

South Australia

Fisheries Management (Marine Scalefish Fisheries) Variation Regulations 2007

under the *Fisheries Management Act 2007*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Fisheries Management (Marine Scalefish Fisheries) Regulations 2006*

- 4 Variation of regulation 3—Interpretation
- 5 Insertion of regulation 17A
 - 17A Individual pipi catch quota system
- 6 Variation of regulation 18—Individual sardine catch quota system
- 7 Insertion of regulations 18A and 18B
 - 18A Restriction on use of cockle rakes
 - 18B Restriction on taking of pipi
- 8 Insertion of regulation 19A
 - 19A Information to be provided to Minister before pipi are taken
- 9 Insertion of regulation 20A
 - 20A Pipi to be landed within State
- 10 Variation of regulation 21—Use of agents in fishing activities
- 11 Variation of regulation 26—Catch and disposal records—sardines
- 12 Insertion of regulations 26A and 26B
 - 26A Disposal of pipi
 - 26B Catch and disposal records—pipi
- 13 Insertion of Schedule 1A

Schedule 1A—Individual pipi catch quota system

Part 1—Preliminary

- 1 Interpretation
- 2 Determination of unit value

Part 2—Allocation of pipi units to eligible licences

- 3 Allocation of pipi units to eligible licences (pool 1)—quota period commencing 13 December 2007
- 4 Allocation of pipi units to eligible licences (pool 2)—quota period commencing 13 December 2007
- 5 Allocation of pipi units to eligible licences—quota period commencing 1 November 2008
- 6 Allocation of pipi units to eligible licences—subsequent quota periods

Part 3—Variation of pipi quota entitlements

- 7 Variation of pipi quota entitlements
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Fisheries Management (Marine Scalefish Fisheries) Variation Regulations 2007*.

2—Commencement

These regulations come into operation on the day on which they are made.

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 Management (Marine Scalefish Fisheries) Regulations 2006*

4—Variation of regulation 3—Interpretation

- (1) Regulation 3(1)—after the definition of *blue crab fishing zone* insert:

cm means centimetre;

- (2) Regulation 3(1)—after the definition of *domestic partner* insert:

eligible licence means—

- (a) any of the following licences in respect of the Lakes and Coorong Fishery:
- (i) a licence numbered L03, L08 or L10;
 - (ii) any licence numbered in the range L12 to L20;
 - (iii) a licence numbered L26 or L27;
 - (iv) any licence numbered in the range L29 to L31;
 - (v) any licence numbered in the range L33 to L39;
 - (vi) a licence numbered L41, L43, L44, L45 or L47; or
- (b) a licence in respect of the Marine Scalefish Fishery numbered M236, M301 or M489;

- (3) Regulation 3(1)—after the definition of *Gulf St. Vincent Blue Crab Fishing Zone* insert:

Lakes and Coorong has the same meaning as in the *Fisheries Management (Lakes and Coorong Fishery) Regulations 2006*;

Lakes and Coorong Fishery means the fishery of that name constituted by the *Fisheries Management (Lakes and Coorong Fishery) Regulations 2006*;

m means metre;

- (4) Regulation 3(1)—after the definition of *PF-CDR form* insert:

pipi means Pipi (*Donax* spp);

pipi quota entitlement—see clause 1 of Schedule 1A;

5—Insertion of regulation 17A

After regulation 17 insert:

17A—Individual pipi catch quota system

The Minister may impose conditions on eligible licences in respect of the Marine Scalefish Fishery fixing pipi quota entitlements in accordance with Schedule 1A.

6—Variation of regulation 18—Individual sardine catch quota system

- (1) Regulation 18(1), definition of *unit entitlement*—delete "pilchard" and substitute:
sardine
- (2) Regulation 18(1), definition of *unit value*—delete "pilchard" and substitute:
sardine
- (3) Regulation 18(1), definition of *unit value*—delete "Director" and substitute:
Minister

7—Insertion of regulations 18A and 18B

After regulation 18 insert:

18A—Restriction on use of cockle rakes

- (1) The holder of a licence in respect of a marine scalefish fishery must not use, or cause, suffer or permit the use of, more than 3 cockle rakes at any 1 time for the purpose of taking pipi under the licence.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) In this regulation—
cockle rake has the same meaning as in the *Fisheries Management (General) Regulations 2007*.

18B—Restriction on taking of pipi

The holder of a licence in respect of a marine scalefish fishery (other than an eligible licence) must not take pipi under the licence in the Lakes and Coorong except for the purpose of bait to be used to take fish under the licence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

8—Insertion of regulation 19A

After regulation 19 insert:

19A—Information to be provided to Minister before pipi are taken

- (1) At least 1 hour before the commencement of fishing activities involving the taking of pipi under an eligible licence in respect of the Marine Scalefish Fishery, the Minister must be informed by telephone of—
 - (a) the name of the person making the telephone call; and
 - (b) the date on which, and the time at which, the fishing activities are to be engaged in; and
 - (c) the location at which the fishing activities are to be engaged in; and
 - (d) the number of the licence under which the fishing activities are to be engaged in; and
 - (e) the name of the holder of the licence; and
 - (f) if a registered boat is to be used for the purpose of engaging in the fishing activities—the name of the registered master of the boat.
- (2) If subregulation (1) is not complied with, the holder of the licence is guilty of an offence.
Maximum penalty: \$5 000.
Expiation fee: \$315.

9—Insertion of regulation 20A

After regulation 20 insert:

20A—Pipi to be landed within State

The holder of an eligible licence in respect of the Marine Scalefish Fishery must ensure that all pipi taken under the licence are landed within the State.

Maximum penalty: \$5 000.

Expiation fee: \$315.

10—Variation of regulation 21—Use of agents in fishing activities

- (1) Regulation 21(2)—after "fishery" last occurring insert:

(other than the taking of pipi under an eligible licence in the Lakes and Coorong)

(2) Regulation 21—after subregulation (2) insert:

(2a) The holder of an eligible licence in respect of the Marine Scalefish Fishery or the registered master of a registered boat used under such a licence must not cause or permit more than 4 persons to be engaged at the same time on the shore as agents of the holder of the licence in the taking of pipi under the licence in the Lakes and Coorong.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2b) The Minister may impose conditions on an eligible licence in respect of the Marine Scalefish Fishery limiting the fishing activities that may be engaged in by agents of the holder of the licence in connection with the taking of pipi under the licence in the Lakes and Coorong.

11—Variation of regulation 26—Catch and disposal records—sardines

Regulation 26(4)—delete "pilchards taken pursuant to" and substitute:

sardines taken under

12—Insertion of regulations 26A and 26B

After regulation 26 insert:

26A—Disposal of pipi

The holder of an eligible licence in respect of the Marine Scalefish Fishery must ensure that all pipi taken under the licence are delivered or consigned to a registered fish processor.

Maximum penalty: \$5 000.

Expiation fee: \$315.

26B—Catch and disposal records—pipi

(1) In this regulation—

approved bag means a hessian bag not more than 45.5 cm wide;

G-CDR book means the document issued by the Department containing blank G-CDR forms;

G-CDR form means the form produced by the Department entitled *Pipi Cockle Catch and Disposal Record*;

(2) The holder of an eligible licence in respect of the Marine Scalefish Fishery or the registered master of a registered boat used under such a licence must comply with the following provisions in respect of pipi taken under the licence:

(a) before the pipi are removed to a place that is 100 m or more above Mean High Water Springs of coastal waters, he or she must ensure that—

- (i) the pipi are placed in an approved bag and sealed with a tag issued by the Minister by inserting the tag through an eyelet, the centre of which is not less than 41 cm from the base of the bag; and
 - (ii) a G-CDR form in respect of the pipi is completed; and
 - (iii) the original G-CDR form is placed in a blue envelope issued by the Minister and secured to the bag containing the pipi or, if there is more than 1 bag containing the pipi, to 1 of those bags;
- (b) if a tag is damaged in the process of sealing a bag—he or she must ensure that the damaged tag is threaded onto a replacement tag used to seal the bag and that the number of the replacement tag is recorded on the G-CDR form;
- (c) if a tag is lost—he or she must ensure that the Minister is immediately notified of the loss;
- (d) he or she must ensure—
- (i) that the G-CDR form is posted to the Minister within 48 hours of its completion; or
 - (ii) if, within 48 hours of completion of the G-CDR form, the form is transmitted by fax transmission to a fax number nominated by the Minister for the purposes of this subparagraph—that the G-CDR form is posted to the Minister within 4 days of its completion;
- (e) he or she must ensure that G-CDR forms are completed in consecutive order and that all forms in a G-CDR book are completed before a new G-CDR book is used;
- (f) he or she must ensure that the sealed bags containing the pipi are not opened before the pipi are delivered or consigned to a registered fish processor.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) The holder of an eligible licence in respect of the Marine Scalefish Fishery must ensure that if a G-CDR form completed in respect of pipi taken under the licence is cancelled, all copies of the form are marked with the word "cancelled" and the original copy of the form is delivered to the Minister within 24 hours of the cancellation.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) The holder of an eligible licence in respect of the Marine Scalefish Fishery must keep completed G-CDR books for a period of 5 years.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) The holder of an eligible licence in respect of the Marine Scalefish Fishery must keep copies of completed G-CDR forms for a period of 3 years.

Maximum penalty: \$5 000.

Expiation fee: \$315.

13—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—Individual pipi catch quota system

Part 1—Preliminary

1—Interpretation

In this Schedule—

catch history of a person who held an eligible licence on 31 July 2007 means the sum of—

- (i) the total number of kilograms of pipi lawfully taken under that licence while that person held the licence in the period that commenced on 1 November 2003 and ended on 31 May 2006 (as recorded on completed returns lodged under the relevant regulations); and
- (ii) the total number of kilograms of pipi lawfully taken under that licence while that person held the licence in the period that commenced on 1 November 2006 and ended on 21 December 2006 (as recorded on completed returns lodged under the relevant regulations) multiplied by 2;

eligible licence (pool 1) means the licence in respect of the fishery numbered M301;

eligible licence (pool 2) means a licence in respect of the fishery numbered M236, M301 or M489;

fishery means the Marine Scalefish Fishery;

pipi quota entitlement or *quota entitlement*, in relation to an eligible licence in respect of the fishery, means the maximum number of kilograms of pipi that may be taken by the holder of the licence during a quota period, being the product of—

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

subject to any variation applying during that quota period;

quota period—a quota period for the fishery is—

- (a) the period commencing on 13 December 2007 and ending on 31 October 2008; or

- (b) the period of 12 months commencing on 1 November 2008 or 1 November in any subsequent year;

relevant regulations means—

- (i) in relation to an eligible licence in respect of the fishery—the *Fisheries (Scheme of Management—Marine Scalefish Fisheries) Regulations 1991* or these regulations (as the case requires);
- (ii) in relation to an eligible licence in respect of the Lakes and Coorong Fishery—the *Fisheries (Scheme of Management—Lakes and Coorong Fishery) Regulations 1991* or the *Fisheries Management (Lakes and Coorong) Regulations 2006* (as the case requires);

unit entitlement under a licence means the number of pipi units allocated to the licence for the time being;

unit value means the number of kilograms of pipi determined by the Minister to be the value of a pipi unit for the fishery and a quota period.

2—Determination of unit value

The Minister must determine the number of kilograms of pipi that is to be the value of a pipi unit for the fishery and each quota period.

Part 2—Allocation of pipi units to eligible licences

3—Allocation of pipi units to eligible licences (pool 1)—quota period commencing 13 December 2007

For the quota period commencing on 13 December 2007, an eligible licence specified in column 1 of the table below may be allocated the number of pipi units specified alongside in column 2.

Column 1	Column 2
Eligible licence	Number of pipi units
M301	1

4—Allocation of pipi units to eligible licences (pool 2)—quota period commencing 13 December 2007

- (1) For the quota period commencing on 13 December 2007, an eligible licence (pool 2) may be allocated a number of pipi units calculated in accordance with this clause.
- (2) First, the following formula is to be applied:

$$A = \left(\left(\frac{B}{C} \times 800 \right) + \frac{320}{32} \right) \times \left(\frac{947}{1000} \right)$$

where—

A is the number of pipi units to be allocated to the licence

B is the catch history of the person who held that licence on 31 July 2007

C is the sum of the catch histories of all persons who held eligible licences in respect of the fishery and the Marine Scalefish Fishery on 31 July 2007.

- (3) Second, the number of kilograms of pipi taken under the licence during the period that commenced on 1 November 2007 and ended on 12 December 2007 (as recorded on returns lodged in accordance with licence conditions) must be divided by unit value determined by the Minister for the quota period commencing on 13 December 2007.
- (4) Third, the result of that division must be subtracted from the number of pipi units to be allocated to the licence, as calculated under subclause (2).
- (5) Fourth, any pipi units allocated to the licence under clause 3 are to be added to the result of the division under subclause (4) to arrive at the total number of pipi units that may be allocated to the licence for the quota period commencing on 13 December 2007.

5—Allocation of pipi units to eligible licences—quota period commencing 1 November 2008

- (1) For the quota period commencing on 1 November 2008, an eligible licence in respect of the fishery may be allocated a number of pipi units calculated in accordance with this clause.
- (2) First, the following formula is to be applied:

$$A = \left(\left(\frac{B}{C} \times 680 \right) + \frac{320}{32} \right) \times \left(\frac{947}{1000} \right) \pm D$$

where—

A is the number of pipi units to be allocated to the licence

B is the catch history of the person who held that licence on 31 July 2007

C is the sum of the catch histories of all persons who held eligible licences in respect of the fishery and the Marine Scalefish Fishery on 31 July 2007

D is the total number of pipi units deducted from or added to the licence by way of variation of the unit entitlement under the licence during the quota period commencing on 13 December 2007.

- (3) If the unit entitlement under a licence is varied under clause 7 and the variation is not expressed to be only for the balance of the quota period during which it is made, the formula prescribed by subclause (2) must be applied as follows:
 - (a) if the variation resulted in the unit entitlement under the licence being increased, the number of pipi units in the increase (as denoted by "D") must be added;

- (b) if the variation resulted in the unit entitlement under the licence being decreased, the number of pipi units in the decrease (as denoted by "D") must be deducted.
- (6) Second, in the case of a licence specified in column 1 of the table below, the number of pipi units specified alongside in column 2 is to be added to the number of pipi units to be allocated to the licence, as calculated under subclause (2), to arrive at the total number of pipi units that may be allocated to the licence for the quota period commencing on 1 November 2008.

Column 1	Column 2
Eligible licence	Number of pipi units
M301	1

6—Allocation of pipi units to eligible licences—subsequent quota periods

For the quota period commencing on 1 November 2009 or 1 November in a subsequent year, an eligible licence in respect of the fishery may be allocated a number of pipi units equal to the number of pipi units allocated to the licence immediately before the commencement of that quota period.

Part 3—Variation of pipi quota entitlements

7—Variation of pipi quota entitlements

- (1) The Minister may vary conditions of eligible licences as follows:
- (a) on joint application made to the Minister by the holders of any 2 licences in respect of the fishery subject to a condition fixing a pipi 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 the holder of a licence in respect of the fishery subject to a condition fixing a pipi quota entitlement (the *first licence*) and the holder of a licence in respect of the Lakes and Coorong 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 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 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) if the total catch of pipi taken by the holder of a licence in respect of the fishery during a quota period exceeded the pipi quota entitlement under the licence for that quota period, the conditions of the licence may be varied so as to decrease the pipi quota entitlement—
 - (i) if the catch exceeded the quota entitlement by not more than 500 kilograms—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 500 kilograms but not more than 2 000 kilograms—by 2 kilograms for each kilogram taken in excess of the quota entitlement;
- (d) 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 pipi quota entitlement; and
 - (ii) the conduct constituting the offence involved the taking of more than 2 000 kilograms of pipi in excess of the quota entitlement,the conditions of the licence may be varied so as to decrease the pipi 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.
- (2) If a variation of a unit entitlement is to have effect only for the balance of the quota period during which the variation is made, the variation must be expressed to have such effect.
- (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 in the *Fisheries Management (Fees) Regulations 2007*.
- (4) If an eligible licence in respect of the fishery is transferred to the holder of another such licence before 1 November 2009 and 1 of those licences is surrendered, the conditions of the remaining licence may be varied so as to increase the unit entitlement under that licence by the number of pipi units allocated to the surrendered licence immediately before its surrender.

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 13 December 2007

No 310 of 2007

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