

Peer Review of Draft Report

"Sea countries of New South Wales: benefits and threats to Aboriginal people's connections to the marine environment"

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1.0 INTRODUCTION

This peer review is of the report entitled 'Sea countries of New South Wales: benefits and threats to Aboriginal people's connections to the marine environment' prepared by Sue Feary of the Conservation and Heritage Planning and Management. Feary was commissioned by the NSW Department of Primary Industries (DPI Fisheries) on behalf of the NSW Marine Estate Management Authority (MEMA) to prepare a draft report identifying and documenting the social, economic and cultural benefits the Aboriginal community derive from the NSW marine estate (the coastline, estuaries and marine waters of NSW) and the threats to those benefits within existing literature/information. This report one of several pieces of background information being used to inform the social, economic and environmental benefits, and threats to those benefits, feeding into a state-wide assessment.

NSW DPI Fisheries sought the reviewers' advice on five aspects of the Feary report as well as the overall adequacy in meeting project methodology. A copy of the report was provided to the reviewer by email on the 30/7/15. However, given the need for the report to be finalised as soon as possible the reviewer provided direct feedback to the consultant and NSW DPI whilst preparing this review.

Comments on each of the five aspects are provided by the reviewer under separate headings in the following section. (Note, that for the sections on benefits (Chapter 3) and threats (Chapter 4) the reviewer refers to an Appendix, which contains an iteration of these Chapters received from the author on the 13/8/15.)

2.0 ASPECTS OF FEARY REPORT

2.1 Comprehensiveness/adequacy of literature/information in meeting agreed project methodology to inform statewide threat/risk assessment.

The literature and information reviewed in the report is limited but extensive covering historical (pre and post-settlement period) as well as contemporary times (the past 20 years or so) in NSW. I believe the coverage is sufficient to be able to identify some of the connections that Aboriginal people have with their sea country as well as the values held and benefits derived through those connections. However there are a few additional references I would like to suggest for Chapters 2, and they are as follows:

- In section 2.1, additional reference could be made to the recommendations emanating from the Coastal Zone Inquiry on the role of Indigenous people in coastal areas particularly in chapter 10 of the CZI, recommendations 17, 18 and 23. The reason for suggesting this is two fold, firstly the CZI recommendations led to the provision of funding to states such as NSW to develop Indigenous fisheries strategies. Secondly and more importantly the context provided for the development of these recommendations highlights the connections that Indigenous people have with coastal environments.
- Also in section 2.1, mention might also be made of the Palmer Report (Report on Illegal Fishing for Commercial Gain or Profit in NSW Conducted by Mick Palmer, May 2004). This report also provided NSW DPI with information issues such as cultural vs. commercial fishing as well as added support for the recognition of cultural fishing in the NSW FMA.
- Also in section 2.1, having mentioned the role of Native Title in the section 'Brief Overview' it would be worth mentioning the recent Torres Strait Island Sea Claim determination especially the recognition given in the determination of the right of Islanders to dispose of their cultural catch commercially, see *Akiba v Cwlth of Australia* (B58-2012) [2013] HCA 33. Also mention might be made of the recent High Court Case relating to Native title right to take abalone in South Australia, *Karpany and Anor v. Dietman*, as this reveals the strength of Native Title in relation to state fisheries Act.
- Also in section 2.1, some more discussion around the use of the term 'Country' and by extension 'Sea Country' might be valuable in helping readers to understand the meaning of these terms especially in relation to Aboriginal connection to the marine estate in NSW.
- In the section 2.3, on defining cultural heritage reference could be made to the recent review of cultural heritage management in NSW in particular the recognition that Aboriginal cultural heritage not only encompasses the non-living but living components of the environment. This is particularly relevant in the marine estate where there are a number of species like Abalone, pipis, and mullet to name a few that are considered to be culturally iconic by coastal people.
- In section 2.4, on previous studies, the author provides an extensive list of literature on the subject, one additional study of relevance especially to the south coast of NSW is an honors completed at Southern Cross University by Jesse Waddell entitled ' Indigenous Customary and Contemporary Uses and Values of Marine Resources in Bateman's Marine Park Southern NSW: A case study of eastern Australian salmon' see reference below.
- Also in section 2.4 the author notes a study by Umwelt Pty Ltd relating to abalone, this was one of a number of studies conducted by Umwelt on behalf of the NSW DPI Fisheries in assessing the impacts of various commercial fisheries on indigenous cultural heritage. Putting this in context, in the early 2000's, the NSW Government developed fishery management strategies for each major commercial fishery at the same time they carried out an assessment of the environmental impacts of those fisheries. In assessing the social impacts of each of the fisheries NSW DPI Fisheries were required to identify the interests of Indigenous people in the resources harvested by the fishery and in habitats that may be impacted by the fishery. This included;
 - Identifying important Aboriginal heritage sites/places likely to be affected by fishers operating within the fishery and outline any existing protocols/measures that aim to minimise risk of harm to these sites.
 - Outlining how the fishery interfaces or affects traditional fishing and access to fisheries resources.

- Outlining the implication of the current fishery regime on Indigenous communities' well being, including economics, employment and community viability.

Consequently assessments were carried out on the Estuary Prawn Trawl Fishery, Estuary General Fishery, Ocean Haul Fishery, Ocean Trap and Line Fishery, Rock Lobster Fishery and the Abalone fishery see;

- Umwelt Environmental Consultants (2001) NSW Estuary Prawn Trawl Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues. Prepared for NSW DPI Fisheries.
- Umwelt Environmental Consultants (2002) NSW Estuary General Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues. Prepared for NSW DPI Fisheries.
- Umwelt Environmental Consultants (2002) NSW Ocean Haul Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues. Prepared for NSW DPI Fisheries.
- Umwelt Environmental Consultants (2004) Ocean Trap and Line Fishery Management Strategy- Assessment of Indigenous Issues and Historic Heritage Issues. Prepared for NSW DPI Fisheries.
- Umwelt Environmental Consultants (2004) Draft Rock Lobster Fishery Management Strategy: Assessment of Indigenous Issues and Historic Heritage issues. Prepared for NSW DPI Fisheries.
- Umwelt Environmental Consultants (2005) NSW Commercial Abalone Draft Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues. Prepared for NSW DPI Fisheries.

Each of these studies describes Aboriginal connection to sea country through fishing as well as highlighting values and benefits and some even evaluate risks to Indigenous cultural heritage, so they provide even stronger support for the section on benefits and threats. It would be worth including these references in Table 2.

- In the section 2.5 on understanding connections the author provides a very detailed description identifying relevant connections between Aboriginal people and their sea country. One issue that could be further highlighted is the importance of 'sense of place and identity' that Aboriginal people derive from their sea country. That is, how 'country' provides location but also underpins 'identity', people speak of being 'saltwater people' etc and linked to this obligations to protect and manage their 'country' all of which is the basis for demanding a rightful place at the 'decision-making table'.
- Also in section 2.5 on contemporary connections it's worth pointing out that Aboriginal connections include not only direct ie out 'on country' activities like harvesting, moving through, managing sites, intergenerational knowledge transfer etc but indirect, ie engaging in knowledge transfer for the purpose of better policy development, awareness raising, broader knowledge enhancement, advocacy etc for example;
 - Through government agencies by submissions made by individuals and organisations to various government reviews of fisheries and MPA's in NSW
 - Through research collaboration, with agencies, universities etc, for example; Tweed Heads community with SCU, NSW ALC, NSW DAA and NSW DPI, quantifying Aboriginal cultural fishing; NSW Aboriginal commercial fishers, NSW DPI and SCU identifying threats to Aboriginal commercial fishing; NSW cultural fisher input into the development of a national RD&E plan for Indigenous fisheries, identifying issues

- Other additional contemporary connections include;
 - Connection through contemporary cultural revitalisation activities for example: cultural fishing days Arakwal, Byron Bay, 12/2012 , <https://www.youtube.com/watch?v=CyQyJhIYr3Q> and Yuin, Broulee, 10/2014 <http://www.batemansbaypost.com.au/story/2620528/indigenous-fishos-cast-line-for-rights/?cs=228>
 - Connection through community driven environmental management initiatives for example; the establishment of IPA's, Gumma IPA at Nambucca Heads; and the development of local Aboriginal fisheries management plan for the Tweed Heads community
 - Connection through engagement in policy and strategic planning engagement for example; NSW Aboriginal participation in National Indigenous Sea Country Workshop in Darwin 2012, see Report at <http://nailsma.org.au/hub/resources/publication/national-indigenous-sea-country-workshop-report-2012>; and submissions by Tweed Community on the development of cultural bag limits in NSW waters
 - Connection through information sharing for example, conference presentations; see Stewart, W. & Stewart, Y. (2013). NSW Marine Parks and Aboriginal Cultural Fishing. Presentation at World Network of Indigenous and Local Community Land and Sea Managers (WIN) Conference, Darwin 26 to 29 May 2013. <http://www.winism.net/nsw-marine-parks-and-aboriginal-cultural-fishing/> ; and presentation on cultural fishing at the 20th NSW Coastal Conference in Tweed Heads from the 8th to the 11th of November 2011

2.2 Do the social/economic/cultural benefits presented adequately reflect the benefits that need to be considered in the NSW marine estate threat/risk assessment?

I believe that the benefits identified by the author in Chapter 3 of the report are very comprehensive but I would like to suggest a few small additions see Appendix 1, the additions are obvious in track changes.

2.3 Do the threats to the social/economic/cultural benefits in the draft report adequately reflect the threats within existing literature/information that need to be considered in the NSW marine estate threat and risk assessment?

I believe that the threats identified by the author in Chapter 4 of the report are also very comprehensive but I would like to suggest a few small additions see Appendix 1 the additions are obvious in track changes.

I would also like to draw attention to threats variously introduced by the words 'lack of understanding of Aboriginal peoples', for example, from the report;

'Lack of understanding of the customary/ informal/ subsistence economy and how it works'

'lack of understanding of, and respect for their culture, in particular the spiritual aspects'

Closely related to this threat is a lack of willingness by managers to develop and adopt strategies that address issues, which are the object of the lack of understanding. So for example having gained an understanding, while a success in and of itself, achieves little else unless the understanding is converted into action. The reviewer has been in many situations where managers understand the issues presented by Aboriginal people but fail to address for fear of being seen by other stakeholders or

broader society to be making special measures for one group over the other. In these circumstances reference to international best practice can provide managers with the extra argument needed to convince other stakeholders of the need to make special measures.

2.4 Any key gaps that need to be addressed in finalising the report?

One key gap in Section 2 of the report I believe is the lack of coverage of international best practice and convention around Indigenous people, fishing, biodiversity conservation, connection to country and rights. I believe that reference should be made to the following:

The UN FAO Code of Conduct on Responsible Fisheries Section 7.7.6, which states that;

'When deciding on the use, conservation and management of fisheries resources, due recognition should be given, as appropriate, in accordance with national laws and regulations, to the traditional practices, needs and interests of indigenous people and local fishing'

The UN Convention on Biodiversity, Articles 8(j) and 10(c) which state;

8(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

10(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

The UN Declaration on the Rights of Indigenous Peoples, Article 25 and 26 which state;

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

2.5 Key documents/information missing from draft report that needs to be taken into

account?

2.5.1 Additional References

Waddell, J. (2010) Indigenous Customary and Contemporary Uses and Values of Marine Resources in Bateman's Marine Park Southern NSW: A case study of eastern Australian salmon. Submitted in Partial Fulfillment of the Requirements for B. Env. Sci. (Honours) Southern Cross University, May 2010

Umwelt Environmental Consultants (2001) NSW Estuary Prawn Trawl Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues. Prepared for NSW DPI Fisheries.

Umwelt Environmental Consultants (2002) NSW Estuary General Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues. Prepared for NSW DPI Fisheries.

Umwelt Environmental Consultants (2002) NSW Ocean Haul Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues. Prepared for NSW DPI Fisheries.

Umwelt Environmental Consultants (2004) Ocean Trap and Line Fishery Management Strategy- Assessment of Indigenous Issues and Historic Heritage Issues. Prepared for NSW DPI Fisheries.

Umwelt Environmental Consultants (2004) Draft Rock Lobster Fishery Management Strategy: Assessment of Indigenous Issues and Historic Heritage issues. Prepared for NSW DPI Fisheries.

Umwelt Environmental Consultants (2005) NSW Commercial Abalone Draft Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues. Prepared for NSW DPI Fisheries.

deKoninck, V., Kennett, R., and Josif, P. (2013) National Indigenous Sea Country Workshop Report, NAILSMA Knowledge Series 014/2013. North Australian Indigenous Land and Sea Management Alliance, Darwin NAILSMA 2013

2.5.1 Correction to Existing References

Smyth, D. 1993. *A Voice In All Places: Aboriginal and Torres Strait Islander Interests in Australia's Coastal Zone* (revised edition). Consultancy Report, Resource Assessment Commission, Canberra.

rather than

Smyth, D., 1993. *Aboriginal and Torres Strait Islander relationships with Australia's oceans*, Canberra: Environment Australia

and

Schnierer, S., and Egan, H. 2011. *Aboriginal fisheries in new South Wales; determining catch, cultural significance of species and traditional fishing knowledge needs*, Canberra: Fisheries Research and Development Corporation and Southern Cross University.

rather than

Schnierer, S., 2011. *Aboriginal fisheries in new South Wales; determining catch, cultural significance of species and traditional fishing knowledge needs*, Canberra: Fisheries Research and Development Corporation and Southern Cross University.

2.6 Reviewers overall views on adequacy of report in meeting project methodology to inform the statewide threat and risk assessment.

The reviewers' overall assessment is that the Feary Report given the comments provided by the reviewer are adopted in whole or in part, will adequately inform the statewide threat and risk assessment of Aboriginal connections with the marine estate in NSW.