

Cultural Fishing in NSW

May 2009

Introduction

Many Aboriginal people have as part of their culture, strong spiritual, social and customary associations with fisheries resources. It is important that Aboriginal people are able to continue this association, maintain their knowledge and pass on within their own communities and, to future generations.

With increasing population and greater pressure on the marine environment, Government regulation of fishing activity has been necessary to maintain sustainable use of our fisheries resource. This regulation has also impacted on Aboriginal communities continuing aspects of traditional fishing practise.

The *Fisheries Management Act 1994* provides the framework by which fish may be harvested. Currently, the Act does not specifically recognise or provide for cultural fishing. Section 37 of the Act has however allowed for the issue of a special permit for activities such as cultural fishing that may otherwise be defined as "unauthorised". The NSW government has used these provisions, amongst other things to enable Aboriginal people to take fish outside the rules of commercial and recreational fishing to satisfy cultural needs.

The lack of specific recognition of Aboriginal peoples' cultural fishing needs and traditions by the Act has long been acknowledged and changes are underway. Amendments to the Act are being made that will specifically include a definition of cultural fishing, an objective to recognise cultural fishing and specific provision within section 37 that provides for cultural fishing. These changes will identify cultural fishing as a legitimate fishing activity in NSW.

With these amendments comes an opportunity to build on the actions and initiatives implemented under the NSW Indigenous Fisheries Strategy, particularly in relation to the issuing of permits under section 37 of the Act for cultural fishing.

A definition of cultural fishing

The following definition for Aboriginal cultural fishing has been drafted for inclusion in the Act:

"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 or ceremonial purposes or other traditional purposes, and which do not have a commercial purpose."

Access for Cultural Fishing

Section 37 permits have been available to Aboriginal people for cultural fishing activities since the implementation of the Act in the early 1990s. However, applications have been sporadic and the application process challenging.

It is recognised that some Aboriginal people do not consider it necessary or "fair" that they should need to apply or be issued with a special permit to fish outside the current rules, an activity they consider a right.

It is important, however, that government and Aboriginal communities continue to work together to recognise and protect customary fishing rights and that they are integrated into current and future management frameworks.

Current process for issuing a section 37 permit

If Aboriginal people wish to take fish for cultural purposes outside the rules that apply to recreational fishers, for example, bag limits, closures, use of gear or legal sizes, they must apply for a special permit to be issued under section 37 of the *Fisheries Management Act 1994*.

The application form and process has changed over time following feedback from Aboriginal people and NSW Department of Primary Industries (NSW DPI) staff.



Currently:

- Forms are available on the internet – www.dpi.nsw.gov.au, from local Fisheries Offices or by contacting the NSW DPI Fisheries Business Services Unit
- NSW DPI staff are available to help complete this form
- Information required includes:
 - The name and addresses of the applicant and those who will be fishing
 - The organisation and the event for which the permit is sought
 - The location of the event
 - The number of people attending
 - The location of where fishing will occur
 - The species and quantities to be taken
 - The type of car that will be used to transport the fish to the event
 - Whether support has been given for the fishing activity by the traditional clans, custodians or Local Aboriginal Land Council where the fishing activity will occur
- Applications ideally should be submitted at least 3 weeks before the event.

Issues raised in relation to current process

A number of issues have been raised in relation to the current process:

- It has been suggested that too much information is required on the form
- The exact date of fishing may not be known at the time of application as weather and sea conditions are variable
- The process is complicated and slow
- There is lack of awareness of, or resistance to apply for a permit
- Fisheries Officers must be advised before fishing takes place

The requirement to provide information such as location and date of fishing, proposed harvest and fishers' names is important because:

- Information such as the number and size of fish being caught can be used to promote sustainable harvest by all user groups. More importantly, it ensures that the cultural catch is formally recognised when total allowable catches are set for commercial fisheries. If the cultural catch is not known, it is possible that the commercial catch may be over-allocated

- If compliance officers know the date and location of fishing activity, cultural fishing can be promoted and claims of illegal fishing easily refuted.

NSW DPI has also tried to improve the process by dealing directly with the applicant and by assisting with completion of the form. Generally applications are processed within a few days and if a change of date for fishing is required because of bad weather or other cultural commitments, a call to the local fisheries office can generally resolve the issue.

Opportunities to improve the process

Feedback is being sought through this paper on how the process can be refined further. Options that could be explored include:

- streamlining the process by identifying major cultural events in advance. This will allow more lead time for consultation and associated administration and distribution of the permit. Standing permits could be issued for these events.
- issuing permits to a community or elder to administer on behalf of the community. It would still however be important to notify NSW DPI when fishing was occurring and to provide harvest information.

It is proposed to make it easier to find the form on the NSW DPI web site and send forms to Land Councils for distribution. The local Fisheries Office and the Fisheries Business and Services Unit are available to assist with any enquiries.

To increase awareness of the availability of section 37 permits, a targeted advisory and education program could be initiated. It is proposed that staff from NSW DPI meet with local communities to talk about the permits in the first instance. Future articles in publications such as the Koori Mail and the production of a small flyer may also better inform communities and facilitate cultural activity.

What is the best way to get information to Aboriginal people about opportunities for cultural fishing that may be outside the current commercial or recreational fishing rules?

How can NSW DPI make it easier to get an application form and information?

What could be done to make the form easier to understand and complete?

Development of guidelines for cultural fishing

Aboriginal people can fish under commercial fishing rules (if they are licensed), recreational fishing rules or under special arrangements, linked to a cultural event. It is important that cultural fishing is distinguished from commercial or recreational fishing and that the recognition of cultural fishing is not exploited by those fishing illegally. An aim of the National Indigenous Fishing Principles, endorsed by the NSW Government, is to recognise and protect cultural fishing practises and to carry out those practises in accordance with Indigenous laws. Feedback on cultural practices is sought to inform guidelines and conditions that might be attached to a section 37 permit.

- What do you consider to be a cultural event?
- What are the major cultural events for your community?
- What indigenous laws should be taken into account for cultural fishing?
- Should only certain types of gear be used when fishing for cultural purposes?
- If "traditional" types of gear are used and there are no major sustainability issues, should size limits apply?
- What types of fish are/were typically caught by your community?
- What are reasonable quantities of fish for an event ie, how many abalone or lobster per person would be considered reasonable?
- Do your cultural events include the need for marine vegetation? If so what type and how much?
- Should a community organisation approve an application before it is sent to NSW DPI?
- What appeal options, if any should be available if an application for a permit is refused?
- What options, if any should be available for 3rd party appeals if an application is approved but not supported by another community member?
- What type of penalty should be imposed on those who do not fish in accordance with the cultural access arrangements and who should impose these penalties?

Where to from here?

Feedback from Aboriginal people and communities is sought. You can send in a written submission or attend one of the proposed meetings to talk about these issues. Advice from submissions and the meetings will be used to formulate the

revised guidelines for cultural fishing in NSW.

If you would like to make a written submission please send it to:

Cultural Fishing
PO Box 21
CRONULLA 2230
or fax: 02 9527 8558
or email: cultural.fishing@dpi.nsw.gov.au

Submission close **30 June 2009**

Meetings will be held at the following locations:

Location	Dates	Venue
Batemans Bay	12 May 9.30 am	BB Rugby Club. Hanging Rock Oval. Beach Road Catalina
Wagga Wagga	13 May 2.30 pm	DPI Offices Pine Gully Road Wagga Wagga
Coffs Harbour	25 May 9.30 am	Marine Science Centre. Bay Drive Charlesworth Bay (opp Novotel)
Dubbo	26 May 12.00 pm	Carlton House. 212 Darling Street Dubbo
Gosford	16 June 11 am	Suites 36-38, 207 Albany Street North, Gosford NSW

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (April 2009). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of New South Wales Department of Primary Industries or the user's independent adviser.

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