

# **Protecting Sea Country: Indigenous Peoples and Marine Protected Areas in Australia**

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## **Introduction and background to Sea Country**

### ***What is sea country?***

While the several hundred coastal and island Indigenous groups around Australia have different languages and their own unique belief systems, ceremonies and relationships with their local environments, they all regard the estuaries, beaches, bays, and marine areas (collectively known as ‘sea country’ or ‘saltwater country’) as integral parts of their traditional estates. Sea country is not additional to a clan estate on land, it is part of an integrated terrestrial and marine domain (Smyth 1997, 2001).

According to local cultures, sea country, as on land, contains evidence of the ancient mystical events by which all geographic features, animals, plants and people were created. Sea country contains sacred sites, often related to these creation events, and it contains tracks (or Songlines) along which mythological beings travelled during the creation period. The sea, like the land, is integral to the identity of each clan, and clan members have a kin relationship to the important marine animals, plants, tides and currents.

Today, most Indigenous people with marine clan estates live in coastal regions of the mainland and Tasmania, the larger islands off the Northern Territory coast, and islands in Torres Strait and Bass Strait. However, in the past many Indigenous people lived exclusively or periodically on smaller offshore islands, particularly off the Queensland, Northern Territory and Kimberley coasts. Island dwellers were, and continue to be, particularly dependent on the subsistence resources of the sea and they maintain a strong interest in the management of large marine estates radiating out from their island homes.

Aboriginal and Torres Strait Islander peoples’ relationship to their sea country brings with it a complexity of cultural rights and responsibilities, including the right to access, use and distribute resources, and the responsibility to manage those resources from generation to generation. Clan members are owners of their country, they belong to their country, they identify with their country and they are stewards of their country, including their sea country (Smyth 1994).

In the past, and continuing in many areas today, marine environments were managed through a variety of strategies and cultural practices, including:

- Conduct of ceremonies, songs, dances, storytelling and other rituals with the purpose of nurturing the wellbeing 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 seasonal exploitation of particular resources marked by ecological events, such as the flowering of particular plants or the arrival of migratory birds;
- 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; 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 protection, management and exploitation that was conservative, and which enabled Indigenous societies to live within the carrying capacity of local environments.

The geographic 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 50,000 years, and possibly considerably longer (Hiscock 2008). During this time sea levels have risen over 100 metres, resulting in inundation of extensive areas of coastal lands previously occupied by Indigenous groups, particularly around northern Australia with a low gradient shoreline and extensive continental shelf; land bridges between Australia and Papua New Guinea, and between Tasmania and the Australian mainland were also inundated by the rising seas. Following stabilisation of the sea level at its present height, about 6,000 years ago, Indigenous patterns of marine use observed at the time of British colonisation began to be established. Around northern Australia, this included the use of tidal fish traps and extended sea voyages by canoe to exploit resources and manage clan sea country estates, 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 80 km off the Northern Territory coast (Peterson and Rigsby 1978).

Prior to British colonisation in the late 1700s, Indigenous people had established a comprehensive network of sustainably managed and protected maritime estates, including culturally endorsed and enforced 'no-take zones', which had many of the characteristics of contemporary marine protected areas (MPAs) and which had been adapted to dramatic climate and sea level changes over millennia. The effectiveness of this network of marine estate management was enhanced by the integration of land and sea management (which is not often the case with modern marine protected areas) and the protection and management regime embraced the entirety of Australia's coastal marine environments (in comparison to the modest patchwork of MPAs today).

### ***Recognition of Indigenous sea country rights and interests***

The formal recognition of Indigenous peoples' rights and interests in sea country lags considerably behind recognition of similar rights and interests on land (NAILSMA 2012). This is because of fundamental different perspectives on human interactions with the sea between Indigenous cultures and the broader Australian community. Whereas Indigenous saltwater people regard the sea as an inseparable extension of coastal land estates and subject to the same characteristics of traditional ownership, custodianship, exclusive resources use and customary law as on land, the broader community views the marine environment as an open commons, owned and managed by governments on behalf of all Australians – a view that can be traced back to Roman jurist Marcianus in the second century AD, who stated that the sea and the shores are “common to all men” (Cordell 1991; Allen 1993) and subsequently imported into Australia as part of the British colonial legal framework.

On the other hand, while a great many Aboriginal groups were displaced and prevented from accessing their traditional lands as a result of British colonisation and its aftermath, their relationship with the sea could often be maintained, and was sometimes encouraged by government policy. Many early Aboriginal missions and 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 *Dugong dugon* oil, collection of pearl and trochus shell and harvesting of bêche-de-mer (or trepang) in northern Australia, and whaling in some southern areas (Smyth 1993).

The first land rights legislation in Australia, the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), applied to the whole Northern Territory, including intertidal land which in many parts of the Northern Territory extends up to a kilometre or more from the high tide mark. In 2008, the High Court of Australia found that ownership of intertidal land under the *Aboriginal Land Rights (Northern Territory) Act* includes the right to control access to tidal waters over Aboriginal-owned land between the high and low water marks. (Brennan 2008).

In other jurisdictions, however, statutory land rights legislation does not extend to marine areas, including intertidal areas, thereby limiting Indigenous peoples' legal recognition of their cultural connections to sea country; this, in turn, limits their formal engagement in the governance and management of marine protected areas. However, fisheries legislation in all Australian jurisdictions does recognise, to greater and lesser effect, the existence of distinct Indigenous fisheries to support ongoing access to traditional marine resources by Indigenous people.

Following the Mabo High Court decision of 1992 (Sharp 1996), Indigenous peoples' customary rights to land and marine areas are now recognised as part of Australian common law in all jurisdictions. In 1993, the *Native Title Act* (Cth) provided a mechanism for statutory recognition of those rights, as well as procedures for determining their continued existence through native title claims, mediation with other interested parties by the National Native Title Tribunal, and formal determination by the Federal Court. However, the High Court has also determined that where other rights exist, such as the right of commercial fishers, the declaration of a marine protected area, the right of free passage by mariners, and the right of public access to beaches and the sea, native title rights and interests must “yield” to those other legal rights. Native title rights and interests in sea country, therefore, are generally not as comprehensively recognised as on land and must coexist with the rights of others (Australian Human Rights Commission 2000).

## **Indigenous engagement in Marine Protected Areas**

Until about 40 years ago, all of Australia's protected areas were managed almost exclusively for their biodiversity and scenic values, with some recognition of archaeological values (and for marine areas fisheries management purposes), but little regard to other Indigenous cultural values. Indigenous peoples were excluded from living in and using traditional resources within protected areas, and they played no part in managing these areas, which had been in their care for millennia. In this respect, protected areas were part of the broader colonial project that denied Indigenous Australians ownership of, cultural relationships with, and economic benefit from their traditional estates (Smyth 1995).

Since about 1975, in parallel with and as a consequence of, the emergence of statutory Indigenous rights to land and subsequently the recognition of native title, various mechanisms have been developed for the involvement of Indigenous Australians in the management of protected areas, including the transfer of ownership of some national parks to Indigenous groups and the development of formal co-management arrangements (usually referred to in Australia as 'joint management') (Smyth 2001).

Indigenous engagement in the governance and management of marine protected areas is far less advanced than has occurred in terrestrial protected areas, reflecting the more limited legal recognition of Indigenous rights over marine environments as noted above; as a result, there are no MPAs for which Indigenous people have ownership rights equivalent to the co-management national parks referred to above. Nevertheless, there are examples (summarised below) of Indigenous engagement in MPAs that demonstrate attempts to reconcile the contrasting Indigenous and non-Indigenous perspectives on sea country (Bauman *et al.* 2013).

### ***Northern Territory***

Garig National Park, located 200 km northeast of Darwin in the Northern Territory, became Australia's first jointly managed terrestrial protected area in 1981, and subsequently became the first co-managed integrated terrestrial and marine protected area when the adjacent Coburg Marine Park was merged with the national park to become the 450,000 ha Garig Gunak Barlu National Park (see also Chapter XXX NT). The key features of the joint management of Garig Gunak Barlu National Park are:

- Declaration of the park under its own legislation by the Northern Territory Parliament (rather than existing protected area legislation);
- Aboriginal ownership of the terrestrial and intertidal components of the park (but not ownership of the sub-tidal component of the park);
- A management board comprising 8 members, of whom 4 are Aboriginal Traditional Owners and 4 are representatives of the Northern Territory Government; the Board is chaired by one of the Traditional Owner members who also has a casting vote;
- The payment of an annual fee by the Northern Territory Government to Traditional Owners for use of their land as a National Park;
- Day to day management by the Parks and Wildlife Commission of the Northern Territory, including the training and employment of local Traditional Owners as rangers;
- Recognition of the rights of Traditional Owners to use and occupy the Park;
- Inclusion of terrestrial and marine areas in a single protected area – reflecting local Traditional Owners' holistic view of country.

Marine areas also form part of Kakadu National Park in the NT and Booderee National Park in Jervis Bay Territory (a small coastal Commonwealth territory excised from New South Wales – originally envisaged as a port for Australia’s inland capital, Canberra), both of which are jointly managed by Parks Australia and local Aboriginal people under Commonwealth legislation. Once again, only the terrestrial components of the parks are Aboriginal-owned, while the joint management boards, on which local Aboriginal people are in a majority, have responsibility for both the terrestrial and marine components of the park.

### *Queensland*

Australia’s largest MPA, the Great Barrier Reef Marine Park (GBRMP) off the Queensland coast, 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, governance and management rights and responsibilities for the many clan estates that lie within the marine park.

Over recent years there has been a broadening of Aboriginal involvement in management of the GBRMP as a result of lobbying by coastal Indigenous groups, several research projects that documented Aboriginal maritime culture and management aspirations in the area of the marine park (e.g. Ross 2005), and the prospect that continuing native title may exist in parts of the park.

Initially the Australian Government’s *Great Barrier Reef Marine Park Act 1975* made no reference to Aboriginal interests in the marine park. While subsequent changes fall short of full recognition of Indigenous ownership and management of Indigenous sea country estates, substantial efforts have been made by legislators, the Great Barrier Reef Marine Park Authority (GBRMPA) and by coastal Indigenous groups themselves to put in place measures that recognise the longstanding and continuing relationship saltwater Indigenous groups have with their sea country, while maintaining the GBRMP as a multiple use MPA managed by a government agency on behalf of all Australians. These measures now include:

- amendments to the *Great Barrier Reef Marine Park Act* providing for Indigenous representation on the GBRMPA board and for the accreditation of Traditional Use of Marine Resource Agreements (TUMRAs) (see below);
- the establishment of an Indigenous Reef Advisory Committee comprising Traditional Owners and others with expertise in Indigenous sea country rights and interests;
- appointment of Indigenous employees, some of whom are assigned to GBRMPA’s dedicated Indigenous Partnerships Unit;
- accreditation of, and financial support for the implementation of, TUMRAs which are negotiated by and among Traditional Owner groups to determine how they will sustainably use and manage their traditional marine resources (e.g. dugongs, marine turtles, fish etc.) within their own sea country estates;
- recognition and support for the dedication of sea country estates as Indigenous Protected Areas (IPAs) within the GBRMP (see below for further discussion on IPAs);
- compliance training for Indigenous sea country rangers located in coastal communities adjoining the GBRMP;

- science and management workshops for Traditional Owners to share knowledge and understanding about sea country within the GBRMP;
- funding to coastal Aboriginal groups to support their sea country planning and management initiatives, including documenting Indigenous knowledge of the GBRMP, through GBRMPA's Reef Rescue Land and Sea Country Indigenous Partnerships Program;
- special consultative procedures, such as community visits and newsletters, aimed at improving communication between GBRMPA and Indigenous groups;
- 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 islands and outer barrier reefs.

Indigenous Land Use Agreements (ILUAs) provide another mechanism to recognise Indigenous interests within the GBRMP. For example, the Kuuku Ya'u people on eastern Cape York Peninsula have been authorised as state marine park inspectors, trained in compliance and given certain powers of enforcement under an ILUA with the GBRMPA, with in-kind support provided by the Queensland Government. The ILUA also provides for information exchange and wildlife protection measures (ATNS 2011).

There are a number of other informal agreements between the Queensland and/or Commonwealth governments and Traditional Owner groups, including Memoranda of Understanding (MOUs), which set out agreed practices for hunting and fishing, the use of marine resources, law enforcement training and the delegation of powers to manage aspects of MPAs.

A key aspect of these developments in Queensland is the recognition that particular groups of Traditional Owners have cultural associations with, as well as native title rights and interests for, particular sea country estates within the GBRMP. This contrasts with earlier more generic recognition of hunting and fishing rights for all Aboriginal people across the GBRMP.

### ***Torres Strait***

While the Torres Strait region is part of the state of Queensland, it is dealt with separately here because of its unique characteristics: it is primarily a marine region, its population is predominantly Indigenous and of Melanesian origin, and its closest international neighbours are Papua New Guinea and Indonesia. There are approximately 247 islands in the Torres Strait, scattered over a geographic area of 4,800,000 hectares, with 18 communities established on 17 inhabited islands, and two additional communities comprising mainly of Torres Strait Islanders located on northern Cape York Peninsula (known locally as Northern Peninsula Area communities).

The Torres Strait is renowned for its ecological complexity and biodiversity, providing a multitude of habitats and niches for the highly diverse Indo-Pacific marine flora and fauna, including Dugongs and marine turtles. The Torres Strait is also of enormous significance from an Indigenous cultural resource management perspective. Marine and island resources traditionally have been, and continue to be, vital to Torres Strait Islanders from a subsistence and cultural viewpoint. Torres Strait Islanders have a strong and abiding connection with their islands and sea country, governed by their unique *Ailan Kastom* (Island Custom).

These relationships are now legally recognised, with over 20 Registered Native Title Bodies Corporate (RNTBCs) established following native title consent determinations on all inhabited islands and several uninhabited islands throughout the region, as well as the recent High Court determination in the Regional Sea Claim (*Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* [2013] HCA 33 7 August 2013 B58/2012).

In 2001, a native title claim, known as the Torres Strait Regional Sea Claim, was lodged over most of the sea and seabed in Torres Strait. The High Court decision in 2013 in *Akiba* was a significant milestone for all Torres Strait Islanders in terms of their continued exercise of rights and responsibilities over sea country. The High Court, in upholding the decision of Justice Finn in 2010 in the Federal Court, recognised the long history of Torres Strait Islander people and their tradition of trading and utilising marine resources, and affirmed their ongoing customary rights to take any resources from the waters and use them according to traditional laws and customs, including for livelihood, community and commercial purposes. Importantly, the Court rejected the arguments of the State and Commonwealth that Torres Strait Islander people's traditional rights only covered small areas around the islands, and found the rights covered a continuous area between the maritime estates and shared areas of the communities. The Court also recognised that different parts of the sea were owned by the people of different island communities, and some parts were shared between multiple communities. Many of these findings were underpinned by the Court's recognition of the traditional and cultural significance of *Ailan Kastom* and the relationships between Torres Strait people and communities, that included rights and obligations in relation to marine resources. The High Court's determination only related to the parts of the claim area (Part A) that were not also claimed by the Kaurareg and Gudang peoples (the Aboriginal Traditional Owners of the continental islands in the south Torres Strait adjacent to Cape York Peninsula). Due to the overlapping claims between the Kaurareg and Gudang peoples in Part B, the claim to these areas is still to be determined.

Malu Lamar<sup>1</sup> Torres Strait Islander Corporation was appointed in 2014 as the RNTBC to hold the native title rights and interests in Part A of the Sea Claim area, covering approximately 40,000 square kilometres of Torres Strait waters. In 2012, Gur A Baradharaw Kod Torres Strait Sea and Land Council (GBK) was formed by Traditional Owners in the region to act as a peak body to promote the collective interests of native title holders and to develop a culture of governance that aligns with *Ailan Kastom*. The Directors of GBK comprise the Chairs of the RNTBCs in the region. GBK aims to seek Ministerial approval to become the region's Native Title Representative Body during 2016, and also aspires to play a strong future leadership role in relation to land and sea management arrangements.

The Torres Strait Treaty between Australia and Papua New Guinea (PNG), ratified in 1985, has laid important foundations for Torres Strait Islander engagement in protected area management. The Treaty establishes maritime boundaries between the two countries, and recognises the sovereign rights of both countries in respect to the shared management and conservation of fisheries and marine resources. The Treaty recognises the long history of traditional movement, trade and subsistence fishing by both Torres Strait Islanders and PNG people in the waters of Torres Strait, and seeks to minimise interference with their lives, livelihoods and traditional practices (Figure 1). The Treaty establishes a Protected Zone within which traditional movements can occur. A further purpose of the Protected Zone is to

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<sup>1</sup> Meaning 'deep water spirit'

protect and preserve the marine environment and endemic flora and fauna within the Protected Zone. Under the Treaty, a number of consultative mechanisms have been established to progress the implementation of the Treaty, including a Traditional Inhabitants Meeting, Treaty Liaison Meeting, Environmental Management Committee, Fisheries Advisory Committee and Joint Advisory Council. The map of maritime zones in the Torres Strait below shows the Protected Zone, and fisheries and seabed jurisdiction lines established under the Treaty. Note also the limits of coastal and Australian territorial waters, and the northern extent of the Marine Park boundary.

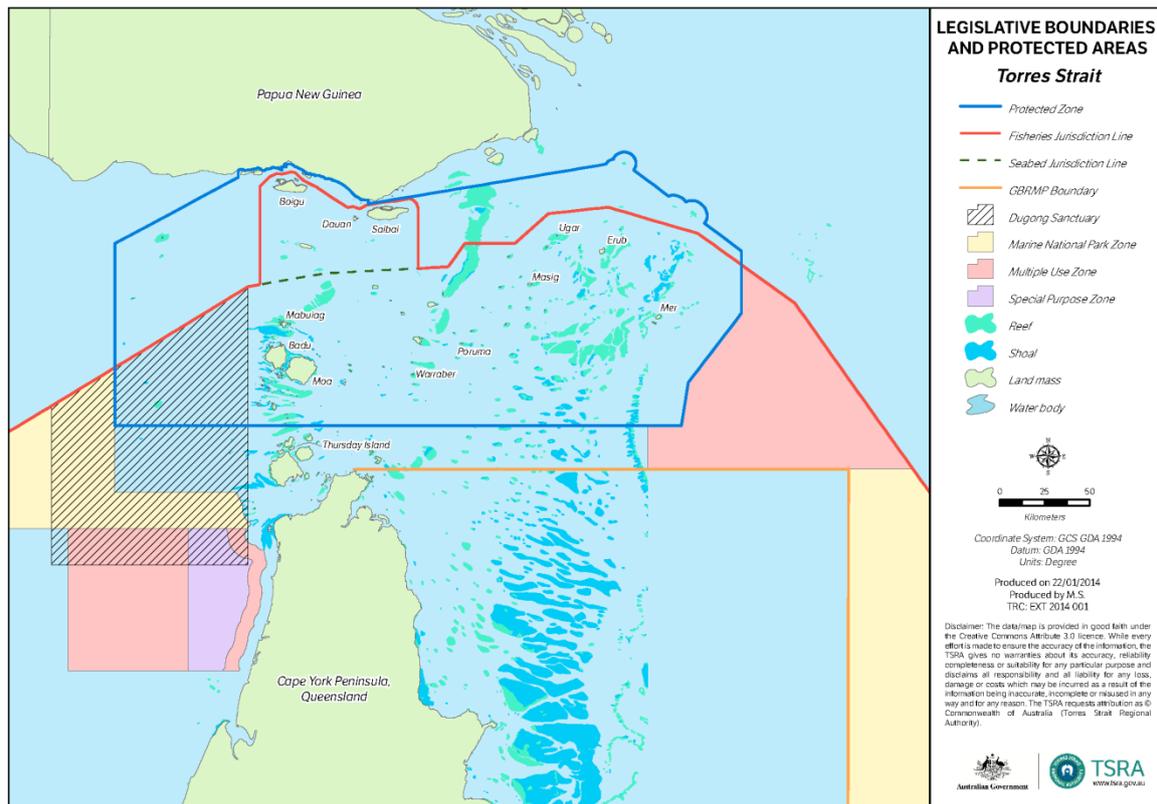


Figure 1. Legislative boundaries and protected areas in the Torres Strait

In terms of formal statutory protection for marine areas within Torres Strait, it is important to note that the Great Barrier Reef Marine Park does not extend up into the Torres Strait, although the reefs of Torres Strait are ecologically the northern extension the Great Barrier Reef, and several Torres Strait Islander groups regard the northern section of the GBRMP as part of their traditional fishing grounds. Islander involvement in consultative processes regarding the management of the Great Barrier Reef has been limited to date, though there have been some recent attempts to facilitate Torres Strait Islander Traditional Owner involvement in joint monitoring activities on islands in the northern section of the GBRMP, as well as in collaborative research and ranger compliance training initiatives delivered through GBRMPA (see also Day GBR chapter).

Perhaps the most significant developments in terms of Islander engagement in marine protected area management have occurred since the development of the *Land and Sea Management Strategy for Torres Strait* in 2005 (Torres Strait NRM Ltd, 2005), and the subsequent establishment of the Land and Sea Management Unit (LSMU) within the Torres

Strait Regional Authority (TSRA), with funding under the Natural Heritage Trust. Prior to then, the region lacked a framework and institutional capacity for coordinating strategic and integrated environmental management approaches, covering both terrestrial and marine areas.

Since its inception in 2006, the LSMU has advocated for, established and implemented a community-based management approach as the most appropriate long-term strategy for the sustainable management of the unique environmental values of the Torres Strait, in line with cultural priorities and customary knowledge held by Torres Strait Islander and Aboriginal people living in the region. The LSMU acts as the regional natural resource management body for Torres Strait, and administers a range of projects through a combination of funding sources, in collaboration with Traditional Owners, communities, researchers and all levels of government.

One of the many projects administered by the LSMU is the Indigenous Protected Areas (IPA) project, delivered through a funding agreement with the Australian Government. The first IPA for the Torres Strait region was declared in 2000, at Warul Kawa (Deliverance Island), in the top western area of the Torres Strait Protected Zone. Due to its remoteness and the lack of resourcing and institutional support, IPA management activities were very limited on Warul Kawa until quite recently. In 2009, a second IPA in the region, at Pulu Islet, adjacent to Mabuig Island, was declared. In 2014, the Warraberalgal and Porumalgal IPA, was also declared with the support of Traditional Owners. Plans of Management, developed with Traditional Owner input and based on the best available scientific information, are in place for all three IPAs. At present, the focus for management activities is primarily land-based, but the plans make reference to Traditional Owner aspirations for management regimes to eventually extend over traditional maritime estates also, in line with the Sea Country IPA model discussed below.

Indigenous rangers play an integral role in implementing these IPA management plans, including through enforcing protocols for visitation, maintaining cultural heritage sites, carrying out beach surveys and marine debris clean ups, and managing weeds and feral animal incursions, amongst other things.

With funding under the Australian Government's Working on Country initiative, the LSMU has supported the establishment of ranger groups in 14 Torres Strait communities, employing over 40 local Indigenous staff on the outer islands. Rangers are responsible for carrying out a variety of cultural and natural resource management activities on their islands and in surrounding marine areas, in accordance with the priorities identified in community-endorsed Working on Country Plans. These plans embed and reflect management activities identified in IPA Plans of Management, as well as community-based Dugong and Turtle Management Plans.

The Torres Strait Dugong and Turtle fisheries are classified as traditional subsistence fisheries under the *Torres Strait Fisheries Act 1984* (Cth), and are limited to Traditional Inhabitants of the Torres Strait. Dugong and turtle may only be taken in the course of traditional fishing and used for traditional purposes. The legislated management arrangements for these traditional fisheries are outlined in Fisheries Management Notices No. 65 and 66, and are complemented by the community-based Dugong and Turtle Management Plans being implemented on a voluntary basis by communities throughout the region with the support of the TSRA.

The Torres Strait Dugong and Turtle Management Project, which commenced in 2005, aims to support Torres Strait Islanders to sustainably manage these endangered and culturally iconic species through a combination of western scientific research approaches and contemporary management measures, and traditional knowledge and customary management practices. Non-statutory community-based Dugong and Turtle Management Plans have been developed and endorsed in all Torres Strait outer island communities. Whole-of-government support has been negotiated for the implementation of plans through the Protected Zone Joint Authority. Rangers are actively implementing priority activities under the plans, including protection of turtle nesting and foraging areas, dugong surveys, turtle tagging, seagrass monitoring, marine debris management, culturally appropriate management of harvest, catch monitoring, seasonal and area-based closures, and community education and awareness-raising about the conservation of the species.

Under the Dugong and Turtle Management Project a consultative process is currently underway regarding the proposed expansion of the Dugong Sanctuary (a large no hunting zone in western Torres Strait; Figure 1) and the inclusion of marine turtles in the protective regime established under the Sanctuary. The Dugong Sanctuary is a protected area established in 2003 under Fisheries Management Notice No. 65 in accordance with the *Torres Strait Fisheries Act 1984*.

Results from dugong aerial surveys show that the Torres Strait is the most important Dugong habitat in Queensland, Australia and probably the world, supporting a healthy and relatively stable population of more than 12,000 Dugongs (Marsh *et al.* 2011). The region contains 54 percent of the high and very high-density Dugong habitat in north-east Australia. Almost one quarter of this area occurs in the Dugong Sanctuary, which illustrates the potential value of this spatial closure. The extension of the Sanctuary northwards into an area that is rarely frequented by hunters, and the protection of turtles as well as Dugongs within the Sanctuary, could complement and build upon existing community-based management and legislative measures to manage the species sustainably into the future.

With recognition of native title rights and interests over islands and sea areas in Torres Strait, strong institutional foundations and support for a community-based environmental management approach in the region, and effective arrangements in place for ongoing collaboration between communities, scientists and government agencies, there is considerable scope for the expansion and enhancement of existing protected area regimes over Torres Strait islands and marine areas.

Gur A Baradharaw Kod Torres Strait Sea and Land Council and Malu Lamar will no doubt be key driving forces in consolidating Traditional Owner-led management approaches across marine areas in the region, and in fulfilling long-held Islander aspirations for greater control over marine resources. Locally dedicated and managed marine protected areas are likely to feature strongly in the raft of management measures and options that are considered in the efforts to progress this broader agenda.

### ***Western Australia***

In Western Australia, the Roebuck Bay Marine Park, near Broome in the Kimberley region of Western Australia, is part of the multi-tenure Yawuru conservation estate that comprises a 100 kilometre long coastal (terrestrial and marine) park complex. The complex is coordinated by the Yawuru Park Council, made up of representatives of Yawuru Traditional Owners, the Western Australian Department of Parks and Wildlife and the Shire of Broome. A

comprehensive Yawuru Cultural Management Plan sets out the cultural values and principles to be adopted in the four management plans being developed jointly for the separate components of the conservation estate. The recent dedication of the Yawuru IPA across all components of the Yawuru conservation estate further strengthens the integration of the land and sea country management within the protected area complex.

Other MPAs established by the Western Australian Government are currently not co-managed with local Traditional Owners but there is scope for joint management of these marine areas under the *Conservation and Land Management Act 1984* (WA), and/or through the establishment of sea country Indigenous Protected Areas over the same marine areas. In October 2015 the Western Australian Government released a draft Plan of Management for establishing a network of jointly managed marine protected areas and national parks on Dambinari Country along the Kimberley coast – a proposal that would require the consent of native title holders (Department of Parks and Wildlife 2015).

### ***New South Wales***

- In New South Wales (NSW), the *Marine Estate Management Act 1997* makes no provision for co-management of MPAs with Indigenous people, but allows for Indigenous cultural resource use within marine parks where the activity is consistent with biodiversity conservation, ecosystem integrity and ecosystem function.

Aboriginal involvement in the management of marine parks is facilitated by the Marine Estate Management Authority and implemented in accordance with the *Aboriginal Engagement and Cultural Use of Fisheries Resource Policy*, which encourages Aboriginal people to nominate for membership of local marine park advisory committees, provides for the establishment, on request by Aboriginal people, of an Aboriginal Advisory Group for each MPA and the convening of community consultative meetings as required (Marine Parks Authority 2010).

### ***South Australia***

In South Australia, the *Marine Parks Act 2007* (SA) makes no provision for formal Aboriginal involvement in MPA governance or management but requires that consideration should be given to Aboriginal heritage values. A step towards greater Indigenous engagement has been made in the Great Australian Bight Marine Park (GABMP) where there is an agreement with the local Yalata Community, through their land management group, to advance cooperation in relation to visitor management, research and monitoring, surveillance and reporting, collection of marine debris and cliff rescue assistance.

### ***Victoria***

In Victoria there are no provisions for co-management of MPAs marine parks under the *National Parks Act 1975* (Vic). However, under the *Traditional Owner Settlement Act 2010* (Vic) there may be opportunities for agreements to be reached regarding Aboriginal management of MPAs (see Chapter XX), including the possibility of the granting of Aboriginal Title in respect of a marine national park or marine sanctuary, though this has not yet occurred. Meanwhile, the Parks Victoria 2003 to 2010 *Management Strategy for Marine Parks* (Parks Victoria 2003) provides the foundations for joint management partnerships, including:

- committing to working in partnership with Indigenous communities towards the long-term protection and conservation of marine national parks and sanctuaries;
- acknowledging traditional ownership of marine areas;

- committing to improved consultation and involvement;
- developing an Indigenous Cultural Awareness Program;
- helping Indigenous communities to build capacity; and
- increasing Indigenous employment opportunities within Parks Victoria.

### ***Tasmania***

In Tasmania there are no legislative provisions for Indigenous co-management of MPAs, but the *Tasmanian Marine Protected Areas Strategy* (Marine and Marine Industries Council 2001) aims to cater for the management of marine areas and species in partnership with Indigenous communities, to recognise the interests of Australia's Indigenous people and to incorporate Indigenous people in decision-making.

### **Indigenous Protected Areas**

Indigenous Protected Areas (IPAs) are areas of land and/or sea that are voluntarily dedicated as a protected area by the Traditional Owners associated with the area, recognised by the Australian Government and all state and territory governments as part of Australia's National Reserve System (NRS) of protected areas and managed according to the protected area management guidelines of the International Union for Conservation of Nature (IUCN). Currently only the terrestrial components of IPAs are recorded in the Collaborative Australian Protected Area Database (CAPAD) maintained by the Australian Department of the Environment. This is because there are currently two separate reserve systems – the NRS (for terrestrial protected areas) and the National Representative System of Marine Protected Areas (NRSMPA) for marine areas. While the NRS recognises all terrestrial protected areas that meet the IUCN protected area definition, the NRSMPA only recognises MPAs established under legislation. The NRSMPA criteria were developed in the early 1990s before the development of IPAs and before the recognition of native title in Australia and have not been subsequently reviewed (Smyth 2008). As it is increasingly difficult to make precise distinctions between terrestrial and marine protected areas (e.g. IPAs on coastal Aboriginal land in the Northern Territory extend to the low water mark and therefore include extensive marine areas), there is an argument for establishing a single reserve system to include all of Australia's terrestrial and marine protected areas.

The first IPA was established in South Australia in 1998 and as of May 2015, there were over 72 IPAs across Australia, together comprising over 60 million hectares and contributing almost 40% of the total area of the NRS. Most IPAs are established on Indigenous owned land, but IPAs have also been established over multiple tenures, including existing national parks and marine parks, in collaboration with other parties, based on the concept of "country" (traditional land and sea estates) rather than tenure (Rose 2013).

IPAs are established and managed by Indigenous people independently of government legislation, consistent with the IUCN protected area definition which refers to protected area management by "legal or other effective means". IPAs are not government protected areas, but they are supported by the Australian Government's Indigenous Protected Area Program and most IPAs are also supported through partnerships with state and territory agencies, Natural Resource Management bodies, business enterprises and research institutions.

The first IPA to include a significant area of sea country was the 101,000 ha Dhimurru IPA on the northeast coast of Arnhem Land (Figure 2). It was declared in 2000 with the inclusion of 9,000 hectare of sea country that had been registered as a marine sacred site under the

Northern Territory's *Aboriginal Sacred Sites Act 1989*. However, limiting the marine component of the IPA to registered marine sacred sites excluded a large area of sea country for which there is currently no legal recognition (Smyth 2008). Dhimurru Aboriginal Corporation released a strategic Sea Country Plan in 2006 which outlined their vision for integrated land and sea management in partnership with government agencies, research institutions and others (Dhimurru Aboriginal Corporation 2006). Following a collaborative planning process over several years, Yolngu Traditional Owners dedicated an additional 400,000 ha of sea country as part of the Dhimurru IPA in April 2013. The inclusion of this additional sea country into the IPA was formally recognised by the Australian and Northern Territory governments at a ceremony during the World Indigenous Network Conference in Darwin in May 2013. The expanded Dhimurru IPA includes a Terrestrial Zone (Aboriginal Land) and a Sea Country Zone (collaborative management) in recognition that management of the land is the sole responsibility of Traditional Owners, while management of the sea country is undertaken in collaboration with government agencies and resource users (Dhimurru Aboriginal Corporation 2013). Dhimurru IPA's Sea Country Zone overlaps with part of the Wessel Commonwealth Marine Reserve – one of a network of offshore MPAs recently established by the Commonwealth Government around Australia. Integration of land and sea management across the IPA is coordinated through the Dhimurru IPA Advisory Group chaired by Dhimurru and including representatives of all IPA collaborative agencies.

The concept of this collaborative approach to managing the sea country component of the IPA is that all government and non-government partners bring to the IPA table their respective commitments to achieving the goals of the IPA through the shared application of their respective authorities, resources and capabilities. Further details of the IPA governance and management arrangements are provided in the *Dhimurru IPA Sea Country Management Plan* (Dhimurru Aboriginal Corporation 2013).

As noted above, IPAs can overlap and coexist with government MPAs, as a voluntary, non-legal, Indigenous-led mechanism that complements existing MPA management arrangements in the MPA. The first of these in Australia was the Mandingalbay Yidinji IPA near Cairns in north Queensland, which includes a portion of the Queensland Government's Great Barrier Reef Coast State Marine Park, as well as a national park, forest reserve and conservation park – thus reuniting land and sea country that had been fragmented into several terrestrial and marine protected areas managed by different agencies.

Several other IPAs have subsequently been established over parts of the GBRMP and adjacent terrestrial protected areas, including the Girringun Regional IPA between Innisfail and Ingham, and Yalanji IPA between Daintree and Cooktown.

This country-based approach (Smyth 2011) to maritime IPA planning and management presents a new opportunity for expanding the marine and coastal protected area estate in Australia, particularly at a time when proposals to establish conventional marine protected areas (legislated, dedicated and managed by government agencies) are often subjected to strong opposition from resource user groups and their political allies. Sea country IPAs can be more readily acceptable because they provide a non-legislated collaborative framework in which all parties share their values, resources and expertise to achieve locally, nationally and globally recognised protected areas consistent with IUCN guidelines. Multi-tenure, land/sea IPAs also represent the re-emergence of "country" as the cultural and geographic scale at which Australia's coastal and marine environments have been managed for millennia.

The conceptual basis for these “country-based” and “multi-tenure” IPAs is the same as for the earlier tenure-based IPAs: they are declared by the Indigenous people traditionally associated with the area and they are managed through a package of legal and other effective means. The key innovation in these more recent IPAs is that this package includes the legal authorities and management capacities of other land owners and management agencies with rights and interests over the various tenures within the multi-tenure IPA. Of course, such IPAs can only be recognised and effectively managed with the consent and collaboration of all relevant parties with interests in the IPA. This approach provides an opportunity to “put country back together” when it has been fragmented into multiple tenures and is providing a new, Indigenous-led pathway for negotiating co-management of existing national parks, MPAs and other government protected areas on land and sea.

While it can be argued that country-based sea country IPAs lack the legislated “security” of government MPAs, their collaborative nature provides unparalleled opportunities for diverse rights-holders and stakeholders to come together, exchange perspectives, share knowledge and use their collective authorities and commitments to agreed protected area objectives that can result in area-based management outcomes that are far less likely to be achieved through a legislated MPA. This is because in many instances the diverse interest groups would prevent the MPA being established in the first place and because government MPA management often results in a coercive rather than collaborative relationship with rights-holders and stakeholders. Furthermore, the “security” of protected areas established under legislation can prove illusory if new governments amend legislation to reconfigure or remove protected area status, or when inadequate resources are allocated for effective management.

### **Future directions**

While saltwater Indigenous people and their representative organisations continue to express disappointment, frustration and sometimes outrage about the failure of governments to adequately recognise and support their legitimate rights and interests in sea country governance, management and resources – as evidenced by the National Indigenous Sea Country Statement referred to above (NAILSMA 2012) – there have been substantial improvements in recognition and support in recent decades and the trend is likely to continue.

Significant contributing factors to this trend have been the recognition of native title, and other statutory Indigenous rights regimes, that have in turn led to legislative and policy shifts within protected area management agencies that have increasingly come to see Indigenous peoples as rights-holders with respect to specific clan estates, rather than stakeholders with generic interests across an MPA.

Perhaps as significant has been the increasingly proactive stance taken by Indigenous peoples themselves to lead the partnership-building process (e.g. through sea country IPAs) and to establish their own independent land and sea management capabilities (Indigenous ranger groups – Figure 4, research partnerships, resource management agreements etc.) that in turn has resulted in policy and legislative changes. Governments are (albeit slowly) responding to Indigenous initiative and leadership, rather than to Indigenous complaints and requests for redress.

Government responses in this policy area are also part of a wider commitment to “close the gap” between Indigenous and non-Indigenous social, health and education outcomes and a rapidly growing awareness that investment in Indigenous land and sea management is yielding multiple benefits both in terms of environmental management and Indigenous

wellbeing. Indigenous caring for land and sea country is recognised not only as the continuation of an ancient and inherent cultural right, but also a propitious employment niche in 21<sup>st</sup> century Australia (Greiner 2010; Smyth 2014).

## Biographies

Irish born, Dermot Smyth studied zoology at the Australian National University and at James Cook University. Having encountered Indigenous peoples and other traditional communities during research in Papua New Guinea and West Africa, Dermot subsequently worked with many Aboriginal groups and Torres Strait Islanders to support their management of traditional estates around Australia. Dermot helped develop the concept of Indigenous Protected Areas (IPAs) from the 1990s to the present time, including the establishment of multi-tenure and sea country IPAs, and has contributed to the re-emergence of Indigenous “Country” as an appropriate scale for the management of Australia’s environments. He is an Adjunct Research Fellow at the Research Institute for the Environment and Livelihoods, Charles Darwin University and Principle Consultant with Smyth and Bahrdt Consultants.

Miya Isherwood has a background in law and environmental science, and has worked in the legal profession, for Indigenous organisations and government agencies in the fields of land management, conservation planning and environmental program delivery for over 15 years. Miya played a pivotal role in the establishment of the Land & Sea Management Unit within the Torres Strait Regional Authority, including successfully negotiating collaborative arrangements between all levels of government, Indigenous communities and the research sector for the delivery of nationally funded environmental programs. Miya has also worked in planning, environmental and local government law, including on the development of community legal education materials and on law reform submissions. Miya is Programs and Partnerships Officer, Land and Sea Management Unit, at the Torres Strait Regional Authority.

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