



The Cape York Turtle and Dugong Taskforce of Concerned Communities  
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242 Sheridan Street  
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17 January 2014

Committee Secretary  
Senate Standing Committees on Environment and Communications  
Parliament House  
Canberra  
ACT 2600

Dear Secretary,

### **Submission to the Senate Standing Committees on Environment and Communications – *Environment Legislation Amendment Bill 2013***

[1] The Cape York Turtle and Dugong Taskforce of Concerned Communities (the Taskforce) is made up of representatives put forward by over 20 Cape York Peninsula clan groups, who are concerned about the sustainability of their dugong and marine turtle species. We, the members of the Taskforce, recognise the right of Traditional Owners to maintain their cultural heritage through turtle and dugong hunting. For many Indigenous Saltwater people around the Cape, hunting turtle and dugong in the tradition of their ancestors is a central aspect of their identity and their ties to country. Because of this, the Taskforce feels that it is of the utmost importance that these animals be protected from the many and varied threats that the modern world presents. To lose these species to extinction would be to lose an aspect central to our culture.

[2] The Taskforce has been working, under the auspices of the Balkanu Cape York Development Corporation and with assistance from the Cape York Land Council and the Cape York Institute, at a community and regional scale since 2011 to plan for the conservation of these species. The *Cape York Turtle and Dugong Regional Plan* (attached as a supporting document) and 10 *Turtle and Dugong Local Management Plans* have been developed to manage specific anthropogenic impacts that affect the species across the region and within specific communities. Primarily, these plans address common concerns held by the Australian public, such as the ability to set sustainable harvest levels and humane dispatch methods for traditional hunting. This is achieved through a regional permit system, to be administered at the local level, which sets sustainable limits on the total number of animals to be caught. In this way, the Indigenous communities of Cape York are strengthening the protection of dugong and marine turtle using a collaborative, community based approach. However, additional government support is required to implement the planning work that has been completed so far.



[3] The Taskforce is eager to increase the protection of turtle and dugong species while ensuring native title rights and rights to hunt under other legislation are upheld. However, the Taskforce is concerned that the proposed amendment may be used to as a shallow, ‘band-aid’ measure to address what is a limited threat to turtle and dugong species, as opposed to the key underlying threats. While illegal activities which may harm turtle and dugong are certainly a threat, the damage caused is vastly outweighed by other factors, such as predation, coastal development, boat strikes, habitat loss, agricultural runoff, marine debris, commercial fishing, soil runoff or nesting failure. In addition to this, the combination of threats changes distinctly across the Cape York region, creating a need for conservation plans tailored to the local level. For example, in the South Eastern Cape, agricultural runoff, soil erosion and collisions with commercial boats cause significant damage, whereas on the Western Cape predation is the largest threat, with some reports of close to one hundred percent loss of turtle nests at key mainland sites. A full list of threats facing the species on Cape York is detailed in the *Cape York Turtle and Dugong Regional Plan*. In addition, these threats are also recognised under the plans developed by Traditional Owners in their local area. However, little to no meaningful action will be taken to address such threats at either a local or regional scale under the proposed amendment.

[4] For Indigenous people exercising their traditional right to hunt, the law is often undecipherable and alienating. Because of this, many in indigenous communities do not have the intricate understanding of the law required to make accurate decisions and many misconceptions abound about what is considered to be lawful or not. Many people currently lawfully hunt in their traditional hunting grounds under section 211 of the *Native Title Act 1993* or under other legislation such as the *Aboriginal and Torres Strait Island Communities (Justice, Lands and other matters) Act 1984 (Qld)*. However, the legislation relevant to hunting in the waters around Cape York is a complex mix of the *Native Title Act 1993 (Cth)*, the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, the *Animal Care and Protection Act 2001 (Qld)*, the *Great Barrier Reef Marine Park Act 1975 (Cth)*, the *Aboriginal and Torres Strait Island Communities (Justice, Lands and other matters) Act 1984 (Qld)* and the *Nature Conservation Act 1992 (Qld)*. Without proper support, many indigenous people are not able to negotiate through this legal tangle and may end up unwittingly breaking the law.

This failing is a result of the complexity of legislation regulating Traditional Hunting, which, in the past, has been developed without proper consultation with Traditional Owners. The Taskforce is concerned that this amendment has also been developed with little to no consultation with indigenous communities and, as such, many people who exercise their traditional right to hunt will not be aware of the greatly increased penalties. . To mitigate this risk, the Taskforce asks that a consultation period be enacted for this amendment so as to provide a reasonable time period for Indigenous communities to provide feedback to legislators and ensure that community members are adequately aware of any changes to existing legislation. Without such a consultation process, the amendment will not result in a change of behaviour and indigenous people will be placed at unnecessary legal risk.

[5] The proposed amendment adds to a growing list of legislation applied to turtle and dugong management within indigenous communities on the part of Commonwealth, State and Local



legislators. This is often made in opposition to, or without recognition of, the existing Indigenous governance that allowed Traditional Owners to manage turtle and dugong populations sustainably for tens of thousands of years. Recognising existing Indigenous governance is necessary to ensure the success of proposed legislation affecting communities, as is providing adequate level of support to programs and actions that have proven to be effective, such as that of the Taskforce's work. While any single amendment or new piece of legislation may be small, without the proper recognition and support of community efforts, over time the cumulative burden of legislation undermines the ability of Traditional Owners to manage sustainable turtle and dugong hunting and conservation through community actions. The Taskforce is concerned that the proposed amendment may add to this burden and bypass current efforts made by Indigenous communities, undermining their ability to uphold effective Indigenous governance.

Furthermore, although the government has recognised the legal rights of indigenous people to hunt turtle and dugong in accordance with their tradition and culture through legislation such as the *Native Title Act 1993*, the government has failed indigenous people by removing the authority of indigenous people to enforce cultural law. Such law has traditionally regulated the take of turtle and dugong within each community, however, the proposed amendment fails to recognise it as an effective alternative for regulating traditional hunting in a culturally meaningful way. The fact that indigenous people have little realised authority to regulate hunting and other fundamental threats to the species is seen as a failure of government, which is not addressed by the proposed amendment.

[6] For indigenous people who are intentionally undertaking illegal activities, such as the sale of endangered species, greatly increased civil and financial penalties may not be as effective in changing behaviour as is anticipated. On Cape York, Indigenous communities are highly disadvantaged such that prison sentences and an inability to pay fines are a common occurrence compared with other regions in Australia. As such, the Taskforce is concerned that these penalties are excessive and yet may prove to be ineffective.

Through the *Proposal for Implementation of 'Community based Management Plans' for Turtle and Dugong 2013*, published on behalf of the Taskforce, an alternative method to deter offenders and provide Indigenous people with the cultural authority to regulate the way in which hunting is conducted; this is described in Appendix 1. This method provides ways to integrate traditional lore/law into the current legal framework by creating a set of culturally meaningful penalty provisions that are administered by Traditional Owners. Such provisions are designed to work in conjunction with existing statutory penalties as opposed to replacing them. With government support, such alternative penalties could be designed by Traditional Owners for maximum effect. The proposal also provides a missing part of existing regulatory frameworks which will regulate native title rights in an appropriate and effective way.

[7] Through collaborative and community based planning at both regional and local scales, the Taskforce, and the Traditional Owners of Cape York that they represent, have created options to significantly increase the protection of dugong and marine turtle species in a manner which



addresses key underlying threats. In contrast, this amendment attempts to address only one, minor threat to the sustainability of these species, and does so in a way that places unnecessary risk on indigenous people. Furthermore, due to the high levels of disadvantage and poverty that are evident in Indigenous communities on Cape York, increasing financial and civil penalties will likely do little to curb intentionally illegal behaviour such as the sale of endangered species.

The Balkanu Cape York Development Corporation has undertaken an analysis of the existing regulatory frameworks which and has identified relevant legal rights to hunt, existing issues with the exercise of those rights and identified ways of resolving those issues. This has been provided to government along with a plan for a suitable and equitable framework to manage indigenous hunting and to facilitate the exercise of rights of aboriginal people to hunt in a way which avoids many existing issues. The proposed amendment ignores such advice and does nothing to contribute to the real issues. The amendment makes uninformed people think that turtle and dugongs have been given increased protection, where in reality this is not the case.

Government support of the local and regional plans that the Taskforce has put forward is a far superior option in regard to the effectiveness of reducing illegal activities harming turtle and dugong and addressing the combination of factors threatening the species in the Cape York Peninsula region. It has been endorsed by leading scientific minds and, as a means to keep the government's election promise, has the potential to be both highly efficient and effective. The Taskforce suggests that programs such as this be supported by the government as opposed to, or in conjunction with, this amendment.

Sincerely,

The Taskforce of Concerned Communities

*Signed on behalf of the Taskforce*

***Mr William Busch***

***Ms Larissa Hale***

***Ms Marie Shipton***

***Mr Robert Deemal***

***Mr Gavin Bassani***



### ***Appendix 1 – Explanation of Alternative Traditional Authority Penalty Provisions***

The model 'Alternative Traditional Authority Penalty Provisions' allows for initial breaches of the rules for hunting to be dealt within the community in the first instance in a culturally sensitive way as an alternative to the court system.

Rather than replacing the existing penalties and sanctions for offences under legislation, the alternative provisions are designed to sit alongside and provide an alternative pathway for breaches of the rules. Where those alternative sanctions and pathways fail, breaches of the rules for hunting would attract prosecution by existing enforcement agencies under the existing offence provisions under legislation.

Under the proposed model, the Conservation Agreement under the EPBC Act would provide the overarching agreement that hunting of turtle and dugong could occur where that hunting was carried out in accordance with the community based management plan for that particular area.

Hunting in accordance with the rules contained within the management plan could provide an exemption to the overarching penalty provisions which prohibit the take of a protected species including:

- Sections 196, 211, and 255 of the EPBC Act which prohibit the take of a listed species without permission;
- Section 38BA of the GBRMPA Act which prohibits the entry and use of a zone of the marine park for the take of a listed species under the GBRMPA without permission; and
- Section 88 of the NC Act which prohibits the take of a protected species without authority.

The community based management plans for each area would contain two important elements:

- A clear set of rules and conditions that must be adhered to in order to legally hunt under the plan in that particular area; and
- A compliance section that includes a prescribed set of alternative penalties.

In circumstances where a person breached the rules of the relevant management plan, in the first instance they would then be subject to the 'Alternative Traditional Authority Penalty Provisions'. For example:

- For a first offence a person may have to appear before the elders to explain their conduct and may receive a sanction including: an admonishment; an official warning; undertake an initiation or training course; or give an undertaking that they will not breach the rules.
- For a second offence the hunter may have their permit and hunting privileges revoked or suspended for a period of time.
- For a third offence the person may have to bring their vessel to the Traditional Owner groups for voluntary surrender at which time it would be locked in a compound for a period of time.



The actual penalties would be left to the Traditional Owner group to determine. Provided that person then complied with the alternative penalty provisions in place under the management plan, they would still be considered to be in compliance with the management plan and therefore still covered by the exemption for the take of a protected species provided by the Conservation Agreement.

In circumstances where a person refused or failed to comply with the alternative penalty provisions, that person would then be declared to be in breach of the Conservation Agreement. The exemption provided by the local community based management plan would no longer apply and that person would be liable to the offence provision provided for in the overarching legislation. Penalties under the overarching legislation would be followed up where the alternative provisions were not effective.

As a type of voluntary system the alternative provisions would not technically rely on the exercise of existing enforcement powers. In circumstances where a person choose not to comply with the rules or the 'Alternative Traditional Authority Penalty Provisions', that person would be subject to normal enforcement avenues through the overarching legislation ('white man law').

If required the responsibilities of each party could be clearly articulated, and made transparent and enforceable through legislative reform.

The model could provide a greater role for Traditional Owners in compliance whilst facilitating development and demonstration of capacity for further participation in compliance and enforcement aspects.

The governance and administration of the alternative provisions would require support of the authorities and would require incorporation of safeguards such as a documented operational procedures and risk assessments.