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Whale are our kin, our memory and our responsibility

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ABSTRACT

There is a global move to advocate for the incorporation of Indigenous Knowledges into conservation and land management programs. In Australia this is being reflected in some programs and also regularly in strategy documents. However, we argue that this rarely reflects self-determination for Traditional Custodians. In this article we use two Culturally Significant Entities (CSEs), the humpback and southern right whales, to demonstrate how the regulatory framework that is in place to support species conservation does not adequately allow for Traditional Custodians to extend culturally appropriate levels of care for Country or preserve the knowledge held or associated with a species. Our aim is that the Australian Government and people will work with us to find a way to support the care of CSEs.

Position statement. *We, the authors, are Indigenous Australians. We have familial connections to whale Lore Holders and/or hold traditional whale Lore/Law as part of our cultural obligations. It is from this position that we advocate for greater care of the whales with which we have Ancestral kinship and reciprocal responsibility.*

Keywords: culturally significant entities, ethnozoology, humpback whale, indigenous knowledge, songline, southern-right whale, traditional ecological knowledge.

Introduction

It is incumbent upon governments and conservation NGOs to incorporate Indigenous Knowledges into conservation and land management programs to be consistent with self-determination as defined by the United Nations Declaration for the Rights of Indigenous People. This has been acknowledged in international agreements including the *Kuming-Montreal Global Biodiversity Framework* and the *Nagoya Protocol of Access and Benefit Sharing*. In Australia, where there are significant shortcomings in achieving this (see [Goolmeer *et al.* 2022a](#)), it is now consistently reflected in reporting and strategy documents (i.e. [Royal Commission into National Natural Disaster Arrangements 2020](#); [Cresswell *et al.* 2021](#)). We are also beginning to see more frequent uptake of Traditional Ecological Knowledge (TEK) in the protection of our most threatened species ([Goolmeer and van Leeuwen 2023](#)).

We welcome this development as a step towards Traditional and Western frameworks working collaboratively and cooperatively. However, here we argue that the uptake of TEK for the purpose of conservation, although highly pragmatic, does not represent self-determination for Traditional Custodians in and of itself. True self-determination in caring for Country, requires not only the use of TEK, but also the adoption of the principles and priorities that have kept Country healthy for tens of thousands of years, and meaningful partnerships between Traditional Custodians, conservationists, and Government ([Woodward *et al.* 2020](#)). The adoption of Indigenous Knowledges must be Indigenous-led and driven, encompassing culture, Country and kin.

TEK is not isolated, siloed facts and information. It is a body of integrated and interrelated knowledge that is both specific and encompasses every aspect of Country and the entities that inhabit it. Our knowledge systems are holistic and all encompassing. TEK must be recognised, upheld and integrated in the environmental context in the same way

that the knowledge of Traditional Custodians has been introduced in the health sector, where Indigenous understandings and definitions of health (Gee *et al.* 2014) have been identified and integrated into the delivery of health programs. This example demonstrates how other sectors are working in partnership with TEK. Conservation and land management has an opportunity to take a further step by incorporating TEK into contemporary land management frameworks with Country, and its care, at its core.

As Traditional Custodians, our culture places us in Country, and as part of Country, as much a part of the landscape as the plants and other animals, the rocks, earth, waters, skies and spirits. Our place in Country is defined by Lore/Law (a concept which encompasses both a body of wisdom (Lore) and an associated rules system (Law)) which establishes our kinship with individual species, and it spiritually and physically defines our responsibilities to Country. Through this Lore/Law we are responsible to our human and non-human Kin and Ancestors in the same way that Country cares for us (Suchet-Pearson *et al.* 2013). We cannot practice our Culture without taking account of these responsibilities. However, this inherent association with Country and species is not prevalent or regularly referenced in contemporary approaches to conservation or natural resource management.

Much of the focus in conservation is the protection of threatened species, a task which we are failing to adequately fund (Wintle *et al.* 2019) and is becoming increasingly challenging as the list of species threatened with extinction grows ever longer (Woinarski *et al.* 2019; Legge *et al.* 2023). We applaud the efforts of conservationists who work tirelessly in a space which is inadequately valued and resourced by governments and philanthropy. However, although the work of the movement is critical, their priorities do not reflect the entirety of our obligations to Country and the species of special significance to Traditional Custodians as defined by our Lore/Law.

When a species declines in an order consistent with threatened species listing, it represents a failure to meet our cultural responsibility. Further, once a species is listed, simply managing population level threats does not address our responsibility to preserve all significant knowledge held and represented by a species, nor does it ensure that cultural and spiritual responsibility is accounted for.

In this perspective piece we outline our view on caring for Country by acknowledging and protecting Culturally Significant Entities, a term we adopt from Goolmeer *et al.* (2022b). Culturally Significant Entities, or CSEs, are species and ecological communities of cultural significance to Indigenous Australians. We highlight Australia's responsibility to ensure Traditional Custodians lead the definition and restoration of healthy Country. In addition, we emphasise that non-Indigenous people who hold relevant Western knowledge have a responsibility to work in partnership with Traditional Custodians under the guidance of Indigenous Knowledge Holders. We use two species of whale to articulate our vision.

Gurawal – humpback whale – *Megaptera novaeangliae*

Along the coastline of eastern Australia, humpback whales continue to make a stunning recovery post-industrialised whaling. According to the International Whaling Commission (2015) it is thought that there are in excess of 35,000 humpback whales in the eastern and western Australian populations and numbers are increasing at their maximum biological rate of 10% per annum towards an expected carrying capacity of 45,000. This would make the species one of the few contemporary examples of conservation success. In fact, recovery of the humpback has seen it downlisted to least concern and, as a result, it is not the priority of targeted conservation actions under Australian legislation. We welcome the return to strength of humpback whales to our coast, but the level of comfort that the Australian Government has in the legal status of the species, does not satisfy our cultural obligations.

Yuin authors McKnight and Pascoe are, among others, custodians of Gurawal Lore. This ancient history was passed on to us by our great teacher Uncle Max 'Dulumunmun' Harrison and has been shared publicly in his writings (Harrison 2023). Uncle Max describes this story as 'The Promise' and it explains how Yuin people came to Country and the interrelation between Yuin people and our whale kin, Gurawal.

According to cultural lore, Gurawal were once land-based animals who beseeched the Elders to let them live in Gadu, the Ocean. The Elders agreed on the condition that Gurawal would hold the Lore/Law of Gadu, just as people would do for Wruk, the land, and that from time-to-time Gurawal must return that Lore to the people (by beaching) so that the Lore/Law would never be lost; this was the promise.

In the time when Gadu rose up and submerged significant parts of Country (at the same time as severing Lutruwita, Tasmania, from the mainland of Australia) the people were confused and fearful. But, as Gadu engulfed the plains and swept up toward the mountains, Gurawal came to their aid, showing a clear path for the people to follow by blowing bubbles. In this way, Gurawal led the people to safety on the higher grounds of Country, keeping the promise that had been made to the Elders.

We are related to Gurawal through kinship and mutual responsibility. In our time of need, Gurawal held Lore/Law and protected us. So, it is now our turn to hold our Lore/Law and protect our ancient Kin. Yes, humpback whales are returning to the East coast of Australia in great numbers. But many threats are arrayed against this Culturally Significant Entity (Johnson *et al.* 2022). There are existential threats like climate change, which if unmitigated could see the collapse of submerged ice shelves in Antarctica which are vital for the food source of Gurawal in their summer range. There are also threats like seismic blasting which can force whales to alter their movements. This is an example of a threat to Gurawal that is less tangible from a conservation perspective, whereas

Traditional Custodians see it as an unacceptable interference to an ancient Songline.

There are also tangible threats to individual whales like ship strikes and ghost net injuries which can lead to mortality. Whales are the Elders of Gadu; the loss of an Elder of the sea reduces the collective memory of Gurawal and their ability to hold the Lore/Law of the ocean, in the same way that our Elders collectively hold our Lore/Law. It cannot be tolerated.

The predominant mechanism for providing special protection for a species is listing it as a threatened species. The case study of the humpback whale demonstrates that the species is not consistent with such a listing. However, our cultural obligation demands we give the species care beyond what is currently demonstrated.

Koontapool – Southern right whale – *Eubalaena australis*

Like the humpback whale, the southern right whale is recovering from historical industrialised whaling. However, population gains are more modest for southern right whales, with populations considered to be <20% of their pre-whaling size (DCCEEW 2022). The south eastern Australian population in particular is not recovering well and the cause/s are poorly understood. The species is listed as Endangered under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The limited recovery of southern right whales is of grave concern due its Cultural Significance in Southern Australia.

Keeraay Wooroong Elder, and co-author Couzens, through her family line, holds ancient Lore for Sea Country. Couzens' daughter, Yaraan Couzens-Bundle, was gifted Koontapool Lore/Law from Story holders and carries this Songline as clan Custodian.

Every year, after following their ancient Songline (ancient route through Sea Country) from sub-Antarctic feeding grounds, Koontapool mothers gather in Gunditjmara Sea Country, to birth and raise their calves in the shallow, warm and protected waters of bays along the coast of Southern Australia. These sites are related to Koontapool midwives, and this Lore/Law prescribes the matrilineal nature of Keerray Wooroong and the social structures of the greater Gunditjmara nation. For the Keerray Wooroong, Koontapool are the Elders of Sea Country, Meerteeyt Meerreeng, holding the Lore/Law of how Koontapool and people, Maara, are inexorably and integrally woven in the fabric of their shared co-existent and interdependent society.

As an endangered species, southern right whales will be the subject of a National Recovery Plan, which is currently under draft. The draft currently states that 'The purpose of this Recovery Plan is to set out the objectives, targets, and management and research actions necessary to minimise anthropogenic threats to facilitate the recovery of the southern right whale and allow their conservation status to improve so that they can be removed from the threatened species list under

the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)'.

The Draft Plan acknowledges the significance of the species to Traditional Custodians and recommends the adoption of TEK in identifying Biologically Important Areas (BIAs). However, there are no priorities within The Recovery Plan which have been identified by Traditional Custodians. For instance, the plan's stated priority is that the trajectory of the species' populations is no longer consistent with listing under legislation. But the plan will not extend its care of the species if the target is reached. Nor does the plan provide protection of individual whales beyond the protections already in place under the Australian Whale Sanctuary or in the *Wildlife (Marine Mammals) Regulations 2019* of the *Wildlife Act 1974* in Victoria.

Whilst BIAs are developed independently of recovery planning processes, they are referenced in recovery plans to identify areas of Habitat Critical to The Survival (HCTS) of the species. Under Part 13, section 270 of the EPBC Act, it is mandatory for Recovery Plans to identify the HTCS of the species or community concerned, and the actions needed to protect those habitats and the EPBC Act Significant Impact Guidelines 1.1 – Matters of National Environmental Significance state that, 'An action is likely to have a significant impact on a threatened species if there is a real chance or possibility that it will: adversely affect habitat critical to the survival of a species.' BIAs are an effective conservation tool; however, they do not extend to the entirety of the waters used by southern right whales and they do not identify areas which are of cultural significance relating to the species. Similarly, the plan only extends to Australian territorial waters so this cannot encompass the obligation of Traditional Custodians to the species. We are obliged to ensure that Koontapool is protected along the full extent of its Songline.

The case study of Koontapool demonstrates that even when CSEs are afforded special protection under Australian legislation, they do not receive the consideration that Traditional Custodians expect.

Discussion

The example of these two whale species highlights the inability of contemporary conservation approaches to effectively protect the tangible and intangible elements of Cultural Heritage and knowledge associated with a species. We see an opportunity to ensure that Traditional Custodians can care for species of cultural significance as CSEs within the national environmental regulatory framework and ensure their ongoing connection with and care for the species. Current reform of Australian Environment and Cultural Heritage Legislation provides an opportunity to enable these levels of care. We will not allow

an opportunity such as this to pass without progressing this cause.

It's also important to recognise that changes to legislation alone will not guarantee greater consideration of Indigenous Knowledge and the value of species. For instance, the Species at Risk Act 2002 (Canada), which mandates a legal requirement to consult Indigenous peoples, has a less than 50% inclusion rate of Indigenous Knowledge and values in recovery and management plans (Hill *et al.* 2019). While tailored legislation sets a clear mandate, legislation is just the first step.

Realignment of policy and practice to promote the traditional management of CSEs will also be required, and indeed could achieve much even without legislation change. Only robust and flexible policy can accommodate a place-based approach to protect and manage CSEs in a traditional management setting. A foundational policy principle must be that upon recognition of a CSE, their care must be guided by Traditional Custodians and must not impinge upon the rights of Indigenous peoples which are established under other legal frameworks. This care of CSEs, and by extension Country, through legislative change, policy and practice can be guided by Traditional ways of knowing. Through the sharing of this ancient and sacred knowledge, responsibility will also be imparted to non-Indigenous Australians, who will have earned and gained a place in Caring for this land.

Australia has endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which recognises the connection and responsibility of Indigenous people to their Country. We call on the Australian Government to use this issue as an opportunity to begin the implementation of UNDRIP under Australian law, in the process of law reform and in the policy of the Australian Government. It is incumbent on the Australian Government and people to work with us to find a way to support the care of CSEs.

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