

## CONSULTATION | FISHERIES MANAGEMENT ACT 1994

# Summary of proposed changes to the *Fisheries Management Act 1994* relevant to the NSW commercial fishing industry

May 2015

## Purpose

The purpose of this paper is to summarise proposed amendments to the *Fisheries Management Act 1994* of particular relevance to the NSW commercial fishing industry for targeted consultation. Similar papers have been prepared for the recreational, charter and Aboriginal fishing sectors, with an additional paper covering environmental and other matters of potential interest to all stakeholders.

## 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 <a href="#">This paper you are reading</a>	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.
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. The paper is titled " <i>Summary of proposed changes to the Fisheries Management Act 1994 relevant to environmental and other issues</i> ".

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 the NSW commercial fishing industry contact Janine Sakker, A/Senior Fisheries Manager on (02) 6691 9686.

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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.

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Table 1. Proposed amendments to the *Fisheries Management Act 1994* of particular relevance to the NSW commercial fishing industry

Summary of existing provision	Proposed amendment	Reason for proposal
<b>Permits – authorising groups or classes of persons to undertake activities otherwise unlawful under the Act</b>		
At present, permits issued under section 37 of the Act can only be issued to an individual, but they may also authorise others (in addition to the permit holder) to undertake activities that are otherwise unlawful under the Act.	The proposed amendments expand the existing permit provisions by enabling the Minister to authorise groups of people to undertake activities that are otherwise unlawful, via an <i>order</i> of the Minister published in the NSW Government Gazette and/or on the Department's website. Under the proposed provisions all members of the group are subject to the conditions specified in the order – not just the person that a permit is issued to as is the case under the current permit related provisions. Any such order may be amended or revoked by a further order published in the NSW Government Gazette and/or on the Department's website.	The proposed changes provide a streamlined measure for authorising groups of people to undertake activities that are otherwise unlawful under the Act, and ensure that all members of such groups are subject to the conditions that may be attached to such an authority.
<b>Permits – fees</b>		
At present, the Act is not explicit in relation to the recovery of costs associated with activities authorised by permits.	The proposed amendments clarify that the regulations may make provision for the payment of fees to cover the following costs sometimes associated with the activities authorised by permits: <ul style="list-style-type: none"> <li>• The costs of monitoring the activity.</li> <li>• The costs of managing the activity.</li> <li>• The costs of ensuring compliance with permit conditions and other controls relevant to the activity.</li> <li>• The costs of carrying out research into the activity, or fishery, species, or methods associated with the activity.</li> </ul>	The proposed changes improve transparency by separating existing permit application and/or issue fees, from those more closely related to monitoring and managing activities authorised by the permit.
<b>Amending and revoking fishing closures urgently</b>		
At present, fishing closures can only be amended or revoked by a further notification published in the NSW Government Gazette.	The proposed amendments enable fishing closures to be amended or revoked urgently by exhibiting a further notification adjacent to the waters to which the original fishing closure applies or publishing it on the Department's website instead of in the NSW Government Gazette as is currently the case.	Adaptively managing fishing activities is a strategy often used to respond to matters that involve competing environmental and economic objectives and can involve a variety of actions, such as monitoring prevailing conditions and adjusting fishing closures on an as-needs basis as sometimes occurs in the NSW ocean and estuary prawn trawl fisheries. The proposed changes establish a streamlined process for urgently amending and revoking fishing closures and responds to past

Summary of existing provision	Proposed amendment	Reason for proposal
<b>Fishing closures inconsistent with share management plans</b>		
<p>At present, if a fishing closure is inconsistent with a share management plan the share management plan prevails unless:</p> <ul style="list-style-type: none"> <li>The closure deals with an “environmental emergency” and is in force for no longer than 8 weeks.</li> <li>Relevant management advisory committees (MACs) are consulted, the Minister certifies to the Governor that the matter cannot be delayed until a new management plan is made, the Governor approves the fishing closure and the fishing closure is expressed to have effect despite the relevant management plans.</li> </ul>	<p>The proposed amendments enable fishing closures to prevail over share management plans, whether or not in response to an “environmental emergency” or approved by the Governor.</p>	<p>The proposed changes streamline the process for making, amending and revoking fishing closures in share management fisheries. If pursued, interim measures set out in clause 22 and 23 of the Fisheries Management (Supporting Plan) Regulation 2006 may be repealed.</p> <p><b>Note:</b> The Department will continue to consult relevant shareholders (or advisory bodies and councils where relevant) when making, amending and revoking fishing closures.</p>
<b>Bag limits – consultation requirements</b>		
<p>At present, the Minister is required to consult the Advisory Council on Recreational Fishing (ACoRF) on any proposal to introduce or change a bag limit.</p>	<p>The proposed amendments require consultation with relevant advisory councils or advisory groups on proposals to introduce or change bag limits, not just ACoRF.</p>	<p>The proposed changes streamline the process for introducing or changing bag limits and in particular, remove the requirement to consult ACoRF on bag limits that do not concern the recreational sector.</p>
<b>Possession limits</b>		
<p>At present, possession limits can only be imposed by regulation.</p>	<p>The proposed amendments expand the possession limit provisions to enable possession limits to be imposed, amended or revoked by an <i>order</i> of the Minister published in the NSW Government Gazette or if required urgently, exhibited adjacent to the waters to which it applies or published on the Department’s website (as per the new arrangements proposed for fishing closures). An order may be disallowed in Parliament, similar to a regulation.</p>	<p>Adaptively managing fishing activities is a strategy often used to respond to matters that involve competing environmental and economic objectives and can involve a wide variety of actions, including changes to bag and possession limits on an as-needs basis (e.g. in the NSW hand gathering (pipi) commercial fishery). The Act already provides for urgent changes to the taking of fish (i.e. using fishing closures), but it does not provide for urgent changes to possession limits. The proposed changes establish a streamlined process for the urgent imposition, amendment and revocation of possession limits.</p>
<b>Shark finning</b>		
<p>At present, a fishing closure made under section 8 of the Act is used to prohibit shark finning on board boats. The practice of shark finning on board boats</p>	<p>The proposed amendments prohibit shark finning on board boats under the Act instead of a fishing closure.</p>	<p>Incorporating the shark finning prohibition in the Act will streamline administration by alleviating the need for the Department to re-make the shark finning fishing closure every five years, which is the</p>

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<p>has been prohibited in NSW since 1999.</p>	<p>The amendments include a regulation making power so that certain exemptions to the prohibition, such as those in the current fishing closure notice, can be preserved. Moving the shark finning prohibition into the Act does not otherwise change the effect of the prohibition or the maximum penalties that apply for offences.</p>	<p>maximum duration for a fishing closure.</p> <p><b>Note:</b> There have been suggestions that the shark finning prohibition should extend beyond boats (to land). Such an amendment cannot be pursued because of the impact it would have on the legitimate processing of sharks on land by commercial and recreational fishers. The basis for the suggestion – the illegal take of shark fins by land based fishers – may be more appropriately addressed via alternative enforcement related strategies.</p>
<p><b>Licensing of commercial fishing boats</b></p>		
<p>At present, the Act requires all boats used for commercial fishing activities to be licensed.</p>	<p>The proposed amendments replace the mandatory requirement for a boat used in commercial fisheries to be licensed with a provision that provides for the regulations to specify, conditionally or otherwise, whether boats used in particular fisheries, share classes or for particular fishing activities must be licensed.</p>	<p>The proposed change delivers increased flexibility by deferring to the regulation for any requirement for boats used in commercial fisheries to be licensed.</p> <p><b>Note:</b> The changes do not lock-in any new arrangements. There remains opportunity for further discussion as part of the current commercial fisheries reform process before deciding upon and regulating the ongoing licensing of boats in individual fisheries.</p>
<p><b>Removal of provisions providing for category 2 share management fisheries</b></p>		
<p>At present, the Act establishes a number of different management frameworks for commercial fisheries in NSW, including:</p> <ul style="list-style-type: none"> <li>• Restricted Fisheries</li> <li>• Category 1 Share Management Fisheries</li> <li>• Category 2 Share Management Fisheries</li> </ul>	<p>The proposed amendments remove all provisions and references relating to category 2 share management fisheries.</p>	<p>The proposed changes remove provisions that have never been used and are not proposed to be used. Category 2 share management was created in 2000 in response to industry interest in the security that share management can deliver and concern over the level of 'community contribution' payable for the right to access a community owned resource under the category 1 share management fishery framework. The category 2 share management fishery provisions were never used. Instead, in 2007 the EG, EPT, OH, OTL and OT fisheries were converted to category 1 share management fisheries and the 'community contribution' set at \$100 per fishing business. The reduced community contribution was agreed to by Government on the basis of economic assessments during the environmental assessment process demonstrating negative net returns in the five relevant fisheries. The main differences between category 1 and 2 share management</p>

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		<p>fisheries are:</p> <ul style="list-style-type: none"> <li>• Shares in a category 1 share management fishery are issued for a 10-year period and are automatically renewed. If the share management fishery is terminated, all the shares in the fishery are cancelled and compensation is payable. Shareholders are liable to pay a community contribution for their right of access to the fishery.</li> <li>• Shares in a category 2 share management fishery are issued for a 15-year period and are renewable. If the share management fishery is terminated, the shares expire at the end of the 15-year period. Compensation is payable for the termination of the fishery (by its omission from Schedule 1) before the expiry of the current term of the shares, but is not payable for a termination by the Minister after that expiry. Shareholders in the fishery are not liable for a community contribution, but must pay a rental charge for their right of access to the fishery.</li> </ul>
<b>Electronic transactions</b>		
<p>At present, the Act does not explicitly provide for transactions to be done online, such as transferring boat licences and shares in commercial fisheries or 'fishing activities' and seats etc. in the case of charter fishing.</p>	<p>The proposed amendments provide for electronic transactions, and for the regulations to specify the finer details.</p>	<p>The proposed changes support the introduction of FishOnline for the commercial and charter fisheries to improve administrative efficiency.</p> <p><b>Note:</b> FishOnline is an online system for reporting catch and effort and performing a wide range of fisheries related transactions – to provide quicker and cheaper alternatives to paper-based transactions.</p>
<b>Scientific observer program</b>		
<p>At present, there are no specific provisions relating to scientific observer programs.</p>	<p>The proposed amendments allow the Minister to establish a scientific observer program to collect information about commercial and charter fishing activities. In particular, the amendments:</p> <ul style="list-style-type: none"> <li>• Authorise scientific observers to observe, obtain, collect and record information about fishing activities, including the gear used and fish taken.</li> <li>• Require scientific observers to exercise their functions in a manner that does not unreasonably interfere with the fishing activities being observed.</li> <li>• Establish offences should a person provide false or misleading information, fail to comply with a</li> </ul>	<p>The proposed changes will facilitate ongoing monitoring of commercial and charter fishing activities, consistent with commitments set out in the commercial fishery management strategies and the requirements of current Commonwealth export approvals.</p>

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	<p>lawful requirement of a scientific observer without reasonable excuse, or resist, obstruct, abuse, threaten or impersonate a scientific observer.</p> <p>The proposed amendments also require commercial fishers, charter boat operators and crew to provide information lawfully requested by an observer including information that may incriminate a person. However, such information is not admissible (or cannot be used) in criminal proceedings.</p>	
Advisory groups		
<p>At present, the Act provides for the regulations to establish MACs and sets out the functions of MACs.</p>	<p>The proposed amendments deliver the following fundamental concepts:</p> <ul style="list-style-type: none"> <li>• Such groups will be recognised as “advisory groups” rather than MACs.</li> <li>• Such groups will report to the Department rather than the Minister.</li> <li>• The Secretary may establish and disband such groups on an as-needs (or task-orientated) basis.</li> <li>• The Secretary may appoint members directly, subject to skills and experience relevant to the functions of the group.</li> <li>• The Secretary may determine the number of members, functions and procedures of each group.</li> </ul> <p><b>Note:</b> the “Secretary” referred to throughout the Bill is the position previously known as the Director-General.</p>	<p>The 2012 Independent Review of Commercial Fisheries Policy, Management and Administration made a number of recommendations to improve the existing fisheries consultation framework. The Government supported the recommendations and the proposed changes deliver the necessary legislative framework, noting:</p> <ul style="list-style-type: none"> <li>• Advisory groups may be established on an “as needed” or “ongoing” basis, and may be tasked with specific roles where necessary.</li> <li>• The new approach provides for expert advice on a wide range of fisheries issues, not just commercial fishing.</li> <li>• Creating and disbanding advisory groups will be far more efficient and cost-effective into the future – changes to regulations, elections (where relevant) and Cabinet approval of appointments will no longer be required each time a group is created, disbanded or if membership changes.</li> <li>• Requiring members to have skills and experience relevant to the functions of a working group should help improve the quality of advice from such groups.</li> <li>• Generally, the Department will still call for nominations for appointment to such groups.</li> </ul> <p>A policy titled “Fisheries non-statutory working groups: Establishment and governance” and a “Handbook for Members” can be found on the Department’s website.</p> <p><b>Note 1:</b> There has been some concern that the requirement for skills and experience relevant to the function of a working group may preclude some people, such as staff of an industry association who represents fishers, from becoming a member. However, the proposed changes, as drafted, do not</p>

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		<p>preclude such appointments provided the person has the necessary skills and expertise to provide advice on the issues relevant to the group. Normally, industry representatives would be able to demonstrate such skills and experience by virtue of their normal duties.</p> <p><b>Note 2:</b> It has been suggested that advisory bodies must include members that represent the interests of relevant commercial fishers and that industry should nominate these people. The Department can advise that these issues are more relevant to the policy “Fisheries non-statutory working groups: Establishment and governance” rather than the Act which operates at a much higher level.</p>
<p><b>Amending references to specific councils, bodies and interest groups</b></p>		
<p>At present, the Act contains a range of statutory consultation requirements and makes specific reference to:</p> <ul style="list-style-type: none"> <li>• Ministerial advisory councils</li> <li>• The Advisory Council on Recreational Fishing</li> <li>• Management Advisory Committees</li> <li>• Relevant commercial fishing bodies</li> <li>• Relevant recreational fishing bodies</li> <li>• Bodies representing indigenous interests</li> <li>• Bodies representing conservation interests.</li> </ul>	<p>The proposed amendments replace references to specific groups with generic references, including:</p> <ul style="list-style-type: none"> <li>• Relevant advisory councils.</li> <li>• Relevant advisory groups.</li> </ul>	<p>The proposed changes support the new consultative arrangements recommended by the Independent Review and approved by the Government. Using generic references as proposed will alleviate the need for the Act to be amended each time changes are made to the consultation arrangements or representative bodies.</p>
<p><b>Consultation requirements for share management plan amendments</b></p>		
<p>At present, the Minister is required to consult the public and relevant advisory bodies on any proposed new management plan, but not amendments to existing management plans.</p>	<p>The proposed amendments address some ambiguity in the current Act and clarify that public consultation is not mandatory when amending existing management plans.</p>	<p>The proposed changes clarify the current situation, noting:</p> <ul style="list-style-type: none"> <li>• Many amendments to plans are minor (or administrative) in nature, such as annual fee adjustments in line with the Consumer Price Index or updating the scientific name of a species following taxonomic reclassification. It is inappropriate that the Minister be bound to consult the public on such changes.</li> <li>• The Department will continue to consult with relevant stakeholders/ advisory groups on an as-needs basis, whether in relation to the Act, regulations (including management plans) or other subordinate legislation such as fishing closures and Ministerial orders.</li> </ul>

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		<ul style="list-style-type: none"> <li>Mandatory requirements to undertake broad-scale public consultation on any amendments to a plan would inhibit efficient regulatory reform.</li> </ul> <p><b>Note:</b> There has been some concern that the proposed provisions do not include a statutory requirement to consult shareholders. As mentioned above, it would be inappropriate (and inefficient) to require the Minister to consult all shareholders on all changes including those that are minor or administrative in nature. The Department can also confirm that it will continue to consult relevant shareholders/ advisory bodies on <u>substantive changes</u> to share management plans and other legislation.</p>
<b>Minimum shareholdings</b>		
<p>At present, the Act requires all share classes to have a corresponding minimum shareholding – which are used to determine eligibility to an endorsement in the share class concerned.</p>	<p>The proposed amendments remove the mandatory requirement to fix a minimum shareholding in regulation for each and every share class.</p>	<p>The proposed changes deliver increased flexibility. Specifically, they provide the option to not set a minimum shareholding for a share class, if needed.</p> <p><b>Note:</b> The changes do not lock-in any new arrangements. There remains opportunity for further discussion as part of the current commercial fisheries reform process before deciding the share classes that require corresponding minimum shareholdings, including any new classes of shares that may be created.</p>
<b>Maximum shareholdings</b>		
<p>At present, the Act limits the number of shares that may be held in a <u>fishery</u> to 5% of the total shares in the fishery, unless a different maximum is fixed by the relevant share management plan.</p>	<p>The proposed amendments deliver two things:</p> <ul style="list-style-type: none"> <li>They provide for maximum shareholdings to be applied at the share class level rather than or as well as the fishery level; and</li> <li>They remove from the Act the default maximum shareholding of 5%.</li> </ul>	<p>The proposed changes deliver increased flexibility. The maximum shareholdings for each of the five new share management fisheries are currently set at 40% of the total number of shares in each fishery and as such are ineffective for two reasons: (a) they apply at the fishery level and in all fisheries there are many thousands of shares, and (b) they are set at a reasonably high level (i.e. 40%). With respect to the proposed changes:</p> <ul style="list-style-type: none"> <li>Providing for maximum shareholdings at the share class level will enable more meaningful maximum shareholdings to be implemented, if needed; and,</li> </ul>

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		<ul style="list-style-type: none"> <li>Removing the default maximum shareholding of 5% will provide for a share class to have no maximum shareholding, where appropriate.</li> <li>The Act will still enable the share management plans to fix maximum shareholdings if needed.</li> </ul> <p><b>Note:</b> The changes do not lock-in any new arrangements. There remains opportunity for further discussion as part of the commercial fisheries reform process before deciding the share classes that require corresponding maximum shareholdings, including any new classes of shares that may be created.</p>
Shareholder supported redefinition proposals – amalgamating and replacing share classes and redefining share management fisheries		
<p>At present,</p> <p>(a) Two or more share classes cannot be amalgamated under any circumstances.</p> <p>(b) A class of share cannot be replaced with a new class of share under any circumstances.</p> <p>(c) If the description of a share management fishery is omitted from Schedule 1 of the Act, including for the purpose of redefining a fishery, all shares in the fishery must be cancelled and the compensation provisions apply.</p> <p><b>Note:</b> Compensation may involve shares in a fishery which replaces the omitted fishery (wholly or partly) or monetary compensation for the market value of the shares held.</p>	<p>The proposed amendments provide for the following, subject to majority support from the shareholders affected:</p> <p>(a) The amalgamation of two or more share classes.</p> <p>(b) Replacing a class of shares with a new class of shares.</p> <p>(c) Redefining a share management fishery described in Schedule 1 of the Act without triggering the compensation provisions.</p> <p>Determining whether a redefinition proposal has majority support is achieved by conducting a poll of affected shareholders.</p> <p>Subject to the regulations, which will be created at a later date, the proposed amendments include the following high-level caveats:</p> <ul style="list-style-type: none"> <li>Each shareholder is entitled to one vote;</li> <li>If shares are held by a corporation, one person is to be nominated to vote on behalf of the corporation; and,</li> <li>If shares are held by a partnership, one person is to be nominated to vote on behalf of the partnership.</li> </ul>	<p>The current structure of the Act and the existence of compensation provisions help make shares a secure property right, however, this 'protection' can also act as a barrier to making changes to support future management decisions, including changes that could directly benefit the fishery and shareholders.</p> <p>The proposed changes (a) and (b) provide increased flexibility. Specifically, they provide opportunity to streamline any new arrangements arising as a result of the commercial fisheries reform program.</p> <p>The proposed change (c) provides for fisheries to be redefined to benefit shareholders, such as the following 'common sense' suggestions by fishers and fisheries managers over a number of years:</p> <ul style="list-style-type: none"> <li>To provide for the use of beam trawls in the Estuary Prawn Trawl Fishery (to reduce fuel consumption, emissions and running costs).</li> <li>To clarify in Schedule 1 that fish other than lobsters may be taken in the Lobster fishery (as per regulatory provisions).</li> <li>To redefine the waters of the Estuary General Fishery to make it easier to identify the upstream extremity of the fishery (i.e. non-tidal waters).</li> <li>To redefine the waters of the Estuary General Fishery to allow eel trapping in some non-tidal waters in lower catchments (e.g. some artificial drains).</li> <li>To redefine and expand the waters where spanner crab nets may be used in the Ocean Trap and Line Fishery.</li> </ul> <p>Where there is not majority support for a redefinition proposal, the</p>

Summary of existing provision	Proposed amendment	Reason for proposal
		<p>redefinition proposal cannot proceed or cannot proceed without triggering the compensation provisions – which could be costly and time consuming and has the potential to unnecessarily disrupt industry certainty, particularly in the case of a minor change to benefit shareholders.</p> <p>The requirement for majority shareholder support stems from previous discussions with the PFA and former Seafood Industry Advisory Council members in 2011, noting that the PFA was the only major industry representative body that existed at the time.</p> <p><b>Note:</b> There has been some concern about the potential implications of weighting votes based on shareholdings – as provided for by the proposed amendments. However, it is important to note:</p> <ul style="list-style-type: none"> <li>• No decisions have been made on weighting votes nor do the proposed amendments specify whether votes will be weighted or not. They simply provide for the regulations to establish, if and when needed, whether votes will be weighted and if so how.</li> <li>• Only the Minister can put forward a redefinition proposal.</li> </ul>
<p><b>Fishing determinations – total allowable catch (TAC) and total allowable effort (TAE)</b></p>		
<p>At present, the Act establishes an independent TAC committee and authorises it to determine and keep under review TACs and TAEs for the commercial fishing sector only.</p>	<p>A range of amendments are proposed. The more significant changes include:</p> <ul style="list-style-type: none"> <li>• Changing the name of the TAC committee to the Total Allowable Fishing Committee (TAF Committee) given that the committee is authorised to make determinations relating to fishing effort in addition to catch.</li> <li>• Enabling TACs and TAEs to be determined for any harvest sector or part thereof, not just the commercial fisheries sector.</li> <li>• Enabling the Secretary to make TAC and TAE determinations for expedience (instead of the TAF committee), but only if a relevant, robust and recent scientific assessment exists and requiring the TAF committee to make the determination would result in unnecessary duplication of that assessment.</li> </ul>	<p>The proposed changes provide for a more holistic approach to the management of fisheries resources in NSW by enabling TAC and TAE determinations to be made across all relevant stakeholder groups or parts thereof, not just commercial fishers. Enabling the Secretary to make TAC and TAE determinations in certain circumstances will streamline the process and reduce the cost of determining TACs and TAEs in sectors such as the spanner crab fishery where a relevant, robust and recent scientific assessment and clear TAC setting process in Queensland already exists.</p> <p><b>Note:</b> If a TAC (or TAE) is to be set and apportioned between stakeholder groups, consideration would need to be given to any Resource Sharing Framework when apportioning or sharing the TAC (or TAE) amongst those groups.</p>
<p><b>Allocating quota</b></p>		

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<p>At present, the Act provides guidance on allocating quotas in commercial share management fisheries only, and requires the whole of a TAC or TAE to be allocated (as quota) and for allocations within a share class to be made in proportion to shareholdings.</p>	<p>A range of amendments are proposed. The more significant changes include:</p> <ul style="list-style-type: none"> <li>• Extending the quota allocation provisions so that they may be applied to any stakeholder groups, not just shareholders in commercial share management fisheries.</li> <li>• Providing for a TAC or TAE to be allocated [as quota] in full, part or not at all – to participants in one or more stakeholder groups.</li> <li>• Providing for the regulations (or the Minister subject to the regulations) to determine the manner in which quota is otherwise allocated to participants in one or more stakeholder groups.</li> </ul>	<p>The proposed changes provide for a more holistic approach to the management of fisheries resources in NSW by enabling the allocation of quota to any stakeholder group or part thereof. There are certain circumstances where it will not be appropriate to allocate the whole of a TAC or TAE (as quota) to the participants in a stakeholder group. For example, if a popular commercial/recreational species were to be more carefully managed, it may be appropriate to quota manage it in one sector but not the other. In such cases, the sector not subject to quota may be required to implement other strategies to ensure that it does not exceed its portion of the TAC or TAE, whether on an annual basis or, for example, over multiple consecutive years.</p> <p><b>Note:</b> Consultation with relevant stakeholder groups would be required before any decisions are made on implementing quota in those sectors.</p>
<b>Transferring quota</b>		
<p>At present, the Act limits the transfer of quota to shareholders in the same share management fishery only. Subject to the management plan for a fishery, the amount of quota that may be acquired is also limited to no more than twice the shareholder's initial allocation.</p>	<p>The proposed amendments remove these limits from the Act and instead, provide for the regulations to specify how quota may be transferred and whether any limits apply.</p>	<p>The proposed changes deliver increased flexibility. Specifically, they remove current limitations on the transfer of quota and will allow for the preferred quota transfer rules to be developed before being included in regulation.</p>
<b>Forfeiting quota – debt management</b>		
<p>At present, the Act does not provide for quota to be forfeited.</p>	<p>The proposed amendments provide for the forfeiture of quota where fees, charges or contributions required under the Act have not been paid.</p>	<p>Under current arrangements there have been instances where shareholders have transferred quota or continued to enjoy financial returns from the fisheries resources of NSW despite significant outstanding debt. The proposed changes deliver an additional and optional sanction (instead of share forfeiture and licence/endorsement suspension or cancellation) for cases that involve significant outstanding debt.</p>
<b>Creating new classes of shares</b>		
<p>At present, the Act requires the criteria for allocating new classes of shares to provide for the</p>	<p>The proposed amendments:</p>	<p>The proposed changes deliver increased flexibility and efficiency by removing the requirement for 'catch history' to be recognised when</p>

Summary of existing provision	Proposed amendment	Reason for proposal
<p>recognition of 'catch history' of those in the fishery. It also includes complex and highly prescriptive arrangements relevant to the issue of shares in newly created share management fisheries.</p>	<ul style="list-style-type: none"> <li>Remove the requirement for 'catch history' to form part of the criteria for allocating new classes of shares.</li> <li>Clarify that Division 3 of the Act, which sets out a range of requirements relating to the issue of shares in newly created fisheries, do not apply to the issue of new classes of shares in existing share management fisheries.</li> </ul>	<p>allocating new classes of shares and clarifying that steps that apply to the issue of shares in a newly created fishery do not apply to the issue of new classes of shares in an existing fishery. The need for new classes of shares and the basis or criteria for their allocation (current shares, hull units, catch history etc.) will be informed by the outcome of current consultation on commercial fishery reforms.</p>
<p><b>Note:</b> Neither of these changes affect opportunity to use 'catch history' to allocate new classes of share or the requirement for a share management plan to include provision for the making of appeals to the Share Appeals Panel.</p>		
Retaining, re-issuing and selling surrendered shares		
<p>At present, the Act requires the Minister, if requested by the shareholder, to sell surrendered shares by public tender, pay 85% of the purchase price to the holder and credit the balance of the purchase price, after deduction of the expenses reasonably incurred in connection with the sale, to the Consolidated Fund.</p>	<p>The proposed amendments would mean that the Minister is not obliged to sell surrendered shares. Instead, the Minister would have the option to retain, reissue or sell any shares that have been surrendered, subject to the following:</p> <ul style="list-style-type: none"> <li>If the surrendered shares are cancelled, new shares are not to be issued in their place.</li> <li>If the Minister does sell shares that have been surrendered, the Minister may choose whether to pay 85% of the purchase price to the holder.</li> <li>The balance of the purchase price, after deduction of sale expenses and shareholder dues, is to be credited to the Consolidated Fund.</li> </ul> <p>The amendments also clarify that the Minister is not liable for fisheries management charges for shares that the Minister decides to retain.</p>	<p>The proposed change delivers increased flexibility with respect to the fate of surrendered shares and importantly, removes the mandatory requirement for the Minister to sell surrendered shares – on the basis that the NSW Government should not be required to become a broker of shares on behalf of individuals.</p>
<p><b>Note:</b> The Department can confirm that any shares surrendered as a result of the current commercial fisheries reform program will be cancelled (not retained, reissued or sold), and that the fate of shares surrendered in the future will be guided by policy developed in consultation with relevant advisory groups.</p>		
Retaining, re-issuing and selling forfeited shares		
<p>At present, the Act provides for the Minister to cancel or sell forfeited shares. It also sets out the fate of funds from the sale of forfeited shares including payments to the Consolidated Fund, Commercial Fishing Trust and the shareholder in the case of forfeiture for failure to pay certain fees.</p>	<p>The proposed amendments provide the Minister the option to retain, reissue or sell shares that have been forfeited. In the event that shares are forfeited for failure to pay relevant fees and the Minister decides not to sell the shares to recoup the outstanding fees, the Minister must deduct from the amount owing the amount the Minister considers would be obtained if the shares</p>	<p>The proposed change delivers increased flexibility with respect to the fate of forfeited shares, but also ensure that a holder whose shares are forfeited for failure to pay fees is not unduly disadvantaged should the Minister decide not to sell the shares to recoup outstanding fees.</p>
<p><b>Note:</b> The Department can confirm that the fate of shares forfeited will be guided by policy developed in consultation</p>		

Summary of existing provision	Proposed amendment	Reason for proposal
<p><b>Note:</b> Shares can only be forfeited for offences against the Act and failure to pay certain fees.</p>	<p>were sold.</p>	<p>with relevant advisory groups. In the meantime, the current arrangement in the Abalone and Lobster fisheries will continue to apply.</p>
<p><b>Special endorsements in share management fisheries</b></p>		
<p>At present, the Act provides for the Minister to issue additional endorsements in a share management fishery if the Minister is satisfied, following consultation with relevant advisory bodies, that an available fisheries resource would not otherwise be utilised. Such endorsements, sometimes referred to as 'special endorsements', remain in force for a maximum of 6 months or such shorter period as is specified in the endorsement.</p>	<p>The proposed amendments provide for eligibility criteria for special endorsements to be included in relevant share management plans and opens up the period a special endorsement may be issued for.</p>	<p>Special endorsements are reserved for 'developmental fishing' in share management fisheries pursuant to the Developing Fisheries Policy, which is available on the Department's website. To date, no special endorsements have been issued in any of the seven share management fisheries. The proposed changes provide a mechanism for equitable access to special endorsements and adequate opportunity to develop and assess the prospects of developmental fishing proposals.</p>