



New South Wales

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.

First print



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Fisheries Management Amendment Bill 2006

No. , 2006

A Bill for

An Act to amend the *Fisheries Management Act 1994* to make further provision with respect to the management of fishery resources.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fisheries Management Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Fisheries Management Act 1994 No 38	6
The <i>Fisheries Management Act 1994</i> is amended as set out in Schedule 1.	7
	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	The whole Act (except Schedule 7)	3
	Omit “NSW Fisheries” wherever occurring. Insert instead “the Department”.	4
[2]	Section 4 Definitions	5
	Insert in alphabetical order in section 4 (1):	6
	<i>Department</i> means the Department of Primary Industries.	7
	<i>owner of a fishing business</i> is defined in section 34Q.	8
[3]	Section 32 Review of determinations by TAC Committee	9
	Insert after section 32 (3):	10
	(4) Despite section 31, a review of a determination of total allowable catch made by the TAC Committee (an <i>initial determination</i>) may be carried out without calling for public submissions on the appropriate total allowable catch if:	11
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	(a) the review is conducted, and any new or different determination of total allowable catch made as a result of the review is made, within 6 months after the initial determination was made, and	15
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	(b) before making the initial determination, the TAC Committee called for public submissions in relation to the appropriate total allowable catch.	19
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	(5) Subsection (4) does not apply if the Minister directs the TAC Committee to call for public submissions in relation to a review.	22
		23
	(6) If the TAC Committee conducts a review of an initial determination without calling for public submissions, the TAC Committee must, in making any decision in relation to the review, have regard to any public submissions that it was required to have regard to when it made the initial determination.	24
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		28
[4]	Section 34Q Fishing business determinations	29
	Insert after section 34Q (8):	30
	(9) A reference in this Act to the <i>owner of a fishing business</i> is a reference to the person (or persons) who, from time to time, owns or own a business that is, or has been, determined to be a fishing business by the Director-General under this section.	31
		32
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[5] Section 37A	1
Insert after section 37:	2
37A Defence—permits authorising sale of fish for charitable purposes	3
(1) The Minister may issue to a person or body a permit that authorises the sale of fish, by auction, for a charitable purpose.	4 5
(2) Any such permit may also authorise a person, or any class of persons specified in the permit, to take and possess fish, in connection with the sale of the fish by auction, by any method or by any specified method, from any waters or any specified waters or in any other specified way, despite any provision of or made under this Act to the contrary.	6 7 8 9 10 11
(3) A person who takes fish, or is in possession of fish, in connection with a sale authorised by a permit issued under this Part, and in accordance with the authority granted by the permit, is not considered to be taking that fish, or in possession of that fish, for sale.	12 13 14 15 16
(4) It is a defence to a prosecution for an offence against this Act or the regulations if the person charged satisfies the court that the act or omission constituting the offence was authorised by a permit issued under this section.	17 18 19 20
(5) A permit under this section:	21
(a) is subject to such conditions as are prescribed by the regulations or specified in the permit, and	22 23
(b) remains in force for the period specified in the permit, and	24
(c) may be cancelled or suspended by the Minister at any time by notice given to the permit holder.	25 26
(6) The Minister may from time to time, by notice given to the permit holder, vary the conditions of a permit under this section.	27 28
(7) The regulations may make provision for or with respect to permits under this section. In particular, the regulations may prescribe the fee payable for the issue of a permit.	29 30 31
(8) The power to issue permits under this section is limited by section 220ZW (Licence to harm threatened species, population or ecological community or damage habitat).	32 33 34
(9) In this section:	35
<i>charitable purpose</i> includes any benevolent, philanthropic or patriotic purpose.	36 37

[6] Section 66 Who may fish in share management fisheries after commencement of management plan	1
	2
Omit “in the Share Register” from section 66 (a).	3
[7] Section 68 Endorsements on licences	4
Omit “in the Share Register” from section 68 (3) (a).	5
[8] Section 68 (3) (b)	6
Omit the paragraph. Insert instead:	7
(b) the shareholder has not less than the minimum	8
shareholding in the share management fishery required	9
under this Division, or the minimum such shareholding for	10
the class of shares concerned, and	11
[9] Section 68 (4B) and (4C)	12
Insert after section 68 (4A):	13
(4B) The licence of a shareholder may not be endorsed if the	14
shareholder is already authorised, by endorsement, to take fish in	15
another share management fishery, unless the further	16
endorsement is authorised by the management plan for each	17
fishery in which the shareholder is, or will (as a consequence of	18
the further endorsement), be authorised to take fish.	19
(4C) Subsection (4B) does not prevent a shareholder from nominating	20
another person to take fish on behalf of the shareholder in any	21
fishery in which the shareholder is prevented from holding an	22
endorsement, subject to compliance with any requirements under	23
section 69.	24
[10] Section 68 (5)	25
Insert “an” after “application for”.	26
[11] Section 68 (6A)–(6C)	27
Omit section 68 (6A). Insert instead:	28
(6A) The authority conferred by such an endorsement is subject to	29
such conditions as are prescribed by the regulations or specified	30
in the endorsement.	31
(6B) The Minister may, at any time by notice in writing to the holder	32
of a licence who is authorised by an endorsement to take fish in a	33
share management fishery, revoke or vary the conditions of the	34
endorsement or add new conditions. This subsection does not	35
apply to conditions prescribed by the regulations.	36

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(6C)	The holder of a commercial fishing licence who contravenes any condition of an endorsement on the licence under this section is guilty of an offence. Maximum penalty: 100 penalty units.	1 2 3 4
[12] Section 68 (8A)–(8C)		5
	Omit section 68 (8A). Insert instead:	6
(8A)	An endorsement of the licence of a shareholder, or of the licence of a nominated fisher of a shareholder, may also be revoked by the Minister on a request made by the shareholder in accordance with the requirements (if any) of the management plan for the fishery.	7 8 9 10 11
(8B)	The Director-General is to record particulars of any endorsement under this section, and any suspension, cancellation or revocation of an endorsement, in the Share Register.	12 13 14
(8C)	The Minister may approve arrangements under which a person who is eligible for an endorsement is given such an endorsement in the form of a separate document from the commercial fishing licence of the person. Any such document is taken to be an endorsement on the commercial fishing licence of the person authorised by the endorsement to take fish in the fishery, and references in this Act or the regulations to an endorsement extend to an endorsement in that form.	15 16 17 18 19 20 21 22
[13] Section 69 Nomination of commercial fisher by holder of shares		23
	Omit section 69 (6)–(8). Insert instead:	24
(6)	However, the holder (the <i>nominating shareholder</i>) may not:	25
(a)	nominate a commercial fisher who is nominated by another shareholder in the same fishery, unless authorised to do so by the management plan for the fishery, or	26 27 28
(b)	nominate a commercial fisher who is nominated by another shareholder in another fishery, unless authorised to do so by the management plan for each fishery in which the commercial fisher will be authorised to take fish as a consequence of the nominations.	29 30 31 32 33
(7)	The management plan for a fishery may make further provision for nominations under this section, and for the revocation of nominations, including by requiring a shareholder to keep a record of a nomination or revocation of a nomination.	34 35 36 37

(8)	The Director-General is to record any nomination under this section, and any revocation of the nomination, in the Share Register.	1 2 3
[14]	Section 70 Special endorsements to take fish in share management fishery	4 5
	Insert after section 70 (4):	6
(4A)	The Minister may, at any time by notice in writing to the holder of a licence who is authorised by an endorsement under this section to take fish in a share management fishery, revoke or vary the conditions of the endorsement or add new conditions. This subsection does not apply to conditions prescribed by the regulations.	7 8 9 10 11 12
(4B)	The holder of a commercial fishing licence who contravenes any condition of an endorsement on the licence under this section is guilty of an offence. Maximum penalty: 100 penalty units.	13 14 15 16
[15]	Section 70 (6)	17
	Insert after section 70 (5):	18
(6)	The Minister may approve arrangements under which a person who is proposed to be given an endorsement under this section is given the endorsement in the form of a separate document from the commercial fishing licence of the person. Any such document is taken to be an endorsement on the commercial fishing licence of the person authorised by the endorsement to take fish in the fishery, and references in this Act or the regulations to an endorsement extend to an endorsement in that form.	19 20 21 22 23 24 25 26
[16]	Section 75 Forfeiture of shares for certain contraventions of Act	27
	Omit section 75 (5). Insert instead:	28
(5)	The Minister is to sell forfeited shares to which this section applies by public tender.	29 30
(6)	The purchase price is to be paid to the credit of the Consolidated Fund, subject to this section.	31 32
(7)	If shares are forfeited for a failure by the shareholder to pay a community contribution or other amount due under this Part:	33 34
(a)	any community contribution due under this Part is to be deducted from the purchase price and paid to the credit of the Consolidated Fund, and	35 36 37

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(b)	any other amount due under this Part that would, on payment, be paid into the Commercial Fishing Trust Fund, is to be deducted from the purchase price and paid to the credit of the Commercial Fishing Trust Fund, and	1 2 3 4
(c)	the balance (if any) remaining after payment of the amounts referred to in paragraphs (a) and (b) is to be paid to the shareholder.	5 6 7
(8)	The regulations may authorise or require the payment of any part of the purchase price to a person (other than the shareholder) who had an interest in the shares after deduction of the expenses reasonably incurred in connection with the sale.	8 9 10 11
[17]	Section 76 Management charges	12
	Omit section 76 (1). Insert instead:	13
(1)	The Minister may, subject to this section, determine the management charge payable by holders of shares in a share management fishery. The charge is payable annually, or as otherwise determined by the Minister.	14 15 16 17
[18]	Section 76 (4A)	18
	Insert after section 76 (4):	19
(4A)	The management charge may be fixed to provide for, and the provisions of a management plan relating to the management charge may facilitate, either or both of the following:	20 21 22
(a)	the calculation of a single management charge for more than one share management fishery (that is, so that holders of shares in more than one share management fishery are not liable to pay a separate management charge in respect of each fishery),	23 24 25 26 27
(b)	the calculation of a single management charge for a single fishing business (even if the fishing business is comprised of, or includes, shares in more than one share management fishery).	28 29 30 31
[19]	Section 76 (7A)	32
	Insert after section 76 (7):	33
(7A)	Interest charged on an overdue management charge, or an instalment of a management charge, under subsection (6) is taken to be part of the management charge.	34 35 36

[20]	Section 106 Annual contribution to cost of research and to other industry costs	1
		2
	Omit the section.	3
[21]	Section 112 Commercial fishing licence to be endorsed for restricted fishery	4
		5
	Omit section 112 (2). Insert instead:	6
	(2) The authority conferred by such an endorsement is subject to such conditions as are prescribed by the regulations or specified in the endorsement.	7
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	(3) The Minister may, at any time by notice in writing to the holder of a licence who is authorised by an endorsement to take fish in a restricted fishery, revoke or vary the conditions of the endorsement or add new conditions. This subsection does not apply to conditions prescribed by the regulations.	10
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	(4) The holder of a commercial fishing licence who contravenes any condition of an endorsement on the licence under this section is guilty of an offence.	15
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	Maximum penalty: 100 penalty units.	18
	(5) The Minister may approve arrangements under which a person who is eligible for an endorsement in a restricted fishery is given an endorsement in the form of a separate document from the commercial fishing licence of the person. Any such document is taken to be an endorsement on the commercial fishing licence of the person authorised by the endorsement to take fish in the fishery, and references in this Act or the regulations to an endorsement extend to an endorsement in that form.	19
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[22]	Section 115A	27
	Insert after section 115:	28
	115A Annual contribution to industry costs	29
	(1) A participant in a restricted fishery must, if the regulations so require, pay to the Minister an annual contribution towards one or more of the following:	30
		31
		32
	(a) the costs of taking measures to enhance the effective management of commercial fishing,	33
		34
	(b) the costs of carrying out research into commercial fishing,	35
	(c) the costs of management and administration of commercial fishing,	36
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(d)	the costs of ensuring compliance with commercial fishing regulatory controls,	1
(e)	the costs of consultative arrangements with commercial fishers.	2
(2)	For the purposes of this section, a <i>participant</i> in a restricted fishery means:	3
(a)	a person who has an endorsement on his or her commercial fishing licence that authorises the person to take fish for sale in the restricted fishery, or	4
(b)	the owner of a fishing business of which the endorsement is a component.	5
(3)	The amount of the contribution is to be specified in or determined under the regulations.	6
(4)	The regulations may provide for payment of the annual contribution by instalments.	7
(5)	If a contribution, or an instalment of a contribution, is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, that rate.	8
(6)	Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.	9
(7)	Interest charged on an overdue annual contribution, or instalment of a contribution, under subsection (5) is taken to be part of the contribution.	10
[23]	Section 119 Fish receiver to supply information	11
	Omit section 119 (2). Insert instead:	12
(2)	The regulations may make provision for or with respect to the information to be given by registered fish receivers.	13
[24]	Section 119 (3)	14
	Omit “, or keep records,”.	15

[25] Sections 121–122A	1
Omit sections 121 and 122. Insert instead:	2
121 Records to be made by commercial fishers	3
(1) A commercial fisher must make such records as the regulations require in respect of fishing activities engaged in by the commercial fisher for commercial purposes.	4 5 6
(2) In particular, the regulations may require a record to be made of the following:	7 8
(a) particulars of all fishing activities engaged in by a commercial fisher for commercial purposes (including those where no fish were taken),	9 10 11
(b) particulars of all fish taken during those fishing activities,	12
(c) the location in which the fishing activities were carried out,	13
(d) the fishing gear used in connection with the fishing activities,	14 15
(e) any period in which the commercial fisher did not engage in any fishing activities for commercial purposes.	16 17
(3) The record must be made in such form and manner as is prescribed by the regulations or (subject to the regulations) as is approved by the Minister.	18 19 20
(4) A commercial fisher who fails to make a record as required by this section is guilty of an offence. Maximum penalty: 200 penalty units.	21 22 23
(5) A commercial fisher who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe. Maximum penalty: 10 penalty units.	24 25 26 27 28
122 Records to be made by employers of commercial fishers	29
(1) A fishing employer must make such records as the regulations require in respect of fishing activities engaged in by a nominated fisher on behalf of the fishing employer.	30 31 32
(2) In particular, the regulations may require a record to be made of the following:	33 34
(a) particulars of all fishing activities engaged in by a nominated fisher on behalf of the fishing employer (including those where no fish were taken),	35 36 37

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(b)	particulars of all fish taken during those fishing activities,	1
(c)	the location in which the fishing activities were carried out,	2
(d)	the fishing gear used in connection with the fishing activities,	3 4
(e)	any period in which the nominated fisher did not engage in any fishing activities on behalf of the fishing employer.	5 6
(3)	The record must be made in such form and manner as is prescribed by the regulations or (subject to the regulations) as is approved by the Minister.	7 8 9
(4)	A fishing employer who fails to make a record as required by this section is guilty of an offence. Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 200 penalty units.	10 11 12 13
(5)	A nominated fisher who engages in any fishing activity on behalf of a fishing employer must not fail to provide the fishing employer with such information concerning those activities as the fishing employer may reasonably require to comply with this section. Maximum penalty: 200 penalty units.	14 15 16 17 18 19
(6)	A fishing employer who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe. Maximum penalty: 10 penalty units.	20 21 22 23 24
(7)	In this section: <i>fishing employer</i> means a shareholder in a share management fishery, an owner of a fishing business, or any other person, who nominates a commercial fisher to take fish in a fishery on behalf of the shareholder, owner or other person. <i>nominated fisher</i> of a fishing employer means a commercial fisher who is for the time being nominated by the fishing employer under this Act or the regulations to take fish in a fishery on behalf of the fishing employer.	25 26 27 28 29 30 31 32 33
122A	Records to be made by fish receivers	34
(1)	A registered fish receiver must make such records as the regulations require relating to fish received by the fish receiver.	35 36
(2)	The record must be made in such form and manner as are prescribed by the regulations or (subject to the regulations) as are approved by the Minister.	37 38 39

(3)	A registered fish receiver who fails to make a record as required by this section is guilty of an offence.	1 2
	Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 200 penalty units.	3 4
(4)	A registered fish receiver who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe.	5 6 7 8
	Maximum penalty: 10 penalty units.	9
[26]	Section 127D	10
	Insert after section 127C:	11
127D	Annual contribution to industry costs	12
(1)	The holder of a charter fishing boat licence must, if the regulations so require, pay to the Minister an annual contribution towards one or more of the following:	13 14 15
	(a) the costs of taking measures to enhance charter fishing,	16
	(b) the costs of carrying out research into charter boat fishing,	17
	(c) the costs of management and administration of charter fishing boat operations,	18 19
	(d) the costs of ensuring compliance with charter fishing boat regulatory controls,	20 21
	(e) the costs of consultative arrangements with owners and operators of charter fishing boats.	22 23
(2)	The amount of the contribution is to be specified in or determined under the regulations.	24 25
(3)	The regulations may provide for payment of the annual contribution by instalments.	26 27
(4)	If a contribution, or instalment of a contribution, is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, that rate.	28 29 30 31 32
(5)	Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.	33 34
(6)	Interest charged on an overdue annual contribution, or instalment of a contribution, under subsection (4) is taken to be part of the contribution.	35 36 37

(7)	The payment required under this section is taken to be a condition of every charter fishing boat licence.	1 2
[27]	Sections 127E–127EB	3
	Omit section 127E. Insert instead:	4
127E	Charter fishing boat operators to make records of fishing activities	5
(1)	The master of a charter fishing boat must make such records as the regulations require in respect of the use of the boat for recreational fishing activities (regardless of whether those fishing activities are activities for which it is required to be licensed).	6 7 8 9
(2)	In particular, the regulations may require the master of a charter fishing boat to make a record of the following:	10 11
(a)	particulars of all recreational fishing activities engaged in (including those where no fish were taken),	12 13
(b)	particulars of all fish taken during the fishing activities,	14
(c)	the location in which the fishing activities were carried out,	15
(d)	the fishing gear used in connection with the fishing activities,	16 17
(e)	any period in which the charter fishing boat was not used for recreational fishing activities for which it is required to be licensed.	18 19 20
(3)	A record required under this section must be made in such form and manner as is prescribed by the regulations or (subject to the regulations) as is approved by the Minister.	21 22 23
(4)	A master of a charter fishing boat who fails to make a record as required by this section is guilty of an offence. Maximum penalty: 200 penalty units.	24 25 26
(5)	A master of a charter fishing boat who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe. Maximum penalty: 10 penalty units.	27 28 29 30 31
127EA	Records of recreational fishing activities—licence holders	32
(1)	The holder of a charter fishing boat licence must make such records as the regulations require in respect of the use of the licensed charter fishing boat for recreational fishing activities (whether or not those activities are activities for which it is required to be licensed).	33 34 35 36 37

(2)	In particular, the regulations may require the licence holder to make a record of the following:	1
		2
(a)	particulars of all recreational fishing activities engaged in (including those where no fish were taken),	3
		4
(b)	particulars of all fish taken during the fishing activities,	5
(c)	the location in which the fishing activities were carried out,	6
(d)	the fishing gear used in connection with the fishing activities,	7
		8
(e)	any period in which the charter fishing boat was not used for recreational fishing activities for which it is required to be licensed.	9
		10
		11
(3)	The record must be made in such form and manner as are prescribed by the regulations or (subject to the regulations) as are approved by the Minister.	12
		13
		14
(4)	The holder of a charter fishing boat licence who fails to make a record as required by this section is guilty of an offence.	15
		16
	Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 200 penalty units.	17
		18
(5)	The master of a boat that is a licensed charter fishing boat must not fail to provide the holder of the licence for the boat with such information concerning the use of the boat for recreational fishing activities as the licence holder may reasonably require to comply with this section.	19
		20
		21
		22
		23
	Maximum penalty: 200 penalty units.	24
(6)	The holder of a charter fishing boat licence who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Director-General within such period as the regulations prescribe.	25
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		27
		28
	Maximum penalty: 10 penalty units.	29
(7)	If the holder of a charter fishing boat licence is also master of the boat, the holder of the licence is taken to have complied with this section if the holder complies with his or her obligations under section 127E.	30
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127EB	False records	34
	A person who makes an entry in a record, or copy, for the purposes of this Part knowing that the entry is false or misleading in a material particular is guilty of an offence.	35
		36
		37
	Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.	38
		39

[28] Section 220ZW Licence to harm threatened species, population or ecological community or damage habitat	1 2
Insert after section 220ZW (2) (after the note):	3
(3) A permit under section 37A may not be issued for a purpose referred to in subsection (1).	4 5
[29] Section 283A	6
Insert after section 283:	7
283A Disclosure of information	8
(1) If a person nominates a commercial fisher to take fish in a fishery on the person's behalf under this Act, the regulations or the management plan for a fishery, the Department is authorised to disclose to the person who makes the nomination any information provided to the Department by the nominated fisher in any record of fishing activities made by the nominated fisher for the purposes of this Act, insofar as that information relates to fishing activities conducted on behalf of the person who makes the nomination.	9 10 11 12 13 14 15 16 17
(2) The Department is authorised to disclose to the owner of a fishing business any information provided to the Department in any record made under this Act in connection with fishing activities conducted on behalf of the fishing business, or the use of any fishing boat or fishing gear that is a component of the fishing business, including information provided before the fishing business, or any component of the fishing business, was transferred to the owner.	18 19 20 21 22 23 24 25
(3) The Department is authorised to disclose to the holder of a charter fishing boat licence any information provided by the master of that boat to the Department in any record made under this Act in connection with the use of that boat for recreational fishing activities during the period in which the person to whom the information is to be disclosed is the holder of the charter fishing boat licence for the boat.	26 27 28 29 30 31 32
(4) Information may be disclosed under this section without the consent of the person who provided the information (despite section 18 of the <i>Privacy and Personal Information Protection Act 1998</i>).	33 34 35 36

(5) In this section:	1
<i>Department</i> includes the Director-General or any officer of the Department engaged in the administration of this Act.	2
<i>information</i> includes personal information (within the meaning of the <i>Privacy and Personal Information Protection Act 1998</i>).	3
[30] Section 284 Public consultation procedure	4
Omit “the Minister” from section 284 (1). Insert instead “a person or body”.	5
[31] Section 284 (1) (c)	6
Omit the paragraph. Insert instead:	7
(c) a management plan, or supporting plan, for a share management fishery (including any amendment or new plan),	8
[32] Section 284 (2) and (3)	9
Omit “the Minister” wherever occurring.	10
Insert instead “the person or body to whom the requirement applies”.	11
[33] Schedule 1 Share management fisheries	12
Omit clause 6A. Insert instead:	13
6A Ocean trawl fishery	14
Description of fishery	15
The ocean trawl fishery consists of the following:	16
(a) the use of an otter trawl net (prawns) to take fish from any of the following waters:	17
(i) inshore waters,	18
(ii) offshore waters,	19
(iii) the waters of Coffs Harbour,	20
(b) the use of an otter trawl net (fish) to take fish from ocean waters that are north of a line drawn due east from Barrenjoey Headland (other than any waters in which use of an otter trawl net (fish) is prohibited under the regulations),	21
(c) 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.	22

[34] Schedule 7 Savings, transitional and other provisions	1
Insert at the end of clause 2 (1):	2
<i>Fisheries Management Amendment Act 2006</i>	3
[35] Schedule 7, clause 6B	4
Omit the clause. Insert instead:	5
6B Appeals to Share Appeal Panel in relation to restricted fishery determinations	6 7
(1) If a share management fishery referred to in Schedule 1 (as in force immediately after its amendment by the <i>Fisheries Management Amendment Act 2006</i>) was a restricted fishery, or any part of such a share management fishery was a restricted fishery, when shares in the fishery were provisionally issued, there is no appeal to the Share Appeal Panel in relation to determinations made under this Act in connection with that restricted fishery, if there was an opportunity for the person in respect of whom the determination was made to apply for an internal review of the determination after the determination was made.	8 9 10 11 12 13 14 15 16 17 18
(2) The Share Appeal Panel is to refuse to hear an appeal in relation to any such determination.	19 20
(3) In particular, this clause applies to the following determinations:	21
(a) a determination as to the person's eligibility for an endorsement on a commercial fishing licence that would authorise the person to take fish for sale in the restricted fishery,	22 23 24 25
(b) a determination as to the catch history of the person, or the catch history of the person's fishing business, made in connection with a determination as to eligibility for such an endorsement.	26 27 28 29
(4) This clause applies in respect of any appeal by an applicant for shares in a share management fishery even if that applicant is not the person in respect of whom the earlier determination was made (for example, because the person acquired the relevant fishing business after the determination was made).	30 31 32 33 34
(5) This clause extends to the following:	35
(a) a share management fishery in which shares were provisionally issued before the commencement of this clause,	36 37 38

(b)	an appeal made to the Share Appeal Panel before the commencement of this clause, if the Share Appeal Panel has not commenced to hear the appeal.	1 2 3
(6)	In this clause: <i>internal review</i> means review by the Minister or by an officer or officers of the Department (whether conducted exclusively by officers of the Department or in conjunction with persons not employed within the Department), including the review provided for by Division 6 of Part 8 of the <i>Fisheries Management (General) Regulation 1995</i> before its repeal. Note. Division 6 of Part 8 of the <i>Fisheries Management (General) Regulation 1995</i> , now repealed, provided a procedure for the review of certain decisions made in respect of some of the fisheries set out in Schedule 1 when they were restricted fisheries.	4 5 6 7 8 9 10 11 12 13 14
[36]	Schedule 7, clauses 6F and 6G	15
	Insert after clause 6E:	16
	6F Redefinition of ocean trawl fishery	17
	Section 44 (2) does not apply to the omission of the description of the ocean trawl fishery from Schedule 1 by the <i>Fisheries Management Amendment Act 2006</i> . That is, shares in the fishery are not cancelled as a consequence of the amendments made to Schedule 1 by that Act but continue to have effect in respect of the fishery (as redefined by the amendments).	18 19 20 21 22 23
	6G Application of amendments made by Fisheries Management Amendment Act 2006	24 25
	(1) Section 68 (4B), as inserted by the <i>Fisheries Management Amendment Act 2006</i> , applies only to endorsements given after the commencement of that subsection.	26 27 28
	(2) The amendment made to section 69 (6) by the <i>Fisheries Management Amendment Act 2006</i> applies only to nominations made after the commencement of the amendments.	29 30 31
	(3) The amendment made to section 76 (1) by the <i>Fisheries Management Amendment Act 2006</i> does not affect the requirement to pay any management charge that became payable before the commencement of that amendment.	32 33 34 35

Fisheries Management Amendment Bill 2006

Schedule 1 Amendments

[37] Schedule 7, clause 12A	1
Insert after clause 12:	2
12A Repeal of section 106	3
Any annual contribution that was payable under section 106, immediately before its repeal by the <i>Fisheries Management Amendment Act 2006</i> , remains payable despite the repeal of that section.	4 5 6 7
[38] Schedule 7, clause 19C	8
Insert after clause 19B:	9
19C Disclosure provisions	10
(1) Section 283A, as inserted by the <i>Fisheries Management Amendment Act 2006</i> , extends to the following records:	11 12
(a) a record made or provided to the Department before the commencement of that section,	13 14
(b) a record of fish taken or catch history.	15
(2) A reference in that section to this Act includes a reference to the 1935 Act.	16 17