



New South Wales

Fisheries Management Amendment Act 2001 No 104

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Fisheries Management Amendment Act 2001 No 104

Act No 104, 2001

An Act to amend the *Fisheries Management Act 1994* to make further provision for the management of fishery resources; and to make consequential amendments to the *Environmental Planning and Assessment Act 1979*. [Assented to 11 December 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fisheries Management Amendment Act 2001*.

2 Commencement

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

3 Amendment of Fisheries Management Act 1994 No 38

The *Fisheries Management Act 1994* is amended as set out in Schedule 1.

4 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 2.

Schedule 1 Amendment of Fisheries Management Act 1994

(Section 3)

[1] Section 3 Objects of Act

Insert at the end of section 3 (2) (f):

- , and
- (g) to provide social and economic benefits for the wider community of New South Wales.

[2] Section 7 Waters to which Act applies

Insert after section 7 (1) (d):

Note. In many cases the legislative powers of the State will extend beyond three nautical miles, particularly in relation to recreational fishing.

[3] Section 7 (3)

Insert after subsection (2):

- (3) This Act is intended to have extraterritorial application in so far as the legislative powers of the State permit.

[4] Section 20

Omit the section. Insert instead:

20 Fish and waters protected from commercial fishing

- (1) The regulations may declare that fish of a specified species are protected from commercial fishing.
- (2) The regulations may declare specified waters to be waters in which all or a class of commercial fishing is prohibited absolutely or conditionally.
- (3) A person who:
- (a) takes fish of a species declared under subsection (1), or
- (b) sells fish of a species declared under subsection (1), or

- (c) takes fish from waters declared under subsection (2) in breach of a declaration,

is guilty of an offence.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units or imprisonment for 6 months, or both.

- (4) Subsection (3) (b) applies whether or not the fish were taken from waters to which this Act applies.
- (5) Nothing in this section limits the power of the Minister to make a fishing closure in relation to commercial fishing.

[5] Section 21 Defences

Omit “20 (3)” from section 21 (2). Insert instead “20 (3) (b)”.

[6] Section 34AA

Insert after section 34A:

34AA Purpose of fishing fees

The purpose of fishing fees is to provide revenue to assist activities supported through the recreational fishing trust funds established under Division 3 of Part 8, including the following:

- (a) enhancing recreational fishing,
- (b) carrying out research into fish and their ecosystems,
- (c) managing recreational fishing,
- (d) ensuring compliance with recreational fishing regulatory controls.

[7] Section 52A

Insert after section 52:

52A Shares subject to appeal

- (1) Despite section 52, the Minister may cancel provisional shares or issue final shares in a share management fishery, and the management plan for that fishery may be made, even if any appeal relating to the issue of provisional shares is still outstanding.

- (2) If the Minister considers that a person's entitlement to shares may be affected by any such appeal, the Minister may issue shares in the fishery as *shares subject to appeal*.
- (3) Shares subject to appeal are subject to the following special conditions:
 - (a) the transfer of, or any other registrable dealing in, the shares is only permitted with the consent of the Minister,
 - (b) no compensation is payable by or on behalf of the State for cancellation of the shares for any reason, including:
 - (i) cancellation by the Minister resulting from a determination in relation to the appeal, or
 - (ii) cancellation due to the termination of the fishery as a share management fishery,
 - (c) any other conditions prescribed by the regulations.
- (4) On completion of the relevant appeal:
 - (a) the Minister must cancel the shares subject to appeal, and
 - (b) the Minister may, if appropriate, issue a person with shares in accordance with this Act.

[8] Section 84 Making of appeals

Insert after section 84 (1):

- (1A) An appeal cannot be made to that Panel under subsection (1) after the making of a share management plan for the fishery to which the appeal relates. However, the making of a share management plan does not affect any appeal that was made, but not finally determined, before the making of the plan.

[9] Section 182 Diseases declared for the purposes of this Division

Insert after section 182 (3):

(3A) A declaration under this section may specify:

- (a) the circumstances in which, or
- (b) the conditions on which,

any specified provisions of this Division do not apply in relation to a particular declared disease or class of declared diseases.

[10] Part 7, Division 2, Subdivision 1, heading

Insert before section 194:

Subdivision 1 Declaration of aquatic reserves

[11] Part 7, Division 2, Subdivisions 2 and 3

Insert after section 197A:

Subdivision 2 Development and activities within aquatic reserves

197B Mining in aquatic reserve prohibited

- (1) It is unlawful to prospect or mine for minerals in an aquatic reserve, except as expressly authorised by an Act of Parliament.
- (2) The *Offshore Minerals Act 1999*, the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* and the *Petroleum (Submerged Lands) Act 1982* do not apply to or in respect of any area within an aquatic reserve.
- (3) This section does not apply to or in respect of any licence, permit, authorisation or lease in force under any of those Acts at the commencement of this section. However, no renewal or extension of such a licence, permit, authorisation or lease may be granted after that commencement except as expressly authorised by an Act of Parliament.

197C Development within aquatic reserve—application of EPA Act

- (1) Before determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development within an aquatic reserve, a consent authority must:
 - (a) take into consideration:
 - (i) the objects of this Act specified in section 3, and
 - (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
 - (iii) the permissible uses of the area concerned under this Act, and
 - (b) if the consent authority intends to grant consent to the carrying out of the development, obtain the concurrence of the Minister to the granting of the consent.
- (2) A Minister who is a determining authority must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) within an aquatic reserve unless the Minister has:
 - (a) taken into consideration:
 - (i) the objects of this Act specified in section 3, and
 - (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
 - (iii) the permissible uses of the area concerned under this Act, and
 - (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, consulted with the Minister on the carrying out of the activity or the granting of approval.
- (3) A determining authority (not being a Minister) must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) within an aquatic reserve unless the determining authority has:
 - (a) taken into consideration:
 - (i) the objects of this Act specified in section 3, and

- (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
 - (iii) the permissible uses of the area concerned under this Act, and
 - (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, obtained the concurrence of the Minister to the carrying out of the activity or the granting of approval.
- (4) In deciding whether or not concurrence should be granted under this section, the Minister must take into consideration:
- (a) the objects of this Act specified in section 3, and
 - (b) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
 - (c) the permissible uses of the area concerned under this Act.
- (5) The provisions of section 79B (8)–(11) of the *Environmental Planning and Assessment Act 1979*, and the regulations under that Act, apply to and in respect of a requirement under this section to obtain the concurrence of the Minister in the same way as they apply to a requirement to obtain concurrence imposed on a consent authority by an environmental planning instrument under that Act.
- (6) For the purposes of applying those provisions, a reference in those provisions to the matters stated pursuant to section 30 (3) of the *Environmental Planning and Assessment Act 1979* (however expressed) is to be read as a reference to the objects of this Act specified in section 3 and the permissible uses of the area concerned under the regulations.

197D Development affecting aquatic reserve—application of EPA Act

- (1) In determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development on land that is in the locality of an aquatic reserve, the consent authority must take into consideration the objects of this Act, the permissible uses of the

area concerned under this Act and any advice given to it by the Director about the impact on the aquatic reserve of development in the locality.

- (2) If the consent authority is of the opinion that development proposed in the development application is likely to have an effect on the plants or animals within the aquatic reserve and their habitat, the consent authority must consult with the Minister before finally determining the application.
- (3) A determining authority must not carry out, or grant an approval to carry out, an activity on land that is in the locality of an aquatic reserve in purported compliance with Part 5 of the *Environmental Planning and Assessment Act 1979* unless:
 - (a) the determining authority has taken into consideration the objects of this Act, the permissible uses of the area concerned under this Act and any advice given to it by the Director on the impact on the aquatic reserve of the carrying out of an activity in the locality, and
 - (b) if the determining authority is of the opinion that the proposed activity is likely to have an effect on the plants or animals within the aquatic reserve or their habitat, the determining authority has consulted with the Minister.

Subdivision 3 Aquatic reserve notifications

197E Prohibition of activities in aquatic reserves

- (1) The Minister may from time to time, by notification, prohibit the carrying out of any specified activity (including the taking of fish) in an aquatic reserve or part of an aquatic reserve.
- (2) Any such prohibition is called an *aquatic reserve notification*.
- (3) An aquatic reserve notification:
 - (a) may apply absolutely or subject to conditions, and
 - (b) must specify the activities that are prohibited and the area or areas to which it applies, and
 - (c) may only apply to the aquatic reserve specified in the notification, and
 - (d) has effect despite any provision of the regulations.

197F Publication of aquatic reserve notification

- (1) An aquatic reserve notification is to be published:
 - (a) in the Gazette, and
 - (b) in a newspaper circulating, or by radio or television broadcast, in the area adjacent to the aquatic reserve to which the notification applies, and
 - (c) by causing a copy of the notification to be exhibited in a prominent place or places adjacent to the aquatic reserve to which the notification applies.
- (2) However, if the Minister considers that the aquatic reserve notification is required urgently, the Minister may publish the notification in accordance with subsection (1) (b) or (c) so long as the notification is published in the Gazette as soon as practicable.

197G General provisions relating to aquatic reserve notifications

- (1) An aquatic reserve notification takes effect on the first publication of the notification or on a later date specified in the notification.
- (2) An aquatic reserve notification remains in force, subject to this Act, for the period (not exceeding 5 years) specified in the notification, but may be remade (with or without modification) by a further notification in accordance with this Subdivision.

197H Amendment or revocation of notification

The Minister may from time to time amend or revoke an aquatic reserve notification by a further notification published in accordance with this Subdivision.

197I General provisions relating to notification

Sections 42, 43 and 45 of the *Interpretation Act 1987* apply to aquatic reserve notifications in the same way as they apply to statutory rules within the meaning of that Act.

Note. The above provisions of the *Interpretation Act 1987* contain standard provisions that will authorise the adoption of other publications by reference, the making of differential notifications, the amendment or repeal of notifications and judicial notice and presumptions as to validity for notifications.

197J Regulations relating to notifications

The regulations may make provision for or with respect to giving effect to aquatic reserve notifications or to any other matter relating to aquatic reserve notifications.

197K Offence provisions

- (1) A person who carries out any activity in contravention of an aquatic reserve notification is guilty of an offence.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

- (2) A person who is in possession of any animal, plant, rock, sand or other thing that has been taken in contravention of an aquatic reserve notification is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

- (3) It is a defence to a prosecution for an offence under subsection (2) if the person charged satisfies the court that the person did not know and could not reasonably have known that the animal, plant, rock, sand or other thing had been taken in contravention of a provision of or made under this Act.

[12] Section 200 Circumstances in which a local government authority may carry out dredging or reclamation

Omit “500 penalty units” from section 200 (1).

Insert instead “2,000 penalty units”.

[13] Section 201 Circumstances in which a person may carry out dredging or reclamation

Omit “500 penalty units” from section 201 (1).

Insert instead “2,000 penalty units”.

[14] Section 201 (1)

Omit “100 penalty units”. Insert instead “1,000 penalty units”.

[15] Section 204A Marine vegetation protected from any harvesting or other harm

Omit “1,000 penalty units” from section 204A (2).
Insert instead “2,000 penalty units”.

[16] Section 204A (2)

Omit “200 penalty units”. Insert instead “1,000 penalty units”.

[17] Section 204B Marine vegetation protected from any commercial harvesting

Omit “1,000 penalty units” from section 204B (2).
Insert instead “2,000 penalty units”.

[18] Section 204B (2)

Omit “200 penalty units”. Insert instead “1,000 penalty units”.

[19] Section 205 Marine vegetation—regulation of harm

Omit “1,000 penalty units” from section 205 (2).
Insert instead “2,000 penalty units”.

[20] Section 205 (2)

Omit “200 penalty units”. Insert instead “1,000 penalty units”.

[21] Section 205B

Insert after section 205A:

205B Activities harmful to marine vegetation

- (1) For the purposes of this Division, a person is presumed to have harmed marine vegetation if the person carries out an activity prescribed for the purposes of this section by the regulations, unless the person establishes that the particular activity caused no actual harm to marine vegetation.
- (2) The regulations may prescribe an activity in relation to one or more of the following:
 - (a) all protected areas,

- (b) a specific protected area,
- (c) part of a protected area.

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

Omit “1,000 penalty units” from section 218 (3).

Insert instead “In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units”.

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

Omit “1,000 penalty units” from section 219 (1).

Insert instead “In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units”.

[24] Section 220A Objects of Part

Insert “and activities” after “development” in section 220A (a).

[25] Section 220O Protection measures apart from listing

Omit “(s 20—fish protected from commercial fishing)” from the note to the section.

Insert instead “or taking fish from specified waters (s 20—fish and waters protected from commercial fishing)”.

[26] Section 220ZF Defences

Omit section 220ZF (1) (a). Insert instead:

- (a) was authorised by, and was done or omitted in accordance with:
 - (i) a licence granted under this Part, or
 - (ii) a Ministerial order or interim order made under Subdivision 1A of Division 6, or
 - (iii) a permit under section 37, or
 - (iv) an aquaculture permit, or

[27] Part 7A, Division 6, heading

Insert “and Ministerial orders” after “Licensing” in the heading to Division 6.

[28] Part 7A, Division 6, Subdivision 1A

Insert after Subdivision 1:

Subdivision 1A Ministerial orders

221IA Ministerial order to permit harm to threatened species etc

- (1) The Minister may make an order authorising a class of persons to carry out an activity that may result in one or more of the following:
 - (a) harm to a threatened species, population or ecological community,
 - (b) damage to a habitat of a threatened species, population or ecological community.
- (2) Such an order may be made only if the Minister complies with the requirements of this Subdivision.
- (3) An order may be made subject to conditions or restrictions.
- (4) Before making an order, the Minister must provide:
 - (a) the Fisheries Scientific Committee, and
 - (b) any advisory council established under section 229 that, in the opinion of the Minister, has an interest in the proposed order,with a copy of the proposed order, and must invite the Committee and any such council to provide advice, within such period as the Minister may specify (being a period of not less than 30 days), on the proposed order.

221IB Minor amendments

- (1) For the purposes of this Subdivision, *making an order* includes varying an existing order but does not include making a minor amendment to an existing order.
- (2) An amendment to an existing order that the Minister considers to be a minor amendment may be made by publishing the amended order in the Gazette.
- (3) The Minister is not obliged to comply with any other requirements of this Subdivision in relation to a minor amendment.

221IC Species impact statement

Before the Minister makes an order, a person appointed by the Minister must prepare a species impact statement in relation to the activity the subject of the proposed order in accordance with Subdivision 2.

221ID Public consultation

- (1) After the species impact statement is prepared and before making an order, the Minister must give the public an opportunity to make written submissions on the proposed order.
- (2) For the purposes of that public consultation procedure, a copy of the species impact statement and a copy of any advice received by the Minister under section 221IA is to be exhibited with the proposed order as provided by section 284.

Note. Section 284 regulates the public consultation procedure.

221IE Matters that Minister must take into account

- (1) In determining whether to make an order, the Minister must take into account the following:
 - (a) the species impact statement,
 - (b) any advice of the Fisheries Scientific Committee, and any advice of any advisory council established under section 229 that, in the opinion of the Minister, has an interest in the proposed order, received under section 221IA.
 - (c) any written submissions concerning the order received within the period allowed for public comment,
 - (d) the factors specified in section 220F (Eligibility for listing),
 - (e) any relevant recovery plan or threat abatement plan,
 - (f) the principles of ecologically sustainable development,
 - (g) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,

(h) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.

(2) The Minister must also consider the likely social and economic consequences of making or not making an order.

221IF Making an order

(1) The Minister makes an order by publication of the order in the Gazette.

(2) For the avoidance of doubt, it is declared that the Minister is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when making an order or an interim order.

221IG Interim orders

(1) The Minister may make an interim order to permit the continuation of an existing activity if the Minister considers that the making of the interim order is reasonably necessary to reduce social or economic impacts during the assessment of a proposed order under this Subdivision.

(2) The Minister makes an interim order by publishing the order in the Gazette.

(3) An interim order remains in force for such period, not exceeding 6 months, as the Minister specifies in the order, but the order may be remade.

(4) The Minister is not obliged to comply with any other requirements of this Subdivision in relation to an interim order.

(5) An interim order may be made subject to conditions or restrictions.

221IH Director to keep register of orders

(1) The Director must keep a register containing copies of all orders and interim orders in force under this Subdivision.

(2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director.

221II Revocation of an order

An order or interim order made under this Subdivision may be revoked by the Minister at any time by notification in the Gazette.

221IJ Breaching conditions or restrictions

A person must not contravene or fail to comply with a condition or restriction attached to an order or interim order.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

221IK Transitional limitation on making orders relating to salt water fish

- (1) Despite any other provision of this Act, the Minister may not make an order or interim order under this Division in respect of an activity that may result in harm to a salt water fish species, or damage to the habitat of such a species, unless the order is expressly permitted by a regulation made for the purposes of this section.
- (2) This section ceases to have effect on 1 January 2003.

[29] Section 221J Form of species impact statements

Omit section 221J (2). Insert instead:

- (2) A species impact statement must be signed by the principal author of the statement and by the *sponsor* who, for the purposes of this Subdivision, is one of the following:
 - (a) if the species impact statement is prepared for the purposes of a licence application under Subdivision 1—the applicant for the licence,
 - (b) if the species impact statement is prepared for the purposes of an order under Subdivision 1A—the person appointed by the Minister in accordance with section 221IC,

- (c) if the species impact statement is prepared for the purposes of the *Environmental Planning and Assessment Act 1979*—the applicant for development consent or the proponent of the activity to be carried out (as the case requires).

[30] Section 221L Director’s requirements

Omit “person applying for the licence (or, if the species impact statement is being prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity)” from section 221L (1).

Insert instead “sponsor”.

[31] Section 221O Director may make stop work order

Insert after 221O (4):

- (5) A person who does not comply with an order in force under this section is guilty of an offence and is liable, on conviction:
- (a) in the case of a corporation, to a penalty not exceeding 2,000 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,000 penalty units for each day the offence continues, or
 - (b) in the case of an individual, to a penalty not exceeding 1,000 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 500 penalty units for each day the offence continues.

[32] Section 230 Management Advisory Committees for fisheries

Insert “, fishery management strategy” after “plan” in section 230 (4) (a).

[33] Section 230 (4) (b)

Insert “, the fishery management strategy” after “plan”.

[34] Section 230 (4) (c)

Insert “, fishery management strategy” after “plan”.

[35] Section 238C

Insert after section 238B:

238C Use of money in trust funds for species impact statements

The costs incurred in connection with a species impact statement, prepared in relation to a Ministerial order made under Subdivision 1A of Division 6 of Part 7A in respect of a fishery, may be paid or reimbursed from a trust fund that relates to the fishery.

[36] Section 261 Hot pursuit

Omit “coastal waters of New South Wales” from section 261 (1).
Insert instead “waters to which this Act applies”.

[37] Section 261 (4)

Insert after section 261 (3):

- (4) Nothing in this section limits the application of this Act as provided by section 7.

[38] Section 275G Offences

Omit “Maximum penalty: 200 penalty units” from section 275G.
Insert instead “Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units”.

[39] Section 284 Public consultation procedure

Insert after section 284 (1) (f):

- (g) a Ministerial order (but not an interim order) made under Subdivision 1A of Division 6 of Part 7A.

[40] Schedule 2 Provisions relating to members and procedure of TAC Committee

Omit clause 6. Insert instead:

6 Filling of vacancy in office of member

- (1) If the office of a member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.
- (2) A person is not required to be so appointed to fill a vacancy in the case of a member who was appointed under section 27 (1) (d) if there are at least 4 remaining members of the TAC Committee.

[41] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Fisheries Management Amendment Act 2001

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

(Section 4)

[1] Section 115G Definitions

Insert after paragraph (g) of the definition of *fishing regulatory controls*:

- (h) Ministerial orders and interim orders made under Subdivision 1A of Division 6 of Part 7A of the *Fisheries Management Act 1994*.

[2] Section 115N Special provisions relating to threatened species conservation

Insert after section 115N (2):

- (2A) However, despite subsection (2), a species impact statement is not required in relation to threatened species, populations or ecological communities or their habitats, if:
 - (a) the designated fishing activity subject to the environmental assessment is an activity authorised by a Ministerial order made under Subdivision 1A of Division 6 of Part 7A of the *Fisheries Management Act 1994*, and
 - (b) the species impact statement prepared under section 221IC of the *Fisheries Management Act 1994* in relation to that order includes an assessment of the likely effect of the activity on those threatened species, populations or ecological communities or their habitats.

[Minister's second reading speech made in—
Legislative Assembly on 6 November 2001
Legislative Council on 5 December 2001]

BY AUTHORITY