

# Oxleyan Pygmy Perch

*(Nannoperca oxleyana)*

## Habitat Ecosystem Restoration Project

The protection and restoration of the Oxleyan Pygmy Perch (OPP) Habitat project was to implement the elements of the Threatened Species Recovery Plan for the endangered Oxleyan Pygmy Perch.

Urban drainage has been identified as one of the threatening processes on the OPP. This is due to nutrient input, sediments, and altered hydrology.

The OPP habitat restoration was a collaborative project for the community of Evans Head, assisted by , NSW Fisheries, the Department of Environment and Climate Change, Richmond Valley Council, Northern Rivers Catchment Management Authority and the Environmental Trust.




## Protecting Threatened Fish

### NEFA BACKGROUND PAPER

#### Protecting Threatened Fish

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Forestry Corporation undertake logging operations under a Fisheries Licence (FL), introduced as an outcome of the RFA, which is intended to regulate activities so as to protect State and national threatened species of fish. NEFA have found that the FL has rarely been applied or enforced. As Fisheries NSW and Forestry Corporation are both in the NSW Department of Primary Industry there is a strong reluctance by Fisheries to regulate or penalise their colleagues, as evidenced by just one FL audit/complaint being dealt with in the UNE over the 10 years 1999/2009, and no enforcement action being taken. NEFA's recent audits prove that the FL is being regularly breached, the problem is that despite the lack of compliance by Forestry Corporation there is no effective oversight and minimal enforcement by Fisheries NSW.

The Fisheries Licence is itself a weak regulatory instrument designed to have minimal additional impact on forestry operations, thus the real lesson from Forestry Corporation's intentional refusal to implement the intent of the FL is that they will not implement any requirement for sustainable logging unless legally forced to.

The Fisheries Licence requires in Section 9 that "*forestry activities must not be undertaken in any compartment unless a pre-logging and pre-roading aquatic habitat assessment has been conducted*". Aquatic Habitat Assessments (AHA) are required to identify Class 1 habitat where potential habitat of threatened fish occurs within 2km upstream and 5km downstream, and Class 2 habitat where potential habitat of threatened fish occurs within 100km downstream. Class 1 and 2 habitat then triggers application of prescriptions. AHAs are to be undertaken by "*suitably experienced and trained*" surveyors.

While this appears to establish a clear requirement for AHAs to be prepared for all logging operations, it is interpreted to mean that an AHA is only required if instream works are proposed. While "in stream works" refer to any activity between the banks/edges of a watercourse, Forestry Corporation limit its application to the construction of stream crossings and ignore their crossing of watercourses with logging machinery. Forestry Corporation's planning "Checklist to Ensure Fisheries Licence Requirements Met" only triggers the need for an AHA and the identification of Class 1 and 2 habitat where "*in stream works' consisting of new/replacement or significant upgrade proposed*". If such works are not proposed the checklist states "*no further assessment required*".

The other key problem is that Forestry Corporation consider that according to the FL, irrespective of publicly available data, they do not have to take any specified actions to protect threatened fish species unless the data is first provided to them by Fisheries NSW. On this basis, apparently the FL did not even come into effect until records of the endangered Eastern Freshwater Cod were provided to Forestry Corporation in 2002.

Since Forestry Corporation abandoned the EPL for most logging operations in 2004 the FL has taken on greater significance, particularly in Upper North East NSW where a variety of threatened fish occur within 100km downstream of operations, because it still requires the protection of unmapped drainage lines. After Forestry Corporation was exempted from the EPL for most operations they seem to have gone on a spree of logging unmapped drainage lines, even where they were still legally required to protect them by the FL.

In our audit of Yabbra SF (Pugh 2009) NEFA identified 5 unmapped drainage lines which had not been marked in the field and documented 22 trees that had been illegally removed from their stream banks. From NEFA's small sample it was evident that many other unmapped streams had also been subject to logging and burning, with estimates that over 100 trees were likely to have been illegally logged. Forestry Corporation had not switched on the EPL and ignored the requirements of the FL despite being informed that the endangered Eastern Freshwater Cod occurred downstream.

The harvest plan (which is a legal document) for Compartments 162 and 163 of Yabbra SF identified that all conditions of the IFOA, including the EPL and FL, would be applied. Though the plan made no mention of the presence of the Eastern Freshwater Cod downstream and it appears an Aquatic Habitat Assessment was not undertaken. Contrary to the harvesting plan there was no attempt made to exclude logging from the banks of unmapped streams. Because of our complaint Fisheries NSW undertook a cursory

assessment of some of the areas we had identified and for the first time issued 2 Penalty Infringement Notices and \$500 fines for failing to mark exclusion boundaries on unmapped drainage lines and logging, bulldozing and burning within 10m of these unmapped streams.

NEFA's audit of Doubleduke SF (Pugh 2010c) found that Forestry Corporation had not prepared an AHA for one compartment (despite later roading through a wetland), though had prepared what they claimed was an AHA for another where they proposed the construction of new creek crossings. The AHA was prepared by the supervising forester instead of by a "*suitably experienced and trained*" surveyor. He recognised the presence of the endangered Eastern Freshwater Cod downstream but not the publicly available evidence of the presence and potential habitat of the endangered Oxleyan Pygmy Perch.

The Oxleyan Pygmy Perch is identified as Endangered under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the NSW *Fisheries Management Act 1994*. Threats to this species include runoff and sediment from stream crossings, logging operations and post-logging burns. The FL was specifically intended to protect this species when it was issued in 1999.

When NEFA complained that the Oxleyan Pygmy Perch had been ignored despite information presented in the 2005 Oxleyan Pygmy Perch Recovery Plan showing it occurred downstream we were told (J. Murray pers. com., November 2010) that they didn't need to consider the species because Fisheries NSW had not provided them with the required information. It is revealing that Fisheries NSW were going to give them the data years before, but apparently hadn't got around to it, as stated in the 2004/5 RFA report:

*Preparation of distribution data for the Oxleyan pygmy perch (Nannoperca oxleyana), a species occurring in coastal areas of northern New South Wales, and Macquarie perch (Macquaria australasica) occurring in streams of the southern highlands and slopes, is complete. Both species could be affected by forestry operations and the distribution data is expected to be provided to Forests NSW shortly.*

It is also revealing that Fisheries NSW approved the Doubleduke assessment without themselves identifying the missing endangered species.

Despite discussing our concerns with both agencies and submitting a written complaint, Fisheries NSW refused to take any legal action against Forestry Corporation – not even a warning letter. NEFA was verbally assured by a Fisheries NSW officer that the problem had been fixed by provision of the required data to Forestry Corporation and would not occur again.

NEFA's audit of Wedding Bells SF (Pugh 2011b) found that Forestry Corporation had again failed to prepare Pre-Logging and Pre-Roading Aquatic Habitat Assessments within the catchment of known and potential habitat for the endangered Oxleyan Pygmy Perch in the catchment of the Corindi River, and failed to exclude unmapped drainage lines from logging and roading to protect downstream habitat of the Oxleyan Pygmy Perch as required by the FL. It is extremely concerning that within days of our complaints over Doubleduke SF Forestry Corporation had done a shoddy checklist for Wedding Bells which again ignored the known presence of Oxleyan Pygmy Perch downstream.

Despite Fisheries NSW finding that instream works had indeed occurred on a number of locations in unmapped drainage lines they again refused to take any action on the grounds

that they had not provided adequate records to Forestry Corporation. Because of a technicality the Forestry Corporation have managed to exempt themselves from many requirements of the Fisheries Licence for 15 years.

It is revealing that since at least 2004 the Roads and Traffic Authority has been acknowledging the potential habitat of the Oxleyan Pygmy Perch in Wedding Bells State Forest in its planning processes. The RTA (2006) "Pacific Highway Upgrade – Woolgoolga to Wells Crossing Preferred Route Report" identified the presence of known habitat downstream from Wedding Bells SF and potential habitat within Wedding Bells SF from information provided by Fisheries NSW.

NEFA's audit of Royal Camp (Pugh 2012e) found that the AHA still did not consider the presence of the Oxleyan Pygmy Perch within 100km downstream, and for a crossing proposed in mapped potential habitat of the Eastern Freshwater Cod, the site of the Aquatic Habitat Assessment used to determine whether suitable habitat existed for the Cod at a proposed creek crossing was 9km away, upstream, in farming land.

NEFA's few samples of logging operations reveal that there has been a widespread and deliberate failure to implement the minimalist requirements of the Fisheries Licence to reduce impacts of forestry operations on threatened fish in New South Wales. It is important to recognise that the prescriptions are aimed at reducing pollution and sedimentation of streams and thus are of benefit to all fish species.

Fisheries NSW have still failed to provide records of Oxleyan Pygmy Perch to Forestry Corporation. When last checked in mid 2011 Fisheries NSW had also failed to provide records of the endangered Purple Spotted Gudgeon to Forestry Corporation despite its being listed in January 2008, so it has been similarly ignored. It is also apparent that the last records of the Endangered Eastern Freshwater Cod were provided in 2002 and are in need of updating. This is a significant failure on behalf of Fisheries NSW, though Forestry Corporation should be capable of collating this information for themselves.

Forestry Corporation and NSW Fisheries have colluded for over a decade to avoid preparing Aquatic Habitat Assessments and to not take any action to implement legal requirements to protect a number of Endangered fish on the pretext that the Fisheries NSW have not provided the required data to Forestry Corporation. Fisheries NSW have also allowed unqualified people to prepare the few AHAs that have been done and failed to critically review Forestry Corporation's deficient assessments.

This raises two key questions "Why have Fisheries NSW failed to provide the required data on threatened fish to Forestry Corporation for over 15 years?", and "Why does Forestry Corporation not act responsibly and take action to protect a nationally endangered species unless forced to by the letter of the law?"

The refusal by Forestry Corporation to employ anybody with expertise in freshwater fish to advise them or undertake Aquatic Habitat Assessments is an obvious problem that must be addressed.

## **REFERENCES**

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