

South Australia

Fisheries Management (Prawn Fisheries) Regulations 2017

under the *Fisheries Management Act 2007*

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Legislative history

1—Short title

These regulations may be cited as the *Fisheries Management (Prawn Fisheries) Regulations 2017*.

3—Interpretation

(1) In these regulations, unless the contrary intention appears—

Act means the *Fisheries Management Act 2007*;

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

current company extract means a document prepared by the Australian Securities and Investment Commission from its national database kept under the Corporations Act that contains current details of the following in relation to a company:

- (a) the company's name;
- (b) the address of the company's registered office;
- (c) the date of registration of the company;
- (d) the State or Territory in which the company is taken to be registered under the Corporations Act;
- (e) the company's Australian Company Number;
- (f) whether the company is a proprietary company or a public company;
- (g) the full name of each director of the company;
- (h) the full name of each secretary (if any) of the company;

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the Act;

Gulf St. Vincent means the waters of Gulf St. Vincent, Investigator Strait and Backstairs Passage contained within and bounded by a line commencing at Mean High Water Springs closest to 35°13'26.90" South, 137°00'00.00" East, then beginning easterly following the line of Mean High Water Springs to the location closest to 35°39'37.06" South, 138°13'38.09" East (Porpoise Head), then south-westerly to the location on Mean High Water Springs closest to 35°48'06.93" South, 138°07'29.06" East (Cape St Albans, Kangaroo Island), then beginning south-westerly following the line of Mean High Water Springs to the location closest to 35°40'20.07" South, 137°0'00.00" East, then northerly to the point of commencement;

Mean High Water Springs means the line representing the average of all high water observations at the time of spring tide over a period of 19 years;

overall length, in relation to a boat, means the horizontal distance between—

- (a) a perpendicular dropped from the extremity of the bow of the boat or, if a fixture or structure attached to the bow projects beyond the bow, from the extremity of that fixture or structure; and
- (b) a perpendicular dropped from the extremity of the stern of the boat or, if a fixture or structure attached to the stern projects beyond the stern, from the extremity of that fixture or structure;

prawn means King Prawn (*Merlicertus latisulcatus*);

prawn fishery means—

- (a) the Gulf St. Vincent Prawn Fishery; or
- (b) the Spencer Gulf Prawn Fishery; or
- (c) the West Coast Prawn Fishery,

constituted by these regulations;

Spencer Gulf means the waters of Spencer Gulf north of the geodesic from the location on Mean High Water Springs closest to 34°9'07.15" South, 136°00'11.06" East (Cape Catastrophe, Eyre Peninsula) to the location on Mean High Water Springs closest to 35°17'59.60" South, 136°52'50.11" East (Cape Spencer, Yorke Peninsula);

surveyed length, in relation to a registered boat, means the length as shown on the certificate of survey issued under the *Harbors and Navigation Act 1993*;

trawl net has the same meaning as in the *Fisheries Management (General) Regulations 2017*;

West Coast waters means the waters adjacent to South Australia contained within the meridians of longitude 131° East and 137° East, but does not include the waters of Spencer Gulf north of the geodesic from the location on Mean High Water Springs closest to 34°59'07.15" South, 136°00'11.06" East (Cape Catastrophe, Eyre Peninsula) to the location on Mean High Water Springs closest to 35°17'59.60" South, 136°52'50.11" East (Cape Spencer, Yorke Peninsula).

- (2) In these regulations, unless the contrary intention appears, **company**, **director**, **proprietary company** and **public company** have the same respective meanings as in the Corporations Act.
- (3) 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 5300—2015 *Australian Fish Names Standard* published by Standards Australia, as in force from time to time;
 - (c) a reference to the **taking of aquatic resources** includes a reference to an act preparatory to, or involved in, the taking of the aquatic resources.

4—Constitution of fisheries

- (1) The following fisheries are constituted:
 - (a) the Gulf St. Vincent Prawn Fishery;
 - (b) the Spencer Gulf Prawn Fishery;
 - (c) the West Coast Prawn Fishery.
- (2) The Gulf St. Vincent Prawn Fishery consists of—
 - (a) the taking of prawns in Gulf St. Vincent; and
 - (b) the taking of aquatic resources specified in Schedule 1 Part 1 in Gulf St. Vincent where the aquatic resources are taken at the same time in the same net incidentally to the taking of prawns.
- (3) The Spencer Gulf Prawn Fishery consists of—
 - (a) the taking of prawns in Spencer Gulf; and

- (b) the taking of aquatic resources specified in Schedule 1 Part 1 in Spencer Gulf where the aquatic resources are taken at the same time in the same net incidentally to the taking of prawns.
- (4) The West Coast Waters Prawn Fishery consists of—
 - (a) the taking of prawns in the West Coast waters; and
 - (b) the taking of aquatic resources specified in Schedule 1 Part 2 in the West Coast waters where the aquatic resources are taken at the same time in the same net incidentally to the taking of prawns.

5—Maximum number of licences that may be in force

- (1) The maximum number of licences that may be in force in respect of the Gulf St. Vincent Prawn Fishery is the number of licences in force in respect of that fishery immediately before the commencement of this regulation.
- (2) The maximum number of licences that may be in force in respect of the Spencer Gulf Prawn Fishery is the number of licences in force in respect of that fishery immediately before the commencement of this regulation.
- (3) The maximum number of licences that may be in force in respect of the West Coast Prawn Fishery is the number of licences in force in respect of that fishery immediately before the commencement of this regulation.

6—Transfer of licence

- (1) Licences in respect of a prawn fishery are transferable.
- (2) An application for consent to the transfer of a licence must be accompanied by—
 - (a) the licence to be transferred; and
 - (b) a form of return as required by regulation 12 completed by the holder of the licence up to the date of application; and
 - (c) if the transferee is a company—a current company extract relating to the transferee issued not more than 1 month immediately preceding the date of application.
- (3) The Minister may only consent to the transfer of a licence if satisfied as to the following:
 - (a) that any fees or other amounts payable in relation to the licence under the Act have been paid in full;
 - (b) that the licence to be transferred has not been suspended;
 - (c) that no proceedings alleging an offence against the Act are pending or likely to be commenced in the State against the holder of the licence;
 - (d) that the transfer is to 1 person only;
 - (e) if the transferee is a natural person, that the transferee is at least 15 years of age and is a fit and proper person to hold a licence in respect of a prawn fishery;
 - (f) if the transferee is a company, that each director of the company is a fit and proper person to be a director of a company that holds a licence in respect of a prawn fishery;

- (g) if a registered boat used under the licence is the subject of, or registered for use under, or is otherwise referred to in, a licence, permit, authority or other entitlement to take fish granted under a law of the Commonwealth or a corresponding law—
 - (i) that the entitlement is either to be transferred together with the licence to the transferee or to be surrendered on or before the transfer of the licence; or
 - (ii) that—
 - (A) the transfer of the licence separately from the entitlement is not likely to result in fishing activities that over-exploit or endanger the aquatic resources of the State; and
 - (B) the person or body that granted the entitlement concurs with the separate transfer of the licence.

7—Registration

- (1) An application by the holder of a licence in respect of a prawn fishery—
 - (a) to register a boat or device for use under the licence; or
 - (b) to register a person as a master of a boat that may be used under the licence,must be accompanied by the documents specified in the application form.
- (2) The Minister may only grant an application to register a boat for use under a licence in respect of a prawn fishery if satisfied that—
 - (a) the overall length of the boat does not exceed 22 metres; and
 - (b) the continuous brake power rating of the main engine of the boat does not exceed 336 kw; and
 - (c) no other boat is registered for use under the licence.

8—Revocation of registration

- (1) The Minister may, on application by the holder of a licence in respect of a prawn fishery, revoke the registration of—
 - (a) a boat or device used under the licence; or
 - (b) a person as a master of a boat that may be used under the licence.
- (2) An application for revocation of registration must—
 - (a) be made in a manner and form approved by the Minister; and
 - (b) be completed in accordance with the instructions contained in the form; and
 - (c) be accompanied by the documents specified in the application form.

9—Individual fishing nights entitlement scheme—Gulf St. Vincent Prawn Fishery

- (1) In this regulation—

amalgamated gear means trawl nets set up as a triple rig with an overall headline length not exceeding 43.89 metres;

closed season means—

- (a) the period commencing on 25 December in any year and ending on the last day of February in the following year; or
- (b) the period commencing on 1 August in any year and ending on 31 October in the same year;

fishery means the Gulf St. Vincent Prawn Fishery;

fishing night means a night occurring during a prescribed period;

fishing nights entitlement, in relation to a licence in respect of the fishery and a fishing season, means the maximum number of nights during which the holder of the licence may lawfully take aquatic resources under the licence during that fishing season, being the product of—

- (a) the unit entitlement under the licence; and
- (b) the unit value for the fishery and the fishing season,

subject to any variation applying during that fishing season;

fishing season means the period comprising prescribed period 1 in any year and the prescribed period 2 ending on 31 July in the following year;

night means the period between sunset on 1 day and sunrise on the next day;

prescribed period means—

- (a) prescribed period 1; or
- (b) prescribed period 2;

prescribed period 1 means a period commencing on 1 November in any year and ending on 24 December in the same year;

prescribed period 2 means a period commencing on 1 March in any year and ending on 31 July in the same year;

prescribed period 2 (2020) means the prescribed period 2 that ended on 31 July 2020;

prescribed period 2 (2021) means the prescribed period 2 ending on 31 July 2021;

prescribed period 2 (2022) means the prescribed period 2 ending on 31 July 2022;

unit entitlement means the number of fishing night units for the time being allocated to a licence in respect of the fishery;

unit value means the value of a fishing night unit determined by the Minister for the fishery and a fishing season.

- (2) The Minister will, for the purposes of this regulation, determine—
 - (a) the total number of nights on which aquatic resources may be lawfully taken by holders of licences in respect of the fishery during a prescribed period in a fishing season; and
 - (b) the number of fishing night units that are to be required for the holder of a licence in respect of the fishery to lawfully take aquatic resources under the licence on a night during a prescribed period in a fishing season; and

- (c) the number of fishing night units that are to be required for the holder of a licence in respect of the fishery to lawfully take aquatic resources under the licence on a night during a prescribed period in a fishing season by using amalgamated gear.
- (3) The Minister may, for the purposes of this regulation, determine that fishing night units are to be of 2 or more classes.
- (4) The Minister may impose or vary conditions on licences in respect of the fishery fixing fishing nights entitlements as follows:
 - (a) on joint application made to the Minister by the holders of any 2 licences in respect of the fishery, the Minister may vary the conditions of the licences 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;
 - (ab) if the total number of nights on which the holder of the licence in respect of the fishery took aquatic resources during the prescribed period 2 (2020) is less than the fishing nights entitlement under the licence for that prescribed period, the Minister may vary the conditions of the licence so as to increase the fishing nights entitlement for the prescribed period 2 (2021) and the prescribed period 2 (2022) by up to 1 fishing night for every fishing night by which the number of nights fell short of the fishing nights entitlement for the prescribed period 2 (2020);
 - (b) a variation of a unit entitlement under paragraph (a) may be expressed to apply only for the fishing season during which the variation is made.
- (4a) In determining whether to vary the conditions of a licence under subregulation (4)(ab) so as to increase the fishing nights entitlement under the licence for the prescribed period 2 (2022), the Minister must take into account—
 - (a) the total nights of fishing undertaken by the holder of the licence during the prescribed period 2 (2021); and
 - (b) any increase in the fishing nights entitlement under the licence for the prescribed period 2 (2021).
- (5) An application to vary unit entitlements must—
 - (a) be made in a manner and form approved by the Minister; and
 - (b) be completed in accordance with the instructions contained in the form; and
 - (c) be accompanied by the prescribed fee.
- (6) The holder of a licence in respect of the fishery must not engage in a fishing activity under the licence—
 - (a) during daylight hours; or
 - (b) during a closed season.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (7) The holder of a licence in respect of the fishery must not engage in a fishing activity under the licence by using amalgamated gear without the approval of the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$315.

10—Temporary restrictions or prohibitions on certain fishing activities

- (1) The Minister may, by notice given to each holder of a licence in respect of a prawn fishery in a manner determined by the Minister—
- (a) restrict or prohibit fishing activities of a specified class during a specified period; or
 - (b) vary or revoke such a restriction or prohibition.
- (2) A restriction or prohibition under subregulation (1) may be subject to such exceptions and conditions as the Minister thinks fit.
- (3) A person must not contravene, or fail to comply with, a notice under subregulation (1).
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (4) Notice of a restriction or prohibition imposed under subregulation (1) must be published by the Minister in the Gazette as soon as practicable.

11—Catch and disposal requirements—Gulf St. Vincent Prawn Fishery

- (1) The holder of a licence in respect of the Gulf St. Vincent Prawn Fishery or the registered master of a registered boat from which aquatic resources are taken under such a licence must comply with the following provisions:
- (a) the holder of the licence or registered master must, in the manner and form, at such places and at such times, as determined by the Minister, record such information in respect of the catch and disposal of aquatic resources taken under the licence as determined by the Minister;
 - (b) the holder of the licence or registered master must provide such information recorded under paragraph (a) to the Department in the manner and form, and at such times, as determined by the Minister;
 - (c) the holder of the licence or registered master must ensure that aquatic resources taken under the licence are weighed, stored, placed in containers, sealed, tagged, and transported, delivered, consigned or otherwise disposed of, and accompanied by such information, in accordance with the requirements (if any) as determined by the Minister.
- (2) If a determination of the Minister made for the purposes of subregulation (1) is not complied with, the holder of the licence and the registered master of the registered boat are each guilty of an offence.
Maximum penalty: \$5 000.
Expiation fee: \$500.

- (3) The holder of a licence must keep records made under subregulation (1) in the manner, at such place, and for such period as determined by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$315.

12—Periodic returns

- (1) The holder of a licence in respect of a prawn fishery must provide the Department with such returns in the manner and form, at such times and containing such information, as determined by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$500.

- (2) The holder of a licence must keep a record of each return that the licence holder provides to the Department under this regulation in such manner, and for such period, as determined by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$500.

13—Provision relating to keeping of records

A person required under these regulations to keep a record for a period of time must ensure that the record—

- (a) is maintained in a good condition and is legible; and
- (b) is kept so that it is readily accessible; and
- (c) is produced for inspection by a fisheries officer on request.

Maximum penalty: \$2 500.

Expiation fee: \$210.

14—Minister's determinations

- (1) The Minister may make a determination for the purposes of a regulation.

- (2) A determination may—

- (a) be of general or limited application; and
- (b) make different provision according to the persons, things or circumstances to which it is expressed to apply.

- (3) If the Minister makes a determination, notice of the determination—

- (a) must be published on the Department's website; and
- (b) may also be published in the Gazette.

- (4) As soon as practicable after a determination of the Minister is made, a notice in writing setting out the date on which notice of the determination is published and the terms of the determination must be given to the persons bound by the determination in a manner and form that, in the opinion of the Minister, will bring the determination to the attention of those persons.

- (5) The Minister may, by further determination, vary or revoke a determination.

- (6) This regulation does not apply in relation to a determination made for the purposes of regulation 9 or 10.

Schedule 1—Aquatic resources prescribed for prawn fisheries

Part 1—Aquatic resources prescribed for Gulf St. Vincent & Spencer Gulf Prawn Fisheries

Crustaceans

Bug (*Ibacus* spp)

Molluscs

Southern Calamari (*Sepioteuthis australis*)

Part 2—Aquatic resources prescribed for West Coast Prawn Fishery

Crustaceans

Bug (*Ibacus* spp)

Molluscs

Southern Calamari (*Sepioteuthis australis*)

Octopus (*Octopus* spp)

Scallop (Family Pectinidae)

Gould's Squid (*Nototodarus gouldi*)

Schedule 2—Transitional provisions

Part 2—Transitional provisions

2—Eligibility to be granted fishery licence

- (1) Only a person who is, immediately before the commencement of this clause, the holder of a licence in respect of the Gulf St. Vincent Prawn Fishery, may make an application under section 54 of the Act for a licence in respect of that fishery.
- (2) Only a person who is, immediately before the commencement of this clause, the holder of a licence in respect of the Spencer Gulf Prawn Fishery, may make an application under section 54 of the Act for a licence in respect of that fishery.
- (3) Only a person who is, immediately before the commencement of this clause, the holder of a licence in respect of the Western Coast Prawn Fishery, may make an application under section 54 of the Act for a licence in respect of that fishery.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Fisheries Management (Prawn Fisheries) Regulations 2017* revoked the following:

Fisheries Management (Prawn Fisheries) Regulations 2006

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2017	233	<i>Gazette 8.8.2017 p3428</i>	15.1.2018: r 2
2020	323	<i>Gazette 17.12.2020 p5788</i>	17.12.2020: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>17.12.2020</i>
r 9		
r 9(1)		
prescribed period 2 (2020)	inserted by 323/2020 r 4(1)	17.12.2020
prescribed period 2 (2021)	inserted by 323/2020 r 4(1)	17.12.2020
prescribed period 2 (2022)	inserted by 323/2020 r 4(1)	17.12.2020
r 9(4)	varied by 323/2020 r 4(2)	17.12.2020
r 9(4a)	inserted by 323/2020 r 4(3)	17.12.2020
Sch 2		
<i>Pt 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>17.12.2020</i>