

Passed by both Houses



New South Wales

Fisheries Management Amendment (Shark Management Trials) Bill 2016

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2016

Clerk of the Parliaments



New South Wales

Fisheries Management Amendment (Shark Management Trials) Bill 2016

Act No , 2016

An Act to amend the *Fisheries Management Act 1994* and related legislation to promote the safe use and enjoyment by the public of coastal beaches and tidal waters by facilitating shark management trials.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fisheries Management Amendment (Shark Management Trials) Act 2016*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Fisheries Management Act 1994 No 38

[1] Schedule 6D

Insert after Schedule 6C:

Schedule 6D Shark management trials

Part 1 Preliminary

1 Objects

- (1) The object of this Schedule is to promote the safe use and enjoyment by the public of coastal beaches and other tidal waters by facilitating shark management trials.
- (2) The objects of this Schedule, in relation to the shark management trials, are as follows:
 - (a) to reduce the risk to swimmers posed by sharks,
 - (b) to minimise the impact of shark management measures on fauna,
 - (c) to inform future decision making about shark management.

2 Definitions

In this Schedule:

approved management plan—see clause 3.

approved shark management trial—see clause 3.

authorised shark management activity—see clause 4.

management plan means a management plan for a shark management trial prepared by the Secretary under this Schedule.

shark management measure means any of the following:

- (a) nets that are suspended in waters to protect swimmers from sharks,
- (b) any other thing that is used in or on waters to capture sharks or deter the incursion by sharks into waters that are frequented by swimmers.

shark management trial means a trial of the use of one or more shark management measures.

swimmers include bathers and surfers.

trial approval—see clause 3.

use includes install, deploy and operate.

Part 2 Approval to conduct shark management trial

3 Minister may approve trial

- (1) The Minister may, by order published in the Gazette, approve the conduct of a shark management trial in accordance with a management plan for the shark management trial that is adopted in the approval.
- (2) The Minister may approve a shark management trial only if the Minister is of the opinion that sharks pose a significant risk to the safety of swimmers in the area in which the trial is to be conducted.
- (3) An order under this clause is a *trial approval*.

- (4) A trial approval is to adopt a management plan for the shark management trial by specifying the name of the management plan and the date of the management plan.
- (5) A trial approval takes effect on its publication in the Gazette or on a later date specified in the approval.
- (6) When a trial approval takes effect:
 - (a) the shark management trial specified in the approval is an ***approved shark management trial***, and
 - (b) the management plan adopted in the trial approval is the ***approved management plan*** for that shark management trial.
- (7) A copy of the trial approval for an approved shark management trial, and the approved management plan for the shark management trial (as in force for the time being), is to be made available for public viewing on the website of the Department.
- (8) More than one shark management trial may be approved.

4 Effect of trial approval

- (1) The trial approval for a shark management trial is authority to carry out the authorised shark management activities.
- (2) Each of the following activities is an ***authorised shark management activity***:
 - (a) the use of any shark management measure that is described in the approved management plan for the trial as a shark management measure that is to be used under the trial, but only in the area specified in the approved management plan as the area in which the trial is to be conducted,
 - (b) any other activity specified in the approved management plan for the trial as an activity that is to be carried out for the purposes of, or in connection with, a shark management measure that is to be used under the trial (including monitoring, reporting and research activities),
 - (c) any activity that is ancillary to or reasonably incidental to an activity referred to in paragraph (a) or (b).
- (3) An activity referred to in subclause (2) is an authorised shark management activity only if:
 - (a) the activity is carried out by the Crown or a NSW Government agency, by an officer or employee of the Crown or a NSW Government agency acting in his or her capacity as such or by another person who is employed, engaged or authorised by the Secretary to carry out the activity, and
 - (b) the activity is carried out in accordance with any requirements specified in the approved management plan.
- (4) An activity is an authorised shark management activity only if it is carried out during the period of the trial (as specified in the approved management plan for the trial) and while the trial approval has effect.

5 Suspension or termination of shark management trial

- (1) The Minister may, by order published in the Gazette, suspend or terminate an approved shark management trial if the Minister is of the opinion that:

- (a) the shark management trial is not being carried out in accordance with the approved management plan for the shark management trial, or
 - (b) the suspension or termination is necessary for any other reason.
- (2) A suspension has effect for the period specified in the order, which may be extended by further order under this clause.
- (3) A termination has effect on the date the order is published in the Gazette or a later date specified in the order.
- (4) A trial approval ceases to have effect during any period in which the approved shark management trial is suspended by the Minister under this clause.
- (5) A trial approval ceases to have effect if the approved shark management trial is terminated by the Minister under this clause.

6 Amendments to approved management plan

- (1) The Minister may, by order published in the Gazette, amend a trial approval:
 - (a) to revoke the adoption of an approved management plan and adopt a new management plan in its place, or
 - (b) to adopt amendments to an approved management plan.
- (2) The order is to adopt a new management plan, or amendments, as the case requires, by specifying the name of the new management plan or the document that sets out the amendments and the date of the plan or document (as the case requires).
- (3) The order has effect on the date the order is published in the Gazette or a later date specified in the order.
- (4) An order cannot be made under this clause so as to extend or change the area in which an approved shark management trial is to be conducted, unless the Minister first certifies that the change corrects a minor error or omission.
- (5) An order cannot be made under this clause so as to extend the period of the approved shark management trial.
- (6) Subclauses (4) and (5) do not limit the Minister's power to approve the conduct of a new shark management trial under this Schedule.

Part 3 Management plans

7 Management plan

The Secretary may prepare a management plan for a shark management trial.

8 Content of plan

- (1) The management plan for a shark management trial must specify the following:
 - (a) the area in which the trial is to be conducted,
 - (b) the shark management measure or shark management measures to be used under the trial,
 - (c) the period of the trial.
- (2) The period of the trial must not exceed 12 months.
- (3) A management plan cannot provide for the use of any shark management measure in or on waters for a total period of more than 6 months.

- (4) A management plan may also make provision for or with respect to the following:
 - (a) monitoring and reporting requirements,
 - (b) performance indicators and measures to monitor and assess whether the objects of this Schedule are being attained by the trial,
 - (c) risk mitigation and management strategies in relation to the trial, including in relation to the following:
 - (i) public safety,
 - (ii) environmental impact,
 - (iii) emergencies that may arise in connection with the trial,
 - (d) requirements relating to the use of shark management measures (including contractor requirements),
 - (e) an observer program for the trial,
 - (f) any other matters relating to the trial.

Part 4 Exemptions

9 Approvals not required for authorised shark management activities

- (1) A trial approval for a shark management trial is sufficient authority to carry out an authorised shark management activity and no other consent, approval, licence, permit or authorisation under this or any other Act or law is required to carry out the activity.
- (2) A person who carries out an authorised shark management activity has lawful authority to carry out that activity.
- (3) Nothing in this Part limits or otherwise affects the generality of this clause.

10 Specific legislative exemptions

- (1) The *Environmental Planning and Assessment Act 1979* does not apply to authorised shark management activities. Accordingly:
 - (a) development consent under Part 4 of that Act is not required for an authorised shark management activity, and
 - (b) Part 5 of that Act does not apply in respect of an authorised shark management activity, and
 - (c) an authorised shark management activity cannot be prohibited or restricted by an environmental planning instrument (whether made before or after the commencement of this clause) under that Act.
- (2) A person does not contravene a provision of Part 7A of this Act or of Part 7, Part 7A or Part 8A of the *National Parks and Wildlife Act 1974* by carrying out an authorised shark management activity.
- (3) A person does not contravene a provision of Division 3 of Part 2 of this Act, or a regulation under any of those provisions, by carrying out an authorised shark management activity.
- (4) An environment protection licence under the *Protection of the Environment Operations Act 1997* is not required to carry out an authorised shark management activity.
- (5) The following orders, notices or directions cannot be made or given so as to prevent or interfere with the carrying out of an authorised shark management activity:

- (a) an interim protection order (within the meaning of the *National Parks and Wildlife Act 1974*),
 - (b) an order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995*, section 220AA of this Act or Division 7 (Stop work orders) of Part 7A of this Act,
 - (c) an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*,
 - (d) an order under section 124 of the *Local Government Act 1993*.
- (6) The *Marine Estate Management Act 2014*, or any instrument made under that Act, does not prohibit or restrict the carrying out of authorised shark management activities.
- (7) A person carrying out an authorised shark management activity does not contravene a provision of an Act or regulation by carrying out that activity if the provision is prescribed by the regulations under this clause.

11 No liability in nuisance

An authorised shark management activity does not constitute a nuisance.

Part 5 Interference with shark management measures

12 Unlawful interference with shark management measures

- (1) A person must not interfere with any shark management measure that is used under an approved shark management trial.
- (2) In this clause, *interfere with* includes damage, harm, climb on, hold on to, move or destroy.
- (3) This clause does not apply to the following:
 - (a) anything done with lawful authority,
 - (b) anything done with the consent of the Minister.Maximum penalty: 200 penalty units

13 Interference by operation of vessel

For the purposes of the *Marine Safety Act 1998*, the use of a shark management measure that is an authorised shark management activity is a lawful use of waters.

Note. Section 15A of the *Marine Safety Act 1998* permits an authorised officer to give directions to persons to prevent the use of vessels in contravention of a lawful use of waters.

Part 6 Miscellaneous

14 No proceedings in Land and Environment Court

Section 282 does not apply to a breach or an apprehended breach of this Schedule.

15 Personal liability

- (1) A matter or thing done or omitted to be done by the Minister, the Secretary or a person acting in his or her capacity as an officer or employee of the Crown or a NSW Government agency does not, if the thing was done or omitted to be

done in good faith for the purpose of exercising a function under this Schedule or carrying out an authorised shark management activity, subject the Minister, the Secretary or person so acting personally to any action, liability, claim or demand.

(2) However, any such liability attaches instead to the Crown.

16 Repeal of Schedule

This Schedule is repealed on the date that is 5 years after the date of commencement of this Schedule.

[2] Schedule 7 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on end of shark management trials

Repeal of Schedule 6D

Schedule 6D, as in force immediately before its repeal, continues to apply in relation to any shark management trial for which a trial approval is given under that Schedule before its repeal.

Note. Schedule 6D is due to be repealed 5 years after the date of its commencement.

Schedule 2 Amendment of Fisheries Management (General) Regulation 2010

Schedule 7 Penalty notice offences

Insert at the end of Part 1:

Schedule 6D, clause 12	\$1,000
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