



New South Wales

Fisheries Management Amendment Act 1997 No 153

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New South Wales

Fisheries Management Amendment Act 1997 No 153

Act No 153, 1997

An Act to amend the *Fisheries Management Act 1994* with respect to threatened species conservation, recreational freshwater fishing, special fisheries trust funds and charter fishing boats, and in other respects, and to amend consequentially certain other Acts. [Assented to 19 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fisheries Management Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Fisheries Management Act 1994 No 38

The *Fisheries Management Act 1994* is amended as set out in Schedules 1–5.

4 Consequential amendment of other Acts

The Acts specified in Schedule 6 are amended as set out in that Schedule.

Schedule 1 Amendments relating to threatened species conservation

(Section 3)

[1] Section 3 Objects of Act

Omit section 3 (2). Insert instead:

- (2) In particular, the objects of this Act include:
- (a) to conserve fish stocks and key fish habitats, and
 - (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and
 - (c) to promote ecologically sustainable development, including the conservation of biological diversity,
- and, consistently with those objects:
- (d) to promote viable commercial fishing and aquaculture industries, and
 - (e) to promote quality recreational fishing opportunities, and
 - (f) to appropriately share fisheries resources between the users of those resources.

[2] Section 4 Definitions

Insert in alphabetical order:

biological diversity means the diversity of life and is made up of the following 3 components:

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,

- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities or ecosystems.

ecologically sustainable development has the same meaning as under section 6 (2) of the *Protection of the Environment Administration Act 1991*.

habitat means any area occupied, or periodically or occasionally occupied, by fish or marine vegetation (or both), and includes any biotic or abiotic component.

[3] Section 37 Defence—special permits for research or other authorised purposes

Insert “or marine vegetation” after “fish” wherever occurring.

[4] Section 37 (7)

Insert after section 37 (6):

- (7) The power to issue permits under this section is limited by section 220ZW (Licence to harm threatened species etc).

[5] Section 192 Preparation of habitat protection plans

Omit “critical” wherever occurring.

Insert instead “essential”.

[6] Section 192 (1A)

Insert after section 192 (1):

- (1A) Without limiting subsection (1), a habitat protection plan may be determined for the protection of critical habitat declared under Part 7A.

[7] Part 7, Division 4

Omit the Division. Insert instead:

Division 4 Protection of mangroves and certain other marine vegetation

204 Application and interpretation

- (1) This Division does not apply to a threatened species, population or ecological community of marine vegetation within the meaning of Part 7A.
- (2) In this Division:
harm has the same meaning it has in Part 7A.
protected area means any public water land or aquaculture lease, or the foreshore of any such land or lease.

204A Marine vegetation protected from any harvesting or other harm

- (1) This section applies to any marine vegetation declared by the regulations to be protected marine vegetation.
- (2) A person must not harm any such protected marine vegetation in a protected area.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units.

204B Marine vegetation protected from any commercial harvesting

- (1) This section applies to any marine vegetation declared by the regulations to be protected from commercial harvesting.
- (2) A person must not gather or collect for commercial purposes any such protected marine vegetation in a protected area.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units.

Note. Permits for the commercial harvesting of other marine vegetation may be required by regulations under section 191.

205 Marine vegetation—regulation of harm

- (1) This section applies to:
- (a) mangroves, or
 - (b) seagrasses, or
 - (c) any other marine vegetation declared by the regulations to be marine vegetation to which this section applies,

but does not apply to protected marine vegetation under section 204A.

- (2) A person must not harm any such marine vegetation in a protected area, except under the authority of a permit issued by the Minister under this Part.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units.

205A Aquaculture exempted

This Division does not apply to any marine vegetation that is being cultivated or kept in accordance with the authority conferred by an aquaculture permit.

[8] Section 208

Omit the section. Insert instead:

208 Defence for authorised activities

A defence to a prosecution for an offence of damaging critical habitat under Part 7A is also available as a defence to a prosecution for an offence against this Division.

[9] Part 7A

Insert after Part 7:

Part 7A Threatened species conservation

Division 1 Preliminary

220A Objects of Part

The objects of this Part are as follows:

- (a) to conserve biological diversity of fish and marine vegetation and promote ecologically sustainable development,
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities of fish and marine vegetation,
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered,
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities of fish and marine vegetation,
- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities of fish and marine vegetation is properly assessed,
- (f) to encourage the conservation of threatened species, populations and ecological communities of fish and marine vegetation by the adoption of measures involving co-operative management.

Note. In furtherance of the objects of this Part, the responsibilities of the Minister and the Director extend to biological diversity of fish and marine vegetation—see the other provisions of this Part and the provisions relating to the Biological Diversity Advisory Council and the Biological Diversity Strategy in relation to fish and marine vegetation under Part 9 of the *Threatened Species Conservation Act 1995*.

220B Definitions

(1) In this Part:

critical habitat means habitat declared to be critical habitat under Division 3.

ecological community means an assemblage of species of fish or marine vegetation (or both) occupying a particular area.

endangered ecological community means an ecological community specified in Part 3 of Schedule 4.

endangered population means a population specified in Part 2 of Schedule 4.

endangered species means a species specified in Part 1 of Schedule 4.

endangered species, populations and ecological communities means species, populations and ecological communities specified in Schedule 4 and *endangered species, population or ecological community* means a species, population or ecological community respectively specified in that Schedule.

fish means any fish (as defined in section 5) that is indigenous to New South Wales.

Fisheries Scientific Committee means the Fisheries Scientific Committee constituted under Division 9.

harm means:

- (a) in the case of fish—take, injure or otherwise harm the fish, or
- (b) in the case of marine vegetation—gather, cut, pull up, destroy, poison, dig up, remove, injure or otherwise harm the marine vegetation, or any part of it,

but in any such case does not include harm by changing the habitat of the fish or marine vegetation.

joint management agreement means an agreement entered into under Division 8.

key threatening process means a threatening process specified in Schedule 6.

land includes:

- (a) land covered with water, whether regularly or intermittently, and
- (b) the sea or an arm of the sea, and
- (c) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or not, and
- (d) a river, stream or watercourse, whether tidal or not.

landholder of land means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

list means a list set out in Schedules 4–6, and includes a list in one or more of those Schedules that does not contain any entries.

marine vegetation means any marine vegetation (as defined by section 4) that is indigenous to New South Wales.

population means a group of organisms, all of the same species of fish or marine vegetation, occupying a particular area.

public authority means a public authority (as defined in section 4), and includes a person exercising any function on behalf of the authority and any person prescribed by the regulations to be a public authority.

recovery plan means a recovery plan prepared and approved under Division 5.

region means a region within the meaning of the *Threatened Species Conservation Act 1995*.

species means a species of fish or marine vegetation, and includes any defined sub-species and taxon below a sub-species and any recognisable variant of a sub-species or taxon.

species impact statement means a statement referred to in Subdivision 2 of Division 6 and includes an environmental impact statement, prepared under the *Environmental Planning and Assessment Act 1979*, that contains a species impact statement.

species presumed extinct means a species specified in Part 4 of Schedule 4.

threat abatement plan means a threat abatement plan prepared and approved under Division 5.

threatened species means a species specified in Part 1 (Endangered species) or Part 4 (Species presumed extinct) of Schedule 4 or in Schedule 5 (Vulnerable species).

threatened species, populations and ecological communities means species, populations and ecological communities specified in Schedules 4 and 5 and ***threatened species, population or ecological community*** means a species, population or ecological community respectively specified in either of those Schedules.

threatening process means a process that threatens, or that may threaten, the survival or evolutionary development of species, populations or ecological communities of fish or marine vegetation.

vulnerable species means a species specified in Schedule 5.

- (2) A reference in this Part to fish or marine vegetation indigenous to New South Wales is a reference to fish or marine vegetation of a species that was established in New South Wales before European settlement.
- (3) A reference in this Part to New South Wales includes a reference to the coastal waters of the State.

Note. Coastal waters of the State is defined in section 58 of the *Interpretation Act 1987*. Generally speaking, coastal waters extend to the waters of the sea within 3 nautical miles of the coast.

Division 2 Listing of threatened species, populations and ecological communities and key threatening processes

Subdivision 1 Listing

220C Lists

- (1) **Endangered species**
Part 1 of Schedule 4 contains a list of endangered species for the purposes of this Part.
- (2) **Endangered populations**
Part 2 of Schedule 4 contains a list of endangered populations for the purposes of this Part.
- (3) **Endangered ecological communities**
Part 3 of Schedule 4 contains a list of endangered ecological communities for the purposes of this Part.
- (4) **Species presumed extinct**
Part 4 of Schedule 4 contains a list of species presumed extinct for the purposes of this Part.
- (5) **Vulnerable species**
Schedule 5 contains a list of vulnerable species for the purposes of this Part.
- (6) **Key threatening processes**
Schedule 6 contains a list of key threatening processes for the purposes of this Part.

220D Amendment of lists

- (1) The Minister may, by order, amend Schedule 4, 5 or 6:
 - (a) by inserting the name or description of a species, population, ecological community or threatening process, or
 - (b) by omitting the name or description of a species, population, ecological community or threatening process, or
 - (c) by amending the name or description of a species, population, ecological community or threatening process.

- (2) The Minister may, by order, amend this Act by omitting Schedule 4, 5 or 6 and by inserting instead a Schedule containing the names or descriptions of species, populations, ecological communities or threatening processes.
- (3) A new species, population, ecological community or threatening process may not be listed, nor any such listing changed or omitted, unless the Fisheries Scientific Committee has made a recommendation to the Minister about the matter under Subdivision 2.
- (4) An order under this section is not invalid because of a contravention of the requirements of Subdivision 2 relating to the order.

220E Identification of nationally threatened species and ecological communities

- (1) A species or ecological community listed in Schedule 4 or 5 that is also listed under Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth is shown in Schedule 4 or 5 to this Act marked with an asterisk to show its national status.
- (2) As soon as practicable after a species or ecological community that is or was indigenous to New South Wales is inserted in Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth, the Fisheries Scientific Committee is to consider whether, in accordance with this Division, the species or ecological community should be listed in Schedule 4 or 5 to this Act.
- (3) If a species or ecological community is omitted from Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth:
 - (a) Schedule 4 or 5 to this Act may be amended to omit the asterisk showing its national status, and
 - (b) the Fisheries Scientific Committee is to consider, in accordance with this Division, whether the species or ecological community should be omitted from Schedule 4 or 5 to this Act.

220F Eligibility for listing

(1) Endangered species

A species is eligible to be listed as an endangered species if:

- (a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or
- (b) its numbers have been reduced to such a critical level, or its habitats have been so drastically reduced, that it is in immediate danger of extinction, or
- (c) it might already be extinct, but is not presumed extinct.

(2) Endangered populations

A population is eligible to be listed as an endangered population if it is a reproducing population but its numbers have been reduced to such a critical level, or its habitat has been so drastically reduced, that it is in immediate danger of extinction, and:

- (a) it is a population of a vulnerable species listed in Schedule 5, or
- (b) it is disjunct and at or near the limit of its geographic range and it is or is likely to be genetically distinct.

(3) Endangered ecological communities

An ecological community is eligible to be listed as an endangered ecological community if it represents a type of ecological community that is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

(4) Species presumed extinct

A species is eligible to be listed as a species that is presumed extinct at a particular time if, to the knowledge of the Fisheries Scientific Committee, it has not been

definitely located in nature during the preceding 50 years despite searching of known and likely habitats during that period.

(5) **Vulnerable species**

A species is eligible to be listed as a vulnerable species if it is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

(6) **Key threatening processes**

A threatening process is eligible to be listed as a key threatening process if it:

- (a) adversely affects 2 or more threatened species, populations or ecological communities, or
- (b) could cause species, populations or ecological communities that are not threatened to become threatened.

Subdivision 2 Procedure for listing

220G Fisheries Scientific Committee responsible for recommending listing

- (1) The Fisheries Scientific Committee is responsible for recommending to the Minister the species, populations, ecological communities or threatening processes that should be listed in Schedule 4, 5 or 6.
- (2) Accordingly, the Fisheries Scientific Committee must keep the lists in those Schedules under review and recommend any changes to the lists that it considers necessary.

220H Who may initiate action for listing

The Fisheries Scientific Committee may make a recommendation for listing:

- (a) on its own initiative, or
- (b) following a request by the Minister, or
- (c) on a nomination, duly made, of any other person.

220I How nominations made

- (1) Any person may nominate an amendment of Schedule 4, 5 or 6.
- (2) A nomination must be in writing addressed to the Chairperson of the Fisheries Scientific Committee and must include any information prescribed by the regulations.
- (3) The Fisheries Scientific Committee may request a person who makes a nomination to provide additional information about the subject-matter of the nomination within a specified period.
- (4) A person must not deliberately and wilfully make a vexatious nomination.

Maximum penalty (subsection (4)): 20 penalty units.

220J Consideration of nomination by Fisheries Scientific Committee

- (1) The Fisheries Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.
- (2) The Fisheries Scientific Committee may consider different nominations about the same subject together, and may consider different matters in the same nomination separately.
- (3) The Fisheries Scientific Committee may reject a nomination if:
 - (a) the Committee determines not to recommend the amendment nominated having regard to the eligibility requirements of this Part for listing, or
 - (b) the subject of the nomination has already been dealt with, or
 - (c) the nomination is vexatious, or

- (d) the nomination is not accompanied by the information prescribed by the regulations, or
 - (e) any additional information requested by the Committee is not provided within the period specified for its provision or any such additional information provided is inadequate.
- (4) If the Fisheries Scientific Committee rejects a nomination, it is to notify the Minister and the person who made the nomination and is to give reasons for the rejection.

Note. Section 220O enables the Committee to recommend other measures to protect the fish or marine vegetation even if it rejects a nomination.

220K Notification and consultation with respect to proposed recommendation of Fisheries Scientific committee

Before it makes a recommendation for the amendment of Schedule 4, 5 or 6, the Fisheries Scientific Committee must:

- (a) notify the Minister of the proposed recommendation and, if it was made in response to a nomination, also notify the person who made the nomination, and
- (b) give the public an opportunity to make submissions on the proposed recommendation and the reasons for it, and
- (c) have regard to any written submissions received by the Committee on or before the date specified for the receipt of public submissions about the proposed recommendation.

Note. Section 284 regulates the public consultation procedure. It requires copies of the proposed recommendation and reasons to be publicly exhibited and a period of at least 30 days for public comment.

Section 220N provides for provisional listings of endangered species without the need for compliance with this section.

220L Fisheries Scientific Committee's recommendation

- (1) The Fisheries Scientific Committee may, in accordance with this Subdivision, make a recommendation to the Minister for the amendment of Schedule 4, 5 or 6. The Committee must give reasons for its recommendation.
- (2) In a case involving a nomination, the Fisheries Scientific Committee must make a recommendation or reject the nomination within 6 months:
 - (a) after the making of the nomination, or
 - (b) if additional information has been requested by the Committee, after that information has been provided or the period specified for its provision has expired.

That period of 6 months may be extended by the Minister, at the request of the Committee, by a further period not exceeding 3 months.

- (3) The Fisheries Scientific Committee must, as soon as practicable after making a recommendation in a case involving a nomination, notify the person who made the nomination of the recommendation and the reasons for it.
- (4) In a case involving a request by the Minister, the Fisheries Scientific Committee must make a recommendation or decide not to do so within such period as the Minister specifies in the request or such further period as the Minister allows. If the Committee decides not to make a recommendation for amendment, it is to notify the Minister and is to give reasons for its decision.

220M Decision by Minister or Committee on listing

- (1) The Minister must, as soon as practicable (and in any event within 2 months) after receiving a recommendation by the Fisheries Scientific Committee for the amendment of Schedule 4, 5 or 6:
 - (a) accept the recommendation, or
 - (b) refer the recommendation back to the Committee for further consideration.

- (2) The Minister may only refer a matter back to the Committee for reasons of a scientific nature provided to the Committee. In the case of a nomination, the Committee is to notify the person who made the nomination that the matter has been referred back to the Committee and of the Minister's reasons for doing so.
- (3) If the recommendation is referred back to the Committee for further consideration:
 - (a) the Committee may decide to proceed with the recommendation, to change the recommendation or not to proceed with the recommendation, and
 - (b) the Committee is to make that decision within 3 months, and
 - (c) the Minister cannot refer the matter back to the Committee again after it has made that decision.
- (4) The Minister must make an order to give effect to a recommendation of the Committee:
 - (a) immediately after the Minister accepts the recommendation under subsection (1) (a), or
 - (b) if the matter has been referred back to the Committee for further consideration, immediately after the Minister is notified of the Committee's decision (unless the Committee decides not to proceed with the matter).

220N Provisional listing

- (1) This section applies to the provisional listing, on an emergency basis, of a species in Part 1 of Schedule 4 as an endangered species, being a species that:
 - (a) although not previously known to have existed in New South Wales, is believed on current knowledge to be indigenous to New South Wales, or
 - (b) was presumed to be extinct in New South Wales but has been rediscovered.

- (2) The Fisheries Scientific Committee may recommend the provisional listing of any such endangered species without complying with section 220K (Notification and consultation with respect to proposed recommendation of Fisheries Scientific Committee). The other provisions of this Subdivision (including sections 220H and 220I) apply to any such recommendation, except that the Minister is not entitled to refer a recommendation for a provisional listing back to the Committee under section 220M (1) (b).
- (3) An order made for the purpose of provisionally listing the endangered species must provide, in the matter inserted in Schedule 4, that the listing has effect for a specified period (not exceeding 12 months).
- (4) The Fisheries Scientific Committee must review the status of any such endangered species in accordance with this Subdivision (including section 220K) as soon as practicable after the species is provisionally listed.

220O Protection measures apart from listing

- (1) The Fisheries Scientific Committee may, if of the opinion that a species, population or ecological community should be protected but does not satisfy the criteria for listing, recommend to the Minister that other measures should be taken under this Act to protect the species, population or ecological community.
- (2) The Minister is to give the Committee the reasons for any rejection of such a recommendation of the Committee.

Note. The measures that could be taken to protect an unlisted species, population or ecological community include fishing closures (s 8), prohibitions on the taking of specified species of fish (s 19—protected fish), prohibitions on the taking of specified species of fish for sale (s 20—fish protected from commercial fishing), bag limits (s 17), declaration of prohibited size of fish (s 15), restrictions on the lawful use of fishing gear (s 24), determination of total allowable catches (ss 26–34), declaration of share management fishery (ss 41–101), declaration of restricted fishery (ss 111–116), habitat protection plans (s 192), declaration of aquatic reserves (ss 194–197) and protection of marine vegetation (ss 204–205A).

**Division 3 Critical habitat of endangered species,
populations and ecological communities**

220P Habitat eligible to be declared critical habitat

- (1) The whole or any part of the habitat of an endangered species, population or ecological community that is critical to the survival of the species, population or ecological community is eligible to be declared under this Division to be the critical habitat of the species, population or ecological community.
- (2) The regulations may provide that a specified habitat, or habitat of a specified kind, may, or may not, be declared to be critical habitat for the purposes of this Division.

Note. For the purposes of this section, *habitat* means any area occupied, or periodically or occasionally occupied, by fish or marine vegetation (or both), and includes any biotic or abiotic component—see section 4.

220Q Identification of critical habitat

- (1) The Minister is to identify (where this is possible) the critical habitat of each endangered species, population and ecological community.
- (2) The Minister must consult the Fisheries Scientific Committee about the identification of any such critical habitat and must not make a preliminary identification until the Minister has considered the advice of the Committee on the matter.

**220R Publication of preliminary identification and consultation
with other Ministers**

- (1) After making a preliminary identification of critical habitat, the Minister must:
 - (a) give details of the preliminary identification to the Fisheries Scientific Committee, and
 - (b) give a copy of the notice of the preliminary identification that is required to be published under section 284 to all affected persons, and

- (c) give the public an opportunity to make submissions about the preliminary identification.

Note. Section 284 regulates the public consultation procedure. It requires copies of the preliminary identification to be publicly exhibited and a period of at least 30 days provided for public comment.

- (2) If a submission from a public authority indicates that the declaration of the area concerned as critical habitat is likely to affect the exercise of functions by the public authority, the Minister is to consult with the responsible Minister for the public authority before making a decision on the matter.
- (3) For the purposes of this Division, an *affected person* is any of the following persons who (to the knowledge of the Minister after the making of reasonable searches and inquiries) would be affected by the declaration of critical habitat:
 - (a) landholders (including public authorities who are landholders) of the land concerned,
 - (b) other public authorities known to the Minister to exercise relevant functions in relation to the land concerned,
 - (c) if the land concerned is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant,
 - (d) holders of leases and other interests granted by the Crown over the land concerned.

220S Matters to which Minister to have regard in declaring critical habitat

- (1) Before deciding whether an area identified by the Minister should be declared critical habitat, the Minister must have regard to the following:
 - (a) the likely social and economic consequences of a declaration of the area as critical habitat,

- (b) without limiting paragraph (a), the likely consequences of a declaration of the area as critical habitat for landholders of, or other persons having an interest in, or in lawful uses of, the land concerned,
 - (c) the advice of the Fisheries Scientific Committee on the matter,
 - (d) any written submissions received by the Minister on or before the date specified for the receipt of public submissions about the preliminary identification of the area and, in particular, any submissions received from public authorities exercising relevant functions in relation to the area.
- (2) In so doing, the Minister must also consider whether, consistent with the principles of ecologically sustainable development, the area identified might be amended to avoid or lessen any adverse consequences of its declaration as critical habitat.

220T Declaration of critical habitat by Minister

- (1) The Minister may, by notification published in the Gazette, declare an area described in the notification to be the critical habitat of a specified endangered species, population or ecological community.
- (2) The Minister must not do so until the Minister has made a preliminary identification of the area as critical habitat and complied with the other requirements of this Division with respect to the declaration of that area as critical habitat.
- (3) The Minister may declare the area the subject of the preliminary identification to be critical habitat without amendment or with any amendments that the Minister considers appropriate.

- (4) The Minister may refuse to declare the area the subject of the preliminary identification to be critical habitat (on the basis of one or more of the factors referred to in section 220S or otherwise).
- (5) The Minister must make a decision on whether to declare a particular area as critical habitat within 6 months after the date specified for the receipt of public submissions about the preliminary identification of the area.
- (6) As soon as practicable after the declaration of critical habitat, the Minister must:
 - (a) give notice of the declaration to all affected persons, and
 - (b) publish notice of the declaration in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area declared to be critical habitat.

Note. See section 220W for requirements with respect to the publication of a map of the critical habitat.

220U Amendment or revocation of declaration of critical habitat

- (1) The Minister may amend or revoke a declaration of critical habitat by a further notification published in the Gazette.
- (2) However, the Minister must not amend or revoke a declaration unless the Minister:
 - (a) has consulted the Fisheries Scientific Committee about the matter, and
 - (b) has given notice of the proposed amendment or revocation to affected persons and given the public an opportunity to make submissions as if it were a preliminary identification of critical habitat, and
 - (c) has had regard to the matters the Minister would be required to have regard to if it were a decision to declare critical habitat.

- (3) The Minister must give notice of the amendment or revocation to all affected persons as if it were a declaration of critical habitat.
- (4) The Minister must, in a notification amending or revoking a declaration of critical habitat and in a notice under subsection (3), give the reasons for the amendment or revocation of the declaration.

220V Public authorities to have regard to critical habitat

A public authority must have regard to the existence of critical habitat declared under this Division:

- (a) in relation to the use of any of the land concerned of which it is a landholder, or
- (b) in exercising its functions in relation to any of the land concerned.

Note. The *Environmental Planning and Assessment Act 1979* contains a number of significant provisions with respect to critical habitat (and also certain other habitat of threatened species, populations and ecological communities of fish and marine vegetation), including in connection with the preparation of environmental planning instruments, the granting of development consents and environmental assessment under Part 5 of that Act. Section 192 of this Act also enables habitat protection plans to be made for the protection of critical habitat.

220W Maps of critical habitat

- (1) Before any critical habitat is declared or any declaration of critical habitat is amended, the Minister must arrange for the preparation of a map that shows the location of the critical habitat proposed to be declared or amended.
- (2) A copy of the map is to be published in the Gazette and the description in a notification of the area declared to be critical habitat, or any amendment of that area, is to be provided by or by reference to that map.

- (3) The Minister must serve a copy of a map of critical habitat on the following:
 - (a) the Director-General of the Department of Land and Water Conservation,
 - (b) the Director-General of the Department of Urban Affairs and Planning,
 - (c) each local council within whose area the whole or part of the critical habitat is located,
 - (d) any other affected persons as the Minister considers appropriate.

220X Director to keep register of critical habitat

- (1) The Minister must keep a register containing copies of declarations of critical habitat as in force from time to time, and maps of the critical habitat that are published in the Gazette.
- (2) The register is to be made available to public authorities.
- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

220Y Discretion not to disclose location of critical habitat

- (1) Despite the other provisions of this Division, the Minister may decline to disclose the precise location of critical habitat (or proposed critical habitat) in accordance with this Division to the public or to any class of affected persons. This subsection extends to the notification of a preliminary identification of critical habitat, the declaration of critical habitat, any public or other notice of any such declaration, the service of a copy of any map or the keeping of any register under this Division.

- (2) The Minister may decline to disclose the precise location of critical habitat (or proposed critical habitat) only if the Minister is satisfied that:
- (a) the disclosure would be likely to expose the habitat and the endangered species, population or ecological community that occupies it to a significant threat, and
 - (b) each landholder of land concerned agrees that the precise location should not be disclosed, and
 - (c) it is in the public interest that the precise location should not be disclosed.
- (3) This section does not prevent the Minister from disclosing the precise location of critical habitat (or proposed critical habitat) to particular persons, including:
- (a) landholders or other persons having an interest in, or in lawful uses of, the land, or
 - (b) public authorities exercising functions in relation to the land, or
 - (c) persons entitled by law to notice of the existence of interests in or proposals affecting the land.

220Z Effect of failure to comply with procedural requirements

A declaration of critical habitat (or any amendment or revocation of the declaration) is not open to challenge, because of a failure to comply with the procedural requirements of this Division, after notification of the declaration (or of the amendment or revocation) has been published in the Gazette.

Division 4 Offences

220ZA Harming threatened species, populations or ecological communities

A person must not harm any fish or marine vegetation of a threatened species, population or ecological community.

Maximum penalty:

- (a) in the case of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years, or both, or
- (b) in the case of any vulnerable species—500 penalty units or imprisonment for 1 year, or both.

220ZB Buying, selling or possessing threatened species

- (1) A person must not buy, sell or have in possession any fish or marine vegetation of a threatened species.

Maximum penalty:

- (a) in the case of any endangered species—2,000 penalty units or imprisonment for 2 years, or both, or
 - (b) in the case of any vulnerable species—500 penalty units or imprisonment for 1 year, or both.
- (2) The following are exempt from this section:
 - (a) fish or marine vegetation that has been cultivated or kept under the authority of an aquaculture permit,
 - (b) any class of fish or marine vegetation exempted by the regulations, subject to such conditions as may be specified in the regulations.

220ZC Damage to critical habitat

- (1) A person must not, by an act or omission, do anything that causes damage to any critical habitat.

Maximum penalty: 2,000 penalty units or imprisonment for 2 years, or both.

- (2) If a map of the critical habitat has been duly published in the Gazette, it is not necessary for the prosecution to prove that the person knew that the habitat was declared as critical habitat or that the accused knew that it was the habitat of an endangered species, population or ecological community.

- (3) It is a defence to a prosecution for an offence against this section in relation to an area of critical habitat that the Minister has declined to disclose its precise location under section 220Y and that the accused did not know and could not reasonably be expected to have known that the area was critical habitat.

220ZD Damage to habitat of threatened species, population or ecological community

A person must not, by an act or omission, do anything that causes damage to any habitat (other than critical habitat) of a threatened species, population or ecological community if the person knows that the area concerned is habitat of that kind.

Maximum penalty: 1,000 penalty units or imprisonment for 1 year, or both.

220ZE Regulations may prohibit certain actions on critical habitat

- (1) The regulations may prohibit or regulate, for the purposes of this Part, the carrying out of specified actions, or actions of a specified class or description, on specified critical habitat.
- (2) Any such regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

220ZF Defences

- (1) It is defence to a prosecution for an offence against this Division if the accused proves that the act or omission constituting the offence:
- (a) was authorised by, and was done or omitted in accordance with, a licence granted under this Part, a permit under section 37 or an aquaculture permit, or

- (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act, if the determining authority has complied with that Part, or
 - (c) was authorised by or under the *Rural Fires Act 1997* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
 - (d) was a routine activity in connection with the lawful taking of fish or marine vegetation other than a threatened species, population or ecological community of fish (unless it was an activity of a kind that the regulations declare is not a routine activity for the purposes of this paragraph), or
 - (e) was a routine agricultural or aquacultural activity (unless it was an activity of a kind that the regulations declare is not a routine activity for the purposes of this paragraph), or
 - (f) is identified in, and carried out in accordance with, a property management plan approved by the Director under subsection (4) or by the Director-General of National Parks and Wildlife under section 91 of the *Threatened Species Conservation Act 1995*.
- (2) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this Part:

- (a) this Part prevails (except in relation to a matter referred to in subsection (1) (b) or (c)), and
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this Part.
- (3) The Minister must not recommend the making of any regulation under subsection (1) (e) unless the Minister certifies that the Director has consulted with the Director-General of the Department of Agriculture concerning the making of the regulation.
- (4) The Director may, for the purposes of subsection (1) (9), approve of a property management plan for land prepared by a landholder. Any such plan may identify an activity even if it is declared not to be a routine agricultural or aquacultural activity for the purposes of subsection (1) (e).

220ZG Court may order offender to restore critical habitat

- (1) If a court convicts a person of an offence against section 220ZC (Damage to critical habitat), the court may, in addition to or in substitution for any pecuniary penalty for the offence, direct the person to take any action to mitigate the damage or to restore the critical habitat.
- (2) The court may specify the actions to be taken to mitigate the damage or restore the habitat and may order the person to maintain the habitat until those actions have been fully performed.
- (3) The court may order the person to provide security for the performance of any obligation imposed under this section.
- (4) For the purposes of this section, a *conviction* includes the making of an order under section 556A of the *Crimes Act 1900*.

Division 5 Recovery plans and threat abatement plans

220ZH Application of Division

- (1) This Division applies to the preparation, approval and implementation of
 - (a) recovery plans for threatened species, populations and ecological communities, and
 - (b) threat abatement plans to manage key threatening processes.
- (2) In this Division, *plan* means any such recovery plan or threat abatement plan.

220ZI Director to prepare recovery plans for threatened species, populations and ecological communities

- (1) The Director must prepare a recovery plan:
 - (a) for each endangered species (other than a species presumed extinct), and
 - (b) for each endangered population or endangered ecological community, and
 - (c) for each vulnerable species,as soon as practicable after it is listed, to promote the recovery of the species, population or ecological community to a position of viability in nature.
- (2) A recovery plan may contain provisions relevant to more than one species, population or ecological community and more than one recovery plan may be prepared for a species, population or ecological community.

220ZJ Director to prepare threat abatement plans

- (1) The Director must prepare a threat abatement plan for each key threatening process to manage the threatening process so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities.

- (2) A threat abatement plan may contain provisions dealing with more than one key threatening process and more than one threat abatement plan may be prepared for a key threatening process.

220ZK Priorities for recovery or threat abatement plans

- (1) The Director must, after consulting with the Fisheries Scientific Committee, determine priorities in the preparation of plans.
- (2) In the case of recovery plans, the highest priority is to be given to the preparation of plans for species, populations and ecological communities that are identified by asterisks in Schedule 4 as being endangered nationally.
- (3) After complying with subsection (2), priorities in the preparation of recovery plans are to be determined in accordance with the following criteria and any other criteria that the Director, after consultation with the Fisheries Scientific Committee, considers relevant:
 - (a) likelihood of extinction—whether the species, population or ecological community has a greater likelihood of extinction than other species, populations or ecological communities,
 - (b) likelihood of recovery—whether the species, population or ecological community is more likely to recover, if it is the subject of a recovery plan, than other species, populations or ecological communities,
 - (c) keystone species—whether many other species are dependant for survival on the species,
 - (d) indicator species—whether the relative abundance of the species is a measure of the overall health of its ecosystem.

220ZL Deadlines for preparation of recovery or threat abatement plans

Recovery plans and threat abatement plans must be prepared within the same time limits as recovery plans or threat abatement plans (within the meaning of the *Endangered Species Protection Act 1992* of the Commonwealth) must be prepared under that Act.

220ZM Guidelines for recovery or threat abatement plans

- (1) The Director must, in preparing a plan and in deciding which measures to include in it, have regard to the following:
 - (a) the objects of this Part,
 - (b) the likely social and economic consequences of the making of the plan,
 - (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
 - (d) the desirability of minimising any significant adverse social and economic consequences.
- (2) The Director is to consider, when preparing a plan, any measures by which the public may co-operate:
 - (a) in the conservation of the threatened species, population or ecological community, or
 - (b) in the abatement, amelioration or elimination of the adverse effects of the key threatening process on threatened species, populations or ecological communities.

220ZN Contents of recovery or threat abatement plans

- (1) **Recovery plans**

A recovery plan must:

 - (a) identify the threatened species, population or ecological community to which it applies, and

- (b) identify any critical habitat declared in relation to the threatened species, population or ecological community, and
 - (c) identify any threatening process or processes threatening the threatened species, population or ecological community, and
 - (d) identify methods by which adverse social and economic consequences of the making of the plan can be minimised, and
 - (e) state what must be done to ensure the recovery of the threatened species, population or ecological community, and
 - (f) state what must be done to protect the critical habitat (if any) identified in the plan, and
 - (g) state, with reference to the objects of this Part:
 - (i) the way in which those objects are to be implemented or promoted for the benefit of the threatened species, population or ecological community, and
 - (ii) the method by which progress towards achieving those objects is to be assessed, and
 - (h) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and
 - (i) state the date by which the recovery plan should be subject to review by the Director.
- (2) **Threat abatement plans**
A threat abatement plan must:
- (a) state the criteria for assessing the achievement of the objective, and
identify the actions needed to abate, ameliorate or eliminate the effects of the key threatening process. and
 - (b) identify the actions needed to abate, ameliorate or eliminate the effects of the key threatening process. and

- (c) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and
- (d) where practicable, provide a proposed timetable for the implementation of the plan, and
- (e) state the estimated cost of the measures included in the plan, and
- (f) state the date by which the plan should be subject to review by the Director, and
- (g) include any other matter relating to the impact of the plan as the Director considers appropriate.

220ZO Public and other consultation concerning draft recovery or threat abatement plan

(1) **Publication of draft plans**

As soon as practicable after preparing a draft plan, the Director must:

- (a) give a copy of the draft plan to the Fisheries Scientific Committee, and
- (b) give a copy of the draft plan to any public authority that the Director knows is likely to be affected by the plan, and
- (c) give the public an opportunity to make submissions on the draft plan.

Note. Section 284 regulates the public consultation procedure. It requires copies of the draft plan to be publicly exhibited and a period of at least 30 days for public comment.

(2) **Consideration of submissions by Director**

The Director must consider all written submissions received by the Director on or before the date specified for the receipt of public submissions about the draft plan. The Director may amend the draft plan to take account of those submissions or any advice given by the Fisheries Scientific Committee.

(3) **Consultation between Ministers**

If the Director informs the Minister that the Director considers that a public authority should be responsible for the implementation of a measure to be included in a plan:

- (a) the Minister must consult with the Minister responsible for the public authority before completing the preparation of the draft plan, and
- (b) a measure must not be included in a plan for implementation by the public authority unless the Minister responsible for the public authority approves of the inclusion of the measure.

220ZP Approval of recovery or threat abatement plan by Minister

- (1) After considering the submissions and making amendments (if any) to the draft plan, the Director must:
 - (a) forward the draft plan to the Minister, and
 - (b) provide the Minister with a summary of any advice given by the Fisheries Scientific Committee and of all submissions received about the draft plan, and details of any amendments made to the draft plan by the Director to take account of that advice or those submissions.
- (2) In considering whether to approve or to refuse to approve a draft plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.
- (3) The Minister may:
 - (a) approve a draft plan without amendment or with any amendments that the Minister considers appropriate, or
 - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or

- (c) refer the plan back to the Director for further consideration (whether with or without a request for the amendment of the plan).

220ZQ Recovery and threat abatement plans to be published

- (1) As soon as practicable after the Minister approves a draft plan, the Director must:
 - (a) give a copy of the plan to the Fisheries Scientific Committee, and
 - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and in such local newspapers (if any) as the Director considers appropriate, and
 - (c) notify any public authority that the Director knows is likely to be affected by the plan, and
 - (d) publish notice of the approval of the plan in the Gazette.
- (2) The Director must also make a copy of the plan available for public inspection, without charge, during ordinary business hours and copies of or extracts from the plan are to be made available to the public on request, on payment of the fee fixed by the Director.

220ZR Review of recovery and threat abatement plans

- (1) The Director is required to keep each plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) The Director is also to consider any submissions about plans received from public authorities or the public.
- (3) If the Director considers that any change (other than a minor change) should be made to a plan, the Director is to prepare a new plan in accordance with this Division.

220ZS Ministers and public authorities to implement recovery and threat abatement plans

- (1) Ministers and public authorities are to take any appropriate action available to them to implement those measures included in a plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a plan.
- (2) If the implementation of a plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or public authority must take the plan into account.
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

220ZT Public authorities to report on implementation of recovery and threat abatement plans

- (1) A public authority (other than a local council) identified in a plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.
- (2) A local council identified in a plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

220ZU Notification of, and consultation concerning, proposed departures from recovery or threat abatement plan

- (1) A public authority must not exercise a function in a manner that is inconsistent with the implementation of measures included in a plan unless the public authority has given notice of the proposed exercise of the function to the Director.

- (2) The Director must, on receiving notice of a proposed departure from a plan from a public authority, advise the Minister whether the exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan.
- (3) If the Minister (having regard to that advice) considers that the departure is acceptable, the Director must notify the public authority accordingly.
- (4) If the Minister (having regard to that advice) considers that the departure is likely to jeopardise the effective implementation of the plan, the Director must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means.
- (5) This section does not apply in relation to anything authorised to be done by or under the *Rural Fires Act 1997* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

220ZV Reference of matters concerning departures to Ministers and Premier for settlement

- (1) A matter that has not been resolved after consultation between the Director and the public authority concerned must be referred by the parties to their respective Ministers.
- (2) In the case of a local council, the reference is to be made to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be made to the Minister administering the *Environmental Planning and Assessment Act 1979*.

- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution.
- (5) A public authority must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions.

Division 6 Licensing

Subdivision 1 Grant of licences

220ZW Licence to harm threatened species, population or ecological community or damage habitat

- (1) The Director may grant a licence authorising a person to take action that is likely to result in one or more of the following:
 - (a) harm to a threatened species, population or ecological community,
 - (b) damage to a critical habitat,
 - (c) damage to a habitat of a threatened species, population or ecological community.
- (2) A permit under section 37 may only be issued for a purpose referred to in subsection (1):
 - (a) for scientific purposes, or
 - (b) for the welfare of fish or marine vegetation, or
 - (c) if there is a threat to life or property.

Note. Section 220ZF provides a defence for offences under Division 4 if the accused proves that the action constituting the alleged offence was a routine fishing, agricultural or aquacultural activity or was authorised by a property management plan approved by the Director or by the Director-General of National Parks and Wildlife.

220ZX Application for licence

- (1) An application for a licence must be in a form approved by the Director and be accompanied by any processing fee payable under this Division.
- (2) If the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by a species impact statement prepared in accordance with Subdivision 2.
- (3) If the action proposed is not on land that is critical habitat, the application must include the following:
 - (a) details of the types, and condition, of habitats in and adjacent to the land to be affected by the action,
 - (b) particulars of any known records of a threatened species in the same or similar known habitats in the locality,
 - (c) details of any known or potential habitat for a threatened species on the land to be affected by the action,
 - (d) details of the amount of such habitat to be affected by the action proposed in relation to the known distribution of the species and its habitat in the locality and region,
 - (e) an assessment of the likely nature and intensity of the effect of the action on the life cycle and habitat of the species,
 - (f) details of possible measures to avoid or ameliorate the effect of the action.
- (4) An applicant may lodge a species impact statement with an application even if the action proposed is not on land that is critical habitat. In that event, the application need not include the information referred to in subsection (3).
- (5) The Director may request the applicant to provide additional information in support of an application for a licence.

220ZY Payment of licence processing fee

- (1) The Director is to levy a processing fee, being not more than the costs (including on-costs) incurred by NSW Fisheries in the assessment and processing of a licence application (whether or not the application is successful).
- (2) The fee is recoverable by the Director as a debt due to the Crown in a court of competent jurisdiction.
- (3) The Director may, before dealing with an application, require the applicant to pay an amount not exceeding one-half of the estimated processing fee.
- (4) The Director may reduce the amount of a processing fee levied for any licence application having regard to the following:
 - (a) the extent of scientific examination necessary for the processing of the application,
 - (b) the adequacy of any species impact statement or environmental impact statement that includes a species impact component supplied by the applicant,
 - (c) the capacity of the applicant or persons with whom the applicant is associated to meet the fee levied,
 - (d) whether and to what extent the activity sought to be licensed may confer a commercial benefit on the applicant if the licence is granted.
- (5) Before a prospective applicant for a licence lodges an application, the Director must advise the applicant of the maximum fee payable in respect of the application.

220ZZ Significant effect on threatened species, populations or ecological communities, or their habitats

- (1) If the action proposed to be taken by the applicant is not on land that is critical habitat and the application is not accompanied by a species impact statement, the Director

must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

- (2) For that purpose, the Director must take into account the following:
 - (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction,
 - (b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised,
 - (c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed,
 - (d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,
 - (e) whether critical habitat will be affected,
 - (f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region,
 - (g) whether the action proposed is of a class of action that is recognised as a threatening process,
 - (h) whether any threatened species or ecological community is at the limit of its known distribution.
- (3) If the Director determines that an action proposed by an applicant for a licence is likely to significantly affect threatened species, populations or ecological

communities, or their habitats, the Director must notify the applicant that, if the application is to proceed, a species impact statement prepared in accordance with Subdivision 2 must be provided.

- (4) If the Director determines that an action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats, a licence under this Part is not required and the Director must, as soon as practicable after making the determination, issue to the applicant a certificate to that effect.

Note. An action that is not required to be licensed under this Part may however be required to be authorised by other provisions of this Act or may otherwise constitute an offence under this Act.

221 Publication of licence application

On the receipt of a licence application accompanied by a species impact statement or a species impact statement provided in response to a notification from the Director that a statement is required, the Director must cause to be placed in a newspaper circulating throughout the State a notice:

- (a) outlining the nature of the application, and
- (b) specifying the address of the place at which copies of the species impact statement may be inspected or purchased, and
- (c) inviting written submissions within a period of not less than 30 days after the date of the notice.

221A Matters that Director must take into account

- (1) In considering whether to grant or to refuse to grant a licence application, the Director must take into account the following:
- (a) any species impact statement,
 - (b) any written submissions received concerning the application within the period, and at the address for submissions, specified in the notice,

- (c) the factors specified in section 220F (Eligibility for listing),
 - (d) any relevant recovery plan or threat abatement plan,
 - (e) the principles of ecologically sustainable development,
 - (f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,
 - (g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.
- (2) The Director must also consider the likely social and economic consequences of granting or refusing to grant a licence application.

221B Determination of licence application

- (1) After considering an application for a licence and accompanying material, the Director may:
- (a) grant the application, unconditionally or subject to conditions or restrictions, or
 - (b) refuse the application.
- (2) The Director must, subject to subsection (3), make a decision about an application within 120 days after the Director receives a species impact statement or within such further period as may be agreed with the applicant for the licence.
- (3) The Director must not grant an application until the processing fee levied in respect of it has been paid.
- (4) A licence may authorise specified persons in addition to the person to whom the licence is granted to do the things authorised by the licence. In any such case, the specified persons are taken to be the holders of the licence for the purposes of this Part.

- (5) For the avoidance of doubt, it is declared that the Director is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting a licence.

221C Deemed approval

If the Director fails to grant, but does not refuse, a licence application by the time the Director is required by this Division to make a decision on the application, the application is taken to have been granted.

221D Conditions and restrictions to licence

- (1) Without limiting section 221B (1) (a), the Director may grant an application for a licence subject to a condition that the applicant:
- (a) make specified modifications to the action proposed, whether in relation to the area of land proposed to be affected or otherwise, or
 - (b) make a monetary contribution towards the cost of preparation of a recovery plan for any threatened species, population or ecological community, or any of their habitats, likely to be affected by the action proposed.
- (2) The Director may, by notice in writing served on the holder of a licence:
- (a) attach any conditions or restrictions to the licence after its issue, or
 - (b) vary or remove any conditions or restrictions attached to any licence, or
 - (c) otherwise vary the licence.
- (3) The holder of a licence must not contravene or fail to comply with a condition or restriction attached to the licence.

Maximum penalty: 40 penalty units.

221E Proposed variation of licence to be publicly notified

- (1) The Director must, before removing or varying any condition or restriction attached to a licence:
 - (a) cause to be placed in a newspaper circulating throughout the State a notice:
 - (i) outlining the nature of the proposed variation to the licence, and
 - (ii) specifying the address of the place at which copies of any species impact statement relating to the licence may be inspected or purchased, and
 - (iii) inviting written submissions within a period of not less than 30 days after the date of the notice, and
 - (b) take into account the matters required by this Division to be taken into account by the Director when considering whether to grant or refuse to grant a licence.
- (2) This section does not apply if the proposed variation to the licence constitutes a minor amendment only of that licence.

221F Notification of licence determination

The Director is to notify an applicant and any person who has made submissions of the Director's determination of a licence application.

221G Cancellation of licence

- (1) A licence granted under this Division may be cancelled by the Director.
- (2) The Director is to notify the holder of a licence of its cancellation and is to include the reasons for the cancellation in that notification.

221H Director to keep register of licences

- (1) The Director must keep a register containing copies of licences issued under this Subdivision as in force from time to time.
- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director.

221I Appeal by applicant or person commenting on licence application

- (1) An applicant for a licence or a person who has made written submissions (within the period specified in this Subdivision) about an application for a licence, or a person to whose licence conditions or restrictions have been attached or whose licence has been varied or cancelled may, if dissatisfied with the Director's decision, appeal to the Land and Environment Court.
- (2) In determining an appeal about an application for a licence, the Court must take into account the matters required by this Division to be taken into account by the Director when considering whether to grant or refuse to grant a licence, but this requirement does not limit the operation of section 39 of the *Land and Environment Court Act 1979*.
- (3) An appeal is to be made by a person within 28 days after the Director notifies the person of the matter concerned or, if the appellant is dissatisfied with any condition or restriction attached to a licence when it is granted, within 28 days after the licence is granted.
- (4) If an appeal relates to the grant of a licence, the licence has no operation until the expiration of the period within which a person entitled to lodge an appeal may do so or, if an appeal has been lodged, until the appeal is finally determined.

- (5) If no written submissions about an application of a licence are received at the specified place and by the specified date and the applicant informs the Director in writing that the applicant does not wish to lodge an appeal but that the applicant wishes the licence to commence, the licence is to operate from a date stipulated by the Director.

Subdivision 2 Species impact statements

221J Form of species impact statements

- (1) A species impact statement must be in writing.
- (2) A species impact statement must be signed by the principal author of the statement and by:
- (a) the applicant for the licence, or
 - (b) if the species impact statement is prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires).

221K Content of species impact statement

- (1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section.
- (2) A species impact statement must include the following information as to threatened species and populations:
- (a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,
 - (b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,

- (c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it,
- (d) an estimate of the local and regional abundance of those species or populations,
- (e) a full description of the type, location, size and condition of the habitat (including critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,
- (f) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,
- (g) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,
- (h) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,
- (i) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population.

- (3) A species impact statement must include the following information as to ecological communities:
- (a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,
 - (b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it,
 - (c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region,
 - (d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local communities in the cumulative effect in the region,
 - (e) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,
 - (f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures,
 - (g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community.

- (4) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement.
- (5) The requirements of subsections (2) and (3) in relation to information concerning the State-wide conservation status of any species or population, or any ecological community, are taken to be satisfied by the information in that regard supplied to the principal author of the species impact statement by NSW Fisheries, which information NSW Fisheries is by this subsection authorised and required to provide.

221L Director's requirements

- (1) The person applying for the licence (or, if the species impact statement is being prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity) must request from the Director and must, in preparing the species impact statement, comply with any requirements notified to the person by the Director concerning the form and content of the statement.
- (2) The Director must notify any requirements under this section within 28 days after having been requested to provide them.
- (3) Despite the other provisions of this Subdivision, the Director may, having regard to the circumstances of a particular case, limit or modify (or limit and modify) the matters to be included in a species impact statement in such manner as may be specified by the Director in the particular case.
- (4) Despite anything in this Part or the *Environmental Planning and Assessment Act 1979*, the Director may, having regard to the circumstances of a particular case, dispense with the requirement for a species impact statement in the particular case if the Director is satisfied that the impact of the activity concerned will be trivial or negligible.

221M Regulations

The regulations may make further provision for or with respect to the form and content of species impact statements.

221N Director may accredit persons to prepare assessments of species impact statements

- (1) The Director is to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare assessment reports on species impact statements for the purposes of this Part.
- (2) An applicant for accreditation must furnish the Director with such information as the Director requires to effectively determine the application and must be accompanied by the fee fixed by the Director for the consideration of the application.
- (3) An accreditation is to be for the period specified by the Director in the instrument of accreditation, and the accreditation (or any renewal of it) may be given subject to the conditions and restrictions (if any) specified in the instrument of accreditation.
- (4) The Director may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

Division 7 Stop work orders

221O Director may make stop work order

- (1) If the Director is of the opinion that any action is being, or is about to be, carried out that is likely to result in one or more of the following:
 - (a) harm to a threatened species, population or ecological community,
 - (b) damage to critical habitat,
 - (c) damage to habitats of threatened species, populations or ecological communities,

the Director may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the critical habitat or the habitat of the threatened species, population or ecological community within a period of 40 days after the date of the order.

- (2) An order takes effect on and from the date on which:
 - (a) a copy of the order is affixed in a conspicuous place in the critical habitat or other habitat the subject of the order, or
 - (b) the person performing or about to perform the action is notified that the order has been made,whichever is the sooner.
- (3) This section does not apply in relation to anything that (under section 220ZF) constitutes a defence to an offence under Division 4.
- (4) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Director may make an order, in accordance with this Division, that any such action is to be carried out.

221P Prior notification of making of stop work order not required

The Director is not required, before making an order under this Division, to notify any person who may be affected by the order.

221Q Appeal to Minister

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
 - (a) confirm the order, or
 - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development.

221R Extension of stop work order

The Director may extend an order under this Division for such further period or periods of 40 days as the Director thinks fit.

221S Consultation about modification of proposed detrimental action

- (1) After making an order under this Division, the Director must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the threatened species, populations or ecological communities, critical habitat or other habitat concerned.
- (2) The Director may, for the purposes of making any such determination and considering whether the adoption of any other steps (such as the grant of a licence under Division 6) may be appropriate, request the person proposing to perform the action to provide the information referred to in section 220ZX (3).
- (3) After considering any information provided under subsection (2) in accordance with the requirements of section 220ZZ, the Director may, if appropriate and if the person concerned wishes to apply for a licence under Division 6, request the person to provide an application for a licence and a species impact statement for determination under that Division.

221T Recommendations for further protective measures

The Director is to recommend to the Minister the taking of other protective measures under this Act if, after consulting the person proposing to perform the action, the Director is of the opinion that satisfactory arrangements cannot be made to protect the threatened species, population or ecological community, critical habitat or other habitat that is the subject of the order under this Division.

Note. See note to section 220O for examples of other protective measures.

221U Step work order prevails over other instruments

- (1) An approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits critical habitat, the subject of an order in force under this Division, to be significantly affected is inoperative to the extent of any inconsistency with the order under this Division.
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the order under this Division.

Division 8 Joint management agreements

221V Joint management agreements

- (1) The Minister may enter into a joint management agreement with one or more public authorities for the management, control, regulation or restriction of an action that is jeopardising the survival of a threatened species, population or ecological community.
- (2) The parties may amend a joint management agreement, but only by a further joint management agreement.

221W Contents of joint management agreements

- (1) A joint management agreement is to contain terms, binding on all parties, that:
 - (a) identify the threatened species, population or ecological community to which the agreement applies, and
 - (b) identify the action that it manages, controls, regulates or restricts, and
 - (c) state its objective (for example, maintenance of a habitat in a state that will contribute to the long-term survival of the species, population or ecological community), and

- (d) state the way in which the objective is to be achieved, and
 - (e) specify the measures by which progress towards achieving the objective is to be assessed, and
 - (f) identify the parties who are responsible for the implementation of those measures.
- (2) A joint management agreement entered into with a local council or a consent authority (within the meaning of the *Environmental Planning and Assessment Act 1979*) is void to the extent to which it fetters any discretion of the local council or consent authority in the granting or refusal of a consent or approval under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*.

221X Publication of draft joint management agreement

The Minister must, before entering into a joint management agreement:

- (a) give a copy of the draft agreement to the Fisheries Scientific Committee for review, and
- (b) give the public an opportunity to make submissions on the draft agreement.

Note. Section 284 regulates the public consultation procedure. It requires copies of the draft agreement to be publicly exhibited and a period of at least 30 days for public comment.

221Y Role of Fisheries Scientific Committee

- (1) Before a joint management agreement is entered into, the Fisheries Scientific Committee must review the draft joint management agreement and provide the Minister with comments on the review by the date specified for the making of public submissions on the draft agreement.

- (2) The Fisheries Scientific Committee must also:
 - (a) conduct an annual review of the performance of all parties to a joint management agreement, and
 - (b) advise the Minister of any deficiencies in implementation of any joint management agreement by any party to it.
- (3) The Fisheries Scientific Committee's advice on the annual review of joint management agreements is to be set out in the annual report to Parliament of NSW Fisheries or is to be available for public inspection at a place specified in that annual report.

221Z Consideration of submissions by Minister

- (1) The Minister must consider all written submissions received by the Minister on or before the date specified for the making of public submissions about the draft agreement.
- (2) The Minister may, with the consent of the other parties to the agreement, amend the draft joint management agreement to take into account any of those submissions and any comments made by the Fisheries Scientific Committee about the draft agreement.

Division 9 Fisheries Scientific Committee

221ZA Establishment of Fisheries Scientific Committee

There is established by this Act a body corporate with the corporate name of the Fisheries Scientific Committee.

221ZB Functions of Fisheries Scientific Committee

- (1) The Fisheries Scientific Committee has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of the Fisheries Scientific Committee are as follows:

- (a) the functions relating to the listing of species, populations, ecological communities of fish and marine vegetation and key threatening processes as are conferred on it by this Act,
 - (b) to advise the Minister on the identification of critical habitat of endangered species, populations or ecological communities,
 - (c) to review draft joint management agreements and the performance of parties under executed joint management agreements,
 - (d) to advise the Director on the exercise of the Director's functions under this Part,
 - (e) to advise the Minister on any matter relating to the conservation of threatened species, populations or ecological communities that is referred to the Committee by the Minister or that the Committee considers appropriate.
- (3) The Fisheries Scientific Committee may, in the exercise of its functions, make use of consultants or obtain assistance or advice from other persons.
- (4) The Fisheries Scientific Committee and the Scientific Committee under the *Threatened Species Conservation Act 1995* are required to consult each other on matters that affect the exercise of their respective functions.

221ZC Members of Fisheries Scientific Committee

- (1) The Fisheries Scientific Committee is to consist of 7 members appointed by the Minister.
- (2) Of the members of the Fisheries Scientific Committee:
 - (a) two are to be scientists employed in NSW Fisheries nominated by the Director,
 - (b) one is to be a scientist nominated by the Australian Society for Fish Biology,
 - (c) one is to be a scientist employed and nominated by the Australian Museum Trust,

- (d) one is to be a scientist employed and nominated by the Royal Botanic Gardens and Domain Trust,
 - (e) one is to be a scientist who is employed by a tertiary educational institution and who is selected by the Minister,
 - (f) one is to be a scientist with expertise in fisheries science and natural resource management who is selected by the Minister.
- (3) A person appointed as a member of the Fisheries Scientific Committee is to have expertise in one or more of the following areas of study:
- (a) fish biology,
 - (b) aquatic invertebrate biology,
 - (c) marine vegetation biology,
 - (d) population dynamics,
 - (e) aquatic ecology,
 - (f) genetics of small populations.

221ZD Fisheries Scientific Committee not subject to Ministerial control

The Fisheries Scientific Committee is not subject to the control or direction of the Minister.

221ZE Provisions relating to members and procedure of Fisheries Scientific Committee

Schedule 6A has effect.

[10] Section 221 Minister and Director to administer Act in accordance with its objects

Renumber the section as section 222A.

[11] Section 222 Fisheries Administration Ministerial Corporation

Renumber the section as section 222B.

[12] Section 277 Nature of proceedings for offences

Omit “under Part 7 or the regulations under that Part” from section 277 (1) (c).

Insert instead “under Part 7 or 7A or the regulations under those Parts”.

[13] Section 282 Restraint of breaches of Act

Insert after section 282 (3):

- (4) Proceedings under this section may not be brought in connection with development carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

[14] Section 283 Annual reporting

Omit section 283 (2). Insert instead:

- (2) In particular, the information must include:
 - (a) information on the operation of Part 7A (including information required by that Part to be included in the report), and
 - (b) information required by the regulations to be included in the report.

[15] Section 284 Public consultation procedure

Insert after section 284 (1) (e):

- (f) a recommendation for listing, a declaration of critical habitat, a recovery plan, a threat abatement plan or a joint management agreement under Part 7A.

[16] Schedules 4–6A

Insert after Schedule 3:

Schedule 4 Endangered species, populations and ecological communities

(Section 220C)

Part 1 Endangered species

Fish

Trout cod *Maccullochella macquariensis*

Eastern freshwater cod *Maccullochella ikei*

Oxleyan pigmy perch *Nannoperca oxleyana*

Part 2 Endangered populations

Part 3 Endangered ecological communities

Part 4 Species presumed extinct

Schedule 5 Vulnerable species

Fish

Honey blue-eye *Pseudomugil mellis*

Schedule 6 Key threatening processes

Schedule 6A Provisions relating to members and procedure of Fisheries Scientific Committee

(Section 221ZE)

1 Definition

In this Schedule:

member means a member of the Fisheries Scientific Committee.

2 Term of office

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Vacation of office

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this section or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 consecutive meetings of the Fisheries Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Fisheries Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Fisheries Scientific Committee for having been absent from those meetings, or
 - (f) becomes a mentally incapacitated person, or
 - (g) ceases to have the qualifications required for the member's appointment.
- (2) The Minister may remove a member from office.

5 Application of other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Schedule as a member.

6 Chairperson and Deputy Chairperson

A Chairperson and a Deputy Chairperson of the Fisheries Scientific Committee are to be appointed by the Minister from among the members of that Committee.

7 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Fisheries Scientific Committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Fisheries Scientific Committee.

(2) A disclosure by a member at a meeting of the Fisheries Scientific Committee that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Fisheries Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Fisheries Scientific Committee.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Fisheries Scientific Committee otherwise determines:

- (a) be present during any deliberation of the Fisheries Scientific Committee with respect to the matter, or
- (b) take part in any decision of the Fisheries Scientific Committee with respect to the matter.

(5) For the purposes of the making of a determination by the Fisheries Scientific Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Fisheries Scientific Committee for the purpose of making the determination, or
 - (b) take part in the making by the Fisheries Scientific Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Fisheries Scientific Committee.

8 Procedure of Fisheries scientific committee

- (1) The procedure for the calling of meetings of the Fisheries Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Fisheries Scientific Committee.
- (2) The quorum for a meeting of the Fisheries Scientific Committee is 5 members.
- (3) The Chairperson of the Fisheries Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Fisheries Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote.
- (4) A decision supported by a majority of the votes cast at a meeting of the Fisheries Scientific Committee at which a quorum is present is the decision of the Fisheries Scientific committee.
- (5) The Fisheries Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Fisheries Scientific Committee on any matter.

9 Transaction of business outside meeting or by telephone or other means

- (1) The Fisheries Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Fisheries Scientific Committee.
- (2) The Fisheries Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Fisheries Scientific Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Fisheries Scientific Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

10 Service of documents on Fisheries Scientific Committee

For the purposes of this Act, a nomination for listing under this Act or any other document is made, issued or given to the Fisheries Scientific Committee if it is addressed to the Fisheries Scientific Committee and is:

- (a) lodged at the head office of NSW Fisheries, or

- (b) sent by post to the head office of NSW Fisheries, or
- (c) sent by facsimile transmission or other electronic means notified by the Fisheries Scientific Committee as being an available means of communication, or
- (d) sent by any means provided for the service of documents by another Act or law.

[17] Schedule 7 Savings, transitional and other provisions

Insert after clause 17 of Part 7:

17A Preservation of regulations under section 204 (marine vegetation for which permit required for cutting etc)

- (1) A regulation under section 204 that prescribes any marine vegetation for the purposes of Division 4 of Part 7 of the Act and that is in force immediately before the substitution of that Division by Schedule 1 to the *Fisheries Management Amendment Act 1997* is taken to be a regulation prescribing that marine vegetation for the purposes of section 205.
- (2) This clause does not prevent the regulation from being amended or repealed.

[18] Schedule 7

Insert after Part 7:

Part 7A Provisions relating to conservation of threatened species

17B Savings in respect of planning matters

- (1) The amendments made to the *Environmental Planning and Assessment Act 1979* by Schedule 6 to the *Fisheries*

Management Amendment Act 1997 (“the relevant amendments”) do not affect:

- (a) any development consent granted before the commencement of the relevant amendments or any development carried out in accordance with such a consent, or
 - (b) any activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies (or any approval for the carrying out of any such activity) if the provisions of that Part were complied with for that activity before the commencement of the relevant amendments.
- (2) If an application for development consent has not been finally determined on the commencement of the relevant amendments, the relevant amendments do not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application. However, the Minister for Urban Affairs and Planning may, by notice served on the consent authority, direct that all or any specified relevant amendments apply to the determination of the application.
- (3) If, in respect of any activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies (or any approval for carrying out any such activity):
- (a) an environmental impact statement was duly obtained before the commencement of the relevant amendments, but the provisions of that Part had not been fully complied with before that commencement, or
 - (b) the Director-General of the Department of Urban Affairs and Planning had duly notified the person preparing an environmental impact statement before the commencement of the relevant amendments of requirements with respect to the form and contents of the statement, but the statement had not been obtained before that commencement,

then the following provisions apply:

- (c) the statement (so long as it is obtained in accordance with the provisions of that Act as in force immediately before that commencement) is taken to have been obtained in accordance with that Act, as amended by the relevant amendments,
 - (d) the relevant amendments do not apply to the carrying out of the activity or any approval for the carrying out of the activity.
- (4) Subclause (3) does not apply to an activity that has not been carried out before the commencement of the relevant amendments to the extent that the Minister for Urban Affairs and Planning (by notice served on the person obtaining the statement concerned) so directs.
- (5) This clause applies to amendments made to Schedule 4, 5 or 6 to this Act (by proclamation or otherwise) in the same way as it applies to the relevant amendments made to the *Environmental Planning and Assessment Act 1979*.

Schedule 2 Amendments relating to recreational freshwater fishing fee

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

freshwater means water in a river or creek that is not subject to tidal influence:

- (a) including any body of freshwater that is naturally or artificially stored (such as a freshwater lake, lagoon, dam, reservoir, pond, canal, channel or waterway), but
- (b) not including any coastal lake that is intermittently open to tidal influence.

The regulations may, for the purpose of avoiding doubt about the application of this definition, specify the point at which any river, creek or other body of water becomes subject to tidal influence.

recreational freshwater fisher means a fisher who takes fish from freshwater by any method, otherwise than for sale.

[2] Part 2, Division 4A

Insert after Division 4 of Part 2:

Division 4A Recreational freshwater fishing fee

34A Definitions

In this Division:

fishing fee means a recreational freshwater fishing fee payable under this Division.

official receipt means a receipt issued under this Division for payment of a recreational freshwater fishing fee.

34B Recreational freshwater fishing fee

A recreational freshwater fishing fee is payable by recreational freshwater fishers as required by this Division.

34C Recreational freshwater fishers required to pay fishing fee

- (1) A fishing fee is payable by all recreational freshwater fishers, unless exempted by or under this section.
- (2) A fisher is exempt from paying a fishing fee:
 - (a) if the fisher is under 18 years of age, or
 - (b) if the fisher holds a licence, permit or other authority under this Act or the regulations and is taking fish in accordance with that licence, permit or other authority, or
 - (c) if the fisher is taking fish from water subject to an aquaculture permit and is taking fish to which the permit relates, or
 - (d) if the fisher is an Aboriginal within the meaning of the *Aboriginal Land Rights Act 1983*, or
 - (e) if the fisher is taking fish from an aquarium, or from a body of water of a class exempted by the regulations, or
 - (f) if the fisher is a fisher of a class exempted by the regulations.
- (3) The regulations may require recreational freshwater fishers to produce evidence that they are exempt from paying a fishing fee.

34D Periods for which fishing fee payable

- (1) A fishing fee is payable for any period during which a recreational freshwater fisher takes fish from freshwater otherwise than for sale.

- (2) A fishing fee may be paid for the following periods:
 - (a) a period of 28 days,
 - (b) a period of 12 months,
 - (c) a period of 3 years.
- (3) The regulations may prescribe other periods for which a fishing fee may be paid (whether in addition to, or substitution for, the periods referred to in subsection (2)).

34E Amount of fishing fee

- (1) The amount of the fishing fee is (subject to this section):
 - (a) for a period of 28 days—\$10, or
 - (b) for a period of 12 months—\$25, or
 - (c) for a period of 3 years—\$70.
- (2) The regulations may prescribe a different amount for any such period and may prescribe the amount for any other period for which a fishing fee may be paid.

34F Reductions in fishing fee payable

The regulations may provide for reductions in the amount of the fishing fee otherwise payable by persons of a specified class.

34G Issue of receipt on payment of fishing fee

- (1) A person who pays a fishing fee is entitled to be issued with an official receipt for the payment.
- (2) The receipt is to be in a form approved by the Director.
- (3) The regulations may make provision for the issue of replacement receipts for official receipts that are lost, destroyed or damaged.
- (4) An official receipt is not transferable.

34H Arrangements for collection of fishing fees and issue of receipts

- (1) The Director may enter into arrangements with any person for the collection of fishing fees and the issue of official receipts. A person who enters into such an arrangement is an authorised agent for the purposes of this Act.
- (2) The Director is to ensure that sufficient arrangements are made to enable the payment of fishing fees in convenient locations throughout the State.
- (3) An arrangement may make provision for the payment of a commission to the authorised agent, whether by way of the retention of a percentage of the amount of fishing fees paid or by way of a separate payment.
- (4) An arrangement may make provision for the authorised agent to make specified records, and follow specified procedures, with respect to the collection and remittance of fishing fees and the issue of official receipts.

34I Offences

- (1) A recreational freshwater fisher who is required by this Division to pay a fishing fee is guilty of an offence if the fisher:
 - (a) fails to pay the fishing fee, or
 - (b) does not have an official receipt for the payment of the fishing fee in his or her possession while taking fish for which payment of the fee is required.

Maximum penalty: 20 penalty units.

- (2) The fact that a person who is on, in or adjacent to freshwater and is in possession of fishing gear is evidence, for the purposes of this section, that the person is taking fish from those waters.

[3] Section 257 Power to require production of fishing authority

Insert after section 257 (4):

- (5) In this section, fishing authority includes, in the case of any fishing activity for which a person is required to pay a recreational freshwater fishing fee, an official receipt for the fee under Division 4A of Part 2.

Schedule 3 Amendment relating to special fisheries trust funds

(Section 3)

Part 8, Division 3

Insert after Division 2 of Part 8:

Division 3 Special fisheries trust funds

232 Definition

In this Division:

trust fund means an account in the Special Deposits Account established by section 233.

233 Establishment of trust funds

- (1) The following accounts are established in the Special Deposits Account:
 - (a) a Recreational Fishing (Freshwater) Trust Fund,
 - (b) a Recreational Fishing (Estuarine and Marine) Trust Fund,
 - (c) a Commercial Fishing Trust Fund,
 - (d) a Fish Conservation Trust Fund,
 - (e) an Aquaculture Trust Fund.
- (2) Money in a trust fund is under the control of the Minister and can be expended by the Minister only for the purposes authorised by this Division.

234 Recreational Fishing (Freshwater) Trust Fund

- (1) There is to be paid into the Recreational Fishing (Freshwater) Trust Fund:
 - (a) all recreational freshwater fishing fees paid under Division 4A of Part 2 or other payments received in connection with the administration of that Part, and

- (b) the proceeds of the sale of tags, or other identification, to be used on fish taken by recreational freshwater fishers, and
 - (c) any gift or bequest of money for the purposes of that Fund, and
 - (d) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.
- (2) There may be paid out of that Fund:
- (a) the costs of stocking freshwater with fish, or taking other measures, to enhance recreational fishing, and
 - (b) the costs of carrying out research into freshwater fish and their ecosystems, and
 - (c) the costs of management and administration of recreational freshwater fishing (including commission for authorised agents collecting recreational freshwater fishing fees), and
 - (d) the costs of ensuring compliance with recreational freshwater fishing regulatory controls, and
 - (e) the costs of providing third-party insurance coverage for landowners where recreational fishers use private land (or water over private land) for freshwater fishing, and
 - (f) the costs of consultative arrangements with freshwater recreational fishers.
- (3) The Minister is to consult any relevant advisory council on recreational fishing established under section 229 about policies and priorities for expenditure from that Fund.

235 Recreational Fishing (Estuarine and Marine) Trust Fund

- (1) There is to be paid into the Recreational Fishing (Estuarine and Marine) Trust Fund:
 - (a) all fees paid for the registration of fishing gear used for recreational estuarine and marine fishing, and
 - (b) the proceeds of the sale of tags, or other identification, to be used on fish taken by recreational estuarine and marine fishers, and
 - (c) all fees and charges paid under Part 4A and the regulations under that Part, and
 - (d) any gift or bequest of money for the purposes of that Fund, and
 - (e) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.
- (2) There may be paid out of that Fund:
 - (a) the costs of taking measures to enhance recreational estuarine and marine fishing, and
 - (b) the costs of carrying out research into estuarine and marine fish and their ecosystems, and
 - (c) the costs of management and administration of recreational estuarine and marine fishing, and
 - (d) the costs of the ensuring compliance with recreational estuarine and marine fishing regulatory controls, and
 - (e) the costs of consultative arrangements with recreational estuarine and marine fishers.
- (3) The Minister is to consult any relevant advisory council on recreational fishing established under section 229 about policies and priorities for expenditure from that Fund.

236 Commercial Fishing Trust Fund

- (1) There is to be paid into the Commercial Fishing Trust Fund:
 - (a) all fees paid for commercial fishing licences, fishing boat licences, charter fishing boat licences and the registration of fishing gear used by commercial fishers, and
 - (b) all fees and charges paid under Parts 3 and 4 and the regulations made under those Parts (other than community contributions by shareholders under section 77), and
 - (c) the proceeds of the sale of tags, or other identification, to be used on fish taken by commercial fishers, and
 - (d) fees for services provided by NSW Fisheries to commercial fishers, and
 - (e) any gift or bequest of money for the purposes of that Fund, and
 - (f) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.
- (2) There may be paid out of that Fund:
 - (a) the costs of taking measures to enhance the effective management of commercial fishing, and
 - (b) the costs of carrying out research into commercial fishing, and
 - (c) the costs of management and administration of commercial fishing, and
 - (d) the costs of ensuring compliance with commercial fishing regulatory controls, and
 - (e) the costs of consultative arrangements with commercial fishers.

- (3) The Minister is to consult any relevant advisory council on commercial fishing established under section 229 about policies and priorities for expenditure from that Fund.

237 Fish Conservation Trust Fund

- (1) There is to be paid into the Fish Conservation Trust Fund:
- (a) all fees and charges paid under Part 7 or 7A and the regulations made under those Parts, and
 - (b) all fees and charges for inspections and reports by NSW Fisheries relating to development proposals affecting fish habitat, and
 - (c) any gift or bequest of money for the purposes of that Fund, and
 - (d) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.
- (2) There may be paid out of that Fund:
- (a) the costs of taking measures to enhance fish habitat, and
 - (b) the costs of carrying out research into fish habitat, and
 - (c) the costs of management and administration of Part 7 or 7A and the regulations under those Parts, and
 - (d) the costs of ensuring compliance with the regulatory controls under Part 7 or 7A and the regulations under those Parts.
- (3) The Minister is to consult any relevant advisory council on conservation established under section 229 about policies and priorities for expenditure from that Fund.

238 Aquaculture Trust Fund

- (1) There is to be paid into the Aquaculture Trust Fund:
 - (a) all fees for aquaculture permits and all payments of rent for aquaculture leases, and
 - (b) all other fees and charges paid under Part 6 and the regulations made under that Part (except annual contributions payable into the trust funds established under section 157), and
 - (c) fees and charges for services provided by NSW Fisheries to persons engaged in aquaculture, and
 - (d) any gift or bequest of money for the purposes of that Fund, and
 - (e) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.
- (2) There may be paid out of that Fund:
 - (a) the costs of taking measures to enhance the management of aquaculture, and
 - (b) the costs of carrying out research into aquaculture, and
 - (c) the costs of management and administration of Part 6 and the regulations under that Part, and
 - (d) the costs of ensuring compliance with the regulatory controls on aquaculture under Part 6 and the regulations under that Part, and
 - (e) the costs of consultative arrangements with persons engaged in aquaculture.
- (3) The Minister is to consult any relevant advisory council on aquaculture established under section 229 about policies and priorities for expenditure from that Fund.

238A General provisions relating to consultation on expenditure from trust funds

The following provisions apply for the purposes of consultation with an advisory council that is required under this Division with respect to expenditure from a trust fund:

- (a) the Minister is to provide the advisory council with a draft expenditure budget,
- (b) the Minister is to give the advisory council at least 1 month to make any recommendations about the draft budget,
- (c) the Minister is to take any such recommendation into account before finalising the expenditure budget, and give the advisory council reasons for the rejection of any such recommendation.

239 Report to Parliament on use of trust funds

The annual report of the Department responsible to the Minister for the administration of this Act is to include a report on the application of money in each trust fund during the reporting year.

239A Investment of money in trust funds

- (1) The Minister is to invest money in a trust fund:
 - (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
 - (b) if that Act does not confer power on the Minister to invest the money—in any manner authorised for the investment of trust funds or approved by the Treasurer.
- (2) The proceeds of investment of money in a trust fund is to be paid into that fund.

- (3) Money in the trust funds may be invested as a common pool. The proceeds of investments are to be distributed rateably among the trust funds that contributed money to the common pool according to the amount contributed.
- (4) In subsection (3), *trust fund* includes the trust fund established under section 157.

239B Separate accounting for research

The Minister may establish a separate account in, or separate part of, a trust fund in connection with the payment of money into or out of that fund for the purposes of research.

Schedule 4 Amendments relating to charter fishing boats

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

charter fishing boat licence means a licence for a boat issued under Part 4A and in force.

[2] Part 4A

Insert after Part 4:

Part 4A Charter fishing management

127A Meaning of charter fishing boat

For the purposes of this Part, a boat is a *charter fishing boat* if:

- (a) the boat is used principally for recreational fishing activities under an arrangement made with or on behalf of the persons using the boat, and
- (b) a payment or other consideration is required to be made or given by or on behalf of all or any of those persons for the right to fish from the boat, and
- (c) the boat is used for recreational fishing activities in any waters (whether or not within the limits of the State).

127B Certain charter fishing boats to be licensed

- (1) The regulations may declare that all or any specified class of charter fishing boats are required to be licensed under this Part.

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- (2) The master of a boat must not use the boat as a charter fishing boat if:
- (a) it is required by such a regulation to be licensed, and
 - (b) the boat is not licensed under this Part.

Maximum penalty: 100 penalty units.

- (3) The owner of a boat must not permit the boat to be used as a charter fishing boat if:
- (a) it is required by such a regulation to be licensed, and
 - (b) the boat is not licensed under this Part.

Maximum penalty: 100 penalty units.

- (4) The regulations may provide that a boat licensed under a law of the Commonwealth or of another State or a Territory as a charter fishing boat is taken to be licensed under this Part.

127C Provisions relating to licensing of charter fishing boats

- (1) The owner of a boat (or a person authorised by the owner) may apply to the Minister for the issue of a licence for the boat under this Part.
- (2) An application is to be in the form approved by the Minister and is to be accompanied by such fee (if any) as is prescribed by the regulations.
- (3) The Minister is required to issue a charter fishing boat licence if an application for the licence is duly made, unless the Minister is authorised by the regulations to refuse the application. Without limiting this subsection, the Minister may refuse the application because of any applicable restriction on charter fishing boats under a management plan prescribed by the regulations for the charter fishing industry.

- (4) A charter fishing boat licence:
 - (a) is subject to such conditions as are prescribed by the regulations or specified in the licence, and
 - (b) remains in force for the period of 1 year or such other period as is specified in the licence, and
 - (c) may be renewed from time to time in accordance with the regulations, and
 - (d) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.
- (5) The regulations may prescribe different classes of charter fishing boat licences.
- (6) The Minister may, at any time, by notice in writing to the holder of a charter fishing boat licence, revoke or vary the conditions of the licence or add new conditions. This subsection does not apply to conditions prescribed by the regulations.
- (7) The holder of a charter fishing boat licence who contravenes any condition of the licence is guilty of an offence.

Maximum penalty: 100 penalty units.
- (8) The regulations may make provision for or with respect to charter fishing boat licences.

127D Commercial fishing boats may be licensed as charter fishing boats

- (1) A fishing boat licensed under Division 2 of Part 4 may also be licensed as a charter fishing boat.
- (2) It is a condition of any such charter fishing boat licence that the boat, while being used for recreational fishing activities for which it is required to be licensed:
 - (a) is not also used to take fish for sale, and
 - (b) is not equipped with fishing gear for use to take fish for sale (except as authorised by the licence).

127E Charter fishing boat operators to keep records of catch

- (1) The master of a boat that is a licensed charter fishing boat must make such records as the regulations require of fish taken by persons on the boat when it is used for recreational fishing activities for which it is required to be licensed. The regulations may require the masters of other charter fishing boats to make records of fish taken by persons on the boats when they are used for recreational fishing activities.
- (2) The record must be made in such form and manner as are prescribed by the regulations or (subject to the regulations) as are approved by the Minister.
- (3) The master of a boat who makes a record under this section is required to send a copy of the record to the Director within such period as the regulations prescribe.
- (4) The master of a boat who contravenes this section is guilty of an offence.

Maximum penalty: 100 penalty units.

- (5) A person who makes an entry in a record, or copy, for the purposes of this section knowing that the entry is false or misleading in a material particular is guilty of an offence.

Maximum penalty (subsection (5)): 200 penalty units or imprisonment for 3 months, or both.

127F Appeal rights

Division 6 of Part 4 applies to a charter fishing boat licence as if the licence were a relevant authority for the purposes of that Division.

Schedule 5 Miscellaneous amendments

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

noxious marine vegetation means marine vegetation declared under Division 6 of Part 7 to be noxious marine vegetation.

[2] Section 4

Insert in alphabetical order:

process fish means cut up, break up, shell, skin, shuck, purge, cook, pack, chill, freeze, can, preserve or otherwise treat or process fish.

[3] Section 4, definition of "take"

Omit the definition. Insert instead:

take fish includes:

- (a) catch or kill fish, or
- (b) gather or collect fish, or
- (c) remove fish from any rock or other matter, or attempt to do so.

[4] Section 4

Omit the note at the end of the section. Insert instead:

- (2) In this Act, a reference to taking fish for sale includes a reference to taking fish for use as bait in taking fish for sale.

Note. Penalties for offences are expressed in penalty units. Under the *Interpretation Act 1987*, the amount of a penalty unit is currently \$110.

[5] Section 5 Definition of “fish”

Omit “marine mammals” from section 5 (4).
Insert instead “mammals”.

[6] Section 17 Bag limits—taking of fish

Insert “, or of a specified class,” after “specified species” in section 17 (1).

[7] Section 18 Bag limits—possession of fish

Insert “, or of a specified class,” after “specified species” in section 18 (1).

[8] Section 19 Protected fish

Insert after section 19 (3):

- (4) Subsection (3) applies whether or not the fish were taken from waters to which this Act applies.

[9] Section 20 Fish protected from commercial fishing

Insert after section 20 (3):

- (4) Subsection (3) applies whether or not the fish were taken from waters to which this Act applies.

[10] Section 21 Defences

Insert at the end of section 21:

- (2) Subsection (1) (a) does not apply to offences under section 19 (3) or 20 (3).

[11] Section 35 Possessing fish illegally taken

Omit “taken in contravention of a provision of or made under this Act” wherever occurring.

Insert instead “illegally taken”.

[12] Section 35 (3)

Insert after section 35 (2):

(3) In this section:

illegally taken means taken in contravention of a provision of or made under:

(a) this Act, or

(b) a law of another State or Territory, or of the Commonwealth, relating to fisheries.

[13] Section 123 Records of sale and possession of fish

Omit “12 months” from section 123 (1) (b).

Insert instead “5 years”.

[14] Section 123 (1) (c)

Omit “12-month”. Insert instead “5-year”.

[15] Section 123 (2) (b)

Omit “12 months”. Insert instead “5 years”.

[16] Section 123 (2) (c)

Omit “12-month”. Insert instead “5-year”.

[17] Section 123 (2A)

Insert after section 123 (2):

- (2A) The offence under subsection (1) or (2) applies whether or not the fish were sold to a purchaser within the State.

[18] Section 123 (4)

Insert “, transportation for reward” after “sale”.

[19] Section 123 (4A)

Insert after section 123 (4):

- (4A) The offence under subsection (3) applies whether or not the fish were taken from waters to which this Act applies.

[20] Part 5 Co-operation with Commonwealth and other States with respect to fisheries management

Insert after Division 3 of Part 5:

Division 4 State agreements

141A Power to enter into agreements

- (1) The Minister may enter into an agreement with a Minister administering an Act of another State relating to fisheries, or with an authority of another State concerned in the administration of that Act, for the purpose of co-operation in carrying out the objects of this Act (whether in this State or in that other State).
- (2) In this section:
State includes a Territory.

141B Functions under agreements

- (1) For the purposes of this Division, the Minister may exercise any function conferred on the Minister under the other Divisions of this Part as if the Commonwealth Act applied under this Division.
- (2) The other Divisions of this Part apply in respect of agreements under this Division, with such modifications as are prescribed by the regulations or as are necessary.

[21] Section 169 Survey of leased area

Omit section 169 (3). Insert instead:

- (3) The lessee of a leased area or any other person must not obstruct a survey carried out for the purposes of subsection (2) (b).

Maximum penalty: 50 penalty units.

[22] Section 182 Diseases declared for the purposes of this Division

Omit section 182 (4). Insert instead:

- (4) If the Minister considers that a declaration under this section is required urgently, the declaration may be made by the Minister by publishing notification of the declaration in a newspaper circulating generally in the State, or by radio or television broadcast.
- (5) In any such urgent case, the Minister is to publish the declaration in the Gazette as soon as practicable after it is made.
- (6) A declaration made by the Minister under this section has the same effect as a regulation and remains in force (unless sooner revoked by another declaration) for the period, not exceeding 6 months, specified in the declaration.

[23] Section 203 Minister may order carrying out of certain work

Insert after section 203 (4):

- (5) This section extends to a contravention of Division 4 or 5 and to damage caused by any such contravention. Accordingly, a reference to section 200 or 201 includes a reference to that Division and a reference to dredging or reclamation work includes a reference to work to which that Division applies.

[24] Part 7, Division 6, heading

Omit the heading. Insert instead:

Division 6 Noxious fish and noxious marine vegetation

[25] Section 209 Declaration of noxious fish and noxious marine vegetation

Omit subsection (1). Insert instead:

- (1) The regulations may declare:
- (a) fish of a specified species to be noxious fish, or
 - (b) marine vegetation of a specified species to be noxious marine vegetation,
- for the purposes of this Act.

[26] Section 209 (2)

Insert "or marine vegetation" after "fish".

[27] Section 209 (3), 210 (1), 211 (1) and (2), 212, 213 (1), 214 (2)

Insert "or noxious marine vegetation" after "noxious fish" wherever occurring.

[28] Section 209 (3)

Insert “or that vegetation” after “those fish”.

[29] Section 210 Sale of noxious fish or noxious marine vegetation prohibited

Insert “, or the marine vegetation is only noxious marine vegetation,” after “noxious fish” in section 210 (2).

[30] Section 211 Possession of noxious fish or noxious marine vegetation prohibited

Omit “them” from section 211 (2).
Insert instead “the noxious fish or marine vegetation”.

[31] Section 211 (3)

Insert “, or the marine vegetation is in waters in which it is not noxious marine vegetation,” after “noxious fish”.

[32] Section 213 Destruction of noxious fish or noxious marine vegetation

Omit section 213 (2). Insert instead:

- (2) A fisheries officer may take possession of:
 - (a) any fish the officer suspects are noxious fish in order to determine whether they are noxious fish, or
 - (b) any marine vegetation the officer suspects is noxious marine vegetation in order to determine whether it is noxious marine vegetation.

[33] Section 213 (3), (4) (a)

Insert “, or noxious marine vegetation is,” after “noxious fish are” wherever occurring.

[34] Section 213 (3)

Insert “or marine vegetation” after “the fish”.

[35] Section 213 (4) (b)

Insert “or that marine vegetation” after “those fish”.

[36] Section 213 (5)

Omit the subsection. Insert instead:

- (5) Compensation is not payable for the seizure or destruction of live noxious fish or live noxious marine vegetation under this section or for the destruction of other live fish or live marine vegetation if, in destroying the noxious fish or the noxious marine vegetation, the destruction of the other fish or marine vegetation could not reasonably be avoided.

[37] Section 214 Search warrant

Insert “, or live noxious marine vegetation is,” after “noxious fish are” in section 214 (1).

[38] Section 218 Fishways to be provided in the construction of dams and weirs

Omit section 218 (6). Insert instead:

- (6) In this section:

dam, weir or reservoir includes a floodgate.

waterway means a river, creek or other naturally flowing stream of water, whether regularly or intermittently.

[39] Section 220 Provisions relating to permits under this Part

Insert after section 220 (1):

- (1A) Without limiting subsection (1), conditions of a permit may include conditions requiring the permit holder to enter into a bond or guarantee or other financial arrangement for the due performance of the holder's obligations under this Act.

[40] Section 242A

Insert after section 242:

242A Access to information by fisheries officers

The Roads and Traffic Authority is authorised and required to provide a fisheries officer, on request, with the following information, if available, relating to a person whom the fisheries officer has reason to believe has contravened or is contravening this Act or the regulations:

- (a) the address of the person,
- (b) details of any licences for vehicles held by the person,
- (c) details of any vehicle registered in the name of the person.

[41] Section 265

Omit the section. Insert instead:

265 Seizure of boats and motor vehicles

- (1) A fisheries officer may seize a boat or motor vehicle that the officer has reason to believe has been used by a person engaged in commercial fishing activities for the purposes of committing a forfeiture offence.

- (2) For the purposes of this section, *a forfeiture offence* is a fisheries offence that is declared by the regulations to be a forfeiture offence.

[42] Section 274 Disposal of perishable things

Insert after section 274 (2):

- (3) If any such fish are live, the fisheries officer may return the fish to the water.

[43] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Fisheries Management Amendment Act 1997

Schedule 6 Consequential amendment of other Acts

(Section 4)

6.1 Environmental Planning and Assessment Act 1979 No 203

[1] Section 4 Definitions

Insert “or (subject to section 5C) Part 7A of the *Fisheries Management Act 1994*” after “*Threatened Species Conservation Act 1995*” wherever occurring.

[2] Section 5C

Insert before section 6:

5C Application of Act with respect to threatened species conservation—fish and marine vegetation

- (1) A reference in this Act to the *Threatened Species Conservation Act 1995*, in connection with critical habitat, or threatened species, populations or ecological communities, or their habitats, is to be construed in accordance with this section.
- (2) To the extent that the matter concerns critical habitat of fish or marine vegetation, or threatened species, populations or ecological communities of fish or marine vegetation, or their habitats:
 - (a) a reference to the *Threatened Species Conservation Act 1995* is taken to be a reference to Part 7A of the *Fisheries Management Act 1994*, and

- (b) a reference to the Minister administering the *Threatened Species Conservation Act 1995* is taken to be a reference to the Minister administering the *Fisheries Management Act 1994*, and
- (c) a reference to the Director of National Parks and Wildlife is taken to be a reference to the Director of NSW Fisheries.

[3] Schedule 6 Savings, transitional and other provisions

Insert at the end of the list of Acts in clause 1 (1):
Fisheries Management Amendment Act 1997

6.2 Fisheries Act 1935 No 58

[1] Sections 119B, 119C, 119D

Insert after section 119A:

119B Delegations

- (1) The Minister may delegate to the Director any function of the Minister under this Act, other than this power of delegation.
- (2) This section is taken to have had effect on and from the repeal of section 8A by the *Fisheries Management Act 1994* and any delegation purported to have been made by the Minister under this Act after that repeal is taken to have been made under this section.

119C Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned

in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

119D Penalties and proceedings for offences

- (1) A person guilty of an offence under this Act is, where no specific penalty is provided for the offence, liable to a penalty not exceeding 100 penalty units in the case of a corporation or 50 penalty units in any other case.
- (2) The provisions of the *Fisheries Management Act 1994* relating to the bringing of proceedings apply to offences under this Act in the same way as they apply to offences under that Act.

6.3 Land and Environment Court Act 1979 No 204

Section 21 Class 5—Environmental planning and protection summary enforcement

Insert after section 21 (ga):

- (gb) proceedings under section 277 (1) (c) of the *Fisheries Management Act 1994*,

6.4 Soil Conservation Act 1938 No 10

[1] Section 21B Protected land

Insert “or Part 7A of the *Fisheries Management Act 1994*” after “*Threatened Species Conservation Act 1995*” in section 21B (6) (b).

[2] Section 21D Authority to destroy timber on protected land

Insert “or Part 7A of the *Fisheries Management Act 1994*” after “*Threatened Species Conservation Act 1995*” in section 21D (3A) (c).

6.5 Subordinate Legislation Act 1989 No 146

Schedule 3 Matters not requiring regulatory impact statements

Insert at the end of Schedule 3:

- 7 A management plan for a share management fishery made under the *Fisheries Management Act 1994*.

6.6 Threatened Species Conservation Act 1995 No 101

[1] Section 4 Definitions

Omit “by the Director-General by order published in the Gazette” from the definition of *region* in section 4 (1).
Insert instead “by the Director-General under subsection (4)”.

[2] Section 4 (4)

Insert after section 4 (3):

- (4) For the purposes of the definition of *region* in subsection (1), a determination of bioregions is to be made by the Director-General by order published in the Gazette. The

Director-General is to consult the Director of NSW Fisheries before making any such order and is to obtain the concurrence of that Director with respect to areas occupied by fish or marine vegetation.

[3] Section 136A

Insert before section 137:

136A References to Minister and Director-General

- (1) In this Part, a reference to the Minister includes a reference to the Minister administering the *Fisheries Management Act 1994* and a reference to the Director-General includes a reference to the Director of NSW Fisheries.
- (2) If a provision of this Part (or applied by this Part) requires or authorises the Minister or the Director-General to take any action or decide any matter, the provision is taken only to require or authorise:
 - (a) the Minister administering this Act and the Minister administering the *Fisheries Management Act 1994*, or
 - (b) the Director-General and the Director of NSW Fisheries,to take the action jointly or decide the matter jointly.
- (3) However, any such action may be taken separately, or any such decision may be made separately, in respect of any matter if those Ministers or officers so agree.

[4] Section 137 Biological Diversity Advisory Council

Omit "10 members" from section 137 (2).

Insert instead "14 members".

[5] Section 137

Insert after section 137 (2) (f):

- (g) one fish biologist selected by the Minister from 3 nominees of the Australian Society of Fish Biology,
- (h) one fish biologist with expertise in aquatic ecosystems selected by the Minister from 3 nominees of the Australian Museum Trust,
- (i) one person with expertise in the commercial fishing industry, and one person with expertise in recreational fishing, appointed by the Minister.

[6] Section 138 Provisions relating to Advisory Council and members of Advisory Council

Insert at the end of the section:

- (2) Despite subsection (1), the quorum for a meeting of the Advisory Council is 8 members.

[7] Section 140 The Strategy

Omit “of plants and animals” from section 140 (2) (a).

[8] Section 140 (2) (a)

Insert “or under the *Fisheries Management Act 1994*” after “1974”.

[9] Section 140 (3) (c)

Omit “proposes to assess its performance”,
Insert instead “and NSW Fisheries propose to assess their performance”.

[10] Section 140 (5)

Insert after section 140 (4):

- (5) The Strategy is to be amended within 12 months after the commencement of the amendments to this section made by the Fisheries Management Amendment Act 1997 so as to extend the Strategy to fish and marine vegetation.

[11] Section 141 Procedure for making or amending Strategy

Insert after section 141 (8):

- (9) In this section a reference to the Scientific Committee includes a reference to the Fisheries Scientific Committee under Part 7A of the *Fisheries Management Act 1994*.

[12] Schedule 7 Savings, transitional and other provisions

Insert at the end of the Schedule:

Part 3 Provisions consequent on Fisheries Management Amendment Act 1997

7 Saving of definition of regions

The amendments made to section 4 of this Act by the *Fisheries Management Amendment Act 1997* do not affect any order made under that section before the commencement of those amendments with respect to regions under this Act.

[Minister's second reading speech made in—
Legislative Assembly on 22 October 1997
Legislative Council on 3 December 1997]