

South Australia

## **Fisheries Management (Marine Scalefish Fisheries) Variation Regulations 2008**

under the *Fisheries Management Act 2007*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Fisheries Management (Marine Scalefish Fisheries) Variation Regulations 2008*.

#### **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:  
*cockle* means *Katelysia* spp;
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***cockle fishing zone*** means—

- (a) the Coffin Bay cockle fishing zone; or
- (b) the Port River cockle fishing zone; or
- (c) the West Coast cockle fishing zone;

***cockle quota entitlement***—see regulation 16;

***Coffin Bay cockle fishing zone*** means the waters of or near Coffin Bay contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 34°30'36.68" South, 135°22'46.38" East (generally south-west of Farm Beach), then beginning southwesterly following the line of Mean High Water Springs to the location closest to 34°27'20.32" South, 135°13'00.83" East (Point Burgess), then south-easterly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs;

- (2) Regulation 3(1)—after the definition of ***MSSF licence*** insert:

***Northern Zone Rock Lobster Fishery*** means the fishery of that name constituted by the *Fisheries Management (Rock Lobster Fisheries) Regulations 2006*;

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

***Port River cockle fishing zone*** means the waters of or near Port Gawler contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 34°40'12.26" South, 138°26'35.25" East (end of Port Gawler road), then beginning easterly following the line of Mean High Water Springs to the location closest to 34°46'59.03" South, 138°28'40.48" East, then north-westerly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs;

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

***West Coast cockle fishing zone*** means—

- (a) the waters of or near Smoky Bay contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 32°15'48.62" South, 133°46'09.70" East (Cape D'Estrees), then beginning easterly following the line of Mean High Water Springs to the location closest to 32°23'54.35" South, 133°52'00.15" East (Cape Missiessy), then westerly to the line of Mean High Water Springs closest to 32°23'55.74" South, 133°43'09.43" East (Goalen Rocks), then north-easterly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs; and

- (b) the waters of or near Streaky Bay contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 32°39'22.17" South, 134°17'13.59" East (most northern point of Perlubie beach), then beginning northeasterly following the line of Mean High Water Springs to the location closest to 32°42'37.66" South, 134°05'08.97" East, then north-easterly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs; and
  - (c) the waters of or near Venus Bay contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 33°10'19.37" South, 134°41'04.36" East (Port Kenny jetty), then beginning easterly following the line of Mean High Water Springs to the location closest to 33°13'48.68" South, 134°39'38.86" East (South Head), then northerly to the line of Mean High Water Springs closest to 33°13'31.48" South, 134°39'41.81" East (North Head), then beginning north-easterly following the line of Mean High Water Springs to the location closest to 33°10'51.24" South, 134°38'14.69" East, then north-easterly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs.
- (5) Regulation 3(2)—delete subregulation (2) and the notes appearing at its foot and substitute:
- (2) In these regulations—
    - (a) 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 coordinates are expressed in terms of GDA94;
    - (b) 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;
    - (c) a reference to the **taking of aquatic resources** includes a reference to an act preparatory or involved in the taking of the aquatic resources.

## 5—Insertion of regulation 16

After regulation 15 insert:

### 16—Individual cockle catch quota system

- (1) In this regulation—

***cockle quota entitlement*** or ***quota entitlement***, in relation to a licence in respect of a marine scalefish fishery or an eligible rock lobster fishery licence and a cockle fishing zone, means the maximum number of kilograms of cockles that may be lawfully taken by the holder of the 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;

***eligible marine scalefish fishery licence*** means a licence in respect of a marine scalefish fishery held on the commencement of this regulation by a person who lawfully took cockles under the licence in a cockle fishing zone during the period that commenced on 1 January 1997 and ended on 30 June 2006 (as recorded on completed returns lodged under the relevant regulations);

***eligible rock lobster fishery licence*** means a licence in respect of the Northern Zone Rock Lobster Fishery under which the holder may lawfully take aquatic resources specified in Schedule 1 of the *Fisheries Management (Rock Lobster Fisheries) Regulations 2006*;

***relevant regulations*** means the *Fisheries (Scheme of Management—Marine Scalefish Fisheries) Regulations 1991* or these regulations (as the case requires);

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

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

- (2) In this regulation, a reference to a ***quota period*** is a reference to—

- (a) the period commencing on the day on which this regulation comes into operation and ending on 30 June 2009; or
- (b) a period of 12 months commencing on 1 July 2009 or 1 July in any subsequent year.

- (3) The Minister must determine the number of kilograms of cockles that is to be the value of a cockle unit for a cockle fishing zone and a quota period.

- (4) The Minister may impose conditions on eligible marine scalefish fishery licences fixing cockle quota entitlements as follows:
- (a) the Minister must determine the total number of cockle units to be allocated in respect of each cockle fishing zone;
  - (b) each licence may be allocated a share of the total number of cockle units in respect of a cockle fishing zone, being—
    - (i) a number of cockle units equal to 0.5% of the total number of cockle units to be allocated in respect of that zone; and
    - (ii) if, during the period that commenced on 1 July 2001 and ended on 30 June 2006, cockles were lawfully taken in that zone under a licence by the person who holds the licence on the commencement of this regulation, additional cockle units based on the total number of kilograms of cockles taken by the person in that zone during that period proportionate to the total number of kilograms taken under all eligible marine scalefish fishery licences and eligible rock lobster fishery licences in that zone during that period (as recorded on completed returns lodged under the relevant regulations).
- (5) The Minister may impose or vary conditions of licences in respect of a marine scalefish fishery or eligible rock lobster fishery licences fixing cockle quota entitlements as follows:
- (a) on joint application made to the Minister by the holders of any 2 licences in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement in respect of the same cockle fishing zone, the conditions of the licences may be varied so as to increase the unit entitlement under 1 of the licences in respect of that zone and decrease the unit entitlement under the other licence in respect of that zone by a corresponding number of units;
  - (b) on joint application made to the Minister by the holder of a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement in respect of a particular cockle fishing zone and the holder of an eligible rock lobster fishery licence subject to a condition fixing a cockle quota entitlement in respect of that zone, the conditions of the licences may be varied so as to increase the unit entitlement under 1 of the licences in respect of that zone and decrease the unit entitlement under the other licence in respect of that zone by a corresponding number of units;

- (c) on joint application made to the Minister by the holder of a licence in respect of a marine scalefish fishery licence subject to a condition fixing a cockle quota entitlement in respect of a particular cockle 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 cockle quota entitlement in respect of that 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
  - (ii) a corresponding number of units may be allocated to the second licence and a condition fixing a cockle quota entitlement in respect of that zone may be imposed on that licence;
- (d) on joint application made to the Minister by the holder of a licence in respect of a marine scalefish fishery licence subject to a condition fixing a cockle quota entitlement in respect of a particular cockle fishing zone (the *first licence*) and the holder of an eligible rock lobster fishery licence not subject to a condition fixing a cockle quota entitlement in respect of that 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
  - (ii) a corresponding number of units may be allocated to the second licence and a condition fixing a cockle quota entitlement in respect of that zone may be imposed on that licence;
- (e) if the total catch of cockles taken during a quota period by the holder of a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement exceeded the cockle quota entitlement under the licence for that quota period, the conditions of the licence may be varied so as to decrease the cockle quota entitlement—
  - (i) if the catch exceeded the quota entitlement by not more than 50 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 50 kilograms but not more than 250 kilograms—by 2 kilograms for each kilogram taken in excess of the quota entitlement;
- (f) if—

- (i) the holder of a licence in respect of a marine scalefish fishery is convicted of an offence of contravening a condition of the licence fixing a cockle quota entitlement; and
- (ii) the conduct constituting the offence involved the taking of more than 250 kilograms of cockles in excess of the cockle quota entitlement,

the conditions of the licence may be varied so as to decrease the cockle 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) if—

- (i) the holder of a licence in respect of a marine scalefish fishery licence subject to a condition fixing a cockle quota entitlement has assisted in the carrying out of research work under the Act in relation to the fishery; and
- (ii) the Minister considers that it is appropriate to compensate or reward the holder of the licence for the time spent in providing that assistance,

the conditions of the licence may be varied so as to increase the cockle quota entitlement under the licence.

- (6) 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.
- (7) 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*.
- (8) If a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement is transferred to the holder of another such licence 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 cockle units allocated to the surrendered licence immediately before its surrender.

- (9) Subject to subregulations (10) and (11), the holder of a licence in respect of a marine scalefish fishery must not take cockles for a commercial purpose in a cockle fishing zone unless the licence is subject to a condition fixing a cockle quota entitlement in respect of that zone.
- Maximum penalty: \$5 000.
- (10) The holder of a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement in respect of a cockle fishing zone may take cockles in another cockle fishing zone if—
- (a) the holder of the licence is unable to lawfully take cockles in the cockle fishing zone to which the condition relates because—
    - (i) as a result of a variation in the conditions of the licence under subregulation (5), the number of cockle units allocated to the licence for the time being is zero; or
    - (ii) the total number of kilograms of cockles taken under the licence in that zone equals the quota entitlement under the licence in respect of that zone; and
  - (b) the cockles are taken solely for the purpose of bait to be used to take aquatic resources under the licence; and
  - (c) the number of cockles taken for that purpose on any 1 day does not exceed the number fixed by condition of the licence as the maximum number of cockles that may be taken in any 1 day for that purpose.
- (11) The holder of a licence in respect of a marine scalefish fishery that is not subject to a condition fixing a cockle quota entitlement may take cockles in a cockle fishing zone if—
- (a) the cockles are taken solely for the purpose of bait to be used to take aquatic resources under the licence; and
  - (b) the number of cockles taken for that purpose on any 1 day does not exceed the number fixed by condition of the licence as the maximum number of cockles that may be taken in any 1 day for that purpose.

## **6—Insertion of regulation 22A and 22B**

After regulation 22 insert:

### **22A—Catch and disposal records—cockle**

- (1) In this regulation—

*approved* means approved by the Minister;

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



***M-CDR form*** means the form produced by the Department entitled *Mud Cockle Catch and Disposal Record*.

- (2) The holder of a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement or the registered master of a registered boat used under such a licence must comply with the following provisions in respect of cockles taken under the licence:
- (a) he or she must ensure that, at least 1 hour before the cockles are brought ashore or landed, the Minister is notified by telephone of—
    - (i) the name of the person making the telephone call; and
    - (ii) the number of the licence under which the cockles were taken; and
    - (iii) the location at which the cockles are to be weighed; and
    - (iv) the estimated time of arrival of the cockles at that location; and
    - (v) whether any of the cockles are to be returned to the waters of the State for storage before consignment or delivery to a registered fish processor;
  - (b) he or she must ensure that the Minister is notified of any change in the estimated time of arrival of the cockles at the location referred to in paragraph (a)(iii) if it appears likely to the holder of the licence or the registered master that the cockles will arrive at that location earlier than the estimated time previously notified to the Minister or more than 30 minutes after that time;
  - (c) he or she must, immediately after the cockles are brought ashore or landed, complete the white, blue and yellow copies of a M-CDR form within 50 metres of the place at which they are brought ashore or landed;
  - (d) he or she must ensure that before any of the cockles are returned to the waters of the State for storage, the cockles are weighed and placed in containers of an approved kind each of which is sealed with a tag issued by the Minister;
  - (e) he or she must ensure that tags are used in consecutive order and that all tags in each series issued by the Minister are completed before a new series of tags is used;
  - (f) he or she must ensure that tags are not reused;

- (g) if a tag is damaged in the process of sealing a container—he or she must ensure that the damaged tag is threaded onto a replacement tag used to seal the container and that the number of the replacement tag is recorded on the M-CDR form;
- (h) if a tag is lost—he or she must ensure that the Minister is immediately notified of the loss;
- (i) he or she must ensure—
  - (i) that the white copy of the M-CDR form is posted to the Minister within 48 hours of its completion; or
  - (ii) if, within 48 hours of completion of the M-CDR form, the form is transmitted by fax to a number nominated by the Minister for the purposes of this subparagraph—that the white copy of the M-CDR form is posted to the Minister within 7 days of its completion;
- (j) he or she must ensure that M-CDR forms are completed in consecutive order and that all forms in a M-CDR book are completed before a new M-CDR book is used;
- (k) he or she must ensure that, at least 1 hour before any cockles being stored in the waters of the State are brought ashore or landed, the Minister is notified of—
  - (i) the weight of the cockles being stored; and
  - (ii) the number of containers of an approved kind in which the cockles are being stored; and
  - (iii) the tag number on each tag used to seal a container in which the cockles are being stored;
- (l) he or she must cause the cockles to which the completed M-CDR form relates to be transported to the registered premises of the registered fish processor specified on the form, together with the blue copy of the completed form;
- (m) he or she must ensure that any sealed containers of an approved kind containing cockles are not unsealed before the cockles are consigned or delivered to a registered fish processor.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) The holder of a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement must ensure that if a M-CDR form completed in respect of cockles 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 a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement must keep all completed M-CDR books for a period of 5 years.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) The holder of a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement must keep the yellow copies of completed M-CDR forms for a period of 3 years.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **22B—Disposal of cockles**

The holder of a licence in respect of a marine scalefish fishery subject to a condition fixing a cockle quota entitlement must ensure that all cockles taken under the licence are consigned or delivered to a registered fish processor.

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **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 16 October 2008

No 272 of 2008

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