



New South Wales

Fisheries Management Amendment Bill 2001

Explanatory note

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

Overview of Bill

The *Fisheries Management Act 1994* reflects the complexities of modern fisheries management which seeks to conserve living aquatic resources as well as regulate the impact of fishing on fish stocks and the ecosystem generally. It does this by employing an integrated systems approach to assessing the interacting ecological, biophysical, economic and social factors. To better achieve these overall aims, this Bill includes as an objective of the above Act the provision of social and economic benefits for the wider community of New South Wales.

In addition, the object of this Bill is to amend the *Fisheries Management Act 1994*:

- (a) to clarify that the Act is to have extraterritorial application in so far as the legislative powers of the State permit, and
- (b) to enable regulations to be made to prohibit the taking of fish for sale from specified waters, and
- (c) to specify the purpose of fishing fees, and

- (d) to enable a share management fishery to proceed to the final stage of implementation by the issuing of shares and the making of a management plan despite outstanding appeals in relation to the issue of provisional shares, and
- (e) to remove the need for consultation in relation to the first proposed management plan for a fishery if a fishery management strategy has been prepared for that fishery and a determination in relation to the fishery has been made pursuant to Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979*, and
- (f) to ensure that no new appeal in relation to a provisional issue of shares in a fishery can be lodged with the Share Appeal Panel after the making of the management plan for the fishery, and
- (g) to permit a declaration for a disease to specify the circumstances in which provisions relating to the declared disease do not apply, and
- (h) to bring provisions relating to development and the prohibition of certain activities in aquatic reserves into line with the corresponding provisions for marine parks, and
- (i) to increase penalties for unauthorised dredging and for unauthorised harvesting or harming of marine vegetation, and
- (j) to raise a presumption that a person has harmed marine vegetation if that person is carrying on an activity prescribed by the regulations unless that person can establish that the specific activity caused no such harm, and
- (k) to increase penalties for failing to provide fishways and blocking the passage of fish, and
- (l) to allow the Minister to make an order authorising a class of persons to carry out an activity that may harm a threatened species, population or ecological community or damage its habitat, and
- (m) to provide a penalty for failing to comply with a stop work order, and
- (n) to include in the functions of a Management Advisory Committee functions relating to the fishery management strategy, and
- (o) to permit any costs incurred in preparing a species impact statement in relation to a Ministerial order to be repaid from the trust fund associated with the fishery to which the order relates, and
- (p) to increase the penalties for offences in relation to audits, and

- (q) to provide that the Minister is not obliged to fill the vacancy of a member of the Total Allowable Catch Setting and Review Committee if the person was appointed under section 27 (1) (d) of the Act and there are at least 4 remaining members on the Committee, and
- (r) to make other minor amendments.

The Bill also amends the *Environmental Planning and Assessment Act 1979* so as to include Ministerial orders made under proposed Subdivision 1A of Division 6 of Part 7A of the *Fisheries Management Act 1994* in the definition of ***fishing regulatory controls***, and to provide that a person need not prepare a species impact statement where the fishing activity has been authorised by a Ministerial order and the species impact statement prepared in relation to that order included an assessment of the activity.

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 a day or days to be appointed by proclamation.

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

Clause 4 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 2.

Schedule 1 Amendment of Fisheries Management Act 1994

Objects of the Act

Schedule 1 [1] amends section 3 of the Act to add a new object of providing social and economic benefits for the wider community of New South Wales.

Territorial application

Schedule 1 [3], [37] and [38] amend sections 7 and 261 to clarify that the Act is intended to have extraterritorial application in so far as the legislative powers of the State permit. **Schedule 1 [2]** inserts a note in section 7 explaining that the legislative powers of the State will often extend beyond three nautical miles.

Protection of fish from commercial fishing

Schedule 1 [4] replaces section 20 to permit the regulations to declare specified waters to be waters in which commercial fishing is prohibited absolutely or conditionally. It also increases the maximum penalties for offences under the section to 2,000 penalty units in the case of a corporation and 1,000 penalty units or 6 months imprisonment, or both, in any other case. **Schedule 1 [5]** and **[26]** make consequential amendments.

Purpose of fishing fees

Schedule 1 [6] introduces a new section 34AA that specifies the purpose of fishing fees.

Final issue of shares

Schedule 1 [7] introduces a new section 52A to permit the issuing of shares and the making of the share management plan for a fishery while there are still outstanding appeals in relation to the issuing of provisional shares. The section permits shares that may potentially be affected by an appeal to be issued as *shares subject to appeal*. Such shares are subject to certain special conditions. **Schedule 1 [9]** amends section 84 to prohibit any fresh appeal relating to the issuing of provisional shares being made to the Share Appeal Panel after the making of a share management plan for the fishery to which the appeal relates. It also makes it clear that the making of a share management plan does not affect any appeal that has been made but not yet finalised.

Public and industry consultation

Schedule 1 [8] provides an exception to the consultation requirements placed on the Minister by section 58. This exception applies in the case of the first proposed management plan for a fishery, but only if a fishery management strategy has been prepared for the fishery and a determination in relation to the fishery has been made pursuant to Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979*.

Declared diseases

Schedule 1 [10] amends section 182 to permit a declaration for a disease or class of disease to specify the circumstances in which the provisions of Division 4 of Part 6 relating to declared diseases will not apply.

Aquatic reserves

Schedule 1 [12] introduces two new Subdivisions into Division 2 of Part 7 that relate to development activities within aquatic reserves and aquatic reserve notifications. These mirror provisions in the *Marine Parks Act 1997*. **Schedule 1 [11]** makes a consequential amendment.

Increased penalties

Schedule 1 [13]–[21], [23] and [24] increase penalties for various offences relating to dredging, harming or harvesting marine vegetation and blocking or failing to provide fishways. In relation to each offence the maximum penalty for a corporation is increased to 2,000 penalty units and in other cases the maximum penalty is increased to 1,000 penalty units.

Activities harmful to marine vegetation

Schedule 1 [22] introduces a new section 205B which allows the regulations to prescribe an activity that, if carried out by a person in a relevant protected area, is presumed for the purposes of the offences contained in Division 4 of Part 7 to cause harm to marine vegetation unless the person is able to demonstrate that the particular activity caused no actual harm.

Ministerial orders

Schedule 1 [29] introduces a new Subdivision 1A to Division 6 of Part 7A that enables the Minister to make an order authorising a class of persons to carry out an activity that may result in harm to a threatened species, population or ecological community or damage to its habitat. Before making such an order the Minister must cause a species impact statement to be prepared, engage in public consultation and take a number of matters into account. The Minister is also permitted to make an interim order lasting up to 6 months to reduce social and economic impacts during the course of the assessment of a proposed order. **Schedule 1 [36]** adds a new section 238C that permits the cost of preparing a species impact statement in relation to a Ministerial order made in respect of a fishery to be reimbursed from a trust fund that relates to the fishery. **Schedule 1 [25], [27], [28], [30], [31] and [40]** make consequential amendments.

Stop work orders

Schedule 1 [32] provides a penalty for failing to comply with a stop work order made by the Director under section 221O. The maximum penalty in the case of a corporation is to be 2,000 penalty units with an additional penalty of up to 1,000

penalty units for each day that the offence continues. In the case of an individual the maximum penalty is to be 1,000 penalty units with an additional penalty of up to 500 penalty units for each day that the offence continues.

Management Advisory Committees

Schedule 1 [33]–[35] amend section 230 to include in the functions of a Management Advisory Committee functions relating to the fishery management strategy for a fishery.

Audit offences

Schedule 1 [39] increases the penalty for audit offences under section 275G. The maximum penalty for a corporation is to be 2,000 penalty units and in all other cases, 1,000 penalty units.

Vacancy on TAC Committee

Schedule 1 [41] amends clause 6 of Schedule 2 to provide that the Minister is not obliged to fill the vacancy of a member of the Total Allowable Catch Setting and Review Committee if the person was appointed under section 27 (1) (d) and there are at least 4 remaining members on the Committee.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

Schedule 2 [1] and [2] make consequential amendments to the *Environmental Planning and Assessment Act 1979* to include a Ministerial order made under Subdivision 1A of Division 6 of Part 7A of the *Fisheries Management Act 1994* in the definition of *fishing regulatory controls* found in section 115G. Section 115N of the 1979 Act is also amended so as to not require a second species impact statement to be prepared in relation to harm to threatened species, populations or ecological communities or their habitats if the activity has been authorised by a Ministerial order and the species impact statement prepared in relation to that order has already assessed the likely effect of the activity on those species, populations or ecological communities or their habitats.



New South Wales

Fisheries Management Amendment Bill 2001

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New South Wales

Fisheries Management Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Fisheries Management Act 1994* to make further provision for the management of fishery resources; and to make consequential amendments to the *Environmental Planning and Assessment Act 1979*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fisheries Management Amendment Act 2001</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Fisheries Management Act 1994 No 38	7
The <i>Fisheries Management Act 1994</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Environmental Planning and Assessment Act 1979 No 203	10 11
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 2.	12 13

Schedule 1	Amendment of Fisheries Management Act 1994	1
		2
	(Section 3)	3
[1]	Section 3 Objects of Act	4
	Insert at the end of section 3 (2) (f):	5
	, and	6
	(g) to provide social and economic benefits for the wider community of New South Wales.	7
		8
[2]	Section 7 Waters to which Act applies	9
	Insert after section 7 (1) (d):	10
	Note. In many cases the legislative powers of the State will extend beyond three nautical miles, particularly in relation to recreational fishing.	11
		12
[3]	Section 7 (3)	13
	Insert after subsection (2):	14
	(3) This Act is intended to have extraterritorial application in so far as the legislative powers of the State permit.	15
		16
[4]	Section 20	17
	Omit the section. Insert instead:	18
	20 Fish and waters protected from commercial fishing	19
	(1) The regulations may declare that fish of a specified species are protected from commercial fishing.	20
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	(2) The regulations may declare specified waters to be waters in which all or a class of commercial fishing is prohibited absolutely or conditionally.	22
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		24
	(3) A person who:	25
	(a) takes fish of a species declared under subsection (1), or	26
	(b) sells fish of a species declared under subsection (1), or	27

(c) takes fish from waters declared under subsection (2) in breach of a declaration,	1 2
is guilty of an offence.	3
Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units or imprisonment for 6 months, or both.	4 5 6
(4) Subsection (3) (b) applies whether or not the fish were taken from waters to which this Act applies.	7 8
(5) Nothing in this section limits the power of the Minister to make a fishing closure in relation to commercial fishing.	9 10
[5] Section 21 Defences	11
Omit “20 (3)” from section 21 (2). Insert instead “20 (3) (b)”.	12
[6] Section 34AA	13
Insert after section 34A:	14
34AA Purpose of fishing fees	15
The purpose of fishing fees is to provide revenue to assist activities supported through the recreational fishing trust funds established under Division 3 of Part 8, including the following:	16 17 18
(a) enhancing recreational fishing,	19
(b) carrying out research into fish and their ecosystems,	20
(c) managing recreational fishing,	21
(d) ensuring compliance with recreational fishing regulatory controls.	22 23
[7] Section 52A	24
Insert after section 52:	25
52A Shares subject to appeal	26
(1) Despite section 52, the Minister may cancel provisional shares or issue final shares in a share management fishery, and the management plan for that fishery may be made, even if any appeal relating to the issue of provisional shares is still outstanding.	27 28 29 30 31

(2) If the Minister considers that a person's entitlement to shares may be affected by any such appeal, the Minister may issue shares in the fishery as <i>shares subject to appeal</i> .	1 2 3
(3) Shares subject to appeal are subject to the following special conditions:	4 5
(a) the transfer of, or any other registrable dealing in, the shares is only permitted with the consent of the Minister,	6 7 8
(b) no compensation is payable by or on behalf of the State for cancellation of the shares for any reason, including:	9 10
(i) cancellation by the Minister resulting from a determination in relation to the appeal, or	11 12
(ii) cancellation due to the termination of the fishery as a share management fishery,	13 14
(c) any other conditions prescribed by the regulations.	15
(4) On completion of the relevant appeal:	16
(a) the Minister must cancel the shares subject to appeal, and	17 18
(b) the Minister may, if appropriate, issue a person with shares in accordance with this Act.	19 20
[8] Section 58 Public and industry consultation	21
Insert after section 58 (2):	22
(3) The Minister is not required to comply with this section in relation to the first proposed management plan for a fishery if:	23 24
(a) a fishery management strategy has been prepared for the fishery, and	25 26
(b) a determination in relation to the fishery has been made pursuant to Division 5 of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> .	27 28 29

[9] Section 84 Making of appeals	1
Insert after section 84 (1):	2
(1A) An appeal cannot be made to that Panel under subsection (1) after the making of a share management plan for the fishery to which the appeal relates. However, the making of a share management plan does not affect any appeal that was made, but not finally determined, before the making of the plan.	3 4 5 6 7
[10] Section 182 Diseases declared for the purposes of this Division	8
Insert after section 182 (3):	9
(3A) A declaration under this section may specify:	10
(a) the circumstances in which, or	11
(b) the conditions on which,	12
any specified provisions of this Division do not apply in relation to a particular declared disease or class of declared diseases.	13 14 15
[11] Part 7, Division 2, Subdivision 1, heading	16
Insert before section 194:	17
Subdivision 1 Declaration of aquatic reserves	18
[12] Part 7, Division 2, Subdivisions 2 and 3	19
Insert after section 197A:	20
Subdivision 2 Development and activities within aquatic reserves	21 22
197B Mining in aquatic reserve prohibited	23
(1) It is unlawful to prospect or mine for minerals in an aquatic reserve, except as expressly authorised by an Act of Parliament.	24 25
(2) The <i>Offshore Minerals Act 1999</i> , the <i>Mining Act 1992</i> , the <i>Petroleum (Onshore) Act 1991</i> and the <i>Petroleum (Submerged Lands) Act 1982</i> do not apply to or in respect of any area within an aquatic reserve.	26 27 28 29

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- (3) This section does not apply to or in respect of any licence, permit, authorisation or lease in force under any of those Acts at the commencement of this section. However, no renewal or extension of such a licence, permit, authorisation or lease may be granted after that commencement except as expressly authorised by an Act of Parliament. 1
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- 197C Development within aquatic reserve—application of EPA Act 7**
- (1) Before determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development within an aquatic reserve, a consent authority must: 8
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11
- (a) take into consideration: 12
- (i) the objects of this Act specified in section 3, and 13
- (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and 14
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16
- (iii) the permissible uses of the area concerned under this Act, and 17
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- (b) if the consent authority intends to grant consent to the carrying out of the development, obtain the concurrence of the Minister to the granting of the consent. 19
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21
- (2) A Minister who is a determining authority must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) within an aquatic reserve unless the Minister has: 22
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24
25
- (a) taken into consideration: 26
- (i) the objects of this Act specified in section 3, and 27
- (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and 28
29
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- (iii) the permissible uses of the area concerned under this Act, and 31
32
- (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, consulted with the Minister on the carrying out of the activity or the granting of approval. 33
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- (3) A determining authority (not being a Minister) must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) within an aquatic reserve unless the determining authority has:
 - (a) taken into consideration:
 - (i) the objects of this Act specified in section 3, and
 - (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
 - (iii) the permissible uses of the area concerned under this Act, and
 - (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, obtained the concurrence of the Minister to the carrying out of the activity or the granting of approval.
 - (4) In deciding whether or not concurrence should be granted under this section, the Minister must take into consideration:
 - (a) the objects of this Act specified in section 3, and
 - (b) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
 - (c) the permissible uses of the area concerned under this Act.
 - (5) The provisions of section 79B (8)–(11) of the *Environmental Planning and Assessment Act 1979*, and the regulations under that Act, apply to and in respect of a requirement under this section to obtain the concurrence of the Minister in the same way as they apply to a requirement to obtain concurrence imposed on a consent authority by an environmental planning instrument under that Act.
 - (6) For the purposes of applying those provisions, a reference in those provisions to the matters stated pursuant to section 30 (3) of the *Environmental Planning and Assessment Act 1979* (however expressed) is to be read as a reference to the objects of this Act specified in section 3 and the permissible uses of the area concerned under the regulations.

197D	Development affecting aquatic reserve—application of EPA Act	1
(1)	In determining a development application under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> for the carrying out of development on land that is in the locality of an aquatic reserve, the consent authority must take into consideration the objects of this Act, the permissible uses of the area concerned under this Act and any advice given to it by the Director about the impact on the aquatic reserve of development in the locality.	2 3 4 5 6 7 8 9
(2)	If the consent authority is of the opinion that development proposed in the development application is likely to have an effect on the plants or animals within the aquatic reserve and their habitat, the consent authority must consult with the Minister before finally determining the application.	10 11 12 13 14
(3)	A determining authority must not carry out, or grant an approval to carry out, an activity on land that is in the locality of an aquatic reserve in purported compliance with Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> unless:	15 16 17 18
(a)	the determining authority has taken into consideration the objects of this Act, the permissible uses of the area concerned under this Act and any advice given to it by the Director on the impact on the aquatic reserve of the carrying out of an activity in the locality, and	19 20 21 22 23
(b)	if the determining authority is of the opinion that the proposed activity is likely to have an effect on the plants or animals within the aquatic reserve or their habitat, the determining authority has consulted with the Minister.	24 25 26 27
	Subdivision 3 Aquatic reserve notifications	28
197E	Prohibition of activities in aquatic reserves	29
(1)	The Minister may from time to time, by notification, prohibit the carrying out of any specified activity (including the taking of fish) in an aquatic reserve or part of an aquatic reserve.	30 31 32
(2)	Any such prohibition is called an <i>aquatic reserve notification</i> .	33
(3)	An aquatic reserve notification:	34
(a)	may apply absolutely or subject to conditions, and	35

(b)	must specify the activities that are prohibited and the area or areas to which it applies, and	1 2
(c)	may only apply to the aquatic reserve specified in the notification, and	3 4
(d)	has effect despite any provision of the regulations.	5
197F	Publication of aquatic reserve notification	6
(1)	An aquatic reserve notification is to be published:	7
(a)	in the Gazette, and	8
(b)	in a newspaper circulating, or by radio or television broadcast, in the area adjacent to the aquatic reserve to which the notification applies, and	9 10 11
(c)	by causing a copy of the notification to be exhibited in a prominent place or places adjacent to the aquatic reserve to which the notification applies.	12 13 14
(2)	However, if the Minister considers that the aquatic reserve notification is required urgently, the Minister may publish the notification in accordance with subsection (1) (b) or (c) so long as the notification is published in the Gazette as soon as practicable.	15 16 17 18 19
197G	General provisions relating to aquatic reserve notifications	20
(1)	An aquatic reserve notification takes effect on the first publication of the notification or on a later date specified in the notification.	21 22 23
(2)	An aquatic reserve notification remains in force, subject to this Act, for the period (not exceeding 5 years) specified in the notification, but may be remade (with or without modification) by a further notification in accordance with this Subdivision.	24 25 26 27
197H	Amendment or revocation of notification	28
	The Minister may from time to time amend or revoke an aquatic reserve notification by a further notification published in accordance with this Subdivision.	29 30 31

197I	General provisions relating to notification	1
	Sections 42, 43 and 45 of the <i>Interpretation Act 1987</i> apply to aquatic reserve notifications in the same way as they apply to statutory rules within the meaning of that Act.	2 3 4
	Note. The above provisions of the <i>Interpretation Act 1987</i> contain standard provisions that will authorise the adoption of other publications by reference, the making of differential notifications, the amendment or repeal of notifications and judicial notice and presumptions as to validity for notifications.	5 6 7 8 9
197J	Regulations relating to notifications	10
	The regulations may make provision for or with respect to giving effect to aquatic reserve notifications or to any other matter relating to aquatic reserve notifications.	11 12 13
197K	Offence provisions	14
	(1) A person who carries out any activity in contravention of an aquatic reserve notification is guilty of an offence.	15 16
	Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.	17 18 19
	(2) A person who is in possession of any animal, plant, rock, sand or other thing that has been taken in contravention of an aquatic reserve notification is guilty of an offence.	20 21 22
	Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.	23 24 25
	(3) It is a defence to a prosecution for an offence under subsection (2) if the person charged satisfies the court that the person did not know and could not reasonably have known that the animal, plant, rock, sand or other thing had been taken in contravention of a provision of or made under this Act.	26 27 28 29 30
[13]	Section 200 Circumstances in which a local government authority may carry out dredging or reclamation	31 32
	Omit “500 penalty units” from section 200 (1).	33
	Insert instead “2,000 penalty units”.	34

[14]	Section 201 Circumstances in which a person may carry out dredging or reclamation	1
		2
	Omit “500 penalty units” from section 201 (1).	3
	Insert instead “2,000 penalty units”.	4
[15]	Section 201 (1)	5
	Omit “100 penalty units”. Insert instead “1,000 penalty units”.	6
[16]	Section 204A Marine vegetation protected from any harvesting or other harm	7
		8
	Omit “1,000 penalty units” from section 204A (2).	9
	Insert instead “2,000 penalty units”.	10
[17]	Section 204A (2)	11
	Omit “200 penalty units”. Insert instead “1,000 penalty units”.	12
[18]	Section 204B Marine vegetation protected from any commercial harvesting	13
		14
	Omit “1,000 penalty units” from section 204B (2).	15
	Insert instead “2,000 penalty units”.	16
[19]	Section 204B (2)	17
	Omit “200 penalty units”. Insert instead “1,000 penalty units”.	18
[20]	Section 205 Marine vegetation—regulation of harm	19
	Omit “1,000 penalty units” from section 205 (2).	20
	Insert instead “2,000 penalty units”.	21
[21]	Section 205 (2)	22
	Omit “200 penalty units”. Insert instead “1,000 penalty units”.	23

[22] Section 205B	1
Insert after section 205A:	2
205B Activities harmful to marine vegetation	3
(1) For the purposes of this Division, a person is presumed to have harmed marine vegetation if the person carries out an activity prescribed for the purposes of this section by the regulations, unless the person establishes that the particular activity caused no actual harm to marine vegetation.	4 5 6 7 8
(2) The regulations may prescribe an activity in relation to one or more of the following:	9 10
(a) all protected areas,	11
(b) a specific protected area,	12
(c) part of a protected area.	13
[23] Section 218 Fishways to be provided in construction of dams and weirs	14
Omit “1,000 penalty units” from section 218 (3).	15
Insert instead “In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units”.	16 17
[24] Section 219 Passage of fish not to be blocked	18
Omit “1,000 penalty units” from section 219 (1).	19
Insert instead “In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units”.	20 21
[25] Section 220A Objects of Part	22
Insert “and activities” after “development” in section 220A (a).	23
[26] Section 2200 Protection measures apart from listing	24
Omit “(s 20—fish protected from commercial fishing)” from the note to the section.	25 26
Insert instead “or taking fish from specified waters (s 20—fish and waters protected from commercial fishing)”.	27 28

[27] Section 220ZF Defences	1
Omit section 220ZF (1) (a). Insert instead:	2
(a) was authorised by, and was done or omitted in accordance with:	3
(i) a licence granted under this Part, or	4
(ii) a Ministerial order or interim order made under Subdivision 1A of Division 6, or	5
(iii) a permit under section 37, or	6
(iv) an aquaculture permit, or	7
[28] Part 7A, Division 6, heading	8
Insert “ and Ministerial orders ” after “ Licensing ” in the heading to Division 6.	9
[29] Part 7A, Division 6, Subdivision 1A	10
Insert after Subdivision 1:	11
Subdivision 1A Ministerial orders	12
221IA Ministerial order to permit harm to threatened species etc	13
(1) The Minister may make an order authorising a class of persons to carry out an activity that may result in one or more of the following:	14
(a) harm to a threatened species, population or ecological community,	15
(b) damage to a habitat of a threatened species, population or ecological community.	16
(2) Such an order may be made only if the Minister complies with the requirements of this Subdivision.	17
(3) An order may be made subject to conditions or restrictions.	18
221IB Minor amendments	19
(1) For the purposes of this Subdivision, <i>making an order</i> includes varying an existing order but does not include making a minor amendment to an existing order.	20

(2) An amendment to an existing order that the Minister considers to be a minor amendment may be made by publishing the amended order in the Gazette.	1 2 3
(3) The Minister is not obliged to comply with any other requirements of this Subdivision in relation to a minor amendment.	4 5 6
221IC Species impact statement	7
Before the Minister makes an order, a person appointed by the Minister must prepare a species impact statement in relation to the activity the subject of the proposed order in accordance with Subdivision 2.	8 9 10 11
221ID Public consultation	12
After the species impact statement is prepared and before making an order, the Minister must give the public an opportunity to make written submissions on the proposed order.	13 14 15 16
Note. Section 284 regulates the public consultation procedure.	17
221IE Matters that Minister must take into account	18
(1) In determining whether to make an order, the Minister must take into account the following:	19 20
(a) the species impact statement,	21
(b) any written submissions concerning the order received within the period allowed for public comment,	22 23
(c) the factors specified in section 220F (Eligibility for listing),	24 25
(d) any relevant recovery plan or threat abatement plan,	26
(e) the principles of ecologically sustainable development,	27
(f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,	28 29 30
(g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.	31 32 33

	(2) The Minister must also consider the likely social and economic consequences of making or not making an order.	1 2
221IF	Making an order	3
	(1) The Minister makes an order by publication of the order in the Gazette.	4 5
	(2) For the avoidance of doubt, it is declared that the Minister is not a determining authority for the purposes of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> when making an order or an interim order.	6 7 8 9
221IG	Interim orders	10
	(1) The Minister may make an interim order to permit the continuation of an existing activity if the Minister considers that the making of the interim order is reasonably necessary to reduce social or economic impacts during the assessment of a proposed order under this Subdivision.	11 12 13 14 15
	(2) The Minister makes an interim order by publishing the order in the Gazette.	16 17
	(3) An interim order remains in force for such period, not exceeding 6 months, as the Minister specifies in the order, but the order may be remade.	18 19 20
	(4) The Minister is not obliged to comply with any other requirements of this Subdivision in relation to an interim order.	21 22
	(5) An interim order may be made subject to conditions or restrictions.	23 24
221IH	Director to keep register of orders	25
	(1) The Director must keep a register containing copies of all orders and interim orders in force under this Subdivision.	26 27
	(2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director.	28 29 30 31

221II	Revocation of an order	1
	An order or interim order made under this Subdivision may be revoked by the Minister at any time by notification in the Gazette.	2 3 4
221IJ	Breaching conditions or restrictions	5
	A person must not contravene or fail to comply with a condition or restriction attached to an order or interim order.	6 7
	Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.	8 9 10
[30]	Section 221J Form of species impact statements	11
	Omit section 221J (2). Insert instead:	12
	(2) A species impact statement must be signed by the principal author of the statement and by the <i>sponsor</i> who, for the purposes of this Subdivision, is one of the following:	13 14 15
	(a) if the species impact statement is prepared for the purposes of a licence application under Subdivision 1—the applicant for the licence,	16 17 18
	(b) if the species impact statement is prepared for the purposes of an order under Subdivision 1A—the person appointed by the Minister in accordance with section 221IC,	19 20 21 22
	(c) if the species impact statement is prepared for the purposes of the <i>Environmental Planning and Assessment Act 1979</i> —the applicant for development consent or the proponent of the activity to be carried out (as the case requires).	23 24 25 26 27
[31]	Section 221L Director’s requirements	28
	Omit “person applying for the licence (or, if the species impact statement is being prepared for the purposes of the <i>Environmental Planning and Assessment Act 1979</i> , the applicant for development consent or the proponent of the activity)” from section 221L (1).	29 30 31 32
	Insert instead “sponsor”.	33

[32] Section 221O Director may make stop work order	1
Insert after 221O (4):	2
(5) A person who does not comply with an order in force under this section is guilty of an offence and is liable, on conviction:	3
(a) in the case of a corporation, to a penalty not exceeding 2,000 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,000 penalty units for each day the offence continues, or	4
(b) in the case of an individual, to a penalty not exceeding 1,000 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 500 penalty units for each day the offence continues.	5
[33] Section 230 Management Advisory Committees for fisheries	6
Insert “, fishery management strategy” after “plan” in section 230 (4) (a).	7
[34] Section 230 (4) (b)	8
Insert “, the fishery management strategy” after “plan”.	9
[35] Section 230 (4) (c)	10
Insert “, fishery management strategy” after “plan”.	11
[36] Section 238C	12
Insert after section 238B:	13
238C Use of money in trust funds for species impact statements	14
The costs incurred in connection with a species impact statement, prepared in relation to a Ministerial order made under Subdivision 1A of Division 6 of Part 7A in respect of a fishery, may be paid or reimbursed from a trust fund that relates to the fishery.	15
[37] Section 261 Hot pursuit	16
Omit “coastal waters of New South Wales” from section 261 (1).	17
Insert instead “waters to which this Act applies”.	18

[38] Section 261 (4)	1
Insert after section 261 (3):	2
(4) Nothing in this section limits the application of this Act as provided by section 7.	3 4
[39] Section 275G Offences	5
Omit “Maximum penalty: 200 penalty units” from section 275G.	6
Insert instead “Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units”.	7 8
[40] Section 284 Public consultation procedure	9
Insert after section 284 (1) (f):	10
(g) a Ministerial order (but not an interim order) made under Subdivision 1A of Division 6 of Part 7A.	11 12
[41] Schedule 2 Provisions relating to members and procedure of TAC Committee	13 14
Omit clause 6. Insert instead:	15
6 Filling of vacancy in office of member	16
(1) If the office of a member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.	17 18
(2) A person is not required to be so appointed to fill a vacancy in the case of a member who was appointed under section 27 (1) (d) if there are at least 4 remaining members of the TAC Committee.	19 20 21 22
[42] Schedule 7 Savings, transitional and other provisions	23
Insert at the end of clause 2 (1):	24
<i>Fisheries Management Amendment Act 2001</i>	25

Schedule 2	Amendment of Environmental Planning and Assessment Act 1979	1
		2
	(Section 4)	3
[1]	Section 115G Definitions	4
	Insert after paragraph (g) of the definition of <i>fishing regulatory controls</i> :	5
	(h) Ministerial orders and interim orders made under Subdivision 1A of Division 6 of Part 7A of the <i>Fisheries Management Act 1994</i> .	6 7 8
[2]	Section 115N Special provisions relating to threatened species conservation	9 10
	Insert after section 115N (2):	11
	(2A) However, despite subsection (2), a species impact statement is not required in relation to threatened species, populations or ecological communities or their habitats, if:	12 13 14
	(a) the designated fishing activity subject to the environmental assessment is an activity authorised by a Ministerial order made under Subdivision 1A of Division 6 of Part 7A of the <i>Fisheries Management Act 1994</i> , and	15 16 17 18 19
	(b) the species impact statement prepared under section 221IC of the <i>Fisheries Management Act 1994</i> in relation to that order includes an assessment of the likely effect of the activity on those threatened species, populations or ecological communities or their habitats.	20 21 22 23 24