



New South Wales

Fisheries Management and Planning Legislation Amendment (Shark Meshing) Bill 2008

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.

First print



New South Wales

Fisheries Management and Planning Legislation Amendment (Shark Meshing) Bill 2008

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Fisheries Management Act 1994 No 38	2
4 Amendment of planning legislation	2
5 Repeal of Act	2
Schedule 1 Amendment of Fisheries Management Act 1994	3
Schedule 2 Amendment of planning legislation	4



New South Wales

Fisheries Management and Planning Legislation Amendment (Shark Meshing) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Fisheries Management Act 1994* and other legislation with respect to shark meshing; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fisheries Management and Planning Legislation Amendment (Shark Meshing) Act 2008</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	6 7
(2) Schedule 1 [4] commences on a day to be appointed by proclamation.	8
3 Amendment of Fisheries Management Act 1994 No 38	9
The <i>Fisheries Management Act 1994</i> is amended as set out in Schedule 1.	10 11
4 Amendment of planning legislation	12
The <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment Regulation 2000</i> are amended as set out in Schedule 2.	13 14 15
5 Repeal of Act	16
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	17 18
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	19 20

Schedule 1	Amendment of Fisheries Management Act 1994	1
		2
	(Section 3)	3
[1] Section 4 Definitions		4
	Insert “a Government Department,” after “includes” in the definition of <i>public authority</i> in section 4 (1).	5 6
[2] Section 220ZFB		7
	Insert after section 220ZFA:	8
220ZFB Defences relating to joint management agreements		9
	It is a defence to a prosecution for an offence against:	10
	(a) this Division or the regulations under this Division, or	11
	(b) Part 2 or 7 or the regulations under those Parts,	12
	if the accused proves that the act or omission constituting the alleged offence was authorised by, and done in accordance with, a joint management agreement.	13 14 15
[3] Section 221W Contents of joint management agreements		16
	Insert after section 221W (2):	17
	(3) A joint management agreement under this Act and a joint management agreement within the meaning of the <i>Threatened Species Conservation Act 1995</i> may be combined into a single document if both agreements deal with the same subject-matter.	18 19 20 21
[4] Schedule 1A Designated fishing activities		22
	Omit clause 5.	23
[5] Schedule 7 Savings, transitional and other provisions		24
	Insert at the end of clause 2 (1):	25
	<i>Fisheries Management and Planning Legislation Amendment (Shark Meshing) Act 2008</i>	26 27

Schedule 2	Amendment of planning legislation	1
	(Section 4)	2
2.1	Environmental Planning and Assessment Act 1979 No 203	3
[1]	Section 115G Definitions	4
	Insert in alphabetical order:	5
	<i>shark meshing</i> means the placing of nets around beaches or other waters to protect the public from sharks.	6 7
[2]	Section 115I Application of Division to designated fishing activities	8
	Omit section 115I (2) (b). Insert instead:	9
	(b) shark meshing,	10
[3]	Section 115RA	11
	Insert after section 115R:	12
115RA	Shark meshing	13
(1)	Despite section 115I, this section applies to shark meshing that:	14
(a)	is the subject of both a joint management agreement under Division 8 of Part 7A of the <i>Fisheries Management Act 1994</i> and a joint management agreement within the meaning of the <i>Threatened Species Conservation Act 1995</i> , and	15 16 17 18 19
(b)	is not a designated fishing activity.	20
(2)	The provisions of this Part (other than this section) do not apply to or in respect of shark meshing to which this section applies.	21 22
(3)	Shark meshing to which this section applies cannot be declared to be a project to which Part 3A applies.	23 24
(4)	Shark meshing to which this section applies cannot be made subject to a requirement for development consent under Part 4.	25 26
(5)	An environmental planning instrument cannot prohibit or otherwise regulate shark meshing to which this section applies.	27 28
[4]	Schedule 6 Savings, transitional and other provisions	29
	Insert at the end of clause 1 (1):	30
	<i>Fisheries Management and Planning Legislation Amendment (Shark Meshing) Act 2008</i>	31 32

2.2 Environmental Planning and Assessment Regulation 2000	1
Clause 244B	2
Omit the clause. Insert instead:	3
244B Fishing activities and shark meshing	4
(1) For the purposes of the definition of <i>activity</i> in section 110 (1) of the Act, a fishing activity carried out at any time before 1 April 2009 pursuant to a fisheries approval issued or renewed for a period of not more than 12 months is prescribed not to be such an activity.	5 6 7 8 9
(2) For the purposes of the definition of <i>activity</i> in section 110 (1) of the Act, shark meshing carried out at any time before 1 April 2009 is prescribed not to be such an activity.	10 11 12
(3) This clause does not apply to or in respect of aquaculture, within the meaning of the <i>Fisheries Management Act 1994</i> .	13 14