

Submission
No 1011

INQUIRY INTO RECREATIONAL FISHING

Organisation: New South Wales Aboriginal Land Council
Name: Ms Clare McHugh
Position: A/Director, Policy & Research
Date received: 6/04/2010



The Director
Select Committee on Recreational Fishing
Parliament House
Macquarie Street
Sydney NSW 2000

Wednesday, 31 March 2010

Dear Director,

Re: Submission by the New South Wales Aboriginal Land Council in response to the Inquiry into recreational fishing

Thank you for the inviting the New South Wales Aboriginal Land Council to provide a submission in respect to the inquiry into recreational fishing currently being conducted by the NSW Legislative Council's Select committee on Recreational Fishing.

As you may be aware, in December 2009 amendments to the *Fisheries Management Act* were passed by Parliament which included provisions for a new class of fisher – the *Aboriginal cultural fisher*. It is within this context that this submission is provided to the committee for its consideration.

If you have any questions regarding this submission, or wish to discuss this matter, please contact Clare McHugh, A/Director of Policy and Research on

Yours sincerely,

Clare McHugh
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**SUBMISSION BY THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL IN RESPONSE
TO THE INQUIRY INTO RECREATIONAL FISHING**

OVERVIEW:

The purpose of this submission is to provide a brief overview of Aboriginal cultural fishing, particularly in respect to the provisions of the *Fisheries Management Act 1994*, and the *Fisheries Management Amendment Act 2009*.

BACKGROUND:

The Fisheries Management Act 1994:

Under the *Fisheries Management Act 1994*, Aboriginal cultural fishers were classed as either 'Recreational' fishers or 'Commercial' fishers. Under the provisions of the *Fisheries Management Act 1994*, Aboriginal cultural fishers were afforded little freedoms, with the only exemption being:

- No fee or license required if fish are being taken from freshwater, and
- No fee or license required if fish are taken in accordance with Native Title rights or interests, subject of an approved determination.

Classed as Recreational fishers, Aboriginal cultural fishers were subject to recreational bag limits, legal sizes, area closures, and gear and species limitations, as per the regulations associated with Recreational fishing.

The only instrument within the *Fisheries Management Act 1994* that acknowledged Aboriginal cultural fishing was the section 37, '*Taking Fish for Aboriginal Cultural or Ceremonial Use Permit Application*'. Subject to approval, this instrument allows Aboriginal cultural fishers to fish outside of the limitations of the Recreational fisher for the purpose of cultural or ceremonial events. However it is widely acknowledged within Aboriginal communities that the section 37

process was problematic and often failed to meet the needs of communities, particularly in respect to the timeframes associated with applying for a permit and the discretionary nature of the granting of permits.

The Fisheries Management Amendment Act 2009:

On 3 December 2009, amendments to the *Fisheries Management Act 1994* were passed by Parliament. The *Fisheries Management Amendment Act 2009* ("the Act") provides recognition of the importance of fishing for Aboriginal people through the object of the Act – '*to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing*'¹.

The Act defines the practice of Aboriginal cultural fishing as:

*'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, ceremonial or other traditional purposes, and which do not have a commercial purpose'*².

The Act provides a special provision for Aboriginal cultural fishing³, which:

- **Authorises an Aboriginal person to take or possess fish** for the purpose of Aboriginal cultural fishing in accordance with the Act, and consistent with native title rights and interests under an approved determination of Native Title or with the terms of an Indigenous Land Use agreement,
- **Provides for the making of Regulations** for the management of Aboriginal cultural fishing including, but not limited to, the taking or possession of fish and restrictions as to the quantity of fish of a specified species, and

¹ Objects of Act, section 3(2)h of the *Fisheries Management Amendment Act 2009 No. 114*

² Definitions, section 4(1) of the *Fisheries Management Amendment Act 2009 No. 114*

³ Offences relating to size, quantity and particular species of fish, section 21AA of the *Fisheries Management Amendment Act 2009 No. 114*

- **Does not prevent the issue of a section 37 permit** for Aboriginal cultural fishing purposes, outside of the provisions provided by the special provision for Aboriginal cultural fishing.

Where necessary for Aboriginal cultural fishers to fish outside of the limits prescribed by the Regulations, such as for large cultural events, a permit is required⁴.

The practical application of this provision is that Aboriginal cultural fishers, fishing within the meaning of the Act, are no longer required to apply for a permit as they are deemed to be authorised to fish, a freedom previously only afforded to Aboriginal people fishing in freshwaters.

Aboriginal Ministerial Advisory Council:

The Act further provides for the establishment of an Aboriginal Ministerial Advisory Council under section 229 which will advise the Minister of matters relating to the management of Aboriginal cultural fishing.

Proclamation of the *Fisheries Management Amendment Act 2009*:

At the time of writing this submission the new provisions of the Act are not yet in effect. It is anticipated to be proclaimed by the Minister for Primary Industries, Steve Whan on 1 April 2010.

Marine Parks:

The New South Wales Aboriginal Land Council is aware of broad concerns within Aboriginal communities regarding restricted access to Marine Parks for Aboriginal cultural fishing purposes. Anecdotal evidence has revealed that Aboriginal communities have been restricted

⁴ Defences, section 37(1)(c) of the *Fisheries Management Amendment Act 2009 No. 114*

from carrying out Aboriginal cultural fishing practices in areas within Marine Parks which hold cultural and traditional values.

The New South Wales Aboriginal Land Council anticipates Aboriginal coastal communities will increase their focus on issues concerning improved access to Marine Parks for Aboriginal cultural fishing purposes in the near future.