

South Australia

**SCHEME OF MANAGEMENT (MARINE SCALEFISH FISHERIES)  
REGULATIONS 1991**

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## REGULATIONS UNDER THE FISHERIES ACT 1982

### *Scheme of Management (Marine Scalefish Fisheries) Regulations 1991*

being

No. 111 of 1991: *Gaz.* 27 June 1991, p. 2187<sup>1</sup>

as varied by

- No. 181 of 1991: *Gaz.* 22 August 1991, p. 635
- No. 2 of 1992: *Gaz.* 16 January 1992, p. 168
- No. 107 of 1992: *Gaz.* 25 June 1992, p. 1932<sup>2</sup>
- No. 217 of 1992: *Gaz.* 17 December 1992, p. 2219<sup>3</sup>
- No. 108 of 1993: *Gaz.* 17 June 1993, p. 1997<sup>4</sup>
- No. 124 of 1993: *Gaz.* 24 June 1993, p. 2068<sup>5</sup>
- No. 5 of 1994: *Gaz.* 10 February 1994, p. 265<sup>6</sup>
- No. 97 of 1994: *Gaz.* 23 June 1994, p. 1812<sup>7</sup>
- No. 152 of 1994: *Gaz.* 1 September 1994, p. 677<sup>8</sup>
- No. 147 of 1995: *Gaz.* 29 June 1995, p. 3161<sup>9</sup>
- No. 152 of 1996: *Gaz.* 20 June 1996, p. 3009<sup>10</sup>
- No. 160 of 1996: *Gaz.* 27 June 1996, p. 3162<sup>11</sup>
- No. 131 of 1997: *Gaz.* 13 May 1997, p. 1959<sup>12</sup>
- No. 132 of 1998: *Gaz.* 11 June 1998, p. 2534<sup>13</sup>
- No. 141 of 1999: *Gaz.* 1 July 1999, p. 51<sup>14</sup>
- No. 135 of 2000: *Gaz.* 22 June 2000, p. 3356<sup>15</sup>**

- <sup>1</sup> Came into operation 27 June 1991: reg. 2.
- <sup>2</sup> Came into operation 25 June 1992: reg. 2.
- <sup>3</sup> Came into operation 1 January 1993: reg. 2.
- <sup>4</sup> Came into operation 17 June 1993: reg. 2.
- <sup>5</sup> Came into operation 24 June 1993: reg. 2.
- <sup>6</sup> Came into operation 10 February 1994: reg. 2.
- <sup>7</sup> Came into operation 23 June 1994: reg. 2.
- <sup>8</sup> Came into operation 1 September 1994: reg. 2.
- <sup>9</sup> Came into operation 29 June 1995: reg. 2.
- <sup>10</sup> Came into operation 20 June 1996: reg. 2.
- <sup>11</sup> Came into operation 27 June 1996: reg. 2.
- <sup>12</sup> Came into operation 13 May 1997: reg. 2.
- <sup>13</sup> Came into operation 11 June 1998: reg. 2.
- <sup>14</sup> Came into operation 1 July 1999: reg. 2.
- <sup>15</sup> **Came into operation 22 June 2000: reg. 2.**

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last consolidation.
- For the legislative history of the regulations see Appendix 1.

### **Citation**

1. These regulations may be cited as the *Scheme of Management (Marine Scalefish 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 (Marine Scale Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1647), as varied;

and

(b) the *Scheme of Management (Restricted Marine Scale Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1657), as varied.

### **Interpretation**

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

"**the Act**" means the *Fisheries Act, 1982*;

"**blue crab**" means blue crab (*Portunus pelagicus*);

"**Blue Crab Fishery**" has the same meaning as in the *Scheme of Management (Blue Crab Fishery) Regulations 1998*;

"**blue crab fishing zone**" has the same meaning as in the *Scheme of Management (Blue Crab Fishery) Regulations 1998*;

"**blue crab net entitlement**" means the maximum number of crab nets that the holder of a licence in respect of the Marine Scalefish Fishery may lawfully use at any one time for the purpose of taking blue crab pursuant to the licence;

"**blue crab pot entitlement**" has the same meaning as in the *Scheme of Management (Blue Crab Fishery) Regulations 1998*;

"**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 influence of the sea, but does not include the waters of the Coorong between the barrages and the Murray Mouth;

"**crab net**" has the same meaning as in the *Fisheries (General) Regulations 1984*;

"**crab pot**" has the same meaning as in the *Fisheries (General) Regulations 1984*;

"**Department**" means the Department of Primary Industries and Resources;

"**Gulf St. Vincent Blue Crab Fishing Zone**" has the same meaning as in the *Scheme of Management (Blue Crab Fishery) Regulations 1998*;

"**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;

"**marine scalefish fishery**" means—

(a) the Marine Scalefish Fishery;

or

(b) the Restricted Marine Scalefish Fishery,

constituted by these regulations;

"**pilchard**" means pilchard (*Sardinops neopilchardus*);

"**pilchard net**" has the same meaning as in the *Fisheries (General) Regulations 1984*;

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

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

"**Spencer Gulf Blue Crab Fishing Zone**" has the same meaning as in the *Scheme of Management (Blue Crab Fishery) Regulations 1998*;

"**spouse**" includes a person who is a putative spouse notwithstanding that a declaration has not been made under the *Family Relationships Act 1975* in relation to that person.

(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 purpose 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.

4.

(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

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

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

*Note: For definition of divisional penalties see Appendix 2.*

#### **Constitution of fisheries**

5. (1) The following fisheries are constituted:

(a) the Marine Scalefish Fishery;

and

(b) the Restricted Marine Scalefish Fishery.

(2) The Marine Scalefish Fishery and the Restricted Marine Scalefish Fishery each consist of—

(a) the taking of fish specified in schedule 1 in coastal waters; and

(b) the taking of razor fish (*Pinna bicolor*) in coastal waters for the purpose of bait.

(3) The Director may impose a condition on a licence in respect of the Marine Scalefish Fishery that limits the holder of the licence to the taking of blue crab in—

(a) the waters of the State west of longitude 135°E; or

(b) the waters of the State west of longitude 135°E and the waters of the Gulf St. Vincent Blue Crab Fishing Zone; or

(c) the waters of the State west of longitude 135°E and the waters of the Spencer Gulf Blue Crab Fishing Zone; or

(d) the waters of the Gulf St. Vincent Blue Crab Fishing Zone and the Spencer Gulf Blue Crab Fishing Zone.

**No further licences to be granted**

6. (1) The licences in respect of the Marine Scale Fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the Marine Scalefish 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 Restricted Marine Scale Fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the Restricted Marine Scalefish 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 a marine scalefish fishery expires on 30 June following the date of its last renewal.

**Renewal of licences**

8. (1) A licence in respect of a marine scalefish fishery may be renewed by the Director on application made before or within 12 months after the expiry of the licence.

(2) An application to renew a licence in respect of a marine scalefish 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 specified in Schedule 2 less \$90; or

(ii) the first instalment of the renewal fee specified in Schedule 2, 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 equal instalments payable on or before the date of renewal of the licence and 1 October, 1 January and 1 April following the date of renewal.

6.

(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
- (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**

9. Where a licence in respect of a marine scalefish fishery is surrendered otherwise than as part of a process under regulation 10B, 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 following 1 July bears to 12.

#### **Transfer of licences**

10. (a1) In this regulation—

"**authorised family transfer**" means a transfer of a licence that is authorised under regulation 10A;

"**authorised amalgamation scheme transfer**" means a transfer of a licence that is authorised under regulation 10B.

(1) A licence in respect of the Restricted Marine Scalefish Fishery is non-transferable.

(2) A licence in respect of the Marine Scalefish Fishery may be transferred with the consent of the Director.

\* \* \* \* \*

(3) 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.

(4) The application—

- (a) must be made in writing in a form approved by the Director;
- (b) must contain the information specified in schedule 3;
- (c) must contain a nomination by the holder of the licence of the person to whom the licence is to be transferred;

and

7.

(d) must be verified by the applicants by statutory declaration.

(5) 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

(c) the application fee specified in schedule 2.

(6) Before consenting to the transfer of a licence, the Director must be satisfied—

(a) that the transfer is—

(i) an authorised family transfer;

or

(ii) an authorised amalgamation scheme transfer;

and

(b) as to the following matters:

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

(ii) 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;

(iii) that the transfer is to one person only;

(iv) that the transferee is a natural person who—

(A) is at least 15 years of age;

and

(B) has not, within the period of three years preceding the date of the application, been convicted in the State or elsewhere in Australia of an offence involving a breach of any legislation relating to fishing;

(v) 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;

8.

- (vi) that, in the case of an authorised family transfer, the transferee—
- (A) does not already hold a licence in respect of the fishery or any other fishery;
- and
- (B) is not an associate of a person who holds such a licence;
- and
- (vii) 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—
- (A) 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
- (B) that—
- 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
- the person or body that granted the entitlement concurs with the separate transfer of the licence.

**Transfer of licences between family members**

**10A.** Subject to regulation 10, a licence in respect of the Marine Scalefish Fishery may be transferred if the transferee is—

- (a) the spouse of the licensee;
- (b) a parent or grandparent of the licensee;
- (c) a brother or sister, or half-brother or half-sister, of the licensee;
- (d) a child or grandchild of the licensee;
- or
- (e) a child or grandchild of the spouse of the licensee.

### **Transfer of licences under amalgamation scheme**

**10B.** (1) In this regulation—

"**aggregate fishing points value**", in relation to two licences, means the sum of the fishing points values endorsed on the licences under this regulation;

"**aggregate gear entitlement**", in relation to two licences, means the aggregate of the numbers and kinds of devices the use of which is authorised by the gear endorsements of the licences (subject to any applicable limitations on the use of devices imposed by the *Fisheries (General) Regulations 1984*);

"**gear endorsement**" of a licence means the conditions endorsed on the licence under the Act specifying the numbers and kinds of devices that may be used for the purpose of taking fish pursuant to the licence;

"**licence**" means a licence in respect of the Marine Scalefish Fishery;

"**line licence**" means a licence other than a net licence;

"**net**" does not include a bait net;

"**net licence**" means a licence with a gear endorsement authorising the use of one or more nets (whether or not the endorsement authorises the use of other devices).

(2) For the purposes of this regulation, the Director must adopt and implement a system for ranking net licences and a system for ranking line licences under which—

- (a) points are allotted to every net licence or line licence, as the case may be, based on—
- (i) the quantities of each fish species taken pursuant to the licence during a specified period (as recorded on returns lodged in respect of the licence under regulation 16 or the corresponding regulation previously in force);
- and
- (ii) values (reflecting market values) applied in relation to those recorded quantities of each fish species,
- so that the greater the resulting total value the greater the points allotted to the licence;
- (b) all net licences are arranged in ascending order of allotted points and then divided into 10 approximately equal groups and all line licences are similarly arranged and divided into groups;
- and
- (c) the licences in each group are each given a value (a "**fishing points value**") starting with 11 for the group with the lowest range of allotted points, 12 for the next group and so on through to 18 so that the value 18 is given to the licences in the groups with the three highest ranges of allotted points.

10.

(3) The Director must then endorse on each licence the fishing points value given to the licence under the system for ranking net licences or the system for ranking line licences (as the case may be) under subregulation (2).

(4) The fishing points value endorsed on a licence under subregulation (3) may be varied only—

(a) to reflect a change of the licence from a net licence to a line licence;

(b) as otherwise required under this regulation;

or

(c) in order to correct an error.

(5) Subject to regulation 10, a licence may then be transferred as authorised under the following provisions:

(a) a net licence may be transferred to the holder of another net licence;

(b) a line licence may be transferred to the holder of another line licence;

(c) in either case, the transferee must, when the transfer has effect, surrender to the Director one of the two licences then held by the transferee;

(d) if one or both of the licences held by the transferee has recorded on it under section 56 of the Act a conviction for an offence committed within the preceding period of three years, the licence surrendered must be—

(i) the licence without such a conviction, or as the case may require, the licence with the lesser number of such convictions, recorded on it;

or

(ii) if the same number of such convictions is recorded on each licence—the licence other than the licence with a conviction recorded on it for the most recently committed offence;

(e) where a licence is to be surrendered but—

(i) the last renewal fee for the licence has not been paid in full;

or

(ii) an additional amount is required to be paid for late payment of an instalment of the renewal fee,

the balance of the renewal fee and any such additional amount must be paid before or when the licence is surrendered;

- (f) on the surrender of the licence and payment of any amount required to be paid under paragraph (e) in respect of the licence, the Director must—
- (i) replace the gear endorsement of the remaining licence held by the transferee with a gear endorsement that makes provision for the aggregate gear entitlement in relation to that licence and the surrendered licence;
- and
- (ii) vary the fishing points value endorsed on the remaining licence under this regulation so that it equals the aggregate fishing points value in relation to that licence and the surrendered licence;
- (g) when, as a result of the process referred to above, the fishing points value endorsed on a licence under this regulation equals or exceeds 26, the licence may be transferred to a person who is not—
- (i) the holder of a licence in respect of the Fishery or any other fishery;
- or
- (ii) an associate of a person who holds such a licence;
- (h) paragraph (g) does not prevent the holder of a licence with a fishing points value that equals or exceeds 26 from transferring the licence under the process referred to in paragraphs (a) to (f).

**Licence conditions subject to variation only as part of licence amalgamation scheme**

**10C.** The conditions endorsed on a licence in respect of the Marine Scalefish Fishery governing the use of devices for the purpose of taking fish pursuant to the licence may be varied only—

- (a) with the consent of the licensee so as to further restrict the devices that may be used;
  - (b) as required under regulation 10B;
- or
- (c) in order to correct an error.

**Registration of boats**

**11.** (1) An application to register a boat to be used in a marine scalefish 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 the applicant is the holder of a licence in respect of the fishery.

**Registration as master**

**12.** (1) An application to be registered 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.

(2) No person other than the holder of the licence may be registered as the master of a boat used pursuant to a licence in respect of a marine scalefish fishery.

### **Revocation of registration**

**13.** (1) The Director may, on application by the holder of a licence in respect of a marine scalefish fishery, revoke any registration effected by endorsement of the licence.

(2) An application for revocation of any 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.

### **Registered master may only be assisted by one agent**

**14.** The registered master of a boat registered by endorsement of a licence in respect of the Restricted Marine Scalefish Fishery must not, when using the boat for the purpose of engaging in a fishing activity of a class that constitutes the fishery, cause or permit more than one other person to assist him or her in that activity.

Penalty: Division 6 fine.

### **Blue crab net entitlement**

**14A.** (1) The Director may impose or vary conditions on licences in respect of the Marine Scalefish Fishery fixing blue crab net entitlements as follows:

- (a) a blue crab net entitlement may be fixed by condition of a licence but must be at least 20;
- (b) the blue crab net entitlements fixed by licence conditions as referred to in this regulation may be increased or decreased on the same proportionate basis for all licences (provided that where in relation to any licence the result of such proportionate variation would be a fractional entitlement, that fractional entitlement is increased to the next highest whole number) if the Director is satisfied that it is appropriate to do so for the proper management of the fishery;
- (c) the blue crab net entitlements fixed by the conditions of any two licences in respect of the fishery may, on application made by the holders of those licences in a manner and form approved by the Director, be varied so as to increase the entitlement under one of the licences and decrease the entitlement under the other by a corresponding number;
- (d) the blue crab net entitlement fixed by the conditions of a licence in respect of the fishery may, on application made in a manner and form approved by the Director by the holder of that licence and the holder of a licence in respect of the Blue Crab Fishery, be varied—
  - (i) so as to decrease the blue crab pot entitlement under the licence in respect of the Blue Crab Fishery and increase the blue crab net entitlement under the licence in respect of the Marine Scalefish Fishery by a corresponding number; or
  - (ii) so as to increase the blue crab pot entitlement under the licence in respect of the Blue Crab Fishery and decrease the blue crab net entitlement under the licence in respect of the Marine Scalefish Fishery by a corresponding number.

(2) The Director may impose conditions on licences in respect of the Marine Scalefish Fishery limiting the number of blue crab nets that may be carried on boats and otherwise regulating the carrying of blue crab nets used for fishing activities pursuant to the licences.

(3) Where a court convicts the holder of a licence in respect of the Marine Scalefish Fishery of an offence of contravening a condition of the licence fixing a blue crab net entitlement, the court must make an order requiring the Director to vary the conditions of the licence so as to reduce the blue crab net entitlement under the licence by one crab net for each crab net used in excess of the entitlement.

(4) Blue crab net entitlements must not be varied except as provided by this regulation.

(5) If the blue crab net entitlement of a licence in respect of the Marine Scalefish Fishery falls below the lower limit referred to in subregulation (2)(a), the holder of the licence must not, while the entitlement remains below that limit, take blue crab pursuant to the licence except in the waters of the State west of longitude 135°E.

Penalty: Division 6 fine.

#### **Individual blue crab quota system**

**14B.** (1) This regulation applies only in relation to licences in respect of the Marine Scalefish Fishery that are endorsed with a condition fixing a blue crab net entitlement.

(2) In this regulation—

"**blue crab quota**", in relation to a licence in respect of the Marine Scalefish Fishery and a blue crab fishing zone, means the maximum number of kilograms of blue crab that may be lawfully taken by the holder of the licence in that zone during a licence period, being the product of—

- (a) the unit entitlement of that licence; and
- (b) the unit value for that blue crab fishing zone and that licence period,

subject to any variation of the blue crab quota of the licence applying during that licence period;

"**unit entitlement**" means the number of blue crab units for the time being allocated to a licence;

"**unit value**" means the number of kilograms of blue crab determined by the Director to be the value of a blue crab unit for a blue crab fishing zone and a licence period.

(3) The Director may impose or vary conditions on licences in respect of the Marine Scalefish Fishery fixing blue crab quotas as follows:

- (a) the number of blue crab units to be allocated to a licence must be determined by the Director having regard to the blue crab net entitlement under the licence;
- (b) the Director must, on the commencement of each licence period, determine the number of kilograms of blue crab that is to be the value of a blue crab unit for a blue crab fishing zone and the licence period;

- (c) the unit entitlement of a licence in respect of the fishery may, on application made to the Director by the holder of the licence in a manner and form approved by the Director, be increased or decreased so as to reflect an increase or decrease in the blue crab net entitlement fixed by conditions of the licence;
  - (d) the Director may, if the total blue crab catch taken pursuant to a licence during a licence period exceeded the blue crab quota of the licence for that licence period, vary the conditions of the licence so as to decrease the quota—
    - (i) where the catch exceeded the quota by not more than 20 kilograms of blue crab—by one kilogram for each kilogram in excess of the quota; or
    - (ii) where the catch exceeded the quota by more than 20 kilograms but not more than 50 kilograms of blue crab—by two kilograms for each kilogram in excess of the quota;
  - (e) unit entitlements and blue crab quotas must not be varied except as provided by this regulation.
- (4) Where—
- (a) a court convicts the holder of a licence in respect of the Marine Scalefish Fishery of an offence of contravening a condition of the licence imposing a blue crab quota on the licence; and
  - (b) the conduct constituting the offence involved the taking of more than 50 kilograms of blue crab 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 blue crab quota of the licence for three licence periods following the conviction by one kilogram for each kilogram in excess of the quota for the licence period during which the offence was committed.

#### **Individual pilchard quota system**

**14C.** (1) This regulation applies only in relation to licences in respect of the Marine Scalefish Fishery endorsed with a condition permitting the holder of the licence to take pilchards by use of a pilchard net.

(2) In this regulation—

"**pilchard quota**", in relation to a licence in respect of the Marine Scalefish Fishery, means the maximum number of kilograms of pilchard that may be lawfully taken by the holder of the licence during a licence period, being the product of—

- (a) the unit entitlement of that licence; and
- (b) the unit value for that licence period,

subject to any variation of the pilchard quota of the licence applying during that licence period;

"**unit entitlement**" means the number of pilchard units for the time being allocated to a licence;

"**unit value**" means the number of kilograms of pilchard determined by the Director to be the value of a pilchard unit for a licence period.

(3) The Director may impose or vary conditions on licences in respect of the Marine Scalefish Fishery fixing pilchard quotas as follows:

- (a) all licences in respect of the fishery must be allocated the same number of pilchard units;
- (b) the Director must, on the commencement of each licence period, determine the number of kilograms of pilchard that is to be the value of a pilchard unit for a the licence 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 and decrease the unit entitlement of the other licence by a corresponding number of units;
- (d) the Director may, if the total pilchard catch taken pursuant to a licence during a licence period exceeded the pilchard quota of the licence for that licence period, vary the conditions of the licence so as to decrease the quota—
  - (i) where the catch exceeded the quota by not more than 2 000 kilograms of pilchard—by one kilogram for each kilogram in excess of the quota; or
  - (ii) where the catch exceeded the quota by more than 2 000 kilograms but not more than 4 000 kilograms of pilchard—by two kilograms for each kilogram in excess of the quota;
- (e) any variation of—
  - (i) a unit entitlement made pursuant to paragraph (c); or
  - (ii) a pilchard quota made pursuant to paragraph (d),
 must be expressed to apply only for the licence period during which the variation is made;
- (f) unit entitlements and pilchard quotas must not be varied except as provided by this regulation.

(4) If—

- (a) a court convicts the holder of a licence in respect of the Marine Scalefish Fishery of an offence of contravening a condition of the licence imposing a pilchard quota on the licence; and

- (b) the conduct constituting the offence involved the taking of more than 4 000 kilograms of pilchard 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 pilchard quota of the licence for three licence periods following the conviction by one kilogram for each kilogram in excess of the quota for the licence period during which the offence was committed.

**Fishing activities on the shore**

**15.** (1) The holder of a licence in respect of a marine scalefish fishery must not cause or permit a person to be engaged on the shore as his or her agent in a fishing activity of a class that constitutes the fishery unless—

- (a) the holder of the licence is at the same time also engaged on the shore in a fishing activity of a class that constitutes the fishery;

and

- (b) the holder of the licence and the other person remain, while so engaged, within 700 metres of each other.

Penalty: Division 6 fine.

(2) The holder of a licence in respect of the Marine Scalefish Fishery must not cause or permit more than two persons to be engaged at the same time on the shore as his or her agent in a fishing activity of a class that constitutes the fishery.

Penalty: Division 6 fine.

(3) The holder of a licence in respect of the Restricted Marine Scalefish Fishery must not cause or permit more than one person to be engaged at the same time on the shore as his or her agent in a fishing activity of a class that constitutes the fishery.

Penalty: Division 6 fine.

**Catch and disposal records—blue crab**

**15A.** (1) In this regulation—

"**CDR book**" means a book issued by the Department containing blank forms BSCF1;

"**form BSCF1**" means the document produced by the Department entitled *BSCF1 Primary Industries (S.A.) Fisheries Blue Crab Catch and Disposal Record*.

(2) The holder of a licence in respect of the Marine Scalefish Fishery that is endorsed with a condition fixing a blue crab net entitlement or the registered master of a boat from which blue crab is taken pursuant to such a licence must comply with the following provisions:

- (a) immediately on landing blue crab taken pursuant to the licence he or she must weigh the crabs on accurate scales and complete Part A of form BSCF1 using a blue or black ballpoint pen; and

17.

- (b) he or she must cause the crabs to which the completed Part A of that form relates to be transported to the registered premises of the registered fish processor specified on the form, together with the white, blue and green copies of the completed form; and
- (c) he or she must complete forms BSCF1 in consecutive ascending order and complete all forms in a CDR book before commencing to use a new CDR book; and
- (d) he or she must ensure that the yellow copies of forms BSCF1 and the CDR book are kept on board the registered boat until the CDR book is completed; and
- (e) he or she must deliver a completed CDR book to the Director of Fisheries within 14 days of its completion.

(3) If a provision of subregulation (2) is not complied with, the holder of the licence is guilty of an offence.

Penalty: Division 6 fine.

#### **Furnishing of returns**

**16.** (1) The holder of a licence in respect of a marine scalefish 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 a marine scalefish fishery takes no fish pursuant to the licence 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 fish were taken.

#### **Copies of returns must be made**

**17.** The holder of a licence in respect of a marine scalefish 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

18.

- (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***Fish prescribed for the Marine Scalefish Fisheries*

The following fish are specified for the marine scalefish fisheries:

*Scalefish*

Anchovy (*Engraulis australis*)  
 Barracouta (*Thyrsites atun*)  
 Bluethroated wrasse (*Notolabrus tetricus*)  
 Bream (*Acanthopagrus butcheri*)  
 Cod (marine species) (Family Moridae)  
 Dory (Family Zeidae)  
 Flathead (Family Platycephalidae)  
 Flounder (Family Pleuronectidae) (Family Bothidae)  
 Garfish (*Hyporhamphus melanochir*)  
 Horse Mackerel (*Trachurus declivis*)  
 Leather jacket (Family Aluteridae)  
 Ling (*Genypterus blacodes*)  
 Mackerel (*Scomber australasicus*)  
 Morwong (Family Cheilodactylidae)  
 Mullet (Family Mugilidae)  
 Mulloway (*Argyrosomus hololepidotus*)  
 Nannygai, Red snapper, Swallowtail (Family Berycidae)  
 Pilchard (*Sardinops neopilchardus*)  
 Red mullet (*Upeneichthys porosus*)  
 Salmon (*Arripis truttaceus*)  
 Snapper (*Chrysophrys auratus*)  
 Snook (*Sphyraena novaehollandiae*)  
 Sole (*Aserragodes haackeanus*)  
 Sweep (*Scorpius aequipinnis*)  
 Tommy ruff (*Arripis georgianus*)  
 Trevalla (*Hyperoglyphe antarctica*)  
 Trevally (*Usacaranx georgianus*)  
 Whiting (Family Sillaginidae)  
 Yellowtail kingfish (*Seriola grandis*)

*Crustaceans*

Crab, blue (*Portunus pelagicus*)  
 Crab, sand (*Ovalipes australiensis*)  
 Crab, rock (*Nectocarcinus integrifrons*)  
 Crab, velvet (*Nectocarcinus tuberculatus*)

*Molluscs*

Cockle (Suborder: Teledonta)  
 Cuttlefish (*Sepia* spp.)  
 Mussels (*Mytilus* spp.)  
 Octopus (*Octopus* spp.)  
 Oyster (Family Ostreidae)  
 Scallop (Family Pectinidae)  
 Squid, calamary (*Sepioteuthis australis*)  
 arrow (*Nototodarus gouldi*)

*Annelids*

Beachworm  
Bloodworm  
Tubeworm



(Class Polychaeta)

*Shark*

All species other than white pointer  
shark (*Carcharodon carcharias*)  
Skate  
Rays



(Class Elasmobranchii)

**SCHEDULE 2**  
*Fees*

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

\$

- (a) on application for the renewal of a licence in respect of a marine scalefish fishery—
  - (i) in the case of a licence in respect of the Marine Scalefish Fishery that is, on renewal, to be endorsed with a condition permitting the holder of the licence to take pilchards by use of a pilchard net . . . . . 1
  - (ii) in any other case . . . . . 2 729
- (b) on application for the transfer of a licence in respect of the Marine Scalefish Fishery . . . . . 300
- (c) on application under regulation 14A by the holder of a licence in respect of the Marine Scalefish Fishery to vary a condition of the licence so as to decrease the blue crab net entitlement under the licence and increase the blue crab net entitlement under one or more licences in respect of the fishery or the blue crab pot entitlement under one or more licences in respect of the Blue Crab Fishery—\$100 plus a fee of an amount obtained by multiplying \$20 by the number of licences the blue crab net entitlement or blue crab pot entitlement of which is to be increased;
- (d) on application under regulation 14C by the holder of a licence in respect of the Marine Scalefish Fishery to vary a condition of the licence so as to decrease the unit entitlement of the licence in respect of pilchards and increase the unit entitlement under one or more other licences—\$100 plus a fee of an amount obtained by multiplying \$20 by the number of licences the unit entitlements of which are to be increased.

**SCHEDULE 3**  
*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, date of birth, address (residential and postal) and telephone number of the transferee.
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 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 is a party to a contract, arrangement or understanding, the purpose or effect of which is that he or she will act at the direction of, or in accordance with, the wishes or instructions of another in relation to the transferee's activities pursuant to the licence;
  - (d) whether or not the transferee 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 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 in the State or elsewhere in Australia against him or her.

23.

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

\* \* \* \* \*

## APPENDIX 1

### LEGISLATIVE HISTORY

#### Transitional Provisions

*(Transitional provision from Regulation No. 131 of 1997, reg. 4)*

4. (1) A licence renewal fee prescribed by schedule 2 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 2 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"** means the period of 12 months commencing on 1 July in any year.

*(Transitional provision from Regulation No. 132 of 1998, reg. 8)*

8. (1) A licence renewal fee prescribed by schedule 2 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 7, a licence renewal fee prescribed by schedule 2 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. 141 of 1999, reg. 8)*

8. (1) A licence renewal fee prescribed by Schedule 2 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 7, a licence renewal fee prescribed by Schedule 2 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. 135 of 2000, reg. 6)*

6. (1) A fee prescribed by Schedule 2 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 5, a fee prescribed by Schedule 2 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

*(entries in bold type indicate amendments incorporated since the last consolidation)*

<b>Regulation 4(1):</b>	definitions of "blue crab", "Blue Crab Fishery", "blue crab fishing zone", "blue crab net entitlement" and "blue crab pot entitlement" inserted by 132, 1998, reg. 3(a) definitions of "crab net", "crab pot", "Department" and "Gulf St. Vincent Blue Crab Fishing Zone" inserted by 132, 1998, reg. 3(b) definition of "licence period" inserted by 141, 1999, reg. 3 definition of "marine scalefish fishery" substituted by 124, 1993, reg. 3(a) <b>definitions of "pilchard" and "pilchard net" inserted by 135, 2000, reg. 3</b> definition of "SARDI" inserted by 124, 1993, reg. 3(b) definition of "Spencer Gulf Blue Crab Fishing Zone" inserted by 132, 1998, reg. 3(c) definition of "spouse" inserted by 2, 1992, reg. 2
Regulation 5(2):	substituted by 160, 1996, reg. 3
Regulation 5(3):	inserted by 132, 1998, reg. 4
Regulation 8(2):	substituted by 181, 1991, reg. 2(a)
Regulation 8(5):	inserted by 181, 1991, reg. 2(b); varied by 141, 1999, reg. 4
Regulation 8(6) - (8):	inserted by 181, 1991, reg. 2(b)
Regulation 9:	varied by 152, 1994, reg. 3
Regulation 10(a1):	inserted by 152, 1994, reg. 4(a)
Regulation 10(2a):	inserted by 2, 1992, reg. 3; varied by 107, 1992, reg. 3; 217, 1992, reg. 3; 108, 1993, reg. 3; 5, 1994, reg. 3; revoked by 152, 1994, reg. 4(b)
Regulation 10(6):	substituted by 152, 1994, reg. 4(c)
Regulation 10A:	inserted by 152, 1994, reg. 5
Regulation 10B:	inserted by 152, 1994, reg. 5
Regulation 10B(5):	varied by 160, 1996, reg. 4
Regulation 10C:	inserted by 152, 1994, reg. 5
Regulation 14A:	inserted by 132, 1998, reg. 5
Regulation 14A(1):	varied by 141, 1999, reg. 5
Regulation 14B:	inserted by 132, 1998, reg. 5
Regulation 14B(2):	definition of "blue crab quota" varied by 141, 1999, reg. 6
<b>Regulation 14C:</b>	<b>inserted by 135, 2000, reg. 4</b>
Regulation 15A:	inserted by 132, 1998, reg. 6
Regulation 16(1):	varied by 107, 1992, reg. 4; 124, 1993, reg. 4
Regulation 17:	varied by 124, 1993, reg. 5
Schedule 1:	varied by 152, 1994, reg. 6; 160, 1996, reg. 5
<b>Schedule 2:</b>	substituted by 107, 1992, reg. 5; 124, 1993, reg. 6; 97, 1994, reg. 3; <b>varied by 147, 1995, reg. 3; 152, 1996, reg. 3; 131, 1997, reg. 3; 132, 1998, reg. 7; 141, 1999, reg. 7; 135, 2000, reg. 5</b>
Schedule 4:	revoked by 107, 1992, reg. 6

**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