

Submission  
No 44

**INQUIRY INTO COMMENCEMENT OF THE FISHERIES  
MANAGEMENT AMENDMENT ACT 2009**

**Name:** Abalone Association NSW

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## **Representing the NSW Abalone and SUTS Fisheries**

### **SUBMISSION ON CULTURAL FISHING**

**June 2022**

#### **IMPACT OF ILLEGAL ABALONE CATCHING AND SELLING IN NSW**

The following submission explain the severe impacts that the illegal harvest and sale of abalone is having on this important commercial fishery.

All abalone fisheries in Australia are well managed to ensure long-term sustainability, by harvesting and supplying a healthy, safe and high-quality seafood. The NSW Abalone fishery is no exception and is an important contributor to the state and regional economy, particularly the NSW South coast. The abalone fishery provides employment for professional divers, deckhands and process workers. The illegal harvest and sale of abalone has severe impacts on the commercial, recreational and cultural sectors.

#### **CULTURAL FISHING POLICY**

AANSW has been consistent on this policy. From the outset, our concerns relate to the policy's abuse by those who do not observe the limit set for cultural use, taking excessive quantities evidenced in ongoing and recent compliance apprehensions directly related to the domestic market.

The DPI data on offenders being apprehended south of Moruya (who travel south from Wollongong, Batemans Bay, Moruya etc.) shows that the resource has been 'fished down' in these areas necessitating offenders travelling to where the resource is more plentiful i.e., south where most of the commercial operators are working.

Professional divers adhere to bigger size limits as well as conservative quotas which are rigidly enforced. Further, annual compliance reports indicate recreational bag and size limits are adhered to, noting that the recreational limit had been dropped to two per day/diver at the same time as the commercial TAC was reduced from 300 tonnes pa to the current 100 tonnes pa.

Enhancement measures that industry pressured DPI to implement have shown to be beneficial to the resource. Biomass increases are evident and catch data such as CPUE and daily catches have greatly improved in the last 12 years.

#### **IMPACT 1 RESOURCE SUSTAINABILITY**

The annual allowable commercial catch (TACC) for abalone is conservatively set to ensure that stocks cannot be overfished. Industry has been proactive in ensuring ongoing enhancement of stocks in the longer term.

When the TACC is set for the fishery the Total Allowable Fishing Committee (TAFC) has to also consider the total harvest from the fishery including recreational take, cultural take and illegal take. With a TACC for the commercial fishery, a bag limit for the recreational fishery and a cultural fishing limit, the total legal take can be managed. Any take outside of this system is unregulated (IUU) and poses a significant threat to the resource's resilience and sustainability, threatening the legitimate commercial fishery. Excessive catches can cause overfishing.

Most abalone harvested illegally is under the legal-size limit set to ensure the abalone have had several breeding seasons prior to harvest (see DPI apprehension data). The impact of excessive uncontrolled and/or undersized take is serial depletion of stocks. Wherever this occurs, recreational, commercial and cultural fishers are deprived of the opportunity to catch abalone.

### **IMPACT 2 FOOD SAFETY & BIOSECURITY**

Illegal abalone are often shucked out and hidden in bushland and eventually transported in conditions unsafe for human consumption.

Greg Vakaci, Acting Director of NSW Biosecurity and Food Safety said illegally harvested abalone can pose a serious health risk to consumers and should not be trusted:

*"There are strict food safety controls in place for harvesting and selling seafood for consumption. These controls ensure that consumers get the best quality and safest possible seafood on their plates," Mr Vakaci said.*

*"Some seafood such as shellfish require extra care to ensure that is safe to eat. Poor food safety practices during harvesting, transport, processing and sale can result in an increase in microbiological contamination.*

*"We recommend people only buy shellfish from reputable retailers as their product has been monitored for safety."*

Those who observe illegal activity also observe unsafe food storage conditions, abalone shucked in unsafe premises or locations, and unsafe transport conditions.

### **IMPACT 3: INVESTMENT IN THE FISHERY**

Investors in the fishery have a significant outlay, with capital and non-capital equipment including but not limited to quota shares, vessels, vehicles, associated equipment, insurance and regulatory fees. have taken out mortgages to enable their participation in the fishery, only to find that resource theft is threatening their investment and chosen occupation.

### **IMPACT 4: RESOURCE CONFLICT AND EMOTIONAL STRESS**

Organised illegal abalone activity creates resource conflicts between the Marine Estate stakeholder groups and directly impedes effective and necessary fishery co-management, often creating tremendous emotional stress and anxiety for professional fishers, recreational fishers, cultural fishers, environmentalists, compliance officers, and fisheries management.

This is due to all or any of the following:

- Serial depletion;
- Value eroding illegal markets;
- Food and stock disease biosecurity risks;
- Reduced environmental, cultural, commercial, and recreational values;
- The use of abalone as a currency for supporting other serious criminal activities.

### **AANSW CONTENDS THAT CULTURAL RIGHTS ARE BEING ABUSED AND USED AS A FRONT TO ILLEGALLY CATCH AND MARKET COMMERCIAL QUANTITIES OF ABALONE AND OTHER SPECIES**

Cultural fishing policy has been in place for many years and allows Aboriginal people to catch seafood for their own consumption. There has been no contention from abalone fishery stakeholders about the rights of indigenous people to catch seafood for their own use. Cultural fishing policy allows Aboriginal people to catch set quantities of seafood for their own consumption.

Commercial access to wild fisheries resources is managed in line with the State's statutory commercial fishery framework. There are no exemptions to these rules being applied. The abalone fishery in NSW has gone to great lengths over the past years to guarantee catches are sustainable in the longer term for the benefit of future generations. Sustainability measures have included reduced quotas, increased size limits to ensure more spawning biomass, management of diseases, fishing distribution and increased data collection.

Cultural fishing is not for commercial use, yet the practice continues to be blatantly abused by a small minority who repeatedly exploit regulations in place to ensure sustainability for future generations. Abalone are often the target of aboriginal fishers with a bag limit of 10

per person (5 times the recreational bag limit). A minority are using cultural fishing as a front to catch excessive amounts of abalone well above the limit of 10 abalone and mostly these are under the legal size limit set to ensure abalone are not taken before they have had at least several seasons to spawn and reproduce.

On 15 May 2022, an article in the *Herald Sun* reported:

*"Indigenous abalone poaching syndicate allegedly caught boasting they could 'work system'" reported that "an abalone syndicate was allegedly caught boasting how they could 'work the system' to escape punishment for illegal plunders because they are Indigenous." The article further states: "In one covertly recorded conversation, [EC] can be heard boasting about the money he and his family had made diving for abalone..." The article further reports: "(He says) his family has been selling abalone for years (and) knowing how to work the system being Aboriginal as an excuse..."*

AANSW is aware of offenders committing serious breaches of fisheries laws. The actions of a few have put and continue to put the health of the seafood eating public at risk while causing serial depletion of the state's abalone resource. The apprehension-court lag exacerbates the problem.

All commercial fishing needs to be sustainably managed for future generations, hence the need for regulations such as size limits and catch controls such as quotas and bag limits. The NSW government has the responsibility under the Act to ensure fishery resources are managed for the benefit of all citizens of NSW and future generations, and a dedicated team of professional fishery officers are entrusted with ensuring there is compliance with fishery regulations that safeguard those fishery resources.

***This is a real threat to the long-term sustainability of the abalone resource in NSW*** costing the state in resource policing and protecting the resource by NSW fisheries officers and NSW police who are often involved in apprehending offenders who, although claiming they are culturally fishing, go to great lengths to avoid detection and apprehension. This then costs the state in court time and costs as well as funding for the Aboriginal legal service.

AANSW sees the solution to conflict and abuse is to set cultural bag limits by enforceable regulation:

*"DPI Fisheries manages the State's fisheries resources on behalf of, and for the benefit of, all of the people of NSW. The management of this resource observes the objects and provisions of the Fisheries Management Act 1994, the Marine Estate Management Act 2014, and other applicable fisheries related legislation. Native Title holders' rights related to fishing are recognised and supported in the course of managing the State's fisheries resources with the understanding that native title holders are not bound by all of the State's fisheries laws when exercising their native title right to fish and gather resources for non-commercial use. Commercial access to the wild fisheries resources is managed in line with the State's statutory commercial fishery framework. There are no exemptions to these rules being applied. Native title commercial rights that have been recognised are subject to management in line with the commercial fishery framework."*

Enforcement of current regulations with regard to illegal fishing and possession and selling commercial quantities of abalone (and indeed all seafood) should be treated as prescribed for indictable offences in the current Fisheries Management Act.

**The Committee of AANSW**  
Greg Ryzy, President

John Smythe, Secretary  
NSW delegate on Abalone Council of Australia

Stephen Bunney, Industry Liaison  
Member Commfish NSW

Greg Finn  
MFAC/ Commfish NSW

Michael Arentz, Jack Lavender, Reece Warren,  
Jayde Theodore – Abalone Shareholders.