

INQUIRY INTO THE COMMENCEMENT OF SCHEDULE 1 OF THE FISHERIES MANAGEMENT AMENDMENT ACT 2009



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25 February 2022

The Hon. Mark Banasiak, MLC, Committee Chair
Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture
NSW Parliament
Macquarie Street
Sydney NSW 2000

Email: portfoliocommittee4@parliament.nsw.gov.au

Dear Mr Banasiak,

Inquiry into the commencement of Schedule 1 of the Fisheries Management Amendment Act 2009

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 160 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

Thank you for the opportunity to make a submission to the Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture inquiry into the failure to proclaim the commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009* concerning Aboriginal cultural fishing.

NCC's primary objectives are the conservation of nature, the protection of the environment and the attainment of an ecologically sustainable society. As part of our commitment to the conservation of nature and ecological sustainability, NCC supports the rights of Aboriginal People to own and make decisions in accordance with their own law and custom over their land and sea estates (self-determination, including the right of free prior and informed consent) and supports their fundamental human rights as protected through the Sustainable Development Goals and the Convention on Biological Diversity, as well as through the international human rights conventions.



Aboriginal Cultural Fishing is not open slather

NCC notes the public comments and judicial commentary stereotyping Aboriginal cultural fishers as “poachers” or practicing “black market fishing”.

NCC is concerned that this type of language is divisive and unhelpful, and risks being racially discriminatory. There is no evidence that Aboriginal cultural fishing anywhere in NSW has led to resource collapse or fisheries resources being under pressure. This includes areas where the native title right to fish has been recognised by the State of NSW.

Ecologically sustainable fishing must factor in the fundamental human rights of Aboriginal People to practice their law and custom, prior to any additional allocation to licensed entitlement holders, such as commercial or recreational fishers.

NCC relies upon the Total Allowable Fishing Catch resource assessments and environmental impact statements to note the following factual information:

- Commercial and recreational take factors Aboriginal fishing take into their resource assessments.ⁱ
- Many commercially and recreationally important species such as Abalone have not had a proper stock assessment or Fisheries Management Plan prepared, despite the Total Allowable Commercial Catch (TACC) committee calling for one over several years.ⁱⁱ
- All economic and resource expert appraisals provided to NSW Fisheries, including the most recent in 2005, note that Aboriginal cultural fishing take is less than 1% of the commercial and recreational take.ⁱⁱⁱ Other commentary by the TACC committee suggests that there is no evidence of impact from Aboriginal cultural fishing.^{iv}
- The most recent Total Allowable Fishing Committee recommendation for Abalone noted the need to allow for a fair share of commercial licences for Aboriginal People.^v

NCC notes that rather than ‘open slather’, Aboriginal Peoples’ in NSW have had a sophisticated and sustainable management regime. There is no evidence of the type of ecological collapses that have plagued NSW Fisheries Management.

NCC notes the views of South Coast Aboriginal People who express their laws and customs as:

- Always leave some for later
- Take only what you need
- Do not damage the weed, or cunjevoi around nests
- Share your catch, particularly with Elders who can no longer fish



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- Take abalone the size of your palm (except for black lip), and leave bigger breeders
- Clean guts and shells at shoreline, don't make a mess
- Return guts to the water and feed the fish
- Ocean and land are our mother.

NCC is of the view that contrary to the unhelpful comments made by some, conservation is a strong value in Aboriginal Peoples' law and custom, and that natural resource management can be improved by ensuring those views are properly sought, and respected.

Conservation Knowledge

NCC notes that along the South Coast, acknowledgement of Aboriginal Peoples' law and custom with respect to their land and sea country is officially signposted by Marine Park and National Park signage.

Their land and sea knowledge, laws and customs, are protective and promote a long-term resilient future for all species.

NCC encourages the NSW Government to:

- as a priority, immediately commence section 21AA without regulations as per Parliament's intention in 2009
- support Native title holders who make requests through their Prescribed Body Corporate regulation for protection of their fisheries
- educate and provide resources for NSW Fisheries officers to ensure good literacy about and respect for native title rights and interests and international human rights of Aboriginal People
- revise the Fisheries Management Act 1994 (NSW) to provide for equitable and culturally appropriate access for Aboriginal commercial fisheries
- immediately audit the basis of commercially important species in NSW to ensure that Total Allowable Catch is determined on a proper resource assessment and fisheries management plan.

To ignore repeated calls by the TACC, and TAFC committees to do essential research is dereliction of the fundamental duty of managers of access to that resource, fails the public interest, and subsequently the interests of all fishers.

Thank you for the opportunity to participate in the consultation.



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Your key contact point for further questions and correspondence is Jacquelyn Johnson, Strategy and Operations Director, via jjohnson@nature.org.au or 02 9516 0461.

We welcome further conversation on this matter.

Yours sincerely,

Chris Gambian
Chief Executive
Nature Conservation Council

ⁱ Abalone Fisheries Management Strategy 2007, p 32

ⁱⁱ [SAFS Report - Prod \(fish.gov.au\)](#), [NSW Abalone TACC Determination 2018.pdf](#) at p 53 'obsolete'

ⁱⁱⁱ In 2021, the TAFC notes that the annual commercial take is 100 tonnes, and this year a further 30 tonnes was permitted. The recreational take is estimated at 10 tonnes. The rather expansive estimate is that 1 tonne is taken by permitted Aboriginal fishers (not defined but certainly not holding section 37 permits) less than 0.7% of the annual take. [Abalone Fishery Determination Report - FINAL 15 April 2021 \(nsw.gov.au\)](#)

^{iv} [NSW Abalone TACC Determination 2018.pdf](#) at p 52

^v [Abalone Fishery Determination Report - FINAL 15 April 2021 \(nsw.gov.au\)](#)