



# **Aboriginal and Torres Strait Islander commercial fishing development policy**

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**Please note:** When implementing this policy you must consider whether any human rights are engaged under the *Human Rights Act 2019* and whether any limitations on human rights are reasonable and justifiable. If you engage a human right, you should conduct a proportionality assessment under the Act. In addition, this policy has been reviewed to ensure actions and decisions under this policy can be made in a way that is compatible with human rights.

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## 1 Background and purpose

In June 2017, the Queensland Government released the *Queensland Sustainable Fisheries Strategy: 2017–2027*, outlining its vision for the sustainable management of Queensland's fisheries resources. The strategy commits to developing a commercial fishing policy for Aboriginal peoples and Torres Strait Islanders to support economic development in a way that supports sustainable fishing.

A policy has been in place since 2008 to support commercial fishing by Aboriginal peoples and Torres Strait Islanders by issuing an Indigenous fishing permit (now issued under section 54 of the Fisheries (General) Regulation 2019). The purpose of this permit was to assess the commercial viability of a fishing activity for a limited period without having to initially acquire commercial fishing licences (e.g. commercial boat licence and fishery symbols). If the activity was considered economically viable, the applicant would need to move to full commercial operation to continue the activity, either by purchasing or leasing a commercial boat licence and the required fishery symbols. However, a review of the previous approach found it had limited flexibility (i.e. only one pathway to full commercial operation within a limited period of time) and limited guidance on how much catch (kilograms) is available to access under this permit. As a result, of the 35 Indigenous fishing permits issued to 13 applicants between 2006 and 2017, few applicants transitioned to full commercial operation.

Aboriginal and Torres Strait Islander communities continue to express a desire to have more economic opportunities around fishing, particularly in their own sea country.

This revised policy aims to support economic development opportunities for Indigenous peoples and communities by:

- providing pathways for Indigenous peoples and communities to enter or take part in fishing-related businesses
- setting overarching principles, including setting aside an access allocation (Indigenous commercial allocation) for economic development opportunities

The Indigenous commercial allocation will be implemented via the relevant fishery harvest strategy.

## 2 Aboriginal peoples and Torres Strait Islanders

Aboriginal peoples and Torres Strait Islanders are the first inhabitants of Australia. Today, the federal government defines an Aboriginal or Torres Strait Islander person as someone who:

- is of Aboriginal or Torres Strait Islander descent
- identifies as an Aboriginal person or Torres Strait Islander
- is accepted as an Aboriginal person or Torres Strait Islander by the community in which they live.<sup>1</sup>

The term 'Indigenous' is used to refer to both Aboriginal peoples and Torres Strait Islanders. For more information on Aboriginal peoples and Torres Strait Islanders, visit the Australian Human Rights Commission website at [humanrights.gov.au](http://humanrights.gov.au).

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<sup>1</sup> Australian Law Reform Commission website: <<https://www.alrc.gov.au/publication/essentially-yours-the-protection-of-human-genetic-information-in-australia-alrc-report-96/36-kinship-and-identity/legal-definitions-of-aboriginality/>>.

### 3 Scope

This policy applies to proposals (through a permit application process) to take and sell fisheries resources, and use commercial fishing apparatus outside the existing commercial fishing licencing framework, in order to support commercial fishing-related economic opportunities for Indigenous peoples and communities.

This policy does not apply to traditional fishing or native title fishing rights, which involve the taking, using or keeping of the fisheries resources for the purpose of satisfying a personal, domestic or non-commercial communal need of Aboriginal people or Torres Strait Islanders, in accordance with the particular traditional laws and customs of native title holders or Traditional Owners of the area being fished.

### 4 Definitions

<b>Commercial fishery</b>	Generally provided for in schedules 1–8 of the Fisheries (Commercial) Regulation 2019, which specifies the fishery area, the fishery symbol, which fish may be taken and permitted ways of taking the fish (e.g. types of nets, pots or fishing lines)—permits cannot be issued to take or possess freshwater fish for trade or commerce, unless it is for broodstock for aquaculture (section 25 Fisheries (General) Regulation 2019)
<b>Commercial fishing apparatus</b>	Defined in the Fisheries (General) Regulation 2019 as fishing apparatus other than that permitted as recreational fishing apparatus
<b>Fisheries resources</b>	'Fish' defined under section 5 of the <i>Fishery Act 1994</i> include fin fish, crabs, prawns, crayfish and molluscs (it doesn't include animals protected under other legislation, such as crocodiles, dugong and turtles)
<b>Harvest strategy</b>	A framework that specifies the predetermined management actions in a fishery for defined species (at the stock or management unit level) necessary to achieve the agreed ecological, economic and/or social management objectives, and outlines resource-sharing arrangements between sectors
<b>Indigenous commercial allocation</b>	The access allocation set aside in a fishery harvest strategy to support economic development opportunities for Aboriginal peoples and Torres Strait Islanders in relation to commercial fishing activities
<b>Indigenous fishing permit</b>	A type of fishing authority that can be issued under the Fisheries (General) Regulation 2019 (section 54), which permits the holder to assess the commercial viability of a fishing activity in a commercial fishery, and to take, possess and sell the fish

## **5 Key guiding principles**

The following principles form the basis of this policy:

1. Sustainability of Queensland's fisheries is paramount.
2. Fisheries Queensland will provide flexible pathways for Indigenous peoples and communities to participate in fishing-related businesses, which require the ability to sell fish product and/or use commercial fishing apparatus.
3. An Indigenous commercial allocation will be recognised in harvest strategies where appropriate.
4. There needs to be clear and direct economic benefits to an Indigenous person or community to grant access.
5. Existing users of the fishery will be recognised.
6. Accessing an Indigenous commercial allocation is fair, transparent and set up in a way that maximises opportunities and maintains sustainability.

## **6 Indigenous commercial allocation**

An appropriate Indigenous commercial allocation will be considered for each fishery. This allocation will be identified in the harvest strategy for an individual species, management region or fishery.

An amount of up to 10 tonnes may be set aside as an Indigenous commercial allocation. It will be either by species, or groups of species.

If there is not an existing commercial fishery (e.g. gear, species or area not currently regulated for commercial fishery operation), the information requirements for a developmental fishing permit will also be required (refer to the *Developmental fishing policy*).

If a commercial fishery or stock cannot reasonably support additional fishing effort without creating a sustainability risk (e.g. sea cucumber), an appropriate allocation or alternative approach may need to be negotiated over time.

If a particular species cannot be accessed under an Indigenous fishing permit, the reason for this decision will be made clear in the harvest strategy.

Access to the Indigenous commercial allocation will be through a non-transferable fixed-term Indigenous fishing permit under section 54 of the Fisheries (General) Regulation 2019 for a period of up to three years (depending on the application). Extensions may be considered on a case-by-case basis.

## **7 Flexible pathways to participate in commercial fishing-related businesses**

There should be flexibility to consider a range of opportunities that require the ability to sell fish product and use commercial apparatus (this is the commercial aspect). This recognises that moving to a full commercial fishery operation is one pathway, but may not always be possible or desirable.

For example, authorised activities could include (but are not limited to):

- trialling an existing commercial fishery for a period of time before deciding if it is viable to enter the fishery on a long-term basis by leasing or buying the necessary endorsements (e.g. commercial boat licence and fishery symbols)
- trialling a small-scale fishing business to supply fresh fish to the local Indigenous community
- training to participate in commercial fisheries.

## 8 Assessment criteria

The *Fisheries Act 1994* manages commercial, recreational and Indigenous fishing to achieve ecologically sustainable development objectives.

It will not be appropriate to issue an Indigenous fishing permit in all situations. Recognising this, the decision-maker will consider an application using the criteria outlined in sections 8.1–8.5.

**Table 1: Indigenous fishing permit application checklist**

Application checklist	
<input checked="" type="checkbox"/>	Applicant has provided a business plan that addresses the minimum information requirements (section 8.1).
<input checked="" type="checkbox"/>	Applicant has provided proof that they are an Aboriginal person or Torres Strait Islander (section 8.2).
<input checked="" type="checkbox"/>	The application demonstrates that the proposed activities meet the sustainability principle (section 8.3).
<input checked="" type="checkbox"/>	The application adequately outlines how economic benefits will be realised at either an individual or community level through access to the Indigenous commercial allocation (section 8.4).
<input checked="" type="checkbox"/>	The applicant has sought support from the Traditional Owners or native title holders in the area where the activity is proposed, and provided evidence of this support or an explanation of why support has not been given (section 8.5).

### 8.1 Minimum information requirements for a business proposal

An applicant will need to provide a business plan that sets out the main elements of the proposed fishing operation, including:

- intended fishing area
- species of fish intended to be harvested and desired allocation amount (e.g. 1 tonne of a species annually from the Indigenous commercial allocation)
- arrangements for marketing the catch
- size of the boat
- how the necessary finance, equipment and training will be obtained
- a plan for how the other legislative requirements for a commercial operation will be obtained (e.g. food handling requirements and Australian Maritime Safety Authority commercial fishing boat requirements).

### 8.2 Proof of Aboriginal or Torres Strait Islander heritage

The applicant must provide proof that they are an Aboriginal person or Torres Strait Islander. For example, a certificate of Aboriginality, or a statement from an Aboriginal land council or community organisation that the person:

- is of Aboriginal or Torres Strait Islander descent
- identifies as an Aboriginal person or Torres Strait Islander
- is accepted as an Aboriginal person or Torres Strait Islander by the community in which they live.

If native title has been determined, the applicant should provide proof from the Registered Native Title Body Corporate that hold the native title rights for the applicant's Traditional Owner group. If this is not available, proof may be accepted from another Aboriginal or Torres Strait Islander organisation (e.g. a group representing a native title claim) or a recognised elder.

## **8.3 Sustainability is paramount**

Sustainability and ecological objectives are overarching principles in Queensland's fisheries management approach under the Fisheries Act, Fisheries (Commercial) Regulation 2019 and Fisheries (General) Regulation 2019.

Any application under this policy would need to comply with existing regulations in place for sustainability and ecological protection purposes. This would include, for example, marine park zoning, fisheries closures, size limits and no-take species.

An application under this policy would need to demonstrate that the proposed activity is sustainable. How this is demonstrated will depend on the fishing activity and apparatus, but is likely to include minimising impacts on bycatch, adhering to existing commercial fishing regulations and operating within the objectives of the harvest strategy.

## **8.4 Clear and direct economic benefits to an Indigenous person or community**

An applicant must outline how economic benefits will be realised, at either an individual or community level, through access to the Indigenous commercial allocation. It is recognised that the type of economic benefits will depend on the type of application.

For example, if the applicant is an individual, then the benefits are likely to be at an individual or family level. If the application is on behalf of a community, an application would need to be clear about how the economic benefits would be shared within the community.

## **8.5 Consideration of existing users of the fishery**

The Indigenous commercial allocation is not a proportion of the recreational or commercial catch share. It is also not a proportion of the total traditional fishing catch. Rather it is a fixed amount considered sustainable for the fishery that would appropriately support economic development.

When assessing an application, Fisheries Queensland will consider the current level of access by other users in the application area.

Traditional Owners and native title holders will be consulted about the areas where the fishing operation is proposed through the future acts notification process under the federal *Native Title Act 1993*.

Traditional Owner support for the proposed activity would ideally be sought by the applicant through the business development process and evidence of this provided in the application. This recognises that while community support for an application is favourable, it may not always be granted for a range of reasons. Applications will be considered on a case-by-case basis.

# **9 Reporting requirements**

An Indigenous fishing permit will have similar reporting requirements to existing commercial fisheries. Conditions of the permit include:

- daily logbook and unload reporting (logbooks provided)
- vessel tracking (tracking unit will need to be obtained and monthly account paid for by the applicant).<sup>2</sup>

Ongoing access under a permit will be subject to the completion of the reporting requirements. If a permit holder does not provide timely information as per the conditions of the permit, the permit may be cancelled.

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<sup>2</sup> Vessel tracking units cost approximately \$300–\$700, plus \$35–\$55 per month polling costs.

## 10 Other requirements

Securing access to take and sell fisheries resources through an Indigenous fishing permit is only one aspect for undertaking a fishing-related business. There are a range of other requirements outside fisheries legislation that will need to be complied with, generally for health and safety reasons.

Specific requirements will depend on the activity being proposed and may include (but is not limited to), holding a relevant certificate of competency for boat operations and boat survey requirements regulated by the Australian Maritime Safety Authority, and complying with Safe Food Queensland requirements. Early discussion with Fisheries Queensland prior to lodging a permit application will help identify these requirements.

Generally, the permit holder is required to be on the boat when operating under an Indigenous fishing permit. Other people may be able to assist as long as they meet the other requirements for safe operation and the intent of the permit.

Steps may need to be taken by the applicant or permit holder to secure long-term commercial access for a business operating successfully under the permit. Accessing fisheries via existing commercial fishing endorsements is the best way to secure long-term access. Fisheries Queensland will support permit holders on a case-by-case basis; however, there is no specific funding to purchase commercial fishing entitlements (e.g. commercial fishing boat licence, commercial symbols or quota).

## 11 Permit cost

There is no cost to apply for an Indigenous fishing permit; however, there may be costs associated with the requirements to operate a commercial fishing vessel. This includes (but is not limited to) Australian Maritime Safety Authority certificates and licences, and safe food accreditation.

## 12 Responsibilities

Fisheries Queensland is responsible for managing Queensland's fisheries resources on behalf of the Queensland Government and community. Fisheries Queensland will assess applications using the criteria in section 8 of this policy and relevant sections of the Fisheries Act, Fisheries (Commercial) Regulation and Fisheries (General) Regulation.

**Please note:** When implementing this policy, Fisheries Queensland must consider whether any human rights are engaged under the *Human Rights Act 2019* and whether any limitations on human rights are reasonable and justifiable. If a human right is engaged, the procedure under the *Human rights policy* should be applied and a proportionality assessment conducted under the Human Rights Act. This policy has been developed to ensure actions and decisions under this policy can be made in a way that is compatible with human rights.

Applicants are responsible for providing the necessary information in the application. Once an Indigenous fishing permit is in operation, applicants are responsible for being compliant with the permit conditions, including fishing rules, regulations and reporting obligations.

## 13 References

Department of Agriculture and Fisheries 2015, *Developmental fishing policy*, Queensland Government, <<https://publications.qld.gov.au/dataset/developmental-fishing/resource/9b9d8631-ba0c-466e-99fb-9401fee7a7f7>>.

Department of Agriculture and Fisheries 2017, *Queensland Sustainable Fisheries Strategy: 2017–2027*, Queensland Government, <<https://publications.qld.gov.au/dataset/queensland-sustainable-fisheries-strategy>>.

## Legislation

For Queensland legislation, visit [legislation.qld.gov.au](https://legislation.qld.gov.au).

For federal (Commonwealth) legislation, [legislation.gov.au](https://legislation.gov.au).

*Fisheries Act 1994* (Qld)

*Fisheries (Commercial) Regulation 2019* (Qld)

*Fisheries (General) Regulation 2019* (Qld)

*Human Rights Act 2019* (Qld)

*Native Title Act 1993* (Cwlth)