

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY
2006**

The Fisheries Amendment Bill 2006

EXPLANATORY STATEMENT

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Fisheries Amendment Bill 2006

Outline

The Fisheries Amendment Bill 2006.

One of the current issues affecting sustainable fisheries management in Australia is the illegal trafficking in “priority species”, these species includes abalone and rock lobster. Both Victorian and New South Wales Fisheries as well as the Australian Crime Commission, have brought to the Territory’s attention that some of these “priority species” appear to be illegally trafficked into or through the ACT, transported up the Kings Highway and Monaro Highway either transiting the ACT, or allegedly being disposed of in certain parts of Canberra.

(For further background see Palmer Report on Illegal Fishing for Commercial Gain or Profit in NSW May 2004 and soon to be released Australian Crime Commission (ACC) report on Crime in Fisheries 2006)

The ACT is a member of the National Fisheries Compliance Committee (NFCC) established under an MOU between State, Territory and Federal Agencies for Mutual Assistance and Cooperation on Fisheries. One aim of this MOU is to achieve a truly national framework and enforcement compliance.

The trafficking in unlawfully taken species especially abalone, is an extremely serious and profitable business. It is allegedly dominated by organised crime syndicates who see this as a less dangerous enterprise than drug trafficking, prostitution and, or, handling stolen goods.

Financial implications

Nil

Clause Notes

Clause 1 - Name of Act- provides that the Act is called the *Fisheries Amendment Act 2006*.

Clause 2 - Commencement - provides that the Act commence on the day after notification on the Legislation Register

Clause 3 – Legislation amended– provides that the Act amends the *Fisheries Act 2000*.

Clause 4 – Kinds of licences – inserts a new section 19(d) – this introduces a new licence for priority species. This licence is in addition to the three other licences (commercial fishers, fish dealers and import/export licence (for live fish) under the Act.

Clause 5 – Insert a new section 22A – This will insert in division 4.1, a priority species licence. It authorises the licensee (licence holder) to do one or more of the following in relation to a commercial quantity of fish of a priority species. That is to: sell the fish, possess or gain possession or control of the fish, receive the fish and process the fish.

Abalone and rock lobster are to be declared priority species under the *Fisheries Regulation 2001*; “commercial quantity” is to be set at 100 abalone and 20 rock lobster. These commercial quantities are based on the figures in the Victorian legislation. They are likely to be used in the amendments to the NSW legislation amendments. This list of species and quantities can be added to or amended, as, when and if required.

Clause 6 – Import and export licences – relevant considerations section 28(1)(d) – provides that reference to sections 16, 17 and 21 are omitted and replaced with sections 33, 34 and 38. This is to ensure correct cross - referencing.

Clause 7 – New section 28 –issue of priority species licences –relevant consideration. – Provides that the Conservator in deciding whether to issue a priority species licence must consider a range of issues including the history and track record of the applicant in relation to any offence under the *Fisheries Act 2000*, the *Nature Conservation Act 1980* or a law of a State, corresponding to this Act, for example New South Wales or Victorian fisheries legislation. The Conservator must also take into account how the fish of a priority species would be stored and transported, and must take into account the impact by issuing this licence on the potentially diminishing resource of this priority species of fish. The Conservator can take other issues into account and is not limited to just these three matters. The Conservator must also give consideration to the objectives of this Act this includes applying the principles of ESD (ecologically sustainable development).

Clause 8 – Terms of licences – provides that a scientific licence and a priority species licence are issued for up to 3 years. (Commercial fishers licence remains at 1 year)

Clause 9 – Commercial fishers and fish dealers to make records - Section 46 heading - specifies that this heading is substituted with the words commercial fishers, priority species licence holders and fish dealers, who are required to make records. Under section 46 there are provisions for the Conservator of Flora and Fauna to make directions setting out criteria on the keeping of records. This notifiable instrument will be notified after the commencement of the Bill.

Clause 10 – New Section 46(1A) - Under this section the holder of a priority species licence (that is currently for abalone and or rock lobster) must make a record of all the fish of a priority species the holder possesses, receives (purchases) or sells and if a direction is in force under subsection (4) then the records must be kept in accordance with that direction. Failure to make records has a 50 PU fine. This is a strict liability offence and the penalty level is at the upper end of the penalty range for strict liability offences given the serious nature of fisheries resources depletion and the need to have up to date and transparent recording of all fisheries transactions. (Note in NSW failure to keep such records carries a 200PU fine)

Clause 11 – New Section 46 (2 A) - provides for the insertion of a new section 46(A) that reads subsections (1) (1A) and (2) apply whether or not the fish were sold to a purchaser within the ACT or the fish were taken from waters in the ACT, is reported upon. This is to ensure that all fish transactions within the ACT are recorded and these records are kept for at least five years, irrespective of where the fish originated from, so this would cover species coming from any other jurisdiction being sold in the ACT. The reporting requirements are contained in a direction made by the Conservator under subsection (4).

Clause 12 – Section 46 (4) - omits subsection (1) or (2) and substitutes this with (1), (1A) or (2) This is in relation to the giving of directions by the Conservator, in particular how records must be kept in relation to the three different licence types.

Clause 13 – Keeping of records by commercial fishers and fish dealers - Section 47 heading - this provision substitutes the current heading with the following - keeping of records by commercial fishers, priority species licence holders and fish dealers, these changes are to include the reference to priority species licence holders.

Clause 14 – New section 47 (1A) - this change to the provision is the inclusion of the priority species licence holders to the list of other licence holders and the requirement to keep records for at least 5 years if they are required under the Act to keep records. Failure to do so has a 50 PU fine that is \$5000 for individuals and \$25000 for companies.

Clause 15 – Commercial fishers and fish dealers to supply information – Section 49 heading – this provides for the substitution of the heading Commercial fishers, priority species licence holders and fish to dealers to supply information. These changes are to include the reference to priority species licence holders.

Clause 16 – Section 49 (1) Note – this provision includes notes that explain (1) how documents may be given and ((2) on offences of giving false or misleading statements under the Criminal Code 2000 which are applicable to information given under this Act, (for example, in relation to reporting requirements, if the information is false or misleading).

Clause 17 – New Section 49 (1A) – this provision inserts a new subsection into Section 49 which requires commercial fishers, priority species licence holders and fish dealers to supply information. It allows the Conservator by written notice to require the holder of a priority species licence to give the Conservator within a reasonable time, about the fish possessed, received or sold by the holder of the licence stated in the notice.

Clause 18 – Section 49 (3) – this provision omits the current subsection (1) or (2) and substitutes it with subsection (1) (1A) or (2). These changes are to include the reference to priority species licence holders.

Clause 19 – New Sections 76A to 76C –

76(A) Trafficking in commercial quantity of fish of priority species. – This provision inserts an offence of trafficking in a commercial quantity of fish of priority species. This offence is aimed at stopping illegal trades in commercial quantities of abalone and rock lobster. It carries a maximum penalty of 10 years imprisonment and 1000 PU fine. Other jurisdictions have similar offences with similar penalties and this new offence will assist in breaking the loop in illegal fisheries transactions of fish of a priority species. The definition of “traffic” is broad and includes any act listed in (a) to (d); it is intended to cover all stages in the fisheries chain.

Holders of licenses for priority species are exempt from this offence as long as they are acting under the conditions of their licence. Persons who purchase fish from license holders will be exempted from this offence, for example purchases for personal or domestic use from a licensed holder for example a dinner party or wedding are exempt.

76(B) Taking commercial quantity of fish of priority species. – This provision inserts an offence of taking a commercial quantity of fish of a priority species in a 24-hour period and to do so without having a priority species licence to authorise that taking. This provision has been introduced to ensure that multiple takings are not made within the day. Evidence from other jurisdictions showed that multiple takings were being made within a 24-hour period. The penalty is a maximum one of 1000 penalty units and or 10 years imprisonment. The definition of take for the purpose of this offence

only, is gain possession or control by any means and not the general definition of “take” in the dictionary at the back of the Bill which covers taking from aquatic waters and clearly abalone and rock lobster are not from waters in the ACT, but from other jurisdictions that then follow the chain through the ACT. The aim is to cover all stages in the fisheries chain.

As in the previous offence provision for trafficking holders of licenses for priority species are exempt from this offence as long as they are acting under the conditions of their licence. Persons who purchase fish from licence holders will be exempted from this offence, for example purchases of 22 rock lobsters for personal or domestic use from a licensed holder say for a dinner party are exempt.

76 C) Possessing commercial quantity of fish of priority species. - This provision inserts an offence of possessing a commercial quantity of fish of a priority species. A person commits an offence if the person possesses a commercial quantity of fish of a priority species and does not hold a licence authorising that possession. The maximum penalty is 500 penalty units or 5 years imprisonment or both. As in the previous offence provisions for trafficking and taking, holders of licenses for priority species are exempt from this offence as long as they are acting under the conditions of their licence. Persons who purchase fish from licence holders will be exempted from this offence, also purchases for personal or domestic use from a licensed holder for example 110 abalone for a wedding party are exempt.

Clause 20 Guidelines New Section 113(1) (ca) - This provision inserts a provision whereby the Minister may issue written Guidelines, relating to the exercise of the Conservators functions in relation to the issuing of a licence for priority species. This ensures consistency with the ability to issue guidelines for other licences.

Clause 21 Dictionary - new definitions. - This inserts definitions for abalone, commercial quantity and fish of a priority species.

Clause 22 Dictionary - definition of licence - new paragraph (d) - This inserts a definition for a priority species licence.

Clause 23 Dictionary - New Definitions - This inserts definitions for priority species licence and rock lobster

Clause 24 – Regulations -this clause specifies that the definition of commercial quantity will be set in the regulations.

