



New Fishing Laws - The first step in the right direction for Aboriginal fishers in New South Wales.

This Fact Sheet provides general information about recent amendments to the *Fisheries Management Act 1994 (New South Wales)*¹, which now includes acknowledgement of - and provisions for - Aboriginal cultural fishing in New South Wales (NSW). This fact sheet has been developed by the NSW Aboriginal Land Council (NSWALC).

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. The information in this fact sheet is current as of May 2010.

NSWALC and others have been part of wider delegations who have been involved in negotiations with the Minister for Primary Industries and the Department of Industry and Investment NSW (I&I NSW), to amend the *Fisheries Management Act 1994 (NSW)* to recognise Aboriginal cultural fishers.

What were the previous provisions for Aboriginal fishers in NSW?

Under the previous law, the lack of a clear definition of Aboriginal cultural fishing has seen countless Aboriginal people prosecuted over the years simply for engaging in traditional fishing practises.

Aboriginal fishers were only categorised as either *recreational fishers* or *commercial fishers*.

However, some exemptions did apply for Aboriginal fishers. These were mainly for those community members fishing inland from freshwater sources, members of Local Aboriginal Land Councils (LALCS) within their respective boundaries, and areas subject to native title application or determination.

These measures did not provide equity for *all* NSW Aboriginal community members.

A provision also existed for larger scale cultural events via the application for a permit. This however has been historically plagued by administrative burdens and inflexibility.

Previously, no avenues were provided for the traditional subsistence style of fishing.

What has changed?

The *Fisheries Management Act 1994 (NSW)* now includes a definition of Aboriginal cultural fishing which states:

Aboriginal cultural fishing means fishing activities and practices carried out by Aboriginal persons² 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.³

Apart from the definition of a cultural fisher, other welcomed improvements include:

- A general exemption for all Aboriginal people from paying the recreational fishing fee for both saltwater fishing activities and freshwater fishing activities;⁴
- 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 streamlining of the process for obtaining a section 37 permit to catch fish for larger cultural and ceremonial purposes.

Interim Compliance Provisions

The proclamation by the Minister for Primary Industries for a portion of the amendments took place on 01 April 2010.

Due to the fact that s21AA of the *Fisheries Management Act 1994 (NSW)* - which compliment the Aboriginal cultural fishing amendments - has not yet commenced by proclamation, and regulations have not yet been developed in consultation with the *Aboriginal Fisheries Advisory Council (AFAC)*, I&I NSW have afforded interim provisions for Aboriginal cultural fishing in the spirit of the recent cultural fishing amendments.

The *Interim Compliance Policy* includes provisions for cultural events and subsistence measures.

[Please see *Fishing Fact Sheet 2 – Interim Provisions for Aboriginal Fishers in NSW*, for further information on these provisions. This fact sheet can be accessed at www.alc.org.au.]

Aboriginal Fisheries Advisory Council (AFAC)

NSWALC is currently working closely with the NSW Government, through I&I NSW, on the establishment of the AFAC which will advise the Minister on all Aboriginal fishing issues.

This will include components of the regulations that will provide for Aboriginal cultural fishing consistent with the new amendments; and future changes required to bring into effect the Minister's commitment to increase opportunities for Aboriginal communities in the commercial fishing sector.

More information

For more information about the changes, and other Fact Sheets and advice developed for LALCs visit the NSWALC website at www.alc.org.au.

Alternatively, you can contact the NSWALC Policy and Research Unit on 02 9689 4444 for further information.

¹ A current version of the *Fisheries Management Act 1994 (NSW)* can be accessed online at NSW Legislation: <http://www.legislation.nsw.gov.au> – Follow the links to the 'Browse', then 'Acts', then 'F'.

² 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.

³ *Fisheries Management Act 1994(NSW)*, s4 (1)

⁴ *Fisheries Management Act 1994 (NSW)*, s34 C 2(f)