



FACT SHEET

INTERIM RECREATIONAL FISHING LICENCES

Background

On 2 March 2007, in the Blue Mud Bay case, the Federal Court held on appeal that the licensing system under the Fisheries Act (NT) does not apply regarding commercial fishing in tidal waters overlying Aboriginal land (ie freehold) - being the intertidal zone and tidal rivers.

The Court held that the power to grant commercial (and recreational) fishing licences regarding tidal waters overlying Aboriginal land was instead vested in Aboriginal Land Trusts under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth).

This outcome flowed from the Court's finding that a grant of Aboriginal land includes the right to take fish from overlying tidal waters, with the public right to enter and fish being abrogated.

The Northern Land Council has raised this legal issue in various cases since 1994 without final resolution.

The decision has broad implications. Over 80% of the Northern Territory coastline (including islands) is Aboriginal land to the low water mark, and both Aboriginal and non-Aboriginal people engage in commercial and recreational fishing.

On 16 March 2007 the Court declined to stay or suspend its decision pending a High Court appeal since, having declared the law, it had no power to order that the law was not in effect.

On 30 March 2007 the NT Government filed an application for special leave to appeal to the High Court, which will be heard later in 2007.

In conjunction with the NT Government and the NT Seafood Council, the Anindilyakwa, Northern and Tiwi Land Councils have identified an interim commercial and recreational licensing regime which, insofar as feasible, maintains the status quo until two months after the High Court decision (and will then be extended for at least 12 months after the decision).

The status quo prior to 2 March 2007 was that the public had a right to enter and fish in any tidal waters overlying Aboriginal land. The public however did not have a right to cross Aboriginal land to access tidal waters. A permit was required for that purpose.

Interim recreational fishing licences under the Land Rights Act

The primary features of the interim recreational fishing licence regime are as follows.

- (1) The NLC will be a "one-stop shop," and process all interim recreational fishing licences for tidal waters in the Northern Territory on behalf of the three Land Councils'.
- (2) An interim recreational fishing licence will be granted by each Land Trust in the region with overlying tidal waters to all persons who make an application.

- (3) The licence is granted under s 19 of the *Land Rights Act*, and gives a right to take fish for recreational purposes from Aboriginal tidal waters. The permit is issued under s 5 of the *Aboriginal Land Act* and gives a right of entry to Aboriginal tidal waters.
- (4) A postal/fax/online system will be implemented for applications, in conjunction with widespread publicity to stakeholders. A written licence and permit will be issued.
- (5) Subject to one special exemption, an application will commence on the date on which it is made. This means that a fishing venture may be organised at short notice with the application being posted/ faxed or made online immediately prior to departure. A written licence and permit will subsequently be issued which is valid from the date of application (ie prior to departure).
- (6) The special exemption is that applications made before the “cut-off date” will be automatically backdated to 2 March 2007 (the date of the Court’s decision). The “cut-off date” was originally 31 May 2007, but has been extended to 31 July 2007. This means that Territorians and interstate visitors may enjoy planned fishing vacations without concern as to possible delay in the processing of applications.
- (7) All licences and permits, whether sought before or after the “cut-off date,” will be valid until two months after the High Court resolves the Blue Mud Bay case. This approach ensures a short transition period is automatically in force at that time (which may be extended by the NLC).
- (8) The licence and permit will be free.
- (9) All persons over the age of 18 years must apply for a licence and permit. The licence and permit automatically apply to all members of a licensee’s immediate family who are aged under 18 years. (Persons under the age of 18 years may also apply for a separate licence and permit in their own name.)
- (10) The licence is subject to a condition that all requirements in the *Fisheries Act* and regulations are observed. This means that bag limits, river closure lines, restrictions on fishing gear and safe vessel requirements etc apply. The Director of Fisheries will continue to administer these requirements. If the Director advises as to breach and recommends revocation, the Land Councils will terminate the licence.
- (11) The Land Councils will exercise their power to terminate a licence in consultation with the Director of Fisheries.
- (12) The licence is personal in legal character, and cannot be transferred, mortgaged, charged or assigned to another person.
- (13) The licence and permit do not authorise entry to sacred sites in tidal waters, closed seas, or give a right to cross Aboriginal land to access tidal waters. A separate and specific permit is required for those purposes.
- (14) Each licensee enters Aboriginal land at his or her own risk, and the Land Councils and each Land Trust are absolved of all liability regarding that entry.

The future

It is expected that the High Court will consider this matter in 2007, with a decision by 2008.

If successful in the High Court, in the following two months the Land Councils will, through an amnesty, continue the interim licensing regime for at least 12 months after the decision to enable a negotiated and workable outcome after comprehensive consultations with all stakeholders.

For further information contact the Northern Land Council on: 1800 645 299