



## FISHERIES MANAGEMENT AMENDMENT (ENFORCEMENT POWERS) BILL 2022

### STATEMENT OF PUBLIC INTEREST

#### **Need: Why is the policy needed based on factual evidence and stakeholder input?**

The *Fisheries Management Act 1994* (the Act) governs the management of fish and their habitats in NSW and aims to conserve, develop and share fishery resources for present and future generations, which includes conserving fish stocks and threatened species.

On 1 July 2022 issues raised by a District Court judgment resulted in limitations in the search powers of Fisheries Officers – relating to where powers could be used and the extent of those powers. As a result of the legal precedent arising from the judgment, Fisheries Officers are now limited in their capacity to exercise powers under the Act.

Prior to the District Court judgment, the interpretation of powers was based on a Supreme Court judgment from 2004. Given the ambiguity created by different interpretations by different courts, the NSW Government is seeking to provide absolute clarity for the community and fisheries officers through legislative amendments.

Without the proposed amendments, the ability of fisheries officers to search for and examine fish, fishing gear and other things believed to be connected with fisheries offences or where it is considered necessary for the purpose of investigating, monitoring or enforcing compliance with the Act remains severely compromised.

If this issue is not promptly rectified, it may have significant detrimental impacts on the sustainable management of NSW fisheries resources, both for current generations and for the future.

These issues also cascade into the *Marine Estate Management Act 2014* (MEM Act), as enforcement powers under the MEM Act are directly linked to those available under the Act, and would therefore also compromise compliance and enforcement activities under the MEM Act.

#### **Objectives: What is the policy's objective couched in terms of the public interest?**

There is strong public interest in ensuring that NSW's fisheries resources are sustainably managed, both for current and future generations, and that the marine estate is protected. The provision of proportionate and appropriate compliance powers supports enforcement activity and provides an effective deterrent against illegal fishing activities.

The Bill seeks to clarify the powers for fisheries officers and in doing so provide certainty for the officers and the public. These amendments will ensure fisheries officers are able to effectively and efficiently carry out compliance and enforcement activities by giving them practical, appropriate and proportionate powers to conduct searches in areas where fisheries offences are likely to occur.

#### **Options: What alternative policies and mechanisms were considered in advance of the bill?**

The following alternative approaches were considered:

- Appealing the District Court judgment
- Retaining the status quo (i.e. not making legislative amendments)
- Increasing compliance effort from police officers and use of police powers under other legislation to address the gap in powers

**Analysis: What were the pros/cons and benefits/costs of each option considered?**

The introduction of the Bill is considered the most effective and efficient approach to addressing the gap in powers created by the District Court judgment. This Bill seeks to clarify the available powers and ensure that both fisheries resources and NSW marine parks can be protected by officers exercising proportionate, appropriate and fit-for-purpose compliance powers.

Appealing the District Court judgment

The NSW Government did not appeal the judgment because appealing was not considered in the public interest – as it would have continued legal action against an individual who had been found guilty of other offences for the purpose of seeking to determine a matter of law. Secondly, as two courts had provided two different interpretations of the available powers, it was clear that there was some ambiguity in the construction of the available powers, which is best resolved through legislative amendments.

Retaining the status quo (i.e. no legislative amendments)

The amendments are urgently needed and retaining the status quo (i.e. not addressing the gap in powers) is not considered an appropriate option. The longer these issues are unaddressed, the longer Fisheries Officers are unable to undertake compliance activity in some situations – and therefore the greater the risk of impacts on the sustainable management of NSW fisheries resources.

Increased compliance effort from police officers to address gap in powers

It is not possible to address the limitations in fisheries officers search powers through increased compliance effort from police officers and use of police powers under other legislation, as the powers would be applicable for only some fisheries offences. Furthermore, it is preferable for fisheries officers to have primary responsibility for enforcing offences under the Act, with police officers able to assist if required.

**Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

It is proposed that the Bill will commence on assent to immediately address the issues that have been raised with the current powers and provide certainty to the public.

The act is administered and enforced by the NSW Department of Primary Industries (DPI) and officers of the NSW Police Force are also taken to be Fisheries Officers under the Act. The amendments will not alter DPI's risk-based approach to compliance and will not result in any change of regulatory effort or focus.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

The NSW Government undertook consultation with the Ministerial Fisheries Advisory Council, the Aboriginal Fishing Advisory Council, the Recreational Fishing NSW Advisory Council and the Commercial Fisheries NSW Advisory Council.