Yawuru joint management in the Kimberley

By Sharon Ferguson, Department of Environment and Conservation (WA)

Situated in Western Australia's Kimberley region is Yawuru *buru* (country). The Yawuru people are the traditional owners of the lands and waters in and around Broome. Part of the resolution of the Yawuru native title determination in 2010 was the identification of a new conservation estate under two Indigenous land use agreements ('ILUAs') signed by Yawuru and the Western Australian ('WA') Government.

The new Yawuru conservation estate comprises around 100,000 hectares of lands and waters to be jointly managed by Yawuru, the WA Government and the Shire of Broome. These lands and waters comprise significant cultural, recreational and conservation values including law grounds, meeting places, hunting areas, the internationally recognised Ramsar Wetlands of Roebuck Bay and popular terrestrial and marine recreation areas. The Yawuru people live by six seasons and have cultural rules and responsibilities for looking after country by these seasons.

Luke Puertollano with the Governor-General

The management of the Yawuru conservation estate is overseen by the Yawuru Park Council, a body comprising equal representatives from Yawuru, the Department of Environment and Conservation ('DEC') and the Shire of Broome. Each party has voting rights on those parcels of land for which they have a vested interest.

The Yawuru Park Council operates under the joint management agreement outlined in one of the ILUA's, and its primary function is the development and implementation of management plans for the estate. The estate management plans that are currently being developed are guided by the Yawuru cultural management plan, which was produced as an outcome of the ILUAs. The cultural management plan was prepared by Yawuru people to explain the importance of Yawuru *buru* and culture, and how they will be protected, nurtured and passed on to future generations.

Yawuru Rangers at Mangalagun

Employment and training opportunities for Yawuru people managing Yawuru *buru* were identified as a focus of the joint management agreements and an employment and training strategy has been set up within DEC. The Mentored Aboriginal Training and Employment Scheme ('MATES') is an initiative of DEC which aims to recruit, train and employ Aboriginal staff to manage country.

Four trainee Yawuru rangers were selected by a panel consisting of Yawuru and DEC representatives to undertake the MATES program. The four trainees undertake their Certificate II, III and IV in Conservation and Land Management through a mixture of on the job training, short courses and guided workbooks while being employed full time with DEC on the management of the Yawuru conservation estate.

The officers within the joint management team supervise, mentor and work with the trainee rangers. These officers include a Yawuru operations officer and Yawuru trainee supervisor, who have themselves been through the MATES program as Aboriginal trainees. Of the nine staff working within the joint management team, seven are Yawuru men.

In September 2011, the WA Government passed the *Conservation Legislation Amendment Act 2011* (WA), which amended the *Conservation and Land Management Act 1984* (WA) and the *Wildlife Conservation Act 1950* (WA). This enabled joint management between DEC and other landowners, including Aboriginal people, over lands and waters including private land, *Conservation and Land Management Act1984* (WA) reserve land, pastoral leases and other Crown land.

Joint management was defined by the *Conservation Legislation Amendment Act 2011* (WA) as a cooperative legal arrangement between the WA Government, represented by DEC, and one or more other parties to manage land or waters in the State. Areas of the Yawuru conservation estate classified as 'out of town' reserves, which will be jointly managed by Yawuru and DEC, will be primarily vested freehold to Yawuru with a leaseback arrangement to DEC for joint management.

Case note: *Commonwealth of Australia v Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group*

15 March 2012
Federal Court of Australia - Brisbane
Keane CJ, Mansfield, Dowsett JJ

Dr Lisa Strelein and Gabrielle Lauder, AIATSIS

In this appeal, the Full Court of the Federal Court varied the original native title determination, which covered a significant area of the waters of the Torres Strait. The original determination contained a right to take resources 'for any purpose', but on appeal this right was restricted such that there is no right to take fish or other aquatic life for sale or trade. The cross-appeal by the Seas Claim Group – concerning the geographic extent of their claim, the recognition of reciprocity-based rights, and the relationship of native title rights to public rights – was dismissed.

Introduction

The Torres Strait sea claim decision was handed down in the Federal Court of Australia on 2 July 2010. Justice Finn, the primary judge, found that the claim group had established their claim to approximately 37,800 square kilometres of sea between the Cape York Peninsula and Papua New Guinea.

The primary judge found that the claimants' native title interests include the non-exclusive right to 'access resources and take for any purpose resources in the native title area', subject to the laws of the State of Queensland and the Commonwealth of Australia. This determination did not affect the validity of other interests in relation to the native title areas, including the rights and interests of holders of licenses, permits, authorities, resource allocations and endorsements issued under State and Commonwealth fisheries legislation. To the extent of any inconsistency, native title rights and interests were to yield to common law public rights and customary rights.

Many of the issues that were contested at trial, including questions about the proper scope and definition of the relevant 'society', were no longer controversial on appeal. The issues to be decided in the appeal were:

1. whether Commonwealth and State licensing regimes for commercial fishing extinguished native title rights to take fish and marine life for commercial or trading purposes;
2. the geographic boundaries of the native title claim area; and
3. the nature and extent of subsisting native title rights and interests.

Appeal by Commonwealth – extinguishment issue

The important point of the decision at first instance was that once a determination had been made that law and custom supported the right to take resources, the use made of those resources was irrelevant (unless restricted by law and custom, which is matter internal to the group). The primary judge had held that although statutory licensing regimes had regulated the native title right to take fish or other marine resources for commercial purposes, they had not extinguished that native title right. This was based on the reasoning in *Yanner v Eaton* that native title rights will not be extinguished by legislation unless the legislation demonstrates a clear and plain intention to do so. In this case, as in *Yanner*, the judge held that the primary purpose of the legislation was to regulate the use of scarce resources, and the extinguishment of native title rights was not necessary to this purpose.

On appeal, the Commonwealth argued that previous regulatory regimes have extinguished native title rights to commercial fisheries and