

FISH HABITAT PROTECTION PLAN NO. 1

GENERAL INTRODUCTION

- 1.1** The *Fisheries Management Act 1994* (the Act) was proclaimed, and came into effect, on 16 January 1995.
- 1.2** The objectives of the Act are to conserve, develop and share the fisheries resources of the State for the benefit of present and future generations, and in particular:
- i) to conserve fish stocks and protect key fish habitats;
 - ii) to promote viable commercial fishing and aquaculture industries;
 - iii) to provide quality recreational fishing opportunities; and,
 - iv) to promote ecologically sustainable development.
- 1.3** To assist in the protection of key fish habitats, the Act enables the Minister to make Habitat Protection Plans for the protection of any habitat of fish, “whether the habitat is critical for the survival of the species or required to maintain harvestable populations of fish”.
- 1.4** The Act requires the Minister to seek public comment on a Habitat Protection Plan before gazettal. Once gazetted, the Minister and Public Authorities must have regard to any Habitat Protection Plan that is relevant to the exercise of their functions.
- 1.5** This is the first Habitat Protection Plan to be developed under the Act. It deals broadly with dredging and reclamation activities, fish passage requirements, the protection of mangroves, seagrasses and other marine vegetation, and the importance of snags.

OBJECTIVES OF THIS PLAN

- 2.1** The objectives of this Plan are:
- i) To provide protection, where necessary, for all fish habitat, and in particular those habitat features which may be affected by the activities subject to this plan.
 - ii) To restate the relevant requirements of the habitat provisions of the Act in a form which can be readily distributed to, and understood by, other Government agencies and the community.
 - iii) To establish a requirement for public authorities who propose to remove snags from waterways to notify the Minister.
 - iv) To outline the process for individuals or agencies to follow when consent, notification or consultation is required, and to describe how each application will be processed.

DEFINITIONS RELATING TO THE PLAN

- 3.1** In this Plan, Minister refers to the Minister responsible for the *Fisheries Management Act 1994*.
- 3.2** Waters and fish have the same meanings as they have in the *Fisheries Management Act 1994*. Waters includes all waters within the territorial limits of NSW, including those waters within three nautical miles of the coastline; fish means marine, estuarine or freshwater fish (or other aquatic animal life) at any stage of their life history, and includes aquatic molluscs, crustaceans, echinoderms and worms, but excludes mammals, birds, reptiles and amphibians.
- 3.3** Notify means advise the details of any proposal at least 28 days (or as otherwise mutually agreed) prior to the commencement of any development, works or activities.

DURATION OF THE PLAN

- 4.1** This Plan will be reviewed within five years of the date of gazettal, and at least every five years thereafter.

HABITATS TO WHICH THIS PLAN APPLIES

- 5.1** This plan applies to all waters to which the *Fisheries Management Act 1994* applies. The habitats and habitat features to which this Plan applies are those required for the spawning, nursery, shelter and feeding activities of fish and include:
- i) quantity and quality of waters,
 - ii) mangroves,
 - iii) seagrasses,
 - iv) saltmarshes,
 - v) wetlands,
 - vi) mudflats,
 - vii) sand and gravel substrates,
 - viii) rocky reefs,
 - ix) reed beds, and other aquatic plants, and
 - x) snags, primarily fallen trees and rocks.
- 5.2** All of these habitats have been shown by scientific research to be important in the life cycles of one or more species of fish. Further information on the importance of these habitats is available in a variety of publications (see reading list).

ACTIVITIES TO WHICH THIS PLAN APPLIES

6.1 This plan applies to the following developments, works or activities, each of which can impact on fish habitat:

- dredging or reclamation;
- impeding fish passage;
- damaging marine vegetation;
- desnagging.

Dredging and Reclamation

6.2 Dredging and reclamation can destroy fish habitat (e.g. seagrasses and mangroves), reduce habitat diversity (e.g. by removing deep holes) and affect water quality.

6.3 Under Sections 200 and 201 of the Act, **the Minister's consent is required for dredging or reclamation works carried out by any person or local government authority unless those works are authorised by a relevant public authority or under the *Crown Lands Act 1989*.**

6.4 **If dredging or reclamation works are carried out in contravention of Sections 200 or 201 the Minister may, under Section 203 of the Act, order remedial works to be carried out to rectify any damage caused to fisheries or fish habitats.**

6.5 Under Section 199 of the Act, **the Minister is required to be consulted over any dredging or reclamation works carried out, or proposed to be authorised, by a public authority** (other than a local government authority). This Section also establishes consultation and dispute resolution procedures.

6.6 Under Section 198, the Minister's consent is not required where the dredging or reclamation is for the purpose of mining; or is approved by Public Works and is for the restoration or maintenance of a navigation channel; or is on land vested in the Maritime Services Board and is for the passage or accommodation of seagoing vessels; or is for the removal of accumulated silt from a stormwater channel. All such works can affect fish habitat, however, and should not be carried out without carefully considering ways to minimise their impacts. In order to facilitate these considerations, Public Authorities are hereby required to notify the Minister of any proposals for dredging or reclamation, whether they propose to undertake the work or merely to authorise it, and whether or not the Minister's consent is required.

6.7 Where consultation with the Minister or NSW DPI is already required for such works under other legislation (as is the case, for example, in the *Mining Act 1992*, the *Petroleum (Onshore) Act 1993* and SEPP35), or where an EIS is prepared and referred to NSW DPI, that consultation satisfies the notification requirement specified in Section 6.5 of this Plan.

Impeding Fish Passage

- 6.8** The construction of weirs, dams, bridges, roads, culverts, causeways and reservoirs has impeded the passage of fish, and has been one of the main causes of declines in populations of estuarine and freshwater fish and species with a migratory phase in their life cycle.
- 6.9** Under Section 218 of the Act, **the Minister may require any person who constructs, alters or modifies a dam, weir or reservoir to carry out works to enable the passage of fish; the Minister may also require the person responsible to maintain the fish passage facility.**
- 6.10** **Any public authority that proposes to construct, alter or modify a dam, weir or reservoir on a waterway (or to authorise any such construction, alteration or modification) is required to notify the Minister and, if the Minister so requests, to include a suitable fishway or fish by-pass in those works.**

Damaging Marine Vegetation

- 6.11** Mangroves and seagrasses are important fish nursery grounds, and sources of food and shelter for fish and other aquatic organisms.
- 6.12** Under Section 205 of the Act, **the Minister's consent is required for any cutting, removal, damage or destruction of mangroves, seagrasses or any other prescribed marine vegetation on:**
- (a) Crown land, or**
 - (b) land vested in a public authority (or trustees for public recreation or for any other public purpose), or**
 - (c) an aquaculture lease, or**
 - (d) the foreshore of any such land or lease.**

Desnagging

- 6.13** Snags provide essential habitat for some species of fish, offering them shelter and opportunities to feed and spawn. Desnagging operations destroy fish habitat and should not be conducted without carefully considering ways to minimise that impact.
- 6.14** In order to facilitate these considerations, public authorities are hereby required to notify the Minister of any proposal to remove or relocate snags, in particular fallen trees or rocks, from or not they propose to undertake the work or to authorise it under the legislation.
- 6.15** Where a snag is causing a hazard to navigation or public safety, and needs to be removed or relocated as a matter of urgency, a Public Authority may do so without complying with the notification period, but must promptly inform the Minister of the work undertaken and the reasons for it.

WHAT TO DO

7.1 If you propose to carry out any development, works or activities which may require notice to, or consent by, the Minister then the process you should follow is:

- a) Consult with your local NSW DPI Office over the proposed activity to determine whether any consent, notification or further consultation is required.
- b) If the Minister's consent is required, provide the relevant information on an approved form (these forms are available at NSW DPI Offices) and submit it, together with any fee required.

Notification or consultation can be effected by a letter to the Minister. The completed form or letter must provide sufficient information to enable the Minister to assess your proposal and to give effect to the objects of the Act and plan. No work should be undertaken prior to notification or consent requirements being met.

ASSESSMENT PROCESS

8.1 Any forms received seeking the Minister's consent for a development, work or activity will be processed as follows;

- a) The completed form will first be assessed for completeness. If sufficient information is available, the Minister will respond within 28 days of the application being received. If the information provided is inadequate, the Minister may object to the development, works or activities proceeding until further information is provided.
- b) In some cases, site inspections may be needed before a decision can be made. Any inspections necessary to assess an application will be carried out at a time agreed with the applicant and following the payment of any inspection fee required.
- c) The Minister may attach conditions to any consent given. These conditions may relate to the term, area, or method of the development, work or activity; to the suspension or cancellation of the consent; or to any works required to restore, or compensate for any loss of, habitat; or to any other matter necessary for the Minister to give effect to the objects of the Act or Plan.
- d) The conditions attached may also include a requirement for monitoring. Monitoring requirements may relate to any increase or decrease in fish populations, or seagrasses, or mangroves, or to water quality or any other thing relevant to the consent. Where the required monitoring is not carried out, or where monitoring indicates a significant impact on fish or fish habitat, the Minister may suspend or cancel any consent given, and may require restoration (or compensation) work to be carried out at the applicant's expense.

8.2 Any letters received notifying the Minister of, or consulting the Minister about any development, work or activity, will be responded to within 28 days if sufficient information is available. If not, additional information may be requested.

- 8.3** Any application, approval, refusal or notice referred to in this Plan will be entered into a register which will be available for inspection at NSW DPI's Head Office, Sydney.

Further Reading

- Billyard,R.(1993). Fishcare - our freshwater rivers and streams. Fishnote DF/33,NSW Fisheries, Sydney.
- Burchmore, J.J.(1992). Fishcare - protecting fish habitats. Fishnote DF/20, NSW Fisheries, Sydney.
- Harris, J.H.(1989).The conservation of threatened fishes and their habitats. Proceedings of a National Conference, Sydney, March 1987.Eds M. Hicks & P. Eiser. Australian Committee for IUCN, Canberra.
- Larkum,A.W.D.,McComb,A.J.& Shepherd, S.A. (eds) (1989). Biology of Seagrasses. Elsevier Science Publishers, Amsterdam.
- Mallen-Cooper, M.(1994).How high can a fish jump? New Scientist. 16 April,pp. 32-37.
- McDowall,R.M.(1980).Freshwater Fishes of South-Eastern Australia. Reed, Sydney.
- NSW Fisheries (1992). Education kit: Why do we depend on estuaries? NSW Fisheries, Sydney.
- NSW Fisheries (1993).Estuarine Habitat Management Guidelines. Edited by J.J. Burchmore, D.A. Pollard, M.J. Middleton & R.J.Williams. NSW Fisheries, Sydney.
- NSW Fisheries (1993).Freshwater Habitat Management Guidelines. Edited by J.J.Burchmore. NSW Fisheries, Sydney.
- State Pollution Control Commission and Division of Fisheries (undated). A Guide to Mangrove Transplanting.
- West,R.J.(1985). Mangroves. Agfact. NSW Agriculture and Fisheries, Sydney.
- West,R.J.(1989). Seagrasses. Agfact. NSW Agriculture and Fisheries, Sydney.

This Fish Habitat Protection Plan was released for public comment and consultation on 31 January 1995.