

South Australia

Fisheries Management (Miscellaneous Fishery) Regulations 2015

under the *Fisheries Management Act 2007*

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Schedule 1—Aquatic resources prescribed for Miscellaneous Fishery

Schedule 2—Competitive tender procedure for issue of licences

1 Competitive tender procedure

Legislative history

1—Short title

These regulations may be cited as the *Fisheries Management (Miscellaneous Fishery) Regulations 2015*.

3—Interpretation

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

Act means the *Fisheries Management Act 2007*;

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

current company extract means a document prepared by the Australian Securities and Investment Commission from its national database kept under the Corporations Act that contains current details of the following in relation to a company:

- (a) the company's name;
- (b) the address of the company's registered office;
- (c) the date of registration of the company;

- (d) the State or Territory in which the company is taken to be registered under the Corporations Act;
- (e) the company's Australian Company Number;
- (f) whether the company is a proprietary company or a public company;
- (g) the full name of each director of the company;
- (h) the full name of each secretary (if any) of the company;

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the Act;

fishery means the Miscellaneous Fishery constituted by these regulations;

giant crab means Giant Crab *Pseudocarcinus gigas*;

waters of the State means all the waters to which the Act applies.

- (2) In these regulations, unless the contrary intention appears, **company**, **director**, **proprietary company** and **public company** have the same respective meanings as in the Corporations Act.
- (3) In these regulations—
 - (a) common and scientific fish names are given according to AS5300—2019 *Australian Fish Names Standard* published by the Fisheries Research & Development Corporation, as in force from time to time;
 - (b) a reference to the **taking of aquatic resources** includes a reference to an act preparatory to, or involved in, the taking of the aquatic resources.

4—Constitution of the fishery

- (1) The Miscellaneous Fishery is constituted.
- (2) The Miscellaneous Fishery consists of the taking of aquatic resources specified in Schedule 1 in the waters of the State.

5—Issue of licences

- (1) If a licence in force in respect of the fishery ceases to be held by a person, the Minister may issue the licence to another person.
- (2) If the Minister considers that it would not be detrimental to the aquatic resources of the State to issue an additional licence in respect of the fishery, the Minister may issue a licence in respect of the fishery.
- (3) The Minister may, but is not required to, call for applications in respect of a licence to be issued under this regulation in accordance with the competitive tender procedure prescribed by Schedule 2.
- (4) Subject to subregulation (5), if the Minister conducts a tender in accordance with Schedule 2, the Minister must not grant a licence in respect of which the procedure was conducted except to the person who was the successful applicant for the licence at the tender.

- (5) If a person who is a successful applicant at a tender conducted in accordance with Schedule 2—
- (a) fails to make an application for the licence in respect of which the person was the successful applicant; or
 - (b) having made an application for that licence, is for any reason not granted the licence,
- the Minister may call for additional applications in respect of that licence in accordance with the procedure prescribed by Schedule 2.
- (6) The Minister may not issue a licence to an applicant under this regulation unless satisfied—
- (a) in the case of a natural person—that the person is at least 15 years of age and is a fit and proper person to hold a licence in respect of the fishery;
 - (b) in the case of a company—that each director of the company is a fit and proper person to be a director of a company that holds a licence in respect of the fishery.

5A—Transfer of licence

- (1) Licences in respect of the fishery are transferable.
- (2) An application for consent to the transfer of a licence must be accompanied by—
- (a) the licence to be transferred; and
 - (b) a form of return as required by regulation 11 completed by the holder of the licence up to the date of application; and
 - (c) if the transferee is a company—a current company extract relating to the transferee.
- (3) The Minister may only consent to the transfer of a licence if satisfied as to the following:
- (a) that any fees or other amounts payable in relation to the licence under the Act have been paid in full;
 - (b) that the licence to be transferred has not been suspended;
 - (c) that no proceedings alleging an offence against the Act are pending or likely to be commenced in the State against the holder of the licence;
 - (d) if the transferee is a natural person, that the transferee is at least 15 years of age and is a fit and proper person to hold a licence in respect of the fishery;
 - (e) if the transferee is a company, that each director of the company is a fit and proper person to be a director of a company that holds a licence in respect of the fishery;
 - (f) if a boat registered for use under the licence is the subject of, or registered for use under, or is otherwise referred to in, a licence, permit, authority or other entitlement to take fish granted under a law of the Commonwealth or a corresponding law—

- (i) that the entitlement is either to be transferred together with the licence to the transferee or to be surrendered on or before the transfer of the licence; or
- (ii) that—
 - (A) the transfer of the licence separately from the entitlement is not likely to result in fishing activities that over-exploit or endanger the aquatic resources of the State; and
 - (B) the person or body that granted the entitlement concurs with the separate transfer of the licence.

6—Power of Minister to limit fishing activities

The Minister may impose conditions on a licence in respect of the fishery limiting the class of fishing activities that may be engaged in under the licence.

7—Registration

An application by the holder of a licence in respect of the fishery—

- (a) to register a boat or device for use under the licence; or
 - (b) to register a person as a master of a boat that may be used under the licence,
- must be accompanied by the documents specified in the application form.

8—Revocation of registration

- (1) The Minister may, on application by the holder of a licence in respect of the fishery, revoke the registration of—
 - (a) a boat or device used under the licence; or
 - (b) a person as a master of a boat that may be used under the licence.
- (2) An application for revocation of registration must—
 - (a) be made in a manner and form approved by the Minister; and
 - (b) be completed in accordance with the instructions contained in the form; and
 - (c) be accompanied by the documents specified in the application form.

9—Individual giant crab catch quota system

- (1) In this regulation—

giant crab fishing zone means the Northern Zone or Southern Zone;

giant crab quota entitlement or *quota entitlement*—

- (a) in relation to a licence in respect of the fishery and a giant crab fishing zone, means the maximum number of kilograms of giant crab that may be lawfully taken by the holder of the licence in that zone during a quota period, being the product of—
 - (i) the unit entitlement under that licence in respect of that zone; and
 - (ii) the unit value for that zone and that quota period,subject to any variation applying during that quota period;

- (b) in relation to a licence in respect of a rock lobster fishery—has the same meaning as in the *Fisheries Management (Rock Lobster Fisheries) Regulations 2017*;

quota period—

- (a) in relation to the Northern Zone means—
 - (i) the period that commenced on 1 July 2020 and ends on 31 October 2021; or
 - (ii) the period of 12 months commencing on 1 November 2021 or on 1 November in any subsequent year;
- (b) in relation to the Southern Zone means—
 - (i) the period that commenced on 1 July 2020 and ends on 30 September 2021; or
 - (ii) the period of 12 months commencing on 1 October 2021 or on 1 October in any subsequent year;

unit entitlement—

- (a) in relation to a licence in respect of the fishery and a giant crab fishing zone—means the number of giant crab units for the time being allocated to the licence in respect of that zone;
- (b) in relation to a licence in respect of a rock lobster fishery—has the same meaning as in the *Fisheries Management (Rock Lobster Fisheries) Regulations 2017*;

unit value means the number of kilograms of giant crab determined by the Minister to be the value of a giant crab unit for a giant crab fishing zone and a quota period.

- (2) In this regulation, **Northern Zone**, **rock lobster fishery** and **Southern Zone** have the same respective meanings as in the *Fisheries Management (Rock Lobster Fisheries) Regulations 2017*.
- (3) The Minister must, on or before the commencement of each quota period, determine the number of kilograms of giant crab that is to be the value of a giant crab unit for a giant crab fishing zone and the quota period.
- (4) The Minister may impose or vary conditions on licences in respect of the fishery or a rock lobster fishery varying giant crab quota entitlements as follows:
 - (a) on joint application made to the Minister by the holders of licences in respect of the fishery subject to conditions fixing a giant crab quota entitlement, the conditions of the licences may be varied so as to increase the unit entitlement under 1 of the licences and decrease the unit entitlement under the other licence by a corresponding number of units;
 - (b) on joint application made to the Minister by a holder of a licence in respect of the fishery subject to a condition fixing a giant crab quota entitlement (the **first licence**) and the holder of a licence in respect of the Northern Zone Rock Lobster Fishery subject to such a condition (the **second licence**)—

- (i) the conditions of the first licence may be varied so as to decrease the unit entitlement under that licence in respect of the Northern Zone and the conditions of the second licence may be varied so as to increase the unit entitlement under that licence by a corresponding number of units; or
 - (ii) the conditions of the first licence may be varied so as to increase the unit entitlement under that licence in respect of the Northern Zone and the conditions of the second licence may be varied so as to decrease the unit entitlement under that licence by a corresponding number of units;
- (c) on joint application made to the Minister by the holder of a licence in respect of the fishery subject to a condition fixing a giant crab quota entitlement (the *first licence*) and the holder of a licence in respect of the Southern Zone Rock Lobster Fishery subject to such a condition (the *second licence*)—
 - (i) the conditions of the first licence may be varied so as to decrease the unit entitlement under that licence in respect of the Southern Zone and the conditions of the second licence may be varied so as to increase the unit entitlement under that licence by a corresponding number of units; or
 - (ii) the conditions of the first licence may be varied so as to increase the unit entitlement under that licence in respect of the Southern Zone and the conditions of the second licence may be varied so as to decrease the unit entitlement under that licence by a corresponding number of units;
- (d) if the total catch of giant crab taken during a quota period exceeded the giant crab quota entitlement under the licence for that quota period, the conditions of the licence may be varied so as to reduce the quota entitlement—
 - (i) if the catch exceeded the giant crab quota entitlement by not more than 20 kilograms of giant crab—by 1 kilogram for each kilogram taken in excess of the quota entitlement; or
 - (ii) if the catch exceeded the quota entitlement by more than 20 kilograms but not more than 50 kilograms of giant crab—by 2 kilograms for each kilogram taken in excess of the quota entitlement;
- (e) if—
 - (i) the holder of a licence in respect of the fishery is convicted of an offence of contravening a condition of the licence fixing a giant crab quota entitlement; and
 - (ii) the conduct constituting the offence involved the taking of more than 50 kilograms of giant crab in excess of the quota entitlement,

the conditions of the licence may be varied so as to reduce the quota entitlement under the licence for 3 quota periods following the conviction by 1 kilogram for each kilogram taken in excess of the quota entitlement for the quota period during which the offence was committed;

- (f) a variation of a giant crab quota entitlement made under paragraph (d) must be expressed to apply only for the quota period during which the variation is made.
- (5) An application to vary quota entitlements must—
 - (a) be made in a manner and form approved by the Minister; and
 - (b) be completed in accordance with the instructions contained in the form; and
 - (c) be accompanied by—
 - (i) the documents specified in the application form; and
 - (ii) the prescribed fee.

10—Use of agents in fishing activities on shore

- (1) The holder of a licence in respect of the fishery or the registered master of a registered boat used under such a licence must not cause or permit a person to be engaged on the shore as an agent of the holder of the licence in a fishing activity of a class that constitutes the fishery unless—
 - (a) the holder of the licence or the registered master 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 or the registered master (as the case may be) and the other person remain, while so engaged, within 700 metres of each other.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) The holder of a licence in respect of the fishery or the registered master of a registered boat used under such a licence must not cause or permit more than 2 persons to be engaged at the same time on the shore as agents of the holder of the licence in a fishing activity of a class that constitutes the fishery.

Maximum penalty: \$5 000.

Expiation fee: \$315.

11—Periodic returns

- (1) The holder of a licence in respect of the fishery must provide the Department with such returns in the manner and form, at such times and containing such information, as determined by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$500.

- (2) The holder of a licence must keep a record of each return that the licence holder provides to the Department under this regulation in such manner, and for such period, as determined by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$500.

12—Provision relating to keeping of records

A person required under these regulations to keep a record for a period of time must ensure that the record—

- (a) is maintained in a good condition and is legible; and
- (b) is kept so that it is readily accessible; and
- (c) is produced for inspection by a fisheries officer on request.

Maximum penalty: \$2 500.

Expiation fee: \$210.

13—Minister's determinations

- (1) The Minister may make a determination for the purposes of a regulation.
- (2) A determination may—
 - (a) be of general or limited application; and
 - (b) make different provision according to the persons, things or circumstances to which it is expressed to apply.
- (3) If the Minister makes a determination, notice of the determination—
 - (a) must be published on the Department's website; and
 - (b) may also be published in the Gazette.
- (4) As soon as practicable after a determination of the Minister is made, a notice in writing setting out the date on which notice of the determination is published and the terms of the determination must be given to the persons bound by the determination in a manner and form that, in the opinion of the Minister, will bring the determination to the attention of those persons.
- (5) The Minister may, by further determination, vary or revoke a determination made for the purposes of a regulation.
- (6) This regulation does not apply in relation to a determination made for the purposes of regulation 9 or Schedule 2.

Schedule 1—Aquatic resources prescribed for Miscellaneous Fishery

All aquatic resources other than Abalone (*Haliotis* spp), King Prawn (*Melicertus latisulcatus*) and Southern Rock Lobster (*Jasus edwardsii*).

Schedule 2—Competitive tender procedure for issue of licences

1—Competitive tender procedure

- (1) If the Minister proposes to call applications for the issue of a licence in respect of the fishery, the Minister must cause an advertisement, in a form determined by the Minister, to be published—
 - (a) calling for tenders for such number of licences in respect of the fishery as are to be granted; and

- (b) fixing a time and date on which tenders will close (being a date that is at least 1 month after the publication of the advertisement); and
 - (c) requiring each tender to be accompanied by an ADI guarantee equal to 10 per cent of the amount tendered; and
 - (d) requiring all tenders to be made in a manner and form approved by the Minister.
- (1a) An advertisement under subclause (1)—
- (a) must be published in the Gazette; and
 - (b) may also be published—
 - (i) on a website determined by the Minister; or
 - (ii) in a newspaper circulating generally throughout the State.
- (2) All tenders must be enclosed in a sealed envelope and forwarded to the office of the Minister.
- (3) The Minister must provide at his or her office a locked box into which all tenders must be deposited.
- (4) All tenders deposited in the locked box must remain there until the close of tenders.
- (5) A person must not interfere with or remove a tender from the locked box prior to the close of tenders.
Maximum penalty: \$1 250.
- (6) At the close of tenders the Minister must open the locked box in the presence of two persons appointed by the Minister for this purpose.
- (7) One of those persons must remove each of the envelopes from the box taking each 1 singly and at random and, after removing an envelope from the box, that person must open the envelope and hand the contents to the other person.
- (8) On receiving the contents of an envelope the other person must prepare a schedule of tenderers containing—
- (a) the name of each tenderer; and
 - (b) the amount tendered; and
 - (c) the order in which the envelopes containing the tenders were removed from the box.
- (9) When all the tenders have been removed from the box and the schedule of tenderers has been completed the Minister must examine each tender and the schedule of tenderers.
- (10) If 1 licence in respect of the fishery is to be granted—
- (a) the amount payable for the licence will be an amount equal to the highest amount tendered; and
 - (b) the successful applicant will be the person who tenders an amount equal to the highest amount.

- (11) If 1 licence in respect of the fishery is to be granted and more than 1 person tenders an amount equal to the highest amount—
- (a) 1 of the persons who tendered an amount equal to the highest amount will be the successful applicant; and
 - (b) the successful applicant will be the person whose tender was removed from the box before the tenders of the other persons who tendered an amount equal to the highest amount.
- (12) If more than 1 licence in respect of the fishery is to be granted and the number of licences to be granted is equal to the number of persons who have tendered an amount equal to or greater than the clearing price, those persons who have tendered an amount equal to or greater than the clearing price will be the successful applicants.
- (13) If the number of licences to be granted in respect of the fishery is less than the number of persons who have tendered an amount equal to or greater than the clearing price, the successful applicants will be selected as follows:
- (a) each of the persons who tendered an amount greater than the clearing price will be a successful applicant; and
 - (b) the name of the other persons who have tendered an amount equal to the clearing price will be put on a list in the order in which their tender was removed from the box and the successful applicant will be the person whose name appears first on the list; and
 - (c) if, after following the procedure specified in paragraph (b), there remains 1 or more licences to be granted in respect of the fishery, the successful applicant or applicants in respect of that licence or those licences will be the person whose name appears next on the list prepared under paragraph (b) and so on in descending order until a successful applicant has been determined in respect of each licence to be granted.
- (14) If more than 1 licence is to be granted in respect of the fishery the amount payable for that licence will be the clearing price determined by the Minister at the close of tenders.
- (15) If a person makes a tender that is successful but—
- (a) the person fails, within a reasonable time, to make an application for the licence in respect of which his or her tender was accepted; or
 - (b) the person makes such an application but for any reason does not accept the licence that the Minister is prepared to grant in the person's favour,
- the person forfeits an amount equal to 10% of the amount tendered on the Minister making a demand on the guarantee referred to in subclause (1).
- (16) If a person makes a tender that is not successful, or the tender is successful but the Minister is not prepared to grant the licence in the person's favour, the person does not forfeit the amount of 10% of the amount tendered.
- (17) In this Schedule—
- clearing price*** means an amount equal to the lowest amount that, having regard to the number of licences to be granted in respect of the fishery, would have to be tendered by an applicant to enable that applicant to be a successful applicant.

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 *Fisheries Management (Miscellaneous Fishery) Regulations 2015* revoked the following:

Fisheries Management (Miscellaneous Fishery) Regulations 2000

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2015	193	<i>Gazette 13.8.2015 p3807</i>	1.9.2015: r 2
2017	231	<i>Gazette 8.8.2017 p3421</i>	15.1.2018: r 2
2020	322	<i>Gazette 17.12.2020 p5786</i>	17.12.2020: r 2
2021	106	<i>Gazette 1.7.2021 p2612</i>	1.7.2021: r 2
2022	41	<i>Gazette 16.6.2022 p1825</i>	1.7.2022: r 2
2022	42	<i>Gazette 16.6.2022 p1831</i>	1.10.2022 except r 3—1.11.2022: r 2

Provisions varied

New entries appear in bold.

Provision	How varied	Commencement
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	15.1.2018
r 3		
r 3(1)		
Department	inserted by 231/2017 r 4(1)	15.1.2018
r 3(3)	substituted by 231/2017 r 4(2)	15.1.2018
	varied by 106/2021 r 4	1.7.2021
r 5A	inserted by 106/2021 r 5	1.7.2021
r 8		
r 8(2)	varied by 231/2017 r 5	15.1.2018
r 9		

r 9(1)		
giant crab quota entitlement or quota entitlement	varied by 231/2017 r 6(1)	15.1.2018
quota period	substituted by 322/2020 r 4	17.12.2020
unit entitlement	varied by 231/2017 r 6(1)	15.1.2018
r 9(2)	varied by 231/2017 r 6(1)	15.1.2018
r 9(4)	varied by 231/2017 r 6(2)	15.1.2018
r 9(5)	varied by 231/2017 r 6(3), (4)	15.1.2018
r 11	substituted by 231/2017 r 7	15.1.2018
rr 12 and 13	inserted by 231/2017 r 7	15.1.2018
Sch 1	varied by 231/2017 r 8	15.1.2018
Sch 2		
cl 1		
cl 1(1)	varied by 231/2017 r 9(1)	15.1.2018
cl 1(1a)	inserted by 231/2017 r 9(2)	15.1.2018
Sch 3	<i>omitted under Legislation Revision and Publication Act 2002</i>	15.1.2018

Historical versions

15.1.2018
17.12.2020