



Module 3:

Deciphering legal jargon

Objectives

- Participants will have a clear understanding of how to interpret the legislation regarding the management of pest fish in Queensland, New South Wales and nationally
- Participants will understand why certain clauses of the legislation have been put in place

Intended participants

- Module is in two parts
 - Part A:**
Stakeholders in Queensland
 - Part B:**
Stakeholders in New South Wales

Key messages

- It is important to be able to understand pest fish legislation in your area, as it is a vital aspect of pest fish management and heavy fines apply

Learning resources

- AQIS: <www.daff.gov.au/aqis>
- ANZCCART publication—*Euthanasia of animals used for scientific purposes*: <www.adelaide.edu.au/ANZCCART/publications/Euthanasia.pdf>
- PowerPoint with links to legislation for trainers to go through and explain.
Trainers: If you do not have internet access during the workshop, please ensure you access and print the most up-to-date sections of the legislation before the workshop
- Learning activities

Legislation

- Queensland:
<www.legislation.qld.gov.au>
- New South Wales:
<www.legislation.nsw.gov.au>
- Federal:
<www.comlaw.gov.au>



Part A (for Queensland participants)

Introduction

State and federal government bodies have a responsibility to coordinate effective pest fish management in Australia. A major element of this is to provide effective and uniform legislative frameworks. Government bodies work with industry, the public and other key stakeholders to develop, update and implement appropriate policies and legislation to ensure the overall sustainability of our waterways. When the government proposes changes to legislation, several formal processes must be followed to ensure the community is aware of these changes and has the opportunity to comment on them.

Important information!

Legislation is updated on a regular basis. Please ensure you access the most current versions of legislation online before interpreting them. This includes any legislation included in this package.

Queensland legislation

Legislation relating to pest fish in Queensland is contained in the *Fisheries Act 1994*. The relevant sections are included under Part 5 of the Act (Fisheries management), specifically Division 5 (Noxious and nonindigenous fisheries resources and aquaculture fish).

In addition to this, the Fisheries Regulation 2008 also relates to the management of pest fish in Queensland under Schedule 6: Glossary of scientific names for particular fish other than regulated coral reef fin fish (Appendix A).

Trainers: Check <www.legislation.qld.gov.au> for the latest updates to legislation.

Fisheries Act 1994

Part 5 Fisheries Management

Division 5 Noxious and nonindigenous fisheries resources and aquaculture fish

89 Noxious fisheries resources not to be possessed, released etc.

A person must not unlawfully—

- (a) bring noxious fisheries resources, or cause noxious fisheries resources to be brought, into Queensland; or
- (b) possess, rear, sell or buy noxious fisheries resources; or
- (c) release noxious fisheries resources, or cause noxious fisheries resources to be placed or released, into Queensland waters.

Maximum penalty—2000 penalty units.

Schedule 6 of the Fisheries Regulation 2008 (Appendix A) provides a list of all fish classified as noxious in Queensland.

This section of the legislation means that it is illegal for someone to bring tilapia (and other fish classified as noxious) into Queensland; possess, rear, sell or buy tilapia; or release tilapia into any Queensland waters. The use of the term 'fisheries resources' means that these prohibitions relate to tilapia whether they are dead or alive, as well as to pieces of the fish (e.g. a fillet or gut). Both the use of tilapia as bait for fishing and the consumption of tilapia are, therefore, prohibited.

The maximum penalty that can be issued to someone found in breach of this section of the legislation is \$200 000, as outlined in the *Penalties and Sentences Act 1992*, available at <www.legislation.qld.gov.au>.

Trainers: Check <www.legislation.qld.gov.au> for the latest updates to legislation.

90 Nonindigenous fisheries resources not to be possessed, released etc.

- (1) A person must not unlawfully—
 - (a) bring nonindigenous fisheries resources, or cause nonindigenous fisheries resources to be brought, into Queensland; or
 - (b) possess, rear, sell or buy nonindigenous fisheries resources; or
 - (c) release nonindigenous fisheries resources, or cause nonindigenous fisheries resources to be placed or released, into Queensland waters; or
 - (d) release nonindigenous fisheries resources, or cause nonindigenous fisheries resources to be placed or released, in a waterway or lake in a wild river area.

Maximum penalty—2000 penalty units.
- (2) Subsections (1)(a) and (b) do not apply to nonindigenous fisheries resources prescribed under a regulation or management plan.

Schedule 6 of the Fisheries Regulation 2008 (Appendix A) provides a list of particular nonindigenous fish that are exempt from some of the provisions in s. 90 (1)(a) and (1)(b). These fish can be brought into Queensland and used for trade. For example, goldfish are a common aquarium fish and their possession is legal, as they are listed as particular nonindigenous fish.

Section 90 of the legislation outlines that it is illegal to release a fish (dead or alive), or any part of a fish, into a Queensland waterway if the fish is not native to the area. This means that although a person is allowed to possess a goldfish, it is illegal for them to empty their goldfish bowl into any Queensland waterway. The maximum penalty that can be issued to someone found in breach of this section of the legislation is \$200 000, as outlined in the *Penalties and Sentences Act 1992*, available at <www.legislation.qld.gov.au>.

Trainers: Check <www.legislation.qld.gov.au> for the latest updates to legislation.

92 Duty of person who takes or possesses noxious or nonindigenous fisheries resources

- (1) A person who unlawfully takes or possesses noxious or nonindigenous fisheries resources must immediately—
 - (a) if the fisheries resource is a fish—kill it; or
 - (b) if the fisheries resource is a plant—destroy it.

Maximum penalty—2000 penalty units.
- (2) Subsection (1) does not apply to nonindigenous fisheries resources prescribed under a regulation or management plan.

If a person accidentally comes into possession of a noxious fish (e.g. tilapia) or a nonindigenous fish that is not on the list outlined in Part 2 of Schedule 6 of the Fisheries Regulation 2008 (Appendix A), they must immediately kill the fish as humanely as possible and dispose of it without releasing it into the water. Possession would include accidentally catching the fish while line fishing, as well as fish found in farm dams or council waters running through private property. If a population of noxious or illegal nonindigenous fish is found established in a body of water that is privately owned, the owner must carry out all practical ways to control the population and prevent it from spreading into other waterways. This may include eradication if at all possible.

The maximum penalty which can be issued to someone found in breach of this section of the legislation is \$200 000, as outlined in the *Penalties and Sentences Act 1992*, available at <www.legislation.qld.gov.au>.





The most humane method for euthanising fish is to follow the ethical euthanasia protocols recommended by the Australian and New Zealand Council for the Care of Animals in Research and Teaching (ANZCCART). The 2001 ANZCCART publication—*Euthanasia of animals used for scientific purposes*—states that the most appropriate method is to stun the fish with a sharp blow to the back of the head (just above the eyes), causing brain destruction.

Pest fish should be disposed of as soon as possible in a way that avoids any risk of the fish being released back into a waterway. This is usually achieved by burying the fish above the tidal influence and at least 50 m from surrounding watercourses at the minimum depth determined by local council guidelines. The pest fish can also be placed in an appropriate rubbish bin.

Trainers: Check <www.legislation.qld.gov.au> for the latest updates to legislation.

93 Recovery costs of removing noxious fisheries resources etc.

- (1) If a person commits an offence against this division, the costs reasonably incurred by the chief executive in taking and removing, or destroying, the fisheries resources in relation to which the offence was committed are a debt payable by the person to the chief executive.
- (2) If the person is convicted of an offence against this division, the court may, as well as imposing a penalty for the offence, order the person to pay the amount of the costs to the chief executive.
- (3) Subsection (2) does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

If an offence is committed under any of the previously mentioned legislation, the person responsible can be ordered to pay for any eradication or control actions required as a result of their offence. This amount would be charged in addition to the original penalty charge of up to \$200 000.

Federal legislation

The federal management of pest fish is also implemented by the Australian Quarantine and Inspection Service (AQIS), which prohibits the importation of any live freshwater fish that are not included in the AQIS *List of permitted live freshwater fish suitable for import* (Appendix D). Their guidelines state:

Only live ornamental fish included in the AQIS permitted species list are eligible for importation into Australia from approved countries.

Importers are advised to check that this list is current at the time of importation. Only fish appearing on this list on the day of import will be eligible for entry into Australia.

Learning activities

Possession of pest fish

Purpose: To assess whether participants understand how legislation applies to a real-life scenario and to prompt them to think about the legal requirements in real-life situations.

Scenario: On a fine Sunday afternoon, Rod and his neighbour Finn decided to try out a new fishing spot just north of Brisbane. After almost two hours, the duo still hadn't managed to catch a fish and were about to give up when Rod's rod started to bend. The excited angler jumped to his feet and managed to bring in the flapping silvery fish.

'That's a good sized bass!' exclaimed Rod.

But, recognising the truncate tail and long, continuous dorsal fin, Finn knew the creature was no Australian bass. After pointing out to Rod that his catch was actually a tilapia, the men had to then decide what to do with the noxious fish.

Rod was aware that they couldn't keep the pest fish for dinner and thought it would be best to just throw it back into the water, since it was now dead and couldn't possibly do any further harm. Finn suggested that they throw the fish into a rubbish bin. However, since there were no bins nearby, the men would have to take the dead fish with them in their car until they found one.

Questions: Discuss what Rod and Finn should do with the dead fish. Should they throw it back into the water or take it with them until they spot a rubbish bin? Give reasons for and against these options. Are these the only two options for Rod and Finn? Why can't the men take the fish home for dinner? Other than getting rid of the fish, what is another action Rod and Finn should take?

Answer

Rod and Finn should not throw the dead tilapia back into the water as, being a mouth-brooder, it may have juveniles inside its mouth that are still alive—heavy fines apply for releasing noxious fish into Queensland waterways. If Rod and Finn choose to throw the fish into a rubbish bin, they should wrap it in a plastic bag for immediate transport to an appropriate bin. Alternatively, Rod and Finn could bury the fish well away from the water's edge. It is illegal in Queensland for the men to take the fish home for consumption and heavy fines apply. Using tilapia for human consumption may lead to the noxious fish having a trade value and people purposely stocking them. Rod and Finn should also take clear photographs of the fish (if possible) and report the fish to the DEEDI Customer Service Centre on 13 25 23.





Importing fish

Purpose: To assess whether participants understand how the legislation applies to a real-life scenario and to prompt them to think about the legal requirements in real-life situations.

Scenario: Mr Guppy is the manager of Scales 'R' Us, a new and upcoming Australian aquarium store for rare and exotic ornamental fish enthusiasts. He has recently heard of a new fish species that has become a very popular aquarium fish in America: the hairy-backed gobbler. Mr Guppy did some research on the hairy-backed gobbler and discovered it was native to Tunisia, very easy to look after and available in a variety of vibrant colours and patterns.

The hairy-backed gobbler appears to be the perfect addition to Scales 'R' Us. Unfortunately Mr Guppy would have to import the fish from either America, or direct from Tunisia.

Questions: What steps should Mr Guppy take in order to see if he can import some hairy-backed gobbler individuals into Australia for sale in his store? What are some of the reasons that would prevent him importing this fish into Australia?

Answer

Mr Guppy would have to consult the AQIS *List of permitted live freshwater fish suitable for import*, which can be accessed online at www.daff.gov.au/aqis. If the hairy-backed gobbler is allowed to be imported into Australia (according to the list), Mr Guppy would then have to check that Tunisia is an approved country for aquarium fish importation. Mr Guppy can contact AQIS directly on 1800 020 504 or (02) 6272 3933. It is important that Mr Guppy check that the list is current at the time of importation as only fish appearing on the list on the day of import will be eligible for entry into Australia. In addition to this, Mr Guppy would also have to check that the hairy-backed gobbler is not listed as noxious in the state where he is planning to sell the fish. Finally, Mr Guppy would have to ensure that he has all the relevant certificates and import permits to accompany his consignment.

Further questions for group discussion

- Q** Why would laws exist that prohibit the use of dead pest fish for bait? What impacts might dead fish for bait have in the case of Mozambique tilapia?
- A** Female tilapia use their mouths to rear and protect juveniles, which can survive for a long time even after the adult female is dead. Therefore, dead fish may have live juveniles inside their mouths, which can survive and breed when returned to a waterbody. This action can spread pest fish from one waterbody to another.
- Q** Why is it illegal to sell or buy noxious fish in Queensland?
- A** Trade adds value to a product. Therefore, if there were a trade for noxious fish in Queensland, people might wish to purposely stock them for profit.

FAQs

Can someone be fined for possessing a frozen specimen of a fish they think is tilapia if they have reported the fish to Fisheries Queensland?

No, you are permitted to temporarily possess the frozen specimen for collection by a fisheries officer for identification or reporting purposes (Fisheries Queensland must be notified as soon as possible in this case).

What should I do if I spot someone trying to sell tilapia (dead or alive) in Queensland?

You are not encouraged to approach the seller about the legal ramifications of their actions. Instead, you should report this sort of activity immediately by contacting the DEEDI Customer Service Centre:

Telephone: 13 25 23

Email: pestfish@deedi.qld.gov.au

Web: www.fisheries.qld.gov.au and search for 'report a pest fish sighting'

Can people eat tilapia?

Tilapia is a popular food fish in Asia, Africa and the South Pacific. However, the use of tilapia for consumption in Queensland is illegal.

Can recreational anglers target tilapia?

Tilapia may be captured during recreational fishing; however, their possession in Queensland is illegal. Therefore, any tilapia captured must be euthanised and disposed of straightaway. The most humane way of euthanising is to stun the fish with a sharp blow to the head just above the eyes, causing brain destruction. It can be disposed of in an appropriate rubbish bin or buried well away from the water. The most important things for recreational anglers to remember are not to use tilapia as bait, alive or dead, and not to release tilapia back into a waterway.

What do I do if I already have tilapia in my farm dam?

Phone the DEEDI Customer Service Centre on 13 25 23 and speak to a pest fish officer who will provide appropriate recommendations and may organise an inspection of the waterbody if this is deemed necessary.





Part B (for New South Wales participants)

Introduction

State and federal government bodies have a responsibility to coordinate effective pest fish management in Australia. A major element of this is to provide effective and uniform legislative frameworks. Government bodies work with industry, the public and other key stakeholders to develop, update and implement appropriate policies and legislation to ensure the overall sustainability of our waterways. When the government proposes changes to legislation, several formal processes must be followed to ensure the community is aware of these changes and has the opportunity to comment on them.

Important information!

Legislation is updated on a regular basis. Please ensure you access the most current versions of legislation online before interpreting them. This includes any legislation included in this package.

New South Wales legislation

The New South Wales government manages the state's noxious fish species through Part 7 (Protection of aquatic habitats), Division 6 (Noxious fish and noxious marine vegetation) of the *Fisheries Management Act 1994*. Noxious species fall into one of three classes, depending on the threat they pose to the aquatic environment in New South Wales. Schedule 6C of the Act (Noxious fish and noxious marine vegetation) provides a list of Class 1, 2 and 3 noxious fish, as well as the waters in which the species are classified as noxious (Appendix B). When particular waters are specified, the species is noxious only when located in the specified waters. Different rules and exemptions apply to each class of noxious fish with regard to possession, sale, destruction and management. These are summarised in the following table.

Summary of rules and regulations applied to different classes of noxious fish in New South Wales

Class	Species (example)	Possession			Sale	Destruction required	Management
		Aquarium	Garden pond	Farm dam			
1	Tilapia Redfin Gambusia	No	No	No	No	Yes	Strategies developed for rapid response to any outbreaks
2	Banded grunter	Yes	No	No	No	Yes (destruction of fish not required if kept in fully contained aquarium)	Control and eradication where possible
3	Carp Gambusia (only in waters within the greater Sydney area)	Yes	Yes	Yes	Yes	No	Education and awareness campaign to discourage possession and sale

Trainers: Check <www.legislation.nsw.gov.au> for the latest updates to legislation.

Fisheries Management Act 1994

Part 7 Protection of aquatic habitats

Division 6 Noxious fish and noxious marine vegetation

210 Sale of noxious fish or noxious marine vegetation prohibited

- (1) A person who sells live noxious fish or noxious marine vegetation otherwise than under the authority of a permit issued by the Minister is guilty of an offence.
Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.
- (2) This section applies even if the fish are only noxious fish, or the marine vegetation is only noxious marine vegetation, for the purposes of this Division when in particular waters.

According to a ministerial order effective from 1 April 2010 (Appendix C), this section of the Act does not apply to fish classified in Schedule 6C (Appendix B) as Class 3 noxious fish.

Therefore, it is illegal to sell any noxious fish in New South Wales, except if the fish are dead or in parts, or if the species is eastern gambusia (in the greater Sydney region) or carp, which are classified as Class 3 noxious fish in specified waters. The maximum penalty that can be issued for someone found guilty of breaching this section of legislation is \$11 000 for a corporation or \$5500 for anyone else, as outlined in Section 17 of the *Crimes (Sentencing Procedure) Act 1999* available from <www.legislation.nsw.gov.au>.

Trainers: Check <www.legislation.nsw.gov.au> for the latest updates to legislation.

211 Possession of noxious fish or noxious marine vegetation prohibited

- (1) A person who has possession of live noxious fish or noxious marine vegetation otherwise than under the authority of a permit issued by the Minister under this Part or an aquaculture permit is guilty of an offence.
Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.
- (2) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the person neither introduced the noxious fish or noxious marine vegetation into the waters concerned nor maintained the noxious fish or marine vegetation in those waters.
- (3) This section does not apply if the fish are in waters in which they are not noxious fish, or the marine vegetation is in waters in which it is not noxious marine vegetation, for the purposes of this Division.

According to a ministerial order effective from 1 April 2010 (Appendix C), this section of the Act does not apply to Schedule 6C (Appendix B) Class 2 noxious species kept in a fully-contained aquarium or Class 3 noxious fish.

This section of the legislation essentially prohibits anyone from stocking their private dam or pond with Class 1 or 2 noxious fish. Noxious fish are, however, allowed to be kept in fully-contained aquariums if they are classified as Class 2 noxious fish. The maximum penalty that can be issued for someone found guilty of breaching this section of legislation is \$11 000 for a corporation or \$5500 for anyone else, as outlined in Section 17 of the *Crimes (Sentencing Procedure) Act 1999*, available from <www.legislation.nsw.gov.au>.

In addition to the Act, Part 5, Division 8 of the Fisheries Management (General) Regulation 2010 manages the use of pest fish (or any other live finfish) as bait.





Trainers: Check <www.legislation.nsw.gov.au> for the latest updates to legislation.

Fisheries Management (General) Regulation 2010

Part 5 Miscellaneous provisions relating to fisheries management

Division 8 Miscellaneous

90 Prohibited lures and baits

...

- (2) A person must not take any fish from inland waters with a lure or bait that is:
- (a) a live finfish, or
 - (b) any fish or any part of a fish not native to the waters of New South Wales (other than dead carp), or
 - (c) trout or salmon roe or any product containing trout or salmon roe.

Maximum penalty: 50 penalty units.

...

- (4) A person fishing in inland waters must, on the demand of a fisheries officer, produce to that officer the lure or bait being used by that person.

Maximum penalty: 50 penalty units.

- (5) In this case:

carp means fish of the species *Cyprinus carpio* or *Carassius auratus*.

...

Therefore, it is illegal to use any fish (or any part of the fish) classified as noxious in New South Wales as live or dead bait, unless it is dead carp. The maximum penalty that can be issued for someone found guilty of breaching this section of legislation, or someone refusing to show the bait they are using to a fisheries officer, is \$5500, as outlined in Section 17 of the *Crimes (Sentencing Procedure) Act 1999*, available from <www.legislation.nsw.gov.au>.

Federal legislation

The federal management of pest fish is also implemented by the Australian Quarantine and Inspection Service (AQIS), which prohibits the importation of any live freshwater fish that are not included in the AQIS *List of permitted live freshwater fish suitable for import* (Appendix D). Their guidelines state:

Only live ornamental fish included in the AQIS permitted species list are eligible for importation into Australia from approved countries.

Importers are advised to check that this list is current at the time of importation. Only fish appearing on this list on the day of import will be eligible for entry into Australia.

Learning activities

Importing fish

Purpose: To assess whether participants understand how the legislation applies to a real-life scenario and to prompt them to think about the legal requirements in real-life situations.

Scenario: Mr Guppy is the manager of Scales 'R' Us, a new and upcoming Australian aquarium store for rare and exotic ornamental fish enthusiasts. He has recently heard of a new fish species that has become a very popular aquarium fish in America: the hairy-backed gobbler. Mr Guppy did some research on the hairy-backed gobbler and discovered it was native to Tunisia, very easy to look after and available in a variety of vibrant colours and patterns.

The hairy-backed gobbler appears to be the perfect addition to Scales 'R' Us. Unfortunately Mr Guppy would have to import the fish from either America, or direct from Tunisia.

Questions: What steps should Mr Guppy take in order to see if he can import some hairy-backed gobbler individuals into Australia for sale in his store? What are some of the reasons he wouldn't be able to import this fish into Australia?

Answer

Mr Guppy would have to consult the AQIS *List of permitted live freshwater fish suitable for import*, which can be accessed online at <www.daff.gov.au/aqis>. If the hairy-backed gobbler is allowed to be imported into Australia (according to the list), Mr Guppy would then have to check that Tunisia is an approved country for aquarium fish importation. Mr Guppy can contact AQIS directly on 1800 020 504 or (02) 6272 3933. It is important that Mr Guppy check that the list is current at the time of importation as only fish appearing on the list on the day of import will be eligible for entry into Australia. In addition to this, Mr Guppy would also have to check that the hairy-backed gobbler is not listed as noxious in the state where he is planning to sell the fish. Mr Guppy would also have to ensure that he has all the relevant certificates and import permits to accompany his consignment.

Further questions for group discussion

- Q** Why would laws exist that prohibit the use of dead pest fish for bait? What impacts might the use of dead fish as bait have in the case of Mozambique tilapia?
- A** Female tilapia use their mouths to rear and protect juveniles, which can survive for a long time even after the adult female is dead. Therefore, dead fish may have live juveniles inside their mouths, which can survive and breed when returned to a waterbody. This action can spread pest fish from one waterbody to another.
- Q** Why is it illegal to sell or buy live noxious fish in New South Wales?
- A** The sale or possession of live noxious species is prohibited to reduce the risk of these species being introduced into New South Wales waterways, either accidentally or deliberately through illegal stocking or translocation.





FAQs

Can someone be fined for possessing a frozen specimen of a fish they think is tilapia if they have reported the fish to NSW DPI?

No, in New South Wales it is not illegal to possess a noxious fish if it is dead. However, you are encouraged to notify NSW DPI about the fish as soon as possible.

What should I do if I spot someone trying to sell live tilapia in New South Wales?

You are not encouraged to approach the seller about the legal ramifications of their actions. Instead, you should report this sort of activity immediately by contacting your local fisheries office or the Aquatic Biosecurity and Risk Management Unit of NSW DPI:
Telephone: (02) 4916 3877
Email: aquatic.pests@industry.nsw.gov.au
Web: www.dpi.nsw.gov.au and search for 'aquatic pest sighting'

Can people eat tilapia?

It is not illegal to consume tilapia in New South Wales, as long as the species isn't being possessed alive. However, you are strongly advised not to use the species for consumption, as it is in the best interests of the environment to keep the species out of circulation in Australia.

Can recreational anglers target tilapia?

Tilapia may be captured during recreational fishing; however, anglers are encouraged to euthanise and dispose of the fish immediately after capture. The most humane way of euthanising is to stun the fish with a sharp blow to the head just above the eyes, causing brain destruction. It can be disposed of in an appropriate rubbish bin or buried well away from the water. The most important things for recreational anglers to remember are not to use tilapia as bait, alive or dead, and not to release tilapia back into a waterway.

What do I do if I already have tilapia in my farm dam?

Phone NSW DPI on (02) 4916 3877 and speak to a pest fish officer who will provide appropriate recommendations and may organise an inspection of the waterbody if this is deemed necessary.