

#### Explanatory note

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

#### Overview of Bill

The object of this Bill is to amend the Fisheries Management Act 1994 (the principal Act) as follows:

- (a) to increase penalties for certain fisheries offences,
- (b) to establish higher penalties for certain second or subsequent offences and for certain offences committed in circumstances of aggravation,
- (c) to allow additional monetary penalties (to reflect the market value of fish taken) to be imposed in respect of certain offences,
- (d) to extend regulation making powers in the principal Act relating to bag limits, prohibited size fish and other matters,
- (e) to create a new indictable offence of trafficking in fish,
- (f) to recognise, protect and promote Aboriginal cultural fishing activities and practices,
- (g) to make further provision with respect to share management fisheries,
- (h) to tighten record-keeping requirements for fish sellers and for others who take possession of fish,

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- (i) to extend the circumstances in which charter fishing arrangements are required to be licensed,
- (j) to give effect to a uniform national scheme relating to Commonwealth cooperative fishing arrangements,
- (k) to make further provision with respect to the grant of aquaculture permits and leases, and for the recovery of rental payments on aquaculture leases,
- (l) to authorise quarantine orders to be made in respect of pet shops and commercial aquariums,
- (m) to transfer from the regulations to the principal Act the list of diseases and noxious fish and marine vegetation that are the subject of the regulatory arrangements under the principal Act,
- (n) to give the Minister further powers with respect to quarantine areas,
- (o) to make further provision for the protection of areas where salmon and trout spawn,
- (p) to prohibit the importation of live marine vegetation that is not indigenous to New South Wales,
- (q) to require notice to be given to the Minister of certain works that affect waterways,
- (r) to authorise the making of stop work orders to prevent certain activities that may damage fish habitat or obstruct free passage of fish,
- (s) to create a new offence of interfering with fish of a threatened species and to make further provision with respect to the protection of threatened species generally,
- (t) to give further powers to fisheries officers to require information for the purposes of the principal Act,
- (u) to impose a duty on the master of a fishing boat to prevent contraventions of the principal Act,
- (v) to increase the jurisdictional limit of a Local Court under the principal Act,
- (w) to enable restoration orders to be issued in respect of certain contraventions of the principal Act and to expand the types of orders that can be made in respect of repeat offenders,
- (x) to make other miscellaneous amendments relating to the management of fishery resources.

The Bill also makes related amendments to other legislation.

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.

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Schedule 1 Amendment of Fisheries Management

Act 1994 No 38

Penalties for offences

Schedule 1 [11] relates to the offences of possessing and selling prohibited size fish.

The maximum penalty for a first offence is increased and there is a higher maximum penalty for a second or subsequent offence. Two further offences (with higher penalties) are created for possessing or selling fish in circumstances of aggravation, which is defined as possessing or selling a commercial quantity of a priority species of fish. Schedule 1 [12] and [16] increase the maximum penalty for the offences of taking and possessing more fish than the daily bag limit and provide for an increased maximum penalty for a second or subsequent offence. Schedule 1 [13] and [17] create further offences (with higher penalties) of taking and possessing more fish than the daily bag limit in circumstances of aggravation, which is defined as taking or possessing a commercial quantity of a priority species of fish. Schedule 1 [19] provides that a court that finds a person guilty of an offence related to taking or possessing more than the daily limit of a priority species of fish can impose an additional monetary penalty of up to 10 times the market value of the fish the subject of the offence. Schedule 1 [15] makes a consequential amendment.

Schedule 1 [8] gives effect to proposed Schedule 1B, which contains a list of the fish that are priority species for the purposes of the new aggravated offences and sets out the commercial quantity of those fish. The Governor may amend the Schedule by regulation made on the recommendation of the Minister. Schedule 1 [136] inserts the proposed Schedule.

Schedule 1 [6] provides for an increased maximum penalty for a second or subsequent offence of taking or being in possession of fish in contravention of a fishing closure. It also increases the maximum penalty for a first offence of being in possession of fish in contravention of a fishing closure.

Schedule 1 [21] increases the maximum penalty for taking and being in possession of protected fish and provides for an increased maximum penalty for a second or subsequent offence.

Schedule 1 [23] provides for an increased maximum penalty for a second or subsequent offence of taking or selling fish that are protected from commercial fishing. This amendment is explained further below.

Schedule 1 [28] and [29] provide for an increased maximum penalty for a second or subsequent offence of unlawful use of fishing gear or possession of illegal fishing gear.

Schedule 1 [35] increases the maximum penalty for possessing fish that were illegally taken and provides an increased maximum penalty for a second or subsequent offence.

Schedule 1 [46] and [57] increase the penalties for contravening a condition of an endorsement on a licence. Schedule 1 [54] provides for an increased maximum penalty for a second or subsequent offence of commercial fishing without a licence.

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Schedule 1 [4] makes it clear that if a provision of the principal Act provides for an

increased maximum penalty for a second or subsequent offence, an offence is to be regarded as a second or subsequent offence only if a conviction was recorded in relation to the other offence and the other offence occurred on a separate occasion.

Regulation-making powers relating to bag limits and other matters

Schedule 1 [14] and [18] enable the regulations to specify a maximum limit of zero for the daily limits for taking and possessing fish, so that any taking of the fish is prohibited.

Schedule 1 [9] and [10] extend the power to make regulations declaring fish to be prohibited size fish, so that the regulations may declare different prohibited size fish for different classes of persons or for different circumstances and may specify the size of fish by reference to the number of individuals in any specified weight.

Schedule 1 [20] relates to the offence of possessing protected fish. The purpose of the amendment is to allow fish to be declared by the regulations to be protected fish absolutely or conditionally. If fish are absolutely protected, it will be an offence to be in possession of the fish in this State, whether or not the fish were taken from the waters of this State. If the fish are not absolutely protected, it will be an offence to be in possession of the fish in this State, but a defence to a prosecution of the offence if the person in possession proves that the fish were taken from waters outside this State.

Schedule 1 [22] allows the regulations to declare fish to be protected absolutely or conditionally from all or a class of commercial fishing. At present, it is only possible to declare a species of fish to be absolutely protected from all commercial fishing. As a consequence of the change, Schedule 1 [23] makes it an offence to take or sell fish protected from commercial fishing only if the fish were taken in breach of the declaration. However, similarly to the amendments relating to protected fish described above, the new provision allows the regulations to declare the sale of fish protected from commercial fishing to be absolutely prohibited. If the fish are absolutely protected from all commercial fishing it will be an offence to sell the fish in this State whether or not they were taken from the waters of this State.

Schedule 1 [26] makes a consequential amendment.

Schedule 1 [24] enables the regulations to declare a specified species of fish or specified waters to be protected, absolutely or conditionally, from all or a class of recreational fishing. This is similar to existing provisions in relation to commercial fishing. It will be an offence to take fish in breach of such a declaration.

Schedule 1 [7] makes a consequential amendment.

Trafficking in fish

Schedule 1 [27] creates a new offence of trafficking in an indictable species of fish with a maximum penalty of 10 years imprisonment. A person traffics in an indictable species of fish if the person dishonestly takes, sells, receives or possesses fish of an indictable species in contravention of another provision of the principal Act or the regulations and the quantity is not less than the indictable quantity. The indictable

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species and indictable quantity of fish are specified in Schedule 1C to the principal Act (as inserted by Schedule 1 [136]). The Governor may, by regulation made on recommendation of the Minister, amend Schedule 1C. A court that finds a person guilty of a trafficking offence may impose an additional monetary penalty of up to 10 times the market value of the fish the subject of the offence.

Aboriginal cultural fishing

Schedule 1 [1] makes it an object of the principal Act to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect and promote Aboriginal cultural fishing. Schedule 1 [2] defines Aboriginal cultural fishing as fishing activities and practices carried out by Aboriginal persons

for the purpose of satisfying their personal, domestic or communal needs or for educational, ceremonial or other traditional purposes, and which do not have a commercial purpose.

Schedule 1 [37] provides that the Minister may issue a fishing permit to a person for Aboriginal cultural fishing purposes. Schedule 1 [42] provides that the Minister may not issue a permit to a person for those purposes if it would be inconsistent with native title rights and interests or an indigenous land use agreement within the meaning of the Native Title Act 1993 of the Commonwealth.

Schedule 1 [38] provides that a permit may authorise a specified person or class of persons, in addition to the permit holder, to take and possess fish or marine vegetation as authorised by the permit. This will enable permits to be issued in respect of activities of a particular group (rather than a particular person).

Schedule 1 [39] makes a consequential amendment.

Share management fisheries

Schedule 1 [44] and [45] clarify the provisions relating to the duration of an endorsement on a commercial fishing licence, so that it is no longer necessary for the management plan for a fishery to specify the period for which an endorsement remains in force. Instead, the relevant period will be specified in the endorsement.

Schedule 1 [47] and [48] make it clear that if the maximum shareholding permitted in a share management fishery is decreased, existing shareholders are not required to sell any of their shares that exceed the new maximum limit.

Schedule 1 [49] makes it clear that when a review is conducted of a share management plan for a fishery and a new management plan is made, shares under that management plan are renewed for 10 years from the commencement of the new management plan. If a new management plan is not made after a review, the shares are renewed for 10 years from the expiry of the shares under the existing management plan.

Schedule 1 [50] authorises the Minister to cancel shares that are forfeited under the principal Act. At present, the shares must be sold.

Generally speaking, when forfeited shares are sold the purchase price is paid to the Consolidated Fund. If shares are forfeited because of a failure to pay a community contribution or other amount, the purchase price is paid to the shareholder after

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deduction of the amounts owing under the principal Act. Schedule 1 [51] makes further provision for the deductions that can be made before the purchase price is paid to the Consolidated Fund, or paid to the shareholder, as the case requires. In a case where the purchase price is to be paid to the Consolidated Fund, the amendment authorises the deduction from the purchase price, and payment to the Commercial Fishing Trust Fund, of any amount payable to that Fund by the shareholder. In a case where the purchase price must be paid to the shareholder after deduction of amounts owing, the amendment authorises the reasonable expenses incurred in selling the forfeited shares (in addition to amounts owing) to be deducted from the purchase price. The amendment also makes it clear that the Minister can recover the reasonable costs incurred in the sale in cases where the purchase price is insufficient to cover those costs and that the Minister is not liable to pay any community contribution or other amount under the principal Act that becomes payable after shares are forfeited.

Schedule 1 [52] clarifies that the Director-General of the Department of Primary Industries (the Director-General) is required to register a dealing in shares in the Share Register only if the Director-General has approved the transaction.

Schedule 1 [53] removes a redundant reference to the cancellation of shares.

Record keeping

Schedule 1 [60] replaces the current requirements for the keeping of records of the sale and possession of fish, which only apply to the sale and possession of the quantities of fish prescribed by the regulations. Under the new provisions, any person who sells fish must make and give to the purchaser a record of the sale (irrespective of the quantity of fish) and must also make a record concerning the person's acquisition of the fish. The seller must keep the records for 5 years after the fish are sold and must produce a copy of the record when requested to do so by a fisheries officer.

In addition, a person in possession of fish must produce a prescribed record when requested by a fisheries officer, if the person is a fishing industry participant (that is, the holder of a fishing authority or a person carrying on the business of selling or processing fish) or if the person has more than the commercial quantity of fish prescribed by the regulations.

The amendment also provides for an increased maximum penalty for a second or subsequent offence against the new provisions, and for a higher penalty for corporate offenders.

#### Charter fishing

Schedule 1 [61] and [62] clarify that a boat is a charter fishing boat for the purposes of Part 4A (Charter fishing management) of the principal Act if it is used for recreational fishing activities on a commercial basis. This includes where persons using the boat pay for the right to fish from the boat or for connected services (such as accommodation), where the boat is being used by members of a club or

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organisation that charges membership fees, and other arrangements prescribed by the regulations.

#### Co-operative fisheries management arrangements

Schedule 1 [5] and [63]–[72] make amendments to reflect the uniform national scheme for the management of co-operative fisheries consequent on the enactment of the Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006 of the Commonwealth. The relevant changes to the Commonwealth Act:

- (a) allow a co-operative fisheries arrangement to be varied, and
- (b) allow a co-operative fisheries arrangement to provide for the management of part of a fishery in accordance with a law of the State, and the management of other parts of the fishery in accordance with a law of the Commonwealth or of another State.

#### Aquaculture permits and leases

Schedule 1 [74] makes it clear that an aquaculture permit is not required for aquaculture undertaken by the Minister under an aquaculture industry development plan or otherwise for the purposes of the administration of the principal Act.

Schedule 1 [75] provides that an aquaculture permit must specify the type of aquaculture that is authorised to be undertaken under the permit, rather than the species of fish or marine vegetation, as is currently the case. Schedule 1 [76] provides that the type of aquaculture specified may include the species that can be cultivated or kept under the permit, the things that can be cultivated from fish or marine vegetation kept under the permit and the part of the life cycle of a species during which the species may be cultivated. Schedule 1 [25], [73] and [77]–[80] make consequential amendments. Schedule 1 [81] and [83] make similar amendments in respect of aquaculture leases.

Schedule 1 [82] removes the public consultation requirements in relation to an application for an aquaculture lease if the area to which the application relates is the subject of an aquaculture industry development plan and the type of aquaculture

proposed is a type that is suitable in that area according to the development plan. Schedule 1 [84] removes the 3-month grace period for overdue rental payments for an aquaculture lease, so that interest may be charged on overdue rental as soon as it becomes overdue, rather than only after it has remained unpaid for 3 months.

Schedule 1 [85] allows the Minister to cancel an aquaculture lease as soon as any rental payment or other amount due under the lease is not paid on time, rather than having to wait until the amount has remained unpaid for 2 years.

Diseases affecting fish and marine vegetation

At present, the Minister may declare an area a quarantine area because of the presence or suspected presence of diseases affecting fish or marine vegetation.

Schedule 1 [89] provides that the Minister may declare pet shops and commercial

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aquariums as quarantine areas, in addition to areas of water, areas in the vicinity of water and areas subject to aquaculture permits. Schedule 1 [90] and [91] provide that the Minister may require owners or occupiers of land or premises within a quarantine area, as well as aquaculture permit holders, to take certain action within quarantine areas. Schedule 1 [92] allows a fisheries officer to enter any quarantine area (not only areas subject to aquaculture permits) to take the required action, if the owner, occupier or permit holder has not taken the action. Schedule 1 [93] and [94] make minor consequential amendments.

Under the amendments made by Schedule 1 [88], declared diseases will be specified in Schedule 6B to the principal Act (as inserted by Schedule 1 [137]) rather than in the regulations. The Governor may, by regulation made on the recommendation of the Minister, amend the Schedule. Schedule 1 [95] enables the Minister, by order published in the Gazette, to exempt a declared disease from certain provisions of Division 4 (Diseased fish and marine vegetation) of Part 6 of the principal Act. In the case of an emergency, the Minister continues to be able to make urgent declarations, by order published in the Gazette, providing that a disease is a declared disease.

Schedule 1 [87] makes a consequential amendment.

Schedule 1 [86] re-locates the definition of disease currently found in section 182 (2) of the principal Act.

Damaging salmon and trout spawning areas

Schedule 1 [97] increases the maximum penalty for damaging gravel beds in waters in which salmon or trout spawn from 100 penalty units to 1,000 penalty units (currently, \$110,000). Schedule 1 [98] provides that a person is conclusively taken to have known that the waters were waters in which salmon or trout spawn if the act or omission constituting the offence occurred in the course of carrying out development or an activity for which development consent or other approval was required but not obtained or the act or omission constituted a failure to comply with any such development consent or approval.

Noxious fish and noxious marine vegetation

Under the amendments made by Schedule 1 [99], noxious fish and marine vegetation will be specified in Schedule 6C to the principal Act (as inserted by Schedule 1 [137]), rather than in the regulations. The Governor may, by regulation made on the recommendation of the Minister, amend the Schedule. Schedule 6C may also provide that a specified species of fish or marine vegetation is noxious in specified waters only. Schedule 1 [100] enables the Minister, by order published in the Gazette, to declare that certain provisions in the principal Act relating to noxious fish and noxious marine vegetation do not apply in respect of specified noxious fish or marine vegetation. In the case of an emergency, the Minister continues to be able to make urgent declarations, by order published in the Gazette, declaring a specified species of fish or marine vegetation to be noxious. Schedule 1 [3] makes a

consequential amendment.

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Prohibition on importation of live fish and live marine vegetation

Schedule 1 [104] restates the offence of importing live fish and creates a new offence of importing live marine vegetation. It will be an offence to bring into New South Wales any live fish or marine vegetation of a species prescribed by the regulations, except under the authority of a permit issued by the Minister. It will also be an offence to sell, buy or possess fish or marine vegetation knowing that it has been brought into New South Wales in contravention of those provisions. The offences do not apply to indigenous fish or marine vegetation. Schedule 1 [101] and [102] make consequential amendments.

Works affecting waterways

Schedule 1 [105] requires a person (other than a public authority) to notify the Minister in writing 28 days before commencing any construction or modification work on a dam, weir or reservoir on a waterway. The requirement does not apply in respect of any works approved by a public authority or by the Minister for Planning under Part 3A of the Environmental Planning and Assessment Act 1979.

Stop work orders

Schedule 1 [108] enables the Director-General to make a stop work order in relation to actions that are being carried out without a permit (or in contravention of a permit) under Division 3 or 4 of Part 7, or section 219, of the principal Act. The relevant provisions prohibit dredging or reclamation work, actions that may harm mangroves or other marine vegetation, and actions that may obstruct fish passage, except as authorised by a permit issued by the Minister. A stop work order may be issued if the action being carried out is likely to damage fish habitat or obstruct free passage of fish. Such an order may last for 40 days (and may be extended) and takes effect from the date on which the person carrying out the action is notified or the date on which a copy of the order is affixed in a conspicuous place in the vicinity of the relevant waters (whichever is the sooner). Provision is made for appeals to the Land and Environment Court against a decision to issue an order.

Threatened species conservation

Schedule 1 [116] makes it an offence for a person to interfere with fish of a threatened species. Interfering includes harassing, chasing, or tagging fish and any activity the purpose of which is to attract or repel fish, or any other activity prescribed by the regulations. It is a defence to the offence if the act or omission was carried out in accordance with certain licences and permits under the principal Act or the Threatened Species Conservation Act 1995. It is also a defence if the act or omission was reasonably necessary to prevent a risk to human health or to deal with a serious threat to human life or property or done in accordance with a direction given by a fisheries officer.

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Schedule 1 [109] extends the power to make regulations that prohibit certain actions on specified critical habitat to enable regulations to be made that prohibit or regulate such actions in specified waters or within a prescribed distance of fish or marine vegetation of a threatened species or their habitat.

Schedule 1 [110] and [112] clarify an existing defence to prosecution for certain offences related to threatened species. The defence applies if the act or omission constituting the offence was a routine fishing activity. The amendment makes it clear that the defence is only available if the person charged satisfies the court that, on becoming aware of taking any threatened species of fish, the person took immediate

steps to return the fish to its natural environment with the least possible injury. Schedule 1 [36] clarifies that the general defence for the accidental taking of fish that applies to any offence under the principal Act or regulations does not apply to offences relating to threatened species, because defences to offences against Part 7A of the principal Act are contained in that Part.

Schedule 1 [113] extends the circumstances in which a court may order a person to carry out restoration work (in addition to or instead of paying a fine) so that the court may make such an order for any person convicted of any offence against Part 7A (Threatened species conservation) of the principal Act if the offence has caused damage to any threatened species, population or ecological community or their habitat. At present, the provision is limited to offences causing damage to critical habitat. If a person does not comply with the requirements of such an order, Schedule 1 [114] enables the Minister to cause the actions specified in the order to be carried out, to claim or realise any security provided by the person to meet the costs of carrying out those actions and to recover those costs from the person in a court of competent jurisdiction.

Schedule 1 [115] allows a court that makes a community service order against a person convicted of an offence related to threatened species to recommend that the community service work include restoring damaged habitat or work that otherwise assists in achieving the objects of Part 7A (Threatened species conservation) of the principal Act.

Schedule 1 [111] makes a minor statute law revision amendment.

Power to require information

Schedule 1 [121]–[124] clarify that a fisheries officer who requires a person to produce records or answer questions in relation to commercial fishing may do so either orally or by notice in writing and may require the person to produce the records immediately or at a specified place within a specified period. Schedule 1 [125] increases the maximum penalty for not complying with such a requirement from 50 penalty units to 1,000 penalty units in the case of a corporation (currently, \$110,000) or 200 penalty units in any other case (currently, \$22,000).

Similarly, Schedule 1 [126] clarifies that a person who is required by a fisheries officer to provide information (including their name and address) must provide that information immediately or within the period specified by the fisheries officer.

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Schedule 1 [127] inserts a new provision that enables a fisheries officer to require information from a person or a corporation whom the officer suspects on reasonable grounds to have information that is required for the purposes of Part 7 (Protection of aquatic habitats) or Part 7A (Threatened species conservation) of the principal Act. A person who fails to comply with a requirement under this section is guilty of an offence with a maximum penalty of 1,000 penalty units in the case of a corporation or 200 penalty units in any other case.

Schedule 1 [127] also inserts a new provision that provides that a person must be warned that failure to comply with a requirement to provide information is an offence. A person is not excused from complying on the grounds of self-incrimination. However, information given by a person under such a requirement is inadmissible in proceedings against the person (other than proceedings relating to a failure to comply with the requirement to provide information) if the person objects or is not warned of his or her right to object.

Schedule 1 [118]–[120] make it clear that a fisheries officer has the power to enter a public place at any time, without having to give any notice that would be required before entry to commercial premises.

Duty of master of a boat to prevent contraventions of Act



Schedule 1 [132] imposes a duty on a master of a boat to prevent another person on the boat from committing certain serious fishing offences. If a person on board a boat commits a serious fishing offence (whether or not that person is charged with or convicted of the offence), the master of the boat is guilty of an offence. The maximum penalty is the same as the maximum penalty for the offence that the other person on the boat committed. It is a defence if the person charged proves that the person took reasonable precautions to ensure compliance with the principal Act, was not aware of the other person's conduct and could not have reasonably prevented the commission of the offence.

#### Proceedings for offences

Schedule 1 [130] increases the maximum monetary penalty a Local Court can impose for an offence under the principal Act or regulations from \$10,000 to 200 penalty units, which is currently \$22,000. Currently, a Local Court may also order the forfeiture of a boat or motor vehicle, which is valued at no more than \$10,000, and is seized in connection with a fisheries offence under the principal Act.

Schedule 1 [128] increases the maximum value of a boat or vehicle that can be forfeited to the jurisdictional limit of the Local Court, which is currently \$60,000.

Schedule 1 [129] and [131] provide that an offence against section 21B (Trafficking in fish) is an indictable offence. The amendment to the Criminal Procedure Act 1986 in Schedule 2.1 provides that the offence is to be dealt with summarily unless the prosecutor elects otherwise.

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#### Prohibition orders for repeat offenders

Schedule 1 [133] expands the court's power to make a prohibition order in respect of a repeat offender so that, in addition to prohibiting the person from engaging in specified commercial fishing activities or from being on a specified kind of boat in certain waters, the order may prohibit the person from being in possession of specified fishing gear or species of fish or marine vegetation and from being on any specified commercial fishing premises.

#### Restoration orders

Schedule 1 [134] inserts new provisions relating to the making of restoration orders and other actions that may be taken by the Minister or a court against certain persons whose conduct constitutes a serious fisheries offence and has damaged fishery resources. A serious fisheries offence is defined and includes offences relating to fishing closures, prohibited size fish and bag limits, trafficking in fish, illegal fishing gear, and contravening conditions of endorsements on fishing licences. Under proposed section 282I, the Minister may order a person who has contravened the principal Act and caused damage to a fishery resource (whether or not that person has been charged with or found guilty of an offence) to carry out actions that the Minister reasonably considers to be necessary to mitigate or rectify the damage. If the person does not comply with the order, the Minister may cause the actions specified in the order to be carried out and may recover from the person the reasonable costs of complying with the order. A person against whom an order is made may appeal against the making of the order to a Local Court, and the Local Court may determine the appeal by confirming the order, revoking the order or revoking the order and making a new order.

Under proposed section 282J, a court that convicts a person of a serious fisheries offence may, in addition to imposing a fine, order a person to carry out actions the court considers necessary to mitigate or rectify the damage. The court may require a person to provide security for the performance of any obligation imposed under the order. If the person does not comply with the order, the Minister may cause the actions specified in the order to be carried out and may claim or realise any security

provided by the person, or recover as a debt from the person, the reasonable costs of complying with the order.

In addition, a court that makes a community service order against a person who has been convicted of a serious fisheries offence may recommend that the community service work include work that restores damage to any fishery resource or otherwise to enhance, maintain or protect fishery resources.

Other miscellaneous amendments

Schedule 1 [33] and [34] make it clear that a recreational fisher must have an official receipt in his or her immediate possession when taking fish, that is, the person must be able to immediately produce the receipt if required.

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Schedule 1 [32] provides that the Director-General is to make appropriate arrangements to ensure that a person who pays a recreational fishing fee is issued with an official receipt. Schedule 1 [30] defines official receipt as the hard copy receipt (or a copy of that receipt) if the fee was paid in person, the receipt number if the fee was paid over the telephone or by electronic means, or any other evidence of payment prescribed by the regulations.

Schedule 1 [40] clarifies that an application for a permit is to be in a form approved by the Minister.

Schedule 1 [117] extends the circumstances in which a person is presumed to be engaged in fishing activities for commercial purposes to include if the person is in possession of fishing gear that cannot be lawfully used by a commercial fisher or a recreational fisher and the fishing gear is capable of being used to take more fish than a recreational fisher is entitled to take.

Schedule 1 [58] provides that money paid into various Trust Funds (such as the Commercial Fishing Trust Fund and the Recreational Fishing (Freshwater) and (Saltwater) Trust Funds), which comes mainly from fees and charges paid under the principal Act, can be used for taking measures to maintain and protect the fisheries, in addition to measures to enhance the fisheries, as is currently the case.

Schedule 1 [31] makes a consequential amendment to extend the purposes of fishing fees to enhancing, maintaining and protecting recreational fishing.

Schedule 1 [135] gives the Minister a general power to waive or refund any fees, charges, rental payments or other contributions payable under the principal Act or the regulations, if the Minister considers it is appropriate to do so.

Schedule 1 [103] and [106] remove an ambiguity in the definition of waterway. The amendment makes it clear that the offence of releasing live fish into waters without a permit extends to any flowing stream of water, whether natural or artificially regulated (such as by weirs, dams or pumping). Similarly, the Minister's power to require a person carrying out construction work on waterways to provide a fishway or fish by-pass applies to any flowing stream of water, whether natural or artificially regulated.

Schedule 1 [96] requires an appeal to the Land and Environment Court under the principal Act to be made within 30 days of receiving notice of the decision to which the appeal relates. The amendment also provides that an appeal does not operate to automatically stay a decision appealed against.

Schedule 1 [43] enables regulations to be made in relation to the fees payable in respect of an application for a permit under the principal Act (in addition to, or instead of, a fee for the issue of a permit). Schedule 1 [41] and [107] make consequential amendments.

Schedule 1 [55] and [56] provide that a declaration that a fishery is a restricted fishery is no longer required to specify the duration of the declaration, so that a fishery remains a restricted fishery until the declaration is revoked by the regulations

or until the expiry of any specified period.

Schedule 1 [59] removes an outdated reference to the Fisheries Act 1935.

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Schedule 1 [2] inserts a definition of share management plan in the principal Act, which is defined as a management plan for a share management fishery.

Savings and transitional provisions

Schedule 1 [138] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [139]–[144] insert savings and transitional provisions consequent on the amendments.

Schedule 2 Amendment of other Acts

Schedule 2.1 Criminal Procedure Act 1986 No 209

Schedule 2.1 provides that the new indictable offence of trafficking in certain species of fish (as inserted by Schedule 1 [27]) is to be dealt with summarily unless the prosecutor elects for the offence to be dealt with on indictment.

Schedule 2.2 Land and Environment Court Act 1979 No 204

Schedule 2.2 ensures that appeals in relation to the stop work orders that amendments in Schedule 1 allow the Director-General to make can be heard by the Land and Environment Court.

Schedule 2.3 Local Court Act 2007 No 93

Schedule 2.3 enables the Local Court, in its special jurisdiction, to hear proceedings on an appeal against a restoration order made by the Minister under the provisions to be inserted in the principal Act by Schedule 1.

Schedule 2.4 Local Courts Act 1982 No 164

Schedule 2.4 enables the Local Court, in its jurisdiction under Part 6 of the Local Courts Act 1982, to hear proceedings on an appeal against a restoration order made by the Minister under the provisions to be inserted in the principal Act by Schedule 1.

Schedule 2.5 Marine Parks Act 1997 No 64

Schedule 2.5 [1] makes it clear that, in applying certain enforcement provisions of the Fisheries Management Act 1994 (Divisions 1–4 of Part 9 of that Act) to the Marine Parks Act 1997, a reference to a forfeiture offence is a reference to an offence declared by the regulations under the Marine Parks Act 1997 to be a forfeiture offence. This allows the seizure powers conferred by the enforcement provisions of the Fisheries Management Act 1994 to be applied to offences under the Marine Parks Act 1997.

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Explanatory note

Schedule 2.5 [2] increases the maximum monetary penalty that the Local Court may impose for an offence against the Marine Parks Act 1997 or the regulations made under that Act from \$20,000 to \$22,000. Schedule 2.5 [4] provides that the increased penalty applies only to offences committed after the commencement of the amendment.

Schedule 2.5 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.