



I&I NSW

Fisheries, Compliance and Regional Relations Division

Guidelines for Environmental Assessment of Fishing Related Activities

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Industry &
Investment

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1. Introduction

Industry and Investment NSW (“I&I NSW”) is responsible for issuing permits under section 37 of the *Fisheries Management Act 1994* (“the Act”).

As part of this role, I&I NSW has a statutory responsibility under Section 111 of the *Environmental Planning and Assessment Act 1979* (“the EPA Act”) to assess the environmental impacts of activities authorised by permits. To assess these impacts, I&I NSW requires the applicant for the permit to prepare an environmental assessment.

These Guidelines have been developed to assist when applying for a section 37 permit, to determine if an environmental assessment is required and to guide the preparation of an environmental assessment where necessary.

1.1. What is a permit?

Permits may be issued under section 37 and section 37A of the Act. Section 37 permits authorise activities related to taking and possessing fish or marine vegetation that would otherwise be unlawful. Section 37A permits authorise the sale of fish for charitable purposes, including taking and possessing the fish.

1.2. What is an environmental assessment?

An environmental assessment is an assessment of the possible impacts (positive or negative) that an activity may have on the environment. The environmental assessment process provides a means whereby:

- the proponent of an activity (such as collecting fish for your home aquarium) considers the potential environmental impacts of a proposed activity, and develops measures to ensure the activity avoids or minimises environmental impacts if the activity is carried out; and
- determining authorities such as I&I NSW may decide whether an activity should be approved, taking into account, to the fullest extent possible, all matters likely to affect the environment.

1.3. Contacting I&I NSW

For enquiries concerning permits and environmental assessments for fishing related activities please contact, David Chalmers on 02 8437 4975 or by email david.chalmers@industry.nsw.gov.au.

Typical enquiries that I&I NSW will be able to assist you with include:

- how do I apply for a permit for a proposed activity?
- is the proposed activity subject to Part 5 of the EPA Act and is an environmental assessment required?
- has the proposed activity previously been environmentally assessed (in which case a further assessment may not be required)?
- if an environmental assessment is required for a proposed activity, what type or level of assessment is required?

2. What activities do these guidelines apply to?

These guidelines apply to all fisheries related activities other than:

- dredging; reclamation; harm marine vegetation; sale or possession of noxious fish or marine vegetation; release or importation of live fish; and blocking of fish passage under Part 7 (Protection of Aquatic Habitats) of the Act;
- harming threatened species, populations or ecological communities; buying, selling or possessing threatened species; damage to critical habitat and damage to habitat of threatened species, populations or ecological communities under Part 7A (Threatened Species Conservation) of the Act;
- use of explosives to take fish under Part 2 of the Act;
- aquaculture activities under Part 6 of the Act.

I&I NSW may also determine at any time that these guidelines apply to other fishing related activities approved by I&I NSW (via permit or otherwise).

Examples of fisheries related activities that these guidelines apply to include:

- use of non-prescribed fishing gear;
- use of prescribed fishing gear requiring permit (e.g. electrical devices);
- using fishing gear in closed waters, aquatic reserves or marine parks;
- taking species of fish that would otherwise be unlawful to take;
- taking fish in excess of bag limits;
- gathering marine vegetation for commercial purposes, etc;
- taking and possessing fish for charity auctions

whether related to commercial fishing, recreational fishing, indigenous cultural events, aquarium collection, research or otherwise.

If unsure whether a proposed fishing related activity is subject to these guidelines or requires an environmental assessment please contact I&I NSW.

3. Applying for a permit

3.1. What activities must be covered by a permit?

A permit is required for any activity that involves taking or possessing fish or marine vegetation that would otherwise be unlawful under the Act or subordinate legislation. If unsure whether a permit is required for a proposed activity please contact I&I NSW.

Permits are also required for certain activities in Marine Parks. If unsure whether a permit is required for a proposed activity in a marine park please contact the Marine Park Authority on 1300 361 967.

3.2. How do I apply for a permit from I&I NSW?

An application form for a permit can be found on the I&I NSW website or by contacting I&I NSW. Application forms must be completed in full and accompanied by:

- the relevant permit application fee;
- a relevant environmental assessment, if required;

Permits issued under section 37A of the Act for the taking, possession and sale of fish by auction for charitable purposes may be issued to an individual or an incorporated body (i.e. company, incorporated association). All other permits may only be issued to individuals.

I&I NSW may make written requests for further information to support an application for a permit. Such requests will normally be made within 21 days of receipt of the deficient application.

The issue of a permit may be refused in certain circumstances.

3.3. Application fee for permits

The permit application fee covers the costs incurred by I&I NSW to prepare and issue a permit. I&I NSW will not prepare or issue a permit until the application fees for the permit, and environmental assessment where relevant, is paid.

4. Types of environmental assessment

Part 5 of the EPA Act provides the framework for the environmental assessment of fishing activities. The EPA Act divides fishing related activities into three categories for the purpose of assessment: (i) designated fishing activities, (ii) non-designated fishing activities, and (iii) activities.

Designated fishing activities currently include each of the share management fisheries included in Schedule 1 of the Act, and fish stocking in Schedule 1A of the Act. The process of environmental assessment of designated fishing activities involves the mandatory preparation of a Fishery Management Strategy and full Environmental Impact Statement in accordance with Div. 5 of Part 5 of the EPA Act.

Non-designated fishing activities and activities (as referred to in section 111 of the EPA Act) are those activities which have not been formally designated and, due to their nature and the way they are managed, become subject to environmental assessment under the general provisions (Div. 1 – 3) of Part 5 of the EPA Act. Section 37 permits are primarily related to those non-designated fishing activities.

There are three types or levels of environmental assessment under these provisions that may be relevant to a proposed activity:

- a Review of Environmental Factors;
- an Environmental Impact Statement; and
- a Species Impact Statement.

These are explained in greater detail below.

4.1. What is a Review of Environmental Factors?

To assess the likely impacts of a fishing related activity I&I NSW will in the first instance require a Review of Environmental Factors (“REF”) to be prepared. A REF is the most basic form of environmental assessment.

The REF is prepared by the permit applicant and submitted to I&I NSW for review. The REF will be used by I&I NSW to make an assessment of the likely environmental impacts of the activity and to determine whether the activity:

- should be approved or refused;
- should be approved with modifications or conditions;
- is likely to have a significant impact on the environment, in which case an Environmental Impact Statement (“EIS”) is required; or
- will significantly affect threatened species, populations, ecological communities, or critical habitat, in which case a Species Impact Statement (“SIS”) is required.

A REF should be sufficiently detailed to enable I&I NSW to examine and take into account to the fullest possible extent all matters affecting or likely to affect the environment by reason of the proposed activity.

4.2. What is an Environmental Impact Statement?

An Environmental Impact Statement (“EIS”) will be required for activities which are determined by I&I NSW to be likely to significantly affect the environment.

An EIS is prepared to provide a thorough public examination of a proposed activity that is likely to have a significant impact on the environment, and to form the basis for a decision on whether that activity should proceed. The form, content and process for preparing and exhibiting an EIS are stated specifically in the EPA Act and must be followed.

Upon reviewing a REF, I&I NSW will inform you if an EIS must be prepared.

4.3. What is a Species Impact Statement

If an activity is likely to have a significant impact on threatened species, populations, or ecological communities, a Species Impact Statement (“SIS”) is required.

A SIS is also required for any activity that is proposed to take place in a critical habitat for a threatened species or ecological community.

The form and content of a Species Impact Statements is detailed in the Threatened Species Conservation Act 1995 (Part 6) and in respect of fish the Fisheries Management Act 1994 (Part 7A).

Upon reviewing a REF, I&I NSW will inform you if an SIS must be prepared (either as a stand alone assessment or in connection with an EIS).

5. Preparing and submitting an environmental assessment

5.1. Is an environmental assessment required?

Environmental assessment will not be required if the activity falls outside the scope of Part 5 of the EPA Act.

Environmental assessment will also not be required if the activity has previously been environmentally assessed. I&I NSW has prepared and/or approved the following environmental assessments:

- EIS for the Estuary General commercial fishery;
- EIS for the Estuary Prawn Trawl commercial fishery;
- EIS for the Ocean Hauling commercial fishery;
- EIS for the Ocean Trap and Line commercial fishery;
- EIS for the Ocean Trawl commercial fishery;
- EIS for the Lobster commercial fishery;
- EIS for the Abalone commercial fishery;
- EIS for freshwater fish stocking;
- EIS for marine fish stocking (in progress);
- EIS for the NSW Shark Meshing (Bather Protection) program (in progress);
- REF for the Sea Urchin and Turban Shell commercial fishery;
- REF for marine vegetation gathering for commercial purposes;
- REF for removal of fish from drying inland lakes;
- NSW Land Based Sustainable Aquaculture Strategy.
- REF for Fish Aggregating Devices (FADs)
- REF for the Inland Restricted Fishery

Notwithstanding this, further environmental assessment and application of Part 5 of the EPA Act is required for designated fishing activities if fisheries approvals are not granted or renewed in accordance with approved fisheries management strategies.

Prior to preparing an REF, EIS or SIS (or applying for issue of a permit) you should contact I&I NSW to confirm whether an environmental assessment is required for the proposed activity.

5.2. Who prepares an environmental assessment?

Environmental assessments are generally prepared by the proponent of an activity (i.e. the applicant for the permit). Alternatively, another person may prepare the environmental assessment on behalf of a proponent.

5.3. When do I submit the environmental assessment?

An environmental assessment is generally submitted upon application for a permit (or approval) to undertake an activity.

The environmental assessment should be submitted in advance of when an activity is proposed to allow time for the environmental assessment to be considered, a determination made, approval granted, and a permit to be issued.

6. General guidelines to assist in preparation of a REF

6.1. REF pro-forma & relationship to these guidelines

I&I NSW has prepared a REF pro-forma that may be completed and submitted as a REF for activities within the scope of these guidelines (see Part 2). The REF pro-forma can be found on the I&I NSW website or by contacting I&I NSW.

These guidelines will assist you complete the REF pro-forma or alternatively prepare a stand alone REF where necessary. To assist you complete the REF pro-forma, the REF pro-forma includes references to relevant parts of this document for further information.

6.2. What level of detail should be included?

The comprehensiveness or complexity of an environmental assessment, whether in the form of a REF, an EIS or a SIS, should correspond to the complexity and the likely environmental impacts of the proposed activity.

An environmental assessment should also be sufficiently detailed to enable I&I NSW to examine and take into account to the fullest extent possible all matter affecting or likely to affect the environment by reason of the activity.

The following general guidelines are also provided:

- address relevant issues as completely as possible;
- minimal detail is required on issues of marginal relevance;
- where an issue is not applicable, the reason for this should be stated;
- a REF is generally not as detailed as an EIS or SIS.

6.3. Evaluating the risk of environmental impacts

A critical component of an environmental assessment is the process of determining the level of risk that a proposed activity may have on the environment, or a component of the environment.

Evaluating risk can be a subjective exercise. For example, the death of one whale may be perceived by one person to be a significant consequence for the environment whereas another person may consider it to be non-consequential.

The REF pro-forma requires risks to be evaluated in terms of high, moderate, low or nil.

There are various methodologies available to evaluate risk. For the purpose of preparing a REF for fishing related activities the following methodology will assist.

Fundamental to the vast majority of risk assessment methodologies is the following concept:

Level of risk of impact = probability X consequence

“Probability” is generally considered in terms of the likelihood or probability of the interaction or incident in question occurring. Factors influencing the probability of an incident occurring can include, for example:

- how many times you propose to conduct the activity;
- how long you propose to conduct the activity for on each occasion;
- on how many of those occasions the subject impact will occur.

For example, if you propose to conduct a fishing activity for 40 consecutive days, for 12 hours each day in eastern freshwater cod territory, then the likelihood of interacting with an eastern freshwater cod is likely to be high.

“Consequence” is generally considered in terms of the potential affect (positive or negative) of the interaction. Factors influencing the consequence of an interaction can include, for example:

- the size, scope and intensity of the activity (fishing line vs explosives);
- how resilient the species/environment in question is;
- status of the species/population in question (abundant vs endangered).

For example, if you propose to use a prawn scoop net (as opposed to explosives), the consequence of an interaction with an eastern freshwater cod would be negligible despite the fact that the species is listed as endangered.

Using the basic risk assessment matrix below, the high likelihood of interacting with an eastern freshwater cod coupled with the negligible consequences of any such interaction means that fishing with a prawn scoop net in eastern freshwater territory is expected to be low risk to the eastern freshwater cod population.

Basic Risk Assessment Matrix

		Consequence			
		Negligible	Low	Moderate	High
Probability	Nil	Nil	Nil	Nil	Nil
	Low	Nil	Low	Low	Moderate
	Moderate	Low	Low	Moderate	High
	High	Low	Moderate	High	High

When considering the concepts of ‘probability’, ‘consequence’ and ‘risk’, consider extreme examples to assist put these factors into perspective.

7. Content requirements for a REF

The following guidelines will assist you prepare a REF, whether in the form of a 'stand alone REF' or if using the REF pro-forma.

7.1. Proponents details

The REF must contain the name, address and contact details of the person proposing to conduct the activity (address, phone numbers and fax number).

If the person conducting the activity is affiliated with an association or the activity is to be conducted for or on behalf of an association, that association should also be identified.

7.2. Description of proposed activity

The REF must contain sufficient information to accurately explain the proposed activity in full, including where relevant diagrams, photos, and or detailed descriptions of particular aspects of the activity.

The following will assist you identify important components of the activity, for the purpose of explaining the activity to I&I NSW and to assist you identify and evaluate the risks associated with the activity.

7.2.1. The proposed activity

The REF must contain a description for the proposed activity for which a permit (or I&I NSW approval) is required. For example:

- use a fyke net (i.e. non-prescribed fishing gear);
- use a meshing net in Botany Bay (i.e. waters closed to meshing nets);
- take or harm threatened or protected species of fish;
- take prohibited size fish;
- exceed bag limit for pipis;
- take and sell fish for charitable purposes;
- gather marine vegetation, etc;

The description of the activity should focus on that aspect of the activity that would otherwise be unlawful (and for which a permit or approval is required).

This 'short' description of the activity will also assist you accurately identify and evaluate the risks associated with the activity, as opposed to risks associated with other activities that are ancillary to (occurring in connection with) the proposed activity. For example; if the activity proposed involves use of a fyke net, it is the impacts directly associated with using the fyke net that need to be identified and evaluated as opposed to impacts associated with other actions taking place in connection with use of the fyke net (e.g. using a boat or landing net).

7.2.2. Duration of activity

The REF must identify the overall duration during which the activity is proposed to occur. For example, some activities may be proposed to occur over a single weekend whereas others may be proposed to occur over longer periods. Where possible identify the duration with dates (e.g. 1 January 2012 to 1 January 2013).

The duration of the activity is important to acknowledge when identifying (and evaluating) the potential risks associated with the activity.

7.2.3. Intensity of activity

The REF must identify, as far as practicable, the number of occasions the activity is proposed to occur. For example, some activities may be proposed to occur on few days (e.g. 20 days) over a 12 months period whereas others may be proposed to occur daily.

Where practicable, identify the dates that the activity is proposed to occur. Otherwise use general descriptions such as 'intermittently' etc.

The number of occasions the activity is proposed to occur is important to acknowledge when evaluating the potential risks associated with the activity.

7.2.4. Purpose of activity

The REF must contain a short description for the purpose of the proposed activity. For example: research, aquaculture, aquarium collection, testing new gear, re-locating fish, commercial purposes, charitable purposes, indigenous cultural event, education etc.

7.2.5. Justification for the activity

The REF must contain justification for the proposed activity in terms of environmental, economic and social considerations. For example, the proposed activity may be essential to further knowledge on the status of a commercially important species of fish.

The REF should also discuss feasible alternatives to the proposed activity, the reason for the preferred approach, and the consequences of not carrying out the proposed activity.

Providing justification for an activity, advice on your consideration of alternatives and the consequences of not carrying out a proposed activity is particularly important if environmental impacts are identified and modifications or alternative approaches need to be negotiated between the proponent and I&I NSW.

7.2.6. Measures to minimise impacts

The REF must identify measures proposed to be adopted to prevent or minimise potential impacts. For example, if it is known that critical habitat for the grey nurse shark is located in the waters or vicinity of where an activity is proposed to occur, measures such as staying a minimum distance away from

the critical habitat or modifying fishing gear may be feasible ways to mitigate any potential impacts.

It is important to recognise that a fundamental concept of the process of environmental assessment is the ongoing development of strategies and modification of an activity to mitigate impacts that are identified during the environmental assessment process.

7.3. Site identification

The REF must contain both map(s) and description of the waters or environment in which the activity is proposed to be carried out.

In particular the REF must identify the river, creek, lake or site etc where the activity is proposed to occur. Maps must be location specific and identify the waters or site where an activity is proposed to take place.

The REF must also identify:

- other major activities taking place, or expected to take place, in the area where the activity is proposed to occur (e.g. popular skiing area, heavily used by commercial fishers, high level of recreational boating activity etc);
 - any environmentally sensitive areas in the area where the activity is proposed to occur; and;
 - whether the waters (or site) where the activity is proposed to occur are, in part or in full:
 - in a Marine Park;
 - in an Aquatic Reserve;
 - closed to the proposed activity;
 - in an important commercial fishing area;
 - in an important aquaculture area;
- and, as required by section 111 of the EPA Act:
- subject to a land conservation agreement;
 - subject to a wilderness protection agreement.

With respect to the above that are relevant to the proposed activity, the REF must identify:

- any potential environmental, social or economic issues that may arise as a result of the activity taking place, and;
- whether the activity is consistent (or not) with any management plans, plans of management, zoning arrangement or similar that may apply to the waters (or site).

The REF should also examine whether the not the activity is incompatible with any relevant State or local planning instruments.

Through thorough examination of the environment in which the activity is proposed to occur, potential environmental, social and economic impacts can be identified.

Appendix A contains a list of useful references to help you identify if the waters (or site) fall into the above categories or subject to a management plan, plan of management, zoning arrangements or similar.

7.4. Evaluation of risk of potential impacts

The following factors need to be addressed in any environmental assessment under Part 5 of the EPA act:

- (a) any environmental impact on a community,
- (b) any transformation of a locality,
- (c) any environmental impact on the ecosystems of the locality,
- (d) any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,
- (e) any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,
- (f) any impact on the habitat of protected fauna (within the meaning of the *National Parks and Wildlife Act 1974*),
- (g) any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air,
- (h) any long-term effects on the environment,
- (i) any degradation of the quality of the environment,
- (j) any risk to the safety of the environment,
- (k) any reduction in the range of beneficial uses of the environment,
- (l) any pollution of the environment,
- (m) any environmental problems associated with the disposal of waste,
- (n) any increased demands on resources (natural or otherwise) that are, or are likely to become, in short supply,
- (o) any cumulative environmental effect with other existing or likely future activities.

7.5. Identification of potential impacts on threatened species and their habitats

A threatened species impact assessment must be completed to determine whether an action, development or activity is likely to significantly affect threatened species, populations or ecological communities, or their habitats. The *Fisheries Management Act 1994* lists the current threatened and protected fish and marine vegetation species in NSW.

Where an activity is likely to affect any threatened species, applicants must complete a test of significance, otherwise known as a “7 part test”. A number of factors must be taken into account when completing a test of significance, as outlined under Section 5A of the *Environmental Planning and Assessment Act 1979*.

Guidelines are available on the I&I NSW website to assist proponents in understanding these factors and completing the assessment. (see <http://www.dpi.nsw.gov.au/fisheries/species-protection/>)

7.6. Identification of potential impacts on matters of national environmental significance

The EPBC Act establishes a system of environmental assessment and approval by the Commonwealth for actions that significantly affect matters of national environmental significance. Further information on the EPBC Act is available from the Commonwealth Government's website, at <http://www.environment.gov.au/epbc/index.html>.

In January 2007, the Commonwealth and NSW governments signed a Bilateral Agreement which allows the assessment regimes under the *Environmental Planning and Assessment Act 1979* (Parts 3A, 4 and 5 of the EP&A Act) to be automatically accredited under the EPBC Act. This means that separate assessment processes are not required. The Bilateral Agreement only covers matters that are determined to be 'controlled actions' by the Commonwealth Government (see <http://www.planning.nsw.gov.au/assessingdev/environmentalassessment.asp>).

In accordance with the NSW Assessments Bilateral Agreement, please advise NSW DPI if this proposal is likely to have an impact upon any 'Matter of National Environmental Significance' under the EPBC Act, such as:

- heritage values of World Heritage properties
- listed National Heritage places
- wetlands of international importance (Ramsar wetlands)
- Commonwealth-listed threatened species and ecological communities
- listed migratory species

If you are unsure, please refer to the following website for more information: <http://www.environment.gov.au/epbc/matters/index.html>

If you believe it will, you have an obligation under the EPBC Act to refer the proposal to the Commonwealth Environment Minister for a decision as to whether the action is a 'controlled action' and therefore requires assessment and approval.

Appendix A Useful References

The following list of useful reference is set out to reflect the structure of this document.

7.3 Site identification

Marine Parks

Refer to the Marine Parks Authority (MPA) website for information on the location of Marine Parks in NSW and the zoning arrangements applying to each at:

<http://www.mpa.nsw.gov.au/>

Aquatic reserves

Refer to the NSW Department of Environment, Climate Change and Water (DECCW) website for information on the location of aquatic reserves and the activities prohibited within each at:

<http://www.environment.nsw.gov.au/parktypes/AquaticReserves.htm>

Waters closed to an activity

Refer to the Industry and Investment NSW (I&I NSW) website for information on fishing closures (i.e. waters closed to an activity) at:

www.industry.nsw.gov.au or www.dpi.nsw.gov.au