

# Gumbaynggirr Native Title and Fishing

April 2018 Primefact 1591 Second edition  
Recreational & Aboriginal Fisheries

## Introduction

On 15 August 2014 and 8 December 2017, the Gumbaynggirr People's native title rights were formally recognised through orders of the Federal Court.

In 2014, a Consent Determination formally recognised a range of native title rights for the Gumbaynggirr People (NSD6054/98) at Warrell Creek on the mid north coast, including "the right to fish in the temporary waters occurring above the mean high water mark in the Consent Determination Area". This right, together with the other native title rights and interests recognised in 2014, is for personal, domestic and non-commercial communal purposes and are non-exclusive (meaning others are able to continue to undertake and enjoy fishing activities in accordance with the rules applicable to their activities from time to time).

On 8 December 2017, the Federal Court further determined that the Gumbaynggirr People (NSD6104/98) have native title rights and interests over an area of land and waters at Wenonah Head, near Urunga, on the mid-north coast of NSW. A range of non-exclusive rights were determined, including the right to fish, and to access natural resources and to take, use, share and exchange those natural resources for any purpose.

DPI Fisheries manages the State's fisheries resources on behalf of, and for the benefit of, all of the people of NSW in accordance with the objects and provisions of the *Fisheries Management Act 1994* and with regard to the native title rights held in an area. Ensuring sustainability of the resource is the primary objective of DPI Fisheries. Lawful rights and appropriately shared access to the resource are also ensured through management arrangements that promote quality recreational fishing opportunities, viable commercial fisheries and aquaculture, and continuation of Aboriginal cultural fishing (in its broader context beyond specific native title rights and interests in the area).

## Where do the native title rights of the Gumbaynggirr People apply?

The land and waters over which the Gumbaynggirr People hold native title is fully described in Schedule A of the Consent Determination made on 15 August 2014 and Schedule 1 of the Consent Determination made on 8 December 2017. The determination areas are depicted in Figures 1 and 2 of this document.

Within the overall boundary of the determination area at Warrell Creek (Figure 1), the native title right to fish is recognised over certain waterways. These include the temporary tidal waters above the mean high water mark (that may occur from time to time).

Within the boundary of the determination area at Wenonah Head (Figure 2), the native title right to fish and to access natural resources for any purpose is also recognised over certain waterways including Dalhousie Creek, McGraths Creek, Oyster Creek, and along the coastline from the mean low water mark landwards.

## Who are the native title holders?

Native title is held by the Gumbaynggirr People, who are the Aboriginal persons who are:

- the biological descendants of persons named in the consent determinations who inhabited the area since European settlement; and
- persons adopted into the families of these descendants and who identify as and are accepted as Gumbaynggirr People in accordance with Gumbaynggirr traditional laws and customs.

## What kind of fishing activities can the Gumbaynggirr native title holders undertake?

The Gumbaynggirr People have the right to fish in the determination area at Warrell Creek for personal, domestic and non-commercial communal purposes. In the determination area at Wenonah Head, the Gumbaynggirr People have the right to fish and to access, take, use share and exchange natural resources for any purpose.

This means that the Gumbaynggirr People can fish according to their traditional laws and customs, with recognition that traditional ways of fishing evolve over time and use of modern materials and methods exists.

Although much of the fishing activities will fall within what is prescribed by the *Fisheries Management Act 1994* and the *Marine Estate Management Act 2014*, the Gumbaynggirr People are not bound by all of these laws when exercising their native title right to fish and gather traditional natural resources for personal, domestic and non-commercial communal use. For example, when non-prescribed fishing gear is used for a traditional purpose or prescribed catch limits are exceeded in address of cultural needs.

Commercial access to the wild fisheries resources is managed in line with the State's statutory commercial fishery framework. There are no exemptions to these rules being applied. Native title commercial rights that have been recognised are subject to management in line with the commercial fishery framework.

## Will the activities of native title holders place increased pressure on fish stocks in the area?

The fishing activities of the Gumbaynggirr People have been taking place for generations. Although it is recognised that present day fisheries resources are exposed to broader harvest and other pressures, there is nothing to suggest that the harvest by the Gumbaynggirr People in fulfilling their recognised fishing rights is different to what has historically taken place alongside the other users of the resource. It is expected that harvest will continue in ways and at levels that is already being experienced.

## Can people who do not hold native title visit and fish in these areas?

Yes, in most circumstances non-exclusive areas are accessible to all unless closed due to other restrictions not related to native title. The determination of native title rights over water is not exclusive and allows the waters and natural resources to be shared with other rights and interests in the same area.

Whilst there are trails within the Wenonah determination area closed to public access due to other restrictions, the public's rights of access to the Wenonah Head recreational area, Jagun Nature Reserve, the beach and waterways continues. Activities related to fishing along the public easements in the area are able to be continued.

With recognition of and due respect given to activities of the various user groups within the area, access to and enjoyment of the State's fisheries resources can be harmoniously undertaken and everyone's needs can be met.

### More information

National Native Title Tribunal

<http://www.nntt.gov.au/Pages/Home-Page.aspx>

Native Title and Indigenous Land Use Agreements | NSW Department of Primary Industries

<http://www.dpi.nsw.gov.au/fisheries/aboriginal-fishing/native-title>

### Contact

DPI Fisheries, Ph: 1300 550 474

**Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.**

© State of New South Wales through Department of Industry 2018. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Industry as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (April 2018) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Industry), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication. **PUB15/296**

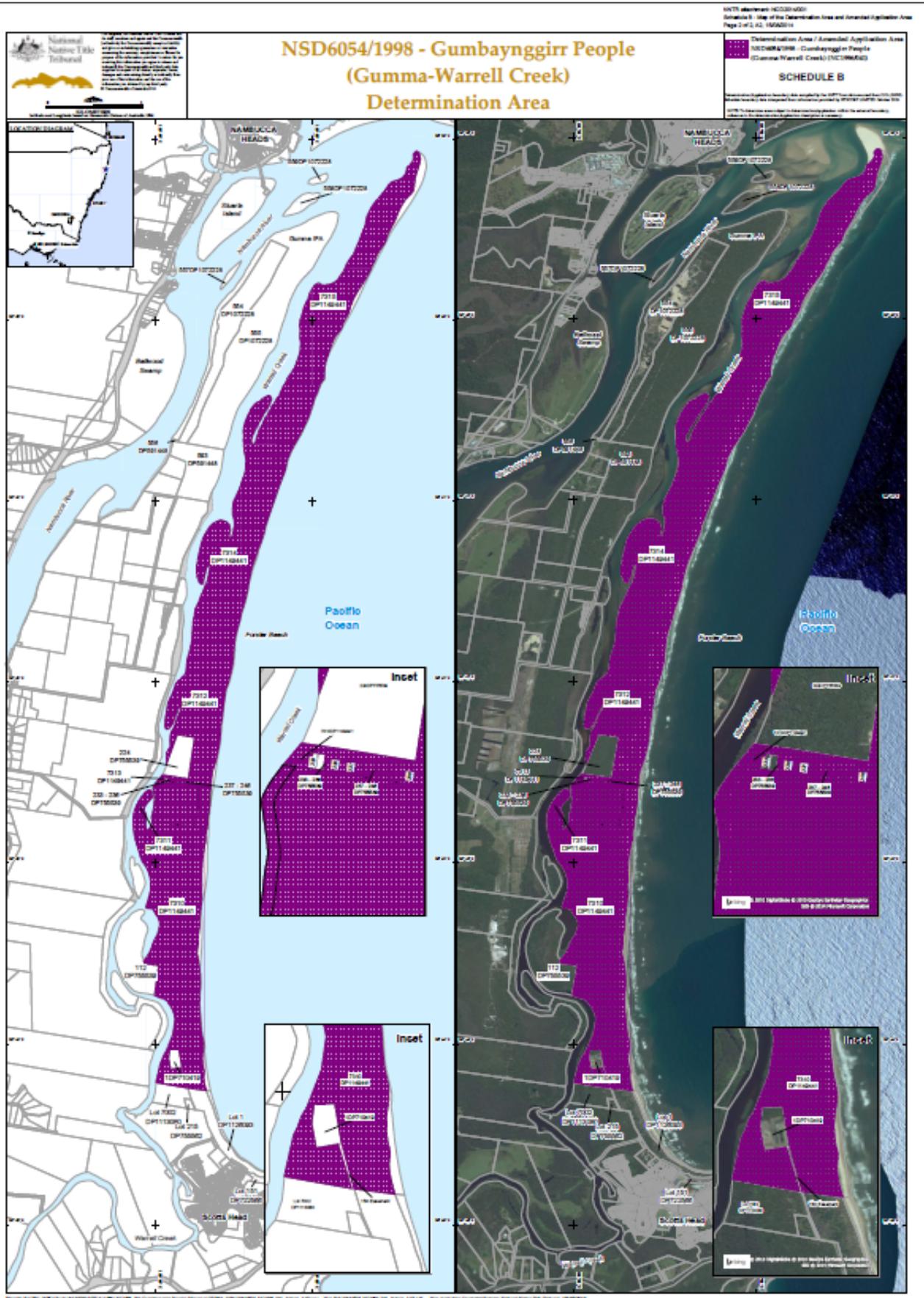


Figure 1. Plan of Determination Area – Gumbaynggirr People (Gumma-Warrell Creek) NSD6054/1998 (Source: National Native Title Tribunal).

