

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

Organisation: Katungul Aboriginal Corporation Regional Health and
Community Services

Date Received: 28 February 2022

Partially
Confidential



25 February 2022

Dear Committee,

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

On behalf of Katungul Aboriginal Corporation Regional Health and Community Service (**Katungul**), I write in response to the Terms of Reference, particularly paragraph (c) the impact of the non-commencement of Section 21AA contained within the Fisheries Management Amendment Act 2009 on Aboriginal people's health and wellbeing, and the practice of Aboriginal cultural fishing.

Katungul is named after the South Coast Aboriginal people who ate seafood¹. The practices and reliance of South Coast Aboriginal peoples fishing is well recorded, and it has sustained many non-Aboriginal people who would have perished had that fishing not occurred. Aboriginal people not been generous to not only observe the perilous circumstances those early people were enduring, but to give them the very food they needed to sustain our communities and culture.

Compliance impact on our Community

The impact on our South Coast Aboriginal community from a health and wellbeing perspective of the non-commencement of section 21AA has been serious and contributing factor to the health outcomes of the Aboriginal people of the far south coast. It undermines the investment in health to contribute to Closing the Gap priorities and outcomes and the ability to support self-determination of our communities. It is disappointing to see legislation passed to improve quality of life for Aboriginal people in the State of NSW; only for there to be delays in implementation and compliance with these changes which today significantly contribute to the deaths and chronic health of our Aboriginal children, Elders and families.

The NSW Fisheries compliance activities have risen since the registration of the right to fish for South Coast people. The same right has previously been recognised in consent determinations for the Yeaghl and Arakwal peoples of NSW. There has not been a concern raised about overfishing by those Peoples' issue since the determinations and those communities see tangible benefits in access to staple food and resources to support health outcomes for their people.

The impact of increasing compliance actions has been detrimental to Aboriginal people, their families and our communities. Aboriginal people are [overrepresented](#) among those jailed or convicted in New South Wales for offences related to abalone fishing; which is considered a key source of food for Aboriginal people on the south coast.

¹ Unnamed Aboriginal source, cited by George Augustus Robinson, 1844

According to research undertaken by Paul Cleary (2021):

“Indigenous people dominate criminal convictions for NSW fisheries offences. In the 10 years to 2017 (the latest available data), 25 of the 32 people jailed for these offences identified as Indigenous (or 78 per cent). As Indigenous people make up 3.4 per cent of the state’s population, this makes them 23 times over-represented. Of the 60 people convicted with bonds whose Indigenous status was recorded in the data, half identified as Indigenous, making them 15 times over-represented.”

It is still not clear why this persecution persists. Based on convictions, most [total allowable catch assessments](#) for the South Coast note that the Aboriginal take is infinitesimally small compared to other forms of take. In 2021, the TAFC notes that the annual commercial take is 100 tonnes, and this year a further 30 tonnes was permitted. The recreational take is estimated at 10 tonnes. The rather expansive estimate is that 1 tonne is taken by permitted Aboriginal fishers (not defined but certainly not holding section 37 permits) less than 0.7% of the annual take. It would be good to understand exactly the basis for that estimate.

TOR (c) Impact

Katungul has substantial experience in Aboriginal health issues experienced by our South Coast Aboriginal people. They tend to die earlier and suffer more from diseases such as Type 2 diabetes, and cardiovascular illness and development of comorbidities. Contributing causes of these illnesses include lack of access to high quality protein sources, regular exercise, staple diet and social connection and culture. More than one-third of our Aboriginal community members have a comorbidity, which stem from preventable measures relating to diet and inflammation and stress. Unaddressed diet, exercise, and stress cause long-term health issues which historically were resolved through Aboriginal cultural fishing activities as a people and community.

Fresh seafood is the freshest, most readily available source of protein and the exercise associated with cultural fishing, and the social and cultural bonds fishing reinforces are all excellent for health and wellbeing. Health priorities under the Closing the Gap will be unachievable without the abilities for our communities to practice and teach their cultural rights and responsibilities under kinship without prosecution. We request the State commence section 21AA immediately to enable Aboriginal people and communities to improve their quality of life for this generation and future generations.

No other member of the community experiences fishing like the South Coast Aboriginal People, the cultural dimension, the reflection on what they have been taught and the ability to pass on their culture is a fundamental human right, protected by international law. It reinforces wellbeing and creates resilience and health in our community. Inability to practice and share cultural responsibilities has both physical, mental and spiritual impacts, with long-term impacts on identity, cultural preservation and survival of Indigenous languages. Through the practice of fishing, our children and people develop an importance of understanding of country, kin, lore and tradition through practice and repetition since time in immortal. The practice of fishing is pivotal in the preservation of culture and identity of the Aboriginal South Coast people, which contributes to increase physical health as well as fundamental in the mental health and wellbeing of the people.

Language is fundamental to Aboriginal culture and identity, even for those who do not speak language. Strengthening language is central to achieving outcomes across all Closing the Gap outcomes. All Aboriginal languages, traditional and new, provide significant social and economic benefits to their speakers. Speaking language has demonstrated benefits for individual health and wellbeing, is beneficial in learning contexts, and is an asset in terms of employment prospects and income-generating opportunities across a wide range of sectors.

Healthy seafood

Aboriginal cultural fishing values have been articulated to NSW Fisheries, NSW Marine Parks when developing the marine Parks Plans, published by AIATSIS, and spoken about at National Native Title conferences.

Significant headlands identified clearly by South Coast Aboriginal People and publicly in many documents, including the Eurobodalla Shire Council as family camps, where families would camp and gather seafood, and the crucial reliance upon that for health and survival, are now designated as Marine Parks. The consultation occurred, and they drew the lines as if it had not been considered.

For South Coast People, access to fresh seafood continues to be viewed as medicinal and interwoven with health and wellbeing. When Aunty Maree Stewart gave evidence at the trial of her nephews (Kieran Stewart and Wayne Carberry) in relation to their charge over Abalone fishing in excess of recreational bag limits, she explained they were bringing her abalone. She had been hospitalised in part because of her diabetes condition.

She reported during the hearing that when she ate abalone bought to her in hospital the doctors inquired as to how her blood sugar levels came down so quickly. As Aunty Maree Stewart's testimony in defence of her nephews indicates, this is a widely held community view, and is now backed by scientific research (Soole 1999, Yang, 2014). Fresh seafood is very nourishing, providing not only nutrients, but also medicinal benefits as is known within South Coast People's lore and custom; Abalone is known by South Coast People for regulating blood sugar levels.

Lack of access to fresh seafood diminishes the health and welfare of the fisher, their family and Elders within the community who can no longer fish and rely on others for fresh seafood. The current practices of NSW Fisheries are detracting from the health of our community every week they continue to chase and prosecute our People undertaking cultural fishing.

Stress and worry

Our South Coast Elders have a cultural responsibility and obligation to teach their culture to the next generation. They are proud of their culture, and need to teach, as they were once taught. To not be able to teach cultural fishing, for fear of being harassed, and accused of breaking the law in front of family, and the broader community is deeply embarrassing, and causes shame and hurt, compounded by anger at the way South Coast People are being treated on their own lands.

It is also very confusing to have signs at headlands along the coast teaching others about South Coast Aboriginal Peoples long cultural history with their land and sea country, the seafood they caught and cultural stories about prominent landmark, and at the same time, at the same location, people are being chased and having the food for their family taken from them, at times depending on government department structures, the same department that is responsible for the signage. The respect for the history and culture of South Coast People's country and practices are inconsistent with the Governments objectives in supporting health outcomes, protection of Indigenous languages and commitment to Reconciliation.

South Coast Aboriginal People note that their culture, and the recognition of that culture, and their rights as people to practice their culture by Government should not be limited to tourist information for visitors to Marine Parks. It is not limited to telling stories about the cultural landscapes between Biamanga – Guluga, and Barunguba, but it is a connected whole that does not depend on white recognition, or State recognition to exist – it is, as it always has been.

The prosecution of our people undertaking their cultural fishing, demeaning and diminishing their cultural rights one day, and appearing to promote it the next, means that our Elders think very carefully before teaching our young ones to fish – they worry it will lead to harm, jail, and stress for their young ones, and their families. This causes unnecessary stress for our families and communities as well as

financial stress in the form of fines, many of which outweigh the family's ability to financial meet these costs.

A further consequence of the compliance and portrayal of Aboriginal people as 'poachers' is the harassment they experience and shame they feel if they go fishing. Verbal abuse and non-Indigenous people calling compliance officers as soon as they see an Aboriginal person approach the water, were reported. Some Aboriginal people have taken to only fishing/diving at night to avoid this, despite the dangers (Smyth, Egan and Kennett 2018).

Diet, Health, Wellbeing, and Poverty

The continued heavy handed compliance activities, contributes to the poor health and wellbeing of our communities. The toll it takes on significant Elders is appalling, and the failure of them to provide for their families means that our people are going hungry, eating less nutritious food in circumstances where allowing them to keep their feed of fish would enhance their health, and promote stated Government policy.

Our Elders who can no longer fish are particularly vulnerable to the failure to fish, as it is a protein that can be more easily chewed and digested.

As Smyth, Egan and Kennett (2018) recognised:

'As saltwater people, all of the knowledge and practices related to marine foods are central to their culture, and part of what makes it unique. This means that fishing and gathering other seafood is one of the main ways people practice their culture. It's also about getting out on country, and feeling connected to country and ancestors by fishing and gathering the way they did.'

The ability of older people to take young people out fishing and diving is also essential to being able to pass on their knowledge of the marine environment. The study found that,

'...taking children fishing is necessary for their cultural education. Through fishing they learn cultural knowledge of local fauna and flora, different fishing techniques and practices, knowledge of their country and the right places to get different species – as well as the stories of those places. They also learn the cultural laws that govern fishing.' (p22-23)

All of these interactions are crucial to wellbeing.

Egan and Kennett (2018) document, people 'share their catch with their siblings, parents, grandparents, aunties and uncles, cousins, neighbours, friends, and sometimes even complete strangers....This sharing creates a social safety net that supports vulnerable people within the community'

Thus when a fisher has their catch seized, or when people don't go fishing for fear of compliance actions, many people suffer the absence of valuable protein and other nutritious elements contained in seafood in their diets. Nowadays South Coast Aboriginal people struggle to get jobs and many live in poverty; both [Eurobodalla](#) and [Bega](#) shires have high rates of Indigenous unemployment.

South Coast Aboriginal people have poorer Indigenous education outcomes than non-Indigenous people and [longstanding racism](#) also impacts upon their [employment](#). In the face of poverty, it is hardly surprising that people who are skilled fishers and divers head to the sea to gather highly nutritious seafood to supplement their diets.

Aboriginal children and young people benefit from having strong links to family, culture, country and community. Improving outcomes for children in out-of-home care is likely to result in improvements in safety and wellbeing, educational attainment, and youth incarceration rates. Fishing forms a key function and tool in strengthening early interventions for those who are considered at risk of entering

out-of-home care to stop them entering the system in the first place and supporting those who have already experienced harm to reduce intergenerational trauma and impacts.

Hypertension, thyroid, diabetes and high cholesterol levels are associated specifically by South Coast Aboriginal people with eating less seafood and not getting the exercise fishing/diving provide, while fear of collecting species which are traditional medicines, (e.g., bimbillas) used to control high blood pressure is also reported (Smyth, Egan and Kennett 2018: p 26).

Concluding comments

The Australian Governments 'Commonwealth Close the Gap Implementation Plan' outlines a '*commitment to undertake all actions in a way that takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people (cl21 and 107)*'. A key focus is funding research to measure impacts of strengthening culture as a determinant of health outcomes. We trust this includes the actions and impact of NSW Fisheries in health outcomes of our people through prosecution of our people for Aboriginal cultural fishing.

It's time for action and the harassment and prosecutions of our South Coast Aboriginal people to stop; We request the urgent implementation of S21AA immediately to restore our communities and people's rights as Aboriginal people. We urge you to encourage the NSW Government to take urgent and serious action without any delay, they have had over a decade to get regulations or local management plans, or a fair share of the fishery in place. The negligence of Government to act has contributed to the poor health outcomes of our people and communities for long enough.

It is fair and just that South Coast Aboriginal people continue to fish culturally, as they have done since time immemorial.

Should you require additional information or wish to discuss this submission I can be contacted on or via email at

Kind Regards,

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