

# Ornamental Fish in NSW - Recent changes to Fisheries legislation Frequently asked questions

November 2009

## What changes are we talking about?

Industry & Investment NSW (formerly NSW DPI) implemented changes to fisheries legislation on the 1 July 2009 that affects ornamental fish producers.

The change introduces an exemption for small scale ornamental fish producers from the requirement to hold an aquaculture permit.

I&I NSW established an amnesty period of six months from the 1 July to the 1 January 2010, to provide time for the ornamental industry to comply with the new rules.

## Who is classed as a hobbyist and who requires an aquaculture permit?

On the 1 July 2009, an amendment to the *Fisheries Management (Aquaculture) Regulation 2007*, provided an exemption from the need for an aquaculture permit for any person who cultivates ornamental fish with a view to sale in a facility that holds less than 10,000 litres. Previously there was no exemption for small scale ornamental fish production.

Any person who cultivates ornamental fish with a view to sale in a facility that holds 10,000 litres or more must hold an aquaculture permit.

## Why is 10,000 litres the cut off point?

All Australian State and Territory fisheries agencies and ornamental fish industry representatives on the National Ornamental Fish Policy Working Group (NOFPWG) identified that a consistent approach to the management of ornamental fish was required across all jurisdictions of Australia. It was also identified that fisheries legislation across the jurisdictions did not identify hobbyist aquaculture activities. After considering a range of possible criteria the volume of 10,000 litres was considered the most appropriate.

## What consultation was undertaken?

In December 2005 the national document "A *Strategic Approach to the Management of Ornamental Fish in Australia*" was released for public consultation. In addition to the NOFPWG consultation the department sent letters to ornamental fish associations or groups, retailers and suppliers seeking comments.

## Does the old agreement between the department and ornamental fish groups that existed prior to the regulation amendment still apply?

No. The approval provided by the former NSW Fisheries department was given under legislation which was superseded by the

current fisheries legislation rules. Therefore, this previous approval is not a defence against complying with the new ornamental fish management provisions that came into force on the 1 July 2009.

### **If I am a member of an ornamental fish association or group do I need to apply for an aquaculture permit?**

Yes. Belonging to an ornamental fish association or group **does not** exempt you from the requirements of NSW fisheries legislation.

### **If I sell my fish at an ornamental fish auction or club trade day is that classed as sale under the new regulation?**

Yes. Sale at an ornamental fish auction or club trade day is considered as sale under the new regulation and **is not** an exempt activity under the *Fisheries Management (Aquaculture) Regulation 2007*. Any person selling fish at these events who produced the fish with a view to sale in a facility that holds more than 10,000 L of water must hold a current aquaculture permit. I&I NSW compliance officers may attend these events.

### **Are only the ponds I breed in considered for the 10,000 litres?**

No. All ponds (breeding, broodfish and growout) involved in the culturing of fish are considered in calculating the volume of the ponds or tanks.

### **How long do I have to get my aquaculture permit?**

The department has provided a six month amnesty period to provide time for a person to commence their aquaculture application process. This amnesty commenced on the 30 June 2009 and ceases on the 1 January 2010.

## **How do I get an aquaculture permit?**

There are two basic steps obtaining an aquaculture permit as briefly outlined below.

- Contact I&I NSW to obtain information regarding the class H (hatchery) aquaculture permit application, commercial farm development plan and the required application fee. Please note that any application that is submitted without the required information or prescribed fee payment will be returned.
- Obtain either a letter from your local council stating that you are not required to get a development consent or obtain a development consent from council. Please note that the letter or development consent is required before an aquaculture permit would be issued.

The class H aquaculture permit application form and other information can be downloaded from the I&I NSW website [www.dpi.nsw.gov.au/fisheries/aquaculture](http://www.dpi.nsw.gov.au/fisheries/aquaculture)

### **If I am required to get an aquaculture permit, do I have to get approval from my local council?**

Yes, you will either require a letter from council stating that you don't require development consent or you will have to lodge a development application and be granted consent.

### **If I have already built my facility, and I am required to get an aquaculture permit under the new regulations, do I still need to go to Council?**

Yes, unless your local council has already provided development consent for your facility or provided a letter to you stating you do not require development consent.

## **My council doesn't permit aquaculture in my area. What happens in this situation?**

Your local council's Local Environmental Plan (LEP) may currently limit the zones in which aquaculture is permitted. However, an amendment to the State Environmental Planning Policy No. 62 (SEPP - 62) includes a table (see attached) that outlines in which LEP zones (or their equivalent) aquaculture will be permitted. The amendment to SEPP - 62 is expected shortly so please regularly check for updates on the I&I NSW website [www.dpi.nsw.gov.au/fisheries](http://www.dpi.nsw.gov.au/fisheries).

## **What about pet shops and fish wholesalers?**

Pet shops and fish wholesalers currently are exempt from requiring an aquaculture permit to keep fish for on-sale. This is provided that they are not breeding and culturing fish as part of the business. This will not change with the completion of the amnesty on the 1 January 2010.

## **Are there any other changes proposed?**

Yes. As part of the national document "A Strategic Approach to the Management of Ornamental Fish in Australia", all states and territories of Australia have agreed to adopt a national noxious fish list. The amendment to NSW fisheries legislation to include the nationally agreed noxious list to the NSW noxious fish list is underway. This will result in a significant increase in the number of ornamental species which cannot be kept or traded in NSW. I&I NSW will provide more information on the progress of these legislative amendments, and what it means for ornamental fish hobbyists and industry in 2010.

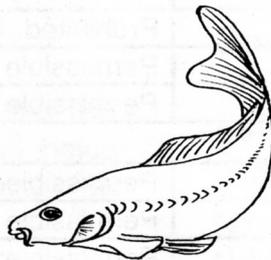
## **Further information**

If you require any further information please consult the I&I NSW website [www.dpi.nsw.gov.au/fisheries](http://www.dpi.nsw.gov.au/fisheries) or contact the Port Stephens Fisheries Institute on (02) 4982 1232 for advice.

## **Note**

**The amnesty for ornamental fish producers undertaking non exempt activities to obtain an aquaculture permit will expire 1 January 2010.**

Compliance with the new legislation is mandatory and hobbyists and ornamental fish industry members are advised to ensure that they are aware of their obligations and make every effort to comply before the amnesty expires.



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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (June 2009). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of New South Wales Department of Primary Industries or the user's independent adviser.

**LEP Zoning Table (LEP Zones for aquaculture based on LEP template).**

| LEP ZONES                             | AQUACULTURE TYPE |                 |
|---------------------------------------|------------------|-----------------|
|                                       | Pond             | Tank            |
| <b>Rural</b>                          |                  |                 |
| RU1 Primary Production                | Permissible      | Permissible     |
| RU2 Rural Landscape                   | Permissible      | Permissible     |
| RU3 Forestry                          | Permissible      | Permissible     |
| RU4 Rural Small Holdings              | Permissible      | Permissible     |
| RU5 Village                           | Prohibited       | Permissible     |
| RU6 Transition                        | Prohibited       | Permissible     |
| <b>Residential</b>                    |                  |                 |
| R1 General Residential                | Permissible (1)  | Permissible (1) |
| R2 Low Density Residential            | Permissible (1)  | Permissible (1) |
| R3 Medium Density Residential         | Prohibited       | Permissible (1) |
| R4 High Density Residential           | Prohibited       | Prohibited      |
| R5 Large Lot Residential              | Permissible (1)  | Permissible (1) |
| <b>Business</b>                       |                  |                 |
| B1 Neighbourhood Centre               | Prohibited       | Permissible     |
| B2 Local Centre                       | Prohibited       | Permissible     |
| B3 Commercial Core                    | Prohibited       | Permissible     |
| B4 Mixed Use                          | Prohibited       | Permissible     |
| B5 Business Development               | Prohibited       | Permissible     |
| B6 Enterprise Corridor                | Prohibited       | Permissible     |
| B7 Business Park                      | Prohibited       | Permissible     |
| <b>Industrial</b>                     |                  |                 |
| IN1 General Industrial                | Prohibited       | Permissible     |
| IN2 Light Industrial                  | Prohibited       | Permissible     |
| IN3 Heavy Industrial                  | Prohibited       | Permissible     |
| IN4 Working Waterfront                | Permissible      | Permissible     |
| <b>Special Purpose Zones</b>          |                  |                 |
| SP1 Special Activities                | Permissible      | Permissible     |
| SP2 Infrastructure                    | Permissible      | Permissible     |
| SP3 Tourist                           | Permissible      | Permissible     |
| <b>Recreation</b>                     |                  |                 |
| RE1 Public Recreation                 | Permissible      | Permissible     |
| RE2 Private Recreation                | Permissible      | Permissible     |
| <b>Environment protection</b>         |                  |                 |
| E1 National Parks and Nature Reserves | Prohibited       | Prohibited      |
| E2 Environmental Conservation         | Prohibited       | Prohibited      |
| E3 Environmental Management           | Permissible (2)  | Permissible (1) |
| E4 Environmental Living               | Permissible (2)  | Permissible (1) |
| <b>Waterway</b>                       |                  |                 |
| W1 Natural Waterways                  | Permissible (3)  | Permissible (3) |
| W2 Recreational Waterways             | Permissible (3)  | Permissible (3) |
| W3 Working Waterways                  | Permissible (3)  | Permissible (3) |

**Note (1)** Permissible only if the development is for the purposes of small scale aquarium fish production.

**Note (2)** Permissible only if the development is for the purposes of extensive aquaculture.

**Note (3)** Permissible only if the development will utilise waterways to source water.