

South Australia

Fisheries (Scheme of Management—Blue Crab Fishery) Variation Regulations 2007

under the *Fisheries Management Act 2007*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Fisheries (Scheme of Management—Blue Crab Fishery) Variation Regulations 2007*.

2—Commencement

These regulations will come into operation on the day on which Part 6 Division 1 of the *Fisheries Management Act 2007* comes into operation.

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—Blue Crab Fishery) Regulations 1998*

4—Variation of regulation 1—Short title

Regulation 1—delete "*Fisheries (Scheme of Management—Blue Crab Fishery) Regulations*" and substitute:

Fisheries Management (Blue Crab Fishery) Regulations

5—Variation of regulation 4—Interpretation

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

Act means the *Fisheries Management Act 2007*;

- (2) Regulation 4(1), definition of *blue crab*—delete "blue crab" second occurring and substitute:

Blue Swimmer Crab

- (3) Regulation 4(1), definition of *blue crab pot entitlement*—delete "pursuant to" and substitute:

under

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

blue crab quota entitlement or *quota entitlement*, in relation to a licence in respect of the Blue Crab Fishery or a marine scalefish fishery and a blue crab fishing zone, means the maximum number of kilograms of blue crab that may lawfully be taken by the holder of the licence in that zone during a quota period, being the product of—

- (a) the unit entitlement under the licence in respect of that zone; and
(b) the unit value for that zone and that quota period,

subject to any variation applying during that quota period;

conversion value means the number determined by the Minister to be the conversion value for a blue crab fishing zone and a quota period;

- (5) Regulation 4(1), definition of *crab pot*—delete "*Fisheries (General) Regulations 2000*" and substitute:

Fisheries Management (General) Regulations 2007

- (6) Regulation 4(1), definition of **Department**—delete the definition and substitute:
- Department** means the administrative unit of the Public Service responsible, through the Minister, for the administration of the Act;
- (7) Regulation 4(1), definitions of **Gulf St. Vincent Blue Crab Fishing Zone** and **licence period**—delete the definitions and substitute:
- Gulf St. Vincent Blue Crab Fishing Zone** means the waters of Gulf St. Vincent north of the geodesic from the location on Mean High Water Springs closest to 35°03'12.00" South, 137°43'30.45" East to the location on Mean High Water Springs closest to 35°03'12.00" South, 138°30'16.59" East;
- (8) Regulation 4(1), definition of **marine scalefish fishery**—delete "*Fisheries (Scheme of Management—Marine Scalefish Fisheries) Regulations*" and substitute:
- Fisheries Management (Marine Scalefish Fisheries) Regulations*
- (9) Regulation 4(1)—after the definition of **marine scalefish fishery** insert:
- Mean High Water Springs** means the line representing the average of all high water observations at the time of spring tide over a period of 19 years;
- quota period**—a quota period for the fishery is a period of 12 months commencing on 1 July;
- (10) Regulation 4(1), definition of **Spencer Gulf Blue Crab Fishing Zone**—delete the definition and substitute:
- Spencer Gulf Blue Crab Fishing Zone** means the waters of Spencer Gulf north of the geodesic from the location on Mean High Water Springs closest to 34°26'45.00" South, 136°06'57.58" East to the location on Mean High Water Springs closest to 34°26'45.00" South, 137°24'59.26" East;
- (11) Regulation 4(1), definition of **unit value**—delete "Director" and substitute:
- Minister
- (12) Regulation 4(1), definition of **unit value**—delete "licence" and substitute:
- quota
- (13) Regulation 4—after subregulation (2) insert:
- (3) In these regulations, 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.

Notes—

- 1 Common and scientific fish names are given according to *AS: SSA-001 Australian Fish Names Standard* published by Seafood Services Australia in July 2007, as amended from time to time.
 - 2 Unless the contrary intention appears, all lines in spatial descriptions are geodesics based on the Geocentric Datum of Australia 1994 (GDA94) as defined in the Commonwealth of Australia Gazette GN35 of 6 September 1995 and all co-ordinates are expressed in terms of GDA94.
- (14) Regulation 4(4)—delete subregulation (4)

6—Variation of regulation 5—Constitution of fishery

- (1) Regulation 5(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:
 - (a) of aquatic resources specified in Schedule 1 Part 1; and
 - (b) of aquatic resources specified in Schedule 1 Part 2 for the purpose of bait.
- (2) Regulation 5(3)—delete "Director" and substitute:

Minister
- (3) Regulation 5(3)—delete "fish" and substitute:

aquatic resources

7—Substitution of regulations 6 to 13

Regulations 6 to 13 (inclusive)—delete the regulations and substitute:

6—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 by a person who holds a licence in respect of the Marine Scalefish Fishery subject to a condition fixing a blue crab quota entitlement.
- (3) The Minister may only grant an application for a licence in respect of the fishery—
 - (a) if the applicant's licence in respect of the Marine Scalefish Fishery has been surrendered; and
 - (b) if a boat registered for use under that licence is the subject of, is registered for use under, or is otherwise referred to in, a licence, permit, authority or other entitlement to take aquatic resources granted under a law of the Commonwealth or a corresponding law—that entitlement has also been surrendered.

7—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 17 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 issued not more than 1 month immediately preceding the date of application.

- (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 or the repealed 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 or the repealed 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, is registered for use under, or is otherwise referred to in, a licence, permit, authority or other entitlement to take aquatic resources 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.

8—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.

9—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 signed by the applicant and completed in accordance with the instructions contained in the form; and
 - (c) be accompanied by the documents specified in the application form.

8—Variation of regulation 14—Blue crab pot entitlements and carriage of crab pots on boats

- (1) Regulation 14(1) and (2)—delete subregulations (1) and (2) and substitute:
 - (1) The Minister must, on or before the commencement of each quota period, determine the conversion value for a blue crab fishing zone and the quota period.
 - (2) The Minister may impose or vary conditions on licences in respect of the fishery fixing blue crab pot entitlements as follows:
 - (a) on the issue of a licence in respect of the fishery, a condition must be imposed on the licence fixing a blue crab pot entitlement calculated in accordance with the formula set out in subregulation (3);
 - (b) on the variation of a blue crab quota entitlement under a licence in respect of the fishery, the conditions of the licence must be varied so that the blue crab pot entitlement under the licence, as calculated in accordance with the formula set out in subregulation (3), reflects the variation in the unit entitlement under the licence;
 - (c) blue crab pot entitlements must not be varied except as provided by this subregulation.
- (2) Regulation 14(3)—delete "entitlement of" wherever occurring and substitute in each case:

entitlement under
- (3) Regulation 14(4)—delete "Director" and substitute:

Minister
- (4) Regulation 14(4)—delete "pursuant to" and substitute:

under

9—Substitution of regulation 15

Regulation 15—delete the regulation and substitute:

15—Individual blue crab catch quota system

- (1) The Minister must, on or before the commencement of each quota period, determine the number of kilograms of blue crab that is to be the value of a blue crab unit for a blue crab fishing zone and the quota period.
- (2) The Minister may impose or vary conditions on licences in respect of the Blue Crab Fishery or a marine scalefish fishery fixing blue crab quota entitlements as follows:
 - (a) on the issue of a licence in respect of the Blue Crab Fishery (a *new licence*), the licence may be allocated a number of blue crab units in respect of a blue crab fishing zone equal to the number of blue crab units in respect of that zone that was, immediately before the surrender of the licence in respect of the Marine Scalefish Fishery held by the applicant for the new licence, the subject of a condition of the licence in respect of the Marine Scalefish Fishery;
 - (b) on joint application made to the Minister by the holders of any 2 licences in respect of the Blue Crab Fishery subject to a condition fixing a blue crab quota entitlement in respect of the same blue crab fishing zone, the conditions of the licences may be varied so as to increase the unit entitlement in respect of that zone under 1 of the licences and decrease the unit entitlement in respect of that zone under the other 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 Blue Crab Fishery subject to a condition fixing a blue crab quota entitlement in respect of a particular blue crab fishing zone (the *first licence*) and the holder of a licence in respect of a marine scalefish fishery subject to a condition fixing a blue crab quota entitlement in respect of the same zone (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 that zone and the conditions of the second licence may be varied so as to increase the unit entitlement under that licence in respect of that zone 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 that zone and the conditions of the second licence may be varied so as to decrease the unit entitlement under that licence in respect of that zone by a corresponding number of units;

- (d) on joint application made to the Minister by the holder of a licence in respect of the Blue Crab Fishery subject to a condition fixing a blue crab quota entitlement in respect of a particular blue crab fishing zone (the *first licence*) and the holder of a licence in respect of a marine scalefish fishery not subject to a condition fixing a blue crab quota entitlement (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 that zone; and
 - (ii) a corresponding number of units may be allocated to the second licence and a condition fixing a blue crab quota entitlement in respect of that zone may be imposed on that licence;
- (e) if the total catch of blue crab taken by the holder of a licence in respect of the Blue Crab Fishery during a quota period exceeded the blue crab quota entitlement under the licence for that quota period, the conditions of the licence may be varied so as to decrease the quota entitlement—
- (i) if the catch exceeded the quota entitlement by not more than 20 kilograms of blue 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 blue crab—by 2 kilograms for each kilogram taken in excess of the quota entitlement;
- (f) 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 blue crab quota entitlement; and
 - (ii) the conduct constituting the offence involved the taking of more than 50 kilograms of blue crab in excess of the quota entitlement,
- the conditions of the licence may be varied so as to reduce the blue crab 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;
- (g) a variation of a quota entitlement under paragraph (e) must be expressed to apply only for the quota period during which the variation is made.

- (3) An application to vary unit entitlements must—
 - (a) be made in a manner and form approved by the Minister; and
 - (b) be signed by the applicants and completed in accordance with the instructions contained in the form; and
 - (c) be accompanied by the appropriate fee fixed by the *Fisheries Management (Fees) Regulations 2007*.

10—Variation of regulation 16—Catch and disposal records

- (1) Regulation 16(2)—delete "pursuant to" wherever occurring and substitute in each case:

under
- (2) Regulation 16(2)(e)—delete "Director of Fisheries" and substitute:

Minister
- (3) Regulation 16(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

11—Variation of regulation 17—Periodic returns

- (1) Regulation 17(1)(b)—delete "Chief Executive Officer of SARDI, with the approval of the Minister," and substitute:

Minister
- (2) Regulation 17(1)(c)—delete "office of the Chief Executive Officer of SARDI" and substitute:

Minister
- (3) Regulation 17(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.
Expiation fee: \$315.
- (4) Regulation 17(2)—delete "fish" wherever occurring and substitute in each case:

aquatic resources

12—Variation of regulation 18—Copies of periodic returns must be made and kept

- (1) Regulation 18(a)—delete "Chief Executive Officer of SARDI" and substitute:

Minister
- (2) Regulation 18, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.
Expiation fee: \$315.

13—Revocation of regulation 19

Regulation 19—delete the regulation

14—Substitution of Schedules 1 to 4

Schedules 1 to 4 (inclusive)—delete the Schedules and substitute:

Schedule 1—Aquatic resources prescribed for Blue Crab Fishery

Part 1—Aquatic resources prescribed for purposes of regulation 5(2)(a)

Crustaceans

Blue Swimmer Crab (*Portunus pelagicus*)

Sand Crab (*Ovalipes* spp)

Spider Crab (Family Majidae)

Velvet Crab (*Nectocarcinus tuberculatus*)

Part 2—Aquatic resources prescribed for purposes of regulation 5(2)(b)

Molluscs

Octopus (*Octopus* spp)

Gould's Squid (*Nototodarus gouldii*)

Scalefish

Australian Anchovy (*Engraulis australis*)

Barracouta (*Thyrsites atun*)

Black Bream (*Acanthopagrus butcheri*)

Cod (marine species) (Family Moridae)

Flathead (Family Platycephalidae)

Flounder (Family Bothidae or Pleuronectidae)

Bluespotted Goatfish (*Upeneichthys vlamingii*)

Eastern Striped Grunter (*Pelates sexlineatus*)

Australian Herring (*Arripis georgianus*)

Yellowtail Kingfish (*Seriola lalandi*)

Leatherjacket (Family Monacanthidae)

Blue Mackerel (*Scomber australasicus*)

Common Jack Mackerel (*Trachurus declivis*)

Morwong (Family Cheilodactylidae)

Mullet of all species (Family Mugilidae)

Mulloway (*Argyrosomus hololepidotus*)

West Australian Salmon (*Arripis truttaceus*)

Australian Sardine (*Sardinops sagax*)

Snook (*Sphyraena novaehollandiae*)

Southern Sole (*Aseraggodes haackeanus*)

Sea Sweep (*Scorpiis aequipinnis*)

Trevally (*Caranginae* spp)

Bluethroat Wrasse (*Notolabrus tetricus*)

Sharks

Rays of all species (Class Elasmobranchii)

Shark of all species (Class Elasmobranchii) other than White Shark (*Carcharodon carcharias*)

Skate of all species (Class Elasmobranchii)

Schedule 2—Transitional provision

1—Eligibility for fishery licence

Subject to regulation 6, only a person who is, immediately before 30 June 2008, the holder of a licence in respect of the fishery, may make an application under section 54 of the Act for a licence in respect of the fishery.

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 29 November 2007

No 279 of 2007

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