



Australian Government

Great Barrier Reef  
Marine Park Authority

# A Reef-wide framework for managing traditional use of marine resources in the Great Barrier Reef Marine Park

Compiled by  
Kirstin Dobbs

our great barrier reef  
let's keep it great





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**Compiled  
by  
Kirstin Dobbs  
Manager**

**Species Conservation Unit  
Conservation, Heritage and Indigenous Partnerships Critical Issues Group**

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Published by the Great Barrier Reef Marine Park Authority

ISBN 978 1 876945 60 2 (web)

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**Comments and inquiries on this document are welcome and should be addressed to:**

Manager, Species Conservation  
[species@gbrmpa.gov.au](mailto:species@gbrmpa.gov.au)

**Requests and inquiries concerning reproduction and rights should be addressed to:**

Director, Communication and Education Group  
Great Barrier Reef Marine Park Authority  
2-68 Flinders Street  
PO Box 1379  
Townsville Qld 4810  
Phone: (07) 4750 0700  
Fax: (07) 4772 6093  
[info@gbrmpa.gov.au](mailto:info@gbrmpa.gov.au)

**[www.gbrmpa.gov.au](http://www.gbrmpa.gov.au)**

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## EXECUTIVE SUMMARY

Among other achievements, the current *Great Barrier Reef Marine Park Zoning Plan 2003* established a new framework for managing traditional use of marine resources for Australian Aboriginals and Torres Strait Islanders.

The new framework complements existing community-based measures developed by some Traditional Owner Groups to manage their use of some of these resources and recognises entitlements enshrined in the *Native Title Act 1993*. It promotes the sustainable use of threatened (for example, dugongs, turtles) and iconic (for example, barramundi cod, giant clams) species within the Great Barrier Reef Marine Park (Marine Park), given the other sources of human related mortality that may impact upon these stocks. The framework also supports Traditional Owners in maintaining their cultural connections with the sea country of the Great Barrier Reef. This is achieved by working in sea country partnerships to develop and implement Traditional Use of Marine Resources Agreements (TUMRAs) and supporting cooperative management arrangements.

A summary of changes resulting in the Reef-wide framework were to:

- Treat traditional fishing, collecting, hunting and gathering as a single activity under the new term ‘traditional use of marine resources’
- Change the term and definition of who can undertake traditional use of marine resources from ‘traditional inhabitant’ to ‘traditional owner’
- Change the use and entry provisions in the Zoning Plan to all traditional use to occur in accordance with a ‘Traditional Use of Marine Resources Agreement’ accredited by the Great Barrier Reef Marine Park Authority (GBRMPA). If no agreement has been accredited, then a permit will be required, except if the activity is otherwise allowed ‘as of right’ (for example, fishing and collecting in a General Use Zone) and
- Develop guidelines for establishing the TUMRA and the contents of such agreements to be set out in the Regulations.

In designing a better way of doing future business with Indigenous Australians and, more specifically, Traditional Owner Groups, the GBRMPA has developed a legislative management framework that:

- Is reflected through policy and regulations consistent with the *Great Barrier Reef Marine Park Act 1975*, *Great Barrier Reef Marine Park Regulations 1983*
- Complements national processes established by the *Native Title Act 1993*, especially the working processes of Native Title Representative Bodies, Native Title Claims and Indigenous Land Use Agreements
- Provides a sound basis for achieving sustainable levels of harvesting as necessary for species conservation
- Encourages cooperative and culturally appropriate management between marine management agencies and Traditional Owner Groups on a wide range of sea country issues
- Is capable of managing a wide range of traditional use of marine resource activities in the Marine Park
- Is accepted as a management tool by at least the majority of Traditional Owner Groups and their representative bodies
- Is a scientifically valid basis for harvesting protected marine species in line with national threatened species management recovery plans
- Is workable on the ground
- Is legally binding for compliance.

## INTRODUCTION

The Great Barrier Reef is widely acclaimed as one of the world's great natural treasures. Established under the *Great Barrier Reef Marine Park Act 1975*, the 344 400 km<sup>2</sup> Great Barrier Reef Marine Park supports one of the most complex and biologically diverse ecosystems on earth. The park comprises over 99 percent of the Great Barrier Reef World Heritage Area, which was inscribed on the World Heritage List in 1981 on the basis of its outstanding natural values and its ecological integrity. The Great Barrier Reef World Heritage Area is the world's largest and is one of only a few World Heritage Areas that satisfy all four natural World Heritage criteria, namely:

- Being an outstanding example representing major stage of the earth's evolutionary history
- Being an outstanding example representing significant ongoing geological processes, biological evolution and man's interaction with his natural environment
- Containing unique, rare and superlative natural phenomena, formations and features and areas of exceptional natural beauty
- Providing habitats where populations of rare and endangered species of plants and animals still survive.

The stated aims of the Authority include protecting the natural qualities of the Great Barrier Reef while providing for reasonable use of the reef region, and minimising regulation of, and interference in, human activities, consistent with meeting the goal and other aims of the Authority. Consistent with these obligations, the Authority is responsible for conserving threatened and protected species in the Marine Park. This is achieved through managing human activities that impact on the species occurring in the Marine Park, including both current activities and predicted future activities. To the extent that it is consistent with protecting the natural values of the Great Barrier Reef, the Authority provides for ecologically sustainable use of the Marine Park, including traditional use by Aboriginal and Torres Strait Islander peoples.

### Aboriginal and Torres Strait Islander culture

In Australia, there are two Indigenous peoples or races; the Aboriginal peoples of the mainland region and the Torres Strait Islander peoples from the Torres Strait Islands between Australia and Papua New Guinea. The Authority also seeks to ensure that the interests of Aboriginals and Torres Strait Islanders are reflected in the management of the Great Barrier Reef World Heritage Area. The particular relationship between Aboriginals and Torres Strait Islanders and several marine species within the Great Barrier Reef World Heritage Area is well documented (Cook 1994, Hunter & Williams 1998, Ponte et al. 1994).

Aboriginal groups have lived along the Great Barrier Reef region in excess of 60 000 years. The Great Barrier Reef is part of their culture and spirituality, and has provided food for their subsistence tribal lifestyle. Today Aboriginal people live a more modern lifestyle however still maintain their cultural practices, including traditional hunting and fishing activities.

Torres Strait Islanders have lived in the Torres Strait for an estimated 10 000 years or more. Torres Strait Islanders have traditionally sailed south along the Great Barrier Reef and Cape York Peninsula coastline and made contact with Aboriginal groups for exchanges of technology, culture and goods. More recently, Torres Strait Islanders have moved south to settle in towns adjacent to the Great Barrier Reef World Heritage Area.

Indigenous Australians live in all cities, towns and communities adjacent to the Marine Park. There are more than 70 recognised Aboriginal and Torres Strait Islander Traditional Owner Groups<sup>1</sup> affiliated with the Marine Park and a significant number of people with historical

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<sup>1</sup> For the purposes of this report, Traditional Owner and Traditional Owner Group having the meaning under the *Great Barrier Reef Marine Park Zoning Plan 2003* and *Great Barrier Reef Marine Park Regulation 1983*. Traditional Owner Group means, in relation to a site or area of

association (GBRMPA 2002, p.47). Each Traditional Owner group maintains its own distinctive culture and identity and even within the groups, there are many more kinship groups whose characteristics further distinguish one from the other. About 20 different languages are spoken by Traditional Owners along the Great Barrier Reef coast. The 2001 Australian Bureau of Statistics Census reported approximately 54 960 Indigenous people living along the Marine Park coast and within the Great Barrier Reef catchment area (the same census gave the total population for that area as 818 200 people).

Traditional use of marine resources of the Marine Park is very important in the culture of Indigenous coastal peoples. The activities associated with traditional use of marine resources have great significance and express the continuance of long cultural traditions. For Traditional Owners the spiritual relationship with 'country' (land or sea) has been likened to that with a favourite member of the family: to be loved, nurtured, cared for and above all, respected. The practise of traditional use of marine resources by Traditional Owners, an integral part of the relationship with country, is steeped in ancient lore and ritual developed over millennia. Great importance is placed on the social sharing of food with members of the family. Marine resource use strengthens Aboriginal and Torres Strait Islander culture and demonstrates connection with tradition and sea country.

The GBRMPA recognises the important role of tradition and custom in the lives of Traditional Owners, that they have a vital interest in the management of the Marine Park and that they are unique and distinct from other stakeholder groups.

Aboriginal and Torres Strait Islander peoples are keen to be involved in the management and protection of marine resources in the Marine Park and the GBRMPA understands the need to actively engage with Traditional Owners for a range of Marine Park issues. As the Australian and Queensland Governments continue to respond to calls from Indigenous people for co-operative management arrangements, the GBRMPA is actively engaging with Traditional Owners to develop effective and supportive management arrangements for sea country within the Marine Park. The aim of these initiatives is to facilitate an active role for the Traditional Owner Groups in monitoring a sustainable level of take of Protected Species<sup>2</sup> (in particular dugongs and marine turtles) whilst maintaining their living maritime culture.

### ***Cultural value of dugongs and marine turtles***

Dugongs and marine turtles are an essential element of Aboriginal and Torres Strait Islander peoples living maritime culture along the Great Barrier Reef World Heritage Area. This is a culture that has evolved over time through the introduction, adoption and use of new technologies in a method similar to all Indigenous and Non – Indigenous societies around the world. For example, wooden outrigger canoes were one form of transport used to access reefs and islands, but today small-motorised boats have largely replaced them for traditional activities.

The activities associated with the hunting of dugong and turtle and preparing the meat has great significance and is an expression of the continuance of long cultural traditions. Great importance is placed on the social sharing of the meat with members of the family. Turtle shell is important to many Aboriginal and Torres Strait Islander people as historically it was often fashioned into combs and fishhooks.

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the Marine Park, means the group of Traditional Owners who, in accordance with Aboriginal or Torres Strait islander custom, speak for the site or area.

<sup>2</sup> Regulation 29 of the *Great Barrier Reef Marine Park Regulations 1983* defines, for the purposes of the *Great Barrier Reef Marine Park Zoning Plan 2003*, the species that are declared as Protected Species.

In remote coastal areas dugongs and green turtles have a higher social value because they provide food to communities where a nourishing diet is essential but often expensive to attain by direct purchase. In addition these marine food resources strengthen Aboriginal and Torres Strait Islander culture and maintain connection with tradition and sea country.

Traditional Owners have cultural authority over who is allowed to hunt in their sea country. Customary law and cultural practices determine such matters as what animals can be taken (for example, adults, calves), who can catch and cut up the animals, restrictions on the take of turtle eggs and seasonal closures of beaches and hunting areas. Traditional hunting activities are also being increasingly displaced by other non-traditional activities such as tourism and fishing.

### ***Conservation of dugongs and marine turtles***

Scientific studies indicate significant declines in the numbers of dugongs, especially along the urban coast of Queensland (Marsh et al. 2001) and that a precautionary approach should be taken with green turtles because there are indications both the northern and southern Great Barrier Reef populations may be in the early stages of a population decline (Chaloupka 2002, Limpus et al. 2003). Scientists conclude that urgent measures must be taken to stabilise numbers and to reverse the decline for future generations. All human-related mortality issues must be addressed to ensure dugongs and green turtles remain an integral part of Aboriginal and Torres Strait Islander tradition and custom as well as recognised World Heritage values of the Great Barrier Reef.

### **Aims of this report**

The rezoning of the entire Marine Park through the Representative Areas Program provided an opportunity to develop consistent Reef-wide frameworks for a range of activities including traditional use of marine resources. Refer to Day et al. 2002, Day et al. 2003, and Lewis et al. 2003 for an overview of the Representative Areas Program.

This document describes the GBRMPA's reasoning for developing a new approach for managing the traditional use of marine resources by Traditional Owners. The challenge was to develop a Reef-wide framework that:

- Incorporated provisions to ensure species conservation
- Supported sustainable Traditional Owner use of the Marine Park resources
- Was consistent with the *Native Title Act 1993*, the Australian Government position on native title and national policy initiatives such as the *Recovery Plan for Marine Turtles in Australia*
- Was developed cooperatively with and supported by Traditional Owner Groups, representative Indigenous organisations, Australian and State Government agencies, conservation groups and research organisations.

## PREVIOUS MANAGEMENT ARRANGEMENTS

The five Zoning Plans in effect for the Marine Park before 1 July 2004 had a variety of use and entry provisions for traditional activities (Tables 1 and 2) and various definitions for traditional activities and who could undertake those activities (Table 3). Because each Zoning Plan had been developed at different times (ranging from 1987 to 2002), the provisions for traditional use activities and the access conditions varied and created inconsistencies throughout the Marine Park in the way the activities were managed and also did not adequately reflect national policy on native title rights and interests.

The five previous Zoning Plans and the year in which they were made were:

- Far Northern Section (2002)
- Gumoo Woodabuddee Section (2002)
- Cairns Section (1996)
- Central Section (1987)
- Mackay/Capricorn Section (1987).

**Table 1. Traditional hunting provisions in previous Zoning Plans**

Zone	Zone Colour	Previous Zoning Plans			
		FNS & Gumoo	Cairns	Central	Mac/Cap
General Use	Light blue	Permit	Permit	Permit	Permit
Habitat Protection	Dark blue	Permit	Permit	Permit	Permit
Conservation Park	Yellow	Permit	Permit	Permit	Permit
Buffer	Light green	Permit	Permit	*	*
Scientific Research	Orange	*	*	Not allowed	Not allowed
Marine National Park	Dark green	Permit	Permit	Not allowed	Not allowed
Preservation	Pink	Not allowed	Not allowed	Not allowed	Not allowed
Commonwealth Island	-	Permit	*	*	*

\* = Not applicable in that specific Zoning Plan

**Table 2. Traditional fishing and collecting provisions in previous Zoning Plans**

Zone	Zone Colour	Previous Zoning Plans			
		FNS & Gumoo	Cairns	Central	Mac/Cap
General Use	Light blue	No permit	Permit	Permit	Permit
Habitat Protection	Dark blue	No permit	Permit	Permit	Permit
Conservation Park	Yellow	No permit	Permit	Permit	Permit
Buffer	Light green	No permit	Permit	*	*
Scientific Research	Orange	*	*	Not allowed	Not allowed
Marine National Park	Dark green	Permit	Permit	Not allowed	Not allowed
Preservation	Pink	Not allowed	Not allowed	Not allowed	Not allowed
Commonwealth Island	-	No permit	*	*	*

\* = Not applicable in that specific Zoning Plan

**Table 3. Definitions in the previous Zoning Plans**

<b>Zoning Plan</b>	<b>Definitions</b>
Far Northern Section (2002) and Gumoo Woodabuddee Section (2002)	<p><u>Traditional hunting</u>: means taking by a traditional inhabitant, other than for purposes of sale or trade, of a reptile of the Families Cheloniidae, Dermochelyidae and Crocodyllidae or a Dugong (<i>Dugong dugon</i>).</p> <p><u>Traditional fishing and collecting</u>: means fishing and collecting, by a traditional inhabitant, other than for the purposes of recreation, sale or trade.</p> <p><u>Traditional inhabitant</u>: means a person of Aboriginal or Torres Strait Islander descent who is recognised in the community as an Aboriginal or Torres Strait Islander and who identifies as an Aboriginal or Torres Strait Islander.</p>
Cairns Section (1996)	<p><u>Traditional hunting and gathering</u>: means collecting, otherwise than for the purposes of recreation, sale or trade, by a traditional inhabitant.</p> <p><u>Traditional fishing</u>: means fishing, otherwise than for purposes recreation, sale or trade, in an area by a traditional inhabitant.</p> <p><u>Traditional inhabitant</u>: means a person of Aboriginal or Torres Strait Islander descent, who is recognised in the community as an Aboriginal or Torres Strait Islander and who identifies as an Aboriginal or Torres Strait Islander.</p>
Central Section (1987) and Mackay/Capri corn Section (1987)	<p><u>Traditional hunting and gathering</u>: means collecting, otherwise than for the purposes of recreation, sale or trade, in an area by a traditional inhabitant or by a group of traditional inhabitants.</p> <p><u>Traditional fishing</u>: means fishing, otherwise than for purposes recreation, sale or trade, in an area by a traditional inhabitant or a groups of traditional inhabitants.</p> <p><u>Traditional inhabitant</u>: means an Aboriginal or Islander who lives in an area or areas in accordance with Aboriginal tradition or Islander tradition, respectively. Aboriginal means a person who is a member of the Aboriginal race of Australia. Islander means a person who is a member of the race to which Torres Strait Islanders belong.</p>

## Permits

Under the previous regulatory management approach Aboriginal and Torres Strait Islander people needed to apply for permits to undertake traditional activities like fishing, collecting and hunting in the Marine Park. With the first successful Native Title determinations (per Brennan J. *Mabo v Queensland (no. 2)* (1992) 175 CLR1 at 58.61) handed down by the Australian High Courts, much uncertainty developed as to who required permits and how the current marine park zoning provisions applied to Aboriginal and Torres Strait Islander people (See *Native Title matters* below). As a result of that ground breaking court decision and other precedent setting decisions about the application of native title in the Australian legal system, at least one Queensland Native Title Representative Body had advised Traditional Owner clients in their area not to apply for permits to undertake traditional activities because the granting of permits might have infringed their future native title rights in response to the decision in *De Rose Hill v State of South Australia* [2002] FCA 1342.

Other Traditional Owners advised the GBRMPA that they did not want to use the GBRMPA permit system for conducting traditional activities in sea country. Instead they expressed the desire to develop and manage their own community-based plans. However throughout this period many Traditional Owner communities and individuals became increasingly disillusioned with a lack of official and/or community response to their efforts to manage their own use of marine resources through community-based permits. Some Traditional Owners who demonstrated their commitment to sustainable use of marine resources found that they were unable to enforce their own management regimes.

Because these issues were not addressed in the previous Marine Park zoning plans, unmonitored and unsanctioned hunting of dugongs and green turtles occurred, despite compliance efforts.

## Reporting

Although permits generally required permittees to report details of activities, especially hunting, few permittees complied with this permit condition and there was little follow up by the

GBRMPA to gather the information. However the information on actual numbers of animals hunted is critical for determining whether traditional use of marine resources is occurring on a sustainable basis within the context of all the other mortality factors impacting upon the species.

### **Timeframes**

Native Title notification processes [known as ‘future act notices’] introduced by the *Native Title Amendment Act 1998* occasionally frustrated the GBRMPA’s ability to process traditional hunting permit applications. Because of the future act notice timeframes (a minimum of 28 days notice), the GBRMPA was not always able to process applications within the timeframes required by the applicants. Although some traditional activities (for example, birth, marriage) can be planned ahead of time, some cannot (for example, deaths).

### **Permit decisions**

From time to time the GBRMPA refused permits, subject to normal assessment processes or made no decision at all in respect of traditional hunting permit applications. This may have been for a variety of reasons, some of which are detailed in the policies mentioned below (for example, not allowing the issuing dugong hunting permits south of Cooktown). It is unknown whether the GBRMPA’s refusal or failure to make a decision had any influence on whether the activity occurred, as there was little ability to monitor compliance with the decisions.

Decisions by the GBRMPA not to grant traditional activity permits undermined:

- Collaborative management arrangements with Indigenous communities (as recommended at the 30 July 1999 Great Barrier Reef Ministerial Council meeting)
- Negotiations with Traditional Owners for a reduction in take of threatened species (for example, dugongs, turtles)

and were consequently counterproductive to the conservation of threatened species.

### **Compliance**

Traditional Owners and the GBRMPA were concerned about anecdotal reports of poaching of marine turtles and dugongs from the Marine Park. Traditional Owners continuously raised issues with the GBRMPA about non-Traditional Owners not following cultural protocols by not seeking permission from them before undertaking traditional hunting, fishing or collecting activities in their sea country. Of primary importance to the GBRMPA was the need to reduce the amount of poaching activities of marine turtles and dugongs. An important objective for designing a new framework for traditional use of marine resources activities for Traditional Owner Groups Reef-wide, was to reduce the amount of poaching of marine turtles and dugongs and reduce the amount of traditional hunting activities that were conducted without the consent of the Traditional Owners or permission from the GBRMPA.

On ground compliance activities were difficult to progress under previous arrangements because there was no way of identifying whether someone was a Traditional Owner for a particular part of the Marine Park or had sought permission from the Traditional Owners to undertake extractive activities for that part of the Marine Park. This uncertainty led to many incidents not being progressed.

## NATIVE TITLE ISSUES

Under the previous five Zoning Plans that together covered most of the Marine Park, traditional hunting could occur only with the written permission of the Authority. The effect of section 211 of the Commonwealth's *Native Title Act 1993* (see box below) is that native title holders<sup>3</sup> may undertake traditional hunting, gathering and fishing activities without a permit if the requirements of this provision are satisfied, including that the activity is done for the purposes of satisfying the native title holder's personal, domestic or non-commercial needs.

### **Section 211 of the Native Title Act 1993 - Preservation of certain native title rights and interests**

Requirements for removal of prohibition etc. on native title holders

Subsection (2) applies if:

- the exercise or enjoyment of native title rights and interests in relation to land or waters consists of or includes carrying on a particular class of activity (defined in subsection (3)); and
- a law of the Commonwealth, a State or a Territory prohibits or restricts persons from carrying on the class of activity other than in accordance with a licence, permit or other instrument granted or issued to them under the law; and
- (ba) the law does not provide that such a licence, permit or other instrument is only to be granted or issued for research, environmental protection, public health or public safety purposes; and
- the law is not one that confers rights or interests only on, or for the benefit of, Aboriginal peoples or Torres Strait Islanders.

#### **Removal of prohibition etc. on native title holders**

If this subsection applies, the law does not prohibit or restrict the native title holders from carrying on the class of activity, or from gaining access to the land or waters for the purpose of carrying on the class of activity, where they do so:

- for the purpose of satisfying their personal, domestic or non-commercial communal needs; and
- in exercise or enjoyment of their native title rights and interests.

*Note: In carrying on the class of activity, or gaining the access, the native title holders are subject to laws of general application.*

#### **Definition of class of activity**

(3) Each of the following is a separate *class of activity*:

- hunting;
- fishing;
- gathering;
- a cultural or spiritual activity;
- any other kind of activity prescribed for the purpose of this paragraph.

However native title implications for the Marine Park are much broader than section 211 of the *Native Title Act 1993*. Native title has its origins in, and is given its context by, the traditional laws acknowledged and the traditional customs observed by the Indigenous inhabitants of a territory. The nature and incidents of native title must be ascertained as a matter of fact by reference to those laws (per Brennan J. *Mabo v Queensland (no. 2)* (1992) 175 CLR1 at 58.61).

Native title rights may range from access and hunting rights to rights equivalent to exclusive possession (per *Gummar J in Wik Peoples v Queensland* (1996) 187 CLR1 at 169), although in respect of 'sea country' the High Court has determined that a native title right to exclusive possession would be contrary to the public rights to fish and navigate and the right of innocent passage (see *Commonwealth v Yarmirr v Northern Territory* (2001) 75 ALJR 1582).

As of 1 May 2006, there had been 58 successful native title determinations across Australia. Within these areas native title has been found to exist in all, or part of, all the claimed areas. The geographic extent and number of claims vary continuously. Over the past five years some Traditional Owners have indicated that they prefer to work with government agencies to progress cooperative management agreements for their sea country rather than lodging a Native Title claim. This is because even if native title is determined, it does not necessarily result in exclusive use or cooperative management arrangements with users of the area.

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<sup>3</sup> A native title holder is someone who holds native title.

## OTHER CONSIDERATIONS FOR DEVELOPING A REEF-WIDE FRAMEWORK

In developing a new framework for managing traditional use of marine resources, the GBRMPA also drew upon Australia's international obligations and national legislative and policy initiatives.

### International obligations

The GBRMPA must have regard to the following key species conservation instruments in determining its response to species conservation issues (Stokes et al. 2005). This list is not exhaustive but rather gives a context for some of the GBRMPA's obligations to various conventions and pieces of legislation.

- Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention)
- Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention, CMS)
- Convention on the International Trade of Endangered Species of Wild Flora and Fauna (CITES)
- Convention on Biological Diversity
- Agreements between the Government of Australia and the Governments of Japan and China for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (JAMBA, CAMBA)
- International Whaling Commission (IWC)
- The World Conservation Union (IUCN).

These various international conventions and agreements also specify provision for Indigenous use of natural resources. For example, the Convention on Biological Diversity states in Article 10, Sustainable Use of Components of Biological Diversity that each Contracting Party shall, as far as possible and as appropriate:

- Integrate consideration of the conservation and sustainable use of biological resources into national decision-making
- Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity
- Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements
- Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced
- Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

The World Conservation Union's Policy on *Sustainable use of Wild Living Resources*, states, *inter alia*, that:

- Use of wild living resources, if sustainable, is an important conservation tool because the social and economic benefits derived from such use provide incentives for people to conserve them
- When using wild living resources, people should seek to minimize losses of biological diversity
- Achievement of sustainable use of wild living resources involves an ongoing process of improved management of those resources
- Such management should be adaptive, incorporating monitoring and the ability to modify management to take account of risk and uncertainty.

The World Conservation Union's policy statement sets out four main considerations that should increase the likelihood that the use of a wild living resource will be sustainable:

- Supply is limited by intrinsic biological characteristics of species and ecosystems, including productivity, resilience and stability, which are themselves subject to extrinsic change

- Institutional structures of management and control need incentives and sanctions, good governance and implementation at an appropriate scale
- Favourable conditions for investment in the conservation and sustainable use of a resource will arise when economic value can be attached to it and perverse incentives removed
- Demand for wild living resources is affected by a complex array of factors, which must be considered along with supply if sustainability is to be promoted.

### **National Legislation and Policy**

The main national environmental legislation is the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* which is administered by the Department of the Environment and Water Resources.

Obligations under the World Heritage Convention, CITES and the Bonn Convention are largely addressed through the *EPBC Act*'s requirements (for example, World Heritage values as a matter of national environmental significance, 'listed migratory species', export permits for CITES listed species).

### **Permits**

Currently permits for the take of listed species under the *EPBC Act* are required from the Department of the Environment and Water Resources if a permit has been granted under the *Great Barrier Reef Marine Park Act 1975* (refer sections 197(j), 212(j), 255(j)). These permits would be required for activities in a Commonwealth area except when the area is the seabed, subsoil under the seabed, or any water and airspace over seabed and vested in a State under section 4 of the *Coastal Waters (State Title) Act 1980*. Because of this interpretation, the requirement for a permit under the *EPBC Act* exists only for those parts of the Marine Park that occur outside State coastal waters (for example, greater than 3 nautical miles from the Queensland coast or a Queensland-owned island).

### **Offences**

Section 197 of the *EPBC Act* makes it an offence to kill or injure listed threatened species (for example, green turtles) in a Commonwealth area unless *inter alia* the action is in accordance with a permit under Marine Park Regulations. Section 199 makes it an offence to fail to notify, within 7 days, of the taking (death, injury) of a listed threatened species in a Commonwealth area.

Section 211 of the *EPBC Act* makes it an offence to kill or injure listed migratory species (for example, dugong) in a Commonwealth area unless *inter alia* the action is in accordance with a permit under Marine Park Regulations. Section 214 makes it an offence to fail to notify, within 7 days, of the taking (death, injury) of a listed migratory species in a Commonwealth area.

### **Trade of species taken during traditional use activities**

The trade of listed threatened, migratory and marine species is prohibited under *EPBC Act* (sections 196D, 211D, 254D, respectively). In addition, any removal of products from the Marine Park for commercial purposes would require a permit. This is also consistent with the *Native Title Act 1993*, which states that an activity that falls under section 211 must be '*for the purpose of satisfying their personal, domestic or non-commercial communal needs*'.

### **Matter of national environmental significance**

Under the environmental assessment provisions of the *EPBC Act*, individual actions that are likely to have a significant impact on a matter of national environmental significance are subject to a rigorous assessment and approval process. An action includes a project, development, undertaking, activity, or series of activities.

At the time of the Representative Areas Program occurring, the *EPBC Act* identified six matters of national environmental significance. The ones that most likely relate to traditional use activities include:

- World Heritage properties
- Ramsar wetlands of international significance
- Nationally listed threatened species
- Listed migratory species
- Commonwealth marine areas.

### **Recovery Plans**

In July 2003 the Minister for the then Environment and Heritage (now the Minister for the Environment and Water Resources) finalised a *Recovery Plan for Marine Turtles in Australia* (Environment Australia 2003). Actions identified under this Plan in relation to customary harvest include that (A.2.1.) management agreements be established between lead agencies and Indigenous communities which:

- Recognise customary law and the cultural significance of marine turtles
- Quantify existing harvest using the best available science and local Indigenous knowledge
- Identify and implement negotiated mechanisms that will ensure that customary harvest does not threaten recovery of marine turtles
- Control marine turtle use within the communities' area
- Recognise that communities only carry out harvesting for traditional use
- Recognise endangered or critically endangered species and implement a zero take where possible
- Identify the research requirements of Indigenous communities regarding marine turtle conservation
- Increase awareness of marine turtle conservation issues through information exchange.

No national dugong wildlife conservation plan had been developed at the time the Representative Areas Program was occurring.

### **Marine Park Authority policies**

The GBRMPA is the principal adviser to the Australian Government on the care and development of the Marine Park, and is the lead agency for Great Barrier Reef World Heritage Area issues. At the time of the Representative Areas Program, the GBRMPA's goal was to '*Provide for the protection, wise use, understanding and enjoyment of the Great Barrier Reef in perpetuity through the care and development of the Great Barrier Reef Marine Park*'. On this basis, the Marine Park is managed as a multiple use Marine Park. Traditional use of the Great Barrier Reef by Indigenous Australians is recognised as an important and valid use of the Marine Park, along with fishing, tourism, recreation, research and other activities.

The GBRMPA manages the area pursuant to the *Great Barrier Reef Marine Park Act 1975*, the *Great Barrier Reef Marine Park Regulations 1983*, various Zoning Plans, Plans of Management, and is guided by a suite of policy documents. The GBRMPA also works closely with other Australian and State Government agencies (particularly the Queensland Parks and Wildlife Service).

The Marine Park Authority has introduced various policy initiatives over several years to provide for and ensure the sustainable take of green turtles and dugongs by Aboriginal and Torres Strait Islander people, for example:

- Policy 2000/164: Management should (*inter alia*) give recognition of the relevant rules under the local community By-laws, which may facilitate the management of traditional hunting and fishing by Aboriginal communities. (MPA 102/15, June 1988)

- Policy 2000/163: Management should (*inter alia*) give consideration during review of the Zoning Plans for the Cairns and Far Northern Sections, to the establishment of '*designated hunting areas*', for use by Aboriginal communities. (MPA 102/15, June 1988)
- Policy 2000/262: Staff of the Authority and Queensland Department of Environment are to use the '*Interim Policy - Traditional Hunting Dugong*' dated June 1996 when assessing applications for traditional hunting of dugongs in the area from Cooktown to the southern boundary of the Marine Park (decision MPA 91/15 on guidelines for permits for hunting of dugongs refers); and they are to proceed cautiously in the introduction of the interim policy, in recognition of the need for further consultation with Indigenous groups and others, in order to develop a cooperative approach to managing all threats to dugongs. (MPA 161/8, July 1996)
- Policy 2000/481: 'Management will recognise that the Great Barrier Reef evolved in the presence of Aboriginal people; and will enable Aboriginals and Torres Strait Islanders to pursue their own lifestyles and cultures, and have the responsibility for areas and resources relevant to their heritage, within the bounds of nature conservation and ecologically sustainable use.' (MPA 166/5, April 1997).

In addition to those policy documents, the *25 Year Strategic Plan for Great Barrier Reef World Heritage Area* (GBRMPA 1994a) is far-reaching in its vision and innovative approach, providing a 25-year vision for the World Heritage Area. The Plan identifies key objectives and strategies for the management of the World Heritage Area including the recognition of Aboriginal and Torres Strait Islander interests.

The Strategic Plan (Chapter 6) recognises that for thousands of years Aboriginals and Torres Strait Islanders have used the natural environment of the World Heritage Area for both cultural and economic purposes, and that management of the Area should recognise this continuing use.

One of the objectives of the Plan is to have a community, which recognises the interests of Aboriginals and Torres Strait Islanders so that they can pursue their own lifestyle and culture and exercise responsibility for issues, areas of land and sea, and resources relevant to their heritage within the bounds of ecologically sustainable use.

Aboriginal and Torres Strait Islander peoples were involved in the development of the Plan (see Appendix 2 of the Plan) although they did not endorse the Plan due to their concerns at that time about potential impacts on native title and the need for further negotiation about their involvement in management (Benzaken et al. 1997).

In 2002 the then Minister for the Environment the Honourable Dr David Kemp noted an initiative of the GBRMPA to recommence the permitting system for traditional hunting of green turtles in the southern Great Barrier Reef while a Reef-wide management framework (including policies) was developed. This was consistent with a decision of the Great Barrier Reef Ministerial Council meeting on 8 June 2001, when officials were asked to prepare a report to Council about, amongst other things, '*how to develop more co-operative management arrangements with relevant Indigenous Traditional Owner Groups (for example, addressing conservation of turtles and dugongs).*'

## NEW FRAMEWORK FOR TRADITIONAL USE OF MARINE RESOURCES

A new system for management for traditional use of marine resources in the Marine Park was proposed and adopted through the new zoning plan and associated regulations. An important objective for Traditional Owner Groups Reef-wide, and for the GBRMPA, is to ensure that hunting of green turtles and dugongs occurs at sustainable levels within the context of all the human-related mortality factors impacting on these species.

### Public Consultation

As part of the GBRMPA's Representative Areas Program, ideas on how to best manage traditional use of marine resources were discussed at length with relevant Traditional Owner Groups and representative bodies along the Great Barrier Reef coast as part of the rezoning process and incorporated into the resultant legislation and policy.

In a 2002 teleconference, the Chief Executives of the four Native Title Representative Bodies (such as, Land Councils) adjacent to the Marine Park (excluding Torres Strait) endorsed the GBRMPA's proposal to develop the framework and offered assistance in identifying and liaising with Traditional Owner Groups. Example comments included:

- *'The North Queensland Land Council would endorse (the GBRMPA proposal). If you want to contact us at any time to have these forums, we would be happy to oblige in that area. We would like to see all those forums happen and get a response from Traditional Owners regarding all the stuff you are putting forward and how it may or may not work.'* (Chairperson, North Queensland Land Council)
- *'We (Cape York Land Council) are pretty much the same (as North Queensland Land Council). We are in agreement with what Terry said. We have been waiting a long time for something like this to happen to take it to the next step....'* (Governing Committee Member, Cape York Land Council).
- *'I will need a fair bit of lead-in time to be able to organize these meetings.....so if you can give use as much notice as possible, that will help us a lot.'* (Executive Officer, Central Queensland Land Council)
- *'We are pretty much the same as Russell. Give us plenty of lead time into it, given that we have got plenty of work on at the moment. We support what you have put together.'* (Chief Executive Officer, Gurang Land Council).

On 28 October 2002, the Director-General of the Environmental Protection Agency wrote to the GBRMPA supporting the *'...Authority's efforts to pursue an ecologically sustainable and culturally appropriate management system for traditional hunting.'* He added that *'...The traditional hunting framework (the GBRMPA is) proposing is consistent with actions this agency has taken and is taking with Traditional Owners elsewhere in the State.'* On 6 November 2002, the Director, Queensland Parks and Wildlife Service, Northern Region, also wrote in *'...support of this initiative and (looking) forward to achieving mutually acceptable solutions.'*

In November-December 2002, in collaboration with the Queensland Parks and Wildlife Service and the Cape York and the North Queensland Land Councils, initial meetings were held with representatives of all Cape York Peninsula Traditional Owner Groups with 'sea country' in the Marine Park, and with those in the North Queensland Land Council Region. These meetings were positive and GBRMPA staff subsequently assisted Traditional Owner Groups based at three Cape York Peninsula settlements to introduce short-term management arrangements for hunting over the 2002/03 Christmas holiday period. This approach was also consistent with the Queensland Environmental Protection Agency, Northern Region, *Traditional Hunting Management Strategy Action Plan for Cape York Peninsula (November 2002-April 2003)*.

Between March 2002 and December 2003, the GBRMPA held more than 200 meetings with Traditional Owners, the Aboriginal & Torres Strait Islander Commission (ATSIC) and Native Title Representative Bodies to discuss the Representative Areas Program, and more specifically,

sustainable traditional use of marine resources. As a result, a number of Traditional Owner Groups and Native Title Representative Bodies endorsed the proposed approach.

While there has been general community input into the development of the approach through the formal Representative Areas Program submission process to the Zoning Plan, there is a need to engage the broader community as the process is implemented. This engagement needs to occur at many levels, including key local and national stakeholders.

During a second community participation phase for the Representative Areas Program (May – July 2003), the GBRMPA received 336 submissions discussing Indigenous issues. These comprised 322 Indigenous submissions and 14 non-Indigenous submissions. More than 90 per cent of these submissions supported the concept of entering into formal management arrangements for traditional use of marine resources.

### **Recognition of native title**

The *Great Barrier Reef Marine Park Zoning Plan 2003* recognises that under section 211 of the *Native Title Act 1993*, a native title holder may hunt, fish or gather any species in the exercise or enjoyment of his/her native title rights and interests for the purpose of personal, domestic or non-commercial communal use without either having a permit or being included within a TUMRA. This and other native title rights have been reiterated in the Zoning Plan (Part 1.7):

(3) Nothing in this Zoning Plan is intended to extinguish any native title rights and interests

(4) Nothing in this Zoning Plan is intended to affect the operation of section 211 of the *Native Title Act 1993* in relation to any provision of this Zoning Plan.

### **Definitions**

(1) Feedback from Traditional Owners during the Representative Areas Program indicated that collecting, fishing, hunting and gathering activities were all conducted simultaneously and hence should be treated as one activity. As such, the GBRMPA developed a new activity term ‘*traditional use of marine resources*’. This term replaced ‘traditional hunting and gathering’ and ‘traditional fishing and collecting’ in previous zoning plans.

The scope of ‘traditional use of marine resources’ includes both ‘take<sup>4</sup>’ and non-take activities by Traditional Owners. In this regard, the definition of ‘traditional use of marine resources’ contained within the Zoning Plan is ‘*the undertaking of activities in accordance with Aboriginal or Torres Strait Islander custom or tradition for the purposes of satisfying personal, domestic or communal needs.*’ Examples include fishing, hunting and collecting of Protected and non-Protected species and the maintenance of fish traps.

(2) The term ‘traditional inhabitant’ was changed to ‘traditional owner’ to better reflect terminology used by Indigenous people.

Traditional owner is defined in the Marine Park Regulations (Reg 33) as meaning “*a person of Aboriginal or Torres Strait Islander descent who: (a) is recognised in the Indigenous community or by a native title representative body: (i) as having spiritual or cultural affiliations in a site or area in the Marine Park; or (ii) as having native title; and (b) holds entitlements to undertake activities under Aboriginal or Torres Strait Islander custom or tradition in that site or area.*” It should be highlighted that this definition is broader than just those people that have a native title right. It also includes people that have an affiliation with and can ‘speak for’ an

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<sup>4</sup> In the Zoning Plan taking an animal, plant or marine product includes:

(a) removing, gathering, catching, capturing, killing, destroying, dredging for, raising, carrying away, bringing ashore, interfering with and obtaining (by any other means) the animal, plant or marine product; and

(b) attempting to do anything mentioned in paragraph (a).

area and are considered by Native Title Representative Bodies as being the correct contacts for an area.

- (3) The new framework for managing traditional use of marine resources involves the development of a traditional use of marine resources agreement (TUMRA) by a Traditional Owner or a group of Traditional Owners. A TUMRA means ‘*an agreement, developed in accordance with the regulations, by a traditional owner group, for the traditional use of marine resources in a site or area of the Marine Park*’. This definition is contained within the Zoning Plan.

### Zone Objectives and Use and Entry provisions

Consistent Reef-wide zone names and objectives were introduced for the Marine Park in the 2003 Zoning Plan. The objectives of the General Use, Habitat Protection, and Conservation Park Zones provide for some extractive uses to occur. Scientific Research Zones also allow for some forms of extractive use to occur, including traditional use of marine resources.

In contrast, Buffer Zones and Marine National Park Zones are more highly protected zones and, with the exception of certain permitted forms of research, extractive activities (other than traditional use of marine resources) are considered inconsistent with the objectives of these zones. In recognising the rights and interests of Traditional Owner Groups, the GBRMPA considers that there is reasonable justification for ecologically sustainable traditional use of marine resources of Buffer and Marine National Park Zones, if the take is cooperatively managed with the GBRMPA.

Preservation Zones are established for the preservation of some areas in their natural state and undisturbed by human activities. There are few Preservation Zones and most are relatively small in comparison with other zones, and/or are situated in remote locations. The GBRMPA considers that traditional use of marine resources should not occur in Preservation Zones to achieve the objective of retaining them in a natural state as benchmark areas of the Marine Park, generally undisturbed by human activities. However, access and use for traditional non-extractive use will be considered in consultation with relevant groups and such access is reflected in Part 5.1 of the Zoning Plan.

**Table 4. Requirements for traditional use of marine resources under the Great Barrier Reef Marine Park Zoning Plan 2003**

Zone	Can traditional use of marine resources occur?	How can traditional use of marine resources occur?
General Use	Yes	<ul style="list-style-type: none"> <li>In accordance with section 211 of the <i>Native Title Act 1993</i></li> <li>In accordance with an accredited TUMRA for a site or area within the Marine Park</li> <li>If otherwise an ‘as of right’ activity for the particular zone where the traditional use of marine resources is being conducted</li> <li>As a permitted activity with the written permission of the Authority.</li> </ul>
Habitat Protection	Yes	
Conservation Park	Yes	
Buffer Zone	Yes	
Scientific Research	Yes	
Marine National Park	Yes	
Commonwealth Islands	Yes	Right of access for non-extractive Traditional uses only
Preservation Zone	Yes but only non-extractive activities	

## TRADITIONAL USE OF MARINE RESOURCES AGREEMENTS

Under the framework established by the Zoning Plan and associated Regulations, traditional use of marine resources involving take activities can be conducted only in accordance with one of the following:

- in accordance with section 211 of the *Native Title Act 1993*; or
- in accordance with an accredited TUMRA for a site or area within the Marine Park; or
- if otherwise an 'as of right' activity for the particular zone where the traditional use of marine resources is being conducted; or
- as a permitted activity with the written permission of the Authority.

Guidelines for establishing TUMRAS, including the contents of such agreements, were established in consultation with Traditional Owner Groups, representative bodies and the Queensland Environmental Protection Agency (EPA).

Commercial activities, such as tourism, aquaculture, and commercial fishing, cannot be included in a TUMRA. Permits for these activities are subject to different management processes, policies and administrative arrangements.

### Development process

Traditional Owner Groups who speak for country (including native title holders) may develop a TUMRA and may apply to have a TUMRA accredited by the Authority. While corporations may at the request of Traditional Owners, assist in the development and administration of a TUMRA, only the Traditional Owners are able to apply for accreditation. At the request of Traditional Owners, staff of the Authority can provide advice on and work with Traditional Owners in preparing the TUMRA including the use of a ***TUMRA Assistance Workbook*** and supporting sea country management education materials.

The development of a TUMRA approximates a three-step process:

#### *Step 1*

- Traditional Owners meet and decide whether they want to develop a TUMRA. Matters to be addressed at an initial meeting should include:
  - What are the issues in their sea country?
  - How should they be managed?
  - What can the community do itself?
  - What help may be needed from the Government [if any]?
  - What Government agencies should be involved?
- Traditional Owners should agree on a way ahead, including:
  - Setting up a small working group to take their plans forward
  - Deciding who is responsible for what on the Working Group (for example, the Chair), and who will arrange and keep a record of meetings
  - Nominating contact people for the working group
  - Writing down all the issues identified by the meetings
  - Writing down how they want to see the TUMRA developed and implemented
  - Determining what part of the Marine Park the TUMRA will apply over.

The GBRMPA does not make a determination or judgements of TUMRA boundaries, rather it is hoped that where overlapping boundaries occur, that efforts concentrate on how the traditional use activities or particular species should be managed within those areas, irrespective of the boundary.

#### *Step 2*

- The working group needs to:
  - Determine what assistance is needed from the GBRMPA, including how they'd like GBRMPA's staff to help develop their TUMRA, and/or other assistance they would like from the GBRMPA

- Determine how they propose the TUMRA should be implemented
- Inform the EPA and GBRMPA the decisions from those discussions.

#### *Step 3*

- The working group and staff of the GBRMPA together write a first draft of the TUMRA addressing the matters raised in Step 1 and plan how the TUMRA will be implemented. (The GBRMPA developed a ***TUMRA Assistance Workbook*** that can be used by Traditional Owners in their TUMRA development)
- The working group ensures that at least half of the Traditional Owners in the area support the draft TUMRA
- The working group arranges meetings of Traditional Owners to present and discuss the draft TUMRA
- The working group and GBRMPA staff develop a final draft
- Follow-up meeting(s) of Traditional Owners are held to discuss and approve final draft
- Traditional Owners send the final draft to the GBRMPA for accreditation.

### **Accreditation process**

Before a TUMRA can be implemented it requires accreditation from the Authority. The Marine Park Authority will consider an application for accreditation of a TUMRA in line with criteria in the *Great Barrier Reef Marine Park Regulations 1983* (Reg. 10). As part of the accreditation process, checks will be made with appropriate Native Title Representative Bodies that the Traditional Owners who have applied for accreditation of a TUMRA are the correct people for that sea country. A TUMRA can be used to manage the 'traditional use' activities of non-Traditional Owners in sea country (for example, Aboriginal and Torres Strait Island people living away from their traditional country, or Indigenous people from other areas, provided those activities and persons are covered by the accredited TUMRA) but only if the take of Protected Species will be sustainable.

Once accredited, a TUMRA has legal force and can be implemented through sea country partnership arrangements with the GBRMPA and Queensland Environmental Protection Agency. Of primary importance to the GBRMPA is to obtain better information about turtle and dugong hunting activities, which is also of major concern to Traditional Owner Groups Reef-wide.

Where the traditional use of marine resources activity is not 'as of right' under the Zoning Plan (for example, the activity requires the written permission of the Authority) and where the person conducting the activity is not a native title holder, a breach under an accredited TUMRA will essentially amount to a breach of the Zoning Plan. The Authority also has the legislative ability to vary or revoke TUMRA accreditation if concerns warrant such an action.

The intent of TUMRA accreditation is to achieve a formal level of cooperative management agreement within Traditional Owner Groups for the sustainable traditional use of marine resources, in the first instance dugongs and green turtles, in accordance with Traditional Owner custom for the sea country areas, and to support those agreements with a negotiated implementation arrangements and a targeted compliance programme.

### **Native title implications**

The TUMRA approach, developed after many discussions with Traditional Owners, Native Title Representative Bodies, the Native Title Unit at the Commonwealth Office of the Attorney General in Canberra and others, is considered the most practical and acceptable way forward to manage the complexities of traditional use of marine resources and the pressing need for accurate information to aid species conservation.

TUMRAs are not inconsistent with the *Native Title Act 1993*. A TUMRA is intended to assist Traditional Owners in the management of sustainable traditional use of their sea country.

Traditional Owners that voluntarily limit the numbers of a particular species (for example, green turtle) taken or have a voluntary moratorium on the take of some species (for example, dugongs) are not affecting their future native title rights in relation to those species. The TUMRA is purely a statement, which reinforces how Traditional Owners use their traditional decision making processes to manage contemporary sea country issues. The accreditation of a TUMRA is not a Native Title determination and is not intended to affect the operation of the *Native Title Act 1993*.

### **Benefits**

The GBRMPA is committed to ensuring that marine resources are conserved for their intrinsic heritage value, and as one of the natural values associated with the listing of the Great Barrier Reef as a World Heritage site. The GBRMPA must strive to ensure these resources are available for appreciation by other users of the Marine Park. The GBRMPA is also committed to ensuring that these resources are used sustainably and hence available in the long-term for use by Traditional Owners.

The new system will benefit the conservation of marine resources and both the GBRMPA and Traditional Owners, because the process will be consistent, transparent, and enforceable. The system is a positive step forward in the GBRMPA's working relationship with Traditional Owners because it integrates cooperative management of the Marine Park and sea country.

### ***Achieving sustainable levels of harvesting***

For restrictions on traditional activities to succeed, it is essential to have the understanding and support of the affected Traditional Owners. Indeed, managed and sustainable Indigenous harvest is far more acceptable than an uncontrolled and unmonitored harvest. The GBRMPA recognises that liaison cannot occur; let alone negotiation, with Traditional Owner communities, without recognition that traditional use of marine resources is an important part of their culture. This recognition requires acknowledgment and acceptance of sustainable use by Indigenous people.

Because TUMRAs are developed by the Traditional Owners themselves, they are an effective way of assisting Traditional Owners and the GBRMPA to manage sea country sustainably. This is crucial for gaining acceptance by the non-Indigenous community. It is also crucial because the GBRMPA must be able to monitor the actual level of take in Indigenous communities if dugongs and green turtles are to be conserved in the Marine Park. Cooperation with Traditional Owners is essential for effective monitoring of the take and use of marine resources in the Marine Park.

Strategy 3.7 of the *Turtle and Dugong Conservation Strategy for the Great Barrier Reef Marine Park* (GBRMPA 1994b) recommended that the GBRMPA '*define sustainable harvest rates of traditional hunting in conjunction with Traditional Owner Groups and researchers*'. The GBRMPA will continue working with Traditional Owner Groups and researchers to agree on sustainable levels of harvest of all species throughout the Marine Park. Some Traditional Owners have already developed community management strategies and voluntarily reduced their use of these resources.

The requirement for reporting basic details such as the number of dugongs and green turtles hunted will allow for a 'whole of stock' management approach to sustainability, which can then be considered when updating TUMRAs.

### ***Encouraging cooperative management***

The new system for managing traditional use in the Marine Park is an important mechanism by which the GBRMPA recognises and affirms the special relationship Aboriginal and Torres Strait Islander people have with the marine environment.

The GBRMPA is committed to developing cooperative management arrangements with Traditional Owners for the sustainable use of marine resources. In 1998, GBRMPA staff wrote *'For management to work in communities it must be compatible to the needs of individual communities and these needs have to be identified and understood. In general, community based management needs to ensure that turtles are hunted on a sustainable basis to fulfil community aspirations, expectations and the realistic ability to fulfil those expectations. It must maintain flexibility for the dynamics of Indigenous society and most importantly be initiated, monitored and maintained by the communities themselves thus empowering Indigenous communities'* (Hunter & Williams 1998).

The matter of traditional use of marine resources in the Marine Park is sensitive. The GBRMPA is aware that some Traditional Owners may not support restrictions on traditional use. The GBRMPA must maintain the good will of the communities to be able to most effectively manage traditional use, especially of use of threatened species by Traditional Owners in the Marine Park. The GBRMPA is also aware that some non-Indigenous people may not support the taking of threatened species for traditional use of marine resources.

The TUMRA approach is consistent with views expressed for marine turtles internationally. The International Union for the Conservation of Nature 1995 *'Global Strategy for the Conservation of Marine Turtles'*, recommended that management agencies promote conservation at the local community level through reinforcing the internal structure of the community and promoting environmental sustainability. The overall recovery objective of the *Recovery Plan for Marine Turtles in Australia* is *'to reduce detrimental impacts on Australian stocks of marine turtles and hence promote their recovery in the wild'* (Environment Australia 2003). This new system is a step forward to achieve this objective.

Other ways the GBRMPA involves Aboriginal and Torres Strait Islander people in the management of the Marine Park include the:

- Facilitation of workshops with Traditional Owner Groups and other government agencies
- Development of strategies to engage Traditional Owner Groups in the GBRMPA's programmes
- Development of culturally appropriate policies that reflect Traditional Owner cultural and heritage values, rights, aspirations and responsibilities for their sea country
- Distribution of posters, newsletters, fact sheets and Internet information to increase awareness of Aboriginal and Torres Strait Islander peoples cultural relationships and connection to sea country
- Aboriginal and/or Torres Strait Islander membership on the Board of the Marine Park Authority, the Great Barrier Reef Consultative Committee, the GBRMPA's four Reef Advisory Committees, and 11 Local Marine Advisory Committees.

## IMPLEMENTING THE NEW SYSTEM

The GBRMPA envisages that cooperation among the 70 tribal groups will result in about 27 Traditional Use management units being developed. Traditional Owner Groups from 20 of the 27 areas have expressed support for the TUMRA process. Currently, 10 Traditional Owner Groups have developed and implemented their own form of traditional hunting management regimes for their sea country, and some of these may evolve into accredited TUMRAs over time.

While TUMRAs are being developed, the GBRMPA will:

- Continue to advise Traditional Owners and other Indigenous people of the Authority's permit requirements
- Negotiate with Traditional Owners regarding the number of turtle to be taken in their sea country
- Continue the policy of not issuing permits for dugong hunting south of Cooktown
- Limit the issuing of permits for dugong hunting north of Cooktown to a number based on advice from the local Traditional Owners and the scientific community.

In March 2004 the Authority (MPA 191/4 (03/03/04)) approved guidelines for staff for the implementation of the framework for managing the traditional use of marine resources in the Marine Park. Included with this were:

- A five-year work programme to proceed with implementing Traditional Use of Marine Resource Agreements subject to resource constraints and agency priorities MPA 191/5 (03/03/04)
- Agreement that:
  - An integrated approach across both Australian and State Government should occur in negotiating TUMRAs
  - The accreditation of any TUMRAs should rest with the Authority in the first instance MPA 191/6 (03/03/04).

A regulatory framework including explanatory material and staff guidelines has been developed to give effect to the Zoning Plan provisions for TUMRAs. The regulatory framework will allow for the enforceability of TUMRAs, while the staff guidelines will ensure consistency in approach, and in line with the commitment made during the consultation process, these guidelines will be further developed in consultation with Traditional Owners, Native Title Representative Bodies and other key stakeholders to ensure transparency.

The first priority in developing the framework was to develop mechanisms with Traditional Owners to effectively manage the hunting of green turtles and dugongs. Implementing the framework includes the following components:

- The most important species to be included in the TUMRAs are those for which there is a concern about the sustainability of their populations, in particular dugongs and green turtles. Those species listed as threatened, migratory or marine under the *EPBC Act* receive the next highest priority for management.
- At the same time, the GBRMPA recognises that the hunting of green turtles and dugongs is an established cultural right for Traditional Owners. It will therefore make every effort to allow for and ensure the sustainable take of green turtles and dugongs by Traditional Owners. Thus, enforcement action with regard to hunting and the need for permissions will be pursued except where it occurs in accordance with an accredited TUMRA. The GBRMPA in developing measures to conserve green turtles and dugongs will communicate management actions and their outcomes to the wider community as part of its public education processes.

The success of the TUMRA programme will depend on a culturally appropriate process and the prudent use of a wide range of other marine management tools. A layer of management intent

based on Traditional Owner Groups' customary, traditional and cultural heritage values will develop over time.

While there has been targeted Indigenous input to the development of the TUMRA process, the broader community will need to be involved as TUMRAs are implemented. This will need to occur at many levels, involving a wide range of local and national stakeholders.

The TUMRA approach conforms to the vision of the *'Shared Responsibility, Shared Future'* initiative that was recently endorsed by the Council of Australian Governments. Consistent with this approach, *'...governments support communities to identify their local and regional priorities and agree outcomes that are documented in local agreements. These agreements detail the contribution of the communities and the governments to meeting and sustaining those priorities and outcome. This approach recognizes that each partner to a local agreement has an important contribution to make towards building stronger communities.'*

The TUMRA programme will also be a key element in the implementation of the *Recovery Plan for Marine Turtles* (Environment Australia 2003) and the Australian Government's *Sustainable Harvest of Marine Turtles and Dugongs in Australia – A National Partnership Approach 2005*.

Ongoing consultation with Traditional Owners will be a key factor in successfully developing and implementing this framework. Traditional Owners will need to be involved, especially regarding questions of management and sustainability of long-term traditional hunting, and may also wish to consider matters such as boat strikes, reporting methodologies, and habitat monitoring.

### **Traditional Owner issues**

Many Traditional Owner Groups desire and require funding for on-ground management activities, including implementing accredited TUMRAs. The GBRMPA does not have funds available to fund every Traditional Owner group, and will therefore need to work with other Australian and State Government management agencies to ensure the system does not falter as a result. Access to funding programmes by Native Title Representative Bodies or Traditional Owners may be one way to facilitate these agreements.

Continuing consultation with Traditional Owner Groups, Native Title Representative Bodies and government agencies, especially the Queensland Environmental Protection Agency and the Department of the Environment and Water Resources, remains a key factor in successful implementation of this programme.

In June 2003, the Great Barrier Reef Ministerial Council noted that progress has been made towards achieving agreement with Traditional Owner Groups in relation to traditional use of marine resources of the Great Barrier Reef.

In December 2005, the Marine Park Authority accredited the first TUMRA, submitted by representative of six of the Giringun Traditional Owner Groups (Djiru, Gulnay, Girramay, Bandjin, Warragamay and Nywaigi). The accredited TUMRA is the first of its kind and sets a benchmark for sustainable traditional use of marine resource cooperative arrangements between government agencies and Traditional Owners.

## **ACKNOWLEDGEMENTS**

Thanks to the many GBRMPA staff who assisted with developing the new framework for traditional use of marine resources as part of the re-zoning of the *Great Barrier Reef Marine Park* and the Representative Areas Program. In particular, appreciation is extended to Jon Day, Leanne Fernandes, James Hall, Leon Jackson, Fiona Macdonald, Peter McGinnity, Tony Stokes, John Tanzer, John Tapim, and Chicka Turner. Thanks to Leanne Fernandes, Chicka Turner, Jane McAuliffe, Sarah Salmon and Stephanie Lemm for providing comments on earlier drafts of this report.

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