvantage — promoting a greater awareness of the causes of indigenous Australians' disadvantage;
- responding to custody levels — generating a greater community response to addressing the underlying causes of the high levels of Aboriginal and Torres Strait Islander people in custody;
- agreeing on a document — agreeing on whether the process of reconciliation would be advanced by a document or documents of reconciliation; and
- controlling destinies — promoting greater opportunities for indigenous Australians to control their destinies.

In 1994 the CAR produced a series of key issue papers, addressing each of these issues in turn. The paper — *Understanding Country* — concluded that understanding the importance of country to indigenous Australians involves a recognition of the centrality of particular areas of land and sea to the identities, cultures and social

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<sup>267</sup> Steve Szabo, ANCA, personal communication, 27 September 1995.

<sup>268</sup> Great Barrier Reef Marine Park Authority, *Annual Report 1994-5*, p.11.

<sup>269</sup> Brett Shorthouse, personal communication, September 1995.

<sup>270</sup> Smyth, personal communication, September 1995.

<sup>271</sup> Exel, 'Australian fisheries management — resource allocation and traditional rights', pp.15-19.

<sup>272</sup> Exel, 'Australian fisheries management — resource allocation and traditional rights', p.16.

structures of particular groups of Aboriginal and Torres Strait Islander peoples and a recognition of the significance of sacred sites and hunting, fishing and gathering. It concluded that there is also a need for indigenous Australians to secure an independent economic base while maintaining traditional associations with land and sea. It suggested that understanding country involves a recognition of the effects of dispossession, and the importance of indigenous peoples' efforts, and governments' policies, on recognising, rebuilding and maintaining indigenous Australians' links with traditional country. It endorsed the recommendations of the *Coastal Zone Inquiry Final Report* and the considerations of a 1993 national conference of the Australian Nature Conservation Agency (ANCA) 'Keeping the Community Alive'.

Another of the CAR key issue papers — *Sharing History* — urged better community understanding about the contribution that Aboriginal and Torres Strait Islander men and women made to the development of Australia's industries:

Around the north coast, from Broome in the west to Townsville in the east, Aboriginal and Torres Strait Islander men and women provided the labour which allowed the development of significant maritime industries based on pearls and pearl-shell, trochus shells and beche-de-mer. They swam for pearls and shell, collected, processed and smoked beche-de-mer. The majority of the wealth was never shared with local Aboriginal and Torres Strait Islander peoples. Without this large, and largely unpaid work force, the industries would have been unviable.

... Museums and monuments could recognise the role of Aboriginal and Torres Strait Islander experts in the history of European discovery and exploration. ... A major display about Aboriginal and Torres Strait Islander workers in maritime industries could be established in Broome and Thursday Island, and at the Maritime Museum in Sydney. Thursday Island would have the advantage of allowing for a concentration on the history of the Torres Strait Islanders.<sup>273</sup>

Reconciliation is also of concern to advisers on appropriate celebrations for the centenary of Australia's federation in 2001. The 1994 report of the Centenary of Federation Advisory Committee (CFAC) recommended that the theme for 2001 be 'Many cultures, one Australia', consolidating and celebrating core values. It reported that '[t]he themes of respect for difference, of the 'fair go', of reconciliation and environmental harmony were constantly emphasised', as the committee 'talked to hundreds of people across Australia'. The CFAC report noted that proposals to restore waterways and coasts came from every State and Territory. It was also noted that 'Aboriginal communities are keen to achieve joint management of their traditional hunting and fishing areas'.<sup>274</sup> The CFAC addressed the building of 'national identity' and suggested that a commitment to tolerance, respect for diversity, democracy and participation, and 'extending the process of reconciliation with Aboriginal and Torres Strait Islander people and elimination of the disadvantages they suffer' were central concepts. The committee wrote:

At the time of federation, governments undertook a role of guardianship and so called protection of indigenous people whom they believed were not capable of living in the modern world...Today we are engaged in a dialogue which seeks to reconcile past differences and to plot a future path of equity, respect and understanding. The reconciliation issue was perhaps the most commonly heard of all the ideas put to the committee in every part of the country.<sup>275</sup>

The 1992 *National Strategy for Ecologically Sustainable Development* also suggests that governments will support the Council for Aboriginal Reconciliation as a forum for discussion and formulation of Aboriginal and Torres Strait Islander peoples' positions relating to ESD.

### **Relevant State and Territory Legislation and Policies**

Information was unavailable regarding conflict resolution strategies in Victoria, South Australia, New South Wales and the ACT.

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<sup>273</sup> Council for Aboriginal Reconciliation, *Sharing History: A Sense for all Australians of a Shared Ownership of their History*, Australian Government Publishing Service Canberra, 1994, p.23-24.

<sup>274</sup> Centenary of Federation Advisory Committee, *2001: A Report from Australia*, Australian Government Publishing Service, August 1994, p.66.

<sup>275</sup> Centenary of Federation Advisory Committee, *2001*, p.48.

### *Tasmania*

Preliminary discussions have occurred between the Department of Primary Industry and Fisheries in Tasmania. Aboriginal groups and the State's Office of Aboriginal Affairs, regarding implementation of the *Living Resources Management Act 1995 (Tas)*. These are expected to be formalised in due course.<sup>276</sup>

### *Western Australia*

The fisheries administration in Western Australia has been reviewed and restructured in recent times and there is now a greater emphasis on service delivery in the regions and the placement of more senior officers in key regional offices. The Policy Officer (Native Title) in the Department of Fisheries has advised:

Alongside the introduction of the FRMA [*Fish Resources Management Act 1994 (WA)*]the Department itself has been reviewed and is currently being restructured. As part of the review, there is a greater emphasis on service delivery in the regions and the placement of more senior officers in key regional offices. The first three to be phased in are Broome, Albany and Fremantle during the coming year, followed by Carnarvon and Geraldton in 1997.<sup>277</sup>

This restructuring may improve relationships with local Aboriginal groups as service delivery is improved. Some staff in the fisheries department also attend cross-cultural awareness courses.

### *Northern Territory*

At the August 1995 workshop organised by the Northern Land Council in Darwin on Aboriginal interests and commercial fishing, workshop participants discussed the issue of enforcing fisheries legislation. Enforcement is currently the responsibility of the Northern Territory police. Nigel Scullion of the Northern Territory Fishing Industry Training Council said that it was inappropriate that the police were enforcing the Fisheries Act; that enforcement should be a Fisheries matter, and that there should be paid Aboriginal guides on all patrols and a delegation of enforcement powers to outstations. Responses were mixed. The comment was made that relations between police and Aboriginal communities needed to improve before Aboriginal people would willingly take on policing functions.<sup>278</sup> But it was also suggested that saltwater people with saltwater totems had a cultural interest in protecting the marine environment and that Aboriginal enforcement could address the lack of coastal surveillance. Marcia Langton suggested that the example of Kowanyama's Aboriginal land and natural resources management office in Queensland might be followed in the NT.

The fishing industry in the Northern Territory has developed a code of practice which provides that the non-commercial portion of the catch should be handed over to traditional owners, but apparently there is a problem with fishermen not knowing who the traditional owners are.<sup>279</sup> Iain Smith of the Northern Territory Fishing Industry Council told the workshop that he was developing an information kit for commercial fishermen to explain to them cultural sensitivities such as the importance of sacred sites. Waste fish is a significant issue in the Northern Territory and it is agreed that any crocodile, dugong or turtle caught accidentally in fishing nets should be handed over to traditional owners.

### *Queensland*

In Queensland most of the 50 community rangers who are currently working with Community Councils have received accredited training as community rangers. Their presence within communities is reported to have 'resulted in improved liaison and co-operation with fisheries managers and enforcement officers'.<sup>280</sup>

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<sup>276</sup> A. Schaap, Acting General Manager (Marine Resources), Department of Primary Industry and Fisheries Tasmania, 20 February, 1996.

<sup>277</sup> P. Summerfield, personal communication, 26 September 1995, Ref. 1161/94, pp.2-3.

<sup>278</sup> Northern Land Council, 'Minutes: 'Commercial Fishing and Aboriginal Interests in the Sea', p.3.

<sup>279</sup> Northern Land Council, 'Minutes: 'Commercial Fishing and Aboriginal Interests in the Sea'.

<sup>280</sup> Smyth, 'Indigenous Peoples and the Marine Environment...', at p.15.

The work of the Kowanyama Land and Natural Resources Management Office is widely recognised as a particularly sound approach to ecosystem management and an empowering situation for the local Aboriginal community involved. One of Kowanyama's central wishes is to sustain traditional subsistence fishing and the resource base of Aboriginal lands and waters. This is being achieved following the closure of parts of the Mitchell River system to non-indigenous fishers so as to conserve fish stocks; the issuance of camping permits for recreational fishers, and the introduction of an active Ranger Service, amongst other activities.<sup>281</sup>

Viv Sinnamon suggests that in developing co-management and self-management strategies, governments must recognise and respect indigenous peoples' rights and responsibilities; have the political will to realise genuine community-based approaches to resource management, and to understand that governments 'have no monopoly upon the management of planetary or national resources'.<sup>282</sup> Traditional aspects of indigenous and non-indigenous sciences for resource use and management are taught at Kowanyama. According to Sinnamon, traditional ecological knowledge can include information on topics such as increase ceremonies, seasonal condition, and availability of natural resources which complement water cycles, food chains, riparian ecology, and other concepts.<sup>283</sup>

According to Sinnamon:

Contemporary indigenous land management strategies have begun to develop at Kowanyama. This includes the maintenance of fish increase ceremonies, the consolidation of the traditional ecological knowledge base in the school curriculum, through to the establishment of a sophisticated geographic information system. Mapping of both cultural landscape and natural resources inventories will form the basis for future management of aboriginal lands and waters.

Sinnamon also suggests that mutual respect can be developed between recreational and commercial fishers, and indigenous communities, if preferences and interests in the various local resources are identified.<sup>284</sup> This is being achieved at Kowanyama because the Council has developed a sound working relationship with the Queensland Fisheries Management Authority. Kowanyama's Fisheries Officer has the powers of a Fisheries Inspector under State fisheries legislation and will be able to exercise powers under the Kowanyama Aboriginal Council's by-laws. Kowanyama undertakes joint enforcement exercises with the Queensland Boating Fisheries Patrol, and is also involved in developing regional strategies with the Mitchell River Watershed Management Group.<sup>285</sup> Kowanyama covers the costs of a helicopter surveillance program through the fees it levies on recreational fishers camping on Aboriginal lands and this had proven to be both a good management strategy and a useful lever in the community's negotiations for river closures. According to Sinnamon:

Helicopter surveillance has concentrated on commercial fishing activity on coast waterways of the delta but more recently has been used in the observation of recreational fishing activity. Last season the program resulted in the prosecution of individuals gillnetting freshwater on the Alice River adjacent to the Alice

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<sup>281</sup> V. Sinnamon, 'Fisheries of the Lower Mitchell River, North Queensland', in Cordell (ed.), *Indigenous Management of Land and Sea...*, pp.1-31 at pp.20, 24.

<sup>282</sup> Sinnamon, 'Fisheries of the Lower Mitchell River ...', p.26.

<sup>283</sup> Sinnamon, 'Fisheries of the Lower Mitchell River ...' p.15.

<sup>284</sup> Sinnamon, 'Fisheries of the Lower Mitchell River ...', p.6.

<sup>285</sup> Sinnamon, 'Fisheries of the Lower Mitchell River ...', p.14.

and Mitchell Rivers National Park. Close co-operation between Fisheries Officer at Kowanyama and Queensland Boating and Fisheries Patrol ensured the success of the operation.<sup>286</sup>

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<sup>286</sup> Sinnamon, 'Fisheries of the Lower Mitchell River ...', pp.18, 27.