

Second Reading

The Hon. TONY KELLY (Minister for Primary Industries, and Minister for Lands) [3.15 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Fisheries Management Amendment Bill 2009 introduces a number of important reforms to the Fisheries Management Act 1994. These amendments will ensure that the Act is brought into line with other State and national fisheries legislation by recognising Aboriginal cultural fishing and strengthening enforcement provisions against illegal fishing in this State. The bill also improves various threatened species, aquaculture and habitat protection provisions. Finally, it makes a number of minor amendments to streamline administration of the Act. The Fisheries Management Amendment Bill 2009 stems largely from two major reviews of fisheries legislation and practices in New South Wales, both conducted in 2004. The first review was the Report on Illegal Fishing for Commercial Gain or Profit in New South Wales by Mr Mick Palmer. This document is commonly referred to as the Palmer report. The second was the Review of the New South Wales Indigenous Fisheries Strategy for NSW Fisheries by Tyagarah Consultants.

The Fisheries Management Act is designed to maintain and preserve fish stocks in New South Wales by regulating both commercial and recreational fishing with a system of offence provisions and penalties to enforce those regulations. While the existing legislation defines commercial and recreational fishing, there is currently no recognition of Aboriginal cultural fishing practices. Since the early 1990s permits have been available to Aboriginal people for cultural fishing activities that fall outside the general recreational fishing rules. However, Aboriginal people have to apply for a permit that groups cultural fishing with aquaculture and research projects. Many Aboriginal people do not consider it necessary or fair that they should have to apply for a special permit to fish outside the current rules—an activity they consider a right.

It is important, however, that government and Aboriginal communities continue to work together to recognise and protect cultural fishing rights and that they are integrated into current and future management frameworks. The bill, therefore, includes a new objective that recognises the spiritual, social and customary significance to Aboriginal people of fisheries resources and protects and promotes the continuation of Aboriginal cultural fishing. Aboriginal cultural fishing is defined in the bill as "fishing activities and practices carried out by Aboriginal persons for the purpose of satisfying their personal, domestic or communal needs, or for educational or ceremonial purposes or other traditional purposes, and which do not have a commercial purpose".

The changes proposed in this bill mean that for the first time Aboriginal people's customary association with the fisheries resource is formally recognised in the Fisheries Management Act. In keeping with this new objective, the bill also amends the Act to allow permits to be issued specifically to enable Aboriginal people to fish or take marine vegetation for Aboriginal cultural fishing purposes. The bill will also allow permits for Aboriginal cultural fishing to be issued to a group, as well as to an individual. This will make it easier for communities to fish culturally—especially for large ceremonies such as birthdays and weddings—because more than one person will be able to fish under the one permit.

The next area of reform is illegal fishing for commercial gain. The Palmer report found that illegal harvesting and black market selling of fish in New South Wales is widespread, deeply entrenched and poses significant economic and environmental threats to the sustainability of the New South Wales fishery. Furthermore, as fisheries resources become more sought after and valuable we can expect an increase in illegal fishing and black markets. The Palmer report highlighted the need to clamp down on illegal seafood harvesting and sale by increasing the powers the courts have to rule against those who are convicted of fisheries offences, increasing the powers of Fisheries officers to act on suspected illegal fishing activity, imposing tougher penalties for a range of offences, and giving the courts and the Minister the power to order an offender to restore fish habitat if they are found to have damaged this habitat.

The Australian Institute of Criminology paper, "A National Study of Crime in the Australian Fishing Industry", endorsed Palmer's findings. One of the key recommendations of this study is a nationally consistent approach to fighting illegal fishing. The bill contains three sets of amendments that support the recommendations of both the Palmer report and the study. The first set of amendments aims to reduce the black marketing of fish. The second seeks to provide more appropriate penalties for serious fisheries offences. The third aims to increase the accountability of those suspected of being involved in illegal fishing activity. The Act currently requires a person who has a certain quantity of fish in their possession to produce a written record of that fish if requested to do so by a Fisheries officer.

However, if they can prove that the fish were for personal use and not intended for sale, transportation or storage, they are not in breach of the law. This defence is open to abuse and can act as a significant barrier to successful prosecution. The bill, therefore, amends powers by deeming that all fish held at commercial premises are being held for sale. The bill also requires the owner or occupier of the commercial premises to have a record for all fish in their possession or held at their commercial premises. These changes will help prevent illegally caught fish from being stored on commercial premises and make it more difficult to black market illegal product.

Turning now to more appropriate penalties, the bill will introduce much-needed tougher penalties to deter people from committing serious fisheries offences. In its 2007-08 assessment the Abalone Total Allowable Catch Committee noted

that, while abalone thieves are enjoying the windfall gains of bank robbers, they are paying penalties of minor traffic offenders. The committee's assessment also highlighted that the penalties imposed for illegal abalone fishing in New South Wales are much lower than those in Victoria and Tasmania. This bill addresses these anomalies and brings New South Wales legislation into line with other States, which is one of the key objectives of the Australian Fisheries National Compliance Strategy 2004-2009.

To create more powerful deterrents to illegal fishing and to provide greater consistency between Australian jurisdictions the bill introduces incremental penalties for first and subsequent offences. This means that the courts will now have the power to impose higher maximum penalties for second and subsequent offences. The bill also provides higher penalties for certain offences if the offence concerned was committed in circumstances of aggravation, such as, significantly exceeding bag limits for priority species of fish. Additionally, the bill includes a higher maximum penalty for certain first offences. For example, we are doubling the penalty for taking our special protected fish species, such as estuary cod and eastern blue devil fish. The bill also gives the courts the power to impose an additional penalty linked to the value of the catch. This means that illegal fishers can, for the first time, be made to pay additional fines of up to 10 times the value of the illegal catch for high-value species such as abalone and lobster.

The bill also introduces the new offence of trafficking in indictable species. Serious fisheries crime in trafficking certain species, such as abalone and eastern rock lobster, will now be an indictable offence, with substantial jail terms applying. A person convicted of trafficking in abalone or lobster could therefore face a maximum penalty up to 10 times the market value of the fish and 10 years in jail. The new trafficking offences will be brought also under the Confiscation of the Proceeds of Crime Act 1997, which gives courts the power to seize assets and money gained through illegal fishing. The community quite rightly has an expectation that criminals should not benefit from the proceeds of their crime. Allowing the proceeds and assets acquired through serious fisheries crimes to be confiscated will provide a major deterrent to black market activity.

I turn now to the issue of prohibition orders. Currently, when a repeat offender is convicted of a fisheries offence, the court can prohibit him or her from engaging in particular commercial fishing activities, or from being on any boat or in any premises associated with those commercial fishing activities. However, a prohibition order cannot prevent an offender from fishing recreationally or from working in the fishing industry. If a prohibition order is made against an individual it is because he or she has been continually and blatantly fishing illegally. Preventing him or her only from taking part in commercial fishing activities may not be a strong enough deterrent. The bill therefore includes an amendment to allow the court to decide from what kinds of fishing or associated activities the offender should be banned. This will bring New South Wales into line with Victorian, Tasmanian and South Australian legislation—a recommendation of the Palmer report.

The final amendment to the Act, based on the Palmer report, increases accountability and seeks to address the situation where children, accompanied by adults, claim that fish illegally caught or found on a boat are theirs alone. Because of the principles applied to young offenders, it is almost impossible to prosecute the real offenders for illegal fishing in these circumstances. The bill will make the master of a boat jointly liable for any fisheries offences committed on board that boat, subject to various defences. This will bring New South Wales into line with Western Australia.

To complement the recommendations of the Palmer report, the bill also includes a suite of changes to improve the operation and enforcement of the Act generally. The first group of amendments will improve and streamline fisheries compliance activities. One amendment will give fisheries officers the power to seize boats and motor vehicles if a person has any unlawful fishing gear provided that gear is reasonably capable of catching commercial quantities of fish. Another amendment will allow the Minister or a court to impose a remediation order for serious fish theft offences. This power could result in a convicted offender having to restore a denuded abalone reef or perform community service.

The bill also introduces two amendments that relate to threatened species. The first of these amendments will remove a defence that currently allows anglers to deliberately target and repeatedly catch threatened species under the guise of other fishing activities, as occurred at Stockton Beach in 2005 when anglers repeatedly captured great white sharks from the beach. The second amendment will allow a fish retailer to possess and sell protected fish that have been legally taken in another jurisdiction, except for fish that have been declared by regulation to be protected absolutely. A further amendment will clarify the requirements for possession of a recreational fishing fee receipt.

The bill will make important changes to the jurisdiction of local courts for fishing offence prosecutions. Currently the maximum penalty that the Local Court can impose is \$10,000. This means that more serious matters must be heard in the Supreme Court or the Land and Environment Court, which is costly for both the Government and offenders. The bill increases the maximum penalty that the Local Court can impose to 200 penalty units, which currently equates to \$22,000. This will allow local courts to impose higher penalties where appropriate. The bill also enables the Local Court to deal with the forfeiture of boats and motor vehicles worth up to \$60,000, which is the jurisdictional limit of the Local Court's General Division. Currently if a seized boat or motor vehicle is worth more than \$10,000 the offence must be heard in the Supreme Court.

The bill makes some relatively minor amendments to improve the efficiency and operation of the aquaculture and aquatic habitat provisions of the Act. Amendments relating to aquaculture include some aquatic biosecurity provisions relating to quarantine actions. Amendments relating to aquatic habitat include a presumption in certain circumstances that a person knows that an area is a place where salmon or trout spawn or are likely to spawn, and the ability to issue a stop-work order to prevent unauthorised works that are damaging fish habitats or blocking the free passage of fish. The bill makes some amendments to protect threatened species from harmful interaction with humans.

For example, the bill will include a new offence prohibiting a person from interfering with threatened species of fish listed under the Act. This will prevent recreational boaters from berleying up or teasing up threatened species—for example, great white sharks—which has happened in the past. The bill also includes amendments to reflect a uniform

national scheme for cooperative arrangements in the management of fisheries resulting from changes to Commonwealth legislation. Finally, the bill includes various miscellaneous measures to improve the administration and operation of the Act. These include allowing for a bag limit of zero for the taking and possession of fish, and allowing the Minister to cancel forfeited shares as opposed to selling them by public tender.

There has been extensive consultation between agencies with respect to the proposals put forward in the bill. Consultation has occurred with the Minister for Police, the Attorney General's Department, the Department of Aboriginal Affairs, the Office of the Director of Public Prosecutions and the Department of Water and Energy. Consultation has also occurred with the Minister for Regulatory Reform, the Treasurer, the Minister for Climate Change, Environment and Water, and the Minister Assisting the Minister for Climate Change, Environment and Water. The policy proposals underlying the bill have been developed over several years, taking into consideration the views of community and industry stakeholders. Improved management of Aboriginal cultural fishing has been under consideration for some time. Key Aboriginal stakeholders, including members of the former Indigenous Fisheries Strategy Working Group, the former Aboriginal and Torres Strait Islander Commission, and Aboriginal and Torres Strait Islander services have been consulted. Other groups that have been consulted include Aboriginal commercial fishers, the former NSW Native Title Services—now NTSCORP—and the NSW Department of Primary Industries Aboriginal Reference Group.

In relation to illegal fishing, the Palmer report review was undertaken with the help of an advisory team consisting of commercial and recreational fishing representatives along with seafood industry and government agency representatives. Public and industry submissions were received on the Palmer report, which was released for public comment in 2004. These submissions have contributed to the development of amendments stemming from the Palmer report recommendations. The bill introduces important reforms to the Fisheries Management Act. These amendments will ensure that the Act is brought into line with other State and national fisheries legislation by recognising Aboriginal cultural fishing and by strengthening enforcement provisions against illegal fishing in this State. The bill will make a significant and positive contribution to the future of fisheries in New South Wales. I commend the bill to the House.