

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

Currently, shark meshing (that is, the placing of nets around beaches or other waters to protect the public from sharks) carried out by the Minister administering the Fisheries Management Act 1994 is listed as a designated fishing activity in Schedule 1A to that Act. Normally such activities require assessment in accordance with Division 5 of Part 5 of the Environmental Planning and Assessment Act 1979. However, the Environmental Planning and Assessment Regulation 2000 contains a provision exempting such shark meshing from Part 5. The exemption expires on 31 December 2008.

The objects of this Bill are:

- (a) to amend the Fisheries Management Act 1994 to remove shark meshing from the list of designated fishing activities in Schedule 1A to that Act, and
- (b) to amend the Environmental Planning and Assessment Act 1979 to provide that shark meshing is not subject to assessment and regulation under that Act if it is the subject of both a joint management agreement under the Fisheries Management Act 1994 and a joint management agreement under the Threatened Species Conservation Act 1995 and is not a designated fishing activity, and
- (c) to make other amendments to the Fisheries Management Act 1994 to facilitate the entering into of joint management agreements under that Act, and
- (d) to amend the Environmental Planning and Assessment Regulation 2000 to extend the current exemption given by that Regulation to shark meshing and certain other fishing activities until 1 April 2009, and
- (e) to amend the Fisheries Management Act 1994 to create a defence to certain offences under that Act for actions done in accordance with joint management agreements entered into under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act, with the exception of Schedule 1 [4] which commences on a day appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Fisheries Management Act 1994 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the planning legislation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Fisheries Management Act 1994

Amendments relating to shark meshing

Schedule 1 [4] amends Schedule 1A to the Fisheries Management Act 1994 to remove shark meshing carried out by the Minister administering that Act from the list of designated fishing activities. The result of the amendment is that such shark meshing will no longer be a designated fishing activity to which Division 5 of Part 5 of the Environmental Planning and Assessment Act 1979 applies. That Division provides a special regime for the environmental assessment of designated fishing activities. See proposed section 115RA of that Division (to be inserted by Schedule 2.1 [3]) which provides for certain shark meshing to be generally exempt from the operation of the Environmental Planning and Assessment Act 1979.

Amendments relating to joint management agreements

Schedule 1 [2] inserts proposed section 220ZFB into the Fisheries Management Act 1994 to provide that it is a defence to a prosecution for an offence against Part 2, Part 7 or Division 4 of Part 7A of that Act, or the regulations under those provisions, if the act or omission constituting the offence was authorised by, and done in accordance with, a joint management agreement entered into under that Act. The Minister administering that Act may enter into such agreements with one or more public authorities for the management, control, regulation or restriction of an action that is jeopardising the survival of a threatened species, population or ecological community.

Schedule 1 [3] amends section 221W of the Fisheries Management Act 1994 to enable a joint management agreement under that Act and a joint management agreement under the Threatened Species Conservation Act 1995 to be combined into a single document if they both deal with the same subject-matter.

Other amendments

Schedule 1 [1] amends the definition of public authority in section 4 (1) of the Fisheries Management Act 1994 to clarify that it includes a Government Department.

Schedule 1 [5] enables savings and transitional regulations to be made consequent on the amendment of the Fisheries Management Act 1994 by the proposed Act.

Schedule 2 Amendment of planning legislation

Amendment of Environmental Planning and Assessment Act 1979

Schedule 2.1 [1] amends the Environmental Planning and Assessment Act 1979 to include a definition of shark meshing in Division 5 of Part 5 of that Act. Shark meshing is defined as the placing of nets around beaches or other waters to protect the public from sharks. Schedule 2.1 [2] makes a consequential amendment.

Schedule 2.1 [3] inserts proposed section 115RA into the Environmental Planning and Assessment Act 1979 which applies to shark meshing that is the subject of both a joint management agreement under the Fisheries Management Act 1994 and a joint management agreement under the Threatened Species Conservation Act 1995, but that is not listed in Schedule 1A to the Fisheries Management Act 1994 as a designated fishing activity. The proposed section provides that such shark meshing cannot be declared to be a project under Part 3A of the Environmental Planning and Assessment Act 1979, cannot be made subject to a requirement for development consent under Part 4 of that Act and is not an activity to which Part 5 of that Act (other than the proposed section) applies. The proposed section also provides that such shark meshing cannot be prohibited or regulated by an environmental planning instrument.

Schedule 2.1 [4] enables savings and transitional regulations to be made consequent on the amendment of the Environmental Planning and Assessment Act 1979 by the proposed Act.

Amendment of Environmental Planning and Assessment Regulation

2000

Schedule 2.2 substitutes clause 244B of the Environmental Planning and Assessment Regulation 2000. That clause currently exempts from the definition of activity in Part 5 of the Environmental Planning and Assessment Act 1979 shark meshing carried out by the Minister administering the Fisheries Management Act 1994 and fishing activities carried out pursuant to fisheries approvals issued or renewed for a period of not more than 12 months, but only until 31 December 2008. Proposed clause 244B extends the exemption for those activities until 1 April 2009.