

Western Bundjalung Native Title and Fishing

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Recreational & Indigenous Fisheries

Introduction

On 29 August 2017, the Western Bundjalung People's native title rights were formally recognised through orders of the Federal Court.

A consent determination was made to recognise a range of native title rights and interests over land and waterways in the determination area. An Indigenous Land Use Agreement (ILUA), which sets out the manner in which native title rights and interests will be implemented, will be submitted to the National Native Title Tribunal for registration.

The range of native title rights now formally recognised for the Western Bundjalung People includes the right to fish and gather traditional natural resources in the determination area. These native title rights are non-exclusive, which means all other persons are able to continue to undertake and enjoy fishing activities in accordance with the rules applicable to their activities from time to time. The native title rights and interests recognised are subject to and exercisable in accordance with the laws of the State of NSW and the Commonwealth and with traditional laws acknowledged and traditional customs observed.

DPI Fisheries manages the State's fisheries resources on behalf of, and for the benefit of, all the people of NSW. The management of this resource observes the objects and provisions of the *Fisheries Management Act 1994* and has 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 Western Bundjalung People apply?

The land and waters over which the Western Bundjalung People hold native title rights are fully described and depicted in the Consent Determination of the Federal Court made on 29 August 2017. The map shown on page 3 of this document shows the boundary of the claim area within which native title has been recognised in certain areas.

In addition to the recognition of rights in certain parcels of land, native title is also recognised over certain waterways within the boundaries of the Consent Determination area, including parts of the Clarence, Mann, Boonoo Boonoo and Timbarra Rivers and their tributaries.

Who are the native title holders?

Native title is held by the Western Bundjalung 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 Western Bundjalung People in accordance with Western Bundjalung traditional laws and customs.

What kind of fishing activities can the Western Bundjalung native title holders undertake?

The Western Bundjalung People have the right to hunt, fish and gather traditional natural resources of the determination areas for their, personal, domestic and communal use (including cultural purposes) in areas where their native title has not been extinguished, or is otherwise excluded, in accordance with their traditional laws and customs. This means that they 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*, the Western Bundjalung 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 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.

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

The fishing activities of the Western Bundjalung 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 of the Western Bundjalung People, fulfilling their fishing rights, is inconsistent with what has historically taken place in conjunction with the harvest by other stakeholders. It is expected that harvest will continue in ways and at levels that are already being undertaken alongside that of other stakeholders.

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. A 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.

With recognition and respect of the fishing activities of all 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

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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.

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (September 2017). 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 the Department of Primary Industries or the user's independent advisor.

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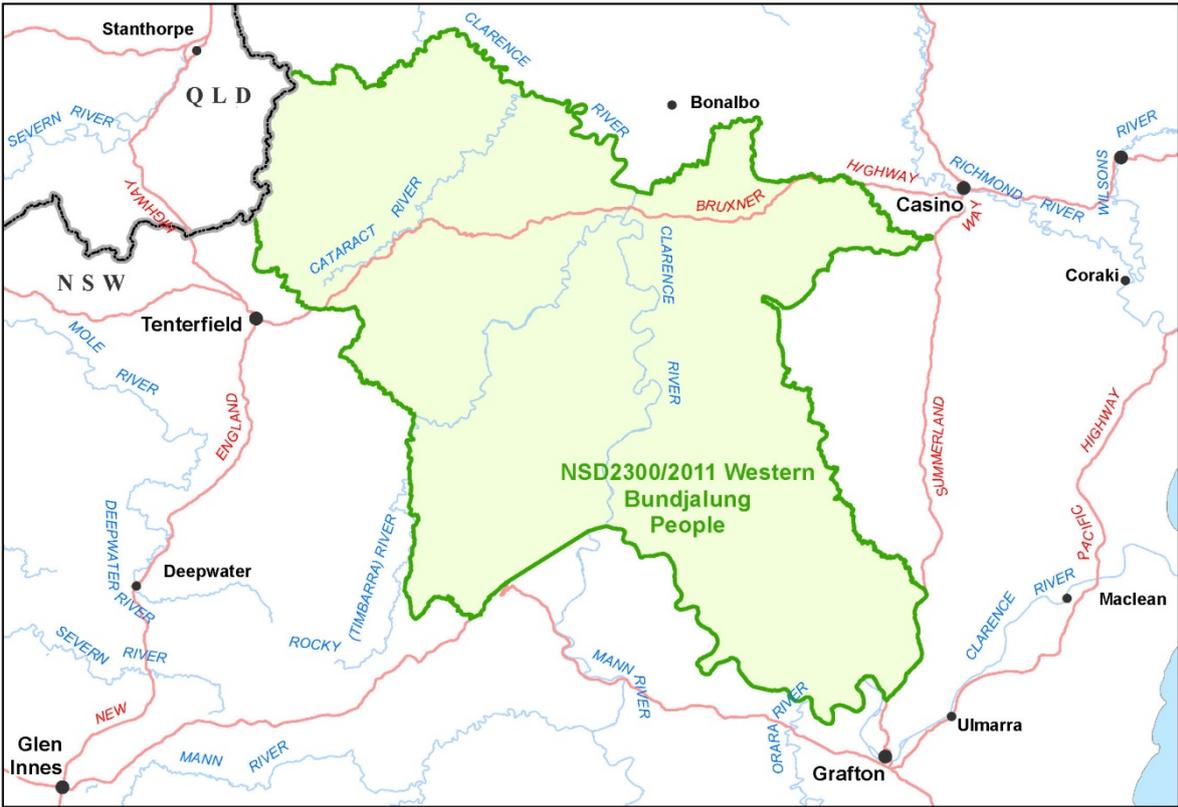


Figure 1. Boundary of Claim Area – Western Bundjalung (NSD2300/2011) (Source: National Native Title Tribunal)