

NSW Government response to the Inquiry into the commencement of the *Fisheries Management Amendment Act 2009*

The NSW Government is committed to supporting the continuation of Aboriginal cultural fishing and recognises the spiritual and cultural connection Aboriginal peoples have with marine and freshwater environments and species. Fishing is both a subsistence activity for many Aboriginal communities, on our coastline and inland areas, as well as an important practice that maintains connection to culture and Country. Fishing is also an essential element of future economic strength and prosperity for Aboriginal communities.

The NSW Government is also committed to the Closing the Gap socio-economic targets and ensuring progress towards improving Aboriginal cultural fishing and economic development opportunities. The recommendations of the Inquiry are relevant to several targets in the NSW Closing the Gap Implementation Plan 2022-24, specifically socio-economic outcomes 10 and 11 relating to reducing the overrepresentation of Aboriginal and Torres Strait Islander adults and young people in the justice system and Socio-economic outcome 15 - Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters. The NSW Government's responses to the recommendations will work in concert to deliver a holistic approach to addressing Aboriginal community aspirations and outcomes for cultural fishing, economic development and improved relationships between government and communities.

The NSW Government acknowledges the efforts of the Inquiry and Aboriginal fishers, their families and broader communities in contributing to the work of the Inquiry alongside the range of experts, service providers and fishers from other sectors who provided valuable contributions.

The NSW Government has several existing programs (summarised below) designed to improve Aboriginal engagement and self-determination in natural resource management, preserve Aboriginal cultural values and knowledge and increase the economic development opportunities for Aboriginal people and community businesses in fisheries and eco-tourism more broadly, in line with Closing the Gap (socio-economic target 15) and consistent with the ecologically sustainable management of fisheries resources. These programs of work, alongside new opportunities, contribute towards actioning recommendations of the Inquiry.

Marine Estate Management Strategy (MEMS)

Since August 2018, under the NSW Marine Estate Management Strategy (2018-2028) Initiative 4 (Protecting the Aboriginal cultural values of the marine estate), DPI Fisheries has worked with Aboriginal communities in the management of Sea Country to reduce threats and risks to Aboriginal cultural heritage. The Marine Estate Management Strategy is prepared under the *Marine Estate Management Act 2014* and all public authorities are required to have regard to it when making decisions which affect the marine estate. DPI Fisheries has supported many projects that have been codesigned and delivered with Aboriginal communities across the NSW coast. These have included: support for the employment of 8 identified

roles within DPI Fisheries to engage with communities to deliver the initiative; Aboriginal Sea Country Ranger programs to work on Country; training and capacity building to support employment in jobs on Sea Country; supporting the management and repatriation of marine wildlife on Country; delivery of a Sea Country school education program for primary school children; cultural immersion events with Elders and DPI Fisheries staff in each mainland marine park; support for cultural tourism and fisheries business development. Just under \$10M has been invested to date and a further \$10M is planned to 30 June 2028.

Some of the outcomes achieved to date:

- Support for the training of 180 Aboriginal people who have received their NSW general boat license and safety training.
- Supported 7 Aboriginal community members from the South Coast to complete their Coxswains training with an additional 34 candidates engaged with completing their sea time associated with this training.
- Assisted 31 Aboriginal people from Narooma, Yarrawarra and Port Stephens to obtain their Certificate II in Tourism to enable them to work in tourism related industries.
- Six Aboriginal people on the South Coast completed the inaugural scuba dive (research diver) certification course. This course extends employment outcomes through further capacity building in underwater monitoring and research on Country.
- Four young Aboriginal people have participated in a funded training program as part of the SMART drumline shark mitigation contracts awarded to two Aboriginal businesses in the Kiama and Eurobodalla local government areas in 2021/22 and 2022/23.
- Fifteen cultural tourism assessments have been completed across the coast which have led to the development of 8 cultural tourism business plans to assist with both aspirations and growth of cultural tourism in the marine estate.
- Construction of a dedicated Aboriginal training vessel to support training program delivery. An associated 16-week trades assistant traineeship from the Yaegl community resulted in a young local Aboriginal person securing an apprenticeship with the boat building company.
- 50 Aboriginal Rangers supported to deliver on-ground habitat rehabilitation and wildlife management on Country.
- Directly investing just over \$1,550,000 in business support for 10 Aboriginal businesses or organizations.
- Investing to \$250,000 in business capacity training.
- Supporting opportunities for Aboriginal people to care for culture and reignite cultural practices.
- Delivery of five cultural immersion events with Aboriginal Elders and DPI Fisheries staff in all five mainland marine parks with plans in place to expand this to other coastal areas. The project aims to respectfully engage local Elders as cultural knowledge holders, to impart their Sea Country knowledge and wisdom (as they determine appropriate) to DPI Fisheries staff.
- Support for the MiiMi Aboriginal Corporation at Bowraville for training and employment of Aboriginal rangers to deliver environmental monitoring in conjunction with Southern Cross University across the river continuum over four sampling sites around Bowraville as part of the Clean River, Clean Seas project. The project forms part of the Plastic Collective's project to develop and deploy mobile plastic recycling containers to two remote Aboriginal communities to facilitate and process onsite 100% of single-use plastics into

valuable products. MEMS Initiative 4 is continuing to support this project this financial year. The MiiMi Rangers are now collecting and recycling oyster barrels and processing them to make other valuable recycled plastic items. The process involves cleaning the barrels of barnacles, cutting them down to smaller sheets and then chipping them to make the plastic pellets. The plastic pellets are then sold to local plastic manufacturers who use them to make recycled plastic items such as bollards and park benches. The ranger group also collects and recycles other marine plastic waste such as fishing line.

Aboriginal Fisheries Business Development Program

The Aboriginal Fisheries Business Development Program is a collaboration between the NSW Department of Primary Industries (DPI Fisheries), the Department of Regional NSW, the Department of Aboriginal Affairs, the NSW Aboriginal Fishing Advisory Council (AFAC), the Fisheries Research and Development Corporation and Indigenous Land and Sea Corporation. This is a new two-year Program aimed at supporting the development and establishment of up to three new Aboriginal community owned and operated fishing businesses that will result in benefits flowing back to Aboriginal communities. These businesses can include aquaculture operations, commercial fishing, charter fishing, post-harvest processing, shark mitigation, aquatic-related tourism and fisheries hatcheries. An Expression of Interest (EOI) process is open until 10 February 2023 with regional information sessions planned in person and virtually in January 2023. The Program is part of the NSW Government's response to the Closing the Gap national targets, aiming to increase Aboriginal and Torres Strait Islander people's legal rights or interests in the sea. DPI Fisheries and its program partners will work with the successful applicants to prepare feasibility studies and business cases for their chosen business, before helping the applicants explore funding and investment options. This collaborative Program will also be used to develop business models that could be easily replicated across the State and help businesses in other areas to be more successful.

Aboriginal Fishing Trust Fund

The Fund, established under the *Fisheries Management Act 1994*, supports projects to enhance, maintain and protect Aboriginal cultural fishing and to provide economic development opportunities in relation to fishing or fishing related activities, including research and education. Since the first funding round in 2017/18, 28 projects totaling just under \$1 million have been funded from the Aboriginal Fishing Trust Fund. Recommendations for expenditure from the Fund are provided to the Minister for Agriculture by the Aboriginal Fisheries Advisory Council (AFAC).

A recent project funded in the 2020/21 round on the South Coast is Nar-OO-ma Aboriginal cultural tours, which was supported with just under \$190,000 funding from the Trust Fund to fund a purpose-built cultural tourism vessel, constructed locally on the South Coast. The business, managed by Joonga Aboriginal Land & Sea Corporation (Joonga), was launched in early December 2022 and will be based out of Wagonga Inlet at Narooma. The development of the Nar-OO-ma Aboriginal Cultural Tours has been a long-held aspiration for Joonga as it seeks to promote economic opportunities for the community through employment, training and education. DPI Fisheries has worked closely with the South Coast

community to assist delivery of marine skills training including Certificate II in Tourism, Certificate I in Marine Operations (Deckhand), Certificate II in Marine Operations (Coxswains) for local Aboriginal people and trainees will be employed in this business.

Current support for Aboriginal cultural fishing

Cultural fishing continues to be supported by the NSW Government statewide via the following mechanisms:

- Aboriginal Cultural Fishing Interim Access Arrangements (ACFIA), which enable extended bag and possession limits for cultural fishing recognising that some cultural fishers may fish for others in the community. These arrangements have been in place since 2010.
- Issuing of permits under Section 37 of the *Fisheries Management Act 1994* and the *Marine Estate Management Act 2014* (in marine protected areas) for higher harvest levels than that provided by the ACFIA to support cultural events, education and training. Over 150 Section 37 permits have been issued since 2010, with half issued on the South Coast.
- Establishing a new project in 2022-23 to develop a specific cultural fishing harvest strategy framework to support the inclusion of cultural fishing into all NSW fisheries harvest strategies, developed in partnership with the NSW Aboriginal Fishing Advisory Council.
- Supporting delivery of place-based cultural fishing arrangements with engaged Aboriginal communities via the development and trial over two years of Cultural Fishing Local Management Plans, such as those developed for the Hastings and Tweed areas.
- Funding to support cultural fishing, education and research from the Aboriginal Fishing Trust Fund and via the MEMS program

Definitions of ‘cultural fishing’ under NSW and Commonwealth law

The NSW Government’s response has been developed consistent with the definitions of ‘cultural fishing’ outlined in NSW and Commonwealth legislation. Under the *Fisheries Management Act 1994*, ‘Aboriginal cultural fishing’ means fishing activities and practices carried out by Aboriginal persons for the purpose of satisfying their personal, domestic or communal needs, or for educational, ceremonial or other traditional purposes, and which do not have a commercial purpose.

Management of fishing activities in NSW is with the understanding that native title holders may exercise their native title right to fish and gather resources for personal, domestic or non-commercial purposes and NSW laws that prohibit or restrict the holder from carrying out fishing activities do not apply to native title holders. Where native title is recognised over marine waters, rivers, lakes and estuaries native title holders can exercise their non-exclusive rights to fish in line with the provisions of the *Native Title Act 1993* (Commonwealth).

If a native title holder’s exercise or enjoyment of native title rights and interests in relation to land or waters consists of or includes carrying out fishing activities, the native title holder may exercise those rights for the purpose of satisfying their personal, domestic or non-commercial communal needs and is unable to exercise those rights for a commercial purpose (as outlined in Section 211 of the *Native Title Act 1993*) unless a determination of native title determines otherwise. In NSW in the absence of determinations of native title requiring otherwise, commercial

activity related to fisheries resources is currently exercised within the state’s commercial fisheries management framework and native title holders are assisted to invest in commercial fisheries where possible.

Progress in line with National Fisheries Plan

The [National Fisheries Plan 2022-2030](#), Priority 4 Indigenous opportunity aims to have an empowered Indigenous fishing sector actively involved in fisheries management and fisheries-related business. NSW has progressed this aim by having a comprehensive approach to supporting Aboriginal cultural fishing, including an independent Aboriginal advisory body to Government (the AFAC) and a standalone Aboriginal Fishing Trust Fund alongside the programs listed above to promote cultural fishing, participation in the fishing industry and economic development.

These programs of work act to achieve the [Closing the Gap NSW Implementation Plan 2022-24](#) actions under socio-economic outcome 15, key action area 2 which refers broadly to supporting increased access to cultural fishing rights.

After carefully considering the Inquiry’s findings and recommendations, the NSW Government partially supports recommendation 1 and supports recommendations 2 through to 7 of the Inquiry. Preparation of the NSW Government’s response has involved consultation with AFAC, the peak advisory body to the Minister for Agriculture on Aboriginal fishing issues as well as advisory councils for commercial and recreational fishing. The AFAC’s views have been incorporated wherever possible. The NSW Government recognises the views of AFAC during the Inquiry process and will continue to work with the council to promote the spiritual and cultural connection Aboriginal peoples have with marine and freshwater environments and species and the sustainable management of the state’s fisheries resources.

The NSW Government will continue to partner with and draw on the advice of AFAC and other fisheries advisory councils in implementing recommendations.

The NSW Government will continue to support the strengthening, preservation and practice of Aboriginal cultural fishing including provision of funding, education and development of regulatory frameworks to continue to facilitate broader understanding and support for Aboriginal cultural fishing within a sustainable natural resource framework.

A detailed response to the recommendations of the Inquiry is provided below.

Recommendation	NSW Government Response
<p>Recommendation 1 That the NSW Department of Primary Industries immediately, and until Schedule 1 of the <i>Fisheries Management Act 2009</i> is commenced:</p>	<p>Partially Supported Consistent with the objects of the <i>Fisheries Management Act 1994</i>, the NSW Department of Primary Industries (DPI) will continue to ensure that the regulatory framework under the <i>Fisheries Management Act 1994</i> and associated regulations are complied with by all groups</p>

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<ul style="list-style-type: none"> • Part I - cease all surveillance, compliance actions and prosecution actions against Aboriginal cultural fishers • Part II - review and withdraw any penalty infringement notices issued to Aboriginal individuals on the South Coast who were practicing cultural fishing. 	<p>seeking access to the State’s commonly owned community fisheries resources. This includes commercial fishers, recreational fishers, and Aboriginal fishers.</p> <p>Fisheries Officers continuing to conduct surveillance and compliance activity across all fishing stakeholders is critical to ensure that the health of fisheries resources and the integrity of the regulatory framework are not put at risk by people contravening any part of the regulatory framework.</p> <p>In relation to Aboriginal cultural fishing, DPI takes additional steps when undertaking compliance activity to ensure that Fisheries Officers’ engagement with Aboriginal people is appropriate and culturally sensitive.</p> <p>Firstly, Fisheries Officers undertake compliance activity pursuant to detailed work instructions which include recognition of cultural fishing arrangements and Native Title rights.</p> <p>Secondly, the <i>Fisheries Management Act 1994</i> was recently amended with the effect that Fisheries Officers, when interacting with Aboriginal people, can only exercise their powers under section 255A after taking reasonable steps to determine whether the fishing concerned was Aboriginal cultural fishing or fishing in line with Native Title rights. The work instructions of Fisheries Officers have been reviewed and amended to incorporate these steps and will be subject to further review as outlined in response to Recommendation 3.</p> <p>Thirdly, Fisheries Officers receive specific and regular Aboriginal cultural awareness training and education which is also reflected in their Work Instructions.</p> <p>Further, matters are only referred to the courts where there is a strong reason to believe that illegal activity may be taking place, for example where sale or commercial quantities of high value species are involved, which does not align with the definition of Aboriginal cultural fishing under the provisions of the <i>Fisheries Management Act 1994</i> or the <i>Native Title Act 1993</i> (see above). Any matter considered for prosecution are assessed by a Prosecutions Review Panel comprising legal representatives from the Department of Regional NSW and senior Fisheries Compliance members, independent of the officers involved in bringing the matter forward. The Panel consider a range of factors (including detailed Crown Solicitor’s advice for</p>

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	<p>any matter regarding an Aboriginal person) before the Panel recommends to either proceed to prosecution or not. The Panel also considers additional information as it comes to light during the prosecution proceedings and makes recommendations regarding whether proceedings should continue.</p> <p>DPI has already undertaken two reviews of all prosecutions and Penalty Infringement Notices involving Aboriginal people as part of the Government's Closing the Gap commitments (January 2022 and September 2022). Both reviews confirmed that there were no outstanding Penalty Infringement Notices involving Aboriginal people and that all prosecutions currently underway were of a serious nature and should continue in the public interest.</p>
<p>Recommendation 2 That the NSW Department of Primary Industries review and implement a comprehensive training program for all Fisheries compliance officers, to be delivered in partnership with key Aboriginal stakeholders, covering Aboriginal cultural fishing practices (including the trade or barter of fish for other items) and native title rights.</p>	<p>Supported DPI Fisheries staff regularly undertake training regarding Aboriginal cultural awareness and Native Title. DPI Fisheries continues to remain committed to updating and refreshing its training for existing staff which includes Fisheries Officers. New Fisheries Officers receive cultural competency training as part of their rigorous induction processes. The Department of Regional NSW also has mandatory online cultural competency training as part of standard employee onboarding practices and annual employee mandatory training requirements.</p> <p>Examples of recent DPI Fisheries staff cultural awareness training is set out below:</p> <p>In 2017/18 approximately 360 Fisheries staff including Fisheries Officers completed mandatory Aboriginal Cultural Awareness training delivered through 20 regional workshops which included local Aboriginal community members in engagement sessions.</p> <p>In 2022 all Fisheries Officers completed a full day of tailored Aboriginal Cultural Awareness, with half of the day focused on Native Title. The training was run by an Aboriginal training service provider with expertise in the areas of compliance, cultural awareness and Native Title. At each training location Traditional Owners were consulted on the training and also provided a Welcome to Country at the start of the training. Aboriginal Fisheries Officers also provided feedback on the training package as part of the training evaluation process.</p>

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	<p>In 2022, DPI Fisheries has also established a new Aboriginal Fisheries Officer Career Pathways Program, which has involved employing 6 new Aboriginal identified Fisheries Officers.</p> <p>Further, Aboriginal cultural awareness training is to be delivered to all remaining fisheries staff in 2023, building on previous training undertaken by the department. An Aboriginal owned and operated consultancy company has been engaged to deliver the Aboriginal Cultural Learning Program regionally and involve local Traditional Owners and members of Aboriginal communities, including members of AFAC where possible, in training days and providing specific regional perspectives and knowledge as appropriate. The training program will be evaluated to determine its effectiveness in meeting its intended outcomes.</p>
<p>Recommendation 3 That the NSW Government conduct an independent review of the culture and regulatory practices of the compliance division of the Department of Primary Industries Fisheries, to identify any systemic cultural problems and implement changes which will lift the cultural capability of the organisation.</p>	<p>Supported The NSW Government has full confidence in the professionalism and conduct of Fisheries Officers in the field who undertake difficult and at times dangerous operations to protect the State’s fisheries. However, to ensure transparency and support continuous improvement in the regulatory practices of Fisheries Compliance, DPI will engage a suitable team of experienced external consultants to review and provide advice on the complexities of the work environment facing Fisheries Officers, the culture of fisheries compliance and existing specialised Cultural Fishing Work Instructions that currently guide how Compliance staff interact with Aboriginal fishers in the field.</p> <p>DPI remains committed to ensuring that Aboriginal cultural awareness continues to be prioritised and celebrated across all parts of the Department. DPI is also party to the Department of Regional NSW (DRNSW) Aboriginal Outcomes Strategy and Aboriginal Employment Strategy (2022-25) which guide the cluster’s approach to supporting Aboriginal career pathways for the organisation.</p> <p>DPI is also committed to actively supporting further Aboriginal employment opportunities within DPI Fisheries to embed Aboriginal involvement and knowledge more deeply into fisheries management practices across DPI operations. Future employment opportunities would supplement the six dedicated Aboriginal Fisheries Officer roles currently in place in Fisheries Compliance and the other 10 identified roles working on the delivery of programs</p>

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	<p>supporting the protection of cultural values, cultural fishing and economic development programs for Aboriginal communities in NSW. Support for Aboriginal staff will be guided and informed by the implementation of the DRNSW Aboriginal Employment Strategy 2022-2025 which includes key initiatives to deepen connections and platforms to share Aboriginal knowledge, listening from Aboriginal voices and learn from their experiences, attracting and retaining Aboriginal talent and championing cultural capability and safety.</p> <p>Increased representation through employment, alongside regular consultation and engagement undertaken with the Aboriginal Fishing Advisory Council, through place-based Local Management Plan trial implementation in the Hastings and Tweed areas, and through Sea Country initiatives and cultural immersion and engagement opportunities under the Marine Estate Management Strategy (Initiative 4) will continue to ensure that the culture and practices of DPI Fisheries continues to recognise and support Aboriginal cultural knowledge and cultural fishing practices across NSW.</p>
<p>Recommendation 4 That the NSW Government commence Schedule 1 of the <i>Fisheries Management Amendment Act 2009</i> by 30 June 2023, and take immediate steps to develop a supporting regulation in consultation with Aboriginal communities and peak bodies, and other stakeholders.</p>	<p>Supported The NSW Government supports the Committee’s view at paragraph 3.114 of the Report that “section 21AA should be commenced with a supporting regulation, to ensure fishery stocks are managed appropriately and sustainably into the future”. Work is underway in an effort to have a section 21AA and supporting regulations commence by 30 June 2023.</p> <p>DPI also supports the making of further regulations that recognise and support place-based cultural fishing arrangements such as Local Management Plans currently being trialed with Aboriginal communities in the Tweed and Hastings areas.</p> <p>The NSW Government commits to engaging with the Aboriginal Fishing Advisory Council on the development of the supporting regulation, in line with requirements under section 21AA(5) and section 229 of the <i>Fisheries Management Act 1994</i>. NSW Government also commits to consulting with NSW Coalition of Aboriginal Peak Organisation (CAPO) and Aboriginal Affairs, Department of Premier and Cabinet on the development of the supporting regulation.</p>
<p>Recommendation 5</p>	<p>Supported</p>

Recommendation	NSW Government Response
<p>That the NSW Department of Primary Industries, Department of Regional NSW and Department of Aboriginal Affairs proactively work with the Aboriginal community on the South Coast to support the community to make an application to the Aboriginal Fisheries Business Development Program, or other programs, to give them greater opportunities for commercial fishing businesses, for the broader benefit of the local community.</p>	<p>The Aboriginal Fisheries Business Development Program is open to new Aboriginal community-owned businesses statewide to express an interest until 10 February 2023. The intent of the program is to deliver on Aboriginal community fisheries business aspirations, which may go beyond commercial fishing, such as cultural tourism, recreational charter fishing, shark mitigation, fisheries hatcheries and other aquatic-related fisheries businesses.</p> <p>Regional forums will be conducted by DRNSW, DPI Fisheries and AFAC (as a program partner) in coastal and inland areas to promote the program and encourage involvement, including on the South Coast. DPI Fisheries will work with the program partners to encourage interest across NSW.</p> <p>Development and training opportunities, as well as financial support for Aboriginal-owned businesses will continue to be provided under Initiative 4 of the Marine Estate Management Strategy and under the Aboriginal Fishing Trust Fund.</p>
<p>Recommendation 6</p> <p>That the NSW Department of Primary Industries explore other options that would enable local Aboriginal communities to have greater access to the commercial fishing industry.</p>	<p>Supported</p> <p>NSW DPI, in partnership with AFAC, will continue to review existing support and engagement approaches under the Aboriginal Fishing Trust Fund, Marine Estate Management Strategy and other funding avenues to provide support to Aboriginal communities with an interest in participating in the commercial fishing industry or other aquatic related fisheries businesses.</p>
<p>Recommendation 7</p> <p>That the NSW Department of Primary Industries implement measures to better educate the broader fishing community about Aboriginal cultural fishing practices.</p>	<p>Supported</p> <p>NSW DPI, in partnership with AFAC, will develop and implement a strategic communications, education and engagement plan in 2023, to increase community education raising the awareness of the broader community about Aboriginal cultural fishing practices promoting support for the maintenance of cultural fishing practices.</p> <p>NSW DPI will also continue to support Aboriginal communities to deliver their own place-based cultural fishing education and awareness raising programs and initiatives to support sustainable cultural fishing practices via Local Management Planning, the Aboriginal Fishing Trust Fund, and Initiative 4 of the Marine Estate Management Strategy.</p>