

Aboriginal Engagement and Cultural Use of Fisheries Resources in NSW Marine Parks

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Policy Statement

The Department recognises that the Aboriginal people of NSW have a continuing custodial relationship with 'Country', the land, sea and their resources. This extends to maintaining spiritual links to and caring for Country. Cultural use of fisheries resources is an integral part of the Aboriginal relationship with Country and the Department acknowledges that conservation-based fisheries and marine park laws place some restrictions on cultural resource use within NSW marine parks.

This policy aims to:

- encourage the involvement of Aboriginal people in the planning and management of NSW marine parks
- support and provide for the cultural use of fisheries resources in NSW marine parks.

This policy is guided by Two Ways Together, the NSW Government's Aboriginal Affairs Plan 2003–2012, which aims to improve the social, economic, cultural and emotional well-being of Aboriginal people and is consistent with a whole of government framework for ecologically sustainable and culturally appropriate use of natural resources.

In implementing this policy the Department will work with traditional owners, Aboriginal owners, native title holders or registered native title claimants, who are representative of local Aboriginal people and have the authority to speak for Country.

Scope

1 Encouraging involvement in planning and management of marine parks

The Department would like to ensure that Aboriginal people take part in decision-making around how marine parks are managed.

1.1 Aboriginal representatives on marine park advisory committees

Local Marine Park Advisory Committees provide advice to the Department and ministers on the zoning and management of each marine park. The committees include marine science, commercial fishing, recreational fishing, scuba diving, Aboriginal, tourism, local government and conservation representatives. The Department encourages Aboriginal people to nominate for membership of local marine park advisory committees where and when vacancies arise.

1.2 Aboriginal Advisory Groups

At the request of Aboriginal people, the Department will establish and support an Aboriginal Advisory Group for each marine park that will discuss how to manage marine park issues of concern to the community.

1.3 Aboriginal community meetings

Where broader involvement with the Aboriginal community is requested by the Aboriginal Advisory Group, the Department will assist by holding meetings with the Aboriginal community.

1.4 Memorandums of understanding

Aboriginal communities may request to enter into a formal agreement, known as a memorandum of understanding (MoU), with the Department regarding their involvement in the management of a marine park.

An MoU is a voluntary agreement that is not legally binding, but helps ensure that the interests of the Aboriginal community in the management of the marine park is documented and agreed to. For example, interests might include community participation in park management and how marine parks staff will consult with the Aboriginal community on management issues. MoUs may also document aspirations for employment, education and training for Aboriginal people, and involvement in education and interpretation of the cultural heritage.

MoUs will only be developed at the request of Aboriginal people who have authority to speak for Country, including a traditional owner, an Aboriginal owner, an elder, or a registered native title claimant.

2 Supporting cultural resource use in marine parks

Cultural resource use involves the collection of fish and marine plants for subsistence, medicinal and other Aboriginal cultural purposes within a marine park. Cultural resource use can also refer to activities associated with visiting places, such as culture camps. Cultural use of fisheries resources is supported in marine parks through the three following processes.

2.1 Establishment of special purpose zones

Special purpose zones are areas within a marine park that require special management.

Aboriginal community involvement in the planning of marine parks through advisory committees and groups can help limit the impact of zoning on cultural resource use and identify the need for the establishment of special purpose zones for cultural resource use. Cultural resource use activities to be undertaken in a special purpose zone can be set out in the marine park zoning plan. There are already special purpose zones in Cape Byron, Solitary Islands and Batemans marine parks that support cultural resource use. For example, the Arrawarra Headland special purpose zone in the Solitary Islands Marine Park includes ancient stone fish traps and provides for traditional use and research. The need for additional special purpose zones can be considered during marine park preparation of marine park management plans.

2.2 Development of Cultural Resource Use Agreements

Cultural Resource Use Agreements are intended to set out the Aboriginal cultural fishing activities that may be undertaken in a marine park, including across different zones. An agreement between the Department and Aboriginal people would document the cultural significance of places and activities in the marine park as well as include details of the proposed harvesting. For example, details of the species and quantities of fish or marine plants to be harvested, the methods and fishing gear being used, from what areas or zones harvesting will occur, and monitoring programs.

At the request of traditional owners, Aboriginal owners, or registered native title claimants, the Department will participate in the development of Cultural Resource Use Agreements. Assessments relating to the issue of fisheries and or marine parks permits required to support cultural resource use will occur as a cultural resource use agreement is being developed. The relevant marine park and fisheries permits will then be issued as part of finalising the agreement and these will apply for the period of the agreement. Permits may be issued to groups or individuals.

2.3 Event specific permits for individuals or groups

If a Cultural Resource Use Agreement has not already been established, Aboriginal people can request a short-term permit to undertake cultural resource use that involves fishing contrary to marine park and fisheries laws; for example, in connection with specific community and cultural events and gatherings, including cultural camps (e.g. the National Aboriginal and Islander Day Observance Committee week celebrations).

Event-specific permits will not allow fishing in sanctuary zones, the harvesting of protected species, or the use of fishing gear and methods that are not allowed in the marine park zone. The assessment and issue of marine park and or fisheries permits will be coordinated as part of a single process and apply to the period of the specific cultural event.

3. Principles applying to cultural resource use activities

Cultural resource use must be ecologically sustainable. Activities that result in irreversible damage to habitat, such as seagrass or reefs, or involve the harvesting of fish smaller than the minimum legal length or larger than the maximum legal length will not be permitted. Cultural significance and the availability of alternate sites within a marine park would be considered before a Cultural Resource Use Agreement is made supporting cultural fishing in a marine park sanctuary zone.

The ability to harvest in excess of fisheries bag and possession limits will be considered in the development of special purpose zoning, cultural resource agreements and in the assessment of event-specific permits. The use of traditional and modern methods and fishing gear not normally allowed in a marine park zone will be considered as part of special purpose zoning and in the development of cultural resource agreements.

Prohibitions on the use of explosives or poisons would remain and the taking of listed threatened species under NSW or Commonwealth laws will not be permitted. Cultural resource use activities must be safe for those Aboriginal people undertaking them and for members of the public.

4. Summary of cultural resource use activities and mechanisms

Cultural resource use will typically involve a combination of taking of species and a quantity of fish using certain fishing gear and methods in an area or zones within a marine park over a period of time. Table 1 provides a simple guide to the range of cultural resource use activities that may be possible under this policy through special purpose zoning, cultural resource agreements or event specific permits.

5. Native title

Cultural resource use activities will only be allowed where they do not affect native title rights and interests and are consistent with the Native Title Act 1993 (Cth). If a native title determination is made by the Federal Court it will set out which native title rights apply and this may change the fisheries or marine park approvals needed.

Table 1. Range of cultural resource use activities that may be possible under this policy.

Cultural resource use that involves the following may be possible, subject to case-by-case assessment	Approach to cultural resource use		
	Special purpose zoning	Cultural Resource Use Agreements	Event specific permit(s)
<i>Fish species, quantities and size</i>			
Harvesting a larger quantity of fish than fisheries bag and possession limits	✓	✓	✓
Harvesting fish smaller than minimum legal lengths or larger than maximum legal lengths	☒	☒	☒
Harvesting protected fish species	✓	✓	☒
Harvesting threatened species	☒	☒	☒
<i>Fishing gear and methods</i>			
Recreational fishing gear and methods	✓	✓	✓
Other fishing gear and methods allowed in the marine park zone (e.g. commercial hauling and mesh nets and traps)	✓	✓	✓
Fishing gear and methods not allowed in the marine park zone	☒ ¹	✓	☒
Use of explosives and poisons	☒	☒	☒
<i>Areas within marine parks</i>			
Fishing in areas subject to specific fishing restrictions (closures or regulations)	✓	✓	✓
Fishing in general purpose zones	Not applicable ²	✓	✓
Fishing in habitat protection zones	Not applicable ²	✓	✓
Fishing in sanctuary zones	Not applicable ²	✓	☒
<i>Time period in which cultural resource use could be undertaken</i>			
	As provided by zoning plan	As indicated in the agreement	Related to a specific event

✓ - indicates that the activity may be possible under this policy, subject to case-by-case assessment

☒ - indicates that the activity will not be possible under this policy.

1. A special purpose zone established for cultural resource use would detail the fishing gear and methods allowed in the specific zone.

2. An area that is a special purpose zone cannot overlap other zone types, including general purpose, habitat protection and sanctuary zones.

Requirements

1 Aboriginal engagement in the management of NSW marine parks

1.1 Representation of Aboriginal people on local marine park advisory committees

The Department recognises that having Aboriginal representation on marine park advisory committees can contribute to marine park zoning and management decisions that better meet the needs of Aboriginal people. The Department will seek to ensure that when recommending an Aboriginal community member for appointment to a local Marine Park Advisory Committee, the Aboriginal person has the authority to speak for Country. This will occur through consultation, where possible, with traditional owners, Aboriginal owners, native title holders and/or registered native title claimants and may include letters of endorsement from such groups.

1.2 Establishment of local Aboriginal advisory groups

At the request of traditional owners, Aboriginal owners, native title holders or registered native title claimants, the Department may establish local Aboriginal advisory groups to provide information to the Department and the Aboriginal representative on the advisory committee about Aboriginal issues for a given marine park.

The Group would determine a Terms of Reference and decide on a chairperson, and such things as when, where and how often to meet.

1.3 Consulting the broader Aboriginal community

Although it is the intention that an Aboriginal Advisory Group will consist of members of the Aboriginal community with the authority to speak for Country and the capacity to speak for the community on most matters, broader consultation with the Aboriginal community may also be required in some circumstances.

The marine park manager will hold meetings with the broader Aboriginal community to assist in providing information to the Department, the Aboriginal representative on the Advisory Committee and the Aboriginal Advisory Group about Aboriginal issues within a marine park.

The Aboriginal Advisory Group can also request the marine park manager to convene a meeting of the broader Aboriginal community to discuss important issues associated with the management of the marine park, such as during the development or review of a zoning plan.

1.4 Entering into Memoranda of Understanding between the Marine Parks Authority and Aboriginal people

The interests of traditional owners, Aboriginal owners, native title holders or registered native title claimants in the management of a marine park may lead to a request for a formal agreement regarding involvement in the planning and management of the marine park through the development of a Memorandum of Understanding (MoU). An MoU is a non-legal voluntary agreement between two or more parties that aims to formalise the terms of a relationship, or an agreed operating arrangement between the parties.

MoUs concerning marine parks will only be established with traditional owners, Aboriginal owners, native title holders or registered native title claimants who have authority to speak for Country.

MoUs concerning marine parks may address:

- Aboriginal community participation in park planning and management and how the Department will consult with the Aboriginal community on park management issues, including the possible establishment of Aboriginal advisory groups
- employment, education and training opportunities for Aboriginal people
- Aboriginal community access for cultural activities such as cultural camping and other cultural events or access to materials for art and craft purposes, food resources and medicine (giving rise to the negotiation of a Cultural Resource Use Agreement)
- Aboriginal community involvement in education and interpretation of the cultural heritage values of the park.

An MoU is not required to prescribe detailed processes for dealing with these issues, but may instead define an agreed framework for ongoing communication and decision making over time.

MoUs do not recognise or impact on native title rights.

2 Cultural resource use in NSW marine parks

2.1 Legislation

Cultural resource use involving the taking of fisheries resources, such as fin fish and invertebrates, in marine parks is subject to the Fisheries Management Act 1994 and the Marine Estate Management Act 2014.

The Fisheries Management Act 1994 currently allows for cultural resource use within NSW waters where the activity is undertaken:

- by an Aboriginal person in possession of a recreational fishing fee receipt or who is otherwise exempt from the fee within the constraints of the regulation
- within existing species bag limits
- within existing size limit restrictions
- using legal gear and methods
- so that it is not contrary to a fishing closure
- so that it does not involve targeting protected species
- so that it does not involve targeting threatened species.

However, scope exists for cultural resource use contrary to some of these restrictions by a permit issued under section 37 of the Fisheries Management Act 1994. These permits cannot authorise the

taking of threatened species. In addition, a fisheries permit cannot authorise activities contrary to a marine park zoning plan.

The Marine Parks legislation allows for cultural resource use within marine parks where the activity:

- is undertaken in accordance with the provisions of the Fisheries Management Act as described above
- is permitted by the marine park management plan as described within the Regulation
- does not involve targeting protected species
- is not contrary to a marine park notification.

Cultural resource use that is contrary to the above may be authorised under a marine parks permit. However, a marine parks permit cannot authorise activities contrary to the Fisheries Management Act 1994. Permits may be issued to specific persons or may be issued for a class of persons described as a group; for example, Aboriginal people who are members of a specific Aboriginal corporation.

The Marine Parks legislation sets out the process for issuing permits to undertake activities contrary to zoning plans. Permits are issued by the delegate of the ministers, who must consider this policy and all relevant assessment when deciding whether or not to issue a permit, and what conditions might apply to the activity.

2.2 Framework for cultural resource use

Opportunities will be provided within marine parks for Aboriginal people to access waters for cultural resource use of fisheries resources, where that use is ecologically sustainable.

Aboriginal people eligible to undertake cultural resource use in marine parks can do so through one or more of the following:

- establishment of special purpose zones within marine park zoning plans that are managed for cultural resource use
- development of a Cultural Resource Use Agreement between the Department and eligible Aboriginal people, which includes the issue of any fisheries and/or marine park permits that may be required to give effect to the Agreement
- issue of a marine parks and/or fisheries permit to individuals or groups for specific events on a case-by-case basis.

Cultural resource use must be ecologically sustainable. Limits on activities, particularly the fishing of protected species or taking of fish in sanctuary zones may apply. Cultural resource activities within sanctuary zones will only be allowed as part of a Cultural Resource Use Agreement.

Cultural resource use is not to be undertaken for commercial benefit. Although commercial activities may be undertaken by Aboriginal peoples or communities within marine parks – for example, cultural tourism ventures and commercial fishing – these activities have different and separate approval requirements which fall outside of the scope of this policy.

Cultural resource use by eligible Aboriginal people who are not native title holders is only permitted where it does not effect native title rights and interests recognised under the Native Title Act 1993 (Cth), unless permissible under the 'future act' provisions of that Act.

Aboriginal people may use modern and traditional gear and methods for cultural resource use within marine parks within the limitations of existing marine parks and fisheries legislation, unless a permit has been issued authorising the use of other gear and methods.

Cultural resource use must be undertaken with regard to the safety of participants and other persons including members of the public and marine park officers.

3 Eligibility for undertaking cultural resource use

The Department will consult and negotiate with eligible Aboriginal people on the:

- development of Cultural Resource Use Agreements
- identification of special purpose zones for cultural resource use
- assessment of permit applications for cultural resource use.

Aboriginal people who have a determination of native title under the Native Title Act 1993 (Cth), which includes rights and interests to undertake cultural resource use in a marine park, can undertake cultural resource use without any additional approvals being obtained under the Marine Estate Management

Act 2014 or the Fisheries Management Act 1994. In such circumstances, cultural resource use undertaken within the marine park must be in accordance with the native title determination.

Eligible Aboriginal people include:

- traditional owners for the area within or adjacent to the marine park
- Aboriginal owners for the area within or adjacent to the marine park
- an Aboriginal person who is part of a native title claim group that is a party to an Indigenous Land Use Agreement for the area within or adjacent to the marine park (if the agreement does not recognise native title)
- registered native title claimants whose claim covers a marine park or relates to land adjacent to a marine park.

Potentially eligible Aboriginal people may include:

- an Aboriginal person with familial ties (including marital ties) to traditional owners, Aboriginal owners, native title holders or registered native title claimants of the area within or adjacent to the marine park but who may not reside in the area
- an Aboriginal person recognised by traditional owners, Aboriginal owners, native title holders or registered native title claimants as having eligibility (this may include members of the relevant Local Aboriginal Land Council).

The eligibility of these Aboriginal people will be determined by the Department in consultation with traditional owners, Aboriginal owners, native title holders or registered native title claimants.

4 Special purpose zones

Special purpose zones are used when an area within a marine park has special management needs, including cultural resource use.

The Department is committed to considering the need for special purpose zones identified by Aboriginal people for cultural resource use as part of future zoning plan reviews.

Cultural resource use arrangements within special purpose zones would be developed as part of the zoning plan in consultation with eligible Aboriginal people, including approvals required under the Fisheries Management Act 1994.

There are already special purpose zones in Cape Byron, Solitary Islands and Batemans marine parks that support cultural resource use. For example, the Arrawarra Headland special purpose zone in the Solitary Islands Marine Park includes ancient stone fish traps and provides for traditional use and research.

5 Cultural Resource Use Agreements

Cultural Resource Use Agreements allow for the negotiation of access to all marine park zones and may be subject to a mix of restrictions due to area and season, fishing gear and methods as well as species-based restrictions, including bag and possession limits.

Cultural Resource Use Agreements are to be developed where eligible Aboriginal people seek cultural resource use of fisheries resources within a marine park which cannot be achieved through the establishment of special purpose zones for cultural resource use or through the issue of event-specific (i.e. one-off) permits, including where fishing access to a marine park sanctuary zone is sought. Cultural Resource Use Agreements will only be established with eligible Aboriginal people who have the authority to speak for Country.

Cultural Resource Use Agreements will directly inform fisheries and marine park permits that may be required. Finalisation of the conditions associated with these permits and their issue will occur as part of the negotiation and finalisation of a Cultural Resource Use Agreement.

The local Marine Park Advisory Committee will be advised of the Departments intention to develop a Cultural Resource Use Agreement with eligible Aboriginal people and will be updated on progress. The Advisory Committee, or individual members of the Committee, may be requested to provide advice or comment on the Cultural Resource Use Agreement where the Department considers there is potential for the Agreement to impact on other marine park users.

The Department will aim to finalise a Cultural Resource Use Agreement within 12 months of the negotiations commencing; however, this would not prevent eligible Aboriginal people requesting additional time.

The Department will work with the Aboriginal community to promote public awareness and understanding of a Cultural Resource Use Agreement once finalised.

6 Event specific permits

The Department recognises that some cultural resource activities may occur in connection with significant family or community events and gatherings, and sometimes at short notice. If eligible Aboriginal people wish to undertake cultural resource use that would involve taking fish contrary to bag limits, fishing closures, gear and method restrictions, they can apply for a fisheries and marine park permit to be issued on an event-specific basis.

Event-based permits will not allow fishing in sanctuary zones, the harvesting of protected species, or use of fishing gear and methods that are not allowed in the marine park zone where harvesting is to occur. The assessment and issue of any marine park and/or fisheries permits will be coordinated as part of a single process and apply to the period of the specific cultural event.

7 Restrictions on species, fishing gear and methods

The following sections set out the circumstances in which cultural resource use activities beyond those currently allowed under the Fisheries Management Act 1994 and Marine Estate Management Act 2014 will be considered during the establishment of special purpose zoning, development of a cultural resource agreement or the issue and reissue of event-based permits.

7.1 Species bag and possession limits

Bag and possession limits under the Fisheries Management Act 1994 set the maximum number of a species of fish that may be taken daily or be in the possession of an individual.

A fisheries permit under the Fisheries Management Act 1994 is required for cultural resource use involving the harvest of fish in excess of bag or possession limits for the purpose of providing food for ceremonies and other gatherings and will be considered by Trade and Investment NSW (T&I NSW; formerly the Department of Primary Industries (fisheries)) on a case-by-case basis. Permits from T&I NSW to exceed bag and possession limits may also be issued in support of a special purpose zone established for cultural resource use or a Cultural Resource Use Agreement.

7.2 Species size limits

Species size limits, or minimum and maximum legal lengths, are a conservation tool under the Fisheries Management Act 1994. Normally, minimum size limits are set at a length equivalent to sexual maturity so the fish have an opportunity to breed before being harvested. Maximum size limits recognise the increased breeding capacity of larger-sized fish within some species. Cultural resource use involving harvesting fish species smaller than the minimum legal length or larger than the maximum legal length will not be allowed.

7.3 Gear and methods

A range of gear and methods are used for fishing and collecting including hooks and lines, traps, nets and spears, and hand-picking. Motorised and non-motorised vessels are also used.

Aboriginal people may use modern and traditional techniques and equipment for the purposes of cultural resource use within marine parks within the restrictions currently in force within the Fisheries Management Act 1994 and Marine Estate Management Act 2014.

Permits to use gear and methods otherwise prohibited under the Fisheries Management Act 1994 or Marine Estate Management Act 1997 may be considered where cultural resource use is permitted in a special purpose zone established or under a Cultural Resource Use Agreement.

A Cultural Resource Use Agreement and/or marine parks permit will be required where cultural resource use would involve the use of gear or methods specifically prohibited in the zone in which the activity is to be undertaken.

A fisheries permit will be required where cultural resource use includes the use of gear or methods not specified as legal within the Fisheries Management Act 1994.

The use of explosives or poisons as part of cultural resource use activities will not be allowed.

7.4 Protected species

Fish species protected under the Fisheries Management Act 1994 and the Marine Estate Management Act 2014 are not allowed to be harvested. Clause 1.30 of the Marine Parks (Zoning Plans) Regulation 1999 prohibits the taking or attempting to take fish or marine vegetation in a marine park identified as protected species in the zoning plan.

The harvesting of species protected under the Fisheries Management Act 1994 or the Marine Estate Management Act 2014 may be negotiated where cultural resource use is permitted in a special purpose zone established for that purpose or under a Cultural Resource Use Agreement.

A fisheries permit and/or marine park permit is required for cultural resource use that involves the taking of species protected under the Fisheries Management Act 1994 or the Marine Estate Management Act 2014.

Note: Permits for the cultural resource use of marine mammals, birds or reptiles protected under the National Parks and Wildlife Act 1974 or other relevant legislation are outside the scope of this policy.

7.5 Threatened species

Threatened species listed under State (Fisheries Management Act 1994, Threatened Species Conservation Act 1995) or Commonwealth (Environment Protection and Biodiversity Conservation Act 1999) legislation are animals or plants whose numbers or habitat have been reduced so much, or are facing such threats, that they are in danger of becoming extinct if action is not taken to protect them or their habitat.

The taking of species listed as endangered, threatened or vulnerable under State or Commonwealth legislation, whether marine fishes, marine invertebrates, marine reptiles, marine mammals or birds, will not be permitted from marine park waters for the purpose of cultural resource use unless native title rights, or interests covered by a native title determination, include the harvest of specified threatened species.

8 Marine park zones

Each marine park includes different types of zones providing different levels of protection for marine animals, plants and habitats, within different areas of the marine park.

The following section sets out the cultural resource use activities currently allowed within marine park zones, and the circumstances in which cultural resource use beyond these limitations may be allowed.

8.1 General use zones and habitat protection zones

General use zones allow most commercial and recreational activities to be undertaken. Habitat protection zones provide greater protection from activities that damage habitats or impact significantly on fish populations.

Cultural resource use in general use and habitat protection zones is usually permitted without requirements for permits or agreements provided that the cultural use is permitted by fisheries legislation. Where cultural use involves the taking of a protected species or a method that is not permitted within one of these zones then a Cultural Resource Use Agreement is required.

Cultural resource use that involves a one-off or infrequent taking of fish, or collecting of invertebrates, or the undertaking of fishing activities otherwise prohibited in the zone, may be undertaken through the issue of an event-specific permit under the Fisheries Management Act 1994 and/or the Marine Estate Management Act 2014. Requests for such permits will be subject to a case-by-case assessment. A Cultural Resource Use Agreement is most appropriate where cultural resource use needs are frequent and ongoing.

8.2 Special purpose zones

Special purpose zones are used when an area within a marine park has special management needs. Although the zones can be declared to enable the management of Aboriginal cultural heritage sites or for cultural resource use, they can also be declared for other purposes, such as to support aquaculture, enable management of port or marina facilities, or for fish feeding.

Cultural resource use within special purpose zones established other than for the protection of Aboriginal culture heritage and cultural resource use would need to be assessed on a case-by-case basis and having regard to the specific objectives of the special purpose zone.

8.3 Sanctuary zones

Sanctuary zones fully protect marine life, including plants and animals, together with their habitat by prohibiting fishing and collecting activities that can harm them.

Cultural resource use that involves the taking of fish or the collection of invertebrates is not permitted in sanctuary zones unless the requesting Aboriginal person is party to a Cultural Resource Use Agreement with the Department for that marine park that specifically authorises such cultural use.

Cultural resource use within sanctuary zones will be considered where:

- the Country within the zone is documented to be culturally significant
- there is no alternative site in which the cultural resource use can occur
- the activity proposed can be conducted without causing significant harm to species or habitats protected within the zone.

Access for cultural use within sanctuary zones may be subject to restrictions including: timing and location, gear or method, allowable species, bag limits, and a monitoring program.

9 Managing impacts of cultural resource use

Cultural resource use may be undertaken in areas also used for commercial fishing or in areas used by permitted commercial tourism operators and permitted commercial enterprises. Rights of priority may be given for cultural resource use activities within special purpose zones. However, in some circumstances, outside of these zones, commercial fishers may have legal rights of priority relating to the use of fishing gear under the Fisheries Management Act 1994 and regulations. Where such priority rights exist, cultural resource use could only be undertaken where it does not interfere with commercial fishing activity already underway; for example, where there are nets set in the water.

Cultural resource use that involves the taking of fish or collecting of marine life or activities currently allowed under existing marine parks or fisheries legislation may occur without specific monitoring programs.

Cultural resource use that needs to be authorised by a permit or occurs in a special purpose zone may be subject to monitoring programs.

10 Review and appeal of cultural resource use decisions

Aboriginal people or communities who have applied for a permit to authorise cultural resource use but are dissatisfied with the Departments decision may apply for a review of the decision. Reviewable decisions include a refusal of a permit and conditions attached to a permit granted by the Department.

Roles and responsibilities

- All staff: must be fair, unbiased, ethical and transparent in their application of this policy

Safety considerations

Eligible Aboriginal people undertaking cultural resource use activities in marine parks are required to ensure the safety of participants, the public and officers of the Department or any other government agency acting on behalf of, or in conjunction with, the Department in the conduct of these activities.

Public safety must be considered by the Department in the issue of permits authorising cultural resource use and these permits. For example, location conditions may need to be considered for

swimming areas on public beaches and timing conditions on activities to reduce risk to public safety. Public liability insurance may be required.

Delegations

- Powers vested in the relevant Ministers may be delegated to the Department. The Department may also delegate powers to its officers, for example, marine park managers. In this policy, references to the consent of the Ministers or the exercise of a power by the Ministers include exercise of that power under delegation. References to the exercise of a power by the Department, or by marine park managers, include exercise of that power under delegations.

Definitions

Aboriginal owners: Aboriginal persons whose names are entered on the Register of Aboriginal Owners because of cultural association with particular land. Note: An Aboriginal person's name and other relevant information is entered in the Register of Aboriginal Owners. The Register is maintained by the Registrar appointed under the NSW Aboriginal Land Rights Act 1983. Source: NSW Aboriginal Land Rights Act 1983.

Aboriginal person: A person who:

- a. is a member of the Aboriginal race of Australia
 - b. identifies as an Aboriginal person
 - c. is accepted by the Aboriginal community as an Aboriginal person.
- Source: NSW Aboriginal Land Rights Act 1983.

Country: The land, sea and its resources.

Cultural resource use: The collecting of native and introduced plants and animals and other natural materials for subsistence, medicinal and other cultural purposes. Cultural resource use may also refer to the activities associated with visiting or interacting with a place or landscape, such as culture camps. Source: NSW Cultural Resource Use Framework.

Note: The Marine Parks Zoning Plans Regulation 1999 defines 'traditional use' as 'a use that satisfies personal, domestic or non-commercial communal needs of Aboriginal people'. This definition is similar to the NSW Government definition for cultural resource use in that they both provide for subsistence, communal, ceremonial and non-commercial use. Note: In this policy 'cultural resource use' specifically applies to the cultural resource use of fisheries resources; i.e. fin fish and invertebrates that are indigenous to the estuarine and marine waters of marine parks.

Ecologically sustainable use: The taking of plants, animals and/or materials from a marine park, and/or some other use of the marine park, in accordance with the principles and programs for ecologically sustainable development set out in section 6(2) (a)–(d) of the Protection of the Environment Administration Act 1991.

Ecologically sustainable development: This requires the integration of economic and environmental considerations in decision-making processes. Relevant principles include intergenerational equity, the conservation of biological diversity and ecological integrity, and the precautionary principle. Source and further information: Protection of the Environment Administration Act 1991 section 6(2) (a)–(d).

Fisheries resources: These resources include fish, marine invertebrates and marine plants. This policy does not address the cultural resource use of resources other than fisheries resources. That is, it does not contain directives to allow for the cultural resource use of land based plants or of marine mammals and reptiles or sea birds.

Indigenous land use agreement: A binding agreement between the State of NSW, registered native title claimants and other affected parties that recognises native title rights and interests in relation to specified land or waters, or does not recognise native title but recognises the continued exercise of specific cultural activities such as cultural resource use, depending on the terms of the agreement. The finalisation of the agreement will often result in the determination of the native title claim and binds all parties to the agreement as well as potential future native title claimants for the area.

Marine park manager: An officer of DPI with the delegation to manage a marine park.

Marine parks permit: A permit issued by the Department (as delegate for the relevant ministers under the Marine Estate Management Act 2014)

Native title holder: Where there has been a native title determination:

- a. a person or persons who hold the native title
 - b. the prescribed body corporate – if a prescribed body corporate is registered on the National Native Title Register as holding native title rights and interests on trust.
- Source: Commonwealth Native Title Act 1993 (Native Title Act 1993 (Cth)).

Native title determination: A determination by the Federal or High Court under the Native Title Act 1993 (Cth) on whether or not native title exists in relation to a particular area (the determination area) of land or waters and, if it does exist, a determination of:

- a. which persons, or group of persons, hold the common or group native title rights
 - b. the nature and extent of the native title rights and interests in relation to the determination area
 - c. the nature and extent of other interests in relation to the determination area
 - d. the relationship between the rights and interests in points (b) and (c) (taking into account the effect of the Native Title Act 1993 (Cth))
 - e. whether the native title rights and interests confer possession, occupation and use of that land or waters on the native title holders to the exclusion of all others.
- Source: Native Title Act 1993 (Cth).

Native title/native title rights or interests: The communal, group or individual rights and interests of Aboriginal or Torres Strait Islander peoples in relation to land or waters where:

- a. the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal or Torres Strait Islander peoples
 - b. the Aboriginal or Torres Strait Islander peoples who by those laws and customs have a connection with the land or waters
 - c. the rights and interests are recognised by the common law of Australia.
- Source: Native Title Act 1993 (Cth).

Nation: An area traditionally inhabited by a self-governing group of Aboriginal people. Aboriginal people of a Nation have an obligation to care for the land, waters, plants and animals which form a part of the landscape of their Nation.

Registered native title claimant: A person who belongs to a group whose native title claim in the Federal Court to land or waters has passed a registration test, so that the claim is listed in the Register of Native Title Claims maintained by the National Native Title Tribunal, pending determination of the native title claim by the Federal Court.

Section 37 fisheries permit: A permit issued by T&I NSW under the Fisheries Management Act 1994 to allow for fishing activities which would otherwise be contrary to the Fisheries Management Act 1994.

Traditional Owners: Those Aboriginal people who, through membership in a descent group or clan, have responsibility for caring for particular Country, including Aboriginal people who claim to be and are accepted by their community as being authorised to speak for Country and its heritage. Source: adapted from the Australian Heritage Commission, Ask First: A guide to respecting Indigenous heritage places and values.

Legislation

- Aboriginal Land Rights Act 1983
- Fisheries Management Act 1994
- Marine Estate Management Act 2014
- Protection of the Environment Administration Act 1991
- Threatened Species Conservation Act 1995

- Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)
- Native Title Act 1993 (Commonwealth)

Related policies

- TI -P-134 Complaints handling policy

Other related documents

- OCHRE: the NSW Government Plan for Aboriginal affairs: education, employment and accountability

Superseded documents

This policy replaces:

- Marine Parks Authority Aboriginal Engagement and Cultural Use of Fisheries Resources Policy

Revision history

Version	Date issued	Notes	By
1	16/04/2015	Minor amendment	Manager Port Stephens - Great Lakes Marine Park

Review date

01/07/2016

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