

[Act 2001 No 104]



New South Wales

Fisheries Management Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The *Fisheries Management Act 1994* reflects the complexities of modern fisheries management which seeks to conserve living aquatic resources as well as regulate the impact of fishing on fish stocks and the ecosystem generally. It does this by employing an integrated systems approach to assessing the interacting ecological, biophysical, economic and social factors. To better achieve these overall aims, this Bill includes as an objective of the above Act the provision of social and economic benefits for the wider community of New South Wales.

In addition, the object of this Bill is to amend the *Fisheries Management Act 1994*:

- (a) to clarify that the Act is to have extraterritorial application in so far as the legislative powers of the State permit, and

* Amended in committee—see table at end of volume.

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- (b) to enable regulations to be made to prohibit the taking of fish for sale from specified waters, and
- (c) to specify the purpose of fishing fees, and
- (d) to enable a share management fishery to proceed to the final stage of implementation by the issuing of shares and the making of a management plan despite outstanding appeals in relation to the issue of provisional shares, and
- (e) to remove the need for consultation in relation to the first proposed management plan for a fishery if a fishery management strategy has been prepared for that fishery and a determination in relation to the fishery has been made pursuant to Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979*, and
- (f) to ensure that no new appeal in relation to a provisional issue of shares in a fishery can be lodged with the Share Appeal Panel after the making of the management plan for the fishery, and
- (g) to permit a declaration for a disease to specify the circumstances in which provisions relating to the declared disease do not apply, and
- (h) to bring provisions relating to development and the prohibition of certain activities in aquatic reserves into line with the corresponding provisions for marine parks, and
- (i) to increase penalties for unauthorised dredging and for unauthorised harvesting or harming of marine vegetation, and
- (j) to raise a presumption that a person has harmed marine vegetation if that person is carrying on an activity prescribed by the regulations unless that person can establish that the specific activity caused no such harm, and
- (k) to increase penalties for failing to provide fishways and blocking the passage of fish, and
- (l) to allow the Minister to make an order authorising a class of persons to carry out an activity that may harm a threatened species, population or ecological community or damage its habitat, and
- (m) to provide a penalty for failing to comply with a stop work order, and
- (n) to include in the functions of a Management Advisory Committee functions relating to the fishery management strategy, and
- (o) to permit any costs incurred in preparing a species impact statement in relation to a Ministerial order to be repaid from the trust fund associated with the fishery to which the order relates, and
- (p) to increase the penalties for offences in relation to audits, and

- (q) to provide that the Minister is not obliged to fill the vacancy of a member of the Total Allowable Catch Setting and Review Committee if the person was appointed under section 27 (1) (d) of the Act and there are at least 4 remaining members on the Committee, and
- (r) to make other minor amendments.

The Bill also amends the *Environmental Planning and Assessment Act 1979* so as to include Ministerial orders made under proposed Subdivision 1A of Division 6 of Part 7A of the *Fisheries Management Act 1994* in the definition of ***fishing regulatory controls***, and to provide that a person need not prepare a species impact statement where the fishing activity has been authorised by a Ministerial order and the species impact statement prepared in relation to that order included an assessment of the activity.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Fisheries Management Act 1994* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 2.

Schedule 1 Amendment of Fisheries Management Act 1994

Objects of the Act

Schedule 1 [1] amends section 3 of the Act to add a new object of providing social and economic benefits for the wider community of New South Wales.

Territorial application

Schedule 1 [3], [37] and [38] amend sections 7 and 261 to clarify that the Act is intended to have extraterritorial application in so far as the legislative powers of the State permit. **Schedule 1 [2]** inserts a note in section 7 explaining that the legislative powers of the State will often extend beyond three nautical miles.

Protection of fish from commercial fishing

Schedule 1 [4] replaces section 20 to permit the regulations to declare specified waters to be waters in which commercial fishing is prohibited absolutely or conditionally. It also increases the maximum penalties for offences under the section to 2,000 penalty units in the case of a corporation and 1,000 penalty units or 6 months imprisonment, or both, in any other case. **Schedule 1 [5]** and **[26]** make consequential amendments.

Purpose of fishing fees

Schedule 1 [6] introduces a new section 34AA that specifies the purpose of fishing fees.

Final issue of shares

Schedule 1 [7] introduces a new section 52A to permit the issuing of shares and the making of the share management plan for a fishery while there are still outstanding appeals in relation to the issuing of provisional shares. The section permits shares that may potentially be affected by an appeal to be issued as *shares subject to appeal*. Such shares are subject to certain special conditions. **Schedule 1 [9]** amends section 84 to prohibit any fresh appeal relating to the issuing of provisional shares being made to the Share Appeal Panel after the making of a share management plan for the fishery to which the appeal relates. It also makes it clear that the making of a share management plan does not affect any appeal that has been made but not yet finalised.

Public and industry consultation

Schedule 1 [8] provides an exception to the consultation requirements placed on the Minister by section 58. This exception applies in the case of the first proposed management plan for a fishery, but only if a fishery management strategy has been prepared for the fishery and a determination in relation to the fishery has been made pursuant to Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979*.

Declared diseases

Schedule 1 [10] amends section 182 to permit a declaration for a disease or class of disease to specify the circumstances in which the provisions of Division 4 of Part 6 relating to declared diseases will not apply.

Aquatic reserves

Schedule 1 [12] introduces two new Subdivisions into Division 2 of Part 7 that relate to development activities within aquatic reserves and aquatic reserve notifications. These mirror provisions in the *Marine Parks Act 1997*. **Schedule 1 [11]** makes a consequential amendment.

Increased penalties

Schedule 1 [13]–[21], [23] and [24] increase penalties for various offences relating to dredging, harming or harvesting marine vegetation and blocking or failing to provide fishways. In relation to each offence the maximum penalty for a corporation is increased to 2,000 penalty units and in other cases the maximum penalty is increased to 1,000 penalty units.

Activities harmful to marine vegetation

Schedule 1 [22] introduces a new section 205B which allows the regulations to prescribe an activity that, if carried out by a person in a relevant protected area, is presumed for the purposes of the offences contained in Division 4 of Part 7 to cause harm to marine vegetation unless the person is able to demonstrate that the particular activity caused no actual harm.

Ministerial orders

Schedule 1 [29] introduces a new Subdivision 1A to Division 6 of Part 7A that enables the Minister to make an order authorising a class of persons to carry out an activity that may result in harm to a threatened species, population or ecological community or damage to its habitat. Before making such an order the Minister must cause a species impact statement to be prepared, engage in public consultation and take a number of matters into account. The Minister is also permitted to make an interim order lasting up to 6 months to reduce social and economic impacts during the course of the assessment of a proposed order. **Schedule 1 [36]** adds a new section 238C that permits the cost of preparing a species impact statement in relation to a Ministerial order made in respect of a fishery to be reimbursed from a trust fund that relates to the fishery. **Schedule 1 [25], [27], [28], [30], [31] and [40]** make consequential amendments.

Stop work orders

Schedule 1 [32] provides a penalty for failing to comply with a stop work order made by the Director under section 221O. The maximum penalty in the case of a corporation is to be 2,000 penalty units with an additional penalty of up to 1,000

penalty units for each day that the offence continues. In the case of an individual the maximum penalty is to be 1,000 penalty units with an additional penalty of up to 500 penalty units for each day that the offence continues.

Management Advisory Committees

Schedule 1 [33]–[35] amend section 230 to include in the functions of a Management Advisory Committee functions relating to the fishery management strategy for a fishery.

Audit offences

Schedule 1 [39] increases the penalty for audit offences under section 275G. The maximum penalty for a corporation is to be 2,000 penalty units and in all other cases, 1,000 penalty units.

Vacancy on TAC Committee

Schedule 1 [41] amends clause 6 of Schedule 2 to provide that the Minister is not obliged to fill the vacancy of a member of the Total Allowable Catch Setting and Review Committee if the person was appointed under section 27 (1) (d) and there are at least 4 remaining members on the Committee.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

Schedule 2 [1] and [2] make consequential amendments to the *Environmental Planning and Assessment Act 1979* to include a Ministerial order made under Subdivision 1A of Division 6 of Part 7A of the *Fisheries Management Act 1994* in the definition of *fishing regulatory controls* found in section 115G. Section 115N of the 1979 Act is also amended so as to not require a second species impact statement to be prepared in relation to harm to threatened species, populations or ecological communities or their habitats if the activity has been authorised by a Ministerial order and the species impact statement prepared in relation to that order has already assessed the likely effect of the activity on those species, populations or ecological communities or their habitats.