

NATIONAL WINNER WA YOUNG HISTORIAN



GRACE SHARMA

PERTH MODERN SCHOOL

**SALTWATER AND SOVEREIGNTY: THE SEA
RIGHTS CASE AS A TURNING POINT IN THE
RESOLUTION OF INDIGENOUS LAND CONFLICT**

National History Challenge 2025

Saltwater and Sovereignty: The Sea Rights Case as a Turning Point in the Resolution of Indigenous Land Conflict

Grace Sharma

Perth Modern School (Year 10)

1486 Words

The denial of Indigenous Sea rights has long been a tool of settler colonial control in Australia. This essay explores how the 2008 *Blue Mud Bay* High Court ruling marked a significant legal resolution in the struggle for sea country, recognising traditional owners' rights to intertidal zones. However, it argues that while this case resolved key legal questions, the broader conflict over Indigenous sovereignty - cultural, political, and economic - remains ongoing.

Inquiry Question: To what extent did the 2008 High Court ruling in Blue Mud Bay resolve the longstanding conflict over First Nations Sea rights - and how have Indigenous communities continued to seek true sovereignty since?

For over two centuries, Australia's Indigenous peoples have been locked in a battle not only over land, but over the seas that sustain their cultures, economies, and identities. While the legal recognition of Native Title in *Mabo v Queensland* (1992) marked a symbolic shift in Australia's colonial legacy¹, true sovereignty over sea country remained elusive until the 2008 High Court ruling in *Blue Mud Bay*. This decision, which granted traditional owners exclusive rights to the intertidal zones of Arnhem Land, appeared at first to be a watershed moment - a resolution to a conflict stretching back to colonisation.² Yet, like many legal "resolutions," it raises the question: does a court ruling truly restore what was lost, or does it simply shift the boundaries of struggle? This essay argues that while Blue Mud Bay legally resolved one of Australia's longest-running sea rights conflicts, it did not end the deeper political, cultural, and economic contest over sovereignty. Instead, it marked a turning point - where Indigenous communities gained recognition not only in law, but in the national conversation about what it means to belong, govern, and care for country.³

The conflict over Indigenous Sea rights is rooted in the broader colonial denial of Aboriginal and Torres Strait Islander sovereignty.⁴ Since British arrival in 1788, settler authorities claimed ownership over land and waters based on the doctrine of *terra nullius* - the false assumption that Australia was uninhabited and unowned.⁵ This principle, which ignored thousands of years of continuous Indigenous custodianship, allowed colonial governments to impose legal and economic control over coastal areas without recognising the cultural, spiritual, and subsistence connections Indigenous peoples held with the sea.^{6,7}

For saltwater communities like the Yolngu of northeast Arnhem Land, the sea was never separate from the land; it was an extension of their law (*Madayin*), identity, and survival.⁸ Songlines mapped coastlines and reefs, and ancestral stories tied sacred knowledge to specific tidal movements and marine species.⁹ The sea was part of a spiritual geography and economic system passed down for generations.¹⁰ Despite this, government policies across the 19th and 20th centuries restricted Indigenous access to marine areas, granting fishing and commercial licences to outsiders and excluding traditional owners from decisions about their own country. The 1974 Aboriginal Land Rights Commission acknowledged this injustice, but legislative protections remained limited, particularly offshore. This legal and cultural exclusion laid the groundwork for a long-running conflict - one that would not be formally challenged in court until the early 2000s.^{11, 12}

¹ *The History of the Blue Mud Bay Decision (2008) - Northern Territory Seafood Council Inc.* (n.d.). www.ntsc.com.au

² Spirits, J. K., Creative. (2020, November 29). Blue Mud Bay High Court decision. Creative Spirits.

³ Brennan, Sean --- "Wet or Dry, it's Aboriginal land: The Blue Mud Bay Decision on the Intertidal Zone" [2008]

⁴ Havemann, Paul --- "Denial, Modernity and Exclusion: Indigenous Placelessness in Australia" [2005] *MqLawJl* 4; (2005)

⁵ Working With Indigenous Australians. (2020, June). *History: Colonisation : Working with Indigenous Australians*.

⁶ Sea Country an Indigenous perspective (DCCEEW)

⁷ *Self-determination and Indigenous peoples*. (n.d.). Australian Human Rights Commission.

⁸ *Customary marine tenure in Australia* (N. Peterson & B. Rigsby, Eds.).

⁹ Songlines—tracking the Seven Sisters (Australian Government)

¹⁰ Branigan, M. (2025, April 9). The power of songlines. *Welcome To Country - Shop*.

¹¹ Vanstone, A., Ministerial Taskforce on Indigenous Affairs, Prime Minister, National Indigenous Council, Mundine, W., (n.d.). Chapter 1. In *Native Title Report 2005*.

¹² *The history of Aboriginal and Torres Strait Islander peoples advocating for the right to be heard*. (n.d.). Australian Human Rights Commission.

The *Blue Mud Bay* case emerged from a growing tension between the Northern Territory government and the Yolngu people, who opposed the granting of fishing permits in intertidal zones without their consent.¹³ In 2002, the Northern Land Council launched a legal challenge on behalf of traditional owners, arguing that the intertidal zone - the area between the high and low tide marks - fell within Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976*. The case went through multiple court levels before reaching the High Court of Australia.^{14, 15, 16}

In July 2008, the court ruled unanimously in favour of the Yolngu, affirming that these waters were part of Aboriginal land and that outsiders required permission to fish or access them. The decision was historic: it was the first time sea country was legally recognised as falling under Indigenous land rights in Australia. As legal scholar Sean Brennan (2015) notes, the case “confirmed that Indigenous law and authority does not stop at the high-tide line - it extends across the water.”¹⁷ It represented a clear legal resolution to the longstanding question of whether Indigenous title extended into the sea. In a country where land claims had long been obstructed, this moment signalled a shift - one in which First Nations law and connection to country were finally acknowledged within settler legal frameworks.

For the Yolngu and other saltwater peoples, *Blue Mud Bay* was more than a legal win - it was a cultural affirmation. The ruling acknowledged, even within the colonial legal system, that the sea holds deep cultural and spiritual value for First Nations people. It validated the principle that Indigenous custodianship extends across both land and sea, and that cultural law does not end at the shoreline. As Galarwuy Yunupingu - a key Yolngu leader - expressed, the sea is “not a boundary, but a bridge” - a living part of country governed by ancestral law.¹⁸

The decision empowered traditional owners to assert control over their sea country, regulate fishing activity, and make decisions about how their waters should be used. This has led to the development of sea ranger programs, Indigenous fisheries governance structures, and cultural education initiatives that centre saltwater knowledge.¹⁹ The decision also helped to reshape public understanding of Indigenous legal rights, pushing the conversation beyond land-based claims to broader questions of ecological stewardship and sovereignty. Symbolically, it opened the door for future struggles to be framed not as claims for charity or inclusion, but as assertions of enduring rights and law - the idea that First Nations peoples are not stakeholders in settler institutions, but sovereign peoples with their own systems of governance.

Despite its symbolic weight, the *Blue Mud Bay* decision has not delivered full resolution. More than a decade later, implementation has been slow and incomplete. In 2019, after years of delays and political negotiation, a temporary agreement was reached between the

¹³ Brennan, S. (2008). Wet or Dry, it's Aboriginal land: The Blue Mud Bay Decision on the Intertidal Zone. *Indigenous Law*

¹⁴ Butterly, Lauren --- "Strangers in Sea Country: The Early History of the Northern Territory's Legislation Recognising Aboriginal Peoples' Relationships to the Sea" [2023]

¹⁵ Native Title Newsletter - AIATSAS

¹⁶ *A decade on: What happened to the historic Blue Mud Bay case (and why is it in the news again)?* (n.d.).

¹⁷ Brennan, Sean --- "Wet or Dry, it's Aboriginal land: The Blue Mud Bay Decision on the Intertidal Zone" [2008]

¹⁸ Sea Country and the Saltwater Collection. (2024). Australian National Maritime Museum

¹⁹ Barber, M. (2015). Rangers in place: the wider Indigenous community benefits of Yirralka Rangers in Blue Mud Bay, northeast Arnhem Land. Charles Darwin University.

Northern Territory government and traditional owners to allow access for recreational fishers - but this compromise has raised concerns about whether Yolngu rights are being diluted for political convenience. Critics argue that the state's reluctance to enforce Indigenous control over the seas reflects a broader unwillingness to fully relinquish power (*Northern Land Council, 2019*).²⁰

Economic barriers also persist. While the court ruling grants legal control, many Indigenous communities lack the funding, infrastructure, and training needed to develop sustainable marine industries. In remote areas, sea rangers are often under-resourced, and Indigenous-led enterprises face regulatory hurdles. Without meaningful investment and structural reform, sea rights remain symbolic rather than transformative.²¹

More broadly, the case did not address the underlying issue of sovereignty: the right of First Nations peoples to govern their own lands and waters according to their own law, not merely to be recognised within settler legal frameworks. Legal scholar Megan Davis (2020)²² warns that victories like *Blue Mud Bay* risk becoming “symbolic concessions” if not supported by structural change. True resolution requires not just recognition, but the redistribution of decision-making power.

The *Blue Mud Bay* case highlights the tension between recognition and self-determination. While it resolved a specific legal question, it did not resolve the broader conflict over who has the authority to define and care for country. This tension was evident in the 2023 referendum on the Voice to Parliament, which aimed to establish a permanent Indigenous advisory body in the Constitution.²³ Its failure reflected persistent national resistance to structural reform; suggesting that symbolic recognition is often accepted more readily than substantive power-sharing.

Nevertheless, *Blue Mud Bay* remains a landmark in the ongoing movement for land and sea justice. It has inspired renewed efforts by Indigenous communities to assert control over marine resources, build many programs, and pass on knowledge to younger generations. It also continues to challenge Australia to reckon with the legacy of colonisation, and to ask whether true resolution can ever be achieved without recognising Indigenous law as equal to - not beneath - settler law. Importantly, the case remains a reference point in discussions around treaty, constitutional reform, and co-governance - reminding Australians that the path to justice does not end with one court ruling, but continues through partnership, respect, and ongoing resistance.²⁴

The 2008 *Blue Mud Bay* decision was a critical legal resolution in a long-running conflict over Indigenous Sea rights, granting traditional owners a level of recognition long denied. Yet resolution in law does not always equate to resolution. While the ruling acknowledged sea country within settler frameworks, the deeper struggle for sovereignty

²⁰ Gibson, J. (2022, October 6). Leaked draft documents trigger threat of injunction by NT government over Blue Mud Bay fishing deal. ABC News.

²¹ Bardon, J. (2023, March 14). Fishing industry warns snap lockout of key Northern Territory waters could affect restaurant plates around Australia. ABC News.

²² Butterly, L. (2020). Reconciling Indigenous and Settler-State assertions of sovereignty over sea country in Australia's northern territory. *unsworks.unsw.edu.au*. <https://doi.org/10.26190/unsworks/22443>

²³ Detailed analysis of the 2023 Voice to Parliament Referendum and related social and political attitudes | POLIS: The Centre for Social Policy Research. (n.d.)

²⁴ Social Justice Commissioner, A. and T. S. I. & Australian Human Rights Commission. (2010). Social Justice Report 2010.

- for cultural authority, political power, and economic self-determination - continues. *Blue Mud Bay* stands not as a conclusion, but as a turning point: one that marked the beginning of a new phase in the fight for justice, where First Nations peoples are not only recognised, but heard, respected, and empowered to lead.

ANNOTATED BIBLIOGRAPHY:

Brennan, Sean --- “Wet or Dry, it’s Aboriginal land: The Blue Mud Bay Decision on the Intertidal Zone” [2008] IndigLawB 27; (2008) 7(7) Indigenous Law Bulletin 6. (2015). Austlii.edu.au. <https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/IndigLawB/2008/27.html#Heading3>

This article explains the significance of the 2008 High Court decision in *Blue Mud Bay*, which recognised Indigenous ownership of intertidal zones in the Northern Territory. It outlines the case background, legal arguments, and the Court’s reasoning, making it valuable for understanding both the legal and cultural context. A strength of this source is its clear explanation of complex legal concepts in accessible language, making it suitable for students and non-specialists. It also provides insight into the broader implications for Indigenous sea rights and resource management. However, it was published soon after the decision, so it lacks discussion of more recent developments. I used this source to explain the legal outcome of the case and its immediate impact on Indigenous sovereignty over coastal areas.

Spirits, J. K., Creative. (2020, November 29). Blue Mud Bay High Court decision. Creative Spirits. <https://www.creativespirits.info/aboriginalculture/land/blue-mud-bay-high-court-decision>

This source summarises the Blue Mud Bay High Court ruling and its importance for Indigenous control over coastal waters. The source is clear, easy to understand, and places the decision within a broader history of land rights. It includes cultural context and practical implications, which helped me explain why the case was significant for Indigenous sovereignty. A limitation is that it focuses more on narrative and less on detailed legal analysis.

A decade on: What happened to the historic Blue Mud Bay case (and why is it in the news again)? (n.d.). Australian Public Law. <https://www.auspublaw.org/blog/2017/06/what-happened-to-the-historic-blue-mud-bay-case>

This source reflects on the impact of the Blue Mud Bay decision ten years later, assessing progress and ongoing challenges in implementing Indigenous sea rights. The source is valuable for its balanced perspective, combining legal commentary with updates on political and practical outcomes. It helped me include more recent context and evaluate whether the decision’s promises have been fulfilled. A drawback is that it predates the most current developments, so it does not cover changes after 2017. Nonetheless, it still serves as a highly useful source that helped shape my entry.

BIBLIOGRAPHY:

AIATSIS. (2023). The Mabo Case. Australian Institute of Aboriginal and Torres Strait Islander Studies; AIATSIS. <https://aiatsis.gov.au/explore/mabo-case>

The History of the Blue Mud Bay Decision (2008) - Northern Territory Seafood Council Inc. (n.d.). Wwww.ntsc.com.au. <https://www.ntsc.com.au/content/access-bmb>

Havemann, Paul --- "Denial, Modernity and Exclusion: Indigenous Placelessness in Australia" [2005] *MqLawJl* 4; (2005) 5 *Maquarie Law Journal* 57. (2025).

Austlii.edu.au.
<https://classic.austlii.edu.au/au/journals/MqLawJl/2005/4.html#Heading19>

Working With Indigenous Australians. (2020, June). *History: Colonisation : Working with Indigenous Australians*. Workingwithindigenoussaustralian.info.
https://www.workingwithindigenoussaustralian.info/content/History_3_Colonisation.html

Self-determination and Indigenous peoples. (n.d.). Australian Human Rights Commission.
<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>

Branigan, M. (2025, April 9). The power of songlines. *Welcome To Country - Shop*.
<https://www.welcometocountry.com/blogs/news/the-power-of-songlines>

The history of Aboriginal and Torres Strait Islander peoples advocating for the right to be heard. (n.d.). Australian Human Rights Commission. <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/history-aboriginal-and-torres-strait>

<https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/SydLawRw/2023/8.html>

https://aiatsis.gov.au/sites/default/files/research_pub/julaug08_2.pdf

Sea Country and the Saltwater Collection. (2024). Australian National Maritime Museum.
<https://www.sea.museum/en/first-nations/sea-country-and-the-saltwater-collection>

Barber, M. (2015). *Rangers in place: the wider Indigenous community benefits of Yirralka Rangers in Blue Mud Bay, northeast Arnhem Land*. Charles Darwin University.
https://nesplandscapes.edu.au/wp-content/uploads/2015/10/2.1.19_rangers_in_place_-_final_report.pdf

Gibson, J. (2022, October 6). *Leaked draft documents trigger threat of injunction by NT government over Blue Mud Bay fishing deal*. ABC News.

<https://www.abc.net.au/news/2022-10-05/nt-blue-mud-bay-fishing-document/101498340>

Bardon, J. (2023, March 14). *Fishing industry warns snap lockout of key Northern Territory waters could affect restaurant plates around Australia*. ABC News.

<https://www.abc.net.au/news/2023-03-14/traditional-owners-nt-government-ban-commercial-fishing/102092472>

Butterly, L. (2020). Reconciling Indigenous and Settler-State assertions of sovereignty over sea country in Australia's northern territory. *unsworks.unsw.edu.au*.

<https://doi.org/10.26190/unsworks/22443>

Detailed analysis of the 2023 Voice to Parliament Referendum and related social and political attitudes | POLIS: The Centre for Social Policy Research. (n.d.).

<https://polis.cass.anu.edu.au/research/publications/detailed-analysis-2023-voice-parliament-referendum-and-related-social-and>

Social Justice Commissioner, A. and T. S. I. & Australian Human Rights Commission. (2010). *Social Justice Report 2010*.

https://humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport10/pdf/sjr2010_full.pdf