

Fisheries Management Amendment Bill 2006

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 make further provision with respect to endorsements on commercial fishing licences that authorise the taking of fish in particular fisheries, including:
 - (i) by making further provision for endorsement conditions, and
 - (ii) by making it an offence to contravene a condition of an endorsement, and
 - (iii) by allowing the management plan for a share management fishery to permit or restrict the issue of multiple endorsements to one person, and
 - (iv) by allowing an endorsement that authorises a person to take fish in a fishery to be given in the form of a separate document from the commercial fishing licence of the person authorised to take the fish,
- (b) to make further provisions with respect to the management charges payable by shareholders in share management fisheries and the annual contributions payable by participants in restricted fisheries and in the recreational charter fishing industry,
- (c) to modify record keeping requirements under the principal Act,
- (d) to allow the disclosure of information collected under the principal Act to certain persons,
- (e) to allow the Minister to issue permits for fish auctions that are conducted for charitable purposes,
- (f) to require money raised on the sale of forfeited shares in a share management fishery to be paid into the Commercial Fishing Trust Fund in certain circumstances,
- (g) to allow the Total Allowable Catch Committee (the **TAC Committee**) to review and revise a total allowable catch determination in certain circumstances without further public consultation,
- (h) to redefine the ocean trawl share management fishery,
- (i) to make further provision with respect to appeals in relation to the issue of shares in a share management fishery,
- (j) to make other amendments of a statute law revision nature.

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 that gives effect to the amendments to the *Fisheries Management Act 1994* set out in Schedule 1.

Schedule 1 Amendments

Endorsements on commercial fishing licences

At present, if a fishery is a share management fishery or a restricted fishery, a commercial fisher is not authorised to take fish in the fishery unless he or she has an endorsement on his or her commercial fishing licence that authorises the fisher to take fish in that fishery.

Schedule 1 [11], [14] and [21] make it clear that the Minister has power to revoke or vary conditions attached to an endorsement (other than conditions prescribed by the regulations) or add new conditions. The provisions also make it an offence to contravene a condition of an endorsement. The new provisions are similar to the

existing provisions relating to conditions of commercial fishing licences, fishing boat licences and charter fishing boat licences.

Schedule 1 [12] allows the Minister to revoke an endorsement in a share management fishery at the request of the relevant shareholder. It also requires particulars of endorsements, and any revocation of an endorsement, to be recorded in the Share Register.

Schedule 1 [9] and [13] allow the management plan for a share management fishery to provide for the circumstances in which it is permissible for a commercial fisher (including a shareholder who is a commercial fisher) to engage in fishing activities in multiple fisheries or on behalf of multiple shareholders.

Schedule 1 [13] also removes the requirement that a shareholder notify the Director-General if the shareholder revokes a nomination of a commercial fisher to take fish on the shareholder's behalf. The new provisions allow the management plan for the fishery to set out requirements relating to nominations. **Schedule 1 [6] and [7]** are consequential amendments.

Schedule 1 [21] includes a provision that allows an endorsement that authorises a person to take fish in a restricted fishery to be given in the form of a document that is separate from the commercial fishing licence of the person authorised by the endorsement to take fish in the fishery. **Schedule 1 [15]** inserts a similar provision in relation to special endorsements in share management fisheries. A similar provision that already exists in relation to ordinary endorsements in share management fisheries is revised by **Schedule 1 [12]** so as to confirm that an endorsement given in the form of such a separate document is taken, for purposes of the principal Act and the regulations, to be an endorsement on the commercial fishing licence of the person authorised by the endorsement to take fish in the fishery.

Schedule 1 [36] includes savings and transitional provisions in relation to the above changes.

Management charges and annual contributions

At present, shareholders in a share management fishery are required to pay a management charge determined by the Minister for each fishing period during which the commercial fishing licences of the shareholders (or their nominees) are endorsed to take fish in the fishery. In addition, commercial fishers (whether or not shareholders) are subject to a requirement to pay an annual contribution to the costs of research and other commercial fishing industry costs in accordance with the regulations.

Schedule 1 [17] extends the requirement that shareholders in a share management fishery pay a management charge determined by the Minister, so that the management charge will be payable whether or not a shareholder is taking fish, or has nominated a person to take fish, in the fishery. The charge will be payable annually, or as otherwise determined by the Minister.

Schedule 1 [18] allows a single management charge to be applied to a shareholder in several share management fisheries or in respect of a single fishing business that includes shares in several share management fisheries.

Schedule 1 [20] removes the requirement that holders of a commercial fishing licence pay an annual contribution to research and other industry costs. However, under **Schedule 1 [22]**, an annual contribution will now be payable by participants in a restricted fishery if the regulations so require it. The contribution will be payable into the Commercial Fishing Trust Fund and payable towards the various purposes for which that Fund may be used (similar to the management charge payable by shareholders in share management fisheries).

Persons who hold a charter fishing boat licence will also be required to pay an annual contribution to industry costs, if the regulations so require it, as a result of **Schedule 1 [26]**. The contribution will be payable into the Charter Fishing Trust Fund and payable towards the various purposes for which that Fund may be used.

Schedule 1 [36] and [37] include savings and transitional provisions in relation to the above changes.

Schedule 1 [19] makes a statute law revision amendment to ensure that the management charge provisions in the principal Act, in relation to charging of interest, are consistent.

Record keeping requirements

Schedule 1 [25] and [27] allow the regulations to require records to be kept by commercial fishers, persons who nominate commercial fishers to take fish on their behalf, fish receivers, and charter fishing boat operators and licence holders. The requirements that may be imposed by the regulations are more extensive than the record keeping requirements currently contained in the principal Act, and include provision for a record to be kept of commercial fishing activities engaged in where no fish are taken or of periods in which no fishing activities are engaged in. The provisions also ensure that both commercial fishers and the business owners who nominate them may be held responsible for providing records in relation to fishing activities. Similarly, both the master of a charter fishing boat and the licence holder for that boat may be held responsible for providing records in relation to charter fishing activities under the new requirements.

Schedule 1 [23] and [24] are consequential amendments.

Disclosure of information

Schedule 1 [29] allows certain information obtained by the Department of Primary Industries under the principal Act to be disclosed in limited circumstances, without the consent of the person who provided it. The provision will allow:

- (a) disclosure of information provided by a nominated fisher of a person, to the person who nominated him or her, insofar as it relates to activities conducted on behalf of that person, and
- (b) disclosure of information held in connection with the fishing business, to the owner of a fishing business (including information provided before the owner became the owner of that fishing business), and
- (c) disclosure of information provided by the master of a licensed charter fishing boat in connection with the use of the boat for recreational fishing activities, to the holder of the charter fishing boat licence for the boat.

Schedule 1 [38] makes it clear that the provision extends to information already held by the Department.

Permits authorising sale of fish for charitable purposes

Schedule 1 [5] allows the Minister to issue a permit that authorises the sale of fish, by auction, for a charitable purpose. It is envisaged that such permits will authorise fish taken in a recreational fishing competition to be sold for a charitable purpose at the end of the competition. Participants in the competition will not, as a result of the anticipated sale, be regarded as taking the fish concerned for sale (and will continue to be treated as recreational fishers).

Schedule 1 [28] makes it clear that such a permit cannot be issued to authorise harm to threatened species, populations or ecological communities or to damage habitat.

Redefinition of ocean trawl fishery

Schedule 1 [33] redefines the ocean trawl fishery to extend the fishery to the use of a danish seine trawl net (fish) to take fish from ocean waters that are north of a line drawn due east from Barrenjoey Headland, and to omit the waters of Jervis Bay from the fishery (as trawling in those waters is no longer permitted). **Schedule 1 [36]** includes a provision that ensures that shares provisionally issued in the fishery continue to have effect, despite that redefinition.

Public consultation by TAC Committee

Schedule 1 [3] allows the TAC Committee to review a determination of total allowable catch made following public consultation (an *initial determination*), without further public consultation, and to make a new or different determination of

total allowable catch following that review, within 6 months after making an initial determination. The TAC Committee will continue to be required to undertake public consultation if the review occurs at a later stage, or if the Minister directs it.

Schedule 1 [30] and [32] confirm that the public consultation procedure provided for by the principal Act applies to the TAC Committee.

Sale of forfeited shares

At present, shares in a share management fishery may be forfeited for certain contraventions of the principal Act or for a failure to pay a community contribution or other amount due under the principal Act. The shares are sold by public tender, and the purchase price paid to the Consolidated Fund.

Schedule 1 [16] provides that if the shares are forfeited for a failure to pay an amount that would, on payment, be paid into the Commercial Fishing Trust Fund, the amount outstanding is to be deducted from the purchase price and paid to that Fund (rather than the Consolidated Fund).

It also makes it clear that, where shares are forfeited for a failure to pay an amount payable under the principal Act, any proceeds of sale exceeding the amount payable is to be refunded to the shareholder.

Appeals to Share Management Fisheries Appeal Panel

Many of the existing share management fisheries under the principal Act were wholly or partially restricted fisheries when shares in the fishery were provisionally issued. Under the principal Act, the persons eligible for shares in such fisheries are the persons entitled to take fish in the relevant restricted fisheries. **Schedule 1 [35]** modifies an existing provision of the principal Act that applies in respect of particular restricted fisheries. The existing provision prevents an appeal from being made to the Share Management Fisheries Appeal Panel in relation to a determination made before the restricted fishery became a share management fishery if the determination could have been made the subject of a review request under the former regulations under the principal Act. The amendment extends the provision to ensure that there is no appeal in relation to any restricted fishery determination (including any associated determination of catch history) for which an internal review procedure was available. The purpose of the provision is to ensure that appeals in relation to the issue of shares in a share management fishery do not reopen any previously settled issues relating to eligibility for an endorsement in a restricted fishery.

Other amendments

Schedule 1 [1] and [2] update references in the principal Act to the Department responsible for administering the principal Act.

Schedule 1 [2] and [4] define *owner of a fishing business*, for the purposes of provisions of the principal Act that use that expression (including the new provisions described above relating to record keeping requirements and disclosure of information).

Schedule 1 [8] makes a statute law revision amendment to confirm that a provision that requires a shareholder to have not less than the minimum shareholding in a fishery extends to fisheries that have different minimum shareholdings for different classes of shares.

Schedule 1 [10] makes a statute law revision amendment to insert an omitted word.

Schedule 1 [31] makes a statute law revision amendment to confirm that the public consultation requirements under the principal Act also apply to supporting plans made under the principal Act.

Schedule 1 [34] provides for the making of savings and transitional regulations as a consequence of the amendments to the principal Act.