



# fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales  
Aboriginal Land Council

## Marine Parks and Aquatic Reserves: Management, Access and Cultural Activities

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This Fact Sheet provides information about access to marine parks and aquatic reserves in NSW and activities that are permitted in these areas.

This is one of a series of Fact Sheets which have been developed for Local Aboriginal Land Councils (LALCs) and the Aboriginal community by the NSW Aboriginal Land Council (NSWALC). Copies of Fact Sheets are available from [www.alc.org.au](http://www.alc.org.au) or by calling the NSWALC Resource Centre on 02 9689 4444.

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. This Fact Sheet is current as of March 2011.

### Aquatic Protected Areas

In NSW, marine areas can be protected as:

- marine parks, or
- aquatic reserves.

The boundaries of some national parks also extend into aquatic areas and relatively pristine rivers can be protected as 'wild rivers' under the *National Parks and Wildlife Act 1974* (NSW). In addition, the Commonwealth also protects some marine areas which fall within its jurisdiction.

About 46% of the NSW coastline is contained in protected areas (both NSW and Commonwealth areas, including marine areas within national parks). However less than 7% of coastal waters are protected in sanctuary zones.<sup>i</sup>

The NSW system of marine protected areas currently encompasses six multiple use marine parks, 12 aquatic reserves and 62 national parks and reserves with marine components – see map below.

### What are Marine Parks?

A marine park is an area of marine water that is managed in order to protect the biological diversity of its plants and animals.

They are established under the *Marine Parks Act 1997* (NSW) and the NSW Marine Parks Authority has responsibility for managing them. There are currently six marine parks declared in NSW – see map below.

### What activities can be undertaken in marine parks?

Marine parks are divided into zones that have specific additional fishing restrictions placed on them by the *Marine Parks (Zoning Plans) Regulation 1999*(NSW)<sup>ii</sup>.

The following zones and restrictions may be found in marine parks:

- **sanctuary zones** - provide the highest level of protection for biodiversity and do not permit fishing, collecting, dredging, aquaculture or mooring on designated sites;
- **habitat protection zones** - also provide a high level of protection, but allow for some recreational and fishing activities which do not harm habitat or affect fish populations;
- **general use zones** – allows for fishing that is in accordance with the specific marine park management plan; and
- **special purpose zones** – allows for fishing that is in accordance with the specific marine park management plan.

**Zoning maps** for each marine park should be checked to find out what fishing activities are permitted in each zone of the marine park. Zoning maps are available from the Marine Parks Authority (contact details are provided below).<sup>iii</sup>

**Please note: Where recreational fishing is unrestricted in a marine park, bag, possession and size limits still apply.**

# FISHING RIGHTS

March 2011

## Cultural fishing, hunting and gathering in marine parks

Since December 2009 Aboriginal people in NSW may undertake Aboriginal cultural fishing without a license wherever recreational fishing is permitted. This includes areas where recreational fishing is allowed in marine parks.

Aboriginal cultural fishing has a specific meaning and limitations set by law. For more information on Aboriginal cultural fishing please see NSWALC Fact Sheet: Fishing Rights 1 – Aboriginal cultural fishing in NSW.

In addition, the Marine Parks Authority has developed a policy titled '*Aboriginal engagement and cultural use of fisheries resources policy*<sup>iv</sup>' that outlines a number of options that Aboriginal people can pursue to negotiate to use marine parks for cultural purposes.

*Cultural resource use* can be supported through one or more the following processes:

### 1. Establishment of special purpose zones

Special purpose zones can be established when an area has special management needs which can include cultural resource use. Such use will be set out in the marine park zoning plan.

### 2. Development of cultural resource use agreements

The MPA *Aboriginal engagement and cultural use of fisheries resources policy* states that "Cultural Resource Use Agreements allow for the negotiation of access to all marine park zones based on Aboriginal cultural fishing activities, 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".

These agreements are generally used when the establishment of special purpose zones for cultural resource use or through the issue of event-specific (i.e. one-off) permits, are not available.

### 3. Event specific permits for individuals or groups

Aboriginal people who wish to undertake cultural activities that involve taking fish contrary to the marine parks and fisheries laws, including bag limits, fishing closures, gear and method restrictions, may need to apply for permits.

**PLEASE NOTE: that some activities may require two separate permits.**

The permits that may be required are:

- **Marine Parks Permits**

These permits are needed when a person wants to fish or undertake activities outside of the limitations set out in marine parks zoning plan.

**IMPORTANT NOTE:** A marine parks permit cannot authorise activities that are contrary to the *Fisheries Management Act 1994*.

- **Section 37 Permit**

These permits are needed when a person wants to fish above bag limits, size restrictions, and outside of the legal restrictions placed on gear and methods.<sup>v</sup>

To obtain a Section 37 Permit, an applicant needs to submit an application form and pay a fee to the Department of Industry and Investment NSW.

**Aboriginal cultural fishing is one of the grounds upon which a Section 37 Permit may be obtained.**

For more information on Aboriginal cultural fishing please see NSWALC Culture & Heritage Fact Sheet: Fishing Rights 1 – Aboriginal cultural fishing in NSW.

**IMPORTANT NOTE:** Section 37 Permits cannot authorise the taking of threatened species or activities are that contrary to a marine park zoning plan.

Generally, 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 the activity is to occur.

### Accessing marine parks

No entry fees are required to be paid for entry to marine parks. However the Marine Parks Authority may charge fees for particular uses.

### How are marine parks managed?

All activities within a marine park are regulated through zoning and operational plans developed for each marine park. Zoning plans set out what can and cannot be done within the zones of a marine park. These plans are generally developed in consultation with the community and interest groups.

The Marine Parks Authority is assisted by the Marine Parks Advisory Council and local marine park advisory committees. The Marine Parks Advisory Council consists of State and Commonwealth government representatives, and also has scientific and community representative positions. They also include a member to represent the interests of Aboriginal peoples.<sup>vi</sup>

**PLEASE NOTE:** A different management and permit system exists for **Commonwealth marine reserves and parks**<sup>vii</sup> managed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)<sup>viii</sup>.

### **Involvement in planning and management of marine parks**

The community are given an opportunity to comment on draft marine park zoning plans.<sup>ix</sup> While the public are not given an opportunity to directly comment on proposed marine park operational plans, they can present their concerns about a proposed plan to a member of their local marine park advisory committee.<sup>x</sup>

#### **Get involved!**

##### **1. Local advisory committees**

Local marine park advisory committees provide advice to the Marine Park Authority and Ministers on the zoning and management of each marine park. **Aboriginal people are encouraged to nominate for membership when vacancies arise.**<sup>xi</sup>

##### **2. Aboriginal advisory groups**

At the request of Aboriginal people, the Marine Park Authority may establish and support an aboriginal advisory group for a particular marine park. Such a group is to provide advice on park management issues that concern the community.

##### **3. Aboriginal community meetings**

Where broader involvement with the Aboriginal community is requested by an Aboriginal advisory group, the Marine Parks Authority may hold meetings with the Aboriginal community.

##### **4. Memorandums of Understanding**

MPA *policy* states that "Aboriginal communities may request to enter into a formal agreement, known as a memorandum of understanding (MoU), with the Marine Park Authority regarding their involvement in the management of a marine park.

An MoU is a voluntary agreement that is not legally binding, but can help ensure that the interests of the Aboriginal community in the management of a marine park is documented and agreed to.

For example an MoU may include an agreement about community participation in park management or how marine parks staff will consult with the Aboriginal community. MoUs may also document aspirations for Aboriginal participation in employment, education and training, as well as the teaching and interpretation of Aboriginal culture and heritage".

### **What are Aquatic Reserves?**

Aquatic reserves are declared by the Minister for the Environment under the *Fisheries Management Act 1994* (NSW) to conserve the biodiversity of fish and marine vegetation. Aquatic reserves have similar objectives to marine parks, but are generally smaller. There are presently 12 aquatic reserves across NSW – see map below.

#### **What activities can be undertaken in aquatic reserves?**

Like marine parks, activities including fishing may be restricted in aquatic reserves. Restrictions may be different for each aquatic reserve, so to find out what activities are allowed in a particular reserve please check the Department of Environment, Climate Change and Water (**DECCW**) website, or your local DECCW office (contact details for the head office are provided below).

Generally, the restrictions placed on fishing in aquatic reserves are stricter than the general fishing requirements.

Please Note: where aquatic reserves place no additional restrictions on fishing, general fishing rules of the *Fisheries Management Act* still apply, including bag and size limits, and those for Aboriginal cultural fishing. For more information on Aboriginal cultural fishing please see NSWALC Fact Sheet: Fishing Rights 1 – Aboriginal cultural fishing in NSW.

The Director-General of DECCW can provide consent to permit fishing that is not allowed in an aquatic reserve. However, where such fishing is expected to go beyond allowable bag or size limits or the general fishing rules of the *Fisheries Management Act*, a Section 37 Permit will be needed.

To obtain a Section 37 Permit, an applicant needs to submit an application form and pay a fee to the Department of Industry and Investment NSW. Aboriginal cultural fishing is one of the grounds upon which a Section 37 Permit may be obtained.

#### **Accessing Aquatic Reserves**

There are no entry fees for Aquatic Reserves, however if they adjoin a National Park, there may be a fee. Aboriginal people may be granted a park entry fee exemption. Contact your local DECCW office for more information (contact details for head office provided below).

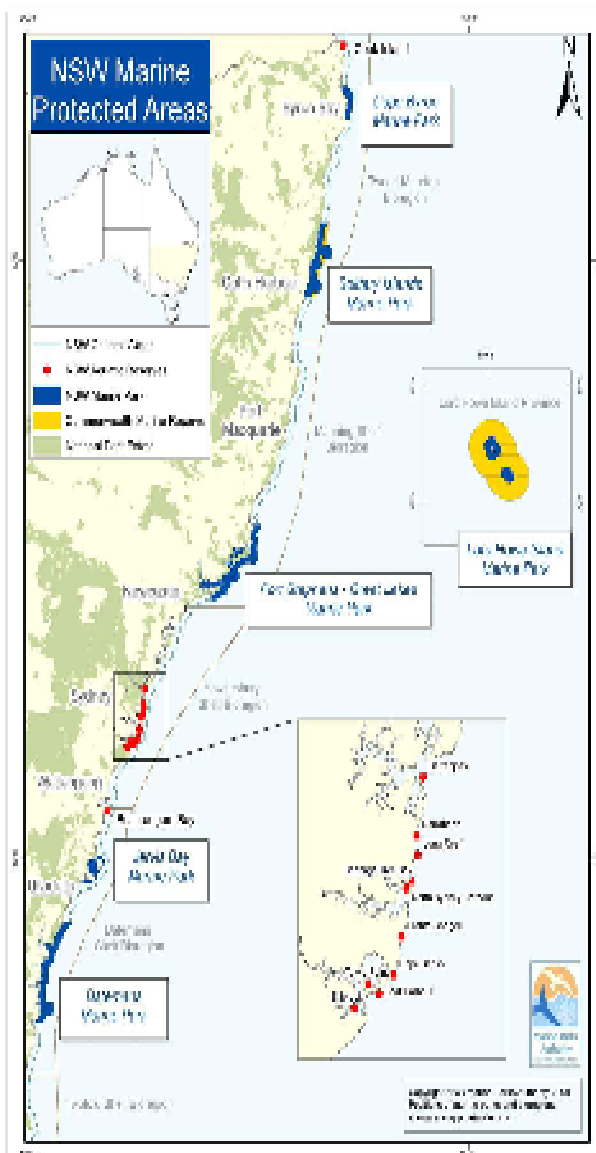
#### **How are Aquatic Reserves Managed?**

DECCW has responsibility for managing aquatic reserves and for preparing aquatic reserve management plans for the Minister to approve.

## Having a say in the management of Aquatic Reserves

When an aquatic reserve management plan is being prepared or revised the public must be given an opportunity to comment on the proposed plan, and the Minister must consider any comments made when deciding whether to approve the new or revised plan.<sup>xii</sup>

New or amended management plans are exhibited at DECCW offices for 30 days, and notification of this exhibition period must be published in newspapers circulating both across the state and in the relevant locality<sup>xiii</sup>. In addition the consent of private land owners may be required before an Aquatic Reserve is declared.<sup>xiv</sup>



Map Courtesy of Marine Parks Authority

## Where can I get more information?

Visit the 'Culture and Heritage' pages of the NSWALC website at [www.alc.org.au](http://www.alc.org.au) or contact the NSWALC Policy and Research Unit on 02 9689 4444.

Information on marine parks, can be accessed from the **Marine Parks Authority** by (ph) 1300 361 967 or [www.mpa.nsw.gov.au](http://www.mpa.nsw.gov.au).

Information on marine parks and aquatic reserves, can be accessed from the **Department of Environment, Climate Change and Water (DECCW)** by (Ph) 1300 361 967 or [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au) under the 'Nature Conservation' then 'Protected Areas' tabs, or, click on 'Visiting a Park', then go by region.

**Industry and Investment NSW** can be contacted on (ph) 1300 550 474 or [www.dpi.nsw.gov.au/fisheries](http://www.dpi.nsw.gov.au/fisheries).

The **Environmental Defender's Office (EDO)** has a range of Fact Sheets on environmental laws, including marine parks and protected areas at: [www.edo.org.au/edonsw](http://www.edo.org.au/edonsw), and can provide free legal advice on 1800 626 239.

<sup>i</sup> Marine Parks Authority, March 2010, 'Recreational Fishing in NSW Marine Parks' available at <http://www.mpa.nsw.gov.au/pdf/Fishing%20in%20Marine%20Park%20s.pdf>

<sup>ii</sup> *Marine Parks Act 1997(NSW)* and *Marine Parks (Zoning Plans) Regulation 1999(NSW)* can be accessed online at NSW Legislation: <http://www.legislation.nsw.gov.au> – Follow the links to the 'Browse', then 'Acts' or "Regulations", then 'M'.

<sup>iii</sup> The *Marine Parks (Zoning Plans) Regulation 1999 (NSW)* details how each marine park is zoned, the permitted method of fishing and fishing limits on fish type/species.

<sup>iv</sup> The Marine Parks Authority 'Aboriginal Engagement and Cultural Use of Fisheries Resources Policy' is available at: [www.mpa.nsw.gov.au](http://www.mpa.nsw.gov.au) under the 'News and Publications' heading

<sup>v</sup> Section 37 permit application forms are available to download from the Industry and Investment website at: <http://www.dpi.nsw.gov.au/fisheries/info/section-37-permits>

<sup>vi</sup> Subsection 32(2)(d) *Marine Parks Act 1997(NSW)*.

<sup>vii</sup> There are three Commonwealth marine protected areas in NSW: Solitary Islands Marine Reserve, Cod Grounds off Laurieton, and Elizabeth and Middleton Reefs Marine National Park.

<sup>viii</sup> *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* can be accessed online at [www.comlaw.gov.au](http://www.comlaw.gov.au).

<sup>ix</sup> Section 17C *Marine Parks Act 1997 (NSW)*.

<sup>x</sup> Subsection 25(2) *Marine Parks Act 1997 (NSW)*.

<sup>xi</sup> Subsection 35(2) *Marine Parks Act 1997 (NSW)*.

<sup>xii</sup> Subsection 197A(3) *Fisheries Management Act 1994 (NSW)*.

<sup>xiii</sup> Subsection 284(2) *Fisheries Management Act 1994 (NSW)*.

<sup>xiv</sup> Section 195 *Fisheries Management Act 1994 (NSW)*.