

CHAPTER FROM:

Working on Country: Contemporary Indigenous Management of Australia's Lands and Coastal Regions, edited by Richard Baker, Jocelyn Davies and Elsbeth Young, published in 2001 by Oxford University Press

Management of Sea Country

Indigenous Peoples' Use and Management of Australia's Marine Environments

Dermot Smyth

Introduction

This chapter explores past and present relationships between Aboriginal and Torres Strait Islander cultures and Australia's marine environments. An understanding of these relationships and associated rights, interests, and responsibilities is essential to the equitable and sustainable use of resources of the sea.

'Commons' or 'country'

The general Australian community regards the sea as a common domain, with open access to all, to be managed by governments in cooperation with relevant stakeholders on behalf of the whole community. Indigenous cultures, on the other hand, view the sea as part of their traditional country with all the possibilities of identity, ownership, private use rights, and management responsibilities that apply to land.

Indigenous groups avoided the so-called 'tragedy of the commons' by group ownership of resources and access, use and management rules prescribed by law, cultural practices, and social cohesion. Governments attempt to avoid the tragedy of open access by various mechanisms, including licensing and establishing tradable quotas, enforced through law but without the imperatives of small-group social cohesion.

These very different perspectives on the relationship of people to the sea present a major challenge for contemporary marine management in Australia. Governments not only conceive of marine environments and resources differently from indigenous peoples, they have developed different policy approaches and legislation for different groups. In particular, Torres Strait Islander rights and interests in the sea have historically been given, and are currently given, greater recognition than those of coastal Aboriginal groups. For this reason, Aboriginal and Torres Strait Islander marine interests are mainly addressed separately in this chapter.

Pre-colonial indigenous maritime cultures

Our understanding of Aboriginal and Torres Strait Islander use and management of Australia's oceans prior to British settlement derives from many sources. These include the stories, knowledge, and traditional practices passed on by generations of Aboriginal and Torres Strait people to the present day. This information is supplemented by the work of archaeologists who have examined the material remains of occupation sites around much of Australia's coast; additional perspectives on pre-colonial coastal cultures have been provided by early navigators, settlers, explorers, and anthropologists.

Aboriginal clans and country

Although there was considerable diversity among the cultures of the hundreds of Aboriginal groups around Australia's coast, there were some common factors that reflected their relationship to the sea. A simplified general description of Aboriginal social organisation and relationship of people to country is given below. It should be stressed, however, that Aboriginal societies were and are more complex than indicated here, and that interpretations of Aboriginal social structures vary within the anthropological literature.

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'. The country of coastal clans always included estuaries, beaches, and coastal waters, extending in some instances many kilometres out to sea. Groups of clans speaking a common language formed a wider social group, sharing ceremonies, belief systems, technologies, and subsistence strategies. 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.

Individuals retained their clan membership, and country affiliations and responsibilities even when they moved to other areas, for example to marry into a neighbouring clan or language group. The occupants, users, and managers of particular areas of land and sea country were therefore the owners of that particular clan estate, as well as people who had moved into an area and who had clan affiliations and responsibilities elsewhere. Anthropologists refer to the group of people occupying a clan estate at any one time as a 'band'.

'Sea country' was not additional to a clan estate on land, it was inseparable from it. As on land, sea country contained evidence of events that occurred during the Dreaming, by which all geographic features, animals, plants, and people were created. Sacred sites, often related to these creation events, and Dreaming Tracks, or Songlines, along which mythological beings travelled during the creation period, were part of sea country. 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. A generalised interpretation of coastal clan estates is shown in figure 4.1.

INSERT FIGURE 4.1: MAP OF: COASTAL SEA COUNTRY ESTATES

Most Aboriginal people with marine clan estates were coastal mainland dwellers. However, others lived exclusively or periodically on offshore islands, particularly off the Queensland, Northern Territory, and Kimberley coasts and in Bass Strait. 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.

The extent of Aboriginal sea 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 probably began more than 60,000 years ago. During the time Australia's coasts have been used by Aboriginal peoples, sea-levels have risen over 100 m, resulting in inundation of extensive areas of coastal lands, particularly around northern Australia where the shoreline has a very gentle gradient and there is an extensive shallow continental shelf.

Following stabilisation of the sea-level at its present height, about 6000 years ago, the Aboriginal patterns of marine use that were observed at the time of British colonisation began to be established. Around northern Australia, these included extended sea voyages by canoe to exploit resources and to 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 cultural sites have been recorded up to 80 km off the Northern Territory coast (Davis 1989).

Throughout coastal Australia and along major river systems, logs and bark were used as floating aids for Aboriginal people and their possessions. In some areas more complex rafts and canoes were used, depending on availability of materials and on 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, made from kapok trees (*Bombax ceiba*) and other light, buoyant woods, were also used in the north. In some areas a mast and a sail woven with fibre made from pandanus leaves (*Pandanus* spp.) were attached to dugout canoes. Both single and double outrigger canoes were used along the Coral Sea coast of north Queensland.

The greater complexity of watercraft in northern Australia probably arose because of the presence of offshore reefs and islands suitable for hunting, fishing, and temporary habitation. Northern technologies also benefited from the interaction between the inhabitants of coastal Australia and areas to the north, particularly from the Indonesian archipelago, Torres Strait, and 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. Fishing line and bone hooks were used in coastal waters of southern Australia.

Aboriginal use and management of sea country

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. 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 well-being of particular places, species, and habitats
- control of entry into marine clan estates by outsiders—restricting resource use to clan members and others who had their permission
- seasonal exploitation of particular marine resources, and the opening and closure of seasons according to 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 the age, gender, reproductive condition, health, fat content, and so on, 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 or 'totem'. These were generally animal or plant species, but could also be sea currents, winds, or celestial bodies

- 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 conservative marine exploitation that enabled the local population to live within the carrying capacity of the local environment.

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 6000 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 low 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 are large areas of ocean regarded as belonging to particular groups within each island. Meriam people of Mer (Murray Island), for example, assert that their sea country extends over 100 km 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 strait, the people 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.

Impact of colonisation

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 communities became involved in commercial fisheries and other marine industries, such as the production of dugong oil, collection of pearl shell and bêche-de-mer or trepang in northern Australia, and whaling in some southern areas.

Many coastal Aboriginal people chose or were forced to join private commercial fishing ventures. These activities were responsible for depopulating some 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 societies, they also provided opportunities for some Aboriginal peoples to maintain contact with their marine estates, and to transmit cultural knowledge of their sea country to succeeding generations. Torres Strait Islanders were also involved, willingly and unwillingly, in marine industries, particularly diving for pearl shell, trochus, and bêche-de-mer during the second half of the nineteenth century and up until World War II.

Many deaths of indigenous people occurred as a result of these unregulated early industries. However, during an era when the movement of indigenous people on land was greatly restricted by government policy, involvement in commercial fishing enterprises kept Torres Strait Islanders moving through their sea country, harvesting traditional foods as well as the commercial products, and taking them far beyond their customary areas in the Torres Strait region.

Contemporary indigenous relationships with the sea

Aboriginal interests in the sea: the present

Approximately half of Australia's population of 300~000 indigenous people live on or near the coast. Most of them live in coastal towns and cities. They also reside in about 100 designated Aboriginal communities (former church missions and government reserves) as well as over 200 outstations or homeland centres located on traditional clan estates away from the main communities.

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 that extend back to pre-colonial times.

For these people, subsistence marine resources form an important part of the domestic economy, in addition to being important culturally. Food is shared among the extended families of the community and represents a continuation of a traditional subsistence economy.

This modern dependence on subsistence marine resources is most clearly seen on remote, northern coastal communities where traditional activities such as hunting for turtle and dugong are widely practised. However, subsistence fishing and shell-collecting is also a common activity of coastal Aboriginal people in southern Australia, many of whom combine working in mainstream jobs and living in suburbs and small towns with these subsistence activities. For example, in 1994 over 90 per cent of adults from the Wallaga Lake Koori community on the far south coast of New South Wales said they collect fish and shellfish from the sea and sea lakes of the region.

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 aluminium or wooden dinghies, powered by outboard motor or factory-made oars. The hunting implement, a wooden harpoon with a detachable head, is the same design as was used in pre-colonial times, although the harpoon head is now made of steel, rather than stone or shell, and the rope attached to the head 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 study by the Australian Law Reform Commission (1986) into the recognition of Aboriginal customary law 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.

Conflicts and competing interests

Aboriginal cultural relationships with the sea continue 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 are now obliged to share their sea country with commercial and recreational fishers, commercial shipping, pleasure craft, naval ships, and marine parks.

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. For example, the impact of commercial abalone fishing on coastal Aboriginal people in New South Wales has been enormous (see box 4.1).

Box 4.1

Aboriginal people and abalone fishing in New South Wales

Commercial abalone harvesting in southern Australian waters is an example of a relatively recently developed marine industry that has impacted heavily on the subsistence activities of coastal Aboriginal peoples. Prior to the 1970s, 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 that abalone harvesting has been carried out continuously since the formation of the present coastal zone about 6000 years ago.

Overharvesting 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 licences and quotas for the commercial sector, restricted bag limits for recreational fishers (as low as five per person per day in some states), and no specific recognition of the longstanding Aboriginal abalone fishery. In this case, the Aboriginal subsistence fishery has had to continue within the confines of the recreational fisheries regime. On occasions this has resulted in prosecutions of Aboriginal fishers for exceeding the recreational bag limit or for engaging in trade in abalone without a licence.

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—that is, when a resource such as abalone becomes commercially valuable, Aboriginal people have been excluded from benefiting, in favour of other interest groups.

All marine activities have the potential to invade the privacy of marine clan estates, and to 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.

Contemporary use of marine resources in Torres Strait

Seafood consumption by Torres Strait Islanders, in excess of 200 g per day on some islands, is among the highest in the world. By comparison Australians in general consume an average of 22 g of seafood per day. Species harvested for food include dugong, turtle, fish, and crayfish, with considerable variation in the proportion of each between the different regions in Torres Strait. On the northern and central islands the seafood diet comprises 50 per cent turtle and 40 per cent fish, while on the western islands dugong represent about 60 per cent of the catch (Johannes & MacFarlane 1991).

Many Torres Strait Islanders continue their involvement in marine industries in Torres Strait and elsewhere across northern Australia, particularly in the harvesting of trochus shell, bêche-de-mer, and crayfish (see table 4.1). However, there is no indigenous participation in the commercial prawn industry, which provides the main economic returns in Torres Strait.

Table 4.1 Average annual commercial fishery production and participation rates in Torres Strait

<i>Fishery</i>	<i>Annual production (tonnes)</i>	<i>Value (\$)</i>	<i>Indigenous participation (%)</i>	<i>Non-indigenous participation</i>
Prawns	1,200	15,000,000	0	100
Crayfish	250	7,500,000	40	60
Mackerel	100	900,000	3	97
Reef fish	22	20,000	0	100
Pearl shell	3,500	600,000	1	99
Trochus shell	90	400,000	100	0
Bêche-de-mer	22	250,000	100	0

(Source: Based on Altman et al. 1994)

Today more Torres Strait Islanders live on mainland Australia than in Torres Strait. On the mainland some of them 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.

Involvement of indigenous peoples in marine management

Over the last decade Aboriginal and Torres Strait Islander peoples have become increasingly involved in the management of Australia's marine environments and resources. For these 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 people were wholly or partially exempt from fisheries regulations under prescribed circumstances, such as being resident on an Aboriginal reserve. This could be interpreted as de facto recognition of the customary fishing rights of these Aboriginal people. However, these concessions did not provide any mechanism for Aboriginal involvement in decision making about fisheries management, such as the allocation of fishing rights to commercial fishing operators or how fish breeding habitats would be protected. This system therefore provided some recognition of Aboriginal marine resource rights without recognising Aboriginal peoples' 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.

Some measures have been developed to facilitate Aboriginal involvement in commercial fisheries. These include community fishing licences in Queensland, Aboriginal coastal licences in the Northern Territory, and special commercial trochus shell fishing permits in Western Australia. However, these provisions are a minor part of the management of commercial fishing and there is widespread concern among coastal Aboriginal peoples that they have been denied economic benefit from the commercialisation of what were once their exclusive 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. Progressive though these measures are in comparison to the recognition of Aboriginal marine interests on the mainland, the situation in Torres Strait falls far short of the level of indigenous autonomy and benefit from marine resource use sought by many Torres Strait Islanders.

Addressing 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, in particular the Coastal Zone Inquiry (RAC 1993; Smyth 1993) and

during the development of the Marine Strategy for Torres Strait (Mulrennan et al. 1994; Dews & David 1998).

Progress in implementing recommendations from these reviews has been slow, but significant steps have been 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 (ZACs) and species-specific Management Advisory Committees (MACs) in Queensland and elsewhere.

The Commonwealth government allocated some funding (\$300~000) to state and territory fisheries agencies in 1997 to conduct consultative workshops with coastal indigenous groups, fisheries managers, and representatives of commercial and recreational fishers. These workshops were to be the first stage in the development of a national Aboriginal and Torres Strait Islander Fisheries Strategy. However, no further funding has been allocated and the future of the strategy is uncertain. Furthermore, a national Aboriginal and Torres Strait Islander Coastal Reference Group, established in 1994 to advise the Commonwealth government on indigenous coastal and marine policies, has been disbanded.

Policy changes are hindered by the different approaches taken by state, territory, and Commonwealth governments. While the Commonwealth has constitutional responsibility for indigenous affairs, fisheries management is largely the responsibility of state and territory governments. The latest Commonwealth government indigenous marine initiatives are contained within Australia's Oceans Policy, released in 1998 (Environment Australia 1998). This document includes commitments by the Commonwealth to remove barriers to sustainable subsistence fishing, to promote indigenous involvement in commercial fisheries, and to encourage indigenous participation in fisheries and marine management.

Marine Protected Areas

Marine Protected Areas (MPAs), also referred to as marine parks, are the most intensively managed areas of Australian marine environments. They represent an attempt by governments to provide for the sustainable use of marine resources, while also conserving 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 also provide an opportunity to 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 threat to the maintenance of those indigenous values.

Australia's largest MPA, the Great Barrier Reef Marine Park, was established during the 1970s, at a time when there was less recognition of indigenous peoples' maritime interests than there is today. Provision was made to permit a continuation of Aboriginal traditional hunting, and efforts were made to document traditional knowledge of the marine park. However, 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 that lie within the marine park.

Over the last twenty years there has been a broadening of Aboriginal involvement in management. This results from lobbying by coastal indigenous groups, several research projects that 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.

Twenty years ago, the Great Barrier Reef Marine Park Act made no reference to Aboriginal interests in the marine park. There was no indigenous representation on either the Authority Board or the Community Consultative Committee, there were no indigenous employees, and no special consultative procedures to involve indigenous people in decisions on the planning and management of their customary estates within the marine park. This has now changed (see box 4.2). The changes 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 part of an indigenous domain, in which indigenous peoples have a legitimate claim to a special place in its management.

Box 4.2

Recognition of indigenous interests in the Great Barrier Reef Marine Park

The recognition of Aboriginal and Torres Strait Islander interests in the marine park now includes:

- amendments to the Great Barrier Reef Marine Park Act providing for indigenous representation on the Authority Board
- indigenous representation on the Community Consultative Committee
- indigenous employees of the Authority, some of whom are employed in the Indigenous Cultural Liaison Unit
- training and some part-time employment for indigenous community rangers located in coastal 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 indigenous people living in Torres Strait and on the mainland
- assessment of potential impacts on indigenous cultural values of any proposed development within the marine park, such as the construction of pontoons for tourists on island and outer barrier reefs.

Other marine parks

The Cobourg Marine Park (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. A significant shortcoming of this arrangement is that the board does not have jurisdiction over fisheries management within the marine park, once again denying Aboriginal people control over their traditional marine resources.

Elsewhere in Australia there is considerably less formal involvement of Aboriginal people in marine park management, and there is no nationally agreed policy for the recognition of indigenous peoples' interests in MPA management.

Native title in the sea

The *Mabo* High Court decision did not address the issue of native title over the waters surrounding Mer (Murray Island). The *Native Title Act 1993*, however, does provide for the possibility of native title in the sea. As of 26 July 2000 there were 204 native title applications that extended beyond the high-water mark under consideration by the National Native Title Tribunal (pers. comm., September 2000, Robyn Green, NNTT). Only one such claim, involving the sea surrounding Croker Island in the Northern Territory, has resulted in a determination by the Federal Court.

The Croker Island marine native title determination provides for the coexistence of Aboriginal native title rights and the rights of licensed commercial fishers, recreational fishers, the general public and shipping etc. The regime of coexistence outlined by the Federal Court, however, provides for a hierarchy of rights in which native title rights must yield to all other legal rights where there is a conflict. Nevertheless, the Croker Island decision has established that Aboriginal customary law in relation to the sea is part of Australian common law and is recognised and protected by the Native Title Act. Even without stronger recognition of marine native title as a result of the future court determinations, Aboriginal and Torres Strait Islander peoples now have a legal basis for pressing their demands for greater involvement in the use and management of marine resources. However, marine native title rights as currently recognised by the Federal Court are restricted to subsistence, non-commercial use, and other cultural practices.

Indigenous initiatives

Concurrent with the legal struggle for recognition of indigenous marine rights, coastal indigenous groups are also involved in projects and activities aimed at regaining self-management of their marine environments. Land and sea management agencies have been established on at least three coastal Aboriginal communities in northern Australia. These agencies are engaged in a variety of environmental and resource planning and management initiatives, including monitoring subsistence resource use, documenting cultural sites on land and sea, patrolling clan estates, and facilitating and monitoring visitor access to Aboriginal land and adjacent marine areas.

These and other communities employ community rangers who are responsible to their elected council and to the appropriate elders for implementing land and sea management for their area. In some locations, community rangers work in conjunction with, or on behalf of, government environmental and fisheries management agencies. In some instances, community rangers have undergone law enforcement training and been granted enforcement powers under various state or Commonwealth legislation.

In Torres Strait, the Island Coordinating Council, in cooperation with the Torres Strait Regional Authority and supported by the Commonwealth and Queensland governments, has developed a Marine Strategy for Torres Strait. The strategy provides a framework for promoting the ecologically sustainable management of environments and resources across Torres Strait in the context of recognition of the cultural, social, and economic rights and interests of Torres Strait Islanders and their associated resource management responsibilities.

Aboriginal traditional owner groups from Cooktown to Fraser Island have instigated a negotiating process known as Sea Forum. The aim of Sea Forum is to

develop regional agreements with state and Commonwealth governments for the recognition of Aboriginal rights and interests in all aspects of marine resource use and management in the south Great Barrier Reef region. Around coastal Australia and in Torres Strait, indigenous communities and organisations have embarked on their own coastal management projects as part of the joint Commonwealth/State Coastcare Program.

Reconciling indigenous and non-indigenous perspectives on marine management

As described elsewhere (chapter 5), equity in management of terrestrial national parks became a reality only when Aboriginal property rights were recognised. It can be assumed that the situation for marine areas will be similar. It is likely that significant involvement of indigenous people in marine management, and more equitable sharing of benefits from the commercial exploitation of marine resources, will only emerge once marine native title rights are given equal legal status with other marine environmental and resource rights.

Meanwhile, marine managers, researchers, and other stakeholders can prepare for such recognition by becoming informed about indigenous interests and perspectives on marine environments and resources, and by building collaborative relationships with indigenous groups in their own sphere of influence.

At a policy level, the Commonwealth has the opportunity to move the process forward during the implementation of its commitments in *Australia's Oceans Policy* (Environment Australia 1998), to revive the stalled Aboriginal Fisheries Strategy, and to establish firm guidelines for the equitable involvement of indigenous people in the planning and management of all marine protected areas in Australia. These initiatives will assist 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 marine environments. On the other hand, 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 about indigenous perspectives on sea country.

Recognition of Aboriginal and Torres Strait Islanders' cultural rights and interests in the sea can achieve mutually acceptable outcomes. The debate need not focus on 'commons versus country'. Rather, the indigenous stewardship ethic that already exists could be recognised and nurtured to the benefit of Australia's marine environments.

REFERENCES

- Altman, J. C., Arthur, W. S. & Bek, H. J. 1994, *Indigenous Participation in Commercial Fisheries in Torres Strait: A Preliminary Discussion*, Discussion Paper no. 73, CAEPR, Australian National University, Canberra.
- Davis, S. 1989, 'Aboriginal Tenure of the Sea in Arnhem Land, Northern Australia', in J. Cordell (ed.), *A Sea of Small Boats*, Cultural Survival, Cambridge, Mass.
- Dews, G. & David, J. 1998, *Marine Strategy for Torres Strait*, Island Coordinating Council and Torres Strait Regional Authority, Thursday Island.

- Environment Australia 1998, *Australia's Oceans Policy: An Issues Paper*, Commonwealth of Australia, Canberra.
- Johannes, R. E. & MacFarlane, J. W. 1991, *Traditional Fishing in Torres Strait Islands*, CSIRO Division of Fisheries, Hobart.
- Law Reform Commission 1986, *The Recognition of Aboriginal Customary Laws*, AGPS, Canberra, vol. 2, pp. 177–204.
- Mulrennan, M. & Hanssen, N. with Island Coordinating Council 1994, *Marine Strategy for Torres Strait: Policy Directions*, Australian National University NARU, Darwin, and Island Coordinating Council, Thursday Island.
- Resource Assessment Commission (RAC) 1993, *Coastal Zone Inquiry: Final Report*, Commonwealth of Australia, Canberra.
- Smyth, D. M. 1993, *A Voice in All Places: Aboriginal and Torres Strait Islander Interests in Australia's Coastal Zone*, Resource Assessment Commission, Canberra.

FURTHER READING

- Altman, J. C., Arthur, W. S. & Bek, H. J. 1994, *Indigenous Participation in Commercial Fisheries in Torres Strait: A Preliminary Discussion*, Discussion Paper no. 73, CAEPR, Australian National University, Canberra.
- Law Reform Commission 1986, *The Recognition of Aboriginal Customary Laws*, AGPS, Canberra, vol. 2, pp. 177–204.
- Lawrence, D. & Cansfield-Smith, T. 1991, *Sustainable Development for Traditional Inhabitants of the Torres Strait Region*, Workshop Series no. 16, Great Barrier Reef Marine Park Authority, Townsville.
- Meyers, G. G., O'Dell, M., Wright, G. & Muller, S. 1996, *A Sea Change in Land Rights Law: The Extension of Native Title to Australia's Offshore Areas*, Native Title Research Unit Legal Research Monograph, Aboriginal Studies Press, Canberra.
- Northern Territory University 1993, *Turning the Tide*, proceedings of Indigenous People and Sea Rights conference, convened by Faculty of Law and Centre for Aboriginal and Islander Studies, Northern Territory University, Darwin.
- Smyth, D. M. 1996, 'Establishing Marine Protected Areas in Indigenous Environments', in R. Thackway (ed.), *Developing Australia's System of Marine Protected Areas*, Ocean Rescue 2000 Workshop Series, Publication no. 2, Department of Environment, Sport and