

Passed by both Houses



New South Wales

Fisheries Management Amendment Bill 2004

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Fisheries Management Act 1994 No 38	2
4 Amendment of other Acts	2
Schedule 1 Amendment of Fisheries Management Act 1994	3
Schedule 2 Amendment of other Acts	21

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
2004

Clerk of the Parliaments



New South Wales

Fisheries Management Amendment Bill 2004

Act No , 2004

An Act to amend the *Fisheries Management Act 1994* to make further provision with respect to the management of fishery resources; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fisheries Management Amendment Act 2004*.

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 Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Fisheries Management Act 1994

(Section 3)

[1] The whole Act (except Schedule 7 and except as otherwise amended)

Omit “Director” and “Director’s” wherever occurring.

Insert instead “Director-General” and “Director-General’s” respectively.

[2] Section 4 Definitions

Omit the definition of *Director* from section 4 (1). Insert instead:

Director-General means the Director-General of NSW Fisheries.

[3] Section 4 (1)

Insert in alphabetical order:

fishing business is defined in section 34Q.

fishing business determination is defined in section 34Q.

fishing business transfer rules is defined in section 34T.

supporting plan, in relation to a share management fishery, means a supporting plan made under Division 5 of Part 3.

[4] Section 7C Fishery management strategy for designated activities

Insert after section 7C (2):

(2A) An existing strategy may be revised by including provisions in a subsequent strategy (whether or not relating to the same activity) that are expressed to amend, replace or otherwise revise the provisions of the existing strategy.

(2B) The Minister may set priorities, or revise priorities, for the implementation of any action contemplated by an existing strategy, in particular, for the purpose of co-ordinating the implementation of actions that are common to 2 or more strategies.

[5] Part 2, Division 4C

Insert after Division 4B:

Division 4C Acquisition of fishing businesses

34P Definitions

In this Division:

fishing authority means a licence, permit, share, endorsement or any other authority relating to fishing activities issued or given under this Act or any other law (whether or not of this State).

NSW fishing authority means a fishing authority issued or given under this Act.

transfer of a fishing business or a component of a fishing business means the transfer, transmission, conveyance or assignment of a fishing business or component of a fishing business, and includes any other dealing in a fishing business or component of a fishing business of a kind prescribed by the regulations.

34Q Fishing business determinations

- (1) The Director-General may, from time to time:
 - (a) determine that a business that the Director-General considers to be a separate and identifiable fishing business is a fishing business, and
 - (b) determine the components of that fishing business.
- (2) Such of the following as the Director-General considers to be owned, used, held or acquired in connection with a fishing business may be determined to be a component of the fishing business:
 - (a) one or more fishing boats,
 - (b) fishing gear,
 - (c) any fishing authority held by a person,
 - (d) the catch history of any person (determined in accordance with this Act and the regulations).

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- (3) For the purposes of this Act:
- (a) a *fishing business* is a business determined by the Director-General to be a fishing business under this section, and
 - (b) the fishing business is comprised of those components that are determined by the Director-General to be components of the fishing business.
- (4) The Director-General may, from time to time, amend or revoke a determination under this section by making a further determination.
- (5) A determination by the Director-General under this section is called a *fishing business determination*.
- (6) A fishing business determination is to be made:
- (a) in accordance with such provisions (if any) relating to the making of fishing business determinations as may be contained in the regulations or a management plan for a fishery (or both), and
 - (b) in a manner consistent with any guidelines relating to transfers of fishing businesses, approved by the Director-General before the commencement of this section, that had effect in relation to any transfer made before the fishing business transfer rules took effect.
- (7) The Director-General may make a fishing business determination at any time:
- (a) on his or her own initiative, or
 - (b) on an application made, in a form and manner approved by the Director-General, by the person (or persons) who own the business in respect of which the determination is sought.
- (8) The Director-General is required to give the person (or persons) who own a business that is the subject of a fishing business determination notice in writing of the determination.

34R Allocation of fishing business number

- (1) The Director-General is to allocate a unique identification number to each fishing business.

- (2) The Director-General may endorse a NSW fishing authority that is a component of a fishing business with the number allocated to the fishing business.

34S Register of fishing business determinations

- (1) The Director-General is required to keep a register of fishing business determinations.
- (2) For each fishing business determination there is to be recorded in the register:
- (a) the name of the person (or persons) who own the business the subject of the determination,
 - (b) the number allocated by the Director-General to the fishing business,
 - (c) particulars of the components of the fishing business,
 - (d) such other particulars as are required by the regulations to be recorded in the register in relation to a fishing business.
- (3) The register may be kept wholly or partly by means of a computer.
- (4) The register is to be made available for public inspection at the head office of NSW Fisheries during ordinary business hours.
- (5) If the register is kept wholly or partly by means of a computer, subsection (4) may be complied with by making the contents of the register available on the website of NSW Fisheries.
- (6) The Director-General may correct any error in or omission from the register.
- (7) A certificate signed or purporting to be signed by the Director-General, or an officer of NSW Fisheries authorised in writing by the Director-General to exercise the functions conferred by this subsection, that certifies that, on a specified date or during a specified period, the particulars contained in the register as to specified matters were as so specified, is admissible in any proceedings and is evidence of the matters so certified.

34T Fishing business transfer rules

- (1) The regulations or the management plan for a fishery (or both) may make provision for or with respect to the transfer of a fishing business (or components of a fishing business) and provide for the recognition, or restriction, of fishing rights following any such transfer. Such provisions are referred to as *fishing business transfer rules*.
- (2) In particular, the fishing business transfer rules may provide that a person to whom a component of a fishing business is transferred does not, as a consequence of that transfer, acquire any right to be issued with or given a NSW fishing authority unless all components of the fishing business are either transferred to the person or surrendered to the Minister for cancellation.
Note. Some components of a fishing business, for example, endorsements in a restricted fishery, may not be transferable (see section 114). The fishing business transfer rules may require such endorsements to be surrendered to the Minister for cancellation if other components of the fishing business are transferred to another person.
- (3) The fishing business transfer rules may authorise the Minister to cancel a NSW fishing authority that is a component of a fishing business if any other component of the fishing business is transferred in contravention of the fishing business transfer rules.
- (4) No compensation is payable by or on behalf of the State for the cancellation of a NSW fishing authority in accordance with the fishing business transfer rules.

[6] Section 50 Method of determining eligibility and entitlement to shares

Insert “after the commencement of limited access to the fishery” after “category 1 share management fishery” in section 50 (7).

[7] Section 50 (8)

Insert after section 50 (7):

- (8) For the purpose of allocating shares in a share management fishery, if the catch history of a person is a component of a fishing business, the catch history of the person is taken to be the catch history of the person (or persons) who own that fishing business when shares are allocated.

[8] Section 51 Catch history

Omit section 51 (3).

[9] Section 57A

Insert after section 57:

57A Supporting plan

- (1) The Minister may arrange for the preparation of a draft plan relating to management of all or any specified class of share management fisheries (a *supporting plan*).
- (2) A supporting plan may make provision for or with respect to any matter for which a fishery management plan may make provision, but cannot contain any provision that could not be contained in a management plan.
- (3) A management plan for a fishery may adopt by reference any of the provisions of a supporting plan as in force at a particular time or as in force from time to time and with or without modification.
- (4) Any provisions so adopted are taken to form part of the management plan for the fishery.
- (5) A provision of a supporting plan has no effect in relation to a share management fishery except to the extent that the provision is adopted by the management plan for the fishery under this section.
- (6) The Minister may arrange for the preparation of a new supporting plan following a fishery review under this Part or at such other times as the Minister considers appropriate.

[10] Section 58

Omit the section. Insert instead:

58 Public and industry consultation

- (1) The Minister is required to give the public an opportunity to make submissions on any proposed management plan or supporting plan (or proposed new plan) and to take any submission that is duly made into account.

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- (2) The Minister is required to consult relevant commercial or recreational fishing bodies, and bodies representing indigenous and conservation interests, about any such proposed plan, including, in the case of a proposed management plan (or proposed new management plan), the Management Advisory Committee for the fishery to which it relates.

[11] Section 60 Making of plan by regulation

Omit section 60 (1). Insert instead:

- (1) A management plan for a fishery, or a supporting plan, including any amendment or new plan, is to be made by a regulation.

[12] Section 61 Commencement of management plan or supporting plan

Insert at the end of the section:

- (2) A supporting plan commences when the regulation making the plan commences.

[13] Section 62 Plan prevails over other regulations and closures

Insert “(or a provision of a supporting plan adopted by the management plan)” after “management plan for a fishery” in section 62 (1).

[14] Section 64 Amendment of plan

Insert “or supporting plan” after “management plan for a fishery”.

[15] Section 65

Omit the section. Insert instead:

65 Contravention of plan

- (1) A shareholder in a share management fishery is guilty of an offence if the shareholder (or a person nominated by the shareholder to take fish in the fishery) contravenes a provision of a management plan for the fishery, being a contravention that is a designated contravention.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 500 penalty units.

- (2) A *designated contravention* is a contravention of a provision of a management plan that is designated as an offence by:
 - (a) the management plan, or
 - (b) a supporting plan (if adopted by the management plan).
- (3) A management plan or supporting plan may also designate whether any such offence is an offence for which the shares of the shareholder are liable to forfeiture under this Act.

[16] Section 68 Endorsements on licences

Insert after section 68 (4):

- (4A) The licence of the holder of shares (or of a person nominated by the holder) may not be endorsed if the holder is not eligible for an endorsement as a consequence of a contravention of the fishing business transfer rules.

[17] Section 68 (6A)

Insert after section 68 (6):

- (6A) The authority conferred by an endorsement is subject to such conditions as are prescribed by the regulations or attached to an endorsement by the Minister.

[18] Section 68 (7) (c)

Insert “or the fishing business transfer rules” after “management plan for the fishery”.

[19] Section 68 (8A)

Insert after section 68 (8):

- (8A) An endorsement may be given by the Minister in the form of a document that is separate from the commercial fishing licence of the person authorised by the endorsement to take fish in the fishery. In such a case, references in this Act to an endorsement on a commercial fishing licence, or to endorsing a commercial fishing licence, extend to an endorsement, or the giving of an endorsement, in that form.

[20] Section 69 Nomination of commercial fisher by holder of shares

Omit section 69 (3). Insert instead:

- (3) The nomination is to be made in a form and manner approved by the Director-General.

[21] Section 69 (9)

Insert after section 69 (8):

- (9) Until the commencement of the management plan for a fishery, the Minister may determine the matters that, under this section, may be provided for by the plan.

[22] Section 71A

Insert after section 71:

71A Issue of further classes of shares in fishery

- (1) A management plan for a share management fishery may provide for the creation and issue of further classes of shares in the share management fishery.
- (2) Any such further classes of shares in the fishery are to be allocated to shareholders on the basis of criteria provided for by the management plan.
- (3) The criteria are to provide for the recognition of catch history of persons in the fishery during the period from 1986 to 1993 (both years inclusive) or during such other period as the plan provides.
- (4) For the purpose of allocating shares in the fishery, if the catch history of a person is a component of a fishing business, the catch history of the person is taken to be the catch history of the person (or persons) who own that fishing business when shares are allocated.
- (5) If a management plan provides for the issue of further classes of shares in a share management fishery, it is to include provision for the making of appeals to the Share Appeal Panel against decisions made under the plan in relation to the allocation of the shares.

[23] Section 76 Management charges

Omit section 76 (4)–(6). Insert instead:

- (4) The management charge is payable by shareholders in proportion to their shareholding or as otherwise provided by the management plan.
- (5) The management plan may authorise the payment of management charges by instalments.
- (6) If a management charge, or an instalment of a management charge, is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the management plan for the fishery, that rate.
- (7) Interest may be charged under subsection (6) for each day that has elapsed between the date on which payment is due and the date of payment.
- (8) Until the commencement of the management plan for a fishery, the Minister may (after consultation with the Management Advisory Committee for the fishery) determine the matters that may be provided for by the plan.

[24] Section 77 Community contribution for access to category 1 share management fishery

Omit section 77 (4). Insert instead:

- (4) The community contribution is to be based on the size of the shareholding in the fishery, or as otherwise provided by the management plan for the fishery.

[25] Section 84 Making of appeals

Insert “under section 48” after “provisional issue of shares in the fishery” in section 84 (1).

[26] Section 90 Registration of shares

Insert after section 90 (1) (a):

- (a1) if the shares are a component of a fishing business, the number allocated to the fishing business by the Director-General under this Act,

[27] Section 97 Inspection of Share Register and registered documents

Omit section 97 (2). Insert instead:

- (2) If the Share Register is kept wholly or partly by means of a computer, this section is taken to be complied with by making the contents of the Share Register available for inspection on the website of NSW Fisheries.

[28] Section 102 Commercial fishers required to be licensed

Omit “Maximum penalty: 100 penalty units.” from section 102 (1).

Insert instead:

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

[29] Section 104 Provisions relating to licensing of commercial fishers

Omit section 104 (2). Insert instead:

- (2) An application is to be in the form approved by the Minister.

[30] Section 104 (4) (b)

Omit “remains in force for the period of 1 year or such other period”.

Insert instead “remains in force for such period”.

[31] Section 104 (8)

Insert “and the fee or fees payable in respect of an application for the issue or renewal of a licence” after “issue of a licence”.

[32] Section 106 Annual contribution to cost of research and to other industry costs

Omit section 106 (4)–(7). Insert instead:

- (4) If a contribution is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, that rate.
- (5) Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.

- (6) Interest charged on an overdue annual contribution under subsection (4) is taken to be part of the contribution.

[33] Section 108 Provisions relating to licensing of boats

Omit section 108 (2). Insert instead:

- (2) An application is to be in the form approved by the Minister.

[34] Section 108 (4) (b)

Omit “remains in force for the period of 1 year or such other period”.

Insert instead “remains in force for such period”.

[35] Section 108 (8)

Insert “In particular, the regulations may prescribe the fee or fees payable in respect of an application for the issue or renewal of a licence.” after “licences for boats.”.

[36] Section 111 Declaration of restricted fisheries

Insert “in respect of which shares issued in the fishery have taken effect” after “not being a share management fishery” in section 111 (1).

[37] Section 127C Provisions relating to licensing of charter fishing boats

Omit section 127C (2). Insert instead:

- (2) An application is to be in the form approved by the Minister.

[38] Section 127C (4) (b)

Omit “remains in force for the period of 1 year or such other period”.

Insert instead “remains in force for such period”.

[39] Section 127C (8)

Omit the subsection. Insert instead:

- (8) The regulations may make provision for or with respect to charter fishing boat licences. In particular, the regulations:
- (a) may make provision for or with respect to permitting, prohibiting or restricting the use of a boat as both a charter fishing boat and a commercial fishing boat licensed under Division 2 of Part 4, and

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- (b) may prescribe the fee or fees payable in respect of an application for the issue of a licence or the renewal of a licence.

[40] Section 158

Omit the section. Insert instead:

158 Overdue contribution

- (1) If an annual contribution by a permit holder is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, at that rate.
- (2) Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.
- (3) Interest charged on an overdue annual contribution under this section is taken to be part of the contribution.

[41] Section 166

Omit the section. Insert instead:

166 Overdue rental

- (1) If the rental of an aquaculture lease remains unpaid 3 months after the date on which payment was due, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, at that rate.
- (2) Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.
- (3) Interest charged on the overdue rental of an aquaculture lease under this section is taken to be part of the rental.

[42] Section 204 Application and interpretation

Omit the definition of *harm* from section 204 (2). Insert instead:

harm, in relation to marine vegetation, means gather, cut, pull up, destroy, poison, dig up, remove, injure, prevent light from reaching or otherwise harm the marine vegetation, or any part of it.

[43] Section 280 Evidence relating to fishing authorities

Omit “Director or prescribed officer”.

Insert instead “Director-General, or an officer of NSW Fisheries authorised in writing by the Director-General to exercise the functions conferred by this section,”.

[44] Schedule 1 Share management fisheries

Insert after clause 13 (2):

- (3) A reference in this Schedule to ocean waters extends to ocean waters that are managed in accordance with the law of the State under an arrangement referred to in section 135, but only while that arrangement has effect.

[45] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Fisheries Management Amendment Act 2004

[46] Schedule 7, clause 6AA

Insert after clause 6A:

6AA Continuation of fishing business determinations made before commencement

- (1) Any determination made by the Director-General in respect of a fishing business that would have been validly made under section 34Q, had that section been in force at the time that it was made, is taken to have been made under that section and, accordingly, has effect as a fishing business determination.
- (2) The Director-General is not required to comply with section 34Q (8) in respect of such a determination if notice of the determination has already been given to the person or persons who, at the time of the determination, owned the business the subject of the determination.
- (3) Any number allocated to a fishing business pursuant to such a determination is taken to have been allocated under section 34R.

[47] Schedule 7, clauses 6C–6E

Insert after clause 6B:

6C Entitlement to shares—new category 1 share management fisheries

- (1) This clause applies in respect of the following share management fisheries, as described in Schedule 1:
 - (a) the ocean trawl fishery,
 - (b) the ocean hauling fishery,
 - (c) the ocean trap and line fishery,
 - (d) the estuary general fishery,
 - (e) the estuary prawn trawl fishery.
- (2) If the Minister is satisfied, in relation to a restricted fishery that becomes a share management fishery, that a person would have been entitled to an endorsement in the restricted fishery (otherwise than as the nominee or employee of another person) had the person applied for an endorsement before that fishery ceased to be a restricted fishery, the person is taken, for the purposes of section 50 (4), to have been entitled to take fish for sale in the fishery immediately before it ceased to be a restricted fishery.
- (3) The allocation of shares in the share management fishery to any such person is to be made having regard to what the Minister considers the entitlements of the person would have been had the person applied for an endorsement.
- (4) This clause ceases to apply in relation to a share management fishery when one of the following occurs (whichever happens first):
 - (a) the management plan for the fishery commences,
 - (b) all appeals to the Share Appeal Panel in connection with the issue of shares in the share management fishery are disposed of,
 - (c) the period of 12 months from the commencement of this clause elapses.

- (5) In this clause:

endorsement means an endorsement on a commercial fishing licence that authorises a person to take fish for sale in a restricted fishery.

6D Continuation of rental charge for access to new category 1 share management fisheries

- (1) Section 77A is taken to apply in respect of each of the following share management fisheries, as described in Schedule 1, as if the fishery were a category 2 share management fishery:
- (a) the ocean trawl fishery,
 - (b) the ocean hauling fishery,
 - (c) the ocean trap and line fishery,
 - (d) the estuary general fishery,
 - (e) the estuary prawn trawl fishery.
- (2) A shareholder in such a fishery (within the extended meaning of that expression given by section 77A (8)) is required to pay the rental charge provided for by that section on and from 27 March 2004, but only until the commencement of the management plan for the fishery.
- (3) For avoidance of doubt, a person is not required to pay a rental charge under section 77A (as applied by this clause) because the person is authorised to take fish, or to nominate a person to take fish, in the southern region of the ocean fish trawl restricted fishery.
- (4) Section 45E does not apply to a fishery to which this clause applies.
- (5) This clause has effect as if it had commenced on 27 March 2004.
- (6) In this clause:
- ocean fish trawl restricted fishery* means the restricted fishery of that name declared by regulations under section 111.
- southern region* of the ocean fish trawl restricted fishery means that part of the fishery that is comprised of the use of an otter trawl net (fish) to take fish from ocean waters that are

not more than 3 nautical miles from the natural coast line and are south of a line drawn due east from Barrenjoey Headland.

Note. Under section 77A a rental charge is payable for access to a category 2 share management fishery. On 27 March 2004 various category 2 share management fisheries were converted to category 1 share management fisheries. A new category 1 share management fishery called the ocean trawl fishery was also created. It is an amalgamation of the ocean prawn trawl fishery and part of the ocean fish trawl fishery. All the new category 1 fisheries are restricted fisheries in respect of which a rental charge was, before the changes, payable under section 77A. This clause continues the requirement to pay that rental charge until the commencement of the management plan for the fishery. (This clause does not apply in respect of the southern region of the ocean fish trawl restricted fishery because that part of the fishery has ceased to be a share management fishery.)

6E Validation

Anything done or omitted to be done, on or after 26 March 2004, in relation to a share management fishery that would have been validly done or omitted had the amendments made to this Act by the *Fisheries Management Amendment Act 2004* been in force at the time that the thing was done or omitted, is validated.

[48] Schedule 7, clause 17AA

Insert after clause 17A:

17AA Change to definition of “harm” in section 204

- (1) The amendment made to section 204 (2) by the *Fisheries Management Amendment Act 2004* does not render unlawful the continuation of any activity (including a use of land) commenced before that amendment, and carried out under the authority of an approval, consent or other authority given under any law of the State, that would be lawful but for that amendment.
- (2) Without limiting subclause (1), the amendment made to section 204 (2) by the *Fisheries Management Amendment Act 2004* does not render unlawful the continuation of any other activity commenced before that amendment, that would be lawful but for the amendment, for a period of 5 years after that commencement, if the scale of the activity is not increased.

[49] Schedule 7, clause 25

Insert after clause 24:

25 References to Director of NSW Fisheries

In any regulation or other instrument made under this Act, a reference to the Director within the meaning of section 4 (1) (before the definition of that expression was omitted by the *Fisheries Management Amendment Act 2004*) is taken to be a reference to the Director-General of NSW Fisheries.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Marine Parks Act 1997 No 64

[1] Section 29 Establishment of Marine Parks Authority

Omit “Director of NSW Fisheries” from section 29 (2) (b).

Insert instead “Director-General of NSW Fisheries”.

[2] Section 32 Establishment of Marine Parks Advisory Council

Omit “Director of NSW Fisheries” from section 32 (2).

Insert instead “Director-General of NSW Fisheries”.

[3] Section 36 Application of Fisheries Management Act 1994

Omit “Director” from section 36 (2) (d).

Insert instead “Director-General”.

2.2 Subordinate Legislation Act 1989 No 146

Schedule 3 Matters not requiring regulatory impact statements

Insert “or a supporting plan” after “management plan for a share management fishery” in clause 7.