



MEDIA RELEASE

06 September, 2013

No sea change

Eddie Koiki Mabo once said that 'what is on the land, what is below the land, what is in the sea and what is under the sea, belongs to my people.'

The High Court handed down a decision on August 7, 2013 recognising that native title rights to the sea, including rights to fish commercially, are not extinguished by a legislative regime that otherwise requires a permit for commercial fishing (Leo Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia [2013] HCA 33).

Torres Strait Island Regional Council Mayor Fred Gela said that Torres Strait Islanders have a right not only to access their lands and seas, but also to control how it is accessed by others.

"We also have a right to control our own destinies which are inseparable from our lands and seas; this entails a right to absolute, unfettered exclusivity and control," Mayor Gela said.

The High Court held that there was "nothing in the character" of a conditional prohibition on taking fish (such as the requirement of a licence) that meant that it extinguished the native title right. The majority judgment stated in its concluding paragraph that:

...telling the native title holders in this case, "You may not fish for the purpose of sale or trade without a licence", did not, and does not, sever their connection with the waters concerned and it did not, and does not, deny the continued exercise of the rights and interests possessed by them under the traditional laws acknowledged, and traditional customs observed, by them.

A claim to sea country in the Torres Strait has been a long time coming. The original Mabo case in 1992 included a sea claim, but the portion of the claim relating to the sea was not pursued to the High Court for technical legal reasons. The current claim, known as the Torres Strait Sea Claim, was lodged in 2001 and has now been through two Federal Court decisions before its appeal to the High Court.

Mayor Gela said that The Sea Claim is a first step, but by no means the last.

"Torres Strait Islanders are one with their lands and seas, but I wish to see in my lifetime, the laws of the Commonwealth of Australia and State of Queensland recognise and protect this spiritual partnership, in turn realising the vast golden economic opportunities contained within for the betterment of all Torres Strait Islanders," he said.

"My father has always said to me 'if you are going to do something, do it properly or not at all.'"

Mayor Gela said that The Sea Claim has recognised non-exclusive native title rights of the claimants to the determination area.

"The Sea claim has further recognised that the claimant's native title rights extend from domestic rights to hunt and fish for sustenance, but also to commercial rights to sell such produce," Mayor Gela said.

“If this was the unqualified outcome, the decision would have been historic as the commentary has suggested.

“Unfortunately, the High Court qualified this finding in also declaring that the right to sell marine produce commercially was still subject to traditional fisherman and hunters first obtaining State and Commonwealth fisheries license,” he said.

Mayor Gela also said that a failure to do so could result in severe fines being imposed on traditional hunters and fisherman.

“This is a disappointing outcome as it merely documents what is presently, and has been for some time, the situation in the Torres Straits and provides nothing new,” he said.

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