



fact sheet

ABORIGINAL CULTURE AND HERITAGE

Aboriginal Cultural Fishing in NSW



This Fact Sheet provides information about the laws in NSW relating to Aboriginal cultural fishing, particularly a draft Regulation 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) and NTSCORP Limited (NTSCORP). Copies of the Fact Sheets are available from www.alc.org.au or by calling the NSWALC 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 October 2015.

What are the laws in NSW relating to cultural fishing?

The *Fisheries Management Act 1994 (the FMA)* regulates all fishing in NSW and is administered by the NSW Department of Primary Industries (DPI). Amendments to the FMA were passed in 2009 to recognise and provide for Aboriginal cultural fishers.

What were the specific changes?

The 2009 amendments to the FMA included:

- A new **objective** to recognise Aboriginal cultural fishing,
- A new **definition** of Aboriginal cultural fishing,
- An **exemption for Aboriginal people from paying a fee** for recreational fishing,
- The inclusion of Aboriginal cultural fishing as a new ground for obtaining a **section 37 permit** that authorises the person or group to take and possess fish or marine vegetation that would otherwise be unlawful,

- A new provision **authorising Aboriginal people to take and possess fish** for cultural fishing purposes (NOTE: **The NSW Government have not yet commenced this provision section 21AA.** *The NSW Government have advised that it wishes to have a Regulation in place before commencing this section*), and
- The establishment of the Aboriginal Fishing Advisory Council (AFAC), to play a key role in advising the Minister on all Aboriginal fishing issues.

Interim Compliance Provisions

An *Interim Access* policyⁱⁱ has been in place for Aboriginal cultural fishing until such time as section 21AA commences. This policy outlines restrictions on Aboriginal people for cultural fishing purposes including daily take and possession limits that are double the recreational bag/possession limits, except for certain species eg. Abalone (Daily take limit of 10), Murray Cod (Daily take limit of 4).

What is being proposed?

On 1 October 2015 the NSW DPI released a draft Regulation for consultation that proposes a number of restrictions on Aboriginal cultural fishing.ⁱⁱⁱ The NSW DPI are seeking comment on the draft Regulation until **9 November 2015**.

What does the draft Regulation propose?

In summary, the draft Regulation:

- Outlines the number of fish that may be taken by, or in the possession of, an Aboriginal person** for the purposes of Aboriginal cultural fishing. Some examples are outlined in the below table. In some instances the bag/possession limit is double

or more the recreational fisher bag limit, however in other instances it is the same as the recreational limit. *Please refer the draft Regulation for the full table.*

- **Applies a general daily limit** for species not listed in the Regulation table as follows (the DPI has advised these are combined limits):
 - 40 for marine or estuarine species (Proposed Clause 89A(2)(c)).
 - 20 for native freshwater fish (other than invertebrates) (Proposed Clause 89A(2)(d)).
- Outlines that **all intertidal invertebrates may be shucked within 100 meters of the high water mark if the fish are consumed in the area** (Proposed Clause 89B).
- Outlines that the **Aboriginal cultural fishing limits which exceed quantities considered 'commercial quantities' under the FMA do not apply** if fishing within the cultural fishing rules (Proposed Clause 89C).

Species	Proposed daily limit	Current Daily limit as per Interim Access Policy
Abalone	10	10
Flathead (Other than Dusky flathead)	40	40
Bream and Tarwhine	40 in total	40 in total
Tailor	40	40
Blue Swimmer Crab	40	40
Trevally	40	40
Luderick (Blackfish)	40	40
Murray Cod	4	4
Mullet	20	40
Pipis	100	100
Mud crabs	10	10
Eastern Rocklobster	4	4
Murray crayfish	2	4
Oysters	100	100

Who do the cultural fishing provisions apply to?

Any Aboriginal person in NSW who engages in cultural fishing within the meaning of the FMA. In the FMA, Cultural fishing is defined as: *“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.”

Do other rules or restrictions apply?

The DPI advises that other restrictions also apply to Aboriginal cultural fishers including size limits, gear restrictions, fishing closures, marine park zoning.

Native Title Right to Fish

In accordance with s211 of *Native Title Act 1993 (Cth)*, s104A of the *Native Title (NSW) Act 1994* and s287 of the *FMA*, the draft Regulation **cannot affect** the exercise of the native title right to fish.

When is a section 37 permit required?

Where more fish than is allowable under the bag/possession limits set for Aboriginal cultural fishing are needed, a **section 37 permit** is required to avoid prosecution. To obtain a section 37 permit, an applicant needs to submit an application form to the NSW Department of Primary Industries. There is no application fee.^{iv}

Where can I get more information?

NSWALC

Website: www.alc.org.au

Phone: 02 9689 4444.

NTSCORP

Website: <http://www.ntscorp.com.au/>

Phone: 02 9310 3188

Department of Primary Industries

Website:

www.dpi.nsw.gov.au/fisheries/aboriginal-fishing

Phone: 1300 550 474 or 02 4916 3954.

ⁱ A current version of the *Fisheries Management Act 1994* (NSW) and related Regulations, 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 The *Interim Access policy* is available on the DPI website at: <http://www.dpi.nsw.gov.au/fisheries/aboriginal-fishing/legislation>

ⁱⁱⁱ The draft Regulation, consultation documents and details about having a say are available on the DPI website at: <http://www.dpi.nsw.gov.au/fisheries/aboriginal-fishing/cultural-fishing/draft-regulation>

^{iv} The section 37 permit application form is available on the DPI NSW website at: <http://www.dpi.nsw.gov.au/fisheries/aboriginal-fishing/cultural-fishing>