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<http://www.theaustralian.news.com.au/story/0,25197,24101153-2702,00.html>

Aborigines' fishing rights in Blue Mud Bay upheld

Natasha Robinson | *July 30, 2008*

THE right of Aboriginal landowners in the Northern Territory to control who fishes in coastal waters has been upheld in the High Court.

The High Court today dismissed an appeal by the Northern Territory government that sought to challenge the right of traditional owners to exclude commercial and recreational fishermen from tidal waters within Blue Mud Bay in north-east Arnhem Land.

The Blue Mud Bay decision will affect 80 per cent of the territory's coastline, opening up the way for indigenous maritime economic development and giving traditional owners the right to determine when and where commercial and recreational fishing is carried out in inter-tidal waters.

It is also likely to lead to the introduction of a permit system for recreational fishermen.

Northern Land Council chairman Wali Wunungmurra said outside the Supreme Court in Darwin today that the decision had ended a 30-year-long fight for exclusive rights over the inter-tidal zone at Blue Mud Bay, which adjoins the Gulf of Carpentaria.

Mr Wunungmurra said traditional owners would now seek to negotiate a settlement with fishing interests that would ensure commercial and recreational fishermen could still access to tidal waters adjoining Aboriginal land.

Northern Territory Amateur Fishermens Association head Chris Makepeace said he was not suprised by the decision, which upheld a previous Federal Court decision, and the organisation was heartened to hear that traditional owners wanted to negotiate in good faith.

Mr Makepiece said he believed ultimately an individual permit system for each fisherman would not work, and was looking to the Federal Government for guidance on what today's High Court decision would mean in practice.

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High Court hands control of much of NT coastline to traditional owners

PM - Wednesday, 30 July, 2008 18:17:00

Reporter: Sarah Hawke

MARK COLVIN: Meanwhile the existing High Court headed by Murray Gleeson is still in place, and today the Northern Territory Government and the fishing industry are coming to terms with one of its decisions.

This morning, the High Court effectively handed back control of 80 per cent of the Territory's coastline to traditional owners.

It upheld last year's Federal Court decision that traditional owners had exclusive rights to commercial and recreational fishing in tidal waters on Aboriginal land.

Traditional owners say they won't be locking out fishing operators. But they will bring in a permit system, and they'll have a greater say in commercial and recreation activities.

In the middle of a Territory election campaign, politicians are conscious of the influence of the fishing vote. They were quick to express their disappointment at the court outcome.

Sarah Hawke reports from Darwin.

SARAH HAWKE: For the Mala elders from Blue Mud Bay in north-east Arnhem Land, today's high court decision ends a 30-year battle for rights over tidal waters.

Djambawa Marawilli says it's a chance for Aboriginal people to have a say in the management and commercial development of fisheries along the coast.

DJAMBAWA MARAWILLI: It is an economic opportunity for our communities right across this country.

SARAH HAWKE: In the Territory, commercial and recreational anglers haven't needed to negotiate with access to waters along Aboriginal land.

While the power for access now lies with traditional owners, the head of the Northern Land Council, Wali Wunungmurra, was conscious to point out they won't be going out to upset fishermen.

WALI WUNUNG MURRA: We will be going through our process, and we're not making any promises as to how it's going to be going. But what we can assure people out there is that we will be sitting down with these people to able to negotiate things as far as we can go.

SARAH HAWKE: The Blue Mud Bay case has created angst for the recreational sector.

Chris Makepeace from the NT Amateur Fishermen's Association is preparing for talks on future access. He's also hopeful there won't be a cost involved for anglers.

CHRIS MAKEPEACE: I think at the end of the day, somebody's going to have to pay. Are individual recreational fishers going to have to pay? I don't know the answer to that. You know, there are all sorts of issues.

I mean there are political issues, there are issues of whether people are reluctant or not reluctant to do it, but I think at that at the end of the day, there does need to be some form financial recompense for access for both commercial, recreational fishers, and others who may be using those waters. And how that's done, I'm not sure.

SARAH HAWKE: The Seafood Council's chairman, Rob Fish, estimates about 200 commercial fisherman will be impacted by the decision, but is expecting positive talks with the Northern Land Council.

ROB FISH: From our first look at the decision now it looks like already licensed operators would need seek permission to fish in those waters, so it's an additional license not a fishing license per se.

SARAH HAWKE: While the Northern Territory Government lost the fight in the High Court to stop exclusive rights, the Chief Minister has promised to find a way to ensure free access continues.

The recreational fishing sector has lot of political clout and Paul Henderson was well aware of that today; the halfway mark of the Northern Territory election campaign.

PAUL HENDERSON: I will agree through a negotiated agreement, that there will be no requirement for individual permits for recreational fisherman to fish in the Northern Territory. That's what I will see in an agreement. I believe there is good will on all sides.

SARAH HAWKE: A position acknowledged by the Country Liberals leader, Terry Mills.

TERRY MILLS: I still believe that our waterways should be enjoyed by all Territorians and there should be a freedom to access our waterways, without the need for a permit.

SARAH HAWKE: The Prime Minister says the Government is assessing the court decision and Kevin Rudd is urging all parties to use commonsense when negotiating access rights.

KEVIN RUDD: I think the key way through this is common sense. We would urge all parties to show common sense.

And as this matter has been the subject of legal deliberation for a long, long, long time, then it's time now for common sense to prevail on the ground, now the High Court has clarified the law.

SARAH HAWKE: And news is starting filter through to fishermen on the ground. Anglers at the Buffalo Creek boat ramp in Darwin we're largely open minded about today's decision, providing it doesn't reduce their freedom to wet a line.

ANGLER: No, it will take a while to get used to it, but I think everyone will come on board eventually. I think there's enough crabs and fish in there for everyone.

ANGLER 2: Well I think it should be open for everyone, really. I mean it's ... we're all here together, so we should all be able to use them, I think, yeah.

ANGLER 3: I reckon it's not too bad, as long as it's pretty easy to get. As long as you don't have to sit no test and stuff like that.

MARK COLVIN: Anglers at the Buffalo Creek boat ramp in Darwin, ending Sarah Hawke's report.

<http://www.theage.com.au/national/seas-sing-in-coast-decision-20080730-3ngd.html>

Fairfax Digital

'Seas sing' in coast decision

- **Lindsay Murdoch, Darwin**
- July 31, 2008



Traditional owners of Blue Mud Bay celebrate. PICTURE: GLENN CAMPBELL Photo: *Glenn Campbell*

TRADITIONAL Aboriginal owners have won exclusive control of more than 7000 kilometres of Northern Territory coastline in a ground-breaking High Court decision.

The court's 5-2 ruling will allow Aboriginal people living in coastal communities to reap what are expected to be huge economic benefits.

Anyone wanting to enter their land - including beaches and the sea from the high to low-water mark - will have to get permission.

Indigenous elders in Darwin yesterday celebrated what they called a "landmark victory for traditional owners" after a protracted legal battle.

"We are overjoyed by this decision ... we have waited for 30 years for our sea rights to be legally recognised," said Wali Wunungmurra, chairman of the Northern Land Council, which represents indigenous groups in northern Australia.

The decision will give traditional owners authority under the Northern Territory Land Rights Act to decide how fishing is conducted along 80% of the Territory coast, which offers some of Australia's best fishing.

The act applies only to the Northern Territory.

Within minutes of the decision being announced in Canberra, Mr Wunungmurra declared that temporary arrangements under which anglers and commercial fishing operators must obtain permits would remain in place for at least a year.

The permits were introduced last year in response to a Federal Court decision that favoured traditional owners.

The Northern Territory Government appealed against the decision to the High Court.

Although the temporary permits are free, the arrangements outraged many of the Territory's estimated 45,000 amateur anglers, many of whom continued to fish without one.

Yesterday, Mr Wunungmurra moved to allay any further concerns, saying the land council looked forward to negotiations with commercial and recreational fishing representatives.

But he made clear any settlement would see traditional owners "jointly participate in the management and development of a sustainable fishing industry".

Djambawa Marawilli, a traditional owner from Blue Mud Bay in Arnhem Land, said his people could "sing those seas" and had had rights along the coast for 2000 years.

"For all the fishermen and people who fish, I think it will be a good opportunity for them to come and really talk closely and plan for the future in the right manner," he said.

The decision injected new life into lacklustre campaigning ahead of Northern Territory elections on August 9.

Labor Chief Minister Paul Henderson said if returned to power he would negotiate with traditional owners to ensure people would not require a permit or be charged to go fishing.

Country Liberals Opposition Leader Terry Mills declared that he would not obtain a permit.

<http://www.theaustralian.news.com.au/story/0,25197,24104643-2702,00.html>

Land rights reach into the sea

Natasha Robinson and Patricia Karvelas | *July 31, 2008*

ABORIGINAL land rights in the Northern Territory have been extended to the sea for the first time in a landmark High Court ruling that gives traditional owners in northeast Arnhem Land control over fishing in tidal waters.

Yesterday's ruling by a majority of the High Court's full bench sweeps away the common law right to fish in the Territory's inter-tidal zone and grants traditional owners the right to exclude fishermen and others from tidal waters within Blue Mud Bay in northeast Arnhem Land.

The ruling - which will apply to 80 per cent of the Territory's inter-tidal waters - was welcomed by "overjoyed" Aboriginal leaders, who pledged to work co-operatively with fishing interests and the Territory Government to ensure recreational and commercial fishing could still take place in Aboriginal waters.

But the NT Government immediately announced its opposition to the introduction of a permit system for fishing in tidal waters, with Chief Minister Paul Henderson guaranteeing voters during the second week of an election campaign that permits would not be introduced.

His tough stance was in contrast to that of Aboriginal leaders, who pledged to negotiate in good faith with the Government and fishing interests.

"The country is for everybody, the sea and the land," Yolngu leader Djambawa Marawilla said yesterday. "Fishermen, they are allowed to come to fish around in our country but through the permit and through the right communication."

Kevin Rudd yesterday urged all parties to negotiate "flexible and sensible" arrangements for use of tidal waters. "We would urge all parties to show common sense," the Prime Minister said.

Yesterday's ruling upheld a decision by the full bench of the Federal Court early last year, which sparked outrage among the Territory's fishing industry and the NT Government.

The ruling makes invalid those elements of the NT's Fisheries Act that previously governed access to intertidal waters and licences for commercial fishers, finding that the NT's Land Rights Act applied to waters between the shore and the high-tide mark.

"The asserted distinction between dry land and the land in the intertidal zone when covered by water should not be drawn," said the majority judgment, which included Chief Justice Murray Gleeson, William Gummow, Michael Kirby, Susan Crennan and Kenneth Hayne. Judges Susan Kiefel and Dyson Heydon dissented.

In his judgment, Justice Kirby said Mr Rudd's national apology in February to the Stolen Generations was relevant to his decision to rule in favour of Aboriginal control of Blue Mud Bay's inter-tidal zone. "Given the attention to, and nationwide reflection upon, its making, terms and reconciliatory purposes, it is appropriate in my view for this court to take judicial notice of that national apology," he said.

Commercial barramundi fisherman Darren Murray said the High Court decision had left him unsure of his future in the industry. "I was looking at buying a half-million-dollar licence, but I'm not going to do that now," he said.

Traditional owners from the Larrakia nation in Darwin were pleased with the decision.

Robert Browne, a senior Larrakia man, said the High Court judgment would mean rangers such as Danny Raymond and Keith Sailor could do more to look after their traditional lands and sea. Mr Browne said he was disappointed by the NT Government's opposition to a permit system. "Common sense should prevail," he said.

<http://en.epochtimes.com/n2/australia/aborigines-control-northern-territory-coast-high-court-upholds-1913.html>

Aborigines Control Northern Territory Coast, High Court Upholds

AAP Jul 30, 2008



(Ian Waldie/Getty Images)

DARWIN—Traditional Aboriginal owners have secured exclusive control of more than 80 percent of the Northern Territory coast after the High Court dismissed an appeal by the NT Government.

Clan elders in Darwin were today celebrating what they called "a victory for all Aborigines" after their protracted legal battle.

Today's decision was a major blow to the NT Government and the local fishing industry, which sought to overturn a ruling by the federal court.

In May last year, the full bench gave traditional owners from Blue Mud Bay, in northeast Arnhem Land, the power to exclude fishermen from the intertidal zone.

It meant that anyone wanting to enter Aboriginal land - including beaches and the sea from the high to low water mark - had to obtain permission.

The decision affected more than 80 percent of coastal waters and rivers in the Northern Territory and was immediately appealed in the High Court.

But in a 5 to 2 decision today, the court dismissed the NT Government's legal bid and found that without permission from a land council, a person holding a licence could not fish in Aboriginal-controlled tidal waters.

"The Fisheries Act has no application in relation to areas within the boundary lines described in the Mainland Grant and the Islands Grant," the judgment said.

The decision relates to the entire stretch of a 1980 grant to local Aborigines, which covers 90,000 square kilometres from the mouth of the East Alligator River in Van Diemen Gulf and the mouth of the Roper River in the Limmen Bight.

It also covers all adjacent islands, except Groote Eylandt.

"We are overjoyed", " said Northern Land Council (NLC) chairman Wali Wunungmurra.

"It is a landmark victory for traditional owners and we have waited for over 30 years for our sea rights to be legally recognised."

Mr Wunungmurra immediately moved to allay fears the judgment would threaten the billion dollar fishing industry.

"Traditional owners have developed a constructive relationship with commercial and recreational fishing representatives over the last year," he said.

"The NLC looks forward to continuing that relationship and obtaining a win-win outcome for all Territorians."

The ruling will directly impact on recreational anglers as well as commercial licences for barramundi, mud crabs and trepang.

It also supersedes the NT Fisheries Act, which regulates such issues as fish sizes and catch limits.

Mr Wunungmurra said traditional owners would consult with all stakeholders "to obtain a negotiated settlement".

He said the current interim licensing scheme - which is free and involves the automatic granting of licences to commercial operators and recreational licences on request - would be extended for a year.

Outside the court, traditional owner Djamawa Marawili said the ruling was "a victory for all Aborigines along the coast".

"We've had rights since 2,000 years ago, today it has been given to us," he said.

"For all the fishermen and people who fish I think it will be a good opportunity for them to come and really talk closely and plan for the future in the right manner."

NT Amateur Fishermen's Association head Chris Makepeace said the next step was to establish whether a settlement would contain a continuation of the current temporary permit scheme or involve paying for access.

<http://www.abc.net.au/news/stories/2008/07/30/2319441.htm>



Compensation for Blue Mud Bay decision unlikely: Macklin

Posted Wed Jul 30, 2008 6:20pm AEST

Updated Wed Jul 30, 2008 7:26pm AEST



Urging all groups to work together: Jenny Macklin (AAP: Alan Porritt, file photo)

The Federal Indigenous Affairs Minister says it is too early to say if the Federal Government will pay compensation for anyone who is adversely affected by this morning's High Court Decision on Blue Mud Bay.

The High Court has upheld a decision awarding traditional owners exclusive access rights to more than 80 per cent of tidal waters in the Northern Territory.

Indigenous Affairs Minister Jenny Macklin says the Federal Government will work with its Northern Territory counterpart, the fishing industry and Indigenous people to achieve a positive outcome for all parties.

She has urged all groups to work together to ensure that sustainable fishing arrangements can continue in the Northern Territory.

But Ms Macklin says it does not look as though compensation will become an issue.

"I think that's really jumping ahead to a point that at the moment doesn't look like will be necessary because all parties - the Northern Territory Government, the Northern Land Council, the fishing interests - are all saying that they want to address this together," she said.

"I think at the moment they certainly look like they're taking a very sensible approach."

But a spokesman for the Northern Territory's Amateur Fishermen's Association, Chris Makepeace, says because the change comes under federal land rights legislation, the Federal Government should ensure the fishing industry does not have to pay extra for fishing access.

"I think that we're looking now in many respects at a business sort of situation," he said.

"Something that will benefit Indigenous owners of the areas that we're talking about and I think that will involve money and I think that given that this was an act that was imposed on the Northern Territory by the Federal Government, they should be the ones that are sending the cheques."

Prime Minister Kevin Rudd says the Attorney-General's Department is studying the decision.

Mr Rudd has welcomed the agreement between Aboriginal people and fishing groups to work together to figure out how anglers will get access to the Northern Territory's tidal waters in the future.

"We are encouraged by the positive and constructive attitude which has been demonstrated thus far by organisations such as the Northern Territory Lands Council in terms of ensuring that there are flexible and sensible arrangements, negotiated arrangements put in place which can properly balance the rights and interests of fishers both commercial and recreational," he said.

Djambawa Marawilli, a traditional owner involved in the case, says the decision opens up money-making opportunities for Indigenous people.

"It can be like crabbing, fishing and other economic things in the sea," he said.

"This is the time to talk with each other now, this is the time for the Government and the balanda [non-Aboriginal people] to talk and make real smooth process to plan for the future."

Industry 'relaxed'

Meanwhile, the head of Northern Territory Seafood Council says he is "relaxed" about the High Court's decision to give traditional owners control over most of the tidal waters in the territory.

Council chairman Rob Fish says about 200 commercial fisherman will be impacted by the decision.

But he says he has had positive talks with the Northern Land Council about the decision and is sure commercial fisherman will still be able to do business.

"From our first look at the decision now it looks like already licensed operators would need to seek permission to fish in those waters so it's an additional license, not a fishing license per se," he said.

Meanwhile, both sides of Territory politics are urging Aboriginal groups not to introduce a permit system.

The Northern Land Council says there will be no change for at least a year, but a new access system will be negotiated.

Opposition Leader Terry Mills says robust discussion and strong leadership is needed to ensure free access for Territorians.

"A freedom that Territorians have enjoyed has now been challenged by this decision," he said.

NT Chief Minister Paul Henderson also opposes any permit system.

"I will be part of those negotiations and will guarantee that that access for recreational fishermen will be based on the fact that you won't need to have a permit," he said.

<http://hawkesbury.yourguide.com.au/news/local/news/general/fishermen-sound-alarm/1230894.aspx>

Fairfax Digital

Fishermen sound alarm

ELIZABETH FRIAS

30/07/2008 4:22:00 PM



Worried: Gary Howard prepares his fishing boat Sasha for the prawning season to begin by the end of August.

LOCAL trawlers have expressed renewed concerns over the health of the Hawkesbury River they believe is being neglected by the NSW government following reports that

the prawn industry in Queensland is reeling from an aquatic animal disease.

"They talk about the Murray Darling but not the Hawkesbury River – our biggest worry at the moment is our workplace, which is the river, going out of control," Gary Howard of Howard Prawns in Lower Portland said.

"We, the fishermen, are like a canary in the coalmine – we need to see these changes to our river.

"If we have a disease that is harmful to our prawn industry, we don't want it happening here. We have to protect our industry at all cost."

According to Harry Peters of the Seafood Importers Association of Australia, the aquatic disease known as IHNV virus, affecting prawns in Queensland, was not harmful to humans but quarantine bans had been imposed.

The restrictions have been in place since last September after the virus was detected in at least two prawn farms in Queensland.

Mr Peters said the Federal Government had officially notified the World Health Organisation last March on tests carried out on the prawn farms that showed the presence of the virus.

Among the problems raised by the estimated 35 commercial fishermen on the Hawkesbury River are the effective control of blue-green algae and the upgrade of Sydney's existing sewage plant.

Commercial fishermen also called for the removal of effluents – a key part of the Hawkesbury-Nepean River Management Forum.

Mr Howard said there were findings that the river contained at least 15 per cent effluent.

Mr Howard, whose family has been producing prawns from the Hawkesbury for nearly half a century, said the proposal to upgrade the treatment plant must be dealt with as a priority.

King prawns, school prawns, loligo squid, blue swimmer crab, mud crab and trumpeter whiting are the most popular produce from the river.

Mr Howard said consumers and the general community must be assured that the waters where their food was harvested were safe.

"We have such a terrific quality of prawns from the Hawkesbury that we need to protect it at all cost," Mr Howard said.

Mr Howard estimates that 60 per cent of seafoods in the market comes from overseas because the fishing industry in Australia is facing issues such as the declining number of primary industry producers, high direct production costs such as fuel and diesel, and restrictions imposed on commercial fishing areas.

Only 44 per cent of the Hawkesbury River is being fished commercially, with only five per cent of the area being trawled daily by local fishermen, according to Mr Howard.

<http://www.scoop.co.nz/stories/PO0807/S00386.htm>



Tangata whenua involvement in fisheries management

Wednesday, 30 July 2008, 1:59 pm

Press Release: Ministry of Fisheries

30 July 2008

Media statement from the Ministry of Fisheries for immediate release

Improving tangata whenua involvement in fisheries management

The Ministry of Fisheries has released a discussion paper on improving the processes for working with tangata whenua on fisheries management.

Under the Fisheries Act, before making sustainability decisions such as changes to catch limits and amendments to regulations, the Minister of Fisheries is required to provide for the input and participation of tangata whenua and to have regard for Kaitiakitanga (guardianship). The Act also allows the Minister to approve measures to better recognise the rangatiratanga of iwi and hapu over their non-commercial customary fisheries.

In collaboration with iwi, MFish has been developing ways for tangata whenua to have better participation in sustainability decisions, and to manage customary catch and traditional fishing grounds.

“The Treaty Strategy aims to deliver on the Crown’s obligation to involve tangata whenua in fisheries management and to help build a strong working relationship with our Treaty partner,” said Ministry of Fisheries Policy Manager Mark Edwards.

In 2002 MFish spoke to tangata whenua around the country about the best processes for working with them on fisheries issues. These discussions resulted in regional iwi forums being established in 2004. At these forums tangata whenua can discuss fisheries management with MFish and their views can be heard and taken into account.

In addition new staff were hired to liaise directly with tangata whenua and assist them to become more involved in fisheries management processes. There are now 15 Pou Hononga (relationship managers) and 13 Pou Takawaenga (tangata whenua support staff) working around the country.

“Some time has passed since regional forums began to be established in 2004, so it is appropriate to look at how this engagement is going and whether any changes need to be made,” said Mr Edwards.

“There have also been developments in fisheries laws and policies that might affect the best way to work together.”

“We are asking tangata whenua what a good input and participation process looks like.”

“MFish has made some proposals for discussion but has an open mind coming into this process and will now talk to iwi and hapu around the country about how we can better engage with them,” Mr Edwards said.

A number of hui are currently being scheduled around the country between August and October to discuss the proposals and hear the views of tangata whenua.

The discussion paper is available on the MFish website at www.fish.govt.nz or by emailing mfish.policy@fish.govt.nz

Written submissions are also welcome and can be accepted up until 31 October 2008. They can be emailed to mfish.policy@fish.govt.nz or sent to:

Treaty Strategy Project Policy team Ministry of Fisheries PO Box 1020 Wellington

Background note The Ministry of Fisheries (MFish) is separate from the Ministry of Agriculture and Forestry (MAF) after a government restructure in 1995.

Fishery officer is the correct reference—MAF officers have a different role unrelated to fisheries law enforcement.

ENDS