

Fisheries Management Amendment Bill 2004

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* as follows:

- (a) to regulate the transfer of fishing businesses, or components of fishing businesses,
- (b) to provide for the issue of further classes of shares in a share management fishery (after the initial issue has taken effect) on the basis of catch history in the fishery,
- (c) to make further provision for the nomination by shareholders of commercial fishers to take fish in the fishery on their behalf,
- (d) to allow conditions to be imposed on endorsements in share management fisheries and to make further provision with respect to the form of endorsements,
- (e) to make further provision with respect to various share management fisheries that were recently converted from category 2 share management fisheries to category 1 share management fisheries, including:
 - (i) by allowing shares to be issued on an equitable basis to persons who would have been entitled to fish in the corresponding restricted fishery had they applied for an endorsement, and
 - (ii) by ensuring that fishers continue to be liable to pay a rental charge for access to the fisheries,
- (f) to make further provision with respect to management charges, community contributions, annual contributions and rental payments, including by making the charging of interest on overdue amounts discretionary rather than mandatory, (g) to make further provision with respect to the revision and implementation of fishery management strategies,
- (h) to revise the definition of ***harm*** for the purposes of offences relating to protected marine vegetation,
- (i) to increase the penalty for unlicensed commercial fishing, (j) to allow provisions of a management plan that are common to a number of fisheries to be contained in a single supporting plan,
- (k) to allow the Share Management Fisheries Register to be made available for inspection on the website of NSW Fisheries and to contain fishing business information,
- (l) to make other minor miscellaneous amendments, and to provide for matters of a savings and transitional nature.

The Bill also amends the *Marine Parks Act 1997* and the *Subordinate Legislation Act 1989* consequentially.

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.

Clause 4 is a formal provision that gives effect to the amendments to *Marine Parks Act 1997* and the *Subordinate Legislation Act 1989* set out in Schedule 2.

Schedule 1 Amendment of Fisheries Management Act 1994

Fishing business transfers

The amendments set out in **Schedule 1 [5]** provide for the regulation of transfers of fishing businesses, or components of fishing businesses. This will allow the restrictions on transfers of fishing businesses that already operate by regulation under the Act in relation to restricted fisheries to be extended to other commercial fisheries, in particular, to share management fisheries.

Under the amendments, a **fishing business** is defined as a business determined by the Director-General to be a separate and identifiable fishing business. The Director-General may also determine the components of that fishing business, which may include fishing boats, fishing gear, fishing authorities (such as licences, shares and endorsements) and catch history. Any such determination is to be made in accordance with the provisions of the regulations or the management plan for a fishery.

There is to be a public register of fishing business determinations. The amendments authorise the regulations, or the management plan for a fishery, to make provision for the recognition or restriction of fishing rights following the transfer of a fishing business or a component of a fishing business (referred to as **fishing business transfer rules**). For instance, the fishing business transfer rules may provide that a person who acquires a component of a fishing business does not acquire any fishing rights unless the person acquires all components of the fishing business. Such a provision would impose a cap on the number of operators in a fishery. The rules may authorise the Minister to cancel a fishing authority issued under the Act if a component of the fishing business is transferred in contravention of the rules.

Schedule 1 [16] and [18] make it clear that any entitlement to an endorsement in a share management fishery is subject to the fishing business transfer rules. Consequential amendments provide that, for the purpose of allocating shares in a share management fishery, the catch history of a person, if it is a component of a fishing business, is the catch history of the current owner of that fishing business. A redundant provision relating to transfers of fishing boat licences is removed. See **Schedule 1 [7] and [8]**.

Savings and transitional provisions continue the effect of fishing business determinations made before the commencement of the amendments. See **Schedule 1 [46]**.

Issue of further classes of shares in share management fishery

The amendments authorise further classes of shares in a share management fishery to be issued after the initial share issue has taken effect. Any such shares are to be issued in accordance with the management plan for the fishery and on the basis of catch history. See Schedule 1 [22] (proposed section 71A) and [25] (a consequential amendment).

Nominated fishers

Shareholders in a share management fishery may nominate a commercial fisher to take fish in the fishery on their behalf. At present, the Act provides that a nomination must be made in writing served on the Director-General. The amendments allow the nomination to be made in a form and manner approved by the Director-General. See Schedule 1 [20]. At present, the Act allows a shareholder in a share management fishery to nominate 2 or more commercial fishers to take fish in the fishery in respect of the same shareholding only if authorised to do so under the management plan for the fishery. Schedule 1 [21] makes it clear that, before the commencement of the management plan, the Minister may determine the matters that may be provided for by the plan and accordingly may authorise such nominations.

Endorsements on commercial fishing licences

The method by which commercial fishers are authorised under the Act to take fish in a share management fishery is by the issue of an endorsement on the fisher's commercial fishing licence.

The amendments provide that an endorsement in a share management fishery is, like an endorsement in a restricted fishery, subject to such conditions as are prescribed by the regulations or attached to the endorsement by the Minister. See Schedule 1 [17].

The amendments also allow an endorsement to be given to a commercial fisher in the form of a document (such as a card) that is separate from the commercial fishing licence of the person. See Schedule 1 [19].

New category 1 share management fisheries

Recently, the ocean hauling fishery, the ocean trap and line fishery, the estuary general fishery and the estuary prawn trawl fishery were converted from category 2 share management fisheries to category 1 share management fisheries. The ocean prawn trawl fishery and part of the ocean fish trawl fishery (also category 2 share management fisheries) were amalgamated into one fishery, now known as the ocean trawl fishery. The amalgamated fishery was also made a category 1 share management fishery.

The Bill contains further provision in relation to the new category 1 share management fisheries. Currently the Act provides that if a share management fishery is converted from category 2 to category 1, the persons entitled to shares in the new category 1 share management fishery are the persons who are shareholders in the category 2 share management fishery. Shares have not yet been issued in the fisheries converted to category 2 share management. Accordingly, the Act is amended to make it clear that the provision applies only if a category 2 share management fishery is converted after shares have taken effect. See Schedule 1 [6]. All the new category 1 share management fisheries are also restricted fisheries. Under the Act, shares are issued in the fisheries on the basis of entitlements to fish in the corresponding restricted fishery. The amendments will also permit shares to be issued, on an equitable basis, to persons who would have been entitled to fish in the restricted fishery had they applied for the proper authority to do so before the fishery ceased to be a restricted fishery. See Schedule 1 [47] (proposed clause 6C of Schedule 7). Fishers in a category 2 share management fishery are required to pay a rental charge for access to the fishery. The amendments require fishers in each new category 1 share management fishery to continue to pay a rental charge for access to the fishery, as if the fishery had remained a category 2 share management fishery, but only until the commencement of the management plan for the fishery. See Schedule 1 [47] (proposed clause 6D of Schedule 7). When the new category 1 share management fisheries were converted to category 1, some changes were made to the descriptions of the fisheries. Accordingly, there are differences between the way the new share management fisheries are described and the way the corresponding restricted fisheries are described. The Act prevents a fishery that is a share management fishery from being declared a restricted fishery. The amendments provide that a fishery that is a share management fishery may be declared a restricted fishery until shares in the corresponding share management fishery have taken effect. This will allow the restricted fisheries that correspond to the new category 1 share management fisheries to be redeclared or redefined in a manner that is consistent with the new category 1 share management fisheries. See Schedule 1 [36].

A provision is included in the descriptions of the share management fisheries in Schedule 1 to the Act to make it clear that the fisheries extend to ocean waters that are managed under an arrangement with the Commonwealth under the Act only while that arrangement has effect. See Schedule 1 [44]. The provision supplements existing provisions in the Act relating to such arrangements (see Division 3 of Part 5 of the Act). The amendments also validate anything done or omitted to be done in relation to share management fisheries that would have been validly done or omitted had the amendments to the Act proposed to be made by the Bill been in force at the time it was done or omitted. See Schedule 1 [47] (proposed clause 6E of Schedule 7).

Commercial fishery management charges and other charges

Shareholders in a share management fishery are required to pay a management charge in respect of the fishery. In the case of a category 1 share management fishery, the shareholders are also required to pay a community contribution for access to the fishery. The Act provides that those charges are to be paid in proportion to or on the basis of shareholdings in the fishery. The amendments allow the charges to be paid as otherwise provided by the management plan for the fishery. See Schedule 1 [23] and [24].

A provision that makes it mandatory to charge interest on an overdue instalment of a management charge is removed. The new provision allows the Minister to charge interest on an overdue management charge, or instalment, at the rate payable in respect of judgments of the Supreme Court or such other rate

as prescribed by the management plan. In addition, the fact that an instalment becomes overdue will no longer automatically result in the balance of all instalments becoming due and payable. See **Schedule 1 [23]**. Corresponding amendments are made to other provisions of the Act relating to annual contributions to the cost of research and other industry costs and rent under aquaculture leases. See **Schedule 1 [32], [40] and [41]**.

Fishery management strategies

The Act requires a fishery management strategy to be prepared in relation to each designated fishing activity, such as fishing activities in share management fisheries. Strategies are used as the basis for environmental assessment of fishing activities under the *Environmental Planning and Assessment Act 1979* and as an ongoing management tool. Strategies may be revised from time to time under section 7C (2) of the Act. The amendments make it clear that such a revision may be effected by including provisions in a later strategy (whether or not for the same activity) that are expressed to amend, replace, or otherwise revise the earlier strategy. See **Schedule 1 [4]**. The amendments also provide that the Minister may set or revise priorities for the implementation of actions contemplated by strategies, in particular, for the purpose of co-ordinating the implementation of actions that are common to 2 or more strategies. See **Schedule 1 [4]**.

Harm to marine vegetation

At present, the Act contains offences for harming mangroves, seagrasses and protected marine vegetation in certain areas. Harm is defined in the same way as it is defined in Part 7A of the Act, so as to exclude harm by changing the habitat of marine vegetation. The amendments remove that exclusion. In addition, the amendments extend the definition of *harm* to any action that prevents light from reaching marine vegetation. See **Schedule 1 [42]**. Transitional provisions make it clear that the changes do not affect the continuation of existing activities carried out under authorities given under any State law (such as a jetty or other use of land previously authorised under the *Environmental Planning and Assessment Act 1979*). An additional transitional provision provides that the changes do not affect the continuation of any other activities that would be lawful but for the changes, for a period of 5 years. See **Schedule 1 [48]**.

Unlicensed commercial fishing

The amendments increase the penalty for unlicensed commercial fishing from 100 penalty units (\$11,000) to 2,000 penalty units (\$220,000) in the case of a corporation or 1,000 penalty units (\$110,000) in any other case. See **Schedule 1 [28]**.

Supporting plans

At present, the Act requires a management plan to be prepared in relation to each share management fishery. The amendments allow provisions that may be contained in such a management plan, and that are common to all share management fisheries or a specified class of share management fisheries, to be contained in a single supporting plan. This avoids the duplication of common provisions. A supporting plan is, like a management plan, to be prepared by the Minister following public consultation, consultation with industry and others. It is also made by regulation. A management plan for a share management fishery may adopt the provisions of a supporting plan. A supporting plan has no effect in relation to a fishery except to the extent that it is adopted by the management plan. See **Schedule 1 [3] and [9]–[15]**.

Share Management Fisheries Register

Amendments provide that, if the Share Management Fisheries Register is kept wholly or partly by means of a computer, the provisions of the Act relating to public exhibition of the Register may be complied with by making the contents of the Register available for inspection on the website of NSW Fisheries. See **Schedule 1 [27]**.

In addition, if shares in a share management fishery are a component of a fishing business, the fishing business number is to be recorded in the Share Management Fisheries Register. See **Schedule 1 [26]**.

Miscellaneous minor amendments

Amendments to licensing provisions are made to remove any suggestion that that licences must be

issued to remain in force for 1 year. See **Schedule 1 [30], [34] and [38]**. The amendments also make it clear that a fee may be charged in relation to the renewal of a licence, as well as the issue of a licence. See **Schedule 1 [29], [31], [33], [35], [37] and [39]**.

The amendments update references to the Director of NSW Fisheries (now the Director-General of NSW Fisheries). See **Schedule 1 [1], [2] and [49]**. The amendments allow certificate evidence to be given by any officer of NSW Fisheries authorised by the Director-General, instead of a prescribed officer. See **Schedule 1 [43]**.

Savings and transitional

Provision is also made for the making of savings and transitional regulations as a consequence of the amendments to the Act. See **Schedule 1 [45]**.

Schedule 2 Amendment of other Acts

Amendments to Marine Parks Act 1997

The amendments update references to the Director of NSW Fisheries (now the Director-General of NSW Fisheries). See **Schedule 2.1**.

Amendment to Subordinate Legislation Act 1989

The amendment is consequential to the proposal to allow provisions that are common to two or more share management fisheries to be contained in a single supporting plan rather than in separate management plans. Draft supporting plans are subject to the same public consultation requirements as management plans. Management plans currently do not require the preparation of a regulatory impact statement under the *Subordinate Legislation Act 1989*. It is proposed to extend the same exemption to supporting plans. See **Schedule 2.2**.