



## Fisheries Management Amendment Bill 2015 (Proof)

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**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Niall Blair.**

### Second Reading

**The Hon. NIALL BLAIR** (Minister for Primary Industries, and Minister for Lands and Water) [11.34 a.m.]: I move:  
That this bill be now read a second time.

Our fisheries resources belong to all of us and are managed by the Government on behalf of the people of New South Wales. In managing our fisheries, Government must balance the many legitimate, but often competing, needs of a broad range of stakeholders. The objects of the Fisheries Management Act 1994 direct management to conserve, develop and share the fishery resources of our State for the benefit of present and future generations. This bill contains a range of amendments to the Act that will benefit the commercial, recreational, charter boat and Aboriginal fishing sectors, as well as improve aquatic habitat and threatened species protection and strengthen biosecurity measures.

This bill delivers on this Government's commitment to secure sustainable, viable and healthy fisheries. It will continue to build and support a strong and sustainable New South Wales commercial fishing industry, although it does not presuppose the outcome of the current reform process, which is yet to be considered by the Government. It will also ensure greater regulatory effectiveness and efficiency, align industry operations to more contemporary business practices and, importantly, reduce red tape. Prior to the 2011 election, the New South Wales Liberal-Nationals released their fisheries policy "Securing sustainable, viable and healthy fisheries", which committed to, amongst other things, an independent review of NSW Fisheries policy, management and administration. This bill seeks to put in place the legislative changes agreed to by the Government in its response to the review initiated in 2012, as well as other necessary changes to the Fisheries Management Act.

As the bill deals with a number of different matters I will start by detailing the provisions relating to FishOnline. The bill allows for more flexible and streamlined administrative processes through amendments that support the full operational implementation of FishOnline. FishOnline is an online self-service system that will allow fishers in the commercial and charter fishing sectors to undertake a range of business-related transactions and report their fishing activities over the internet using a computer, laptop, tablet or mobile phone. The system will be accessible 24 hours a day, seven days a week. This offers fishing industry participants greatly improved convenience in administration.

Functions available on FishOnline will include renewal of licences; transferring of entitlements and quota; authorising or revoking nominated fishers; updating contact details; and submitting catch and effort reports. FishOnline incorporates technologies to relay, in real time, particulars of when and where certain fishing activities are proposed, as well as estimates and confirmation of catches at the conclusion of fishing. FishOnline facilitates instant transactions allowing businesses to move quickly on operational decisions and keep up with modern business practices. The FishOnline system has been built and is now up and running in a limited capacity. There are currently more than 300 registered online users of the system.

The changes proposed in the bill will enable the system to become fully functional delivering all the benefits of the online system to users. The department has received positive feedback from current users on the system so far demonstrating the clear benefits to industry. In total there are currently approximately 1,500 commercial fishing and 200 recreational charter fishing operations who all stand to benefit from FishOnline. The bill also provides the option for industry participants to authorise agents to use online facilities on their behalf. It is appreciated that for various reasons not all participants will undertake electronic reporting and conduct online transactions. The option to carry out business using traditional paper-based methods will be maintained as

needed.

I turn now to amendments relating to the commercial fishing sector. As noted earlier, in 2012 the Government initiated an independent review into commercial fisheries policy, management and administration. This review identified three key areas of reform: structural adjustment, governance processes and consultation mechanisms. A number of recommendations were made in relation to each of these areas. The Government announced its support for the majority of the recommendations arising from that review, including a recommendation to make the necessary legislative changes to implement these significant reforms.

This bill puts in place a number of the legislative changes agreed to by Government in its response to the review. Importantly, the bill includes the framework that will allow for implementation of the structural adjustment reform program. I would like to be clear however, that this bill does not settle those matters that are currently being considered as part of the structural adjustment program, including, for example, the linkages between shares and fisheries access. The Government is committed to delivering reforms to the commercial fishing industry to address the problems identified in the independent review and overcome concerns around excessive and poorly defined fishing rights. These are important and significant reforms to revitalise the industry and provide a stronger footing for its long-term viability.

This month the Government received the Structural Adjustment Review Committee's final recommendations and is now considering its response. I will be discussing the outcomes with key stakeholder groups as I want to ensure that the future structure is fit for purpose and, importantly, delivers a sustainable and viable fishing industry in the long term. The amendments contained in this bill will provide the machinery to efficiently implement the reforms; however, they do not lock in the details. As the proposed reforms are of intense interest to our commercial fishing industry and to honourable members, it is appropriate that they be debated separately prior to their final implementation and I have no doubt they will return to this Chamber at a later time.

This bill replaces the highly prescriptive provisions placed in the Act in the past with provisions that are flexible and address contemporary management needs. The bill will provide flexibility for how maximum shareholding rules should apply in a fishery and provide that the relevant fishery management plan may fix the maximum shareholding. This will remove the default maximum shareholding of 5 per cent of all shares held in a fishery. In addition, maximum shareholdings may be applied at a share class level rather than, or as well as, the fishery level. This will make it possible to apply different maximums to each class of share within a fishery, making the provision more effective.

The bill will also remove the mandatory requirements for the share management plans to set a minimum shareholding for each share class when there may not be a need for this restriction. The current Act is unclear in relation to the requirement for public consultation when seeking to amend a share management plan, no matter how minor the proposed amendment. The bill clarifies that public consultation is not required in relation to amending an existing fishery management plan or supporting plan. Importantly, this does not prevent consultation from occurring for amendments likely to attract broad public interest. The Government's clear intention is for consultation to occur in such cases.

The bill will increase the flexibility of current provisions relating to the issue of any new share classes in a fishery. The amendments clarify that the detailed provisions associated with issuing shares in a new share management fishery do not apply to issuing further shares to current shareholders in an existing share management fishery. Clarifying this position, as well as removing the requirement for catch history to be recognised when allocating new classes of shares, will ensure significant reductions in red tape.

The bill also provides for the Minister to put forward a redefinition proposal in respect of commercial share management fisheries. A redefinition proposal may involve changing the description of a share management fishery, amalgamating two or more share classes, or replacing existing share classes with new share classes. Under existing arrangements, if a fishery description is omitted from the Act, including for the purpose of redefining a fishery, all shares in the fishery are cancelled and compensation is payable. Changes proposed in the bill provide for the implementation of a redefinition proposal without triggering compensation provisions, provided the redefinition proposal has majority support from affected shareholders. Majority support would be determined by the conduct of a poll as provided for in the bill. This change provides the fishing industry with potential opportunities that cannot be progressed at the moment due to the way the current Act is structured.

Further to this, the Act currently provides for two classes of share management fishery: a category 1 share management fishery and a category 2 share management fishery. The category 2 share management provisions, which allow for shares to be issued with 15-year terms only, were never fully used. All share management fisheries moved to the more secure category 1 share management fisheries many years ago. Accordingly, the bill includes a simple amendment to remove references to these categories. Key features of category 1 share management fisheries, including the issue of shares in perpetuity and compensation provisions, are unchanged.

The bill affords the Minister greater flexibility to manage shares forfeited for failure to pay management charges or community contributions. Currently, forfeited shares can be cancelled or sold but the bill provides the Minister with the further options of being able to reissue or retain such shares. Furthermore, the Minister will no longer be required to sell surrendered shares at the request of the shareholder. Instead, the Minister will have the option to sell, cancel, reissue or retain surrendered shares in the same way that the Minister has discretion to manage forfeited shares. These amendments provide the Minister with options to best use surrendered or forfeited shares. One such option would be to reissue shares for the benefit of Aboriginal communities. Having Aboriginal communities collectively engaged in commercial fishing enterprises has the potential to improve the economic outlook and social wellbeing for those in the community.

The bill abolishes any commercial fishery management advisory committees established by the Minister under the Act and provides for the establishment of expertise-based advisory groups. This was one of the key recommendations of the 2012 independent review that documented the significant problems that were associated with the previous management advisory committee consultation structure. The new expert advisory groups will be appointed by the Secretary of the NSW Department of Industry, and will also provide advice directly to the secretary. There will be the ability to create groups on an "as needs" basis for a wide range of issues, not just commercial fishing. It is important that people with the most relevant expertise are selected for each group to ensure that the Government receives the best advice on the issue at hand on key management issues. The ability to create and disband advisory groups from time to time to tackle priority issues will be far more flexible, efficient and cost-effective.

During the consultation process on this bill and in informal discussions with members of this Chamber there was opposition to the removal of the election processes used to decide membership of these advisory groups and to the lack of a central advisory council in place for commercial fishing. The Government is also aware of concerns raised regarding transparency. In response to concerns, the Government will form a commercial fishing advisory council. This council will be the key advisory body to advise on matters referred to it and on other matters it considers relevant to its sector. It will be similar to the peak bodies already in place for the recreational fishing and Aboriginal fishing sectors. The council can be established under the existing provisions of the Act and would report to the Minister, not the secretary of the department. We will seek industry input with regards to the establishment, composition and procedure of the new advisory council. I am confident that this commitment will go to addressing the concerns raised and work with the new flexible issues-based advisory groups.

The existing management framework in the Act provides for the determination and allocation of total allowable catch and the determination of any other matter relating to fishing effort in commercial share management fisheries. To promote a more holistic approach to the management of fisheries resources, the bill enables total allowable catch and total allowable fishing effort determinations to be made for any fisheries sector, not just the commercial fisheries sector. In recognition of the increased focus on determining both total allowable catches and total allowable fishing effort, the bill introduces the term "fishing determinations" and renames the Total Allowable Catch Committee as the Total Allowable Fishing Committee.

The bill introduces more flexible and streamlined mechanisms for the making of fishing determinations. The bill provides for the Total Allowable Fishing Committee or the Secretary of the NSW Department of Industry to make fishing determinations if required by the regulations, fishery management plan or the Minister. The method by which the committee would make a fishing determination will not change from the current process used. That is, the committee is required to call for public submissions on any determination it makes. The composition of the committee will remain as prescribed in the Act. This structure ensures determinations remain independent and are based on the best available information and assessment.

Under the bill, the Minister may direct the secretary of the department to make a fishing determination. When making a determination, the secretary must have regard to at least one relevant scientific assessment. This requirement ensures that the fishing determination is based on sound evidence and is transparent. The secretary may also seek advice from the Total Allowable Fishing Committee or conduct public consultation, or both, when making a fishing determination. An example of where the secretary may be directed to make a fishing determination is where a species spans multiple jurisdictions or a similar method is used in an adjacent jurisdiction and a joint stock assessment already exists. It will no longer be the case that the whole of a determined catch must be allocated.

The Act currently only permits the transfer of quota between commercial fishery shareholders in the same fishery. Changes proposed in the bill will enable quota to be traded between any fishery or class of persons entitled to receive quota. Any restrictions deemed necessary on the trading of quota can be imposed by the regulations. The bill also puts in place provisions to improve debt management by building on the existing policy of refusing the transfer of quota if there are outstanding fees or charges payable. Under proposed changes the Minister could order that quota or a portion of quota for the period is forfeited in circumstances where a fee, charge or contribution required under the Act has not been paid. Furthermore, new enforcement provisions in the bill create a general power to allow the recovery through the courts of unpaid fees or charges imposed under the Act.

The bill relaxes commercial fishing boat licensing requirements so only certain, rather than all, boats used for commercial fishing will be subject to licensing requirements under the Act. The regulations will detail fishing boat activities for which a fishing boat licence will be required. Licensing provisions will only be applied where they are needed for resource management. Where they are not needed, steps will be taken to reduce the licensing-related administrative burden on fishery participants. In response to concerns raised by stakeholders during consultation on the bill, commercial fishing boats that will no longer be subject to licensing requirements will still need to be marked to identify the boat as a commercial fishing boat.

Improvements have been made to the system of special endorsements and permits. At present the Act provides for the Minister to issue a special endorsement to take fish for sale in a commercial share management fishery, if, following consultation, the Minister is satisfied there are available resources that would not otherwise be used. However, this special endorsement can only be issued for a maximum period of six months. In future, there will not be a time limit for the validity of these endorsements. In addition, the bill provides for the relevant fishery management plans to detail criteria and circumstances under which a special endorsement may be issued.

To improve administrative efficiency, the bill expands the section 37 permit provisions to allow the Minister to make an order authorising a class of persons to take or possess fish or marine vegetation without requiring an individual to hold a permit on behalf of that class of persons. In addition, the proposed changes clarify that a permit holder may be required to contribute towards the costs of management, monitoring, compliance and research related to activities authorised by the permit to enable the proper recovery of costs of services.

I now turn to amendments relating to the charter fishing sector. The amendments to the Act will introduce a more flexible licensing framework for charter fishing operators to enable operators to more easily and efficiently adjust their businesses to meet the needs of clients. The new arrangements are similar to those in commercial fisheries, with the concept of a "charter fishing business" replacing the charter fishing boat licence. Components of the charter fishing business will comprise new charter fishing licences and a certain number of charter boat seats. Entitlements remain transferrable; however, now it will be possible to transfer a licence without the need for the physical boat to be traded. The amendments also allow for a new concept of tradable "seats". Different classes of seats authorising different charter fishing activities will be tradable between industry participants.

The proposed amendments recognise "guided non-motorised activity" promoting opportunity to use manually-operated boats such as kayaks and canoes under the one business. As a result of consultation on the bill, the term "ecotourism activity" has been replaced with "guided non-motorised activity" to alleviate any concerns for existing ecotourism accreditation schemes. While the overall fishing capacity of the State's charter fishing industry remains capped at the existing total number of seats within the industry, these changes will allow redesign of operations to better suit business needs and bring much-needed flexibility for charter operators. The bill establishes a program to authorise scientific observers to collect information about commercial and charter fishing activities which is consistent with the needs under the various Commercial Fishery Management Strategies and environmental approvals that have been granted.

I now turn to amendments relating to the recreational fishing sector. The bill looks to promote resource management related to recreational fishing, most notably through adding to the existing approach to possession limits for fish. The bill expands the possession limit provisions to enable individual possession limits to be imposed by the making of an order by the Minister. Such a provision will allow the Minister to respond quickly where necessary, by introducing a limit on the quantity of fish that a person may have in their possession. In response to concerns raised by stakeholders during consultation on the bill, the proposal to impose limits on the number of fish that can be held on a boat has been removed.

To provide more responsive resource management arrangements, the bill provides for changes to fishing closure arrangements and an enhanced compliance and enforcement scheme. Existing arrangements for fishing closures will now be complemented by the capacity to urgently amend or revoke closures. Fishing closures will take precedence over commercial fishery share management plans to ensure that they can be implemented as intended—as a short term measure to swiftly address issues, which can be applied across all aspects of fishing activity.

I turn to amendments relating to the Aboriginal fishing sector. This bill enables more flexibility in how Aboriginal cultural fishing is provided for. It also establishes a specific trust fund that can be used to improve the management of Aboriginal fishing. This trust fund will provide a suitable and transparent accounting mechanism for incoming funds and expenditure associated with Aboriginal fishing. The trust fund will be a special deposits account and will be allocated any monies received from the Department of Primary Industries, or through grants or other external funding.

Monies expended would need to be approved by the Minister and be for the purposes of enhancing, maintaining or protecting Aboriginal cultural fishing. In response to comments made by Aboriginal stakeholders during consultation on the bill, the scope of the trust has been expanded to include the additional purpose of economic

development opportunities for Aboriginal communities in relation to fishing or fishing-related activities. In addition, the Minister would need to consult with any relevant advisory councils about policies and priorities for expenditure.

This bill is not only about improving efficiencies and sustainability for our fishing stakeholders; it is also about ensuring that we protect our aquatic environment and threatened species, and I now turn to those amendments. In circumstances where dredging or reclamation works have been undertaken in contravention of the Act, currently the Minister or a court can make a remediation order in respect of those works. To encourage compliance with remediation orders, changes proposed in the bill create an offence provision for noncompliance with an order. Maximum penalties would be \$220,000 for corporations and \$110,000 in any other case. To further strengthen these remediation provisions, the bill also provides for a court to make a remediation order in respect of dredging or reclamation works that have been undertaken in contravention of the Act, even if charges are dismissed, or a person is conditionally discharged, following conviction for these offences.

Changes will also be implemented to simplify provisions to protect aquatic habitats. Presently, protection for mangroves and other marine vegetation is split into two parts. The first is within the Act and the second part is provided by way of a ministerial order published in the New South Wales *Government Gazette* in 2011. The bill brings both parts together, removing the need for the order and simplifying the legislation. Greater cohesion between fisheries aquatic habitat protection provisions and planning processes will now be promoted by aligning consultation time frames for public authorities proposing dredging and reclamation works, with those outlined in the State Environmental Planning Policy.

Various amendments will also be made to improve clarity around actions concerning threatened species. Changes in the bill will clarify that it is a defence to a prosecution for an offence relating to threatened species, populations or ecological communities or their habitats if the Secretary of the New South Wales Department of Industry issues a certificate to the effect that: the proposed action is not likely to significantly affect threatened species, populations or ecological communities or their habitats; and a licence under part 7A of the Act is not required for the action. New powers are also included that will enable the preparation of recovery plans for critically endangered ecological communities and align the Act with recovery planning provisions under the Threatened Species Conservation Act 1995.

I turn now to amendments relating to biosecurity measures. The bill will improve the management of biosecurity risks in New South Wales. Stronger biosecurity provisions are important for the sustainability of the fisheries resource and to ensure market access to premium quality seafood. The bill enables fisheries officers to euthanase live fish reasonably suspected of being noxious for the purpose of seeking expert identification. To encourage compliance with notices to destroy noxious fish or marine vegetation, the bill creates an offence provision for non-compliance with such a notice. The bill expands existing declared disease provisions by enabling the Minister to make an importation order that prohibits or imposes conditions on the entry or importation into the State of anything that is likely to introduce or spread a declared disease. Such an order could remain in force for up to five years.

The bill recognises that waste water and abalone waste from live abalone holding facilities pose a biosecurity risk. As such it enables the Minister to make an order requiring specific measures to be taken to minimise the risk of transmission of a declared disease in such holding facilities. The bill also includes a range of miscellaneous amendments which will improve the regulatory framework and reduce red tape for stakeholders. The bill incorporates the current shark finning prohibition on board boats, which has been in place as a fishing closure since 1999, into the Act. A general offence for providing false or misleading information in connection with a requirement under the Act or regulations is also now included in line with powers of other natural resource regulators.

Members will be aware that a similar bill passed the Legislative Assembly in November 2014 but it did not progress through the Legislative Council prior to Parliament being prorogued. The provisions of this bill were the subject of targeted consultation earlier this year with commercial fishing business owners, charter fishing operators, key recreational and Aboriginal organisations, New South Wales local councils and the Nature Conservation Council. A total of 146 submissions were received during the consultation period and were considered during the preparation of the bill. The Government has responded to concerns raised during consultation where appropriate and made a number of minor changes.

The many benefits this bill brings include the option for commercial and charter boat operators to undertake a wide variety of business transactions online; improved administration of the Act and the ability to efficiently implement commercial fishery reforms; improved charter fishing licensing arrangements; the creation of an Aboriginal Trust Fund and potential for promoting engagement of Aboriginal communities in fishing-related activities promoting social and economic benefits for communities; and stronger biosecurity provisions. The bill aims to improve the sustainability and management of the State's fisheries resources and delivers more effective and efficient services to the users of the resource. This omnibus bill covers a wide range of complex fisheries management issues and I will be writing to the Opposition and crossbenchers offering full briefings on its

provisions. I look forward to those discussions. I commend the Fisheries Management Amendment Bill 2015 to the House.