

FACT SHEET

INTERIM COMMERCIAL 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 (NLC) has raised this legal issue in various cases since 1994 without final resolution.

The decision has broad implications, since over 80% of the Northern Territory coastline (including islands) is Aboriginal land to the low water mark, in circumstances where 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 NLC has identified an interim commercial and recreational licensing regime which, insofar as feasible, will maintain 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 commercial fishing licences under the Land Rights Act

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

- (i) An interim commercial fishing licence and permit will automatically be granted by each Land Trust in the NLC's region with overlying tidal waters to all commercial licensees backdated to 2 March 2007 (the date of the Court's decision).

The licence is granted under s 19 of the *Land Rights Act*, and gives a right to take fish for commercial 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.

- (ii) It is not necessary to apply for the licence and permit. They will automatically be issued to all persons possessing a commercial licence or permit under the *Fisheries Act* as of 2 March 2007. This includes both commercial fishers and fishing tour operators.
- (iii) The licence and permit 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).
- (iv) The licence and permit will be free.
- (v) The licence and permit applies to each licensee, as well as its employees, contractors, agents and bona fide guests.

This means, for example, that the paying clients of fishing tour operators are covered, and do not need to apply for a separate licence and permit.

- (vi) 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 police these requirements. If the Director advises as to breach and recommends revocation, the NLC will terminate the licence.

- (vii) The NLC will exercise its power to terminate a licence in consultation with the Director of Fisheries and the NT Seafood Council.
- (viii) The licence may be transferred, mortgaged, charged or assigned to another person. The NLC and the Director of Fisheries must be notified within 28 days if this occurs.
- (ix) 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.
- (x) Each licensee enters Aboriginal land at its own risk, and the NLC and each Land Trust is 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, the NLC will through an amnesty continue the interim licensing regime for at least 12 months to enable a negotiated and workable outcome after comprehensive consultations with all stakeholders.

**For further information,
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