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Native title recognition of CMT and the implications for the GBRMPA and future management of marine areas

by Julie Lahn¹

Introduction

The Great Barrier Reef Marine Park (GBRMP) stretches along the Queensland coast of Australia. It has often been showcased both locally and internationally as the world's most successfully managed marine park. However, in its management of this park, the Great Barrier Reef Marine Park Authority (GBRMPA) has come under scrutiny by researchers and indigenous people alike. This paper presents an update on issues concerning indigenous rights, management strategies and GBRMPA.

Indigenous interests in the Great Barrier Reef Marine Park

The Great Barrier Reef Marine Park Authority has initiated research and workshops to examine Aboriginal and Torres Strait Islander interests in the marine park area. One workshop (Gray & Zann, 1985) concluded that traditional knowledge

and use of the marine environment could be a solid basis from which to build management strategies. Traditional knowledge is acknowledged as useful and the study suggested that further research and consultation should be carried out around Australia to 'take stock' of the information held by indigenous people and to listen to current concerns.

Other research funded by GBRMPA also stresses the importance of Aboriginal interests in marine areas (Smith, 1987). Ethnobiological research carried out by Andrew Smith (*ibid.*) in two Cape York communities, Lockhart River and Hopevale, documented Aboriginal interests in the Cairns and Far Northern Sections of the Marine Park. Smith carried out a comparative study of marine hunting and fishing practices of the Hopevale and Lockhart River communities and at the completion of his research, made suggestions for future directions GBRMPA should take with regard to Aboriginal and Torres Strait Islander peoples.

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Smith's lengthy investigation recommended the recognition of Aboriginal interests in the two marine zones and the incorporation of their interests into management strategies. As part of this, Aboriginal people from the two communities should be employed as rangers and liaison officers and have a formal role in the Great Barrier Reef Consultative Committee. Smith (*ibid.*) recognised the need for Aboriginal interests to be formally recognised by the GBRMPA in the planning and implementation of management plans for the Cairns and Far Northern Sections. The report highlighted the need for anthropological studies in the region, so that Aboriginal perceptions of the Marine Park can be understood, in an effort to facilitate communications and understanding between the GBRMPA and communities (*ibid.*).

More recently, GBRMPA (1992) outlined a draft strategy for managing the area. Their twenty-five-year objective is 'To have a community which recognises the interests of Aboriginal and Torres Strait Islander people so that these people can pursue their own lifestyle and culture, and exercise control over issues, areas of land and sea, and resources relevant to their heritage within the bounds of ecologically sustainable use' (GBRMPA, 1992: 18).

Aboriginal and Torres Strait Islander needs were to be heard in consultation, and representatives would be placed on committees and in research projects to protect their 'social, cultural and economic interests' (GBRMPA, 1992: 19). Despite its intentions, 'the 25-year strategy . . . may not adequately accommodate Aboriginal interests in ownership and total control of some marine environments' (Smyth, 1993: 197). A common problem with such research 'is that they generally ignore, undervalue or misrepresent pre-existing relationships between indigenous people and the places being cared for' (Smyth, 1993: 189).

As part of the Coastal Zone Inquiry, Smyth's (1993) appraisal of indigenous interests in Australia's coastal zones in part highlighted the concerns Aboriginal and Torres Strait Islander people had concerning their lack of control over resources and sites on their 'traditional' lands and seas.

In a recent consultancy report commissioned by the GBRMPA, Anthony Bergin (1993a) recommends actions that GBRMPA could take in incorporating Aboriginal and Torres Strait Islander interests in the marine park. Herein (*ibid.*) are examined previous report recommendations made to the Authority including those by Smith (1987) and Smyth (1993), as mentioned above.

The report examined international legal and political advancements that recognised indigenous marine rights and highlighted the implications of these movements for GBRMPA. International legal precedents will impact on the future involvement of indigenous people in marine areas. Bergin (1993a:23) suggests that:

'In framing its policies the GBRMPA 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 enable aboriginal communities to prepare for co-management negotiations.'

In a conference paper based on Bergin's (1993a) consultancy, Bergin and Lawrence (1993) stress that Aboriginal relationships with land have been significantly documented, but that the 'knowledge and recognition of the cultural, economic and political importance of Aboriginal "sea country" has not been given as much emphasis or attention' (*ibid.*:26). My PhD research will, in part, address this issue by providing detailed anthropological documentation of Customary Marine Tenure.

Despite this lack of documentation, the GBRMPA allows for indigenous fishing and hunting in the Marine Park, but has yet to act on previous recommendations from its commissioned reports. The above mentioned report then presented a number of actions the GBRMPA could take on indigenous marine rights in light of previous recommendations and international legal and political movements (Bergin & Lawrence, 1993). The authors felt that for GBRMPA to actively involve indigenous interests in the Marine Parks, they must act on these previous recommendations. The recommendations made a call for:

'Aboriginal positions on the Great Barrier Reef Consultative Committee. Aboriginal management zones, recognition of cultural and lifestyle issues including dugong and turtle hunting, community-based management strategies, and strengthening links between the Authority and communities' (Bergin & Lawrence, 1993b: 27).

Recent initiatives of the GBRMPA regarding indigenous Australians

In 1994, preliminary discussions took place at the Pajinka Workshop about joint planning of the Far Northern Section and the newly-proposed State Marine Park by GBRMPA, DEH and Aboriginal peoples (Swartz, 1995). Follow-up workshops were held in 1995 at Hopevale, Coen, Lockhart River, Irginoo and Horn Island. The Far Northern Section was again up for management review, and now 'GBRMPA want[ed] strong indigenous input into planning the marine parks' (Swartz, 1995:7). From the initial Pajinka meeting, community rangers were put in place and given powers under the GBRMPA. From the subsequent workshops, Aboriginal views were heard, and the GBRMPA will now begin to jointly draft plans for future management and continue to support community rangers by providing them with further training and resources to keep the communication lines open with their communities (Swartz, 1995).

In 1996, GBRMPA went further to suggest the idea of a 'Sea Council' for the north east Cape York region (anon., 1996). The proposed Sea Council is said to be 'a big step toward recognising indigenous sea rights, and would also be a practical way to bring traditional owners into the management of their sea country' (ibid.). In this way, it will provide them with decision-making powers, a forum for negotiating with commercial and recreational fisheries, and resources for training programmes (ibid.). Aboriginal and Torres Islander peoples were, however, wary of this new body and concerned that it may simply be a token act by GBRMPA. At the 1996 Cape York Summit, participants supported the idea of a Sea Council, but insisted that it must have bargaining powers to ensure fair dealings with State and Federal Governments and other interested parties in the Far Northern Section of the Marine Park.

The Cape York Summit at Wujal Wujal drew up a number of recommendations regarding sea rights and the GBRMPA. Resolutions on Sea Rights included supporting the Umpila sea claim and stressing that until other sea claims go through under the Cape York Land Council's (CYLC) funding, the CYLC 'should liaise with GBRMPA and government agencies to protect and negotiate for recognition of native title rights in sea country' (Calley, 1996a).

When discussing the GBRMPA and their zoning sections, it is reported that people at the summit were angry at having restrictions placed upon them by the Authority (Calley, 1996b). What particularly upset summit participants was GBRMPA's decision not to go against the new Federal Government's decision to oppose Native Title rights in the sea (ibid.). The CYLC has recalled information about native sea rights given to the GBRMPA which was to be used in future joint planning initiatives. This recent stance has angered communities, and the summit drafted two resolutions regarding this issue:

The 1996 Cape York Summit at Wujal Wujal:

1. is disappointed that GBRMPA is not recognising Native Title in the sea. We insist that GBRMPA stand firm in its previous commitments to recognise Native Title and we insist that GBRMPA, as an independent statutory authority, comes to its own decision to recognise Native Title in sea country off Cape York Peninsula, and
2. demands that any GBRMPA Far Northern Section Rezoning and Management Plans must not extinguish or reduce our Native Title rights in sea country. We must be entitled to carry out our Native Title rights without permits. Our Native Title rights are rights that exist under Aboriginal Law. We do not need Government permission to fish, hunt and gather in our sea country (Calley, 1996b).

GBRMPA's recent shift in attitude toward sea rights may be detrimental to the previous work carried out in communities in an attempt to open up communication between the Authority and indigenous communities. Summit participants are clearly disappointed with the GBRMPA and are suspicious of their actions. Much of the extensive work carried out by GBRMPA's Aboriginal Liaison Officer and other GBRMPA staff may have been in vain, and it appears that relations have been set back by the Authority's recent stance on sea rights.

Mabo and its implications for sea rights

The Mabo case has potential applications for CMT claims, and for marine management. The Native Title Act 1993 allows for rights to land, which also provides a space for rights to marine estates. The Mer Island case initially included CMT claims but the 'lack of evidence regarding traditional knowledge and use of this marine component of the Murray Islander's domain' (Allen, 1993: 61) forced the withdrawal of sea claims from the court (Keon Cohen, 1993). Native claims to land are '... undeniably within a class of proprietary interest recognisable at common law' (ibid.) but a similar determination regarding marine estates has yet to be tested in the High Court. Thus, CMT claims may be legally accessible, but Aboriginal and Torres Strait Islander needs and interests must be thoroughly addressed and CMT documented to educate the wider Australian community.

The overseas situation has raised expectations in Australia that customary marine tenure may in the future be legally recognised. At this time, there is a test case over indigenous marine rights over the seas surrounding Croker Island in the Northern Territory. A determination on this test case is expected to be handed down in April 1997. The feeling in Australia signifies that the GBRMPA should not wait for future High Court determinations, and legislation that may require that they incorporate indigenous interests in the Marine Park at a 'high level' (Bergin, 1993a: 40).

In the case of Torres Strait CMT systems (which are outside of GBRMPA jurisdiction) there are legal barriers to proving the existence of native title. The International Law of the Sea (LOS) and the Torres Strait Treaty (TST) are two such barriers (Haigh, 1993). Haigh (ibid.) describes the Torres Strait seas as the most complex in Australian law, and any Court making a determination on CMT would have to take into account the limits placed by the LOS and the TST.

Haigh (ibid.) calls for a review of the use of Torres Strait as an international passage where it interferes with the CMT of Torres Strait Islanders. Secondly, the Torres Strait Treaty needs to be returned to in order to give people control of their

seas, even though it may be risky to start any review process, as Torres Strait Islanders may not achieve any benefits from the process and it may, according to Haigh (1993) be detrimental to their present situation. He finishes by stating that review processes must be implemented, as the current European system of control conflicts with Islander CMT, and for that matter, with mainland indigenous laws. These issues need to be addressed before Torres Strait Islanders obtain greater controls over their future.

Post-Mabo Sea Claims – Australia

Other than the Croker Island test case, there have been a number of recent claims over Australia's coastal seas. Some of these have been placed over the Great Barrier Reef Marine Park. At present there are seven accepted claims in the region that take in areas including Lizard Island, Fitzroy Island, Low Isles, and areas south of Lockhart River claimed by the Ompela people.

Other applications have come from Wik, Dingaal and Kuku Ya'u claims. Some areas are subject to overlapping claims by Aborigines from Yarrabah. Claims outside GBRMPA's jurisdiction have also been lodged. One of these includes a claim over the Arafura Sea that stretches into Indonesian waters. In Torres Strait, there have been (at last count) 63 claims over lands and seas lodged with the National Native Title Tribunal (NNTT).

Indigenous peoples are taking the initiative in laying claims to marine areas they are customarily responsible for, and as a preliminary attempt (in some cases) to control movements through their waters (especially by commercial fishing vessels). If any of these and other claims receive a favourable determination, especially mainland Aboriginal peoples, the GBRMPA will have to accept the decision as the claims are concerned with State and Federal issues.

The GBRMPA have been increasingly concerned with the level of involvement Aboriginal and Torres Strait Islander peoples have had in the running of the Marine Park. However, these concerns are difficult to implement in a relatively short space of time and the lack of control Aboriginal peoples have in the planning and management of the Marine Park has left many disgruntled.

The GBRMPA had many recommendations put to them from different scholars. The continuance of their implementation will provide the institution the benefit of Aboriginal and Islander knowledge and 'on the ground' expertise that will, in the future, improve the management of the marine park and raise its profile in the eyes of indigenous and other Australians.

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