



Department of Industry

Office of the Secretary

SECO16/59

31 MAR 2016

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

Dear Sir/Madam

Submission to Inquiry into the Regulation of Australian Marine Fisheries and Aquaculture Sectors

The Department notes the Productivity Commission has prepared an issues paper and welcomes the opportunity to assist.

Our submission provides information across a range of fishery sectors including commercial fisheries, aquaculture, recreational fishing and Indigenous fishing. NSW has an extensive fisheries reform program that has been delivering outcomes for fishers and will continue to be implemented, details attached. Fisheries compliance is also discussed including approaches that improve enforcement effectiveness.

I note the Productivity Commission has been in contact with the Department and arrangements are being made for direct engagement between Inquiry Commissioner Ms Melinda Cilento, and an executive member of the Fisheries NSW branch. This will provide further opportunity to discuss marine fisheries and aquaculture issues in detail. Additionally, arrangements are being made to facilitate a data request from the Commission and for the Commission to meet with Fisheries NSW staff during a proposed visit to Coffs Harbour on 1 April 2016.

Thank you for the opportunity to provide a submission for consideration in the Commission's review. If you would like further information please contact Mr Jason Gibson, Senior Project Officer, Department of Primary Industries - Fisheries,

Yours sincerely

Simon A Y Smith
Secretary

Encl.

**NSW Department of Industry submission to the Productivity Commission
inquiry into the regulation of Australian marine fisheries and aquaculture
sectors – March 2016**

The Fisheries NSW branch of the NSW Department of Primary Industries (DPI) sits within the NSW Department of Industry cluster. Fisheries NSW encompasses research, compliance, management and administrative staff with responsibilities for management of wild harvest fisheries (commercial, recreational, charter and Indigenous), aquaculture, aquatic conservation (including habitat management and rehabilitation), and marine protected areas. This enables a holistic approach to the management of NSW aquatic ecosystems and resources for the benefit of key stakeholders and the community.

The primary objectives of the *Fisheries Management Act 1994* (NSW) centre on the ecologically sustainable use of fisheries resources, and this is reflected in the management arrangements and policy settings that are developed and applied. A scientific resource assessment process is conducted annually to examine the health of harvested fish resources, and assists in identifying any necessary adjustments in management settings. The vast majority of the primary wild harvest species have been scientifically assessed as being sustainably fished.

NSW is Australia's most populous state with approximately 85% of the population living near the coast. Due to the high population density, fisheries stakeholders and the broader community often have competing interests in relation to the same areas. In addition to sustainability objectives, there is an ongoing need to appropriately share resources between various stakeholder groups.

Commercial Fishing

The NSW commercial fishing sector is worth around \$80 million at first point of sale. It produces high quality, fresh local seafood for predominantly the domestic market, and contributes to direct and indirect employment and economic activity in regional areas.

The overall biomass of fisheries resources located within NSW waters is generally lower than that found in other jurisdictions owing to a narrow continental shelf (hence a smaller area that can produce fish and be fished), but the species mix is very diverse. A suite of regulatory controls are applied to promote the sustainable use and appropriate sharing of resources harvested by the sector, including limits on the number of fishers authorised to operate in each component of a fishery, temporal and spatial closures, boat and gear restrictions, size limits, commercial catch limits and total protection for some species.

Commercial fisheries in NSW have undergone comprehensive environmental impact assessments, in line with NSW and Commonwealth law, placing increased emphasis on ensuring that fishing activities are environmentally sustainable. The resulting

fishery management strategies and plans set out the management goals, objectives, fishing controls and performance measures that apply to the State's main commercial fisheries.

The main commercial fisheries in NSW are currently going through a significant and critical period of reform. The current Business Adjustment Program has been developed in response to a 2012 *Independent Report into NSW Commercial Fisheries Policy, Management and Administration*. The full report, available on the DPI website at www.dpi.nsw.gov.au, provides a detailed assessment of issues affecting the State's commercial fisheries.

The Business Adjustment Program involves a \$16 million structural adjustment component. It aims to: improve the long term viability of the NSW commercial fishing industry; improve the strength and value of shareholders' rights (i.e. shares) by linking shares to catch or fishing effort, providing for autonomous adjustment over time; and, provide for a more efficient industry operating in an environment of reduced red tape.

The current structure of commercial fishing rights (shares) limits their use and value. This has meant controls have been inefficient and has limited the ability for fishers to grow their businesses. Linking commercial fishery shares to catch or effort levels under the Business Adjustment Program will give fishers the ability to grow their business with greater certainty around the value of their investment. Put simply, investing in more shares will provide for higher catch or effort levels, and vice versa. An Exit Grants program is an important component of the Business Adjustment Program, funds will be put towards subsidising prices paid by both buyers and sellers of shares. This will help facilitate some fishers to sell their shares in order to exit the industry or particular fisheries, and others to purchase additional shares. Further information on the Business Adjustment Program can be found on the commercial fishing homepage on the DPI website.

In terms of reducing red tape, a number of soon to be commenced amendments to the *Fisheries Management Act 1994* will relax the current requirement for all commercial fishing boats to be licenced under the Act. Instead, boat licences will only be required for certain boat based commercial fishing activities. Other streamlining measures should be possible once catch and effort is more directly managed through the share linkage arrangements.

In addition, the legislative changes will maximise the functionality of the NSW FishOnline self-service system. Commercial fishers and licensed charter fishing operators will be able to conduct a range of fisheries business transactions and enquiries online, as well as lodge catch and effort reports. The system will offer 24/7 availability via computer or mobile platforms (smartphone/tablet). A specially designed mobile application (app) provides fishers with real time access to quota balances, and enables the submission of catch and effort reports while on the move.

Challenges facing the industry into the future include competition from other fishing sectors, competition in the marketplace with imported seafood and aquaculture product, increasing operational costs and building and maintaining a social licence to operate.

Aquaculture

NSW has prepared two Sustainable Aquaculture Strategies; being a land based strategy and an oyster aquaculture strategy. The strategies include guidelines for sustainable aquaculture development and operation. The strategies embed the principles of Ecologically Sustainable Development into the Department's assessments of aquaculture permit and lease applications, and cover issues such as business planning, species selection, site selection, planning and design, and water quality. The strategies also put in place a planning framework for aquaculture that is supported by *State Environmental Planning Policy 62 – Sustainable Aquaculture*.

The Strategies have been developed in line with the *Best Practice Framework for Regulatory Arrangements in Australian Aquaculture*, arising from the Productivity Commission's 2004 research paper. This paper highlighted that complex and excessive regulation can stifle industry development. The Strategies therefore have a strong focus on minimising red tape and streamlining approvals.

The NSW Oyster Industry Sustainable Aquaculture Strategy identifies areas within NSW estuaries where oyster aquaculture is a suitable and priority outcome. The areas have been identified through a lease by lease inspection and evaluation against a list of locational, environmental and socio-economic suitability criteria. These areas are known as Priority Oyster Aquaculture Areas.

The NSW Land Based Sustainable Aquaculture Strategy is made up of two interlinked sections, a best management practice section and an integrated approvals section so that projects can be established and operated to meet sustainability objectives.

A NSW Marine Waters Sustainable Aquaculture Strategy is currently being developed following the recent approval of two State Significant Infrastructure applications in marine waters. One for Yellowtail Kingfish in ocean waters off Port Stephens and one for shellfish / algae in waters of Jervis Bay. The Strategy will further identify and make available leases that will reduce business risks for aquaculture investors.

Using a whole of government approach to Sustainable Aquaculture Strategies has streamlined the approvals process for investors. This involves a State-wide Aquaculture Steering Committee with representation from the Department of Premier and Cabinet; Environmental Protection Authority; Office of Environment and Heritage; Roads and Maritime Services; Food Authority; Local Government and the Department of Industry (Office of Regional Development and Department of Primary Industries - Fisheries).

The issue of chemical use and approvals is a major threat to the future of the industry. Minor use permits and registration of chemicals needs to be progressed nationally in a consistent and coordinated manner. The current fragmented approach is placing the industry and trade at risk.

Ongoing challenges facing the industry into the future are anticipated to be water quality, biosecurity (pests and diseases), chemical approval and social licence. Aquaculture also offers significant economic development potential including as a driver of regional employment. A stronger national focus on aquaculture development and industry support led by the Australian Government is considered an important

requisite step towards further development. A national approach to reviewing socio-economic indicators and undertaking socio-economic assessments is also important.

The development of a regulatory framework for aquaculture in Commonwealth waters is strongly supported. This is an issue that has been pursued through the national Aquaculture committee for approximately 10 years. NSW is currently moving two sea pen leases from an inshore to an offshore location at Port Stephens, close to State boundaries. This is consistent with advancing aquaculture technology and a move worldwide to locate aquaculture in deeper waters.

Recreational Fishing

Recreational fishing in NSW is socially and economically important to the State. The activities are primarily managed through a combination of catch and size limits, together with fishing method and gear restrictions. These management controls have been in place for a relatively long period with most fishers accustomed to fishing according to these controls. Information on fishing rules is readily available online, through strategically placed signage, and through hard copy publications. There is also an increased emphasis on providing multi-lingual information.

NSW works collaboratively with the adjoining jurisdictions of Queensland and Victoria to make regulatory arrangements such as catch and size limits as consistent as possible.

Recreational catch limits that apply to various species are set at levels of zero, two, five, 10 or 20 per day. This simplifies arrangements by setting round numbers that the community can more easily remember.

NSW also has a recreational fishing fee, commonly referred to as a licence. The fee is not a regulatory control that caps effort, as it is available to anyone willing to pay the fee, but it does provide useful information about the number of fishers and is the basis of a stakeholder database. There are currently four fee options ranging from \$7 for three days up to \$85 for three years. Monies received through payment of the fee are used to fund a range of programs aimed at improving recreational fishing. A fishing fee is not required for: those under 18; an adult assisting a person under 18; Aboriginal persons; and, holders of certain Commonwealth concession cards.

Fishing fees can be paid online (including using mobile platforms) or over the phone with a credit card, and also purchased from an extensive agent network that includes many bait and tackle stores and K-Mart stores. A digital option is also in development so fishers will be able to demonstrate fishing fee payment on their smartphone, rather than having to carry and produce a paper or plastic fishing fee receipt. Detailed information on the large range of programs funded by the fishing fee can be viewed on the Department's website.

Indigenous Fishing

In 2009 cultural fishing was formally acknowledged as a distinct activity from commercial and recreational fishing within the objectives of the *Fisheries Management Act 1994*. Supporting provisions were also introduced. Specifically the objectives were amended to include recognition of the spiritual, social and customary significance of the fisheries resource to Aboriginal people and to protect, and promote the continuation of Aboriginal cultural fishing.

Consistent with the new objective of protecting and promoting cultural fishing, other amendments made included: defining cultural fishing; creating an Aboriginal Fishing Advisory Council to provide advice to the Minister on Aboriginal fishing issues; specifically prescribing protections from prosecution by holding a Section 37 permit issued for cultural fishing purposes; a blanket exemption from the requirement to pay the recreational fishing fee for all Aboriginal people; and, creating authority to make regulations for cultural fishing, including the setting of cultural fishing catch limits.

Extended access to fisheries resources is also currently provided for by the Aboriginal Fishing Interim Access (AFIA) arrangement, which applies when daily cultural fishing is being undertaken. The AFIA arrangement provides for double the catch limits to that of the standard recreational limits, with some species having greater than double. Additionally, Section 37 authorities provide for needs that go beyond what is provided for by the AFIA arrangement. Authorities are typically issued for significant family gatherings or community events and may provide for the use of equipment not normally available to be used and/or access to areas that are restricted to harvest activities, along with catch limits that exceed that of the daily cultural catch limits.

A regulation that formalises take and possession limits across the whole of NSW for all Aboriginal people when culturally fishing is under development with input from community. The regulation also seeks to accommodate traditional practices such as shucking abalone near the water's edge, a practice that is otherwise prohibited under existing controls. A non-statutory management plan is also in development, which will bring together the various measures used to enable access to the fisheries resources in line with protecting and promoting cultural fishing. Implementation of cultural fishing regulation has as to date not yet been decided on.

Further exploration of specific community level needs is proposed in consultation with communities.

In defined resource management areas such as Marine Parks, formal engagement with Aboriginal communities through the management planning process guided by the Aboriginal Engagement and Cultural Use of Fisheries Resources Policy takes place.

A number of soon to be commenced amendments within the *Fisheries Management Amendment Act 2015* will establish greater potential in providing for both cultural fishing access and for communities to derive economic advantage from fisheries resources. An Aboriginal fishing trust fund will be created, with expenditure on programs aimed at aspects such as: protecting and promoting cultural fishing; investing in wild harvest commercial fishing opportunities and aquaculture operations; and, developing business governance structures. The legislative changes will also enable: the reallocation of forfeited commercial fishery shares for the benefit

of Aboriginal communities; provisions to determine and allocate catch or effort where a resource allocation determination can be made; and, the making of Ministerial orders at community/regional levels to authorise broader access arrangements, rather than having to rely on individual permitting arrangements.

Marine Estate

The NSW Government has been implementing a new approach to managing the NSW marine estate (marine waters, coasts and estuaries) since 2013. This includes:

- development of a Marine Estate Management Strategy
- incorporating threat and risk assessments into decision-making
- reforming marine park management
- establishing the Marine Estate Management Authority and the Marine Estate Expert Knowledge Panel
- enacting the *Marine Estate Management Act 2014* to underpin the new approach to marine estate management.

The NSW Marine Estate Management Authority has established a vision for the management of the NSW marine estate of *a healthy coast and sea, managed for the greatest well-being of the community, now and into the future.*

The NSW Government supports co-operative management of the marine estate across State and Commonwealth boundaries. Management plans for Commonwealth marine reserves and NSW marine parks should be well coordinated and consistent, particularly where parks and reserves adjoin in areas such as Jervis Bay, Port Stephens–Great Lakes, Solitary Islands and Lord Howe Island. NSW Department of Primary Industries presently conducts operations for several Commonwealth marine reserves on behalf of the Australian Government.

Marine protected areas can have environmental, social and economic impacts (positive and negative) on communities and stakeholders. The new approach to marine estate management in NSW includes a decision making process to identify community benefits and threats, assess threats and risks to benefits, assess current management, develop management responses to priority threats and monitor, evaluate and report on implementation. This process provides a framework for considering environmental, social and economic impacts of marine estate management.

A recent example of the new approach is a package of suggested initiatives to enhance marine management from Newcastle to Wollongong in NSW. A discussion paper is currently being considered by the community and stakeholders and is available at the NSW marine estate website at www.marine.nsw.gov.au.

Compliance

A review on illegal fishing for commercial gain or profit in NSW (2004) found illegal harvesting and black marketing of fish was a serious, widespread, entrenched and growing problem in NSW. The report indicated these activities and practices threaten resource sustainability and have serious potential consequences for: public health and safety; Government policy and governance; the continuation of Indigenous cultural practices; and the ability of the legitimate fishing industry to properly plan and manage its business affairs and maintain confidence and profitability in the industry. The environmental (sustainability) and health (public risk) dimensions of illegal fishing remain significant.

Since 2004, legislative and operational reforms have been undertaken in response to the report recommendations, but there is evidence that illegal, unreported and unregulated (IUU) fishing persists, and does not appear to be diminishing. This evidence is shown in business information systems that have been designed and built to record the detection of offences and seizures, results of prosecutions, compliance officer effort, fishery compliance rates and reports of illegal fishing.

This data indicates that most serious high risk illegal fishing activity takes place along the coastal and estuarine waters of NSW. Some activity associated with black marketing and trafficking of fish takes place in urban environments at business premises and home residences. The most high risk and pervasive illegal fishing is associated with high value fish species such as abalone, rock lobster, deep water finfish (such as blue-eye trevalla, gemfish, and hapuku), mud and blue swimmer crabs, and eels. This involves both the recreational and commercial sectors. The unlawful collection of intertidal invertebrates also remains a problem, particularly in the Sydney area.

Illegal fishing has the capacity to deplete local populations of fish, particularly abalone and rock lobster on rocky reefs, eels in eastern flowing rivers, cockles on Sydney mud flats, turban snails on rock platforms, mud and blue swimmer crabs in coastal rivers and deep water finfish on continental shelf reefs.

Compliance programs are designed to be proactive, focused on preventing illegal fishing and changing the attitudes and behaviour of fishers through both education and deterrents. Resources need to be devoted to the highest risk offenders and markets that drive the demand for illegally caught fish. Specific compliance problems that are currently the focus of the Department include the unlawful collection of invertebrates, abalone and rock lobster theft, and illegal crab fishing.

More effective enforcement will be achieved through continued adoption of risk based compliance principles, where compliant fishers receive less regulatory burden and offending fishers are subject to more rigorous monitoring and inspection regimes. A collaborative approach with other NSW regulatory agencies to target illegal fishing and related compliance phenomena has also proven to be effective.

The use of mobile device technology by compliance officers to promptly record high quality information in the field reduces data entry burdens in the office, helping to improve effectiveness. Management of compliance data in purpose-built business information systems enable efficient monitoring, reporting and evaluation. Committing appropriate resources to analytics has also boosted effectiveness through for example: hot spot analysis to identify problem areas; time analysis to identify increase/decrease in activity and in which month/day/hour the activity takes place; offender analysis to identify home suburb, age, gender, ancestry and recidivism rate and; fishing activity type analysis to identify methods, species, lawfulness and risk of activity.

Offshore Constitutional Settlement (OCS)

For many years, State and Commonwealth Governments have discussed the prospect of changing the arrangements relating to the management of fish stocks that straddle both jurisdictions, to improve resource management outcomes and deliver efficiency improvements for the fishing industry and government.

The issues surrounding the OCS between NSW and the Commonwealth have been documented previously in the 2012 *Independent Report into NSW Commercial Fisheries Policy, Management and Administration*. In response to that report and the recommendations therein, the NSW Government has enunciated its commitment to progress changes to cross jurisdictional arrangements. Dedicated resources have been set aside for this purpose, commencing with rationalisation of the southern fish trawl sector. The Australian Fisheries Management Authority has confirmed it is also a high priority project for the Commonwealth.