



New South Wales

Fisheries Management Legislation Amendment Regulation 2010

under the

Fisheries Management Act 1994

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

STEVE WHAN, MP
Minister for Primary Industries

Explanatory note

The object of this Regulation is to amend the *Fisheries Management (General) Regulation 2002* as follows:

- (a) to prescribe work that involves the removal of certain material from water land as dredging work for the purposes of provisions of the *Fisheries Management Act 1994* (the *Act*) relating to the management of dredging and reclamation work so that a permit will be required to carry out such work,
- (b) to increase the penalty payable for the offence of damaging salmon or trout spawning areas,
- (c) to prescribe saltmarsh on public water lands as marine vegetation that is protected under the Act,
- (d) to provide a defence to a prosecution for possessing protected fish from the Pegasidae, Solenostomidae and Syngnathidae families (commonly known as seamoths, seahorses, pipefish and seadragons) if they are exhibited in an aquarium or used in the aquarium industry and were lawfully taken from or lawfully cultivated in waters of another jurisdiction,
- (e) to clarify the circumstances in which possession limits for fish do not apply to commercial fishers and persons who purchase fish taken by commercial fishers,
- (f) to prescribe activities that are not routine fishing or farming activities for the purposes of certain defences to threatened species offences,
- (g) to increase the application fees for permits to use electrical devices and explosives,

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- (h) to establish a new scale of fees for permits under Part 7 of the Act (Protection of aquatic habitats) so that the fee payable for a permit depends on the time required to complete an assessment of the application for the permit,
- (i) to amend the fishing business transfer rules in relation to the transfer of endorsements and shares by a dual operator fishing business,
- (j) to increase the maximum carrying capacity for certain charter fishing boats,
- (k) to update the species of fish that are protected under the Act.

This Regulation also makes a law revision amendment to the *Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006*.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 18, 19, 21, 127C, Part 7 and sections 220ZF, 220ZFA, 276 and 289 (the general regulation-making power).

**Fisheries Management Legislation Amendment
Regulation 2010**

under the

Fisheries Management Act 1994

1 Name of Regulation

This Regulation is the *Fisheries Management Legislation Amendment Regulation 2010*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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Schedule 1 Amendment of Fisheries Management (General) Regulation 2002

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[1] Clause 6 Protected fish

Omit the following from Part 1 of the Table under the headings “**Common name**” and “**Species**”, respectively:

Black rock cod (or saddle-tail rock cod)	<i>Epinephelus daemeli</i>
Grey nurse shark	<i>Carcharias taurus</i>
Weedy seadragon (or common seadragon)	<i>Phyllopteryx taeniolatus</i>

[2] Clause 6, Table, Part 2 Freshwater species

Omit the following from under the headings “**Common name**” and “**Species**”, respectively:

Eastern freshwater cod	<i>Maccullochella ikei</i>
Trout cod	<i>Maccullochella macquariensis</i>
Macquarie perch	<i>Macquaria australasica</i>

[3] Clause 7A

Insert after clause 7:

7A Defence—aquarium fish

For the purposes of section 21 (1) (d) of the Act, it is a defence to a prosecution for an offence under section 19 (3) of the Act (relating to the possession of protected fish) if:

- (a) the fish are species of the family Pegasidae, Solenostomidae or Syngnathidae (commonly known as seamoths, seahorses, pipefish and seadragons), and
- (b) the fish are being kept in an aquarium for exhibition or are in the person’s possession for the purposes of sale in the aquarium industry, and
- (c) the fish were lawfully cultivated in or lawfully taken from waters to which this Act does not apply.

[4] Clause 15

Omit the clause. Insert instead:

15 Possession limits do not apply to fish lawfully taken for sale

- (1) It is lawful for a commercial fisher to be in possession of fish in excess of a possession limit specified in this Division if the commercial fisher lawfully took the fish for sale.
- (2) It is lawful for a person to be in possession of fish in excess of a possession limit specified in this Division if the person purchased or otherwise acquired the fish from another person whose possession of the fish was lawful (whether as a result of subclause (1) or as a result of one or more applications of this subclause).
- (3) It is a defence to a prosecution for an offence against section 18 of the Act constituted by being in possession of fish in excess of a possession limit specified in this Division if the person charged proves:
 - (a) that he or she purchased or otherwise acquired the fish from another person, and
 - (b) that the other person's possession of the fish was lawful or that there were no reasonable grounds to suspect that the other person's possession of the fish was unlawful.

[5] Clause 113 Permit to use explosives

Omit "\$127" from clause 113 (5). Insert instead "\$300".

[6] Clause 115 Permit to use electrical devices

Omit "\$127" from clause 115 (5). Insert instead "\$300".

[7] Clause 133E Transfer of external fishing authorities by dual operator fishing businesses

Omit clause 133E (3) (c). Insert instead:

- (c) refuse to issue a new NSW fishing authority to a person who has previously held a NSW fishing authority that has been cancelled by the Minister under this clause,

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[8] Clause 133EA

Insert after clause 133E:

133EA Transfer of endorsements and shares by dual operator fishing businesses

- (1) An endorsement or a share that is a component of a dual operator fishing business is not to be transferred to a person unless all components of the fishing business are transferred to the same person.
- (2) If the components of a dual operator fishing business are transferred, those components must continue to be held as part of a single fishing business (that is, the components must not be split between different fishing businesses).
- (3) The Director-General may refuse to amend or revoke a fishing business determination if the effect of the amendment or revocation would be to recognise the transfer of components of a dual operator fishing business to different fishing businesses.

Note. In addition, under clause 133O (2), the Director-General may refuse to approve a transfer of an endorsement or a share that contravenes this clause.

[9] Clause 133H Effect of contravention

Insert after clause 133H (1) (b):

- (b1) refuse to issue a new NSW fishing authority to a person who has previously held a NSW fishing authority that has been cancelled by the Minister under this clause,

[10] Clause 195 Application for endorsement

Insert "under clause 198" after "cancelled" in clause 195 (4) (d).

[11] Clause 311 Other conditions of licences

Omit clause 311 (5). Insert instead:

- (5) It is a condition of a licence for a charter fishing boat that the number of persons permitted to fish from the boat at any one time does not exceed the maximum carrying capacity for the charter fishing boat.
- (6) The maximum carrying capacity for a charter fishing boat is the carrying capacity (as at 4 August 1999) of the boat relied on by the licence holder to satisfy the eligibility criteria for the licence under clause 301 or 302, or 4 people, whichever is the higher.

[12] Clause 337

Omit the clause. Insert instead:

337 Application for permit under Part 7 of Act

- (1) An application for a permit under Part 7 of the Act is to be in a form approved by the Director-General.
- (2) An application for a permit under Part 7 of the Act is to be accompanied by:
 - (a) an application fee of \$150, and
 - (b) an assessment fee.
- (3) The assessment fee for an application for a permit is to be determined by the Director-General in accordance with this clause on the basis of the time required to complete an assessment of the application.
- (4) The assessment fee is:
 - (a) for a minor assessment—\$150, or
 - (b) for a moderate assessment—\$350, or
 - (c) for a major assessment— \$1,250, or
 - (d) for a complex assessment— \$3,250.
- (5) For the purposes of this clause:
 - (a) an assessment is a *minor assessment* if, in the opinion of the Director-General, the assessment will take up to 3 hours to complete, and
 - (b) an assessment is a *moderate assessment* if, in the opinion of the Director-General, the assessment will take more than 3 hours but less than 7 hours to complete, and
 - (c) an assessment is a *major assessment* if, in the opinion of the Director-General, the assessment will take 7 hours or more but less than 21 hours to complete, and
 - (d) an assessment is a *complex assessment* if, in the opinion of the Director-General, the assessment will take 21 hours or more to complete.
- (6) In determining the time that an assessment will take to complete, the Director-General is to include any time that will be taken to conduct a site visit or to consult with stakeholders, if, in the opinion of the Director-General, a site visit or consultation is necessary for the assessment of the application.

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- (7) If, after making a determination as to the level of assessment required in respect of an application, the Director-General determines that any further assessment in respect of the application is required, an additional assessment fee may be charged.
- (8) The additional assessment fee is \$62 for each hour (or part of an hour) of work performed by an officer of the Department in respect of an application (being work not included in the initial determination as to the level of assessment required).
- (9) In this clause, *stakeholder* means:
 - (a) a person likely to be affected by the activity proposed to be permitted, or
 - (b) a person or body having functions under the *Environmental Planning and Assessment Act 1979*, or any other law, with respect to consent to or approval of the activity proposed to be permitted.

[13] Clause 338

Omit the clause. Insert instead:

338 Marine vegetation—regulation of harm (section 205 of the Act)

- (1) The following are declared to be marine vegetation to which section 205 of the Act applies:
 - (a) attached marine and estuarine macroalgae,
 - (b) saltmarsh in a protected area.
- (2) The taking of sea lettuce (*Ulva* spp.) and blackfish weed (*Enteromorpha* spp.) for use as bait is exempt from the operation of section 205 (2) of the Act.
- (3) Any activity that harms saltmarsh is exempt from the operation of section 205 (2) of the Act if:
 - (a) the activity is authorised under the *Threatened Species Conservation Act 1995*, or
 - (b) the saltmarsh is on land reserved under Part 4 of the *National Parks and Wildlife Act 1974*.
- (4) In this clause:

marine and estuarine macroalgae means those species of non-microscopic plants commonly known as seaweeds that belong to the plant classification divisions of Rhodophyta, Phaeophyta and Chlorophyta, that are endemic to New South Wales marine and estuarine waters.

saltmarsh means an ecological community within the meaning of Part 7A of the Act known as saltmarsh in which one or more of the following species of plants are found:

- (a) *Baumea juncea*,
- (b) *Isolepis nodosa*,
- (c) *Juncus kraussii*,
- (d) *Samolus repens*,
- (e) *Sarcocornia quinqueflora*,
- (f) *Selliera radicans*,
- (g) *Sporobolus virginicus*,
- (h) *Suaeda australis*,
- (i) *Triglochin striata*,
- (j) *Zoysia macrantha*.

[14] Clause 339 Fees for permits under Part 7 of the Act

Omit the clause.

[15] Clause 340AB

Insert after clause 340AA:

340AB Dredging work

- (1) For the purposes of paragraph (b) of the definition of *dredging work* in section 198A of the Act, the following work is prescribed:
 - (a) work that involves the removal of woody debris, snags, gravel beds, cobbles, rocks, boulders, rock bars or aquatic vegetation from water land,
 - (b) work that involves the removal of any other material from water land that disturbs, moves or harms woody debris, snags, gravel beds, cobbles, rocks, boulders, rock bars or aquatic vegetation.
- (2) In this clause, *aquatic vegetation* means native vegetation that inhabits freshwater but does not include noxious weeds within the meaning of the *Noxious Weeds Act 1993*.

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[16] Part 11A, Division 2

Omit the Division. Insert instead:

Division 2 Defences to threatened species offences

340D Activities that are not routine activities in connection with lawful taking of fish or marine vegetation

For the purposes of section 220ZF (1) (d) of the Act, any activity, which, by its nature, results in, or is likely to result in, the repeated taking of a threatened species of fish (within the meaning of Part 7A of the Act) is declared not to be a routine activity.

340DA Limitations on routine farming practice activities

- (1) A routine farming practice activity referred to in section 220ZFA (1) (b) of the Act is limited by excluding any activity that involves buying, selling or being in possession of any fish or marine vegetation that is, or is part of, a threatened species, an endangered population or an endangered ecological community (within the meaning of Part 7A of the Act).
- (2) A routine farming practice activity referred to in section 220ZFA (1) (b) of the Act is limited by excluding any activity carried out for the purposes of preventing, reducing, minimising or eliminating:
 - (a) damage to or loss of crops, livestock or farming infrastructure (such as dams, fences, buildings, sheds, windmills, bores, air strips, stockyards and farm roads), or
 - (b) injury to the health of livestock,if the activity results in or is likely to result in the harming of:
 - (c) any fish that is, or is part of, a threatened species, an endangered population or an endangered ecological community (within the meaning of Part 7A of the Act), or
 - (d) any protected marine vegetation.
- (3) In this clause, *protected marine vegetation* means marine vegetation to which section 204A, 204B or 205 of the Act applies.

[17] Schedule 5 Penalty notice offences

Omit "\$200" from Column 2 in Part 1 in the matter relating to section 206 (1).

Insert instead "\$1,000".

**Schedule 2 Amendment of Fisheries Management
(Ocean Trap and Line Share
Management Plan) Regulation 2006**

Appendix, clause 7C Types of hooks to be used on set lines

Insert after clause 7C (1):

- (1A) It is a condition of an endorsement that the endorsement holder does not contravene this clause.