



## Developmental Commercial Fisheries

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ISSUED BY	Fisheries NSW	AUTHORISED DATE	12/10/2012
AUTHORISED BY	Executive Director Fisheries NSW	EFFECTIVE DATE	12/10/2012

### Purpose

From time to time individuals and groups express an interest in exploring opportunities to harvest fisheries resources they perceive to be under-utilised in NSW waters, or using unique fishing methods. Situations also occur where Fisheries NSW identifies opportunities to develop additional fisheries to those that are currently approved through the Fisheries Management Strategy process.

This policy guides how applications for developmental opportunities are evaluated and explored in a way that ensures:

- § the objects of the *Fisheries Management Act 1994* (FM Act) can be met,
- § any decision to exploit the identified resources is in the best interests of NSW,
- § adequate assessment of the likely environmental, social and economic impacts, including requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act),
- § access and impacts can be appropriately assessed, administered, monitored and managed,
- § recovery of appropriate attributable costs including for administration, management, compliance and research,
- § equity in selecting people or companies to partake in identified opportunities,
- § some certainty and protection for the level of investment that is inherent in testing new fishing techniques and determining whether those activities will be viable and sustainable in the longer term,
- § recognition and protection of commercially sensitive information and intellectual property.

### Scope

Authorisation to undertake developmental commercial fishing activities may be authorised by permit issued under Section 37 of the FM Act. This policy guides departmental staff in processing and assessing applications relating to:

- § the commercial harvest of any "new" fisheries resource(s) perceived to be under-utilised,
- § the use of a new fishing method not currently authorised,
- § changes to already authorised fishing methods likely to significantly alter the environmental impacts of the activity beyond those previously assessed for the fishery.

The policy does not cover:

- § minor modifications to existing commercial fishing methods which have previously been assessed and are covered by an existing approval,
- § taking of fish or marine vegetation for research purposes or 'bio-prospecting',
- § taking species within existing share management fisheries at significantly higher levels e.g. commencing targeted fishing of a by-catch species or previously untargeted part of a fish stock,
- § taking fish for non commercial purposes including recreational fishing and Aboriginal cultural fishing,
- § situations where the NSW Government identifies opportunities to develop additional fisheries and decides to invest Government or other resources into research, development or environmental assessment.

### Policy

1. *Applications for developmental commercial fishery permits*
  - a. Applications must be duly made on the approved application form, accompanied by the appropriate fee and supporting information specified in the form.

- b. Mandatory supporting information may include (but is not limited to):
  - i. Full details of the proposed target species, fishing methods and harvest strategy including areas and timing of operation.
  - ii. Resource assessment information for targeted stock, proposed level of exploitation and justification for how the level of exploitation has been assessed to be sustainable.
  - iii. An environmental assessment complying with the requirements of the EP&A Act i.e. Review of Environmental Factors (REF) or Environmental Impact Statement (EIS) based on the department's "Guidelines for Environmental Assessment of Fishing Related Activities" and prepared by a person with relevant tertiary qualifications and experience.
  - iv. A business case demonstrating the financial viability of the proposal (including market access) based on a Commercial Fishing Activity Development Plan model.

## 2. Consultation

- a. A stakeholder reference group may be established to provide expert advice, if the proposal includes activities that are likely to conflict or interact with the interests of other stakeholders.
- b. Notice of applications will be placed on public exhibition and referred to any relevant fisheries advisory bodies. The information will include sufficient detail to enable informed comment, but not include commercial-in-confidence information.
- c. If a proposal relates to one that has already been assessed, is currently being assessed or is likely to be of interest to the broader fishing community, a public expression of interest process may be initiated. Applications received may be held pending this process and all applications assessed together.

## 3. Consideration of application

- a. The application will be considered by the department.
- b. Relevant considerations will include (but are not limited to):
  - i. The objects of the FM Act, including any issues surrounding current and/or potential future sharing of the resource between sectors.
  - ii. Requirements of the EP&A Act together with the potential range and scale of environmental risks/impacts.
  - iii. The likely direct or indirect effects on any existing fisheries, activities or local communities.
  - iv. Likelihood of the activity resulting in a long term viable and ecologically sustainable fishery including the probable scale, costs and benefits of such a fishery.
  - v. The applicant's capability to undertake the proposed activity.
  - vi. Whether the applicant has been found guilty of any offences under the FM Act, or whether they are listed on a disqualified register, or have outstanding debt to the department.
  - vii. The applicant's capacity to access markets, undertake value adding or other factors which contribute towards maximising the return from the resource to the people of NSW.
  - viii. The applicant's capacity to obtain other relevant approvals (e.g. NSW Food Authority food safety requirements) and comply with relevant government policies.

## 4. Determination of application

- a. When determining whether an application is approved and what mitigation measures or operating requirements will apply, the Executive Director Fisheries NSW (or delegated officer) may consider advice from the stakeholder reference group (if established), advice received from other stakeholders (including peak industry groups, other government agencies and other levels of government), submissions resulting from public exhibition and departmental advice.
- b. If the application is refused, the applicant will be notified in writing outlining the reasons for the decision.
- c. If following consideration of the application the Executive Director Fisheries (or delegated officer) decides that the permit application merits approval the applicant will be notified of the pending approval. The applicant will also be notified of all conditions contained within the proposed permit and associated costs and charges prior to the permit being finally approved and issued.

5. *Operation of developmental commercial fishery permits*

- a. Developmental commercial fishery permits will normally be issued for a five year period, subject to meeting agreed performance criteria. At the end of this trial permit the original applicant may apply to extend the permit.
- b. In addition to the permit, fishers are required to hold a commercial fishing licence to take fish for sale. A commercial fishing boat licence is also required if a vessel is used in the operation. Participants have the option of utilising an existing licensed fishing boat or alternatively a new vessel may be licensed specifically for use in the developmental fishery. Use of any such new boat will be limited to the developmental fishery.
- c. In addition to recovery of the assessment and consultation costs incurred prior to issuing the permit, fees will be applied to recover the ongoing cost of:
  - i. monitoring fishing activities and annual performance,
  - ii. ensuring effective compliance with the harvest strategy and permit conditions,
  - iii. providing administrative services in connection with the activity,
  - iv. research relating to the activity.
- d. When developing a schedule of fees the value of product harvested under the approved harvest strategy will be considered and recovery of some costs may be deferred.
- e. The fees payable will be specified prior to issuing a permit, and the proponent has the option to withdraw from the process before committing further.
- f. Performance will be reviewed at least annually. Matters to be considered include those set out in Section 3 above and the relevant Commercial Fishing Activity Development Plan. Sub-optimal performance or the detection of unforeseen unacceptable impacts may result in suspension or cancellation of permits, or modifications to the harvest strategies.
- g. Permits will be subject to suspension or cancellation at any time including for breaches of the conditions, offences under the FM Act or Marine Parks Act 1997, or defaulting on the payment of ongoing fees and charges.
- h. Permits will not be transferable.
- i. Permit holders will be required to complete and submit a fine scale daily catch/effort logbook. Aggregated data will be made publicly available, regardless of the number of participants (excluding some commercially sensitive information).
- j. Scientific observers may be required, with the scope and level of coverage to be determined during the assessment phase.
- k. Permit holders will be required to assist with research by collecting biological data and/or samples and/or conduct their fishing activities (or some components thereof) in a structured manner.
- l. Permit holders will be required to provide financial information to assess fishery viability.
- m. Adoption of monitoring technology, such as Vessel Monitoring Systems or Interactive Voice Response (pre-fishing, pre-landing and or post-landing reports) may be required as such technology becomes available.

6. *Conclusion of developmental commercial fishery permit*

- a. Prior to, or at the conclusion of, the initial five year permit period the activity permitted by the permit will be assessed by the department against matters set out in Part 3 above to determine if the activity should:
  - i. cease at the expiration of the permit,
  - ii. continue as a developmental fishery and provide the original permit holder the opportunity to re apply for an additional five year permit (in recognition of their initial investment in developing the fishing activity), or
  - iii. be converted to a new ongoing fishery.

7. *Transition to ongoing fishery*

- a. If it is determined that a longer term fishery can be established, the department will make decisions, including but not limited to:
  - i. the likely size and scope of the fishery,
  - ii. gear able to be used,
  - iii. areas and times of operation, and
  - iv. the number of entitlements that should be made available.
- b. Public consultation will be undertaken and a longer term management strategy prepared. Arrangements applicable to any ongoing fishery will be developed in consultation with

relevant stakeholders and advisory bodies. A further environmental assessment may also be required if the scope and likely impact of the activity will change significantly from that carried out during the developmental fishery period.

- c. Regulations made under Part 4, Division 3 of the FM Act dealing with restricted fisheries would initially be utilised to provide ongoing access.
- d. At the conclusion of the developmental fishery permit stage (i.e. either at the five yearly review or after a total of ten years if the permit is renewed) a competitive public tender process will be carried out to allocate entitlements in the new fishery. NOTE all developmental fisheries will terminate or be converted to new fisheries through a public tender process after ten years from the date of commencement.
- e. Access to entitlements in the ongoing restricted fishery will not be an automatic right of the original permit holders and they will need to participate and be successful in the tender process to continue in the fishery.

## Procedures

§ Procedures for Developing New Commercial Fisheries (INT12/124072)

## Roles and responsibilities

§ Approval of applications: Executive Director Fisheries NSW

## Delegations

§ Delegations to be updated upon approval of BN11/2666.

## Legislation

§ *Fisheries Management Act 1994* (FM Act)

§ *Fisheries Management (General) Regulation 2010*

§ *Environmental Planning and Assessment Act 1979* (EP&A Act)

§ *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)* (EPBC Act)

## Related policies

§ Policy O-040 Assessing proposals and trialling modifications to fishing gear in NSW's commercial fisheries.

## Other related documents

§ Developmental Fishing Permit - Application Form (INT11/84658).

§ I&I NSW Guidelines for Environmental Assessment of Fishing Related Activities.

[http://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0011/296066/Guidelines---Environmental-Assessment-of-Fishing-Activities.pdf](http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0011/296066/Guidelines---Environmental-Assessment-of-Fishing-Activities.pdf)

§ Commercial Fishing Activity Development Plan (business case) (INT11/84661).

§ Procedures for Developmental Commercial Fisheries (INT12/124072).

## Definitions

§ Department: means the Department of Trade & Investment, Regional Infrastructure and Services and includes the Department of Primary Industries and Fisheries NSW.

§ Fisheries: means commercial, recreational, aquaculture or Aboriginal fisheries.

§ Environmental assessment: means an assessment of the likely environmental impacts of the activity that complies with the requirements of the EP&A Act i.e. a Review of Environmental Factors (REF) or Environmental Impact Statement (EIS) based on the department's "Guidelines for Environmental Assessment of Fishing Related Activities" and prepared by a person with relevant tertiary qualifications and experience.

§ Business case: means a description of likely commercial considerations of the proposal based on the department's Commercial Fishing Activity Development Plan.

## Superseded documents

This is a new policy.

## Revision history

Version	Date issued	Notes	By
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1.0	12/10/2012	New policy	Director, Aquaculture, Conservation & Marine Parks
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**Review date**

12/10/2015

**Contact**

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