

REGULATIONS UNDER THE FISHERIES ACT 1982

Scheme of Management (Prawn Fisheries) Regulations 1991

being

No. 106 of 1991: *Gaz.* 27 June 1991, p. 2133¹

as varied by

No. 105 of 1992: *Gaz.* 25 June 1992, p. 1927²

No. 126 of 1993: *Gaz.* 24 June 1993, p. 2072³

No. 95 of 1994: *Gaz.* 23 June 1994, p. 1808⁴

No. 44 of 1995: *Gaz.* 20 April 1995, p. 1525⁵

No. 144 of 1995: *Gaz.* 29 June 1995, p. 3154⁶

No. 154 of 1996: *Gaz.* 20 June 1996, p. 3011⁷

No. 125 of 1997: *Gaz.* 13 May 1997, p. 1953⁸

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

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

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

⁴ Came into operation 23 June 1994: reg. 2.

⁵ Came into operation 20 August 1995: reg. 2.

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

⁷ Came into operation 20 June 1996: reg. 2.

⁸ Came into operation 13 May 1997: reg. 2.

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

Citation

1. These regulations may be cited as the *Scheme of Management (Prawn 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 (Gulf St. Vincent Prawn Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1615), as varied;

(b) the *Scheme of Management (Spencer Gulf Prawn Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1605), as varied;

and

(c) the *Scheme of Management (West Coast Prawn Fishery) Regulations 1987* (see *Gazette* 16 April 1987 p. 1045), as varied.

Interpretation

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

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

"**continuous brake horse power rating**", in relation to an engine of a boat, means the continuous brake horse power rating of the engine as stated by the engine manufacturer's specifications and in accordance with Australian Standard 1501-1976:

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

"**fishing period**", in relation to a prawn fishery, means a period during which it is not unlawful to engage in a fishing activity of a class that constitutes the fishery by virtue of a declaration under section 43 of the Act:

"**Gulf St. Vincent**" means the waters within the area bounded by a line commencing at the intersection of the southern shore of Yorke Peninsula at high water mark with the meridian 137° east longitude, then proceeding due south along that meridian to its intersection with the northern shore of Kangaroo Island at high water mark, then easterly along that shore at high water mark to Cape St. Alban (latitude 35°48.7' south, longitude 138°07.4' east), then in a direction of 030°T to Porpoise Head on the southern shore of Fleurieu Peninsula (latitude 35°39.6' south, longitude 138°13.6' east), then along the high water mark of the eastern and western shoreline of Gulf St. Vincent back to the point of commencement:

"**licence period**" means—

(a) the period of 12 months commencing on 1 October 1994; or

(b) the period of 9 months commencing on 1 October 1995; or

3.

- (c) the period of 12 months commencing on 1 July 1996 or on 1 July in any subsequent year;

"overall length", in relation to a boat, means the horizontal distance between—

- (a) a perpendicular dropped from the extremity of the bow of the boat, or, if a fixture or structure attached to the bow projects beyond the bow, from the extremity of that fixture or structure;

and

- (b) a perpendicular dropped from the extremity of the stern of the boat, or, if a fixture or structure attached to the stern projects beyond the stern, from the extremity of that fixture or structure:

"prawn" means western king prawn (*Penaeus latisulcatus*):

"prawn fishery" means—

- (a) the Gulf St. Vincent Prawn Fishery;

- (b) the Spencer Gulf Prawn Fishery;

or

- (c) the West Coast Prawn Fishery,

constituted by these regulations:

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

"renewal fee", in relation to a licence, means the sum of the amount set out in schedule 2 and the amount of any surcharge payable under the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987* in respect of the licence:

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

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

"Spencer Gulf" means the waters of Spencer Gulf that are north of the geodesic joining Cape Catastrophe, Eyre Peninsula and Cape Spencer, Yorke Peninsula:

"surveyed length", in relation to a registered boat, means the length as shown on the survey certificate issued under the *Marine Act 1936*:

"West Coast waters" means the waters east of the meridian of longitude 131° east to the meridian of longitude 137° east, but excluding the waters of Spencer Gulf that are north of the geodesic joining Cape Catastrophe, Eyre Peninsula and Cape Spencer, Yorke Peninsula.

4.

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

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

or

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

(3) For the purposes of these regulations—

- (a) "share", in relation to a body corporate, has the meaning assigned to that term by section 9 of the *Corporations Law*;
- (b) a person is the holder of a share in a body corporate if—
 - (i) he or she is beneficially entitled to that share;

or

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

and

- (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 Gulf St. Vincent Prawn Fishery;

5.

(b) the Spencer Gulf Prawn Fishery;

and

(c) the West Coast Prawn Fishery.

(2) The Gulf St. Vincent Prawn Fishery consists of—

(a) the taking of prawns in Gulf St. Vincent;

and

(b) the taking of fish specified in Part A of schedule 1 in Gulf St. Vincent where the fish are taken at the same time in the same net incidentally to the taking of prawns.

(3) The Spencer Gulf Prawn Fishery consists of—

(a) the taking of prawns in Spencer Gulf;

and

(b) the taking of fish specified in Part A of schedule 1 in Spencer Gulf where the fish are taken at the same time in the same net incidentally to the taking of prawns.

(4) The West Coast Waters Prawn Fishery consists of—

(a) the taking of prawns in the West Coast waters;

and

(b) the taking of fish specified in Part B of schedule 1 in the West Coast waters where the fish are taken at the same time in the same net incidentally to the taking of prawns.

No further licences are to be granted

6. (1) The licences in respect of the Gulf St. Vincent Prawn Fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the Gulf St. Vincent Prawn Fishery subject to the provisions of the Act, the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987* and these regulations, and no other licence may be granted in respect of the fishery.

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

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

6.

Expiry of licences

7. A licence in respect of a prawn fishery expires—

- (a) in the case of a licence in force before 30 September 1995—on 30 September 1995;
- (b) in the case of a licence renewed on or after 1 October 1995—on 30 June following the date of its last renewal.

Renewal of licences

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

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

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

and

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

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

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

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

(a) —

- (i) the renewal fee as specified in schedule 2;

or

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

and

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

(6) Where an application to renew a licence is made before or within three months after the expiry of the licence, the renewal fee may be paid as follows:

- (a) in the case of a licence that expires on 30 September 1995—by four instalments of 25 per cent payable on or before the date of renewal of the licence and 1 January, 1 April and 1 July following the date of renewal;

7.

- (b) in the case of a licence that expires on 30 June 1996—by three almost equal instalments payable on or before the date of renewal of the licence and 1 January and 1 April following the date of renewal;
- (c) in the case of a licence that expires on 30 June in any subsequent year—by four instalments of 25 per cent payable on or before the date of renewal of the licence and 1 October, 1 January and 1 April following the date of renewal.

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

(8) Where—

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

or

- (b) an additional amount is required to be paid for late payment of an instalment of a renewal fee, the amount unpaid may be recovered from the holder of the licence or the person who last held the licence as a debt due to the Crown.

Refund on surrender of licence

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

Registration of boats

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

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

- (a) the applicant is the holder of a licence in respect of the fishery;
- (b) no other boat is registered by the endorsement of the applicant's licence in respect of the fishery;

and

(c) the boat has—

- (i) in the case of a boat to be used in the Gulf St. Vincent Prawn Fishery—

- (A) an overall length not exceeding 15.2 metres;

and

8.

- (B) a main engine the continuous brake horse power rating of which does not exceed 300 continuous brake horse power;
- (ii) in the case of a boat to be used in the Spencer Gulf Prawn Fishery or the West Coast Prawn Fishery—
 - (A) an overall length not exceeding 22 metres;
 - and
 - (B) a main engine the continuous brake horse power rating of which does not exceed 365 continuous brake horse power.

Registration as master

10. 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.

Revocation of registration

11. (1) The Director may, on application by the holder of a licence in respect of a prawn fishery, revoke a registration effected by endorsement of the licence.

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

Transfer of licence

12. (1) A licence in respect of a prawn fishery may be transferred with the consent of the Director.

(2) Any transfer of a licence in respect of Gulf St. Vincent Prawn Fishery is subject to the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987*.

(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

(d) must be verified by statutory declaration.

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

- (a) the licence to be transferred;

9.

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

* * * * *

and

- (d) the application fee specified in schedule 2.

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

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

10.

or

(ii) that—

(A) the transfer of the fishery licence separately from the entitlement is not likely to result in fishing activities that endanger or overexploit fishery resources;

and

(B) the person or body that granted the entitlement concurs with the separate transfer of the licence.

Furnishing of returns

13. (1) The holder of a licence in respect of a prawn fishery must—

(a) fill out a return in a form determined by the Minister, in respect of each fishing period;

(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 fishing period to which it relates.

Penalty: Division 6 fine.

(2) Where the holder of a licence in respect of a prawn fishery takes no prawns or other fish pursuant to the licence during a particular fishing period, 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

14. The holder of a licence in respect of prawn fishery must—

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

and

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

Penalty: Division 6 fine.

SCHEDULE 1

Fish prescribed for Prawn Fisheries

The following fish are specified for the prawn fisheries:

Part A

Crustaceans—

Lobster, slipper (*Ibacus* spp.)

Molluscs—

Squid, calamary (*Sepioteuthis australis*)

Part B

Crustaceans—

Lobster, slipper (*Ibacus* spp.)

Molluscs—

Octopus (*Octopus* spp.)

Scallop (Family Pectinidae)

Squid, calamary (*Sepioteuthis australis*)

arrow (*Nototodarus gouldii*)

SCHEDULE 2*Fees*

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

	\$
(a) on application for the renewal of a licence—	
(i) in respect of the Gulf St. Vincent Prawn Fishery	18 790
(ii) in respect of the Spencer Gulf Prawn Fishery	20 361
(iii) in respect of the West Coast Prawn Fishery	20 028
(b) on application for the transfer of a licence in respect of any prawn fishery	200

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, business address and telephone number of the transferee and, where the transferee is a natural person, the transferee's date of birth and residential address.
4. The price to be paid for the transfer of—
 - (a) the licence;and
 - (b) any boat, equipment, registration endorsed on the licence, or other matter of 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;
 - (h) a description of its engine(s) including make, year of manufacture and continuous brake horse power rating as stated by the engine manufacturer's specifications relating to the engine and in accordance with Australian Standard 1501-1976.
6. Details of the number of persons who are to assist the transferee to take fish from the boat or otherwise.
7. Details of the person who is to be the registered master of the boat.
8. Details of any device to be used to take fish.
9. Statements by the transferee as to—
 - (a) whether or not the transferee holds a licence in respect of any fishery;
 - (b) whether or not the transferee is the associate of a person who holds a licence in respect of any fishery;
 - (c) whether or not the transferee, or where the transferee is a company, a director of the company, is a party to a contract, arrangement or understanding, the purpose or effect of which is that the transferee or director will act at the direction of, or in accordance with, the wishes or instruction of another in relation to the transferee's activities pursuant to the licence;

14.

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

and

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

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

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APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

Transitional provision from Regulation No. 105 of 1992, 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 year commencing after the commencement of these regulations.

(2) Notwithstanding regulation 6, 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 year that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**" means the period of 12 months from 1 October in any year.

Transitional provision from Regulation No. 126 of 1993, 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 year commencing after the commencement of these regulations.

(2) Notwithstanding 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 year that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**" means the period of 12 months from 1 October in any year.

Transitional provision from Regulation No. 95 of 1994, 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 year commencing after the commencement of these regulations.

(2) Notwithstanding 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 year that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**" means the period of 12 months from 1 October in any year.

Transitional provision from Regulation No. 144 of 1995, 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) Notwithstanding 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 commencing before the commencement of these regulations.

(3) In this regulation—

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

(Transitional provision from Regulation No. 125 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**" has the same meaning as in the principal regulations.

Legislative History

Regulation 4(1):	definition of "licence period" inserted by 144, 1995, reg. 3 definition of "SARDI" inserted by 126, 1993, reg. 3
Regulation 7:	substituted by 144, 1995, reg. 4
Regulation 8(1):	varied by 144, 1995, reg. 5(a)
Regulation 8(5):	varied by 126, 1993, reg. 4
Regulation 8(6):	substituted by 144, 1995, reg. 5(b)
Regulation 8a:	inserted by 105, 1992, reg. 3; substituted by 144, 1995, reg. 6
Regulation 9:	varied by 44, 1995, reg. 3
Regulation 12(5)(c):	revoked by 105, 1992, reg. 4
Regulation 13(1):	varied by 105, 1992, reg. 5; 126, 1993, reg. 5
Regulation 14:	varied by 126, 1993, reg. 6
Schedule 2:	substituted by 105, 1992, reg. 6; 126, 1993, reg. 7; 95, 1994, reg. 3; varied by 144, 1995, reg. 7; 154, 1996, reg. 3; 125, 1997, reg. 3
Schedule 4:	revoked by 105, 1992, reg. 7

APPENDIX 2**DIVISIONAL PENALTIES AND EXPIATION FEES**

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

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

Note: This appendix is provided for convenience of reference only.