

Submission
No 24

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

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Partially
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Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture inquiry into the failure to proclaim the commencement of Schedule 1 of the Fisheries Management Amendment Act 2009 concerning Aboriginal cultural fishing

Submission dated 21 January 2022

From: Troy Tungai

Thank you for the opportunity to make an individual submission as a South Coast Aboriginal person to the Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture inquiry into the failure to proclaim the commencement of Schedule 1 of the Fisheries Management Amendment Act 2009 concerning Aboriginal cultural fishing.

I am a South Coast Aboriginal person. I live in Wollongong/Shellharbour. I am a part of the Stewart/Henry/Walkers/Browns/Masons/Thompsons family groups.

I got taught [fishing] by my father, Jeff Tungai, at a young age. How to dive for abalone, lobsters and also fish and all that. So I pretty much grew up on the seafood.

Interactions with fisheries and police

We've got pulled over plenty of times. Like even when we went to the beach, not even jumping in the water, we used to get searched all the time like in the car park by NSW Fisheries. Also by police; they've also done a lot of harassment too.

Most of the time they're in plain clothes. Instead of showing their uniforms and badge they thought they'd get you at the last minute when you're putting your stuff in your car.

What they also do, they'd sit there and watch you get the abalone, watch you for hours and hours, then when you get up the road a couple of hours later, they want to pinch you for it. And to me, that's not doing their job properly. Their job is to protect the abalone stock, so they reckon, but my point is why should they sit there and watch you for hours and hours, watch you get the abalone and lobsters, whatever, wait till you get up the road on the highways and pull you over with police? You know, that's just like watching a bank robber rob the bank. You know you're sitting there watching him and you're not gonna pinch him till he gets up and around the corner in the car.

And when you get caught with abalone they say that they chuck them back in the water. That's a load of lies, because I've been in Wollongong police cells. One day we got caught around about 2:00 o'clock. And we never got out of the police station till about 11:00 o'clock at night with the abalone sitting right next to us in the cop shop. Now that abalone's gonna die, obviously. You know, they've been out of the water for so long.

We've had fisheries officers up here, one bloke was called _____ and he was an ex-copper, but thought he was still a copper. He was in the fisheries. Used to pull everyone up. He pulled my old man and my old lady up one night, about 2:00 o'clock in the morning. We were down at Wallaga Lake. Me dad chucked me mum in the car and he's come home from Wallaga and they pulled up at Batemans Bay garage just about 1 or 2:00 o'clock in the morning. Fisheries bloke pulls him up, try to say that he was diving at 1 or 2:00 o'clock in the morning. How disrespectful is that, you know, like, searched his car and all that sort of stuff. It's just gotta stop.

Another time, probably about 20 years ago, I remember my daughter was only a baby at the time. He [my cousin Nick Glover] also got pulled up. There were around about 20 coppers with guns. And

my missus was in the car with them at the time. Yeah, and like that was very frightening experience, especially for Nick's wife and my wife when about 20 coppers pull up around them with guns and checking his car and all that sort of stuff. And they shit themselves, you know what I mean. I still remember that day.

These fisheries officers, they think they're coppers, they think they're untouchable. They think they can do what they want. They think they can search your car anytime they want without a warrant or anything. You're probably going to get a lot of other people, telling you stories like this. Especially on the South Coast.

Interaction with the legal system

I've been caught about 9 times, and I've also been fined like over \$30,000 something now.

I did [have legal representation] the first couple times I went to Court. But the last couple of years I've just been representing myself. When I first went to court they said 'how do you plead?' I said 'I don't plead anything, I plead no jurisdiction.' Me and the fishery bloke had a bit of an argument. He said 'why don't you plead guilty? It's only a fine.' And I said 'why don't you go and get effed?' I said 'you can't sit there and tell me what to plead and not to plead'. I go into court but it gets adjourned and adjourned and adjourned. I also had a document with me. It's called 'Claim of Rebuttal Entitlement'. Which states that I'm still under tribal law and I'm not a British subject of the Crown and if they want to charge, and they can charge me as a plant or animal. I also use that as my representation.

So the first time I used that Claim of Rebuttal Entitlement was back in 2009 in the Kiama Courthouse. There was me, [redacted]. We didn't use a barrister or solicitor or anything. So what I've done? I've served that to the judge back in 2009. At Kiama Courthouse. Anyway, when we was in the court, the judge was a bit pissed off with us 'cause we served the paperwork. So she adjourned it for 40 minutes. So when we get back in the courthouse, she gets in and she was all nice to us. And she said 'I'm going to have to adjourn this to the District Court in Wollongong'.

A couple weeks later, went back to court in Wollongong. And they showed my document, what I served them. Well, anyway, it got adjourned again, and adjourned again. I think it got adjourned about four times. Then the fisheries withdrew all charges.

But I've also used that document another time. Well, I didn't have any solicitor or barrister, but when I went to serve it to the judge, the judge said 'I don't want nothing to do with it, you serve it to the fisheries minister, the fisheries prosecutor.' So that's what I did. In front of the judge, I served it to the fisheries barrister and that. Anyway, they were shaking their heads in the courthouse, but they adjourned it again for two weeks. I went back two weeks later. They adjourned it again. And then I went back again and they adjourned it again. On the 4th time they dismissed all charges as well.

I wouldn't use a solicitor for a while now. Five or six years.

I got done for abalone. I can't remember how many [I had], it wasn't that many. They give me six months weekend detention. So I done a couple weeks of that but then I stopped going there and stayed out playing football. Anyway, when they caught up to me, they end up taking me to jail. So I was in jail for three months, but they let me out on bail and I done another three months in home detention. So I couldn't go anywhere, but that's still part of jail. Six months I've done. Still called prison. So, yeah.

Personal impacts

I've paid over 30 thousand dollars in fines, and I'm not the only person and I've also been to jail. They should give something back to me.

I've had my diving gear taken off me about 8-9 times. I buy the good diving gear, it's not cheap. I've lost thousands of dollars in just diving gear itself. That's without the fines I've had to pay and the jail I've done.

I've been done over 9 times, but what I've done, I've also taken the rap for my father, cause he was with me a couple of times. What they used to do, back in the day, like, everyone used to take the rap for each other. Even though we were doing the right thing, just getting our traditional food, but instead of five or six people getting a fine, one person would take the rap for each other. Yes, but now they don't do that. They charge you with joint possession. So instead of one getting the phone, the lot is getting the fine. Everyone with you.

Like I say to the fisheries, when they take abalone off us, I say that's like taking a dummy out of a baby's mouth. That's what you've done to us. You know, like taking food out of the baby's mouth. Pretty much the same thing. There's no difference.

I got barred from the ocean, I wasn't allowed to be near the ocean. I took that back to Court, but like, how can you bar someone from the ocean? That's pretty fuckin' shocking.

Community and familial impacts

If you look at it especially on the South Coast, a lot of our mob, they're going to jail because of abalone, but what it's also doing to their families, like, for example, have been in jail there for abalone. But it affects their children and it affects their wives. The kids, it plays around with their head. They keep asking 'how come Dad's gone back to jail again?' and 'why he's never home?' and that sort of thing. down the South Coast, Narooma and that. Their children, they're gone in the heads because they've grown up without a parent cause they're always in jail for abalone. It mucks with their mind. And then their partner. You know, they get into arguments and stuff 'cause he's going to jail all the time but he shouldn't be. He's only trying to feed his children.

But how can he go out and get a feed for his family? Especially with the Elders these days. The Elders can't get out on the rocks or stuff like that. They can't get a feed so we gotta go and get it for them. That's part of our risk. But we get prosecuted for it. What else can we do?

That's [seafood] part of our traditional diet. Look at our Elders for example, that's why they've got sugar, diabetes, heart problems, kidney problems. It's because we can't get their traditional seafood which is a good and healthy diet for them. Like my aunties ask all the time, can I get them a feed of abs? And I tell them no I can't because they're either gonna pull me up or search me. That sort of stuff's gotta stop happening. Look what we're eating now. McDonald's and Kentucky and fish and chips and all that sort of stuff. When we could be eating our traditional foods.

Why do we have to dodge the fisheries and the coppers and that just to get a feed? I've seen a documentary of my Uncle Kevin Mason down at Narooma. You know, they're chasing a 75 year old man. How embarrassing is that? He's just trying to get a feed for his family and that. And they even tackled him to the ground.

They didn't know what is was [abalone] till the Blackfulla's showed 'em, but we used to call them mutton fish. Back in the day. But now they change it from mutton fish to abalone and now they're

making big dollars off it, the government, and these abalone divers, they put the licence up to like \$1.5 million now. Now where's the Blackfulla gonna get \$1.5 million to get a licence? It's pretty poor that we gotta run and hide and dodge fisheries officers just to get a feed. What else can we do?

But if you look I think it was back in, might have been back in 2017 or 2016 I think it was, in Nowra jail, 3% of the jail was Aboriginal people in there for abalone offences. A lot of Blackfullas going to jail, just over abalone.

I can tell you now you're not going to stop any Aboriginal people from La Perouse right down to the Victorian border, right along the South Coast from stopping them diving for these traditional foods. You'll never stop that. We're not gonna stop diving, hunting, gathering for anyone. I've told the judges about 8 or 9 times. You're not going to stop them. It's our traditional foods.

Recommendations

I think they should leave us Blackfullas alone on the South Coast.

The amount of fines we've paid and the diving gear they've taken off us. It ends up into the thousands you know, and also the jail time we done for it. I reckon we should be compensated for all the time we spent in jail and the money we spent on diving gear. All that goes through your head. That gets to you at a point. And that money I could have spent [it] on my children, and my grandchildren. For some of these fines you get, you don't even get that for murder.

It'd be good if they can give us our fishing rights back, and all that sort of stuff. Like even let us be our own sea rangers, whatever. If we can protect and look after the abalone and all that sort of stuff. That'd be good. That'd be really good I reckon. I think they got that up in Darwin, the rangers up there. We should have that down here on the South Coast. That would be a good thing, and that's employment for the Aboriginal people as well. Plus you protect the stock as well. It would be a good outcome.

These fisheries officers, they want to go and do some cultural awareness programme or something. Cause they need to know what we went through. Through the land and how we lived off the land. They need to be more aware of it. I don't think they realise how much the sea and land mean to us. I think they need to do another culture awareness programme, but I don't know if it goes through their head when they do it. I think it goes through one ear and out the other.

They're blaming Aboriginal people for taking abalone, but if you look at the ab (abalone) divers, they're taking hundreds and hundreds of tonnes a year. Between myself and my friends on the South Coast, we'd be lucky to take 100 tonnes. You got 400, 500 divers from right down to Eden 'cause we all fishing family. Now they're blaming the Blackfullas for taking all the abalone, but when you come to think about it, how many tonne they [abalone divers] take a year, they're the ones taking all the abs (abalone), not us. If it's good enough for a white man to make money off it why can't the Blackfullas make a little bit of bread money, smoke money, whatever? We shouldn't need a licence in the first place. It's just that the government, they don't want Blackfullas to get anything. They only want to prosecute them and jail them and stuff like that.

I don't think anyone should have to pay for fishing licence. Doesn't matter if you're white, pink, purple, or black. No one owns the ocean, so, why should people have to pay just to go rock fishing? It's pretty appalling.

Troy Tungai