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**Masters (Research) thesis,  
James Cook University.**

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**Ngalpun Adhabath A Goeygayil Bangal (Our Sea, Our Future): An examination of Torres Strait Protected Zone Joint Authority principles and Torres Strait Islander needs and aspirations for the Torres Strait fisheries, from a Torres Strait Islander perspective.**

**Thesis submitted by  
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in December 2007**

**for the degree of Masters of Indigenous Studies (Honours)  
in the School of Indigenous Australian Studies  
James Cook University**

## Dedication

This thesis is dedicated to my family, my wife Lisa Jane, my sons Moigida Vino Ko and Simmie Alapasa Shinichi and daughter Dulcie Maniama Ai. Being a husband and a father has inspired me to strive for the best things in life for my family. This means fighting the battle for Zenadhaw Mabaygka and gaining social justice and regaining our rights to our seas, our lands and what is rightfully ours in this world. My wife and kids have always kept me going through this process and have always been by my side every step of the way.

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## STATEMENT OF SOURCES

### DECLARATION

I declare that this thesis is my own work and has not been submitted in any form for another degree or diploma at any university or other institution of tertiary education. Information derived from the published or unpublished work of others has been acknowledged in the text and a list of references is given.

Signature

Date

### Statement on the Contributions of Others (2004 – 2007)

This research project was supported by:

Stipend support	I received the Torres Strait Prestige Scholarship from the CRC – Torres Strait over two and half years and a School of Indigenous Australian Studies Scholarship for six months.
Supervision	Professor Paul Havemann: Head of School, School of Law, James Cook University, Townsville Campus Dr Mark Hamann: Research Fellow, School of Earth and Environmental Sciences, James Cook University, Townsville Campus Ms Felecia Watkin – Lui, Senior Lecturer, School of Indigenous Australian Studies, James Cook University, Cairns Campus
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A koey esso (big thanks) to all the mabaygal (people) in Zenadh Kes, especially those who participated with my research and the members of Community Fishermen's Group who assisted gratefully. I appreciated your time, effort and guidance with your knowledge and your concerns.

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## ABSTRACT

The UN Declaration on the Rights of Indigenous People: Articles 18, 23 and 26, states that an Indigenous person has the right to participate fully at all levels of decision making in matters which may affect their lives, they have the right to develop strategies for economic gains, and the right to own, develop, control and use of their lands including waters and coastal seas (Human Rights Council, 2006). Zenadhaw Mabaygka (Torres Strait Islanders) are traditional owners of the islands and seas that are located between the most northern point of Kie Daudai (Australia) and the western coast of Migi Daudai (Papua New Guinea). Occupation of the islands and seas in Zenadh Kes (Torres Strait) by Zenadhaw Mabaygka dates back almost 3000 years (Carter,2004). Their traditional knowledge of their environment has evolved over the generations.

The current fishery governance regime in the Zenadh Kes, the Torres Strait Protected Zone Joint Authority or PZJA has a policy of maximizing the opportunities for Zenadhaw Mabaygka participation in all sectors of the fishing industry, and has limited non-islander participation in the Zenadh wapiw (Torres Strait fisheries). Since 1985 the PZJA has prevented further expansion by this group through the requirement that non-islanders must purchase an existing license to gain access to the fishery (PZJA Annual Report, 2002: 8). Growth in the Zenadh wapiw, where there is scope for expansion, has been reserved exclusively for Zenadhaw Mabaygka. However, Zenadhaw Mabaygka participation in the actual governance structure, where management decisions are made for the Zenadh wapiw, is that of an advisory role, not a decision-making role.

Zenadhaw Mabaygka has an advisory role in the current fishery governance regime through the PZJA. The PZJA was established under the Torres Strait Treaty 1984 No. 4. This Treaty was negotiated between Kie Daudai and Migi Daudai in 1978 and ratified into Kie Daudai law in 1985. The Treaty recognizes the importance of protecting the traditional way of life as well as the livelihood of Zenadhaw Mabaygka. However, it fails to secure equal power and benefit sharing for its primary stakeholders, Zenadhaw Mabaygka. This principle is reflected throughout relevant Kie Daudai legislation and the PZJA.

My thesis argues that the contemporary logic of this Treaty commitment to protect the way of life as well as the livelihood of Zenadhaw Mabaygka requires a governance regime that guarantees benefit sharing and that this guarantee can only be achieved through power sharing. Today the way of life and livelihoods of Zenadhaw Mabaygka must involve them fully in both traditional as well as the commercial

fisheries. To reflect contemporary economic reality and Zenadhaw Mabaygka aspirations the present governance regime requires a re-arrangement of governance mechanisms, a re- articulation of the guiding principles and a modest amendment to the enabling rules. The re-arrangements are needed to empower authentic participation in power sharing through decision-making processes that will accommodate Zenadhaw Mabaygka as key actors in the regime by acknowledging them as in the principal stakeholders in the fisheries.

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## GLOSSARY OF TERMS

A	and
Aber	Beche-de-mer
Amai	Traditional ground oven
Apu	Mother
Athe	Grandfather
Awgadh	Totem
Baydam	Shark
Buai	Tribe/clan
Dagam	Place
Danalgaw balbagiza-aymay	Economic rights
Daibun	Wild yam
Dhangal	Dugong
Dhubu	Spanish mackerel
Githalayg	Crab
Gizu	Chapter
Kabar	Trochus Shell
Kaimel Kulka	Aborigines
Kiar	Tropical Rock Lobster
Kie Daudai	Australia
Kuba danalayg	History
Maapu	Sustainability
Mabaygal	People
Mai	Pearl Shell
Markay	White people/European
Markay danalgiya puydhay	Colonialism
Migi Daudai	Papua New Guinea
Mika sena miya	What it is
Mura-thonaraw-danalayg balbalgiza-aymay	Customary Rights
Ninu sakarpuday	Self-determination
Pon	One
Yadpalgay	Introduction
Thaathi	Father
Thonarr	Time
Thubudh	Papuans
Waru	Green Turtle
Withi	Coral Trout
Zagethaw mothaabi midhikidh yoewthika	Capitalism
Zenadh Kes	Torres Strait
Zenadh wapiw	Torres Strait fisheries
Zenadhaw Mabaygka	Torres Strait Islanders

## ACRONYMNS

UN	United Nations
PZJA	Protected Zone Joint Authority
TSPZ	Torres Strait Protected Zone
TSFMAC	Torres Strait Fisheries Management Advisory Committee
TSSAC	Torres Strait Scientific Advisory Committee
AFMA	Australian Fisheries Management Authority
TSRA	Torres Strait Regional Authority
TST	Torres Strait Treaty

### *Gizu Pon (Chapter One): Setting the Context*

As a child I spent the majority of my childhood interacting with the sea, first just playing and swimming with family members. As I got older I started to explore and search the shallow waters around my local area, Muralag (Prince of Wales Island), venturing into deeper waters now and then. It was around this age that I was told by my parents and family members that I as an individual come from somewhere, I belong to a certain place. My thaathi (father) and apu (mother) are Zenadhaw Mabaygka. My apu's traditional lands and seas include the islands of Badu, Moa and Besi (Mabuiag). My thaathi's traditional land and seas include the islands of Boigu and Besi as well.

My parents and family members made it clear to me where I am from and who I am. From the knowledge that has been passed onto me by my parents and family members I know that I am a Zenadhaw Mabaygka, I know am from the western part of Zenadh Kes and I know my mabaygal (people) have been here long before Markay (white man) ever set foot in Zenadh Kes. But most importantly, I know Zenadh Kes belongs to my mabaygal and me and that no other person can convince me otherwise. The use of my traditional language (Kala Lagau Ya – western Zenadh Kes traditional language) throughout this thesis is to acknowledge my heritage and identity. As I got older I was taught the importance of the sea, never to underestimate it and to show appreciation when the occasion was appropriate. An example of appreciation is when we catch a lot of fish, we would throw some fish back or “chuck e talk” to thank our ancestors and the sea for being generous. Also I must share my catch equally among the mabaygal who caught the catch and from my share give a share to family members who were in a less fortunate state.

Being a Zenadhaw Mabaygka myself and a part-time fisherman, conducting research into this area allows me ‘insider researcher’ status. As a Zenadhaw Mabaygka I hear and feel the concerns my mabaygal express through their voices about the current fishery arrangements. As a fisherman, I can see where decisions in the past have affected our lifestyles and our interaction with our ‘sea garden’. My journey as a Zenadhaw Mabaygka student researcher has provided me with some confronting and discouraging situations and this is evident throughout the thesis.

The UN Declaration on the Rights of Indigenous People: Articles 18, 23 and 26, states that an Indigenous person has the right to participate fully at all levels of decision making in matters which may affect their lives, they have the right to develop strategies for economic gains, and the right to own, develop, control and use of their lands including waters and coastal seas (Human Rights Council,

2006). Zenadhaw Mabaygka are traditional owners of the islands and seas that are located between the most northern point of Kie Daudai (Australia) and the western coast of Migi Daudai (Papua New Guinea). Occupation of the islands and seas in Zenadh Kes (Torres Strait) by Zenadhaw Mabaygka dates back almost 3000 years (Carter,2004). Their traditional knowledge has evolved over the generations.

The overall aim of this thesis is to examine current management objectives of the Torres Strait Protected Zone Joint Authority (PZJA) and document the aspirations and concerns of Zenadhaw Mabaygka with regards to the management of the Zenadh wapiw (Torres Strait fisheries). At present, Zenadhaw Mabaygka have overall an advisory capacity within the management of the Zenadh wapiw and are frustrated with the current arrangements (National Oceans Office, 2005). This thesis also aims to identify alternative management arrangements, objectives and structures that could greatly benefit Zenadhaw Mabaygka with the governance of their fisheries. In this first chapter I locate my research by providing background history and description about Zenadh Kes, its mabaygal and its resources. I will then describe the current management regime focusing on its structure and briefly on its objectives.

### ***1a) Zenadh Kes***

The region known as Zenadh Kes or to mabaygal who are not Zenadhaw Mabaygka, Torres Strait, is located between the Cape York Peninsula of Kie Daudai and runs north to the Migi Daudai southwest coast. It also runs laterally from the Carpentaria Shoal near 141'E longitude in the west, to the edge of the Great Barrier Reef (see Appendix One). Zenadh Kes contains over 100 islands, 20 of which are permanently inhabited. A further two Zenadhaw Mabaygka communities, Bamaga and Seisia, are located on Aboriginal land on the tip of Cape York Peninsula. These communities are the result of the relocation of Zenadhaw Mabaygka from Saibai Island to the mainland due to serious flooding and tidal surges in the 1930's.

The Markay explorer to first sail through Zenadh Kes in 1606 was a Spanish Captain called Luis Vaez de Torres. Torres captained one of three ships that were on an expedition to explore the South Pacific. The expedition broke up in disarray and Torres past through the Strait. Although it is debatable whether they even knew such a strait existed, Torres was able to navigate safely through the maze of reefs and shoals to the Arafura Sea within 27 days (Singe, 1993: 9). Torres showed tenacity and skill to pass through Zenadh Kes to record the first ever passage through the Strait by a Markay. Two centuries

later, in 1770, Captain James Cook hoisted the British flag on Tuidin (Possession Island) to claim Kie Daudai for King George 3rd of England (Toohey, 2001: 5). After that voyage, Zenadh Kes became a regular sea passage, known throughout the rest of the world.

The islands of Zenadh Kes are located within five traditional Zenadh Kes nations that include the Kemerker Meriam, Kulkalgal, Maluiligal, Guda Maluiligal and Kaiwalagal nations (see Figure One). These islands are as follows:

<b>Islanders Name</b>	<b>English Name</b>
<b>Kemerker Meriam (Eastern)</b>	
Ugar	Stephen Island
Erub	Darnley Island
Mer	Murray Island
<b>Kulkalgal (Central)</b>	
Iama	Yam or Turtle-backed Island
Poruma	Coconut Island
Warraber	Sue Island
Masig	Yorke Island
<b>Guda Maluiligal (Top Western)</b>	
Boigu	Talbot Island
Dauan	Mount Cornwallis Island
Saibai	Saibai Island
<b>Maluiligal (Western)</b>	
Badu	Mulgrave Island
Moa	Banks Island
Besi	Mabuiag Island

**Kaiwalagal (Inner Western)**

Keriri

Muralag

Ngurupai

Waibene

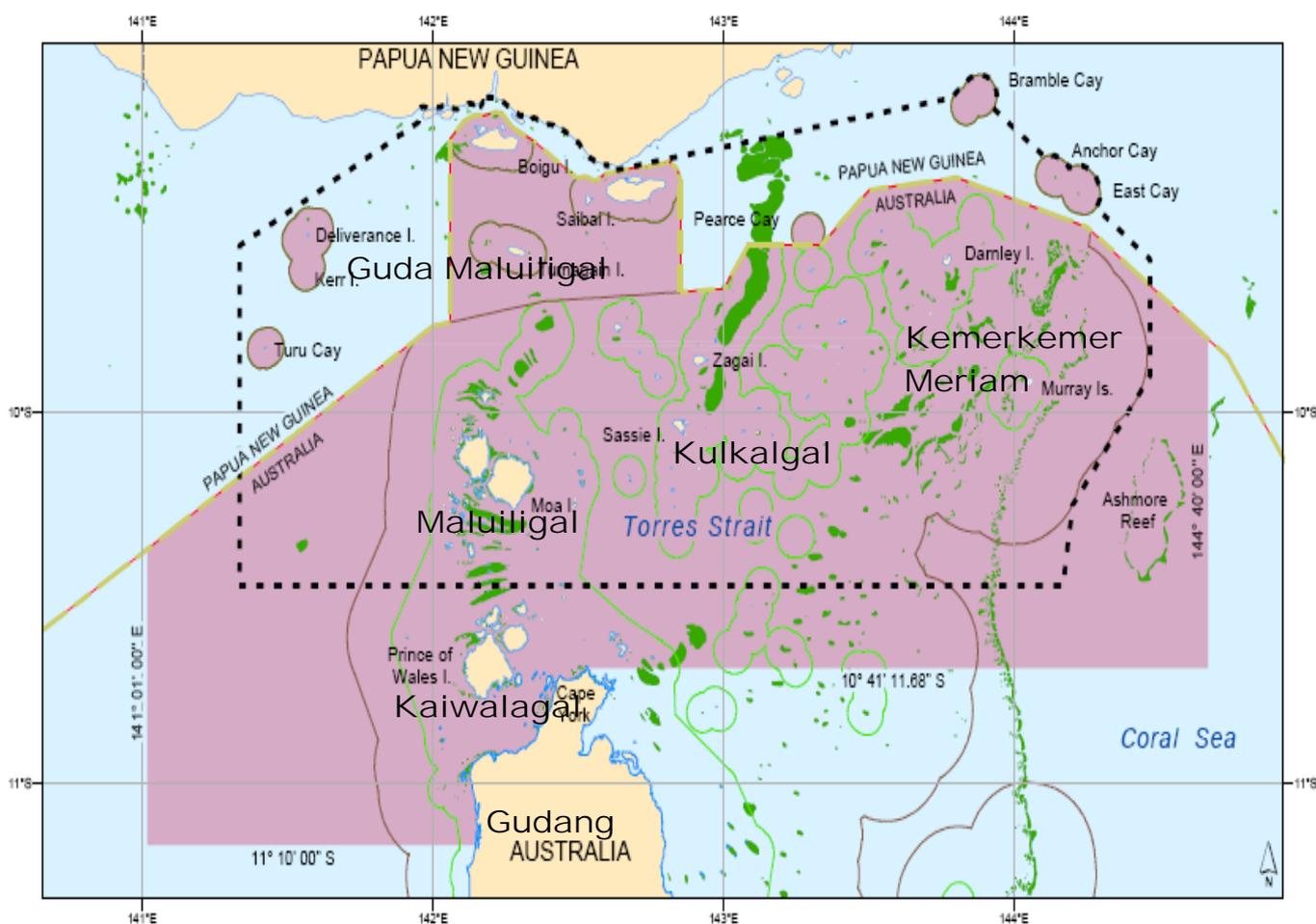
Hammond Island

Prince of Wales Island

Horn Island

Thursday Island

Figure One.



Source: Gau-bath Report 2006 – Land and Sea Management Unit – Torres Strait Regional Authority. Used with permission from the Australian Fisheries Management Authority, on behalf of the Torres Strait Protected Zone Joint Authority. Modified from <http://www.pzja.gov.au/resources/maps.htm>.

The islands mentioned above are the inhabited islands; almost 70% of the islands in Zenadh Kes are not inhabited. The actual landscapes of the islands themselves are quite diverse and vary from cluster to cluster.

The islands inhabited by the Kemerker Meriam nation are composed of weathered, rich, brownish soil with steep well-vegetated slopes and exposed rock. These islands are fertile and picturesque tropical islands surrounded by a variety of marine life on the wide coral reefs. The islands inhabited by the Kulkalgal nation are low sandy cays formed by wave action over platform reefs. The vegetation is scrubby and the islands appear as typical coral cays surrounded by extensive fringing reefs containing a rich diversity of fish life. The islands inhabited by the Maluiligal and Kaiwalagal nations consist of

steep hills and poor soils; the sandy and acidic soils are covered with patches of scrub and forest. Mudflats, mangroves and freshwater swamps surround these islands. The seas around them support a variety of marine life that includes waru (turtle) and dhangal (dugong) (Lawrence and Lawrence in Davis, 2004: 16-17). The islands inhabited by the Guda Maluiligal nation are the alluvial accumulation of organic, inter-tidal and mangrove mud on top of reef limestone and clay. These islands are fringed with mangroves and have broad interior swamps subject to seasonal drying and flooding. Fish and githalayg (crab) are plentiful in the surrounding muddy waters, but dhangal and waru are not as numerous as in southern waters.

There are other Zenadhaw Mabaygka communities located on the mainland of Kie Daudai adjacent to Zenadh Kes. These communities are located within the traditional lands of the Gudang nation. In 1946 a group of Saibai islanders, lead by a Zenadhaw Mabaygka called Bamaga Ginau moved to the mainland after part of their island started to be washed away by tidal waves. The communities of Bamaga and Seisia were established and are adjacent to each other and are described, for geographical convenience, as apart of the Northern Peninsula Reserves.

### ***1b) Mabaygal***

The mabaygal of Zenadh Kes have been described and classified as Melanesians due to their cultural practices and location. In the past, they were described as savages and cannibals in many ship logs and sailors were advised to avoid the islands of Zenadh Kes. Zenadhaw Mabaygka culture and tradition was centred around communal living and their survival on the land and sea through cultural law known today as 'Ailan Kustom'. Although much has changed from those days due to markay danalgiya puydhay (colonialism) within Kie Daudai and Zenadh Kes in the last two centuries, the culture and traditions still remain present through the teachings of Zenadhaw Mabaygka law and custom, language, songs and dances passed on from generation to generation.

Actual human occupation of the islands can be dated back almost 3000 years (Carter et al, 2004). Languages spoken in Zenadh Kes mainly consist of Meriam Mir, Kala Lagaw Ya and Zenadh Kes Creole. Meriam Mir is structurally a typical Migi Daudai language related to Bine, Gidra and Gizra languages from the Migi Daudai coast to the North and is predominantly spoken in eastern Zenadh Kes (Wurm, 1972: 349). Kala Lagaw Ya belongs to the Pama-Nyungan group of Kie Daudai languages and is predominantly spoken in the west (Bani, 1976: 3). Zenadh Kes Creole was developed from pidgin

languages brought to the islands by Pacific Islanders from the 1850s onwards. It has become an important lingua franca in the islands and is spoken right throughout Zenadh Kes. In 2001 it is estimated that there are 48,800 persons of Zenadhaw Mabaygka decent living within Kie Daudai. There is approximately 6,900 living within the Zenadh Kes region (Australian Bureau of Statistics, 2001: 115). During the 1960's after the bust of the marine industries, a lot of Zenadhaw Mabaygka moved to the mainland seeking employment and access to better education.

Zenadhaw Mabaygka today, despite only being accepted as marine labourers in the past, have expanded and are participating in several areas of employment. Zenadhaw Mabaygka are now employed as artists, museum curators, railway workers, defence force personnel, educators, commercial fishermen, public servants, church leaders, researchers and writers. Also their contribution to women affairs, sport activities, business and economic issues, social welfare, political and religious reform demonstrates their critical contribution to Kie Daudai society (Lawrence and Lawrence in Davis, 2004: 28). The island warriors of 200 years ago have adapted and have found themselves a dagam (place) within the present Kie Daudai society.

### *1c) Dagam*

Zenadh Kes's natural environment has been recognised for it's:

"Ecological complexity and biodiversity, the region provides a multitude of habitats and niches for the highly diverse Indo-Pacific marine fauna" (Torres Strait Natural Resource Management Reference Group, 2005)

It is because of this complex geophysical mix that Zenadh Kes waters can support such a diverse and abundant range of marine biological resources. Apart from the eastern group, the islands have poor soils and scarce water supplies. For these reasons the seas can be described as 'species rich' and the islands 'species poor'. The Zenadhaw Mabaygka for subsistence, traditional and ceremonial purposes, has used certain marine species for thousands of years. It is only in the last two hundred years that Zenadhaw Mabaygka have had a commercial interest in the marine resources. Commercial exploitation in Zenadh Kes by foreigners has gone on for much longer.

The species listed under Article 22 of the Torres Strait Treaty contributes to most of the economic output the Zenadh wapiw have to offer. These species include prawn, kiar (tropical rock lobster), dhubu (Spanish mackerel), mai (pearl) and kabar (trochus) shell (Department of Foreign Affairs and Trading, 2006). The current value of the Zenadh wapiw is estimated at approximately AUS\$35 million dollars per year, depending upon stocks and internal and external markets (AFMA, 2000). However, this total does not include mai aquaculture and aber (beche-de-mer) extraction.

## *2) Zenadh Wapiw*

### *2a) Diverse Economies*

Today in Zenadh Kes, both the customary exchange and the subsistence economy are much reduced in size and importance. The cash economy or Zagethaw mothaabi midhikidh yoewthika (capitalism) has more or less dominated, as it has for the rest of the world, in more recent times. Pre contact Zenadhaw Mabaygka traded with the Thubudh (Papuan) of Migi Daudai for canoes, cassowary feathers, dogteeth necklaces and other dance ornaments. They also traded with the Kaimel kulka (Aboriginals) from the mainland of Kie Daudai for red ochre, emu feathers and leg bones (Sharp, 1993: 28). This was customary exchange. Customary exchange brought variety to the Zenadhaw Mabaygka life allowing them to possess items that were unavailable to them in their natural environment. Customary exchange also created unity and extended networks between Zenadhaw Mabaygka and their trading neighbours; the Thubudh and Kaimel kulka (Sharp, 1993: 28). Customary exchange was only possible during the northeast season.

Zenadhaw Mabaygka exploited and interacted with their land and sea resources efficiently for their survival. Land and sea resources varied across the Strait but technologies invented over generations allowed Zenadhaw Mabaygka to effectively gather and grow food (Passi, 1986: 27). The islander's main animal foods came from the sea through hunting and gathering. Fruit and vegetables came from the land through horticulture and trading. For those Zenadhaw Mabaygka who were not fortunate to have certain meat, especially dhangal, or certain vegetables products, participation in the subsistence trade was essential. Zenadhaw Mabaygka exchanged their surplus for a deficiency, or their specialties for the products of other places (Haddon, 1971: 293). Various island buai (tribes/clans) had various specialties depending upon their environment in which they exploited, shared and traded effectively for the benefits of both themselves and other island buai.

One of the first cash-based marine industries to become evident in Zenadh Kes is the aber industry (Williams, 1994: 10). According to MacGillivray, aber fishing began in the 1840's (MacGillivray in Sharp, 1993: 156). Aber or beche-de-mer or trepang is the name given to what the western scientific world call holothurians, or sea cucumbers. During the early years, Zenadhaw Mabaygka were not employed in this industry and thus none benefited. Mostly the Macassans from the South Celebes dominated the industry and fished across Northern Kie Daudai, including Zenadh Kes (Williams et al, 1998: 6). Another cash-based industry to be discovered was the pearling industry. The first reported discovery of mai (pearl) in Zenadh Kes was in 1868 by Captain Banner sailing on the 'Julia'. Mai, a more marketable commodity than aber, came in various forms such as the gold-lip mother-of-pearl 'oyster' and the kabar cone. The extraction of these shells was commonly referred to as pearling. In 1904, 378 boats employing 2,509 men produced 798 tons of shell worth, at the time, \$108, 130 (Beckett, 1979: 34). Zenadhaw Mabaygka were at this time only working as boat crew and the owners, skippers and primary divers of the boats mainly consisted of Markay, Japanese, Malayan, South Pacific and Polynesian workers.

### ***2b) First Attempts to Assert Economic Rights/Benefit Sharing***

Zenadhaw Mabaygka participated in the pearling industry on their account and through time their wants increased: they needed cash because a cash economy had been imposed on the region. Zenadhaw Mabaygka approached Rev FW Walker, who was a member of the London Missionary Society (LMS) mission at the time, requesting his assistance in buying their own money-earning boats (Bleakley, 1961: 265). In 1904 Walker established Papuan Industries Limited (PIL), a trading station, whose purpose was to encourage Zenadhaw Mabaygka participation in the pearling industry to increase their self-reliance (Austin, 1972: 38-62). As a result of this by 1907 Zenadhaw Mabaygka owned and operated eighteen boats; half of them had been fully paid off with the interest by the Zenadhaw Mabaygka owners (Sharp, 1993: 106). Zenadhaw Mabaygka were now operating alongside the non-Indigenous pearlery as boat owners and could now choose when and where they sold their catch. However, after the world wars the need for mother-of-pearl oysters and kabar shell reduced dramatically, especially when plastic were introduced and became the perfect substitute. Pearling then continued on a reduced scale throughout the 1960's, sustained by the need of local mai culture stations for small quantities of live shell. The numbers of boats operating in Zenadh Kes were now a fraction of that operating half a century ago.

At present stocks of both the Aber and Pearling (Mai and Kabar) fisheries are quite low. The Aber fishery is actually closed due to over-exploitation and unregulated fishing efforts in the past and to allow stocks to recover (PZJA, 2002). Participation in these fisheries is exclusive to Zenadhaw Mabaygka but active participation by Zenadhaw Mabaygka is also fairly low compared to historic levels.

The Zenadh Kes Prawn fishery has been developed since the late 1960's and to date has nil participation by Zenadhaw Mabaygka. Commercial prawn fishing began around 1969, when the establishment of Norshrimp Pty Ltd seafood processing factory on Waibene provided an unloading point for trawlers using brine tanks to store product (Williams, 1994: 62-3). It is the most valuable commercial fishery in Zenadh Kes and is worth about \$23.5 million dollars (Bureau of Rural Science, 2004: 37). In 1999, the Island Coordinating Council (ICC), a Zenadhaw Mabaygka elected representation body, called for expressions of interest from Zenadhaw Mabaygka wishing to utilise three available licenses. Several responses were received and are being processed by the appropriate Zenadhaw Mabaygka authorities.

The Zenadh Kes Tropical Rock Lobster (TRL) fishery is now the second most valuable commercial fishery in Zenadh Kes and is crucial to many Zenadhaw Mabaygka. This is because of the significant level of participation by Zenadhaw Mabaygka within this fishery compared to several others. This fishery alone has the largest level of Zenadhaw Mabaygka participation. However, it is unclear whether these licenses are active and this number may have changed since the data was collected (PZJA Annual Report, 2003: 15). Zenadhaw Mabaygka fish largely from their communities, while a small fleet of Waibene (Thursday Island) - based freezer boats travel to the fishing grounds on trips lasting from several days to several weeks.

Although the prawn and the kiar industries are the most valuable industries within Zenadh Kes, there are other industries in which Zenadhaw Mabaygka do participate. Zenadhaw Mabaygka also compete in the Dhubu, Finfish and Githalayg commercial industries. The levels of participation by Zenadhaw Mabaygka in these commercial industries are low due to other fisheries being relatively more profitable (PZJA Annual Report, 2002: 18-32). Indications of how many Zenadhaw Mabaygka participate commercially in the Zenadh wapiw can be sort by viewing Appendix Two. This table highlights the number of licenses issued or renewed by the PZJA in 2004 – 2005. The table gives a clear indication of which commercial fisheries Zenadhaw Mabaygka mostly participate in and how much are actually participating. However, again it is unclear how many of these licenses are active within the TSPZ.

The Zenadh wapiw are the only primary industries that are available to Zenadhaw Mabaygka. These industries are and have been apart of their lives since time immemorial. An interpretative chronology has been attached in this thesis as Appendix Three to give history, clarity and precision as to the paramount events that have influenced Zenadhaw Mabaygka involvement in the Zenadh wapiw. They have been important for subsistence, traditional and trading purposes for Zenadhaw Mabaygka. However, in the last one hundred and fifty years, they've become a valuable and primary source of income. Therefore in recent times the fishing industry has an additional value for Zenadhaw Mabaygka. Although Zenadhaw Mabaygka have been managing these fisheries for thousands of years successfully, the current management regime does not deliver appropriate benefits to Zenadhaw Mabaygka in their views, because it does not accommodate sufficient authentic power sharing.

### *3) Sea Rights: Cultural and Economic Dimensions*

#### *3a) Legislation and the Torres Strait Treaty*

Over 3000 years of occupation, Zenadhaw Mabaygka have developed an intimate relationship with the land, sea and creatures of Zenadh Kes through traditional practices since time immemorial. To this day, Zenadhaw Mabaygka still practice and maintain this relationship. This relationship includes mura-thonaraw-danalayg balbalgiza-aymay (customary rights) and responsibilities to particular land, water and resources. At present, these mura-thonaraw-danalayg balbalgiza-aymay and responsibilities are sometimes recognised in Kie Daudai common law, through certain legislation and the Torres Strait Treaty.

Mura-thonaraw-danalayg balbalgiza-aymay to traditional fishing is increasingly being addressed in fisheries management plans. Fisheries legislation provides varying recognition of mura-thonaraw-danalayg balbalgiza-aymay to fishing. Under Section 8 of the *Torres Strait Fisheries Act 1985* (Cth) and Section 7 of the *Torres Strait Fisheries Act 1984* (Qld) it states:

Objectives to be pursued

In the administration of this Act, regard shall be had to the rights and obligations conferred on Australia by the Torres Strait Treaty and in particular to the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing.

In Zenadh Kes, it is this statement that allows Zenadh Kes fishermen to be exempt from fisheries regulations when fishing under customary laws and traditions. This exemption typically applies only to subsistence fishing.

This objective for both acts has been derived from the *Torres Strait Treaty* 1985 No. 4. Article 1: Section 1 defines 'traditional activities' and 'traditional fishing'. 'Traditional activities', are activities performed by traditional inhabitants in accordance with local traditions, and includes, when performed 1) activities on land, including gardening, collection food and hunting; 2) activities on water, including traditional fishing; 3) religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and 4) barter and market trade. "Traditional fishing" is described as the taking, by traditional inhabitants for their own or their dependents' consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas, including dhangal and waru (Torres Strait Treaty, 1985: Article 1). The Treaty states that 'traditional' is to be interpreted broadly and in accordance with prevailing custom except in relation to activities of a commercial nature.

In other words, in determining whether a fishing activity is 'traditional' consideration is given to the purpose of the practice rather than the method. Hunting dhangal and waru for subsistence purposes from fibreglass skiffs equipped with outboard motors can be considered traditional fishing under the treaty, but fishing for cash income cannot (Schnug, 1999). Finally, under Article 12 the Torres Strait Treaty stipulates mura-thonaraw-danalayg balbalgiza-aymay for traditional inhabitants of access to and use of land and water areas within the Protected Zone will be recognised provided those rights are acknowledged by the traditional inhabitants living in or in proximity to those areas.

Zenadhaw Mabaygka assert their mura-thonaraw-danalayg balbalgiza-aymay to the marine areas and resources by continuing these traditional practices within a localised cultural framework (Schnug, 1999). The matrix of social relations among island, coastal and inland communities and a sense of reciprocity and sharing continue to be important factors underlying access to marine resources. The collections of meanings that clans and communities attach to Zenadh Kes landscape define the distinctive historical relationships that various social groups have to the marine realm and thereby contribute to the separate

identities of these groups (Schnug, 1999). At the same time, however, a network of social ties binds groups together and creates a web of obligations to share territories and resources.

### *3b) Danalgaw balbalgiza-aymay (Economic Rights)*

“Economic studies show that the sea is almost the only economic opportunity our people have, but the fishing interests of outsiders threaten our resources, livelihoods, and future survival” (Getano Lui Jnr, Former Chairperson, Torres Strait Regional Authority and Island Coordinating Council, 1995)

Zenadhaw Mabaygka currently perceive that there is limited economic opportunity in Zenadh Kes for Zenadhaw Mabaygka and that the commercial fisheries are the only resources available for them in this region from which a real economy can be built (TSRA, 2006: 45). The Torres Strait Regional Authority (TSRA), a statutory authority that is the peak Commonwealth representative body for Zenadhaw Mabaygka and Kaimel kulka living within Zenadh Kes, released the Torres Strait Development Plan 2005-2009, which crystallises this predicament:

Geographic isolation, small populations and limited employment opportunities severely impact on the ability of Zenadhaw Mabaygka to engage in economic development. Also fishery stocks are being depleted in Zenadh which has a negative impact on the ability of Zenadhaw Mabaygka fishermen to gain a livelihood” (TSRA, 2006: 11)

Under the present governance regime Zenadhaw Mabaygka have limited recognition of their rights, let alone their danalgaw balbalgiza-aymay to the resources of Zenadh Kes. As Tsamenyi et al (2000) states, ‘there is no recognition for Indigenous people in legislation or in court decisions of a legal right for Indigenous people to participate as distinctive commercial actors in Australia’s commercial fisheries’. This is made more difficult when the existing Kie Daudai Constitution makes no mention of Kaimel kulka and Zenadhaw Mabaygka mabaygal, and thus recognition of Kaimel kulka and Zenadhaw Mabaygka rights does not need to be addressed by the Kie Daudai Government (Reconciliation and Social Justice Library, 1995). Although the 1967 Constitutional Referendum removed negative and excluding references to Indigenous mabaygal, it did not provide for inclusive Indigenous recognition within the Kie Daudai Constitution nor did it address the unique position of Indigenous mabaygal. Though subjected to a history of exclusion and non recognition despite human rights rhetoric, Kaimel kulka and Zenadhaw

Mabaygka mabaygal have for many years been demanding that the constitution be amended to recognise the unique status of Indigenous mabaygal and to ensure recognition and protection of Kaimel kulka and Zenadhaw Mabaygka rights so that these may be properly enjoyed and the legacy of exclusion redressed (Aboriginal and Torres Strait Islander Commission, 1995).

### ***3c) Self-determination: Civil, Political and Economic, Social and Cultural Rights***

International Treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) under Part 1: Article One and the UN Declaration on the Rights of Indigenous Peoples, under Part 1: Article 3, both emphasise and recognise that it is a right of all peoples, including Indigenous peoples to control their lands, territories and resources.

The Covenant states that (Part 1: Article One):

1. All peoples have a right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;
2. All people may, for their own ends, freely dispose of their natural wealth and resource. In no case may a people be deprived of its own means of subsistence.

The Declaration on the Rights of Indigenous Peoples (2007) states that (Part 1: Article 3):

'Indigenous people have the right to self-determination, by virtue of that right they are freely determine their political status and freely pursue their economic, social and cultural development'

There are several pieces of Kie Daudai legislation that recognise Zenadhaw Mabaygka cultural heritage, knowledge, land title, traditional language and lifestyle and customary practices. But as for Zenadhaw Mabaygka rights to economic and social development, there is very little.

In the Torres Strait Treaty, there is some basis for the recognition and protection of the economic rights of Zenadhaw Mabaygka. Under Part 3, Article 10, it states (Torres Strait Treaty, 1985):

“The principal purpose of the Parties in establishing the Protected Zone, and in determining its northern, southern, eastern and western boundaries, is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement”

The word ‘livelihood’ has no clear definition set out in the Treaty, but is defined by the Australian Oxford Dictionary as being ‘means of living; job, income’ (Oxford University Press, 2006). As Start and Johnson explain, ‘a person’s livelihood is located in economic, political and social structures and processes, at both macro and micro levels (Start and Johnson, 2004). Therefore, there is a clear linkage between a person’s livelihood and their current economy. Under this part, Kie Daudai and Migi Daudai have agreed to acknowledge and protect Zenadhaw Mabaygka livelihood. Henceforth, it is the opinion of this researcher that Part 3: Article 10, Zenadhaw Mabaygka have the basis for the recognition and protection of their economic rights. Neither power sharing nor benefit sharing however have been embedded in the regime established by Kie Daudai for the governance of the Zenadh wapiw.

The absence of a clear full recognition of Indigenous fishing rights for Zenadhaw Mabaygka were further highlighted when Mr. Benjamin Ali Nona, or Maluwap Nona as he is known in Zenadh Kes, used a kiar spear to challenge commercial line fishermen who were fishing in the traditional waters around Mer. Mr. Nona also confiscated the withi (coral trout), which the fishermen had caught, in his traditional waters. Police charged Mr. Nona but the cases was dismissed in court. The jury accepted that Mr. Nona had believed, as an Indigenous person, that the fish belonged to him and not the fishermen. The jury decided that Mr. Nona was not criminally liable under Section 22 of the Queensland Criminal Act (Haigh, 2002: 2). This case stands as a reminder that the issue of fishing rights in Zenadh Kes is a matter long overdue for negotiated resolution between governments, professional fishermen and Zenadhaw Mabaygka.

In March 2001 the issue of danalgaw balbagiza-aymay and the encroachment of commercial fisherman on these rights, came to a head when the Indigenous leaders attending the Ngalpun Malu Kaimelan Gasaman Cultural Maritime Summit issued an ultimatum for commercial fishermen. This ultimatum included suspension of all fishing by Markay commercial fishermen throughout Zenadh Kes within a week (Mulrennan, 2001: 308). The Commonwealth fisheries minister visited Zenadh Kes within days, warning against further interference with licensed fishing boats, but commencing political negotiations on important issues. In the 1990’s Zenadhaw Mabaygka concerns about maapu (sustainability) of certain fisheries, and the lack of benefit sharing of wealth accruing from commercial fishing in their

traditional waters have erupted in conflict with Markay commercial interests and central government authorities (Mulrennan et al, 1994). In addition, Eastern Zenadhaw Mabaygka declared exclusive economic zones within their traditional waters for the management of these seas in accordance with traditional law. The declaration of these zones reflected Eastern Zenadhaw Mabaygka anxieties about potential fishing pressures from their western Zenadhaw Mabaygka neighbours where Zenadhaw Mabaygka fishermen use Hookah gear to gain access to aber and kiar at greater depths (Mulrennan, 2001: 308). Although there is nothing in official licensing and regulation to prevent entry into these zones, Markay commercial fishing boats were evicted.

#### ***4) Maapu a Ninu sakarpuday (Sustainability and Self-determination)***

##### ***4a) Maapu***

Zenadhaw Mabaygka are strong advocates of maapu and conservation, especially when it comes to culture and thinking about future generations. They believe as the traditional custodians of the lands and seas that make up the Zenadh Kes, they have the duty and right to control and manage these natural resources. It is these island and marine environments that have influenced Zenadhaw Mabaygka behavioural patterns and cultural use of the local ecosystems. Hence, their traditional methods of resource management are of a conservatory and sustainable nature, unlike western commercial technologies that are often unsustainable (Passi, 1986: 3). The advent of markay danalgiya puydhay brought with it western technologies, zagethaw mothaabi midhikidh yoewthika and a cash-based economy that saw over time the over-exploitation of several fisheries. Outside influences, better technologies and a growing Indigenous and non-Indigenous population have all contributed to greater fishing pressures placed on fishing within Zenadh Kes.

Zenadhaw Mabaygka themselves participate in this cash-based marine fishery, but have always emphasised their aspirations of maapu and conserving their natural resources. From the 1860's to the 1960's, Zenadhaw Mabaygka were involved as seamen and divers with a range of industrial fisheries – aber, mai and kabar shell (Beckett 1987; Ganter, 1994). This experience provided a valuable lesson in the exhaustibility of resources that would not have been depleted under pre-contact conditions. Zenadhaw Mabaygka witnessed first-hand the depletion of wild mai and kabar shell to the point that a crew might dive all day for what a man might formerly have easily gathered in half an hour (Mulrennan, 1994: 306). Management at this period of time was out of the hands of Zenadhaw Mabaygka.

#### *4b) Ninu sakarpuday (Self – determination)*

“Islanders’ demand for self-determination as a desire for greater input into the issues that concern their daily lives” (Stephen in Groves, 2004: 20)

This quote is a description of ninu sakarpuday given by a Zenadhaw Mabaygka, Pedro Stephen, Mayor of the Torres Shire, Waibene, Zenadh Kes. Zenadhaw Mabaygka leaders and organisations have repeatedly stated a desire for ninu sakarpuday or greater regional autonomy (Jull, 1997: 1-12). Recently the TSRA released a discussion paper stating the desired outcome for ninu sakarpuday and/or greater autonomy:

“The recognition of (islander) culture, rights and identity as a separate race of Indigenous people in Australia, a better quality of life – economically, socially, culturally and politically, and greater participation by TSI in the economy of the region” (Torres Strait Regional Authority, 2001: 4)

Zenadhaw Mabaygka have pursued these aspirations through their participation within the Protected Zone Joint Authority (PZJA) and are likely to continue until they achieve total control and management of the regions marine resources.

In 2002 the State and Commonwealth governments have yielded to an extent to these demands. They have afforded the chair of the TSRA a seat at the executive decision-making level of the PZJA (Mulrennan, 2004: 309). Also during that period the PZJA approved a new consultative structure increasing Zenadhaw Mabaygka representation. This model was developed jointly by Indigenous fishermen and TSRA to streamline the current structure and dramatically increase Indigenous input into the PZJA at the consultative levels (Torres Strait Regional Authority, 2002: 2). Previously Zenadhaw Mabaygka representation was limited and Zenadhaw Mabaygka initiatives were frequently countered by the sheer strength of commercial interests in the area, which have been more heavily represented in previous consultative committees (Mulrennan and Scott, 2001). Nevertheless, these recent achievements for Zenadhaw Mabaygka may promise a more equitable process, but it is debatable from a Zenadhaw Mabaygka perspective. The current governance regime was created in 1985 and has provided limited Zenadhaw Mabaygka representation in the past. This structure has been implemented

on the belief that it provides for a cooperative partnership approach for all stakeholders, however, as it stands right now this governance regime does not provide for equal power and benefit sharing.

### ***5) Torres Strait Protected Zone Joint Authority***

The current management regime that manages the Zenadh wapiw within the Torres Strait Protected Zone (TSPZ) (as seen in Appendix 4) is formally known as the Torres Strait Protected Zone Joint Authority or the PZJA. This authority comprises of multiple stakeholders including government agencies, scientists, non-Indigenous commercial fishermen and Indigenous fishermen from both Kie Daudai and Migi Daudai.

#### ***5a) Kuba danalayg (History)***

During December 1978 after long discussions between Kie Daudai and Migi Daudai, a treaty called the Torres Strait Treaty was signed. The Torres Strait Treaty is an agreement between Kie Daudai and Migi Daudai that describes the boundaries between the two countries and how the sea area may be used (Department of Foreign Affairs and Trading, 2006). Zenadhaw Mabaygka had little input into this international treaty despite its benign intent. Neither a right to benefit sharing nor power sharing was envisaged. The regulatory framework for the PJZA originates directly from the Torres Strait Treaty between Kie Daudai and Migi Daudai. The treaty was signed on the 18 December 1978 by the Prime Ministers and Foreign Ministers of Kie Daudai and Migi Daudai (Lyon & Smith in Boyce and White, 1981: 26). During this time, the Commonwealth Government implemented the *Torres Strait Fisheries Act* 1984 (Cth) into Kie Daudai law. The Treaty established the Torres Strait Protected Zone and the Act established the PZJA. A diagram located in Appendix Five demonstrates this relationship. The principal purpose in establishing this protected zone was to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement. A further purpose is to protect and preserve the marine environment and Indigenous fauna and flora in the vicinity of the protected zone (Torres Strait Treaty, 1985). The Protected Zone itself was cooperatively designed and agreed upon by both state parties involved.

The PZJA is responsible for the management of the following fisheries, often referred to, with reference to the Torres Strait Treaty, as Article 22 fisheries: prawn, kiar, dhubu, mai, dhangal, waru and barramundi. All other fisheries in Zenadh Kes, which include kabar, githalayg, aber, baydam (shark)

and line fishing for all species except dhubu are currently managed by Queensland under a complementary *Torres Strait Fisheries Act 1984 (Qld)* (Altman et al, 1994). The Torres Strait Treaty and associated legislation mentioned established the PZJA to serve several purposes, which include managing the Zenadh wapiw.

### ***5b) PZJA Functions and Objectives***

The main functions of the PZJA are to firstly, monitor the condition of the designated fisheries and secondly formulate policies and plans for their management (Protected Zone Joint Authority, 2002: 4). The PZJA has many objectives that are formulated to individually cater for each fishery. Each fishery has a set of objectives for themselves. Although the PZJA does not have an overall set of objectives, it has regard to the rights and obligations conferred on Kie Daudai by the Torres Strait Treaty, in particular the protection of the traditional way of life and livelihood of the traditional inhabitants, including their traditional fishing.

### **Mika sena miya (What it is?)**

Firstly the PZJA is a joint Commonwealth/Queensland State body; it is the mechanism for governance. The actors in the governance regime are the Commonwealth Minister for Fisheries, Forestry and Conservation, the Queensland Minister for Primary Industries and Fisheries and the Chairperson of the Torres Strait Regional Authority. This authority is assisted by its consultative structure which consists of advisory bodies with industry, traditional inhabitants and government representatives. This governance mechanism structure (as seen in Appendix Six) consists of a structure based on three levels; the executive level which is formally called the PZJA, the management level and the working group level.

The working group level consists of working groups for delegated fisheries such as the prawn, kiar and githalayg, mai and kabar, aber and other collectibles and Finfish that include mackerel. The role and functions of the working groups are to advise the Torres Strait Fisheries Management Advisory Committee (TSFMAC) on particular matters relevant to individual fisheries (Protected Zone Joint Authority, 2005: 4). This level also includes the Torres Strait Fisheries Scientific Advisory Committee (TSSAC) that provides the TSFMAC scientific and research advice on issues in the TSPZ. The TSSAC comprise representatives from research organisations, fisheries managers, traditional inhabitants and industry.

The management level consists of the TSFMAC. Its role and function is to advise the PZJA on management issues for the fisheries managed under the Act. It provides the forum where issues relating to the fisheries are discussed, problems identified and possible solutions developed. The outcome of these deliberations determines the recommendations the TSFMAC will make to the PZJA concerning the management of relevant fisheries (Protected Zone Joint Authority, 2005: 3). The TSFMAC consist of representatives of traditional inhabitants, commercial fishermen, fisheries managers from PZJA agencies and the Chairman of the TSSAC.

It is the executive level where power in the PZJA is located. It is at this level that polices are decided upon based on recommendations given to the PZJA by the TSFMAC. The role of the PZJA is to manage the fisheries, both traditional and commercial, in the Torres Strait Protected Zone. The PZJA has delegated day-today management of the fisheries to the Australia Fisheries Management Authority (AFMA) and compliance in the fisheries to the Queensland Department of Primary Industries and Fisheries (QDPIF) under a cost sharing arrangement (Protected Zone Joint Authority, 2005: 2). Five of the Article 22 fisheries currently being managed are jointly managed by Kie Daudai and Migi Daudai. The two countries share the catches of the three Article 22 commercial fisheries according to the formulae set out in the Torres Strait Treaty.

The PZJA current governance structure has been established as the fishery governance regime for the Zenadh wapiw since its implementation in 1988. Previously, Indigenous fishers were concerned that the PZJA consultative structure was disjointed and was not truly representative (Nakata, 200: 1). However, since implementation of a new consultative structure, jointly developed by Zenadhaw Mabaygka and TSRA, and the appointment of the TSRA chair to the PZJA executive level, representation has not been an issue since 2002. In this new consultative structure Zenadhaw Mabaygka still overall have advisory capacity, the same capacity as other stakeholders excluding the executive members, but on a greater scale (Torres Strait Regional Authority, 2002: 2). Zenadhaw Mabaygka seek greater power and benefit sharing given the centrality of the fisheries to their survival. Zenadhaw Mabaygka are concerned and aspire to manage and control 100% of the Zenadh wapiw and pursuing this bold aspiration through the PZJA, they recognise this is a challenge to government. But the question needs to be asked, 'does the PZJA governance regime allow for this aspiration to become a reality? ', or 'is the PZJA the appropriate regime for Zenadhaw Mabaygka to gain total control of the Zenadh Kes marine resources?' A shift in the PZJA allowing greater power and hence benefit sharing for Zenadhaw Mabaygka is entirely

consistent with the objectives of the Treaty and Commonwealth legislation. What has been lacking has been the political will to translate Zenadhaw Mabaygka aspirations, needs and rights into practice.

## Gizu Sar: Yakamay ngurpay (Chapter Two: Reviewing the Literature)

“We need to be able to make decisions about social, cultural, economic and environmental matters in our region, but not just the right to attend advisory meetings which may, or may not, pass our ideas up the line” (Getano Lui Jnr, Former Chairperson, Torres Strait Regional Authority and Island Coordinating Council)

### Yadpalgay

Zenadhaw Mabaygka aspire to control and manage all of their natural resources, especially the Zenadh wapiw. In doing so, they've lobbied for greater participation in the PZJA. As a result in 2002, a new consultative structure was endorsed by both; Zenadhaw Mabaygka and the PZJA boosting Zenadhaw Mabaygka representation in the PZJA, and the TSRA chairman was allocated a seat at the PZJA executive level (Torres Strait Regional Authority, 2002). Their struggle for a greater role in managing the Zenadh wapiw is not a recent endeavour which can be traced through Zenadhaw Mabaygka history. As Lui Jnr states, in the quote above Zenadhaw Mabaygka want and need to make decisions for their future, especially considering their participation in the past within the Zenadh wapiw.

This gizu reviews the literature relating to the history of Zenadhaw Mabaygka and their involvement within the Zenadh wapiw. It looks at certain experiences, describing various concepts that have an intangible, yet noticeable relationship with the current situation within Zenadh Kes. The concepts that will be examined will include markay danalgiya puydhay and zagethaw mothaabi midhikidh yoewthika, autonomy and native title. It will then be concluded with a review of the literature of the current situation and future directions. Also an interpretative chronology has been attached in this thesis as Appendix Three to give history, clarity and precision as to the paramount events which have influenced Zenadhaw Mabaygka involvement in the Zenadh wapiw.

### *1) The Zenadhaw Mabaygka Experience*

“Torres Strait Islanders are seafaring people – skilled navigators, fishers and hunters. Reefs, lagoons and seas are fundamental to their identity, livelihood and economic prospects. In sheer physical terms, the intertidal reef area is often many times the surface of home islands, yielding seafood consumption

rates among the worlds highest. It sustains the vital cultural practices of exchange, ceremonial feastings and rites of passage (Mulrennan & Scott, 2001: 1-6)

In this quote, Mulrennan & Scott identify the special relationship Zenadhaw Mabaygka have with the sea. The sea is fundamental to Zenadhaw Mabaygka identity, livelihood and source for food. Singe states, 'creatures of the sea are known intimately by Zenadhaw Mabaygka and are accorded the esteem or fear they deserve' (Singe, 1979: 128). Sharp describes the relationship Zenadhaw Mabaygka have with the sea to be 'same kind' as themselves. They are born to the sea, so swimming, like walking, is 'natural' (Sharp, 1993: 32). Among Zenadhaw Mabaygka a young person is taught to fish and the child's first fish, be it even a sardine, is honoured by a personal feast: that small person has become a Zenadhaw Mabaygka.

Sharp also describes the relationship as having reciprocal characteristics. Thus, Zenadhaw Mabaygka believe and recognise the sea as having 'another side'. The side that is not only knowable, negotiable, predictable and tamed; but also wild, singular, uncontrolled and threatening. Therefore 'Islanders never growl the sea.... Not say anything bad about the sea when you're on it'. You go with the wind and the currents. When the sea rises up in a storm-surge it threatens: 'like an eye'; it is like danger. 'We never say because it might bring it...' the sea must be 'matched'. So an Islanders' canoe, itself like a living thing, an extension of its owner, sails in matched union with the sea, follow the patterns of its movement (Sharp, 1993: 32). Zenadhaw Mabaygka do not seek to master the sea, to harness or to exploit its 'riches': they seek to live and go along with it and that means to 'know' it.

According to early Markay records Haddon (1971), the Zenadh wapiw are imperative for traditional Zenadhaw Mabaygka ceremonies such as initiation revelry, weddings, funerals, tombstone openings and birthday celebrations. Fish, shellfish, crustaceans and especially waru and dhangal are gathered to cater for the festivities. Dhangal and waru is cooked traditionally in a ground oven in what Zenadhaw Mabaygka call an 'amai' (Haddon, 1971: 132). Certain marine species were also apart of daily Zenadhaw Mabaygka attire. Zenadhaw Mabaygka used waru shells to make combs, hair clips, necklaces, rings and bracelets. Dhangal bones were grounded down to make earrings, nose rings and arm bracelets. Certain marine species were also used in their attire for traditional dancing and warfare. For example, baidam teeth were placed on clubs and waru shells were used as masks and shields (Haddon, 1971: 173). The fisheries also played a vital role in trading for Zenadhaw Mabaygka whether it was external or internal. Smoke dried dhangal and waru were used as food on voyages and were also bartered (Haddon, 1971: 294). Live waru were also a trading option.

Zenadhaw Mabaygka interacted and exploited their marine resources on a daily basis and for various important reasons. It is fair to state that besides their poor island based resources, the fisheries were all they had to survive as is the case today. However, because of the abundance of the Zenadh wapiw, it allowed for Zenadhaw Mabaygka to maintain their culture and a certain way of living. Therefore, the importance of the Zenadh wapiw to Zenadh Kes cannot be easily determined by statistics and graphs, but on how deep-rooted the fisheries are in Zenadhaw Mabaygka culture and lifestyle.

As Passi explains, Zenadhaw Mabaygka exploited and interacted with their land and sea resources efficiently for their survival. Land and sea resources varied across Zenadh Kes but technologies invented over generations allowed Zenadhaw Mabaygka to effectively gather and grow food (Passi, 1986: 27). Zenadhaw Mabaygka main animal foods came from the sea through hunting and gathering. Fruit and vegetables came from the land through horticulture and trading. Prior to the 1800's Zenadhaw Mabaygka had brief encounters with foreigners. They were still participating in their own exchange barter kinship-based economy, which was basically trading specific goods to the Thubudh to the north and the Kaimel kulka to the south. As Beckett explains, their great ocean going canoes, up to twenty metres in length, equipped with double outriggers and a distinctive form of rigging, enabled them to exploit a much wider range of their resources than the Kaimel kulka and Thubudh (Beckett, 1987: 26). However, in time bartering ceased and was replaced with a cash-based economy.

The islands were autonomous societies with partial contact with their Indigenous neighbours from the north, east, south and west. Contact was seemingly only through the customary and subsistence trade. Zenadhaw Mabaygka exploited their land and sea environments efficiently to survive. Their surroundings played a major role in influencing their cultural, ecological and economical system (Passi, 1986: 27-63). However, this was to change in the coming centuries.

## ***2) Zagethaw mothaabi midhikidh yoewthika (Capitalism) and Markay danalgiya puydhay (Colonialism)***

Zagethaw mothaabi midhikidh yoewthika and Markay danalgiya puydhay have changed Zenadh Kes forever since their forced imposition in the mid 1800's. 'Capitalism', as described by Lekachman and Van Loon, is an economic system based on the private ownership of the means of production and distribution of goods, characterised by a free competitive market and motivation by profit (Lekachman and Van Loon, 1981: 3). Beckett (1987) describes 'Colonialism', as the term is used here, to the

political outcome of Markay expansion into other quarters of the globe. Colonial order arises when the state which has annexed a territory formally and systematically discriminates between the conquering and subject groups, in such a way as to entrench the differences between them and to foster their economic, political and cultural inequality (Beckett, 1987: 13). This discrimination is sustained by some form of ideology that justifies the economic, practical, cultural and legal domination of the Indigenous population in terms of differences of race, mentality, moral qualities, cultural advancement or religion.

Zagethaw mothaabi midhikidh yoewthika in its earliest form became evident in Zenadh Kes in the early 1800's when Zenadh Kes became a favoured sea route for merchant shipping. By 1813 a trade relationship had become well established between Markay and Zenadhaw Mabaygka, as observed in the explorers' journals. Prior to 1813 Zenadhaw Mabaygka were still participating in their own island economies (customary and subsistence trade), which were basically trading specific goods to the Thubudh to the north and the Kaimel kulka to the south. As Donovan explains, traders from Sydney, Singapore, Hong Kong and Port Essington in search of mai, tortoise and kabar shells were focusing on Zenadh Kes in the late 1830's. This activity increased during the next two decades (Donovan, 2002). Zagethaw mothaabi midhikidh yoewthika was evolving and Zenadhaw Mabaygka were starting to get involved in capitalist production although it was to be under appalling conditions.

Mullins dates 'Markay danalgiya puydhay' and or 'colonial occupation' of Zenadh Kes from 1863/1864 when an aber station was established on Erub. Also during that period a government settlement was established at Somerset on the Kie Daudai mainland. Mullins explains that the police magistrate based there was able to maintain an unofficial jurisdiction over Zenadh Kes until 1872, when British sovereignty was extended to islands within 96 kilometers of the British Colony of Queensland coast (Mullins, 1994: 26). However, with the marine industries becoming more centralised in Zenadh Kes and because of better anchorage, the administration was removed from Somerset to Waibene (Port Kennedy – Thursday Island) in 1877. Two years later, the remaining islands were annexed to the colony of Queensland.

For Zenadh Kes, 'Zagethaw mothaabi midhikidh yoewthika' and 'Markay danalgiya puydhay' came hand in hand. The Colony of Queensland delegated governance of Zenadh Kes to the LMS on Erub in 1871, the missionaries removed certain practices and customs and they dictated a way of life, the Christian way of life. They put a stop to alliances and warfare, which were intrinsic to exchange relationships between Zenadh Kes communities and the Migi Daudai coast and Kie Daudai. Many articles of exchange and sacred belief were banned and destroyed and churches soon came to occupy

central positions beside the beaches (Sharp, 1980). The missionaries succeeded quickly in gaining Zenadhaw Mabaygka co-operation.

As Sharp states, 'missionaries as is often the case were the vanguard for capitalism'. They established businesses by buying Zenadhaw Mabaygka a fleet of pearling boats whose purpose was to encourage Zenadhaw Mabaygka participation in the pearling industry to increase self-reliance (Sharp, 1993: 160). The participation in the market economy was rapid and enthusiastic throughout Zenadhaw Mabaygka communities. However as Manzie, exclaims, companies were indifferent to the needs of Zenadhaw Mabaygka and trouble occurred where interests clashed. Zenadhaw Mabaygka had learned early of the power of firearms and avoided confrontation (Manzie, 1988: 23). From approximately 1872-1875 the number of boats engaged in the pearling industry increased to nearly 100 with over 1000 men employed in the industry (Finch, 1977). The Pearl Industry was becoming one of the most important and greatest industries in the earlier part of the 20<sup>th</sup> century for Zenadh Kes.

In July 1879, the Queensland Colonial Government inaugurated its rule into Zenadh Kes and the LMS was relegated to second place. That year the inhabitants of each island were mustered by Captain C Pennefather and told that they were now 'amenable to the laws of the white man' (Sharp, 1993: 130). Sharp identifies this event as the activation of three distinct yet overlapping phases of markay danalgiya puydhay in Zenadh Kes. These were indirect rule, paternalist exclusion, and controlled integration.

As Sharp describes, indirect rule was the form of European control during the period 1870's to the early 1900's. Under this system the Government Resident on Thursday Island appointed headmen on the inhabited Islands. The nature of Zenadhaw Mabaygka society allowed this form of control to be effective (Sharp, 1993: 130). These headmen appointed subordinates who were granted police powers. The headmen had magisterial powers but in reality were always subsidiary to the LMS missionaries in their communities. Sharp also calls this phase as the cultural renewal phase.

"From the beginning, conditions of change were set within a general framework of assumptions that proclaimed the superiority and ultimate supremacy of the Anglo-Saxon race. In the eyes of the officials who ruled them Islanders were a backward people" (Sharp, 1980: 66)

Certain assumptions guided relationships with Zenadhaw Mabaygka. One of these assumptions, as stated by Sharp, was that given the removal of customs, traditional ceremonies and beliefs which define Zenadhaw Mabaygka as 'savages', Zenadhaw Mabaygka were given a clean slate on which a more

civilised and sophisticated code could be written. Christianity, the Western knowledge system and the capitalist work ethic would bring them to a position of 'enlightenment'. Therefore, in practical terms, administrators could then pursue the means for Zenadhaw Mabaygka to work for themselves 'and emulate or copy the white men' who had been their employers (Sharp, 1980: 66). Policies and programs enacted at the time, established schools, delegation of authority to Zenadhaw Mabaygka leaders and to Zenadhaw Mabaygka participation into Zagehaw mothaabi midhikidh yoewthika, especially in the marine industry.

### ***3) Company Boats***

The Company Boats were pearling luggers purchased by the LMS, to be worked and owned by Zenadhaw Mabaygka, but controlled by the missionary administration (Sharp, 1993: 161-163). The 'Company Boats' gave Zenadhaw Mabaygka some form of independence and autonomy. By 1907 there were eighteen boats; half of them had been fully paid for with the interest by the Zenadhaw Mabaygka owners. A fleet of vessels recognisable as the 'Company boats' by the 'common badge' of black and white striped railings often carrying Island or buai names like Argan and Wakaid of Badu; Tagai, Meriam, Erub and Ugar of the eastern islands, were operating alongside the pearling luggers of the 'Master' pearlers, as the private employers were known (Sharp, 1993: 161). During the 1880's Zenadhaw Mabaygka participated as boat crews, but now as boat owners Zenadhaw Mabaygka were operating on the same playing field as their previous employers, most of whom were Markay. This development gave Zenadhaw Mabaygka some independence, allowing them to determine their own working hours, who worked for them and how much they could earn. However, this newfound independence would be shortly lived with the advent of protective legislation being applied to Zenadhaw Mabaygka at the beginning of the 20<sup>th</sup> century.

The 'paternalist exclusion' form of colonialism began in 1904 when Queensland Government took control of the Zenadhaw Mabaygka communities from the LMS, and treated Zenadhaw Mabaygka in the same way as the Kaimel kulka (Sharp, 1993). Under the *Aboriginal Protection and Restriction of Sales of Opium Act 1897* (Old) the Zenadhaw Mabaygka communities were declared reserves, segregated from the outside world and virtually every aspect of Zenadhaw Mabaygka personal, domestic and community life was controlled by the local Protector. Zenadhaw Mabaygka literately became 'wards' of the State, as happened to mainland Kaimel kulka mabaygal.

The third phase of colonial policy was 'controlled integration', which began, in the mid 1960s. This phase continued the policies and practices of paternalism and segregation, but appropriately adjusted to accommodate the labour needs of capitalist expansion. Zenadhaw Mabaygka participation in the money market economy took place in the context of each of the three phases of markay danalgiya puydhay. This integration into zagethaw mothaabi midhikidh yoewthika occurred under conditions determined by others and mostly in contradiction to their traditional kin-based mode of production, culture and traditional system of governance. The two aspects of the introduced economy most resented by Zenadhaw Mabaygka were forced labour and controls over their earnings.

Nevertheless, Zenadhaw Mabaygka were enthusiastic about participation in the marine export economy (aber, kabar and mai). Zenadhaw Mabaygka resented government policies, which denied their humanity and their desire to control their own livelihoods and futures (Beckett, 1987: 57-60). Although the Queensland government made some concession, the policy of maintaining broad allegedly protective controls over Zenadhaw Mabaygka' lives continued for several decades under the *Aboriginal Protection and Restriction of Sales of Opium Act 1897* (Qld).

#### ***4) Maritime Strike - 14 January 1936***

It wasn't until after Zenadhaw Mabaygka staged a major strike in 1936, that Zenadhaw Mabaygka had a direct say in the management of the Zenadh wapiw. On January 14 1936, 398 men or about 70 per cent of the total Zenadhaw Mabaygka workforce in one of the world's richest pearl shell industry, which includes both trochus and pearl shells, went on strike (Sharp, 1980: 1-5). As Manzie explains, Zenadhaw Mabaygka have always maintained home island orientation, but in this issue they found they had common interests and were frustrated by the same imposed restrictions (Manzie, 1988: 37). As Sharp (1980) sums it up, the goal of the strike was that Zenadhaw Mabaygka wanted to manage their own affairs. The strike itself lasted one year and it took the most experienced officers the Queensland Administration could muster to settle it (Sharp, 1980: 1-5). Its outcome was a definite victory for Zenadhaw Mabaygka in terms of self-management and it also illustrated their capacity to be self-sustaining outside the cash economy.

At the end of 1936, amendments to the *Aboriginal Protection and Restriction of Sales of Opium Act 1897* (QLD) allowed the powers of the government teachers, the Aboriginal Industries Board (AIB) and the Protectors to be transferred to the local Zenadhaw Mabaygka Councils (Sharp, 1993: 210). During

August 1937, thirty-four elected Councilors from fourteen Zenadhaw Mabaygka communities met at Masig in the presence of Mr. CD O'Leary (Deputy Protector). The conference resolved matters concerning the sale of pearls, registration of fishing grounds and Councilors' wages (Sharp, 1993). The conference was also the opportunity to ask the Commonwealth Government to put Zenadhaw Mabaygka as a community/group of people on the same footing as other mabaygal of Kie Daudai with regards to maternity allowances and training.

The strike of 1936 and the First Inter-Island Councilors Conference of 1937 were essential steps for Zenadhaw Mabaygka in their pursuit to take care of their own affairs. But with respects to fishery management, much more was needed to be done. Zenadhaw Mabaygka at this time were more concerned with concepts such as autonomy, self-governance and self-determination. As Arthur (2001) states, 'Islander leaders have over the years voiced their desire to change their political and economic situation'. Thus, their primary focus at the time, as Arthur states, was to establish 'a form of regional self-government, possibly like that of an Australian External Territory' (Arthur, 2001: 14). Nevertheless, primary control of the region's resources, power and benefit sharing for Zenadhaw Mabaygka are issues that are not far behind.

### ***5) Autonomy and Zenadh Kes***

"In our region, we disagree about many things, and we speak our minds frankly. But we have no disagreement on land rights, sea rights, who we are, the fact that we are a distinct people, and that we wish to govern ourselves" (Lui Jr, 1995)

Autonomy is a multifaceted concept and different users of the word tend to emphasise different interpretations of its meaning. According to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (1997), in the case of Zenadh Kes and its inhabitants, autonomy has three dimensions. Firstly, autonomy has been used to refer to some form of enhanced self-government for the Zenadh Kes region but in way not implying secession from Kie Daudai. Reference has usually been made to improving the structures of representations to give those governed more say or control over the decisions that affect them and a more effective way of influencing Commonwealth, State and local governments.

Secondly, autonomy refers to the desire of Zenadhaw Mabaygka to have greater control over the region's natural resources and government expenditure involving the Zenadh Kes region. Commentators referring to autonomy in this context are usually seeking the establishment of a stronger and independent economic base for the region and greater involvement by Zenadhaw Mabaygka in existing activities, including the fishing industries (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1997: 34-37). Thirdly, autonomy has been referring to the desire of Zenadhaw Mabaygka to 'maintain their culture, identity, values and traditions as a separate distinct group of Indigenous people'.

Through seeking autonomy Zenadhaw Mabaygka aspire to assume primary control of resource and environmental management over the region's natural resources. As Sanders & Altman state, 'this means, primarily, increased control of the fisheries (Sanders & Arthur, 2001). As the previous TSRA chairman, Terry Waia states,

"Islanders needed to be included in decisions on issues such as fisheries... where input is limited... we have very little control over that ... Licenses are issued by the Queensland Government and we'd like our people in the top positions and maybe one day the authority will be given to the people (Waia in Cairns Post, July 9, 2001)

As Altman et al (1996) state, 'the fishing industry is the largest industry in the Torres Strait' (Altman et al, 1996: 9-10). Altman et al (1994) calculated a value, to the fishers, of \$26.7 million in 1992, but has estimated that the potential value of the Zenadh wapiw may be worth up to \$40 million, with a possible increase in utilisation being primarily in the lobster fishery (Altman et al, 1994). The PZJA Annual Report stated, 'commercial fishing is the most economically important activity in Zenadh Kes and provides the greatest opportunity for financial independence and stability for Zenadhaw Mabaygka communities in the region' (Protected Zone Joint Authority Annual Report, 2002: 8).

The current fishery governance regime in Zenadh Kes, the PZJA, has a policy in theory of maximising the opportunities for Zenadhaw Mabaygka participation in all sectors of the fishing industry, and has limited non-islander participation in the TSPZ fisheries. Since 1985 the PZJA has prevented further expansion by this group through the requirement that non-islanders must purchase an existing license to gain access to a fishery (PZJA Annual Report, 2002: 8). Growth in the Zenadh wapiw, where there is scope for expansion, has been reserved exclusively for Zenadhaw Mabaygka. However, Zenadhaw Mabaygka participation in the actual governance structure is that of an advisory role, not a decision-

making role. Therefore, Zenadhaw Mabaygka have the forum to voice their concerns about issues in the fisheries, but the final decisions are out of their hands. There is thus, no real power sharing.

The fisheries clearly are the significant economic basis for Zenadhaw Mabaygka. Control and influence over this economic basis is a joint effort between Zenadhaw Mabaygka, stakeholders and government officials. However, primary control and influence reside with government officials, the Commonwealth and Queensland ministers responsible for fisheries. These ministers jointly head the PZJA. Altman at el assert, 'this pattern of control and influence could be significantly renegotiated as part of a move towards regional self-government, with local representatives structures assuming greater roles than at present (Altman at el, 1994: 10-11). However, in reality renegotiating influence and control with government is a task that is easier said than done. This thesis takes the view that such a re-arrangement of governance mechanism is consistent with the spirit of the Treaty and its enabling legislation.

Altman at el (1996) highlight another noteworthy avenue for renegotiation of control and influence over resources and the fisheries is through the native title processes. Claims have been made in Zenadh Kes, covering both land and marine aspects. How these might progress, alongside moves towards regional self-government, is at this stage largely unknown (Altman at el, 1996: 11). However, any future determination that recognises Zenadhaw Mabaygka property rights in marine resources would certainly be a significant development. Zenadhaw Mabaygka have been successful with Native Title determinations except on the vexed matter of Native title claims to sea country.

## ***6) Native Title***

According to Brennan, one of seven justices that heard the Mabo case in the High Court of Kie Daudai and whose opinion is jointly endorsed by Chief Justice Mason and Justice McHugh, describes Native Title as the following:

"I use the term "native title" to describe Indigenous inhabitants' interests and rights in land, whether communal, group or individual, under their traditional laws and customs. Native title has its origins in, and gets its content from, the traditional laws and customs of the Indigenous inhabitants. To discover the nature of native title we must look to those laws and customs" (Brennan in Butt & Eagleson, 1996: 40)

The Kie Daudai Government codified this definition of Native Title. Its definition, as stated in the *Native Title Act 1993* (Cth) Part 15, Division 2 - Section 223, Subsection 1, definitely produces similarities with respects to Indigenous interests and rights:

## 223 Native Title

Common law rights and interests

The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

- the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
- the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
- the rights and interests are recognised by the common law of Australia.

However, the Kie Daudai Government's definition of native title includes Indigenous interests and rights to waters as well as to land. Wanganeen (2003) highlights in his speech given at the Indigenous Fishing Rights: Moving Forward 2003 conference held in October at Fremantle, Western Kie Daudai, the fact that there is no distinction between land and water for Indigenous peoples when referring to their country:

"Aboriginal and Torres Strait Islander people have 'never' drawn a distinction between the land and the waters that flow over, rest upon or flow beneath it. The land and the waters are equal components of 'country' all that requires care and nurturing and for which there are on-going responsibilities" (Wanganeen, 2003, ATSIC Commissioner, South Australian Zone)

According to Mulrennan, Zenadhaw Mabaygka aspirations to assume primary control of the fisheries may be reshaped through Native Title recognition. The 1992 High decision on Mabo gave Mer (Murray) Islanders recognition of their ownership to land above the high water mark. According to Haigh (1993), the Mabo case, as originally conceived, included a claim to Customary Marine Tenure over sea territory extending to three nautical miles. Moynihan J, of the Queensland Supreme Court, did not proceed with

this claim after a preliminary finding found that it had no substantive basis in fact. However, Haigh explains that although the findings of Moynihan J. effectively truncated the sea from the land claim, it did make mention that customary marine tenure existed at Murray Island (Haigh, 1993: 537). His Honour found:

“Theirs was a system providing access to the produce of the reef flat areas and that boundaries played a role in this. This system has however been lost and replaced by a more pragmatic approach. I would not therefore be inclined to conclude that the plaintiffs have any rights which they claim to the areas of the reefs and reef flats” (Haigh, 1993: 537)

This was a result never intended by the claimants. To them the land included their sea territories. It was also a finding that the Kie Daudai judicial system is an inadequate forum for traditional claims by Indigenous people. The findings, according to Haigh, are sculptured by the High Court’s inquiry process and the lack of a complete anthropological study into the people of Murray Island and their Customary Sea Territories (Haigh, 1993: 537). Haigh (1993: 538) makes the following observations:

The Inquiry was conducted by a Judge conditioned by an Australian European legal background and training and unversed in Indigenous people and their culture, customs, laws and spirituality;

The Inquiry relied on the procedures of an Australian Court and upon evidence submitted under Court rules and tested by the adversary system. This process provided an alien place and created an unnecessary distortion in the evidence which was of necessity based upon traditions and customs of a society with little or no relationship to the court or the society it represents;

The Inquiry focused on the narrow terms of reference of the High Court. It was “not free ranging inquiry into Murray Island and its people”. However, such an Inquiry was needed if the Court was to comprehend the central role that sea and land claims play in Murray Island society. A central role in the Inquiry was played by the various experts called to give evidence before the Inquiry. However, the most important evidence was not received by the Court – namely an anthropological study of the sea territories of Murray Island. It is anomaly in the research base of the Torres Strait that no substantive study has been made specifically on the issue of customary sea territories.

These flaws in the process allow the conclusion that the findings as regard the issue of customary sea territories are open to dispute. However, the principles enunciated by the Court form a legal baseline from which it is possible to assess a claim by Zenadhaw Mabaygka to customary marine tenure over their traditional sea territories.

As Haigh explains, the High Court found that a bundle of rights known as native title existed at the time of the colonisation of Kie Daudai. The rights found provide for the occupation, use and enjoyment of land according to the owners' customary laws. Further native title is to be found if, inter alia, there is a traditional connection with or occupation of the lands and a substantial maintenance of that connection. However, it can be extinguished by the actions of the Crown that are stated clearly in legislation or where some Crown action is inconsistent with its ongoing existence (Haigh, 1993: 538). On those criteria Zenadhaw Mabaygka have a valid legal claim to their customary sea territories under the principles of the Mabo case. A sea claim covering the entire Zenadh Kes region was lodged in late November 2001 on behalf of the Zenadhaw Mabaygka by the TSRA. Zenadhaw Mabaygka seek to have recognition of their right to use and manage the reefs, seas and seabeds below the high tide mark (Mulrennan, 2001: 308).

The first case that involved a sea claim ultimately went before the High Court on appeal, *Commonwealth of Australia v Yarmirr (2001) HCA 56*, from this the Indigenous people of Croker Island lodged a sea claim covering internal waters, territorial sea and associated seabeds generally up to the low water mark adjacent to the Kie Daudai mainland and islands occupied by the Croker Island mabaygal. All the islands in the claimed area had previously been granted under the *Aboriginal Lands Rights (Northern Territory) Act 1976 (Cth)*. The claimants sought recognition of their rights to exclusive possession, ownership, occupation, use and enjoyment of the sea and seabed and its resources.

Justice Olney's decision in the Federal Court was the first determination of native title over the sea and seabed (Morris, 2001: 1-6). In this instance Justice Olney found that:

- native title existed in relation to the sea and seabed within the claimed area; but
- the native title rights and interests did not confer any exclusive rights on the claimants.

In other words, the claimants have the right to their traditional use of the seas, but they cannot prevent others from fishing or carrying out commercial activities in the area. Levy (1998) explains:

"The applicants' native title was found to be non-exclusive of other interests, and to be limited to personal, domestic or non-commercial activities such as fishing for subsistence or cultural purposes, access to areas of sea, protecting places of cultural and spiritual knowledge, and safeguarding that knowledge. The native title does not include a right to trade in resources of the sea" (Levy, 1998: 1-5)

This decision was appealed to the Full Federal Court by both the claimants and the respondents, the Commonwealth Government. A majority of the Full Federal Court dismissed all of the appeals, effectively endorsing the decision of Justice Olney. According to Morris, the majority accepted the view of Justice Olney that recognition of a claim for exclusive possession of the sea should be denied because it would 'fracture a skeletal principle of our legal system' (Morris, 2001: 1-6). This decision was also appealed by the claimants and the Commonwealth Government to the High Court of Kie Daudai.

The High Court rejected both of the Commonwealth's arguments; 1) that common law does not extend below the low water mark and 2) native title could not exist beyond the low water mark. The claimant's argument was also rejected by the High Court based on two reasons. As Morris explains, firstly the majority held that the trial judge had found evidence that indicated that the requirement to seek permission to enter another's country only applied between Kaimel kulka mabaygal. Secondly, the majority held that there is a fundamental inconsistency between the asserted native title rights and interests and the common law public rights of navigation and fishing, as well as the right of innocent passage (Morris, 2001: 3). Mulrennan states that, Zenadhaw Mabaygka hope that their sea claim will result in a more beneficial judgment given the predominance of the sea for their cultural identity and economic prospects (Mulrennan, 2001: 308). If this recognition is granted to Zenadhaw Mabaygka, it will be a milestone for Indigenous mabaygal in Kie Daudai.

Under native title, there has been some confusion as to what fishing rights Indigenous peoples are entitled. There are two types of related but distinct rights in fisheries. These are now understood as open to Indigenous mabaygal as part of Indigenous rights to self-determination. These are customary fishing rights and commercial fishing rights. While customary fishing rights speak to rights of cultural self-determination and the preservation of a distinctive identity, commercial fishing rights are an important part to economic self-determination. The *Native Title Act 1993* (Cth) protects the traditional fishing rights to those successful claiming sea country, but it appears that these rights are restricted to personal, domestic and non-commercial use. According to Garlett (2003), 'the Kie Daudai Government appears to accept this narrow and non-commercial definition of native title fishing rights' (Garlett, 2003: 1-3). This definition of fishing rights has dominated provisions in statute law, the trend in court decisions and government policy. However, as Wanganeen states, 'there is available evidence of a long standing and legitimate interest by Indigenous communities to derive returns and opportunities from the commercial fishing industry' (Wanganeen, 2003: 1-9). Indigenous communities have made calls to

successive governments for a right to commercial participation in fisheries to be made part of Kie Daudai law.

## Conclusion

Zenadhaw Mabaygka have endured some pretty dreadful yet exhilarating experiences with their participation in the Zenadh wapiw. Their knowledge of the seas and fisheries passed down from generation to generation has allowed them to efficiently survive and compete as fishermen. With the advent of markay danalgiya puydhay and zagethaw mothaabi midhikidh yoewthika Zenadhaw Mabaygka with their traditions and culture had to contend with two different influences with different aims (Manzie, 1988: 24). Zenadhaw Mabaygka were forced to adapt and adapt they did by gaining minor independence through owning and operating their own fishing boats. As for participating in the management of these fisheries it is uncertain. Although participation in management by Zenadhaw Mabaygka is of a greater capacity now then it was 100 years ago, Zenadhaw Mabaygka still aspire for total control.

Autonomy and Native Title are deemed to be valid avenues for Zenadhaw Mabaygka in securing a greater capacity in the management of the Zenadh wapiw. By pursuing autonomy, Zenadhaw Mabaygka have secured an active advisory role in the current management regime. The literature indicates that there are a few issues that need to be sorted and that a lot more needs to be done with regards to policy and legislation. However, Zenadhaw Mabaygka through various forums has indicated that this is their right as Indigenous mabaygal and that it should be recognised.

## Gizu II: Adhiw muyiw gima a dan – angay zinga (Chapter 3: Insider Status and Methodology)

### Yadpalgay

This gizu describes my journey as a Zenadhaw Mabaygka and a student researcher in the exploration and analysis of the current fishery arrangements in Zenadh Kes. There are two main parts to this chapter. The first describes the theories that have influenced me and determined the methodological framework for the research. The second section describes the data collection methods, and methods chosen for data analyses.

#### *1) Theoretical Influences on Methodology*

This gizu begins with a self-narrative, briefly highlighting my genealogy, cultural ties to my country and the connectedness I, as a Zenadhaw Mabaygka have with the land and sea. This part is to put in context how being a Zenadhaw Mabaygka influences the methodology used later in the study. This gizu also introduces a number of ethical dilemmas that I was presented with as a researcher conducting insider research in an Indigenous community. The ethics of research in Indigenous contexts, the ethics of insider research and the advantages and disadvantages that I confronted are analysed in this first section. Also discussed in the first part of this chapter is my choice of methodology and approach to evaluation and how it was influenced by my identity and ethical principles appropriate to the research context.

#### *1a) Ne mila gaz: Where you from?*

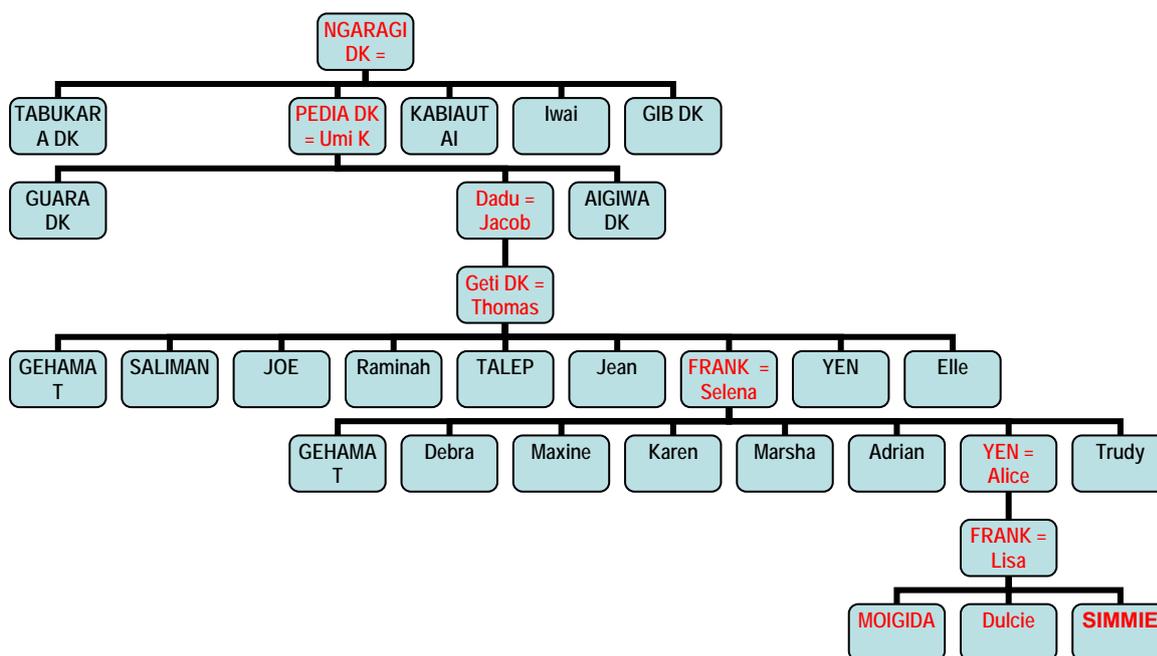
'The protocol for introducing one's self to other Indigenous people is to provide information about one's cultural location, so that connection can be made on political, cultural and social grounds and relations established' (Moreton-Robinson, 2000: xv)

When people ask me where I am from I say I am from Zenadh Kes, but saying just that is not giving my full identity. We Zenadhaw Mabaygka have a strong sense of identity about which region, island, buai (tribe) and awgadh (totem) we are from. An awgadh, as Bani (Bani in Davis, 2004: 151) explains, is the centre of Zenadh Kes traditions. It is not a god or deity as neither some perceive nor is it an idol of worship. It is a flag that stands for a nation, a banner for a club, a crest signifying a particular family. An

awgadh is not necessarily for worship but a focal point for identification or a common solidarity of a certain group attached to it. This is how an awgadh is accepted in Zenadh Kes.

For the purposes of the research I will briefly describe my genealogy to highlight the traditional connection I have with the land and sea. I am what you would call a western Zenadhaw Mabaygka. My athe (grandfather) on my thaathi's (father) thaathi side is a direct descendent of Ngaragi (Fig. 1). Ngaragi was only known by one name; in his time this was common for all Zenadhaw Mabaygka. They only began to use two names when the invasion of Kie Daudai began and Markay needed to record their existence. Ngaragi is of the Dhangal Kodal buai of Mabuiag. His awgadh is the dangal and the kodal. The Dhangal Kodal (DK) buai are the tradition custodians of the Panai area on the northernmost point of Mabuiag. On my thaathi's apu side I am a direct descendent of Maria. Maria is of the Daibun (wild yam) buai of Boigu. The location of traditional lands of the Daibun buai on Boigu is a little uncertain; however it was told to me by my thaathi that where the daibun grew was ultimately where our traditional land and seas were. My direct line is highlighted in red.

Fig. 1



My apu through her athe, her thaathi's thaathi, is a direct descendent of Waika (Fig 2.). Waika is of the Kodal buai of Mabuiag. The Kodal buai's traditional land and sea is located at Mui on the eastern side of Mabuiag.

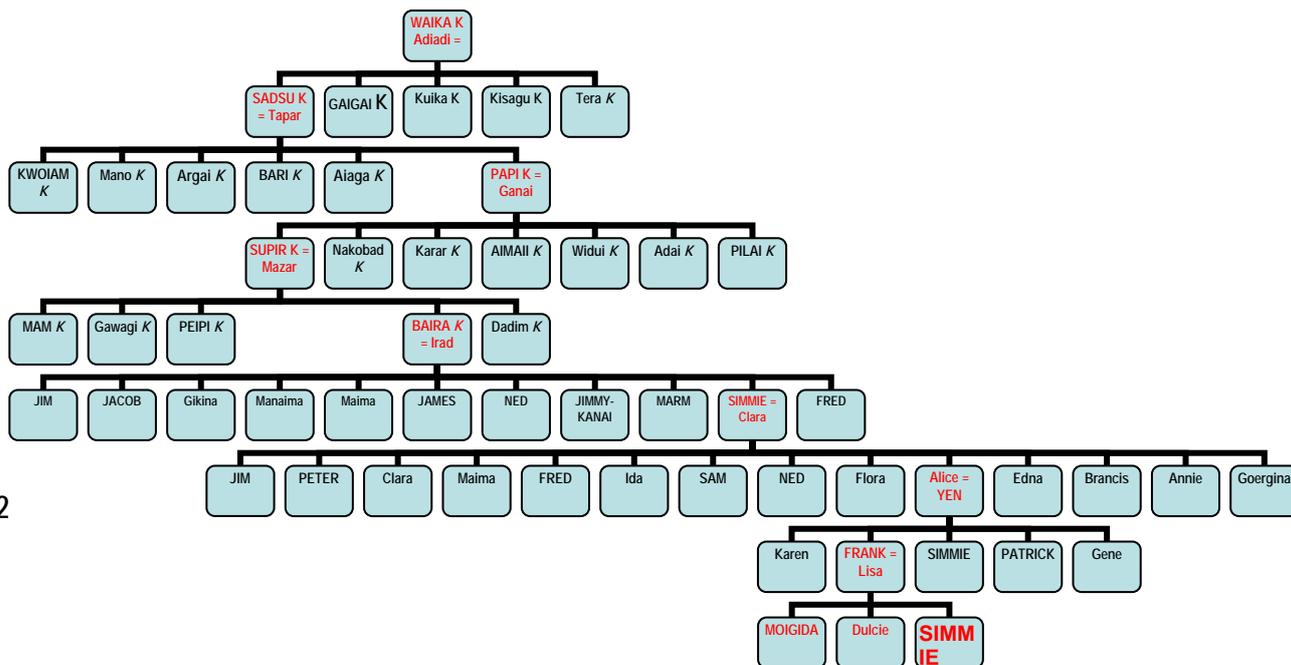
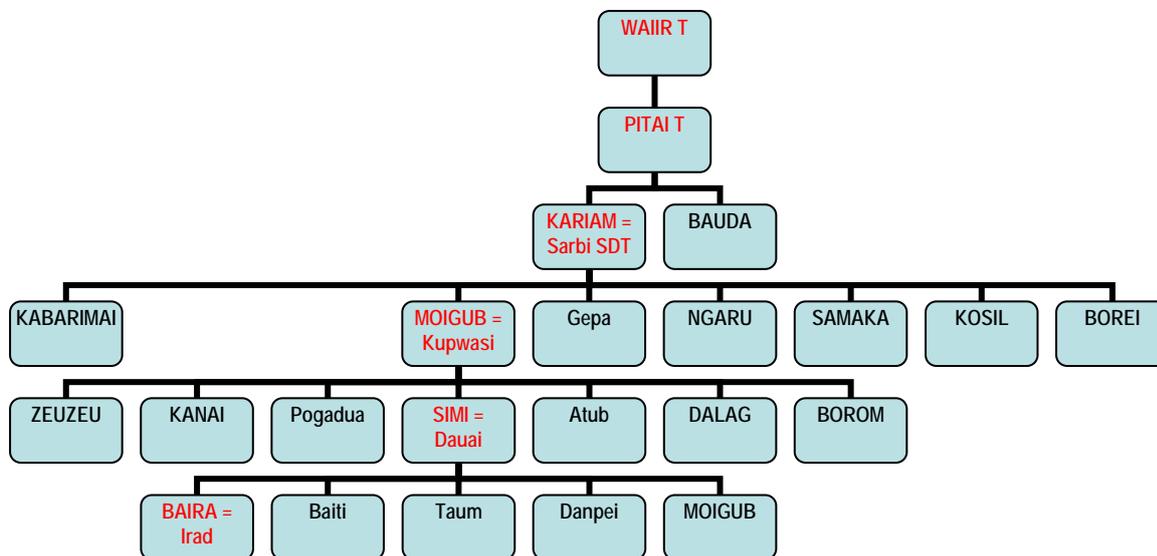


Fig.2

However, my apu's aka, on her thaathi's side, Irad, is a descendent of Waiir (Fig 3.). Waiir is of the Tupimul (Grey spiky string-ray) buai of Badu. There lands are located at the north-western side of Badu.

Fig. 3



My birthright, through my awgadhs, traditionally connects me to the lands and seas of Besi, Badu, Moa and Boigu. Under traditional custom, I am a member of these buais and I have an obligation to sustainably use the resources that are upon or within the lands and seas within my traditional boundaries. You see I have a moral obligation to sustainably use the resources of my land and seas

according to my traditional culture and law because it is my mura-thonaraw-danalayg balbalgiza-aymay as a Zenadhaw Mabaygka. This knowledge has been passed down onto me by koey maykuykul (older generation) Zenadhaw Mabaygka members of my family. Through learning to hunt and interacting with my environment I have learnt a lot. However, I am yet to be initiated in my culture and cannot comment in dept on certain issues. This inheritance of my traditional law, land and seas influence me in my journey when determining what methodology is appropriate for my research.

## *2) Researching in Zenadh Kes – A Question of Ethics*

Researching in the Indigenous context, although being new to me is a practice that has gone on for several centuries. Thus designing an appropriate research methodology that considers the context and culture of the research context as well as the research question is paramount (Bryman & Burgess 1999, Marshall & Rossman, 1999). In addition, the question of ethics are mandatory in any well-designed study and universities provide for this with a system that determines if a research proposal meets ethical requirements before approving the research. In this research, the James Cook University and the National Health and Medical Research Council Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research guidelines set the standards for conduct. The six values that lie at the heart of these guidelines are (NHMRC, 2003):

- Spirit and Integrity;
- Reciprocity;
- Respect;
- Equality;
- Survival and Protection; and
- Responsibility

Also as a CRC Torres Strait Research student I consulted the CRC Torres Strait Guidelines for Researchers and the Mina Mir Lo Ailan Mun: Proper Communication with Torres Strait Islander Peoples Booklet. This booklet was developed by the Department of Aboriginal and Torres Strait Islander Policy (DATSIP) to guide researchers about the issues concerning Zenadhaw Mabaygka and research.

In the past and now in the present my people have echoed their concerns about researchers coming to Zenadh Kes, conducting research on the mabaygal and its resources, and taking their knowledge away

and using it for their benefits and not theirs'. Often times the outsider researchers provide no direct benefits to the mabaygal and region; have no direct contact with the mabaygal and have gone before anybody knew who they were and what they were there for. Smith (2005) states 'for Indigenous communities, research ethics is at a very basic level about establishing, maintaining and nurturing reciprocal and respectful relationships. Therefore, the ability to enter pre-existing relationships; to build, maintain and nurture relationship; and to strengthen connectivity is an important skill to have especially in an Indigenous arena' (Smith in Denzin & Lincoln: 2005). This was a personal challenge for me even though I am a Zenadhaw Mabaygka, because it was the first time that I conducted formal research in Zenadh Kes on Zenadhaw Mabaygka.

The mabaygal of Zenadh Kes also see too many researchers' in Zenadh Kes for their own self-benefit. Familiar comments around Zenadh Kes by local mabaygal are, 'A who da that one?', 'Wane em here for?' and 'Kole nuther white mun ya for take you me knowledge gor for wanem?' Zenadhaw Mabaygka as Indigenous mabaygal are unsure and tired of being researched and are critical of government intervention within their communities. Sue & Sue (1990) discuss how minority groups are 'pathologised' by western research methods and that such research is often used to perpetuate stereotypes. They point out that historically research followed two models: the genetically deficient model or the culturally deficient model (p.18). The genetically deficient model, adhered to at the turn of the century, pathologised minorities and research tended to support racist notions of minority inferiority and white supremacy. The culturally deficient model which followed in the 20th century viewed minorities as deviant and deficient due to cultural impoverishment. Both models depict dismal pictures of Indigenous mabaygal from a western scientific perspective, thus experiences from the past have made Indigenous mabaygal questionable and critical of future research within their community.

Research questions that focus on the problems in Indigenous contexts are another issue. Questions such as "Why are there are greater number of Indigenous youths in detention?" which continue to be posed by non-Indigenous researchers are generally based on the misguided premise of solving the problem for the benefit of the Indigenous people concerned (Hart & Whatman, 1998, Smith, 1999). Although perhaps useful in determining necessary policy and systemic change that need to occur, this type of research often has little meaning and is of limited use to the communities for which benefit of the research was intended.

Another issue that is a recent phenomenon and an important issue for Indigenous mabaygal is the commercialisation of knowledge. Indigenous peoples' intellectual property rights are being exploited in

many and diverse ways. Works of art are misappropriated and Indigenous peoples' biological resources, knowledge and human genetic materials are collected and patented without due recognition being given or benefits distributed to the Indigenous peoples concerned (Davis, 1997). Ownership of the knowledge produced by research and the use of this knowledge is now questioned by Indigenous mabaygal including Zenadhaw Mabaygka. Being an Indigenous person I have assured my elders and the research participants that guidance will be given to me when dealing with the issues of ownership of knowledge and its usage from them.

Their guidance is vital because it is their knowledge and their voice that is being used in this research. Therefore, according to cultural law, it is respectable and out of obligation that the way in which this knowledge is used should be directly influenced by them. Being a Zenadhaw Mabaygka I am fully aware of the issues of research being done in the Zenadhaw Mabaygka communities. To address these issues, I define my position in relation to the research and adopt a methodology that benefits and privileges Indigenous mabaygal and communities. Therefore, the research framework that is needed in my project will be critical, reflexive and be able to honour the voices of the Indigenous participants.

### ***3) Being an Insider***

Doing 'Insider Research' is research undertaken by persons who have been members of an organisation, group or culture under research for a period of time or eternally. Being an 'insider researcher' has both its advantages and disadvantages. Some of the advantages include the fact that when one studies the group to which one belongs, one can use one's knowledge of that group to gain deeper insights into their opinions and experiences (Rose, 2001). It was obvious from the outset of my insider status, being a Zenadhaw Mabaygka, having being taught the culture and actively involved within the community at traditional ceremonies and events. Most of the research participants knew my genealogy, where my family was from, what my totems were, and in some cases how I was related to them. In addition, some of them knew that I and several members of my family are fishermen in Zenadh Kes.

In addition the access to research participants was enhanced greatly because of the status my thaathi had within the Zenadh Kes community and fishing community. He himself is a self employed Outboard Mechanic and he sells boats and outboards on Waibene. Through his daily work and being the sole Indigenous Outboard Mechanic on Waibene, he comes into contact with a lot of the Indigenous and

non-Indigenous community that, as a result, has allowed him to build a well-known reputation throughout Zenadh Kes. When I mentioned whom my thaathi is, the research participants visually seemed a lot more comfortable and relaxed during the interviews.

However, as Merriam et al. (2001) suggests it has 'commonly been assumed that being an insider means easy access; the ability to ask more meaningful questions and most importantly be able to project a more truthful, authentic understanding of the culture under study' (p. 411). But on the other hand, there are concerns that insiders are inherently biased and are too close to the culture and people to be critical. Therefore, with this in mind I am quite aware of the disadvantages that come with doing 'insider research'. My choice in methodology, me being a Zenadhaw Mabaygka conducting research in Zenadh Kes on Zenadhaw Mabaygka allows my research to be heavily scrutinised for subjectivity, but as Herzog puts it, 'as if the only legitimate subject of study is someone that is far removed from the researcher's experience' (Herzog in DeMarrais, 1998: 158). I am also aware that my presence and the topic of my research can unintentionally raise the expectations of research participants and the community in general as to the outcomes of the project.

Deyhle argues in her experience as a researcher is that researchers who do not acknowledge the effects of their presence on the community being studied are not aware of the realities of the drama unfolding around them (Deyhle in DeMarrais, 1998: 47). Another foreseeable disadvantage is the repercussions the project's outcomes can have on myself, my family and research participants. What I mean by this is that if the project has a positive effect for the Zenadh Kes community, my family and I will receive praise. But if the impact is negative, then ridicule of my family and me from the community will be rife and this could last for several years. This could also be said for the members of the community who participated in the research project.

#### ***4) Methodology***

By providing a self-narrative earlier in this chapter, I am claiming and declaring my genealogy and my ancestry (Moreton-Robinson, 2000; Smith, 1999). In making these distinctions, I have identified and described elements of what Rigney expresses as 'Indigenist Research' (Rigney, 1997). My identity was a contributing factor in my choice as to what theories and what research methodology was best suited to this research. But the aim of my research was to examine the PZJA's structure and objectives, and

whether or not it is satisfying Zenadhaw Mabaygka concerns and aspirations from a Zenadhaw Mabaygka perspective.

To achieve this I used the most appropriate methodologies I saw fit: critical qualitative methodology in conjunction with Indigenist research methodology. Neuman states, 'critical researchers conduct research to critique and transform social relations. They do this by revealing the underlying sources of social relations and empowering people, especially less powerful people. The purpose of critical research is to change the world' (Neuman, 2000: 76). As for Indigenist research, Rigney states, 'is carried out by Indigenous Australians whose primary informants are Indigenous Australians and whose goals are to serve and inform the Indigenous liberation struggle to be free of oppression and to gain power' (Rigney, 1999: 118). Both research methodologies had a role to play in the research and from the outset, complemented each other, allowing me as a researcher to critique the PZJA consultative structure to explore and discover alternative arrangements that would satisfy Zenadhaw Mabaygka concerns and aspirations for authentic benefit and power sharing.

## ***5) Research Methods***

Being an indigenous researcher and using a critical Indigenous framework made it quite obvious that qualitative research methods were more applicable. Qualitative methods are useful, to explore and understand people's experiences, feelings and beliefs, and to make statements about how people interpret and structure their lives (Holloway & Wheeler, 1996). I believe, as an Indigenous researcher, that qualitative research methods will give a true reflection of Zenadhaw Mabaygka perceptions of the current social structures, relationships and themes that exist within the fishery governance regime in Zenadh Kes. Moreover, quantitative data is limited with regards to Zenadhaw Mabaygka and their views and aspirations on fisheries management and the relevance of the current fishery regime. Therefore this researcher used qualitative research methods. These research methods are as followed:

### ***5a) Interview***

The interview is particularly useful for getting the story behind a participant's experience (McNamara, 1999: 1-4). The participants I involved in the research are Zenadhaw Mabaygka that represent the Zenadhaw Mabaygka fishermen at various levels of the consultative structure of the PZJA. One participant is located at the Executive level of the PZJA consultative structure; one is located at the

management level; two were at the grass roots level and the final participant had an external status, however, had an advisory role at the grass roots level.

The interviews were conducted to attain Zenadhaw Mabaygka perspectives on whether the PZJA was satisfying Zenadhaw Mabaygka concerns and aspirations. In an interview, the interviewer can pursue in-depth information around a certain topic (McNamara, 1999). Therefore the general theme of the interview was mainly focused around the participant's point of view and how the participant perceived current PZJA processes and policies.

Before I started to design the interview questions and process, I articulated the problem or need that was to be addressed using the information I would gather from the interview. As a result, this strategy kept my mind clear and focused on the intent of each question. I then move onto designing my questions (as seen in Appendix Seven). Being an Indigenous researcher and using critical social science methodology, I knew a majority of the questions would be decisive of the PZJA, its consultative structure and objectives. To develop the actual wording of the questions I took a critical social science approach and consulted several works of Harvey (1990). As Harvey states 'you need to ask yourself why things are as they appear to be, but frame the question, not in terms of 'what are the causes?' or 'what does this mean?' but rather as 'how come this situation exists?'. Harvey later goes onto explain that, 'you need to think in terms of 'how has this come about' and 'how does it persist?', also ask 'how is it that people accept what is clearly is not in their interest?' (Harvey, 1990: 209). I knew that I needed to ask these types of questions to tests my theories and also to get a clearer picture of what I really needed to ask.

Dorothy Smith, an advocate of the feminist standpoint theory suggests that feminist standpoint epistemology makes the basic sociological move that, if you want to understand society, you need to understand it from the perspective of the people who are participants in it (Smith, 1997). In addition, she states that feminist standpoint methodology begins with people's experiences; it focuses on the everyday experiences of people who have been excluded from the dominant white male heterosexual standpoint. We Zenadhaw Mabaygka slot into this category fairly comfortably considering we are a minority within a minority and have been oppressed by the dominant white society of Kie Daudai since the outset of markay danalgiya puydhay. Standpoint methodology rejects the idea that there is only one true standpoint, highlighting the subjective and political nature of all knowledge.

I flew back to Zenadh Kes and conducted interviews at a negotiated time and dagam with the research participants. I was able to conduct three face-to-face interviews during this time. Two other interviews were conducted over the phone after returning to Townsville. This was due to the fact that these participants at the time were unavailable. The telephone interviews provided the next best source of information after the face-to-face option. The drawbacks of this approach are that the researcher cannot see the informal communication, and the phone expenses (Creswell, 1998). The questions I chose to ask allowed the interview to be standardised and have an open-ended nature. A standardised, open-ended interview is where the same open-ended questions are asked to interviewees (an open-ended question is where respondents are free to choose how to answer the question, i.e., they don't select "yes" or "no" or provide a numeric rating, etc); this approach facilitates faster interviews that can be more easily analysed and compared (McNamara, 1999). I found this interview type to be the most suitable and preferred, especially when dealing with the current topic and Zenadhaw Mabaygka.

Ethical considerations were a major component in this Indigenous research, given the negative history of previous research. The sensitive nature of studying this topic in Zenadh Kes requires that ethical dimensions be addressed in the research design and methods. Accordingly, ensuring a high standard of ethical conduct during and following negotiations with research participants remained a priority during the research. I wish to acknowledge that I have consulted and adhered to research protocols recommended to the researcher by the TSRA and CRC – Torres Strait when conducting research within Zenadh Kes.

At the beginning of the interview session, the interviewee was provided with an explanation of the research enquiry, and informed consent was sought for participation. A signed copy of the consent form was obtained in alignment with university ethical requirements. The informants were then made aware that because James Cook University is a critical site in the observation of the research phenomenon, it may be impossible to guarantee anonymity, but confidentiality will be maintained on all accounts.

Techniques of data collection throughout the interview process included audiotape recordings and field notes. The interviewee was made aware of this intention, and permission to carry out the procedure was requested. Such techniques will assist the production of a comprehensive and accurate record of the interview session. Accurate recall is conducive to validity and integrity of the research. No copies will be made from the original tape and transcript safely stored in lockable storage at James Cook University (Douglas Campus). The issues of intellectual property rights has been a major issue in recent years and has reflected a heightened awareness of the need to protect the ownership and

integrity of Indigenous historical and cultural expression. The research methodology will reflect the need to ensure information provided by the participants will not be appropriated for academic/or commercial purposes without their prior knowledge, understanding and informed consent.

I choose to use three types of topic questions:

- 1) Opinion/values – about what a person thinks about a topic;
- 2) Knowledge – to get facts about a topic and;
- 3) Background/demographics – standard background questions, such as age, education, etc.

Before carrying out the actual interview I informed the participant about the purpose of the interview, addressed terms of confidentiality, explained the format of the interview and I also indicated how long the interview usually takes. I also asked if the interview could be recorded and if research participants had any problems with that. I also gave the participant contact details in case they wanted to contact myself later and indicated that personal notes would be written down. During the interview I asked one question at a time, I attempted to remain as neutral as possible and allowed for enough transition between topics. I also made sure that I didn't lose control of the interview. Immediately after the interview I thanked the interviewee for participating and reassured them about confidentiality.

Justification

My justification for using the interview research method was decided whilst considering basic questions.

These questions included:

- 1) What type of information am I after?
- 2) Where am I going to get it?
- 3) How am I going to get it?
- 4) Will the information be relevant and or accurate?

Therefore with the research topic in mind, I knew the information I wanted was the actual concerns and aspirations of Zenadhaw Mabaygka that were involved in the consultative structure of the PZJA. This meant information from Zenadhaw Mabaygka that actually living in Zenadh Kes. As Dane states, 'an interview is typically used when respondents consist of a specific group chosen for their familiarity

with the research topic' (Dane, 1990: 129-130). This researcher has examined other research methods but has come to the conclusion that this type of information should be attained through an interview.

Questionnaires, surveys or checklists can sometimes be misinterpreted by people and not be filled out properly. Moreover, the information given or recorded can possibly be limited due to language barriers or unfamiliarity by participants' with filling the forms out. Therefore, the information given may not truly reflect the participants' point of view. Also sending the questionnaire by mail can take up to a week to a month being distributed, filled out and sent back, whilst an interview over the phone can take up to an hour. Collecting information through focus groups is logistically not feasible due to locality issues for preferred participants. Financial restrictions have limited this researcher because the preferred participants for a focus group reside in Zenadh Kes.

The structure of the interview was adapted by this researcher from Carter McNamara General Guidelines for Conducting Interviews (McNamara, 1999). It was through these guidelines that this researcher determined what type of interview that was needed, what types of questions that were needed, and the sequence of the questions, the wording of the questions and how to conduct the interview. The guidelines also explain what to do immediately after the interview with respects to making notes and checking the recorder if the interview was recorded. Interviews seem to be an appropriate option for me, as they are not time consuming, although face-to-face interviews placed financial restraints on me, the information collected is relevant and up-to-date. However, this researcher acknowledges that to fully understand how the PZJA views Zenadhaw Mabaygka concerns and aspirations, a review of relevant documentation and literature is also needed.

### ***5b) Documentation and Literature Review***

The second research method that was chosen was to review documents and literature that were relevant to the research project. A critical review of documents and literature relevant to a specific field or interest of research is one of the most essential, but also complex activities in the process of research (Afolabi, 1992). The documentation and literature reviewed by this researcher were generally concerned with Zenadhaw Mabaygka, the Zenadh wapiw and the PZJA. This researcher mainly reviewed documentation and literature concerning whether the PZJA satisfied the concerns and aspirations of Zenadhaw Mabaygka.

This researcher reviewed the following:

- Journal Articles;
- Books;
- Conference Proceedings;
- Government reports;
- Newspapers;
- Theses and;
- Internet resources

Journal articles were a good source for information especially for up-to-date information. Journal articles are frequently used in literature reviews because they offer a relatively concise, up-to-date format for research and because most journals articles are peer reviewed (Language Centre, 2005). Books were also a good source of information, but tended to be less up-to-date as it takes longer for a book to be published than a for a journal article. Plus books or book chapters are not necessarily peer reviewed.

Conference papers were very useful as they provided literature on the latest research, research that had not been published, or preliminary results. Conference papers are also helpful in providing information on which people are currently involved in which research areas, and so can be helpful in tracking down other work done by the same researchers (Language Centre, 2005). Government reports also provided a useful source of information. In this case, the TSPZJA annual reports were the only government reports that were reviewed. This was because they were the reports that provided information concerning the PZJA, its structure, its goals and achievements and its responsibilities.

Newspapers are intended for a general audience and are more helpful as providers of information about recent trends, discoveries, changes, and perhaps most importantly articles of public interest (Language Centre, 2005). The only newspaper that was reviewed was the Torres News. The articles used identified obvious concerns expressed by Zenadhaw Mabaygka about proposed policies for the PZJA. I also reviewed a Thesis that examined Zenadh resource management and how it is adapting to current times with the introduction of Western civilisation. This thesis was the only thesis I had access to that was focused around Zenadh, its culture and its mabaygal.

The Internet is the fastest growing source for information and it's impossible to characterise the information available, but access to this source has been quite effortless, due to current facilities. More

and more refereed electronic journals are appearing on the Internet (Language Centre, 2005). However, it is known that anyone can post information on the Internet, so the quality may be questionable. The Internet resources that have been reviewed have been quite relevant and recent.

I acknowledge information directly examining whether or not the PZJA is balancing the concerns and aspirations of Zenadhaw Mabaygka with that of other stakeholders, is fairly limited. However, I will try to do my best. My justification for using the documentation and literature review research method was that this method was the only method that could determine whether the PZJA was balancing the concerns and aspirations of Zenadhaw Mabaygka with that of other stakeholders in the past. A review of the relevant documentation and literature can determine this.

The books and the thesis were located and retrieved from the James Cook University Library. As for the rest of the documentation and literature, all were retrieved from the Internet. Most of the up-to-date information came from resources off the Internet in the form of journal articles, conference proceedings and government reports. The newspaper articles was located in a local Zenadh Kes newspaper and retrieved from the Torres Strait Regional Authority Library. Once reviewing the relevant documentation and literature I identified certain themes, issues and problems. These themes, issues and problems had been examined by myself and have been put together into a literature review.

*Gizu Lak: Gabmanaw gaamu mingu Zenadhaw wapiw giyaway ziw (Chapter Four: Governance and the Torres Strait Fisheries)*

## Yadpalgay

This gizu examines the concept of 'governance' and how it is relevant to the Zenadh wapiw. Firstly, I will identify an appropriate definition of 'governance' and later examine several definitions of 'good governance'. I will then examine relevant international agreements that refer to 'good governance', protected areas and Indigenous peoples. Then I will introduce the theme of 'power sharing' and use it to critique the current Kie Daudai framework for 'good governance' and Zenadhaw Mabaygka participation. Then I will examine and discuss the rhetoric and practice of the current fishery regime in Zenadh Kes, identifying major issues focused on good governance in terms of power and benefit sharing.

### 1) *Governance: Mika sena miya?*

The word 'governance' is associated with the word 'govern' or 'government'. The Australian Dictionary (1992) describes 'governance' as 'the act or manner of governing' (Hughes, 1992). Cameron believes the term 'governance' is used frequently and no single definition is universally accepted. Nevertheless, it is generally understood to encompass authority, stewardship, leadership, direction and control (Cameron, 2002). 'Governance' refers to the process by which organisations are directed, controlled and held to account.

For the purposes of this thesis I adopt Plumptre and Graham's definition of governance:

'Governance' involves 'the interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken, and how citizens or other stakeholders have their say'. Fundamentally, it is about power, relationships and accountability: who has influence, who decides and how decision-makers are held accountable. (Plumptre and Graham, 1999)

As for 'good governance' there are several definitions that also need considering. For example, the Australian Agency for International Development state that 'good governance' depends on transparency, accountability and equality in ways that are responsive to the needs of people. It is

composed of the mechanisms, processes and institutions through which citizens and groups can articulate their interests, exercise their legal rights, meet their obligations and mediate their differences (Commonwealth of Australia, 2006). Seabrook states that definitions by experts and practitioners of 'good governance' vary little and they usually include all the 'succulent' words of self-administered praise, which distinguish Western oversight of the world (Seabrook: 2006). These include participation, transparency, efficiency, responsiveness and accountability.

The United Nations Economic and Social Commission for Asia and the Pacific (UNSAP) suggests that 'good governance' consist of 8 major characteristics. These are participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follow the rule of law (UNSAP, 2007). The United Nations published a list outlining their version of characteristics that make 'good governance', which are almost identical to that of the United Nations Economic and Social Commission for Asia and the Pacific. The United Nations Economic and Social Commission for Asia and the Pacific argues that making these characteristics apart of governance, it assures that corruption is minimised, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making (UNSCP, 2007). However, the United Nations Economic and Social Commission for Asia and the Pacific understands that good governance is an ideal which is difficult to achieve in its totality and that very few countries and societies have come to achieving good governance in its totality.

The governance structure that is being examined by this researcher is the PZJA. This structure manages the Zenadh wapiw and is a governing regime that is restricted to a protected zone called the Torres Strait Protected Zone. As it is the case in Zenadh Kes, throughout the world many countries establish protected areas as a means to protect and manage the natural resources that are contained within. In many cases the establishment of these protected areas has affected the rights, interests and livelihoods of Indigenous peoples and traditional peoples and subsequently resulted in persistent conflicts (World Conservation Union, 2003). As a result of this, international principles have been developed with respects to protected areas and Indigenous peoples. One of the primary objectives of these principles is to achieve 'good governance'.

## ***2) The International Framework for Good Governance of Protected Areas and Indigenous Peoples***

The World Parks Congress (WPC), held in Durban in 2003, offers a very clear definition of good governance of protected areas. As recommendation 16 states:

Governance involves the interactions among structures, processes traditions and knowledge systems that determine how power and responsibility are exercised, how decisions are taken and how citizens and other stakeholders have their say. It is a concept that applies at all levels in the field of protected areas – site, national, regional and global (WPC Recommendation, 2003)

As Havemann et al (2005: 261) state, 'governance regimes are grounded in broad aspirational principles performed through bureaucratic mechanisms and detailed legal rules for the implementation of these principles'. Based on conclusions and recommendations of the IV World Congress on National Parks and Protected Areas 1992 in Venezuela, two organisations, World Wildlife Fund (WWF) and the World Conservation Union (IUCN)/World Commission on Protected Areas (WCPA), have adopted principles and guidelines to be taken into account in all matters pertaining to the mutual interests of protected areas and Indigenous and other traditional peoples (Beltran and Phillips, 2000). The principles briefly include:

*Principle 1* – Indigenous and other traditional peoples should be recognised as rightful, equal partners in the development and implementation of conservation strategies that affect their lands, territories, waters, coastal seas, and other resources, and in particular in the establishment and management of protected areas;

*Principle 2* – Agreements drawn up between conservation institutions, including protected area management agencies, and Indigenous and other traditional peoples for the establishment and management of protected areas affecting their lands, territories, waters, coastal seas, and other resources should be based on full respect for the rights of Indigenous and other traditional peoples to traditional, sustainable use of their lands, territories, waters, coastal seas, and other resources.

*Principle 3* – The principles of decentralisation, participation, transparency and accountability should be taken into account in all matters pertaining to the mutual interests of protected areas and Indigenous and other traditional peoples;

*Principle 4* – Indigenous and other traditional peoples should be able to share fully and equitably in the benefits associated with protected areas, with due recognition to the rights of other legitimate stakeholders;

*Principle 5* – The rights of Indigenous and other traditional peoples in connection with protected areas are often an international responsibility since many of the lands, territories, waters, coastal seas and other resources which they own or otherwise occupy or use cross national boundaries, as indeed do many of the ecosystems in need of protection.

Also, under recommendation 16, the WPC urges all those involved in the establishment and management of the protected areas to strive to pursue the above principles for ‘good governance’ which include (WPC Recommendation, 2003):

- Recognition of the diverse knowledge;
- Openness, transparency and accountability in decision making;
- Inclusive leadership;
- Mobilising support from diverse interests, with special emphasis on partners and local Indigenous communities; and
- Sharing authority and resources and devolving/decentralising decision-making authority and resources where appropriate.

Havemann et al (2005) state, ideally in good governance regimes, form follows function and functions are defined in the governance principles. Law is the principal medium in which the principles and legal rules are articulated and by which implementation mechanisms are enabled. International governance principles concerning Indigenous participation and uses are found in a variety of international instruments. Havemann et al (2005) argue, Kie Daudai has agreed to honour these principles by the ratification of international treaties and the incorporation of principles into Commonwealth legislation. The major sources of applicable international agreements are outlined below.

***2a) Declaration of the United Nations Conference on Environment and Development (Rio Declaration) 1992***

This declaration is a multilateral environment agreement that is agreed upon by over 178 countries. As an international treaty, it states that environment issues are best handled by all concerned citizens, this means in the case of Zenadh Kes, Zenadhaw Mabaygka. Principle 10 states:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have ... the opportunity to participate in decision-making processes. States shall facilitate and encourage ... participation by making information widely available.

This treaty articulates that there is a clear link between Indigenous participation and environmental management as a principle of good governance. Principle 22 states:

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

The Rio Declaration recognises the importance of informed participation and of the potentially valuable role of Indigenous Peoples in achieving sustainable development. Indigenous Peoples inhabit nearly all the areas of highest biological diversity and are directly dependent on the resources of these areas. Indigenous people steward all intact tropical forest ecosystems (Havemann & Whall, 2002). The sustainability of these areas, to date, is evidence of their good stewardship.

### ***2b) United Nations Convention on Biological Diversity (1992) (CBD)***

At the 1992 Summit in Rio de Janeiro, one of the key agreements adopted was the Convention on Biological Diversity. This pact among the vast majority of the world's governments sets out commitments for maintaining the world's ecological environments. The Convention establishes three main goals: 1) the conservation of biological diversity, 2) the sustainable use of its components, and 3) the fair and equitable sharing of the benefits from the use of genetic resources (Secretariat of the Convention on Biological Diversity, 2000). Article 8 of this declaration provides a policy framework for each contracting party to engage in biodiversity conservation:

Each Contracting Party (Australia is one) shall, as far as possible and as appropriate:

(c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;

Article 8 (j) has particularly relevant principles linking biodiversity conservation, participation in conservation by Indigenous and local communities, and sustainable use as principles of good governance:

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

Article 10 also provides that each contracting party shall:

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements

In this Convention, "sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

### ***2c) United Nations Declaration on the Rights of Indigenous Peoples***

This draft declaration emphasises the right of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in accordance with their aspirations and needs. If adopted by the UN Assembly, although not legally binding, it will have a major effect on Indigenous peoples worldwide in regards to their rights. It is a comprehensive statement addressing issues such as collective rights, cultural rights and identity in addition to rights to education; health,

employment and language among others undoubtedly assist Indigenous peoples in their efforts to combat discrimination and racism (UNPFII, 2007). Article 19 states:

*Article 19*

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions. Article 26 states:

*Article 26*

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Many of these principles have been articulated in a host of legal multilateral and regional environmental agreements (Havemann et al (2005). The Commonwealth Government of Kie Daudai has incorporated some of these principles into Kie Daudai legislation.

***2d) Torres Strait Treaty 1985 No.4***

The Torres Strait Treaty (TST) provides recognition of Zenadhaw Mabaygka mura-thonaraw-danalayg balbalgiza-aymay to the access and usage of the resources within Zenadh Kes. Under Article 12 and 22, the treaty gives an apparent indication as to what these rights entail:

*Article 12*

*Traditional customary rights*

Where the traditional inhabitants of one Party enjoy traditional customary rights of access to and usage of areas of land, seabed, seas, estuaries and coastal tidal areas that are in or in the vicinity of the Protected Zone and that are under the jurisdiction of the other Party, and those rights are acknowledged by the traditional inhabitants living in or in proximity to those areas to be in accordance with local tradition, the other Party shall permit the continued exercise of those rights on conditions not less favourable than those applying to like rights of its own traditional inhabitants.

## *Article 22*

### *Conservation and management of individual fisheries*

1. The Parties shall, where appropriate, negotiate subsidiary conservation and management arrangements in respect of any individual Protected Zone commercial fishery.

In the application of this definition, except in relation to activities of a commercial nature, "traditional" shall be interpreted liberally and in the light of prevailing custom;

(l) "Traditional fishing" means the taking, by traditional inhabitants for their own or their dependants' consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas, including dugong and turtle;

(m) "Traditional inhabitants" means, in relation to Australia, persons who-

(i) Are Torres Strait Islanders, who live in the Protected Zone or the adjacent coastal area of Australia;

(ii) Are citizens of Australia, and

(iii) Maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities.

The Treaty gives recognition for Zenadhaw Mabaygka and their mura-thonaraw-danalayg balbalgiza-aymay that include traditional fishing, but it doesn't state specifically the capacity to which Zenadhaw Mabaygka can participate within the management of the Zenadh wapiw. Only under Article 19 there is mention of Zenadhaw Mabaygka having advisory capacity as part of a Joint Advisory Council that include representatives such as Kie Daudai government officials, Migi Daudai government officials, Zenadhaw Mabaygka, Migi Daudai mabaygal who are Kie Daudai citizens and relevant Law Enforcement officials. As it states under Article 19:

## *Article 19*

*Torres Strait Joint Advisory Council*

1. The Parties shall jointly establish and maintain an advisory and consultative body, which shall be known as the Torres Strait Joint Advisory Council (called in this Article "the Advisory Council").
2. The functions of the Advisory Council shall be-
  - (a) To seek solutions to problems arising at the local level and not resolved pursuant to Article 18 of this Treaty;
  - (b) To consider and to make recommendations to the Parties on any developments or proposals which might affect the protection of the traditional way of life and livelihood of the traditional inhabitants, their free movement, performance of traditional activities and exercise of traditional customary rights as provided for in this Treaty; and
6. Unless otherwise agreed by the Parties, the Advisory Council shall consist of eighteen members, that is nine members from each Party who shall include-
  - (c) At least three members representing the traditional inhabitants,

This Treaty is a bi-lateral agreement between two countries and is the only one of its kind within Kie Daudai. The TST gives Zenadhaw Mabaygka recognition of their traditional way of life and allows for their involvement only at an advisory capacity. But this is only sought after when the Chair of the PZJA determines when it is appropriate. As it states under Section 13 of the *Torres Strait Fisheries Act 1985* (Cth):

Minister to seek views of traditional inhabitants

The Minister shall, when he or she considers it appropriate to do so, seek the views of the members of the Joint Advisory Council established under Article 19 of the Torres Strait Treaty who are traditional inhabitants and Australian citizens on any matter relating to the administration of this Act that may affect the interests of traditional inhabitants who are Australian citizens.

Zenadhaw Mabaygka participation through this avenue is fairly restricted and does not allow for them any decision-making authority. The WWF and IUCN/WCPA Principles of Indigenous/Traditional Peoples and Protected Areas and Recommendation 16 put forward by the WPC seem to be ignored by this Treaty. The Treaty, of course pre-dates most of the subsequent attempts to formulate principles. Its paternalistic approach reflects it's vintage. The ratification of this Treaty happened more than a decade ago before these principles and recommendation were even determined. For the 'good governance' of

a protected area the WPC recommend that Indigenous peoples should be recognised as rightful and equal partners. Therefore the authority and power among stakeholders must be distributed equally. The TST does not provide for this type of recognition for Zenadhaw Mabaygka, however, there are several relevant pieces of legislation yet to be examined.

### ***Power Sharing***

It is a common fact that Zenadhaw Mabaygka want to govern themselves, they want to manage their resources and they want to make decisions for themselves. For this to happen they must have equal power and or the power must be distributed equally across all appropriate parties. Power sharing is a term used to describe a system of governance in which all major segments of society are provided a permanent share of power (Sisk, 1996). By having a consultative role, there is an imbalance of power resulting in the frustrations expressed by Zenadhaw Mabaygka of the current fishery arrangements. If the PZJA was to share power equally, Zenadhaw Mabaygka could be decision-makers and play a greater role in the management of the Zenadh wapiw. This perspective will be put forward as a litmus test to critique the Kie Daudai legislative framework for the involvement of Zenadhaw Mabaygka in the management of the Zenadh wapiw.

### ***3) The Kie Daudai Legislative Framework for Zenadhaw Mabaygka Participation***

The PZJA is the principal policy governance mechanism for conserving the Zenadh wapiw. The legal underpinnings of its governance regime are found fundamentally in the *Torres Strait Fisheries Act 1984* (Cth).

#### ***3a) TORRES STRAIT FISHERIES ACT 1984 (Cth)***

The *Torres Fisheries Act 1984* (Cth) allows for recognition of Indigenous customary practices in Zenadh Kes since its implementation in 1984. The primary objective that is to be pursued by this Act is to incorporate Indigenous well being throughout its policies and procedures, especially with respects to the traditional way of life and traditional fishing. As Section 8 states:

#### ***Section 8***

### *Objectives to be pursued*

In the administration of this Act, regard shall be had to the rights and obligations conferred on Australia by the Torres Strait Treaty and in particular to the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing.

The *Torres Strait Fisheries Act 1984* (Cth) entrusts powers to and obligations upon the Commonwealth minister to guide and direct him or her in the way they carry out their duties. Section 13 of the Act 1984 (Cth) states:

#### *Section 13*

Minister to seek views of traditional inhabitants

The Minister shall, when he or she considers it appropriate to do so, seek the views of the members of the Joint Advisory Council established under Article 19 of the Torres Strait Treaty who are traditional inhabitants and Australian citizens on any matter relating to the administration of this Act that may affect the interests of traditional inhabitants who are Australian citizens.

The purpose of this Act is to give effect, in Kie Daudai law, to the fisheries element of the Torres Strait Treaty (PZJA Annual Report, 2003: 9). Therefore, it is under this Act that all policies and regulations relating to the Zenadh wapiw are given its legal status. Section 13 directs the relevant Minister to seek advice from the Joint Advisory Council (JAC), if they consider necessary, in relation to matters that may affect the interests of Zenadhaw Mabaygka. The JAC has 18 members with only three positions guaranteed to Zenadhaw Mabaygka (Department of Foreign Affairs and Trading, 2006). Under Section 13, recognition of Zenadhaw Mabaygka participation is acknowledged to some degree.

Also under this Act, the PZJA is entrusted with the powers to seek the views of traditional inhabitants:

#### *Section 39*

Protected Zone Joint Authority to seek views of traditional inhabitants

The Protected Zone Joint Authority shall, where it considers it appropriate to do so, seek the views of members of the Joint Advisory Council established under Article 19 of the Torres Strait Treaty who are traditional inhabitants and Australian citizens on any matter relating to a Protected Zone Joint Authority fishery where that matter may affect the interests of traditional inhabitants who are Australian citizens.

Under this section, the PZJA is directed to seek advice from the JAC, if necessary, in relation to matters that may affect the interests of traditional inhabitants who are Kie Daudai citizens. This recognition in the legislation allows Zenadhaw Mabaygka to participate to a certain extent. However, the level of participation is only of an advisory capacity and is optional for both the relevant Minister and PZJA. Under Sections 13 and 39, it does not require the Commonwealth Minister or the PZJA to consult the JAC, only when the Commonwealth Minister or the PZJA deem it necessary. Therefore, the JAC has completely no power and possibly no say in the management of the Zenadh wapiw. Under these sections, advice given by the JAC can only be given to the Minister or PZJA when it is requested. If it is never requested, then the JAC will have no voice. There is no obligation to act on advice from Zenadhaw Mabaygka or to privilege their rights over those of outsiders. Under this Act, Zenadhaw Mabaygka will find it hard to seek equal power and authority, as there is no legislative base for its recognition. The principle of equal power and authority cannot seem to be extracted from any part of this Act, and thus, gaining equal power and authority for Zenadhaw Mabaygka will have to be sought elsewhere.

### ***3b) FISHERIES ADMINISTRATION ACT 1991 (Cth)***

Kie Daudai is obligated to take into account Indigenous consultation within the management of the Zenadh wapiw; due to the fact there is specific mention for this recognition in certain Commonwealth legislation. The *Fisheries Administration Act 1991 (Cth)* sections 9, 62 and 68 emphasises the notion of giving and allowing appropriate representation for all key stakeholders involved with the relevant Joint Authority. For Zenadh Kes, this means appropriate representation for Zenadhaw Mabaygka in the PZJA. As it states:

#### *Section 9*

##### *Consultation*

(1) The Authority, for the purpose of considering any matter, or obtaining information or advice, relating to the performance of its functions, may consult with persons, bodies or Governments, including:

(a) Persons or bodies representative of the whole or a part of the industry or recreational fishing;

A critical component this Act fails to mention or acknowledge as a separate facet of fisheries is traditional fisheries, in which indigenous stakeholders have a direct relationship. Zenadhaw Mabaygka will find it difficult to pursue equitable power sharing if their membership is not being acknowledged. However, as section 62 reads; this should not be an issue:

#### *Section 62*

(3) The Authority must try, as far as practicable, to ensure that the membership of a management advisory committee includes an appropriate number of members engaged in, or with experience in, the industry in the fishery in relation to which the management advisory committee is established.

#### *Section 68*

##### *Advisory committees*

A Joint Authority may establish advisory committees, consisting of such persons as it thinks fit, to provide information and advice to the Joint Authority on matters related to any fishery.

Under this Act Zenadhaw Mabaygka are only ensured an advisory role, as industry representatives. As previously mentioned, this Act makes hardly any mention of Indigenous mabaygal and Zenadhaw Mabaygka will find it difficult to use this Act to pursue equal power and authority as stakeholders in the Zenadh wapiw.

### ***3c) Environment Protection and Biodiversity Conservation Act 1999 (Cth)***

Another piece of relevant legislation that applies to the Torres Strait Protected Zone is the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. It's key objective is to promote ecologically sustainable development in Kie Daudai. As Havemann et al (2005) explains, this Act reflects

contemporary international jurisprudence, and situates squarely in its objectives the recognition of Indigenous peoples' rights and roles in ecologically sustainable development that expressly includes conservation. The Act makes specific mention of Indigenous peoples under Section 3:

(1) The objects of this Act are:

...

(f) To recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and

(g) To promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.

(2) In order to achieve its objects

...

(iii) Recognising and promoting Indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and

(iv) The involvement of the community in management planning.

*The Environment Protection and Biodiversity Conservation Act 1999* (Cth) regulates actions that have an impact on "matters of national environment significance" (Section 3(1) (a)). One of these matters includes Commonwealth Marine Areas, which include the Torres Strait Protected Zone. Under this Act Zenadhaw Mabaygka are ensured a role in the management process, but like the other Acts mentioned, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) does not specifically state as in what capacity of the role of Indigenous peoples will participate. Under section 390, there is a special rule to protect Aboriginal interests, but it only applies to Commonwealth reserves. This Act cannot give Zenadhaw Mabaygka equal power and authority in the management process and therefore cannot assist them with their concerns and aspirations, but it does indicate the sort of principles that ought to inform the Commonwealth in their governance of Zenadh Kes.

## QUEENSLAND STATE LEGISLATION

### *3d) Torres Strait Fisheries Act 1984 (Qld)*

The *Torres Strait Fisheries Act 1984* (Qld) does not give recognition to Zenadhaw Mabaygka having a role in the management of the Zenadh wapiw. However, it has regard to the traditional way of life and traditional fishing of the traditional inhabitants. This is to be achieved through its primary objective:

### *Section 7*

#### *Objectives to be pursued*

In the administration of this Act, the Minister shall have regard to the rights and obligations conferred on Australia by the Torres Strait Treaty and in particular to the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing.

This objective is the only form of Indigenous recognition this Act has to show, this is because the PZJA emanated from the *Torres Strait Fisheries Act 1984* (Cth) and is the primary governing body for the Zenadh wapiw. The *Torres Strait Fisheries Act 1984* (Qld) only covers recreational fishing, aquaculture and fisheries marketing within the Torres Strait Protected Zone (PZJA Annual Report, 2003). Commercial and traditional fishing within the Torres Strait Protected Zone is managed under federal law. Zenadhaw Mabaygka recognition within this Act is minute and the Act doesn't even recognise and permit them a role within the management of the fisheries. This Act cannot and will not provide Zenadhaw Mabaygka a greater capacity in the management of the Zenadh wapiw. However if we extrapolate the logic of protecting livelihood the means must surely include economic benefit and power sharing, especially from the fisheries which are the sole major industry.

### ***3e) NATURE CONSERVATION ACT (Qld) 1992***

The main objective of this Act is the conservation of nature. The conservation of nature is to be achieved by an integrated and comprehensive conservation strategy for the whole of the State that involves, among other things, the following:

(f) Recognition of interest of Aborigines and Torres Strait Islanders in nature and their cooperative involvement in its conservation:

- the recognition of the interest of Aborigines and Torres Strait Islanders in protected areas and native wildlife;

- the cooperative involvement of Aborigines and Torres Strait Islanders in the conservation of nature.

The *Nature Conservation Act 1992 (Qld)* provides recognition for Zenadhaw Mabaygka to be involved in the management and conservation of nature. Section 6 reinforces this statement:

*Section 6*

*Community participation in administration of Act*

This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, landholders and interested groups and persons, including Aborigines and Torres Strait Islanders.

This Act gives recognition to Indigenous interests, ensures that the interests of Indigenous mabaygal will always be sorted and their views will always be consulted upon. This type of recognition ensures the views of Indigenous mabaygal will always be heard relative to conservation matters. However, this Act again only gives Indigenous mabaygal a consultative role, which gives them nil decision-making authority. For Zenadhaw Mabaygka to achieve equal power and authority, this is not sufficient.

***3f) ENVIRONMENTAL PROTECTION ACT (Qld) 1994***

The object of this Act is to protect Queensland's environment from pollution and other harm while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development). This Act adopts similar community involvement objectives as the *Nature Conservation Act 1992 (Qld)*:

*Section 6*

*Community involvement in administration of Act*

This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.

In adopting similar objectives as the *Nature Conservation Act 1992* (Qld), it seems this Act also provides Indigenous mabaygal with a consultative role within the management process and not a decision-making one.

### ***3g) FISHERIES ACT (Qld) 1994***

The main purpose of this Act, under Section 3, is to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to:

- (a) Apply and balance the principles of ecologically sustainable development; and
- (b) Promote ecologically sustainable development.

Under this Act, a management plan or agreement cannot be implemented without the cooperation of Indigenous peoples. As Section 14 states:

#### *Section 14*

(3) A regulation or management plan mentioned in subsection (2) may be developed only after cooperating with Aborigines or Torres Strait Islanders, considered by the chief executive to be appropriate, to reach agreement, or reasonably attempt to reach agreement, about the proposed regulation or plan.

As to what the extent does cooperating with Indigenous peoples entail under this Act, it is left unclear for it is not defined. Therefore, the word 'cooperating' could be interpreted to have several definitions. Under this Act Indigenous peoples are recognise to have an interest in the management process but it does not indicate as to their power and or authority with respects to decision-making. For Zenadhaw Mabaygka this Act could possibly only offer an opportunity for their views to be consulted upon, just like other Acts mentioned previously though it may be a little stronger and might require agreement.

### ***3h) MARINE PARKS ACT (Qld) 2004***

The main purpose of this Act, under Section 5, is to provide for conservation of the marine environment in the territorial seas under Queensland control. This objective is to be achieved seeking the cooperative involvement of Indigenous peoples. As Section 5(2)(c) reads:

(c) The cooperative involvement of public authorities and other interested groups and persons, including members of Aboriginal and Torres Strait Islander communities.

This Act provides for the opportunity for Indigenous mabaygal and their cooperative involvement in the management process. It only allows for the cooperative involvement for Indigenous mabaygal. What is cooperative involvement? As there is no clear definition identified within the Act, interpretation of this term is indistinct. This Act does not provide for recognition of Indigenous interests, it does not ensure that the interests of Indigenous mabaygal will always be sorted and does not verify their views will always be consulted upon. After reviewing this Act a pattern is becoming evident.

Kie Daudai Commonwealth and State legislation provide recognition for the participation of Zenadhaw Mabaygka in management processes. As to what their capacity is in these management processes, it was fairly clear. After reviewing all the appropriate Acts, Zenadhaw Mabaygka can only strive to have an advisory role within the management processes. The legislation developed so far by Kie Daudai with regards to resource management, marine environments, protected areas and Indigenous mabaygal only provide for this type of involvement. By using the 'good governance' principle of 'sharing authority' and or 'power' in a protected area with Indigenous mabaygal, it seems Kie Daudai has ignored the principles put forward by the UN and Non – Government Organisations' WWF and IUCN/ WCPA. But in the defence of Kie Daudai, it can argue that these principles were developed long after its legislative framework was developed, least as far as the Treaty is concerned.

The Zenadhaw Mabaygka capacity of participation that has been derived from the legislative framework of Kie Daudai reflects obvious themes. Kie Daudai will take in account when creating and implementing policies for the management of the Zenadh wapiw, Zenadhaw Mabaygka traditional practices; Kie Daudai recognises that Zenadhaw Mabaygka stakeholders have an interest in the management of the Zenadh wapiw; and lastly Zenadhaw Mabaygka are only given a advisory role within the management of the Zenadh wapiw. This highlights some very frustrating issues for Zenadhaw Mabaygka.

The first issue is that by having an advisory role throughout the management of the Zenadh wapiw, Zenadhaw Mabaygka voices have a strong possible chance of not being heard. As a result this

situation, there possibly exists what can be described as a 'participatory deficit'. Because of their advisory status within the current governance regime in Zenadh Kes, this is a reality. For this reason Zenadhaw Mabaygka are frustrated with the current fishery arrangements in Zenadh Kes.

The second issue is that Kie Daudai has not yet implemented or simply ignores the international work done on the 'good governance' of protected areas and Indigenous mabaygal. By Kie Daudai giving Zenadhaw Mabaygka an advisory role in the Zenadh wapiw, is disrespecting them for this shows that Kie Daudai does not respect Zenadhaw Mabaygka as rightful and equal partners in the management of the Zenadh wapiw. By having this type of status, Zenadhaw Mabaygka cannot fully pursue the goals, because someone else will always be in control.

#### ***4) Torres Strait Protected Zone Joint Authority***

The governance of the Zenadh wapiw is the primary responsibility of the Torres Strait Protected Zone Joint Authority (PZJA). The PZJA in its purest form is best described as an advisory model that has a co-operative partnership approach. This model, developed by AFMA, places strong emphasis on co-operative partnership approach among key stakeholders, which include fisheries managers, researchers, fishing operators, environment/conservation and recreational fishing interests and other stakeholders, in the process of developing and implementing fisheries management arrangement (Kaufmann, 2002: 3). The PZJA structure (Appendix Six) is a multi-national, multi-layered and multi-stakeholder model. It has a relatively large number of parties involved who have a stakeholder interest and the structure governs a wide geographic region. It also governs over international waters and determines allocation of international resources.

After examining this model, it does seem that the PZJA incorporates several characteristics of 'good governance' identified by the United Nations Economic and Social Commission for Asia and the Pacific. These characteristics include:

1. Participatory: All key stakeholders within the Zenadh wapiw have appropriate consultation and representation during the PZJA consultative process;
2. Consensus oriented: During the process all recommendations are to be agreed upon by all relevant stakeholders before moving onto the stage;

3. Accountable; All recommendations all created by and agreed upon before moving up the executive level by relevant stakeholders, therefore stakeholders are possibly held responsible for their own recommendations;
4. Transparent: The PZJA provides adequate time for members to attain relevant information for meetings, time to attend meetings and allows access to PZJA members to documents of past meetings;
5. Responsive: During the consultative process there is sufficient opportunity for stakeholders to voice their concerns regarding issues that are present in their fishery or environment, possibly in time with the support of other stakeholders, become a recommendation and then moved up the line; and
6. Follow the Rule of Law: The PZJA consultative process adheres to relevant laws and legislations. The process follows strict guidelines that are stated clearly in the *Torres Strait Fisheries Act 1984* (Cth).

In the past the PZJA has increased its participatory level and has made the process entirely transparent, making all PZJA documents available to the public. Craig (2002) refers to this approach as 'collaborative management'. Regimes in these situations focus on long term planning and resource allocation process and often involve many stakeholders with deeply entrenched conflicts and positions (p 13). In the PZJA Annual Report (2003) it refers to the structure as a 'consultative structure' (PZJA Annual Report: 13). The PZJA refers to the structure as 'consultative', then it could possibly refer to the management regime as 'consultative' as well. Craig (2002) defines 'consultative management' as 'management that incorporates Indigenous participation without power sharing' (p 13). This is precisely the case in Zenadh Kes, possibly so for it has been highlighted before in this chapter.

In Zenadh Kes, you have a situation where an international treaty, relevant Commonwealth and State legislation support and have provided the framework for Zenadhaw Mabaygka participation within management processes. Also Zenadhaw Mabaygka have appropriate representation and avenues for consultation within the consultative model that governs the Zenadh wapiw, which places strong emphasis on having a cooperative management approach. Thus, the situation you would think at present is an adequate attempt of engaging Zenadhaw Mabaygka in the management process and an adequate attempt by Kie Daudai to provide a suitable governance mechanism that achieves 'good governance'. So why are Zenadhaw Mabaygka frustrated?

The rhetoric of Zenadhaw Mabaygka participation within the Zenadh wapiw appears to be the ideal situation for Zenadhaw Mabaygka. Their traditional way of life needs to be considered when designing appropriate fishing arrangements for the Zenadh wapiw, their views and interests are to be consulted upon when needed and they like all stakeholders in the Zenadh wapiw must have appropriate representation on all levels of the PZJA consultative, as well as decision-making process. On some advisory committees they have even more. However, these adjustments seem to do little to lessen Zenadhaw Mabaygka displeasure with current arrangements. The National Oceans Office states, 'this is because Zenadhaw Mabaygka involvement remains to be of an advisory role, rather than a decision-making one' (National Oceans Office, 2005). The current rhetoric seems to be perfect, but in practice this situation seems to disadvantage Zenadhaw Mabaygka.

It is a common fact that Zenadhaw Mabaygka want to govern themselves, they want to manage their resources and they want to make decisions for themselves. In 2002 the PZJA yielded to a certain extent to these demands when the TSRA Chairperson, who is an elected Zenadhaw Mabaygka, was appointed a sit at the PZJA executive level. At this level, this is where the decisions are made for the Zenadh wapiw. But being present at this level doesn't mean you have ultimate decision-making powers for the Zenadh wapiw. The State and Federal Government have not yet reconciled themselves to sharing power. Indeed the law embeds their ultimate power to govern their way. For instance as Section 40, subsection 4 states:

***TORRES STRAIT FISHERIES ACT 1984 (Cth) - SECT 40***

Procedure of Protected Zone Joint Authority

(4) If, at a meeting of the Protected Zone Joint Authority, the members are not agreed as to the decision to be made on a matter, the Commonwealth Minister may, subject to subsection (5), decide that matter and his or her decision shall have effect as the decision of the Protected Zone Joint Authority.

The Commonwealth Minister determines the final decisions if a possible outcome is not reached. Any decisions that the Queensland Minister and TSRA Chairperson make, is possibly in collaboration with the Commonwealth Minister. The Queensland Minister and TSRA Chairperson cannot have the last say, under Section 40, subsection 4, this authority is bestowed upon the Commonwealth Minister. By utilising this section, the current Commonwealth Minister is capable of pursuing the agenda of the current Commonwealth Government. This is where the practice becomes potentially incompatible with

Zenadhaw Mabaygka aspirations for power and benefit sharing in which their claim have primacy. Participation in decision-making processes offers a check on the Minister's power. The structure needs to embed checks on Ministerial discrete through rules, principles, actors and mechanisms of governance.

### Issues for Zenadhaw Mabaygka: Power imbalance

There is an issue present for Zenadhaw Mabaygka when examining the power distributed among the three members of the PZJA executive level. One member has definitely more decision-making powers than the other two and this is the Commonwealth Minister. According to Section 40, subsection 4 of the *Torres Strait Fisheries Act 1984 (Cth)*, the Commonwealth Minister has the last say and final decision on all matters relevant to the Zenadh wapiw. Although Zenadhaw Mabaygka participate at this level by having the TSRA Chairperson there, the chairperson does not have the same legislative authority or bargaining power the Commonwealth Minister has and, thus, cannot fully participate at this level. In hindsight, the consultative structure ultimately is a centralised process, giving the decision-making authority to a single person, contradicting international principles of 'good governance' and Indigenous participation in protected areas with respects to decentralisation. By giving this type of authority to this Minister, a participatory deficit becomes inevitable with respects to Indigenous participation and an inequity affect potentially affects the stakeholders that are not represented by this Minister.

### Collaborative Approach

For Zenadhaw Mabaygka being apart of a collaborative - approach governance regime is not the appropriate regime to be apart of when one wants their concerns and aspirations to be heard and acted upon. As London (1995) points out, there are specific limitations to this approach:

1. Power inequalities among the parties can derail the process;
2. The norms of consensus and joint decision-making sometimes require that the common good take precedence over the interests of a few or minority;
3. Collaboration works best in small groups and often breaks down in groups that are too large.

In the case of the PZJA, research participants have touched on these issues highlighted by London. Therefore, it seems that a collaborative approach is disadvantaging Zenadhaw Mabaygka. In theory this

approach may incorporate all the principles of 'good governance' adopted by this thesis, but the practice of this regime seems to be disadvantaging Zenadhaw Mabaygka.

## Conclusion

In Zenadh Kes the consultative structure of the PZJA manages the governance of the Zenadh wapiw. As a stakeholder in the Zenadh wapiw, Zenadhaw Mabaygka are provided and allocated through Kie Daudai legislation an advisory role within this structure. After the examination of all relevant pieces of legislation this is their ultimate position achievable. International conventions and agreements adopt principles where Indigenous peoples must be respected as equal partners, entitled to equal power and indicate the importance of their traditional knowledge for the sustainable management of resources within a protected area. For Zenadhaw Mabaygka, their current status in the PZJA is inconsistent with these international principles of 'good governance' in a protected area with Indigenous peoples.

Also their role as advisors identifies the fact that they ultimately don't make decisions for the management of the Zenadh wapiw. This responsibility lies in the hands of the PZJA executive level, ultimately the Commonwealth Minister. The Commonwealth Minister has the ultimate say; therefore, his or her power is final. Power is not distributed evenly among the stakeholders of the PZJA and inevitably a participatory deficit is evident. The PZJA governance structure caters for this type of authority. Zenadhaw Mabaygka status will remain to be advisory until there is legislative reform allowing them greater capacity. Kie Daudai Federal and State legislation and the TST entrenches that advisory role within the PZJA. This is why they are frustrated. In the next chapter, Zenadhaw Mabaygka concerns and aspirations will be documented, giving a picture as to how they feel about their status in the PZJA.

## *Gizu Kab: Imayzi – zapul (Chapter Five: Findings)*

### **Yadpalgay**

This gizu presents the findings of my research project. The imayzi-zapul (findings) is drawn from the analysis of the literature, observatory field research and interviews with Zenadhaw Mabaygka who are participants within the PZJA consultative structure. These Zenadhaw Mabaygka were selected from the working group level (bottom level) through to the management level (middle level). I also had formal dialogue with certain Zenadhaw Mabaygka who are involved at the executive level (top level) and had previously had advisory capacity to the Community Fishermen Group (CFG). All participants have several years of experience with working in the fishing industry, representing Zenadhaw Mabaygka and participating in the PZJA consultative structure.

Throughout the course of the research, certain themes have become quite obvious and were simply hard to ignore. To me as a researcher it was there in the literature, in topics of conversations and on several occasions was passionately spoken about in the interviews. These were themes that seem to be the pinnacle of Zenadhaw Mabaygka frustrations and aspirations. These themes included:

- Inequity;
- Self - determination;
- Sustainability;
- Bio – invasion;
- Tradition versus Modernity; and lastly
- Well – being.

During the interviews one of the first questions asked of the research participants was why they got involved in the PZJA consultative structure. The answer to this question varied from participant to participant. Rigney states (1999) privileging their voice in the research is a key principle of Indigenist Research. The answers reflected the participant's background and their role within the community.

### *Current Concerns and Aspirations: Zenadhaw Mabaygka*

#### **Concerns**

I be get involved because them elders blo ya... they look all things happening in the community, all be question em so all be speak me if I can sit down there and find out them thing and take them talk come back for thempla...

(Participant 1)

Torres Strait Islanders weren't treated fairly on some decisions, with my expertise I think I can help my people out by sitting there and representing them, trying to get goals that they want...

(Participant 2)

I got involved basically because what I see was happening is the administration up there... was not doing its job properly in terms of representing interests of the local people...

(Participant 5)

These answers brought to light certain concerns that have been evident in Zenadh Kes for quite some time. As a consequence, one of the main objectives of the interviews was to document the concerns and aspirations of Zenadhaw Mabaygka.

"Others come and take away our resources. We are surrounded by seas full of fish, sea-mammals, shellfish and seafood of many kinds, but this wealth is exploited for commercial advantage from outside our region. The fishing laws and policies of Australia seem designed to help others, even though the waters around our reefs and islands have always been our food source" (Former ICC, TSRA and Yam Island Chairperson Getano Lui Jr, 1995)

This quote highlights some of the major concerns voiced by Zenadhaw Mabaygka over the past few years. One the objectives of the research were to document Zenadhaw Mabaygka concerns and aspirations for the Zenadh wapiw and Zenadhaw Mabaygka. During a previous visit to Zenadh Kes (19 March – 15 April 2005) I had informal conversations with several Zenadhaw Mabaygka fishermen, it was apparent some of these concerns are still strongly present.

Whilst in Zenadh Kes I attended a Community Fishermen Group (CFG) meeting. These meetings are held the day before TSMAC meetings. During this meeting I had observer status and conducted non-participant observer research. Much of the concerns expressed during this meeting are highlighted in the Torres Strait Development Plan 2005 – 2009.

### *1Inequity / Ninu sakarpuday (Self-determination)*

A principal concern was:

'Commercial fisheries are the only resources available for the people in this region, yet rights to the majority of the resources have been given away to people living outside the region. Our people now live below the poverty line, and are dependent on government handouts' (TSRA, 2006)

Zenadhaw Mabaygka feel that the resources of Zenadh Kes have been given away to mabaygal whom are not entitled to it; mabaygal whom are not Zenadhaw Mabaygka. Mabaygal who do not know and or appreciate the culture and do not in anyway, contribute back financial into the community.

'We want to manage the fisheries ourselves; these resources belong to us, nobody else'  
(Participant 1)

Zenadhaw Mabaygka feel as the traditional custodians they should decide how the resource is used. In Zenadh Kes, communities, families and individuals have rights related to their ownership of coastal land, water and reefs (Haigh, 1993).

'These waters belong to us and everything that is in it, it is apart of our lifestyle and culture'  
(Participant 2)

These laws and sanctions are apart of Zenadhaw Mabaygka custom and tradition. Thus, for Zenadhaw Mabaygka all of Zenadh Kes sea space or sea country whether inhabited or not is owned and separated by customary boundaries (Haigh, 1993). According to Zenadhaw Mabaygka traditional law, people who are not Zenadhaw Mabaygka found fishing in Zenadh Kes are trespassing and stealing. They are taking away resources, which could ultimately benefit Zenadhaw Mabaygka. Zenadhaw Mabaygka believe the resource belongs to them and they should be making money off their own resources.

Another concern for Zenadhaw Mabaygka is the limited amount of effort due to less efficient technologies Zenadhaw Mabaygka has in specific fisheries. The concern is:

'A lot of people are on CDEP and cannot afford hookahs and fibre-glass boats such as white people. They are not as advanced as them, so they can catch a lot more than us'

(Participant 5)

Zenadhaw Mabaygka feel that they are not getting their fair share of certain fisheries, especially the crayfish and finfish fisheries in which the majority of Zenadhaw Mabaygka are involved. Although there is a great number of Zenadhaw Mabaygka involved in these fisheries, they feel that non-Indigenous fishermen are delivering greater effort through using more efficient technologies and as a result, extract greater amounts of resources than themselves.

'We are not getting a fair share of the crayfish and finfish fisheries and we experience conflicts between our people and fishermen from outside the region' (TSRA, 2006)

Zenadhaw Mabaygka feel that more resources should be allocated to the local mabaygal.

Another concern that was identified during the analysis of the interviews was that Zenadhaw Mabaygka believe that they aren't being fairly treated with regards to decisions being handed down by the PZJA:

'Our people question some decisions made by the PZJA, it's like they benefit white people more than mipla, and it's makes us wonder, how come it's like that, this one place blo you-me?'

(Participant 1)

Torres Strait Islanders aren't being treated fairly on some decisions...

(Participant 2)

What this participant meant by unfairly is that Zenadhaw Mabaygka recommendations are being surpassed by other recommendations. As Held puts it, even if there is parity of formal representation, it is often the case that established actors, have delegates extensively equipped with negotiating and technical expertise (Held, 2005) such as the commercial non-Indigenous stakeholders in Zenadh Kes. Also the sheer strength of the non-islander commercial contributions to the value of the Zenadh wapiw (78 per cent in 1992) possibly contributes to their voice having more power. Zenadhaw Mabaygka are stakeholders within the Zenadh wapiw and when their recommendations are being surpassed, then being treated unfairly becomes a critical issue.

Prior to 2002 a lot of Zenadhaw Mabaygka were concerned about representation in the PZJA consultative structure and being unfairly treated:

“Torres Strait fishermen were concerned that they were not getting fair representation in the PZJA consultative structure especially when it came to making decisions for our area” (Former TSRA and Saibai Chairperson, Terry Waia, 2002)

However, since the implementation of a new consultative model, which was developed jointly by Indigenous fishermen and the Torres Strait Regional Authority (TSRA) to streamline the current structure and dramatically increase Indigenous input into the PZJA at both the consultative and decision-making levels, concerns have shifted away from unequal representation (TSRA News, 2002). Though real power sharing remains an unrealised aspiration, this is just the tip of the iceberg.

### *Maapu (Sustainability)*

Another concern highlighted during this 2005 meeting is the maapu of the Zenadh wapiw:

‘We must protect of our land and the sea for our kids so that they can enjoy it’  
(Participant 4)

‘Torres Strait people belong to the sea; it is our job to use it wisely so that we protect it for future generations’  
(Participant 3)

‘We must ensure that all our fisheries are managed sustainably: most of them are being over-fished and are in danger of depletion’ (TSRA, 2006)

Zenadhaw Mabaygka want to preserve their resources, their fisheries and their way of life. The fisheries mean a lot to Zenadhaw Mabaygka culture and economic development. Unsustainable management of these fisheries could possibly result in a loss in certain aspects of culture for Zenadhaw Mabaygka, specifically with respects to traditional hunting, ceremonies and feastings. Zenadhaw Mabaygka

economic prospects for the fisheries would also be dealt a blow if the fisheries were not managed to a sustainable level.

### *Bio-invasion*

During the last few years another concern has evolved:

'Foreign fishing vessels are illegally taking Torres Strait resources and bring with them a risk of introducing exotic pests and diseases (TSRA, 2006)

This problem had become prevalent in the past few years and Zenadhaw Mabaygka are fearful of the immediate effects it could have on the depletion of resources. Bio-invasion of Zenadh Kes and Australia's environment is a constant concern for resource managers. These foreign fishing boats by their mobility, provide excellent opportunities for 'hitchhikers' such as exotic pests and human beings or live stock on these boats, such as pets also provide opportunities for exotic diseases (Low, 2001). Exotic pests and diseases are a problem for the entire Kie Daudai primary industries and population if they are not detected early and not monitored. This recent concern is out of the hands of Zenadhaw Mabaygka at the local level. However, the PZJA has the legal power to act, but it is feared by Zenadhaw Mabaygka this will be the case only when it has direct effects on the Zenadh wapiw.

During the interviews it was asked of participants to voice their concerns and aspirations. The following statements are concerns, which identify various themes. These themes are as followed:

### *Tradition vs. Modernity*

Another concern was the fact that younger Zenadhaw Mabaygka weren't adhering to cultural law and using modern technologies to over-exploit the current resources:

I gor carry concerns blo the old people, them elders ya. All concerned them kind that sustainability and kai kai blo you-me from water and on top lo land, all concern e them kind today generation e nor follow that cultural lore blo you-me and all technologies all e use em, all e over hunt them thing, kai kai blo you-me...

(Participant 1)

'Today generations have developed some bad practices because of new technologies, it's easier to hunt dugong and turtle, easier to travel further distances for work kiar, easier to take more'

(Participant 4)

This concern evokes passionate responses among Zenadhaw Mabaygka because, through the knowledge that has been passed down by Zenadhaw Mabaygka mu-ruug (ancestors), koey maykuykul (older generation) Zenadhaw Mabaygka know that once their kai kai (food) is gone, certain aspects of their culture and lifestyle will also be gone:

The concern there, you-me gor lose kai kai blo you-me and that culture, a way of life...

(Participant 1)

### *Wellbeing*

Other concerns that were brought to life through the course of interviews were concerns for the social and physical wellbeing of Zenadhaw Mabaygka. Zenadhaw Mabaygka have an intimate and dependent relationship with the natural resources of Zenadh Kes. As one participant points out, proposed management regulations on certain species such as dhanganal and waru, could possibly have a negative effect on Zenadhaw Mabaygka:

You would find that the relationship between the life of Torres Strait Islanders and the sea being one gone back over thousands and thousands of years, so to suggest that you can set up a PZJA now and dictate how that lifestyle is going to change comes with a lot of consequences for islanders, health consequences, insofar as a lot of peoples' livelihood is tied to fishing and their diet is tied to fishing, if there is a rapid change in diet... it would mean that a lot of people would develop dietary related health problems...

(Participant 5)

This concern hosts a number of themes that include conservation, maapu, customary rights and the well-being of Zenadhaw Mabaygka. This concern also brings to light the issue of competing interests of the waru (turtle) and dhanganal (dugong) fisheries from Zenadhaw Mabaygka and Kie Daudai officials. For Zenadhaw Mabaygka, hunting for waru and dhanganal is important part of culture as well as being a

major source of protein in their diets (PZJA Annual Report 2002 – 2003, 2003). However, conservation of these fisheries is paramount for the fisheries survival. Proposed management regulations by Kie Daudai officials could mean curtailing waru and dhangal extraction numbers for conservation purposes. A direct effect of this is that Zenadhaw Mabaygka would have to replace the protein they receive from waru and dhangal with another source.

Another concern highlighted by this participant is the fact that placing restrictions on specific species such as dhangal and waru that is prominent in the diet of Zenadhaw Mabaygka can have a negative financial effect. What is meant by a negative effect by this participant is that more money will need to be spent to buy meat to subsidise waru and dhangal from Zenadhaw Mabaygka diet.

Sometimes having the dietary intake as part of their staple diet and then restricting it would mean they would need to supplement they're diet with other meats, that income is not there in the Torres Strait which means they now become apart of a poverty stricken cycle that means that they have to use this cash alternative to supplement their subsistent living which means that they need money in the Torres Strait and both our ages are on CDEP, lower then the average wages and the cost of living up there is inflated by 40-100% above living standards that they would expect if they were living down south...

(Participant 5)

This participant believes that the cost of living in Zenadh Kes is pretty high and can be described as very expensive at times and to restrict Zenadhaw Mabaygka even more will definitely place greater strains on the family budget. This concern is an ongoing issue because of the possibility of depleting stocks. Research for determining the repercussions of restricting species for conservational purposes and the social effects it has Zenadhaw Mabaygka communities, it is fairly limited. This is an issue that is real and only time will tell how dramatic the affects will be on Zenadhaw Mabaygka communities.

By reviewing the Torres Strait Development Plan for 2005 – 2009, analysing data collected from the CFG meeting and interviews several prominent concerns were identified. These concerns are as followed:

- Zenadhaw Mabaygka are concerned that the Zenadh wapiw are the only resources available for the people in this region, yet rights to the majority of the resources have been given away to mabaygal living outside the region;

- Zenadhaw Mabaygka are concerned that our fisheries need to be managed sustainably: most of them are being over-fished and are in danger of depletion;
- Zenadhaw Mabaygka are concerned that they are not being fairly treated with regards to certain decisions made for the Zenadh wapiw;
- Zenadhaw Mabaygka are concerned that foreign fishing vessels are illegally taking Zenadh resources and bringing with them a risk of introducing exotic pests and diseases;
- Zenadhaw Mabaygka are concerned that with the increased effort by younger generations in collaboration with the introduction of western technologies into hunting practices, their culture and way of life is being jeopardised; and
- Zenadhaw Mabaygka are concerned that restrictions on certain fisheries that are apart of daily subsistence intake diets of Zenadhaw Mabaygka can possibly lead to dietary health related problems and financial difficulties possibly in the distant future.

The inter-related concerns identified above cover a vast array of issues concerning Zenadhaw Mabaygka. These are their concerns.

### *Aspirations*

The aspirations draw from the literature, Community Fishing Group meeting and the interviews, although similar were like solutions provided by Zenadhaw Mabaygka to their concerns. These aspirations were consistent with themes such as self – determination, autonomy and empowerment. The most obvious and common aspirations for Zenadhaw Mabaygka are listed in the Torres Strait Development Plan 2005 – 2009 (2006). The aspirations consist of:

- Measures are set in place to ensure traditional inhabitants control and manage the Torres Strait fisheries;
- Torres Strait fisheries are to be managed in a sustainable manner; and
- Foreign fishing vessels ought to be strongly discouraged from entering Zenadh Kes waters, are apprehended when they appear and the vessels disposed of in a manner that poses no threat to the environment.

During my participation in the CFG meeting, CFG members expressed their aspirations for Zenadhaw Mabaygka and the Zenadh wapiw. Their aspirations were similar to those outlined within the Torres Strait Development Plan 2005 – 2009. Through these conversations more aspirations were identified:

- Power and benefit sharing; and
- Maapu and conservation of the Zenadh wapiw.

When speaking to them, I could feel a sense of dedication, desire and determination in their pursuit of these aspirations. As a collective body certain aspirations were clear and definite and when speaking to them as individuals the same aspirations were evident.

During the interviews I asked the research participants what their aspirations for the Zenadh wapiw and Zenadhaw Mabaygka were, and this is what they said:

Everybody where Kaiwalagal to come for one conclusion that's to pull one way, look at the sea and all kai kai and up top lo land, same kind. But they must come to understand e gud law and structure blo you-me underneath, that area now e gor be very hard for us for when you-me gor sit down together, e gor take a lot of work for each clan within the Kaiwalagal for come sit down because you-me, everyone mix blood now...

(Participant 1)

This participate is stating that deciding what is good for the environment is difficult, because one of the reasons he believes is that the Kaiwalagal region is made up of many different ethnic makeup. Being multicultural now, means for this participant there is clash between cultures especially with regards to traditional resource management.

What I want and my organisation wants is to see the Torres Strait operated and solely owned by Torres Strait Islanders...

(Participant 2)

Well I guess the aspirations of all TSI have been 100% ownership of the total TSF of its resources and environment. That has been the aspirations for TSI for some time and still is a primary objective...

(Participant 3)

Our biggest aspiration is to have total 100% ownership of our fisheries...

(Participant 4)

From the analysis of these aspirations it is clear that the prominent aspiration is that Zenadhaw Mabaygka seek to manage and control 100% of all the fishery resources in Zenadh Kes.

It is stated in the Torres Strait Development Plan 2005-2009 that the commercial fisheries are the only resources available from which a real economy can be built (TSRA, 2006). Thus, all participants were then asked if, in their opinion, if the current consultative structure benefits Zenadhaw Mabaygka.

### ***Participation within the PZJA***

*Some answers were persuasive:*

They certainly can and we just have to look back at the last two and a half years of what has happen and all the changes has happen, and the effect it has taken on the decision the PZJA has made, prior to 2004 there was no participant of islander fishermen within the structure of the PZJA where as now we have 24 members around the table and not only at that particular regional body but also into the working groups that also participant in making decisions for the species that is fished around throughout the whole region...

(Participant 4)

I would say TSI could benefit greatly and more under this consultative structure by using it to its full capacity, by taking advantage of all it offers, I don't think we are taking full advantage of the structure and others would have a different opinion, I believe this is a fair process and a open process and it's a process of consideration for all views, I believe TSI could benefit greatly from this if they could participate in this more effectively...

(Participant 3)

The increase in Zenadhaw Mabaygka numbers in the PZJA structure is perceived to have yielded better outcomes, but for some of the participants this was not the case. These participants were critical of the current consultative structure:

Torres Strait Islanders are disadvantaged because of 1) their role in the structure because they don't have a management role, they have an advisory role and 2) they've been structurally removed from any, from exercising their rights by way of the administrative procedures that have been put in place to marginalised any opportunity they have in making sure that they get representation on that, for the decision-making...

(Participant 5)

I been questioned this thing from the start. You me gud nothing, we sit down there, always that structure e over aspirations blo mipla... Like I think at the moment we are still at the crawling stage, we've come so far into quota management and other things but we still battling that structure blo thempla because of legislation blo thempla, and all other act blo all other organisation, both commonwealth and state, that's the two structure that we battling, commonwealth and state...

(Participant 1)

I think we are not benefiting from it as it stands now because there are too many stakeholders in the game, like you know there's PNG, there's commercial fishermen, then there's TSI when you try and when there's an issue arise in the PZJA it's very hard to solve...

(Participant 2)

Two out of five participants were confident of the consultative structure and believed Zenadhaw Mabaygka could achieve all aspirations through this process. However, the other three were critical of the structure giving several reasons as to why they believed this to be so. All three participants touch on their roles as actors in the structure and how they are not benefiting because there is definitely a lack of power sharing.

### *Ninu sakarpuday*

A dominant aspiration was to manage and control the fisheries and when asked if Zenadhaw Mabaygka were capable of managing the Zenadh wapiw themselves, all participants answered unanimously:

If they give us a chance to manage our fisheries I think that the members there sit down there inside make talk and take em gor back, I think e gor work good because all our aspirations and thinking are

the same, sustainability, boundary laws, it goes back beyond these structures today, we still respect that, that thing that holds all of us together...

(Participant 1)

I think TSI could manage it themselves and manage it good because before Europeans or commercial fishermen came to TS, we had a manage plan in place already, it's just because Europeans come in here, they bring they're own ideas and they're own laws and it clashes with our management plans and all that but I mean we been living here all our lives with our management plan and it's been working so I cant see why it shouldn't work again for us...

(Participant 2)

I think its fabulous that TSI have primary responsibilities, however in saying that we have along way to go to get to achieve this and I believe by continuing our participation in the fisheries as it currently stands we will build that capacity one day and all of the views that have been expressed or passed through to now have probably indicated that this is the way forward to have primary responsibilities as well as ownership of those resources, marine resources...

(Participant 3)

We need to head towards a direction where that Torres Strait Islanders need to have the responsibilities to manage their own fisheries as a means of economic development and to get the ownership over their waters... our area is 80% water and the ownership to manage that particular economic zone is very vital for future directions of our people...

(Participant 4)

I think in the past they've always been managing it at a domestic level certainly in terms of the ecology, they've certainly controlled the fisheries stock up there by regulating it, if you look at the Eastern islands they have their fish traps, they've used traditional methods of making sure that the resources are not depleted and in recent times there's been technology introduced, you only see certain people who have, who go out and do certain things, so whilst the technology has increased, the frequency and the effort, its only certain people who can do that and if you were to use that structure and take it back to its purest form when it was apart of a traditional structure you can still see traits of how that can be managed sustainably...

(Participant 5)

All participants of the interviews believed that Zenadhaw Mabaygka could manage the Zenadh wapiw if given the chance. Several participants indicated that Zenadhaw Mabaygka were managing the Zenadh wapiw before the intrusion of Markay. Other participants specify the importance of empowerment through capacity building and need for Zenadhaw Mabaygka to manage the Zenadh wapiw for economic development. Throughout the interviews I, as a researcher, could feel that all participants were very passionate about this aspiration.

Now the question must be asked, 'is the PZJA the appropriate mechanism for Zenadhaw Mabaygka to achieve the aspirations identified above?' or 'do PZJA objectives fail to satisfy Zenadhaw Mabaygka concerns and aspirations?' I will determine this by analyzing PZJA objectives and evaluate them against Zenadhaw Mabaygka concerns and aspirations.

#### Zenadh Wapiw Governance Regime

The primary responsibility of managing the Zenadh wapiw belongs to the PZJA. The PZJA, as described by Kaufmann (2002), adopts a cooperative partnership approach among key stakeholders. This model, and the legislation which underpins it, places a strong emphasis on a co-operative partnership approach among key stakeholders, including fisheries managers, researchers, fishing operators, environment/conservation and recreational fishing interests (where appropriate) and other stakeholders, in the process of developing and implementing fisheries management arrangements. Within this model, all stakeholders have advisory capacity. This governance regime consists of four major components:

Principles - The principles relevant to the PZJA are derived from the following legislations and agreements:

*Torres Strait Fisheries Act (Cth) 1984 (notably as amended in 2007)*

*Torres Strait Fisheries Act (Qld) 1984*

*Torres Strait Treaty 1985 No. 4*

Rules – The rules relevant to the PZJA are outlined within the following legislation and agreements:

*Torres Strait Fisheries Act (Cth) 1984*

*Torres Strait Fisheries Act (Qld) 1984*

*Torres Strait Treaty 1985 No. 4*

Mechanism – PZJA advisory consultative structure (appendix six).

Actors – The actors that participant with this regime consist of Zenadhaw Mabaygka, the Commonwealth Minister, the Queensland Minister, TSRA Chairperson, DAFF officials, AFMA officials, DPIQB&F officials, scientists, non-Indigenous commercial fishermen, Migi Daudai fishermen, Aboriginal Australian fishermen who live in or the near the TSPZ and Migi Daudai mabaygal who are Kie Daudai citizens.

### PZJA Objectives

The PZJA authority, as a governing mechanism, has clear principles, rules and objectives that are individually fishery specific. However, when determining decisions, outcomes and policies to meet these objectives, the PZJA has a legal obligation to refer to, under Section 8 of the *Torres Strait Fisheries Act* (Cth) 1984, to the rights and obligations conferred on Kie Daudai by the Torres Strait Treaty, in particular the principle that protection of the traditional way of life and livelihood of the traditional inhabitants, including their traditional fishing (PZJA Annual Report, 2002). The Treaty recognises the importance of protecting the traditional way of life and livelihood of Kie Daudai mabaygal who are Zenadhaw Mabaygka and Thubudh who live in the coastal area of Migi Daudai, in and adjacent, to the “Protected Zone”.

Traditional activities, as defined by the Treaty, include activities on the land (such as gardening, collecting food and hunting), activities on water such as fishing), ceremonies or social gatherings (such as marriages) and traditional trade. The Treaty also requires the Protected Zone to preserve and protect the land, sea and air of the Torres Strait, including native plant and animal life. Moreover, the Treaty ensures that commercial fishing in the Protected Zone is in harmony with traditional fishing (Commonwealth of Australia, 1985). The environmental provisions of the Treaty are considered important for the wellbeing of the traditional inhabitants; for the preservation of the traditional and commercial fisheries; and for protection of the fragile Zenadh Kes environment for its own sake.

The Torres Strait Treaty is a Treaty that has been signed by both Kie Daudai and Migi Daudai and although it places certain obligations onto the PZJA, it does not outline specific objectives for the PZJA itself. The mechanism, the PZJA, since its beginnings, have adopted specific objectives for each individual fishery. These objectives can be found in the latest PZJA Annual Report 2001-2002. These objectives will now be identified, followed by a brief summary.

Objectives adopted for the Zenadh Kes Prawn Fishery are:

- to control effort in the fishery and provide for catch sharing to occur with PNG;
- to achieve a level of fishing effort which is consistent with conservation and optimum use of the Torres Strait prawn resource;

These objectives were adopted by the PZJA in 1993 (PZJA Annual Report 1992-1993, 1993). Another objective was later adopted in 1997 (PZJA Annual Report 1996-1997, 1997).

- To encourage traditional inhabitants of the Torres Strait to participate in the Prawn Fishery.

The objectives are to be achieved in a manner that avoids damage to other fisheries and the marine environment.

Objectives adopted for the Zenadh Kes Kiar Fishery:

- to conserve the stock of tropical rock lobster;
- to maximise the opportunities for traditional inhabitants of both Australia and PNG to participate by implementing policies that include managing the fishery for tropical rock lobster as a dive fishery; and
- to promote the dive fisheries for tropical rock lobster in Torres Strait and in the waters near Yule Island, Papua New Guinea.

These objectives were adopted by the PZJA in 1989 (PZJA Annual Report 1989, 1989). In the PZJA Annual Report 2001 – 2002, it is stated that expansion in participation in the Zenadh Kes Kiar Fishery, is limited to traditional inhabitants so as to maximise their opportunities.

Since 1986 the PZJA has imposed a freeze on the issue of new boat licences to non-Islanders (PZJA Annual Report 2001-2002, 2002). This policy has effectively promoted Islander participation in the fishery. There is also a ban on trawlers taking lobster to prevent pressure on the lobster resource from the prawn trawling fleet.

Objectives adopted for the Zenadh Kes Dhubu Fishery are:

- To manage the mackerel resource so as to achieve its optimal utilisation;
- To maximise the opportunities for traditional inhabitants of both Australia and Papua New Guinea to participate in the commercial fishery;
- To continue monitoring of the fishery and enter into a catch sharing agreement with Papua New Guinea.

These objectives were adopted by the PZJA in 1989 (PZJA Annual Report 1989, 1989). This fishery has been restricted by the PZJA, for the expansion of participation to traditional inhabitants, so as to maximise their opportunities.

Objectives adopted for the Zenadh Kes Mai Fishery are:

- to conserve the stock of pearl shell so as to achieve its optimum utilisation; and
- to maximise the opportunities for traditional inhabitants of Australia and PNG to participate in the Pearl Shell Fishery.

These objectives were adopted by the PZJA in 1989 (PZJA Annual Report 1989, 1989). In the Zenadh Pearl Shell Fishery, expansion in participation is also limited to traditional inhabitants, so as to maximise their opportunities

Objectives adopted for the Zenadh Kes Waru and Dhangal Fisheries are:

- to promote the conservation of turtle and dugong stocks; and
- to restrict the taking of dugongs and turtles to traditional inhabitants fishing for traditional purposes.

These objectives were adopted by the PZJA in 1994 (PZJA Annual Report 1993-1994, 1994).

Objectives adopted for the Zenadh Kes Barramundi Fishery:

- to manage the resource so as to achieve optimal utilisation; and
- to reserve barramundi stocks for the exclusive use of Islanders.

These objectives were adopted by the PZJA in 1994 (PZJA Annual Report 1993-1994, 1994).

On the 1 April 1999, the finfish, githalayg, kabar and aber fisheries changed jurisdiction from Queensland to the Commonwealth. Therefore, new sets of objectives were developed for these fisheries.

Objectives adopted for the Zenadh Kes Finfish Fishery:

- to manage the resource so as to achieve optimum utilisation; and
- to maximise opportunities for traditional inhabitants of Australia and PNG to participate in the commercial fishery.

These objectives were adopted by the PZJA in 2000 (PZJA Annual Report, 1999 – 2000). In the Zenadh Finfish Fishery expansion in participation is limited to traditional inhabitants so as to maximise their opportunities.

Objectives adopted for the Zenadh Kes Githalayg Fishery:

- to manage the resource so as to achieve optimum utilisation; and
- to maximise opportunities for traditional inhabitants of Australia and PNG to participate in the commercial fishery.

These objectives were adopted by the PZJA in 2000 (PZJA Annual Report, 1999 – 2000).

Objectives adopted for the Zenadh Kes Kabar Fishery are:

- to manage the resource so as to achieve optimum utilisation;
- to maximise opportunities for traditional inhabitants of Australia; and
- to encourage traditional inhabitants of the Torres Strait to participate in the Trochus Fishery.

These objectives were adopted by the PZJA in 2000 (PZJA Annual Report, 1999 – 2000). In the Zenadh Kes Kabar Fishery, participation in this fishery is limited to traditional inhabitants so as to maximise their opportunities.

Objectives adopted for the Zenadh Kes Aber Fishery are:

- to provide for the sustainable use of all aber stocks in Torres Strait;
- subject to the above objective, develop aber stocks for the benefit of Australian traditional inhabitants (as defined by the Torres Strait Treaty); and
- based on the results of the 2000 survey develop an appropriate long-term management strategy for sandfish.

These objectives were adopted by the PZJA in 2000 (PZJA Annual Report, 1999 – 2000).

The relevant advisory bodies firstly produce these objectives, from the relevant stakeholders. Then they were considered by the PZJA and then if considered being viable, adopted into relevant fishing objectives and or arrangements for the appropriate fishery. One such management arrangement adopted by the PZJA in 1991 was to freeze further expansion of non-islander involvement in fisheries where there may have been scope for additional growth (PZJA Annual Report 1990 –1991, 1991). In 1991, growth in the kiar, dhubu, mai and barramundi fisheries is reserved for Zenadhaw Mabaygka only.

### *Analysis*

It is quite obvious that the objectives adopted by the PZJA are specially designed to cater for each individual fishery. However, similarities have been identified throughout these objectives. For instance, 1) all fisheries have an objective that refers to conservation, sustainability and optimum utilisation of the fisheries; 2) seven fisheries indicate the need to maximise the opportunities for traditional inhabitants of Kie Daudai in the fisheries; and 3) several fisheries state that expansion in participation is limited to traditional inhabitants so as to maximise their opportunities. For the sustainable management of these fisheries these objectives may be sound, appropriate and possibly effective, but with regards to Zenadhaw Mabaygka concerns and aspirations these objectives are perceived to be too little too late, especially in the absence of active steps by governments to empower implementation.

### *Do PZJA objectives satisfy Zenadhaw Mabaygka concerns and aspirations?*

When determining whether these objectives satisfy Zenadhaw Mabaygka concerns and aspirations certain factors need to be examined. Firstly these objectives are first and foremost designed to individually cater for the specific fishery in which it is designated to; and secondly, although mention of

traditional inhabitants are prominent in the objectives, the PZJA itself governs the Zenadh wapiw for multiple stakeholders of whom Zenadhaw Mabaygka only make up one group, thus when determining fishery arrangements, consideration for all stakeholders is fundamental.

To answer the question directly of whether or not the PZJA objectives satisfy Zenadhaw Mabaygka concerns and aspirations, the answer is negative. As to how I came about this answer, I will now explain.

The first concern identified:

Zenadhaw Mabaygka are concerned that the Zenadh wapiw are the only resources available for the mabaygal in this region, yet rights to the majority of the resources have been given away to mabaygal living outside the region;

Firstly, the objectives are fishery specific, to sustain the fisheries. The objectives themselves cannot and will not determine the allocation of resources. As for the PZJA, it has in the past allocated resources to certain stakeholders. For example, since 1991 the PZJA has limited the expansion in participation in all fisheries except for the aber and prawn fisheries to Zenadhaw Mabaygka (PZJA Annual Report 1990 –1991, 1991). Therefore, the PZJA has the capacity to satisfy this concern. But whether the PZJA is satisfying this concern is undetermined.

The second concern identified:

Zenadhaw Mabaygka are concerned that our fisheries need to be managed sustainably:

A primary objective for all fisheries within the Zenadh wapiw is to manage the resource so as to achieve optimum utilisation. The PZJA itself was created with one of its primary goals being to preserve and sustain the Zenadh wapiw. Its primary function is monitoring the condition of the designated fisheries and to formulate policies and plans for their management (PZJA Annual Report, 2002). The PZJA as a mechanism has the capacity to satisfy this concern. But as for whether the PZJA is satisfying this concern, it is unclear.

The third concern identified:

Zenadhaw Mabaygka are concerned that they are not being fairly treated with regards to certain decisions made for the Zenadh wapiw;

As it has been indicated before, the objectives are fishery specific, to sustain the fisheries. Therefore the decisions made by the PZJA that specially aim to restrict stakeholder effort, so that sustainability of the fisheries is achieved, is the intention. This concern is evidence of London's assertion that the norms of consensus in a collaborative or possibly a cooperative approach sometimes require that the common good take precedence over the interests of a few (London, 1995). If a decision like that evolves then not only Zenadhaw Mabaygka are affected, the rest of the stakeholders are affected as well. Moreover, the objectives highlighted above do not specifically indicate that all stakeholders must be treated fairly with regards to decisions made for the fishery. But from a Zenadhaw Mabaygka perspective the PZJA has been favouring other stakeholders more than themselves. The PZJA itself has the capacity to satisfy this concern, but hasn't practice its discretion to do so yet.

The fourth concern identified:

Zenadhaw Mabaygka are concerned that foreign fishing vessels are illegally taking Zenadh Kes resources and bringing with them a risk of introducing exotic pests and diseases;

The PZJA have a legal obligation to protect and conserve the marine environment of Zenadh Kes. Under the Torres Strait Treaty – Article 13 and 14, it states:

Article 13

Protection of the marine environment

Each Party shall take legislative and other measures necessary to protect and preserve the marine environment in and in the vicinity of the Protected Zone. In formulating those measures each Party shall take into account internationally agreed rules, standards and recommended practices that have been adopted by diplomatic conferences or by relevant international organisations.

Article 14

Protection of fauna and flora

1. Each Party shall, in and in the vicinity of the Protected Zone, use its best endeavour to-
  - (a) Identify and protect species of Indigenous fauna and flora that are or may become threatened with extinction;
  - (b) Prevent the introduction of species of fauna and flora that may be harmful to Indigenous fauna and flora; and
  - (c) Control noxious species of fauna and flora.

Under the *Torres Strait Fisheries Act* 1984 (Cth) section 49A, the *Environment Protection and Biodiversity Conversation Act* 1999 (Cth) section 24A, *Fisheries Management Act* 1991 (Cth) - part 6, division 5, sections 99 – 105, *Fisheries Act* 1994 (QLD) part 4, section 23, *Environment Protection Act* 1991 (Qld), Chapter 8, Part 3, Sections 436 – 440, the PZJA has the legislative authority to prosecute offenders, if caught within Kie Daudai waters, namely the TSPZ.

The PZJA has legal obligations conferred onto it by the Torres Strait Treaty and the legislative authority to prosecute these foreigners given to it by the pieces of legislation mentioned previously. But most importantly the PZJA is a mechanism for implementing fishing arrangements within the TSPZ, so therefore, the PZJA has the capacity and legal obligation to implement policies to mitigate this problem. Henceforth, the PZJA has the capacity to satisfy this concern.

The fifth concern identified:

Zenadhaw Mabaygka are concerned that with the increased effort by younger generations using new technologies for hunting, their culture and way of life is being jeopardised;

The PZJA objectives could possibly satisfy this concern, based on what species is actually involved. Anything that is not listed as a PZJA fishery would have less of a chance of being sustainable, however much of these concerns are directed towards species that are PZJA listed and have prominent cultural significance, such as the dhangal and waru. Although these objectives do not specifically state to preserve Zenadhaw Mabaygka 'traditional way of life', preserving these species are in a way, preserving the culture and way of life.

The final concern identified:

Zenadhaw Mabaygka are concerned that restrictions on certain fisheries that are apart of daily subsistence intake diets of Zenadhaw Mabaygka can possibly lead to dietary health related problems and financial difficulties possibly in the distant future.

The PZJA objectives specifically are designed to conserve the fisheries. The PZJA mechanism has been designed to consult with traditional inhabitants on issues such as the conservation and optimum utilisation of the fisheries. But to fulfil its objectives the PZJA is obligated to recognise the importance of protecting the traditional way of life and livelihood of that of the traditional inhabitants, including their rights in relation to traditional fishing. Traditional fishing contributes to the diet of Zenadhaw Mabaygka and the practice of traditional fishing instils in Zenadhaw Mabaygka their self-identity.

From a Zenadhaw Mabaygka perspective, limiting species such as dhangal a waru to primarily conserve them would protect the species as well as protect the traditional way of life for Zenadhaw Mabaygka. Limiting certain species will ultimately lead to the changing of diets in Zenadhaw Mabaygka communities. A compromise between protecting the species, the traditional way of life for Zenadhaw Mabaygka and subsidising their diets with another source will need to be considered. Zenadhaw Mabaygka have a long-term interest in protecting their way of life as indicated in various legislations and the TST, therefore this compromise will need to be determined by them when the time comes. The PZJA, from a Zenadhaw Mabaygka perspective has the capacity to satisfy these concerns, but either chooses not to do so or just simply ignores the concerns of one of its primary stakeholders.

As for Zenadhaw Mabaygka aspirations, it will now be discussed whether these objectives satisfy them.

The prominent aspiration I identified through the research is:

Zenadhaw Mabaygka seek to manage and control 100% of all the fishery resources in Zenadh Kes;

The answer to the question, whether or not TSPZJA objectives satisfy Zenadhaw Mabaygka aspirations, is unresolved. Firstly, the objectives themselves are designed to preserve the fisheries, promote Zenadhaw Mabaygka participation and promote sustainable use. When looking at the objectives explicitly, the answer is no, but when looking at the PZJA governance mechanism and principles derived from appropriate instruments such as the TST, Commonwealth and State legislations and PZJA Annual Reports, the answer is yes.

The objectives in the PZJA are intended to attain or accomplish goals for the individual fisheries. Therefore, there is limited scope to accomplish this aspiration. But as for the PZJA itself, its mechanism and principles, there is scope. The structure is a top down process and this aspiration is quite difficult to achieve especially when Commonwealth legislation that gives the PZJA is legal status states under Section 40 of the *Torres Strait Fisheries Act 1984 (Cth)*, sub-section 4-5 (*Torres Strait Fisheries Act 1984 (Cth)*, 2006):

If, at a meeting of the Protected Zone Joint Authority, the members are not agreed as to the decision to be made on a matter, the Commonwealth Minister may, subject to subsection (5), decide that matter and his or her decision shall have effect as the decision of the Protected Zone Joint Authority.

It is stated clearly under this section that the Federal Minister has the final decisions for the PZJA. For Zenadhaw Mabaygka their role in the process only allows for consultation and not self – management. This is validated under section 13:

The Minister shall, when he or she considers it appropriate to do so, seek the views of the members of the Joint Advisory Council established under Article 19 of the Torres Strait Treaty who are traditional inhabitants and Australian citizens on any matter relating to the administration of this Act that may affect the interests of traditional inhabitants who are Australian citizens.

But the structure and principles themselves do not specifically deny Zenadhaw Mabaygka management of the Zenadh wapiw. What they do allow for is their participation. The structure like any other governance structure is capable of being changed, and such is the case for its principles. The absence of core commitment in the PZJA governance regime to the principle of power sharing is a key issue. Treating Indigenous mabaygal as equal and rightful partners in the management of protected zones is a key principle of 'good governance' put forward by the WWF and IUCN/WCPA (Beltran and Phillips, 2000). Therefore, for the PZJA to satisfy this aspiration, it must explore all avenues to expand Zenadhaw Mabaygka power beyond mere consultation.

For Zenadhaw Mabaygka to gain 100% control and management of the Zenadh wapiw altering objectives alone can't satisfy this aspiration. A lot more needs to be done within several areas if this aspiration is to be achieved. Firstly, if Zenadhaw Mabaygka want to be decision-makers then an alternative mechanism needs to be adopted that allows them to do this, or the relocation of decision-making powers needs to be examined in the current structure.

The roles and responsibilities of actors within this structure will also need to be examined. What is meant by this is what are their rights as actors and their rights of access to the resources. Under Zenadh Kes traditional law, communities, families and individuals have rights related to their ownership of coastal land, water and reefs (Haigh, 1993). If Zenadhaw Mabaygka is to have decision-making capacity then clearly stated rights indicating Zenadhaw Mabaygka having decision-making capacity is needed to be adopted.

Within the PZJA, there is no clear set of principles that guide the PZJA with regards to its operation. The following principles have been derived from a variety of things such as relevant legislation, the Torres Strait Treaty and PZJA Annual Reports:

Regard shall be had to the rights and obligations conferred on Australia by the Torres Strait Treaty and in particular to the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing;

Recognition of the importance of protecting and managing the marine environment of Zenadh so as to achieve optimal utilisation; and lastly

To maximise opportunities for Traditional Inhabitants of Australia and PNG to participate in the fisheries.

Clear sets of principles are needed to be adopted by the PZJA or the alternative mechanism. One of these principles needs to clearly state that Zenadhaw Mabaygka is to have a primary decision-making role. The principle of inclusiveness and subsidiary at its simplest states, those affected significantly by public decisions, issues or processes, should have equal opportunity to influence and shape them (Held, 2005) For Zenadhaw Mabaygka to gain decision-making status, then these are essential steps.

For the overall question 'Does PZJA's objectives satisfy Zenadhaw Mabaygka concerns and aspirations?' After thorough analysis of interviews and the objectives I have found the answer to be, with respects to Zenadhaw Mabaygka concerns, negative, and for Zenadhaw Mabaygka aspirations, negative as well. With several factors contributing to these answers, I find there is capacity for the PZJA objectives to satisfy Zenadhaw Mabaygka concerns and aspirations, but there is no apparent definite commitment to do so.

*Gizu Per: Tharthiyay ayimay (Chapter Six: Alternative Arrangements)*

### Yadpalgay

In the findings of this thesis it has been identified, that the current PZJA mechanism, despite the implicit commitment to their participation in the protection and sustenance of Zenadhaw Mabaygka traditions and livelihood, has ultimately not satisfied Zenadhaw Mabaygka concerns and aspirations. But if these concerns and aspirations continue on to be unsatisfied, then greater dissatisfaction and frustrations of the PZJA mechanism will continually be expressed by Zenadhaw Mabaygka. Therefore, alternative arrangements must be identified and implemented to reverse this situation. The core principle the new mechanism must reflect is 'power sharing'.

For the successful implementation and transition of the following rearrangements certain issues must be made clear. Zenadhaw Mabaygka has strong ties with the sea and certain species for traditional purposes, but they also have strong economic ties as well. Therefore the following principles must be recognised, acknowledged and accepted by all involved in the PZJA governance mechanism:

- For Zenadhaw Mabaygka 'livelihood' should not be understood as restricted exclusively to a traditional production/extraction for use i.e. non-commercial; and
- Zenadhaw Mabaygka must be recognised as primary stakeholders in the Zenadh wapiw.

The purpose of rearrangements based on these principles will rely on 'power sharing' as a key principle.

The following alternatives have been analysed as to its practicality relevant to the current PZJA governance mechanism and its conformity to Zenadhaw Mabaygka concerns and aspirations. These power sharing arrangements are fully operational throughout the world and in some countries is the cornerstone to their fishery management regimes. These include the certain countries of Africa, the United States and New Zealand. These arrangements are put forward not as replacements for the current regime in Zenadh Kes, but as rearrangements that can enhance Zenadhaw Mabaygka participation through power sharing, especially involving greater decision-making capacity. These rearrangements seek to manage the fisheries sustainably and satisfy Zenadhaw Mabaygka concerns and aspirations.

This thesis concludes that putting forward an alternative arrangement to completely replace the current regime is unrealistic. The governance regime that is used to manage the Zenadh wapiw is also used elsewhere in Kie Daudai to manage other fisheries, which include the Western Australian Southern Demersal Gillnet and Longline Fishery, the Northern Shark Fishery and the Northern Finfish Trawl Fishery (Australian Government Department of Agriculture, Fisheries and Forestry: Bureau of Rural Sciences, 2006). To implement a new regime requires vigorous consultations with prominent stakeholders, creating and implementing new or amending current legislation. This process can take up to years and possibly never produce the desired results. Rearrangement of the existing governance mechanism to increase power sharing is consistent with the principles informing the PZJA and hence a realistic immediate medium term option.

Also this researcher was unable to determine whether Indigenous stakeholders in these other Joint Authorities were also experiencing difficulties with the consultative structure. Therefore, suggesting that the PZJA be replaced entirely on the grounds that the new regime will increase Indigenous participation in the management of fisheries will probably face powerful opposition from various sectors and from various levels of government. It is with these complicated issues in mind that this thesis suggests rearrangements that can be applied to the current governance structure with minimum change while at the same time achieving maximum feasible participation and authenticates power sharing as a core principle.

These alternative arrangements are as followed:

### **Adopting a clear set of principles**

The first alternative arrangement proposed in this thesis that could possibly satisfy Zenadhaw Mabaygka concerns and aspirations is the adoption and implementation by the PZJA of a clear set of principles articulating power sharing, sustainability, conservation, etc. At the moment the PZJA does not have a clear set of principles that it informs its actions. However, in the carrying out of its functions, its primary objective contains a clear principle to protect the way and livelihood of Zenadhaw Mabaygka:

“Regard to the rights and obligations conferred on Australia by the Torres Strait Treaty, in particular the protection of the traditional way of life and livelihood of the Traditional Inhabitants, including their traditional fishing” (Commonwealth of Australia, 1985)

In the case of the PZJA, the proposed principles will be used as a tool of guidance in the governance and management of the Zenadh wapiw. To satisfy Zenadhaw Mabaygka concerns and aspirations, these principles must be created by and designed to cater for Zenadhaw Mabaygka. However, consultation with other key stakeholders should not be ruled out. The intent is power sharing rather than total exclusive control.

The instrument from which the principles can be derived is the Torres Strait Treaty. Since its ratification the Torres Strait Treaty has always been used as a basis for management and as a tool for guidance by the PZJA when formulating and implementing policies and fishery arrangements. But the Treaty too itself does not have a clear set of principles. But this is not to say that principles cannot be extracted from this bi-lateral agreement.

In Aotearoa (New Zealand), during 1840 a treaty called the Treaty of Waitangi was signed between the Crown and Maori. It recognised the prior occupation by Maori people of Aotearoa. It enabled the peaceful acquisition of land for settlement purposes and ensured that immigrants could come and live in Aotearoa in peace. It allowed the Crown to set up a government to establish laws (McCreanor, 1989). In return the Crown were to guarantee and actively protect Maori tribal authority over their lands, fisheries, forests, villages, treasures and culture and extend to them the status and rights of British citizens.

After much deliberation in the courts during 1840 to 1995, a clear set of principles has been established. These principles include (Hayward, 2007):

1. The acquisition of sovereignty in exchange for the protection of rangatiratanga (Maori autonomy in governance);
2. The Treaty established a partnership, and imposes on the partners the duty to act reasonably and in good faith;
3. The freedom of the Crown to govern;
4. The Crown's duty of active protection;
5. Crown duty to remedy past breaches;
6. Maori to retain rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship; and
7. Duty to consult

Two important issues underlying these principles is first, the Treaty is a living document to be interpreted in a contemporary setting. Therefore, new principles are constantly emerging from the Treaty and existing ones modified. Second, the provisions of the Treaty itself should not be supplanted by the principles emerging from it (Hayward, 2007).

Nevertheless it has been through this Treaty and its dynamic principles that the Maori have achieved what they own today. When comparing Zenadhaw Mabaygka with the Maori peoples of Aotearoa, Maori people have had their fishing rights recognised always through the Treaty of Waitangi. Maori persistence through litigation has demonstrated their strong interests in the fisheries and its management. As a result of this, the Aotearoa Government passed the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992* (NZ). This Act established the Maori Fisheries Commission to manage the commercial settlement assets on behalf of Maori. As Hooper states, the settlement allowed the Maori to attain more than 40% of all quota in the Aotearoa fisheries. Taking joint ventures into account Maori have a controlling interest in more than 60% of Aotearoa's commercial fishing industry (Hooper, 2000). This deal has allowed the Maori of Aotearoa to become major commercial players in the fishing industries of Aotearoa.

For Zenadhaw Mabaygka, using the Torres Strait Treaty as the Maori used the Treaty of Waitangi is a practical and sensible option. The Torres Strait Treaty does allow for the recognition and protection of Zenadhaw Mabaygka customary rights and economic rights under Part 3, Article 10 (Commonwealth of Australia, 1985):

"The principal purpose of the Parties in establishing the Protected Zone, and in determining its northern, southern, eastern and western boundaries, is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement"

Under Part 1 (k), Article 1, 'traditional way of life' can be interpreted as 'traditional activities'. 'Traditional activities' is defined in the Treaty as (Commonwealth of Australia, 1985):

(k) "Traditional activities" means activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed-

(i) Activities on land, including gardening, collection of food and hunting;

(ii) Activities on water, including traditional fishing;

(iii) Religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and

(iv) Barter and market trade.

In the application of this definition, except in relation to activities of a commercial nature, "traditional" shall be interpreted liberally and in the light of prevailing custom.

As for the definition of 'livelihood', there is no clear definition in the Treaty. However, according to the Australian Oxford Dictionary, 'livelihood' is defined as 'means of living; job, income' (Oxford University Press, 2006). Therefore, in the case of Zenadhaw Mabaygka 'livelihood' can be interpreted as their work, their job, their source of income or their economic situation. The Treaty stipulates, under Part 3, Article 10, the formulation of TSPZ is to primarily acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants of Zenadh Kes. Therefore, Kie Daudai and Migi Daudai, as it can be interpreted, is obligated to acknowledge and protect the customary and economic rights of that of Zenadhaw Mabaygka. This is possibly where Zenadhaw Mabaygka have a basis to develop these principles to embrace commercial dimensions of their economic life; problem is to reconcile 'livelihood' principle with exclusion of 'commercial activity'.

To satisfy Zenadhaw Mabaygka concerns and aspiration the new principles informing the rearrangement will have to adopt certain themes. These principles must incorporate Zenadhaw Mabaygka culture, customary rights, land and marine tenure, their right to self-management, protection of their rights over land and sea marine tenure and lastly good governance. These themes have been identified as a result of this research project, to possibly satisfying Zenadhaw Mabaygka concerns and aspirations. As to what the principles will look like and entail, will be up to Zenadhaw Mabaygka. With the appropriate consultation and deliberation, these principles will be identified.

The principles approach to 'good governance' proposed by the thesis is a reform of the existing arrangements, a rearrangement of the PZJA governance mechanism for empowering Zenadhaw Mabaygka participation. A more revolutionary approach would involve an approach to governance based on decentralisation. Decentralisation can mean a range of things along a spectrum. The PZJA indeed could be classified as a form of decentralisation if it fits in the middle of a spectrum ranging from minimal to full decentralisation. This thesis proposes ways to nudge the model closer to full decentralisation.

### *Decentralisation*

Another rearrangement that should be considered and that can be applied to the Zenadh Kes situation is the process of decentralisation. In theory, the people who live closest to the resource stand to be most affected by its loss or alteration (World Resource Institute, 2003). Today Ethiopia, Ghana, Mali, Namibia, Nigeria, Senegal, South Africa and Uganda have constitutions that are explicitly pro-decentralisation and formally recognise the existence of local government (UNCDF 2000; Töttemeyer 2000, Therkildsen 1993). "There is not a single country in Africa in which some form of local government is not in operation", and the stated objective of virtually all of these reforms is to strengthen democratic governance and service provision (Oyugi 2000). In the case of Zenadh Kes, the traditional inhabitants, Zenadhaw Mabaygka have a great cultural and recently commercial interest in managing their environment sustainably.

Rondinelli (1981) defines decentralisation as the transfer of authority to plan, make decisions and manage public functions from a higher level of government to any individual, organisation or agency at a lower level. To Smith (1985) decentralisation means, "reversing the concentration of administration at a single centre and conferring powers on local government". For Asante and Ayee (2004), decentralisation is considered the opposite of centralisation or concentration of power and involves delegation of power or authority from the central government to periphery.

The virtues of decentralisation such as local democracy, local popular participation, local responsiveness, accountability and equity have led to the belief that decentralisation will lead to greater responsiveness to the poor or less powerful (Crook, 2003; Crook & Sverrisson, 2001). Since the poor or less powerful are possibly excluded from politics and have restricted access to public goods and services, decentralisation is seen as offering greater political participation to ordinary citizens whose "voice" is more likely to increase with associated relevance and effectiveness of government's policies and programs, especially in poverty reduction.

### *Benefits of decentralisation*

The majority of these benefits can be broadly classified as improved efficiency and effectiveness, governance and/or equity. As Asante and Ayee explain (2004), these benefits are often associated with economic development and poverty reduction (see Table One). The realisation of these benefits depends significantly on political decentralisation.

Table 1: Potential Benefits of Decentralisation

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1. Improved local economic development and poverty reduction through (a) providing services that serve as production and distribution inputs for local firms and entrepreneurs; (b) contributing to a legal and institutional environment that is conducive for development; (c) coordinating key local public, private and community actors in creating partnerships that promote development.
  2. Improved governance because if people see that their interactions with elected decentralised governments will lead to decisions that are more consistent with their wishes than those made by higher levels, they feel better connected to decentralised governments. Being able to influence public affairs in at least some modest ways that directly affect them and empowers people, giving them a new sense of control and autonomy.
  3. Improved efficiency because decentralised governments are said to be closer to the people, have good access to local information and understand local context well. If so, they can better identify the mix and level of services that their constituents need than can the higher-levels, thus improving allocative efficiency.
  4. Improved equity because if decentralised governments are familiar with local circumstances, they may be in the best position to more equitably distribute public resources and target poverty within their own jurisdictions.
  5. Improved responsiveness of government because local representatives are best placed to know the exact nature of local needs and how they can be met in a cost-effective way.
  6. Enhanced accountability because local representatives are more accessible to the populace and can thus be held more closely accountable for their policies and outcomes than distant national political leaders (or public servants).
  7. Political equality from greater political participation will reduce the likelihood of the concentration of power. Political power will be more broadly distributed thus making decentralisation a mechanism that can meet the needs of the poor and disadvantaged.
  8. Political education teaches the mass of the population about the role of political debate, the selection of representatives and the nature of policies, plans and budgets, in a democracy.
  9. Training in political leadership creates a seedbed for prospective political leaders to develop skills in policy-making, political party operations and budgeting with the result that the quality of national politicians is enhanced.

Source: B.C. Smith, *Decentralisation: The Territorial Dimension of the State*, pp. 18-30; Mark Turner & David Hulme, *Governance, Administration and Development: Making the State Work*, p. 157; Paul Smoke, "Decentralisation in Africa: Goals, Dimensions, Myths and Challenges", pp. 9-10.

### *Weaknesses of decentralisation*

Although the demand for decentralisation is strong throughout the world in countries such as sub-Saharan Africa, there are serious drawbacks that should be considered in designing any decentralisation program (see Table Two). These drawbacks are summarised below (Asante & Ayee, 2004):

Table Two: Weaknesses of decentralisation

- 
1. Decentralisation in practice runs up against objections at a political level.
  2. Decentralisation, as the wealth of a country is unfairly distributed, is likely to accentuate the already shaky imbalance within the state because the poor districts would tend to become even poorer.
  3. Decentralisation can lead to increased waste and squandering of public funds.
  4. Decentralisation is not necessarily linked to democracy because the devolution of power may help to increase the dominance of those who, because of wealth or status, are already powerful at the local level.
  5. Decentralisation might be accompanied by more corruption.

From the benefits (Table One) and weakness (Table Two) of decentralisation, put forward by Asante and Ayee (2004), it seems that decentralisation tend to have more benefits then weaknesses. However, applying decentralisation is a case-to-case basis, for countries are different, their citizens are different, their resources are different and their economic status in the world is different. Thus, trying to determine whether or not if decentralisation will work for Zenadhaw Mabaygka before implementation is not possible. The current PZJA mechanism with its multiply levels and stakeholders will allow for the transition of decentralisation to take place. But as a new rearrangement for the Zenadh wapiw, the appropriate amendments to legislation must take place and its core purpose must focus on 'power sharing' as a key principle.

The primary benefit of decentralising the PZJA mechanism is to give Zenadhaw Mabaygka a greater participation status by 'power sharing' and giving them a decision-making role. The role that is given to Zenadhaw Mabaygka must allow them to make decisions that have a direct influence in the

management of the Zenadh wapiw, thus allowing them the avenue to pursue their aspiration of self-management. Moreover, this role must be at a level where when Zenadhaw Mabaygka make a decision, it is taken on board by the appropriate PZJA government departments such as AFMA and DAFF and implemented as a fishery arrangement or policy for the Zenadh wapiw.

### **How decentralisation can be applied to the PZJA**

In the case of the PZJA, the most practical way to decentralise this structure is to allow equal power sharing among members of the PZJA Executive Committee. What is meant by this is that the Commonwealth Minister's veto decision-making power is distributed equally among the Commonwealth Minister, the State Minister and TSRA Chairperson. At this level, the TSRA Chairperson has decision-making powers, however in the case of a disagreement with fellow members or they have a different agenda from the government of the day, the TSRA Chairperson's decisions for the Zenadh wapiw is compromised. Equal power sharing in situations like this would mean equal decision-making authority.

Distributing the power equally among executive members is in essence decentralising a centralised governance regime. Allowing the TSRA Chairperson equal decision-making power at the Executive level removes the tag that Zenadhaw Mabaygka have a consultative role in the PZJA. Thus, the participatory deficit would decrease to a certain extent. To acknowledge Zenadhaw Mabaygka as the primary stakeholders, all decisions made must always seek compatibility with local needs and concerns. Redistributing equal decision-making authority to all Executive members, specifically the TSRA Chairperson will give and allow more Zenadhaw Mabaygka stakeholder influence and accountability. As for if it will work, the main emphasis of implementing decentralisation is to give the decision-making authority back to the people closer to the ground.

### ***Quota Management***

Another alternative that could possibly be implemented into Zenadh Kes in the near future, as a means of sustainable management is the use of a quota management system across all species. Quota management is recognised in many circles as one of the foremost fisheries management tools in the world (Craig, 1999). Quota management systems are now in place for the Aotearoa (NZ), Tasmanian and South Australian rock lobster fisheries. Aotearoa was the first to move to QMS (1989), followed by

the Southern Zone of South Australia (1993), Tasmania (1998) and Northern Zone of South Australia (2001).

Throughout the world of fisheries management, there are a number of assumptions made about quota management systems. Most common is that under a QMS (Bray et al, 2006):

- it is possible to constrain catch to sustainable levels;
- the fleet size falls, the ownership of commercial fishing access rights will concentrate;
- there will be vertical integration through the catching and processing sectors; and
- the new rights holders will display greater stewardship towards the resource..

These assumptions are made because the economic theory is that there are strong incentives for fishing fleets to restructure in order to become more efficient and focus on maximising the value of their catch, as opposed to investing in inputs to maximise their catch.

In 2005 quota management in Zenadh Kes gained momentum when a decision was made during the July PZJA 18 meeting. The decision was that new resource allocation, and management arrangements to underpin that resource allocation, are required in the TRL Fishery and the Finfish Fishery. In accordance with the decisions made at PZJA 18, the following statements outline a board plan for developing the management arrangements.

For the TRL the following developments are planned (Torres Strait Protected Zone Joint Authority, 2005: 1-2):

1. a quota management system (QMS) will be implemented in 2007;
2. Details of the QMS will be developed by PZJA agencies in consultation with stakeholders will commence in 2006;
3. The QMS will apply to all commercial fishers catching TRL;
4. The QMS will not apply to traditional fishing for TRL;
5. At the commencement of the QMS, shares of the Australian TAC will allocated 50:50 between traditional inhabitants and non-traditional inhabitant commercial fishers;
6. In the longer term, the share of the Australian TAC will move towards 70:30 between traditional inhabitants and non-traditional inhabitants commercial fishers;

7. Advice on interim arrangements that could be implemented in 2006 as part of the progression to a QMS will be provided to the PZJA in April 2006 (PZJA 20);
8. Advice will be provided to PZJA 20 on the effort restrictions that would need to be applied in 2006 in order to pursue a more sustainable level of catch prior to the introduction of a QMS;
9. An independent Allocation Advisory Panel will report to the PZJA, no later than mid August 2006, with recommendations for how quota should be allocated to commercial fishers (individuals or licenses);
10. Details of the proposed QMS will be packaged into an implementation plan and submitted to the PZJA for consideration in April 2006 (PZJA 20).

For the Finfish (Torres Strait Protected Zone Joint Authority, 2005: 1-2):

1. Longer term management arrangements for finfish will be developed to commence in 2007;
2. At the commencement of the longer term arrangements, shares of the Australian TAC or TAE will allocated 50:50 between traditional inhabitants and non-traditional inhabitant commercial fishers;
3. In the longer term, the share of the Australian TAC or TAE will move towards 70:30 between traditional inhabitants and non-traditional inhabitants commercial fishers; and
4. An independent Allocation Advisory Panel will be formed during 2006 to provide recommendations to the PZJA on how quota or effort units of access should allocated to commercial fishers (individuals or licenses).

After analysing these proposed developments it is clear that quota management will be entrenched in the management of the Zenadh wapiw in time to come. Also from the outset the Community Fishermen's Group has successfully influenced the PZJA in identifying two developments for TRL and Finfish that will benefit Torres Strait Islanders tremendously. These proposed developments are when the arrangements commence 1) share of the Australian TAC or TAE will be allocated 50:50 between indigenous and non-indigenous fishers and 2) in the longer term, the share of the Australian TAC or TAE will move towards 70:30 between indigenous and non-indigenous fishers. Although, this will be quite an achievement once these management arrangements are implemented, it is still to be negotiated and determined through the consultative structure on how the TAC or TAE will move from 50:50 to 70:30 for both the TRL and Finfish fisheries.

Despite these planned developments for a QMS in the Zenadh wapiw, no direct power sharing has been given to Zenadhaw Mabaygka, just the reallocation of resources. The reallocation of resources to Zenadhaw Mabaygka is a major achievement but when an issue arises regarding this reallocation, due process is to be followed through the PZJA consultative structure which can be a lengthy process especially when it is disadvantaging Zenadhaw Mabaygka. But there are other ways in which Zenadhaw Mabaygka can utilise a QMS to greater assist them with regards to power sharing and increasing their participation.

### **How can using the Quota Management System increase Indigenous participation?**

A QMS is seen as managing a stock to a sustainable level, but how will this management system help satisfy Zenadhaw Mabaygka concerns and aspirations? Well an integral part of a quota management system is that a total allowable catch (TAC) figure is determined for a fishery for fishermen to harvest sustainably. Then a quota allocation panel is then created for the allocation and distribution of these quotas to fishermen in the fishery. This is where Zenadhaw Mabaygka could have a primary role.

Zenadhaw Mabaygka can and should have a primary role on the Quota Allocation Panel because of the following reasons:

1. It is acknowledgement and protection of the livelihood of Zenadhaw Mabaygka, an obligation conferred onto Australia by the Torres Strait Treaty, Part 3, Article 10;
2. Giving Zenadhaw Mabaygka a primary role on this panel, allows Zenadhaw Mabaygka more decision-making powers, more direct influence and a more direct say as to who uses the resources and how much they can take; and lastly
3. Giving Zenadhaw Mabaygka a primary role on this panel, allows them to pursue the primary aspiration of managing and controlling 100% of the Zenadh wapiw.

Several countries use the quota management system and like any other management system it has its virtues and disadvantages (Baelde, 2001). But this system does allow for the opportunity for greater participation by Zenadhaw Mabaygka, especially with respects to decision-making and the allocation of resources. Scientific backing is vital to ensure local knowledge and western-scientific knowledge are combined to inform the calculation of the Total Allowable Catch for each fishery.

### **Conclusion**

The alternatives arrangements that have been proposed in this thesis, both seek to manage resources in a sustainable manner and to satisfy Zenadhaw Mabaygka concerns and aspirations. The emphasis of identifying these arrangements is that they allow for greater participation by Zenadhaw Mabaygka, especially in regards to a greater decision-making capacity and satisfying their concerns and aspirations. What is special about these rearrangements is that they are practical and feasible, and can be implemented into the current governance structure to achieve an immediate result.

Instilling a clear set of principles created by and for Zenadhaw Mabaygka to use as a guide in making decisions in the PZJA governance regime ensures favourable outcomes for Zenadhaw Mabaygka. Decentralisation of the PZJA governance regime reallocates decisions making powers onto Zenadhaw Mabaygka giving them direct power and influence in the management of their resources and benefit sharing. Although much is being done in the TRL and Finfish fisheries with the reallocation of resources by implementing a QMS, Zenadhaw Mabaygka as primary decision makers on the QMS and as priority applicants for quota would cement Zenadhaw Mabaygka opportunities for both power and benefit sharing into the fisheries governance regime.

*Gizu Kud: Kuth Kabuthan a Wakay Yadun Sulpan (Chapter Seven: Conclusion & Recommendations)*

Zenadhaw Mabaygka have a proud and rich culture that is entwined with the sea. The sea is fundamental to Zenadhaw Mabaygka identity, livelihood and source for food. According to Haddon (1971), the Zenadh wapiw are imperative for traditional Zenadhaw Mabaygka ceremonies such as initiation revelry, weddings, funerals, tombstone openings and birthday celebrations (Haddon, 1971). In the last 100 years, the seas of Zenadh have taken on an additional importance for Zenadhaw Mabaygka. The sea of Zenadh Kes provides Zenadhaw Mabaygka an opportunity for economic independence and is described by some as the only source where Zenadhaw Mabaygka can build a real economy (TSRA, 2006). Their participation in the management of the Zenadh wapiw is reflected in their concerns and aspirations.

My journey as a student insider researcher has allowed me to develop intimate relationships with Zenadhaw Mabaygka who are fishermen and who are active participants of the current governance regime, but more importantly a deep insight into their struggles for self –management through their participation in the PZJA. I feel that the way in which I conducted this research was culturally appropriate. Without using a critical qualitative Indigenist methodology, documenting concerns and aspirations and identifying the appropriate rearrangements to satisfy them would not have been possible. The research itself has presented me with some interesting situations where I as an observer of the process have had to question the position of Zenadhaw Mabaygka because of the strong personal attachment I have with the research environment. I was quite alarmed and worried to find that in the current governance regime Zenadhaw Mabaygka do not have a direct say and virtually no power in the management of the Zenadh wapiw. As a Zenadhaw Mabaygka, it was disheartening to discover that my mabaygal only could advise on fishery arrangements, but only when it was sought. As it stands, we do not manage our resources, therefore we have no control over our fisheries.

The current regime, the PZJA, is presented as a co-operative ‘partnership’ approach. This model places strong emphasis on co-operative partnership between key stakeholders, in the process of developing and implementing fisheries management arrangement (Kaufmann, 2002: 3). The PZJA structure (Appendix Six) is a multi-national, multi-layered and multi-stakeholder model. The rhetoric of Zenadhaw Mabaygka participation within the Zenadh wapiw appears to be the ideal situation for Zenadhaw Mabaygka. In theory, to be consistent with the Treaty and PZJA mission statement, their traditional way

of life needs to be considered when designing appropriate fishing arrangements for the Zenadh wapiw, their views and interests are to be consulted upon when needed and they like all stakeholders in the Zenadh wapiw must have appropriate representation on all levels of the PZJA consultative process. But these techniques for promoting participation seem to do little to lessen Zenadhaw Mabaygka displeasure with current arrangements. The National Oceans Office states, 'this is because Zenadhaw Mabaygka involvement remains to be of an advisory role, rather than a decision-making one' (National Oceans Office, 2005). The current rhetoric seems to be perfect, but in practice this situation seems to disadvantage Zenadhaw Mabaygka because it does not mandate power sharing along side benefit sharing.

In reality, the consultative structure essentially is a centralised process, giving the decision-making authority ultimately to a single person, the Commonwealth Minister, thereby contradicting international principles of 'good governance' and Indigenous participation in protected areas with respects to decentralisation. By giving this type of authority to single Minister, a participatory deficit becomes inevitable with respects to Indigenous participation. Likewise a benefit sharing deficit flows from the participatory deficit. Zenadhaw Mabaygka are excluded from control over their sole source of livelihood and an inequity affect potentially affects the stakeholders that are not represented by this Minister. There is also the argument that having the collaborative approach to management is non –beneficial to Zenadhaw Mabaygka because of the influence and sheer strength of the commercial fishing interests in the area, countering Zenadhaw Mabaygka initiatives (Mulrennan & Scott, 2001). Zenadhaw Mabaygka of their current situation has expressed several concerns and aspirations.

On the primary objectives of this thesis was to document Zenadhaw Mabaygka concerns and aspirations. After thorough analysis, these are their concerns:

1. Zenadhaw Mabaygka are concerned that the Zenadh wapiw are the only resources available for the people in this region, yet rights to the majority of the resources have been given away to mabaygal living outside the region;
2. Zenadhaw Mabaygka are concerned that their fisheries need to be managed sustainably: most of them having increased fishing pressures and are in danger of depletion;
3. Zenadhaw Mabaygka are concerned that they are not being fairly treated with regards to certain decisions made for the Zenadh wapiw;
4. Zenadhaw Mabaygka are concerned that foreign fishing vessels are illegally taking Zenadh resources and bringing with them a risk of introducing exotic pests and diseases;

5. Zenadhaw Mabaygka are concerned that with the increased effort by younger generations in collaboration with the introduction of western technologies into hunting practices, their culture and way of life is being jeopardised; and
6. Zenadhaw Mabaygka are concerned that restrictions on certain fisheries that are a part of daily subsistence intake diets of Zenadhaw Mabaygka can possibly lead to dietary health related problems and financial difficulties possibly in the distant future.

To reiterate the findings presented in Chapter 5, these are their aspirations:

1. Equal power and benefit sharing;
2. Sustainability and conservation of the Zenadh wapiw;
3. Measures are set in place to ensure traditional inhabitants control and manage the Torres Strait fisheries;
4. Torres Strait fisheries are to be managed in a sustainable manner; and
5. Foreign fishing vessels ought to be strongly discouraged from entering Zenadh waters, are apprehended when they appear and the vessels disposed of in a manner that poses no threat to the environment.

Another goal of this thesis was to examine the research question of 'Does PZJA objectives satisfy Zenadhaw Mabaygka concerns and aspirations?' After thorough analysis of interviews, research data and the objectives the answer has to be negative. The thesis finds that from a Zenadhaw Mabaygka perspective, it was difficult for the PZJA objectives to satisfy Zenadhaw Mabaygka concerns and aspirations to achieve power and benefit sharing. To address this issue, this researcher has created several recommendations that might satisfy Zenadhaw Mabaygka concerns and aspirations.

### ***Findings & Recommendations***

To satisfy Zenadhaw Mabaygka concerns and aspirations, several recommendations have been identified. These recommendations are as followed:

*Finding 1:* Zenadhaw Mabaygka are frustrated with the current arrangements (National Oceans Office, 2005). If nothing is done about the situation, dissatisfaction with the current arrangements and structure

will increase, leading to possibly tensions and conflict between Zenadhaw Mabaygka and other stakeholders in the Zenadh wapiw. Therefore, something needs to be done to reverse this situation.

*Recommendation:* The governance mechanism must be rearranged to achieve power and benefit sharing with Zenadhaw Mabaygka.

*Finding 2:* To satisfy Zenadhaw Mabaygka concerns and aspirations, the PZJA should adopt and implement one or all of the rearrangements identified by thesis. But before implementing these alternative arrangements, necessary consultations with Zenadhaw Mabaygka must occur and only with the support of Zenadhaw Mabaygka then implementation of these arrangements should proceed.

*Recommendation:* The PZJA implements one or all of the rearrangements identified by this thesis, after careful consultation with Zenadhaw Mabaygka as to which one is the most appropriate for the present time.

*Findings 3:* The PZJA must treat these rearrangements as dynamic alternatives, giving them the opportunity to adapt; to be modified and possibly rectified if need be, to suit the current PZJA governance regime. Also allow for the time for Zenadhaw Mabaygka to embrace these arrangements, to fully understand them and to fully exploit them before determining whether or not these arrangements are fitting.

*Recommendation:* The PZJA implement one or all of the rearrangements identified by this thesis and allow ample amount of time for Zenadhaw Mabaygka to understand and to utilise them.

*Findings 4:* To completely respond to Zenadhaw Mabaygka concerns and aspirations the PZJA must seriously look at alternative arrangements and or decentralising the process that give the authority of decision-making back to the people that the decisions affect the most, the Zenadhaw Mabaygka. By doing this, the PZJA will allow Zenadhaw Mabaygka the opportunity to manage and govern the fisheries themselves, acknowledging their quest for autonomy.

*Recommendation:* The governance mechanism must look at the rearrangements identified by this thesis and implement them after careful consultation with Zenadhaw Mabaygka be rearranged to achieve power and benefit sharing.

This researcher would like to highlight the fact that these rearrangements are not offered as solutions to the situation but as achievable steps towards addressing Zenadhaw Mabaygka fundamental concerns and aspirations.

The current governance regime as it stands gives little power and benefit sharing to Zenadhaw Mabaygka. If all the rearrangements identified by this thesis were to be implemented into the structure then the new structure could look like the diagram as seen in Appendix Eight. At the PZJA level, it would still consist of the three Executive members; however Veto decision-making authority is distributed equally among members. By giving Zenadhaw Mabaygka this amount of decision-making authority at this level allows for power and benefit sharing and recognises Zenadhaw Mabaygka as primary stakeholders in the Zenadh wapiw.

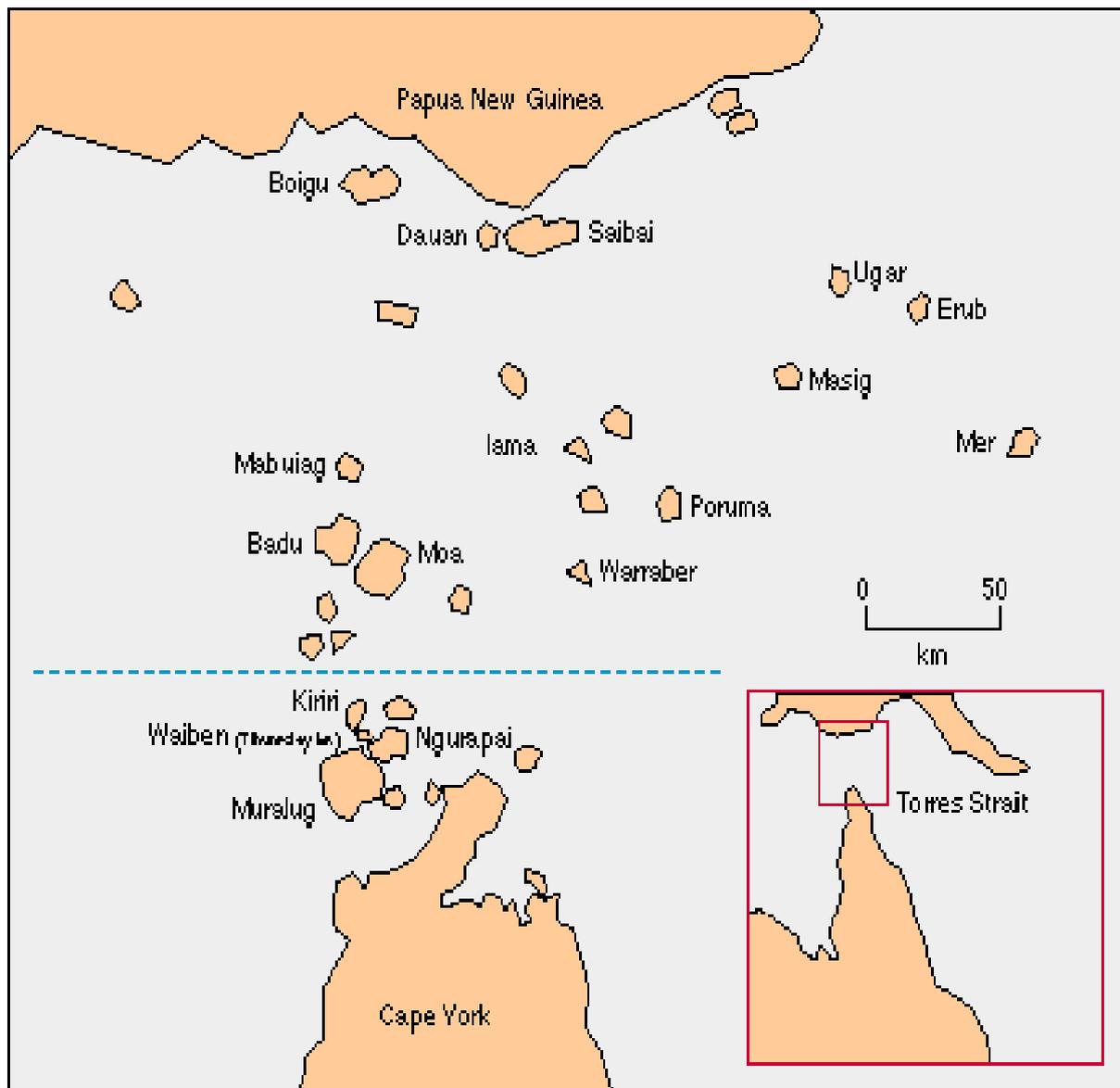
The working groups and TSSAC would play the part as in the present PZJA governing regime. An addition level will be added beneath the working group. This level would be the Quota Allocation Panel and this level would advise the working groups of the Total Allowable Catches for each and every fishery in the Zenadh wapiw. A total of five members would make up this panel which would include four Zenadhaw Mabaygka.

A governance mechanism such as the one recommended in Appendix seven would give Zenadhaw Mabaygka a powerful role enabling them to have and share power. Giving them the ability to share power will also allow for benefit sharing. A mechanism like this would also nullify the participatory deficit identified by this thesis in chapters' four and five. Ultimately, under this structure Zenadhaw Mabaygka would have a decision—making role, have direct influence over the management of the Zenadh wapiw and access to power and benefit sharing. This structure would go along way to satisfying Zenadhaw Mabaygka concerns and aspirations.

Zenadhaw Mabaygka are frustrated and concerned about the current fishery arrangements in the Zenadh wapiw. The Zenadh wapiw is the only economic base from which Zenadhaw Mabaygka can build a real economy. They aspire to control and manage 100% of the Zenadh wapiw. For this to happen, Zenadhaw Mabaygka must be primary actors in the governance of the Zenadh wapiw. If the recommendations identified by this thesis are incorporated into the PZJA governance regime then Zenadhaw Mabaygka will be a step closer to achieving their goals.

Of course much has to be done to allow this to happen, such as amending appropriate legislation and possibly revisiting and altering the Torres Strait Treaty. Doing these things will take time, nothing can be guaranteed, but to satisfy Zenadhaw Mabaygka concerns and aspirations and for them to achieve what they want, the ball must begin to roll.

## APPENDIX ONE: MAP OF ZENADH KES



## APPENDIX TWO: LICENCING ARRANGEMENTS

Table 1: Number of boat licences in each Torres Strait fishery (Current at 30 June 2005)

## Traditional Inhabitant Boat Licences (TIB)

Fishery	Primary	Tenders	Total
Prawn	0	0	0
Tropical Rock Lobster	409	0	409
Mackerel	230	0	230
Reef Line	204	0	204
Pearl Shell	73	0	73
Beche-de-mer	131	0	131
Crab	119	0	119
Trochus	126	0	126
Net	116	0	116

## Commercial Fishing Boat Licences (TVH)

Fishery	Primary	Tenders	Total
Prawn	70	0	70
Tropical Rock Lobster	24	60	84
Mackerel	16	31	47
Reef Line	9	24	33
Pearl Shell	20	35	55
Beche-de-mer	0	0	0
Crab	0	0	0
Trochus	0	0	0
Net	0	0	0
Torres Strait Fisheries which are not covered by a Fisheries Management Notice	8	25	33

## APPENDIX THREE - INTERPRETIVE CHRONOLOGY

This document was completed as an assessment component by Frank Loban requested by his principal Supervisor, Paul Havemann, prior to the commencement of his Masters Thesis.

### INTERPRETIVE CHRONOLOGY: FISHERIES GOVERNANCE IN THE TORRES STRAITS

Frank Loban MSC candidate

#### Introduction

Firstly this interpretive chronology will briefly compare the earliest fishery governance system with the present. Secondly I will give an explanation of all significant events in the history of governance in Torres Strait (TS) according to time periods. This will include tables sub-divided under by headings which have been identified by the author as having the most influence, followed by explanations of the principal events that happened during that time period. The table divided as follow:

<i>TIME</i>	<i>LEGAL</i>	<i>ECONOMIC/ ECOLOGICAL</i>	<i>CULTURAL</i>
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This will then be followed by a brief conclusion.

#### Colonialism, Christianity and Capitalism

Over the last two centuries the indigenous inhabitants of the Torres Strait Islands have endured many hardships and changes through the various fishing industries introduced by outside forces. The Pearling and Beche-de-mer industries were the earliest recorded fishery in the Straits, producing fortunes and dismay for all who participated. It is through these industries that Torres Straits became known to the world. Labour from every quarter of the Pacific basin was attracted to work in these industries (Beckett, 1987: 24). Torres Strait Islanders adapted and took part in these industries and some have even prospered. Prosperity came with a price. They were forced to accept colonial rule and authority and shift from a kin-based subsistence mode of production into capitalism (). An extractive

mode of colonization was imposed on the Torres Strait (TS), harvesting its marine resources frequently on an unsustainable scale.

Torres Strait Islanders lived in harmony with their surroundings and only gathered what was used on a daily basis to survive. The mode of production was kin-based for use, not for profit. TS Islanders were involved with customary exchanging with their neighbours to the north and south on a minimal scale. They traded pearl shells, ochre and even human skulls for canoes and various other items (Sharp, 1993: 155-164). Islanders traded for things that were not available on their islands but which were essential for the carrying out of their daily tasks in gathering food from the land and sea.

### **Traditional Governance and Law**

TS Islander culture is deeply entwined with the sea and their surroundings. TS societies are made up of strong kin-based family structures. Traditional knowledge and authority is a key feature of TS culture. This is evident from the respect given to elders of each island by family members and other islanders. Their knowledge of culture, traditional boundaries of land and sea, history of their family and clan, traditional hunting methods and horticulture, demand respect from younger islanders.

It is through the elders of this kin-based society that many traditional laws have been transmitted and followed from pre-contact times to the present day (Passi, 1986: 10-102). In earlier times these laws and traditional ways of doing things governed the Torres Strait and its people. Today this is known as 'Ailan Kustom' by Torres Strait Islanders and 'Ailan Kustom' is recognized in state law as a distinct system of customary law (Queensland Government, 2003:12). In the Torres Strait Islander Cultural Heritage Act 2003 legislation it is spelt Island Custom.

'Ailan Kustom' differs greatly between the island societies of eastern Torres Strait and the western Torres Strait. Ailan Kustom primarily relates using modern terms, marriage arrangements, property and sea rights, resource management, compensation, justice, morals, beliefs and law (Haddon, 1971,129-153). The management of their sea resources were mainly island based and were enforced by the local clans of that island. In the Eastern Islands most areas were owned by a certain clan and it was their right for them alone to fish in this area. If a person from another clan were to be caught fishing in this area, they would be dealt with according to traditional law (Passi, 1986: 27-66). This practice was also evident on some islands in the western Torres Strait.

The colonization of the Torres Strait, imposition of state laws as well as Christianity and destruction of traditional based governance has nullified many traditional practices in Torres Strait. The effects on this have caused many problems for TS Islanders, especially with regards to traditional sea tenure.

Although certain islands still claim their right to traditional sea tenure, younger generations of Torres Strait Islanders are ignoring or forgetting tradition and are fishing anywhere they please (Passi, 1986: 27-66). This absence of respect and understanding of traditional governance is a result of colonization, Christianity and the imposition of capitalism.

### **Diverse Economies**

Today in the Torres Strait, both the customary exchange and the subsistence economy are much reduced in size and importance. The cash economy or capitalism has more or less dominated, as it has for the rest of the world, in more recent times. Pre contact TS Islanders traded with the Papuans of Papua New Guinea for canoes, cassowary feathers, dogteeth necklaces and other dance ornaments. They also traded with Aboriginals from the mainland of Australia for red ochre, emu feathers and leg bones (Sharp, 1993: 28). This was customary exchange. Customary exchange brought variety to the TS Islanders' life allowing them to possess items that were unavailable to them in their natural environment. Customary exchange also created unity and extended networks between TS Islanders and their trading neighbours; the Papuans and Aboriginals (Sharp, 1993: 28). Customary exchange was only possible during the northeast season.

TS Islanders exploited and interacted with their land and sea resources efficiently for their survival. Land and sea resources varied across the Strait but technologies invented over generations allowed Islanders to effectively gather and grow food (Passi, 1986: 27). The islander's main animal foods came from the sea through hunting and gathering. Fruit and vegetables came from the land through horticulture and trading.

For those islanders who were not fortunate to have certain meat, especially dugong, or certain vegetables products, participation in the subsistence trade was essential. Islanders exchanged their surplus for a deficiency, or their specialties for the products of other places (Haddon, 1971: 293). Various islands clans had various specialties depending upon their environment. In which they exploited, shared and traded effectively for the benefits of both themselves and other island clans.

At present commercial fishing is the primary employer for Torres Strait Islanders and the exploitation of its resources is on a large scale. In the past, the early commercial fisheries of Torres Strait had a 'boom and bust' period. Pearl shell, Trochus and Beche-der-mer extraction were once profitable, but are now struggling and inactive. Historically management authorities were unable to manage these fisheries on a sustainable basis (Williams, 1994: 5-8). Their development, exploitation and demise were determined entirely by external market forces.

Torres Strait produce such as the Tropical Rock Lobster and various prawn species are highly desired and destined for foreign markets. Prices for these products are set by world markets, mainly in Japan and the United States of America (Williams, 1994: 5). Prices are therefore beyond the control of Torres Strait Islanders. The declination of the TS fisheries has led to the adoption of scientific methods of fisheries management, to ensure that Torres Strait stocks are exploited in a sustainable manner (Williams, 1994: 5-8). Fisheries managers use biological advice based on western scientific knowledge in combination with economic and other information so that both environment and economic needs are considered when management decisions are made. Torres Strait Islanders no longer control their own stock, and indigenous knowledge plays little part in consent. TS Islanders only participate in the management process, along with other various stakeholders. This process is controlled by the state and commonwealth government and is out of the hands of Torres Strait Islanders.

The current principle body governing and managing the fisheries in the Torres Strait is known as the Torres Strait Protected Zone Joint Authority (PZJA). The PZJA is responsible for monitoring the conditions of the designated fisheries and for the formulation of policies and plans for their management (PZJA Annual Report, 2002: 4). The PZJA is also obliged to fulfill its responsibilities conferred on Australia by the Torres Strait Treaty, in particular the protection of the traditional way of life and livelihood of traditional inhabitants, including their traditional fishing (PZJA Annual Report, 2002: 4). This principle body was created using two different forms of legislations.

The first piece of legislation which is an international agreement between Australia and Papua New Guinea, as mentioned before is called the Torres Strait Treaty. This Treaty's concern is with sovereignty and maritime boundaries in the area between the two countries and the protection of way of life and livelihood of traditional inhabitants and the marine environment (PZJA Annual Report, 2002: 1). This treaty established the Torres Strait Protected Zone (TSPZ) (as seen in Appendix 1) in which each countries maritime borders fall within.

The second piece of legislation was passed by the Commonwealth Government in 1984 and is called the *Torres Strait Fisheries Act 1984* and it came into affect the same day as Treaty (PZJA Annual Report, 2002: 1). The purpose of the *Torres Strait Fisheries Act 1984* was to give effect, in Australian law, to the fisheries element of the Treaty (PZJA Annual Report, 2002: 1). The Act provides a framework for management of the TS fisheries, and aims for conservation and optimum utilization of stocks and maximum participation by Islanders (Williams, 1994: 6). It was after the endorsement of both pieces of legislation that the PZJA came to be.

Currently the PZJA is responsible for the management of all traditional and commercial fisheries within Torres Strait (PZJA Annual Report, 2002: 3-4). However, recreational fishing, including charter fishing, is still managed by Queensland under the Queensland *Torres Strait Fisheries Act 1984* (PZJA Annual Report, 2002: 4). Queensland also retains responsibility for aquaculture and fisheries marketing in the TSPZ.

Before the 1700's and 1800's this form of resource management would have been seen as ludicrous and inconsiderable. A foreign centralized governing body would have not suited the islanders, especially with their kin-based management regimes. However, when considering Australia's ever changing society and the importance of managing sustainable traditional and commercial fisheries, with multiple stakeholders, the current governing regime seems to be a likely choice. The Torres Strait has come along way from managing sea resources according to traditions on a clan to clan basis to having a centralized regime. This journey has not been an easy one, taking into account all involved and the events which have happened over past. Therefore, with this in mind this author will now move onto the chronology.

### **? - 1700: Before Contact**

Although no recorded contacted can be found between the indigenous peoples of Torres Straits and relevant explorers before the 1700's, a small number of expeditions used the Straits as a passage onto Asia or the Pacific. In 1606 the Spanish navigator, Louis Vaez de Torres sailed safely through Torres Straits, which today bears his name (Williams, 1994: 3). The passage was concealed by the Spanish from it's rivals up until Captain James Cook passed through them and charted Torres Straits in 1770 (Williams, 1994: 3). Apparently Cook was aware that such a passage existed through Torres Straits, and after his voyage it's importance as a shipping route became apparent (Williams, 1994: 3). It

removed the need to sail north around Papua New Guinea (PNG) to reach Batavia (now Jakarta), Singapore and beyond.

During this time Torres Strait Islanders still had only brief encounters with foreigners. They were still participating in their own island economy which was basically trading specific goods to the Papuans to the north and the Aborigines to the south. Their great ocean going canoes, up to twenty metres in length, equipped with double outriggers and a distinctive form of rigging, enabled them to exploit a much wider range of their resources than the Aborigines and Papuans (Beckett, 1987: 26). However, in time these practices ceased and were to be replaced with a cash-based economy.

The islands were autonomous societies with partial contact with their indigenous neighbours. Contact with non-TS Islanders seemed only through the customary and subsistence trade. TS islanders exploited their land and sea environments efficiently to survive. Their surroundings played a major role in influencing their cultural, ecological and economical system (Passi, 1986: 27-63). However, this was to change in the coming centuries.

<i>TIME</i>	<i>LEGAL</i>	<i>ECONOMIC/ ECOLOGICAL</i>	<i>CULTURAL</i>
1606		1606 Portuguese Navigator - Luis Vas de Torres sailed through the Strait, which was later given his name.	

### **1700 - 1864: Contact - Beche-der-mer harvesting**

One of the first marine industries to become evident in Torres Straits is the beche-de-mer, sea slug or trepang industry (Williams, 1994: 10). According to MacGillivray, Beche-de-mer fishing began in the 1840's (MacGillivray in Sharp, 1993: 156). Beche-de-mer or trepang is the name given to holothurians, or sea cucumbers. When collected, mainly by diving or hand picking at low tide off the reef, they are cleaned, boiled, smoked and dried to produce the actually beche-de-mer (Williams et al, 1998: 5). When reconstituted, the flesh is used in Chinese soups and main courses. It is also ground and used for medicine, most recently as a palliative for arthritis (Williams et al, 1998: 5). The industry in the Torres Strait has seen a recent resurgence, followed by a decline. The Queensland Fisheries Management Authority (QFMA) and Torres Strait Fisheries Scientific Advisory Committee (TSFSAC) have indicated concern about sustainability towards this industry due to it being over-exploited.

During the early years, the indigenous peoples were not employed in this industry and thus none benefited. Mostly the Macassans from the South Celebes Seas in the East Indies dominated the industry and fished across Northern Australia, including the Torres Straits (Williams et al, 1998: 6). Although, it was until the mid 1800's that Torres Strait Islanders were to be included, it would be under very strict and harsh conditions.

### 1840's - Trepang, Sea Slug, Beche-der-mer or Sea Cucumber

As mentioned before, the Trepang, Sea Slug, Sea Cucumber or Beche-de-mer industry began in the 1840's (MacGillivray in Sharp, 1993: 156). In the past, this fishery has fluctuated and faced near extinction at one point in time around the Second World War. Over the years this fishery along with several others recruited into the Straits numerous workers from overseas nations such as the islands of the Pacific and Asia. The impact of the foreign workers on TS society was a mixed blessing.

Some encounters were friendly and others were violent and abusive. Some trepangers forced men and women to work for them, withholding promised payment and abducting women to serve the sexual needs of their foreign crews (Beckett, 1987: 33-34). Various incidents were reported over time to the LMS administration and government and it remained in their interests in the long term to check reported incidents and regulate employment.

<i>TIME</i>	<i>LEGAL</i>	<i>ECONOMIC/ ECOLOGICAL</i>	<i>CULTURAL</i>
1700's			
1770		Captain James Cook, navigator from Britain sailed first voyage across Pacific. He landed at Tudin (Possession) and claimed Kie Daudai (Australian mainland) for King George 3 of England.	
1791		' Pandora' manned by Captain Edwards struck a reef and sank, he went to Timor by boats.	
1840's		Beche-der-mer Industry evident	
1843			Barbara sole survivor off ship wreck, taking in by Kaurareg, alias Giom

1846		Marine Exploitation of the Torres Straits by outsiders	
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### **1864 - 1870: Beginnings of Colonialism and Pearlring**

The establishment of Somerset settlement brought with it political and cultural colonization to the Torres Straits. One aim for establishing this settlement was that it would serve as a base to control the indigenous peoples of northern Australia, including the Torres Strait Islanders (Mullins, 1995: 31-2). However, it was the Aborigines who lived on the shores of the Strait felt the full impact of this colonial occupation. This experience proved to be disastrous to their culture and society. TS Islanders were spared the worst of the impact because of their relative remoteness.

The discovery of Mother-of-Pearl Pearl shell however, brought many demoralizing incidents and violent conflicts to the Straits. Foreigners came and looted the sea beds, ransacked the islands for food, water, firewood and most of all slaves, especially women (Sharp, 1993: 155). Despite this, islanders also benefited from this discovery. Although it was not until some time later, TS Islanders were employed in this industry in great numbers and in some cases reaped the rewards for their labour.

#### **1864 August - Somerset is settled**

The establishment of the township of Somerset near the tip of Cape York first began in 1864. George Ferguson Bowen, Queensland's first governor, expectations' were that it would be a harbour of refuge, a supply depot, a coaling station for steamers making the run from Brisbane to Java (Mullins, 1995: 31-2). The station would allow for the control of the Torres Strait Islanders and Aborigines and serve as a military post. It would also serve as a centre for geographical research, missionary enterprise and eventually colonisation of Northern Australia, New Guinea and the Indonesian archipelago (Mullins, 1995: 31-2). Although this township was the first government establishment by the state of Queensland in the Torres Strait region, there were later discussions to move it to Thursday Island.

#### **1868 - Discovery of Mop (Mother-of pearl) Pearl Shell**

The first reported discovery of pearl shell in Torres Strait was in 1868 by Captain Banner sailing on the 'Julia Percy'. He collected pearl shells from around the Warrior reefs. Pearl shells were also found at Wapa and Orman reefs in the Endeavour Strait and in various passages of the Prince of Wales group, Badu, Darnley and Mount Adolphus Islands (Torres Strait Fisheries Assessment Group, 1999: 7). From

approximately 1872-1875 the number of boats engaged in the pearl fisheries increased to nearly 100 with over 1000 men employed in the industry (Finch, 1977). The Pearl Industry was one of the most important and greatest industries in the earlier part of the 20<sup>th</sup> century in Torres Strait.

<i>TIME</i>	<i>LEGAL</i>	<i>ECONOMIC/ ECOLOGICAL</i>	<i>CULTURAL</i>
1864		August - Somerset township is established and settled.	
1866		First mail delivered from Waibene	
1868		Mop Pearl Shell discovered at Tudu	

### 1871 - 1939: Colonial Rule

Colonial rule in the Torres Strait consisted of three distinct phases. These were redirect rule, paternalist exclusion, and controlled integration. Indirect rule was the form of European control during the period 1870's to the early 1900's. Under this system the Government Resident on Thursday Island appointed headmen on the inhabited Islands. The nature of Islander society allowed this form of control to be effective (Sharp, 1993: 130). These headmen appointed subordinates who were granted police powers. The headmen had magisterial powers but in reality were always subsidiary to the London Missionary Society (LMS) missionaries in their communities.

In 1904 the Queensland Government took control of the Island communities from the LMS, and treated the Islanders in the same way as Aboriginal people. The Island communities were declared Reserves, segregated from the outside world and virtually every aspect of Islanders' personal, domestic and community life was controlled by the local Protector. This phase of colonial policy has been described as paternalist exclusion (Sharp, 1993: 130-133). Torres Strait Islanders lost their rights as British citizens and became wards of the State as happened to mainland Aboriginal peoples.

The third phase of colonial policy was controlled integration, which began, in the mid 1960s. This amounted to a continuation of the policies and practices of paternalism and segregation, but appropriately adjusted to accommodate the labour needs of capitalist expansion. Islander participation in the money market economy took place in the context of each of the three phases of colonialism, that is, under conditions determined by others and mostly in current contradiction to their traditional kin-based mode of production.

The two aspects of the introduced economy most resented by Islanders were forced labour and controls over their earnings. Nevertheless, Islanders remained enthusiastic about participation in the marine export economy (Beche de mer, trochus and mother-of-pearl) because they saw it as a means of increasing their self-reliance. Islanders resented government policies, which denied their humanity and their desire to control their own livelihoods and futures (Beckett, 1987: 57-60). Although the Queensland (QLD) government made some concession, the policy of maintaining broad allegedly protective controls over Islanders' lives continued for several decades.

### **1871 July - Coming of the Light**

On the afternoon of Saturday, 1 July 1871, the L.M.S (London Missionary Society) ship carrying Reverend S. McFarlane and the Reverend A. Murray, together with eight Polynesian mission teachers and their wives anchored in Treachery Bay, Darnley Island (Finch, 77: 41). This day 1<sup>st</sup> of July is now celebrated annually throughout the Straits as the festival of 'The Coming of the Light'.

The Missionaries removed certain practices and customs and they dictated a certain way of life, the Christian way of life. They put a stop to alliances and warfare, which were intrinsic to exchange relationships between Island communities and the Papuan coast and Cape York. Many articles of exchange and sacred belief were banned and destroyed and churches soon came to occupy central positions beside the beaches (Sharp, 1980: 50-55). The missionaries succeeded quickly in gaining the islander's co-operation.

Missionaries, as is often the case, were the vanguard for capitalism. They established businesses whose purpose was to encourage Islander participation in the pearling industry to increase self-reliance (Sharp, 1993: 160). The participation in the market economy was rapid and enthusiastic throughout Islander communities. This development gave birth to the 'Company Boats'. Company Boats were pearling luggers purchased by the LMS, to be worked and owned by the Islanders, but controlled by the missionary administration (Sharp, 1993: 161-163). The 'Company Boats' gave islanders some form of independence and autonomy.

### **1872 - The First Annexation**

Before 1872 the Torres Strait was classed as 'International Waters' but Queensland's boundary off its coastline were an area of debate. To overcome doubts about islands off the Queensland coast, an 1872 Letter Patent, at the request of Queensland, permitted the annexation of islands within sixty miles

off the Queensland coast (Holder, 1974: 28). As Mullins (1995) argues, although the new boundary lines included the southern region of the Torres Straits, it's main focus was to secure the Barrier Reef Islands from New South Wales (Mullins: 89). The northern region of Torres Strait was not included, but Queensland still had a presence there.

### **1877 - Waibene (Thursday Island) is settled**

The settlement transferred from Somerset to Thursday Island at Port Kennedy in 1877 in order to administer more adequately the scattered islands of the Torres Strait (Torres Shire Municipal Library, 2004: 1). In 1885, Local government administration came to Thursday Island in the form of the Divisional Board of Torres (Torres Shire Municipal Library, 2004: 1). Since that day, Waibene has been the administrative centre for the Torres Strait.

### **1879 - The Second Annexation**

After 1872 QLD further extended the colony's maritime boundary to include all of Torres Strait. Queensland's argument for this extension was that it would allow for the regulation of working conditions in the beche-de-mer and pearling industries, and for the protection of the Torres Strait Islanders (Mullins, 1999: 139). The Douglas Ministry which negotiated the extension was convinced that it was important for Queensland to push it's boundaries for humanitarian reasons (Mullins, 1999: 139-140). Although at the time Torres Strait were having various problems with the Pacific Islander seamen in the marine industries, this extension supported by the British Colonial Office initiative intended to delay what seem to be the next steps: the colonisation of New Guinea (Mullins, 1999:139). The welfare of Torres Strait Islanders at that time was of incidental rather than central consideration.

### **1879 - Torres Strait Participation in the Marine Industry begins**

Since the second annexation TS Islanders took part in the pearling, trochus and beche-der-mer industries. TS Islanders started out as being labourers aboard boats owned by foreigners or European Australians, at rates, which were considered at that time by European Australians as unjust (Sharp, 1993: 160-162). However, this arrangement economically changed TS Islanders forever because it allowed TS Islanders to participate in a limited capacity in the cash economy and have passbook accounts. Only a certain few were able to purchase their own cutters and work them accordingly to their clans (Sharp, 1993: 159). Most islanders had no source of income and could not participate actively unless aboard a boat not owned by them.

It was later when certain TS Islanders approached Reverend F. W. Walker that Islanders found an avenue to purchase boats for themselves (Beckett, 1987: 49). Walker allocated funds through the LMS to purchase fishing vessels, than allow the islanders to work it and pay it off through him. Shortly after Walker resigned from the LMS because of their policy against commercial involvement. In 1904 Walker attained funds and established Papuan Industries Limited (PIL) on Badu Island in the western part of Torres Strait, a Christian trading station which primary goal was to encourage Islander participation in the Pearling industry to increase their self-reliance (Sharp, 1993: 160). The response was quick and enthusiastic. In it's first year, two boats were purchased at Mabuiag Island and three at Murray Island. The boats purchased at Murray Island were paid for fully that year. Soon Islanders from across the Straits were purchasing cutters and luggers through PIL.

By 1907 eighteen boats were being operated by TS Islanders. A fleet emerged recognisable by the common badge of black and white striped railings often carrying Island names, known back then as the 'Company Boats' (Sharp, 1993: 161). It was through these boats that many TS Islanders participated in the marine industries, gained access to the cash economy and Thursday Island. The operating of the 'Company Boats' by TS Islanders had dramatic effects on their lives economically and culturally.

The islanders took pride in working in the pearling industry, but it came culturally repercussions. Many of the islanders spent long periods of time out on the boats and have limited time to plant and maintain gardens and go fishing. Most islanders began to neglect the traditionally ways of rearing food and became heavily depended and accustomed to introduced foods they bought from local shops. Even the families that were left on the island adapted to this change. However, this did not effect customary land tenure, inheritance patterns and kinship relations (Haddon in Sharp, 1993: 160-163). These areas of TS culture continued to stay strong.

As Haddon states, 'should the supply of pearl-shell fall off, or the price be lowered, the natives would suffer greatly; and if the storekeepers left the island, the people would practically starve. As it is many are considerably in debt to the traders, and often the traders advance supplies of flour and food to ward off starvation. With all their apparent prosperity, the people are really in a false economic condition, and their future may yet be temporarily deplorable' (Haddon in Beckett, 1987: 48). This situation was becoming evident on Mabuiag Island and needed attention from the local teacher-supervisor. This situation was not apparent on all islands but it was foreseeable that it could happen.

In 1904 the Queensland Government also established an agency working in competition with PIL and serving the islands that Walker was not able to serve. The two established a working relationship, and when Walker retired they merged to become Aboriginal Industries Board (AIB) (Beckett, 1987: 50). For the government, Islanders' ownership of their own fishing vessels was a source of independence and threatened their power over them. Four changes were made over the functioning of AIB, which meant passing of control of the 'Company Boats' from their Islander owners to the government (Sharp, 1993: 160-163). Firstly, ultimate control of recruiting boat crew passed into the Protector's hands. Secondly, there was a change from sale of shell by tender of auction to automatic sale to AIB. Thirdly, control over earnings became total; part went to an Island Fund (established in 1912) and part went as credit to the Islander producer in the AIB stores. Then fourthly, where boats were not worked 'satisfactorily' in the eyes of the Protector, he confiscated them (Sharp, 1993: 160-163). The implementation of these steps gave indirect control to the local Protectors, over the operations of the 'Company Boats' and dictation of the way Islanders spent their money,.

During the 1910's and 1920's the Protectors had a difficult task in getting islanders to work their boats on a regular basis. Islanders paid off the purchase price with surprising speed, but supposing the vessel were theirs to use as they chose, got annoyed at the Protector's assertions to keeping working and not use the boats for personal use such as hunting and transportation (Beckett, 1987: 50-52). Some islanders were defiant and went hunting and others were disgusted and left the boats to rot and decay. Hostility and resentment to the administration and Protector began to build slowly.

After the boom that followed the First World War with trochus the Protector expanded the fleet and crew numbers of TS Islanders to take advantage. From 1921 to 1923 the number of employed TS Islanders working in the marine industries on a 'Company Boat' rose from 358 to 587 (Beckett, 1987: 50-52). The 'Company boats' were at fewer disadvantages since no diving gear were required. However, a combination of things such as family concerns, buying prices being lowered and the great depression made it harder for the Protector to persuade islanders to work their boats. In 1931 the Protector reported unrest and a 'temporary revulsion' against working for the government from islanders, and stated it was necessary to use force (Beckett, 1987: 50-52). But even with all of these obstacles the Protector managed to encourage, persuade or force islanders into working on the boats.

### **1897 - *Aboriginals Protection and Restriction of the Sales of Opium Act* is passed**

At the turn of the 20<sup>th</sup> century Queensland were having problems with the indigenous peoples adjusting to colonial order. The Aboriginals on the mainland were on the verge of extinction and the TS Islanders were generally healthy but were in a deplorable state of affairs locally (Mullins, 1995: 176). In an effort to alleviate these problems the Queensland Government passed the Aboriginals Protection and Restriction of Sales of Opium Act. This brought into Queensland the Aboriginal reserve system, that goals were to control and protect indigenous peoples (Mullins, 1995: 176). The situation on the mainland was serious, but it was not likely the case in the Straits.

John Douglas and Hugh Milman, the current officials at the time did all in their powers to see that the provisions of the 1897 Act were not extended to Torres Strait (Mullins, 1995: 176). However, these officials were replaced by professional bureaucrats who brought to the Strait ideas about 'native policy' formed on the pastoral frontier. For them there was no hope of the Islanders becoming independent until their lives were more strictly regulated, and for the next half-century Queensland's oppressive protectionist regime denied TS Islanders the most basic human rights (Mullins, 1995: 176). This Act had dramatic effects on TS Islanders economically and culturally.

The legislation allowed for a Protector to be appointed to Thursday Island along with Supervisors on the outer islands, who were generally the resident teachers. Under the Act all Aborigines, which included TS Islanders, were to be employed under a permit system which gave the local Protector the right to stipulate wages, set conditions and terminate agreements if he thought it justified (Mullins, 1997: 4). It also allowed them to determine whether Islanders could work, when they worked, where they worked and for whom.

This Act also allowed the Protector to take total control of the fishing vessels or 'Company Boats' belonging to the Islanders. This motion was pursuant to his power to care for and manage the property of protected persons, which was half the diving workforce (Plevitz, 2002: 3). In 1921 the protector's office officially took complete control of the earnings and savings of all TS Islanders. A percentage of the money was placed in what were known as the Island Fund to be spent on the communities in whatever way the protector saw fit, and the rest into accounts held in trust that could only be drawn in supplies from the island stores (Mullins, 1997: 7). The Islanders were rarely allowed to have cash. The protector's control became complete when the government bought out PIL in 1929 and established government stores on all the inhabited islands.

TS Islanders had nil control over their financial well-being. They had no power in determining how much they could sell their catch for, how much they could spend at the government owned shops or where they could spend their money. The protector controlled everything. The supervisors on the outer islands controlled all aspects of personal autonomy from personal movement, boat movements and the segregation of the sexes and races (Sharp, 1993:130-131). In 1918 and the early 1930's men from the eastern Torres Strait were convicted under 'morality laws' and deported away from the Straits (Sharp, 1993: 130-132). To top it all off all those who came under the Act were excluded from Thursday Island society and where possible the island itself, the business and administrative centre for the Torres Straits and Northern Cape York Peninsula (Sharp, 1993: 130-132). In each sphere of them being 'protected', Islanders were constantly reminded: they needed help and supervision and were less than equals.

### **1936 January - Maritime "Company Boats " Strike**

Between the 1870's and 1930's the Protector had come to control their operations and the Islanders' earnings from the sale of the shell they caught (Sharp, 1980: 1-5). Their wages were put into an Island Fund for welfare activities and the rest was made available as 'credit' in stores controlled by the 'Aboriginal Department'. That was the name given to the Protector's department.

On January 14 1936, 398 men or about 70 per cent of the total Islander workforce in one of the world's richest pearling industries went on strike (Sharp, 1980: 1-5). The islanders worked luggers or as they were called back then 'Company Boats', which were controlled by the Protector of Aboriginals' at that time (Sharp, 1980: 1-5). The Company Boats themselves belonged to the islanders.

As Sharp (1980: 1-5) sums it up, the goal of the strike was that the Islanders wanted to manage their own affairs. The strike itself lasted one year and it took the most experienced officers the Queensland Administration could muster to settle it (Sharp, 1980: 1-5). Its outcome was a definite victory for Islanders in terms of self-management.

### **1937 August - First Inter-Island Councillors' Conference**

At the end of 1936, amendments to the Aboriginal Protection and Sales of Opium Act allowed the powers of the government teachers, the Aboriginal Industries Board (AIB) and the Protectors to be transferred to the local Island Councils (Sharp, 1993: 210). During August 1937, thirty-four elected Councillors from fourteen Torres Strait Islander communities met at Masig (Yorke Island) in the presence of Mr. CD O'Leary (Deputy Protector). At the conference the authority of the councillors was

underlined at the outset by an election of a Chairman of the Conference from among them (Sharp, 1993: 211-14). It was done through a secret ballot at the request of the islanders.

The conference resolved matters concerning the sales of pearls, registration of fishing grounds and Councillors' wages. They expressed their support for newly developed stores on the outer islands; they also recommended higher wages on the boats of the 'Master' pearlers. The conference was also the opportunity to ask the Commonwealth Government to put Torres Strait Islanders as a race of people on the same footing as other Australians with regards to maternity allowances and training (Sharp, 1993: 211-14). The conference also reaffirmed fundamental traditional rights in land according to Island custom.

<i>TIME</i>	<i>LEGAL</i>	<i>ECONOMIC/ ECOLOGICAL</i>	<i>CULTURAL</i>
1871			July - Evangelists of the London Missionary Society bring Christianity to the Straits.
1872	Imperial Pacific Islanders Act 1872 passed		
1872	Queens land (QLD) annexed many islands close to the coast including the southern straits		
1877		1877 - Govt administration and garrison at Somerset on Cape York relocated to Waibene (Thursday Island)	
1879		Govt Residency move from Somerset to Waibene	
1879	Rest of the Torres Straits annexed to QLD. Islands made into restricted reserves.		
1884	Native Labourers' Protection Act 1884 passed		
1884-1905			Haddon Expedition
1894	Nelson Govt recommend accept Griffith line (border)		
1894		Gold Rush on Horn Is	

1897	Aboriginal Protection and Restriction of the Sale of Opium Act 1897 passed		
1897		Peak of pearling industry (thousands of divers and deckhands from all over the world - more than 400 boats in the Straits)	
1913	First official count - 2368 Torres Strait Islanders left in Strait area		
1930			Unveiling of tombstones tradition become evident
1936		Resentment of QLD Gov lead Islanders to strike for four months - fishing industry	
1937	First TSI Council Conference was held at Masig (Yorke Island).		

### 1939 - 1959: Army Time

In 1939 World War 2 was upon Australia and the Torres Straits. The Australian Army took over from civilian administration and brought in hundreds of troops and put many islander men into uniform (Beckett, 1987: 61-87). The Australian Army formed segregated Islander units and paid them at an amount that was advised by the local Protector and compared to the Royal Papuan Constabulary (Hall, 1989: 34-35). The amount was at \$3 a month, an amount that was advised by the local Protector as being comparable to the earning power of the men employed in the pearling industry (Hall, 1989: 34-35). Although many prospective recruits complained that the pay was too low compared to their white counterparts, by October 1941 106 men enlisted, enough to form a full strength company.

By November 1942, nearly 730 TS men were enlisted into the Islander units of the Torres Strait Defence Force. All fisheries were halted and most TS Islanders lost the use of their luggers. They were impounded by the army, beached and prepared for burning in the event of a Japanese landing (Hall, 1989: 36-7). A number of luggers were left alone but were designated for the use of RAAF and the Protectors of Islanders.

This experience gave some male islanders a sense of competence and entitlement. This was evident in a letter written during the war from a Murray Island councilor addressed to the Governor of Queensland stating that full Citizen Rights and everything involved in that ought to be recognized because of their service in the war. Many islander servicemen shared the aspirations this letter expressed when returning home in the belief that the Commonwealth would honour promises they believed to have been made to them (Beckett, 1987: 61-87). However, Canberra lacked the constitutional power to intervene in what was a state concern.

World War 2 ceased a majority of the marine operations in Torres Strait for 6 years, which meant a limited cash economy for islanders unless they were enlisted in the army. Islanders who weren't enlisted had no other options than to go back to the subsistence economy. World War 2 put an end to the beche-der-mer industry and there was no resumption after 1945 (Beckett, 1987: 67-70). Pearling continued after the war on a medium scale through the 1950's, but declined throughout the 1960's, sustained only by the need for small quantities of live pearl for local pearl farms. The marine industries brought fluctuating fortune to TS Islanders up until this time and there was no difference after the war. The Torres Strait experienced a mini post-war boom in the trochus and pearling industries. Various enterprises stayed in business, but the numbers of boats were fractions of those before the war.

During the 1940's and 1950's although various boats benefited during post-war times, pearl shell and trochus demand were unstable and unemployment increased. In addition to this problem, Torres Strait families were getting larger (Beckett, 1987: 61-87). Thus the combination of a rising population and static employment made many islanders move to mainland Australia for better employment opportunities.

### **1939 - World War 2**

After the bombing of Darwin the Australian Army established the Torres Strait Defense Force. This included the Torres Strait Light Infantry Battalion, coastal artillery, a water transport group utilizing small craft, and several other units (Beckett, 1987: 63). Almost 900 men have served in this force. The war halted the Bech-der-mer Fishery three years before the war actually started and never got up again until several years later. With the introduction of plastic, the main commercial fishery in Torres Strait was still pearling. However, post war pearling was reduced significantly and small-scale operations were sustained to supply local pearl shell farms with shell.

### **1957 - The Tropical Rock Lobster Industry begins**

Diving for the tropical rock lobster *Panulirus ornatus* is the main commercial fishing activity of indigenous people of Torres Strait at the present time and began in 1957. The single most significant development in the fishery was the establishment of a processing factory on Thursday Island in 1969 (Williams, 1994: 54-55). Crayfishing as it is called happens throughout the year and the most productive grounds are around the Orman reefs north of Mabuiag, Dungeness and Warrior reefs.

<i>TIME</i>	<i>LEGAL</i>	<i>ECONOMIC/ ECOLOGICAL</i>	<i>CULTURAL</i>
1939	Torres Strait Islanders Act 1939 passed		
1939		World War 2 begins -Torres Strait Light Infantry Battalion created (four companies recruited on a regional basis)	
1943		Troops on strike re poor pay compared with white troops and lack of access to various benefits	
1947		First Torres Strait Islanders allowed onto mainland to work in cane fields	
1957		The Tropical Rock Lobster Industry begins	

### 1960 - 1967 - Kie Daudai (Australia) Calling

After the war the Australian army gave power back to the Department of Native Affairs. The islanders that didn't migrate to the mainland lived a life that was supervised, however less strict than the generation before (Beckett, 1987: 61-87). The department of Native Affairs regulated their money and employment. Alcohol was forbidden they could not vote and had no access to government other than through the protector. These were hard times for the Torres Straits.

With the introduction of plastics after the war and the huge slump in trochus and pearl shell demands, a lot of islanders started to seek work elsewhere. Also with the population increasing the marine industry was no longer the only field of employment for Islanders (Beckett, 1987: 70). In the past the marine industry provided employment for every able-bodied TS male, but it could only absorb one third of them ten years later.

A lot of young male TS islanders found work as railway fettlers and could make up to six times as much working on the railways as in the marine industry in the Straits. They could also spend it as they pleased. During this time Torres Strait labour was in big demand also for being first-class tropical workers due to their work tactics, their hygiene and their conduct around work camps (Beckett, 1987: 70). Although TS communities regulated strictly the migration to Kie Daudai, the pressure to maintain steady numbers was too strong. The flow of TS Islanders to Kie Daudai eventually grew to big numbers.

### **1967 - 1981: Citizenship & the Border**

During 1967 was the referendum to amend section 51 (xxvi) and repeal section 127. Although campaigning for these constitutional changes began in 1910, the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) and its supporters used the same campaign slogans and themes as they did back then. This referendum meant a lot to indigenous people for the powerful meanings it acquired: it would result in the Commonwealth assuming control of Aboriginal affairs, sweep away racial discrimination, grant citizenship rights and achieve equality for indigenous peoples (Attwood et al, 1997: 59). This referendum was seen as the beginning for a fair go for indigenous peoples, however it didn't affect the federal Coalition government's approach to its role in Aboriginal affairs.

Indigenous people welcomed the result, which was overwhelmingly in favour for indigenous peoples. This was a new era for politics in the Torres Straits. It's obvious that Torres Strait Islanders wanted and lobbied for equal rights in the past in the form of strikes. However in the years to follow it seemed as if the referendum never took place as the federal government at the time revealed it's intention to more or less maintain the status quo in Aboriginal affairs and do nothing (Attwood et al, 1997: 61). Indigenous leaders voiced a lot of negative criticism during this period.

Moreover, in 1972 Prime Minister McMahon brought out his land denial policy for indigenous peoples. This meant indigenous people were not, in principle, to be given land rights (Gilbert in Attwood et al, 1997: 61). This was not the result indigenous people had hoped for following the referendum. Although commonwealth intervention into indigenous affairs was later fulfilled by the Whitlam Labor government later that year, the Torres Straits and it's peoples had a greater challenge facing them with Papua New

Guinea (PNG) receiving their independence. With this independence came the need for PNG to discuss their boundaries with Australia, this would possibly mean dividing the Torres Straits and it's people.

### 1969 - Discovery of Prawn Grounds

The existence of prawn grounds were first suspected when Mackerel fishermen found tiger and endeavour prawns inside their catches from the northeastern areas of Torres Strait. Commercial prawn fishing began around 1969, when the establishment of Norshrimp Pty Ltd's seafood processing factory on Thursday Island provided an unloading point for trawlers using brine tanks to store product (Williams, 1994: 62-3). Since this time, fuel barges and mother ships have been established and make it possibly for fishers to unload and refuel without leaving the trawling grounds. Moreover, improvements into the operations and safety of these vessels has allowed for the vessels to move along more effectively and efficiently.

### 1978 - The Torres Strait Treaty

The "Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime boundaries in the area between the two countries, including the area known as Torres Strait and Related Matters"- usually referred to as the "Torres Strait Treaty"- was signed by the Prime Ministers and Foreign Ministers of Australia and Papua New Guinea (Lyon & Smith in Boyce & White, 1981: 26). This treaty was the result of the 'Border No Change' campaign strongly supported by Torres Strait Islanders within Torres Strait and the Queensland Government. The Queensland Government supported this movement to resist moves by the Australian Government to accommodate more fully the wishes of Papua New Guinea.

Provisions in this treaty allow the inhabitants of Torres Strait and the western coastline of PNG to move freely between the two areas for traditional purposes. This also applies to the navigation and over flight of Australian and Papua New Guinean vessels and aircraft. This treaty permits the creation of a Protected Zone where both countries share the fishing resources the Torres Strait has to offer. Most importantly, this treaty establishes equitable rights over fisheries and seabed resources and for the protection and preservation of the marine environment.

<i>TIME</i>	<i>LEGAL</i>	<i>ECONOMIC/ ECOLOGICAL</i>	<i>CULTURAL</i>
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1967	Referendum to amend s.51(xxxvi) to permit Commonwealth to legislate for indigenous people		
1975	16/09/75 Papua New Guinea Independence		
1978	18/12/78 Torres Strait Treaty signed at P.N.G house in Sydney		

### 1982 - Present: Mabo and Autonomy

In 1982, Eddie Mabo, David Passi and James Rice instituted proceedings against the State of Queensland in the original jurisdiction of the High Court of Australia claiming that their islands, the Murray Islands, have been continuously inhabited and exclusively possessed by their people. They claimed to have lived on the islands in permanent settled communities with a social and political organization of their own (Brennan, 1992: 68-70). Mabo, Passi and Rice acknowledged that the British Crown had exercised sovereignty when it annexed the islands, but claimed that their land rights had not been validly extinguished (Internet). Mabo, Passi and Rice felt compelled to assert their claims because of the attempts by the QLD Government to make indigenous people 'leaseholders' of their own land.

In May 1982 the QLD cabinet announced its decision to grant indigenous communities deeds of grant in trust 'under existing provisions of the Land Act' (Brennan, 1992:16-18). This proposal would abolish indigenous reserves throughout the state and transfer title of reserved land to local indigenous councils. Title to the lands was to be vested in the councils through Deeds of Grant in Trust (DOGIT) under existing provisions of the Land Act (Brennan, 1992: 16-18). The local councils, holding the land in trust, were to have power to lease the land to resident individuals with the approval of the Minister for lands. Thus, submitting indigenous people to pay to live on their land.

Queensland's ultimate defence to the Mabo litigation was the Queensland Coast Islands Declaratory Act 1985. Section 3 declared that upon annexation, the Islands were vested in the Crown in the right of Queensland, freed from all other rights, interests and claims of any kind whatsoever and became waste lands of the Crown in Queensland (Bartlett, 1993: vii). This Act's primary focus was that native title, if any existed, was extinguished upon annexation. However, the High Court concluded in 1988 that the Act contravened the Racial Discrimination Act 1975 of the Commonwealth, because it 'abrogated the immunity of the Miriam people from arbitrary deprivation of their legal rights in and over the Murray

Islands' (Bartlett, 1993: vii). Then later in 1992, the High Court handed down its historical judgments, stating that (Bartlett: 1993: vii):

Australian common law recognizes a form of native title

The source of native title was the traditional connection to or occupation of the land

The native and content of native title was determined by the character of the traditional connection or occupation

Native title could be extinguished by the valid exercise of governmental powers provided a clear and plain intention to do was manifest

Summarily, the Australian Government recognized through law that Mabo, Passi and Rice were the traditional owners of their lands.

During the determination period of Mabo, a lot happened in the Torres Straits with regards to autonomy and self-determination. QLD passed legislation allowing Torres Strait communities to form local councils empowering them to run their own day-to-day businesses. This included infrastructure for housing, health and community based employment programs. These councils were also the infrastructure for local government in the communities of the straits.

When the High Court of Australia finally handed down its decision favouring Mabo, Australia's future was uncertain and looking good for indigenous peoples. The Mabo decision has made implications in various areas throughout Australia, but most importantly has identified native title and that indigenous people have a right to their traditional lands. This notion has encouraged the fundamentals of autonomy and self-determination for indigenous people. The call for autonomy and self-determination was voiced by various TS leaders in several forums, however it was not until the Torres Strait Regional Authority in 1994, was formed that they had a means for achieving this goal.

<i>TIME</i>	<i>LEGAL</i>	<i>ECONOMIC/ ECOLOGICAL</i>	<i>CULTURAL</i>
1982	Mabo & Others v the State of Qld commenced in the High Court (writ issued 1981)		
1984	QLD Community Services (Torres Strait) Act 1984 passed		

1984	Establishment of Island Coordinating Council (ICC) under Qld Community Services (Torres Strait) Act		
1984	Introduction of Deeds of Grant in Trust Legislation (Qld) - deeds given to Qld Aboriginal and TSI communities by 1987 - refused by Murray Island		
1984		Torres Strait Fisheries Act passed	
1985	Community Services (Torres Strait) Act 1985 (QLD) - established current system of Islands Councils and Courts		
1985	Torres Strait Treaty ratified		
1988		Protected Zone Joint Authority (PZJA) created	
1992	High Court upheld claim of Mabo & Others in Mabo & Others v. the State of Qld (Mabo 2) establishing that the common law recognizes a form of native title		
1993	Common law stated in Mabo 2 incorporated into statute in the Native Title Act		
1994		TSRA formed (under the ATSIC Act)	
1994 - 95		TSRA states their Economic/ Ecological objectives	
1997		Amendment to ATSIC Act to provide for direct funding for TSRA	
1997		Prime Minister promised TSRA full independence from ATSIC by 2000	
2001	TSRA lodges sea claim over Torres Strait region		
2001	Qld government no longer consents to determinations - ramifications for native title		
2002	May - Chairperson attends newly established United Nations - Permanent Forum of Indigenous Issues		

2002	July - Torres Strait Regional Sea Claim passes registration Test		
2002		November - Torres Strait Fisheries Amendment Act is passed - PZJA include TSRA Chairperson	
2002		December - New fisheries consultative structure approved	
2002		December - \$3M funding is used to create CRC Torres Strait	
2003		A major decision – TSI decide to cap TSI from entering the crayfishing season for 2004	
2004			Gab Titui Cultural Centre opens on Thursday Island

### 1982 - Mabo Begins

The history for the struggle for land rights goes back to the earliest days of European occupation in Australia. But it was not until in 1982 that Eddie Mabo and four other Torres Strait Islander people went to the High Court of Australia claiming that their island, Mer (Murray Island), had been continuously inhabited and exclusively possessed by them, therefore they were the true owners (Australian Museum, 2004). It wasn't know at the time but this case was to have immense ramifications within the Australia legal and political arena in years to come.

### 1988 - Protected Zone Joint Authority (PZJA) created

The Torres Strait Protected Zone Joint Authority (PZJA) was established under the Torres Strait Fisheries Act 1984 and consists of the Commonwealth Minister for Forestry and Conservation and the Queensland Minister for Primary Industries and Fisheries (Queensland Government, web page). The PZJA was established to manage specific objectives in the Torres Strait Protected Zone with the aim of maximizing the opportunities for islanders in the fishing industry (TSRA News, Vol 00). The Queensland Department of Primary Industries and Fisheries is an agent for the PZJA in day-to-day management of the fisheries and licensing of commercial fishers operating in the Torres Strait.

### 1992 - Mabo - A New Era

On 3<sup>rd</sup> of June, after a decade of litigation, the High Court ruled that the land title of the Indigenous people of Australia is recognised at common law. Native title stems from the continuation within common law of their rights over which pre-dates European colonisation of Australia. In absence of an effective extinguishment by the crown, this title presents through inheritance the original occupants' rights to possession of their traditional lands according to their customs and lores (Pelczynski, 1993: 1-5). This judgment literally marked the beginning of a new era into indigenous rights in Australia.

### **1994 - Torres Strait Regional Authority (TSRA) is formed**

In 1994 following amendments to the Aboriginal and Torres Strait Islander Act 1989 (the 'ASTIC Act'), the former Aboriginal and Torres Strait Islanders Affairs Commission (ATSIC) Torres Strait Regional Council was replaced by an independent statutory authority - the Torres Strait Regional Authority (TSRA) (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1997: 24-5). The TSRA had taken over all the duties for ATSIC within the Torres Strait region.

TSRA represents and acts on behalf both Torres Strait Islanders and Aboriginals' and consists of an elected arm and administrative arm. The elected arm consists of: 17 island council chairs; a rep of Horn and Prince of Wales Islands; a rep from Port Kennedy community on Thursday Island; and a person representing (collectively) from the communities of Tamwoy, Rosehill, Aplin, Waiben and Quarantine on Thursday Island (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1997: 24-5). The TSRA now plays a major role in the region culturally, Economic/ Ecologically and legally.

### **2001 November - Torres Strait Regional Sea Claim**

This historic native title sea claim was lodged on behalf of the Torres Strait Islanders by the TSRA over the Torres Strait region on the 23<sup>rd</sup> of November 2001 (TSRA News, Vol 41). Although TSRA recognised the High Court's decision in the Croker Island case, their aim was to expand the interpretation of the law through the Torres Strait's claim. This native title application was brought by various Torres Strait Islanders from various islands.

At the present time the Torres Strait regional sea claim has been referred by the Federal Court to the National Native Title Tribunal for mediation and is listed for its first directions hearing during July 2003 (TSRA News, Vol 50). As TSRA chairman at the time Mr. Terry Waia states, 'this claim marks a significant step by our people in their struggle for recognition of native title rights over the sea, and

gaining formal respect of existing traditional and Economic/ Ecological boundaries' (TSRA News, Vol 41). If this sea claim is accepted and endorsed, this will bare various implications for the fishing industries.

### **2002 November - Torres Strait Fisheries Amendment Act**

On the 10 November 2002 the Governor General of Australia approved the Torres Strait Fisheries Amendment Act making the Chairperson of the TSRA an equal member on the Protected Zone Joint Authority (PZJA)(TSRA News, Vol 43). Discussions for the Torres Strait Fisheries Amendment Bill 2002 took place in both the House of Representatives and Senate between the 15-23 October. The Chairperson became the first indigenous representative to share with both Commonwealth and Queensland Fisheries ministers on the authority (TSRA News, Vol 43). The Torres Strait people now have a voice in this body that have a direct influence over the management of the fisheries in the Torres Strait region.

A lot of disappointment was expressed by the Chairperson of TSRA at the time towards certain ministers who opposed the bill. This was due to the fact that these ministers were strong advocates for indigenous affairs (TSRA News, Vol 43). However, this Act now ensures there is indigenous representation at the PZJA level. This action assist other changes that indigenous fisherman are advocating for the Torres Straits.

### **2002 December – New consultative structure approved**

During early December 2002 the Torres Strait Protected Zone approved a new fisheries consultative structure which was predicted to revolutionise fisheries management in the Torres Strait. The model was developed jointly by indigenous fishermen and the TSRA to streamline the current structure and dramatically increase indigenous into the PZJA at both the consultative and decision-making levels (TSRA Media Release, 6 December 2002). The model that was approved allowed for 24 indigenous representatives to be present within the structure. This included a representative from each Torres Strait Islander and Northern Peninsula Area community. These representatives make up the group which is now known as the 'Community Fishermen's Group'.

The TSRA Chair at the time, Mr. Terry Waia quoted, 'The struggle for equal representation for our people will come to an end... a new era of cooperatively addressing issues will begin' (TSRA Media

Release, 6 December 2002). During that period indigenous representation did increase and representatives were now included in all three levels on the PZJA consultative structure including the Executive level. During this time the TSRA also announced contributing funds towards the costs to allow the 24 representatives to participate in the PZJA consultative structure. However, only time will tell if this new consultative structure is to benefit Torres Strait Islanders.

### **2002 December - CRC Torres Strait**

On December 10 2002, \$3 million in funding was allocated for a Torres Strait research program to be run by the Cooperative Research Centre for the Great Barrier Reef World Heritage Area (CRC Reef Research Centre) (CSRIO Marine Research, 00). This supplementary program for the CRC Reef Research Centre is known as the CRC Torres Strait. The program brings together the major management agencies, research institutions and stakeholders in Torres Strait including the TSRA.

This program will focus on research that will ensure the conservation and sustainable management of marine resources in Torres Straits (TSRA News, vol 46). It also offers a unique opportunity to collaborate all research projects currently underway and done in the past in the region. The program will improve the delivery of information needed for sustainable development of Torres Strait (CRC Torres Strait web page, 00). The result is an integrated disciplinary applied program of research far beyond that which could be done previously or by any participants acting alone.

### **2003 December – A major decision**

On the 9 December 2003 the Community Fishermen's group decided to put a cap on the 2004 crayfishing season. This meant putting a limit on the number of Traditional Inhabitant Crayfish licenses that can be issued for the 2004 season. Now this was a decision of paramount proportions for TSI to make especially when the crayfishing industry has the greatest participation by TSI. The cap was implemented only while new long term management arrangements for the fisheries were being developed in line with the spirit and objectives of the *Torres Strait Fisheries Act 1984* and *Torres Strait Treaty 1984*. The Chair at the time, Mr. Terry Waia congratulated the Community Fishermen's Group for showing commitment and making a decision that protects the livelihood of TSI now and for future generations (TSRA Media Release, 16 December 2003). At present this cap no longer exists, but this was a sign that TSI were able make a decision for the benefits of the fisheries and future generations.

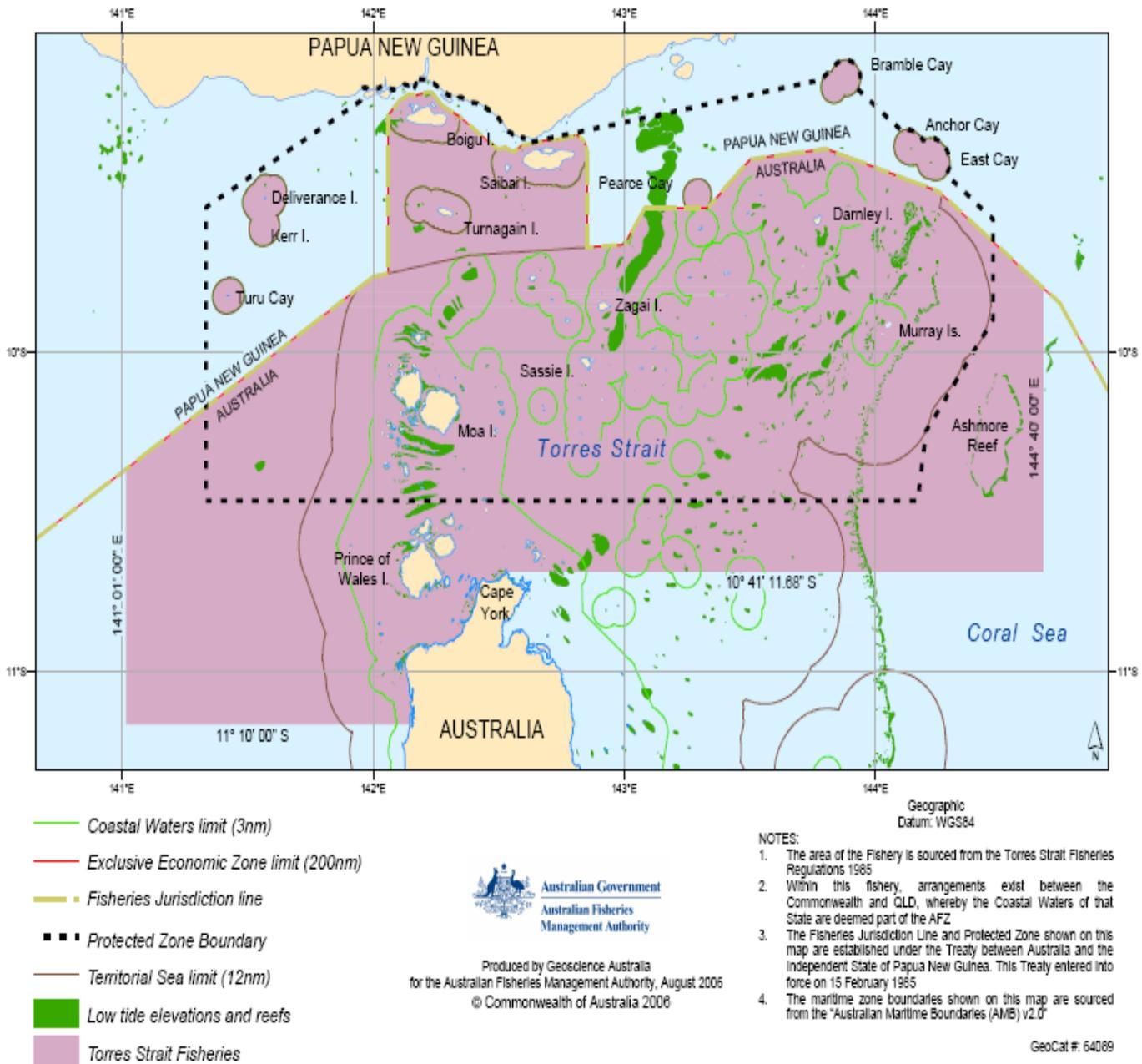
### Conclusion

It is apparent that the events mentioned in the chronicle have been some what related in someway to the fishing industries in Torres Strait. At present, the commercial fishing industries are the main source for employment for Torres Strait Islanders in the Torres Straits (Williams, 1994: 53). The marine industries once catered for every able-bodied male; however a lot has changed since the great pearling fleet days (Beckett, 1987: 70). Recent history reflects the islander's political concerns for self management and being autonomous.

In recent years a lot of focus has been placed on the management and conservation of the marine resources in Torres Straits. This was obvious with the creation of the CRC Torres Strait. The program focuses on research that will ensure the sustainable management of marine resources in Torres Strait, including fisheries, sea grass, dugongs and turtles (TSRA News Release, 12 December 2002). It also provides research opportunities for low-tech, high value marine ventures to provide important bases to develop industries appropriate to the Torres Strait region (TSRA News Release, 12 December 2002). Now in recent times, TSI actively participate in the PZJA consultative structure and have had some success in influencing decisions. Although one hundred years ago Torres Strait Islanders participated and on various occasions were forced to exploit their resources along side foreigners, they're more concern now with the sustainability and management of their resources for future generations through providing participating in the PZJA but only at an advisory capacity.

APPENDIX FOUR: TORRES STRAIT PROTECTED ZONE

## Area of the Torres Strait Fisheries



Source: Australian Fisheries Management Authority – Protected Zone Joint Authority website. Used with permission from the Australian Fisheries Management Authority, on behalf of the Torres Strait Protected Zone Joint Authority. Modified from <http://www.pzja.gov.au/resources/maps.htm>.

## APPENDIX FIVE: TORRES STRAIT PROTECTED ZONE JOINT AUTHORITY CONSULTATIVE STRUCTURE

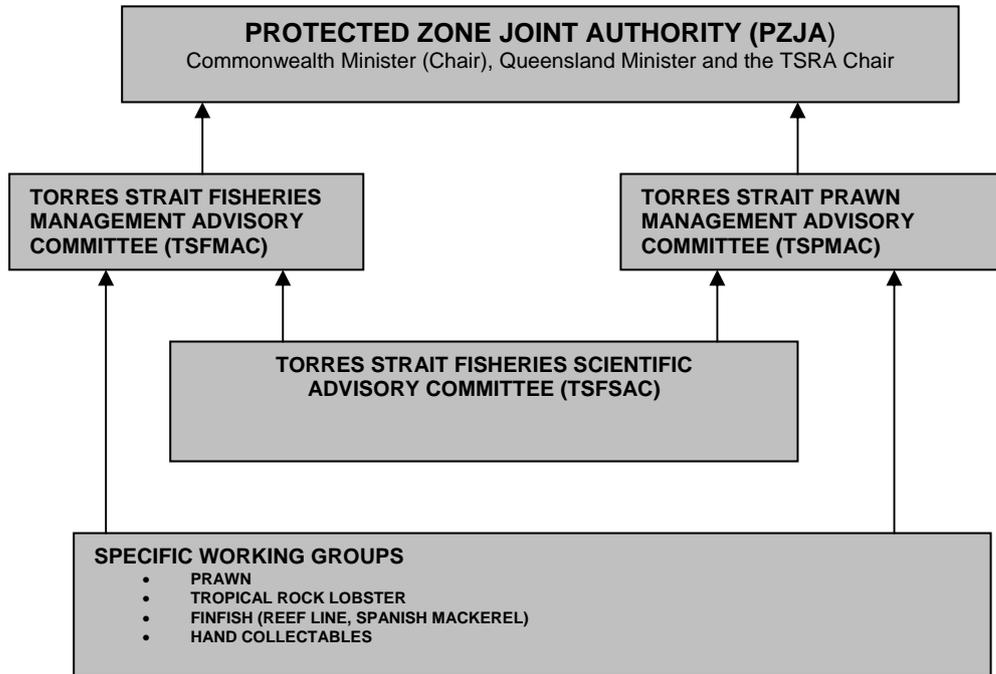


Diagram provided from the TSPZJA Annual Report 2005 – 2006

## Appendix SIX – INTERVIEW QUESTIONS

Q1. What is your role with the Protected Zone Joint Authority?

Q2. Why did you get involved?

Q3. Are you apart of any other fishery or government management body?

Q4. What are your current concerns and aspirations for the Torres Strait fisheries and Torres Strait Islanders?

Q5. The Protected Zone Joint Authority has a consultative structure that involves Torres Strait Islanders at all levels of management, in your opinion can Torres Strait Islanders benefit from this consultative structure?

Q6. In your own words, what do you think about Torres Strait Islanders having primary responsibility to manage the Torres Strait fisheries?

Q7. What about the PZJA principles? The principle government say the Protected Zone Joint Authority is held accountable to? Do you know what principle I am talking about? (If no – read out)

Q8. In your own words, by the Protected Zone Joint Authority having this principle as its major and only principle, how does Protected Zone Joint Authority satisfy Torres Strait Islander needs and aspirations?

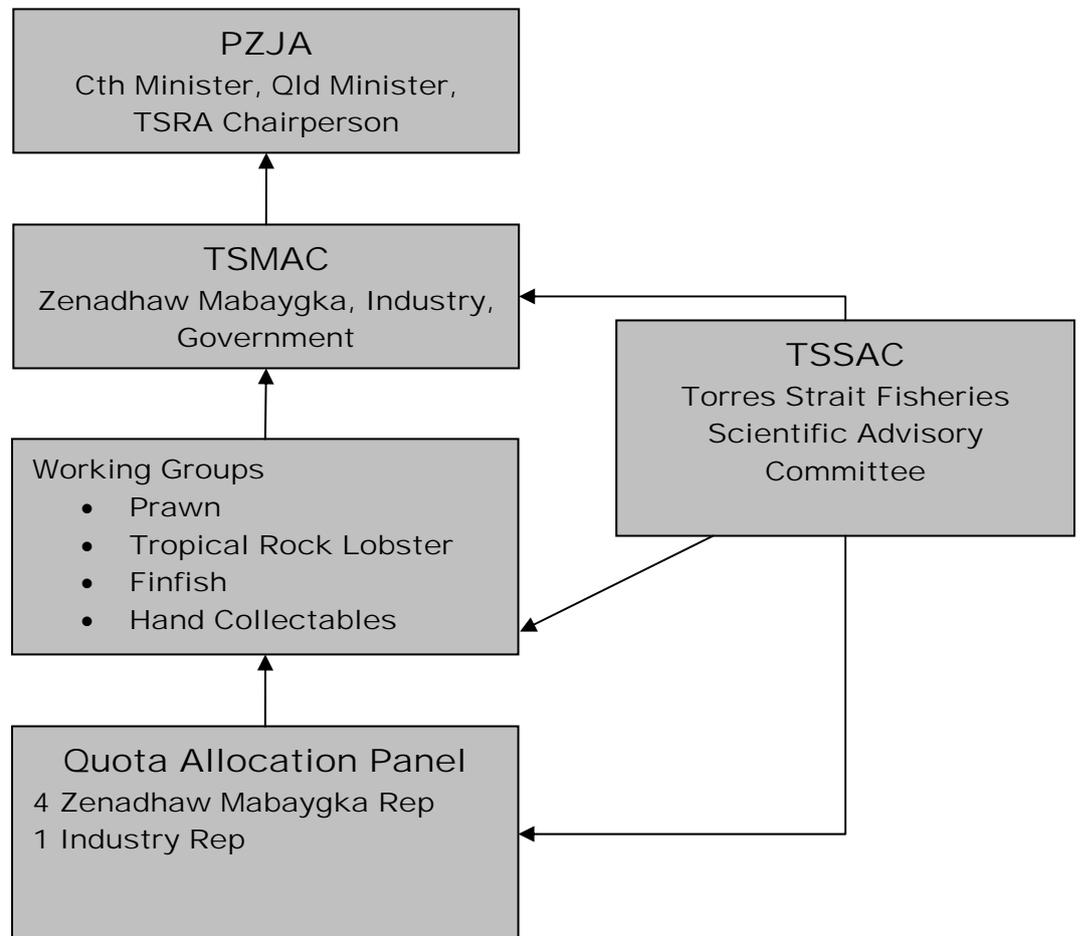
Q9. In your own opinion, is this principle appropriate or relevant today to achieve TSI needs and aspirations?

Q10. If the principles of the PZJA were changed or more were added to suit TSI needs and aspirations, would this satisfy our needs and aspirations for the Torres Strait fisheries?

Q11. Have you in your participation in the Protected Zone Joint Authority seen any changes within the Protected Zone Joint Authority to incorporate Torres Strait Islander concerns and aspirations?

Q12. Do you think the Protected Zone Joint Authority will ever incorporate Torres Strait Islander concerns and rights delegated to Indigenous peoples under International Law into Protected Zone Joint Authority policy? If yes, please explain, if no, please explain?

## APPENDIX SEVEN – Proposed PZJA structure



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