

ABORIGINAL FISHING ADVISORY COUNCIL

AGENDA

28 & 29 March 2011

Cronulla Fisheries Centre of Excellence

Chairperson

To be determined

Council Representatives

Richard Kennedy	Region 1 – Far Western NSW
Joseph Flick	Region 2 – North West NSW
Jason Wilson	Region 3 – Central NSW
Jennifer Williams	Region 5 – Northern NSW
Chels Marshall	Region 7 – North Coast NSW
Anthony Williams	Region 8 – Sydney and NSW Central Coast
Dean Kelly	Region 9 – NSW South Coast
Danny Chapman	Region 10 – NSW Far South Coast
Associate Professor Stephan Schnierer	Other Aboriginal person appointed by the Minister
Natalie Rotumah	NTSCORP Representative
Cr Bev Manton	NSWALC Representative
Peter Turnell	Senior Departmental Officer

Observers

Laura Best	Senior Manager, I&I NSW
Mika Malkki	Manager, Licensing and Policy, I&I NSW
Alice Gleeson	Senior Fisheries Management Officer, I&I NSW
Steven Kennelly	Director Fisheries and Ecosystems Research and Chief Scientist
Bryan Van der Walt	Manager, Recreational Fishing Programs
Mishka Holt	Senior Solicitor, NTSCORP
Clare McHugh	Director Policy and Research, NSWALC
Adrian Toovey	Manager Aquatic & Karst Protected Areas
Wally Stewart	Acting NSW Marine Parks Aboriginal Liaison Officer

Apologies

Aaron Taylor	Region 4 – South Western NSW
Eileen Mcleay	Region 6 – Far North Coast NSW

DAY 1:	
<i>Meeting start</i>	
Acknowledgement of Country	Dean Kelly (AFAC Region 9)
1. Introduction – a background to how we got to this point?	Interim Chairperson (TBA)
2. Draft AFAC Terms of Reference and Administration Manual	Laura Best (I&I NSW)
3. Overview of Fisheries Resource Management	Peter Turnell (I&I NSW)
4. Overview of Fisheries Compliance	TBA
5. Overview of Fisheries Conservation and Aquaculture	TBA
6. Overview of Fisheries & Ecosystems Research	Steven Kennelly (I&I NSW)
7. Outline of AFAC Priorities	Laura Best (I&I NSW)
8. NTSCORP and NSWALC – our involvement so far.	Mishka Holt (NTSCORP) & Clare McHugh (NSWALC)
9. Overview of the Advisory Council on Recreational Fishing (ACoRF) and the Recreational Fishing Trusts	Bryan Van der Walt (I&I NSW)
10. Process for appointing the AFAC Chairperson and Deputy Chairperson	Interim Chairperson (TBA)
11. Overview of tomorrow	Interim Chairperson (TBA)
<i>Meeting close 5:00pm</i>	
DAY 2:	
Acknowledgement of Country	Dean Kelly (AFAC Region 9)
12. Recap of yesterday	Interim Chairperson (TBA)
13. Aboriginal Cultural Resource Use in Marine Parks	Wally Stewart (NSW MPA)
14. Fisheries Legislation, Recent Changes, and Related Legislation Relevant to Aboriginal Fishing Issues	Laura Best (I&I NSW)
15. Indigenous Land Use Agreements & Fishing Interests Policy	Laura Best (I&I NSW)
16. Amendments to the Section 37 Permit Application Form	Mika Malkki (I&I NSW)
17. General Business	AFAC Members
18. Next Meeting	AFAC Members
<i>Meeting Close 3:00pm</i>	

Agenda item 1**Interim Chairperson - AFAC****Issue**

Introduction – a background to how we got to this point?

Background

Welcome to members and observers to the inaugural meeting of the Aboriginal Fishing Advisory Council (the Council). The Council has been established to advise the Minister for Primary Industries on Aboriginal fishing issues.

The establishment of this Council follows an extended period of liaison with stakeholders and undertaking actions to ensure the ongoing sustainability of fishing, and to recognise customary fishing in NSW.

In December 2002, the NSW Government released an Indigenous Fisheries Strategy (IFS) and Implementation Plan to protect and enhance the traditional cultural fishing activities of Aboriginal communities and to ensure Aboriginal involvement in the stewardship of the State's fisheries resources.

The Strategy was an important first step in developing a framework for engaging Aboriginal communities in fisheries management and raising awareness of Aboriginal traditions associated with fishing. Whilst many of the actions identified as part of the IFS were implemented prior to 2004, some strategies are ongoing. These strategies continue to be promoted, leading to the ongoing review of policy and legislation.

The key next steps in progressing Aboriginal fishing in NSW have been provided for in recent amendments to the *Fisheries Management Act 1994 (the Act)*.

Consultation with NSW Aboriginal Land Council (NSWALC) and NSW Native Title Services Corporation Limited (NTSCORP) was undertaken in development of the amendments to the Act. Both organisations have also been engaged in the development of complementary amendments to the *Fisheries Management (General) Regulation 2010*.

Further, the NSW Government has also endorsed the National Indigenous Fishing Principles which encourages jurisdictions to better recognise traditional fishing practices and greater Aboriginal involvement in commercial fisheries, charter fishing and eco-tourism activities.

Outcome

For Information of the Council.

Agenda item 2**Laura Best – I&I NSW****Issue**

Draft AFAC Administration Manual and Terms of Reference (ToR)

Background

The draft Administration Manual and ToR have been developed in consultation with NTSCORP and NSWALC. The information contained in this document is consistent with provisions within the *Fisheries Management (General) Regulation 2010* that relate to this and other Ministerial councils.

In addition to setting out the Terms of Reference for the Council the draft AFAC Manual also provides information on filling vacancies, terms of appointment, frequency of the meetings, notice of a meeting, rules of discussion and quorum, etc.

AFAC members have been provided with a copy of the Administration Manual, which will be used to ensure the structured and cohesive running of each AFAC meeting. Any amendments to the Administration Manual overtime will be provided to each member.

The Department is also exploring options for appointing an Aboriginal Executive Officer for the Council and will discuss specific aspects of this position with the AFAC Chairperson once appointed.

Outcome

For discussion and ratification by the Council, with or without, amendment.

Agenda item 3

Peter Turnell - I&I NSW

Issue

Overview of Fisheries Resource Management

Background

The Fisheries Resource Management unit is responsible for the management of commercial fisheries and recreational fishing activities, along with overall coordination of Aboriginal fishing.

There are two types of commercial fisheries in NSW – share management and restricted. Share management fisheries include the estuary general, estuary prawn trawl, ocean trap and line, ocean prawn trawl and ocean hauling. There are three restricted fisheries including southern fish trawl, sea urchin and turban shell and inland. Management measures such as gear restrictions, total allowable catches, fisher numbers, etc., are in place to ensure sustainability.

Over one million people participate in recreational fishing across NSW each year. Fisheries management play an important role to help ensure the sustainability of our fisheries resources and aquatic biodiversity. Recreational fishing rules such as bag and size limits, gear restrictions and fishing closures are the main management tools used to restrict the amount of fish that recreational fishers can take.

Note: No annexure paper has been provided for this agenda item however further detail will be provided in presentation and any materials will be distributed on the day.

Outcome

For information of the Council.

Agenda item 4

TBA - I&I NSW

Issue

Overview of Fisheries Compliance

Background

The Fisheries Compliance unit ensures that the people of NSW comply with fisheries related legislation.

There is currently in the order of 92 fisheries officers based across both metropolitan and regional NSW working to ensure those that use or otherwise interact with the resource comply with the provisions of the NSW *Fisheries Management Act 1994* and associated legislation.

Fisheries officers aim to achieve compliance through a range of activities including: covert and overt patrols and field operations; market audits; inspections of oyster leases and fish farms; habitat and conservation related inspections and investigations; analysis of intelligence and other information; general education of the rules through activities such as field shows, advisory days and fishing clinics, along with media reporting.

A balance between law enforcement and advisory and education services is seen as necessary in achieving compliance with the management rules.

Note: No annexure paper has been provided for this agenda item however further detail will be provided in presentation and any materials will be distributed on the day.

Outcome

For information of the Council.

Agenda item 5

TBA - I&I NSW

Issue

Overview of Fisheries Conservation and Aquaculture

Background

Fisheries Conservation plays a key role in the protection of aquatic biodiversity and fish habitat. Legislative controls are in place to enable assessment of any works that harm marine vegetation; involve dredging or reclamation; obstruct fish passage; construct or modify barriers to fish passage; harm spawning areas for certain fish; use explosive substances in waters; or involve aquaculture developments.

The Aquaculture Unit of the NSW Department of Primary Industries is responsible for working with the industries, the community and other agencies to ensure aquaculture develops in a sustainable manner - both environmentally and economically. Types of aquaculture operations include: pond, tank or lease based activities using either fresh or saline waters. Where an aquaculture operation requires access to public water or land, an aquaculture lease is required. I&I NSW has developed sustainable aquaculture strategies for both oyster and land based aquaculture activities to ensure that aquaculture enterprises in NSW are established and operated in a sustainable manner.

Note: No annexure paper has been provided for this agenda item however further detail will be provided in presentation and any materials will be distributed on the day.

Outcome

For information of the Council.

Agenda item 6

Steve Kennelly - I&I NSW

Issue

Overview of Fisheries & Ecosystems Research Unit.

Background

Scientific research underpins all of I&I NSW's fisheries resource management strategies. In recognition of the diverse range of fishing and aquaculture environments that the State's primary industries work within, I&I NSW has fisheries scientific units in Aquatic Ecosystems, Wild Fisheries and Aquaculture.

Scientists develop linkages with stakeholders to identify and prioritise areas of research and develop partnerships with other research providers, e.g. universities, other government

departments, the CSIRO and funding agencies like the Fisheries Research and Development Corporation and Environment Australia.

I&I NSW fisheries has research priorities and strategic research planning, which are outlined in the *Planning Strategic Research for Wild Fisheries, Aquatic Ecosystems and Aquaculture in NSW* document.

Note: No annexure paper has been provided for this agenda item however further detail will be provided in presentation and any materials will be distributed on the day.

Outcome

For information of the Council.

Agenda item 7

Laura Best - I&I NSW

Issue

Outline of the Council's priorities

Background

Whilst the Terms of Reference set out the process by which the Council will perform its function, the determination of priorities will help focus these functions further.

An immediate priority of the Council is to assist in developing the regulations that will set out the circumstances in which Section 21AA of the Act will operate. This section provides for regulation making powers to be applied to matters prescribing cultural fishing provisions, including setting limits (including bag and possession limits) and/or other management options (e.g. plans of management). An interim compliance policy is currently in place to allow this to occur until the regulations have been developed in consultation with the AFAC.

The interim compliance policy is a useful starting point for developing the regulations. It is suggested that a Working Group be established to progress the regulation, and should include representation from AFAC, I&I NSW Compliance, Management, and Science and Research.

Other key issues that will also require future consideration by the Council include how to best manage the section 37 permit process, and how to deal with calls for the harvesting of pipis for human consumption. Although these issues are not directly linked to the section 21AA regulations, it is important to consider how the regulations may affect future management of these issues.

A medium to long term priority will also be for the Council to look at initiatives that create economic opportunities for Aboriginal people and communities which flow from the fisheries resource.

Outcome

For consideration of the Council.

Agenda item 8

Mishka Holt & Clare McHugh - NTSCORP & NSWALC

Issue

NTSCORP and NSWALC - our involvement so far

Background

No papers have been provided for this agenda item at time of forwarding - detail will be provided in presentation and any materials will be distributed on the day.

Outcome

For the information of the Council.

Agenda item 9

Bryan van der Walt - I&I NSW

Issue

Overview of the Advisory Council on Recreational Fishing and the Recreational Fishing Trusts

Background

The Advisory Council on Recreational Fishing (ACoRF) is a statutory body established under the provisions of the *NSW Fisheries Management Act 1994*. The Council provides high quality advice to the Minister for Primary Industries on matters relating to recreational fishing. It comprises a Chairman and persons with expertise in estuary fishing, offshore fishing, freshwater fishing, underwater fishing, sale of fishing tackle, fishing media, charter boat fishing, Aboriginal culture and a representative from the Nature Conservation Council.

ACoRF is also responsible for administering the proceeds of the recreational fishing fee. By law, all revenue raised by the NSW recreational fishing fee is placed into two Trusts dedicated to recreational fishing - one for saltwater fishing and the other for freshwater fishing.

The Recreational Fishing Saltwater Trust Expenditure Committee (RFSTEC) and the Recreational Fishing Freshwater Trust Expenditure Committee (RFFTEC) provide advice to ACoRF on priorities for expenditure from the recreational fishing saltwater and freshwaters trust funds, respectively.

There is currently a vacancy on ACoRF for an Aboriginal representative. It is important that the views of Aboriginal people continue to be represented as part of ACoRF in consideration of issues generally, and specifically included in the decision making for expenditure of the trust funds.

AFAC is therefore encouraged to nominate one of its members to apply for membership on ACoRF. Appointees to ACoRF receive remuneration, allowances, and are subject to conditions, as outlined in the *NSW Department of Premier and Cabinet Guidelines for NSW Board and Committee Members* and other documents which can be viewed on line at <http://www.boards.dpc.nsw.gov.au>.

Nomination will need to be in writing and forwarded to the Minister for Primary Industries for consideration. A *curriculum vitae* should be included to allow the appointment process to proceed without delay.

Until an Aboriginal representative is appointed to ACoRF, AFAC's assistance by reviewing and providing feedback to the trust committees on community trust applications may be called upon.

There are several current applications from Aboriginal organisations in relation to Aboriginal community fishing programs that have been referred to AFAC at the suggestion of RFSTEC for review to identify any potential linkages or partnership opportunities that may add value to the projects and increase their effectiveness. Any feed back will be provided back to RFSTEC.

Outcomes

For discussion of the Council, regarding ACoRF membership. Review and feedback of trust applications to be provided to RFSTEC.

Agenda item 10**Interim Chairperson - AFAC****Issue**

Process for appointing the AFAC Chairperson and Deputy Chairperson

Background

Section 299 of the *Fisheries Management (General) Regulation 2010* provides for the Council to appoint its own Chairperson and Deputy Chairperson from among its members. The Council must then advise the Minister of the persons appointed. A meeting of Council is to be chaired by the Chairperson or in the absence of a Chairperson, the Deputy Chairperson.

The AFAC members who are appointed as Chairperson and Deputy Chairperson will retain their full voting rights.

The Draft Administration Manual contains further information in respect to the role and actions of the Chairperson.

Outcome

For discussion and resolution of the Council's voting members.

Agenda item 11**Interim Chairperson - AFAC****Issue**

Overview of tomorrow

Background

Matters on the agenda for tomorrow include:

1. Chance to go over today's items and address any questions that members come up with overnight;
2. Marine Parks Cultural Resource Use Policy is to be presented – it has bearing on how access to the resource more generally for Aboriginal cultural fishing purposes is addressed;
3. Fisheries legislation in greater detail for greater understanding of provisions relevant to fisheries resource management;
4. Explanation of the draft departmental policy designed to ensure consistency in determining a position related to fishing interests associated with an Indigenous Land Use Agreement;
5. Redesign of application form for section 37 permits for Aboriginal cultural fishing purposes;
6. General business and next meeting arrangements.

Outcome

For information.

Agenda item 12**Interim Chairperson - AFAC****Issue**

Recap of yesterday

Background

A summary of yesterday's meeting will be provided, as well as continuation of discussion, and potentially resolution, of nominations of AFAC members for appointment as Chairperson and Deputy Chairperson.

Outcome

For discussion and resolution of the Council's voting members.

Agenda item 13**Wally Stewart - NSW MPA****Issue**

Aboriginal Cultural Resource Use in Marine Parks

Background

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 Parks Act 1997*.

The *Marine Parks Act 1997* provides the legislative framework for the establishment and management of the Marine Park Authority (MPA) and marine parks within NSW. The *Marine Parks Act 1997* currently allows for cultural resource use within marine parks where the activity:

- is undertaken in accordance with the provisions of the *Fisheries Management Act 1994*;
- is permitted by the marine park zoning plan as described within the Marine parks (Zoning Plans) Regulation 1999;
- does not involve targeting protected species;
- is not contrary to a marine park closure.

Cultural resource use that is contrary to the above may be authorised under marine parks permit, however, a marine parks permit cannot authorise activities contrary to the *Fisheries Management Act 1994*.

Aboriginal involvement in the management of marine parks is facilitated by the MPA, in accordance with the *Aboriginal Engagement and Cultural Use of Fisheries Resource Policy*. This policy aims to encourage the involvement of Aboriginal people in the planning and management of NSW marine parks, and support and provide for the cultural use of fisheries resources in NSW marine parks.

The policy supports the collection of fish and marine plants for subsistence, medicinal and other Aboriginal cultural purposes within a marine park, including through special purpose zones, Cultural Resource Use Agreements and event permits.

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

A copy of the policy has been provided in addition to this Agenda, and can be obtained from the Marine Parks Authority website at <http://www.mpa.nsw.gov.au>.

Outcome

For information of the Council.

Agenda item 14

Laura Best - I&I NSW

Issue

Fisheries legislation (and recent changes) and other related legislation relevant to Aboriginal fishing issues.

Background

Fisheries Management Act 1994

The *Fisheries Management Act 1994* (the Act) is the principle piece of legislation related to the management of the fishery resource in NSW.

A number of sections of the Act provide for the making of regulations to support the Act and ensure that its various provisions operate to their fullest extent. The *Fisheries Management (General) Regulation 2010* is one of the legislative avenues for ensuring that the objects of the Act are met in conjunction with numerous fishery specific regulations.

The Act was recently amended to recognise the connection Aboriginal people have with the fisheries resource within the objects of the Act and to include a definition of Aboriginal cultural fishing. The amendments also provided for:

- an Aboriginal Fishing Advisory Council to advise the Minister on fishing issues affecting Aboriginal people;
- specific permit arrangements to provide for the collecting of fish by Aboriginal people for large cultural gatherings and ceremonies;
- a blanket exemption for Aboriginal people from paying a recreational fishing fee; and,
- Aboriginal people to fish for cultural purposes outside current bag and possession limits (section 21AA). An *interim compliance policy* is currently in place to allow the spirit of section 21AA to occur until the Regulations have been developed in consultation with AFAC.

Marine Parks Act 1994

The Department of Environment, Climate Change and Water (DECCW) administers the *Marine Parks Act 1997*. The Marine Parks Authority (MPA) oversees the declaration and management of marine parks. The MPA structure consisting of the Director-General of the Department of Premier and Cabinet (Chairperson); the Director-General Industry and Investment NSW; and , Director-General Department of Environment, Climate Change and Water, reflects that it jointly advises the Minister for Environment, Climate Change and Water and the Minister for Primary Industries on the declaration and management of marine parks.

The MPA recently released the *Aboriginal Engagement and Cultural Use of Fisheries Resource Policy*. This policy aims to encourage the involvement of Aboriginal people in the planning and management of marine parks and support the cultural use of fisheries resources in marine parks. More information on this policy is available on the MPA website at: www.mpa.nsw.gov.au.

Outcome

For Information of the Council.

Agenda item 15

Laura Best - I&I NSW

Issue

ILUA and Fishing Interests Policy

Background

The approach the NSW Government takes in resolving native title matters is through the negotiation of an Indigenous Land Use Agreement (ILUA). An ILUA is a voluntary agreement about the use and management of an area of land or waters where native title exists; it is made between native title claimants, government and other relevant parties. A registered ILUA is legally binding on the parties to the agreement and has the effect of providing benefits and certainty to all parties in relation to the future management of land, resources and interests.

Generally an ILUA will recognise to varying degrees, the native title rights of a native title claim group. This may include the non-exclusive right to fish, hunt and gather from water for non-commercial, cultural, spiritual, personal, domestic and communal purposes.

When dealing with ILUA negotiations where native title rights and interests are likely to be sought in relation to fishing, I&I NSW has developed the 'Indigenous Land Use Agreement and Fishing Interests' policy to ensure consistency in determining a position. The steps contained in the policy will assist staff in their consideration of the native title rights and interests relating to fishing.

Outcome

For information of the Council.

Agenda item 16**I&I NSW****Issue**

Amended application form for section 37 permits to take fish for Aboriginal cultural purposes.

Background

Currently, the Department has a standard application form for use by Aboriginal persons and/or organisations to take fish for Aboriginal cultural fishing purposes outside the provisions of the Act, such as bag and possession limits.

The form is designed to obtain information about the proposed event/activity as it relates to the issue of a permit to the applicant, sustainability of the fisheries resource and compliance.

The Department is looking to amend the application form to make it more "user-friendly" and to incorporate the recent amendments to the Act regarding issue of section 37 permits for Aboriginal cultural purposes.

Outcome

For consideration of the Council.

Agenda item 17**AFAC Members****Issue**

General Business

Background

Opportunity is provided for members to give an overview of issues relating to cultural fishing within the region they are representing, and to raise issues that may be considered for agenda items at future meetings.

Outcome

For discussion.

Issue

Next meeting

Background

Council are to determine a suitable date for the next meeting (membership has questioned whether there is option to hold meetings over weekends).

Outcome

For discussion of the Council.