



Under the sea: a traditional owner perspective on the Marine Estate Management Act

By Wally Stewart, traditional owner and native title applicant, south coast New South Wales (NSW)

For over 50,000 years Aboriginal people in New South Wales have managed marine resources on their Country. The proper management of the marine resources in our Country is an ongoing cultural obligation we have as traditional owners. Unfortunately these obligations do not always align with compliance and marine regulation regimes.

Co-management of sea country and Aboriginal participation in the management of the marine estate

The recent statutory review of the [Marine Estate Management Act 2014](#) (the Act) creates

an opportunity for traditional owners to be involved in planning for marine estates. To maintain and safeguard our cultural obligations, we would like to see the Act include an objective related to increasing co-management of sea country and Aboriginal participation in the management of the marine estate. This can include specific provisions to promote co-management of the marine estate by NSW Aboriginal groups, native title holders, and the state government.

As the new Closing the Gap Report (CTG) acknowledges, the connection between caring for country and Aboriginal and Torres Strait Islander

people's wellbeing is well known.¹ So is the importance of maintaining culture through knowledge transfer to younger generations. Partnering with traditional owners to co-design and manage marine estates provides a perfect opportunity to contribute to many of the new Closing the Gap (CTG) targets and meets a number of the CTG outcomes including:

- everyone enjoys long and healthy lives
- youth engaged in employment and education
- strong economic development and participation of people and their communities

- people enjoy high levels of social and emotional wellbeing
- cultures and languages are strong supported and flourishing
- people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.

Section 13 of the Act, which lays out the required consultation on draft marine estate management strategies, is the perfect place to ensure the perspectives of Aboriginal people in NSW are incorporated into the management of marine estates. We are asking for section 13 of the Act to include specific reference to consultation with Aboriginal stakeholders and native title groups before a draft marine estate management strategy is submitted to the Minister.

In pursuit of this policy objective, Department of Primary Industries (DPI) and Environment, Energy and Science (EES) have the opportunity to collaborate with NSW Aboriginal groups and native title holders to fund and establish Indigenous ranger groups through the federal government's Indigenous Rangers – Working on Country program.² Indigenous ranger groups provide an opportunity to utilise a two-way approach combining traditional knowledge with training in conservation and land and water management. An Indigenous ranger group on the south coast of NSW will significantly improve on-the-ground management and compliance operations while also increasing skills and offering economic and employment opportunities to south coast Aboriginal people.

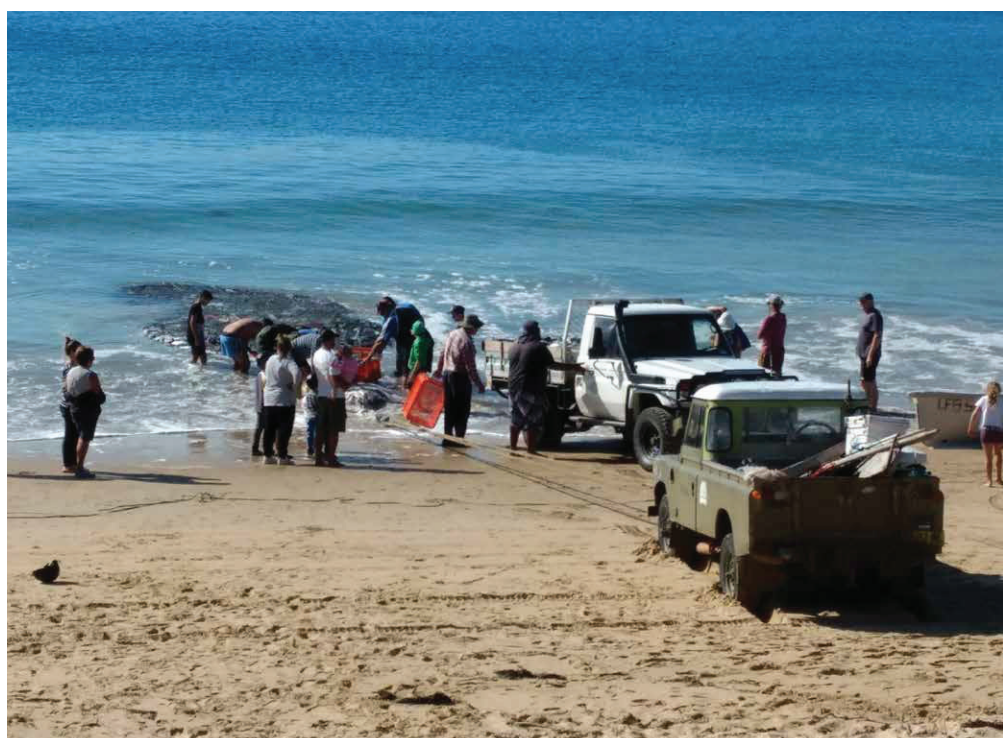
While the economic benefits of a ranger program are clear the social and cultural benefits are equally important. An Indigenous ranger group has the added benefit of linking young people with their elders to learn about and care for country, to learn and practice language and get community members outside and maintaining their physical and spiritual connection to country.

Exercise of native title rights to hunt, fish and gather

As traditional owners in NSW, and particularly on the south coast, we have the right to exercise our native title rights and interests under the Native Title Act 1993 (Cth) (NTA). While there has been an ongoing pattern of south coast Aboriginal people being prosecuted for fisheries offences, despite having the right to do so, we believe now is the time to work with government departments and local community to ensure everyone understands these native title rights.

Section 211 of the NTA provides that Commonwealth and State laws do not apply to prohibit or restrict native title holders from 'hunting, fishing, gathering, cultural or spiritual activity...in the exercise of their native title rights and interests'. This is confirmed in section 104A of the Native Title Act 1994 (NSW) which outlines that native title rights and interests, including the right to fish, cannot be extinguished by operation of a range of state legislation, including the Marine Estate Management Act 2014.

Section 21 – 24 of the Marine Estate Management Regulations 2017 gives authorised officers powers to remove persons or property from marine parks and aquatic reserves. It is imperative that it be made clear in this legislation, and to all government employees working in this space, that these provisions do not have any impact on the native title claimants and native title holders' valid rights and interests to participate in their traditional fishing and gathering rights.



Mullet run at Horseshoe Bay Bermagui 17 April 2018. Credit: Christiane Keller

There is also a great opportunity to make this clear to the wider community via a concerted public education campaign.

Amendments to the regulations are required, or at a minimum an assurance by way of ministerial direction, so that these powers respect the rights of native title holders and individuals exercising native title rights.

Sea urchin barrens

Traditional owners along the south coast have identified management of sea urchin barrens as a top priority and this has potential to be addressed under the [Marine Estate Management Strategy](#).

As noted above, as traditional owners for these waters we have a cultural obligation to see sea urchin barrens managed properly. Traditional owners have observed overfishing and over allocation of commercial abalone licenses leading to a reduction in the number of key sea urchin predators. This in turn has led to a huge increase in the number of sea urchins. Sea urchins are a pest and are having hugely detrimental effects on sea life on the south coast, and in turn our ability to exercise our native title rights and interests in these waters.

High numbers of sea urchin barrens affects the entire southern NSW region and the impact is increasing as the years pass. We need to act now. Our coast is well-loved and used and while tourist enjoy our beaches, they remain unaware of the environmental disaster occurring just under the surface of our ocean.

In developing a solution to this issue there is a great opportunity for collaboration between DPI, EES, and the Aboriginal community on the south coast. There is an urgent need for a process to remove the sea urchins and engage in regeneration efforts in ecosystems damaged by an increased sea urchin population.

This could include physical regeneration of the area after sea urchin removal. Couple this with Indigenous cultural knowledge transfer to ensure the problem doesn't resurface means the area could be successfully managed for generations to come. There are a large number of south coast Aboriginal people living in the affected areas with extensive diving experience who have very good knowledge of the water off the south coast and who could undertake this kind of work. Many people, particularly young people, would benefit from this kind of meaningful connection with their elders along with employment and engagement with DPI and EES staff.

Explore Aboriginal and Torres Strait Islander peoples' cultural connection to the sea and more on caring for sea country in the AIATSIS [Living off our waters exhibition](#).

Batemans Marine Park zoning

Cultural fishing for south coast Aboriginal people has an immense cultural, social, economic and health value. Native title claimants and native title holders should be explicitly exempted from any zoning restrictions. The zoning within the Batemans Marine Park has had a number of negative impacts on us as traditional owners.³ Many of our significant sites for cultural fishing have, for practical purposes, become inaccessible due to marine park zoning. Our people, who continue to fish in these areas, are at risk of being charged with violating marine park zoning regulations, notwithstanding their rights under the NTA.



Sea urchin. Credit: [Flickr](#)



Bingi Beach, NSW. Credit: Levi Lee

Further, marine park zoning has forced all cultural fishers and recreational fishers into a few small areas leading to over exploitation of marine resources in those areas. Increasing Aboriginal participation in the management of the marine estate will enable DPI and EES to identify specific areas which are affected by this and to then jointly identify and implement solutions to these issues.

Consultation forming part of the review process

Effective and genuinely representative involvement of traditional owners in these processes is vital to maintaining, strengthening, and transmitting traditional owners' history, beliefs and traditional laws and customs

to future generations, and ensuring these are appropriately recognised under the Marine Estate Management Act.

Engagement with native title holders must be sought in addition to, and as a separate exercise to, seeking public comment in relation to the review of the Act. This will improve consultation and engagement with Aboriginal people, and enable the DPI and EES to incorporate local Aboriginal knowledge and expertise of land and sea management into the management of marine parks.

Further, wherever possible this engagement must be undertaken as face to face consultation on Country. Personal dialogue will be much more powerful in

re-building relationships between native title holders, DPI and EES than remote written communications. This is the best vehicle to guarantee the provision of input that is meaningful, powerful, and timely.

¹ Department of the Prime Minister and Cabinet, *Closing the Gap Report 2020*, Australia, Department of the Prime Minister and Cabinet, 2020.

² Indigenous ranger projects were first funded in 2007 through the former Working on Country program. National Indigenous Australians Agency, ACT, viewed 12 November <https://www.niaa.gov.au/indigenous-affairs/environment/indigenous-ranger-program>.

³ Department of Primary Industries, *Batemans Marine Park Zoning Map*, viewed 12 November, https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0008/656288/Batemans_Marine_Park_Zoning_Map.pdf.