

South Australia

## **Aquaculture Variation Regulations 2012**

under the *Aquaculture Act 2001*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Aquaculture Variation Regulations 2012*.

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## 2—Commencement

These regulations will come into operation on the day on which the *Aquaculture (Miscellaneous) Amendment Act 2012* 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 *Aquaculture Regulations 2005*

### 4—Variation of regulation 3—Interpretation

- (1) Regulation 3(1), definition of *farming structure*—delete the definition
- (2) Regulation 3(1), definition of *zone*—delete the definition and substitute:  
*zone* means an aquaculture zone or an aquaculture exclusion zone.

### 5—Substitution of regulation 5

Regulation 5—delete the regulation and substitute:

#### 5—Certain amendments may be made by Gazette notice only

For the purposes of section 14(1)(c) of the Act, the Minister may, if of the opinion that there is ambiguity as to the boundary of an aquaculture zone or aquaculture exclusion zone, remove the ambiguity by amending the policy by notice in the Gazette under that section.

### 6—Revocation of regulation 6

Regulation 6—delete the regulation

### 7—Insertion of regulation 8A

After regulation 8 insert:

#### 8A—Fisheries officers and their powers

For the purposes of section 82(2) of the Act, section 81(3)(a) of the *Fisheries Management Act 2007* is to be read as follows:

- (a) the premises are used by a licensee for activities authorised by the licence; or

### 8—Variation of regulation 27—Environmental monitoring and reporting—general

Regulation 27(1)—delete "regulation 32(10)" and substitute:  
regulation 34

## **9—Substitution of Part 4**

Part 4—delete the Part and substitute:

### **Part 4—Division and amalgamation of lease areas and licence areas**

#### **29—Division of production lease area**

- (1) The Minister may, on application by the holder of a production lease for division of the lease area into separate production lease areas—
  - (a) substitute the original lease with leases of the same kind over the separate lease areas; and
  - (b) substitute the corresponding licences relating to the original lease with corresponding licences relating to the substituted leases.
- (2) The following rules apply to the substitution of leases and corresponding licences under this regulation:
  - (a) there must be no change in the persons holding a lease or corresponding licence;
  - (b) the terms of the substituted leases must be for the balance of the term of the original lease;
  - (c) the lease areas of the substituted leases must together make up the lease area of the original lease;
  - (d) the area in which a licensee is authorised to carry on aquaculture must not be altered;
  - (e) the conditions of a substituted lease or corresponding licence must be the same as the conditions of the original lease or corresponding licence, except for conditions designating a lease area or licence area, conditions relating to marking out the boundaries of a lease area or licence area or conditions relating a licence to a lease.
- (3) An application for division of a lease area into separate lease areas—
  - (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) must be accompanied by a plan delineating—
    - (i) the lease area of the original lease; and
    - (ii) the licence areas of the corresponding licences relating to the original lease; and
    - (iii) the separate lease areas into which the original lease area is to be divided; and
    - (iv) the licence areas of the corresponding licences that are to relate to the substituted leases over the separate lease areas; and

- (c) if the public register includes a notation that a specified person has an interest in the original lease—must be accompanied by evidence that the person consents to the division; and
  - (d) must be accompanied by the fee set out in Schedule 1.
- (4) While a licensee continues to hold a number of corresponding licences over adjoining licence areas as a result of the substitution of the licences under this regulation, the licences will, for the purposes of these regulations, be treated as a single licence held by the licensee over the aggregate of the adjoining licence areas.

### **30—Amalgamation of production lease areas**

- (1) The Minister may, on application by the holder of 2 or more production leases for amalgamation of the lease areas into a single production lease area, substitute the original leases with a production lease over the amalgamated lease area.
- (2) The following rules apply to the substitution of leases under this regulation:
  - (a) the holder of each original lease must be the same person;
  - (b) the substitution must not involve a change in the lessee;
  - (c) the original leases must be of the same class;
  - (d) the substitution must not involve a change in the class of lease;
  - (e) the term of the substituted lease must be for the aggregate of the balance of the terms of the original leases, divided by the number of original leases;
  - (f) the lease areas of the original leases must be adjoining;
  - (g) the lease area of the substituted lease must be the aggregate of the lease areas of the original leases;
  - (h) the substituted lease area must not have more than 6 corners except in exceptional circumstances approved by the Minister;
  - (i) the conditions of the substituted lease must be the same as the conditions of the original leases, except for conditions designating a lease area or conditions relating to marking out the boundaries of a lease area.
- (3) An application for amalgamation of lease areas—
  - (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) must be accompanied by a plan delineating—
    - (i) the lease areas of the original leases; and

- (ii) the licence areas of the corresponding licences relating to the original leases; and
  - (iii) the lease area to be substituted; and
  - (iv) the licence areas of the corresponding licences that are to relate to the substituted lease; and
- (c) if the public register includes a notation that a specified person has an interest in the original leases—must be accompanied by evidence that the person consents to the amalgamation; and
- (d) must be accompanied by the fee set out in Schedule 1.

### **31—Division of licence area**

- (1) The Minister may, on application by the holder of an aquaculture licence for division of the licence area into separate licence areas, substitute the original licence with licences over the separate licence areas.
- (2) The following rules apply to the substitution of licences under this regulation:
- (a) there must be no change in the persons holding a licence;
  - (b) the terms of the substituted licences must be for the balance of the term of the original licence;
  - (c) the licence areas of the substituted licences must together make up the licence area of the original licence;
  - (d) the conditions of a substituted licence must be the same as the conditions of the original licence, except for conditions designating a licence area or conditions relating to marking out the boundaries of a licence area.
- (3) An application for division of a licence area into separate licence areas—
- (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) must be accompanied by a plan delineating—
    - (i) the licence area of the original licence; and
    - (ii) the separate licence areas into which the original licence area is to be divided; and
  - (c) if the public register includes a notation that a specified person has an interest in the original licence—must be accompanied by evidence that the person consents to the division; and
  - (d) must be accompanied by the fee set out in Schedule 1.

### **32—Amalgamation of licence areas**

- (1) The Minister may, on application by the holder of 2 or more aquaculture licences for amalgamation of the licence areas into a single licence area (whether or not in connection with an application under regulation 30), substitute the original licences with a licence over the licence area.
- (2) The following rules apply to the substitution of licences under this regulation:
  - (a) the holder of each original licence must be the same person;
  - (b) the substitution must not involve a change in the licensee;
  - (c) the original licences must be of the same class;
  - (d) the substitution must not involve a change in the class of licence;
  - (e) the term of the substituted licence must be—
    - (i) in the case of a corresponding licence—  
co-extensive with the term of the lease; or
    - (ii) in any other case—for the aggregate of the balance of the terms of the original licences, divided by the number of original licences;
  - (f) the licence area of the substituted licence must be the aggregate of the licence areas of the original licences;
  - (g) the conditions of the substituted licence must be the same as the conditions of the original licences, except for conditions designating a licence area or conditions relating to marking out the boundaries of a licence area.
- (3) An application for amalgamation of licence areas into a single licence area—
  - (a) must be made to the Minister in the manner and form required by the Minister; and
  - (b) must be accompanied by a plan delineating—
    - (i) the licence areas of the original licences; and
    - (ii) the single licence area into which the original licence areas are to be amalgamated; and
  - (c) if the public register includes a notation that a specified person has an interest in the original licences—must be accompanied by evidence that the person consents to the amalgamation; and
  - (d) must be accompanied by the fee set out in Schedule 1.

### 33—Minister may require further information

An applicant under this Part must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

## Part 5—Miscellaneous

### 34—Classification of licences as category A, B or C and classification of variations of licence conditions as simple, standard or complex

For the purposes of Schedule 1—

- (a) the Minister must classify each licence other than a corresponding licence as a low risk (*category A*), medium risk (*category B*) or high risk (*category C*) licence having regard to factors affecting the ecological sustainability of aquaculture authorised by the licence, including—
  - (i) any discharge of water from the licence area and the treatment of that water prior to discharge; and
  - (ii) whether or not the species to be farmed are native to the locality of the licence area; and
  - (iii) the susceptibility of the species to be farmed to notifiable disease within the meaning of the *Livestock Act 1997*; and
- (b) the Minister may vary the classification of a licence by written notice to the licensee; and
- (c) the Minister must classify each variation of licence conditions as a simple, standard or complex variation having regard to the extent to which the variation involves factors affecting the ecological sustainability of aquaculture authorised by the licence, including—
  - (i) whether the variation involves any of the following:
    - (A) a change in the species to be farmed;
    - (B) an increase in the scale or intensity of farming;
    - (C) a change in the type of farming structures or method used;
    - (D) a change that will require reclassification of the licence as a low risk (*category A*), medium risk (*category B*) or high risk (*category C*) licence; and
  - (ii) in the case of a corresponding licence, a consideration of the following:

- (A) whether the licence area is in an aquaculture zone (where risks affecting ecological sustainability have been more generally assessed);
- (B) whether the licence area has previously been farmed;
- (C) whether the licence area is being varied.

### **35—Fee payable on grant of aquaculture licence**

A person who applies for an aquaculture licence must, before the licence is granted, pay to the Minister a fee of an amount calculated by multiplying—

- (a) the annual fee that would have been payable by the person (under regulation 36) had the person held the licence at the last date for payment of the annual fee; and
- (b) the proportion that the number of whole months between the grant of the licence and the next 30 June bears to 12 months.

### **36—Annual fees for licences**

- (1) The annual fee payable under section 53(1) of the Act for an aquaculture licence is as set out in Schedule 1.
- (2) If more than 1 fee amount set out in Schedule 1 applies to a corresponding licence, only a single fee amount (being the higher or highest of those amounts) will be payable as the annual fee.
- (3) The Minister may enter into an arrangement with the holder of an aquaculture licence for payment of an annual fee by instalments.
- (4) For the purposes of section 53(2) of the Act, the penalty for failure to pay an annual fee is—
  - (a) if the holder of the licence has entered into an arrangement with the Minister for the payment of an annual fee in instalments—10% of the aggregate of the unpaid instalments for each month (or part of a month) for which the default continues; or
  - (b) in any other case—10% of the annual fee for each month (or part of a month) for which the default continues.

### **37—Further fees**

Further fees are payable for the purposes of the Act as set out in Schedule 1.

### **38—Waiver or refund of fees**

- (1) The Minister may waive or refund a fee (or part of a fee) payable under the Act or these regulations if satisfied that it is appropriate to do so in a particular case.

- (2) The amount of an application fee in Schedule 1 comprising an advertising component must be refunded to the extent that it is not used for advertising in respect of the application.

### **39—Recovery of fees**

A fee payable to the Minister under the Act or these regulations may be recovered by the Minister by action in a court of competent jurisdiction as a debt due to the Minister.

### **40—Defects in applications**

- (1) The Minister may request an applicant to remedy a defect or deficiency in an application or accompanying document or information required by or under the Act or these regulations.
- (2) The Minister may, in connection with an application under the Act or these regulations relating to a lease or licence (other than an application for the grant of a lease or licence), request the applicant—
- (a) to pay any outstanding fee or other amount payable under the Act or these regulations by the applicant in respect of the lease or licence; or
  - (b) to provide any outstanding report, return or other information required to be provided under the Act or these regulations by the applicant in respect of the lease or licence.
- (3) If an applicant in relation to whom a request has been made under this regulation fails to comply with the request within 3 months, the Minister may refuse the application.

### **41—Exemptions**

Section 17 of the Act does not apply to aquaculture carried on through the South Australian Research and Development Institute.

## **10—Substitution of Schedule 1**

Schedule 1—delete the Schedule and substitute:

### **Schedule 1—Fees**

#### **Fees relating to aquaculture leases**

- 1 Application fee for variation of an aquaculture lease or its conditions (section 25A(5) of Act)—
- (a) for a variation consisting of or involving—
    - (i) the substitution of the lease area (within or outside of an aquaculture zone) where at least 80% of the lease area will remain the same \$1 218
    - (ii) the substitution of the lease area within an aquaculture zone (other than a variation of a kind referred to in subparagraph (i)) \$2 054

	(iii) the substitution of the lease area outside of an aquaculture zone (other than a variation of a kind referred to in subparagraph (i))	\$2 906
	(b) for a variation of any other kind	\$744
2	Application fee for consent to transfer a production lease (section 39(2) of Act)—	
	(a) if a corresponding licence authorises the farming of oysters	\$1 588
	(b) in any other case	\$601
3	Application fee for division of a production lease area into separate lease areas (regulation 29)—	
	(a) if a corresponding licence authorises the farming of oysters	\$2 911
	(b) in any other case	\$1 150
4	Application fee for amalgamation of 2 or more production lease areas into a single lease area (regulation 30)	\$1 150

**Fees relating to aquaculture licences**

5	Application fee for a corresponding licence (section 22(2d) of Act)—	
	(a) in the case of a corresponding licence within an aquaculture zone—	
	(i) administrative component	\$2 306
	(ii) advertising component	\$1 382
	(b) in the case of a corresponding licence outside of an aquaculture zone—	
	(i) administrative component	\$3 930
	(ii) advertising component	\$1 382
6	Application fee for a licence other than corresponding licence (section 49 of Act)—	
	(a) for a low risk ( <i>category A</i> ) licence—	
	(i) administrative component—	\$1 544
	(ii) advertising component—	\$1 382
	(b) for a medium risk ( <i>category B</i> ) licence—	
	(i) administrative component—	\$1 847
	(ii) advertising component—	\$1 382
	(c) for a medium risk ( <i>category C</i> ) licence—	
	(i) administrative component—	\$2 911
	(ii) advertising component—	\$1 382

7	Application fee for renewal of an aquaculture licence other than corresponding licence (section 50A of Act)	\$480
	<b>Note—</b>	
	A corresponding licence is, under section 22(2b) of the Act, renewed on the renewal of the relevant lease without the requirement for an application.	
8	Application fee for variation of conditions of an aquaculture licence (section 52(6) of Act)—	
	(a) in the case of a corresponding licence that authorises the farming of oysters—	
	(i) for a simple variation	\$1 373
	(ii) for a standard variation	\$1 818
	(iii) for a complex variation	\$3 441
	(b) in the case of any other corresponding licence—	
	(i) for a simple variation	\$973
	(ii) for a standard variation	\$1 287
	(iii) for a complex variation	\$2 437
	(c) in the case of a licence other than a corresponding licence—	
	(i) for a simple variation	\$692
	(ii) for a standard variation	\$812
	(iii) for a complex variation	\$2 077
9	Application fee for consent to transfer an aquaculture licence (section 55(4) of Act)—	
	(a) in the case of a corresponding licence that authorises the farming of oysters	\$1 853
	(b) in the case of any other corresponding licence	\$555
	(c) in the case of a licence other than a corresponding licence	\$458
10	Application fee for consent to surrender an aquaculture licence other than a corresponding licence (section 56(3)(c) of Act)	\$338
11	Application fee for division of a licence area into separate licence areas (regulation 31)—	
	(a) in the case of a licence that authorises the farming of oysters	\$1 588
	(b) in any other case	\$875
12	Application fee for amalgamation of 2 or more licence areas into a single licence area (regulation 32)	\$1 150
13	Annual fee for a corresponding licence (section 53(1) of Act) for the financial year 2012/13 and for each subsequent financial year—	
	(a) for an aquaculture licence to farm prescribed wild caught tuna	\$5 389

(b)	for an aquaculture licence to farm finfish other than prescribed wild caught tuna	\$3 000
(c)	for an aquaculture licence to farm abalone in a subtidal area	\$3 870
(d)	for an aquaculture licence to farm mussels in a subtidal area	\$2 041
(e)	for an aquaculture licence to farm molluscs (other than abalone and mussels) in a subtidal area	\$1 914
(f)	for an aquaculture licence to farm molluscs (including abalone, but not including oysters) in an intertidal area	\$1 881
(g)	for an aquaculture licence to farm oysters in an intertidal area	\$381 plus \$204 for each hectare (rounded to 2 decimal places) in the licence area
(h)	for an aquaculture licence to farm algae	\$1 746
(i)	for an aquaculture licence authorising the storage of sea cages	\$1 746
14	Annual fee for a licence other than a corresponding licence (section 53(1) of Act) for the financial year 2012/13 and for each subsequent financial year—	
(a)	for a low risk ( <i>category A</i> ) licence	\$481
(b)	for a medium risk ( <i>category B</i> ) licence—	
(i)	in the case of a licence authorising the carrying on of aquaculture on a navigable vessel as it operates within an area of State waters or the use of a farming structure designed to be transported by road or rail	\$1 536
(ii)	in any other case	\$1 536
(c)	for a high risk ( <i>category C</i> ) licence—	
(i)	in the case of a licence authorising the carrying on of aquaculture on a navigable vessel as it operates within an area of State waters or the use of a farming structure designed to be transported by road or rail	\$4 715
(ii)	in any other case	\$2 926

**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 25 October 2012

No 217 of 2012

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