

South Australia

Aquaculture (Miscellaneous) Amendment Regulations 2023

under the *Aquaculture Act 2001*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Aquaculture (Miscellaneous) Amendment Regulations 2023*.

2—Commencement

These regulations come into operation on the day on which the *Aquaculture (Tourism Development) Amendment Act 2021* comes into operation.

Part 2—Amendment of *Aquaculture Regulations 2016*

3—Amendment of regulation 3—Interpretation

- (1) Regulation 3(1)—after the definition of *aquaculture strategy* insert:

aquaculture tourism development has the same meaning as in Part 7A of the Act;

aquaculture tourism development authorisation has the same meaning as in Part 7A of the Act;

aquaculture tourism site means the site of aquaculture tourism development as specified under the aquaculture tourism development authorisation for the development;
- (2) Regulation 3(1)—after the definition of *aquaculture waste* insert:

building work has the same meaning as in Part 7A of the Act;
- (3) Regulation 3(1)—after the definition of *category A licence, category B licence, category C licence or category D licence* insert:

commercial tourism activity has the same meaning as in Part 7A of the Act;
- (4) Regulation 3(1), definition of *GDA94*—delete the definition
- (5) Regulation 3(1), definition of *large marine vertebrate*—after "sea lions" insert:

turtles,
- (6) Regulation 3(1)—after the definition of *sector-based aquaculture strategy* insert:

tourism lease has the same meaning as in Part 7A of the Act;

tourism licence has the same meaning as in Part 7A of the Act;
- (7) Regulation 3(1), definition of *WGS84*—delete the definition
- (8) Regulation 3(2)—after "farmed under a licence" insert:

or held on an aquaculture tourism site for the purposes of a commercial tourism activity
- (9) Regulation 3(2)(a)—after "farmed under the licence" insert:

or held on the site (as the case requires)

4—Amendment of regulation 4—Approvals by Minister

Section 4—delete "licensee" wherever occurring and substitute in each case:
person

5—Amendment of regulation 5—Procedures for making aquaculture policies

- (1) Regulation 5(c)—delete "RecFishSA" and substitute:

South Australian Recreational Fishing Advisory Council Incorporated
(RecFish SA)
- (2) Regulation 5(d)—delete paragraph (d)
- (3) Regulation 5(f)—delete paragraph (f) and substitute:

(f) Seafood Industry South Australia Incorporated;
- (4) Regulation 5(g)—after subparagraph (ii) insert:

(iia) any person holding a tourism lease or tourism licence over an area to which the policy applies; and
- (5) Regulation 5(g)(iii)—delete "NRM Board (within the meaning of the *Natural Resources Management Act 2004*)" and substitute:

landscape board (within the meaning of the *Landscape South Australia Act 2019*)
- (6) Regulation 5(h)—delete "NRM Boards (within the meaning of the *Natural Resources Management Act 2004*)" and substitute:

landscape boards (within the meaning of the *Landscape South Australia Act 2019*)
- (7) Regulation 5—after paragraph (h) insert:

(i) a person or body that, in the opinion of the Minister, promotes tourism within South Australia.
- (8) Regulation 5—after its present contents as amended by this regulation (now to be designated as subregulation (1)) insert:

(2) The Minister must, if a body referred to in subregulation (1)(a) to (f) has ceased to exist, specify, by notice in the Gazette, a body that in the opinion of the Minister has the same or similar functions as the body that has ceased to exist, and a body so specified is prescribed for the purposes of section 12(4)(a) of the Act.

6—Substitution of regulation 6

Regulation 6—delete the regulation and substitute:

6—Certain amendments may be made by Gazette notice only

For the purposes of section 14(1)(c) of the Act, the Minister, by notice in the Gazette under that section, may amend an aquaculture policy—

- (a) if of the opinion that there is ambiguity as to the boundary of an aquaculture zone or aquaculture exclusion zone, to remove the ambiguity; or
- (b) to prescribe the maximum or minimum area that is to be available for use for the purposes of aquaculture tourism development in aquaculture zones in the policy.

7—Amendment of regulation 7—Reference of matters to EPA

Regulation 7—delete "6 weeks" and substitute:

30 business days

8—Amendment of regulation 10—Use of chemical substances

- (1) Regulation 10(1)—delete "or as an antifoulant"
- (2) Regulation 10(3), definition of *antifoulant*—delete the definition

9—Amendment of regulation 15—Stock register

Regulation 15(1), expiation fee—delete "315" and substitute:

500

10—Amendment of regulation 18—Aquaculture strategies

- (1) Regulation 18(2)(b)(ii)—delete subparagraph (ii) and substitute:
 - (ii) a strategy for avoiding or minimising disease of aquaculture stock;
 - (iia) a strategy for avoiding or minimising the escape of aquaculture stock;
 - (iib) a strategy for avoiding or minimising adverse impacts on, or adverse interactions with, seabirds and large marine vertebrates;
- (2) Regulation 18(2)(b)(iii)—delete subparagraph (iii) and substitute:
 - (iii) a response plan for dealing with the escape of aquaculture stock;
 - (iiia) a response plan for dealing with adverse impacts on, or adverse interactions with, seabirds and large marine vertebrates;
- (3) Regulation 18(2)(c)—delete paragraph (c)

11—Amendment of regulation 22—Annual reporting on general environmental matters

Regulation 22(a)(i)—delete subparagraph (i) and substitute:

- (i) the location of farming structures in the licence area (in the form required by the Minister);

12—Amendment of regulation 24—Marking-off lease areas

- (1) Regulation 24—delete "or a corresponding licence" wherever occurring
- (2) Regulation 24(a)—delete "; or" and substitute:

; and

13—Insertion of regulation 24A

After regulation 24 insert:

24A—Navigational Markers

The holder of an aquaculture lease must ensure that—

- (a) navigational markers are installed in the manner required under the conditions of the lease; and
- (b) structures or equipment comprising the navigational markers are maintained in good working condition.

Maximum penalty: \$5 000.

Expiation fee: \$500.

14—Insertion of Part 3A

After Part 3 insert:

Part 3A—Regulation of aquaculture tourism development activities

31A—Aquaculture tourism waste

A person carrying on a commercial tourism activity at an aquaculture tourism site must ensure that waste generated in the course of the activity—

- (a) does not cause an unsightly or offensive condition at the site; and
- (b) is secured or treated in a manner designed to prevent it being blown, washed or swept off the site; and
- (c) is disposed of in a lawful manner.

Maximum penalty: \$5 000.

Expiation fee: \$500.

31B—Recovery of aquaculture tourism equipment or waste blown, washed or swept off-site

A person carrying on a commercial tourism activity at an aquaculture tourism site must ensure that, if any waste, structure, equipment or goods are blown, washed, or swept off the site, the waste, structure, equipment or goods are recovered as soon as practicable, but in any event within 7 days.

Maximum penalty: \$5 000.

Expiation fee: \$500.

31C—Stock register

- (1) A person (the *operator*) carrying on a commercial tourism activity at an aquaculture tourism site must maintain a stock register in accordance with this regulation.

Maximum penalty: \$5 000.

Expiation fee: \$500.

- (2) The stock register must contain (in a clear and legible form)—
- (a) the following information in respect of live aquatic organisms brought to the site for the purposes of the tourism activity:
 - (i) details identifying the place at which the aquatic organisms were last reared before being brought to the site or the place at which the aquatic organisms were collected;
 - (ii) the date on which the aquatic organisms were received or collected by the operator;
 - (iii) the name and address of the person who supplied the aquatic organisms;
 - (iv) the species and number or biomass of aquatic organisms; and
 - (b) the following information in respect of the movement of live aquatic organisms from 1 aquaculture tourism site to another (whether or not the 2 sites are used by the same operator):
 - (i) the date of the movement of the aquatic organisms;
 - (ii) the name and address of the person (if any) receiving the aquatic organisms;
 - (iii) the species and the number or biomass of the aquatic organisms; and
 - (c) the following information in respect of aquatic organisms brought to the site for the purposes of the tourism activity that have died at the site (except where the aquatic organisms have died in the course of being consumed or in preparation for being consumed):
 - (i) the species of the aquatic organisms;
 - (ii) the date (or an estimate of the date) the aquatic organisms died;
 - (iii) the number or biomass (or an estimate of the number or biomass) of aquatic organisms that have died;
 - (iv) the date on which the aquatic organisms were last checked;

- (v) a description of how and where the aquatic organisms were disposed of.
- (3) A record required to be entered in the stock register must, subject to subregulation (4), be entered within 7 days after the event to which it relates.
- (4) However, if an operator has notified the Minister of an unusually high mortality rate under regulation 31E, the Minister may require the operator to update the stock register as required within 24 hours after the notification.
- (5) A record entered in the stock register must be retained for 5 years from the date on which it was entered.
- (6) A person who is required to keep a record under this regulation must, at the request of a person authorised in writing by the Minister, produce the record for inspection.

31D—Control of aquatic organisms affected with disease

- (1) If a person carrying on a commercial tourism activity at an aquaculture tourism site knows, or ought reasonably to know, that an aquatic organism proposed to be introduced into the site for the purposes of the tourism activity is or may be affected with a disease, the person must ensure that the aquatic organism is not introduced into the site without the prior written approval of the Minister.
Maximum penalty: \$10 000.
- (2) If a person carrying on a commercial tourism activity at an aquaculture tourism site knows, or ought reasonably to know, that an aquatic organism held on the site for the purposes of the tourism activity is or may be affected with a disease, the person must ensure that the aquatic organism is not removed from the site unless—
 - (a) it is removed for testing for disease; or
 - (b) it is removed for disposal (other than disposal by sale or supply to another person); or
 - (c) it is removed in accordance with the written approval of the Minister obtained by the person.Maximum penalty: \$10 000.
- (3) For the purposes of this regulation, if the cause of an unusually high mortality rate for aquatic organisms held on an aquaculture tourism site for the purposes of a commercial tourism activity is not immediately apparent, the person carrying on the tourism activity at the site will be taken to know that the aquatic organisms may be affected with a disease.

31E—Notification of unusually high mortality rate and duty to isolate unaffected organisms

- (1) If the mortality rate for aquatic organisms held for the purposes of a commercial tourism activity on an aquaculture tourism site is unusually high (see regulation 3(2)) and the person carrying on the commercial tourism activity at the site knows, or ought reasonably to know, that the organisms are or may be affected with a disease, then—
- (a) the person must, immediately after becoming aware of the unusually high mortality rate, notify the Minister of that fact and of as many of the prescribed details are known at the time of the notification; and
 - (b) the person must, as soon as practicable—
 - (i) take all reasonable measures to isolate aquatic organisms apparently affected from aquatic organisms not apparently affected; and
 - (ii) give notice in writing of the prescribed details to the Minister.

Maximum penalty: \$10 000.

Expiation fee: In the case of an offence against paragraph (a) or (b)(ii)—\$1 000.

- (2) In this regulation—
- prescribed details***, in relation to the mortality of aquatic organisms held on an aquaculture tourism development site, means—
- (a) the name of the species of aquatic organisms;
 - (b) the number or biomass (or an estimate of the number or biomass) of aquatic organisms that have died;
 - (c) details of any clinical signs observable in the organisms prior to death;
 - (d) the number or biomass (or an estimate of the number or biomass) of aquatic organisms that show similar clinical signs but have not died;
 - (e) any known or suspected cause of death;
 - (f) details of the measures taken to control or eradicate the disease;
 - (g) details of all measures taken to isolate aquatic organisms apparently affected from aquatic organisms not apparently affected;
 - (h) details of any other circumstances known or suspected to be contributing factors such as extreme weather conditions, power failures, poor water quality or water temperature.

- (3) For the purposes of subregulation (1), if the cause of an unusually high mortality rate for aquatic organisms held on an aquaculture tourism development site for the purposes of a commercial tourism activity is not immediately apparent, the person carrying on the tourism activity at the site will be taken to know that the aquatic organisms may be affected with a disease.

31F—Notification of entanglement or confinement of protected animals

- (1) If a protected animal becomes entangled or otherwise confined in building work, infrastructure or other equipment at an aquaculture tourism site, a person carrying on a commercial tourism activity at the site must—
- (a) immediately after becoming aware of the entanglement or confinement, notify the Minister of so many of the prescribed details in relation to the entanglement or confinement as are known at the time of the notification; and
 - (b) within 2 days after becoming aware of the entanglement or confinement, give the Minister written notice of the prescribed details in relation to the entanglement or confinement.

Maximum penalty: \$7 500.

Expiation fee: In the case of an offence against paragraph (b)—\$500.

- (2) In this regulation—
- prescribed details***, in relation to the entanglement or confinement of an animal, means the following:
- (a) the species of animal;
 - (b) the expected period of entanglement or confinement;
 - (c) the condition of the animal (to the extent known or reasonably ascertainable);
 - (d) details of the circumstances in which the entanglement took place;
 - (e) any action taken to free the animal and the outcome of that action;

protected animal means—

- (a) a protected animal within the meaning of the *National Parks and Wildlife Act 1972*; or
- (b) a white shark (*Carcharodon carcharias*).

31G—Mitigation of impacts on and interactions with seabirds and large marine vertebrates

A person carrying on a commercial tourism activity at an aquaculture tourism site must take all reasonable measures to minimise any adverse impacts on, or adverse interactions with, seabirds and large marine vertebrates on the site resulting from the activity.

Maximum penalty: \$5 000.

Expiation fee: \$500.

31H—Power to require or carry out work

- (1) If a person fails to take any action required to be taken by the person under this Part, the Minister may, by written notice to the person, direct the person to take the relevant action.
- (2) A person to whom a direction is given under subregulation (1) must comply with the direction within the time allowed in the notice.
Maximum penalty: \$10 000.
- (3) If a person fails to comply with a direction under subregulation (1) within the time allowed in the notice, the Minister may cause the required action to be taken, and may recover the cost, as a debt, from the person.
- (4) Any property removed by action taken by the Minister under subregulation (3) is forfeited to the Crown and may be sold or otherwise disposed of as the Minister sees fit.

15—Amendment of regulation 43—Defects in applications

Regulation 43(2)—delete subregulation (2) and substitute:

- (2) The Minister may, in connection with an application under the Act or these regulations relating to an aquaculture lease or licence, tourism lease or licence or aquaculture tourism development authorisation (other than an application for a grant of such a lease, licence or authorisation), request the applicant—
 - (a) to pay any outstanding fee or other amount payable under the Act or these regulations in respect of the aquaculture lease or licence, tourism lease or licence or aquaculture tourism development authorisation (as the case requires); 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 aquaculture lease or licence, tourism lease or licence or aquaculture tourism development authorisation (as the case requires).

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments 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 30 November 2023

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