

## CONSULTATION | FISHERIES MANAGEMENT ACT 1994

# Summary of proposed changes to the *Fisheries Management Act 1994* relevant to environmental and other issues

May 2015

## Purpose

The purpose of this paper is to summarise proposed amendments to the *Fisheries Management Act 1994* relating to aquatic habitat protection, including additional measures to manage risks associated with noxious fish and declared diseases. Similar papers have been prepared for the commercial, recreational, charter and Aboriginal fishing sectors.

## Other papers and draft Bill

All papers in this series are available on the NSW Department of Primary Industries (the Department) website at: [www.dpi.nsw.gov.au/fisheries](http://www.dpi.nsw.gov.au/fisheries). Following is an overview of the papers available:

Commercial fishing stakeholder paper	Summarises proposed amendments of particular relevance to the NSW commercial fishing industry, including amendments to facilitate the implementation of a wide variety of reforms pursuant to the Independent Review of NSW Commercial Fisheries Management, Policy and Administration. The paper is titled " <i>Summary of proposed changes to the Fisheries Management Act 1994 relevant to the NSW commercial fishing industry</i> ".
Recreational fishing stakeholder paper	Summarises proposed amendments of particular relevance to the recreational fishing sector, including amendments relating to bag limits, possession limits, consultation and managing/monitoring catches. The paper is titled " <i>Summary of proposed changes to the Fisheries Management Act 1994 relevant to recreational fishing</i> ".
Charter fishing stakeholder paper	Summarises proposed amendments of particular relevance to the recreational charter fishing sector including amendments to facilitate reforming the current licensing/transfer arrangements and online transactions. The paper is titled " <i>Summary of proposed changes to the Fisheries Management Act 1994 relevant to the NSW charter fishing industry</i> ". Charter operators are also likely to be interested in the matters set out in the recreational fishing paper above.
Aboriginal fishing stakeholder paper	Summarises proposed amendments of particular relevance to the Aboriginal fishing sector including the establishment of an Aboriginal Fishing Trust fund. The paper is titled " <i>Summary of proposed changes to the Fisheries Management Act 1994 relevant to Aboriginal fishing</i> ".
Environmental and other issues paper	Summarises proposed amendments that may be of interest to all stakeholder groups on matters including declared diseases, dredging and reclamation work, as well as noxious fish and marine vegetation.
<a href="#">This paper you are reading</a>	

For further information on the proposed legislative changes, please refer to the Fisheries Management Amendment Bill, also available on the Department's website at: [www.dpi.nsw.gov.au/fisheries](http://www.dpi.nsw.gov.au/fisheries)

For hard copies of the above papers or the bill please phone (02) 9741 4784.

## Have your say

The Department invites written submissions on the draft Bill, including the proposed amendments summarised. **The closing date for submissions is Friday 26 June 2015.** Send your submission to:

Mail: Fisheries Legislation, PO Box 7526, SILVERWATER NSW 1811

Fax: (02) 6391 4728

Email: [legislation.consult@dpi.nsw.gov.au](mailto:legislation.consult@dpi.nsw.gov.au)

## More information

For more information on the proposed amendments relevant to environmental and other issues contact Jason Gibson, Senior Project Officer on (02) 9741 4769.

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (May 2015). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

Published by the Department of Primary Industries. [OUT15/2989]

Table 1. Proposed amendments to the *Fisheries Management Act 1994* that may be of interest to all stakeholder groups

Summary of existing provision	Proposed amendment	Reason for proposal
<b>Declared diseases – importation orders</b>		
<p>At present, the Act lists certain diseases of fish and marine vegetation as “declared diseases”. The owner or occupier of areas including aquaculture farms, pet shops and commercial aquariums must notify the department if they know or reasonably suspect that a declared disease is present.</p> <p>The Act provides offences for intentionally or recklessly transmitting a declared disease to live fish or marine vegetation, for selling fish or marine vegetation that are known or suspected to be infected with a declared disease, or depositing infected fish or marine vegetation in any waters.</p>	<p>The proposed amendments expand existing declared disease provisions by enabling the Minister to make an order which prohibits, or imposes conditions on, the entry or importation into NSW of any thing that is, or could be a declared disease, or that could be infected with a declared disease, or that could assist in the spread of infection of a declared disease. The amendments include an offence for contravening an importation order without reasonable excuse.</p>	<p>To more effectively manage the biosecurity risks posed by declared diseases entering NSW.</p> <p>A current in-force importation order exists under the <i>Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991</i> to address the risk of Abalone Viral Ganglioneuritis (a declared disease under the Fisheries Act) entering NSW. However the maximum duration of an order (including extensions of any order) under this Act is 30 days. To maintain such an order over longer periods of time involves significant administration, with the order requiring an extension at intervals of no more than 30 days.</p> <p>The proposed amendments provide for a longer term and more appropriate placement of powers to mitigate the risk.</p>
<b>Declared diseases – live abalone holding facilities</b>		
<p>At present, the Act does not provide for the making of orders in respect of live abalone holding facilities.</p>	<p>The proposed amendments enable the Minister to make an order requiring the owner or occupier of a live abalone holding facility, to implement specified measures in relation to the management of waste water or other waste products of a live abalone holding facility. Any such specified measures are intended to minimise the risk of transmission of a declared disease.</p> <p>Live abalone holding facility is defined in the amendments to mean premises at which live abalone are held.</p>	<p>To more effectively manage the biosecurity risks posed by waste water and abalone waste from live abalone holding facilities.</p> <p>A particular concern at present is the risk of Abalone Viral Ganglioneuritis; a declared disease under the Act that is <u>not</u> known to occur in the State’s wild abalone stocks, but that has been found in Victorian and Tasmanian wild stocks.</p>
<b>Noxious fish - seizure and destruction for identification</b>		
<p>At present, the Act lists a large number (&gt;200) of species as noxious fish and noxious marine vegetation.</p> <p>The Act provides offences for selling or possessing live noxious fish or noxious marine vegetation, and for intentionally or recklessly releasing live noxious fish or live noxious marine vegetation into any waters.</p>	<p>The proposed amendments enable fisheries officers to “seize, or seize and destroy” suspected noxious fish or marine vegetation to determine if they are in fact noxious.</p> <p>The proposed amendments provide that compensation is payable for the seizure and destruction of live fish or live marine vegetation if it is determined that the fish or marine vegetation were</p>	<p>The identification of many noxious species requires specialist training with only a few people in NSW having the required skills. The proposed amendments enable fisheries officers to euthanase live fish reasonably suspected of being noxious for the purpose of seeking expert identification.</p>

Summary of existing provision	Proposed amendment	Reason for proposal
The Act provides for fisheries officers to “take possession” of suspected noxious fish or marine vegetation to determine if they are in fact noxious.	not in fact noxious.	
<b>Noxious fish – offence for not complying with a notice to destroy</b>		
<p>At present, the Act enables the Minister to issue a notice requiring specified measures to be taken to destroy noxious fish or noxious marine vegetation within a certain period.</p> <p>If the notice is not complied with, the Department may take measures to destroy the noxious fish or marine vegetation. The Minister may then seek to recover the associated costs of this action through the courts.</p>	<p>The proposed amendments provide an offence for a person who without reasonable excuse fails to comply with a notice to destroy noxious fish or noxious marine vegetation.</p> <p>The Department could still take measures to destroy noxious fish or marine vegetation (as described in the adjacent column), regardless of whether a person has been charged under the proposed offence provision for failing to comply with a notice.</p>	<p>The offence provision is intended to promote compliance with notices to destroy noxious fish.</p> <p>Existing processes where the Department is required to destroy the noxious fish or marine vegetation, and then seeks to recover the costs through the courts, involves significant levels of administration.</p>
<b>Remediation orders – offence for not complying with an order</b>		
<p>At present, the Act sets out circumstances in which a local government authority, or person, may carry out dredging or reclamation works. If dredging or reclamation works are carried out in contravention of these provisions, the Minister (and in some cases a court) may make an order requiring remedial work to rectify damage caused to fisheries and fish habitats.</p> <p>If a remediation order is not complied with, the Minister may cause the required remediation works to be carried out, and then seek to recover the associated costs through the courts.</p>	<p>The proposed amendments provide an offence for a local government authority, or person, for failing to comply with a remediation order.</p>	<p>The offence provision is intended to promote compliance with remediation orders.</p> <p>Existing processes where the Minister causes the required remediation works to be carried out, and then seeks to recover the costs through the courts, involves significant levels of administration.</p>
<b>Remediation orders – orders made by a court</b>		
<p>At present, the Act enables a court to make a remediation order in respect of illegal dredging or reclamation works (under sections 200 or 201 of the Act). A court can only make a remediation order if it convicts a person of an offence against sections 200 or 201 of the Act.</p>	<p>The proposed amendments enable a court to also make a remediation order if the court makes an order under section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i>.</p> <p>Section 10 of this Act deals with the dismissal of charges and conditional discharge of offenders.</p>	<p>To provide the courts with the option of making a remediation order in respect of illegal dredging and reclamation works, in circumstances where the court finds a person guilty, but the court determines that an order under section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i> be made, rather than proceeding to conviction.</p>

Summary of existing provision	Proposed amendment	Reason for proposal
<b>Consultation timeframe – dredging and reclamation works proposed by a public authority</b>		
<p>At present, the Act provides a default consultation timeframe of 28 days between the Minister and a public authority proposing dredging or reclamation works.</p> <p>That is, a public authority must notify the Minister of proposed dredging or reclamation works, and then consider any matters raised by the Minister within 28 days following the giving of the notice.</p>	<p>The proposed amendments reduce the 28 day timeframe to 21 days.</p>	<p>The reduced timeframe aligns with consultation requirements in the <i>State Environmental Planning Policy (Infrastructure) 2007</i> and helps to reduce the time period between proposing and commencing works.</p>
<b>Protected area definition</b>		
<p>At present, the Act provides for the protection of mangroves and certain other marine vegetation in a “protected area”.</p> <p>The definition of protected area is split into two parts:</p> <ol style="list-style-type: none"> <li>1. that part of the foreshore of any public water land below the mean high water mark; and</li> <li>2. any other part of the foreshore of any public water land as declared by Ministerial order published in the NSW Government Gazette.</li> </ol> <p>In 2011 an order was published in the NSW Government Gazette extending the definition of protected area to include that part of the foreshore of any public water land between the mean high water mark and the highest astronomical tide level. The effect of the order, when read with the definition of protected area in the Act, is for the whole of the foreshore to be a protected area.</p>	<p>The proposed amendments change the definition of “protected area” within the Act so that it incorporates the provisions of the order.</p>	<p>Incorporating the provisions of the order within the “protected area” definition in the Act means it will no longer be necessary to read the Act and the order together, thereby simplifying the legislation.</p>
<p><b>Note:</b> “Public water land” is defined in the Act to mean, in effect, public land submerged by water.</p>		

Summary of existing provision	Proposed amendment	Reason for proposal
<b>Threatened species conservation – preparation of recovery plans</b>		
<p>At present, the Act provides that the Secretary of NSW Trade and Investment may prepare a recovery plan for each endangered species, each critically endangered species, each endangered population, each endangered ecological community and each vulnerable species.</p>	<p>The proposed amendments provide that the Secretary may also prepare a recovery plan for each critically endangered ecological community.</p>	<p>To ensure that recovery plans may be prepared for critically endangered ecological communities.</p>
<b>Threatened species conservation – defence to a prosecution</b>		
<p>At present, the Act provides a number of defences to a prosecution for offences against threatened species conservation provisions within Part 7A Division 4. Such offences include harming threatened species, populations or ecological communities and causing damage to critical habitat.</p> <p>One defence is if the accused proves that the act or omission constituting the offence was authorised by, and done in accordance with a licence granted under Part 7A of the Act.</p>	<p>The proposed amendments provide an additional defence to a prosecution, with the defence being a certificate issued by the Secretary NSW Trade and Investment under section 220ZZ(4) of the Act.</p> <p>A section 220ZZ(4) certificate is issued if the Secretary of NSW Trade and Investment determines that a licence under Part 7A of the Act is not required because the action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats.</p>	<p>To ensure a section 220ZZ(4) certificate is recognised as a defence to a prosecution for offences against threatened species conservation provisions within Part 7A Division 4 of the Act.</p>