South Australia

Fisheries Management (Sardine Fishery) Regulations 2021

under the *Fisheries Management Act 2007*

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Schedule 1—Aquatic resources prescribed for Sardine Fishery

Legislative history

1—Short title

These regulations may be cited as the *Fisheries Management (Sardine Fishery) Regulations 2021*.

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 name of the company;

(b) the address of the registered office of the company;

(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 responsible for assisting a Minister in the administration of the Act;

fishery means the Sardine Fishery constituted by these regulations;

Gulfs Zone means the Spencer Gulf, Gulf St. Vincent and surrounding waters contained within and bounded by a line commencing at Mean High Water Springs closest to 34°56'41.95" South, 135°37'30.03" East (near Cape Carnot, Eyre Peninsula), then beginning easterly following the line of Mean High Water Springs to the location closest to 35°36'21.55" South, 138°5'45.63" East (near Cape Jervis, Fleurieu Peninsula), then south-westerly to Mean High Water Springs closest to 35°43'1.15" South, 137°56'31.23" East (near Penneshaw, Kangaroo Island), then beginning westerly following the line of Mean High Water Springs to the location closest to 35°52'59.95" South, 136°32'8.19" East (near Vennachar Point, Kangaroo Island), then westerly to 35°52'59.95" South, 135°37'30.03" East, then northerly to the point of commencement;

Marine Scalefish Fishery means the fishery of that name constituted by the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*;

Outside Zone means the waters adjacent to South Australia that are not within the Gulfs Zone;

quota period—a quota period for the fishery means—

(a) the period that commences on 1 July 2021 and ends on 31 December 2021; or

(b) the period of 12 months commencing on 1 January 2022 or on 1 January in any subsequent year;

sardine means Australian Sardine (*Sardinops sagax*);

sardine fishing zone means—

(a) the Gulfs Zone; or

(b) the Outside Zone;

sardine net has the same meaning as in the *Fisheries Management (General) Regulations 2017*;

sardine quota entitlement or ***quota entitlement***, in relation to a licence in respect of the fishery and a sardine fishing zone, means the maximum number of kilograms of sardines that may be lawfully taken by the holder of a licence in that zone during a quota period, being the product of—

(a) the unit entitlement under that licence in respect of that zone; and

(b) the unit value for that zone and quota period,

subject to any variation applying during that quota period;

unit entitlement, in relation to a licence in respect of the fishery and a sardine fishing zone, means the number of sardine units for the time being allocated to the licence in respect of that zone;

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

(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) all lines in spatial descriptions are geodesics based on the Geocentric Datum of Australia 2020 (***GDA2020***) as defined in the determination under section 8A of the *National Measurement Act 1960* of the Commonwealth for the recognised-value standard of measurement position, and all coordinates are expressed in terms of GDA2020;

(b) 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;

(c) a reference to the ***taking of aquatic resources*** includes a reference to an act preparatory to, or involved in, the taking of aquatic resources.

(4) A reference in these regulations to ***sardine fishing zone***, ***sardine quota entitlement*** or ***unit entitlement*** in relation to the Marine Scalefish Fishery or a licence in respect of that fishery is a reference to that term as defined in regulation 17(2) of the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017* as in force immediately before the commencement of these regulations.

Note—

The *Fisheries Management (Marine Scalefish Fishery) Regulations 2017* were, immediately before the commencement of these regulations, known as the *Fisheries Management (Marine Scalefish Fisheries) Regulations 2017*.

4—Constitution of fishery

(1) The Sardine Fishery is constituted.

(2) The fishery consists of the taking of aquatic resources specified in Schedule 1 in the Gulfs Zone and the Outside Zone.

5—Issue of licences

(1) Subject to this regulation, the Minister may issue licences in respect of the fishery.

(2) An application for a licence in respect of the fishery may only be made—

(a) by a person who, immediately before 1 July 2021, held a licence in respect of the Marine Scalefish Fishery—

(i) subject to a condition fixing a sardine quota entitlement (unless the condition was imposed on the licence after the commencement of the MSF quota period 2021 and was expressed to apply only during the balance of that quota period); or

(ii) under which a sardine net was registered; or

(b) by a person—

(i) to whom a licence in respect of the fishery was transferred under these regulations; and

(ii) who makes the application on or before the expiration of that licence held by the person (or subsequent licence held by the person in substitution for that licence).

(3) The Minister may only grant an application for a licence in respect of the fishery to a person referred to in subregulation (2)(a) if—

(a) the person's licence in respect of the Marine Scalefish Fishery has been varied so as to revoke a condition of the licence fixing a sardine quota entitlement on the licence; or

(b) the person's licence in respect of the Marine Scalefish fishery has been surrendered.

(4) In this regulation—

Marine Scalefish Fishery means the fishery of that name constituted by the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*, as in force immediately before the commencement of this regulation;

MSF quota period 2021 means the period ending on 31 December 2021 defined as ***quota period 2021*** in regulation 17(2) of the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*, as in force immediately before the commencement of this regulation.

6—Transfer of licences

(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 15 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.

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 the 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 sardine catch quota system

(1) In this regulation—

following quota period, in relation to a first quota period and the holder of a licence in respect of the fishery, means the next quota period during which sardines may be taken by the holder of the licence following the first quota period.

(2) The Minister must, on or before the commencement of each quota period, determine the number of kilograms of sardines that is to be the value of a sardine unit for a sardine fishing zone and the quota period.

(3) The Minister may impose or vary conditions on licences in respect of the fishery fixing sardine quota entitlements as follows:

(a) a condition may be imposed on a licence in respect of the fishery fixing a sardine quota entitlement;

(d) the Minister may, not more than twice during a quota period, vary the conditions of all licences in respect of the fishery so as to increase the sardine quota entitlements under the licences by the same number of units in respect of the same sardine fishing zone;

(e) on joint application made to the Minister by the holders of any 2 licences in respect of the fishery the conditions of those licences may be varied so as to increase (by whole units or part units) the unit entitlement under 1 of the licences in respect of a particular sardine fishing zone and decrease the unit entitlement under the other licence in respect of that sardine fishing zone by a corresponding number of units (or part units);

(f) if the total catch of sardines taken by the holder of a licence in respect of the fishery subject to a condition fixing a sardine quota entitlement in respect of a particular sardine fishing zone during a quota period (the ***first quota period***) (being a quota period that commenced on or after 1 January 2022) is less than the sardine quota entitlement under the licence for that fishing zone and that quota period, the Minister may vary the conditions of the licence so as to increase the sardine quota entitlement in respect of that fishing zone for the following quota period (the ***subsequent quota period***) by 1 kilogram of sardines for each kilogram by which the catch fell short of the sardine quota entitlement for the first quota period up to—

(i) —

(A) 10% of the quota entitlement for the first quota period; or

(B) such lower percentage of the quota entitlement for the first quota period, or such other lower kilogram amount of catch, as is determined by the Minister on or before the commencement of the subsequent quota period; or

(ii) if the Minister is satisfied that exceptional circumstances apply—

(A) a percentage that exceeds 10% of the quota entitlement for the first quota period; or

(B) such other greater kilogram amount of catch,

as is determined by the Minister on or before the commencement of the subsequent quota period;

(g) if the total catch of sardines taken by the holder of a licence in respect of the fishery subject to a condition fixing a sardine quota entitlement in respect of a particular sardine fishing zone during a quota period (the ***first quota period***) (being a quota period that commences on or after 1 January 2023) exceeded the sardine quota entitlement under the licence for that fishing zone and that quota period, the conditions of the licence may be varied so as to decrease the quota entitlement in respect of that fishing zone for the following quota period (the ***subsequent quota period***) as follows:

(i) if the catch exceeded the quota entitlement by—

(A) an amount not exceeding 10% of the quota entitlement for the first quota period; or

(B) such lower percentage of the quota entitlement for the first quota period, or such other lower kilogram amount of catch, as is determined by the Minister on or before the commencement of the first quota period,

by 1 kilogram of sardines for each kilogram taken in excess of the quota entitlement; or

(ii) if the catch exceeded the quota entitlement by—

(A) an amount greater than 10% of the quota entitlement for the first quota period; or

(B) such lower percentage of the quota entitlement for the first quota period, or such other lower kilogram amount of catch, as is determined by the Minister on or before the commencement of the first quota period,

by 2 kilograms of sardines for each kilogram taken in excess of the quota entitlement.

(4) For the purposes of—

(a) subregulation (3)(f)(i) and (ii); and

(b) subregulation (3)(g)(i) and (ii),

any increase in the quota entitlement under a licence applying during a first quota period as a result of a variation of the quota entitlement under the licence previously made under subregulation (3)(f)(i) or (ii) must be disregarded.

(4a) A variation of a quota entitlement or unit entitlement under subregulation (3)(d) must be expressed to apply only for the balance of the quota period during which the variation is made.

(4b) A variation of a quota entitlement under subregulation (3)(f) or (g) must be expressed to apply only for the quota period during which the variation is made.

(4c) An application under subregulation (3)(e) may not be made in respect of sardine units allocated to the licence under subregulation (3)(f).

(5) An application to vary unit 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 the prescribed fee.

(6) The holder of a licence in respect of the fishery subject to a condition fixing a sardine quota entitlement must not take sardines under the licence while the total number of sardine units allocated to the licence is less than 100 units.

Maximum penalty: $5 000.

Expiation fee: $315.

10—Restriction on use of certain registered boats to take sardines

(1) A registered boat registered for use under more than 1 licence in respect of the fishery must not be used to take sardines under more than 1 such licence at any 1 time.

(2) If subregulation (1) is contravened, the registered owner and the registered master of the registered boat are each guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

11—Information to be provided when certain registered boats used to take sardines

(1) If a registered boat is, or is to be, used under more than 1 licence in respect of the fishery to take sardines, the Department must be notified, in the manner and form, and at such times, as determined by the Minister, of the information specified by the Minister in the determination.

(2) If the determination of the Minister made for the purposes of subregulation (1) is not complied with, the registered owner and registered master of the registered boat are each guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

12—Catch and disposal requirements

(1) If sardines are taken from a registered boat under a licence in respect of the fishery, the holder of the licence or the registered master must comply with the following provisions:

(a) the holder of the licence or the registered master must, in the manner and form, at such places and at such times, as determined by the Minister, record such information in respect of the catch and disposal of sardines taken under the licence as determined by the Minister;

(b) the holder of the licence or the registered master must provide the information recorded under paragraph (a) to the Department in the manner and form, and at such times, as determined by the Minister;

(c) the holder of the licence or the registered master must ensure that the sardines are weighed, stored, placed in containers, sealed, tagged, and transported, delivered, consigned or otherwise disposed of, and accompanied by such information, in accordance with the requirements (if any) as determined by the Minister.

(2) If a determination of the Minister made for the purposes of subregulation (1) is not complied with, the holder of the licence and the registered master of the registered boat are each guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $500.

(3) The holder of the licence must keep records made under subregulation (1) in the manner, at such place, and for such period, as determined by the Minister.

Maximum penalty: $5 000.

Expiation fee: $315.

13—Sardines to be delivered or consigned to registered fish processor

The holder of a licence in respect of the fishery must ensure that all sardines taken under the licence are delivered or consigned to a registered fish processor.

Maximum penalty: $5 000.

Expiation fee: $315.

14—Restriction on unloading of sardines onto other boats

The registered owner or registered master of a registered boat from which sardines are taken under a licence in respect of the fishery must not cause, suffer or permit the sardines to be unloaded onto another boat unless the other boat is specified on the certificate of registration of the registered fish processor to whom the sardines are to be consigned.

Maximum penalty: $5 000.

Expiation fee: Expiation fee $315.

15—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 in respect of the fishery 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.

16—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.

17—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 for the purposes of a regulation, 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.

(6) This regulation does not apply in relation to a determination made for the purposes of regulation 9.

Schedule 1—Aquatic resources prescribed for Sardine Fishery

Australian Anchovy (*Engraulis australis*)

Maray (*Etrumeus teres*)

Australian Sardine (*Sardinops sagax*)

Blue Sprat (*Spratelloides robustus*)

Sandy Sprat (*Hyperlophus vittatus*)

Legislative history

Notes

- 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.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2021	89	*Gazette 24.6.2021 p2332*	1.7.2021: r 2
2022	**73**	***Gazette 1.9.2022 p5812***	**1.1.2023: r 2**

Provisions varied

New entries appear in bold.

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

Provision	How varied	Commencement
r 2	*omitted under Legislation Revision and Publication Act 2002*	*1.1.2023*
r 9		
r 9(1)	substituted by 73/2022 r 3(1)	1.1.2023
r 9(3)	(b), (c) deleted by 73/2022 r 3(2)	1.1.2023
	amended by 73/2022 r 3(3)	1.1.2023
	(h), (i) deleted by 73/2022 r 3(3)	1.1.2023
r 9(4)	substituted by 73/2022 r 3(4)	1.1.2023
r 9(4a)—(4c)	inserted by 73/2022 r 3(4)	1.1.2023

Transitional etc provisions associated with regulations or variations

Fisheries Management (Sardine Fishery) (Quota) Amendment Regulations 2022 (No 73 of 2022), Sch 1—Transitional provision etc

1—Interpretation

In this Schedule—

principal regulations means the *Fisheries Management (Sardine Fishery) Regulations 2021*;

relevant day means 1 January 2023.

2—Transitional provision etc

If the total catch of sardines taken by the holder of a licence in respect of the Sardine Fishery subject to a condition fixing a sardine quota entitlement during the quota period that commenced on 1 January 2022 exceeded the quota entitlement under the licence for that quota period, then despite the deletion of regulation 9(3)(g) of the principal regulations by regulation 3(3) of these regulations, regulation 9(3)(g), as in force immediately before the relevant day, continues to apply to the licence such that the Minister may vary the conditions of the licence, in accordance with that regulation, in relation to the quota period commencing on 1 January 2023.