

South Australia

Fisheries Management (Marine Scalefish Fisheries) (Pipi) Variation Regulations 2016

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) (Pipi) Variation Regulations 2016*.

2—Commencement

These regulations will come into operation on 1 January 2017.

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 12—Registration

- (1) Regulation 12(2)—after paragraph (a) insert:
 - (ab) the licence is subject to a condition fixing a pipi quota entitlement; or
- (2) Regulation 12—after subregulation (2) insert:
 - (3) If the gear entitlement under a licence in respect of a marine scalefish fishery authorises the use of an ocean jacket trap, a person cannot be registered as the master of a boat used under the licence if the holder of the licence and 2 other persons are already registered as masters of that boat.

5—Substitution of regulation 13A

Regulation 13A—delete the regulation and substitute:

13A—Restriction on fishing activities in which registered masters other than licence holder may be engaged

If a person holds only 1 licence in respect of a marine scale fishery, a registered master other than the holder of the licence must not engage in fishing activities under the licence other than—

- (a) in the case of a licence subject to a condition fixing a pipi quota entitlement—the taking of pipi under the licence; or
- (b) in the case of a licence that authorises the use of ocean jacket traps, sand crab pots or sardine nets—fishing activities involving the use of those devices.

Maximum penalty: \$5 000.

Expiation fee: \$315.

6—Substitution of regulation 18

Regulation 18—delete the regulation and substitute:

18—Individual sardine catch quota system

- (1) This regulation applies only in relation to licences in respect of the Marine Scalefish Fishery under which sardine nets are registered.
- (2) In this regulation—

Gulfs Zone means the waters adjacent to South Australia that are east of the meridian of longitude 135°37'30"E (extending south from near Cape Carnot, Eyre Peninsula) and north of latitude 35°52'00"S (extending to Kangaroo Island, in the vicinity of Vennachar Point) and north of a line between Penneshaw, Kangaroo Island, and Cape Jervis, Fleurieu Peninsula, enclosing the waters of Gulf St. Vincent and Spencer Gulf;

Outside Zone means the waters adjacent to South Australia that are not within the Gulfs Zone;

quota period—a quota period for the Marine Scalefish Fishery is a period of 12 months commencing on 1 January in any year;

sardine fishing zone means—

- (b) the Gulfs Zone; or
- (a) the Outside Zone;

sardine quota entitlement or **quota entitlement**, in relation to a licence in respect of the Marine Scalefish Fishery and a sardine fishing zone, means the maximum number of kilograms of sardines that may lawfully be 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;

unit entitlement in relation to a licence in respect of the Marine Scalefish Fishery and a sardine fishing zone, means the number of sardine units for the time being allocated to the licence in respect of that zone;

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

- (3) The Minister must, on or before the commencement of each quota period, determine the number of kilograms of sardines that is to be the value of a sardine unit for a sardine fishing zone and the quota period.
- (4) The Minister may impose or vary conditions on licences in respect of the Marine Scalefish Fishery fixing sardine quota entitlements as follows:
 - (a) licences in respect of the fishery may be allocated an equal number of sardine units in respect of the same sardine fishing zone;
 - (b) the Minister may, not more than twice during a quota period, vary the conditions of all licences in respect of the fishery so as to increase the sardine quota entitlements under the licences by the same number of sardine units in respect of the same sardine fishing zone;

- (c) on joint application made to the Minister by the holders of any 2 licences in respect of the fishery, the conditions of those licences may be varied so as to increase (by whole units or part units) the unit entitlement under 1 of the licences in respect of a particular sardine fishing zone and decrease the unit entitlement under the other licence in respect of that zone by a corresponding number of units;
 - (d) if the total catch of sardines taken by the holder of a licence in respect of the fishery during a quota period exceeded the sardine quota entitlement under the licence for that quota period, the conditions of the licence may be varied so as to decrease the sardine quota entitlement—
 - (i) if the catch exceeded the sardine quota entitlement by not more than 15 tonnes of sardines—by 1 kilogram for each kilogram taken in excess of the sardine quota entitlement; or
 - (ii) if the catch exceeded the sardine quota entitlement by more than 15 tonnes but not more than 30 tonnes of sardines—by 2 kilograms for each kilogram taken in excess of the sardine 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 sardine quota entitlement; and
 - (ii) the conduct constituting the offence involved the taking of more than 30 tonnes of sardines in excess of the quota entitlement,the conditions of the licence may be varied so as to decrease the sardine quota entitlement under the licence for 3 quota periods following the conviction by 1 kilogram for each kilogram taken in excess of the sardine quota entitlement for the quota period during which the offence was committed;
 - (f) a variation of a quota entitlement or unit entitlement under this subregulation (other than paragraph (e)) must be expressed to apply only for the remainder of the quota period during which the variation is made.
- (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 by the *Fisheries Management (Fees) Regulations 2007*.

- (6) The holder of a licence in respect of the Marine Scalefish Fishery subject to a condition fixing a sardine quota entitlement must not take sardines under the licence while the total number of sardine units allocated to the licence is less than 100 units.

Maximum penalty: \$5 000.

Expiation fee: \$315.

7—Variation of regulation 18A—Restrictions on taking of pipi, blue crab and sardines

Regulation 18A—after subregulation (2) insert:

- (3) The holder of licence in respect of a marine scalefish fishery must not take blue crab in a blue crab fishing zone for a commercial purpose unless the licence is subject to a condition fixing a blue crab quota entitlement in relation to that zone.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) The holder of licence in respect of a marine scalefish fishery must not take sardines for a commercial purpose unless the licence is subject to a condition fixing a sardine quota entitlement.

Maximum penalty: \$5 000.

Expiation fee: \$315.

8—Variation of regulation 18B—Restriction on use of cockle rakes

Regulation 18B—delete "3" and substitute:

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9—Variation of regulation 19A—Information to be provided to Minister before pipi are taken

Regulation 19A(1)—after subparagraph (f) insert:

and

- (g) if a nominated agent approved under regulation 21A is to be engaged in the fishing activities—the name of the nominated agent.

10—Substitution of regulation 21

Regulation 21—delete the regulation and substitute:

21—Use of agents in fishing activities (licences under which boats are registered)

- (1) This regulation applies only in relation to licences under which 1 or more registered boats are used to take aquatic resources.

- (2) The holder of a licence in respect of a marine scalefish fishery, or the registered master of a registered boat used under such a licence, must not cause or permit a person to be engaged on the shore as an agent of the holder of the licence in a fishing activity of a class that constitutes the fishery unless—
- (a) the holder of the licence or the registered master is at the same time also engaged on the shore in a fishing activity of a class that constitutes the fishery; and
 - (b) the holder of the licence or the registered master (as the case may be) and the other person remain, while so engaged, within 700 metres of each other.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) The holder of a 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 2 persons to be engaged at the same time on the shore as agents of the holder of the licence in a fishing activity of a class that constitutes the fishery (other than the taking of pipi under an eligible licence in the Lakes and Coorong).

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) 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 8 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.

- (5) 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.

- (6) The holder of a licence in respect of the Restricted Marine Scalefish Fishery, or the registered master of a registered boat used under such a licence, must not cause or permit more than 1 person to be engaged at the same time on the shore as an agent of the holder of the licence in a fishing activity of a class that constitutes the fishery.

Maximum penalty: \$5 000.

Expiation fee: \$315.

21A—Use of agents in fishing activities (licences under which no registered boats are used)

- (1) This regulation applies only in relation to licences under which there are no registered boats.
- (2) The holder of a licence in respect of the Marine Scalefish Fishery that is subject to a condition fixing a relevant quota entitlement must not cause or permit a person to be engaged on the shore as an agent of the holder of the licence in a relevant fishing activity unless—
 - (a) the holder of the licence or a nominated agent is at the same time also engaged on the shore in a fishing activity of a class that constitutes the fishery; and
 - (b) the holder of the licence or nominated agent (as the case may be) and the other person remain, while so engaged, within 700 metres of each other.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) The holder of a licence in respect of the Marine Scalefish Fishery must not cause or permit more than 2 persons to be engaged at the same time on the shore as agents of the holder of the licence in a fishing activity of a class that constitutes the fishery other than the taking of pipi under the licence in the Lakes and Coorong.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) The holder of an eligible licence in respect of the Marine Scalefish Fishery must not cause or permit more than 8 persons (not including a nominated agent) 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.

- (5) 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 a relevant fishing activity.

- (6) The Minister may, on application by the holder of an eligible licence, approve a person as a nominated agent for the purposes of this regulation.

- (7) An approval under subregulation (6) may be made subject to such conditions as the Minister thinks fit.

- (8) A person must not contravene, or fail to comply with, a condition of an approval under subregulation (6).

Maximum penalty: \$5 000.

Expiation fee: \$315.

(9) In this regulation—

nominated agent means a person approved by the Minister as a nominated agent under subregulation (6);

relevant fishing activity means the taking of pipi in the Lakes and Coorong;

relevant quota entitlement means a pipi quota entitlement.

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 15 December 2016

No 290 of 2016

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