

INQUIRY INTO COMMERCIAL FISHING IN NEW SOUTH WALES

Organisation: New South Wales Aboriginal Land Council (NSWALC)
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NEW SOUTH WALES ABORIGINAL LAND COUNCIL

ABN 82 726 507 500

The Director

Inquiry into Commercial Fishing in New South Wales

Upper House Committees

Parliament of New South Wales

Macquarie Street

SYDNEY NSW 2000

Via email: gpsc5@parliament.nsw.gov.au

To whom it may concern,

Inquiry into Commercial Fishing in New South Wales

The NSW Aboriginal Land Council (**NSWALC**) welcomes the opportunity to make a submission to the Inquiry into Commercial Fishing in NSW (the **Inquiry**). NSWALC is committed to promoting Aboriginal people's social, cultural and economic rights, interests and aspirations in fisheries management and sea country.

The Inquiry terms of reference relate to a range of considerations and reforms underway in respect to the commercial fishing sector. We understand that a number of concerns have been raised by fisheries stakeholders regarding elements of the recent reforms including that some commercial fishers will have to purchase additional shares in order to remain active, and that the proposed reforms and support schemes are not very well understood.

The comments and recommendations provided in this submission aim to promote a self-reliant and secure economic future for Aboriginal peoples in NSW.

The Land Rights Network in NSW

The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. NSWALC is committed to ensuring a better future for all Aboriginal people by working for the return of culturally significant and economically viable land and pursuing cultural, social and economic independence for Aboriginal peoples in NSW.

NSWALC is a self-funded statutory corporation under the *Aboriginal Land Rights Act 1983 (NSW)* (**ALRA**), and has a legislated objective to improve, protect and foster the best interests of all Aboriginal peoples in NSW. NSWALC also provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) across the state. LALCs have similar statutory objectives to NSWALC in regards to their own local communities.

The NSW Parliament established a network of Aboriginal Land Councils to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and recognition of the ongoing disadvantage suffered by Aboriginal communities. It was an assertion by Government that land rights for Aboriginal peoples is the most fundamental initiative to be taken for the regeneration of Aboriginal culture and dignity, and at the same time laying the basis for a self-reliant and more secure economic future for our continent's Aboriginal custodians¹.

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The fisheries sector provides an important mechanism for facilitating key objectives of the *Aboriginal Land Rights Act 1983 (NSW)* – both cultural and economic. NSWALC is keen to work with the NSW Government and other stakeholders to facilitate economic development for Aboriginal peoples in NSW.

Principles for reform

NSWALC is a strong advocate for practical measures to deliver sustainable socio-economic improvements to the circumstances of Aboriginal peoples. NSWALC believes that any framework to address Aboriginal fishing rights should be holistic and be based on the fundamental rights of Aboriginal peoples as espoused in the United Nations *Declaration on the Rights of Indigenous Peoples*, most notably the following:

- **Article 3** *Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
- **Article 23** *Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.*
- **Article 26** *Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
- **Article 28** *Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.*

NSWALC also believes that the following principles are key:

- **Recognition of self-determination** regarding Aboriginal cultural matters based on local custom,
- A commitment to a ***genuine partnership*** between Aboriginal People and Governmentⁱⁱ,
- The development of a framework that facilitates ***working together for the sustainable management of fisheries*** for future generations, and provide for self-regulation and management,
- ***Ensuring that Aboriginal People's rights to practice culture are not criminalised***, but facilitates the maintenance and transmission of traditional knowledge and cultural practices - It is essential that, in any legislation enacted or policies developed, compliance and penalty processes must be culturally appropriate and operate so as to not contribute to the ongoing high rates of incarceration for Aboriginal People in NSW,
- ***That provides economic pathways*** for Aboriginal Peoples through both commercial fishing and employment opportunities,
- ***Is supported by evidence based research*** conducted in partnership with Aboriginal communities, and
- ***That Aboriginal cultural fishers can fish without additional restrictions.***

Fisheries management in NSW

Since time immemorial the seas surrounding this land and its rivers, billabongs and groundwaters have provided Aboriginal peoples with cultural, spiritual, physical and economic nourishment. Dispossession and degradation of these cultural water assets have had significant negative impacts on both Aboriginal people and their cultural landscapes.

As you can appreciate, Aboriginal peoples have long been advocating for the recognition of rights and interests in lands and waters, including in relation to fishing, hunting and gathering. Aboriginal people in NSW have, and continue to, undertake sustainable fishing practices using a variety of methods to supplement food sources for themselves, their family and their community. This continuing practice provides Aboriginal people with a means of retaining cultural and traditional customs and is integral to the maintenance of Aboriginal culture and identity.

NSWALC submits that ensuring Aboriginal people's rights, interests and aspirations are incorporated in the fisheries management presents significant opportunities to deliver cultural, social and economic benefits for the whole community of NSW for generations to come.

NSWALC contends that there are a suite of models that can support Aboriginal People's social, cultural and economic interests, while delivering certainty to Government and other stakeholders. These must be developed in genuine consultation with Aboriginal peoples to ensure that locally based, fit for purpose options are developed, rather than imposing a fragmented or one-size-fits all regime.

Commercial fishing opportunities for Aboriginal peoples and Aboriginal business

Reforms to promote economic development for Aboriginal peoples in respect to fisheries are long overdue. In 1986 the Australian Law Reform Commission Inquiry into the Recognition of Aboriginal Customary Laws suggested that *'as a general principle Aboriginal traditional hunting and fishing should take priority over nontraditional activities including commercial and recreational activities'*.ⁱⁱⁱ Nearly 30 years later, reforms to finally recognise Aboriginal people's cultural fishing practices are yet to be put into practice.

Both the Federal and NSW Government have recognised the importance of providing economic and employment opportunities to Aboriginal peoples in the fisheries sector.^{iv} Importantly in 2010, the then Minister for Primary Industries made a number of commitments to supporting Aboriginal peoples economic development aspirations. These included:

- Reducing red tape to create avenues for the continued development and participation of Aboriginal people in commercial fisheries;
- Introduction of traineeships or training permits;
- Forming an Aboriginal Fishing Trust to provide funding for worthwhile Aboriginal fishing ventures; - this reform was only introduced and passed in Parliament in late 2015. However, the DPI has failed to establish
- Building industry capacity through mentoring and training to develop business skills and build business partnerships and;
- Supporting and assisting external projects that seek to develop strategies to maintain and build involvement of Aboriginal people in the NSW commercial fishing sector.^v

Furthermore, in 2010, the NSW Select Committee on Recreational Fishing provided support for the commitments noted above stating: *"The Committee commends the intent of the NSW Government action and hopes that these projects will meet the needs of Aboriginal commercial fishers."*^{vi}

Unfortunately, six years later, the NSW Government's commitments have not translated into action as the Committee had hoped and Aboriginal peoples are still waiting for the reforms to be implemented as promised.

NSWALC has continued to advocate for the NSW Government to allocate specific support to Aboriginal peoples for commercial fishing interests. This has occurred in other jurisdictions. For example, New Zealand recognises and allocates a percentage of total commercial fishing allocations to Maori which is separate from the cultural fishing regime.^{vii}

NSWALC supports increased avenues for economic development and participation of Aboriginal People in the commercial fishing sector which could include a variety of mechanisms:

- A reduced fee structure and more flexible arrangements for allowing family members to use endorsements and undertake Aboriginal Cultural Fishing on commercial boats,
- Dedicated funding for Aboriginal Commercial fishing initiatives and industry including from use of a revenue stream from recreational and commercial fees,
- Funding beyond the current Aboriginal Business Development Program to set up and start a business and to purchase equipment and premises,
- A reduction of commercial license fees and review and restructure of commercial fee arrangements including exemptions from the community contribution levy and annual fees,
- Purchasing businesses and shares to gain access to fully allocated fisheries,
- Review and restructure on how Aboriginal commercial licences can be held and succession planning for those licences,
- Reallocation of resumed, surrendered, retired or dormant commercial licences to the Aboriginal commercial fishing sector,
- Exemption from s49 FMA prohibition, to allow for Aboriginal People who have had previous fisheries-related convictions to apply for and hold commercial fishing licences,
- Priority share of each of the fisheries and taking up shares at review periods,
- Priority on the grant of commercial licences to Aboriginal applicants,
- Investment in education programs to provide any qualifications required for commercial fishing,
- Engagement in aquaculture industries and restocking of fisheries,
- That funding is made available to Local Aboriginal Land Councils to engage with experts to explore possible economic development opportunities.

Furthermore, strategies to support Aboriginal peoples, Aboriginal organisations and Aboriginal businesses to develop economic opportunities based on promoting Aboriginal culture and heritage and protecting natural resource should be further explored and supported.

Aboriginal Fishing Trust Fund

One recent initiative that has been somewhat progressed is the proposed establishment of the Aboriginal Fishing Trust fund under sections 233(1)(d1) and 237A of the *Fisheries Management Act 1994* (NSW). These amendments to the *Fisheries Management Act 1994* were passed in late 2015 and commenced in mid 2016.

While the fund is not yet operational, NSWALC is hopeful that the Aboriginal Fishing Trust Fund could be a key vehicle to drive investment in Aboriginal owned enterprises in the fishing sector including commercial enterprises, charter enterprises and tourism enterprises.

We hope that the Aboriginal Fishing Trust Fund will be developed in genuine partnership with the Aboriginal Fishing Advisory Council (AFAC), peak Aboriginal organisations including NSWALC and NTSCORP and Aboriginal communities to ensure that an agreed model for administering the Trust fund is developed.

NSWALC submits that the Trust fund must be properly and sustainably resourced by Government to ensure that programs and actions proposed for the benefit of Aboriginal People can be implemented.

More broadly, we are hopeful that the NSW Government and fisheries stakeholders will seek to work with peak Aboriginal organisations and Aboriginal communities in addressing how Aboriginal People's commercial use of fisheries resources can be supported.

NSWALC provides the following recommendations for the Committee's consideration:

1. That the Committee give consideration to how Aboriginal people's economic development aspirations can be supported, particularly given the outstanding commitments made by the NSW Government.
2. That issues specifically relating to Aboriginal commercial fishers are explored and appropriately addressed as part of this Inquiry.
3. That the Committee support the economic aspirations of Aboriginal peoples and greater inclusion of Aboriginal interests in the fishing sector and fisheries reform processes.
4. That the Aboriginal Fishing Trust fund is properly and sustainably resourced by the NSW Government.
5. That the NSW Government work with the relevant Aboriginal peak organisations and communities in addressing how Aboriginal People's commercial use of fisheries resources can supported.

Finally, for the Committee's reference we have enclosed the following:

- a. NSWALC's submission to the Draft Productivity Commission Report into Marine Fisheries and Aquaculture (in respect to point 1(e) of the Inquiry terms of reference); and
- b. NSWALC's recent submissions to the NSW Parliamentary Inquiry into Economic Development in Aboriginal Communities, which provides further context regarding this issue.

NSWALC remains committed to working with all stakeholders to wherever possible deliver cultural, social and economic outcomes for Aboriginal peoples. The ongoing need of Aboriginal communities in NSW requires every such opportunity to be pursued.

We thank you for the opportunity to provide a submission on these important issues and trust that our feedback will be meaningfully addressed. If you have questions regarding the content of this submission, please contact the NSWALC Policy and Programs Unit on (02) 9689 4444 or policy@alc.org.au.

Sincerely,

Malcolm Davis
A/Chief Executive Officer

Date:

8/12/16

Enclosures

1. NSWALC submission to Draft Productivity Commission Report into Marine Fisheries and Aquaculture
2. NSWALC submission to NSW Parliamentary Inquiry into Economic Development in Aboriginal Communities.

¹ Preamble of the Aboriginal Land Rights Act 1983 statement by Minister Walker 24 March 1983: Office of the Registrar of the ALRA <http://www.alra.nsw.gov.au/alrareviewpreamble.html> accessed on 30/09/2015

ⁱⁱ The principle underpinning fisheries management in New Zealand is partnership between the New Zealand Government, Department of Fisheries, and Maori, and sustainable use for future generations. This is based on a shared understanding of each others' understandings. See Ministry of Fisheries Te Tautiaki i nga tini a Tangaroa, 'Customary Fishing Information Manual' 2009 <http://www.fish.govt.nz/NR/rdonlyres/4C12BC8D-1CE8-4B14-AEEF-4AEBE4B82562/0/63585_MOF_CustomaryFishingManual.pdf> Introduction page .

ⁱⁱⁱ Australian Law Reform Commission Inquiry, Recognition of Aboriginal Customary Laws, Paragraph 984, available at: <http://www.alrc.gov.au/publications/36.%20Securing%20Hunting%2C%20Fishing%20and%20Gathering%20Rights/statement-principles>

^{iv} See the National Principles of Indigenous Fishing <http://www.atns.net.au/agreement.asp?EntityID=3797> and the NSW Indigenous Fishing Strategy and <http://www.dpi.nsw.gov.au/fisheries/aboriginal-fishing/strategy/nsw-ifs/nsw-ifs>

^v The Hon. Steve Whan, Minister for Primary Industries, 'Plans to keep Aboriginal fishers in the commercial industry', *Media Release*, 1 June 2010

^{vi} NSW Select Committee on Recreational Fishing, *Recreational Fishing in NSW*, Final Report, 2010, Para 8.68, page 238, available at: <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5704/101210%20FINAL%20COMPILE.pdf>

^{vii} New Zealand Ministry for Primary Industries 'The New Zealand Fishing Industry' accessed: <http://www.fish.govt.nz/en-nz/Commercial/About+the+Fishing+Industry/default.htm?WBCMODE=PresentationUnpublished%2cPresentationUnpublished>



NEW SOUTH WALES ABORIGINAL LAND COUNCIL

ABN 82 726 507 500

Marine Fisheries and Aquaculture
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Sir/Madam,

Productivity Commission Draft Report - Marine Fisheries and Aquaculture

The NSW Aboriginal Land Council (**NSWALC**) appreciates the opportunity to provide a submission to the Productivity Commission's Draft Report on Marine Fisheries and Aquaculture (**Draft Report**).

NSWALC is committed to promoting Aboriginal people's fishing and cultural rights in fisheries management and sea country. While the Draft Report includes some proposals for providing for and recognising 'Indigenous customary fishing' unfortunately these do not appear holistic or sufficient and may undermine Aboriginal people's existing rights and interest in fishing. Further clarification and consultation is required with Aboriginal peoples and peak Aboriginal organisations before the recommendations in the report should be considered for adoption, particularly in a NSW context.

Land Rights in NSW

NSWALC is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983 (NSW)* (**ALRA**), NSWALC is an independent, self-funded non-government organisation that has an elected governing council and the objective of fostering the aspirations and improving the lives of the Aboriginal peoples of NSW.

NSWALC provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) in NSW. As elected bodies, Aboriginal land councils represent the not only the interests of their members, but of the wider Aboriginal community.

Aboriginal peoples in NSW, particularly LALCs, are key stakeholders in relation to land, sea and water management and are holders of specific Traditional Ecological Knowledge and Traditional Fishing Knowledge accumulated over millennia.

Under section 106 (7) of the ALRA, NSWALC has the following functions in relation to Aboriginal culture and heritage:

- a) *To take action to protect the culture and heritage of Aboriginal persons in NSW, subject to any other law,*
- b) *To promote awareness in the community of the culture and heritage of Aboriginal persons in NSW.*

NSWALC is committed to promoting the cultural rights of Aboriginal peoples in NSW. Cultural fishing practices are an integral part of Aboriginal cultural, spiritual, mental and physical wellbeing. There is strong international support for the protection of Aboriginal people's rights to a customary harvest of biological resources as well as traditional knowledge associated with these resources (Article 8(j) of the United Nations Convention on Biological Diversity).

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Since time immemorial the seas surrounding this land and its rivers, billabongs and groundwaters have provided Aboriginal peoples with cultural, spiritual, physical and economic nourishment. Dispossession and degradation of these cultural water assets have had significant negative impacts on both Aboriginal people and their cultural landscapes.

Overarching comments

We note the terms of reference for the inquiry direct the Commission to investigate:

“The extent to which fisheries management regimes support greater participation of Indigenous Australians, provide incentives to Indigenous communities to manage their fisheries, and incorporate their traditional management practices in the fishing industry.”

While we recognise that the broader intent for this inquiry relates to streamlining and reducing red tape, we do not consider that the manner in which the issues relating to Aboriginal fishing have been dealt with appropriately or sufficiently.

While we appreciate that there are complexities and that the Productivity Commission has been asked to take a particular focus, the proposals outlined and draft recommendations do not address many of the concerns Aboriginal peoples have in respect to fisheries management. The Draft Report has oversimplified many issues or only addressed these in a cursory way. The proposals do not appear sufficient to make improvements in the best interests of Aboriginal peoples. Many of the proposals do not explain how they are intended to address the issues raised in the terms of reference and risk undermining improvements that have been made to date.

A number of the proposals that are particularly concerning include:

- Proposals to impose cost recovery systems on Aboriginal peoples,
- Proposals to amend definitions of Indigenous customary fishing without fully examining the potential implications of this,
- Proposals to place the onus on Aboriginal peoples to prove “entitlements” to undertake customary fishing, and
- Proposals to regulate customary fishing.

The commentary and recommendations proposed by the Commission in respect to defining customary fishing are problematic for a number of reasons. Consistency between jurisdictions appears to be the key motivating factor by the Productivity Commission. However, this does not recognise the different and unique circumstances of Aboriginal and Torres Strait Islander peoples across Australia. Furthermore, this appears to be at the expense of the rights and interests of Aboriginal communities. For Aboriginal peoples in NSW, all Aboriginal peoples have rights to practice cultural fishing. The proposals put forward by the Commission appear to undermine this.

NSWALC believes that any framework to address Aboriginal fishing rights should be holistic and based on the principles outlined in the United Nations *Declaration on the Rights of Indigenous Peoples*, in addition to:

- **Recognition of self-determination** regarding Aboriginal cultural matters based on local custom,
- A commitment to a **genuine partnership** between Aboriginal People and Governmentⁱ,
- The development of a framework that facilitates **working together for the sustainable management of fisheries** for future generations, and provide for **self-regulation** and management, through local decision-making,
- **Ensuring that Aboriginal People’s rights to practice culture are not criminalised**, but facilitates the maintenance and transmission of traditional knowledge and cultural practices -

It is essential that, in any legislation enacted or policies developed, compliance and penalty processes must be culturally appropriate and operate so as to not contribute to the ongoing high rates of incarceration for Aboriginal People in NSW,

- ***That provides economic pathways*** for Aboriginal Peoples through both commercial fishing and employment opportunities,
- ***Is supported by evidence based research*** conducted in partnership with Aboriginal communities, and
- ***That Aboriginal cultural fishers can fish without additional restrictions.***

Unfortunately the proposals in the draft report do not appear to be supported by the above principles. It is essential that the potential impacts of the proposed reforms are well considered, and not ad hoc or limited. Aboriginal peoples have been advocating strongly for increased rights and interests for many decades, and the proposed reforms do not appear to address the concerns raised.

There are a suite of models that can both support Aboriginal People's social, cultural and economic interests, while delivering certainty to Government. These must be developed in genuine consultation with Aboriginal peoples to ensure that locally based, fit for purpose options are developed, rather than imposing a fragmented or one-size-fits all regime.

NSW context

An understanding of the current landscape in NSW does not appear to be adequately represented in the Draft Report. As you can appreciate, Aboriginal peoples have long been advocating for the recognition of rights and interests in lands and waters, including in relation to fishing, hunting and gathering. Aboriginal people in NSW have, and continue to, undertake sustainable fishing practices using a variety of methods to supplement food sources for themselves, their family and their community. This continuing practice provides Aboriginal people with a means of retaining cultural and traditional customs and is integral to the maintenance of Aboriginal culture and identity.

In NSW, the *Fisheries Management Act 1994 (NSW) (FMA)* was amended in 2009 to recognise the spiritual, social and customary significance of fisheries resources to Aboriginal persons and to protect and promote the continuation of Aboriginal cultural fishing (Section 3(2)(h), FMA). NSWALC supported these amendments, including section 21AA relating to protections against prosecution for Aboriginal cultural fishers, as a first step to achieving positive reforms that would improve rights of Aboriginal fishers in NSW.

The majority of the amendments came into effect on 1 April 2010. Unfortunately, after five years a key amendment, section 21AA, has not yet commenced. This has resulted in the ongoing prosecution of Aboriginal cultural fishers and a lack of certainty regarding the compliance regime. While a policy document has been developed by the NSW Government, this has not been implemented consistently. While the Draft Report notes that Aboriginal cultural fishers are subject to "*less stringent bag limits than recreational fishers*", this is currently not outlined in the legislation. In the six years where the legal protection for Aboriginal cultural fishing has been sitting in limbo, there have been more over 200 prosecutions of Aboriginal peoples. The former NSW Attorney-General Brad Hazzard has stated that he is: "*aware of some cases of misguided prosecution of Aboriginal people for exceeding fishing bag limits*".ⁱⁱ

In respect to the draft recommendations, we provide the below specific comments.

Draft Recommendation 5.1: Customary Fishing by Indigenous Australians should be recognised as a sector in its own right in fisheries management regimes. The definition of Indigenous customary fishing should be consistent with native title.

The first part of this recommendation that 'Customary Fishing' by Indigenous Australians should be recognised as a sector in its own right in fisheries management regimes' requires further clarification. While proposals to recognise and provide rights for Aboriginal peoples are supported the intent of this recommendation, and how it will directly benefit Aboriginal peoples is not clear.

In relation to the second part of the recommendation concerning the definition of Indigenous customary fishing, NSWALC asserts that this will need to be further considered and the subject of further consultation in a NSW context. It is important to note that NSWALC has advocated for rights for all Aboriginal cultural fishers, not just cultural fishers who have native title rights and interests.

Draft Recommendation 5.2: The Indigenous customary fishing sector should be afforded a priority share of resources in fisheries where catch or effort is limited. This allocation should be sufficient to cover cultural use by the local Indigenous community in accordance with proven traditional laws and customs.

The proposal to prioritise Aboriginal fishing is fisheries resource allocation generally aligns with NSWALC's advocacy on this issue as well as previous recommendations made by the Australian Law Reform Commission noted above. NSWALC notes that the Draft Report provides additional context as to why this recommendation is made:

'Consistent with the principles agreed in 2004 for the management of Indigenous fishing, governments should set aside shares in overall allocations sufficient for local Indigenous communities to maintain their traditional customs. Based on those principles, which state a desire to protect customary fishing, governments should set aside shares sufficient for local Indigenous communities to maintain their traditional customs. This would, in practice, accord priority to customary fishing take.'

Importantly the Productivity Report's Draft Report also recognises that the impact of Aboriginal cultural fishing on catch stocks is 'relatively small'. Specifically, the Productivity Report's Draft report notes:

'Customary catch is understood to be relatively small and the absence of an explicit allowance for customary 'take' in fisheries where there are controls over aggregate catch (or effort) is unlikely to compromise sustainability objectives. However, this may not be the case where fishing pressure on the resource is more intense (for example, abalone). In such cases, formal resource allocations to the customary sector may be required.'

NSWALC's submits that Aboriginal people have an inherent right to fish in accordance with traditional systems of law and custom. Aboriginal peoples have undertaken this activity for thousands of years and have managed the fisheries resource in a sustainable way throughout.

a. Customary fishing rights should not be tradeable or transferrable, recognising the unique characteristics of the associated cultural benefits and that these benefits are exclusive to the community concerned.

This recommendation does not appear to take account of the diversity and complexity of Aboriginal communities both in a contemporary or historic context. Further consideration is needed.

b. Customary allocations and any controls over customary fishing activities should be developed in consultation with Indigenous communities.

NSWALC is of the view that Aboriginal communities should play a vital role in managing cultural fishing and that this management is based on the self-regulation of fishing activity through the application of aspects of traditional law and custom.

Aboriginal people have an inherent right to fish in accordance with traditional systems of law and custom. Aboriginal peoples have undertaken this activity for thousands of years and have managed the fisheries resource in a sustainable way throughout.

Aboriginal peoples in NSW currently undertake self-regulation of fishing activity. This occurs through aspects of traditional law and custom which impose a range of restrictions on community members including measures such as, ensuring there is no waste in relation to a catch, undertaking seasonal fishing activity and having regard to the gender of the species caught, spawning cycles and fish size. Self-regulation, which has been occurring for thousands of years, is a key tool in managing fisheries resources.

Any proposed control or regulation of Aboriginal cultural fishing by Government must be subject to further consultation and engagement with Aboriginal peoples. NSWALC does not support regulation of Aboriginal cultural fishing by Government.

Draft Recommendation 5.3: The definition of customary fishing in fisheries laws should provide for fishing for commercial purposes, but only where consistent with traditional laws and customs.

This recommendation should be subject to further consultation with Aboriginal peoples. NSWALC supports increased avenues for economic development and participation of Aboriginal People in the commercial fishing sector which could include a variety of mechanisms:

- A reduced fee structure and more flexible arrangements for allowing family members to use endorsements and undertake Aboriginal Cultural Fishing on commercial boats,
- Dedicated funding for Aboriginal Commercial fishing initiatives and industry including from use of a revenue stream from recreational and commercial fees,
- Funding beyond the current Aboriginal Business Development Program to set up and start a business and to purchase equipment and premises,
- A reduction of commercial license fees and review and restructure of commercial fee arrangements including exemptions from the community contribution levy and annual fees,
- Purchasing businesses and shares to gain access to fully allocated fisheries,
- Review and restructure on how Aboriginal commercial licences can be held and succession planning for those licences,
- Reallocation of resumed, surrendered, retired or dormant commercial licences to the Aboriginal commercial fishing sector,
- Exemption from s49 FMA prohibition, to allow for Aboriginal People who have had previous fisheries-related convictions to apply for and hold commercial fishing licences,
- Priority share of each of the fisheries and taking up shares at review periods,
- Priority on the grant of commercial licences to Aboriginal Applicants,
- Investment in education programs to provide any qualifications required for commercial fishing, and
- Engagement in aquaculture industries and restocking of fisheries.

Recommendation: That further consultation is undertaken with NSWALC, Aboriginal peak organisations and Aboriginal peoples in NSW to regarding the proposals relating to Aboriginal fishing sector. A genuine consultation process is needed to gain a clearer understanding of the issues and the intent of the proposed reforms.

Both the Federal and NSW Government have previously recognised the importance of providing avenues for Aboriginal peoples to practice culture, as well as the importance of consultation with Aboriginal peoples in fisheries management, and providing economic and employment opportunities to Aboriginal peoples.ⁱⁱⁱ

The importance of recognising Aboriginal people's rights and interests in legislation to avoid prosecutions for carrying out cultural practices is long overdue, as are reforms to promote economic development for Aboriginal peoples in respect to fisheries. In 1986 the Australian Law Reform Commission Inquiry into the Recognition of Aboriginal Customary Laws suggested that '*as a general principle Aboriginal traditional hunting and fishing should take priority over nontraditional activities including commercial and recreational activities*'.^{iv} Nearly 30 years later, reforms to finally recognise Aboriginal people's cultural fishing practices are yet to be put into practice.

Should you require further information in regards to any issues that have been raised in this submission, please do not hesitate to contact the NSWALC Policy and Programs Unit on 02 9689 4444.

Yours Sincerely,

Kate Aubrey Poiner
Executive Director, Policy and Programs

Date: 21/10/16

ⁱ The principle underpinning fisheries management in New Zealand is partnership between the New Zealand Government, Department of Fisheries, and Maori, and sustainable use for future generations. This is based on a shared understanding of each others' understandings Ministry of Fisheries Te Tautiaki i nga tini a Tangaroa, 'Customary Fishing Information Manual' 2009 <http://www.fish.govt.nz/NR/rdonlyres/4C12BC8D-1CE8-4B14-AEEF-4AEBE4B82562/0/63585_MOF_CustomaryFishingManual.pdf> Introduction page .

ⁱⁱ ABC media article, 19 March 2015, 'NSW Election 2015: Aboriginal groups want cultural fishing rights made law': <http://www.abc.net.au/news/2015-03-19/aboriginal-groups-want-cultural-fishing-rights-made-law/6331716>

ⁱⁱⁱ See the National Principles of Indigenous Fishing <http://www.atns.net.au/agreement.asp?EntityID=3797> and the NSW Indigenous Fishing Strategy and <http://www.dpi.nsw.gov.au/fisheries/aboriginal-fishing/strategy/nsw-ifs/nsw-ifs>

^{iv} Australian Law Reform Commission Inquiry, Recognition of Aboriginal Customary Laws, Paragraph 984, available at: <http://www.alrc.gov.au/publications/36.%20Securing%20Hunting%2C%20Fishing%20and%20Gathering%20Rights/statement-principles>