



Primary
Industries

Report on the Statutory Review of the *Fisheries Management Act 1994*

August 2011

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Introduction

I am pleased to table this report on the outcome of the review of the *Fisheries Management Act 1994*.

The Act provides the legislative basis to conserve, develop and share the fishery resources of NSW for the benefit of present and future generations.

In 2009 the Act underwent significant amendment to implement recommendations from two major reviews of fisheries legislation and practice in NSW. One of these reviews examined illegal fishing, and the other considered indigenous fishing.

These amendments strengthened and clarified existing compliance, aquaculture and habitat protection provisions, and improved access to the fisheries resource for Aboriginal cultural fishing.

I am also pleased to report that a number of legislative reforms relating to commercial fisheries management and administration are well advanced and will be progressed as a matter of priority.

Further changes to fisheries management legislation may be recommended by the independent review of fisheries policy, management and administration which this Government is initiating.

Taking into account the recent reviews, the focus of the statutory review process was on aspects of the Act that have not recently been subject to review.

This review report concludes that the policy objectives of the Act remain valid.

The review identified a number of issues related to Parts 7 and 7A of the Act, which cover aquatic habitat protection and threatened species conservation. The report recommends that further investigation and consultation is undertaken before amendments can be made to these Parts.

The Department of Primary Industries will develop detailed amendment proposals for consultation with key stakeholder representatives.

I commend this report to you.

Katrina Hodgkinson MP
Minister for Primary Industries

1. Structure of the Report

The terms of reference and review process are outlined in the initial sections of the report.

The report concludes that the policy objectives of the *Fisheries Management Act 1994* ('the Act') are still valid and that no additional objectives are required.

Issues canvassed in the Discussion Paper, together with issues raised during consultation are discussed in Section 6.

A summary of the recommendations arising out of the review is included in section 7.

2. Terms of reference for the review

The Act sets out the regulatory framework for managing NSW's fisheries resource.

Section 290 of the Act states:

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act are being fulfilled and whether the terms of the Act, and any environmental planning instruments granted biodiversity certification under Division 11 of Part 7A, remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Threatened Species Legislation Amendment Act 2004*.*
- (3) The Minister is to make arrangements for public consultation with respect to the review.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

*The *Threatened Species Legislation Amendment Act 2004* was assented to on 30 November 2004.

3. Review process

To oversee the review process, a Review Group was formed comprising members from the following units within the Department of Primary Industries (formerly Industry & Investment NSW): Legislation and Government Relations; Fisheries Compliance; Fisheries Management and Fisheries Conservation and Aquaculture.

The Review Group considered the Act's policy objectives and their continuing validity, and developed a discussion paper to give the public the opportunity to provide comments on the Act and its operation.

The discussion paper was released for public comment for a period of 30 days, from Wednesday 13 October 2010 until Friday 12 November 2010.

The public was advised of the consultation process through advertisements in the *Sydney Morning Herald*, *The Daily Telegraph* and the *Koori Mail*. The discussion paper was also available on Industry & Investment NSW's website.

Key stakeholders were contacted directly by email and through the relevant Councils and Committees and invited to comment on the discussion paper. (See Appendix A).

Sixteen submissions were received from the individuals and organisations listed in Appendix B.

The recommendations included in this report draw on the consultation process and the submissions received.

It is anticipated that amendments to the Act resulting from the recommendations will be progressed in 2012/13.

4. Policy objectives of the Act

The objects of the Act are set out in Section 3, which states:

(1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.

(2) In particular, the objects of this Act include:

- (a) to conserve fish stocks and key fish habitats, and
- (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and
- (c) to promote ecologically sustainable development, including the conservation of biological diversity,

and, consistently with those objects:

- (d) to promote viable commercial fishing and aquaculture industries, and
- (e) to promote quality recreational fishing opportunities, and
- (f) to appropriately share fisheries resources between the users of those resources, and
- (g) to provide social and economic benefits for the wider community of New South Wales, and
- (h) to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.

Additional objects in relation to the protection of aquatic habitat and threatened species conservation are included in sections 198 and 220A.

5. The Act – background and other reviews

The Act provides the legislative basis to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.

The Act also:

- Sets out the regulatory framework for commercial and recreational fishing and aquaculture activities;
- Provides a framework for Aboriginal cultural fishing;
- Includes requirements for the conservation of certain fish and aquatic habitat; and
- Provides a management framework to protect threatened fish and marine vegetation species, and their habitats.

Certain aspects of the Act have been reviewed recently, as set out below.

Further changes to fishing regulation may be recommended by the independent review of fisheries policy, management and administration which this Government is initiating. One goal of this review will be to consider the devolution of appropriate fisheries governance responsibilities to stakeholders.

5.1 *Fisheries Management Amendment Act 2009*

In 2009 the Act underwent significant amendment to implement recommendations from two major reviews of fisheries legislation and practice in NSW. One of these reviews examined illegal fishing, while the other considered indigenous fishing.

The amendments strengthened and clarified existing compliance, aquaculture and habitat protection provisions, and improved access to the fisheries resource for Aboriginal cultural fishing.

Specifically, the changes:

- Recognise Aboriginal peoples' cultural and customary association with the fisheries resource by including a definition of cultural fishing;
- Provide for establishing an Aboriginal Fishing Advisory Council ('AFAC'), to provide advice to the Minister on Aboriginal fishing issues;
- Establish special provisions for cultural fishing that will allow Aboriginal people to fish culturally without a permit, or having to pay any kind of fee - as long as it occurs within limits that will be developed with the new advisory council and included in regulations;¹
- Increase the range and severity of penalties for serious fisheries offences in order to reduce the black market sale of fish;

¹ These provisions have not yet commenced.

- Establish higher penalties for second or subsequent offences and for certain offences committed in circumstances of aggravation;
- Strengthen existing inspection and compliance powers by including broader powers to seize boats and illegal fishing gear;
- Increase the monetary jurisdiction limits of local courts to enable them to deal with most fisheries offences;
- Improve the efficiency and operation of the aquaculture and aquatic habitat provisions of the Act; and
- Strengthen enforcement provisions for threatened species.

5.2 The Pymont Pact

The previous Government's Pymont Pact program aimed to promote a profitable and sustainable commercial fishing industry through various reforms, including creating a suite of tradeable input and output controls (linked to shares), 'exit grants' for fishers who wish to retire from the industry, streamlining regulatory requirements, reviewing cost recovery, and establishing a peak industry body. Industry & Investment NSW worked closely with the Seafood Industry Advisory Council ('SIAC') to progress implementation of the Pymont Pact, but industry has seemingly been frustrated with the rate of progress.

A notable initiative of the Department of Primary Industries is the development of *FishOnline*, a three-stage project that will deliver a new licensing system and online capabilities for commercial fishers and charter boat operators.

Following further consultation with industry, it is proposed to progress amendments to the Act and regulations in the following areas in 2011:

- issuing new share classes and providing greater flexibility for the basis on which new share classes can be issued;
- providing for greater flexibility in the determination of total allowable catch;
- providing for greater flexibility in the allocation of total allowable catch (ie quota) between participants;
- providing for greater flexibility in the trading and management of quota;
- providing for electronic transactions to streamline administrative processes as part of the *FishOnline* reforms;
- removing the mandatory requirement for commercial fishing boats to be licensed;
- removing the requirement for maximum shareholdings; and
- miscellaneous amendments including the authorisation of agents (for the purpose of online transactions) and the introduction of a general offence for providing misleading information.

The Coalition Government's *Fisheries Policy* outlines key areas of reform relating to commercial fishing, including structural adjustment, streamlining of regulations and co-management. The Department of Primary Industries will facilitate the independent review of NSW fisheries policy, management and administration proposed in the Policy. It is possible that further amendments to the Act and regulations may result from this independent review.

5.3 Charter Fishing Boat review

Significant changes were made to the management of the charter boat industry with the consolidation and licensing of charter fishing boat businesses in 2000. There has been little change to this part of the Act since that time.

The Marine and Estuarine Recreational Charter Management Advisory Committee ('MERCMAC') and Industry & Investment NSW commenced consultation to identify opportunities for greater operational flexibility for NSW charter fishing boat operators. At the request of the MERCMAC and charter fishing boat operators, consultation with industry began in 2010 regarding potential amendments to the Act and associated Regulation to improve administrative systems and business operational processes, including the development of *FishOnline*. It is hoped to progress some charter fishing boat amendments in 2011.

5.4 Select Committee on Recreational Fishing

In November 2009 the NSW Legislative Council established a select committee to examine recreational fishing in NSW for both coastal and inland fisheries.

The aim of this parliamentary inquiry was to consider the current regulatory, policy and decision-making processes that control both coastal and inland recreational fishing. It also examined the current trusts and advisory committees that advise government departments and statutory authorities about recreational fishing.

The inquiry examined the effectiveness of existing Marine Protected Areas and Marine Parks and looked at the gaps in existing recreational fishery programs, including the number and location of Recreational Fishing Havens.

It also considered the value of recreational fishing to the economy of NSW, as well as ecologically sustainable development issues related to improving recreational fisheries.

The committee's final report was released on 10 December 2010. The NSW Government is currently considering its response to the report and its recommendations.

6. Issues and discussion

This section of the report discusses the issues canvassed in the Discussion Paper and other issues raised by stakeholders during consultation, and outlines the NSW government's proposed response to those issues.

Nine significant issues were raised in the submissions, some of which had previously been identified in the Discussion Paper. These are:

- Absence of an environmental impact assessment and a fisheries management strategy for recreational fishing;

- Recreational fishing insurance to provide improved angler access to fish rivers and lakes on private property;
- Introduction of a new offence to address harassment and disturbance of law-abiding fishers;
- Providing greater protection for key fish habitats;
- Improving the management and administration of Habitat Protection Plans;
- Banning the importation of exotic aquarium fish species;
- Moving threatened species provisions from the Act to the *Threatened Species Conservation Act 1995* ('the TSC Act');
- Improving critical habitat provisions, recovery and threat abatement planning, and the operation of Priority Action Statements; and
- Concerns about the administration of advisory bodies, especially the Advisory Council on Recreational Fishing ('ACoRF').

These and other issues raised in the submissions are discussed below under relevant headings.

Some issues raised in submissions relate to specific provisions in the Share Management Plans, or are otherwise outside the scope of the statutory review process. These issues have not been considered in the report.

6.1 Validity of the policy objectives of the Act

Some submissions suggested that the Objects of the Act are deficient. Examples provided include:

- There is no reference to the importance of seafood production for food security
- The current objectives do not reflect the operations of the commercial fishing sector, or the social, economic, health and well being aspects of consuming fresh fish
- The objectives do not adequately recognise the recreational fishing sector and the social, economic, health and well-being aspects of recreational fishing
- The reference to conserving fish stocks needs clarifying

It is considered that the primary and secondary objectives, when taken together, adequately capture the points referred to above. The existing secondary Act objectives - 'to promote viable commercial fishing' and 'to provide social and economic benefits for the wider community of NSW' – are particularly relevant. It is therefore not considered necessary to change the objectives.

6.2 Aboriginal Cultural Fishing

Recent amendments to the Act have formally recognised Aboriginal peoples' association with the fisheries resource. The *Fisheries Management Amendment Act 2009* added a new objective to recognise the significance of the resource for spiritual, social and customary reasons and to protect and promoting the continuation of Aboriginal cultural fishing. The *Fisheries Management Amendment*

Act 2009 also introduced specific provision under section 37 of the Act to issue authorities to Aboriginal people to take fish or marine vegetation for cultural fishing purposes, as well as providing for cultural fishing without specific authorisations in circumstances to be prescribed by the regulations.

The establishment of the AFAC will encourage greater engagement of Aboriginal people in the management of fisheries resources. The AFAC will provide advice directly to the Minister on matters related to access to the fisheries resource for cultural fishing purposes and any other matter relevant to the Aboriginal fishing sector, including commercial fishing opportunities for Aboriginal communities.

Issues

Concerns were expressed in submissions that the cultural fishing provisions could compromise the sustainability of the fisheries resource, and that the definition and intended scope of cultural fishing was not clear. One submission recommended that the NSW Government should provide resources to support Aboriginal enterprises in aquaculture and commercial fishing.

It should be noted that the provisions allowing cultural fishing without a permit will not commence until regulations have been developed in consultation with the AFAC. Work on developing the regulations has commenced. This will be done with regard to the overall objects of the Act including the sustainability of the resource.

The AFAC will also consider initiatives that may assist Aboriginal people in the development of commercial opportunities associated with the fisheries resource. This will include consideration of how the existing commercial fishery and aquaculture frameworks can provide viable opportunities for communities.

6.3 Recreational Fishing

Recreational fishing is a popular activity throughout NSW in inland waters, estuaries and the ocean. Recreational fishing incorporates many activities such as spear fishing, trap and net fishing, hand gathering and shore or boat-based line fishing.

Fees paid by recreational fishers are used to improve recreational fishing in NSW. In 2009/2010, revenue in the recreational fishing trusts reached \$13.2 million.

In 2009/10, over 520,000 people paid recreational fishing fees. Taking into account those who are exempt from the payment of fees, it is estimated that approximately one million people fished recreationally during that year.

The following issues were identified from the submissions:

Issue 1: An Environmental Impact Statement ('EIS') and Fishery Management Strategy ('FMS') have not been prepared for recreational fishing.

Several submissions called for the Government to prepare an EIS and FMS for the recreational fishing sector, with the primary aim of assessing the overall recreational fishing catch.

The report of the NSW Legislative Council's Select Committee on Recreational Fishing supports this approach. The Select Committee's report also recommends that the NSW Government provide appropriate funding to ensure the design and implementation of a statistically robust survey to provide an accurate assessment of recreational fishing catch and effort throughout NSW, to be undertaken once every five years.

The NSW Government is currently considering its response to the Select Committee's report, which will include a specific response on this issue. It should be noted however that research and impact statements on specific recreational fishing actions, such as the impact of catch and release and fish stocking, have been and continue to be, undertaken by the Department of Primary Industries.

Recreational fishing rules such as bag and size limits, gear restrictions and fishing closures are the main means of restricting the quantity of fish that recreational fishers can take. Advisory programs are used to educate anglers about the importance of following the rules, and to promote sustainable fishing practices. Additional controls also apply to protect threatened or endangered species. Recreational fishing is, therefore, highly regulated in NSW to ensure sustainable fishing.

Issue 2: Insurance

A number of submissions suggested that a lack of fisher insurance cover is the main reason why many landholders deny anglers access across private property to rivers and lakes. Some submissions suggested that to cover the necessary insurance premium, those currently exempt from paying licence fees should be required to contribute.

Section 234(2)(e) of the Act provides for third party insurance to be paid from the Recreational Fishing (Freshwater) Trust Fund. There are many issues associated with implementing an insurance scheme for recreational fishers accessing private property with landholder approval, including ongoing coverage, overall cost, mechanisms for making claims, and provision for fishing fee exempt anglers.

One submission also suggested that the fishing fee could be used partly to pay for limited liability sports injuries insurance.

Recommendation: ACoRF be asked to consider all aspects of the proposal to introduce a third party insurance scheme for recreational fishers accessing private property with landholder approval.

Issue 3: Recreational fishing licences

More than one submission suggested that licences should be required for all recreational fishers, even if some categories of person would still be exempt from paying a fee or would only have to pay a nominal fee. The submissions maintain that this would improve the collection of data on recreational fishing and provide improved compliance education opportunities.

Although the possible benefits are acknowledged, it is considered that it would be unnecessarily onerous to introduce licence requirements for recreational fishers who are currently exempt from licence requirements. The costs associated with the extra administration of potentially another 500,000 licences would exceed the amount that could reasonably be collected under a nominal fee arrangement. Imposing licence requirements would also be seen as creating unnecessary red tape. This suggestion is therefore not supported.

6.4 Charter Fishing Boats

Industry stakeholders were involved in the review of current management and administrative systems in the charter boat industry undertaken in 2010 (see section 5.3 above).

Several submissions indicated an intention to comment on the amendments proposed as a result of the review. Other than this, no significant comments were received in relation to charter fishing boats.

6.5 Commercial Fishing

In NSW the regulation of commercial fishing includes:

- Licensing commercial fishers
- Licensing fishing boats
- Issuing shares and endorsements to undertake different kinds of commercial fishing
- Fishing gear restrictions (eg net length, mesh size)
- Registration of some types of gear (eg nets)

To harvest fish for sale in NSW, both the fisher and the boat used must be licensed. To participate in a specific fishery, a fisher must hold the appropriate endorsement. At the time of writing, there are 1,219 commercial fishing businesses.

Proposals to reform the Act in relation to commercial fisheries management, developed as part of the Pyrmont Pact process (see section 5.2 above) are currently well advanced. Comments were not invited on these proposals because they were the subject of separate consultation with the peak industry advisory body.

The Discussion Paper did however flag the following issues, on which a number of comments were made in the submissions:

Issue 1: Simplify the regulation of share management fisheries.

Part 3 of the FMA provides for fisheries to be managed as “share management fisheries”, and sets out the requirement for management plans to be prepared for each share management fishery. It also provides the process for applying for shares in a share management fishery, the method of determining eligibility and entitlement to shares and the determination of disputes by the Share Management Fisheries Appeal Panel.

Part 3 contains extensive and detailed provisions relating to the management and operation of share managed fisheries, including a large amount of procedural and other technical detail which could be contained in regulations rather than in the Act. The current convention is to include detailed provisions in regulations rather than in Acts, to allow greater flexibility. This enables detailed provisions to be adjusted more easily from time to time in line with changes to administrative practices.

The Discussion Paper sought comment on whether the procedural and technical detail in Part 3 should be moved into the regulations, and submissions were received both for and against this proposal.

Recommendation: The Department of Primary Industries to seek advice from Parliamentary Counsel on moving the detailed provisions in Part 3 relating to Commercial Share Management Fisheries from the Act to the regulations.

Issue 2: Personal Property Securities ('PPS') Law Reforms

The PPS reforms aim to establish a national system for the registration of personal property security interests.

Personal property can encompass any form of property *other than land or buildings*. In relation to fisheries, this includes some licences granted under the Act, but not Aquaculture leases which are considered to be land. Most personal property rights created under the Act relate to commercial fishing, for example fishing boat licences, quota, endorsements and shares in share management fisheries.

The reforms will replace various Commonwealth and State acts with a single piece of legislation, and provide a single online system for registering security interests in personal property.

In relation to fisheries, the Act already requires the Director-General to establish and keep a Share Register on which any shares issued by the Minister in a share management fishery must be registered. The register also includes all other relevant information about the shares. Section 91 of the Act regulates the way in which security interests can be registered in shares. The system currently operates as a 'one stop shop' for all transfers, third party interests and the issue of endorsements in share management fisheries.

While the national registration system would make it easier for commercial fishers to raise capital, any transfer of shares or other personal property under the Act will result in concurrent requirements under the State and national systems.

The PPS system is likely to come into operation late in 2011. However, an exemption has been granted to personal property related to fisheries in NSW, which means that the existing register requirements under the Act will continue to apply.

The Discussion Paper sought comment on whether businesses and financiers should be able to register security interests in personal property rights relating to fisheries on the national register or whether the current requirements under the Act should be maintained.

One submission supported personal property rights being entered on the national register, because this will make it easier for industry to borrow and for finance providers to protect their interests. Another submission felt that industry should be consulted and provided with further information on the new system in order to evaluate it.

The Commonwealth Government is currently considering how to inform the public about the PPS system and its application. The Australian Fisheries Management Authority (AFMA) is planning to write to fishing organisations and to put information on its website. The Department of Primary Industries will provide stakeholder contact details to AFMA for this purpose.

6.6 Aquaculture

None of the submissions raised significant issues with the operation of this part of the Act, and it therefore appears that the provisions of the Act dealing with aquaculture leases are working effectively. Also, the Act is consistent with the national regulatory framework for aquaculture resulting from a Productivity Commission report in 2004.

However, one submission pointed to the need for more effective stakeholder consultation, particularly bearing in mind the expected expansion of aquaculture into the future and the possible impacts of climate change, particularly rising sea levels, on the location of aquaculture activities. Another submission flagged the ongoing need to ensure that environmental impacts, disease control and economic sustainability are all considered in the aquaculture approval process

Environmental impacts, disease control and economic sustainability and a wide range of other potential environmental aspects of aquaculture development are already considered in preparing Aquaculture Industry Development Plans under Section 143 of the Act and also in assessing individual project proposals under Section 111 of the *Environmental Planning and Assessment Act 1979*. Both of these processes are robust and no change is considered necessary.

6.7 Fisheries Conservation and Aquatic Habitat Protection

Conservation of the fisheries resources of the State, for the benefit of present and future generations, is one of the primary objects of the Act.

The Act includes various regulatory mechanisms to ensure activities which impact on the State's fisheries resources or their habitat are carried out in a sustainable way. The Act also includes regulatory mechanisms which provide additional protections for certain fish and aquatic habitats.

The Discussion Paper invited comment on the issues discussed in sections 6.7.1 – 6.7.3.

A submission from the Roads and Traffic Authority ('RTA') contained suggestions for more effective management of minor culvert and bridge maintenance works by public authorities. Discussions were held with the RTA in January 2011 to progress

options to reduce red tape and improve the environmental assessment and consultation processes for minor works, as suggested in the submission. The RTA and the Department of Primary Industries are continuing to work on this issue.

6.7.1 Aquatic habitats

ISSUE 1: Improve the protection of aquatic habitats

The Discussion Paper identified the following issues related to improving the protection of aquatic habitats:

- The Act regulates some activities which impact on aquatic habitats, but not others
- Pristine, modified and artificial habitats are all treated equally, without targeting 'key fish habitats' for protection - for example, while marine vegetation is recognised as a key fish habitat, others such as rocky reefs, sand and mud flats and tidal channels are not recognised
- Ephemeral habitats of occasional importance to fish (eg some wetlands) and permanent habitats of constant importance (eg estuaries and major rivers) are treated equally
- Riparian vegetation is not protected, even though 'decline of native riparian vegetation' is listed as a Key Threatening Process to a number of threatened fish species listed under Part 7A of the Act

Submissions from environmental and other stakeholders supported the concept of key fish habitats and the protection of riparian vegetation. Several submissions also raised concerns about the ability of the Act to regulate environmental flows, which can influence fish movement and spawning periods, two key ecological functions for fish conservation.

Other comments included:

- The Act should ensure that fish spawning and migration are addressed in the Guidelines for Storm Water Harvesting and Effluent Water Reuse
- Protection for the spawning grounds of exotic species (eg trout and salmon) should be removed
- The Act should be strengthened to ensure that councils, developers, landholders and other parties are held accountable if aquatic habitat is unlawfully interfered with or damaged
- Responsibility for the control and eradication of water weeds needs to be clarified
- Mangrove and saltmarsh communities that are not already within protected communities should be considered for inclusion in the Act
- An increased percentage of recreational fishing trust funds should go towards the rehabilitation of fish habitat and fish passage
- The Minister responsible for fisheries should be involved in the allocation of shares for water in all estuaries

The aquatic habitat provisions require further detailed investigation and consultation, to focus on key fish habitat protection, including measures to deal with unavoidable habitat losses, rather than on activity regulation. There is also a need to consider the potential to include riparian vegetation as a key fish habitat for the purposes of the Act, which will require consultation with relevant agencies concerned with native vegetation management.

Recommendation: The Department of Primary Industries to consider the provisions relating to the protection of aquatic habitat and develop detailed proposals to improve the focus on key fish habitat protection and key ecological functions for consultation with stakeholders in 2011/12.

ISSUE 2: Improve the management and administration of Habitat Protection Plans

Fish Habitat Protection Plans describe potential threats to fish habitat and recommend actions to lessen the effects of potentially damaging activities. Plans can be developed for the protection of any fish habitat, whether it is critical for the survival of the species or required to maintain sustainable populations of fish for harvesting.

The Act requires that the community be consulted during the preparation of a Plan. The responsibilities of public authorities, including local councils, regarding the protection and management of the habitats are set out in the Plan. Once the Plan is finalised and gazetted, authorities, including local councils, must take into account the protection strategies in the Plan to ensure that those habitats are protected.

Stakeholder submissions raised a number of issues related to Habitat Protection Plans and their operation including:

- Plans being given Ministerial approval, but not being implemented due to a lack of appropriate costing and budget allocation (which could be avoided by amending section 192(2) to require cost estimates for all Plans)
- Section 193 should require authorities to comply with Plans, rather than merely having regard to them
- Plans should be made and enforced under the TSC Act
- All developments, not just those by public authorities, should have to consider the contents of Plans
- The Minister should prepare a statewide fish habitat action plan
- Plans should be prepared for all key fish habitats and nursery and spawning areas
- Plans should be able to deal with off site impacts that affect fish and their habitat, including water quality
- Plans should relate more strongly to the other sections of the Act, and should automatically be required for habitats identified as at risk

Recommendation: The Department of Primary Industries to review the Habitat Protection Plan provisions in the light of issues raised in submissions, and develop detailed proposals for consultation with stakeholders in 2011/12.

ISSUE 3: Improve the management of aquatic reserves

Division 2 of Part 7 of the Act covers the declaration and management of aquatic reserves. This Division was previously administered by the Minister for the Environment but is now administered by the Minister for Primary Industries.

There are currently 12 aquatic reserves, established to conserve the biodiversity of fish and marine vegetation. Under section 197A of the Act, a management plan may be made for an aquatic reserve, in consultation with the community. The Act currently requires that a management plan can only be made by regulation.

The Discussion Paper sought comment on issues associated with the operation of this part of the Act. Submissions from environmental stakeholders supported maintaining aquatic reserves, with one suggesting that aquatic reserve provisions should be included in the *Marine Parks Act 1997* to ensure better coordination of protected area objectives.

Other comments included:

- Concern that the objectives of the two relevant Government agencies (the former Department of Environment, Climate Change and Water ('DECCW') and the Department of Primary Industries) do not align in relation to aquatic reserves, and suggestion that these reserves should be managed either by the Department of Primary Industries alone or by both agencies jointly
- The Minister should be required to prevent any development that may adversely affect an aquatic reserve, its wildlife or habitats
- The creation of any future aquatic reserves should be based on peer reviewed science and should not occur without effective public consultation
- Adequate resources should be allocated to securing sites when establishing new reserves, and securing long term outcomes

DECCW had suggested expanding the scope of aquatic reserve management plans and removing the requirement for them to be made by regulation.

Effective management of aquatic reserves extends beyond regulation. The scope of aquatic reserve management plans could therefore be expanded to allow management planning for community education and engagement, such as volunteer and discovery programs, information and interpretive signage, research and monitoring, and programs to reduce impacts on reserves. Management plans could be similar to fishery management strategies or national park plans of management.

Community engagement and partnerships including with local government, adjacent land managers and user groups is also critical to the effective management of aquatic reserves. Statutory community consultation, approval processes and regulations should remain important parts of the development and implementation of aquatic reserve management plans. Clearer procedures for the preparation of management plans and community consultation could be developed, including a minimum period for community consultation of draft management plans.

The development of a single management plan relating to more than one aquatic reserve may be more efficient where there are similar management issues or local stakeholders.

Recommendation: The Department of Primary Industries to review the provisions for aquatic reserves and develop detailed proposals for consultation with stakeholders in 2012/13.

6.7.2 Biosecurity – Control of noxious aquatic species

Effective biosecurity management is essential in protecting the productivity and value of the State's primary industries and natural resources. Pest species threaten indigenous aquatic and terrestrial life directly as predators or competitors for food or indirectly by altering their natural habitat.

Many fish species have been introduced into NSW waters over the past 200 years, intentionally and accidentally. Such species can invade marine or freshwater environments. Some species, including plants, animals and seaweeds, have established themselves in NSW and are now regarded as pests.

The Discussion Paper noted the following deficiencies in the Act in relation to noxious aquatic species:

- There is currently no power under the Act to contain noxious fish and marine vegetation or prevent their unintentional introduction or spread in State waters - the ability to declare quarantine areas would enable the Minister to control the movement of noxious fish or marine vegetation
- The Act does not recognise the seriousness of releasing noxious aquatic species into the environment - there are currently no offences or penalties associated with releasing listed noxious aquatic species

A number of submissions highlighted concerns about the importation of noxious fish, including exotic aquarium species, and marine and freshwater vegetation species. One submission called for a total ban on the importation of all finfish aquarium species into NSW. Two submissions suggested that aquarium species should be declared noxious under the Act. There was also a recommendation for a complete ban on the importation of aquatic plant species including those for aquariums.

It was also suggested that tighter controls are required in relation to the importation and use of unprocessed fish meal by aquaculture and the discharge of ships ballast.

In 2006, all State governments - in consultation with representatives of the ornamental fish industry - developed the "Strategic Approach to the Management of Ornamental Fish in Australia". This strategy contains recommendations for the management of ornamental fish in Australia, including the development of an agreed National Noxious Fish List.

The NSW Government has added species to the NSW Noxious Fish List contained in Schedule 6C to the Act, in line with changes to the National Noxious Fish List and

as part of a consistent approach to the management of noxious fish throughout Australia. This process is continuing and it is likely that other species will be added to the National Noxious Fish List and be declared noxious fish in NSW in the future.

It is not considered appropriate to implement a total ban on the importation of finfish aquarium species or aquatic plant species into NSW. The Commonwealth Government is responsible for managing the importation of food products, including fish meal and live finfish into Australia, and uses an Import Risk Assessment process to inform its decisions. Similarly, the Commonwealth Government is responsible for management of ballast water from international vessels at their first Australian port of call, and has established systems consistent with International Maritime Organisation guidelines to minimise risks.

To complement the Noxious Fish List, the following changes are proposed to improve the aquatic biosecurity provisions of the Act:

- Introduce provisions into Part 7, Division 6, (Noxious fish and noxious marine vegetation) to allow the Minister to declare a quarantine area in order to control the movement of noxious fish or marine vegetation.
- Extend the ability to declare a quarantine order to situations where there is reasonable cause to believe that noxious fish or marine vegetation are possessed or conveyed (for example on a ship's hull).
- Introduce provisions into Part 7, Division 7, Protection of fish and marine vegetation from disease, to control the intentional or reckless release into waterways of Class 1 noxious fish or marine vegetation with penalties that reflect the extreme seriousness of the action (i.e. similar to s184).

Recommendation: The Department of Primary Industries to progress amendments to Part 7, Divisions 6 and 7 in 2011.

6.7.3 Threatened species conservation

Part 7A of the Act deals with threatened species conservation. This Part was inserted into the Act by the *Fisheries Management Amendment Act 1997* and introduced similar threatened species provisions for fish and marine vegetation to those contained in the TSC Act.

Issues 1 and 2 were identified from the submissions, while the Discussion Paper invited comment on Issues 3 and 4.

Issue 1: Transfer threatened species provisions to the TSC Act.

A number of submissions recommended repealing the provisions related to threatened species under the Act and including them in the TSC Act, on the basis that the conservation objectives of Part 7A cannot be fully met while the Part sits within resource-use legislation.

Recommendations to repeal threatened species provisions under the Act for inclusion in the TSC Act have been raised previously during reviews of the TSC Act.

The proposed change would separate threatened species administration from the management of fisheries and marine vegetation resources. At present all these functions are integrated across a broad range of management, research and compliance functions within the Department of Primary Industries. This is considered more effective than having threatened species administration vested separately in an agency that has no statutory responsibility for the management and conservation of the fisheries resources of the State.

The current arrangements for aquatic threatened species management conserve threatened species, populations and ecological communities of fish and marine vegetation, promote ecologically sustainable development, and conserve biological diversity. These functions are integrated into the broader management of fisheries, thus allowing the fisheries resources of the State to be conserved, developed and shared for the benefit of present and future generations.

The status quo continues to achieve a balance between the interests of the key stakeholders by considering environmental, economic and social issues. Moving the provisions to the TSC Act is therefore not supported.

Issue 2: Process for listing threatened species

A number of concerns were raised about the process for listing threatened species, including:

- The ability of the Fisheries Scientific Committee ('FSC') to assess and determine self-nominations
- Membership of the FSC should be broader, to avoid conflicts of interest where a person or agency making a threatened species or critical habitat nomination may also be involved in the determination process
- There should be greater consultation with recreational fishers in relation to proposed threatened species listings.

The Act contains detailed provisions relating to the disclosure of pecuniary interests (direct and indirect) by members of the FSC, but there are no provisions relating to non-pecuniary interests. Amendments could be considered to prevent the FSC or its members from making nominations, to avoid any perception of non-pecuniary conflicts of interest.

The current threatened species framework clearly separates the listing process from management responses. The listing criteria are purely scientific, whereas social and economic factors are considered during the development of management responses. Also, proposed determinations must be publicly exhibited, which provides a consultation opportunity for recreational fishers.

Recommendation: The Department of Primary Industries to review options to improve the threatened species nomination process to avoid any potential for conflicts of interest, and present detailed proposals for consultation with stakeholders in 2011/12.

Issue 3: Improve critical habitat provisions, recovery and threat abatement planning and the operation of Priority Action Statements ('PAS')

Under the Act the Minister is responsible for identifying the critical habitat of each endangered and critically endangered species and ecological community and each endangered population. To date critical habitat has only been declared for one species out of the 21 eligible listings under the Act.

The process to declare critical habitat is time consuming, expensive and requires significant resources from a number of agencies. In addition, there are challenges associated with making critical habitat declarations in riverine environments, where the linear nature of rivers and streams, combined with the complexity of identifying adjoining property owners and property boundaries, complicate the process.

The Act also provides for:

- Recovery plans, which are designed to return a species, population or ecological community to a point where its survival in nature is assured;
- Threat abatement plans, which identify the actions needed to reduce or eliminate the effect of key threatening processes; and
- PAS, which set out strategies for recovering threatened species, populations and ecological communities and managing key threatening processes.

The Discussion Paper sought comment on the operation of the existing provisions in divisions 3, 5 and 5A of Part 7A.

A number of submissions stated that the critical habitat provisions are under-utilised. Several submissions voiced concerns about various aspects of recovery plans, threat abatement plans and PAS and the interaction between them. Some submissions reiterated the point that these provisions should be transferred to the TSC Act.

Other comments noted:

- The lack of provisions for the cessation or removal of recovery or threat abatement plans once recovery has been achieved and sustainability is ensured
- Potential conflict of interest where a person or agency involved in preparing a recovery plan also comments on it as part of the Fisheries Scientific Committee
- The need for information in recovery and threat abatement plans to be kept current and available on the website
- A cost estimate should be required for recovery plans, to be consistent with the requirements for threat abatement plans
- Recovery and threat abatement plans should include socio-economic impact assessments
- The need for increased stakeholder involvement in the preparation and implementation of recovery and threat abatement plans
- Recovery and threat abatement plans to be incorporated in PAS, and the PAS incorporated into the *Environmental Planning and Assessment Act 1979*

The following approach is proposed:

- (a) The provisions for critical habitat, recovery and threat abatement plans and PAS should remain in the Act;
- (b) Further consideration be given to streamlining the critical habitat provisions to improve their operation; and
- (c) Further consideration should also be given to improving the operation of recovery and threat abatement plans and PAS, particularly in relation to:
 - The need for a greater operational focus on the use of strategies under the PAS and the mitigation of threatening processes;
 - Inconsistencies in procedural requirements between threat abatement and recovery planning processes;
 - Provision for the cessation of recovery and threat abatement plans when recovery has been achieved and sustainability reasonably ensured;
 - Integration of the operation of PAS with environmental planning and assessment legislation, similar to recovery and threat abatement plans;
 - Improved integration of statutory reporting obligations; and
 - The process for incorporating new listings.

These proposals will require further legal and policy investigation and consultation with stakeholders including the Office of Environment and Heritage.

Recommendation: The Department of Primary Industries to consider the proposals relating to critical habitat provisions, recovery and threat abatement plans and Priorities Action Statements and develop detailed proposals for consultation in 2011/12.

Issue 4: Licensing and Ministerial orders

Division 6 sets out the processes for issuing threatened species licences and Ministerial orders. These provisions are used to authorise an activity that is likely to result in harm to a threatened species, population or ecological community or their habitats. Ministerial orders are used to authorise activities by classes of people such as recreational or commercial fishers.

The Discussion Paper sought comment on changes or improvements that could be made to these provisions.

One submission raised the issue of 6-monthly interim orders being used successively for 7 years without a comprehensive species impact statement being prepared. It was suggested that interim orders should be issued only once on condition that a mandatory comprehensive impact assessment is carried out.

It is acknowledged that interim orders have been used successively, sometimes for extended periods. This has occurred for a number of reasons including the complexities of preparing environmental assessments for multi-species fisheries over large geographic areas, often with limited information.

It is proposed that a further review of the operation of Ministerial order provisions (including interim orders) be undertaken, to consider limiting extensions, improving the operation of the statutory consultation provisions, providing additional time for environmental assessment, and consideration of an assessment of significance test as a precursor to the requirement for a species impact statement for activities with only minor impacts. This will involve further legal and policy investigation and consultation with stakeholders.

Recommendation: The Department of Primary Industries to review the operation of the Ministerial order provisions (including interim orders) in Division 6 and develop detailed proposals for consultation in 2011/12.

Issue 5: Biodiversity certification

Biodiversity certification provisions were introduced to the Act and to the TSC Act in 2004. The effect of biodiversity certification is to switch off the threatened species 'assessment of significance' requirements contained in both Acts. Biodiversity values must be improved or maintained for certification to be conferred, indeed one of the major objectives of biodiversity certification is to achieve long-term conservation gains on private land in a strategic manner.

There are currently two categories of biodiversity certification in the Act:

- Certification of the native vegetation reform package; and
- Certification of environmental planning instruments (EPIs)

Corresponding provisions in the TSC Act were amended in 2010 so that biodiversity certification under that Act is now conferred on land rather than on EPIs.

Certification of the native vegetation reform package

Division 10 of Part 7A of the Act allows the Minister to confer biodiversity certification on the native vegetation reform package. This has not occurred because there is currently no methodology to assess the impacts on threatened fish species and their habitats of clearing native vegetation, including riparian and aquatic native vegetation.

An Environmental Outcomes Assessment Methodology has been developed under the *Native Vegetation Act 2003* that assesses the impact of native vegetation clearing on threatened species covered by the TSC Act. However, this methodology focuses on the clearing of native vegetation on land and a similar methodology has not been developed for aquatic vegetation.

One of the challenges in developing biodiversity certification assessment tools for the aquatic environment is the lack of detailed state-wide data about the distribution of fish and marine vegetation species and their habitats. Modelling for the aquatic environment, especially in relation to offsetting impacts, is challenging.

Another challenge in developing appropriate assessment tools for aquatic habitats and species is the difficulty in dealing with off-site impacts, for example developments on land that drain into threatened species habitat.

Certification of EPIs

Division 11 of Part 7A of the Act allows the Minister to confer biodiversity certification on an EPI if the Minister is satisfied that the EPI will lead to the overall improvement or maintenance of biodiversity values. This type of certification is designed to enable local councils in areas with high development pressures to provide for the protection of threatened species at the strategic planning stage. To date certification has not been conferred under the Act on any EPI.

Issues

A number of submissions raised concerns about the existing biodiversity certification provisions in the Act, and the lack of any objective and robust assessment methodology to implement them. Suggestions included:

- Aligning assessment methodologies with other state agency approaches for the *Native Vegetation Act 2003* and the TSC Act
- Supporting the Native Vegetation Reform Package (Division 10) as a biodiversity certification process
- The need for an adequate database of information about aquatic species and their habitats to inform the development of assessment tools
- Amending the provisions to require assessment of impacts of developments on fish, marine and aquatic vegetation

Operation of the biodiversity certification provisions in the Act has been identified as problematic. Several of the proposals received would require amendments to the *Native Vegetation Act 2003* to achieve the desired outcomes. Consultation would also be required with the Office of Environment and Heritage to assess consistency with, and operation of, the TSC Act.

Biodiversity certification under the Act has not been conferred on the native vegetation reform package or any EPI. Consequently, the biodiversity certification provisions have not contributed to achieving the policy objectives of the Act and are unlikely to do so without significant amendment. Accordingly, it is proposed to repeal Divisions 10 and 11 of the Act that relate to biodiversity certification. Environmental impact assessment and consultation/concurrence processes will continue to operate under the existing legislative provisions.

A review of the operation of threatened species provisions is proposed to ensure biodiversity values of aquatic biodiversity are maintained or improved, and to avoid incremental losses over time. Options include the further refinement of existing no-net loss policies and development of formal mechanisms to ensure temporary and permanent impacts on threatened species habitats are adequately offset. This will involve further legal and policy investigation and consultation with stakeholders.

Recommendation: Divisions 10 and 11 of the Act that relate to biodiversity certification to be repealed, and the Department of Primary Industries to review the operation of the threatened species provisions to develop detailed proposals to ensure aquatic biodiversity values are maintained or improved in consultation with stakeholders in 2011/12.

6.8 Cross–Jurisdictional Issues – Managing Australia's Fisheries

The Commonwealth, states and territories have agreed that a regulatory framework for aquaculture in Commonwealth waters should be developed to allow for the expansion of this sector of the industry. In 2005 the Australian Fisheries Management Forum gave in-principle support for the state and Northern Territory governments to regulate aquaculture in Commonwealth waters.

It is likely that the Commonwealth *Fisheries Management Act 1991* will be amended to allow relevant state and territory legislation dealing with aquaculture to apply in Commonwealth waters. Amendments may also be required to state legislation to clarify jurisdiction issues. This approach means states will be able to utilise their existing regulation, licensing, permitting and compliance arrangements. The Discussion Paper sought comment on this proposal.

One submission recommended that if the states are allowed to regulate aquaculture in Commonwealth waters, state provisions must comply with relevant environmental protection provisions under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*. It was also suggested that provisions to regulate aquaculture in Commonwealth waters should ensure that the community has standing to challenge relevant approvals if it wishes to do so.

The NSW Government and all other states and the Northern Territories still support the agreed approach to allow them to regulate aquaculture in Commonwealth waters. However, it will not be clear what, if any, amendments are required to the Act until the Commonwealth's plan for implementation is known.

6.9 Administration

Part 8 of the Act contains general administrative powers, including provisions for the establishment of Ministerial Advisory Councils, management advisory committees and special fisheries trusts.

Division 2 of Part 8 allows the Minister to establish advisory councils for the commercial, recreational, Aboriginal, research and aquaculture sectors of the fishing industry. It also allows the Minister to establish management advisory committees for share management fisheries or restricted fisheries. Advisory councils are considered the peak Ministerial bodies providing strategic advice, while management advisory committees are fisheries-specific and focus on issues at a fisheries level.

Advisory bodies are put in place to ensure that all user groups have an opportunity to provide input into the management of the fisheries resource. The role of advisory bodies is generally to provide objective and expert opinion to Government on the development and implementation of fisheries policy.

There are currently 20 fisheries-related advisory bodies in NSW which advise the Minister on everything from expenditure from statutory fishing trusts to fisheries management and research priorities. Many of these advisory bodies were established 10 or more years ago. Since that time there have been significant changes to management priorities and regulatory requirements.

The Discussion Paper sought comments on Issue 1 below. Issue 2 has arisen from suggestions made in submissions.

Issue 1: Improve the operation and administration of advisory bodies, especially ACoRF

A number of submissions recommended that the Advisory Council on Recreational Fishing (ACoRF) should be reformed and several submissions pointed to changes applicable more broadly to all advisory bodies under the Act. In this regard, it should be noted that the provisions relating to advisory bodies, including the election of members, are found in the regulations as well as in the Act.

Specific suggestions included:

- Members of ACoRF should be voted into position and not appointed by the Minister or by peak bodies
- The chair and deputy chair of ACoRF should be elected by the members, rather than appointed by the Minister
- ACoRF and the licence trust expenditure committees should be able to own and exercise effective control over property purchased out of licence funds
- Conservation interests should be better represented on management advisory committees, for example by non-Government organisations or community members with appropriate expertise
- The Fisheries Scientific Committee and management advisory committees should be required to report regularly to ACoRF to inform anglers of proposals to close or restrict fisheries
- Minutes and reports from Ministerial Advisory Councils and management advisory committees should be made publicly available within a reasonable time after meetings
- Commercial fishing delegates to management advisory committees should be paid a reasonable allowance for attendance at meetings and out of pocket expenses, instead of the current discretionary arrangements
- The process for replacing a member of a management advisory committee who resigns mid-term should be simplified

The NSW Legislative Council's Select Committee on Recreational Fishing in NSW examined the role and function of ACoRF. The Select Committee recommended that Industry & Investment NSW undertake a review, including any legislative constraints, of the structure, membership and operation of ACoRF. The issues raised in submissions in relation to ACoRF will be considered as part of that review, which will now be undertaken by the Department of Primary Industries.

All existing advisory arrangements are currently under review, with the intention of creating a joint recreational and commercial fishing advisory council. This proposal will need to align with recommendations made by the Select Committee, and take into consideration submissions made to the Discussion Paper.

Issue 2: Establishment of special levies

Some submissions suggested that levies be paid by commercial fishers and aquaculture enterprises to provide funds for community or environmental benefit.

Specific suggestions were to:

- Establish a new organisation for commercial fishers, funded by the fees currently paid by commercial fishers, with the funds to be used to benefit fishing communities
- Introduce a new community benefit levy on commercial fishers, with the funds to be used for the fisheries resource, and then for fishing communities
- Introduce an environmental/conservation levy be collected from commercial fishers, to be paid into a specially designated account within the Commercial Fishing Trust Fund and used for conservation and environmental activities.
- Introduce a community benefit levy, to be paid by aquaculture industries

A common theme underpinning these submissions is that fees paid by fishers should not form part of consolidated revenue but should be used to benefit fishing communities or the environment.

An independent review of the administration of commercial fishing is to be undertaken with a view to devolving various responsibilities to industry over time. In any such move matters of governance will need to be established and the possibility of establishing an industry organisation (operating with the support of industry) could also be considered.

Appropriate cost recovery and allocation of funds for administration of the industry, and any associated management of the resource for the benefit of industry and others would also be considered as part of the review.

The call for community benefit levies for aquaculture industries is relevant only for water-based aquaculture that uses public water land. This industry already pays an annual lease rental to the Government for the right to use public water and additional community benefit levies can not be justified. In addition to lease rental, the industry contributes to research, estuarine water quality monitoring and water quality improvement programs. These programs benefit both industry and the community.

6.10 Enforcement

Part 9 of the Act dealing with enforcement and compliance was extensively amended by the *Fisheries Management Amendment Act 2009*. These amendments implemented recommendations from a review of illegal fishing conducted by Mr Mick Palmer. The review report, *Report on Illegal Fishing for Commercial Gain or Profit in NSW*, is commonly referred to as *The Palmer Report*.

Specifically, the *Fisheries Management Amendment Act 2009*:

- increased the range and severity of penalties for serious fisheries offences to help reduce the black market sale of fish;

- establish higher penalties for second or subsequent offences and for certain offences committed in circumstances of aggravation;
- strengthened existing inspection and compliance powers by including broader powers to seize boats and illegal fishing gear;
- increased the monetary jurisdiction limits of local courts to enable them to deal with most fisheries offences;
- improved efficiency and operation of the aquaculture and aquatic habitat provisions of the Act; and
- strengthened enforcement provisions for threatened species.

It is acknowledged that enforcement provisions need to be subject to ongoing review. For example, some of the enforcement provisions in the Act are being examined in the context of a broader review of the Department's biosecurity legislation.

The following issues were identified from the submissions:

Issue 1: Introduction of a new offence to prevent harassment of fishers

A number of submissions called for a new offence to be included in the Act to deal with general harassment and bad behaviour directed towards law-abiding fishers. However, it is considered that issues such as harassment are matters to be dealt with by the Police under the criminal law, rather than by Fisheries Officers. Therefore the proposal to create a new offence under the Act is not supported.

Issue 2: Increased resources for enforcement

Some submissions identified a lack of resources for compliance, and suggested that certain compliance powers under the Act could also be vested in officers of other bodies such as NSW Waterways and NSW Maritime, and vice versa.

Examples given include powers currently only exercisable by fisheries officers such as inspection powers for fishing fee receipts and bag limit violations, and powers only exercisable by NSW Waterways officers such as powers in relation to licence presentation, safety compliance and general boat navigation offences.

It is considered that there may be cost benefits of cross-agency sharing of compliance powers. Preliminary discussions have been held with NSW Maritime to explore this issue, and the matter will be progressed through further discussions.

Issue 3: Stronger enforcement provisions

Some submissions called for further increases in penalties, over and above the recent increases introduced by the *Fisheries Management Amendment Act 2009*, and for the naming and shaming of all offenders, regardless of the level of offence. Other suggestions included increased surveillance and enforcement, and increasing public awareness of the impacts arising from biosecurity breaches, and removing or damaging critical habitat.

It is considered that the penalty increases resulting from the 2009 amendments are appropriate, as well as being in line with penalty levels in legislation in other states. As regards naming and shaming, the media regularly reports convictions for significant offences under the Act. However, the possibility of expanding naming and shaming provisions is currently under consideration.

7. Summary of recommendations

Recreational fishing

1. The Advisory Council on Recreational Fishing be asked to consider all aspects of the proposal to introduce a third party insurance scheme for recreational fishers accessing private property with landholder approval.

Commercial fishing

2. The Department of Primary Industries to seek advice from Parliamentary Counsel on moving the detailed provisions in Part 3 relating to Commercial Share Management Fisheries from the Act to the regulations

Fisheries conservation and aquatic habitat protection

3. The Department of Primary Industries to consider the provisions relating to the protection of aquatic habitat and develop detailed proposals to improve the focus on key fish habitat protection and key ecological functions for consultation with stakeholders in 2011/12.

4. The Department of Primary Industries to review the Habitat Protection Plan provisions in the light of issues raised in submissions, and develop detailed proposals for consultation with stakeholders in 2011/12.

5. The Department of Primary Industries to review the provisions for aquatic reserves and develop detailed proposals for consultation with stakeholders in 2012/13.

Biosecurity

6. The Department of Primary Industries to progress amendments to Part 7, Divisions 6 and 7 in 2011.

Threatened species conservation

7. The Department of Primary Industries to review options to improve the threatened species nomination process to avoid any potential for conflicts of interest, and present detailed proposals for consultation with stakeholders in 2011/12.

8. The Department of Primary Industries to consider the proposals relating to critical habitat provisions, recovery and threat abatement plans and Priorities Action Statements and develop detailed proposals for consultation in 2011/12.

9. The Department of Primary Industries to review the operation of the Ministerial order provisions (including interim orders) in Division 6 and develop detailed proposals for consultation in 2011/12.

10. Divisions 10 and 11 of the Act that relate to biodiversity certification to be repealed, and the Department of Primary Industries to review the operation of the threatened species provisions to develop detailed proposals to ensure aquatic biodiversity values are maintained or improved in consultation with stakeholders in 2011/12.

APPENDIX A – Stakeholders contacted

- Seafood Industry Advisory Council, representing the commercial fishing industry;
- Advisory Council on Recreational Fishing, representing recreational fishing stakeholders;
- Marine and Estuarine Recreational Charter Management Advisory Committee, representing charter boat operators;
- Peak Oyster Advisory Group, representing the aquaculture industry;
- Commercial Fishery Management Advisory Committees;
- NSW Aboriginal Land Council and NTSCORP, representing Aboriginal cultural fishing stakeholders; and
- Nature Conservation Council, representing conservation groups.

APPENDIX B – Submissions received

- Australian National Sportfishing Association Ltd
- Central Acclimatisation Society
- Environmental Defender's Office Ltd
- Hawkesbury Estuary Prawn Trawl Management Advisory Committee
- Monaro Acclimatisation Society Inc
- Nature Conservation Council of NSW
- NSW Council of Freshwater Anglers Inc
- NSW Seafood Industry Council
- Professional Fishermen's Association
- The Recreational Fishing Alliance of NSW
- Roads and Traffic Authority
- Southern Rivers Catchment Management Authority
- Women's Industry Network Seafood Community
- 3 submissions from private individuals