



Marine & Fisheries Management

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This Fact Sheet focuses on marine and fisheries management. It does not cover coastal protection. Please see our [Coastal Protection Fact Sheet](#) for information about how the coast is managed in NSW. For a comprehensive guide to coastal management in NSW, read our book [Caring for the Coast: A Guide to Environmental Law for Coastal Communities in NSW](#).

Overview

This Fact Sheet explains the State and national legislative framework for the protection of the marine environment, and how fisheries operations are regulated.

Marine areas provide valuable ecosystem services, such as oxygen production, nutrient recycling and climate regulation. We also rely on our marine ecosystems to provide recreational opportunities, food, tourism and support to other parts of our economy.

Marine environments are protected and managed under several different frameworks:

- Protected areas
- Protected species
- Fisheries and aquaculture
- Pollution

Australia's marine environment is divided into administrative zones, including:¹

- The State waters zone, which extends from the shoreline to approximately three nautical miles offshore.

¹ http://www.ga.gov.au/image_cache/GA3746.pdf

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- The territorial sea zone, which extends from the low water mark up to 12 nautical miles seaward. Australia's sovereignty extends to the territorial sea, its bed and subsoil, and to the air space above it. This sovereignty is exercised in accordance with international law.
- The Exclusive Economic Zone (EEZ), which extends from the end of the three-mile State waters zone, to 200 nautical miles offshore. In the EEZ, Australia has sovereign rights for the purpose of exploring and exploiting, conserving and managing all natural resources together with other activities such as the production of energy from water, currents and wind.

Protections for marine environments

Protected Areas

Commonwealth Marine Reserves

A network of [Commonwealth marine reserves](#)² has been declared by the Australian Government within Commonwealth marine areas.³ This network covers over 3.3 million square kilometres which equates to around 37% of our oceans.⁴

The primary objective of the network is to 'establish and effectively manage a comprehensive, adequate and representative system of marine reserves to contribute to the long-term conservation of marine ecosystems and to protect marine biodiversity'.⁵

The regions in the network are:

- [Coral Sea](#)
- [North](#)
- [North-west](#)
- [South-east](#)
- [South-west](#)
- [Temperate East](#)

The reserves within this network are split into zones, and each zone is assigned a category which determines the management objectives of the zone. The zones allow different types of uses, including biodiversity conservation, recreational use and fishing. The Australian Government has adopted the International Union for the Conservation of Nature's (IUCN)

² Declared under *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 344.

³ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 24. Commonwealth marine areas consist of the water, seabed and airspace extending from the end of the three-mile State waters zone to 200 nautical miles offshore (the EEZ).

⁴ See Department of Environment: [Commonwealth marine reserves:
http://www.environment.gov.au/topics/marine/marine-reserves/overview](http://www.environment.gov.au/topics/marine/marine-reserves/overview)

⁵ <https://parksaustralia.gov.au/marine/parks/>

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list of [marine protected area management categories](#), which offer varying levels of protection. Zones include:

- Marine National Park
- Habitat Protection
- Multiple Use
- Special Purpose

While the conservation of biodiversity is the primary objective for some zones, the use of natural resources, including fishing, is allowed in other parts of the marine reserve network.⁶ [Read more about the zones.](#)

To find out more about Commonwealth marine reserves, [visit the Australian Environment Department's website.](#)

Read more about protected areas in our [Protected Areas Fact Sheet.](#)

Matters of National Environmental Significance

There are several marine and estuarine areas listed as matters of national environmental significance (MNES) under Commonwealth environmental law,⁷ including:

- [Wetlands of international importance](#) (Ramsar wetlands)⁸
- [The Great Barrier Reef marine park](#)⁹
- [Commonwealth marine areas](#)¹⁰

If an action is likely to significantly affect a matter of national environmental significance, the proposal must be referred to the Australian Environment Department for assessment and approval under Commonwealth environmental law (known as the EPBC Act).¹¹ This is in addition to any State approvals that are required. For more information on Commonwealth approvals and the EPBC Act see our [Publication on the EPBC Act in NSW.](#)

⁶ <https://www.legislation.gov.au/Details/F2017C00993>

⁷ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Ch. 2 Part 3.

⁸ <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/what-protected/wetlands>

⁹ <http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/what-2>

¹⁰ <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/what-protected/commonwealth>

¹¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Ch. 2 Part 3.

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NSW Bilateral Agreement relating to environmental impact assessment

The Australian and NSW governments have signed a [bilateral assessment agreement](#) which means that the NSW Government is responsible for assessing projects that are likely to impact matters of national environmental significance.

In practice, the proponent will refer projects to the Australian Government, who will determine whether the project is a [controlled action](#), and then notify the NSW Government that a referral has been made. The NSW Government will then assess the project, and as part of its usual State assessment (e.g. development assessment) it will undertake an [assessment for the Australian Government](#) using its own assessment processes under the bilateral agreement.¹²

The final decision remains with the Australian Minister for Environment who will make a decision based on the assessment by the NSW Government.¹³ [Read EDO NSW's law reform submission on the draft bilateral agreement for more information.](#)¹⁴

NSW Marine Parks

[Marine parks](#) are areas of State waters which are set aside to conserve biodiversity and maintain ecological processes. Sustainable use of fish and marine vegetation, and opportunities for public enjoyment of the parks are permitted to the extent that they are consistent with conservation objectives. Marine Parks are split up into different zones that allow for different uses. These range from sanctuary and habitat protection zones to general use and specific purpose zones.¹⁵

There is [currently an amnesty](#) that allows shore-based recreational line fishing from ocean beaches and headlands in sanctuary zones at four sites within NSW marine parks. These sites will be re-zoned as habitat protection to allow shore-based recreational line fishing to continue. The amnesty has ceased at three other sites and the sanctuary zone remains in place. All forms of fishing are prohibited in sanctuary zones.¹⁶

¹² <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/nsw>

¹³ <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/nsw>

¹⁴ http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/1229/attachments/original/1387505167/131218_A_NEDO_submission_on_the_Cth-NSW_Assessment_Bilateral_Agreement_WEB.pdf?1387505167

¹⁵ See [NSW Marine Parks Authority website: http://www.mpa.nsw.gov.au/index.html](http://www.mpa.nsw.gov.au/index.html).

¹⁶ <https://www.dpi.nsw.gov.au/fishing/marine-protected-areas/marine-parks/batemans-marine-park/park-management/zones,-regulations-and-permits>

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There are six marine parks in NSW:

- [Batemans](#)
- [Cape Byron](#)
- [Jervis Bay](#)
- [Lord Howe Island](#)
- [Port Stephens Great Lakes](#)
- [Solitary Islands](#)

The [Department of Primary Industries – Marine Environment](#) is responsible for managing the network of parks.

Aquatic Reserves

Some smaller areas of State waters, mainly in the Sydney region, are designated as [Aquatic Reserves](#).¹⁷ Aquatic reserves are set up under fisheries laws and are designed to conserve fish and marine vegetation biodiversity. Some activities are prohibited in Aquatic Reserves, depending on the purpose for which the reserve was established. For example, fishing can take place in some reserves, but not others.

There are 12 declared aquatic reserves in NSW:¹⁸

- [Barrenjoey Head](#)
- [Boat Harbour](#)
- [Bronte-Coogee](#)
- [Bushrangers Bay](#)
- [Cabbage Tree Bay](#)
- [Cape Banks](#)
- [Cook Island](#)
- [Long Reef](#)
- [Narrabeen Head](#)
- [North \(Sydney\) Harbour](#)
- [Shiprock](#)
- [Towra](#)

Marine areas within National Parks

Some marine areas are protected if they are included within the boundaries of a national park. There are 62 national parks and reserves that include marine areas within their boundaries.¹⁹ Whether the marine area surrounding a national park is protected will

¹⁷ *Marine Estate Management Act 2014* (NSW), Part 5, Division 2.

¹⁸ <https://www.dpi.nsw.gov.au/fishing/marine-protected-areas/aquatic-reserves>

¹⁹ <https://www.marine.nsw.gov.au/nsw-marine-estate/marine-protected-areas>

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depend on the park itself. For more information on national parks, see our [Protected Areas Fact Sheet](#).

Protected Species

In addition to the protection provided by the marine reserve network, protection is also offered to individual species.

Protection at the national level

- **Matters of National Environmental Significance**

At the national level the [EPBC Act](#) provides protection for:

- [Nationally listed threatened species or ecological communities](#)²⁰
- [Nationally listed migratory species](#)²¹

It is an offence to harm listed threatened or migratory species or threatened ecological communities without approval.²² If an action is likely to significantly affect one of these protected species or ecological communities, the proposal must be referred to the Australian Environment Department for assessment and approval.²³ See text box above for information on bilateral agreements relating to environmental assessment.

- **Australian Whale Sanctuary**

Whales and dolphins (cetaceans) within the [Australian Whale Sanctuary](#)²⁴ are also protected under the EPBC Act.²⁵ Permits can be requested for activities that will impact on whales and dolphins. Cetacean permits can be issued by the Australian Government for research that will significantly contribute to cetacean conservation.²⁶

Protection at the State level

In NSW, threatened fish (both saltwater and freshwater) and their habitat, and threatened marine vegetation, are protected by fisheries laws.²⁷ Marine mammals and birds are also

²⁰ <http://www.environment.gov.au/topics/threatened-species-ecological-communities>

²¹ <http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/what-4>

²² *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Ch. 2 Part 3.

²³ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Ch. 2 Part 3.

²⁴ <http://www.environment.gov.au/topics/marine/marine-species/whales-dolphins-and-porpoises/australian-whale-sanctuary>

²⁵ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Part 13, Division 3.

²⁶ <http://www.environment.gov.au/topics/marine/marine-species/cetaceans/research-permits>

²⁷ Under the *Fisheries Management Act 1994* (NSW).

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1994-038>

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protected under threatened species laws.²⁸ The NSW Government is responsible for protected species. There are a range of options for ensuring such species are adequately protected.

It is an offence to harm a threatened species, population or ecological community. It is also an offence to damage their habitat. However, licences may be issued to authorise such harm.²⁹

A species is protected under the law once it is listed under the *Fisheries Management Act 1994*. [Anyone can nominate](#) fish, aquatic invertebrates, and marine plants for listing at any time.³⁰ Referrals are made to the [Fisheries Scientific Committee](#),³¹ an independent committee of scientists appointed by the Minister for Primary Industries which is responsible for listings. There are several things that should be included in a nomination, such as:

- Maps of both historical and present distribution of the species
- Biological and ecological data for the species involved (e.g. population size, profiles and trends, habitat requirements)
- Evidence of any decline in the species

The Committee considers nominations on scientific terms but is required to consult with the Minister and the public before making a determination.³²

Once a species, population or ecological community is listed, a recovery plan may be prepared. [Recovery Plans](#) are plans to promote the recovery of the species, population or ecological community to a position of viability in nature.³³ [Threat abatement plans](#) can also be prepared. These plans manage threatening processes to abate, ameliorate or eliminate their adverse effects on threatened species, populations or ecological communities.³⁴ Both these plans are prepared by the Department of Primary Industries, and are required to be [released for public comment](#)³⁵ before being made by the Minister.³⁶

²⁸ Under the *Biodiversity Conservation Act 2016* (NSW)

<https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063>

²⁹ *Fisheries Management Act 1994* (NSW), Part 7A Div. 6, Subdiv. 1; *National Parks and Wildlife Act 1974* (NSW), s 171.

³⁰ <http://www.dpi.nsw.gov.au/fisheries/species-protection/fsc/nomination-process#For-Species--Populations-and-Ecological-Communities>

³¹ <https://www.dpi.nsw.gov.au/fishing/species-protection/fsc>

³² *Fisheries Management Act 1994* (NSW), Part 7A Div 2.

³³ *Fisheries Management Act 1994* (NSW), s 220Z1.

³⁴ *Fisheries Management Act 1994* (NSW), s 220ZJ.

³⁵ <http://www.dpi.nsw.gov.au/fisheries/species-protection/conservation/what/recovery>

³⁶ *Fisheries Management Act 1994* (NSW), Part 7A Div 5.

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The Government can prepare management plans for marine mammals.³⁷ [Priorities Action Statements](#) can be prepared for marine mammals and birds.

Fish or fish habitat can be protected by the absolute or conditional prohibition of fishing in any area.³⁸ It is an offence to take or be in possession of fish in contravention of a [fishing closure](#).³⁹ There are [rules and regulations](#) governing recreational fishing,⁴⁰ including size and bag limits, and instructions on how to measure different species of fish.⁴¹

There are also special provisions for the critically endangered [grey nurse shark](#), restricting actions, including fishing or diving, in or near the shark's critical habitat.⁴²

Stop work orders can be issued by the NSW Government to prevent harm to listed species, populations or ecological communities.

For more information about how protected species are managed, see our [Threatened Species and Ecological Communities Fact Sheet](#).⁴³

Fisheries

National framework

Nationally-managed fisheries and all fisheries intending to export products are [assessed under national environmental law](#).⁴⁴ A [list of all permits issued](#) and their details along with their expiry date is available to the public on the [Australian Environment Department's website](#).⁴⁵ Assessments are made according to [Guidelines for the ecologically sustainable management of fisheries](#).⁴⁶ These guidelines outline specific principles and objectives to guide evaluations of the ecological sustainability of fisheries. To satisfy the Commonwealth Government of its ecological sustainability, a fishery must be:

1. Conducted in a manner that does not lead to over-fishing, or for those stocks that are over-fished, the fishery must be conducted such that there is a high degree of probability the stock(s) will recover;⁴⁷ and

³⁷ *National Parks and Wildlife Act 1974* (NSW), Part 5.

³⁸ *Fisheries Management Act 1994* (NSW), s. 8.

³⁹ *Fisheries Management Act 1994* (NSW), s. 14.

⁴⁰ <https://www.dpi.nsw.gov.au/fishing/recreational/fishing-rules-and-regs>

⁴¹ *Fisheries Management (General) Regulation 2019* (NSW), Part 2.

⁴² *Fisheries Management Act 1994* (NSW), Part 7A, Div. 4.

⁴³ http://www.edonsw.org.au/native_plants_animals

⁴⁴ *Fisheries Management Act 1991* (Cth); *Environment Protection and Biodiversity Act 1999* (Cth).

⁴⁵ <http://www.environment.gov.au/topics/marine/fisheries/commonwealth-managed-fisheries>

⁴⁶ Made under *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Part 10 Div 2:

<http://www.environment.gov.au/resource/guidelines-ecologically-sustainable-management-fisheries>

⁴⁷ Guidelines for the ecologically sustainable management of fisheries, Principle 1:

<http://www.environment.gov.au/topics/marine/fisheries/commonwealth-managed-fisheries>

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2. Managed to minimise the impact of fishing operations on the structure, productivity, function and biological diversity of the ecosystem.⁴⁸

State framework

In NSW, fisheries law applies to the harvesting and protection of marine and freshwater fisheries resources, as well as other aquatic animal life. Fisheries can be protected and managed through measures that apply to both recreational and commercial fishing.

Recreational fishing

Size limits (minimum and maximum size)⁴⁹ apply to many species of fish and it is an offence to possess a fish of a prohibited size.⁵⁰ The maximum penalty for an individual for a first offence is a \$22,000 fine or 6 months in prison (or both). For a corporation, the maximum penalty is \$110,000 for a first offence.

Bag limits restrict the quantity of a species of fish that a person can take on any one day.⁵¹ It is an offence to take more than a set bag limit on any one day. The maximum penalty for an individual for a first offence is a \$22,000 fine or 6 months in prison (or both).⁵² For a corporation, the maximum penalty is \$110,000 for a first offence.

There are a range of rules and offences around the use of fishing gear. For example, the types of lines, nets and traps that can be used for taking fish.⁵³

In addition, the Minister has the power to implement fishing closures, whereby the taking of fish (or a specified class of fish) is either absolutely or conditionally prohibited in specified waters.⁵⁴ All closures are published on the [Department of Primary Industries website](#).

Commercial fishing

Total allowable catch

A Total Allowable Fishing (TAF) Committee is an independent body that is responsible for setting the total allowable catch (TAC) limit for fish in any fishery for the commercial fishing sector.⁵⁵ Over the years, the TAF Committee has made determinations for the

⁴⁸ Guidelines for the ecologically sustainable management of fisheries, Principle 2:

<http://www.environment.gov.au/topics/marine/fisheries/commonwealth-managed-fisheries>

⁴⁹ For a list of size limits, see *Fisheries Management (General) Regulation 2019* (NSW), cl. 11.

⁵⁰ *Fisheries Management Act 1994* (NSW), s. 16.

⁵¹ *Fisheries Management Act 1994* (NSW), s. 17. For a list of bag limits, see: *Fisheries Management (General) Regulation 2019* (NSW), Part 2, Div. 2.

⁵² *Fisheries Management Act 1994* (NSW), s. 17.

⁵³ *Fisheries Management Act 1994* (NSW), s. 23; *Fisheries Management (General) Regulation 2019* (NSW), Part 3.

⁵⁴ *Fisheries Management Act 1994* (NSW), Part 2, Div. 1.

⁵⁵ *Fisheries Management Act 1994* (NSW), Part 2A, Div 2.

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lobster and abalone fisheries,⁵⁶ with the most recent determination being for the spanner crab.⁵⁷

Before setting a limit, the TAF Committee must seek public submissions on the appropriate limit and must have regard to these submissions when setting the TAC.⁵⁸ Determinations are published in the NSW Government Gazette.

Share Management Fisheries

Some commercial fisheries can be declared to be commercial share management fisheries.⁵⁹ Once a fishery becomes a share management fishery, the Minister must give public notice of that fact and invite applications for shares. Applications must be in writing and accompanied by a fee.⁶⁰ Shares are allocated to people who are the holders of current commercial fishing licences or fishing boat licences and who lawfully took fish for sale in the fishery before it became a share management fishery. If the fish were taken by an employee of some other person, the allocation is made to that other person.⁶¹

Once shares have been issued, the fishery becomes a limited access fishery until a Plan of Management has been prepared.⁶² The Minister allocates among shareholders the whole total allowable catch of fish for the commercial fishing sector. The allocation is proportionate to the shareholdings of each shareholder.⁶³

The Plan of Management sets out the objectives of the plan and regulates activities with a view to achieving those objectives. For example, a Plan of Management might cover things such as the rights of shareholders to take fish in the fishery, the fish that may be taken, the area for taking fish, the times or periods for taking fish and the use of boats and fishing gear.⁶⁴

Plans of Management are important because they can override Regulations, including fishing closures, unless such Regulations or closures specifically state that they override the Plan of Management.⁶⁵

⁵⁶ See for example: http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0009/528129/lobster-report-and-determination-2014-15.pdf; http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0005/342185/2010-2011-abalone-tacc-determination.pdf

⁵⁷ https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0004/1240735/NSW-Total-Allowable-Fishing-Committee-Spanner-Crab-Report-and-Determination-for-2020-21-fishing-period.pdf

⁵⁸ *Fisheries Management Act 1994* (NSW), s. 40F.

⁵⁹ See: *Fisheries Management Act 1994* (NSW), Schedule 1 for a list of declared share management fisheries.

⁶⁰ *Fisheries Management Act 1994* (NSW), s. 46

⁶¹ *Fisheries Management Act 1994* (NSW), s. 50.

⁶² *Fisheries Management Act 1994* (NSW), Part 3, Divs. 4 and 5.

⁶³ *Fisheries Management Act 1994* (NSW), s 50.

⁶⁴ *Fisheries Management Act 1994* (NSW), s. 57.

⁶⁵ *Fisheries Management Act 1994* (NSW), s. 62.

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It is an offence for a shareholder to contravene a Plan of Management. The maximum penalty for an individual is \$55,000.⁶⁶

Read more about fisheries management on the [NSW Department of Primary Industries website](http://www.dpi.nsw.gov.au/fisheries).⁶⁷

Licensing of commercial fishing activities

All commercial fishing activities must be licensed.⁶⁸ Only individuals (not corporations) can hold commercial fishing licenses and there are further restrictions on the eligibility to hold commercial fishing licenses.⁶⁹

Licenses can be issued subject to conditions, are not transferrable and remain in force for the time specified in the license.⁷⁰ It is an offence to breach a license condition. The maximum penalty is \$11,000.⁷¹

Commercial fishers are required to keep records of their activities (including those where no fish were taken), such as particulars of all fish taken, particulars of all fish disposed of, particulars of the location in which the activities were carried out, particulars of the fishing gear used, the boat used and the individuals who engaged in or assisted with those fishing activities.⁷²

Commercial fishing boats also need to be licensed.⁷³

People who receive fish for resale or commercial use from commercial fishers are known as fish receivers and must be registered unless they meet one of the exceptions.⁷⁴ Fish receivers can be asked to supply information to a fisheries officer about the fish they receive.⁷⁵

⁶⁶ *Fisheries Management Act 1994* (NSW), s. 65.

⁶⁷ <http://www.dpi.nsw.gov.au/fisheries>

⁶⁸ *Fisheries Management Act 1994* (NSW), Part 4, Div. 1.

⁶⁹ See: *Fisheries Management Act 1994* (NSW), s. 103; *Fisheries Management (General) Regulation 2019* (NSW), Part 8, Div. 1.

⁷⁰ *Fisheries Management Act 1994* (NSW), s. 103.

⁷¹ *Fisheries Management Act 1994* (NSW), s. 104.

⁷² *Fisheries Management Act 1994* (NSW), s. 121; *Fisheries Management (General) Regulation 2019* (NSW), Part 12, Div. 2.

⁷³ *Fisheries Management Act 1994* (NSW), s. 107.

⁷⁴ *Fisheries Management Act 1994* (NSW), Part 4, Div. 4.

⁷⁵ *Fisheries Management Act 1994* (NSW), s. 119.

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Environmental assessment of commercial fishing activities

Commercial fishing activities must undergo environmental assessment.⁷⁶ An environmental impact statement (EIS) must be prepared for commercial fishing activities, including fish stocking and commercial activities in share management fisheries. An EIS must include a species impact statement if the 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,⁷⁷ unless a licence to harm has been issued by the Department.⁷⁸

The Fisheries Minister is required to make the EIS available for public inspection, along with a draft fishery management strategy,⁷⁹ and any person can make a submission during the public exhibition period that is indicated in the public notice inviting submissions.⁸⁰

The way that [commercial fishing is managed has been reformed](#), with recommendations including the greater use of TACs and increases to management charges for share management fisheries being supported by the NSW Government.⁸¹

Aquaculture

Aquaculture is the cultivation or keeping of fish or marine vegetation for commercial purposes but doesn't include keeping anything in a pet shop or aquarium for exhibition.⁸²

Permits and leases

It is an offence to undertake aquaculture without a permit.⁸³ Applications for aquaculture permits are made to the Minister for Primary Industries. There are eight classes of permit that can be issued (Classes A-H).⁸⁴ All permits authorise the holder to take any fish and vegetation that have been cultivated or kept under the permit. No other licence is necessary.⁸⁵

⁷⁶ *Environmental Planning and Assessment Act 1979* (NSW), Part 5, Div 5.1; *Fisheries Management Act 1994* (NSW), Sch 1AA.

⁷⁷ *Environmental Planning and Assessment Act 1979* (NSW), Part 5, Div. 5.1, Sub Div 3.

⁷⁸ *Environmental Planning and Assessment Act 1979* (NSW), Part 5, Div. 5.1.

⁷⁹ *Environmental Planning and Assessment Act 1979* (NSW), s 5.6.

⁸⁰ *Environmental Planning and Assessment Act 1979* (NSW), s 5.8(2).

⁸¹ <https://www.dpi.nsw.gov.au/fishing/commercial/reform>

⁸² *Fisheries Management Act 1994* (NSW), s. 142.

⁸³ *Fisheries Management Act 1994* (NSW), s. 144. The maximum penalty is \$22,000 for corporations and \$11,000 for individuals.

⁸⁴ *Fisheries Management (Aquaculture) Regulation 2017* (NSW), cl. 4.

⁸⁵ *Fisheries Management Act 1994* (NSW), s. 149.

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The Minister for Primary Industries can lease an area of public water land⁸⁶ for use for aquaculture.⁸⁷ The lease will specify the type of aquaculture that is permitted on the leased area. The leaseholder still needs a permit to undertake aquaculture.⁸⁸

An aquaculture lease gives the leaseholder the exclusive right to undertake the type of aquaculture specified in the lease and the ownership of all fish or marine vegetation specified in the lease that are within the leased area. The lease does not give the leaseholder the right of exclusive possession of the leased area.⁸⁹

It is an offence to interfere with any fish or marine vegetation kept within the leased area without the consent of the lessee. The maximum penalty is \$11,000 for corporations and \$5,500 for individuals. Offenders may also be liable to compensate the lessee for any damage sustained because of the interference.⁹⁰

The Minister is required to keep a public register of all aquaculture permits.⁹¹ The Department of Primary Industries also notifies all applications for aquaculture leases and public tenders for aquaculture leases on its [website](#).⁹²

Planning approval

In addition to permits and leases from the Minister for Primary Industries, aquaculture developments also require development consent. Some aquaculture developments will qualify as State significant Development and be assessed by the Minister for Planning and Environment (or the Independent Planning Commission).⁹³ Otherwise, the development will be assessed by the Minister for Primary Industries. See our [Planning, Development & Heritage fact sheets](#) for more information about planning processes.⁹⁴

There may be an opportunity for the community to comment on the development proposal, including any environmental impact statement that has been submitted.

⁸⁶ Public water land means land submerged by water (whether permanently or intermittently), being:

- (a) Crown land, or
- (b) land vested in a public authority, or
- (c) land vested in trustees for public recreation or for any other public purpose, or
- (d) land acquired by the Minister,

but does not include land which is the subject of an aquaculture lease or land of which a person has exclusive possession under a lease under any other Act (*Fisheries Management Act 1994* (NSW), s 4).

⁸⁷ *Fisheries Management Act 1994* (NSW), s. 163.

⁸⁸ *Fisheries Management Act 1994* (NSW), s. 163(3).

⁸⁹ *Fisheries Management Act 1994* (NSW), s. 164.

⁹⁰ *Fisheries Management Act 1994* (NSW), s. 179.

⁹¹ *Fisheries Management Act 1994* (NSW), s. 154.

⁹² <http://www.dpi.nsw.gov.au/fisheries/aquaculture/aquaculture-leases>

⁹³ See: *State Environmental Planning Policy (State and Regional Development) 2011*, Schedule 1(2).

⁹⁴ <https://www.edo.org.au/publication/planning-development-heritage-in-nsw/>

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Restrictions on aquaculture

Aquaculture developments are regulated by State Environmental Planning Policy (Primary Production and Rural Development) 2019. Marine waters aquaculture may only be carried out with development consent and in accordance with any site location and operational requirements (minimum performance criteria) set out in the SEPP. At the time of writing, the SEPP does not contain any minimum performance criteria.⁹⁵ The consent authority is the Minister for Primary Industries. The Minister must take into account any aquaculture industry development plans when determining an application for development consent. At the time of writing, there are no marine aquaculture industry development plans.⁹⁶

The SEPP requires the Planning Secretary to publish a project profile analysis⁹⁷ for any particular kind of aquaculture development in the State. To date, there have been no project profile analysis published in the NSW Government Gazette.

The SEPP provides that development consent for any development may be refused if the development will have an adverse effect on, or impede or be incompatible with, an oyster aquaculture development in a priority oyster aquaculture area – if the consent authority is not satisfied that appropriate measures will be taken to avoid or minimise those impacts.⁹⁸ In determining whether to grant consent or refuse development, the consent authority and Secretary must each take into account the [NSW Oyster Industry Sustainable Aquaculture Strategy](#).

Pollution

Controlling pollution through the law is done either by banning certain substances altogether, or by regulating pollution practices, for example by setting emission limits, imposing planning controls and imposing pollution licence conditions.

Controlling pollution is mostly done by the States. NSW law regulates marine pollution in the following areas:

- Pollution at sea from non-land-based sources
- Pollution at sea from land-based sources
- Noise pollution from vessels

⁹⁵ <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2019-0137#pt.5>

⁹⁶ <https://www.dpi.nsw.gov.au/fishing/aquaculture/starting-up/starting-an-aquaculture-business>

⁹⁷ A project profile analysis is a matrix of environmental and operational criteria for ranking the level of environmental risk in relation to site location and operational attributes of aquaculture development: *State Environmental Planning Policy (Primary Production and Rural Development) 2019*, cl 26(2).

⁹⁸ *State Environmental Planning Policy (Primary Production and Rural Development) 2019*, cl 30.

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The Australian Government has some responsibilities, mostly as a result of international obligations, to prevent pollution from ships and dumping at sea.

Pollution at sea from non-land-based sources

The [Marine Pollution Act 2012 \(NSW\)](#) prohibits pollution of the marine environment, including the discharge of harmful substances in packaged form and discharges of sewage and garbage into NSW waters.⁹⁹ This Act was amended in March 2021 and now applies to all navigable waters in NSW as well as recreational vessels.¹⁰⁰

There is a general duty on ship masters, owners or operators to inform NSW Maritime of any illegal discharges from their ships or incidents involving the probability of a discharge.

The Minister has broad powers to take action to prevent and clean up polluting discharges, recover the costs of its operations from those responsible (including seizing offending ships as payment), and to issue and enforce notices requiring action to be taken, activities to cease or to remove a ship or its cargo.

The [Australian Maritime Safety Authority Act 1990 \(Cth\)](#) protects the marine environment within Australian waters from polluting ships and dumping.¹⁰¹ For more information, see the [Federal Environment Department's page on Marine Pollution](#).

The [Protection of the Sea \(Prevention of Pollution from Ships\) Act 1983 \(Cth\)](#)¹⁰² (Pollution from Ships Act) implements Australia's obligations under the [International Convention for the Prevention of Pollution from Ships](#) (known as the MARPOL Convention).¹⁰³ The MARPOL Convention covers operational or accidental pollution from ships, including oil, noxious liquid substances, harmful substances in packaged form, sewage and garbage.

The Pollution from Ships Act applies to the part of the NSW territorial sea not covered by the [Marine Pollution Act 2012 \(NSW\)](#),¹⁰⁴ which is the area that stretches between a distance of three nautical miles and 12 nautical miles from the coast. In the area where it applies, the Pollution from Ships Act deals with the discharge of oil and noxious liquid substances, retention of oil residues on board a ship, and the notification of incidents involving oil or noxious liquid substances, and contains offences for discharging or dumping garbage and other substances into the sea.

⁹⁹ *Marine Pollution Act 2012 (NSW)*, Part 5.

¹⁰⁰ <https://roads-waterways.transport.nsw.gov.au/maritime/marine-pollution/mpa.html>

¹⁰¹ See *Australian Maritime Safety Authority Act 1990 (Cth)*:

<https://www.legislation.gov.au/Details/C2014C00368>

¹⁰² <http://www.comlaw.gov.au/Series/C2004A02758>

¹⁰³ <https://www.imo.org/en/KnowledgeCentre/ConferencesMeetings/Pages/Marpol.aspx>

¹⁰⁴ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2012-005#statusinformation>

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Pollution at sea from land-based sources

Discharges from land-based sources are regulated under the [Protection of the Environment Operations Act 1997 \(NSW\)](#) (POEO Act).

The POEO Act is the main law in NSW regulating water, air and noise pollution. Regulatory authorities can issue pollution licences to limit and regulate pollution from various premises. There are a range of pollution offences and penalties, which can be enforced by regulatory bodies (such as the Environment Protection Authority or local council). Members of the public can also take legal action to enforce the POEO Act. For more information see our [Air, Water and Noise Pollution](#) Fact Sheet.

The POEO Act also contains offences relating to the dumping or other disposal of waste. For more information see our [Waste Management](#) Fact Sheet.

The [Environment Protection \(Sea Dumping\) Act 1981 \(Cth\)](#)¹⁰⁵ (Sea Dumping Act) implements Australia's treaty obligations under the [Convention on the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter 1972](#) (the London Convention).¹⁰⁶ This Convention limits the discharge of waste generated on land and disposed of at sea. The Sea Dumping Act regulates the dumping of 'wastes' and 'other matter' into the sea from ships, aircraft and platforms, and the incineration of wastes and other matter on ships or platforms at sea.

A permit is required for the following activities:

- Dumping by a vessel, aircraft or platform
- Incineration of waste at sea
- Loading of waste for dumping or incineration at sea
- Export for the purpose of dumping or incineration
- Placement of artificial reef

It is an offence to carry out the above activities without a permit.

For more information on the national regulation of marine pollution, [visit the Australian Environment Department's website](#).¹⁰⁷

Noise pollution from vessels

Noise pollution from vessels is regulated under the POEO Act. For more information see our [Air, Water and Noise Pollution](#) Fact Sheet.

¹⁰⁵ <http://www.comlaw.gov.au/Series/C2004A02478>

¹⁰⁶ <https://www.imo.org/en/OurWork/Environment/Pages/London-Convention-Protocol.aspx>

¹⁰⁷ <http://www.environment.gov.au/topics/marine/marine-pollution>

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Glossary

Key to terms used in this Fact Sheet

EPBC Act means the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#)

POEO Act means the [Protection of the Environment Operations Act 1997 \(NSW\)](#)

Pollution from Ships Act means the [Protection of the Sea \(Prevention of Pollution from Ships\) Act 1983 \(Cth\)](#)

Sea Dumping Act means [Environment Protection \(Sea Dumping\) Act 1981 \(Cth\)](#)

Useful websites

- [Commonwealth Marine Parks website](#)
- [Department of Primary Industries website](#)

Useful legal texts

- *Environmental & Planning Law in New South Wales (5th ed)*, Lyster, Lipman, O'Neill, Couzens and Smith, The Federation Press (2021), Chapter 11: *Protected Areas and Crown Lands*