

SOUTH AUSTRALIA

**SCHEME OF MANAGEMENT (BLUE CRAB FISHERY) REGULATIONS
1998**

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REGULATIONS UNDER THE FISHERIES ACT 1982

Scheme of Management (Blue Crab Fishery) Regulations 1998

being

No. 131 of 1998: *Gaz.* 11 June 1998, p. 2519¹

as varied by

No. 142 of 1999: *Gaz.* 1 July 1999, p. 53²

¹ Came into operation 11 June 1998: reg. 2.

² Came into operation 1 July 1999: reg. 2.

Citation

1. These regulations may be cited as the *Scheme of Management (Blue Crab Fishery) Regulations 1998*.

Commencement

2. These regulations will come into operation on 11 June 1998.

Revocation

3. The *Scheme of Management (Gulf Waters Experimental Crab Fishery) Regulations 1988*, as varied, are revoked.

Interpretation

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

"**Act**" means the *Fisheries Act 1982*;

"**blue crab**" means blue crab (*Portunus pelagicus*);

"**blue crab fishing zone**" means—

(a) the Gulf St. Vincent Blue Crab Fishing Zone; or

(b) the Spencer Gulf Blue Crab Fishing Zone;

"**blue crab net entitlement**" has the same meaning as in the *Scheme of Management (Marine Scalefish Fisheries) Regulations 1991*;

"**blue crab pot entitlement**" means the maximum number of crab pots that the holder of a licence in respect of the fishery may lawfully use at any one time for the purpose of taking blue crab pursuant to the licence;

"**crab net**" has the same meaning as in the *Fisheries (General) Regulations 1984*;

"**crab pot**" has the same meaning as in the *Fisheries (General) Regulations 1984*;

"**Department**" means the Department of Primary Industries and Resources;

"**director**", in relation to a body corporate, has the meaning assigned to that term by section 60 of the *Corporations Law*;

"**fishery**" means the Blue Crab Fishery constituted by these regulations;

"**Gulf St. Vincent Blue Crab Fishing Zone**" means all waters of Gulf St. Vincent north of latitude 35°03.2'S;

"**licence period**" means the period of 12 months commencing on 1 July in any year;

"**Spencer Gulf Blue Crab Fishing Zone**" means all waters of Spencer Gulf north of latitude 34°26.75'S.

3.

(2) For the purposes of these regulations, a person is an associate of another if—

- (a) they are partners; or
- (b) they are parties to a contract, arrangement or understanding, the purpose or effect of which is that one will act at the direction of, or in accordance with the wishes or instructions of, another when, for the purposes of trade or business, he or she engages or refrains from engaging in a fishing activity of a class that constitutes a fishery; or
- (c) one is a body corporate and the other is a director or secretary of, or the holder of a share in, that body corporate; or
- (d) they are bodies corporate that are related to each other for the purposes of the *Corporations Law*; or
- (e) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
- (f) a chain of relationships can be traced between them under one or more of the above paragraphs.

(3) For the purposes of these regulations—

- (a) "**share**" in relation to a body corporate has the meaning assigned to that term by section 9 of the *Corporations Law*;
- (b) a person is the holder of a share in a body corporate if—
 - (i) he or she is beneficially entitled to that share; or
 - (ii) he or she has a relevant interest in that share;
- (c) a person has a relevant interest in a share in a body corporate if the person has a relevant interest in a share for the purposes of the *Corporations Law*.

(4) In these regulations, a reference to the taking of fish includes a reference to an act preparatory to, or involved in, the taking of the fish.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix.

Constitution of the fishery

- 5. (1) The Blue Crab Fishery is constituted.
- (2) The fishery consists of the taking, in the waters of the blue crab fishing zones—
 - (a) of fish specified in Part A of Schedule 1; and
 - (b) of fish specified in Part B of Schedule 1 for the purpose of bait.

4.

(3) The Director may impose a condition on a licence in respect of the fishery that limits the holder of the licence to the taking of fish in the waters of the Gulf St. Vincent Blue Crab Fishing Zone or the Spencer Gulf Blue Crab Fishing Zone.

Issue of licences

6. (1) Subject to this regulation, the Director may, on application, issue a licence in respect of the fishery.

(2) An application for a licence in respect of the fishery may be made only by—

- (a) a person who holds a licence in respect of the Miscellaneous Fishery endorsed with a condition authorising the holder of the licence to use crab pots to take blue crab; or
- (b) a person who holds a licence in respect of the Marine Scalefish Fishery endorsed with a condition authorising the holder of the licence to use at any one time—
 - (i) 700 or more crab nets in the Gulf St. Vincent Blue Crab Fishing Zone; or
 - (ii) 750 or more crab nets in the Spencer Gulf Blue Crab Fishing Zone,to take blue crab pursuant to the licence.

(3) An application for the issue of a licence in respect of the fishery must be made in writing in a form approved by the Director and signed by the applicant.

(4) The Director may not issue a licence unless—

- (a) the applicant has paid—
 - (i) the licence fee specified in Schedule 2; or
 - (ii) the first instalment of the licence fee, in accordance with subregulation (5); and
- (b) —
 - (i) the licence in respect of the Miscellaneous Fishery or Marine Scalefish Fishery held by the applicant is surrendered to the Director; and
 - (ii) if any boat registered by endorsement on that licence is the subject of, is registered by endorsement on, or is otherwise referred to in, a licence, permit, authority or other entitlement to take fish granted under the Commonwealth Act or the laws of another State or Territory—that other licence, permit, authority or entitlement is also surrendered.

(5) A licence fee payable in respect of a licence may be paid by four instalments of 25 per cent payable on or before the date of the grant of the licence and 1 October, 1 January and 1 April following the date of the grant of the licence.

5.

(6) The Director may impose a condition of a licence requiring payment of an additional amount not exceeding 10 per cent of the amount of any instalment not paid in full within 21 days after the instalment became payable.

(7) Where—

- (a) an instalment of a licence fee is not paid in full on or before the due date; or
- (b) an additional amount is required to be paid for late payment of an instalment of a licence fee,

the amount unpaid may be recovered from the holder of the licence as a debt due to the Crown.

(8) The Director must return any licence fee that accompanied the application if the application is not successful.

Expiry of licences

7. A licence in respect of the fishery expires on 30 June following the date of issue or its last renewal.

Renewal of licences

8. (1) A licence in respect of the fishery may be renewed by the Director on application made before the expiry of the licence or before the end of the licence period following the expiry of the licence.

(2) An application to renew a licence in respect of the fishery must—

- (a) be made by the holder of the licence or, if the licence has expired, by the person who last held the licence; and
- (b) be made in writing in a form approved by the Director and signed by the applicant.

(3) Where an application to renew a licence is made before the expiry of the licence, the renewal of the licence takes effect from the expiry of the licence.

(4) Where an application to renew a licence is made after the expiry of the licence, the renewal of the licence takes effect from the date on which the application is granted.

(5) The Director may not renew a licence unless the applicant has paid—

- (a) —
 - (i) the renewal fee specified in Schedule 2 less \$90; or
 - (ii) the first instalment of the renewal fee specified in Schedule 2, in accordance with subregulation (6);
- (b) the amount of any previous renewal fee remaining payable in respect of the licence, together with any additional amount payable for late payment of an instalment of the renewal fee.

6.

(6) Where an application to renew a licence is made before or within three months after the expiry of the licence, the renewal fee may be paid by four instalments of 25 per cent payable on or before the date of renewal of the licence and 1 October, 1 January and 1 April following the date of renewal.

(7) The Director may impose a condition of a licence requiring payment of an additional amount not exceeding 10 per cent of the amount of any instalment not paid in full within 21 days after the instalment became payable.

(8) Where—

- (a) an instalment of a renewal fee for a licence is not paid in full on or before the due date; or
- (b) an additional amount is required to be paid for late payment of an instalment of a renewal fee,

the amount unpaid may be recovered from the holder of the licence or the person who last held the licence as a debt due to the Crown.

Refund on surrender of licence

9. Where a licence in respect of the fishery is surrendered, the Director must, on application by the former licensee, refund an amount that bears to the renewal fee last paid in respect of the licence the same proportion as the number of complete months from the date of surrender to the day on which the following licence period commences bears to the number of months in the licence period during which the licence was surrendered.

Transfer of licence

10. (1) A licence in respect of the fishery may be transferred with the consent of the Director.

(2) An application for consent to the transfer of a licence must be a joint application made by the holder of the licence and the transferee.

(3) The application—

- (a) must be made in writing in a form approved by the Director; and
- (b) must contain the information specified in Schedule 3; and
- (c) must contain a nomination by the holder of the licence of the person to whom the licence is to be transferred; and
- (d) must be verified by statutory declaration.

(4) The application must be lodged with the Director together with—

- (a) the licence to be transferred; and
- (b) a form of return as required by these regulations completed by the holder of the licence up to the date of application; and

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(c) the application fee specified in Schedule 2.

(5) Before consenting to the transfer of a licence, the Director must be satisfied as to the following matters:

- (a) that the licence to be transferred has not been suspended;
- (b) that no proceedings alleging an offence under the Act are pending or likely to be commenced in the State against the holder of the licence;
- (c) that the transfer is to one person only;
- (d) that the transferee is—
 - (i) a natural person of at least 15 years of age; or
 - (ii) a proprietary company;
- (e) that no conviction for an offence involving a breach of any legislation relating to fishing has, within the period of three years preceding the date of the application, been recorded in the State or elsewhere in Australia against the transferee, or, where the transferee is a company, against a director of the company;
- (f) that no proceedings alleging an offence involving a breach of any legislation relating to fishing are pending or likely to be commenced in the State or elsewhere in Australia against the transferee, or, where the transferee is a company, against a director of the company;
- (g) that the transferee does not already hold a licence in respect of the Blue Crab Fishery or any other fishery;
- (h) that the transferee is not an associate of a person who holds such a licence;
- (i) if any boat registered by endorsement of the licence is the subject of, is registered by endorsement of, or is otherwise referred to in, a licence, permit, authority or other entitlement to take fish granted under the Commonwealth Act or the laws of another State or Territory—
 - (i) that the entitlement is either to be transferred together with the fishery licence to the transferee or to be surrendered on or before the transfer of the fishery licence; or
 - (ii) that—
 - (A) the transfer of the fishery licence separately from the entitlement is not likely to result in fishing activities that endanger or overexploit fishery resources; and
 - (B) the person or body that granted the entitlement concurs with the separate transfer of the licence.

Registration of boats

11. (1) An application to register a boat to be used in the fishery must be made in writing in a form approved by the Director and be accompanied by the applicant's licence in respect of the fishery.

(2) Before granting registration of a boat the Director must be satisfied that the applicant is the holder of a licence in respect of the fishery.

Registration of master

12. An application for registration of a person as the master of a boat must be made in writing in a form approved by the Director and be accompanied by the applicant's licence in respect of the fishery.

Revocation of registration

13. (1) The Director may, on application by the holder of a licence in respect of the fishery, revoke any registration effected by endorsement of the licence.

(2) An application for revocation of any registration must be made in writing in a form approved by the Director and be accompanied by the licence on which the registration is endorsed.

Blue crab pot entitlement

14. (1) The Director may impose or vary conditions on licences in respect of the fishery fixing blue crab pot entitlements as follows:

- (a) a blue crab pot entitlement may be fixed by condition of a licence but must be at least 50;
- (b) the blue crab pot entitlements fixed by licence conditions as referred to in this regulation may be increased or decreased on the same proportionate basis for all licences (provided that where in relation to any licence the result of such proportionate variation would be a fractional entitlement, that fractional entitlement is increased to the next highest whole number) if the Director is satisfied that it is appropriate to do so for the proper management of the fishery;
- (c) subject to paragraph (e), the blue crab pot entitlements fixed by the conditions of any two licences in respect of the fishery may, on application made by the holders of those licences in a manner and form approved by the Director, be varied so as to increase the entitlement under one of the licences and decrease the entitlement under the other by a corresponding number;
- (d) subject to paragraph (e), the blue crab pot entitlement fixed by the conditions of a licence in respect of the Blue Crab Fishery may, on application made in a manner and form approved by the Director by the holder of that licence and the holder of a licence in respect of the Marine Scalefish Fishery that is endorsed with a condition fixing a blue crab net entitlement, be varied—
 - (i) so as to decrease the blue crab pot entitlement under the licence in respect of the Blue Crab Fishery and increase the blue crab net entitlement under the licence in respect of the Marine Scalefish Fishery by a corresponding number; or

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- (ii) so as to increase the blue crab pot entitlement under the licence in respect of the Blue Crab Fishery and decrease the blue crab net entitlement under the licence in respect of the Marine Scalefish Fishery by a corresponding number;
- (e) a variation must not be made as referred to in paragraph (c) or (d) if it would result in the blue crab pot entitlement under a licence in respect of the Blue Crab Fishery falling below the lower limit referred to in paragraph (a) except where—
 - (i) that licence is surrendered to the Director; and
 - (ii) if any boat registered by endorsement on that licence is the subject of, is registered by endorsement on, or is otherwise referred to in, a licence, permit, authority or other entitlement to take fish granted under the Commonwealth Act or the laws of another State or Territory—that other licence, permit, authority or entitlement is also surrendered.

(2) The Director may impose conditions on licences in respect of the fishery limiting the number of blue crab pots that may be carried on boats and otherwise regulating the carrying of blue crab pots used for fishing activities pursuant to the licences.

(3) Where a court convicts the holder of a licence in respect of the fishery of an offence of contravening a condition of the licence fixing a blue crab pot entitlement, the court must make an order requiring the Director to vary the conditions of the licence so as to reduce the blue crab pot entitlement under the licence by one blue crab pot for each blue crab pot in excess of the entitlement.

(4) Blue crab pot entitlements must not be varied except as provided by this regulation.

Individual blue crab catch quota system

15. (1) In this regulation—

"blue crab quota", in relation to a licence in respect of the fishery and a blue crab fishing zone, means the maximum number of kilograms of blue crab that may be lawfully taken by the holder of the licence in that zone during a licence period, being the product of—

- (a) the unit entitlement of that licence; and
- (b) the unit value for that blue crab fishing zone and that licence year,

subject to any variation of the blue crab quota of the licence applying during that licence period;

"unit entitlement" means the number of blue crab units for the time being allocated to a licence;

"unit value" means the number of kilograms of blue crab determined by the Director to be the value of a blue crab unit for a blue crab fishing zone and a licence period.

(2) The Director may impose or vary conditions on licences in respect of the fishery fixing blue crab quotas as follows:

- (a) all licences in respect of the fishery must be allocated numbers of blue crab units to be determined by the Director having regard to the respective blue crab pot entitlements under the licences;
- (b) the Director must, on the commencement of each licence period, determine the number of kilograms of blue crab that is to be the value of a blue crab unit for the blue crab fishing zone and the licence period;
- (c) the unit entitlement of a licence in respect of the fishery may, on application made to the Director by the holder of the licence in a manner and form approved by the Director, be increased or decreased so as to reflect an increase or decrease in the blue crab pot entitlement fixed by conditions of the licence;
- (d) the Director may, if the total blue crab catch taken pursuant to a licence during a licence period exceeded the blue crab quota of the licence for that licence period, vary the conditions of the licence so as to decrease the quota—
 - (i) where the catch exceeded the quota by not more than 20 kilograms of blue crab—by one kilogram for each kilogram in excess of the quota; or
 - (ii) where the catch exceeded the quota by more than 20 kilograms but not more than 50 kilograms of blue crab—by two kilograms for each kilogram in excess of the quota;
- (e) unit entitlements and blue crab quotas must not be varied except as provided by this regulation.

(3) Where—

- (a) a court convicts the holder of a licence in respect of the fishery of an offence of contravening a condition of the licence imposing a blue crab quota on the licence; and
- (b) the conduct constituting the offence involved the taking of more than 50 kilograms of blue crab in excess of the quota,

the court must make an order requiring the Director to vary the conditions of the licence so as to reduce the blue crab quota of the licence for three licence periods following the conviction by one kilogram for each kilogram in excess of the quota for the licence period during which the offence was committed.

Catch and disposal records

16. (1) In this regulation—

"**CDR book**" means a book issued by the Department containing blank forms BSCF1;

"**form BSCF1**" means the document produced by the Department entitled *BSCF1 Primary Industries (S.A.) Fisheries Blue Crab Catch and Disposal Record*.

(2) The holder of a licence in respect of the fishery or registered master of a boat from which blue crab is taken pursuant to such a licence must comply with the following provisions:

- (a) immediately on landing blue crab taken pursuant to the licence he or she must weigh the crabs on accurate scales and complete Part A of form BSCF1 using a blue or black ballpoint pen; and
- (b) he or she must cause the crabs to which the completed Part A of that form relates to be transported to the registered premises of the registered fish processor specified on the form, together with the white, blue and green copies of the completed form; and
- (c) he or she must complete forms BSCF1 in consecutive ascending order and complete all forms in a CDR book before commencing to use a new CDR book; and
- (d) he or she must ensure that the yellow copies of forms BSCF1 and the CDR book are kept on board the registered boat until the CDR book is completed; and
- (e) he or she must deliver a completed CDR book to the Director of Fisheries within 14 days of its completion.

(3) If a provision of subregulation (2) is not complied with, the holder of the licence is guilty of an offence.

Penalty: Division 6 fine.

Furnishing of returns

17. (1) The holder of a licence in respect of the fishery must—

- (a) fill out a return, in a form determined by the Minister, in respect of each calendar month during the currency of the licence; and
- (b) include in the return such information as the Director requires; and
- (c) date and sign the return and certify that the information contained in the return is complete and accurate, and post or deliver the return to the address nominated by the Director within 15 days of the end of the month to which it relates.

Penalty: Division 6 fine.

(2) Where the holder of a licence in respect of the fishery takes no fish during a particular calendar month, he or she is required by subregulation (1) to furnish a return in respect of that period indicating that no fish were taken.

Copies of returns must be made

18. The holder of a licence in respect of the fishery must—

- (a) make a copy of each return that he or she fills out pursuant to these regulations before the return is sent or delivered to the Director; and

12.

- (b) retain the copy for the period of one year from the last day of the month to which the return relates.

Penalty: Division 6 fine.

SCHEDULE 1

Fish prescribed for the Blue Crab Fishery

PART A—REG. 5(2)(a)

Crustaceans

- Crab, blue (*Portunus pelagicus*)
- Crab, spider (Family Majidae)
- Crab, rock (*Nectocarcinus integrifons*)
- Crab, velvet (*Nectocarcinus tuberculatus*)

PART B—REG. 5(2)(b)

Scalefish

- Anchovy (*Engraulis australis*)
- Barracouta (*Thyrstites atun*)
- Blue throated wrass (*Notolabrus tetricus*)
- Bream (*Acanthopagrus butcheri*)
- Cod (marine species) (Family Moridae)
- Flathead (Family Platycephalidae)
- Flounder (Family Fleuronectidae) (Family Bothidae)
- Horse Mackerel (*Trachurus declivis*)
- Leather jacket (Family Aluteridae)
- Mackerel (*Scomber australasicus*)
- Morwong (Family Cheilodactylidae)
- Mullet (Family Mugilidae)
- Mulloway (*Argyrosomus hololepidotus*)
- Pilchard (*Sardinops neopilchardus*)
- Red mullet (*Upeneichthys porosus*)
- Salmon (*Arripis truttaceus*)
- Snook (*Sphyraena novaehollandiae*)
- Sole (*Aserragodes haackeanus*)
- Sweep (*Scorpius aequipinnis*)
- Tommy ruff (*Arripis georgianus*)
- Trevally (*Usacaranx georgianus*)
- Striped trumpeter (*Pelates sexlineatus*)
- Yellowtail kingfish (*Seriola grandis*)

Molluscs

- Octopus (Octopus spp.)
- Squid, arrow (*Nototodarus gouldi*)

Shark

- All species other than White pointer shark (*Carcharodon carharias*)
- Skate
- Rays

SCHEDULE 2

Fees

\$

1. The following fees are payable under the Act and these regulations:

- (a) on application for the issue or renewal of a licence in respect of the fishery 2 557.00

An additional licence fee is payable of an amount obtained by multiplying \$16.90 by the number equal to the blue crab pot entitlement that will be fixed under regulation 14 by condition of the licence on its grant or renewal.

- (b) on application for the transfer of a licence in respect of the fishery 300.00

- (c) on application under regulation 14(1)(c) or (d) by the holder of a licence in respect of the fishery to vary a condition of the licence so as to decrease the blue crab pot entitlement under the licence and increase the blue crab pot entitlement under one or more licences in respect of the fishery or the blue crab net entitlement under one or more licence in respect of the Marine Scalefish Fishery—\$80.00 plus a fee of an amount obtained by multiplying \$20.00 by the number of licences the blue crab pot entitlement or blue crab net entitlement of which is to be increased.

SCHEDULE 3
*Information required in application for consent to
licence transfer*

The following information is to be contained in an application for consent to transfer a licence:

1. Full name of the holder of the licence.
2. The licence number.
3. Full name, business address and telephone number of the transferee and, where the transferee is a natural person, the transferee's date of birth and residential address.
4. The price to be paid for the transfer of—
 - (a) the licence; and
 - (b) any boat, equipment, registration or other matter or thing being transferred as part of the transaction.
5. Details of any boat to be used by the transferee to take fish including—
 - (a) its length (where surveyed—surveyed length); and
 - (b) the number of its current survey certificate; and
 - (c) the year of its construction; and
 - (d) the material of which its hull is made; and
 - (e) its main colour; and
 - (f) its name; and
 - (g) its registration number.
6. Details of the number of persons who are to assist the transferee to take fish from the boat or otherwise.
7. Details of the person who is to be the registered master of the boat.
8. Details of any device to be used to take fish.
9. Statements by the transferee as to—
 - (a) whether or not the transferee holds a licence in respect of any fishery; and
 - (b) whether or not the transferee is the associate of a person who holds a licence in respect of any fishery; and
 - (c) whether or not the transferee, or where the transferee is a company, a director of the company, is a party to a contract, arrangement or understanding, the purpose or effect of which is that the transferee or director will act at the direction of, or in accordance with, the wishes or instruction of another in relation to the transferee's activities pursuant to the licence; and

16.

- (d) whether or not the transferee, or where the transferee is a company, a director of the company, has, during the three years immediately preceding the date of the application, been convicted by a court of a State or Territory of the Commonwealth of an offence involving a breach of legislation relating to fishing; and
- (e) whether or not the transferee, or where the transferee is a company, a director of the company, has, at the date of the application, any proceedings alleging an offence involving a breach of any legislation relating to fishing pending or likely to be commenced against the transferee or director.

10. Details in respect of any of the statements made by the transferee in respect of the matters referred to in clause 9.

APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional Provision from Regulation No. 142 of 1999, reg. 5)

5. (1) A licence renewal fee prescribed by Schedule 2 of the principal regulations as varied by these regulations applies in relation to a licence period commencing after the commencement of these regulations.

(2) Despite regulation 4, a licence renewal fee prescribed by Schedule 2 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence period that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence period**" has the same meaning as in the principal regulations.

Legislative History

Regulation 8(5):	varied by 142, 1999, reg. 3
Schedule 2:	varied by 142, 1999, reg. 4

APPENDIX 2**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25