

Better Regulation Statement

Amendments to the Fisheries Management Act 1994



**NSW DEPARTMENT OF
PRIMARY INDUSTRIES**

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Amendments to the Fisheries Management Act 1994 Better Regulation Statement

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Information sources

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Better Regulation Statement: Amendments to the Fisheries Management Act 1994

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1. Executive Summary

The proposal is to make a number of amendments to the *Fisheries Management Act 1994*. The primary purpose of the proposal is to:

- formally recognise the cultural importance of fishing to Aboriginal people in NSW; and
- protect and sustain the NSW fishery resource for economic, recreational and environmental reasons, by reducing illegal fishing.

Other New South Wales natural resource management legislation already recognises Aboriginal peoples' spiritual, social, customary and cultural connection to and use of natural resources. It is fitting that we also formally recognise the importance of our aquatic natural resources to Aboriginal people.

Illegal fishing has been recognised as a major problem in NSW. Illegal fishing can have significant impacts on the sustainability of the fisheries resource. Illegal fishing can also result in significant profits. This means legislation must be effective in enforcing compliance, and include penalties that act as a strong deterrent against illegal activity. Penalties therefore need to be commensurate with the potential gain from the illegal activity. Many of the proposed amendments seek to strengthen the enforcement provisions in the Act.

There has been extensive consultation during the development of the proposed amendments. Consultation has been undertaken through public and other meetings; submissions to reports; cooperative approaches between NSW government agencies and other jurisdictions; and agreement by stakeholders on various proposals.

The proposal has been developed over several years, taking into consideration the views of community and industry stakeholders and government agencies. A number of amendments seek to improve the consistency of the NSW legislation with other NSW natural resource management legislation and regulatory frameworks for fisheries operating in other Australian jurisdictions. This aims to benefit industry operating across jurisdictions and also benefits sustainable management of Australian fisheries.

The costs and benefits of different options have been considered during development of the proposal. This analysis has been informed by stakeholder consultation undertaken during development of the proposal.

The proposed amendments are the preferred option to deliver social benefits including recognition of the cultural importance of fishing to Aboriginal people, and the need to provide a stronger compliance and enforcement framework to protect the sustainability of the fisheries resource. The proposed amendments will deliver the greatest net benefits to the community as a whole.

2. Need for Government Action

Fishing has always been an integral part of the cultural and economic life of coastal and inland Aboriginal communities in NSW. Fishing is an important source of food, a basis for trade and an important part of cultural and ceremonial life. Traditionally, Aboriginal fishers had responsibility for providing not just for themselves but for family and community. These cultural expectations continue in Aboriginal communities today.

Aboriginal peoples' spiritual, social, customary and cultural connection to, and use of natural resources is recognised in NSW legislation such as the *Water Management Act 2000*, the *National Parks and Wildlife Act 1974*, and the *Aboriginal Land Rights Act 1983*. However, the cultural importance of fishing to Aboriginal people in NSW is not formally recognised in the *Fisheries Management Act 1994*. There is a need to recognise Aboriginal cultural fishing in NSW.

A review undertaken into *Illegal Fishing for Commercial Gain or Profit in NSW* (the Palmer Report) found that the illegal harvesting and black marketing of fish is a serious, widespread, entrenched and growing problem in NSW. The activities and practices involved threaten resource sustainability and have serious potential consequences for public health and safety, Government policy and governance, the continuation of Indigenous cultural practices and the ability of the legitimate fishing industry to properly plan and manage its business affairs, and maintain confidence and profitability in the industry. There is a need to reduce levels of illegal fishing in NSW.

In addition, the Natural Resource Management Ministerial Council (NRMMC) is committed to greater national consistency in fisheries legislation. This has given rise to the need to consider amendments to NSW legislation to meet this national commitment.

3. Objective of Government Action

The objective of the proposal is to:

- recognise and legitimise Aboriginal cultural fishing; and
- reduce illegal fishing in order to protect and sustain the NSW fishery resource for economic, recreational and environmental reasons.

The proposal also includes a number of amendments aimed at improving the administration of the Act. These proposed amendments have not been discussed in detail in the Better Regulation Statement. The proposed amendments and the intended outcomes are set out in detail in Attachment 1.

4. Consideration of Options

Options to achieve the objectives of Government action have been considered within the various review processes which have driven development of the proposals. Input from key stakeholders outlining different options has informed the review processes and led to the recommendations in the review reports. The key options considered, and costs and benefits of those options, are outlined below.

4.1 Recognition of Aboriginal fishing

Three broad approaches have been considered to achieve the objective to recognise and legitimise Aboriginal cultural fishing. These include: taking no action; including Aboriginal fishing in an existing licence type; or amending the legislation to formally recognise Aboriginal fishing.

4.1.1 No action

This is the status quo. The legislation currently provides for limited exemptions for Aboriginal cultural fishing from the need for a recreational fishing licence, and also provides for the issue of cultural fishing permits to exceed recreational fishing bag limits and use non-recreational fishing gear.

The current legislation is not considered to appropriately recognise the importance of cultural fishing activities to Aboriginal people and is considered to be unnecessarily complex. This is largely due to the complexity of the information needed to complete the relevant forms, such as detail about the type of activity and those involved. This option does not achieve the objectives of Government action. It has already raised significant problems for both Aboriginal communities and management of fisheries resources and is therefore not the preferred option.

4.1.2 Inclusion of Aboriginal fishing within existing licence types

This approach would involve requiring Aboriginal people to obtain a recreational or commercial fishing licence to undertake Aboriginal cultural fishing activities. In order to implement the objective, the scope of recreational or commercial fishing licences would need to be expanded to accommodate the requirements of Aboriginal fishing. These include exemptions to bag limits, and use of traditional fishing methods.

Expanding the scope of recreational or commercial fishing licences is not consistent with the current aims of sustainable recreational and commercial fishing. In addition, the commercial industry has recently moved from a licencing regime to share management fisheries. All shares in NSW fisheries have been allocated, and adding to this allocation would impact on the sustainability of fishery resources and would decrease the value of existing shares for commercial fishers. This approach does not effectively implement the objective for Government action, and so is not the preferred option.

4.1.3 Formal recognition of Aboriginal fishing

This approach includes amendments to the Act to formally recognise, protect and promote Aboriginal peoples' cultural, spiritual, social and customary association with the State's fisheries resources. This would be achieved by the addition of a relevant objects clause, by defining Aboriginal cultural fishing and by providing for the Minister to issue permits to expressly authorise the taking and possession of fish and marine vegetation for the purposes of Aboriginal cultural activity.

This approach will deliver social benefits to Aboriginal people arising from formal recognition of Aboriginal cultural fishing; and introduction of an effective legal mechanism to authorise Aboriginal cultural fishing activities; administrative benefits derived from consistency with other NSW legislation; and administrative benefits from delivery of NSW's commitment to National Indigenous Fishing Principles. Costs associated with this option include administrative costs of assessing and issuing permits and enforcement costs associated with monitoring compliance with the legislation. These costs are considered minimal in comparison with the benefits of this option. This is the preferred option, as it provides the most flexible and appropriate way to recognise and protect Aboriginal fishing.

4.2 Reduction in illegal fishing

Three broad approaches have been considered to achieve the objective to reduce illegal fishing. These include: taking no action; undertaking an education and awareness campaign; or amending the Act to strengthen the compliance and enforcement framework.

4.2.1 No action

The current legislation sets out a range of penalties and enforcement arrangements to discourage and punish illegal fishing in NSW. The current penalties are significantly lower than those for equivalent offences in other States and illegal fishing remains a significant problem in NSW. In addition, the current requirements to make and keep records relating to the sale of fish are open to abuse and can act as a significant barrier to successful prosecution of black market sales.

Maintaining the current framework will not achieve the objectives of action. The Palmer Report clearly found that, "at present, neither the risk of being apprehended, nor the fear of significant penalty or sanction, is enough to deter illegal activity." Maintaining the status quo is therefore not the preferred option.

4.2.2 Education and awareness campaign

The Palmer Report identified that "present attitudes and poor levels of understanding of the need for resource protection are widely believed by stakeholders to have led to an inappropriate level of community acceptance of

illegal fishing practices, an unwillingness to report illegal activity... and an under-estimation of the seriousness of offences by the judiciary when determining penalties". Option 4.2.2 would involve undertaking an extensive education and awareness campaign to change the community's views about illegal fishing. As this program would need to reach the community as a whole, it is likely to be quite costly to Government.

However, the Palmer Report also found that the most significant risk of illegal fishing is not through inadvertent breaches of the legislation, but through organised fishing activity for sale through the black market. Anecdotal evidence suggests that only a small number of people are involved. On this basis, a broad-based community education campaign would be largely ineffective in targeting the key people involved in illegal fishing activity. While there are clear benefits to ongoing education of the community about illegal fishing, this approach will not achieve the objective of reducing illegal fishing and is therefore is not the preferred option.

4.2.3 Amendments to the Act

This approach involves amendments to the Act relating to record keeping, evidentiary provisions, penalties, and inspectors powers. Under this approach, penalties would be significantly increased, consistent with other NSW natural resource management legislation and fisheries legislation in other Australian jurisdictions. Penalties would also be graded, to allow for greater penalties for more serious breaches of the Act. There would also be scope to link penalties to the value of any illegal catch.

The benefits of this approach would include more effective implementation of the objects of the Act through stronger compliance and enforcement provisions. Strengthening the existing compliance and enforcement framework will reduce illegal fishing activities, and protect the sustainability of commercial and recreational fishing, for the long-term benefit of the community and the industry. The proposed increase in penalties is more likely to act as a deterrent to illegal fishing. This is an appropriate response given the scale of the potential impacts from illegal fishing, and is fairly targeted at those in breach of the law. This is the preferred option.

5. Consultation

The proposed amendments have been developed through extensive consultation with stakeholders, through cooperative stakeholder and inter-jurisdictional forums, and public consultation in relation to the relevant reviews and reports.

Improved management of Aboriginal cultural fishing has been under consideration for several years. Key Aboriginal stakeholders, including; members of the former Indigenous Fisheries Strategy Working Group (IFSWG), the former Aboriginal and Torres Strait Islander Commission (ATSIC) and

Aboriginal and Torres Strait Islander Services (ATSIS), Aboriginal commercial fishers, and the former NSW Native Title Services Limited (now NTSCORP) and the NSW Department of Primary Industries Aboriginal Reference Group, have been consulted.

Stakeholders raised a number of issues in relation to existing Government Aboriginal fishing policy, particularly in relation to the importance of cultural fishing. Stakeholders generally agreed that there was a need to formally recognise the importance of cultural fishing, but there was variation in their understanding and interpretation of what cultural fishing included and how it should be protected and enhanced. This included different understandings of the appropriate size of catch, methods used, and access to places for cultural fishing. These issues are complex, and this proposal seeks to progress the issues where possible, consistent with the views of the majority of stakeholders.

The Palmer Report was a review of illegal fishing in NSW. The review was undertaken with assistance of an advisory team consisting of commercial and recreational fishing representatives along with seafood industry and government agency representatives. The review process included public meetings, meetings with key stakeholders, and consideration of written submissions. In June 2004 the completed report was released for community and targeted stakeholder consultation for a six week period. Eight submissions from individuals and twenty submissions from organisations were received. The majority of respondents were supportive of the overall intent and findings in the report.

The National Fisheries Compliance Committee of the Australian Fisheries Management Forum, which includes representation from all Australian jurisdictions, has spent considerable time considering options related to promoting compliance and creating effective deterrents to illegal fishing activity. This work led to the *Australian Fisheries National Compliance Strategy 2004-2009* which informs some of the proposals now being put forward for amending the NSW Act. The recently released findings of the *National Study on Crime in the Australian Fishing Industry* (completed in 2007) further supports the measures being pursued and has also seen agreement from jurisdictions that national consistency in fisheries legislation is desirable.

There has also been considerable consultation within the NSW Government. Inter-agency meetings have been held between the NSW Department of Primary Industries and the Department of Aboriginal Affairs, the Attorney General's Department, the Department of Water and Energy and Department of Premier and Cabinet. Issues raised, particularly in relation to enforcement proposals, have been taken into consideration in development of this proposal.

6. Preferred Option

Option 4.1.3 is the preferred option to recognise and legitimise Aboriginal cultural fishing in NSW. This option will deliver the greatest net benefit to the community, through significant social benefits to Aboriginal people without compromising the existing regulatory framework for commercial and recreational fishing.

Option 4.2.3 is the preferred option to reduce illegal fishing in NSW waters. This option will deliver the greatest net benefit to the community through more effective enforcement arrangements to protect the long term sustainability of the fisheries resource.

7. Evaluation and Review

A statutory review of the Act will be undertaken in 2009-2010, in accordance with section 290 of the Act. The proposed amendments, if incorporated in the Act, will be reviewed at this time.

In addition, the Act is under constant consideration through a number of Ministerial and stakeholder committees, including the Seafood Industry Advisory Council, the Advisory Council on Recreational Fishing, and the Management Advisory Committee (MAC) for each commercial fishery. The functions of the MACs are to advise the Minister on the preparation of any management plan, fishery management strategy or regulations for the relevant fishery, to monitor whether the objectives of those plans, strategies and regulations are being attained, and to advise on any other matter relating to the fishery.

The NSW Department of Primary Industries Aboriginal Reference Group (ARG) also provides advice to the Minister for Primary Industries on issues of importance to Aboriginal communities relating to their access to primary industries resources. The ARG is a significant stakeholder in the development and ongoing monitoring and review of the management of Aboriginal fishing in NSW.

Attachment 1

Amendments to the Fisheries Management Act 1994

The following table was reviewed in September 2009 against the provisions in the *Fisheries Management Amendment Bill 2009*. Footnotes indicate where proposals have been revised for inclusion in the Bill, or have not been included in the Bill.

Proposal	Intended Outcome
Aboriginal Peoples' Association with Fisheries Resources	
Amend the objects of the Act to recognise Aboriginal peoples' spiritual, customary, and cultural connection to and use of the fisheries resources.	Formally recognise in the Act Aboriginal peoples' association with the fisheries resources to promote relationship between management of the resource and Aboriginal peoples.
Introduce a definition of Aboriginal cultural fishing.	Distinguish authorised cultural fishing activities from illegal commercial or recreational fishing.
Add to section 37 permit provisions to prescribe that permits can be issued for Aboriginal cultural fishing activity.	Enhance recognition of Aboriginal cultural fishing needs through expressly authorising the taking and possession of fisheries resources for the purposes of cultural activities.
Marketing of Fish	
Provide for conclusive evidence that all fish held for sale at designated commercial premises are fish held for the purpose of sale and prescribed records related to the source of those fish is required. Further it is proposed that regardless of the quantity of fish sold, a record of sale must be made and kept.	This goes to helping prevent black marketed fish from being stored on commercial premises along with making it more difficult for those trying to sell illegal product by requiring records of all transactions.
An Appropriate Penalty Regime	
Introduce graded offences associated with seriousness of an offence.	Fisheries penalties would be increased proportionately depending on the seriousness of the offence (e.g. by how much the daily catch limit has been exceeded; or subsequent offences in relation to size and catch limits attracting a penalty twice that of the first offence).
Provide for penalty provisions linked to the value of the catch.	In addition to graded offences courts would have the power to impose an additional penalty linked to the value of the catch, being 10 times the value of the fish so as to ensure the monetary value of the theft of fish such as abalone, lobster and shark fin are reflected in court sanctions. Even though drafted as a mandatory provision, courts are generally to maintain an overriding discretion in relation to sentencing. ¹
Allow prohibition orders made by the courts to be applied to activity beyond that of commercial fishing.	Ensure that courts can decide exactly what fishing activity a person should be prohibited from rather than being restricted to prohibiting commercial

Proposal	Intended Outcome
	fishing activity as the limited application provides a loophole for serious offenders to continue to undertake fishing activities – most likely to the continued threat of the resource.
Bring serious fisheries offences under the scope of the <i>Confiscation of Proceeds of Crime Act 1989</i> .	Have the proceeds/assets of fisheries crime able to be confiscated for serious fisheries offences, which requires elevation of certain fisheries offences (such as trafficking in certain species of fish) to indictable offences and prescribed under the <i>Confiscation of Proceeds of Crime Regulation 2005</i> . ²
Ensuring those Found to be Conducting Illegal Fishing are Accountable	
Give fisheries officers the power to demand proof of identity as well as compelling people to provide other information to assist investigations.	Require alleged offenders to provide a form of proof of identity such as a driving licence which can be used to confirm persons' details. ³ Compelling people to provide other information relates to extending existing powers which currently only associate with people on boats, in premises or vehicles and in particular is needed to effectively investigate habitat and threatened species issues.
Make the master of a boat jointly liable for any fisheries offences carried out on the boat.	Further deter illegal fishing by enhancing the possibility for proceeding with prosecution of significant offences in the situation where children claim fish that have been illegally taken and found on a boat that is also carrying adults are theirs' alone.
Further Fisheries Compliance Amendments	
Clarify that fisheries officers can inspect fish in buckets and other containers in public places by specifically providing a power of inspection for this.	Remove the possibility for any challenges to the legitimacy of fisheries officers to inspect fish in buckets or other containers found in an open public space.
Allow requests for a person to produce records relating to commercial activity associated with fishing to be done by written notice and within a specified timeframe.	Make investigations of illegal fishing activity more efficient and effective.
Extend the power to seize boats and motor vehicles from the existing restriction of only being able to be applied when they have been used by a person engaged in commercial fishing activities for the purpose of committing an offence that is also a forfeiture offence.	Allow the seizure of boats and motor vehicles no matter what type of equipment is used. ⁴
Extend remediation orders from only applying to habitat offences to include serious fish theft offences which are also a form of environmental damage.	Allow remediation orders to be made to cover costs of restocking of species of fish subject to the theft or then other remediation that benefits fish stocks.

Proposal	Intended Outcome
Remove unintended defences to prosecution related to taking threatened species such as that under the guise of routine fishing activities.	Ensure that prosecutions can be pursued in situations such as where anglers intentionally and repeatedly catch and harm threatened species.
Establish certain defences for possession and sale of fish species protected in NSW but which have been taken commercially and lawfully in other jurisdictions.	Allow the marketing sector to lawfully sell fish in NSW which are prescribed in NSW as protected species but which have come from commercial fishers in other jurisdictions where the taking of that species of fish is lawful.
Increase penalties for offences against sections 68 and 112 (Endorsements on commercial fishing licences in share managed fisheries and restricted fisheries respectively).	Assign appropriate penalties for offences against endorsement conditions which have progressed over time in importance and cover significant measures to address resource management issues.
Prescribe what being in possession of a recreational fishing fee receipt means.	Remove the ambiguity of the term 'in possession' to make it clear that the fishing fee receipt needs to be on or in the immediate vicinity of the person.
Jurisdiction of Local Courts	
Increase the jurisdiction of the Local Court for fishing offence prosecutions from \$10,000 to 200 penalty units and increase the value of seized boats and motor vehicles from \$10,000 to \$60,000 before matters must be considered by the Supreme Court.	Lower costs associated with court action for all parties and provide greater accessibility for accused persons to the courts as a result as well.
Aquaculture and Habitat Measures	
Exempt the Minister from obtaining a permit for aquaculture activities undertaken for the purpose of aquaculture industry development.	Remove the need for the Minister to issue a permit to themself.
Provide for aquaculture lease applications that are consistent with an Aquaculture Industry Development Plan (AIDP) not to have to be advertised for comments/objections prior to decision over issuing the lease.	Remove duplication as AIDP have already been through significant community consultation as well as avoiding unwarranted costs of advertising; reduce red tape; and speed up approvals processes.
Remove inconsistency between provisions related to overdue aquaculture lease and permit payments.	Bring overdue lease payments in line with overdue annual payments related to permits by allowing interest to be charged on any outstanding amount immediately after the due date passes.
Remove the two year grace period before cancellation of aquaculture leases for non payment of fees.	Bring overdue lease payments in line with overdue annual payments related to permits by allowing cancellation of leases after normal government debt recovery procedures.
Define aquaculture species so as to provide the ability to describe what hybrid, polyploid form or life stage, an aquaculture species can be cultivated under a permit.	Ensure that the definition of aquaculture does not provide an unintended defence for a permit holder who decides to try to cultivate a species not intended to be allowed – be it due to unsuitable location or otherwise.

Proposal	Intended Outcome
Apply aquatic biosecurity arrangements such as requiring the destruction or treatment of fish or marine vegetation to any area not just areas subject to aquaculture permits.	Allow for direction for destruction or treatment to apply equally to areas covered by a current aquaculture permit as well as to areas such as pet shops, expired permit areas, universities, research facilities, and the like.
Create a Schedule to the Act for noxious fish and diseases and provide the relevant power for the Schedule to be updated by proclamation. ⁵	Elevate the status of the current list from regulation to the Act and at the same time provide a more timely process for updating the list.
Deem, in specific circumstances, for the purposes of protecting fish habitat that a person knew that the area was a place where salmon or trout, other fish spawn or are likely to spawn.	Improve the enforceability of the provision.
Provide for issuing of stop work orders for areas of Part 7 of the Act along with relevant offence provisions.	Allow the halting of unauthorised works that are adversely impacting on aquatic habitats and fish passage.
Require prior to commencement written notice of intention to construct, alter, modify or maintain, a dam, weir, reservoir or floodgate.	Improve the ability to enforce any sanctions and improve the ability to educate about the need to accommodate ensuring fish passage.
Clarify the meaning of the word 'naturally' in the context of naturally flowing stream of water.	Ensure the prohibition to releasing live fish without a permit and the ability to require works to enable fish passage during construction, alteration or modification of a dam, weir or reservoir apply to areas where it would seem that a naturally flowing stream of water could be affected by in stream works or through water extraction such as pumping.
Cooperative Fisheries Management Arrangements	
Consequential amendments as a result of changes to Commonwealth legislation related to cooperative arrangements in management of fisheries.	Reflect the uniform national scheme.
Threatened Species Interactions (Recommendation 3.12)	
Expand control provisions in respect of threatened species to include any potential harmful interactions rather than just prohibit the taking of them.	To further protect threatened species such as the great white shark by prohibiting actions that place threatened species in jeopardy.
Miscellaneous Minor Changes (Recommendation 3.13)	
Extend the regulation making power in respect to fish and waters protected from commercial fishing.	Introduce the flexibility to impose conditions to classes of commercial fishers in respect to protection of fish as is already the case for waters.
Provide for a regulation making power in respect to fish and waters protected from recreational fishing.	Introduce greater consistency in the administration of the Act and ultimately allow for more streamlined and user friendly regulatory arrangements.
Amend the definition of 'charter fishing boat' including allowing the regulations to prescribe activities that constitute and activities that do not	Ensure that illegal operators of charter fishing cannot get around requirements and conversely make sure that other activities are not

Proposal	Intended Outcome
constitute charter fishing.	inadvertently caught up as charter fishing.
Replace the concept of 'fishing period' in relation to endorsements on commercial fishing licences with a more generic term such as 'specified period'.	Remove any confusion between the term 'fishing period' as it applies to the Total Allowable Catch and endorsements on commercial fishing licences.
Amend the commercial fishery maximum share management holding provision to clarify it only applies to a decrease in the maximum share holding not an increase.	Correct the unintended consequence of the provision as currently drafted whereby if a maximum shareholding is increased then existing shareholders would be disadvantaged as against new entrants in that new entrants would receive the benefit of the higher maximum whereas existing holders would be restricted to their previous limit.
Clarify that the Director-General only needs to register a share transaction in the commercial share management fisheries share register if that transaction has been approved, not when an application for a share transaction is made.	Improve the efficiency of administering share management fisheries by removing the need to undo entries in the register when share transactions are not approved.
Amend the duration of the commercial fishery shareholding provision to prescribe that after the initial 10 year period of issue of shares a further 10 year duration of shareholding in the events of a review of a share management plan and the plan being remade as is or then remade in amended form, applies.	Provide for consistency between the 10 year duration of share holding provisions in the events of a review not being conducted or if a new management plan is made after a review, and the events of a review of a share management plan and the plan being remade as is or then remade in amended form which the Act is currently silent on in respect to the period of reissue of shares.
Remove the requirement to declare a specified period for which a restricted commercial fishery has effect for.	Remove an unnecessary requirement as provisions exist for suspension or cancellation of endorsements in restricted fisheries and the sunset provisions of the Subordinate Legislation Act 1989 automatically impose a limit.
Extend existing provisions to provide for a zero bag limit for the taking and possession of fish.	Allow the setting of zero limits for resource management needs.
Extend the provisions that ban the importation of live fish into NSW to include marine vegetation.	Provide an offence related to importation of marine vegetation into NSW without a permit, which has the same potential as importing certain live fish to cause environmental degradation.
Ban the release of certain captured noxious species back into any waterway. ⁶	Reduce the number and impact of noxious species.
Provide a provision that allows the waiver or refund of all or part of a fee payable under the Act or the regulation.	Allow the Minister to waive or refund any fee or part thereof if it is justified on social, economic or environmental grounds.
Extend provisions to allow management advisory committees to be	Currently provisions only provide for management advisory committees to

Proposal	Intended Outcome
<p>established for management reasons beyond that of specific commercial fisheries.⁷</p>	<p>be formed for share management fisheries, restricted or any such proposed fisheries, which are commercial fisheries. Establishment of management advisory committees needs to apply to other management areas of the Act beyond just specific commercial fishing activity</p>
<p>Amend the Act to provide that trust funds can be used for purposes relating to maintaining and protecting the fishery, as well as enhancement purposes.</p>	<p>Allow requests for expenditure from the trust to include requests that aim to maintain or protect fish stocks or fishing activities which is consistent with the intended purpose for establishing the trust funds, but strictly speaking due to the way the provision relates to 'enhancing' it does not seem to allow expenditure for maintaining and protecting purposes.</p>

¹ This provision is not mandatory. Courts will have complete discretion in relation to sentencing. The Bill provides that a penalty of up to 10 times the market value of the fish may be imposed.

² The ability to confiscate the proceeds of crime will only apply to the offence of trafficking in indictable quantities of indictable fish species. The *Confiscation of Proceeds of Crime Act 1989* will automatically apply to this indictable offence.

³ This proposal is not included in the Bill.

⁴ The Bill will extend the circumstances in which a person is presumed to be engaging in commercial fishing activities, to include where a person is in possession of fishing gear that cannot be lawfully used by either a commercial or a recreational fisher, and that gear is capable of taking more fish than a recreational fisher is allowed to take.

⁵ The Bill proposes that the Schedule will be updated by regulation, rather than proclamation.

⁶ This proposal is not included in the Bill.

⁷ This proposal is not included in the Bill.