

SOUTH AUSTRALIA

**SCHEME OF MANAGEMENT (ABALONE FISHERIES) REGULATIONS
1991**

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REGULATIONS UNDER THE FISHERIES ACT 1982

Scheme of Management (Abalone Fisheries) Regulations 1991

being

No. 105 of 1991: *Gaz.* 27 June 1991, p. 2123¹

as varied by

No. 109 of 1992: *Gaz.* 25 June 1992, p. 1936²

No. 121 of 1993: *Gaz.* 24 June 1993, p. 2061³

No. 7 of 1994: *Gaz.* 17 February 1994, p. 486⁴

No. 99 of 1994: *Gaz.* 23 June 1994, p. 1816⁵

No. 149 of 1995: *Gaz.* 29 June 1995, p. 3164⁶

No. 218 of 1995: *Gaz.* 7 December 1995, p. 1579⁷

No. 150 of 1996: *Gaz.* 20 June 1996, p. 3007⁸

No. 129 of 1997: *Gaz.* 13 May 1997, p. 1957⁹

No. 143 of 1998: *Gaz.* 11 June 1998, p. 2560¹⁰

¹ Came into operation 27 June 1991: reg. 2.

² Came into operation 25 June 1992: reg. 2.

³ Came into operation 24 June 1993: reg. 2.

⁴ Came into operation 17 February 1994: reg. 2.

⁵ Came into operation 23 June 1994: reg. 2.

⁶ Came into operation 29 June 1995: reg. 2.

⁷ Came into operation 1 January 1996: reg. 2.

⁸ Came into operation 20 June 1996: reg. 2.

⁹ Came into operation 13 May 1997: reg. 2.

¹⁰ Came into operation 11 June 1998: reg. 2.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.

Citation

1. These regulations may be cited as the *Scheme of Management (Abalone Fisheries) Regulations 1991*.

Commencement

2. These regulations will come into operation on 27 June 1991.

Revocation

3. The following regulations are revoked:

(a) the *Scheme of Management (Western Zone Abalone Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1579), as varied;

(b) the *Scheme of Management (Central Zone Abalone Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1588), as varied;

and

(c) the *Scheme of Management (Southern Zone Abalone Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1597), as varied.

Interpretation

4. (1) In these regulations, unless the contrary intention appears—

"**abalone**" means abalone (*Haliotis* spp.) of all species:

"**abalone fishery**" means—

(a) the Western Zone Abalone Fishery;

(b) the Central Zone Abalone Fishery;

or

(c) the Southern Zone Abalone Fishery,

constituted by these regulations:

"**the Act**" means the *Fisheries Act 1982*:

"**Central Zone**" means the coastal waters between the meridians of longitude 136°30' east and 139° east but does not include the waters of the Coorong or any other waters inside the Murray Mouth:

"**coastal waters**" means the waters of the ocean and all bays, gulfs, straits, passages, inlets and estuaries of the State that are subject to the tidal influences of the sea:

"**director**", in relation to a body corporate, has the meaning assigned to that term by section 60 of the *Corporations Law*:

"**licence period**" means the period of 12 months commencing on 1 July in any year;

3.

"**proprietary company**" has the meaning assigned to that term by section 9 of the *Corporations Law*:

"**revoked regulations**" means the regulations revoked by regulation 3:

"**SARDI**" means the South Australian Research and Development Institute:

"**Southern Zone**" means the coastal waters east of the meridian of longitude 139° east but does not include the waters of the Coorong or any other waters inside the Murray Mouth:

"**Western Zone**" means the coastal waters west of the meridian of longitude 136°30' east.

(2) For the purposes of these regulations, a person is an associate of another if—

- (a) they are partners;
- (b) they are parties to a contract, arrangement or understanding, the purpose or effect of which is that one will act at the direction of, or in accordance with the wishes or instructions of, another when, for the purposes of trade or business, he or she engages or refrains from engaging in a fishing activity of a class that constitutes a fishery;
- (c) one is a body corporate and the other is a director or secretary of, or the holder of a share in, that body corporate;
- (d) they are bodies corporate that are related to each other for the purposes of the *Corporations Law*;
- (e) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;

or

- (f) a chain of relationships can be traced between them under one or more of the above paragraphs.

(3) For the purposes of these regulations—

- (a) "share" in relation to a body corporate has the meaning assigned to that term by section 9 of the *Corporations Law*;

(b) a person is the holder of a share in a body corporate if—

- (i) he or she is beneficially entitled to that share;

or

- (ii) he or she has a relevant interest in that share;

and

4.

- (c) a person has a relevant interest in a share in a body corporate if the person has a relevant interest in a share for the purposes of the *Corporations Law*.

(4) In these regulations, a reference to the taking of abalone includes a reference to an act preparatory to, or involved in the taking of abalone.

Note: For definition of divisional penalties see Appendix 2.

Constitution of Fisheries

5. (1) The following fisheries are constituted:

(a) the Western Zone Abalone Fishery;

(b) the Central Zone Abalone Fishery;

and

(c) the Southern Zone Abalone Fishery.

(2) The Western Zone Abalone Fishery consists of the taking of abalone in the waters of the Western Zone.

(3) The Central Zone Abalone Fishery consists of the taking of abalone in the waters of the Central Zone.

(4) The Southern Zone Abalone Fishery consists of the taking of abalone in the waters of the Southern Zone.

No further licences are to be granted

6. (1) The licences in respect of the Western Zone Abalone Fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the Western Zone Abalone Fishery subject to the provisions of the Act and these regulations, and no other licence may be granted in respect of the fishery.

(2) The licences in respect of the Central Zone Abalone Fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the Central Zone Abalone Fishery subject to the provisions of the Act and these regulations, and no other licence may be granted in respect of the fishery.

(3) The licences in respect of the Southern Zone Abalone Fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the Southern Zone Abalone Fishery subject to the provisions of the Act and these regulations, and no other licence may be granted in respect of the fishery.

Expiry of licences

7. A licence in respect of an abalone fishery expires on 30 June following the date of its last renewal.

Renewal of licences

8. (1) A licence in respect of an abalone fishery may be renewed by the Director on application made before the expiry of the licence or before the end of the licence period following the expiry of the licence.

(2) An application to renew a licence in respect of an abalone fishery must—

(a) be made by the holder of the licence or, if the licence has expired, by the person who last held the licence;

and

(b) be made in writing in a form approved by the Director and signed by the applicant.

(3) Where an application to renew a licence is made before the expiry of the licence, the renewal of the licence takes effect from the expiry of the licence.

(4) Where an application to renew a licence is made after the expiry of the licence, the renewal of the licence takes effect from the date on which the application is granted.

(5) The Director may not renew a licence unless the applicant has paid—

(a) —

(i) the renewal fee as specified in Schedule 1;

or

(ii) the first instalment of the renewal fee, in accordance with subregulation (6);

and

(b) the amount of any previous renewal fee remaining payable in respect of the licence, together with any additional amount payable for late payment of an instalment of the renewal fee.

(6) Where an application to renew a licence is made before or within three months after the expiry of the licence, the renewal fee may be paid by four instalments of 25 per cent payable on or before the date of renewal of the licence and 1 October, 1 January and 1 April following the date of renewal.

(7) The Director may impose a condition of a licence requiring payment of an additional amount not exceeding 10 per cent of the amount of any instalment not paid in full within 21 days after the instalment became payable.

(8) Where—

(a) an instalment of a renewal fee for a licence is not paid in full on or before the due date;

or

6.

- (b) an additional amount is required to be paid for late payment of an instalment of a renewal fee,

the amount unpaid may be recovered from the holder of the licence or the person who last held the licence as a debt due to the Crown.

Refund on surrender of licence

8a. Where a licence in respect of an abalone fishery is surrendered, the Director must, on application by the former licensee, refund an amount that bears to the renewal fee last paid in respect of the licence the same proportion as the number of complete months from the date of surrender to the day on which the following licence period commences bears to the number of months in the licence period during which the licence was surrendered.

Transfer of licence

9. (1) A licence in respect of an abalone fishery may be transferred with the consent of the Director.

(2) An application for consent to the transfer of a licence must be a joint application made by the holder of the licence and the transferee.

(3) The application—

- (a) must be made in writing in a form approved by the Director;
- (b) must contain the information specified in schedule 2;
- (c) must contain a nomination by the holder of the licence of the person to whom the licence is to be transferred;

and

(d) must be verified by statutory declaration.

(4) The application must be lodged with the Director together with—

- (a) the licence to be transferred;
- (b) a form of return as required by these regulations completed by the holder of the licence up to the date of application;

* * * * *

and

(d) the application fee specified in schedule 1.

(5) Before consenting to the transfer of a licence, the Director must be satisfied as to the following matters:

- (a) that the licence to be transferred has not been suspended;

7.

- (b) that no proceedings alleging an offence under the Act are pending or likely to be commenced in the State against the holder of the licence;
- (c) that the transfer is to one person only;
- (d) that the transferee is—
 - (i) a natural person of at least 15 years of age;or
 - (ii) a proprietary company;
- (e) that no conviction for an offence involving a breach of any legislation relating to fishing has, within the period of three years preceding the date of the application, been recorded in the State or elsewhere in Australia against the transferee, or, where the transferee is a company, against a director of the company;
- (f) that no proceedings alleging an offence involving a breach of any legislation relating to fishing are pending or likely to be commenced in the State or elsewhere in Australia against the transferee, or, where the transferee is a company, against a director of the company;
- (g) that the transferee does not already hold a licence in respect of an abalone fishery or any other fishery;
- (h) that the transferee is not an associate of a person who holds such a licence;
- (i) if any boat registered by endorsement of the licence is the subject of, is registered by endorsement of, or is otherwise referred to in, a licence, permit, authority or other entitlement to take fish granted under the Commonwealth Act or the laws of another State or Territory—
 - (i) that the entitlement is either to be transferred together with the fishery licence to the transferee or to be surrendered on or before the transfer of the fishery licence;or
 - (ii) that—
 - (A) the transfer of the fishery licence separately from the entitlement is not likely to result in fishing activities that endanger or overexploit fishery resources;and
 - (B) the person or body that granted the entitlement concurs with the separate transfer of the licence.

Registration of boats

10. (1) An application to register a boat to be used in an abalone fishery must be made in writing in a form approved by the Director and be accompanied by the applicant's licence in respect of the fishery.

(2) Before granting registration of the boat the Director must be satisfied that—

(a) the applicant is the holder of a licence in respect of the fishery;

and

(b) no other boat is registered by endorsement of the applicant's licence in respect of the fishery.

Registration as master

11. An application for registration of a person as the master of a boat must be made in writing in a form approved by the Director and be accompanied by the applicant's licence in respect of the fishery.

Revocation of registration

12. (1) The Director may, on application by the holder of a licence in respect of an abalone fishery, revoke any registration effected by endorsement of the licence.

(2) An application for revocation of a registration must be made in writing in a form approved by the Director and be accompanied by the licence on which the registration is endorsed.

Individual catch quota system

13. (1) In this regulation—

"**abalone quota**", in relation to a licence in respect of an abalone fishery and a species of abalone, means the maximum number of kilograms of abalone meat of that species that may be lawfully taken by the holder of the licence during a prescribed period, being the product of—

(a) the unit entitlement of that licence in respect of that species;

and

(b) the unit value for that fishery, that species and that prescribed period,

subject to any variation of the abalone quota of the licence applying during that prescribed period:

"**prescribed period**" means—

(a) in relation to the Western Zone Abalone Fishery or the Central Zone Abalone Fishery—a calendar year;

(b) in relation to the Southern Zone Abalone Fishery—a licence period;

"unit entitlement" means the number of abalone units for the time being allocated to a licence in respect of a species of abalone:

"unit value" means the number of kilograms of abalone meat determined by the Director to be the value of an abalone unit for an abalone fishery, a species of abalone and a prescribed period.

(2) The Director may impose or vary conditions on licences in respect of an abalone fishery fixing abalone quotas as follows:

- (a) all licences in respect of the fishery must be allocated the same number of abalone units in respect of a species of abalone (but the number of units may vary as between species of abalone);
- (b) the Director must, on the commencement of each prescribed period, determine the number of kilograms of abalone meat that is to be the value of an abalone unit for the fishery, a species of abalone and the prescribed period;
- (c) the conditions of any two licences in respect of the fishery may, on application made to the Director by the holders of those licences in a manner and form approved by the Director, be varied so as to increase (by whole units or part units) the unit entitlement of one of the licences in respect of a species of abalone and decrease the unit entitlement of the other licence by a corresponding number of units in respect of that species;
- (d) the Director may, if the total abalone catch of a species taken pursuant to a licence during a prescribed period exceeded the abalone quota of the licence for that species and prescribed period, vary the conditions of the licence so as to decrease the quota—
 - (i) where the catch exceeded the quota by not more than 10 kilograms of abalone meat—by one kilogram for each kilogram in excess of the quota;

or

 - (ii) where the catch exceeded the quota by more than 10 kilograms but not more than 50 kilograms of abalone meat—by two kilograms for each kilogram in excess of the quota;
- (e) the Director may, if—
 - (i) the holder of a licence has assisted in the carrying out of research work under the Act in relation to the fishery;

and

 - (ii) the Director considers that it is appropriate to compensate or reward the holder of the licence for the time spent in providing that assistance,

vary the conditions of the licence so as to increase the quota of the licence in respect of a species of abalone;

(f) any variation of—

(i) a unit entitlement made pursuant to paragraph (c);

or

(ii) an abalone quota made pursuant to paragraph (d) or (e),

must be expressed to apply only for the prescribed period during which the variation is made;

(g) unit entitlements and abalone quotas must not be varied except as provided by this regulation.

(3) Where—

(a) a court convicts the holder of a licence in respect of an abalone fishery of an offence of contravening a condition of the licence imposing an abalone quota on the licence;

and

(b) the conduct constituting the offence involved the taking of more than 50 kilograms of abalone meat in excess of the quota,

the court must make an order requiring the Director to vary the conditions of the licence so as to reduce the abalone quota of the licence for three prescribed periods following the conviction by one kilogram for each kilogram in excess of the quota for the prescribed period during which the offence was committed.

Furnishing of returns

14. (1) The holder of a licence in respect of an abalone fishery must—

(a) fill out a return, in a form determined by the Minister, in respect of each calendar month during the currency of the licence;

(b) include in the return such information as the Chief Executive Officer of SARDI, with the approval of the Minister, requires;

and

(c) date and sign the return and certify that the information contained in the return is complete and accurate, and post or deliver the return to the office of the Chief Executive Officer of SARDI within 15 days of the end of the month to which it relates.

Penalty: Division 6 fine.

(2) Where the holder of a licence in respect of an abalone fishery takes no abalone during a particular calendar month, he or she is required by subregulation (1) to furnish a return in respect of that period indicating that no abalone were taken.

(3) Where an abalone fishery has been closed for a whole calendar month, the holder of a licence need not furnish a return for that month.

Copies of returns must be made

15. The holder of a licence in respect of an abalone fishery must—

(a) make a copy of each return that he or she fills out pursuant to these regulations before the return is sent or delivered to the Chief Executive Officer of SARDI;

and

(b) retain the copy for the period of one year from the last day of the month to which the return relates.

Penalty: Division 6 fine.

SCHEDULE 1
Fees

1. The following fees are payable under the Act and these regulations:

\$

(a)	on application for the renewal of a licence—	
(i)	in respect of the Western Zone Abalone Fishery	48 800
(ii)	in respect of the Central Zone Abalone Fishery	71 036
(iii)	in respect of the Southern Zone Abalone Fishery	56 854
(b)	on application for the transfer of a licence in respect of any abalone fishery	200

SCHEDULE 2
*Information required in application for
consent to licence transfer*

The following information is to be contained in an application for consent to transfer a licence:

1. Full name of the holder of the licence.
2. The licence number.
3. Full name, business address and telephone number of the transferee and, where the transferee is a natural person, the transferee's date of birth and residential address.
4. The price to be paid for the transfer of—
 - (a) the licence;and
 - (b) any boat, equipment, registration or other matter or thing being transferred as part of the transaction.
5. Details of any boat to be used by the transferee to take fish including—
 - (a) its length (where surveyed—surveyed length);
 - (b) the number of its current survey certificate;
 - (c) the year of its construction;
 - (d) the material of which its hull is made;
 - (e) its main colour;
 - (f) its name;
 - (g) its registration number.
6. Details of the number of persons who are to assist the transferee to take fish from the boat or otherwise.
7. Details of the person who is to be the registered master of the boat.
8. Details of any device to be used to take fish.
9. Statements by the transferee as to—
 - (a) whether or not the transferee holds a licence in respect of any fishery;
 - (b) whether or not the transferee is the associate of a person who holds a licence in respect of any fishery;
 - (c) whether or not the transferee, or where the transferee is a company, a director of the company, is a party to a contract, arrangement or understanding, the purpose or effect of which is that the transferee or director will act at the direction of, or in accordance with, the wishes or instruction of another in relation to the transferee's activities pursuant to the licence;

14.

(d) whether or not the transferee, or where the transferee is a company, a director of the company, has, during the three years immediately preceding the date of the application, been convicted by a court of a State or Territory of the Commonwealth of an offence involving a breach of legislation relating to fishing;

and

(e) whether or not the transferee, or where the transferee is a company, a director of the company, has, at the date of the application, any proceedings alleging an offence involving a breach of any legislation relating to fishing pending or likely to be commenced against the transferee or director.

9. 10. Details in respect of any of the statements made by the transferee in respect of the matters referred to in clause

* * * * *

APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

Transitional provision from Regulation No. 109 of 1992, reg. 8

8. (1) The licence renewal fee prescribed in respect of a fishery by schedule 1 of the principal regulations as varied by these regulations applies in relation to a licence year for that fishery commencing after the commencement of these regulations.

(2) Notwithstanding regulation 6, the licence renewal fee prescribed in respect of a fishery by schedule 1 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence year for that fishery that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**", in respect of a fishery, means the period of 12 months from the date of expiry of licences in respect of the fishery in one year to the date of expiry of the licences in the next year.

Transitional provision from Regulation No. 121 of 1993, reg. 7

7. (1) The licence renewal fee prescribed in respect of a fishery by schedule 1 of the principal regulations as varied by these regulations applies in relation to a licence year for that fishery commencing after the commencement of these regulations.

(2) Notwithstanding regulation 6, the licence renewal fee prescribed in respect of a fishery by schedule 1 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence year for that fishery that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**", in respect of a fishery, means the period of 12 months from the date of expiry of licences in respect of the fishery in one year to the date of expiry of the licences in the next year.

Transitional provision from Regulation No. 99 of 1994, reg. 4

4. (1) The licence renewal fee prescribed in respect of a fishery by schedule 1 of the principal regulations as varied by these regulations applies in relation to a licence year for that fishery commencing after the commencement of these regulations.

(2) Notwithstanding regulation 3, the licence renewal fee prescribed in respect of a fishery by schedule 1 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence year for that fishery that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**", in respect of a fishery, means the period of 12 months from the date of expiry of licences in respect of the fishery in one year to the date of expiry of the licences in the next year.

Transitional provision from Regulation No. 149 of 1995, reg. 9

9. (1) A licence renewal fee prescribed by schedule 1 of the principal regulations as varied by these regulations applies in relation to a licence period commencing after the commencement of these regulations.

(2) Notwithstanding regulation 8, a licence renewal fee prescribed by schedule 1 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence period commencing before the commencement of these regulations.

(3) In this regulation—

"**licence period**" has the same meaning as in the principal regulations as varied by these regulations.

(Transitional provision from Regulation No. 129 of 1997, reg. 4)

4. (1) A licence renewal fee prescribed by schedule 1 of the principal regulations as varied by these regulations applies in relation to a licence period commencing after the commencement of these regulations.

(2) Despite regulation 3, a licence renewal fee prescribed by schedule 1 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence period that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence period**" has the same meaning as in the principal regulations.

(Transitional provision from Regulation No. 143 of 1998, reg. 7)

7. (1) A licence renewal fee prescribed by schedule 1 of the principal regulations as varied by these regulations applies in relation to a licence period commencing after the commencement of these regulations.

(2) Despite regulation 6, a licence renewal fee prescribed by schedule 1 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence period that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence period**" has the same meaning as in the principal regulations.

Legislative History

Regulation 4(1):	definition of "licence period" inserted by 149, 1995, reg. 3; substituted by 143, 1998, reg. 3
Regulation 7:	definition of "proprietary company" inserted by 7, 1994, reg. 3
Regulation 8(1):	definition of "SARDI" inserted by 121, 1993, reg. 3
Regulation 8(6):	substituted by 149, 1995, reg. 4; 143, 1998, reg. 4
Regulation 8a:	varied by 149, 1995, reg. 5(a)
Regulation 9(4)(c):	substituted by 149, 1995, reg. 5(b); 143, 1998, reg. 5
Regulation 9(5):	inserted by 109, 1992, reg. 3; substituted by 149, 1995, reg. 6
Regulation 11:	revoked by 109, 1992, reg. 4
	substituted by 7, 1994, reg. 4
	substituted by 7, 1994, reg. 5

17.

Regulation 13(1):	definition of "abalone quota" varied by 149, 1995, reg. 7(a); 218, 1995, reg. 3(a) definition of "prescribed period" inserted by 218, 1995, reg. 3(b) definition of "licence year" revoked by 149, 1995, reg. 7(b) definition of "unit value" varied by 149, 1995, reg. 7(c); 218, 1995, reg. 3(c)
Regulation 13(2):	varied by 7, 1994, reg. 6(a); 149, 1995, reg. 7(d)-(f); 218, 1995, reg. 3(d)-(f)
Regulation 13(3):	inserted by 7, 1994, reg. 6(b); varied by 149, 1995, reg. 7(g), (h); 218, 1995, reg. 3(g), (h)
Regulation 14(1):	varied by 109, 1992, reg. 5; 121, 1993, reg. 4.
Regulation 15:	varied by 121, 1993, reg. 5.
Schedule 1:	substituted by 109, 1992, reg. 6.; 121, 1993, reg. 6; 99, 1994, reg. 3; varied by 149, 1995, reg. 8; 150, 1996, reg. 3; 129, 1997, reg. 3; 143, 1998, reg. 6
Schedule 2	
Item 3:	substituted by 7, 1994, reg. 7(a)
Item 9:	varied by 7, 1994, reg. 7(b)
Schedule 3:	revoked by 109, 1992, reg. 7.

APPENDIX 2**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25