



# National Native Title Tribunal

Welcome to the third edition of the National Native Title Tribunal's Indigenous fishing bulletin.

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## National Indigenous Fishing Technical Working Group (NIFTWG) update

A major outcome of a meeting of the National Indigenous Fishing Technical Working Group on 1 June 2004 was an agreement to develop a set of nationally endorsed principles to guide policy and strategy in relation to the fishing activities of Indigenous people. Progress on the draft principles has now resumed after being delayed while the Australian Government was in caretaker mode, pending the outcome of the federal election on 9 October 2004. With the election decided, the fourth draft of the Principles Communiqué was circulated to stakeholders on 19 October 2004 and responses are now being collated. It is envisaged that agreement on the full set of principles will be reached in the next month, subject to the draft principles being satisfactory to all stakeholder groups.

The process of developing the principles has involved extensive input from: Indigenous representatives from Native Title Representative Bodies in each State; ATSIC Commissioners; the Australian Government; participating State and Territory Governments as well as peak industry and recreational fishing representative bodies. The principles have been proposed to guide the future development of Indigenous fishing strategies within the sustainability limits that currently apply to all other stakeholders. Indigenous representatives' support for these principles does not affect the legal rights of Indigenous people or limit their scope to pursue other options. However, it is considered that strategies that provide Indigenous people with a lasting recognition of customary fishing practices and increased opportunities for economic engagement in fisheries-related enterprises, have a greater capacity than litigation to deliver practical outcomes within the foreseeable future.

For background information about NIFTWG, go to the 'Current Projects' section of the National Native Title Tribunal's website: <http://www.nntt.gov.au/media/Projects.html>

## Indigenous fishing in the news

### NSW: Narooma abalone trial to conclude early next year

Radio 2EC in Bega (18/11/2004) reports that a landmark Indigenous fishing rights case involving 11 Aboriginal men from the New South Wales south coast may not be concluded until possibly March or April of next year. The men are facing more than 20 charges relating to abalone

poaching under the NSW Fisheries Management Act and could face jail terms if convicted. While the case is a criminal trial being heard in the Narooma Local Court, the ramifications of the decision are considerable, which is why senior barristers are appearing for both the Crown and the defence. The defence is arguing that in collecting abalone to share among their community the men were practicing their religion. Under the Australian Constitution, freedom of religious practice is guaranteed so, if their argument can be proven, there is speculation that it could render certain parts of legislation unconstitutional, such as native title and fisheries legislation.

#### **NSW: Concerns over Indigenous fishing and water access in proposed marine park**

Lismore's *Northern Star* newspaper ('Aboriginal groups join fish fight,' 18/11/2004) reports that four local Aboriginal groups from Byron Bay and surrounding areas have united in their fight for Indigenous fishing rights in the proposed Cape Byron Marine Park. 30 members of the Bundjalung community met at Mullumbimby recently to discuss challenging moves that could potentially cut them off from traditional fishing areas in the marine park. Arakwal spokesperson, Ms Yvonne Stewart, said that the Arakwal people may consider pulling out of marine park negotiations if Indigenous people were locked out of certain sanctuary zones. 'Indigenous fishing and water access is no different to the Indigenous access and management of land,' she said. 'We want our people to look after water, just as we do on the land.'

ABC Online (17/11/2004) has also reported on the Arakwal people's concerns:  
<http://www.abc.net.au/news/newsitems/200411/s1245267.htm>

#### **NSW: Landmark fishing case resumes**

ABC Online (16/11/2004) reports that a landmark Indigenous fishing rights case involving 11 Aboriginal men from the New South Wales south coast has resumed. The accused men will use traditional fishing rights as a defence when they face Narooma Local Court in a trial that is scheduled to last two weeks. The men are facing more than 20 charges relating to abalone poaching under the NSW Fisheries Management and could face jail terms if convicted. It is predicted that the case may go to the High Court.

Source: <http://www.abc.net.au/news/newsitems/200411/s1244633.htm>

#### **Qld: Commercial fishing sector partly to blame for decline in dugong numbers**

Cape York community leader Peter Guivera, who chairs the Mapoon Community Council, has told ABC Online (9/11/2004) that traditional hunters should not be held solely responsible for declining dugong numbers in the region. Mr Guivera said that the commercial fishing sector also has to accept some responsibility for their part in contributing to the decrease in the dugong population.

Source: <http://www.abc.net.au/news/newsitems/200411/s1239331.htm>

#### **Qld: Northern communities to develop dugong, turtle management plans**

ABC Online (8/11/2004) reports that the Federal Government has provided the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) with \$3.8 million to develop local community plans for the management of dugong and marine turtles. NAILSMA is a peak Indigenous natural resource agency that is comprised of the Kimberley Land Council, Northern Land Council and the Balkanu Cape York Development Corporation.

Source: <http://www.abc.net.au/news/newsitems/200411/s1243011.htm>

#### **Qld: Claims that dugong are being hunted to extinction**

ABC Online (8/11/2004) reports on plans by Federal Fisheries Minister Ian Macdonald to reassess the traditional harvesting of dugong in order to protect the marine animal. Senator Macdonald has ruled out enforcing a total ban on hunting, saying Torres Strait Islanders have rights under international conventions to kill the animals. He said however, that a reduced intake must be agreed on or "it will mean that the species will no longer be available for cultural pursuits."

Source: <http://www.abc.net.au/news/newsitems/200411/s1236790.htm>

#### **NSW: Calls for focus on Indigenous fishers**

ABC Online (22/10/2004) reports calls by Ron Snape, a spokesman for Indigenous fishers of the south-east of New South Wales, for Indigenous fishers to be considered in the restructure of fishing in the state. Mr Snape has spoken out before about the rights of Indigenous fishers in NSW. At a meeting of the Estuary Management Advisory Committee in Sydney last November, Mr Snape raised concern that too many Aboriginal people were being charged for offences under the NSW Fisheries Act because the legislation failed to be inclusive of Indigenous activities.

Source: <http://www.abc.net.au/news/newsitems/200410/s1225585.htm>

#### **NSW: Indigenous aquaculture offers unlimited potential**

The *South Coast Weekly* (NSW) reports that delegates at the recent Australasian Aquaculture Conference have identified aquaculture as a way for Indigenous people to gain skills, employment and take part in an industry with unlimited potential. Cecil Stewart from the Bodalla Land Council is coordinating an aquaculture project in his South Coast community with assistance from NSW Fisheries via the state's Indigenous Fishing Strategy. The project, which will involve six trainees, is now weeks away from commencement and will involve the group growing oysters and muscles on various leases granted through the scheme. 'The project will get unemployed people out of the rut that they might be in,' Mr Stewart said.

Source: 'Harvesting a living from the sea,' 4 October 2004, *South Coast Weekly*, p. 11.

#### **Qld: Protests against dugong cruelty charges**

ABC Online (29/9/2004) reports that a small contingent of people gathered outside of the Childer's Court to protest against charges brought against two Aboriginal men accused of inflicting cruelty on a dugong. Magistrate Barry Barrett entered a not guilty plea on behalf of Dale Lesley Brown and Bruce Little who allegedly mutilated a dugong off Woodgate Beach near Bundaberg in July. The matter has been adjourned.

Source: <http://www.abc.net.au/news/newsitems/200409/s1209856.htm>

#### **Tas: Commissioner seeks further funding to defend fisheries charges**

ABC Online (27/9/2004) reports that a court case centred on fisheries charges involving Tasmanian ATSIC Commissioner Rodney Dillon has been held up due to the suspension of Commonwealth funding for the defence. Mr Dillon is contesting fisheries charges, relating to unlawfully taking abalone, that date back to August 2002. The Commissioner will argue that, as an Indigenous person, he has native title rights over the fish. The Hobart Magistrates Court has adjourned the case to a date to be fixed.

Source: <http://www.abc.net.au/tasmania/news/200409/s1207775.htm>

## Issues in brief

### **Declining dugong stocks a concern for government, environmental and traditional owner groups**

Indigenous communities could be hunting the dugong to extinction, according to a report commissioned by the Federal Government. The *Dugong Distribution and Abundance in Torres Strait* report prepared for the Australian Fisheries Management Authority by environmental scientist Dr Helene Marsh shows up to 1,000 dugongs are caught using traditional Indigenous methods each year. In response to the findings, the Australian Government will try to reduce the number to 100 a year. Environment Minister Senator Ian Campbell, and Fisheries and Conservation Minister Senator Ian Macdonald, have announced the traditional harvest of turtles and dugongs in the Torres Strait will now be assessed under the *Environment Protection and Biodiversity Conservation Act 1999*. "Dugongs are culturally, spiritually and economically significant to many coastal Indigenous communities and are a precious part of Australia's biodiversity," Senator Campbell said. "The assessment of the dugong and turtle fishery will help ensure that Indigenous harvest of dugong and turtle in the region is managed in a sustainable manner."

See the Australian Government's media release for further information:

<http://www.mffc.gov.au/releases/2004/04219mj.html>

Following Minister for Fisheries Senator Ian McDonald's warning that the dugong population in the Torres Strait would decline if the number hunted was not reduced, a number of articles have appeared in the press in Queensland in relation to the issue of traditional Indigenous hunting practices. The *Cairns Post* ('Call to strip native dugong hunting rights,' 13/11/2004) quotes MP Warren Entsch as saying that Indigenous people that use 'appallingly cruel' hunting methods should be stripped of their traditional hunting rights. The *Courier Mail* ('One mans meat is...,' 13/11/2004) reports that the issue has highlighted divisions in the community about attitudes to traditional hunting practices, particularly in relation to dugong and sea turtle hunting. In defence of traditional hunting, Torres Strait Regional Authority (TSRA) chair Toshie Kris said that: 'Dugongs are captured as a means of supporting families often on low incomes. It is critical that the measures adopted to control hunting are culturally appropriate and come from the hunters themselves.' Queensland Parks and Wildlife Service officer Col Limpus said that traditional hunting is central to native title and not easily rolled back: 'I think people are approaching this debate from the wrong end,' Mr Limpus said. 'The High Court has already decided on the indigenous people's right to hunt.' Reports on the issue have also appeared in the *News-Mail* (Bundaberg), the *National Indigenous Times*, the *Koori Mail* and on ABC Online.

#### **For further reports on this issue, see also:**

ABC Online (PM): 'Traditional hunting driving dugong to extinction,'

<http://www.abc.net.au/pm/content/2004/s1237356.htm>

SBS Online: 'Dugongs facing extinction,'

<http://www9.sbs.com.au/worldnews/region.php?id=98431&region=7>

*The Australian*: 'Dugongs facing extinction: report,'

[http://www.theaustralian.news.com.au/common/story\\_page/0,5744,11319681%255E1702,00.htm](http://www.theaustralian.news.com.au/common/story_page/0,5744,11319681%255E1702,00.htm)

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*The Courier Mail*: 'Islanders want hunt limit to cover PNG,'

[http://www.thecouriermail.news.com.au/common/story\\_page/0,5936,11345564%255E3102,00.html](http://www.thecouriermail.news.com.au/common/story_page/0,5936,11345564%255E3102,00.html)

*National Indigenous Times*: 'Islanders blamed for dugong vulnerability,'

<http://www.nit.com.au/News/story.aspx?id=3820>

### **Memorandum of Understanding signed to protect dugong and turtle stocks in the Cape York region**

An historic Memorandum of Understanding (MoU) signed last month between the Angumothimaree Paynaranama (Pine River) people, the Environmental Protection Agency and the Queensland Parks and Wildlife Service will establish a turtle and dugong management plan for the Pine River system in the north-western Cape York region. "Our people identified the need to conserve and protect our natural and cultural resources for both the present and future generations," said spokesperson for the Angumothimaree Paynaranama Traditional Owners, Mr Mervyn Wales. "We have proved that with the right dialogue between traditional owners and the appropriate government agencies these important protection laws can be introduced, and I mean direct dialogue, with no middle-man, this is what I call a real partnership." As part of the plan, there will be seasonal and permit restrictions in place and permits will only be approved during the summer months of November to March. In addition, permits will only be granted for cultural reasons, like a funeral feast.

### **NSW conference establishes an action agenda for Indigenous fishing**

A major outcome of the Port Stephens conference on Indigenous fishing (held in early June) was a move to establish a taskforce, in consultation with Aboriginal communities, to promote Aboriginal fishing rights to the Commonwealth and NSW Governments. The proposed taskforce will promote legislative and policy changes to ensure recognition of cultural fishing rights, commercial fishing rights and the rights of Indigenous people to participate in the management of fishing resources in New South Wales. A major aim of the conference was to develop and put into place an action agenda for Indigenous fishing in the state, taking into consideration both long and short term goals relating to the way forward for traditional and cultural fishing practices, the role of Aboriginal communities in achieving resource sustainability and Aboriginal participation in the commercial fishing industry.

See the ATSIIC media release for further information:

[http://www.atsic.gov.au/News\\_Room/Media\\_Releases/Default.asp?id=3296](http://www.atsic.gov.au/News_Room/Media_Releases/Default.asp?id=3296)

### **Living on Saltwater Country report series**

The National Oceans Office has recently published three reports that examine sea country management and the needs and issues of Indigenous saltwater people in northern Australia. The *Living on Saltwater Country* report series is an input to the northern regional marine planning process ([http://www.oceans.gov.au/pdf/Northern\\_Scoping\\_Report.pdf](http://www.oceans.gov.au/pdf/Northern_Scoping_Report.pdf)) and have been prepared in consultation with land councils in the North of Queensland and the Northern Territory. The reports focus on three key northern areas, including: the Cape York Peninsula (prepared by the Balkanu Cape York Aboriginal Corporation Caring for Country Unit); the Southern Gulf of Carpentaria (prepared by Paul Memmot and Associates and the University of Queensland on behalf of the Carpentaria Land Council Aboriginal Corporation); and Goulburn Island to the Queensland border (prepared by Smyth and Bahdrt Consultants on behalf of the Northern Land Council). The three reports are companion documents to the *Living on Saltwater Country Literature Review*: [http://www.oceans.gov.au/SaltwaterCountry\\_Lit\\_Review.jsp](http://www.oceans.gov.au/SaltwaterCountry_Lit_Review.jsp)

To view the reports please go to the publication area of the National Oceans Office website:

<http://www.oceans.gov.au/publications.jsp>

### **Torres Strait Sea Claim report available online**

A report by Professor Stuart Kaye on the *Torres Strait Native Title Sea Claim* is the most recent addition to the National Native Title Tribunal's Occasional Paper Series. Marine living resources are being considered in the claim, with the traditional owners seeking, *inter alia*, to "take, use, enjoy and develop the resources of the claim area, including to make decisions about the allocation, exploitation and conservation of such resources." Professor Kaye was commissioned by the Tribunal to provide an analysis of legal issues that arise in the Torres Strait sea claim. This report was tabled for the parties to the mediation in 2002 and updated in September 2004, for

release to a general audience, on behalf of the parties to the claim. A separate map of the maritime boundaries is included.

You can access Professor Kaye's report and other native title related research publications at: <http://www.nntt.gov.au/metacard/research.html>

### **NZ: Maori Fisheries Act given royal assent**

On 25 September the historic Maori Fisheries Act 2004 was given its royal assent after more than a decade of negotiation and compromise. The bill allows Maori, through Aotearoa Fisheries, to become owners of one of New Zealand's largest commercial fishers. On the event of the third reading of the bill on 16 September, Fisheries Minister the Hon. David Benson-Pope said that the legislation will deliver economic growth that will benefit all New Zealanders. 'This is indeed an historic day,' Minister Benson-Pope said. 'The Maori Fisheries Bill 2004 will repeal and replace the Maori Fisheries Act 1989, and give effect to the model that has been developed by the Treaty of Waitangi Fisheries Commission, in consultation with Maori, for allocating fisheries settlement assets to *iwi* (Maori tribes), for the ultimate benefit of all Maori and all New Zealanders.'

To view a full copy of the act, a historical timeline, a summary of the final allocation model and other information, go to: <http://www.tokm.co.nz/allocation/mfa2004.htm>