

3 July 2015

NSW Department of Primary Industries
Fisheries Legislation
PO Box 7526
SILVERWATER NSW 1811

Sent by email: legislation.consult@dpi.nsw.gov.au

To whom it may concern,

Re: Fisheries Management Amendment Bill 2015

EDO NSW welcomes the opportunity to comment on the Fisheries Management Amendment Bill 2015 (**Bill**). EDO NSW is broadly supportive of the Bill. Our comments are therefore confined to the following areas:

1. Permitting research and other matters;
2. Redefinition proposals;
3. Public consultation provisions – share management fisheries;
4. Who makes fishing determinations;
5. Special endorsements for fisheries;
6. Fishing boat licences;
7. Regulation of charter fishing activities;
8. Management Advisory Committees;
9. Use of scientific names.

1. Permitting research and other matters - ss. 37, 37AA

EDO NSW recommends that the proposed amendments be circumscribed to ensure that taking and possession of a fish for a specified purpose is consistent with the relevant management plan and the principles of ecologically sustainable development (**ESD**). This is particularly important as the proposed amendments provide the Minister with broad discretion to approve the taking of fish for 'any other purpose' as long as that purpose is 'consistent with the objects of this Act.' This arguably gives rise to uncertainty regarding the types of activities that the Minister may approve within a given fishery. The recommended limitations would provide greater clarity and ensure that all approved activities remain consistent with the management plan for the affected fishery.

2. Redefinition proposals - ss. 55A – 55G

EDO NSW recommends amending the provision to provide that redefinition of a fishery may only occur where it does not permit the fishery to expand beyond environmentally-assessed impacts (species, method). If any such expansion is

allowed, the proposal must be accompanied by appropriate environmental assessment.

3. Removing public consultation provisions – share management fisheries – s. 58 (3)

EDO NSW strongly opposes this amendment, which if passed will remove the requirement to conduct public consultation when seeking to amend a management plan or a supporting plan for a fishery. Public consultation is an essential component of transparent decision-making, particularly when it concerns the management of shared resources.

4. Who makes fishing determinations – s. 40C

EDO NSW recommends amending the section to require any fishing determination made by the Secretary to involve community consultation (as is the case with fishing determinations made by the TAF Committee). Furthermore, we recommend replacing the subjective element in subsection (4) ('if the Minister considers') with an objective test. For example:

The Minister is to direct the Secretary to make a fishing determination that is required by the regulations if it is expedient to do so because:

(a) There is in existence a scientific assessment of the species of fish, fishery or fishing method concerned, that, in the opinion of the Minister, is relevant, robust and sufficiently recent to allow a determination to be made, and...

(b) ...

5. Removing time limit for special endorsements for fisheries – ss. 70 (4) (b)

EDO NSW opposes this amendment. Fisheries are not environmentally assessed with special endorsements. We are therefore concerned that removing time limits may undermine the sustainable management of any affected fishery.

6. Removing requirement that fishing boats be licenced under the Act – s. 107

This amendment removes the requirement that all fishing boats used for commercial fishing be licensed under the Act. Fishing boat licences are currently used to control effort in a number of fisheries. EDO NSW therefore recommends the inclusion of transitional provisions which ensure that this requirement is not removed until a Total Allowable Effort that reflects the acceptable effort levels for a fishery is in place.

7. Regulation of charter fishing activities– s. 127AA

EDO NSW does not support the use of the term 'ecotourism activity' to describe a charter fishing activity involving a 'manually operated boat'. The type of boat used does not determine whether the operation is environmentally sensitive. This amendment therefore has the potential to undermine industry ecotourism

accreditation. EDO NSW therefore recommends that an alternative term be used for this fishing activity.

8. Removing conservation group representation on Management Advisory Committees – s. 230; Schedule 7 cl. 19D

EDO NSW strongly opposes the substitution of Management Advisory Committees (**MAC**) with 'advisory groups' where the composition of such groups is to be entirely determined by the Secretary. We submit that the current regime should be either maintained or improved. Under this regime, the Minister must appoint 'interested persons' specified in the regulations to MACs.¹ The regulations currently provide for equitable representation across different sectors. Specifically, they specify (amongst others) 'groups representing recreational fishers', 'groups representing Indigenous Australians' and the 'Nature Conservation Council.'² Rather than undermining this system, any amendment should seek to strengthen it by enshrining the requirement for equitable representation of these groups in the Act itself.

9. Use of scientific names – s. 4 (4)

EDO NSW supports the use of consistent terminology for fish across all jurisdictions. We therefore recommend that the Act adopt the Australian Fish Names Standard.

Yours sincerely,
EDO NSW



Dr Emma Carmody
Policy and Law Reform Solicitor

¹ *Fisheries Management Act 1994*, s. 230.

² *Fisheries Management (General) Regulation 2010*, cl. 335.