

South Australia

## **Fisheries (Scheme of Management—Rock Lobster Fisheries) Variation Regulations 2003**

under the *Fisheries Act 1982*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Fisheries (Scheme of Management—Rock Lobster Fisheries) Variation Regulations 2003*.

#### **2—Commencement**

These regulations will come into operation on 30 October 2003.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of *Fisheries (Scheme of Management—Rock Lobster Fisheries) Regulations 1991*

### 4—Variation of regulation 4—Interpretation

- (1) Regulation 4(1), definition of *the Act*—delete the definition and substitute:

*Act* means the *Fisheries Act 1982*;

*CDR book* means a book issued by the Department of Primary Industries and Resources containing blank NZRL-CDR forms;

- (2) Regulation 4(1)—after the definition of *licence period* insert:

*non-commercial purpose* means a purpose other than trade or business;

- (3) Regulation 4(1)—after the definition of *Northern Zone* insert:

*NZRL-CDR form* means the form produced by the Department of Primary Industries and Resources entitled *Northern Zone Rock Lobster Catch and Disposal Record*;

### 5—Variation of regulation 14—Rock lobster pot entitlement

Regulation 14—after subregulation (1) insert:

- (1a) The holder of a licence in respect of the Northern Zone Rock Lobster Fishery must not, for the purpose of trade or business, engage in a fishing activity of a class that constitutes the Fishery while the rock lobster pot entitlement endorsed on the licence is less than 25.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

### 6—Insertion of regulation 14AA

Before regulation 14A insert:

#### 14AA—Individual rock lobster catch quota system—Northern Zone

- (1) In this regulation—

*fishery* means the Northern Zone Rock Lobster Fishery;

*prescribed period* means—

- (a) the period commencing on 1 November 2003 and ending on 30 June 2004; or
- (b) the period of 12 months commencing on 1 July 2004 or on 1 July in any subsequent year;

*relevant period* means a period determined by the Director to be a relevant period for the purposes of this regulation;

**rock lobster quota**, in relation to a licence in respect of the fishery, means the maximum number of kilograms of rock lobster that may be lawfully taken by the holder of the licence during a prescribed period, being the product of—

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

subject to any variation of the rock lobster quota of the licence applying during that prescribed period;

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

**unit value** means the number of kilograms of rock lobster determined by the Director to be the value of a rock lobster unit for the fishery and a prescribed period.

- (2) The Director may impose or vary conditions on licences in respect of the fishery fixing rock lobster quotas as follows:
  - (a) on or before 1 November 2003 each licence in respect of the fishery must be allocated a number of rock lobster units for the prescribed period commencing on that date to be determined by the Director as follows:
    - (i) if the person who held the licence on 15 September 2003 is the person who held the licence for the whole of the relevant period, the licence will be allocated a number of rock lobster units that is the sum of—
      - (A) a number determined by the Director having regard to—
        - the number of rock lobster pots endorsed on the licence on 15 September 2003; and
        - the quantity of rock lobster taken pursuant to the licence during the relevant period (as recorded on returns lodged under regulation 15) relative to the number of rock lobster pots endorsed on the licence during the relevant period; and

- (B) if the number of rock lobster pots endorsed on the licence on 15 September 2003 was greater than the number of rock lobster pots endorsed on the licence on the last day of the relevant period—the number obtained by multiplying 16 by the number of rock lobster pots in the difference between the number of rock lobster pots endorsed on the licence on the last day of the relevant period and the number of rock lobster pots endorsed on the licence on 15 September 2003;
- (ii) if the person who held the licence on 15 September 2003 held the licence during part only of the relevant period, the licence will be allocated a number of rock lobster units that is the sum of—
- (A) a number determined by the Director having regard to—
- the number of rock lobster pots endorsed on the licence on 15 September 2003; and
  - the quantity of rock lobster taken pursuant to the licence during that part of the relevant period during which the person held the licence (as recorded on returns lodged under regulation 15) relative to the number of rock lobster pots endorsed on the licence during that part of the relevant period; and
  - a value determined by the Director for the quantity of rock lobster taken pursuant to the licence during that part of the relevant period during which the person did not hold the licence; and
  - a value determined by the Director for the number of rock lobster pots endorsed on the licence during that part of the relevant period during which the person did not hold the licence; and

- (B) if the number of rock lobster pots endorsed on the licence on 15 September 2003 was greater than the number of rock lobster pots endorsed on the licence on the last day of the relevant period—the number obtained by multiplying 16 by the number of rock lobster pots in the difference between the number of rock lobster pots endorsed on the licence on the last day of the relevant period and the number of rock lobster pots endorsed on the licence on 15 September 2003;
- (iii) if the person who held the licence on 15 September 2003 did not hold the licence during any part of the relevant period, the licence will be allocated a number of rock lobster units that is the number obtained by multiplying 16 by the number of rock lobster pots endorsed on the licence on 15 September 2003;
- (b) on or before 1 July 2004 each licence in respect of the fishery must be allocated a number of rock lobster units for the prescribed period commencing on that date to be determined by the Director as follows:
- (i) if the person who held the licence on 1 June 2004 is the person who held the licence for the whole of the relevant period, the licence will be allocated a number of rock lobster units that is the sum of—
- (A) a number determined by the Director having regard to—
- the number of rock lobster pots endorsed on the licence on 1 June 2004; and
  - the quantity of rock lobster taken pursuant to the licence during the relevant period (as recorded on returns lodged under regulation 15) relative to the number of rock lobster pots endorsed on the licence during the relevant period; and

- (B) if the number of rock lobster pots endorsed on the licence on 1 June 2004 was greater than the number of rock lobster pots endorsed on the licence on the last day of the relevant period—the number obtained by multiplying 16 by the number of rock lobster pots in the difference between the number of rock lobster pots endorsed on the licence on the last day of the relevant period and the number of rock lobster pots endorsed on the licence on 1 June 2004;
- (ii) if the person who held the licence on 1 June 2004 held the licence during part only of the relevant period, the licence will be allocated a number of rock lobster units that is the sum of—
- (A) a number determined by the Director having regard to—
- the number of rock lobster pots endorsed on the licence on 1 June 2004; and
  - the quantity of rock lobster taken pursuant to the licence during that part of the relevant period during which the person held the licence (as recorded on returns lodged under regulation 15) relative to the number of rock lobster pots endorsed on the licence during that part of the relevant period; and
  - a value determined by the Director for the quantity of rock lobster taken pursuant to the licence during that part of the relevant period during which the person did not hold the licence; and
  - a value determined by the Director for the number of rock lobster pots endorsed on the licence during that part of the relevant period during which the person did not hold the licence; and

- (B) if the number of rock lobster pots endorsed on the licence on 1 June 2004 was greater than the number of rock lobster pots endorsed on the licence on the last day of the relevant period—the number obtained by multiplying 16 by the number of rock lobster pots in the difference between the number of rock lobster pots endorsed on the licence on the last day of the relevant period and the number of rock lobster pots endorsed on the licence on 1 June 2004;
  - (iii) if the person who held the licence on 1 June 2004 did not hold the licence during any part of the relevant period, the licence will be allocated a number of rock lobster units that is the number obtained by multiplying 16 by the number of rock lobster pots endorsed on the licence on 1 June 2004;
- (c) on or before 1 July 2005 each licence in respect of the fishery must be allocated a number of rock lobster units for the prescribed period commencing on that date to be determined by the Director as follows:
  - (i) if the person who held the licence on 1 June 2005 is the person who held the licence for the whole of the relevant period, the licence will be allocated a number of rock lobster units that is the sum of—
    - (A) a number determined by the Director having regard to—
      - the number of rock lobster pots endorsed on the licence on 1 June 2005; and
      - the quantity of rock lobster taken pursuant to the licence during the relevant period (as recorded on returns lodged under regulation 15) relative to the number of rock lobster pots endorsed on the licence during the relevant period; and

- (B) if the number of rock lobster pots endorsed on the licence on 1 June 2005 was greater than the number of rock lobster pots endorsed on the licence on the last day of the relevant period—the number obtained by multiplying 16 by the number of rock lobster pots in the difference between the number of rock lobster pots endorsed on the licence on the last day of the relevant period and the number of rock lobster pots endorsed on the licence on 1 June 2005;
- (ii) if the person who held the licence on 1 June 2005 held the licence during part only of the relevant period, the licence will be allocated a number of rock lobster units that is the sum of—
- (A) a number determined by the Director having regard to—
- the number of rock lobster pots endorsed on the licence on 1 June 2005; and
  - the quantity of rock lobster taken pursuant to the licence during that part of the relevant period during which the person held the licence (as recorded on returns lodged under regulation 15) relative to the number of rock lobster pots endorsed on the licence during that part of the relevant period; and
  - a value determined by the Director for the quantity of rock lobster taken pursuant to the licence during that part of the relevant period during which the person did not hold the licence; and
  - a value determined by the Director for the number of rock lobster pots endorsed on the licence during that part of the relevant period during which the person did not hold the licence; and



- (B) if the number of rock lobster pots endorsed on the licence on 1 June 2005 was greater than the number of rock lobster pots endorsed on the licence on the last day of the relevant period—the number obtained by multiplying 16 by the number of rock lobster pots in the difference between the number of rock lobster pots endorsed on the licence on the last day of the relevant period and the number of rock lobster pots endorsed on the licence on 1 June 2005;
  - (iii) if the person who held the licence on 1 June 2005 did not hold the licence during any part of the relevant period, the licence will be allocated a number of rock lobster units that is the number obtained by multiplying 16 by the number of rock lobster pots endorsed on the licence on 1 June 2005;
- (d) on or before 1 July 2006 each licence in respect of the fishery must be allocated a number of rock lobster units for the prescribed period commencing on that date to be determined by the Director having regard to the rock lobster pot entitlement endorsed on the licence on 1 June 2006;
- (e) on 1 July 2007 and on 1 July of each subsequent year, each licence in respect of the fishery must be allocated a number of rock lobster units for the prescribed period commencing on that date equal to the number endorsed on the licence on the last day of the preceding prescribed period;
- (f) the Director must, on or before the commencement of each prescribed period, determine the number of kilograms of rock lobster that is to be the value of a rock lobster unit for the fishery and the prescribed period;
- (g) 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 the unit entitlement of one of the licences and decrease the unit entitlement of the other licence by a corresponding number of units;
- (h) if a variation of rock lobster pot entitlements is made as referred to in regulation 14(1)(d) in relation to licences in respect of the fishery, the Director must vary the number of rock lobster units endorsed on the licences so that for every additional rock lobster pot endorsed on one of the licences, the unit entitlement of that licence is increased by 16 rock lobster units and the unit entitlement under the other licence is decreased by 16 rock lobster units for every rock lobster pot in the decrease in the rock lobster pot entitlement under that licence;

- (i) the Director may, if the total rock lobster catch taken pursuant to a licence during a prescribed period exceeded the rock lobster quota of the licence for that prescribed 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 rock lobster—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 rock lobster—by two kilograms for each kilogram in excess of the quota;
  - (j) any variation of a unit entitlement made under paragraph (g) must, if made during the prescribed period commencing on 1 November 2003, 1 July 2004 or 1 July 2005, be expressed to apply only for the prescribed period during which the variation is made;
  - (k) any variation of a rock lobster quota made under paragraph (i) must be expressed to apply only for the prescribed period during which the variation is made;
  - (l) unit entitlements and rock lobster quotas must not be varied except as provided by this regulation.
- (3) The holder of a licence in respect of the fishery must not, for the purpose of trade or business, engage in a fishing activity of a class that constitutes the fishery while the number of rock lobster units endorsed on the licence is less than 400.
- Penalty: Division 6 fine.
- Expiation fee: Division 6 fee.
- (4) If—
- (a) a court convicts the holder of a licence in respect of the fishery of an offence of contravening a condition of the licence imposing a rock lobster quota on the licence; and
  - (b) the conduct constituting the offence involved the taking of more than 50 kilograms of rock lobster 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 rock lobster quota of the licence for three prescribed periods following the conviction by one kilogram for each kilogram in excess of the quota for the prescribed period during which the offence was committed.

## **7—Insertion of regulations 14C and 14D**

After regulation 14B insert:

### **14C—Rock lobster taken in Northern Zone to be landed whole within the State**

The holder of a licence in respect of the Northern Zone Rock Lobster Fishery must ensure that rock lobster taken pursuant to the licence—

- (a) is landed whole; and
- (b) is landed within the State.

Penalty: Division 6 fine.

Expiation fee: Division 9 fee.

### **14D—Disposal of rock lobster—Northern Zone**

- (1) Subject to subregulation (2), the holder of a licence in respect of the Northern Zone Rock Lobster Fishery must ensure that all rock lobster taken pursuant to the licence is consigned or delivered to a registered fish processor.

Penalty: Division 6 fine.

Expiation fee: Division 9 fee.

- (2) If any rock lobster are found to be dead when they are landed, the holder of the licence may, instead of consigning or delivering the rock lobster as required by subregulation (1), retain the rock lobster for a non-commercial purpose provided that the total number of rock lobster retained by the holder of the licence for such a purpose does not exceed—

- (a) 2 rock lobster landed on the same day; or
- (b) 30 rock lobster landed in the same licence period.

### **14E—Catch and disposal records—Northern Zone**

- (1) The holder of a licence in respect of the Northern Zone Rock Lobster Fishery or the registered master of a registered boat from which rock lobster is taken pursuant to such a licence must ensure that—

- (a) at least 2 hours before the rock lobster is removed from the boat, the Director is notified by telephone of—
  - (i) the name of the registered fish processor to whom the rock lobster is to be consigned or delivered; and
  - (ii) the location and time at which the rock lobster is to be removed from the boat; and
  - (iii) the number (if any) of rock lobster that are to be retained by the holder of the licence for a non-commercial purpose; and

- (b) if, after the Director is notified under paragraph (a), a decision is made to consign or deliver the rock lobster to a different registered fish processor, the Director is immediately notified by telephone of the name of that registered fish processor.
- (2) The holder of a licence in respect of the Northern Zone Rock Lobster Fishery or the registered master of a boat from which rock lobster is taken pursuant to such a licence must comply with the following provisions:
- (a) before the end of the day on which the rock lobster is taken, he or she must complete Part A of a NZRL-CDR form using a blue or black ballpoint pen;
  - (b) before the rock lobster is removed from the boat, he or she must complete Part B of the NZRL-CDR form using a blue or black ballpoint pen;
  - (c) he or she must ensure—
    - (i) that the rock lobster to which a completed NZRL-CDR form relates that is to be consigned or delivered to the registered premises of the fish processor specified on the form is transported in bins of a kind approved by the Director; and
    - (ii) that before a bin containing rock lobster is removed from the boat, the bin is sealed with a tag of a kind approved by the Director; and
    - (iii) that if a tag is broken while a bin is being sealed—
      - (A) the bin is sealed with a replacement tag; and
      - (B) the broken tag is attached to the bin by threading it through the replacement tag; and
      - (C) the number of the replacement tag is recorded on the NZRL-CDR form; and
    - (iv) if a tag is lost—that the Director is immediately notified of the loss;
  - (d) he or she must ensure that the white, blue and green copies of a completed NZRL-CDR form that relates to rock lobster that is to be consigned or delivered to a registered fish processor are transported to the registered premises of the fish processor together with the rock lobster;
  - (e) he or she must ensure that the white and blue copies of a completed NZRL-CDR form that relates only to rock lobster that is to be retained by the holder of the licence for a non-commercial purpose are delivered to the Director within 7 days of the removal of the rock lobster from the boat;

- (f) he or she must ensure that the yellow copies of a completed NZRL-CDR form and the CDR book are kept on board the boat until the CDR book is completed; and
  - (g) he or she must deliver a completed CDR book to the Director within 14 days of its completion.
- (3) If a provision of subregulation (1) or (2) is not complied with, the holder of the licence is guilty of an offence.  
Penalty: Division 6 fine.  
Expiation fee: Division 9 fee.
- (4) The holder of a licence in respect of the Northern Zone Rock Lobster Fishery must keep green copies of completed NZRL-CDR forms relating to rock lobster taken pursuant to the licence for a period of 5 years.  
Penalty: Division 6 fine.  
Expiation fee: Division 9 fee.

#### **8—Variation of regulation 15—Furnishing of returns**

Regulation 15(1), penalty provision—delete the penalty provision and substitute:  
Penalty: Division 6 fine.  
Expiation fee: Division 9 fee.

#### **9—Variation of regulation 17—Victorian licences**

Regulation 17, penalty provision—delete the penalty provision and substitute:  
Penalty: Division 6 fine.  
Expiation fee: Division 9 fee.

#### **10—Variation of regulation 18—Sale of rock lobster during closed season**

Regulation 18(1), penalty provision—delete the penalty provision and substitute:  
Penalty: Division 6 fine.  
Expiation fee: Division 9 fee.

#### **11—Variation of Schedule 2—Fees**

- (1) Schedule 2, clause 1—after paragraph (c) insert:
- (ca) on application under regulation 14AA(2)(g) by the holder of a licence in respect of the Northern Zone Rock Lobster Fishery to vary the conditions of the licence so as to decrease the unit entitlement of the licence in respect of rock lobster and increase the unit entitlement of one or more other licences in respect of the Fishery—\$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.

- (2) Schedule 2, clause 1—after its present contents as varied by this regulation (now to be designated as subclause (1)) insert:
- (2) The fees prescribed in relation to an application under regulation 14(1)(d) are not payable if the application relates to a licence in respect of the Northern Zone Rock Lobster Fishery and, at the same time, an application under regulation 14AA(2)(g) is made in respect of the same licence and the fees prescribed in relation to that application are paid.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

with the advice and consent of the Executive Council  
on 30 October 2003

No 221 of 2003

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