

## Executive Summary

The Great Barrier Reef Marine Park Authority (GBRMPA) is responsible for the care and development of a marine park within the Great Barrier Reef region. The object of the marine park is conservation of the reef. Reasonable use of the reef must be ensured in the development of zoning plans and management plans. Under its legislation, the Great Barrier Reef Marine Park Authority in drawing up zoning plans for usage of the area, must take into account all existing uses.

Within the marine park there are Aboriginal individuals and groups who continue to identify themselves as traditional owners of maritime estates and who are keen to have their traditional claims to ownership of estates recognised. There is also a keen interest among maritime Aboriginal people to become more directly involved in marine management and decision-making within the park. The great strength of the bonds linking Aboriginal people and their land is common knowledge but the knowledge and recognition of the cultural, economic and political importance of Aboriginal 'sea country' has not been given as much emphasis or attention.

This report considers the broad direction of how Aboriginal and Torres Strait Islander interests should be incorporated in the marine park.

Existing and emerging international legal norms support Aboriginal people with regard to entitlements to coastal marine resources as well as their strong interests as partners in co-management regimes. These legal norms and principles should inform the Authority as it structures its policies with respect to Aboriginal interests in the park.

Political and legal developments in a number of countries that are attempting to deal with marine rights and indigenous people also need to be understood because these developments demonstrate that the political importance of sea rights is now seen as a matter of some interest by Aboriginal people, not only as a focus for Aboriginal identity and to compensate for past wrongs, but also to gain the economic potential that the sea and its resources may provide.

In Canada, New Zealand, the US and the South Pacific indigenous groups have taken their battle for indigenous sea rights to the courts and won. Judicial decisions have been followed by legislative and executive changes which have given indigenous owners a primary role in the management of the marine resources of traditional domains. In framing its policies the Authority should be aware that the broad political and legal trends overseas exhibit a respect for the existence of genuine, and possibly extensive marine resource rights and a commitment by government to prepare for co-management negotiations.

At the national level Aboriginal groups have concentrated on land ownership. Aborigines have thus put their political energies into negotiating land rights. This is reflected in the fact that the recognition of Aboriginal 'sea country' has not seen much movement at the legal or political level. However, Aboriginal groups are now looking closely at how indigenous marine rights issues are being developed overseas. It seems likely that marine oriented indigenous people in Australia will want to study such developments, legal trends and agreements and examine their relevance for their own situation.

Perhaps the greatest boost to Aboriginal demands for marine rights has come from the Murray Island case, which in June 1992 effectively overturned the long held legal doctrine of *terra nullius*; that Australia was land belonging to no-one prior to Crown acquisition of sovereignty. Mabo certainly opens the way for arguments supporting marine traditional native property rights, although there are different problems in applying native title to the seabed than is the

case on land. Mabo has and will continue to raise expectations by Aboriginal groups for recognition of marine estates and to raise aspirations for a greater degree of involvement in marine policy matters that affect their traditional maritime domains. The most likely offshore rights are those associated with fishing and marine hunting for food.

Mabo principles if applied to native marine rights issues could see some groups take their cases to the courts. The Authority should avoid costly litigation by taking positive steps to respond to what have been the conservative claims of Aboriginal people to joint as opposed to exclusive management strategies in the park.

GBRMPA has taken a number of steps to recognise Aboriginal interests in the park and it is perhaps unfortunate that there may have grown up a perception by some that the Authority has not considered Aboriginal traditional use and rights. There has certainly been a category of traditional hunting and gathering with an associated definition of traditional inhabitant in all zoning plans from the Cairns plan onwards. In fact the Authority has led the way in commissioning research on various aspects of Aboriginal maritime culture. The reputation of the Authority has been given a boost by these reports. Again on the issue of consultation it is probably fair to say that for some Aboriginal communities the Authority was the first government agency to consult them on *anything*. While the Authority has undertaken a number of positive steps its efforts have been somewhat token. It has failed to come to grips with a number of key recommendations that it has already been given in previous research reports on the way forward on indigenous issues in the marine park.

The Authority needs to act on these if it is to be seen to be seriously addressing Aboriginal and Torres Strait Islander interests. Indigenous issues are really long-term and cannot be submerged by short-term considerations in marine management. As 1993 is the International Year for the World's Indigenous People the Authority has a chance to be recognised as undertaking positive steps to realise Aboriginal and Torres Strait Islander marine interests by developing co-management arrangements in appropriate areas in the Marine Park.

The key recommendations that the Authority needs to consider relate to places on the consultative committee, longer term structures to facilitate consultation, recognition of Aboriginal clan boundaries and maritime estates in zoning and management plans, establishment of Aboriginal heritage zones, the need for Aborigines to be involved in joint management strategies, using community rangers and extra resources for Aboriginal liaison. The Authority will also need to liaise with relevant Queensland State Government departments and be actively involved in negotiations on land claims and claims to tidal areas under the new Queensland Aboriginal and Torres Strait Islander Lands Acts. The new Acts may well see more Aboriginal coastal communities in the future. Resources will need to be provided if a successful Aboriginal and Torres Strait Islander strategy is to be implemented.

## **Terms of Reference**

1. Analysis of legal and political trends in Australia and overseas countries with respect to the recognition of the rights of indigenous people to marine resources.
2. Analysis of implications of these legal and political trends for GBRMPA.
3. Examination of the recommendations presented to the GBRMPA from commissioned research, workshop proceedings and MPA decisions etc.
4. Analysis of actions which the GBRMPA could take with respect to ATSI interests having regard for compliance with Government policy and directions, moral obligations, statutory requirements and the State/Commonwealth division of powers, effects on other park users, current ATSI practices with respect to traditional hunting and fishing, endangered species legislation, establishment of co-management strategies, Aboriginal Management Zones, etc.