



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

Aboriginal Cultural Fishing in NSW

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This Fact Sheet provides an overview of the laws in NSW relating to Aboriginal cultural fishing, particularly under the *Fisheries Management Act 1994 (NSW)*.ⁱ

This is one of a series of Fact Sheets which have been developed for Local Aboriginal Land Councils (LALCs) and the Aboriginal community by the NSW Aboriginal Land Council (NSWALC). Copies of the Fact Sheets are available from www.alc.org.au or by calling the NSWALC Resource Centre on 02 9689 4444.

Please note: While all care has been taken in the preparation of this fact sheet, it is not a substitute for legal advice in individual cases. This Fact Sheet is current as of January 2011.

What are the laws in NSW relating to cultural fishing?

The *Fisheries Management Act 1994 (the Act)* regulates all fishing in NSW and is administered by Industry and Investment NSW. Until 2009 the Act only included provisions for commercial and recreational fishing, it said nothing on Aboriginal cultural fishing.

Following amendments to the Act, the majority of which came into force on **1 April 2010**, the Act now acknowledges and provides for Aboriginal cultural fishing in NSW.

As a result, where an Aboriginal person is not fishing for commercial purposes and is fishing within the prescribed methods and bag/possession limits then **a license or license fee is not required for Aboriginal cultural fishing.**ⁱⁱ

However, if an Aboriginal person wishes to fish outside of the set limits, then he or she will need to apply for a permit to do so, (see Section 37 Permits below).

Aboriginal fishing provisions prior to 2009

Before 2009 Aboriginal fishing was seen as being either commercial or recreational and Aboriginal people would have to apply for licenses in order to practice cultural fishing.

There were some exemptions for community members to fish in their local fresh waters e.g. members could fish within their LALC's boundaries, and where areas were subject to a native title application or determination. There were also permits that allowed fishing to provide for larger cultural events.

These measures did not provide equity for *all* NSW Aboriginal community members, and for the most part traditional subsistence fishing was overlooked.

2009 Amendments to the Act

Amendments to the Act passed through both houses of the NSW Parliament on 3 December 2009.

The Objects of the Act now include: '*to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing*'.

The Act also now includes the following definition of Aboriginal cultural fishing:

Aboriginal cultural fishing means fishing activities and practices carried out by Aboriginal personsⁱⁱⁱ for the purpose of satisfying their personal, domestic or communal needs, or for educational or ceremonial purposes or other traditional purposes, and which do not have a commercial purpose.^{iv}

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What are the specific changes?

- A general exemption for Aboriginal people from paying a fee for recreational fishing in saltwater and freshwater;
- The establishment of an *Aboriginal Fisheries Advisory Council (AFAC)*, to advise the NSW Primary Industries Minister on all matters relating to Aboriginal fishers in NSW; and
- The inclusion of Aboriginal cultural fishing as a new ground for obtaining a Section 37 permit.^v

PLEASE NOTE: Section 21AA, which creates special provisions for Aboriginal cultural fishing in relation to bag/possession limits for Aboriginal culture fishing, has not yet commenced.

This section along with additional Regulations is meant to be developed in consultation with the *Aboriginal Fisheries Advisory Council (AFAC)*.

Interim Compliance Provisions

An *Interim Compliance* policy applies for Aboriginal cultural fishing until such time as section 21AA commences.

The provisions of this policy include:

- For communal needs such as for Elders, or the incapacitated, within the context of Aboriginal cultural events, individual limits (bag limits) for fish that may be taken further than 20 metres from the high water mark has been increased to double that of the current recreational bag/possession limits for each species. The increased bag limit applies only for individuals who are fishing.
- If a small Aboriginal group (up to 15 Aboriginal people) are participating in a cultural event within 20 metres of the high water mark, the bag/possession limit in relation to the number of fish that may be taken will be based on the number of people at the event regardless of whether all are fishing.

For example if there are 10 people at the event and only 3 are fishing, the possession limit for abalone, for example, will be 20 and not 6. To complement this, the shucking of abalone, rock lobster and turban shell is permitted within 20 metres of the high water mark.

Note: that the fish must be consumed in this area.

Please note: legal length or size limits still apply for all species taken in the above scenarios.

When is a section 37 permit required?

Where cultural purposes require more fish than is allowable under the bag/possession limits set for

Aboriginal cultural fishing, or where a cultural event requiring fish involves more than 15 Aboriginal people than a section 37 permit is required to avoid prosecution under the Act.

To obtain a section 37 permit, an applicant needs to submit an application form and pay a fee to the Department of Industry and Investment NSW.^{vi}

Can Aboriginal people fish in marine parks?

Aboriginal people can fish in marine park zoning that allows recreational fishing. Local marine park zoning plans will identify such zones.

Zoning maps of NSW marine parks are accessible via the Marine Parks Authority website www.mpa.nsw.gov.au.

Please note: 6.7% of coastal waters in NSW prohibit recreational fishing.

Aboriginal Fisheries Advisory Council

Section 229 of the Act provides for the establishment of Ministerial Advisory bodies, including for Aboriginal fishing.

Clause 289 of the *Fisheries Management (General) Regulation 2010* outlines that the Aboriginal Fisheries Advisory Council is to be composed of Aboriginal persons appointed to represent different regions of the State (not more than 10 persons in total), one person appointed as a representative of NTSCORP Limited, one person appointed as a representative of the NSWALC, one other Aboriginal person, and a senior officer of the Department.

Where can I get more information?

Visit the 'Culture and Heritage' pages of the NSWALC website at www.alc.org.au or contact the NSWALC Policy and Research Unit on 02 9689 4444.

Industry and Investment NSW can be contacted on 1300 550 474 or www.dpi.nsw.gov.au.

ⁱ A current version of the *Fisheries Management Act 1994* (NSW) and related Regulation, can be accessed online at NSW Legislation: <http://www.legislation.nsw.gov.au> – Follow the links to the 'Browse', then 'Acts' or "Regulations", then 'F'.

ⁱⁱ *Fisheries Management Act 1994* (NSW), Section 34C(2)(f)

ⁱⁱⁱ As per s4(1) of the *Fisheries Management Act 1994*(NSW) - An Aboriginal person means a person who: (a) is a member of the Aboriginal race of Australia; and (b) identifies as an Aboriginal person; and (c) is accepted by the Aboriginal community as an Aboriginal person.

^{iv} *Fisheries Management Act 1994*(NSW), s4 (1)

^v *Fisheries Management Act 1994* (NSW), s37 1 (C1)

^{vi} The section 37 permit application form is available on the Industry and Investment NSW website at: [www.dpi.nsw.gov.au/ data/assets/pdf file/0016/350053/Form-24.pdf](http://www.dpi.nsw.gov.au/data/assets/pdf_file/0016/350053/Form-24.pdf)

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