

Fisheries Management and Environmental Assessment Legislation Amendment Act 2000

As at 20 March 2001

Long Title

An Act to amend the *Fisheries Management Act 1994* and the *Environmental Planning and Assessment Act 1979* to provide for the environmental assessment of fishing activities; to restructure the management of commercial fisheries; to require recreational saltwater fishers as well as freshwater fishers to pay a fishing fee; to make further provision for the protection of aquatic habitats; and for other purposes.

1 Name of Act

This Act is the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedules 1 and 6.1.

4 Amendment of Fisheries Management Act 1994 No 38

The *Fisheries Management Act 1994* is amended as set out in Schedules 2-5, 6.2 and 7.

5 Amendment of Native Title (New South Wales) Act 1994 No 45

The *Native Title (New South Wales) Act 1994* is amended as set out in Schedule 8.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 relating to assessment of fishing activities

(Section 3)

[1] Part 5, Division 5

Insert after Division 4 of Part 5:

Division 5 - Environmental assessment of fishing activities

115G Definitions In this Division:

designated fishing activity means a fishing activity to which this Division applies as provided by section 115I.

fish, **fishery**, **fishing activity** and **share management fishery** have the respective meanings given in the *Fisheries Management Act 1994*.

fisheries approval means a licence, endorsement or permit, of any kind, issued or renewed under the *Fisheries Management Act 1994* or the regulations under that Act.

Fisheries Minister means the Minister administering the *Fisheries Management Act 1994* .

fishery management strategy means a fishery management strategy for a designated fishing activity under Part 1A of the *Fisheries Management Act 1994* .

fishing regulatory controls means the provisions of the following instruments that regulate, prohibit or authorise fishing activities:

- (a) the *Fisheries Management Act 1994* and the regulations under that Act,
- (b) management plans under the *Fisheries Management Act 1994* ,
- (c) fishing closures under section 8 of the *Fisheries Management Act 1994* ,
- (d) fisheries approvals,
- (e) determinations of the TAC Committee under Division 4 of Part 2 of the *Fisheries Management Act 1994* ,
- (f) policies approved by the Fisheries Minister with respect to the administration of the *Fisheries Management Act 1994* and the regulations under that Act,
- (g) any relevant environmental planning instrument referred to in section 115R (5).

proponent of a fishing activity means:

- (a) in the case of a share management fishery--the holders of shares in the fishery or, if shares have not yet been issued on a provisional or permanent basis, the persons who are entitled to be allocated shares in the fishery, or
- (b) in the case of any other fishery--the fishers or other persons who carry out, or propose to carry out, the fishing activity.

115H Principles guiding administration of Division The administration of this Division is to be guided by the following principles:

- (a) the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (b) public participation in accordance with this Division,
- (c) environmental impact assessment in accordance with this Division.

115I Application of Division to designated fishing activities

(1) This Division applies to designated fishing activities described in Schedule 1A to the *Fisheries Management Act 1994* .

(2) This Division extends to the following activities (but only if the activity is such a designated fishing activity):

- (a) the stocking of waters with fish,
- (b) the placing of nets around beaches or other waters to protect the public from sharks,
- (c) the harvesting of marine vegetation.

For that purpose, a reference in this Division to a fishing activity or fishery includes a reference to any such activity.

(3) This Division does not apply to aquaculture within the meaning of the *Fisheries Management Act 1994* .

115J Designated fishing activities to be assessed under this Division

(1) Environmental assessments of designated fishing activities are to be undertaken in accordance with this Division.

(2) A draft fishery management strategy is required for a designated fishing

activity that is the subject of such an environmental assessment.

Note: Section 7E of the *Fisheries Management Act 1994* deals with the contents of such a strategy (including the incorporation of the relevant management plan).

(3) The environmental assessment is to be undertaken on the basis of the activity described in the draft strategy.

(4) The environmental assessment is to assess the likely cumulative environmental impact of the designated fishing activity carried out by all the proponents as authorised by the applicable fishing regulatory controls described in the draft strategy.

115K Environmental impact statements to be prepared

(1) An environmental impact statement in respect of a designated fishing activity must be prepared for the purposes of an environmental assessment under this Division.

(2) An environmental impact statement is required even if it would not be required under Division 3 if that Division applied to the carrying out of the designated fishing activity.

(3) An environmental impact statement is to be prepared in accordance with the requirements of Division 3, and the regulations under that Division, relating to the preparation of such statements.

(4) The Fisheries Minister is to make arrangements for the preparation of an environmental impact statement, including engaging a person to be responsible for the preparation of the statement.

(5) The Fisheries Minister may, under those arrangements, require the proponents of the designated fishing activity to provide information or carry out investigations for the statement and to contribute to the cost of the preparation of the statement.

(6) As soon as practicable after an environmental impact statement has been prepared and before public notice is given under section 115L, the Fisheries Minister is to give a copy of the statement to the Director.

115L Publicity and examination of environmental impact statements

(1) The Fisheries Minister must give public notice of the preparation of an environmental impact statement under this Division and make a copy of the statement available for public inspection in accordance with the requirements for environmental impact statements made by section 113.

(2) A copy of the relevant draft fishery management strategy is to accompany any copy of the environmental impact statement that is made available for public inspection in accordance with this section.

(3) Any person may, during the period specified in the public notice under subsection (1), inspect the environmental impact statement and may, within that period, make representations in writing to the Fisheries Minister with respect to the designated fishing activity to which the statement relates.

(4) Copies of all such representations received by the Fisheries Minister are to be provided, as soon as practicable, to the Director.

(5) The Director may, unless an inquiry has been directed under section 115M:

(a) examine or cause to be examined in the Department the environmental impact statement and any relevant representations, and

(b) forward to the Fisheries Minister, as soon as practicable, a report containing the findings of that examination together with any recommendations arising from that examination.

The Director must make that report public.

(6) If the Director notifies the Fisheries Minister that the environmental impact statement and representations are to be examined in the Department, the Fisheries

Minister must not make a determination under section 115O with respect to the designated fishing activity until the report of the Director has been forwarded to the Fisheries Minister.

115M Public inquiry into designated fishing activity

(1) The Minister administering this Act may direct an inquiry under section 119 with respect to all or any of the environmental aspects of a designated fishing activity the subject of an environmental impact statement prepared under this Division.

(2) The Minister administering this Act is to consider the findings and recommendations of the Commission of Inquiry that has conducted the inquiry and forward to the Fisheries Minister a copy of the findings and recommendations (together with any advice on whether there are environmental grounds on which the activity should be permitted, modified or prevented).

(3) If the Minister administering this Act notifies the Fisheries Minister that an inquiry is to be conducted, the Fisheries Minister must not make a determination under section 115O with respect to the designated fishing activity until the findings and recommendations (and any advice) have been forwarded to the Fisheries Minister.

115N Special provisions relating to threatened species conservation

(1) An environmental assessment under this Division of a designated fishing activity is to include an assessment of the effect or likely effect on the following:

- (a) critical habitat,
- (b) threatened species, populations and ecological communities and their habitats.

(2) An environmental impact statement under this Division must include a species impact statement if the designated fishing activity is to be carried out in critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats.

(3) The Fisheries Minister, in considering a species impact statement under this Division, must have regard to the terms of any recovery plans or threat abatement plans relating to the area to which the statement applies for the purpose of assessing any effect on a threatened species, population or ecological community, or its habitat.

(4) The Fisheries Minister must not make a determination under section 115O with respect to a designated fishing activity that is to be carried out in critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats unless the Minister has consulted the Minister administering the *Threatened Species Conservation Act 1995*. This subsection does not apply if the critical habitat or the threatened species, population or ecological community relate to fish or marine vegetation.

(5) In consulting under subsection (4), the Minister administering the *Threatened Species Conservation Act 1995* must provide the Fisheries Minister with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination with respect to the designated fishing activity. The Fisheries Minister must include any recommendations not accepted by the Fisheries Minister (and the reasons for not accepting them) in the public report of the Fisheries Minister's determination.

(6) The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under subsection (4)) must take into consideration the matters referred to in section 112E of this Act.

Note: This section incorporates the relevant obligations under Division 3 with respect to threatened species conservation.

115O Determination with respect to environmental assessment

(1) The Fisheries Minister is to make a determination with respect to the designated fishing activity the subject of an environmental impact statement for the purpose of attaining the objects of this Act relating to the protection and the enhancement of the environment and the objects of the *Fisheries Management Act 1994*.

(2) When making the determination, the Fisheries Minister is to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of the designated fishing activity (including the effect of the activity on the matters referred to in section 111 (2)-(4)).

Note: The duty of the Fisheries Minister under this section is in similar terms to the duty imposed on determining authorities by section 111 to consider the environmental impact of activities.

(3) The Fisheries Minister is to consider:

(a) the environmental impact statement and the representations duly received by the Fisheries Minister with respect to the designated fishing activity to which the statement relates, and

(b) any report on the statement and recommendations of the Director that are forwarded to the Fisheries Minister under section 115L, and

(c) any findings and recommendations of a Commission of Inquiry and advice of the Minister administering this Act that are forwarded to the Fisheries Minister under section 115M, and

(d) the matters required to be considered under section 115N relating to threatened species conservation.

(4) The Fisheries Minister may make any of the following determinations:

(a) a determination to permit the designated fishing activity to be carried out,

(b) a determination to permit the designated fishing activity to be carried out subject to such modifications as will in the Fisheries Minister's opinion eliminate or reduce the detrimental effect of the activity on the environment,

(c) a determination to prevent the carrying out of the designated fishing activity or any part of the activity.

The Fisheries Minister must make the determination public as soon as practicable after it is made.

Note: This subsection is in similar terms to section 112 (4) with respect to the actions of a determining authority once it has obtained and considered an environmental impact statement on an activity that is likely to significantly affect the environment. Section 7F of the *Fisheries Management Act 1994* requires the Fisheries Minister to revise the relevant draft fishery management strategy (and publish the approved strategy) so as to reflect the result of the determination.

(5) If the approval of the Minister administering this Act is required under section 115P for a determination under this section, the Fisheries Minister is to make a preliminary determination before seeking approval under that section. A determination is not made under this section until a final determination is made in accordance with section 115P.

(6) When giving effect to a determination, the Fisheries Minister is to comply with the applicable provisions of the *Fisheries Management Act 1994* and the regulations under that Act.

(7) A determination under this section does not prevent the imposition from time to time of new fishing regulatory controls applicable to a designated fishing activity, or changes from time to time to those controls.

Note: See also section 115R (3) which only excludes a fishing approval from the requirement for individual environmental assessment under this Part if it is issued or renewed in accordance with

the determination of the environmental assessment under this section.

115P Approval of Minister administering this Act required for designated fishing activity where Fisheries Minister is or is declared to be proponent

(1) This section applies to:

(a) any designated fishing activity of which the Fisheries Minister is the proponent, and

(b) any other designated fishing activity in respect of which the Fisheries Minister is declared to be the proponent by the Minister administering this Act by order published in the Gazette:

(i) with the approval of the Fisheries Minister, or

(ii) if there is a dispute between the Minister administering this Act and the Fisheries Minister, with the approval of the Premier.

(2) The Fisheries Minister is not to make a final determination under section 115O with respect to a designated fishing activity to which this section applies without the approval of the Minister administering this Act. If the approval is subject to conditions, the final determination must accord with those conditions.

(3) Division 4 applies (with any necessary modifications) to an approval of the Minister administering this Act required under this section in the same way as it applies to an approval of that Minister required under that Division.

115Q Re-assessment of designated fishing activity

(1) A further environmental assessment of a designated fishing activity is to be undertaken under this Division if:

(a) a review of the relevant fishery management strategy is indicated by the strategy because the specified performance indicators are not being met, and

(b) the review results in proposed changes to the strategy, and

(c) the proposed changes to fishing regulatory controls are likely, in the opinion of the Fisheries Minister, to significantly affect the environment (including threatened species, populations or ecological communities or their habitats).

(2) A further environmental assessment may be limited to an assessment that relates to the proposed changes to fishing regulatory controls.

115R Application of other provisions of this Act

(1) The provisions of this Part (other than this Division) do not apply to or in respect of a designated fishing activity.

(2) Despite subsection (1), those provisions apply to a designated fishing activity if the Fisheries Minister has not made a determination with respect to the activity under this Division before:

(a) 1 July 2003, except as provided by paragraph (b), or

(b) a later date prescribed by the regulations for the purposes of that fishing activity.

In that case, those provisions cease to apply if the determination is made after that date.

(3) Despite subsection (1), those provisions apply to a fisheries approval that relates to a designated fishing activity if:

(a) until a determination is made by the Fisheries Minister with respect to the activity under section 115O--the fisheries approval does not authorise commercial fishing activities and is granted or renewed for a period exceeding 12 months, or

(b) after such a determination is made--the fisheries approval is not granted or renewed in accordance with the determination.

(4) A designated fishing activity cannot be made subject to a requirement for

development consent under Part 4.

(5) An environmental planning instrument cannot prohibit or otherwise regulate a designated fishing activity (or any part of such an activity) unless the Fisheries Minister has approved those provisions before the instrument is made.

[2] Part 5A (sections 115G-115N)

Renumber sections 115G-115N as sections 116A-116H.

Schedule 2 Amendment of Fisheries Management Act 1994 relating to environmental assessment

(Section 4)

[1] Section 4 Definitions

Omit the definition of **management plan** from section 4 (1). Insert instead:

management plan means:

(a) in relation to a share management fishery--a management plan for the fishery made under Division 5 of Part 3, or

(b) in relation to any other fishery--a management plan under the regulations referred to in section 40 (2) (a).

[2] Part 1A

Insert after Part 1:

Part 1A - Fishery management strategies

7A Definitions In this Part:

designated fishing activity means a fishing activity described in Schedule 1A.

EPA Act means the *Environmental Planning and Assessment Act 1979* .

Fisheries Resource Conservation and Assessment Council means the Fisheries Resource Conservation and Assessment Council established under Division 1A of Part 8.

fishing activity includes any activity that may be the subject of environmental assessment under Division 5 of Part 5 of the EPA Act.

fishing regulatory controls has the same meaning it has in Division 5 of Part 5 of the EPA Act.

7B Declaration of designated fishing activities

(1) Schedule 1A describes designated fishing activities for the purposes of this Part.

(2) The Governor may, by proclamation on the recommendation of the Minister, amend Schedule 1A by inserting, omitting or amending the description of a fishing activity.

(3) The regulations may make provisions of a savings or transitional nature consequent on the amendment of Schedule 1A.

7C Fishery management strategy for designated activities

(1) The Minister is to arrange for the preparation of a draft fishery management strategy for each designated fishing activity.

(2) The Minister may, from time to time, revise the existing strategy for an activity or arrange for the preparation of a new draft strategy for the activity (whether or not a review of the existing strategy is required because performance indicators are not being met).

(3) The Minister is to consult with the Fisheries Resource Conservation and Assessment Council on the preparation or revision of a fishery management strategy.

7D Purpose of fishery management strategy

(1) A fishery management strategy is the strategy for achieving the objectives of this Act with respect to the designated fishing activity for which it is prepared. The draft strategy is the basis for environmental assessment under Division 5 of Part 5 of the EPA Act of that activity.

(2) A draft strategy is to be prepared (in accordance with guidelines agreed between the Minister administering this Act and the Minister administering the EPA Act) so as to enable:

- (a) an environmental assessment consistent with the principles on which assessments of activities are undertaken under Part 5 of the EPA Act, and
- (b) the cumulative environmental impact of fisheries approvals under this Act to be assessed.

Note: Division 5 of Part 5 of the EPA Act makes special provision for the environmental assessment of designated fishing activities. Section 115I of that Act requires the preparation of a draft fishery management strategy for any fishing activity that is subject to environmental assessment under that Division. The draft strategy is subject to public consultation in conjunction with the environmental impact statement for the assessment.

7E Content of fishery management strategy A fishery management strategy is to:

- (a) describe the designated fishing activity for which it is prepared, and
- (b) incorporate any management plan or draft management plan for the fishery concerned, and
- (c) outline the fishing regulatory controls or proposed fishing regulatory controls applicable to the designated fishing activity, and
- (d) outline the likely interaction of the designated fishing activity with other fishing activities, and
- (e) include performance indicators to monitor whether the objectives of the strategy (and the management plan) and ecologically sustainable development are being attained, and
- (f) describe how the designated fishing activity is to be monitored, and
- (g) specify at what point a review of the strategy is required when a performance indicator is not being satisfied.

Note: See section 57 for content of a management plan for a share management fishery.

7F Revision of draft strategy and publication of approved strategy following environmental assessment

(1) Following a determination under Division 5 of Part 5 of the EPA Act, the Minister is to revise the draft fishery management strategy for the designated fishing activity concerned so as to reflect the result of the determination.

(2) The Minister is to consult with the Fisheries resource Conservation and Assessment Council on the revision of the draft strategy. In particular, the Minister is to give the Council the opportunity:

- (a) to review the environmental impact statement prepared in connection with the draft strategy, and
- (b) to provide advice to the Minister,

prior to the public exhibition of the statement.

(3) The Minister is to publish the approved strategy (as so revised) in connection with the publication of the determination under Division 5 of Part 5 of the EPA

Act.

7G Management plan not to be made until completion of environmental assessment

(1) Until a determination is made under Division 5 of Part 5 of the EPA Act with respect to a designated fishing activity, the first management plan for the fishery concerned cannot be made.

(2) If the management plan for a share management fishery has not been made within the time required by section 42 (3), the Minister is not required to recommend that the description of the fishery be omitted from Schedule 1 if the Management Advisory Committee for the fishery approves of the retention of the fishery as a share management fishery.

[3] Section 42 Declaration of share management fisheries

Omit the note at the end of the section. Insert instead:

Note: The first management plan for a fishery cannot be made until the completion of environmental assessment--see section 7G.

[4] Section 128 Definitions

Insert in alphabetical order:

this Act includes Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979* .

[5] Section 227 Delegation by Minister

Insert at the end of the section:

(2) The Minister may also delegate to the Director any function of the Minister under Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979* (other than the function of making a determination under that Division with respect to a designated fishing activity).

[6] Part 8, Division 1A

Insert after Division 1 of Part 8:

Division 1A - Fisheries Resource Conservation and Assessment Council

228A Establishment of Council

(1) There is established by this Act a Fisheries Resource Conservation and Assessment Council.

(2) The Council is to consist of the following members:

- (a) the chairperson of the Council,
- (b) recreational fishing representatives,
- (c) commercial fishing representatives,
- (d) aquaculture industry representatives,
- (e) conservation and environmental representatives,
- (f) indigenous representatives,
- (g) government representatives.

(3) The chairperson of the Council is to be a person appointed by the Minister who, in the opinion of the Minister:

- (a) has qualifications in marine science, economics or law, and
- (b) has no pecuniary interest in the fishing industry in New South Wales, and
- (c) is not engaged in the administration of this Act.

(4) The recreational fishing representatives are to be 2 or more persons appointed by the Minister to represent recreational fishers, the recreational fishing industry or related interests (such as the fishing tackle industry or charter fishing boat industry). At least one of them must be a recreational fisher.

(5) The commercial fishing representatives are to be 2 or more persons appointed by the Minister to represent commercial fishers, the commercial fishing industry

or related interests (such as fish receivers). At least one of them must be a commercial fisher.

(6) The aquaculture industry representatives are to be one or more persons appointed by the Minister to represent the aquaculture industry.

(7) The conservation and environmental representatives are to be 2 or more persons appointed by the Minister to represent conservation and environmental interests. Of those persons:

(a) at least one person must be appointed to represent conservation interests on the nomination of a group or body generally recognised for its interest in conservation, and

(b) at least one person must be appointed to represent environmental interests, being a person who has expertise in marine science or a related field and who is appointed on the nomination of a University, a scientific organisation or another body that has an interest or expertise in science, and

(c) at least one of any additional representatives may be a representative of the eco-tourism (or other related) industry or hobby that does not involve fishing activities.

(8) The indigenous representatives are to be 2 or more persons appointed by the Minister to represent indigenous people and interests.

(9) The government representatives are to be appointed in accordance with the regulations. Not more than one representative of any one government agency is to be so appointed.

(10) The Minister is, in accordance with the regulations, to request nominations from relevant organisations and bodies for the appointment of members of the Council (other than the chairperson or government representatives).

(11) The number of members appointed as recreational fishing representatives is to be equal to the number of members appointed as commercial fishing representatives.

(12) The number of members appointed in any one of the following representative categories is not to exceed the number of members appointed as recreational fishing representatives or the number of members appointed as commercial fishing representatives:

(a) aquaculture industry representatives,

(b) conservation and environmental representatives,

(c) indigenous representatives.

228B Function of Council The Fisheries Resource Conservation and Assessment Council has the function of advising on:

(a) the preparation or revision of a fishery management strategy under Part 1A (and for that purpose to review the environmental impact statement prepared in connection with a draft strategy), and

(b) such other matters as may be referred to it by the Minister.

228C Provisions relating to members and procedure of Council

(1) A person appointed by the Minister as a member of the Fisheries Resource Conservation and Assessment Council holds office for such term as is specified in the person's instrument of appointment and is, if otherwise qualified, eligible for re-appointment.

(2) The regulations may make other provision for or with respect to the members and procedure of the Council.

(3) The procedure for the conduct of the business of the Council is, subject to the regulations, to be determined by the Council.

Insert after section 238A:

238B Use of money in trust funds for environmental assessment and related expenses
The costs incurred in connection with environmental assessment under Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of a fishery (including in connection with the preparation of a fishery management strategy) may be paid or reimbursed from the trust fund that relates to the fishery.

[8] Section 282A

Insert after section 282:

282A Enforcement of environmental assessment and management planning requirements

(1) This section applies to:

(a) proceedings under section 282 of this Act or section 123 of the EPA Act, or

(b) judicial review proceedings or any other proceedings,

to remedy or restrain a breach or apprehended breach of Part 1A or Division 5 of Part 3 of this Act or of Division 5 of Part 5 of the EPA Act.

(2) A relevant fishing regulatory control (or proposed control) that prohibits or restricts the carrying out of fishing activities cannot, in any such proceedings, be invalidated, suspended, prevented from being made or taking effect or otherwise affected because of any such breach or apprehended breach unless:

(a) a reasonable period is provided by the court to enable compliance with the provision of this Act or the EPA Act concerned (including if necessary the preparation of a new fishery management strategy or a re-assessment under that Act), and

(b) the provision has not been complied with after the end of that period.

(3) Words and expressions in this section have the same meaning as they have in Part 1A.

[9] Section 284 Public consultation procedure

Insert after section 284 (2):

(3) A requirement under this Act to consult relevant commercial or recreational fishing industry bodies in connection with any such public opportunity to make submissions on a matter is a requirement to consult such bodies as the Minister considers have a sufficient interest in the matter.

[10] Schedule 1A

Insert after Schedule 1:

Schedule 1A Designated fishing activities

(Section 7B)

1 Share management fisheries Fishing activities for commercial purposes in a share management fishery specified in Schedule 1.

Note: On the enactment of this Schedule, the abalone fishery and the lobster fishery were share management fisheries. On the commencement of Schedule 3 to the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*, the ocean prawn trawl fishery, the ocean fish trawl fishery, the ocean hauling fishery, the ocean trap and line fishery, the estuary general fishery and the estuary prawn trawl fishery become share management fisheries.

2 Charter boat fishery Recreational fishing activities comprising the use of charter fishing boats (within the meaning of Part 4A).

3 Recreational fishery Recreational fishing activities (except in the charter boat fishery referred to in clause 2).

4 Fish stocking Fishing activities comprising the stocking of waters with fish:

(a) for which a permit of the Minister is required under section 216 of the Act, or

(b) by the Minister.

5 Shark meshing Fishing activities comprising the placing of nets by the Minister around

beaches and other waters to protect the public from sharks.

Schedule 3 Amendment of Fisheries Management Act 1994 relating to commercial fisheries

(Section 4)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

category 1 share management fishery means a fishery specified in Part 1 of Schedule 1.

category 2 share management fishery means a fishery specified in Part 2 of Schedule 1.

[2] Section 28 Function of TAC Committee

Insert after section 28 (3):

(4) The TAC Committee may also determine, in accordance with this Division, any other matter relating to fishing effort in a share management fishery if (and only if) required to do so by the Minister. This Division applies to the determination of any such matter in the same way as it applies to the determination of a total allowable catch.

[3] Part 3, Division 1, heading

Omit the heading. Insert instead: "Division 1 Overview".

[4] Section 41A

Insert after section 41:

41A Categories of share management fishery There are 2 categories of share management fishery, as follows:

- (a) category 1 share management fisheries,
- (b) category 2 share management fisheries.

The principal differences between category 1 and category 2 share management fisheries are as follows:

- (a) Shares in a category 1 share management fishery are issued for a 10-year period and are automatically renewed. If the share management fishery is terminated, all the shares in the fishery are cancelled and compensation is payable to the shareholders. Shareholders in the fishery are liable to pay a community contribution for their right of access to the fishery.
- (b) Shares in a category 2 share management fishery are issued for a 15-year period and are renewable. If the share management fishery is terminated by the Minister, the shares expire at the end of the 15-year period for which they were issued or renewed. Compensation is payable for the termination of the fishery (by its omission from Schedule 1) before the expiry of the current term of the shares, but is not payable for a termination by the Minister after that expiry. Shareholders in the fishery are not liable for a community contribution, but must pay a rental charge for their right of access to the fishery.

[5] Section 44 Omission of share management fishery

Insert after section 44 (7):

- (8) This section does not apply:
 - (a) if a description of a fishery is omitted from Part 2 of Schedule 1 after the fishery is terminated in accordance with Division 2A, or
 - (b) if a description of a fishery is omitted from Part 2 of Schedule 1 and inserted in Part 1 of Schedule 1 (that is, the fishery is converted in accordance with Division 2A).

[6] Part 3, Division 2A

Insert after Division 2 of Part 3:

Division 2A - Termination and conversion of category 2 share management

fisheries

45A Termination of category 2 share management fishery

(1) The Minister may, by order published in the Gazette, terminate a category 2 share management fishery.

(2) The termination takes effect when the current term of the shares in the fishery expires.

Note: Shares in a category 2 share management fishery are issued for 15-year periods. Under section 73A, if a new management plan is not made by the end of the first 10 years of that 15-year period, and an order has not been made terminating the fishery, the shares are automatically renewed for a further 15 years. The effect of that provision is that shareholders must be given at least 5 years' notice of the termination of the fishery.

(3) When the termination takes effect, the fishery is taken to cease to be a share management fishery.

(4) The Minister is to recommend to the Governor that the description of the fishery be omitted from Schedule 1 after the termination takes effect.

45B Regulations relating to terminated fisheries

(1) The regulations may make provision for or with respect to the regulation and management of a category 2 share management fishery that is terminated under this Division.

(2) Without limiting subsection (1), the regulations may declare the fishery to be a restricted fishery from the date the termination takes effect.

45C Conversion of category 2 share management fishery to category 1

(1) A category 2 share management fishery may be converted to a category 1 share management fishery.

(2) A category 2 share management fishery is converted to a category 1 share management fishery if Schedule 1 is amended so as to omit the description of the fishery from Part 2 of Schedule 1 and insert that description of the fishery in Part 1 of Schedule 1.

(3) A category 2 share management fishery cannot be redefined at the time of its conversion to a category 1 share management fishery, but the fishery may be redefined before or after its conversion.

45D Poll of shareholders

(1) The Management Advisory Committee for a category 2 share management fishery may request the Minister to hold a poll of shareholders on the question of whether the fishery should be converted to a category 1 share management fishery.

(2) Within 60 days after the request is made, the Minister is to:

(a) direct that the poll be taken, or

(b) refer the matter back to the Management Advisory Committee for reconsideration.

If the Committee confirms its request, the Minister must, within 60 days, direct that the poll be taken.

(3) For the purposes of a poll under this section:

(a) shareholders are entitled to one vote irrespective of the number of shares they hold, and

(b) 2 or more persons who hold shares jointly are entitled to only one vote, and

(c) a corporation that holds shares is required to nominate an individual to vote in the poll.

(4) The conversion of the fishery is supported at a poll if the number of votes in support of the conversion constitutes a majority of the persons eligible to vote in

the poll.

(5) If the conversion of the fishery is supported at the poll, the Minister is, within 90 days, to recommend to the Governor that the appropriate amendment be made to Schedule 1 to effect the conversion.

(6) A poll in respect of a fishery is not to be conducted under this section more than twice during the period in which the management plan for the fishery remains in force.

(7) The regulations may make provision for or with respect to:

(a) the conduct of polls under this section, and

(b) the recovery of the costs of or in connection with a poll from shareholders in the fishery.

45E General provisions relating to conversion

(1) If a category 2 share management fishery is converted to a category 1 share management fishery:

(a) the fishery is taken, subject to the regulations, to continue to be a category 2 share management fishery for the purposes of this Part until the commencement of the management plan for the category 1 share management fishery, and

(b) the management plan for the category 2 share management fishery continues in force until that commencement (subject to any amendment of that plan in accordance with this Part), and

(c) any entitlement to compensation under section 44 for the omission of the fishery from Schedule 1 before that commencement is to be determined on the basis that the fishery remains a category 2 share management fishery.

(2) When the management plan for the category 1 share management fishery commences, all shares in the category 2 share management fishery are cancelled.

(3) The regulations may make provision for or with respect to the conversion of a category 2 share management fishery to a category 1 share management fishery, including by modifying the application of this Part to the implementation of the category 1 share management fishery.

[7] Section 50 Method of determining eligibility and entitlement to shares

Insert after section 50 (6):

(7) If a category 2 share management fishery is converted to a category 1 share management fishery, the persons entitled to shares in the fishery are the persons who are shareholders in the category 2 share management fishery. The allocation of shares to any such person is to be made having regard to the shares held by the person in the category 2 share management fishery.

[8] Section 55 Fishery that is existing restricted fishery

Insert after section 55 (2):

(3) Any provisions of the regulations that apply to such a restricted fishery apply (with any necessary modifications) as provisions of the regulations that apply to the limited access fishery, until those provisions are repealed.

[9] Section 73 Duration of shareholding--category 1 share management fishery

Omit "share management fishery" from section 73 (1). Insert instead "category 1 share management fishery".

[10] Section 73A

Insert after section 73:

73A Duration of shareholding--category 2 share management fishery

(1) Shares in a category 2 share management fishery are to be issued initially for a period of 15 years (calculated from the commencement of the management plan

for the fishery).

(2) If by the end of the first 10 years of that 15-year period (or any subsequent period for which the shares are renewed):

(a) a new management plan has not been made under this Part, and

(b) there is no order in force under Division 2A that terminates the fishery at the end of current term of the shares in the fishery,

the shares are taken to be renewed for a further period of 15 years and the balance of the current period is terminated.

(3) If by the end of the first 10 years of that 15-year period (or any subsequent period for which the shares are renewed) a fishery review has been conducted and a new management plan has been made under this Part, the shares are taken to be renewed (from the date the new plan commences) for a further period of 15 years and the balance of the current period is terminated.

[11] Section 77 Community contribution for access to category 1 share management fishery
Omit "share management fishery" from section 77 (1). Insert instead "category 1 share management fishery".

[12] Section 77A

Insert after section 77:

77A Rental charge for access to category 2 share management fishery

(1) Shareholders in a category 2 share management fishery are required to pay a rental charge for their right of access to the fishery.

(2) The amount of the rental charge, the method of its payment and other matters concerning its payment are to be provided for by the management plan.

(3) The maximum rental charge is \$100 for a 12-month period.

(4) The management plan for a fishery may provide for the adjustment of the maximum rental charge to take into account changes in the consumer price index. In that case, the maximum rental charge is the amount so adjusted.

(5) A person is exempt from paying the rental charge:

(a) if the person holds shares in another category 2 share management fishery and has paid a rental charge for the same period in respect of that other fishery (unless the management plan otherwise provides), or

(b) in such other circumstances as may be provided for by the management plan.

(6) This section applies in respect of a category 2 share management fishery:

(a) if the fishery is, before the commencement of limited access to the fishery, also a restricted fishery--on and from the day the fishery becomes a share management fishery, or

(b) in any other case--on and from the day appointed for the commencement of limited access to the fishery.

(7) Until the commencement of the management plan for the fishery, the Minister may determine the matters that under this section may be provided for by the plan.

(8) For the purposes of this section:

(a) an applicant for shares in a category 2 share management fishery who has duly lodged an appeal to the Share Appeal Panel, and whose appeal is pending, is taken to be a shareholder in the fishery, and

(b) if a category 2 share management fishery is also a restricted fishery--a person authorised to take fish in the fishery is taken to be a shareholder in the fishery.

[13] Section 78 Allocation of total allowable catch among shareholders in fishery

Insert after section 78 (3):

(3A) The management plan for a fishery that includes different kinds of fish may, for the purposes of this section, provide for different classes of shareholders in the fishery having regard to the kind of fish taken by the shareholders (including in connection with any catch history on which the criteria for shareholding in the fishery was based). The management plan may provide (despite subsection (3)) for the allocation of the total allowable catch of a particular kind of fish among the relevant class of shareholders only.

[14] Section 230 Management Advisory Committees for fisheries

Omit "Director" from section 230 (1). Insert instead "Minister".

[15] Section 230 (2) and (3)

Omit the subsections. Insert instead:

(2) The members of a Management Advisory Committee are to be appointed by the Minister and are to be:

(a) commercial fishers (or other prescribed persons) elected in accordance with the regulations by shareholders or commercial fishers, or persons who are likely to be shareholders or commercial fishers, in the fishery, and

(b) persons representing other interested groups determined by the Minister in accordance with the regulations, and

(c) a person appointed as chairperson of the Committee, being a person who is neither engaged in the administration of this Act nor engaged in commercial fishing in the fishery.

(3) The chairperson of a Management Advisory Committee is entitled to attend and chair meetings of the Committee but is not entitled to vote at any such meeting.

[16] Schedule 1 Share management fisheries

Insert at the beginning of the Schedule:

Part 1A Category 1 share management fisheries

Category 1 share management fisheries

[17] Schedule 1, Parts 2 and 3

Insert after clause 6:

Part 2 - Category 2 share management fisheries

7 Ocean prawn trawl fishery

Description of fishery The ocean prawn trawl fishery consists of the use of an otter trawl net (prawns) to take fish from any of the following waters:

(a) inshore waters,

(b) offshore waters,

(c) the waters of Coffs Harbour and Jervis Bay.

8 Ocean fish trawl fishery

Description of fishery The ocean fish trawl fishery consists of the use of an otter trawl net (fish) to take fish from the following waters:

(a) ocean waters that are north of a line drawn due east from Barrenjoey Headland (other than the waters in which use of an otter trawl net (fish) is prohibited under the regulations under this Act),

(b) ocean waters that are not more than 3 nautical miles from the natural coast line and are south of a line drawn due east from Barrenjoey Headland.

9 Ocean hauling fishery

10 Ocean trap and line fishery

Description of fishery The ocean trap and line fishery consists of the following:

(a) the use of a fish trap to take fish from ocean waters,

(b) the use of a line with hooks attached to take fish from ocean waters,

(c) the use of a spanner crab net to take spanner crabs from ocean waters that are north of a line drawn due east from Korogoro Point (Hat Head).

11 Estuary general fishery

Description of fishery The estuary general fishery consists of:

(a) the taking of fish from estuarine waters by any lawful method other than prawn trawling, and

(b) the taking of fish from ocean beaches by the method of hand picking.

12 Estuary prawn trawl fishery

Description of fishery The estuary prawn trawl fishery consists of the use of an otter trawl net (prawns) to take prawns from estuarine waters.

Part 3 - Interpretation

13 Definitions

(1) In this Schedule:

estuarine waters means waters ordinarily subject to tidal influence (other than ocean waters).

inshore waters means ocean waters that are not more than 3 nautical miles from the natural coast line.

natural coast line , in relation to a fishery described in this Schedule, means the natural coast line as defined in Schedule 1 to the *Fisheries Management (General) Regulation 1995* , as in force at the date the description of the fishery was inserted in this Schedule.

ocean waters means waters east of the natural coast line.

offshore waters means ocean waters that are more than 3 nautical miles from the natural coast line and north of a line drawn due east from Barrenjoey Headland.

(2) A reference in the description of a fishery to a net or a trap is a reference to a net or trap of that description that may lawfully be used by a commercial fisher to take fish from the waters to which the fishery applies, as prescribed by the regulations from time to time in force under this Act.

[18] Schedule 1

Omit clause 9.

[19] Schedule 7 Savings, transitional and other provisions

Insert after Part 3:

Part 3A - Provisions relating to share management fisheries

6B Appeals to Share Appeal Panel

(1) This clause applies in respect of a restricted fishery that becomes a category 2 share management fishery as a result of the amendments made to Schedule 1 by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* .

(2) Despite section 84, there is no appeal to the Share Appeal Panel in relation to any matter that was determined by the Minister before the restricted fishery became a share management fishery (such as a determination as to the catch history of a person) if the determination could have been made the subject of a

review request under Division 6 of Part 8 of the *Fisheries Management (General) Regulation 1995* .

(3) The Share Appeal Panel is to refuse to hear an appeal in relation to any such matter.

[20] Schedule 7

Insert in Part 8 in appropriate numerical order:

19A Saving of arrangements relating to MACs consequent on amendments made by Fisheries Management and Environmental Assessment Legislation Amendment Act 2000

(1) A Management Advisory Committee established for a restricted fishery that becomes a category 2 share management fishery under the amendments made to Schedule 1 by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* is taken to have been established for the share management fishery.

(2) A Management Advisory Committee established by the Director under section 230 before the amendment of that section by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* is taken to have been established by the Minister.

(3) The members of the Management Advisory Committee are taken to have been appointed by the Minister.

(4) In the case of the Management Advisory Committee for the lobster fishery, the chairperson may (until 1 January 2004) be engaged in commercial fishing in that fishery (despite section 230 (2)).

Schedule 4 Amendment of Fisheries Management Act 1994 relating to recreational fishing fee

(Section 4)

[1] Section 4 Definitions

Omit the definition of **recreational freshwater fisher** from section 4 (1). Insert instead:

recreational fisher means a fisher who takes fish by any method, otherwise than for sale.

[2] Part 2, Division 4A

Omit the Division. Insert instead:

Division 4A - Recreational fishing fee

34A Definitions In this Division:

fishing fee means a recreational fishing fee payable under this Division.

fishing fee exemption certificate means a certificate issued under section 34I and in force.

official receipt means a receipt issued under this Division for payment of a recreational fishing fee.

34B Recreational fishing fee A recreational fishing fee is payable by recreational fishers as required by this Division.

34C Recreational fishers required to pay fishing fee

(1) A fishing fee is payable by all recreational fishers, unless exempted by or under this section.

(2) A fisher is exempt from paying a fishing fee:

- (a) if the fisher is under 18 years of age, or
- (b) if the fisher is of or over 18 years of age and is only assisting a fisher under 18 years of age to take fish by means of a single rod or line, or
- (c) if the fisher holds a licence, permit or other authority under this Act or the regulations and is taking fish in accordance with that licence, permit or other authority, or
- (d) if the fisher is engaging in recreational fishing activities that are exempt from payment of a fishing fee by virtue of a fishing fee exemption certificate that is in force, or
- (e) if the fisher is taking fish from water subject to an aquaculture permit and is taking fish to which the permit relates, or
- (f) if the fisher is an Aboriginal (within the meaning of the *Aboriginal Land Rights Act 1983*) and:
 - (i) is taking fish from freshwater, or
 - (ii) is taking fish from other waters pursuant to a native title right or interest that is the subject of an approved determination of native title or of a claim entered on the Register of Native Title Claims (within the meaning of the *Native Title Act 1993* of the Commonwealth), or
- (g) if the fisher is taking fish from an aquarium, or from a body of water of a class exempted by the regulations, or
- (h) if the fisher is a fisher of a class exempted by the regulations.

(3) The regulations may require recreational fishers to produce evidence that they are exempt from paying a fishing fee.

34D Periods for which fishing fee payable

(1) A fishing fee is payable for any period during which a recreational fisher takes fish from any waters otherwise than for sale.

(2) A fishing fee may be paid for any of the following periods:

- (a) a period of 3 days,
- (b) a period of 1 month,
- (c) a period of 12 months,
- (d) a period of 3 years.

(3) The regulations may prescribe other periods for which a fishing fee may be paid (whether in addition to, or substitution for, the periods referred to in subsection (2)).

34E Amount of fishing fee

(1) The amount of the fishing fee is (subject to this section):

- (a) for a period of 3 days--\$5, or
- (a) for a period of 1 month--\$10, or
- (b) for a period of 12 months--\$25, or
- (c) for a period of 3 years--\$70.

(2) The regulations may prescribe a different amount for any such period and may prescribe the amount for any other period for which a fishing fee may be paid.

34F Reductions in fishing fee payable The regulations may provide for reductions in the amount of the fishing fee otherwise payable by persons of a specified class.

34G Issue of receipt on payment of fishing fee

(1) A person who pays a fishing fee is entitled to be issued with an official receipt for the payment.

(2) A receipt is evidence of the payment of the fishing fee and not an authority to take fish, and accordingly cannot be refused or made subject to any conditions.

(3) A receipt is to be in a form approved by the Minister.

(4) The regulations may make provision for the issue of replacement receipts for

receipts that are lost, destroyed or damaged.

(5) A receipt is not transferable.

34H Arrangements for collection of fishing fees and issue of receipts

(1) The Director may enter into arrangements with any person for the collection of fishing fees and the issue of official receipts. A person who enters into such an arrangement is an authorised agent for the purposes of this Act.

(2) The Director is to ensure that sufficient arrangements are made to enable the payment of fishing fees in convenient locations throughout the State.

(3) An arrangement may make provision for the payment of a commission to the authorised agent, whether by way of the retention of a percentage of the amount of fishing fees paid or by way of a separate payment.

(4) An arrangement may make provision for the authorised agent to make specified records, and follow specified procedures, with respect to the collection and remittance of fishing fees and the issue of official receipts.

34I Fishing fee exemption certificates

(1) The Minister may issue a fishing fee exemption certificate in respect of any recreational fishing activities.

(2) A certificate exempts persons carrying out those recreational fishing activities from the obligation to pay a fishing fee under this Division.

(3) A certificate may be issued:

(a) to a person in respect of recreational fishing activities that are carried out under the supervision or guidance of the person (or an employee or agent of the person), or

(b) to the owner of a boat (or another person authorised by the owner) in respect of recreational fishing activities that are carried out on the boat, or

(c) to such other persons or class of persons, and in respect of such other activities, as the regulations may prescribe.

(4) The fee (if any) payable for the certificate and other matters concerning the certificate are to be prescribed by the regulations. The fee for the certificate is taken to be a fishing fee paid under this Division for the purposes of Division 3 of Part 8.

34J Offences

(1) A recreational fisher who is required by this Division to pay a fishing fee is guilty of an offence if the fisher fails to pay the fishing fee.

Maximum penalty: 20 penalty units.

(2) A recreational fisher who is required by this Division to pay a fishing fee is guilty of an offence if the fisher does not have an official receipt for the payment of the fishing fee in his or her possession when taking fish from any waters.

Maximum penalty: 20 penalty units.

(3) For the purposes of proceedings under this section, a person who is in possession of fishing gear on, in or adjacent to any waters is presumed conclusively to be taking fish from those waters (even though the person takes or proposes to take fish only from other waters outside the State). The regulations may provide exemptions from this subsection.

(4) In this section, **official receipt** includes any evidence of the payment of a fishing fee recognised by the regulations for the purposes of this section.

[3] Section 232 Definitions

Insert in alphabetical order in section 232:

recreational fishing fees means the fishing fees paid under Division 4A of Part 2 and any other fees or payments received in connection with the administration of that Division.

[4] Section 233 Establishment of trust funds

Omit section 233 (1) (b). Insert instead:

(b) a Recreational Fishing (Saltwater) Trust Fund,

[5] Section 233 (1) (c1)

Insert after section 233 (1) (c):

(c1) a Charter Fishing Trust Fund,

[6] Section 234 Recreational Fishing (Freshwater) Trust Fund

Omit section 234 (1) (a). Insert instead:

(a) any amount or proportion of the recreational fishing fees that is allocated to that Fund by the Minister under this section, and

(a1) all other payments received in connection with the administration of Part 2 (including fees and charges paid under Part 2 or the regulations made under that Part) that are not required to be paid into any other trust fund, and

[7] Section 234 (3) and (4)

Omit section 234 (3). Insert instead:

(3) The Minister may, from time to time, determine the amount or proportion of the recreational fishing fees to be allocated to that Fund.

(4) The Minister is to consult a relevant advisory council on recreational fishing established under section 229 about:

(a) the allocation of recreational fishing fees to that Fund, and

(b) policies and priorities for expenditure from that Fund.

[8] Section 235 Recreational Fishing (Saltwater) Trust Fund

Omit "Recreational Fishing (Estuarine and Marine) Trust Fund" from section 235 (1). Insert instead "Recreational Fishing (Saltwater) Trust Fund".

[9] Section 235 (1) (c)

Omit the paragraph. Insert instead:

(c) all recreational fishing fees, other than any amount or proportion of those fees allocated to the Recreational Fishing (Freshwater) Trust Fund, and

[10] Section 236A

Insert after section 236:

236A Charter Fishing Trust Fund

(1) There is to be paid into the Charter Fishing Trust Fund:

(a) all fees and charges paid under Part 4A and the regulations under that Part, and

(b) any gift or bequest of money for the purposes of that Fund, and

(c) any other money appropriated by Parliament for the purpose of that Fund or required by law to be paid into that Fund.

(2) There may be paid out of that Fund:

(a) the costs of taking measures to enhance charter fishing, and

(b) the costs of carrying out research into charter boat fishing, and

(c) the costs of management and administration of charter fishing boat operations, and

(d) the costs of ensuring compliance with charter fishing boat regulatory controls, and

(e) the costs of consultative arrangements with owners and operators of charter fishing boats.

(3) The Minister is to consult any relevant advisory council established under section 229 about policies and priorities for expenditure from that Fund.

[11] Section 257 Power to require production of fishing authority

Omit section 257 (5). Insert instead:

(5) In this section, **fishing authority** includes, in the case of any fishing activity for

which a person is required to pay a recreational fishing fee, an official receipt for the fee under Division 4A of Part 2.

[12] Schedule 7 Savings, transitional and other provisions

Insert in Part 3 in appropriate numerical order:

6A Payment of recreational freshwater fishing fee before extension to saltwater fishing

(1) A recreational freshwater fishing fee paid under Division 4A of Part 2 of this Act before the substitution of that Division by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* is taken to be a recreational fishing fee paid under that Division, as so substituted, for the balance of the period after that substitution for which the recreational freshwater fishing fee was paid.

(2) The official receipt issued for the payment of the recreational freshwater fishing fee is taken to be an official receipt under that Division, as so substituted, for the balance of that period.

[13] Schedule 7

Insert in Part 8 in appropriate numerical order:

19B Change in name of Trust Fund The Recreational Fishing (Saltwater) Trust Fund is a continuation of, and the same Fund as, the Recreational Fishing (Estuarine and Marine) Trust Fund.

Schedule 5 Amendment of Fisheries Management Act 1994 relating to acquisition of commercial fishing entitlements

(Section 4)

[1] Part 2, Division 4B

Insert after Division 4A of Part 2:

Division 4B - Acquisition of commercial fishing entitlements

34K Purpose of Division The purpose of this Division is to provide an equitable mechanism for the reallocation of fisheries resources and for the payment of compensation to commercial fishers for the acquisition of their fishing entitlements.

34L Declaration by Minister of acquisition of entitlements

(1) The Minister may, by order published in the Gazette:

(a) declare that any fishery (or part of a fishery) specified in the order is a fishery to which this Division applies, and

(b) specify the relevant commercial fishing entitlements that are to be acquired under this Division.

(2) For the purposes of this Division:

(a) any such declaration is an **acquisition declaration** , and

(b) the fishery (or the part of a fishery) to which the declaration relates is the **declared fishery** , and

(c) the specified commercial fishing entitlements are the **acquired entitlements** .

34M Consultation on proposed acquisition declaration The Minister is required to give the following persons and bodies an opportunity to make submissions on any proposed acquisition declaration and to take any submission that is duly made into account:

(a) the persons whose commercial fishing entitlements are proposed to be acquired,

(b) any advisory council on recreational fishing and any relevant advisory council on commercial fishing established under section 229,

(c) the local community in the area affected by the proposed declaration.

Note: Section 284 sets out the public consultation procedure.

34N Termination of commercial fishing entitlements following declaration of acquisition

(1) As soon as practicable after an acquisition declaration, the Minister is to cancel the acquired entitlements.

(2) For that purpose, the Minister may do any one or more of the following:

- (a) cancel any shares in a share management fishery,
- (b) cancel a commercial fishing licence,
- (c) take any other action available to the Minister.

34O Entitlement to compensation for acquired entitlements

(1) The persons who held acquired entitlements that are cancelled under this Division are entitled (subject to this Division) to compensation from the State for the market value of the entitlements they held:

- (a) as at 19 January 2000, subject to paragraph (b), or
- (b) as at a later date notified in the acquisition declaration.

(2) If the amount of the compensation is not agreed between the Minister and the person entitled to compensation, the Minister is to determine the amount after a review of the matter by a panel constituted by the Minister in accordance with the regulations.

(3) If the person entitled to compensation is not satisfied with the review of the matter by the panel, the Minister may (at the person's request) refer the matter to the Valuer-General for advice as to the amount of compensation required to be paid under this section.

(4) A person who is dissatisfied with the amount of compensation offered to the person under this Division or with any delay in the payment of compensation may appeal to the Land and Environment Court.

(5) The regulations may make provision for or with respect to the payment of compensation in accordance with this Division.

[2] Section 284 Public consultation procedure

Insert after section 284 (1) (b):

(b1) an acquisition declaration under Division 4B of Part 2,

Schedule 6 Amendments to fisheries management and environmental assessment legislation relating to habitat protection

(Sections 3 and 4)

6.1 - Environmental Planning and Assessment Act 1979

[1] Section 91 What is "integrated development"?

Omit "in any waters" from the matter relating to section 201 of the *Fisheries Management Act 1994* in the table to section 91 (1).

[2] Section 91 (1), table

Insert after the matter relating to section 205 of the *Fisheries Management Act 1994* :

to:

- (a) set a net, netting or other material, or
 - (b) construct or alter a dam, floodgate, causeway or weir, or
 - (c) otherwise create an obstruction,
- across or within a bay, inlet, river or creek, or across or around a flat

6.2 - Fisheries Management Act 1994

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

native title holder has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

registered native title body corporate has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

registered native title claimant has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

[2] Section 194 Declaration of aquatic reserves

Omit section 194 (2). Insert instead:

(2) The purpose of declaring an area to be an aquatic reserve is to conserve the biodiversity of fish and marine vegetation and, consistently with that purpose:

- (a) to protect fish habitat in the reserve, or
- (b) to provide for species management in the reserve, or
- (c) to protect threatened species, populations and ecological communities (within the meaning of Part 7A) in the reserve, or
- (d) to facilitate educational activities and scientific research.

[3] Section 195 Consent required for declarations

Omit section 195 (4). Insert instead:

(4) This section does not apply:

- (a) to an area of water (other than freshwater) and the land submerged by that water below mean high water mark, or
- (b) to an area vested in the Minister, or
- (c) to an area subject to an aquaculture lease.

[4] Sections 195A-195C

Insert after section 195:

195A Consent of owners If an owner of land whose consent is required under section 195 to the declaration of an area as an aquatic reserve cannot, after diligent inquiry, be found or identified, the declaration may be made without the consent of that owner.

195B Meaning of "diligent inquiry"

(1) For the purposes of section 195A, **diligent inquiry** to identify a person is the taking of the following actions:

(a) the searching of the following registers:

- (i) the Register kept under the *Real Property Act 1900*, and
- (ii) the General Register of Deeds kept under the *Conveyancing Act 1919*, and
- (iii) the National Native Title Register kept under the *Native Title Act 1993* of the Commonwealth,

(b) placing, on a board or other structure in a conspicuous place on the land concerned, a notice:

(i) stating that it is intended to declare the land as part of an aquatic reserve, and

(ii) inviting the owner of the land to contact the Minister at a specified address,

(c) publishing a notice referred to in paragraph (b) in a newspaper circulating in the vicinity of the land concerned and in a newspaper circulating generally in New South Wales.

(2) For the purposes of section 195A, a person who is a native title holder is taken to have been unable, after diligent inquiry, to be found or identified if:

- (a) notice of the proposed declaration is served by the Minister in accordance with section 288A, and
- (b) at the expiration of the period of 4 months commencing on service of the notice, the person is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.

195C Existing interests and changes in ownership

- (1) A declaration of an aquatic reserve in relation to an area is not affected by:
 - (a) an existing interest in respect of land in the area, or
 - (b) a change of ownership of land in the area.
- (2) Subject to this Act, a provision of this Act or the regulations has effect in relation to an area of an aquatic reserve despite any such existing interest or change of ownership, unless the provision otherwise specifies.

[5] Section 196 Revocation or variation of declaration

Insert after section 196 (4):

- (5) The provisions of sections 195 to 195C apply to a variation of a declaration that adds an area to an aquatic reserve in the same way as those provisions apply to the declaration of an aquatic reserve.

[6] Section 197A

Insert after section 197:

197A Management plans for aquatic reserves

- (1) The Minister may arrange for the preparation of a draft management plan for an aquatic reserve.
- (2) The management plan for an aquatic reserve may make provision for or with respect to the following:
 - (a) the objectives of the aquatic reserve,
 - (b) the regulation of activities in the aquatic reserve in order to achieve those objectives,
 - (c) performance indicators to monitor whether the objectives of the reserve are being attained,
 - (d) reviews of the management plan,
 - (e) any other matter for or with respect to which regulations may be made under this Act in respect of an aquatic reserve.
- (3) The Minister is required to give the public an opportunity to make submissions on any proposed management plan (including any proposed amendment to the plan or new plan) and to take any submission that is duly made into account.
- (4) A management plan for an aquatic reserve (including any amendment or new plan):
 - (a) is to be made by regulation, and
 - (b) may create an offence punishable by a penalty not exceeding 1,000 penalty units.
- (5) The management plan commences when the regulation making the plan commences.
- (6) If a provision of a management plan for an aquatic reserve is inconsistent with any other regulation under this Act relating to aquatic reserves, the management plan prevails.

[7] Sections 198-198B

Omit section 198. Insert instead:

198 Objects of Division The objects of this Division are to conserve the biodiversity of fish and aquatic vegetation and to protect fish habitat by providing for the management of

dredging and reclamation work, consistent with the objectives of ecologically sustainable development.

198A Definitions In this Division:

dredging work means:

- (a) any work that involves excavating water land, or
- (b) any work that involves the removal of material from water land that is prescribed by the regulations as being dredging work to which this Division applies.

farm dam means the backed up waters of any dam, or impoundment, located on land that is not public water land.

reclamation work means any work that involves:

- (a) using any material (such as sand, soil, silt, gravel, concrete, oyster shells, tyres, timber or rocks) to fill in or reclaim water land, or
- (b) depositing any such material on water land for the purpose of constructing anything over water land (such as a bridge), or
- (c) draining water from water land for the purpose of its reclamation.

water land means land submerged by water:

- (a) whether permanently or intermittently, or
 - (b) whether forming an artificial or natural body of water,
- and includes wetlands and any other land prescribed by the regulations as water land to which this Division applies.

wetlands includes marshes, mangroves, swamps, or other areas that form a shallow body of water when inundated intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities.

198B Application of Division This Division applies to any dredging work or any reclamation work, except the following:

- (a) any dredging work or reclamation work carried out in respect of an artificial body of water, unless the body of water is permanently or intermittently connected to a natural body of water or unless the regulations otherwise provide,
- (b) any dredging work or reclamation work carried out in respect of a farm dam, unless the regulations otherwise provide,
- (c) anything permitted by or under this Act (such as digging for bait),
- (d) anything exempted from this Division by the regulations.

[8] Sections 199-201

Omit "in any waters" wherever occurring from sections 199 (1), 200 (1) and 201 (1).

[9] Section 204 Application and interpretation

Insert in alphabetical order in section 204 (2):

foreshore means any land adjacent to public water land, or adjacent to an area that is the subject of an aquaculture lease, that is below the highest astronomical tide level of the waters by which the land or area is submerged.

marine vegetation means marine vegetation, whether living or dead.

[10] Section 204 (2), definition of "protected area"

Omit the definition. Insert instead:

protected area means any public water land, or any area that is the subject of an aquaculture lease, and includes:

- (a) that part of the foreshore of any public water land or area that is the subject of an aquaculture lease that is below the mean high water mark of the waters by which the land or area is submerged, and
- (b) any other part of the foreshore of any public water land or area that is the subject of an aquaculture lease that is declared by the Minister, by order published in the Gazette, to be a protected area.

[11] Section 205A

Omit the section. Insert instead:

205A Exemptions

- (1) This Division does not apply to any marine vegetation that is being cultivated or kept in accordance with the authority conferred by an aquaculture permit.
- (2) The regulations may exempt any activity, class of activities, or area from the operation of this Division or from specified provisions of this Division.

[12] Section 217 Importation of live fish

Omit section 217 (1). Insert instead:

- (1) A person must not bring into New South Wales live fish of a species to which this section applies except under the authority of a permit issued by the Minister.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

[13] Section 217 (3)

Insert after section 217 (2):

- (3) This section applies to any species of fish other than:
 - (a) fish that is indigenous to the waters of the State or of the waters of the sea adjacent to the State that are within the Australian fishing zone, or
 - (b) fish of a species, or class of species, exempted from the operation of this section by the regulations.

For the purposes of this section, **fish indigenous** to those waters is fish of a species that was established in those waters before European settlement.

[14] Section 218 Fishways to be provided in construction of dams and weirs

Omit "100 penalty units" from section 218 (3). Insert instead "1,000 penalty units".

[15] Section 218 (5A)

Insert after section 218 (5):

- (5A) This section does not apply to or in respect of any work or waters of a kind exempted from the operation of this section by the regulations.

[16] Section 218 (6), definition of "waterway"

Omit "whether regularly or intermittently". Insert instead "whether flowing regularly or intermittently, and includes any lagoon or other body of water that is intermittently subject to tidal influence or that intermittently flows into a river, creek or stream".

[17] Section 219 Passage of fish not to be blocked

Omit section 219 (1). Insert instead:

- (1) A person who:
 - (a) sets a net, netting or other material, or
 - (b) constructs or alters a dam, floodgate, causeway or weir, or
 - (c) otherwise creates an obstruction,across or within a bay, inlet, river or creek, or across or around a flat, so that:

(d) fish will or could be blocked or left stranded, or
(e) immature fish will or could be destroyed, or
(f) the free passage of fish will or could be obstructed,
is guilty of an offence.

Maximum penalty: 1,000 penalty units.

[18] Section 219 (5)

Insert after section 219 (4):

- (5) This section does not apply to or in respect of the following:
- (a) any activity that is otherwise permitted by or under this Act or any other Act,
 - (b) any activity that is done in accordance with a permit issued by the Minister under this Part,
 - (c) any activity or waters of a kind exempted from the operation of this section by the regulations.

[19] Section 220 Provisions relating to permits under this Part

Omit "section 201 or 205" from section 220 (1A). Insert instead "section 201, 205 or 219".

[20] Section 284 Public consultation procedure

Insert after section 284 (1) (e):

- (e1) a management plan for an aquatic reserve (including any amendment or new plan),

[21] Section 288A

Insert after section 288:

288A Service of documents on native title holders

- (1) If a document is authorised or required by this Act or the regulations to be served on a person who is a native title holder in relation to an area, service of the document is taken to be effected in accordance with section 288 if the document is served on a registered native title body corporate in relation to the area.
- (2) If no approved determination of native title (within the meaning of the *Native Title Act 1993* of the Commonwealth) exists in relation to the area concerned, a document authorised or required by this Act or the regulations to be served on a person who is a native title holder who cannot be identified may be served on any such person by serving it, in a manner authorised by section 288 on:
- (a) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the area concerned, and
 - (b) any registered native title claimants in relation to the area concerned.

[22] Schedule 7 Savings, transitional and other provisions

Insert after clause 16:

16A Management plans for aquatic reserves Section 197A, as inserted by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* , extends to any aquatic reserve that was declared before the commencement of that section.

Schedule 7 Miscellaneous amendments to Fisheries Management Act 1994

(Section 4)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Aboriginal had the same meaning as in the *Aboriginal Land Rights Act 1983* .

[2] Section 40 Regulations relating to general management of fisheries

Insert after section 40 (2) (d):

- (d1) regulating recreational fishing competitions (including requiring a permit for any

such competition and prescribing a fee for the issue of a permit),
(d2) prohibiting the possession or receipt of fish illegally taken, processed or dealt with in any place outside the State,

[3] Section 127A Meaning of charter fishing boat

Omit "principally".

[4] Section 127C Provisions relating to licensing of charter fishing boats

Insert "(including for or with respect to permitting, prohibiting or restricting the use of a boat as both a charter fishing boat and a commercial fishing boat licensed under Division 2 of Part 4)" after "licences" in section 127C (8).

[5] Section 127D Commercial fishing boats may be licensed as charter fishing boats

Omit the section.

[6] Section 183 Minister may declare quarantine area

Insert after section 183 (4) (a):

(a1) exclude specified provisions of this Division in respect of any fish or marine vegetation, or specified fish or marine vegetation, taken from or deposited in the quarantine area or any part of the quarantine area, and

[7] Section 209 Declaration of noxious fish and noxious marine vegetation

Insert after section 209 (3):

(3A) A class of noxious fish declared under subsection (3) may be designated in the declaration as a pest species or a controlled species or by any other name.

[8] Section 264 Seizure of things (other than boats and motor vehicles) connected with fisheries offence

Insert "or motor vehicle" after "other than a boat".

[9] Section 266 Seizure of fishing gear and other things (other than boats, motor vehicles or fish)

Omit subsection (2). Insert instead:

(2) This section does not apply to boats, motor vehicles or fish.

[10] Section 269 Forfeiture of boats and motor vehicles by order of court

Insert "or motor vehicle" after "boat" wherever occurring.

[11] Section 270 Return of boat or motor vehicle if relevant offence proceedings not taken

Insert "or motor vehicle" after "boat" wherever occurring.

[12] Section 271 Conviction to operate as forfeiture of things (other than boats and motor vehicles)

Insert "or motor vehicle" after "a boat" in subsection (1).

[13] Section 272 Forfeiture of things (other than boats and motor vehicles) where no relevant offence proceedings taken

Insert "or motor vehicle" after "a boat" in subsection (1).

[14] Section 272 (8)

Insert "and motor vehicles" after "boats".

[15] Part 9, Division 4A

Insert after Division 4 of Part 9:

Division 4A - Compliance audits

275A Application of Division

- (1) This Division applies to:
 - (a) fishing activities, and
 - (b) aquaculture, and
 - (c) other activities regulated by Part 7.
- (2) A reference in this Division to:
 - (a) a fishing activity includes a reference to aquaculture or to any such other activity, and
 - (b) a fishing approval includes a reference to an aquaculture permit or to a permit under Part 7 to carry out any such other activity.
- (3) This Division does not apply to any fishing activity carried out, or to any document produced, before the commencement of this Division.
- (4) This Division does not affect other provisions of this Act, which provide for:
 - (a) conditions on fishing authorities, and
 - (b) functions exercisable by fisheries officers for the purpose of auditing compliance with this Act and the regulations.

275B Nature of compliance audit A compliance audit is a periodic or particular documented evaluation of the fishing activity to which a fishing authority relates for either or both of the following purposes:

- (a) to provide information to the persons carrying out or managing the fishing activity and to the persons administering this Act on compliance with legal requirements and relevant policies under this Act relating to the fishing activity,
- (b) to enable those persons to determine whether the way the activity is carried on can be improved in order to promote the objects of this Act.

275C Accreditation and regulation of compliance auditors The regulations may make provision for or with respect to the following:

- (a) the accreditation of compliance auditors for the purposes of this Division,
- (b) the fees payable for accreditation and the trust funds under Part 8 into which they are to be paid,
- (c) the carrying out of compliance audits by compliance auditors.

275D Minister may require compliance audits by imposition of conditions on fishing authority The Minister may, by the imposition of conditions on a fishing authority, require a compliance audit or audits to be undertaken to the satisfaction of the Minister by either or both of the following:

- (a) by the holder of the fishing authority,
- (b) by a compliance auditor.

275E Provisions relating to conditions for compliance audits

- (1) A condition requiring a compliance audit may be imposed at the time the fishing authority is issued or renewed or at any other time by notice in writing to the holder of the fishing authority. Such a condition may be varied or revoked by a similar notice.
- (2) Such a condition must specify the purpose of the audit.
- (3) Such a condition may require:
 - (a) appointment of a compliance auditor to undertake the audit (either periodically or on particular occasions), and
 - (b) approval by the Minister or other person of the compliance auditor before being appointed, and
 - (c) preparation of written documentation during the course of the audit, and
 - (d) preparation of an audit report, and
 - (e) production to the Minister of the audit report.
- (4) Such a condition may specify the format and level of detail required for the

audit.

275F Certification of audit report The audit report for a compliance audit is taken not to have been duly produced to the Minister unless it is accompanied by:

- (a) a declaration signed by the holder of the fishing authority certifying that the holder has not knowingly provided any false or misleading information to the compliance auditor and has provided all relevant information to the auditor, and
- (b) a declaration signed by the compliance auditor:
 - (i) setting out the auditor's qualifications, and
 - (ii) certifying that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.

275G Offences

- (1) False or misleading information to auditor A person who provides information to a compliance auditor in connection with a compliance audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (2) Information not provided to auditor The holder of a fishing authority who fails to provide information to a compliance auditor in connection with a compliance audit being carried out in relation to the fishing authority, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (3) False or misleading information in audit report A compliance auditor who includes information in an audit report produced to the Minister in connection with a compliance audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (4) Information not included in audit report A compliance auditor who fails to provide information in an audit report produced to the Minister in connection with a compliance audit, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (5) Retention of audit documentation The holder of a fishing authority who:
 - (a) fails to retain any written documentation required to be prepared by the holder in connection with a compliance audit for a period of at least 5 years after the audit report concerned was produced to the Minister (or such other period as is prescribed by the regulations), or
 - (b) fails to produce during that period any such documentation to a fisheries officer on request,is guilty of an offence.

Maximum penalty: 200 penalty units.

275H Self-incriminatory information not exempt Information must be supplied by a person in connection with a compliance audit, and this Division applies to any such information that is supplied, whether or not the information might incriminate the person.

275I Use of information

- (1) Any information in an audit report or other documentation supplied to the Minister in connection with a compliance audit may be taken into consideration by the Minister and used for the purposes of this Act.
- (2) Without limiting the above, any such information is admissible in evidence in any prosecution of the holder of a fishing authority for any offence (whether under this Act or otherwise).

[16] Part 9, Division 7

Insert after Division 6 of Part 9:

Division 7 - Prohibition orders

282B Definitions In this Division:

prohibition order means an order made under section 282C.

repeat offender means a person who has been convicted of no fewer than 3 fisheries offences (occurring on separate occasions) whether of the same or of a different kind.

282C Prohibition orders may be made against repeat offenders

(1) A court that convicts a repeat offender of a fisheries offence may, on application by the prosecutor, make an order that prohibits the repeat offender from:

- (a) engaging in specified commercial fishing activities, and
- (b) being on any boat, or in any premises, of a kind specified in the order that are associated with those commercial fishing activities.

(2) The order may be made only if the court is satisfied that the order is necessary to prevent a threat to the sustainable management of a fisheries resource and that the threat justifies the restrictions to be imposed on the repeat offender.

282D Provisions relating to making of prohibition order

(1) A prohibition order may only be made within 6 months after the repeat offender is convicted of the fisheries offence giving rise to the order.

(2) A prohibition order may be made even if the person against whom the order is made has a legal or equitable interest in any boat or premises to which the prohibition order relates, or an entitlement to use the boat or premises to carry out fishing or other activities.

(3) A court may not make a prohibition order unless:

- (a) it has given the repeat offender written notice of the application to make the order and of the proposed terms of the order that has been sought, and
- (b) it has given the repeat offender a reasonable opportunity to make submissions to the court on the matter.

(4) A prohibition order under this section takes effect:

- (a) if the person to whom it relates is present in court when it is made, at the time it is made, or
- (b) in any other case, when it is served on the person to whom it relates.

282E Duration, variation and revocation of prohibition order

(1) A prohibition order remains in force, unless it is sooner revoked, for the period specified in the order, not exceeding 5 years.

(2) The court that made a prohibition order may, on application of the person against whom it was made, vary or revoke the order.

282F Appeal

(1) An appeal may be made against a prohibition order as if the order were part of the sentence for the fisheries offence giving rise to the order.

(2) A prohibition order is suspended during any period that an appeal (or application for leave to appeal) is pending against the conviction for the fisheries offence giving rise to the order.

(3) A prohibition order is revoked if the fisheries offence giving rise to the order is quashed.

(4) The appeal court may vary or revoke a prohibition order even if the conviction for the fisheries offence is not quashed.

282G Offence of contravening order

(1) A person who knowingly contravenes a prohibition order made against the person is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 1 year, or both.

(2) It is a sufficient defence to a prosecution under this section if the accused

person establishes that he or she had a reasonable excuse for contravening the order.

[17] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Fisheries Management and Environmental Assessment Legislation Amendment Act 2000

**Schedule 8 Amendment of Native Title (New South Wales)
Act 1994**

(Section 5)

[1] Section 104A Saving of native title rights and interests with respect to national parks and other reservations or dedications or declarations

Insert the following paragraph (appropriately lettered) at the end of section 104A (1):

() a notice under the *Fisheries Management Act 1994* that declares an area to be an aquatic reserve or part of an aquatic reserve.

[2] Section 104A (3)

Insert ", the *Fisheries Management Act 1994* " before "and the regulations or other instruments".

Historical notes

Table of Acts *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000 No 86* . Assented to 6.12.2000. Date of commencement of secs 1 and 2, secs 3 and 4 in so far as they apply to Schs 1 and 2, Schs 1 and 2, 22.12.2000, sec 2 and GG No 169A of 22.12.2000, p 13909; date of commencement of the uncommenced provisions (Sch 6.2 [12] and [13] excepted), 23.3.2001, sec 2 and GG No 54 of 16.3.2001, p 1227; date of commencement of Sch 6.2 [12] and [13]: not in force.