

South Australia

## **Fisheries (Scheme of Management—Miscellaneous 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—Miscellaneous 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—Miscellaneous Fishery) Regulations 2000*

### 4—Variation of regulation 1—Short title

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

*Fisheries Management (Miscellaneous Fishery) Regulations*

### 5—Revocation of regulation 3

Regulation 3—delete the regulation

### 6—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)—after the definition of *fishery* insert:

*giant crab* means Giant Crab *Pseudocarcinus gigas*;

- (3) Regulation 4(1), definitions of *licence period*, *revoked regulations* and *SARDI*—delete the definitions and substitute:

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

- (4) 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.

**Note—**

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.

- (5) Regulation 4(4)—delete subregulation (4)

### 7—Variation of regulation 5—Constitution of fishery

Regulation 5(2)—delete "fish" and substitute:

aquatic resources

## **8—Substitution of regulations 6 to 14**

Regulations 6 to 14 (inclusive)—delete the regulations and substitute:

### **6—Issue of licences**

- (1) If—
- (a) a licence in respect of the fishery in force ceases to be held by a person; or
  - (b) 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 make a call for applications in respect of that licence in accordance with the competitive tender procedure prescribed by Schedule 2.

- (2) If a person who is a successful applicant at a tender conducted in accordance with the procedure prescribed by Schedule 2—
- (a) fails to make an application for the licence in respect of which he or she was the successful applicant; or
  - (b) having made an application for that licence, is for any reason not granted the licence,

the Minister must call for applications in respect of that licence in accordance with the procedure prescribed by Schedule 2.

- (3) The Minister may only grant a licence in respect of the fishery if satisfied as to the following:
- (a) that the applicant was a successful applicant for the licence at a tender conducted in accordance with the procedure prescribed by Schedule 2;
  - (b) if the applicant is 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;
  - (c) if the applicant 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—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.

### **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 be completed in accordance with the instructions contained in the form; and
  - (c) be accompanied by the documents specified in the application form.

## **10—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 2006*;

***quota period***—a quota period for the fishery is a period of 12 months commencing on 1 July;

***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 2006*;

**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 2006*.
- (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 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 signed by the applicants and 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 appropriate fee fixed by the *Fisheries Management (Fees) Regulations 2007*.

### **9—Variation of regulation 15—Use of agents in fishing activities on shore**

- (1) Regulation 15—delete "boat registered by endorsement of" wherever occurring and substitute in each case:
  - registered boat used under
- (2) Regulation 15(1), penalty provision—delete the penalty provision and substitute:
  - Maximum penalty: \$5 000.
  - Expiation fee: \$315.
- (3) Regulation 15(2), penalty provision—delete the penalty provision and substitute:
  - Maximum penalty: \$5 000.
  - Expiation fee: \$315.

### **10—Variation of regulation 16—Periodic returns**

- (1) Regulation 16(1)(b)—delete "Chief Executive Officer of SARDI, with the approval of the Minister," and substitute:
  - Minister
- (2) Regulation 16(1)(c)—delete "office of the Chief Executive Officer of SARDI" and substitute:
  - Minister
- (3) Regulation 16(1), penalty provision—delete the penalty provision and substitute:
  - Maximum penalty: \$5 000.
  - Expiation fee: \$315.
- (4) Regulation 16(2)—delete "fish" wherever occurring and substitute in each case:
  - aquatic resources
- (5) Regulation 16(2)—delete "pursuant to" and substitute:
  - under

### **11—Variation of regulation 17—Copies of periodic returns must be made and kept**

- (1) Regulation 17(a)—delete "Chief Executive Officer of SARDI" and substitute:
  - Minister
- (2) Regulation 17, penalty provision—delete the penalty provision and substitute:
  - Maximum penalty: \$5 000.
  - Expiation fee: \$315.

## **12—Revocation of regulation 18**

Regulation 18—delete the regulation

## **13—Substitution of Schedule 1**

Schedule 1—delete the Schedule and substitute:

### **Schedule 1—Aquatic resources prescribed for Miscellaneous Fishery**

All fish other than Abalone (*Haliotis* spp), King Prawn (*Merlicertus latisulcatus*) and Southern Rocklobster (*Jasus edwardsii*)

## **14—Variation of Schedule 2—Competitive tender procedure for issue of licences**

Schedule 2, clause 1—delete "Director" wherever occurring and substitute in each case:

Minister

## **15—Substitution of Schedules 3, 4 and 5**

Schedules 3, 4 and 5—delete the Schedules and substitute:

### **Schedule 3—Transitional provision**

#### **1—Eligibility to be granted 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 283 of 2007

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