

South Australia

# Fisheries Management (Vongole Fishery) Regulations 2021

under the *Fisheries Management Act 2007*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *Fisheries Management (Vongole Fishery) Regulations 2021*.

### 3—Interpretation

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

*Act* means the *Fisheries Management Act 2007*;

***Coffin Bay vongole fishing zone*** means the waters of or near Coffin Bay contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 34°30'36.63" South, 135°22'46.41" East (generally south-west of Farm Beach), then beginning south-westerly following the line of Mean High Water Springs to the location closest to 34°27'20.27" South, 135°13'00.86" East (Point Burgess), then south-easterly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs;

***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 name of the company;
- (b) the address of the registered office of the company;
- (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 responsible for assisting a Minister in the administration of the Act;

**fishery** means the Vongole Fishery constituted by these regulations;

**Marine Scalefish Fishery** means the fishery of that name constituted by the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*;

**Port River vongole fishing zone** means the waters of or near Port Gawler contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 34°40'12.21" South, 138°26'35.28" East (end of Port Gawler road), then beginning easterly following the line of Mean High Water Springs to the location closest to 34°46'58.98" South, 138°28'40.51" East, then north-westerly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs;

**quota period**—a quota period for the fishery is a period of 12 months commencing on 1 July;

**unit entitlement** means the number of vongole units for the time being allocated to a licence;

**unit value** means the number of kilograms of vongole determined by the Minister to be the value of a vongole unit for a vongole fishing zone and a quota period;

**vongole** means any mollusc of the genus *Katelysia*;

**vongole fishing zone** means—

- (a) the Coffin Bay vongole fishing zone; or
- (b) the Port River vongole fishing zone; or
- (c) the West Coast vongole fishing zone;

**vongole quota entitlement** or **quota entitlement**, in relation to a licence in respect of the fishery and a vongole fishing zone, means the maximum number of kilograms of vongole that may be lawfully 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;

**West Coast vongole fishing zone** means—

- (a) the waters of or near Smoky Bay contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 32°15'48.57" South, 133°46'09.73" East (Cape D'Estrees), then beginning easterly following the line of Mean High Water Springs to the location closest to 32°23'54.30" South, 133°52'00.18" East (Cape Missiessy), then westerly to the line of Mean High Water Springs closest to 32°23'55.69" South, 133°43'09.47" East (Goalen Rocks), then north-easterly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs; and
- (b) the waters of or near Streaky Bay contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 32°39'22.12" South, 134°17'13.61" East (most northern point of Perlubie beach), then beginning north-easterly following the line of Mean High Water Springs to the location closest to 32°42'37.61" South, 134°05'09.00" East, then north-easterly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs; and
- (c) the waters of or near Venus Bay contained within and bounded by a line commencing at the line of Mean High Water Springs closest to 33°10'19.32" South, 134°41'04.39" East (Port Kenny jetty), then beginning easterly following the line of Mean High Water Springs to the location closest to 33°13'48.63" South, 134°39'38.89" East (South Head), then northerly to the line of Mean High Water Springs closest to 33°13'31.43" South, 134°39'41.84" East (North Head), then beginning north-easterly following the line of Mean High Water Springs to the location closest to 33°10'51.19" South, 134°38'14.72" East, then north-easterly to the point of commencement, but excluding any land or waters so encompassed that lie landward of the line of Mean High Water Springs.
- (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 2020 (**GDA2020**) as defined in the determination under section 8A of the *National Measurement Act 1960* of the Commonwealth for the recognised-value standard of measurement position, and all coordinates are expressed in terms of GDA2020;
- (b) common and scientific fish names are given according to AS5300—2019 *Australian Fish Names Standard* published by the Fisheries Research & Development Corporation, as in force from time to time;
- (c) a reference to the **taking of vongole** includes a reference to an act preparatory to, or involved in, the taking of vongole.

- (4) A reference in these regulations to ***unit entitlement, vongole fishing zone*** or ***vongole quota entitlement*** in relation to the Marine Scalefish Fishery or a licence in respect of that fishery is a reference to that term as defined in regulation 14(1) of the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017* as in force immediately before the commencement of these regulations.

**Note—**

The *Fisheries Management (Marine Scalefish Fishery) Regulations 2017* were, immediately before the commencement of these regulations, known as the *Fisheries Management (Marine Scalefish Fisheries) Regulations 2017*.

#### **4—Constitution of fishery**

- (1) The Vongole Fishery is constituted.
- (2) The fishery consists of the taking of vongole in a vongole fishing zone.

#### **5—Issue of licences**

- (1) Subject to this regulation, the Minister may issue licences in respect of the fishery.
- (2) An application for a licence in respect of the fishery may only be made—
- (a) by a person who, immediately before 1 July 2021, held a licence in respect of the Marine Scalefish Fishery subject to a condition fixing a vongole quota entitlement (unless the condition was imposed on the licence after the commencement of the MSF quota period 2020-2021 and was expressed to apply only during the balance of that quota period); or
  - (b) by a person—
    - (i) to whom a licence in respect of the fishery was transferred under these regulations; and
    - (ii) who makes the application on or before the expiration of that licence held by the person (or subsequent licence held by the person in substitution for that licence).
- (3) The Minister may only grant an application for a licence in respect of the fishery to a person referred to in subregulation (2)(a) if—
- (a) the person's licence in respect of the Marine Scalefish Fishery has been varied so as to revoke a condition of the licence fixing a vongole quota entitlement on the licence; or
  - (b) the person's licence in respect of the Marine Scalefish Fishery has been surrendered.
- (4) In this regulation—

***Marine Scalefish Fishery*** means the fishery of that name constituted by the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*, as in force immediately before the commencement of this regulation;

***MSF quota period 2020-2021*** means the period that ended on 30 June 2021 defined as ***quota period 2020-2021*** in regulation 14(1) of the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*, as in force immediately before the commencement of this regulation.

## **6—Transfer of licences**

- (1) Licences in respect of the 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 15 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.
- (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) 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 the fishery;
  - (e) 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 the fishery.

## **7—Registration**

An application by the holder of a licence in respect of the 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.

## **8—Revocation of registration**

- (1) The Minister may, on application by the holder of a licence in respect of the 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 the 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 vongole catch quota system

- (1) In this regulation—

*following quota period*, in relation to a first quota period and the holder of a licence in respect of the fishery, means the next quota period during which vongole may be taken by the holder of the licence following the first quota period;

*Marine Scalefish Fishery* means the fishery of that name constituted by the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*, as in force immediately before the commencement of this regulation;

*MSF quota period 2019-2020* means the period that ended on 30 June 2020 defined as *quota period 2019-2020* in regulation 14(1) of the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*, as in force immediately before the commencement of this regulation;

*MSF quota period 2020-2021* means the period that ended on 30 June 2021 defined as *quota period 2020-2021* in regulation 14(1) of the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017*, as in force immediately before the commencement of this regulation;

*quota period 2021-2022* means the quota period in respect of the fishery that ends on 30 June 2022.

- (2) The Minister must, on or before the commencement of each quota period, determine the number of kilograms of vongole that is to be the value of a vongole unit for a vongole fishing zone and a quota period.
- (3) The Minister may impose or vary conditions on licences in respect of the fishery as follows:
- (a) a condition may be imposed on a licence in respect of the fishery fixing a vongole quota entitlement;
  - (c) on joint application made to the Minister by the holders of any 2 licences in respect of the fishery the conditions of the licences may be varied so as to increase the unit entitlement under 1 of the licences in respect of a particular vongole fishing zone and decrease the unit entitlement under the other licence in respect of that vongole fishing zone by a corresponding number of units;
  - (d) on joint application made to the Minister by the holder of a licence in respect of the fishery subject to a condition fixing a vongole quota entitlement in respect of a particular vongole fishing zone (the *first licence*) and the holder of a licence in respect of the fishery not subject to a condition fixing a vongole quota entitlement in respect of that vongole fishing zone (the *second licence*)—
    - (i) the conditions of the first licence may be varied so as to decrease the unit entitlement under that licence in respect of that vongole fishing zone; and
    - (ii) a corresponding number of units may be allocated to the second licence and a condition fixing a vongole quota entitlement in respect of that vongole fishing zone may be imposed on that licence;
  - (e) if—

- (i) a licence in respect of the fishery is issued to a person who formerly held a licence in respect of the Marine Scalefish Fishery subject to a condition fixing a vongole quota entitlement; and
- (ii) the total catch of vongole taken pursuant to that licence in respect of the Marine Scalefish Fishery during the MSF quota period 2019-2020 was less than the vongole quota entitlement under that licence for that vongole fishing zone and that quota period,

the conditions of that person's licence in respect of the fishery may be varied so as to increase the vongole quota entitlement in respect of that vongole fishing zone for the quota period 2021-2022 by up to 1 kilogram of vongole for each kilogram by which the catch fell short of the vongole quota entitlement for the MSF quota period 2019-2020;

- (f) if the total catch of vongole taken by the holder of a licence in respect of the fishery subject to a condition fixing a vongole quota entitlement in respect of a particular vongole fishing zone during a quota period (the ***first quota period***) (being a quota period that commenced on or after 1 July 2021) is less than the vongole quota entitlement under the licence for that fishing zone and that quota period, the Minister may vary the conditions of the licence so as to increase the vongole quota entitlement in respect of that fishing zone for the following quota period (the ***subsequent quota period***) by 1 kilogram of vongole for each kilogram by which the catch fell short of the vongole quota entitlement for the first quota period up to—
  - (i) —
    - (A) 10% of the quota entitlement for the first quota period; or
    - (B) such lower percentage of the quota entitlement for the first quota period, or such other lower kilogram amount of catch, as is determined by the Minister on or before the commencement of the subsequent quota period; or
  - (ii) if the Minister is satisfied that exceptional circumstances apply—
    - (A) a percentage that exceeds 10% of the quota entitlement for the first quota period; or
    - (B) such other greater kilogram amount of catch, as is determined by the Minister on or before the commencement of the subsequent quota period;
- (g) if the total catch of vongole taken by the holder of a licence in respect of the fishery subject to a condition fixing a vongole quota entitlement in respect of a particular vongole fishing zone during a quota period (the ***first quota period***) (being a quota period that commences on or after 1 July 2022) exceeded the vongole quota entitlement under the licence for that fishing zone and that quota period, the conditions of the licence may be varied so as to decrease the quota entitlement in respect of that fishing zone for the following quota period (the ***subsequent quota period***) as follows:
  - (i) if the catch exceeded the quota entitlement by—

- (A) an amount not exceeding 10% of the quota entitlement for the first quota period; or
  - (B) such lower percentage of the quota entitlement for the first quota period, or such other lower kilogram amount of catch, as is determined by the Minister on or before the commencement of the first quota period,

by 1 kilogram of vongole for each kilogram taken in excess of the quota entitlement; or

  - (ii) if the catch exceeded the quota entitlement by—
    - (A) an amount greater than 10% of the quota entitlement for the first quota period; or
    - (B) such lower percentage of the quota entitlement for the first quota period, or such other lower kilogram amount of catch, as is determined by the Minister on or before the commencement of the first quota period,

by 2 kilograms of vongole for each kilogram taken in excess of the quota entitlement;
- (h) if—
  - (i) the holder of a licence in respect of the fishery has assisted in the carrying out of research work under the Act in relation to the fishery; and
  - (ii) the Minister considers that it is appropriate to compensate or reward the holder of the licence for the time spent in providing that assistance,

the conditions of the licence may be varied so as to increase the vongole quota entitlement under the licence.
- (4) In determining whether to vary the conditions of a licence under subregulation (3)(e) so as to increase the vongole quota entitlement under the licence for a particular vongole fishing zone and the quota period 2021-2022, the Minister must take into account—
  - (a) the total catch of vongole taken by the holder of the licence in respect of the Marine Scalefish Fishery in that vongole fishing zone during the MSF quota period 2020-2021; and
  - (b) any increase in the vongole quota entitlement under the licence in respect of the Marine Scalefish Fishery licence in respect of that vongole fishing zone for the MSF quota period 2020-2021.
- (4a) For the purposes of—
  - (a) subregulation (3)(f)(i) and (ii); and
  - (b) subregulation (3)(g)(i) and (ii),

the following must be disregarded:

- (c) any increase in the quota entitlement under a licence applying during a first quota period as a result of a variation of the quota entitlement under the licence made under subregulation (3)(e);
  - (d) any increase in the quota entitlement under a licence applying during a first quota period as a result of a variation of the quota entitlement under the licence previously made under subregulation (3)(f)(i) or (ii).
- (4b) A variation of a quota entitlement under subregulation (3)(f) or (g) must be expressed to apply only for the quota period during which the variation is made.
- (4c) An application under subregulation (3)(c) or (d) may not be made in respect of vongole units allocated to the licence under subregulation (3)(f).
- (5) 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.
- (6) 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.
- (7) The holder of a licence in respect of the fishery must not take vongole for a commercial purpose in a vongole fishing zone unless the licence is subject to a condition fixing a vongole quota entitlement in respect of that vongole fishing zone.
- Maximum penalty: \$5 000.  
Expiation fee: \$315.

## **10—Information to be provided**

- (1) If fishing activities involving the taking of vongole under a licence in respect of the fishery are, or are to be, engaged in, the Department must be notified, in the manner and form, and at such times, as determined by the Minister, of the information specified by the Minister in the determination.
  - (2) If a determination of the Minister made for the purposes of subregulation (1) is not complied with, the holder of the licence is guilty of an offence.
- Maximum penalty: \$5 000.  
Expiation fee: \$500.

## **11—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 vongole.
- (2) The holder of a licence in respect of the 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 the taking of vongole under the licence unless—
  - (a) the holder of the licence or the registered master is at the same time also engaged on the shore in the taking of vongole; 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 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 the taking of vongole under the licence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## **12—Use of agents in taking of vongole—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 fishery must not cause or permit a person to be engaged on the shore as an agent of the holder of the licence in the taking of vongole under the licence unless—
  - (a) the holder of the licence is at the same time also engaged on the shore in the taking of vongole; and
  - (b) the holder of the licence 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 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 the taking of vongole under the licence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## **13—Catch and disposal requirements**

- (1) The holder of a licence in respect of the fishery or the registered master of a registered boat used under the licence must comply with the following provisions in respect of vongole taken under the licence:
  - (a) the holder of the licence or the 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 vongole taken under the licence as determined by the Minister;
  - (b) the holder of the licence or the registered master must provide the 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 the registered master must ensure that vongole 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 are each guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$500.
- (3) The holder of the 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.

#### **14—Vongole to be delivered or consigned to registered fish processor**

The holder of a licence in respect of the fishery must ensure that all vongole taken under the licence are delivered or consigned to a registered fish processor.

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **15—Periodic returns**

- (1) The holder of a licence in respect of the 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 in respect of the fishery 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.

#### **16—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.

## **17—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 for the purposes of a regulation, 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.

## 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](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

| Year        | No        | Reference                             | Commencement         |
|-------------|-----------|---------------------------------------|----------------------|
| 2021        | 90        | <i>Gazette 24.6.2021 p2342</i>        | 1.7.2021: r 2        |
| <b>2022</b> | <b>40</b> | <b><i>Gazette 16.6.2022 p1822</i></b> | <b>1.7.2022: r 2</b> |

### 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>1.7.2022</i> |
| r 9                    |  |                 |
| r 9(1)                 |  |                 |
| following quota period | inserted by 40/2022 r 3(1)   | 1.7.2022        |
| r 9(3)                 | (b) deleted by 40/2022 r 3(2)                                      | 1.7.2022        |
|                        | amended by 40/2022 r 3(3)  | 1.7.2022        |
| r 9(4a)—(4c)           | inserted by 40/2022 r 3(4)   | 1.7.2022        |