

South Australia

Aquaculture Regulations 2016

under the *Aquaculture Act 2001*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Aquaculture Regulations 2016*.

3—Interpretation

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

accredited laboratory means a laboratory accredited by the National Association of Testing Authorities and capable of detecting oxidised nitrogen, ammonia and soluble phosphorous at concentrations of 0.1 mg/L or less and total suspended solids at 5 mg/L or less;

Act means the *Aquaculture Act 2001*;

aquaculture strategy means a sector-based aquaculture strategy or an individual aquaculture strategy;

aquaculture waste means waste generated in the course of carrying on aquaculture, but does not include waste created by living aquatic organisms;

category A licence, category B licence, category C licence or category D licence—see regulation 37;

disease includes any bacterium, virus, parasite, insect or other organism or agent capable of causing disease in animals or humans;

GDA94 means the *Geocentric Datum of Australia 1994*;

individual aquaculture strategy—see regulation 20;

large marine vertebrates means sharks, seals, sea lions, dolphins and whales;

lease area means the area of a lease described on the public register under section 80 of the Act;

licence area means the area of a licence described on the public register under section 80 of the Act;

licensee means the holder of an aquaculture licence;

Minister's website means a website determined by the Minister;

prescribed wild caught tuna means members of the genera *Allothunnus*, *Auxis*, *Euthunnus*, *Katsuwonus*, and *Thunnus* that have been taken from the wild;

reporting day, in relation to a licence, means—

- (a) in the case of a licence that authorises the farming of aquatic organisms that require regular feeding—31 January; or
- (b) in any other case—
 - (i) the day approved as the reporting day by the Minister by condition of the licence or by notice in writing to the licensee; or
 - (ii) if no such day has been approved—31 August;

reporting year, in relation to a licence, means—

- (a) if the licence authorises the farming of aquatic organisms that require regular feeding—a period of 12 months commencing on 1 December; or
- (b) in any other case—a period of 12 months commencing on 1 July;

sea cage means a floating farming structure used for aquaculture comprised of or incorporating a net;

sector-based aquaculture strategy—see regulation 19;

WGS84 means the *World Geodetic System 1984*;

zone means an aquaculture zone or an aquaculture exclusion zone.

- (2) The mortality rate of aquatic organisms farmed under a licence will be taken to be **unusually high** if—
 - (a) in the case of a class of aquatic organisms for which the Minister has, by notice in the Gazette, specified a mortality percentage (when measured in a specified manner) for the purposes of this subregulation—at least that percentage of such aquatic organisms farmed under the licence has died as specified; or
 - (b) in any other case—it is at least 20% higher over a period of 24 hours than the usual average mortality rate for those organisms (being the mortality rate measured daily over the preceding 3 months).
- (3) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice published in the Gazette under subregulation (2)(a).

4—Approvals by Minister

- (1) An approval given by the Minister under these regulations to a licensee may be subject to conditions.
- (2) A licensee must comply with the conditions of an approval given to the licensee by the Minister under these regulations.

Maximum penalty: \$10 000.

Expiation fee: \$1 000.

Part 2—General provisions supporting Act

4B—Meaning of *variation of licence conditions*

For the purposes of the definition of ***variation of licence conditions*** in section 3 of the Act, the following matters are excluded from the ambit of the definition:

- (a) the division of a licence area into separate licence areas in accordance with regulation 34;
- (b) the amalgamation of licence areas into a single licence area in accordance with regulation 35.

5—Procedures for making aquaculture policies

For the purposes of section 12(4)(a) of the Act, the following bodies are prescribed:

- (a) Conservation Council of South Australia Incorporated;
- (b) Local Government Association of South Australia;
- (c) RecFishSA;
- (d) South Australian Aquaculture Council;
- (e) South Australian Native Title Services Ltd;
- (f) Wildcatch Fisheries SA Incorporated;
- (g) if the aquaculture policy is expressed to apply only in relation to 1 or more zones or areas—
 - (i) any registered representatives of native title holders or claimants to native title in land comprising or forming part of a zone or area to which the policy applies; and
 - (ii) any person holding an aquaculture licence or aquaculture lease over an area comprising or forming part of a zone or area to which the policy applies; and
 - (iii) any regional NRM Board (within the meaning of the *Natural Resources Management Act 2004*) responsible for a region comprising or forming part of a zone or area to which the policy applies; and
 - (iv) a person or body that, in the opinion of the Minister, promotes economic development in a region comprising or forming part of a zone or area to which the policy applies;
- (h) if the aquaculture policy is not expressed to apply only in relation to 1 or more zones or areas—all regional NRM Boards (within the meaning of the *Natural Resources Management Act 2004*).

6—Certain amendments may be made by Gazette notice only

For the purposes of section 14(1)(c) of the Act, the Minister may, if of the opinion that there is ambiguity as to the boundary of an aquaculture zone or aquaculture exclusion zone, remove the ambiguity by amending the policy by notice in the Gazette under that section.

7—Reference of matters to EPA

For the purposes of section 59(3) of the Act, the prescribed period is 6 weeks.

8—Aquaculture Fund

For the purposes of section 79(3) of the Act—

- (a) the prescribed percentage of fees (other than expiation fees) paid under the Act is 100%; and
- (b) the prescribed percentage of penalties recovered in respect of offences against the Act is 100%.

9—Fisheries officers and their powers

For the purposes of section 82(2) of the Act, section 81(3)(a) of the *Fisheries Management Act 2007* is to be read as follows:

- (a) the premises are used by a licensee for activities authorised by the licence; or

Part 3—Regulation of licensed activities

Division 1—General requirements

10—Use of chemical substances

- (1) Subject to subregulation (2), a licensee must ensure that a chemical substance is not used for therapeutic or prophylactic purposes or as an antifoulant in the course of aquaculture carried on under the licence unless—
 - (a) in the case of a registered veterinary chemical product within the meaning of the *Agricultural and Veterinary Products (Control of Use) Act 2002*, the product is used in accordance with—
 - (i) the instructions on the approved label for the product within the meaning of that Act; or
 - (ii) a permit within the meaning of that Act; or
 - (iii) the written approval of the Minister after consultation with the Environment Protection Authority; or
 - (b) in any other case—the substance is used in accordance with the written approval of the Minister after consultation with the Environment Protection Authority.

Maximum penalty: \$10 000.

Expiation fee: \$1 000.

- (2) The restrictions under subregulation (1) do not apply in relation to the use of a chemical substance for therapeutic or prophylactic purposes in circumstances of an emergency, provided that—
 - (a) a veterinary surgeon has prescribed the use of that substance in relation to the licensee's stock to avoid imminent stock loss in those circumstances; and
 - (b) the licensee has obtained the Minister's prior approval for the use of the substance in those circumstances.

- (3) In this regulation—

antifoulant means a chemical substance designed for application to water submerged surfaces to inhibit the growth of plants, animals or other organisms on those surfaces;

veterinary surgeon means a person registered as a veterinary surgeon under the *Veterinary Practice Act 2003*.

11—Aquaculture waste

A licensee must ensure that—

- (a) aquaculture waste does not cause an unsightly or offensive condition at the licence area; and
- (b) aquaculture waste is secured or treated in a manner designed to prevent it being blown, washed or swept off the licence area.

Maximum penalty: \$5 000.

Expiation fee: \$500.

12—Recovery of aquaculture equipment or waste blown, washed or swept off-site

- (1) A licensee must ensure that, if aquaculture waste or a farming structure or any other aquaculture equipment used to secure, anchor or mark the position of a farming structure, is blown, washed or swept off the licence area, the waste, structure or equipment is recovered as soon as practicable but in any event within 7 days.

Maximum penalty: \$5 000.

Expiation fee: \$500.

- (2) A licensee or some other person carrying on aquaculture under the licence must, on request by a person authorised in writing by the Minister, remove aquaculture waste or a farming structure or any other aquaculture equipment that has not been recovered (as required under subregulation (1)) and deal with it as requested.

Maximum penalty: \$5 000.

Expiation fee: \$500.

13—Notification of unusually high mortality rate and duty to isolate unaffected organisms

- (1) If the mortality rate for aquatic organisms farmed under a licence is unusually high (see regulation 3(2)) and the licensee knows, or ought reasonably to know, that the organisms are or may be affected with a disease, the licensee must take the following action:

- (a) the licensee must, immediately after becoming aware of the unusually high mortality rate, notify the Minister, by telephone call to the number provided to the licensee for the purpose, of that fact and of as many of the prescribed details as are known at the time of the notification;
- (b) the licensee must, as soon as practicable after making the telephone call—
 - (i) take all reasonable measures to isolate aquatic organisms apparently affected from aquatic organisms not apparently affected; and
 - (ii) give the Minister notice in writing of the prescribed details.

Maximum penalty: \$10 000.

Expiation fee: In the case of an offence against paragraph (a) or (b)(ii)—\$1 000.

- (2) In this regulation—

prescribed details, in relation to the mortality rate of aquatic organisms farmed under a licence, means—

- (a) the licence number;
 - (b) the name of the species of aquatic organisms;
 - (c) the number or biomass (or an estimate of the number or biomass) of aquatic organisms that have died;
 - (d) details of any clinical signs observable in the organisms prior to death;
 - (e) the number or biomass (or an estimate of the number or biomass) of aquatic organisms that show similar clinical signs but have not died;
 - (f) any known or suspected cause of death;
 - (g) details of the measures taken to control or eradicate the disease;
 - (h) details of all measures taken to isolate aquatic organisms apparently affected from aquatic organisms not apparently affected;
 - (i) details of any other circumstances known or suspected to be contributing factors such as extreme weather conditions, power failures, poor water quality or water temperature.
- (3) For the purposes of subregulation (1), if the cause of an unusually high mortality rate for aquatic organisms farmed under a licence is not immediately apparent, the licensee will be taken to know that the aquatic organisms may be affected with a disease.

14—Control of aquatic organisms affected with disease

- (1) If a licensee knows, or ought reasonably to know, that an aquatic organism proposed to be introduced into the licence area is or may be affected with a disease, the licensee must ensure that the aquatic organism is not introduced into the licence area without the prior written approval of the Minister.

Maximum penalty: \$10 000.

- (2) If a licensee knows, or ought reasonably to know, that an aquatic organism being farmed under the licence is or may be affected with a disease, the licensee must ensure that the aquatic organism is not removed from the licence area unless—
- (a) it is removed for testing for disease; or
 - (b) it is removed for disposal (other than disposal by sale or supply to another person); or
 - (c) it is removed in accordance with the written approval of the Minister obtained by the licensee.

Maximum penalty: \$10 000.

- (3) For the purposes of this regulation, if the mortality rate for aquatic organisms farmed under a licence is unusually high (see regulation 3(2)) and the cause is not immediately apparent, the licensee will be taken to know that the aquatic organisms may be affected with a disease.

15—Stock register

- (1) A licensee must maintain a stock register in accordance with this regulation.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) The stock register must contain (in a clear and legible form)—
 - (a) the following information in respect of aquatic organisms supplied to the licensee:
 - (i) the date on which the aquatic organisms were received by the licensee;
 - (ii) the name and address of the person who supplied the aquatic organisms;
 - (iii) the species of aquatic organisms;
 - (iv) the number or biomass of aquatic organisms received;
 - (v) the age or developmental stage of the aquatic organisms when received;
 - (vi) details identifying the place at which the aquatic organisms were last reared before supply or the place at which the aquatic organisms were collected; and
 - (b) the following information in respect of aquatic organisms collected by the licensee:
 - (i) details identifying the authority within the meaning of the *Fisheries Management Act 2007* under which the aquatic organisms were collected;
 - (ii) the date the aquatic organisms were collected;
 - (iii) details identifying the place at which the aquatic organisms were collected;
 - (iv) the species of aquatic organisms;
 - (v) the number or biomass of aquatic organisms collected; and
 - (c) the following information in respect of the movement of aquatic organisms from the licensee's licence area to another licence area (whether or not the 2 licence areas are occupied by the same licensee):
 - (i) the date of the movement of the aquatic organisms;
 - (ii) the name and address of the licensee receiving the aquatic organisms;
 - (iii) the species and the number or biomass of the aquatic organisms; and
 - (d) the following information in respect of the supply of aquatic organisms by the licensee to another person (other than in circumstances referred to in paragraph (c)):
 - (i) the date on which the aquatic organisms were supplied;
 - (ii) the name and address of the person to whom the aquatic organisms were supplied;

- (iii) the species and the number or biomass of the aquatic organisms; and
 - (e) the following information in respect of aquatic organisms that have died in the course of aquaculture carried on by the licensee:
 - (i) the species of aquatic organisms;
 - (ii) the date (or an estimate of the date) the aquatic organisms died;
 - (iii) the number or biomass (or an estimate of the number or biomass) of aquatic organisms that have died;
 - (iv) the age or developmental stage of the aquatic organisms at death;
 - (v) the date on which the aquatic organisms were last checked;
 - (vi) a description of how and where the aquatic organisms were disposed of; and
 - (f) details of treatment administered for therapeutic or prophylactic purposes to aquatic organisms kept under the licence including—
 - (i) the reasons for the treatment; and
 - (ii) the dates on which the treatment was administered; and
 - (iii) the name (including trade or patent name) of each substance used as part of the treatment and the dosages or amounts administered; and
 - (iv) information that identifies the aquatic organisms that received treatment by reference to tank or cage number or by other means.
- (3) A record required to be entered in the stock register must, subject to subregulation (4), be entered within 7 days after the event to which it relates.
- (4) However, if a licensee has notified the Minister of an unusually high mortality rate under regulation 13, the Minister may require the licensee to update the stock register as required within 24 hours after the notification.
- (5) A record entered in the stock register must be retained for 5 years from the date on which it was entered.
- (6) A person who is required to keep a record under this regulation must, at the request of a person authorised in writing by the Minister, produce the record for inspection.

16—Periodic returns

A licensee must, on a date or dates determined by the Minister in each year, provide the Minister with a periodic return containing such information as the Minister requires in the manner and form determined by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$500.

Division 2—Additional requirements relating to aquaculture in State waters

Subdivision 1—Application of Division

17—Application of Division

This Division applies to aquaculture leases and to aquaculture licences authorising aquaculture in an area comprised of State waters or State waters and adjacent land within the meaning of the *Harbors and Navigation Act 1993*.

Subdivision 2—Aquaculture strategies

18—Aquaculture strategies

- (1) A licensee must ensure that activities under the licence conform with a sector-based aquaculture strategy adopted by the licensee, or an individual aquaculture strategy approved in relation to the licensee by the Minister, under this Subdivision.
Maximum penalty: \$10 000.
- (2) An aquaculture strategy—
 - (a) must specify the licensee, or class of licensee (by reference to a particular industry sector), to which the strategy applies; and
 - (b) must specify any 1 or more of the following strategies that are to apply to the licensee or class of licensee in the course of aquaculture carried on under the licence:
 - (i) a strategy for maintaining farming structures and other aquaculture equipment;
 - (ii) a strategy for avoiding or minimising—
 - (A) disease or escape of aquaculture stock; or
 - (B) adverse impacts on, or adverse interactions with seabirds or large marine vertebrates;
 - (iii) a response plan for dealing with—
 - (A) the escape of aquaculture stock; or
 - (B) adverse impacts on, or adverse interactions with, seabirds or large marine vertebrates;
 - (iv) a strategy for dealing with dead aquaculture stock in or around farming structures or elsewhere in the licence area;
 - (v) a strategy for inspections or monitoring by the licensee of the licence area;
 - (vi) a strategy for dealing with any other matter considered appropriate by the Minister; and
 - (c) must specify whether regulation 26 or 27 apply in relation to the licensee or class of licensee; and

- (d) may include any other matter considered appropriate by the Minister.

19—Sector-based aquaculture strategies

- (1) The Minister may publish, on the Minister's website, an aquaculture strategy that applies to a particular class of licensee (a *sector-based aquaculture strategy*).
- (2) If a sector-based aquaculture strategy is in place, each licensee who belongs to the class of licensee to which it applies must adopt the sector-based aquaculture strategy.
- (3) Subject to regulation 21, a sector-based aquaculture strategy may be amended—
 - (a) following consultation with the relevant industry sector and any public authority likely to be affected by the strategy; and
 - (b) by publishing the amendment on the Minister's website.
- (4) An amendment under subregulation (3) of a sector-based strategy is taken to be adopted by each licensee who belongs to the class of licensee to which the strategy applies and to form part of his or her sector-based aquaculture strategy on its publication or at such later date as may be specified on the Minister's website.

20—Individual aquaculture strategies

- (1) If a sector-based aquaculture strategy is not in place in relation to an industry sector to which a licensee belongs, the licensee must have an aquaculture strategy approved by the Minister (an *individual aquaculture strategy*).
- (2) Subject to regulation 21, if, at any time, the Minister is not satisfied as to the adequacy of an individual aquaculture strategy, the Minister may require the strategy to be amended and resubmitted for approval within a specified period in a modified form (which may be specified by the Minister).
- (3) If a licensee fails to resubmit a strategy as required, the licensee is guilty of an offence.
Maximum penalty: \$5 000.
Expiation fee: \$500.
- (4) Before requiring an individual aquaculture strategy to be resubmitted, the Minister must give the licensee written notice of the proposed action, inviting the licensee to make written submissions in relation to the proposed action within a period specified in the notice (being not less than 14 days from the day on which the notice is given to the licensee).

21—Aquaculture strategies may be subject to urgent amendment without prior notice or consultation

- (1) If the Minister is of the opinion that action needs to be taken without delay in order to avoid, remedy or mitigate an adverse effect on the environment resulting from farming practices or other conduct by licensees, the Minister may, despite regulation 19 or 20, by notice published on the Minister's website, declare that specified licensees to whom the declaration applies—
 - (a) must discontinue, or not commence—
 - (i) specified farming practices or other specified conduct; or
 - (ii) the use of specified aquaculture equipment; or

- (b) must take specified action in a specified manner,
in the course of aquaculture carried on under the licence.
- (2) A declaration under subregulation (1)—
 - (a) takes effect on its publication on the Minister's website or at such later date as may be specified in the declaration; and
 - (b) remains in place according to its terms for a specified period not exceeding 12 months; and
 - (c) while in place, is taken to be adopted by, and form part of an aquaculture strategy of, each licensee to whom the declaration applies.
- (3) In this regulation—
conduct includes a failure to act.

Subdivision 3—Environmental reporting

22—Annual reporting on general environmental matters

A licensee must, on or before the reporting day in each year, furnish a report to the Minister—

- (a) containing the following details (or so many of the following details as may be specified by notice given to the licensee by the Minister) in relation to the preceding reporting year:
 - (i) the location (using WGS84 or GDA94 datum) of farming structures in the licence area;
 - (ii) the number, dimensions or spacing of farming structures in the licence area;
 - (iii) details about farming practices carried on by the licensee, for example—
 - (A) the amount and type of any supplemental feed used in the licence area; or
 - (B) the amount and type of chemical substances used in the licence area; or
 - (C) the dates on which the chemical substances were used; or
 - (D) in the case of aquatic organisms requiring regular feeding—an estimate of the number and biomass of such organisms in the licence area; or
 - (E) the scale or intensity of farming in the licence area;
 - (iv) if the author of the report is not the licensee—the author's name and address;
 - (v) any other details required by the Minister and specified in the notice; and

- (b) accompanied by a copy of the most recent report (if any) on the aquatic environment prepared by the licensee under regulation 23.

Maximum penalty: \$7 500.

Expiation fee: \$750.

23—Periodic reporting on aquatic environment

- (1) The Minister may, by notice in writing to a licensee, require the licensee to prepare, within a period specified in the notice, a report on the condition of the aquatic environment in or around the licence area.
- (2) A notice under this regulation may require the licensee—
 - (a) to collect evidence of the condition of the aquatic environment, by—
 - (i) taking, in a specified manner and form, photographs or other visual images or recordings of or relating to aquatic flora and fauna or the sea floor; or
 - (ii) taking and analysing, in a specified manner (including by the use of services of an accredited laboratory), specified samples of aquatic flora and fauna or the sea floor; or
 - (iii) taking any other specified samples or measures; and
 - (b) to prepare and submit to the Minister, in a specified manner and form, a report containing the specified details about the condition of the aquatic environment in or around the licence area found by the evidence collected under paragraph (a).
- (3) A licensee must comply with a notice given to the licensee under subregulation (1).

Maximum penalty: \$7 500.

Expiation fee: \$750.

Subdivision 4—Miscellaneous

24—Marking-off lease areas

The holder of an aquaculture lease must ensure that—

- (a) the boundaries of the marked-off area of the lease are marked-off or indicated in the manner required under the conditions of the lease or a corresponding licence; or
- (b) the structures or equipment used to mark off or indicate the boundaries of the marked-off area of the lease under the conditions of the lease or a corresponding licence are maintained in good working condition.

Maximum penalty: \$5 000.

Expiation fee: \$500.

25—Farming structures

A licensee must comply with the following requirements:

- (a) each sea cage must be marked with the licence number, or a unique identifier for which the licensee has obtained the Minister's written approval, in text that—
 - (i) is at least 70 millimetres in height; and
 - (ii) is clearly visible above the water line;
- (b) farming structures being used for aquaculture must—
 - (i) except when being placed into position, moved or recovered—
 - (A) be securely fixed or moored in place so as to remain wholly within the licence area; and
 - (B) be anchored in a manner that minimises the impact on the benthos; and
 - (ii) be maintained in good working condition;
- (c) equipment used to secure, anchor or mark the position of a farming structure must be located wholly within the licence area;
- (d) if the aquaculture involves the use of a floating culture unit in subtidal waters—the distance between the unit and the sea floor must be at least 3 metres at all times unless otherwise approved in writing by the Minister;
- (e) stocked sea cages must not be located in the same place that stocked sea cages have been located within the preceding 12 months unless otherwise approved in writing by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$500.

26—Notification of escape of stock or damage that may lead to escape of stock

- (1) Subject to subregulation (2), if aquaculture stock has escaped, or a farming structure or other equipment has been damaged that may lead to the escape of aquaculture stock, the licensee must take the following action:
 - (a) the licensee must as soon as practicable after becoming aware of the escape or damage, take all reasonable measures to contain or prevent the escape or further escape of stock;
 - (b) the licensee must, within 4 hours after becoming aware of the escape or damage, notify the Minister, by telephone call to the number provided to the licensee for the purpose, of so many of the prescribed details in relation to the escape or damage as are required by the Minister, and known by the licensee, at the time;
 - (c) the licensee must, within 2 days after becoming aware of escape or damage, give the Minister written notice of the prescribed details in relation to the escape or damage.

Maximum penalty: \$5 000.

Expiation fee: In the case of an offence against paragraph (c)—\$500.

- (2) A licensee is not required to comply with subregulation (1) if the licensee's aquaculture strategy specifies that this regulation does not apply.
- (3) In this regulation—
- prescribed details***, in relation to the escape of stock or damage to a farming structure or other equipment, means the following:
- (a) the species of aquatic organisms involved;
 - (b) the date (or estimated date) on which the escape or damage took place;
 - (c) the number and biomass (or estimated number and biomass) of aquatic organisms that have escaped;
 - (d) the age or developmental stage of the aquatic organisms at the time of their escape;
 - (e) details of the circumstances in which the escape or damage took place;
 - (f) any action taken to contain or prevent the escape of the stock or otherwise address the escape or damage and the outcome of that action.

27—Notification of entanglement or confinement of protected animals

- (1) Subject to subregulation (2), if a protected animal becomes entangled or otherwise confined in a farming structure or other equipment used in connection with aquaculture carried on by a licensee, the licensee must take the following action:
- (a) the licensee must, immediately after becoming aware of the entanglement or confinement, notify the Minister, by telephone call to the number provided to the licensee for the purpose, of so many of the prescribed details in relation to the entanglement or confinement as are known at the time of the notification;
 - (b) the licensee must, within 2 days after becoming aware of the entanglement or confinement, give the Minister written notice of the prescribed details in relation to the entanglement or confinement.

Maximum penalty: \$7 500.

Expiation fee: In the case of an offence against paragraph (b)—\$500.

- (2) A licensee is not required to comply with subregulation (1) if the licensee's aquaculture strategy specifies that this regulation does not apply.
- (3) In this regulation—
- prescribed details***, in relation to the entanglement or confinement of an animal, means the following:
- (a) the species of animal;
 - (b) the expected period of entanglement or confinement;
 - (c) the condition of the animal (to the extent known or reasonably ascertainable);
 - (d) details of the circumstances in which the entanglement took place;
 - (e) any action taken to free the animal and the outcome of that action;

protected animal means—

- (a) a protected animal within the meaning of the *National Parks and Wildlife Act 1972*; or
- (b) a white shark (*Carcharodon carcharias*).

Division 3—Additional requirements relating to aquaculture not in State waters

28—Application of Division

This Division applies to aquaculture licences authorising aquaculture in an area not comprised of State waters or State waters and adjacent land within the meaning of the *Harbors and Navigation Act 1993*.

29—Annual reporting on general environmental matters

A licensee must, on or before the reporting day in each year, furnish a report to the Minister—

- (a) containing the following details (or so many of the following details as may be specified by notice given to the licensee by the Minister) in relation to the preceding reporting year:
 - (i) details about water discharged from farming structures, for example—
 - (A) a description of where and how the water has been discharged (including details of bodies of water to which it has been discharged); or
 - (B) a statement of whether the water has been treated before discharge and, if it has, a statement of how the water has been treated; or
 - (C) for each month—the volume in litres of water discharged;
 - (ii) details about farming practices carried on by the licensee, for example—
 - (A) the amount and type of supplemental feed used in connection with each farming structure in the licence area; or
 - (B) the amount and type of any chemical substances used in the licence area; or
 - (C) the dates on which the chemical substances were used;
 - (iii) if the author of the report is not the licensee—the author's name and address;
 - (iv) any other details required by the Minister and specified in the notice; and

- (b) accompanied by a copy of the most recent report (if any) prepared by the licensee under regulation 30 containing the results (if any) of the testing of the water samples provided by the laboratory.

Maximum penalty: \$7 500.

Expiation fee: \$750.

30—Periodic reporting on aquatic environment

- (1) The Minister may, by notice in writing to a licensee, require the licensee to prepare, within a period specified in the notice, a report on the condition of the aquatic environment in or around the licence area.
- (2) A notice under this regulation may require the licensee—
 - (a) to collect evidence of the condition of the aquatic environment by—
 - (i) taking and analysing, in a specified manner (including by the use of services of an accredited laboratory), specified samples of water used for aquaculture under the licence; or
 - (ii) taking any other specified samples or measures; and
 - (b) to prepare and submit to the Minister, in a specified manner and form, a report containing the specified details about the condition of the aquatic environment in or around the licence area found by the evidence collected under paragraph (a).
- (3) A licensee must comply with a notice given under subregulation (1).

Maximum penalty: \$7 500.

Expiation fee: \$750.

Division 4—Exemptions from environmental reporting requirements

31—Exemptions from environmental reporting requirements

- (1) The Minister may, on application by a licensee, exempt the licensee from the application of regulation 22 or 29 in respect of a licence area for a period not exceeding 2 years if satisfied—
 - (a) that no aquaculture is to be carried on in that area during that period; or
 - (b) that the scale or intensity of aquaculture to be carried on in that area during that period is so low as to have a negligible or minimal adverse impact on the environment.
- (2) An application for an exemption under this regulation must be made in the manner and form determined by the Minister and must be accompanied by the prescribed fee.
- (3) An exemption under this regulation may be granted unconditionally or subject to conditions.
- (4) An exemption under this regulation must be in writing and must specify—
 - (a) the regulation from which the licensee is to be exempted; and
 - (b) the licence area to which the exemption relates; and
 - (c) the conditions (if any) to which the exemption is subject.

- (5) The Minister must, in determining—
 - (a) an application for an exemption under this regulation; or
 - (b) what should be the conditions of such an exemption,take into account any relevant aquaculture policy and any other matters the Minister considers relevant.
- (6) The Minister may, by further notice in writing, vary or revoke an exemption under this regulation.
- (7) An exemption under this regulation has effect from the date specified in the exemption and remains in force according to its terms for a period (not exceeding 2 years) specified in the exemption or until revoked by the Minister.
- (8) A licensee must comply with the conditions of an exemption under this regulation.
Maximum penalty: \$5 000.
Expiation fee: \$500.

Part 4—Division and amalgamation of lease areas and licence areas

32—Division of production lease area

- (1) The Minister may, on application by the holder of a production lease for division of the lease area into separate production lease areas—
 - (a) substitute the original lease with leases of the same kind over the separate lease areas; and
 - (b) substitute the corresponding licences relating to the original lease with corresponding licences relating to the substituted leases.
- (2) The following rules apply to the substitution of leases and corresponding licences under this regulation:
 - (a) there must be no change in the persons holding a lease or corresponding licence;
 - (b) the terms of the substituted leases must be for the balance of the term of the original lease;
 - (c) the lease areas of the substituted leases must together make up the lease area of the original lease;
 - (d) the area in which a licensee is authorised to carry on aquaculture must not be altered;
 - (e) the conditions of a substituted lease or corresponding licence must be the same as the conditions of the original lease or corresponding licence, except for conditions designating a lease area or licence area, conditions relating to marking out the boundaries of a lease area or licence area or conditions relating a licence to a lease.

- (3) An application for division of a lease area into separate lease areas—
 - (a) must be made to the Minister in the manner and form required by the Minister; and
 - (b) must be accompanied by a plan delineating—
 - (i) the lease area of the original lease; and
 - (ii) the licence areas of the corresponding licences relating to the original lease; and
 - (iii) the separate lease areas into which the original lease area is to be divided; and
 - (iv) the licence areas of the corresponding licences that are to relate to the substituted leases over the separate lease areas; and
 - (c) if the public register includes a notation that a specified person has an interest in the original lease—must be accompanied by evidence that the person consents to the division; and
 - (d) must be accompanied by the prescribed fee.
- (4) While a licensee continues to hold a number of corresponding licences over adjoining licence areas as a result of the substitution of the licences under this regulation, the licences will, for the purposes of these regulations, be treated as a single licence held by the licensee over the aggregate of the adjoining licence areas.

33—Amalgamation of production lease areas

- (1) The Minister may, on application by the holder of 2 or more production leases for amalgamation of the lease areas into a single production lease area, substitute the original leases with a production lease over the amalgamated lease area.
- (2) The following rules apply to the substitution of leases under this regulation:
 - (a) the holder of each original lease must be the same person;
 - (b) the substitution must not involve a change in the lessee;
 - (c) the original leases must be of the same class;
 - (d) the substitution must not involve a change in the class of lease;
 - (e) the term of the substituted lease must be for the aggregate of the balance of the terms of the original leases, divided by the number of original leases;
 - (f) the lease areas of the original leases must be adjoining;
 - (g) the lease area of the substituted lease must be the aggregate of the lease areas of the original leases;
 - (h) the substituted lease area must not have more than 6 corners except in exceptional circumstances approved by the Minister;
 - (i) the conditions of the substituted lease must be the same as the conditions of the original leases, except for conditions designating a lease area or conditions relating to marking out the boundaries of a lease area.

- (3) An application for amalgamation of lease areas—
- (a) must be made to the Minister in the manner and form required by the Minister; and
 - (b) must be accompanied by a plan delineating—
 - (i) the lease areas of the original leases; and
 - (ii) the licence areas of the corresponding licences relating to the original leases; and
 - (iii) the lease area to be substituted; and
 - (iv) the licence areas of the corresponding licences that are to relate to the substituted lease; and
 - (c) if the public register includes a notation that a specified person has an interest in the original leases—must be accompanied by evidence that the person consents to the amalgamation; and
 - (d) must be accompanied by the prescribed fee.

34—Division of licence area

- (1) The Minister may, on application by the holder of an aquaculture licence for division of the licence area into separate licence areas, substitute the original licence with licences over the separate licence areas.
- (2) The following rules apply to the substitution of licences under this regulation:
- (a) there must be no change in the persons holding a licence;
 - (b) the terms of the substituted licences must be for the balance of the term of the original licence;
 - (c) the licence areas of the substituted licences must together make up the licence area of the original licence;
 - (d) the conditions of a substituted licence must be the same as the conditions of the original licence, except for conditions designating a licence area or conditions relating to marking out the boundaries of a licence area.
- (3) An application for division of a licence area into separate licence areas—
- (a) must be made to the Minister in the manner and form required by the Minister; and
 - (b) must be accompanied by a plan delineating—
 - (i) the licence area of the original licence; and
 - (ii) the separate licence areas into which the original licence area is to be divided; and
 - (c) if the public register includes a notation that a specified person has an interest in the original licence—must be accompanied by evidence that the person consents to the division; and
 - (d) must be accompanied by the prescribed fee.

35—Amalgamation of licence areas

- (1) The Minister may, on application by the holder of 2 or more aquaculture licences for amalgamation of the licence areas into a single licence area (whether or not in connection with an application under regulation 33), substitute the original licences with a licence over the licence area.
- (2) The following rules apply to the substitution of licences under this regulation:
 - (a) the holder of each original licence must be the same person;
 - (b) the substitution must not involve a change in the licensee;
 - (c) the original licences must be of the same class;
 - (d) the substitution must not involve a change in the class of licence;
 - (e) the term of the substituted licence must be—
 - (i) in the case of a corresponding licence—co-extensive with the term of the lease; or
 - (ii) in any other case—for the aggregate of the balance of the terms of the original licences, divided by the number of original licences;
 - (f) the licence area of the substituted licence must be the aggregate of the licence areas of the original licences;
 - (g) the conditions of the substituted licence must be the same as the conditions of the original licences, except for conditions designating a licence area or conditions relating to marking out the boundaries of a licence area.
- (3) An application for amalgamation of licence areas into a single licence area—
 - (a) must be made to the Minister in the manner and form required by the Minister; and
 - (b) must be accompanied by a plan delineating—
 - (i) the licence areas of the original licences; and
 - (ii) the single licence area into which the original licence areas are to be amalgamated; and
 - (c) if the public register includes a notation that a specified person has an interest in the original licences—must be accompanied by evidence that the person consents to the amalgamation; and
 - (d) must be accompanied by the prescribed fee.

36—Minister may require further information

An applicant under this Part must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

Part 5—Miscellaneous

37—Classification of licences as category A, B, C or D and classification of variations of licence conditions as simple, standard or complex

For the purposes of a prescribed fee relating to a licence—

- (a) a licence (other than a corresponding licence) is to be classified by the Minister as a category A, category B, category C or category D licence by reference to the Minister's reasonable assumptions as to the level of effort involved in the administration and enforcement of the Act and these regulations in relation to the aquaculture authorised by the licence (with category A representing the least effort and category D the greatest), having regard to the following:
 - (i) the scale and intensity of farming to be carried on under the licence;
 - (ii) any discharge of water from the licence area and the treatment of that water prior to discharge;
 - (iii) whether or not the species to be farmed are native to the locality of the licence area;
 - (iv) the susceptibility of the species to be farmed to notifiable disease within the meaning of the *Livestock Act 1997*;
 - (v) any other matters considered relevant by the Minister; and
- (b) the Minister may vary the classification of a licence by written notice to the licensee; and
- (c) the Minister must classify each variation of licence conditions as a simple, standard or complex variation having regard to the extent to which the variation involves factors affecting the ecological sustainability of aquaculture authorised by the licence, including—
 - (i) whether the variation involves any of the following:
 - (A) a change in the species to be farmed;
 - (B) an increase in the scale or intensity of farming;
 - (C) a change in the type of farming structures or method used;
 - (D) a change that will require reclassification of the licence as a category A, category B, category C or category D licence; and
 - (ii) in addition, in the case of a corresponding licence, a consideration of the following:
 - (A) whether the licence area is in an aquaculture zone (where risks affecting ecological sustainability have been more generally assessed);
 - (B) whether the licence area has previously been farmed;
 - (C) whether the licence area is being varied.

38—Fee payable on grant of aquaculture licence

A person who applies for an aquaculture licence must, before the licence is granted, pay to the Minister a fee of an amount calculated by multiplying—

- (a) the annual fee that would have been payable by the person (under regulation 39) had the person held the licence at the last date for payment of the annual fee; and
- (b) the proportion that the number of whole months between the grant of the licence and the next 30 June bears to 12 months.

39—Annual fees for licences

- (2) If more than 1 prescribed fee amount payable under section 53(1) of the Act applies to a corresponding licence, only a single fee amount (being the higher or highest of those amounts) will be payable as the annual fee.
- (3) The Minister may enter into an arrangement with the holder of an aquaculture licence for payment of an annual fee by quarterly instalments.
- (4) For the purposes of section 53(2) of the Act, the penalty for failure to pay an annual fee is—
 - (a) if the annual fee is being paid in instalments—an amount equal to 10% of the unpaid balance of the instalment; or
 - (b) in any other case—an amount equal to 10% of the fee.

41—Waiver or refund of fees

- (1) The Minister may waive or refund a prescribed fee or other amount (or part of a prescribed fee or other amount) if satisfied that it is appropriate to do so in a particular case.
- (2) The amount of a prescribed application fee comprising an advertising component must be refunded to the extent that it is not used for advertising in respect of the application.

42—Recovery of fees etc

A fee or other amount payable to the Minister under the Act or these regulations may be recovered by the Minister by action in a court of competent jurisdiction as a debt due to the Minister.

43—Defects in applications

- (1) The Minister may request an applicant to remedy a defect or deficiency in an application or accompanying document or information required by or under the Act or these regulations.
- (2) The Minister may, in connection with an application under the Act or these regulations relating to a lease or licence (other than an application for the grant of a lease or licence), request the applicant—
 - (a) to pay any outstanding fee or other amount payable under the Act or these regulations by the applicant in respect of the lease or licence; or

- (b) to provide any outstanding report, return or other information required to be provided under the Act or these regulations by the applicant in respect of the lease or licence.
- (3) If an applicant in relation to whom a request has been made under this regulation fails to comply with the request within 3 months, the Minister may refuse the application.

44—Exemption from requirement for licence under section 17 of Act

Section 17 of the Act does not apply to aquaculture carried on through the South Australian Research and Development Institute.

45—Exemption from requirement for ATAB to assess certain applications under section 36 of Act

The Minister may determine that an application for a production lease and an accompanying application for a corresponding licence in relation to an aquaculture zone are exempt from the application of section 36(1) and (2) of the Act if—

- (a) the class of aquaculture proposed to be carried on under the applications is the farming of prescribed wild caught tuna; and
- (b) the applicant already holds an aquaculture lease in that zone authorising the farming of prescribed wild caught tuna; and
- (c) the Minister considers it appropriate to do so in the circumstances.

Schedule 2—Revocation and transitional provisions

Part 1—Revocation of *Aquaculture Regulations 2005*

1—Revocation of *Aquaculture Regulations 2005*

The *Aquaculture Regulations 2005* are revoked.

Part 2—Transitional provisions

2—Interpretation

In this Part—

revoked regulations means the *Aquaculture Regulations 2005* revoked under Part 1.

3—Use of chemical substances

An approval of the Minister obtained by a licensee to use a substance in a particular way and in force under regulation 10(1)(b) of the revoked regulations immediately before the commencement of this clause will be taken to continue, on and from that commencement, as an approval under regulation 10(1)(b) of these regulations in relation to the use of that substance by the licensee.

4—Aquaculture strategies

- (1) Subject to subclause (2), if a licensee had a strategy approved by the Minister and in place under regulation 19 of the revoked regulations immediately before the commencement of this clause, the strategy will be taken to continue for the licensee, on and from that commencement, as an individual aquaculture strategy under Part 3 Division 2 Subdivision 2 of these regulations.

- (2) If, on the commencement of this clause, a sector-based aquaculture strategy is in place for the industry sector to which the licensee belongs, the licensee will be taken to have adopted that strategy on that commencement.

5—Farming structures

An approval by the Minister obtained by a licensee of a unit to sea floor distance and in force under regulation 17(1)(d) of the revoked regulations immediately before the commencement of this clause will be taken to continue, on and from that commencement, as an approval under regulation 25(d) of these regulations in relation to that matter and that licensee.

6—Amalgamation of production lease areas

An approval of the Minister obtained in relation to the number of corners of a substituted lease area and in force under regulation 30(2)(h) of the revoked regulations immediately before the commencement of this clause will be taken to continue, on and from that commencement, as an approval under regulation 33(2)(h) of these regulations in relation to that matter and that lease holder.

7—Classifications of licences and variations of licences to continue

A classification by the Minister of a licence, or variation of a licence, under regulation 34 of the revoked regulations, will be taken to continue, on and from that commencement, as a classification of a licence, or variation of a licence, under regulation 37 of these regulations.

8—Preserved provisions to continue for licences pending classification

If a licence in force immediately before the commencement of these regulations is not, on that commencement, classified as a category A, category B, category C or category D licence under regulation 37 of these regulations, the revoked regulations as in force on 21 July 2015 will continue to apply in relation to the licence until such time as the licence is so classified under these regulations.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Aquaculture Regulations 2016* revoked the following:

Aquaculture Regulations 2005

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2016	180	<i>Gazette 7.7.2016 p2873</i>	7.7.2016: r 2
2017	85	<i>Gazette 14.6.2017 p2145</i>	1.7.2017: r 2
2017	87	<i>Gazette 22.6.2017 p2227</i>	1.7.2017: r 2
2017	219	<i>Gazette 8.8.2017 p3158</i>	8.12.2017: r 2
2017	302	<i>Gazette 7.11.2017 p4521</i>	1.7.2018: r 2
2018	168	<i>Gazette 21.6.2018 p2468</i>	1.7.2018—immediately after 302/2017: r 2
2019	55	<i>Gazette 23.5.2019 p1409</i>	1.7.2019: r 2
2020	175	<i>Gazette 4.6.2020 p3033</i>	1.7.2020: r 2
2023	118	<i>Gazette 30.11.2023 p4006</i>	uncommenced

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2017</i>
r 3		
r 3(1)		
<i>abalone</i>	<i>deleted by 175/2020 r 4(1)</i>	<i>1.7.2020</i>
<i>finfish</i>	<i>deleted by 175/2020 r 4(2)</i>	<i>1.7.2020</i>

Pt 2		
r 4B	inserted by 87/2017 r 4	1.7.2017
Pt 3		
r 31		
r 31(2)	varied by 175/2020 r 5	1.7.2020
Pt 4		
r 32		
r 32(3)	varied by 175/2020 r 6	1.7.2020
r 33		
r 33(3)	varied by 175/2020 r 7	1.7.2020
r 34		
r 34(3)	varied by 175/2020 r 8	1.7.2020
r 35		
r 35(3)	varied by 175/2020 r 9	1.7.2020
Pt 5		
r 37	varied by 175/2020 r 10	1.7.2020
r 39		
r 39(1)	<i>deleted by 175/2020 r 11(1)</i>	<i>1.7.2020</i>
r 39(2)	varied by 175/2020 r 11(2)	1.7.2020
r 39(4)	substituted by 87/2017 r 5	1.7.2017
r 40	<i>deleted by 175/2020 r 12</i>	<i>1.7.2020</i>
r 41		
r 41(1)	varied by 175/2020 r 13(1)	1.7.2020
r 41(2)	varied by 175/2020 r 13(2)	1.7.2020
r 45	inserted by 219/2017 r 4	8.12.2017
Sch 1	<i>substituted by 85/2017 r 4</i>	<i>1.7.2017</i>
	<i>substituted by 302/2017 r 4</i>	<i>1.7.2018</i>
	<i>substituted by 168/2018 r 4</i>	<i>1.7.2018</i>
	<i>substituted by 55/2019 r 4</i>	<i>1.7.2019</i>
	<i>deleted by 175/2020 r 14</i>	<i>1.7.2020</i>

Historical versions

1.7.2017
8.12.2017
1.7.2018
1.7.2019