

South Australia

Fisheries Management (Marine Scalefish Fisheries) Variation Regulations 2009

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 2009*.

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 rake has the same meaning as in the *Fisheries Management (General) Regulations 2007*;

- (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 2009*;

Lakes and Coorong Fishery means the fishery of that name constituted by the *Fisheries Management (Lakes and Coorong Fishery) Regulations 2009*;

- (4) Regulation 3(1), definition of *PF-CDR form*—delete the definition and substitute:

PF-CDR form means the form produced by the Department entitled *PIRSA Sardine Catch and Disposal Record*;

pipi means Pipi (*Donax* spp);

pipi quota entitlement—see regulation 16A;

5—Insertion of regulation 16A

After regulation 16 insert:

16A—Individual pipi catch quota system

(1) In this regulation—

pipi quota entitlement or *quota entitlement*, in relation to an eligible licence, means the maximum number of kilograms of pipi that may be lawfully 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 that quota period,

subject to any variation applying during that quota period;

quota period—a quota period for the Marine Scalefish Fishery for the taking of pipi is a period commencing on 1 November in any year and ending on 31 May next;

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 a quota period.

- (2) The Minister must determine the number of kilograms of pipi that is to be the value of a pipi unit for each quota period.
- (3) The Minister may impose or vary conditions of eligible licences in respect of the Marine Scalefish Fishery fixing pipi quota entitlements as follows:
 - (a) for the quota period commencing on 1 November 2009, an eligible licence in respect of the Marine Scalefish Fishery specified in column 1 of the table below may be allocated a number of pipi units for that quota period specified alongside in column 2:

Column 1	Column 2
Eligible licence	Number of pipi units
M236	14.25
M301	12.11
M489	0.00

- (b) for the quota period commencing on 1 November 2010 or 1 November in any subsequent year, an eligible licence in respect of the Marine Scalefish 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;

- (c) on joint application made to the Minister by the holders of any 2 licences in respect of the Marine Scalefish 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;
- (d) on joint application made to the Minister by the holder of a licence in respect of the Marine Scalefish 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;
- (e) if the total catch of pipi taken by the holder of a licence in respect of the Marine Scalefish 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 kg—by 1 kg for each kilogram taken in excess of the quota entitlement; or
 - (ii) if the catch exceeded the quota entitlement by more than 500 kg but not more than 2 000 kg—by 2 kg for each kilogram taken in excess of the quota entitlement;
- (f) if—
 - (i) the holder of a licence in respect of the Marine Scalefish 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 kg 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 kg for each kilogram taken in excess of the quota entitlement for the quota period during which the offence was committed.

- (4) 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.
- (5) 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*.

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

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

7—Insertion of regulations 18A to 18C

After regulation 18 insert:

18A—Restriction on taking of pipi

- (1) The holder of a licence in respect of a marine scalefish fishery must not take pipi for a commercial purpose unless the licence is subject to a condition fixing a pipi quota entitlement.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) The holder of a licence in respect of a marine scalefish fishery (other than an eligible licence) must not take pipi under the licence except for the purpose of bait to be used to take aquatic resources under the licence.
Maximum penalty: \$5 000.
Expiation fee: \$315.

18B—Restriction on use of cockle rakes

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.

18C—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.

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—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.

10—Insertion of regulation 22C

After regulation 22B insert:

22C—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.

11—Insertion of regulation 25A

After regulation 25 insert:

25A—Catch and disposal records—pipi

(1) In this regulation—

approved container means a container approved by the Minister for the purposes of containing pipi;

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 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 container and sealed with a tag issued by the Minister; and

- (ii) a G-CDR form in respect of the pipi is completed; and
 - (iii) the original G-CDR form is placed in an envelope and secured to the container containing the pipi or, if there is more than 1 container containing the pipi, to 1 of those containers;
- (b) 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 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 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 containers 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.

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

- (1) Regulation 26(1), definition of *PF-CDR form*—delete the definition
- (2) Regulation 26(4)—delete "pilchards taken pursuant to" and substitute:
sardines taken under

13—Variation of Schedule 2—Transitional provisions

Schedule 2—after clause 1 insert:

2—Fees for taking of pipi

- (1) Despite regulation 5(3) of the *Fisheries Management (Fees) Regulations 2007*, if the holder of an eligible licence in respect of the Marine Scalefish Fishery is allocated a number of pipi units under regulation 16A(3) for the quota period commencing on 1 November 2009, the holder of the licence must, before 31 December 2009, pay an additional annual fee of \$204.10 for each pipi unit of the pipi quota entitlement under the licence.
- (2) An additional annual fee payable under this clause may be paid by equal instalments at intervals fixed by the Minister.

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 October 2009

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