

## Caring for sea country – accommodating indigenous peoples' interests in marine protected areas

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### 8.1 INTRODUCTION

Over the last decade or so, there has been growing recognition by environmental conservation agencies of the special cultural, spiritual and economic relationship between indigenous peoples and the environment (IUCN *et al.*, 1991). In Australia, that recognition has translated into special management arrangements for some national parks which are now owned by Aboriginal people, who also control the management boards. There are currently four such parks in the Northern Territory (two of which are also listed as World Heritage areas) and negotiations are currently taking place for similar arrangements in other Australian states.

During this same period, a growing awareness of the need to protect and manage the marine environment around Australia has resulted in the establishment of several marine protected areas, notably the Great Barrier Reef Marine Park. To date, the accommodation of indigenous peoples' interests in marine protected areas has not yet developed to the same extent as in some terrestrial national parks.

This chapter examines the nature of the relationship between Australia's indigenous peoples and the marine environment and charts the still emerging efforts by marine park agencies to accommodate it, focusing on the Great Barrier Reef Marine Park (Figure 8.1) as a case study.

### 8.2 THE GREAT BARRIER REEF MARINE PARK

In 1975 the Australian Federal Government passed the Great Barrier Reef Marine Park Act, which created the Great Barrier Reef Region and provided for the Great Barrier Reef Marine Park (GBRMP) to be established in Commonwealth (i.e. federal government) waters within it. The GBRMP com-

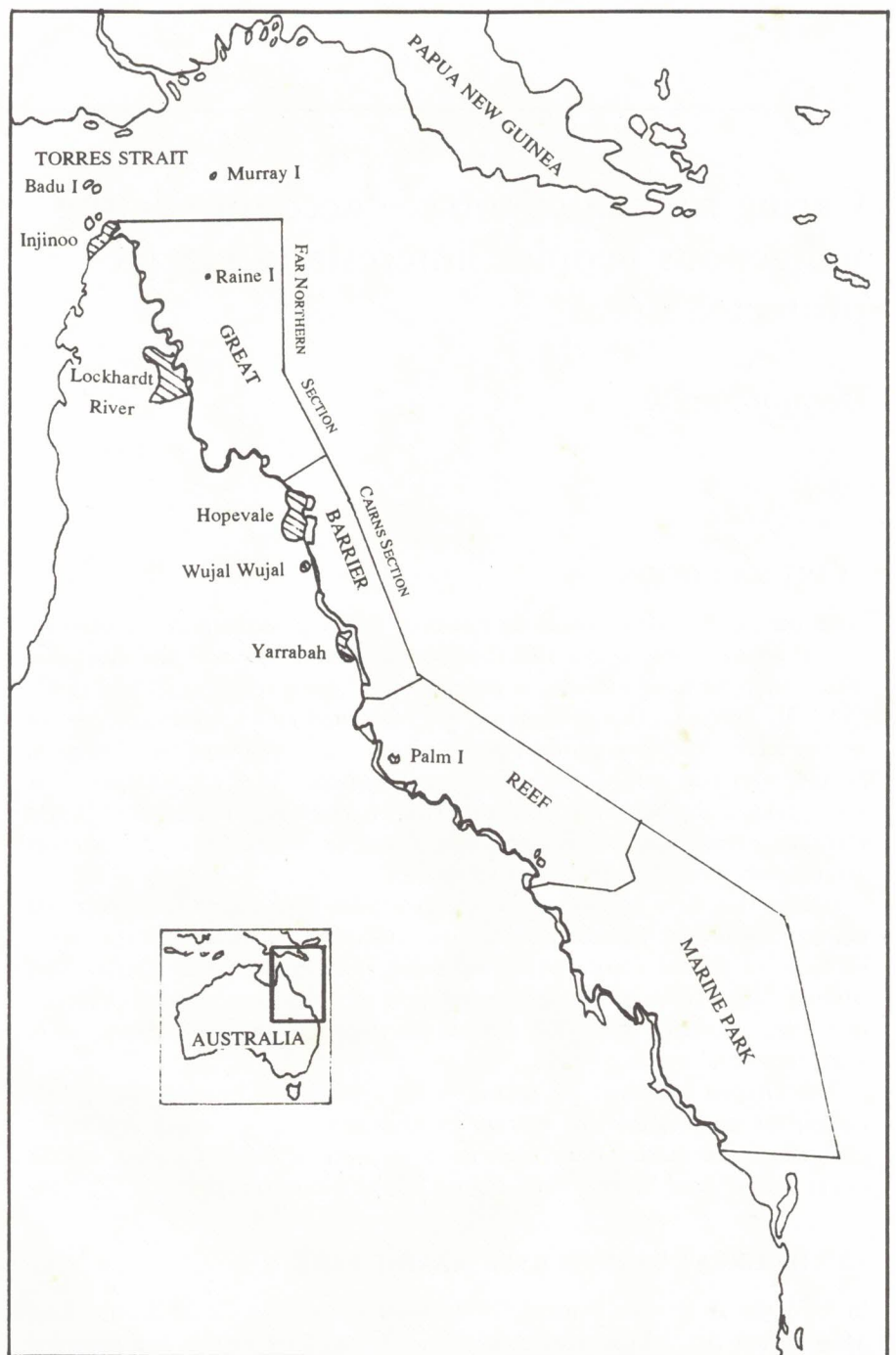


Figure 8.1 East coast of Queensland showing the Great Barrier Reef Marine Park, adjacent Aboriginal Trust Areas and the islands of the Torres Strait.

prises 98.5% of the Great Barrier Reef Region, the remainder being some coastal waters which were not considered, at the time, to be of sufficient conservation importance to the Great Barrier Reef to warrant inclusion in the GBRMP.

In 1981, the whole of the Great Barrier Reef as well as the islands within the Region were inscribed on the World Heritage List, under the UNESCO convention concerning the protection of the world's natural and cultural heritage.

During the 1980s the Queensland government established several state marine parks which include much of the coastal and intertidal waters adjacent to the GBRMP. Most of the islands throughout the barrier reef region are Queensland national parks.

The Great Barrier Reef World Heritage Area therefore contains three main conservation estates: the Great Barrier Reef Marine Park, coastal Queensland state marine parks, and island national parks. In practice there is a good deal of coordination in how these estates are managed. The federal government's Great Barrier Reef Marine Park Authority is responsible for the management of the GBRMP and for the development of general policy and zoning plans for the four sections of the GBRMP. Day-to-day management of the GBRMP is carried out by the Queensland government's Department of Environment and Heritage, which is also responsible for Queensland state marine parks and national parks.

The three-member Authority is advised by a Great Barrier Reef Marine Park Consultative Committee, comprising one member of the Authority and at least 12 other members, not less than one third of whom are nominees of the Queensland government. Committee membership is selected from a wide range of community, scientific and industry groups. Members are appointed on a personal basis; they are not delegates of their particular interest group.

The same members also constitute a parallel consultative committee which provides advice to the Queensland government on the management of Queensland state marine parks (but not island national parks).

The other major avenue for community involvement in the management of the marine parks within the Great Barrier Reef World Heritage Area is via a two-stage process of public participation in the development of zoning plans. The first occurs before the planning of a section of the marine park commences, to gauge the range of issues and concerns among members of the public. The second follows the preparation of a draft zoning plan.

Invitations to participate in these processes are communicated via advertisements in local newspapers, media releases and meetings arranged between marine park staff and interest groups in major centres along the Queensland coast.

This chapter primarily discusses issues relating to the involvement of indigenous peoples in the management of the GBRMP, though many issues dis-

cussed are also relevant to the management of adjacent Queensland state marine parks and island national parks.

### 8.3 INDIGENOUS PEOPLES OF THE MARINE PARK

There are two major indigenous populations with cultural, historical and economic interests in environments and resources contained within the GBRMP. These are Torres Strait Islanders and coastal Aboriginal people, both comprising many local groups with distinctive cultures, languages and maritime interests.

#### 8.3.1 Torres Strait Islanders

Torres Strait Islanders are Melanesian people who have been occupying the islands of Torres Strait for at least the last 1000 years (Campbell, 1988). These islands formed about 6000 years ago when the land bridge between Australia and Papua New Guinea became flooded by the last great rise in sea level. Not surprisingly the sea and its resources are very important in the lives of the Islanders. Seafood consumption in Torres Strait has been ranked among the highest in the world (Johannes and MacFarlane, 1991). On Mabuiag Island in western Torres Strait, for example, seafood consumption was estimated to be 450 g per day, of which 60% was dugong meat, 29% turtle and 9% finfish (Nietschmann, 1989). Some Torres Strait Islanders have cultural and economic interests which extend southwards into the waters of the GBRMP.

Like all Torres Strait Island cultures, the Murray Islanders have a system of customary tenure which includes estates on both land and sea (Nietschmann, 1989; Johannes and MacFarlane, 1991). These estates are bounded areas containing many named places, some of which are sacred sites of spiritual significance related to mythological events surrounding the creation of land, sea and people. Within island estates, customary owners have rights to harvest wild food and plant gardens. Similarly, marine estate owners have customary rights to hunt and fish, and to allocate such rights to others.

The customary marine estates of Murray Islanders extend far beyond the visible horizon, south to Raine Island some 100 km south of Cape York, and well within the GBRMP. Customary ownership of these vast marine estates (which include Queensland, federal and international waters) is currently not legally recognized. Contemporary belief in customary ownership of marine estates, and right to resources within them, is based not only on tradition passed on through countless generations, but also on a history of commercial harvesting of pearl shell, top shells (*Trochus* species) and bêche-de-mer (holothurians) over the last 100 years.



People from throughout the Torres Strait have been involved in pearling and other commercial marine activities, variously run by Japanese and European entrepreneurs, missionaries and government agents since the late nineteenth century. During the middle decades of the twentieth century Badu became the most prosperous of the Torres Strait Islands, partially based on the utilization of resources within what is now the GBRMP.

Although the pearl shell industry is now confined to collecting live shell for use in cultured pearl farms, the collection of *Trochus* shell (used for making buttons) is still commercially viable. Torres Strait Islanders involved in the trochus industry have objected to restrictions placed on commercial fishing within large conservation zones of the far northern section of the GBRMP and the lack of consultation prior to the implementation of these restrictions (Smyth, 1993). The Marine Park Authority, however, contends that there was substantial consultation.

### 8.3.2 Coastal Aboriginal people

Aboriginal people have occupied the Australian land mass for at least 40 000 years and perhaps as much as 100 000 years. During that time Australia's coastline changed dramatically as sea levels fell and rose. The last major sea-level rise began about 20 000 years ago and stabilized between 6000 and 8000 years ago. This rise of over 100 m in sea level inevitably resulted in huge losses of Aboriginal territory as the wide continental shelf became flooded. While there is some evidence of a lapse in time between sea-level stabilization and Aboriginal occupation of particular parts of the coast (Beaton, 1985), it is reasonable to assume that Aboriginal people have been an integral part of maritime ecosystems since the establishment of the current Australian coastline.

Anthropological research over the last 60 years indicates the importance of the marine environment to coastal Aboriginal groups in north Queensland (e.g. Chase, 1980; Chase and Sutton, 1981; Hale and Tindale, 1933, 1944; Rigsby and Williams, 1991; Thompson, 1934). In traditional coastal societies, owned clan estates comprise portions of coastal land as well as extensive areas of sea. These integrated, bounded land/sea estates are owned by members of a clan descent group (usually through the male line) who traditionally have control of resource rights, as well as responsibility for the conduct of ceremonies necessary for the well-being of particular places or species.

For further information on customary marine tenure see Cordell (1989, 1991) and Bergin (1991).

Research commissioned by the Authority in recent years (e.g. Smith, 1987; Smyth, 1989, 1992), as well as statements by coastal Aboriginal people themselves (in Smyth, 1993; Wallace *et al.*, 1992), indicate that this close

identification with maritime environments and resources persists in contemporary Aboriginal communities adjacent to the GBRMP. For example:

- Marine animals such as dugong, turtle, and stingray continue to have totemic importance for particular groups of people.
- Sacred sites which link people, animals, plants, landscapes and seascapes with the creation period of the Dreamtime continue to have profound meaning for coastal Aboriginal people (Figure 8.2).
- Subsistence hunting and fishing are widely practised, both as an economic activity and as a statement of belonging to and responsibility for customary marine estates and resources.

The extent to which these contemporary cultural interests in marine environments and resources persist varies from place to place along the Queensland coast, largely dependent on local history. In southern Queensland, and in some areas of the north, maritime Aboriginal culture has been very greatly disturbed by almost 200 years of European settlement. Over the last 100 years many Aboriginal people have been forcibly relocated to places far removed from their traditional estates. Until the 1960s it was common government practice to take Aboriginal children away from their families to be brought up out of contact with their own language and ways of life. Such events led to immeasurable personal suffering as well as considerable

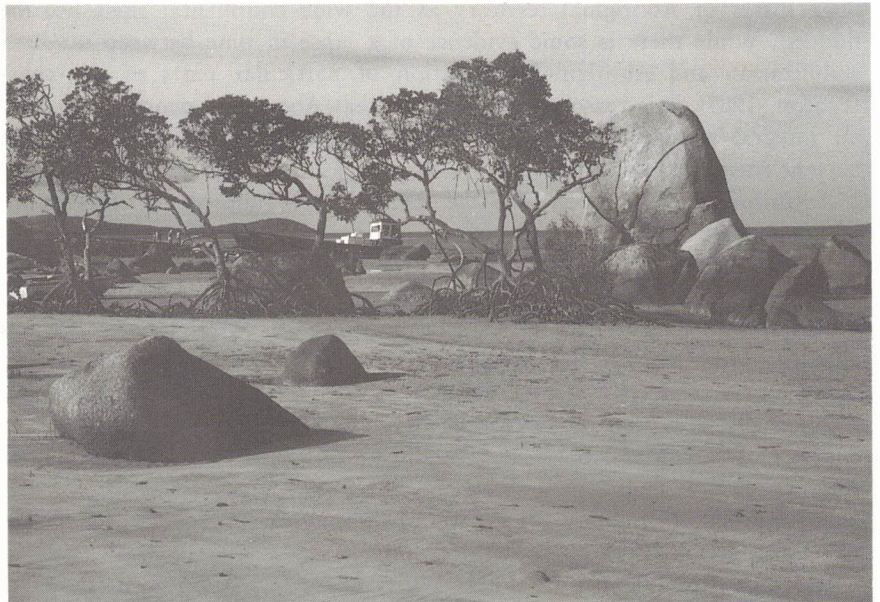


Figure 8.2 Turtle Story place.

cultural loss between generations. In some places entire clans and language groups were killed or have been displaced without trace.

In spite of these grave pressures, very many Aboriginal people along the coast are knowledgeable about their customary estates, stories and sacred places. A common link with the past is the largely unbroken practice of subsistence hunting and fishing.

In far north Queensland, several Trust Area communities (former Aboriginal mission stations which are now largely managed by local people) are located on or close to customary estates. In such places, languages have survived and clan identification is strong. There is also considerable knowledge about the traditional ownership of maritime estates, the location of land and sea sacred sites, the conduct of ceremonies and behaviour taboos associated with particular places, species or the status of individuals in Aboriginal society.

#### **8.4 CONTEMPORARY ABORIGINAL AND ISLANDER INTERESTS IN THE GREAT BARRIER REEF MARINE PARK**

Contemporary interests of indigenous peoples in the management of the Great Barrier Reef Marine Park can be divided into cultural, economic and legal issues, all of which are interrelated.

##### **8.4.1 Cultural interests**

Cultural interests include the protection of sacred sites with the GBRMP, as well as the conduct of ceremonies associated with the well-being of particular places and species. Utilization of marine estates and resources provides opportunities for displaying, teaching and learning cultural skills, and knowledge relating to hunting and fishing. These activities also encourage the maintenance of language and interest in cultural traditions.

##### **8.4.2 Economic interests**

Economic interests fall into three main categories: subsistence hunting and fishing; commercial exploitation of marine resources; and vocational opportunities.

Subsistence hunting and fishing are activities which link coastal Aboriginal people with each other and through time with their ancestors. While serving important cultural functions, subsistence hunting and fishing continue to contribute significantly to household economies of Islander and Aboriginal people, including those living in coastal towns and cities.

Although Islanders resident in the Torres Strait may not often engage in subsistence hunting and fishing within the GBRMP, there are now sizeable



Torres Strait Islander populations located in major coastal settlements in north Queensland who wish to continue to have access to traditional marine resources, even though they have moved far away from their customary estates.

As mentioned above, Torres Strait Islanders have a long history of commercial exploitation of marine resources. Within the GBRMP, Islanders continue to be involved in *Trochus* fishing under licence from the Queensland government.

Although many coastal Aboriginal people were involved in the pearling, *Trochus* and bêche-de-mer industries in the past (usually as indentured divers but sometimes as skippers), these activities are no longer pursued. Coastal Aboriginal people are, however, expressing interest in establishing mariculture enterprises (particularly clam and oyster farms) and in small-scale commercial lobster fishing. A pilot oyster farm, partly owned by Aboriginal people, has been established within the Queensland Marine Park off Fitzroy Island near Cairns.

Over the last decade, coastal Aboriginal people have been establishing 'outstations' away from the large government settlements. Outstations are semi-permanent camps located at focal points of clan estates, where clan members and their relations can spend part of the year away from the major Aboriginal settlements. This trend, driven by social and cultural forces, has raised interest in exploring options for economic development in these small satellite communities. In such places, subsistence fishing and hunting are primary economic activities but small-scale commercial lobster fishing and mariculture are also viewed as possibilities.

Also viewed with interest is the possibility of gaining a livelihood from involvement in the management of marine parks and adjacent terrestrial environments. All coastal Aboriginal communities north of Townsville already employ their own Community Rangers to protect cultural and natural heritage and to manage tourism in their areas. Increasingly these rangers are working with government wildlife, marine park, customs and quarantine officers to provide unofficial coastal management in remote areas. At present, such cooperation is on an honorary basis, but coastal Aboriginal communities have expressed interest in undertaking formal management roles for which payment would be received from government agencies.

#### 8.4.3 Legal interests

Australia's indigenous peoples have long pressed governments for legal recognition of their customary ownership of land and sea and their rights to resources. In 1991 the Queensland government passed the Aboriginal Land Act and the Torres Strait Islander Land Act, which established processes to enable some traditional lands to be returned to the appropriate indigenous



peoples. In particular, some Crown land which is currently vacant, some national parks and all Aboriginal and Islander reserves and Trust Areas (former reserves) will be eligible for return to traditional owners, subject to approval by an Aboriginal Land Tribunal. The Land Acts also provide for the possibility of intertidal land to be returned to Aboriginal and Islander ownership.

An important limitation of the Acts is that the Queensland government retains control over which pieces of land will become available for claim. Particular areas of land must first be declared as available for claim before any Aboriginal or Torres Strait Island group can begin the claim process. To date the government has chosen to make available for claim only former Aboriginal reserves, nine national parks and some vacant Crown land in the far north of the state.

By mid 1994 several former Aboriginal reserves had been transferred to Aboriginal ownership. Aboriginal claims over three coastal national parks (Flinders Island, Cape Melville and Lakefield) and the Simpson Desert National Park were well advanced and the process of developing plans of management and appointing Aboriginal trustees could be expected to take place in 1995 (Figure 8.3). As yet no intertidal land has been made available for claim, but this may occur once the claims for coastal national parks have been resolved.

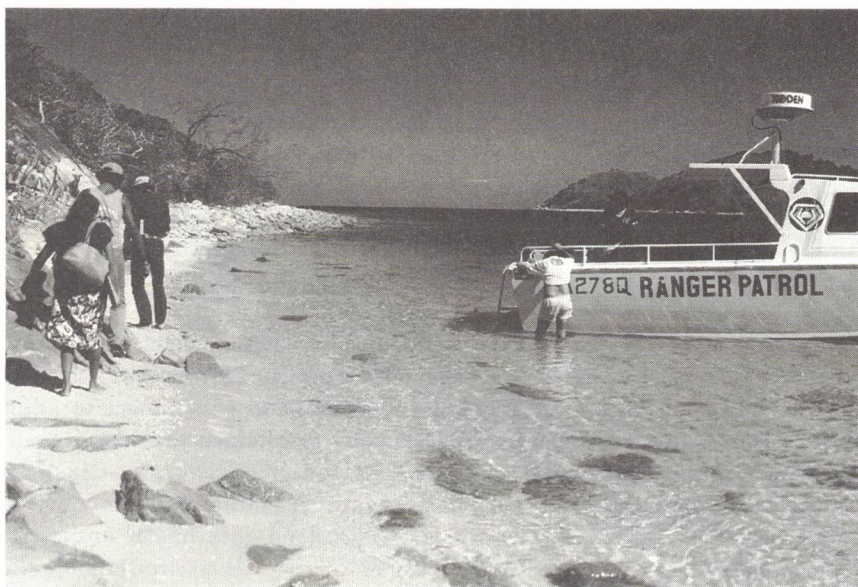


Figure 8.3 Aboriginal community rangers with patrol vessel.

While not providing for indigenous ownership of sub-tidal marine estates, these Acts are likely to alter radically the relationship between indigenous peoples and marine park management agencies. Firstly, the land claim process will clarify and identify who are the traditional owners for particular tracts of coastline, making it clear to conservation agencies which groups should be involved in the management of particular portions of marine parks. Secondly, Aboriginal ownership may be granted to intertidal land lying within marine parks. Thirdly, many islands within the GBRMP may be owned by Aboriginal people who could expect a major say in the management of surrounding waters.

Indigenous peoples resident on Trust Areas can obtain permits to carry out subsistence hunting and fishing within most of the GBRMP. Queensland fisheries legislation currently prevents indigenous peoples living outside Trust Areas from obtaining permits, though this is likely to change under provisions in the Nature Conservation Act 1992, once management plans have been prepared for individual species such as turtle and dugong.

Subsistence hunting and fishing are not recognized as legal rights of indigenous peoples within the GBRMP, though this has been advocated by the federal government's Law Reform Commission (Law Reform Commission, 1986). Similarly, Aboriginal and Islander rights to other marine resources, such as commercial fisheries and sea-bed minerals, are currently not legally recognized. These issues are considered further in the following section, which deals with a landmark decision of the Australian high court.

## 8.5 THE MABO CASE

In June 1992 a decision by the high court of Australia formally recognized the existence of Aboriginal 'native title' to land in Australia. Prior to this decision Australian governments had assumed that Aboriginal ownership of territory had been extinguished on the acquisition of sovereignty by the British in 1770. Similarly it had been assumed that indigenous ownership of the Torres Strait Islands was extinguished at the time of their formal annexation about 100 years later.

The case was brought before the Court by Eddie Mabo and other traditional owners of the Murray Islands in eastern Torres Strait. In 1982 the Islanders had refused an offer by the Queensland government to grant them a lease over their islands. The Islanders maintained that the government was not in a position to make such an offer since the Islanders believed that they already owned the islands under customary law. After a 10-year legal struggle, during which the Queensland government unsuccessfully attempted to extinguish native title to the islands by legislation<sup>1</sup>, the Islanders' customary ownership was finally recognized as valid under Australian common law.

The successful claim strictly relates only to the land of one island within the Murray Group, but it has implications everywhere in Australia where indigenous peoples have retained customary association with their traditional country. Although the judgement deals specifically with land ownership, many legal commentators have suggested that there are implications for ownership of marine estates and rights to marine resources. One academic lawyer has concluded:

Common law recognition of customary marine tenure is highly likely following the Mabo decision . . . there is nothing in the judgement which would seem to preclude the application of native title principles to the seabed. (Sutherland 1992)

Following a period of prolonged and intense negotiation between indigenous groups, federal and state governments, mining, farming, fishing and other interests, the Australian parliament passed the Native Title Act 1993. This Act provides legislative recognition of the Mabo high court decision and sets out procedures for the determination and protection of native title wherever it continues to exist. The legislation also provides mechanisms for claiming compensation in the case of customary landowners whose native title was wrongfully extinguished.

The Native Title Act 1993 provides for the possibility of native title being recognized in marine environments but the nature of such title will be a matter of determination by courts, probably in a series of test cases over the next few years. While it is now widely recognized by governments, conservation agencies and industry groups that native title continues to exist in coastal waters around much of Australia, especially in the north, there is uncertainty as to whether such title amounts to a property interest (as on land) or merely some form of access and use right (such as hunting, fishing and gathering rights). Whatever the precise outcome, the Mabo decision is already affecting the decision-making process of governments and the ways in which government agencies and indigenous groups interact. The possibility exists that legislation, regulations or administrative decisions which seek to curtail or extinguish native title or rights may now be subject to injunction or claims for compensation. In general terms, the Mabo decision has raised the prospect that agencies such as the Marine Park Authority may have to deal with indigenous peoples as 'owner groups' rather than 'user groups'.

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<sup>1</sup> In 1985 the Queensland parliament passed the Queensland Coastal Islands Declaratory Act, the function of which was to extinguish any outstanding indigenous title or claim to the islands of Torres Strait. In a separate high court action in 1988 the Murray Islanders established that this legislation contravened provisions of the Racial Discrimination Act 1975. The Queensland Coastal Islands Declaratory Act was therefore declared invalid and the original claim for recognition of traditional ownership of the Murray Islands proceeded to the high court.



A special challenge for the Marine Park Authority will be the development of mechanisms to evaluate competing interests by indigenous groups and reef-based tourism operators. At present the Authority's assessment staff consult with appropriate Aboriginal people whenever an application is received for permission to conduct some new tourism venture. Such ventures often involve bringing many hundreds of people (sometimes more than 1000) to a reef each day and the long-term mooring of large pontoons. In areas adjacent to Aboriginal communities such high levels of tourism activities effectively prevent the exercise of Aboriginal hunting and fishing rights, and hence adversely impact on the maintenance of Aboriginal cultural and heritage values.

While the Authority's own regulations require them to protect Aboriginal cultural and heritage values, there is currently no direct participation by Aboriginal groups in the final decision on whether or not to grant a permit for such tourism ventures. That is, while Aboriginal groups are adequately consulted about such proposals, it is the Authority which makes the final judgement about which of the competing interests will prevail. Sometimes direct negotiations between tourism operators and Aboriginal groups result in modifications to the proposals to the satisfaction of all parties. However, where operators refuse to enter into such negotiations, Aboriginal people remain dependent on the judgement of the Authority in relation to the protection of cultural and heritage values.

## **8.6 ABORIGINAL AND ISLANDER INVOLVEMENT IN THE GBRMP**

Current opportunities for Aboriginal and Torres Strait Islander involvement in the management of the GBRMP include:

- Membership of the Great Barrier Reef Marine Park Consultative Committee.
- Public participation process for the development of zoning plans.
- Attendance at marine park workshops and conferences.
- Participation in research projects.
- Participation in community liaison meetings.
- Employment by the Authority and the Queensland Department of Environment and Heritage.

### **8.6.1 Membership of the Consultative Committee**

It was not until 1988, 13 years after the establishment of the GBRMP, that the first Aboriginal person was appointed to the Consultative Committee. In earlier committees, the interests of indigenous peoples were represented by the administrative head of the Queensland government department responsible for Aboriginal and Islander affairs.



In 1988 the Aboriginal person appointed to the Consultative Committee was at the time chairman of the Aboriginal Coordinating Council (ACC), an organization established by the Queensland government to provide advice on matters relating to the management of Queensland's 16 designated Aboriginal Trust Areas. Six of these communities have responsibilities for managing land adjacent to the GBRMP, and substantial cultural and economic interests within the marine park. The appointment was made with little prior consultation with coastal Aboriginal communities and the person selected attended no meetings of the Consultative Committee during his 2-year term.

In 1990, the ACC nominated one of its employees as the replacement member of the Consultative Committee. This person made a significant contribution to the deliberations of the Committee and in 1991 prepared a report (Ziegelbauer, 1991) which was critical of the Authority's progress in involving Aboriginal people in management of the GBRMP.

### **8.6.2 Public participation in the planning process**

In theory, Aboriginal and Torres Strait Islander people have the same access to the public participatory planning process as other Australians interested in the future of the GBRMP. In practice, however, the style, pace and format of the planning process has largely excluded indigenous peoples, especially those with detailed cultural knowledge of marine estates within the marine park. For many such people, English is a second or even a third language, and they may have infrequent access to newspapers in which invitations to participate in the planning process are placed. Furthermore, such people are often not in a position to make detailed written submissions outlining their concerns.

Although officers of the marine park did visit the main coastal Aboriginal communities during the development of the first zoning plans, it appears that these plans were developed with only limited input from indigenous peoples. Aboriginal and Islander people did, however, attend a marine park workshop in 1978 prior to the development of the first far northern section zoning plan.

In 1988 the Authority funded a project to assist two Aboriginal communities to prepare submissions in relation to the second zoning plan for the Cairns section of the GBRMP (Smyth, 1989). Those submissions, based on meetings held with traditional owners of marine estates and the general Aboriginal community, outlined Aboriginal aspirations for greater involvement in the management of the marine park and especially the protection of their marine sacred sites. The Hopevale Aboriginal Community outlined similar concerns in a submission to the Authority as part of the Cairns section re-zoning process (Hopevale Community Council, 1990).

### 8.6.3 Attendance at marine park workshops and conferences

Coastal Aboriginal and Torres Strait Islander people have participated in several workshops and conferences organized by the Marine Park Authority which focused on indigenous interests in the marine environment. These include:

- 1978: Far Northern Section Planning Workshop.
- 1985: Traditional Knowledge of the Marine Environment Workshop (Bani, 1988; Mabo, 1988).
- 1988: Innovative Planning and Management Workshop (Pearson, 1988).
- 1990: Torres Strait Baseline Study Conference (Lawrence and Cansfield-Smith, 1991).

These events have given selected Aboriginal and Islander people the opportunity to put on record the broad range of issues which characterize their relationship with the marine environment. Also participating in these workshops and conferences were anthropologists, archaeologists and ethno-ecologists with research interests in coastal Queensland and Torres Strait. Papers delivered by these specialists provided further evidence of the complexity and continuity of Aboriginal and maritime cultural and economic interests (e.g. Chase, 1981).

### 8.6.4 Participation in research projects

Indigenous peoples have been involved in several research projects funded by the Marine Park Authority. These include:

- A study on the usage of marine resources by Aboriginal communities on the east coast of Cape York Peninsula (Smith, 1989).
- Studies on Aboriginal maritime culture in the Cairns and far northern sections of the GBRMP (Smyth, 1990, 1992).
- Studies on dugong populations (Marsh *et al.*, 1984).
- Studies on the usage of marine resources by Torres Strait Islanders, as part of the Torres Strait Baseline study (Lawrence and Cansfield-Smith, 1991).

These projects have provided selected indigenous peoples with opportunities to participate in, and contribute to, research relating to the management of the GBRMP. However, indigenous peoples have so far had only limited involvement in the selection and design of research projects and currently have no meaningful involvement in how the results are utilized in management.

#### 8.6.5 Participation in community liaison meetings

Officers of the Marine Park Authority and the Queensland Department of Environment and Heritage have visited coastal Aboriginal communities from time to time since the establishment of the GBRMP. Such meetings have provided opportunities for traditional owners of marine estates, custodians of sacred sites and people actively engaged in subsistence hunting and fishing to communicate directly with marine park personnel. The Authority and Department have not been sufficiently well resourced to conduct such meetings regularly. As a result, liaison meetings have generally been arranged in response to particular problems rather than to negotiate and develop cooperative management arrangements.

Events which led to such meetings include the decision by the Authority to impose a quota on dugongs caught by the Hopevale Aboriginal Community in 1993 (Marsh *et al.*, 1984) and the Authority's decision to permit tourist boat operations in Northeast Bay on Palm Island, an Aboriginal Trust Area (Smyth, 1993). In both cases, liaison meetings resulted in the reversal of the original decision, pointing both to the success of such on-ground liaison and the need for it to be on-going and proactive, rather than ad hoc and reactive.

The Marine Park Authority has been taking a more proactive approach since the appointment of an Aboriginal Liaison Officer in 1992. A similar approach is being taken by the Department of Environment and Heritage, which has entered into negotiations with the Yarrabah Aboriginal community over the development of cooperative management arrangements for Mission Bay, which is part of the Cairns state marine park adjacent to that community. A draft management plan for Mission Bay has been completed which will, if implemented, lead to substantial devolution of management to the community rangers employed by the Yarrabah Aboriginal Council.

### 8.7 ASSESSMENT OF ABORIGINAL AND ISLANDER INVOLVEMENT

Notwithstanding the potential implications of the recent Mabo high court decision, it cannot yet be said that indigenous peoples' interests are adequately accommodated in the management of the GBRMP. Contributing factors to this situation may include:

- The still emerging understanding by the Authority of the scope of Aboriginal and Torres Strait Islanders in the marine park.
- Political considerations in achieving cooperation between the Australian and Queensland Governments in the management of the GBRMP.
- A belief among the general Australian community that making special



provisions for indigenous peoples runs contrary to democratic ideals of equality.

- Lack of legislative recognition of Aboriginal and Islander interests.

Each of these issues is discussed in the following subsections.

### **8.7.1 Understanding Aboriginal and Islander interests**

From the beginning, the Marine Park Authority has accepted the legitimacy of Aboriginal and Islander interests in subsistence hunting and fishing, which have been accommodated within the limitations imposed by Queensland fisheries legislation. Only recently, however, has the Authority begun to take steps to accommodate the wider cultural and economic relationship between indigenous peoples and the marine environment, which legitimizes a more substantive role in management.

It may initially be difficult to understand why this broader understanding of indigenous peoples' interests in the marine environment has taken so long to develop. Through workshops, conferences, liaison meetings and research projects, indigenous people have made it clear that hunting and fishing are part of a complex cultural relationship between people and environment. They have also made it clear that they wish to regain some control over their customary marine estates.

That the Marine Park Authority has been slow to respond to the full extent of indigenous peoples' interests may be due in part to the cultural values held by the non-indigenous Australian community (including Authority members and staff) which differ markedly from Aboriginal and Islander values with respect to the marine environment. Aboriginal and Islander concepts of integrated land/sea estates, ownership and stewardship of bounded areas of water, sea-bed sacred sites and exclusive clan or family rights to particular marine resources are not easily accommodated into the European view of oceans as global, national or community commons.

In the decade and a half since the establishment of the GBRMP, there has been a gradual awakening of interest and understanding among the wider community about Aboriginal and Torres Strait Islander issues. The Authority has responded gradually to that awakening and has itself contributed to the process by conducting research into Aboriginal maritime interests.

### **8.7.2 The politics of intergovernmental cooperation**

Differing world views aside, the politics of maintaining cooperative relations between the Marine Park Authority (a federal government agency) and the



Queensland government may also have restricted opportunities to accommodate Aboriginal and Islander interests more widely.

For most of the history of the GBRMP, the federal government has been more predisposed to recognition of indigenous peoples rights than the Queensland government. It is possible that, had the Marine Park Authority substantially recognized Aboriginal and Islander interests in maritime ownership and management, it would have jeopardized other aspects of marine park management which required agreement with the Queensland government.

The election in 1989 of a new Queensland government which was committed to greater recognition of Aboriginal and Torres Strait Islander rights, has enabled the Authority to explore the possibility of more comprehensive accommodation of indigenous peoples' interests in the marine park. The passage of the Aboriginal Land Act 1991 by the Queensland parliament has focused attention on the relationship between Aboriginal people and land, with flow-on implications for their interests in the sea. The Mabo high court decision has provided further impetus to examining the full relationship between indigenous peoples and the Australian environment.

### **8.7.3 Discrimination by equality**

Reinforcing the view of the sea as a common domain is the widespread belief that recognition of special rights for indigenous peoples runs contrary to democratic ideals of equality for all. Such beliefs have not only restricted recognition of Aboriginal and Islander traditional rights, but have also discriminated against their access to processes of public participation in marine park planning. Use of printed standard English in planning documents, communicating via advertisements in newspapers and allowing inadequate time for community consultations, have all led to the exclusion of Aboriginal and Islander input into the planning process.

Similarly, the failure to appoint an Aboriginal or Islander person to the Consultative Committee for the first 13 years of its operation may have been defended on the basis that no other members were appointed on the basis of race or ethnicity. The result, however, was to deny structural input by indigenous peoples into planning and management during the formative years of GBRMP operations.

This does not imply a wilful desire on the part of the Authority to exclude Aboriginal or Islander input. Rather it reflects the prevailing operations of Australian governments and government agencies during the 1970s and 1980s. During this period the level of communication and articulation between indigenous and non-indigenous Australians was generally very poor.

#### 8.7.4 Lack of legislative recognition of Aboriginal and Islander interests

A further and related barrier to broad Aboriginal and Islander interests in the GBRMP is the current lack of reference to such interests in the Great Barrier Reef Marine Park Act. Similarly, the Great Barrier Reef World Heritage Area was nominated on the basis of its 'natural' values alone (GBRMPA, 1981). While the nomination document referred to earlier Aboriginal maritime societies and the presence of coastal and island archaeological sites, contemporary Aboriginal interests are described only with reference to subsistence hunting and fishing.

Similarly, the legislative requirement to establish a Consultative Committee does not specify that Aboriginal and Islander people should be represented. Without such specific reference in legislation, social and political pressures which ignore indigenous peoples' interests can prevail.

Furthermore, the absence of a legislative requirement to accommodate Aboriginal and Islander interests may limit the extent to which the Authority can obtain government support to devote adequate resources to resolving these issues, for example funding to employ adequate liaison staff.

### 8.8 RESOLVING ABORIGINAL AND ISLANDER INTERESTS IN THE GBRMP

The Mabo judgement came at a time when the Authority was already contemplating major reforms in the ways in which it accommodated indigenous peoples' interests in the marine park. In cooperation with other government agencies and community groups, the Authority has developed a 25-year strategic plan for the Great Barrier Reef World Heritage Area (GBRMPA, 1994). The strategic plan, which has been endorsed by the federal and Queensland governments, outlines specific objectives and strategies with respect to Aboriginal and Islander interests over a 25-year period. The strategic plan also outlines objectives and strategies to be accomplished over the first 5-year period. These are set out in Table 8.1.

These provisions for accommodating indigenous peoples' interests in the World Heritage Area (including the GBRMP) were developed prior to the high court decision in the Mabo case. Subsequent to that decision, the Cape York Land Council (which had represented Aboriginal interests during the development of the plan) announced that they would not endorse the plan on the grounds that it did not adequately recognize the full range of Aboriginal maritime interests that may now exist in common law as a result of the Mabo judgement.

Notwithstanding the native title implications which may not be addressed in the strategic plan, it does contain provisions which could significantly

improve Aboriginal control over customary marine estates with the GBRMP. Most important of these are Objective 6.4 and Strategies 6.4.1, 6.4.2 and 6.4.3, which provide for the development of cooperative management arrangements with indigenous peoples for specific areas of the marine park, as well as the legislative basis to establish such arrangements.

Other objectives and strategies dealing with the development of culturally relevant interpretive material, membership of advisory boards and the development of Aboriginal and Islander training and employment programmes are also important initiatives. In the long run they are likely to be successful only if they are developed as adjuncts to the central issue of devolving control of customary marine estates within the marine park to appropriate indigenous traditional owners.

Several options for achieving greater control over customary maritime estates by appropriate indigenous peoples have been proposed to the Authority in several reports (e.g. Baldwin, 1984; Smith, 1989; Smyth, 1990, 1992; Ziegelbauer, 1991). These options include:

- The establishment of a separate Aboriginal and Torres Strait Islander Consultative Committee to advise the Authority on planning and management issues relevant to indigenous peoples' interests.
- The establishment of Aboriginal-controlled management boards for sections of the marine park.
- The establishment of local Aboriginal and Islander management committees to be responsible for designated areas within the marine park where indigenous interests are recognized as paramount.

These options are neither exhaustive nor mutually exclusive, and it is likely that different solutions would be appropriate for different regions of the GBRMP. For any solutions to be workable, they will have to emerge after a process of consultation and negotiation with maritime Aboriginal and Islander groups at a local level, as well as with their representative organizations.

During 1994, as part of the zoning review of the Far Northern Section of the Great Barrier Reef Marine Park, the Authority has commenced such negotiations; the development of the new zoning plan for this section (and associated management arrangements) is likely to be a watershed in relations between the coastal indigenous peoples and the Authority. The zoning review provides an opportunity to explore mechanisms for devolving at least some management responsibilities to local or regional indigenous organizations to reflect the reality of their continued cultural and economic association with the marine environment. Meanwhile the Commonwealth Government is giving consideration to amending the Great Barrier Reef Marine Park Act to recognize formally indigenous hunting and other interests, and to guarantee membership of indigenous peoples on the Community Consultative Committee and on the Authority itself.



**Table 8.1** Strategic plan for the Great Barrier Reef World Heritage Area: Aboriginal and Islander interests

**Objective 6.1:**

To ensure that the interests of Aborigines and Torres Strait Islanders are reflected in the management of the Area.

**Strategies**

- 6.1.1: Develop effective participation processes and structures in conjunctions with Aborigines and Torres Strait Islanders;
- 6.1.2: Cooperatively develop guidelines for stakeholder agencies and organizations for culturally appropriate interaction with Aborigines and Torres Strait Islanders;
- 6.1.3: Ensure negotiations occur on all aspects of management;
- 6.1.4: Ensure that use by Aborigines and Torres Strait Islanders is taken into account in the development of resource management plans;
- 6.1.5: Where plans are appropriate, Aborigines and Torres Strait Islanders to develop, with stakeholder agencies and organizations, management plans to ensure that their traditional use of resources is ecologically sustainable;
- 6.1.6: Provide opportunities for Aborigines and Torres Strait Islanders for membership on, and full involvement in, advisory committees and management boards;
- 6.1.7: Develop and implement employment and training programs in stakeholder organizations of Aborigines and Torres Strait Islanders;
- 6.1.8: Consider the implications of relevant legislation for native title.

**Objective 6.2:**

To inform the general public of the cultures and economies of Aborigines and Torres Strait Islanders in relation to the Area.

**Strategies**

- 6.2.1: Develop educational and interpretive materials and programs, in conjunction with Aborigines and Torres Strait Islanders;
- 6.2.2: Incorporate information about Aborigines and Torres Strait Islanders in education curricula and interpretive programs.

**Objective 6.3:**

To develop a culturally appropriate information program for Aborigines and Torres Strait Islanders regarding the Area and its management.

**Strategies**

- 6.3.1: Produce culturally appropriate material;
- 6.3.2: Disseminate information in a culturally appropriate manner.

**Objective 6.4:**

To establish cooperative management arrangements between Aborigines and Torres Strait Islanders and stakeholder agencies in the area.

**Strategies**

- 6.4.1: Establish a legislative basis for cooperative management arrangements;



Table 8.1 continued

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- 6.4.2: Establish cooperative management arrangements for specific areas;
  - 6.4.3: Provide for Aboriginal and Torres Strait Islander representation on advisory committees and management boards.

**Objective 6.5:**

To ensure that projects relating to social, cultural and economic interests of Aborigines and Torres Strait Islanders are included in research and monitoring programs.

**Strategies**

- 6.5.1: Identify and develop relevant research and monitoring projects in consultation with Aborigines and Torres Strait Islanders;
  - 6.5.2: Involve Aborigines and Torres Strait Islanders in projects that affect the interests of their people.
- 

Several initiatives by the Marine Park Authority over the last two years indicate that the process of accommodating the special interests of indigenous peoples in the marine park is gathering momentum. These initiatives include:

- The appointment of an Aboriginal Liaison Officer.
- The development of an Aboriginal employment strategy.
- The development of a marine park training programme for Aboriginal Community Rangers.
- The adoption of a Regulation which amends the assessment criteria for the development of zoning plans so as to protect the cultural and heritage values held in the marine park by traditional inhabitants and other people.
- The establishment of Aboriginal Councils of Elders at several locations along the Queensland coast to assist the Authority in determining the allocation of dugong and turtle hunting permits<sup>2</sup>.
- The training and employment of two Aboriginal Community Rangers by the Authority at each of three coastal communities to assist in research and management of projects within the marine park (Figure 8.4).

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<sup>2</sup> While the Authority retains the legal powers to grant or refuse hunting permits to Aboriginal and Torres Strait Islander people, the formation of Councils of Elders has established a *de facto* devolution of decision-making to local Aboriginal people with respect to the management of local dugong and turtle hunting.

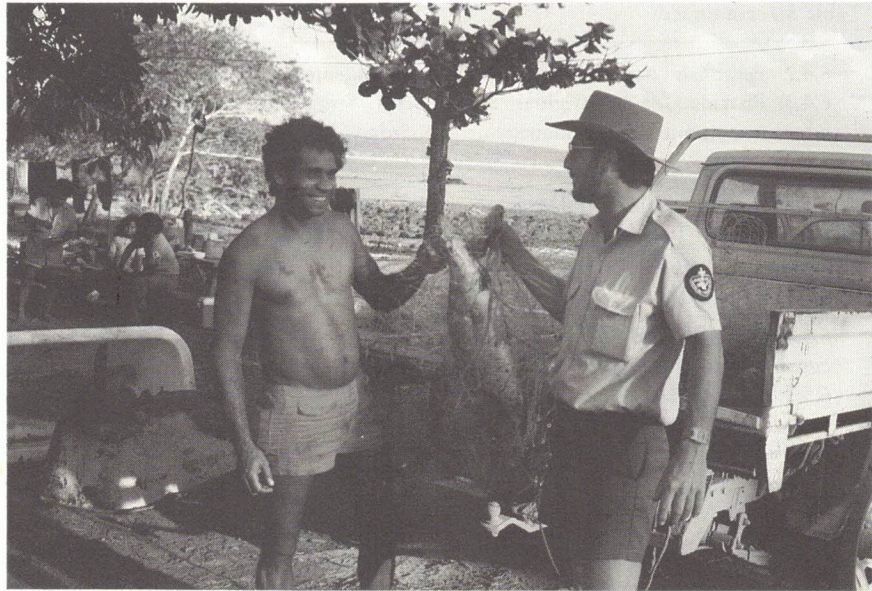


Figure 8.4 Community ranger and government fishery officer.

### 8.9 IMPLICATIONS FOR OTHER MARINE PROTECTED AREAS

The GBRMP is widely regarded as a good model of large-scale marine ecosystem management, accommodating many human uses and providing opportunities for public input into management, but with regard to its accommodation of indigenous peoples' interests the GBRMP does not yet provide a model for others to follow. Nevertheless, there are valuable lessons to be learnt from the experiences of the Marine Park Authority in responding to the implications of managing a marine ecosystem which is part of living indigenous maritime cultures. If this or similar marine protected areas with significant indigenous peoples' interests were to be established now, it is reasonable to expect that the following measures would be addressed:

- Early and ongoing consultation with maritime indigenous peoples as to the nature and extent of their cultural, social and economic interests in the marine environment.
- Early and ongoing negotiations with appropriate indigenous peoples with respect to their meaningful involvement in planning and management of the marine protected area.

- Recognition of indigenous peoples' interest in all enabling legislation.
- Establishment of special management arrangements for the substantive involvement of indigenous peoples in the management of their customary domains and resources within the marine protected area.
- Recognition that the natural marine environment has intrinsic cultural values to indigenous peoples which must be accommodated in planning, management and interpretation of the marine protected area.
- Appointment and resourcing of appropriate specialist staff to facilitate ongoing liaison with indigenous communities, and to assist in the implementation of special management arrangements involving indigenous peoples.

For these measures to be implemented as a matter of course in marine protected areas in Australia, and other places where indigenous maritime cultures survive, considerable progress must be made in increasing awareness of the relationship between indigenous peoples and the maritime environment among the general community and among governments. Organizations such as the Marine Park Authority can benefit from this process and also have much to contribute to it.

If measures outlined in the 25-year strategic plan for the Great Barrier Reef World Heritage Area are promoted, the Marine Park Authority and the Queensland Department of Environment and Heritage have the opportunity of providing the sort of leadership in indigenous people's involvement in marine protected area management that they have already established in the management of the 'natural' marine environment.

It is worth noting, however, that significant Aboriginal involvement in the management of Australian terrestrial national parks only developed once formal recognition of Aboriginal ownership of the land was made. The Mabo high court decision has initiated legal and political processes that may see similar recognition of traditional ownership of marine estates, which in turn could be expected to lead to enhanced involvement of Australia's indigenous peoples in the management of marine protected areas.

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