



**The NSW Aboriginal Land Council's
Inquiry into Recreational Fishing**

October 2010



**NEW SOUTH WALES
ABORIGINAL LAND COUNCIL**

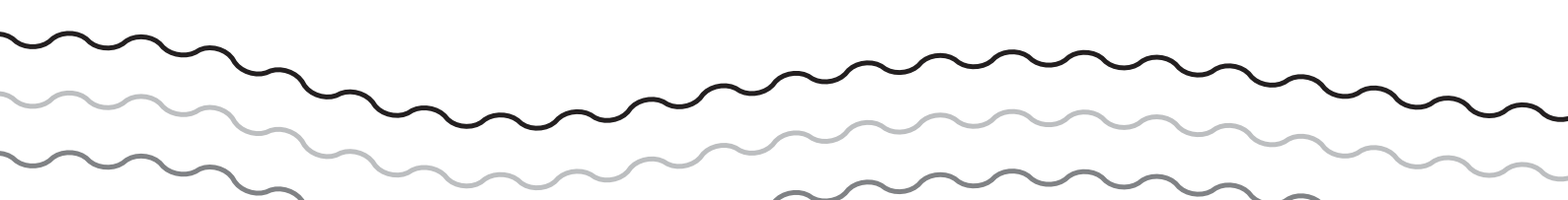
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This report has been prepared by the
Policy and Research Unit of the NSW Aboriginal Land Council.

November 2010

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Catch N Cook Indigenous fishing program.



Inquiry into Recreational Fishing
The Director
Select Committee on Recreational Fishing
Parliament House
Macquarie Street
Sydney NSW 2000

Tuesday, 26 October 2010

Dear Director,

Re: Questions on Notice for Chairwoman of the New South Wales Aboriginal Land Council on Recreational Fishing

Thank you for inviting me to provide further input into the Inquiry into Recreational Fishing currently being conducted by the NSW Legislative Council's Select Committee on Recreational Fishing.

The New South Wales Aboriginal Land Council ("**NSWALC**") is the peak body representing Aboriginal people in NSW. NSWALC is the largest Aboriginal member based organisation in Australia, with over 16,000 members, and provides support to the network of 119 Local Aboriginal Land Councils which exist in NSW.

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.

As the Chairwoman of NSWALC I am pleased to provide a response to your questions on notice.

Yours sincerely,



Bev Manton
Chairwoman
New South Wales Aboriginal Land Council

The (*Fisheries Management Act 1994*) (“the Act”) was currently amended to recognise Aboriginal cultural fishing rights. Do you think the Act goes far enough to support the rights of Aboriginal cultural fishing? Can you please tell us about what changes, if any, you would make to the Act to ensure Aboriginal cultural fishing rights are adequately protected?

In late 2009, I participated in joint discussions and negotiations with representatives of the New South Wales Aboriginal Land Council (“NSWALC”) and the Native Title Services Corporation (“NTSCORP”), with the Department of Industries and Investments and the Minister for Primary Industries Office, to negotiate greater rights in NSW for Aboriginal cultural fishers through amendments to the *Fisheries Management Act 1994* (“the Act”).

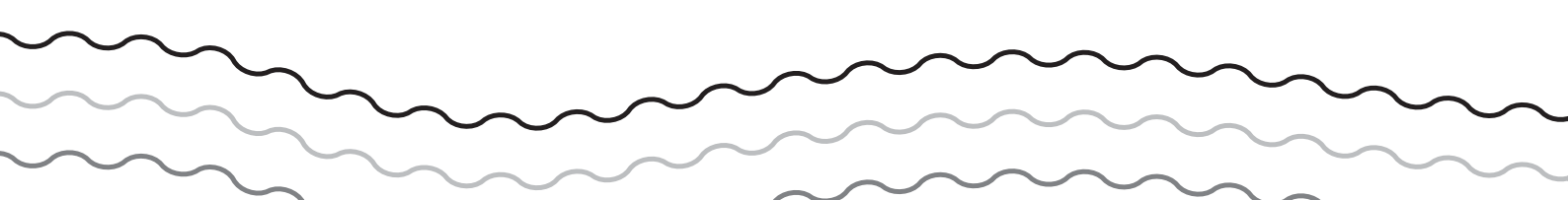
The amendments are reflective of the outcomes developed through the negotiation process and set the framework for the definitive gains for the Aboriginal community through the Regulations. NSWALC supports the amendments and recognise the amendments are the first step in the right direction for greater freedoms for Aboriginal fishers in NSW.

NSWALC supports the amendments to the *Fisheries Management Act 1994* which provide greater freedoms for Aboriginal fishers in NSW.

NSWALC looks forward to working with the Government on its earlier commitments to deliver greater flexibility for permits for larger cultural events outside the cultural fishing provisions and initiatives to improve access to commercial fisheries.

NSWALC is committed to increasing Aboriginal fishing rights and it therefore did not oppose proposed amendments (c2009-075C and c2009-103) which were designed to remove the administrative requirements over Aboriginal fishers and increase the recognition of Aboriginal traditional rights over fishing resources.

NSWALC does not oppose amendments which are designed to further increase the recognition of Aboriginal traditional rights over fishing resources



Do you think the establishment of the Aboriginal Fisheries Advisory Council will ensure that Aboriginal people are adequately consulted in future discussions about amendments to fisheries legislation and policy?

NSWALC is pleased the Government aims to establish the Aboriginal Fisheries Advisory Council (“AFAC”) to provide advice to the Minister of Primary Industry (“the Minister”) in respect to Aboriginal fisheries matters. As the appointed NSWALC representative on the AFAC I intend to advocate for, and advance Aboriginal peoples rights and interests in fisheries issues.

However consultation by Government must not be limited to only advisory committees, including the AFAC, as this does not equate to adequate consultation with Aboriginal people for discussions about amendments to legislation and policy which have the potential to impact significantly on the rights and interests of Aboriginal people in NSW for the following reasons:

- Consultation cannot be selective and all Aboriginal people have a right to be consulted. It should not be presumed that individuals appointed by a Minister to an advisory committee speak on behalf of all Aboriginal people and communities; and
- Consultation must be culturally appropriate, and extensive consultation with Aboriginal people at a local, regional and state level must be fostered, developed and maintained over time.

NSWALC does not support limiting consultation with Aboriginal people to Ministerial advisory groups – all Aboriginal people have a right to be consulted and provide free and informed consent.

Has the imposition of Marine Parks in NSW unduly affected the rights of Indigenous communities to access culturally significant locations and food sources? If yes, could you please tell us what areas are affected and suggest solutions as to how this problem can be rectified?

As the elected representative of the NSWALC Central Coast Region and a Worimi person from the Karuah area, I am acutely aware of my community’s concerns and experiences regarding restricted access to culturally significant locations and food sources as a result of the imposition of the ‘Port Stephens – Great Lakes Marine Park’. The Worimi community maintains a strong cultural connection to the fisheries resources along the Karuah River and surrounding river systems and traditional fishing knowledge has continued to be passed down through the generations – where to fish, what to fish for, how much to take, at what time of year, at day or night and what equipment to use.

The Worimi community traditionally fish with handheld nets. However the Marine Park prevents Aboriginal community members from fishing with nets above the ‘New Bridge’ without a permit, which excludes many of the traditional Worimi fishing grounds and means that the community is forced to fish within a limited space with limited food sources.

There is a general requirement for consent to carry out an ‘activity’ in a Marine Park. Community wishing to fish with a net above ‘New Bridge’ must seek a permit from the relevant Minister on each occasion. The Minister has a discretion for whether or not to grant a permit, but they must consider the Assessment Criteria as set out in clause 9 of the Marine Parks Regulation 2009. Permits have proven to be onerous and not flexible enough to meet the needs of the community, with information required including the size of the net, time of the day which the fishing will be carried out and the proposed catch species and number to be caught. While it was not uncommon for members of the community to participate in net fishing once a fortnight

to provide for their needs, the restrictions imposed by the Marine Park has resulted in the community only applying for one permit a year at NAIDOC.

My partner, Mr Kevin Manton raised his concerns with a Marine Parks Officer and was advised that a solution to the problem could be to pay a professional commercial fisherman with a license to fish for larger catches in waters zoned for commercial use, to cater for the needs of the larger Aboriginal community group. It was also suggested that Aboriginal community members catch the fish in summer and freeze them for consumption at a later date. This lack of understanding of the needs and interests of Aboriginal communities in relation to their fisheries resources is symptomatic of the status placed on Aboriginal cultural fishing in Marine Parks generally.

There are a number of Worimi traditional fishing grounds which are now classified as 'sanctuary zones' within the 'Port Stephens – Great Lakes Marine Park'. The Aboriginal community is no longer able to fish near 'Flat Rock' of the Karuah River, on the bar near Little Branch, the island off Lime Burners Creek, or above Allsworth where the salt water meets the fresh water. Generations of Aboriginal people have traditionally fished sustainably in these areas, but can no longer do so because of the Marine Park restrictions.

It is important that protections are increased to ensure marine life is sustained for future generations, but this must be balanced with the needs of the Aboriginal communities through exemptions for Aboriginal people similar to exemptions available under the *National Parks and Wildlife Act 1974*. Under this Act animals and plants are usually protected in parks however Aboriginal people are exempted from restrictions imposed by various sections of this Act on the hunting of certain animals and the gathering of certain plants within National Parks for *domestic* purposes.

NSWALC supports increased protections to ensure marine life is sustained for future generations, however this must be balanced with the needs of the Aboriginal communities through exemptions for Aboriginal people.

Existing laws and policies relating to cultural fishing in Marine Parks are extremely complex and need to be simplified:

- Cultural resource use involving the taking of fisheries resources – fin fish and invertebrates - in marine parks is subject to the *Fisheries Management Act 1994* and the *Marine Parks Act 1997*.
- However, scope exists for cultural resource use contrary to some of these restrictions by a permit issued under section 37 of the *Fisheries Management Act 1994*. These permits cannot authorise the taking of threatened species. In addition, a fisheries permit cannot authorise activities contrary to a marine park zoning plan.
- The *Marine Parks Act 1997* currently allows for cultural resource use within Marine Parks where the activity:
 - Is undertaken in accordance with the provisions of the *Fisheries Management Act* as described above;
 - Is permitted by the marine park zoning plan as described within the *Marine Parks (Zoning Plans) Regulation 1999*;
 - Does not involve targeting protected species; and
 - Is not contrary to a marine park closure.
- Cultural resource use that is contrary to the above may be authorised under a Marine Parks permit. However, a Marine Park permit cannot authorise activities contrary to the *Fisheries Management Act 1994*. Permits may be issued to specific persons or may be issued for a class of persons described as a group - for example, all Aboriginal people who are members of a specific Aboriginal corporation.

- The *Marine Parks Regulation 2009* sets out the process for issuing permits to undertake activities contrary to zoning plans. Permits are issued by the delegate of the Ministers, who must consider this policy and all relevant assessment criteria included in clause 9 of the Regulation when deciding whether or not to issue a permit, and what conditions might apply to the activity.

NSWALC supports a clear single policy for all Marine Parks in NSW to allow Aboriginal cultural fishing free of a permit system, with certain limits.

Currently, Aboriginal people are eligible to undertake cultural resource use in marine parks and can do so through one or more of the following:

- Establishment of Special Purpose Zones within Marine Parks zoning plans that are managed for cultural resource use;
- Development of a Cultural Resource Use Agreement between the Marine Park Authority (MPA) and eligible Aboriginal people, which includes the issue of any fisheries and/or Marine Park permits that may be required to give effect to the Agreement; and
- Issue of a Marine Parks and/or fisheries permit to individuals or groups for specific events on a case-by-case basis.

Furthermore, cultural resource use must be ecologically sustainable and there are limits on activities, particularly the fishing of protected species or taking of fish in sanctuary zones may apply. Cultural resource activities within sanctuary zones will only be allowed as part of a Cultural Resource Use Agreement.

NSWALC supports a coordinated single approach for Aboriginal people to access Marine Parks to remove the need for Aboriginal cultural fishers to obtain different permissions from different groups.

As the laws and policies relating to cultural

fishing are extremely complex, it difficult to navigate the policies, laws and processes which guide how Aboriginal people and communities can engage in Aboriginal cultural fishing and the management of Marine Parks. Government must develop easily accessible resources for community and invest in the delivery of an educational program to help Aboriginal people better understand these processes.

NSWALC supports an educational program which aims to help Aboriginal people better understand how to be involved in management of Marine Parks.

In your opinion would it be in the best interests of Aboriginal people from around NSW to manage 'sea country'? Can you please tell us what mechanisms would need to be put in place to allow this to happen?

Increasing Aboriginal fishing rights and ensuring Aboriginal people in NSW are included in the management of sea country is critical to ensuring Aboriginal cultures are sustained. Aboriginal peoples spiritual, social and customary relationship with the marine environment, and their continued tradition of fishing consistent with cultural beliefs which fundamentally includes customary sustainable fishing parameters, means including Aboriginal people in the management of sea country would be beneficial.

NSWALC is committed to increasing Aboriginal fishing rights and supports the management of sea country by Aboriginal people in NSW.

The principles enshrined in the *United Nations Declaration of the Rights of Indigenous People*, officially endorsed by the Australian Government on 3 April 2009, have particular relevance to the rights of Aboriginal people in relation to fisheries resources, in particular:

- Articles 5 and 11 – the universal right of Indigenous people to practice and maintain

cultural traditional and institutions; and

- Article 12 – the right to manifest, practice, develop and teach traditions, customs and ceremonies.

The Declaration has been endorsed by the Australian Government but progress has not been matched in practice by Governments.

NSWALC supports practical measures by Government which seek to implement the *United Nations Declaration of the Rights of Indigenous People* as a mechanism to support Aboriginal people managing sea country in NSW.

The National Principles on Indigenous Fishing, signed by the NSW Government in December 2004, encourages the protection of traditional fishing practices while supporting greater involvement of Aboriginal communities in marine management. However these principles have never been fully implemented.

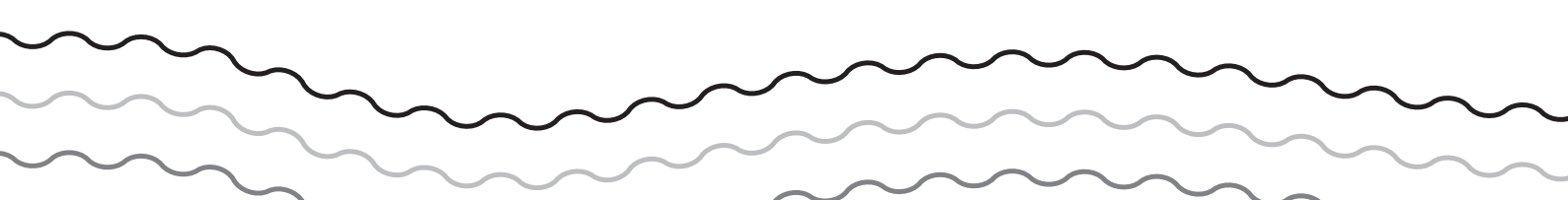
NSWALC supports the practical measures by Government which seek to implement the National Principles on Indigenous Fishing – which encourages the protection of traditional fishing practices while supporting greater involvement of Aboriginal communities in marine management.

Do you consider it necessary to have Indigenous representation on all Marine Park Advisory Committees?

Representing Aboriginal interests on Marine Park Advisory Committees is important and necessary. However, I understand that while Marine Parks generally seek to have Aboriginal representation on Marine Park Advisory Committees, it is not uncommon for Aboriginal interests to be underrepresented on the Committees and therefore Aboriginal interests are often excluded or overlooked.

If Aboriginal interests are to be represented on Marine Parks Advisory Committees, representation must be increased to ensure a balance in the stakeholder status of Aboriginal interests.

NSWALC supports greater Aboriginal representation on Marine Park Advisory Committees to ensure Aboriginal interests are equally represented with other stakeholder groups.



How would you recommend enterprise development be enhanced for coastal Aboriginal communities to ensure they receive the greatest economic gain from recreational fisheries?

In August 2005, the National Indigenous Fishing Technical Working Group (“NIFTWG”) – represented by Aboriginal, government, industry, commercial, recreational and conservation interests – released a ‘Communiqué’ which found a common position across all relevant sectors to in relation to Aboriginal marine resource use, including principles on Aboriginal commercial fishing and the implementation of recreational and commercial fishing initiatives aimed at increasing economic development for Aboriginal people. These include:

- Governments and other stakeholders will work together, at a minimum, implement assistance strategies to increase Indigenous participation in fisheries-related businesses, including the recreational and charter sectors; and
- Increased Indigenous participation in fisheries related businesses and fisheries management, together with related vocational development, must be expedited.

NSWALC supports practical measures by Government which seek to implement the principles outlined in the NIFTWG ‘Communiqué’, to ensure Aboriginal communities receive the greatest economic gain from recreational fisheries.

7. Do you consider aquaculture projects viable economic endeavours? Are you aware of any aquaculture projects run by Aboriginal people that have been successful? If yes can you please provide examples?

NSWALC is particularly interested in identifying opportunities aimed at fish re-stocking, such as the ‘Native Fish Strategy’ for the Murray-Darling Basin.

NSWALC is supportive of measures which aim to increase Aboriginal peoples involvement in economic development initiatives, including the development of a strong Aboriginal aquaculture industry.

The Committee has received evidence suggesting that certain Indigenous commercial fishing practices are not regulated appropriately. For example, the Committee hear that commercial fishing licences can no longer be passed down through family members and that only licensed commercial fishers can assist in beach hauling. How do you think Indigenous commercial fishing can be better regulated to ensure that traditional practices can continue to be passed down to future generations of Aboriginal people?

Aboriginal interests in the commercial fishing sector are generally considered out of reach as a result of the competing interests of the commercial sector and the unachievable costs of obtaining a license, skills, business knowledge and basic equipment. This has resulted in Aboriginal communities being excluded from opportunities and benefits in respect to the commercial fishing industry.

During the joint negotiations on the amendments to the Act with the Minister for Primary Industries Office and the Department of Industries and Investment, NSWALC and NTSCORP provided early preliminary advice on possible options for consideration for Aboriginal interests to be included in the commercial sector, these included:

- Restructure commercial fee arrangements including exemption from the community contribution levy and annual fees (for a restricted period);
- Relaxation of family cultural fishing on commercial boats;
- Review of commercial fishing licenses with a view of incorporating family and/or community succession planning;
- Resumed or surrendered commercial licenses to be granted to Aboriginal commercial fishing sector, rather than being put to tender;
- Portion of the commercial fees raised could be used to purchase existing licenses for Aboriginal commercial fishing sector;
- Investment in TAFE / education to specifically advance Aboriginal people in obtaining qualifications required for commercial fishing sector; and
- Exemptions from section 49 prohibition which prevent Aboriginal people from holding commercial fisheries licenses.

NSWALC supports the development of a range of options which aim to provide Aboriginal people and communities with access to commercial fishing opportunities.

In early 2010, following on from the amendment to the Act, the Minister for Primary Industries made a statement of commitment to consult relevant stakeholders to further explore and progress a number of initiatives to help actively encourage Aboriginal people to participate in the commercial fishing industry. The initiatives include:

- 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;
- 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.

It is hoped that discussion with the Aboriginal community on these initiatives will also lead to a greater understanding of Aboriginal people's aspirations with regard to commercial fishing in NSW.

The establishment of the AFAC will also assist in identifying Aboriginal commercial fishing issues and include Aboriginal people in the management of this fisheries industry.

NSWALC is committed to working with Government to ensure the rights and interests of Aboriginal people are advanced in the commercial fishing sector.

