

**INQUIRY INTO COMMENCEMENT OF THE FISHERIES
MANAGEMENT AMENDMENT ACT 2009**

Name: Mr Wally Stewart

Date Received: 18 February 2022

Partially
Confidential

**Submission
No 13**

**INQUIRY INTO COMMENCEMENT OF THE FISHERIES
MANAGEMENT AMENDMENT ACT 2009**

Name: Mr Wally Stewart

Date Received: 18 February 2022

Audio file

Transcript

Personal Background

My name is Wally Stewart, from Narooma. I am almost 62 years old. I come from a family of 10 kids, me being the youngest out of the 10.

My Father is a traditional owner of the area, Walbunja. He bought a house out in Narooma in 1958, before I was born. He was a fisherman and he lived there basically all our lives. When we bought the house, the whitefellas came around with a petition to move us out. Blackfellas weren't allowed to live in town then. He [my father] sort of paved the way for Blackfellas to live in the town. I've got six kids and thirteen grandkids and we still live on the coast, in Narooma - we're still here.

That's just a bit of a history where my father comes from. He was a fisherman, that's how we survived. He basically taught us everything we know, how to survive. He always said that you'd never starve on the coast. I fish and dive all the time. I haven't dived for a few years because I've had an operation on my ears, which put me out of water, but I fish regularly. I exercise my culture and I share it with people. I make nets, teach people how to make fishing nets - it's something that my father taught me. We sort of grew up fishing, it was a big part of us growing up, and part of us growing up fishing was learning those skills and passing them skills on. I've passed it on to men's groups as well down here on the South Coast, just keep it culture fishing practice alive I suppose. My father fished, traded for it and then made nets for other people so they could survive. I remember going to Victoria for holidays to our family on my mother's side, and my father would like make up these little 10 meter long nets and take them over to all my family there so then they'd all fish. They didn't know how to make 'em, so my father shared that skill with them.

Growing up in Narooma, fishing is how we survived. I remember coming back from Wallaga Lake with my father when I was about 4-5 years, and we'd come back way through Tilba and to Narooma on the old highway, where the farmers were then. He'd pull in, give them fish and then he come out with big tubs of butter, milk and vegetables. On Friday night, he used to go to the bottom pub in Narooma and there used to be a section where they used to drink. He used to go in there, walk in with fish and sell fish at the bar on a Friday night. He used to do it with prawns as well, sell prawns. We [the kids] took that on as well. I used to go to the top pub and sell lots of stuff on a Friday night, I'd take in a box of lobster in. That was nothing back then, it was just something that we just did to survive. If we didn't need it, we sold it, and that came back to feed our families. They say once it's bartered for money and traded its commercial operation, but it's not to us - its survival for us and still is today. We had fish for breakfast, fish for lunch, and fish for tea. We used to go to school and have prawn and fish sandwiches, because that's all we had, and we'd trade with the white kids for chicken or peanut butter or something. I know it sounds funny but it's true.

This was before fisheries came along, policing us and telling us 'you can't do this' and we're going, 'what the hell is going on?' That really started when the abalone industry started coming down here and knocked everyone on the coast out of abalone licences. Back then, an abalone licence was only \$2.00 and then the next minute there's an industry, so fisheries came and locked up access from the rest of us. There was only a certain amount of licences, and the people who weren't doing it seriously had their licences taken away. We were still going about our business, we didn't realise. No one told us that this abalone business was going to take our resources away, no one gave a stuff about us. We had never seen or heard of Fisheries. It wasn't until the industry started that they

started policing us. That was around the late 70s, early 80s. We didn't see anything wrong with what we were doing. There's not a lotta jobs for Blackfellas on the South Coast, and especially not back in those days. But we knew how to fish and make a living from our fishing skills, we had to. It was something that we were taught, it was our heritage. We'd go diving to get a feed for ourselves, for mob, and what was left over we would sell to survive. We were good at fishing, all our mob was good at it. We know how to do it, where to do it, when to do it. Down at Mystery Bay there was a fish trap about 12,00 years old, we always knew it was our country.

Even during COVID, we taught people here how to build a boat. We were going out twice a week or something and feeding our whole communities. In two weeks, I reckon we fed 1600 people between Wallaga and Narooma. Having these restrictions, we were doing it hard. It wasn't about getting the fish, it was about the inside feeling of caring, looking after people - that's our culture. All those things that they've taught us: how to build a net, when to go fishing, how to look after a lobster nest - all those things that they've taught us, Fisheries and government want us to wipe it out.

It's not just about our "rights," what they call it. It's part of us. It's who we are down here. That's that connection to country and they nearly sever that, just by their stupid regulations and not wanting to talk to us. That's why it was so important to us to lobby for a native title claim down here, because fishing is such an important part of our culture. I go and sit by the water and look out to sea. I could be there for half the day and think it's ten minutes. The old fellas do it, my father used to do it, I still do it. We can sit there all day. We got to be close, see the ocean, and feel it. It is a spiritual connection. They don't understand, it's there inside us. You can't explain that to a government to say that we got a duty of care to look after our waters because of this spiritual connection we got, it's our duty. They look at us like are crazy.

Interactions with Fisheries and Industries

I remember the first-time fisheries came along and booked us. We didn't know what they were talking about. After that, we never saw Fisheries on their own, they were always with the police. They started standing over us, telling us that we can't do this no more, and bagging us. No one else even knew what these abalone were when we were growing up. They were like bread and butter for us. It didn't matter where you were, how the weather was, how big the sea was, you could always go down at low tide walk around the rocks and get a feed of abalone. All of a sudden we were criminalised for it.

I got caught in the early days, got prosecuted. Second time I fought it and I won it. After that the Fisheries started going hard on me. Then they hammered me after that. I think it was in the late 80s, early 90s. I got prosecuted for 140 something abalone, they tried to say they were mine, but I'd come out of the water with only 10, that was the bag limit then. They sorta scared me out of the water because you could get sent to jail. It was a threat, and it scared me I didn't want to take that chance, as I had young kids. So I had to change my practice. I'd go early in the morning, hide my catch, go back late and night and go get 'em. It was the only way.

It scared a lot of people: scared them out of the water; changed their diet; sent people to jail for cultural fishing; their families breaking up while they were in jail because they were the bread winners; Elders and people who couldn't go fishing lost those people that would share their resources with them. Fishing laws, that were wrong, destroyed people and it ripped right through our community. Other people had to pick that up. South Coast people are close, we argue and don't always agree, but when people need or someone is down, like funerals or doing it hard because family members in jail, people come together. I think this is one of the things that showed, when people were getting prosecuted and getting sent to jail, the mob stepped in and helped each other.

My father always told us we have this right to fish. We always knew that it was our country. I'm not stupid, I knew the stuff about Captain Cook "discovering" at school was crap. When they started taking things away that we knew was ours, saying we had no right, I couldn't stand it. All of a sudden, every blackfella is punished. It was confronting to me. Knowing that this is where we come from, this is my father's country, and then we were made out to be criminals for something that we'd be doing forever, around 12,000 years.

What really got to me one day was what happened just around the corner where we lived, Mossel Bay on the inlet, where the tide goes out. At least once a month, my mum would say 'go down there and get some bimbellas.' They were everywhere, in big patches of weed. You'd feel them under your feet, get a big bucket full. My mum would boil them up, roll them out and make a big curry - this curry gravy that was just beautiful. I done that right up to the late 90s, go round there and get a feed. I was living in Byron Bay, and one day I came home, jumped in the boat, touched water, back on country. There were these fellas with a boat load of bimbellas. I said 'what are you doing here?!' I was pissed off, as they probably had 20 boxes of bimbellas. He said he had a gathering licence, but I said 'there's no commercial operations allowed here'. I went to the Fisheries office and I asked what was going on, why there was a boatload of bimbellas. They'd allowed these commercial operators there, hand gatherers they call them, and they cleaned the inlet out. You're lucky to get one bimbella there now. We'd done it all our lives, and they go in and cleaned it out, probably in about a month. I was growing up, taking notice of what was happening with the fishing industry, seeing them destroying the waters, and we were the ones made out to be criminals. They were the criminals, but they got a licence to go rape our resources. It made me angry. Everything that my father believed in and taught us, was the opposite to what the Fisheries were doing and still are doing today. I've been fighting Fisheries all my life, because I don't agree with what they do, how they do it.

I was on the tuna boats in Eden once in the eighties during the tuna season, because my two nephews were on it and they said to come for a fish. We were poling fish, poling tuna. Anyway, these two big boats from Port Lincoln came around, one was called Boston Bay and the other was called Maria Louisa from South Australia. When we went up to the club, all the fishing skippers were there and the big tuna boat guys. The skippers were talking and South Australian guys who said when you're hauling, call us in and we'll give you a percentage of what you catch. So we did, we poled 15-20 ton, and the skipper called in the Maria Louisa. We kept chumming it, baiting it, and then their massive nets came in like the size of a footy oval, a purse seine net with strings and rings on the bottom. They close the bottom up and the fish are trapped in there like a pool. When they started winching up, they dropped the net and let us drift over it, and we couldn't believe our eyes. We all sat there, and were blown away, thinking the same thing - there goes the tuna industry. All that tuna in one catch! What was done still has an effect. The damage is done.

Wallaga Lake is another example. It was one of the first Aboriginal reserves in Australia, and in New South Wales. We were the first contact of Captain Cook. Our mob was driven onto those places, given rations and the government actually gave them a boat and a net. They were able to subsidise their rations and keep that healthy lifestyle by fishing. And they were good at it. Then years went on and all of a sudden, the commercial industry comes in and next minute the Blackfellas are pushed out of their own reserves again, with no consideration about Blackfellas or our waters. Wallaga Lake is built around a beautiful lake and what pisses me off is that the recreational fishers have the sole rights to the lakes. Tuross Lake is an exclusive recreational fishing area, there's lots of them (Lakes), but there is no exclusive Aboriginal fishing or diving lakes or areas.

All these places where our mob go diving and Fisheries are pulling them up, where I been pulled up, those places have been handed down for thousands of years. These are exclusive to me, they're precious, they're not just a random place where I go jump in the water. That's why we keep going

back, because we were taught how to look after it. Even with native title, those places should have exclusive rights to our mob – the same places where they have been prosecuted. This government can't see that. They can make rules and exclusive rights for recreational fisherman to areas but can't see that for us. There's two sides. We're only a little group and no one wants to listen to us.

This is the background to my fight.

We were taught only to take what you need. For lobsters, my father taught us to make sure you leave a couple lobster in the nest, don't clean 'em out. When you first started diving you don't do that, you take everything and then you'd come back and there'd be nothing left. So as you start getting good at diving, you leave a few, come back in a month and there would be some lobsters in the nest again. They were the little signs that he taught us. I still have nests today that I showed my nephews, that my father showed me and his father before him. It was sustainable, we looked after our waters. Then we watch the fishing industry go do all these things, like diving with air and scuba gear to get abalone, where all our mob just jump off the rocks and free dive to maintain that healthy lifestyle, get healthy food, and a few dollars to live. It made us sort of wise and angry at the same time, that we'd be doing this for all our lives, sustainably for generations, and they came along with this industry and said we can't do it no more, while they took everything.

If it keeps going this way the resources are not going to be there forever, they've destroyed the waters, destroyed our industry. 50% of our reefs along the coasts are sea urchin barrens because they've got no lobster competition. Even our mobs have seen the places they go out to aren't there anymore. It's because of the money making industry that only looks after their people, and has no respect for our customs, rights and laws and what our obligations are. Our mob will go down fighting, we'll go to the grave - that's who we are. But I know at the end of the day, if we sat down at the same table, we could have some great solutions. There's national parks, ILUAs, all those things, but they can't even employ a Blackfella. They cherry pick our culture, throw in some money for culture burning because some big fires embarrassed them and then they want us to come and do a welcome to country and do a little dance. On the other hand, they're still doing the same thing. There's this whole Aboriginal section in Fisheries, and it's all whitefellas in there. I don't think there's any Blackfellas that work in Fisheries anymore. The people that did work there got discriminated against.

We started standing up. We were all talking about it forever, we'd get together and everyone was saying the same thing. We didn't know how to fight it, we were just fishermen. Then they started sending our people to goal. It blew us away, and we were saying we've gotta stop this. They made us out to be criminals, putting us up on the media, putting us up on crime stoppers – all this bullshit stuff. That's how the Fishing Rights Group came about - we'd just had enough. We all got together and said we'd been talking about it too long, let's just go and protest. So we did in 2015 at Broulee, and 150 people turned up and they'd all had the same issues. They've all had enough. That made me feel proud, that our mob is still standing up. The Yuin people down here, the South Coast people, are very connected to the waters and resources, we wouldn't survive without them.

Interactions with the Law

We looked at what was happening and said this is not right, this is what we have been doing forever. But Fisheries and government didn't want to talk to us. What we were saying was falling on deaf ears, because they just worked under their government regulation. That's why we had to get political. Then the *Mabo* decision happened, and they had to accommodate that and then fit s 211 of the *Native Title Act 1993* (Cth) (NTA) into the *Fisheries Management Act 1994* (NSW) (FMA). Even that is a massive process for our mob to get their head around. We have been getting flogged by

fisheries and police and made out to be criminals, then all of a sudden we got this right in s 211 but it's not even spoken about. Our mob don't understand when we say 'listen, you got a right to do this'. It's because it's been drilled into them that's bad, by getting policed so hard and our legal services going, 'if you just plead guilty, I'll get you six months or a good behaviour order or a fine' instead of going 'hey, these guys are Traditional Owners.' The lawyers didn't know how to represent us, it was sad. Even today, we've been lobbying and fighting and using s 211 *NTA* as a defence, and Fisheries chose to ignore it. Our mob walk into court and all the court just talks about state law, they just prosecute us under that. If we say 'hey, we got a Commonwealth law that protects my right to fish', they don't want to hear about it. They choose to ignore that. The prosecutors, the judge, the courts – they're all just talking about the NSW *FMA* and that we've broken it and are charged with that. They don't even consider that we got a Commonwealth law to protect us, and that we shouldn't even be standing in that court.

Sixteen years after the *NTA*, all our lobbying meant government passes s 21AA. That was to accommodate the *NTA* and protect our rights. It didn't - all they did is get it from one department to another. They'd say 'we'll just put an interim bag limit on it and sort it out.' The reason s 21AA has not been enacted is because they think they need to control us with a bag limit. This is their excuse why it never commenced. They went around consulting and asking for a bag limit and said that we couldn't agree on one. This is what they call consultation: three hours in Ballina, three hours in Narooma. Six hours of consultation. They went to the knockout in Dubbo too, I went there. I said 'what you doing here? I know nothing about the freshwater out there, and they know nothing about our saltwater. They don't know our issues on the South Coast, and we don't know theirs.' When they came to Narooma they asked us for a bag limit, and we said we give you one. Someone said we might have a funeral today, we might need 300 abalone, 200 lobsters and 2 boxes of fish to feed everybody. The next day we might have only have family. We can't give you a bag limit. Why would we want to give up what we have already got? We don't need a bag limit, there is a law there that gives us that right. Fisheries were trying to pull the wool over our eyes by trying to get us to agree to a bag limit to get around the *NTA*, so if we agreed to it, they could put a limit and police us. We would be negotiating our rights away. They know they just can't put it on there because that would be a future act under the *NTA*, and they'd have to pay compensation. I believe that's the reason s 21AA has never been commenced. It's a cunning law, they've discriminated, they've rorted the NSW Parliament by not commencing it.

Fisheries try to get everything under their control. They hate the *NTA*, and seems like they only passed s 21AA because all the other governments were passing it. Soon as it was passed it went straight to their department that was meant to enact it, and it's still waiting. They don't know how to get around it because they can't control us. It comes back to that *NTA*. The fight will never stop until native title is determined. They're not going to take it lying down, but if we have to go to court and fight over it, we'd probably win it. We got enough of evidence and connection. As much as they nearly destroyed our way of life, our mob still go back to the water, and they can't comprehend it. Our mob know it's wrong under their law, but we eat and sleep it, we can't give up this culture.

When our people are getting prosecuted by Fisheries they should be asked if they are a Traditional Owner, and Fisheries officers should be trained to see if they are a native title holder, but Fisheries don't do that. Otherwise, we wouldn't be in court. When they accommodated s 211 into the *FMA*, it just sat there. It reminds me of all the plans to Close the Gap, they all talk about it, but it just sits in the drawer and nothing happens. It's the same here - we had a native title right and the *FMA* was amended for that, but it just sat there. 'Don't worry 'bout that, we'll just keep policing under our state law and show all you Blackfellas.' Section 21AA was put there to protect us, but it never has. Fisheries still discriminate against that law – they choose not to know about, don't train their compliance officers with it, they say they have cultural awareness but they clearly don't. I've talked to their compliance officers about s 21AA and they wanted to know. I even told them where it is in

the *FMA*. But their supervisors tell them not to worry about s 211 and our rights, they are just told to go use their state regulations and work under that.

Fisheries officers should be trained in that when they approach an Aboriginal person they should ask them. Rather than going, 'wait, you there, give us that bag!' - which scares our mob. They are really intimidating. That's how they're trained and it's disgusting. They should be trained to ask, 'oh hey, how are you going? What's your name? Are you a Traditional Owner? Are you part of the South Coast claim?' Simple little things. When we started using s 211 as a defence in court, they started throwing the charges out, wasting all this money - tax payer money. When we started defending prosecutions, fisheries excuse was, 'oh, we didn't know he was a native title holder.' Poor excuse. They were getting away with it before because people weren't using the defence, our own mob didn't understand that section of the legislation and that they were given that right. They were so used to going to court and being told to plead guilty to get off lighter. I am an advocate for the NSW Aboriginal Fishing Rights Group, and we had to educate the lawyers as well to tell them how to use this defence.

The war on Blackfellas by Fisheries has been on from day one from here. As soon as they started getting greedy about exploiting the abalone industry. There's only a handful of jobs. They sell 'em overseas, take our feed away and now we can't even afford to buy them. There's only a handful of people making all this money. They're the only people Fisheries look after because they pay a big part of their shares. I remember having a meeting in Nowra with Fisheries about *NTA* cards and Tony McAvoy SC came with us. They shit themselves. They asked if he was here as a lawyer and he said he was just there as a representative of the Fishing Rights Group. We told them, 'you know how you drag everyone to the last hour, we have to get all the research to show that they're a native title holder, dragging our mob through court and stressing them out, then at the end you throw the charge out and say you didn't know he was a native title holder so you drop the charge? We came up with a native title card.' We made the cards for native title holders to carry when they're fishing and show if they got picked up. They said we can't do that. They then tried to play games and said other mobs don't want us fishing in their country, and started calling people and telling them not to trust the NSW AFRG. This is how far they go, how sly they are, to protect their mates.

Community

This government tries to take our waters and resources away from us and I see the damage that is done to our communities. People scared out of the water. Healthy young men were too scared to go diving. I know a whole family of boys that were fit and healthy but were scared out of the water by Fisheries, and now they've got heart diseases, diabetes, and they're overweight 'cause they don't want to take that chance to go out and get a feed. Their whole diets change, their exercise is gone, that family and culture connection where all the families go out together is all gone because of these regulations. There is method to their madness when they put these regulations on us. Like how you're not allowed to shuck your abalone next to the water. That was only there for when they pulled our mob up and they couldn't tell what size the abs were because they were already shucked. But to us, we got midden sites about every point on the south coast that are twenty thousand years old and we used to still go back and shuck our abs on those sites. With the stroke of a pen, they stripped that culture. That's just one example of how they destroyed our culture. Whether its deliberately done or they didn't know, I don't know or don't understand. Then the way they tried to make out our people as organised crime or "black mafia" - it's just a load of crap. Have a look at the abalone industry, and how many tons they take per year. Aboriginal people are just 3% of the population, none of us have boats or air tanks and are just jumping off the rocks to have a feed, but we're made out to be criminals for taking our own food. It's destroyed our way of life because of the dirty dollar. Its destroyed our people. They talk to us like we're in the old colonial days. The

industry asked me if I want some more catch, I should come and talk to them about it. I don't have to talk to industry about my culture, you should be asking me how much of my resources they can take. They're going to be asking me one day, and that's what it should be. Until they respect our culture and rights, and our obligations to look after country, there will be no end to this problem. Our mob have already proven this, because they keep going back. They are determined not to let that cultural connection die. There's something inside making them, telling them, to go back and practice culture. It's a good thing, but it's a sad thing that they keep going back to the water and get prosecuted. It just goes to show how strong our mob are and culturally and spiritually connected. Native title is about proving connection, and that connection is still here. Fisheries have gotten over 600 fishing cases of the Aboriginals people on the South Coast, so their evidence is good for us at the end of the day! A consolation prize I guess, to use for our native title claim. But a lot of mob don't understand why we keep going back and looking at the water. We got dreamtime stories.

These regulations have nearly destroyed a whole way of life, a whole people. It's another form of dispossession. It's still acting like another colonial government, but the colonial government was better, because they'd actually give us the nets and let us fish. Now they want to take everything from us and give it to someone else. They're worse and we know what it is – its greed. To protect a few of their big mates.

Ways Forward and Recommendations

We don't want licences, we don't need to go and buy a licence. Why should we go and do that when they're our resources in the first place? Let's just keep fighting for our cultural right. We can't take on the FMA, it will destroy our way of life, it could ruin our culture, all our life, just by taking that on. Forever, as long as I can remember, we just put the net out and fished salmon – the whole community was there. That was commercial-cultural fishing. Next minute, they brought laws that said if you haven't got a licence you can't touch that net. It put Koori fisherman in a place when they were caught between their cultural and community obligations about caring and sharing, and the fisheries regulations saying you can't touch that net unless you got a licence, but the community would still do it. The community would come down and fill their buckets and took the fish and then the rest got to markets. This is cultural practice. That's why I say we ain't gonna buy their licences. To keep our culture alive we want to build a community cooperative. We don't want to jump off a boat with a heap of gear, we just want to do what we do – snorkel off the rocks with a bag and bring it back to the co-operative. If you want to sit down and talk about making changes for real, its gotta be a community fishing cooperative for everybody. We're not going to let our culture die and we're not going to let them destroy it.

I recommend

1. that Fisheries Officers should be trained to know about our native title rights, s 211 in particular, and check with people if they are a native title claimant before they take any action.
2. that we not be required to set bag limits but simply be allowed to continue our fishing in line with our law and custom. The FMA 2014 needs to be aligned with the Native Title rights we hold and this needs to be enacted immediately.
3. That they commence 21aa immediately without bag limits
4. That DPI recognised our native title member's card, this card has our name and address and a photo ID of the card holder. This would give DPI appliance officers the information to establish that they are members of the south coast native title claim and are exempt from NSW fisheries management act