

Fisheries Management Amendment Bill 2015

Summary of proposed changes to the Fisheries Management Act 1994

October 2015

Important changes to improve the management of the State's fisheries resources have been introduced into NSW Parliament, under the Fisheries Management Amendment Bill 2015. These changes will provide benefits to the commercial, recreational, charter boat and Aboriginal fishing sectors as well as improve aquatic habitat protection and strengthen biosecurity measures.

Changes following recent consultation

A number of changes have been made to the Fisheries Management Amendment Bill 2015 following the consultation process earlier this year. These changes are:

- Removing the proposed boat limit provisions which would have enabled bag limits to be applied on a per boat basis;
- Providing that boats used for commercial fishing activities (whether or not subject to licence requirements under the Act) will need to display markings so they can be identified as commercial fishing boats;
- Expanding Aboriginal Fishing Trust expenditure provisions to include expenditure on economic development opportunities for Aboriginal communities in relation to fishing or fishing related activities; and
- Removing the term 'ecotourism activity' related to manually operated charter boats and replacing it with the term 'guided non-motorised activity'.

Overview of bill provisions

Bill provision	What the amendment does
Shark finning	<ul style="list-style-type: none"> • The proposed amendment prohibits shark finning on board boats under the Act instead of by a fishing closure which must be renewed every 5 years.
Electronic transactions	<ul style="list-style-type: none"> • Will provide for the full use of the FishOnline system by commercial and charter fishers.
Real time reporting	<ul style="list-style-type: none"> • In some commercial fisheries, fishers will be able to relay via electronic means, in real time, details of when and where fishing activities are proposed, as well as estimating and confirming catches at the conclusion of fishing.
Reissue and sale of surrendered / forfeited commercial fishery shares	<ul style="list-style-type: none"> • Removes the obligation for the Minister to sell surrendered shares if requested to do so. • The Minister has the options of retaining, reissuing, cancelling or selling surrendered or forfeited shares.
Shareholder supported redefinition proposals and issue of new share classes	<ul style="list-style-type: none"> • Provides for the redefinition of a commercial share management fishery without triggering compensation provisions – subject to majority support from affected shareholders. • Simplifies provisions for issuing additional share classes in an existing share management fishery by removing the requirement for 'catch history' to be recognised and removing provisions that apply to the issue of shares in a newly created fishery.
Minimum (commercial fishery)	<ul style="list-style-type: none"> • Removes the mandatory requirement to fix a minimum

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shareholdings	<ul style="list-style-type: none"> shareholding in regulation for each and every share class. A minimum shareholding may still be fixed in regulation if needed.
Maximum (commercial fishery) shareholdings	<ul style="list-style-type: none"> Removes the default maximum shareholding of 5% from the Act. Provides for the regulation to fix a maximum shareholding if needed, and to fix a maximum shareholding for each share class.
Special endorsements	<ul style="list-style-type: none"> Special endorsements are reserved for 'developmental fishing' in commercial share management fisheries. The proposed change removes the current maximum six month duration for which a special endorsement may be issued and provides for special endorsement eligibility criteria to be included in regulation.
Removing category two share management provisions	<ul style="list-style-type: none"> Removes unused category two commercial fishery share management provisions.
Fishing closures to prevail over commercial fishery share management plans	<ul style="list-style-type: none"> Enables fishing closures to prevail over share management plans, whether or not in response to an 'environmental emergency' or approved by the Governor.
Forfeiting quota – debt management	<ul style="list-style-type: none"> Provides for the forfeiture of quota where commercial fisheries fees, charges or contributions required under the Act have not been paid.
Transferring quota	<ul style="list-style-type: none"> Provides for the regulation to permit quota transfers between different commercial fisheries. Provides for the regulation to specify whether any limits apply to quota transfers.
Commercial fishing boat licences	<ul style="list-style-type: none"> Relaxes the requirement for all boats used for commercial fishing to be licensed under the Act. The regulation will specify which fishing activities will require a fishing boat licence. Boats used for commercial fishing activities (whether or not subject to licence requirements) will need to display identifying markings as specified in regulation.
Fishing determinations	<ul style="list-style-type: none"> Builds on existing commercial catch and fishing effort determination provisions so catch or effort can be determined for any sector, including on the basis of species, commercial fishery share class, fishing method, class of persons, area or time period. Determinations may be made by the Total Allowable Fishing (TAF) Committee or the Secretary of the Department. If the determination is required by the regulations it is generally made by the TAF Committee. The Minister may direct the Secretary to make a determination required by the regulations only if there is a relevant, robust and sufficiently recent scientific assessment, and, requiring the TAF Committee to make the determination would involve unnecessary duplication.
Allocating fishing determinations	<ul style="list-style-type: none"> Determinations may be allocated to any stakeholder groups – not just commercial fishers. Allocations may be made in full, part or not at all. The regulations (or the Minister subject to the regulations) may determine the manner in which quota is allocated.
Consultation requirements for share management plan amendments	<ul style="list-style-type: none"> Addresses ambiguity in the Act to clarify that public consultation is not mandatory in relation to amending an existing fishery management plan or supporting plan.
Scientific observer program	<ul style="list-style-type: none"> Allows the Minister to establish a scientific observer program to collect information about commercial and charter fishing activities.
Advisory groups	<ul style="list-style-type: none"> Enables the Secretary of the department to establish advisory groups that will report to the department. The Secretary may determine membership, functions, and subject to the regulations the term of office and procedure of an advisory

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Possession limit orders	<p>group.</p> <ul style="list-style-type: none"> Allows the Minister to implement possession limits (bag limits) by the making of a Ministerial order. Possession limit orders, like fishing closures, provide for rapid implementation if needed and are subject to a maximum duration of five years.
Fishing closures – urgent amendment and revocation	<ul style="list-style-type: none"> Complements existing provisions for urgently implementing a fishing closure, with provisions to urgently amend or revoke a fishing closure.
Permits – authorising groups	<ul style="list-style-type: none"> Expands existing section 37 permit provisions so the Minister may make an order authorising groups of people to undertake activities that are otherwise unlawful under the Act.
Permits - fees	<ul style="list-style-type: none"> Clarifies that the regulation may make provision for the payment of fees to cover section 37 permit related costs such as; monitoring, management, compliance and research.
New charter fishing licence framework	<ul style="list-style-type: none"> Replaces charter fishing boat licences with the concept of a charter fishing business. The licence will no longer link with the physical boat, enabling the use of different boats and removing the need for boat replacement transactions. The regulations will be able to provide for the trading of seats (representing the number of fishers authorised under the business and the permitted fishing activities) between charter fishing businesses, allowing charter operators to easily adjust their businesses. Guided non-motorised activities are being recognised, providing for the use of multiple kayaks or canoes under the one business.
Aboriginal fishing trust fund	<ul style="list-style-type: none"> Establishes a dedicated accounting mechanism for incoming funds and expenditure associated with enhancing Aboriginal cultural fishing. Targeted consultation has resulted in this provision being further expanded so funds may also be used for fishing or fishing related economic development opportunities for Aboriginal communities.
Biosecurity – importation orders	<ul style="list-style-type: none"> Enables the Minister to make orders that prohibit, or impose conditions on the entry or importation into NSW of any thing that is, or could be a declared disease.
Biosecurity – live abalone holding facilities	<ul style="list-style-type: none"> Enables the Minister to make an order requiring the owner / occupier of a live abalone holding facility to implement specified measures in relation to the management of waste water or other waste products of a live abalone holding facility.
Noxious fish – seizure and destruction for identification	<ul style="list-style-type: none"> Enables fisheries officers to seize, or seize and destroy suspected noxious fish or marine vegetation to determine if they are in fact noxious. Compensation is payable if the relevant fish or marine vegetation are determined not to be noxious.
Noxious fish – offence for non-compliance with notice to destroy	<ul style="list-style-type: none"> Provides an offence for a person who without reasonable excuse fails to comply with a notice to destroy noxious fish or marine vegetation.
Remediation orders – offence for non-compliance	<ul style="list-style-type: none"> Provides an offence for a local government authority or a person who without reasonable excuse fails to comply with a remediation order issued in respect of dredging or reclamation works carried out in contravention of the Act.
Remediation orders – orders made by a court	<ul style="list-style-type: none"> Enables a court to make a remediation order in respect of dredging or reclamation works carried out in contravention of the Act, even if the court makes an order under section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i>.
Consultation timeframe – dredging and	<ul style="list-style-type: none"> At present a public authority must notify the Minister of proposed

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reclamation works proposed by a public authority	<p>dredging or reclamation works, and then consider any matters raised by the Minister within 28 days.</p> <ul style="list-style-type: none"> The 28 day period is being reduced to 21 days to align with consultation requirements in the <i>State Environmental Planning Policy (Infrastructure) 2007</i>.
Protection of mangroves and certain other marine vegetation – protected area definition	<ul style="list-style-type: none"> The existing definition of ‘protected area’ relies on provisions within the Act and a separate Ministerial Order gazetted in 2011. The amendment incorporates the provisions of the Ministerial Order within the Act, thereby simplifying the legislation.
Threatened species conservation – preparation of recovery plans	<ul style="list-style-type: none"> Provides that the Secretary may prepare a recovery plan for each <u>critically</u> endangered ecological community. Existing provisions only enable the Secretary of the Department to prepare recovery plans for endangered or critically endangered species, endangered populations, endangered ecological communities, and for vulnerable species.
Threatened species conservation – defence to a prosecution	<ul style="list-style-type: none"> The amendment provides a defence to a prosecution for certain threatened species related offences including harming a threatened species. Specifically the defence is a certificate issued by the Secretary of the Department under section 220ZZ(4) of the Act. Such a certificate is issued if the Secretary determines that a licence under Part 7A of the Act is not required because the action proposed is not likely to significantly affect threatened species, populations or ecological communities or their habitats.

More information

For further information on the proposed legislative changes, please refer to the Fisheries Management Amendment Bill available via the Department’s website at www.dpi.nsw.gov.au/fisheries

For more information or to request a printed copy of this paper, please phone Jason Gibson, Senior Project Officer on (02) 9741 4769.

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