

United Nations Permanent Forum on Indigenous Issues
Ninth Session - New York
19-30 April 2010

Agenda Item 7: Discussion of the Study on Indigenous Fishing Rights in the Seas

JOINT INTERVENTION DELIVERED BY BEVERLEY MANTON OF THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL ON BEHALF OF THE INDIGENOUS ORGANISATIONS OF AUSTRALIA, INCLUDING:

National Native Title Council (NNTC)
Foundation for Aboriginal and Islander Research Action (FAIRA)
New South Wales Aboriginal Land Council (NSWALC)
National Indigenous Higher Education Network (NIHEN)
Aboriginal Legal Service Western Australia (ALSWA)
Aboriginal Legal Rights Movement (ALRM)
Bullana, The Poche Centre for indigenous Health
National Aboriginal Community Controlled Health Organisation (NACCHO)
Indigenous Peoples Organisation Network Youth Delegation
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

Thank you Mr Chair,

The New South Wales Aboriginal Land Council is pleased to make this intervention on behalf of representatives of Aboriginal and Torres Strait Islander organizations present at this forum.

In particular, I am pleased to report on considerable improvements to the position of Aboriginal cultural fishers in the State of New South Wales, Australia.

The Australian Aboriginal culture is one of the world's longest surviving continuous cultures. Our culture has been maintained through the continual practice of traditions and the transfer of knowledge from generation to generation. An important part of Aboriginal culture is the practice of fishing, both for subsistence means and ceremonial purposes.

Aboriginal people have a spiritual, social and customary association with fisheries resources. Fishing has provided a major component of customary diet, as it has been readily available to tribes situated both on the coast and inland. This subsistence lifestyle included a hierarchy of resource distribution providing communally for Elders, women, infants, youth and men. In addition to the day-to-day practice of fishing as a subsistence measure, fishing also provided feasts for cultural ceremonies.

As outlined in the *Report on indigenous fishing rights in the seas with case studies from Australia and Norway* prepared for the Permanent Forum by Australian Professor Mick Dodson, and Carsten Smith, there is no comprehensive recognition of Aboriginal fishing rights across Australia.

While national native title legislation offers some avenues for recognition, to date there is no Australia-wide acknowledgement of these rights and practices, and where

some recognition has been forthcoming, it has been limited and confined not to interfere with the rights and interests of other Australians.

In short, both the management of fishing resources and the recognition of Aboriginal cultural practices are managed largely through State and Territory Governments.

Some States, however, have acknowledged the Aboriginal cultural connection to the fisheries resource in their respective legislation, and have included provisions for this within their fisheries management regimes. Three examples of such legislation exist in the Northern Territory, Tasmania and Western Australia.

In the Northern Territory, cultural fishing has been recognised and provided freedoms to continue without concessions, provided that the cultural fisher does not interfere with another party's catch or equipment.

Tasmania has also afforded similar protections for the Aboriginal cultural fisher through the *Living Marine Resources Management Act 1995 (Tasmania)*, which provides an exemption for Aboriginal fishers from requiring a fishing licence when engaging in an Aboriginal activity.

The Western Australian Government in its *Aboriginal Fishing Strategy (2003)* recognised that '*sharing of fish is important socially and communally ... sharing often extends to barter and exchange of fish for other items, such as other food sources within Aboriginal communities*'.

Nonetheless and despite this, there has not been a national co-ordinated and concerted effort to address the resource rights of Australia's Indigenous peoples to the sea and rivers, including proper recognition and acknowledgement of continuing fishing practices.

In my home state of New South Wales, like so many other states and territories in Australia, the management and regulation of fisheries resources have impacted on the availability of fresh and saltwater fisheries resources for Aboriginal fishers, and have consequently hindered the maintenance of traditional practices.

Indeed, in the more recent past Aboriginal communities in New South Wales who wanted to undertake traditional fishing found themselves over-burdened with detailed administrative processes and limited to the same catch limits as non-Aboriginal 'recreational' fishers.

Another issue with cultural fishing has been the high level of infringements and fines received by Aboriginal people for practicing their culture.

Cultural fishing needs to be recognized nationally as community spirited and traditionally provides for extended families and other community members; hence it is often not carried out within the parameters of the restrictive fishing licence regimes in many of our states. Additionally, Aboriginal cultural fishers, due to the size of the catch required to fulfil communal needs, also often found themselves in direct conflict with the law, and subject to prosecution.

In a recent fishing rights paper prepared by the New South Wales Aboriginal Land Council - titled *Reel Cultural Fishing Rights (2009)* - traditional subsistence fishing methods not only provide a low cost and highly nutritious food source to supplement the diet of the Aboriginal communities, but can also provide positive mental health outcomes through cultural connection.

These outcomes are consistent with the goals of the Council of Australian Governments' to 'Close the Gap' in Indigenous Australia's health inequality.

The New South Wales Aboriginal Land Council actively promotes recognition of the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP), including the provisions relating to control, use and access of natural resources by Aboriginal people, to all levels of Government.

However, the apparent failure of the Australian Government to provide a meaningful framework in which these matters can be resolved means that State jurisdictions are free to implement laws which continue to undermine the rights of Aboriginal people.

As such, commitments made by the Australian Government - by endorsing the United Nations Declaration on the Rights of Indigenous People, on 03 April 2009 - and the Council of Australian Governments' (COAG) *Close the Gap* commitments, run the risk of becoming meaningless when Aboriginal people have no legislative powers or recognition to enforce their rights.

Despite this, we will not be stopped from practicing our traditional rights.

Mr Chair, I can report that in my home state of New South Wales, we have pushed the State Government to work with us constructively so that these rights are recognised.

I am pleased to say that an Aboriginal person in New South Wales can now fish without the need to apply for a fishing permit or to pay a fee, that Aboriginal people in NSW will be able to fish with increased bag limits, in recognition that Aboriginal fishers are often fishing for community events or others in the community, and that the likelihood of any future prosecutions are now eliminated.

It has also been agreed to commit to further change in the future, by examining the regime for the management of commercial fishers and opportunities for Aboriginal people, including economic development rights for Indigenous fisheries.

While we look to working constructively with the New South Wales State Government, indeed, all provincial governments on this issue, it is not enough for some to take action and for others to remain silent.

Recommendation

1. That the Permanent Forum on Indigenous People calls upon all States to formally implement and give proper meaning to the United Nations Declaration on the Rights of Indigenous Peoples.
2. That the Permanent Forum on Indigenous People strongly urges the Australian Government to establish and implement a national human rights framework which specifically recognises the unique status of Australia's Indigenous peoples and provides means by which to further strengthen our Aboriginal cultural institutions in Australia, including cultural fishing.

Thank you Mr Chair.