

South Australia

Fisheries (Scheme of Management—Charter Boat Fishery) Regulations 2005

under the *Fisheries Act 1982*

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1—Short title

These regulations may be cited as the *Fisheries (Scheme of Management—Charter Boat Fishery) Regulations 2005*.

3—Interpretation

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

Aboriginal corporation has the same meaning as in the *Aboriginal Councils and Associations Act 1976* of the Commonwealth;

Act means the *Fisheries Act 1982*;

charter boat means a boat that is used for recreational fishing under charter boat fishing agreements;

charter boat fishing agreement means an agreement made by a person in the course of a business under which the person agrees, for money or other consideration, to facilitate recreational fishing by persons by the provision of charter boat fishing services to the persons;

charter boat fishing business means the business of facilitating recreational fishing by persons by the provision of charter boat fishing services to the persons under charter boat fishing agreements;

charter boat fishing services means carrying persons as passengers on a boat and otherwise assisting or enabling the persons to engage in recreational fishing from the boat;

eligible person means—

- (a) a natural person or company carrying on a charter boat fishing business that was established on or before 28 November 2003; or
- (b) a natural person or company carrying on a charter boat fishing business that was in the process of being established on 28 November 2003; or
- (c) an Aboriginal corporation that—
 - (i) has a business plan for a charter boat fishing business; and
 - (ii) is a party to an indigenous land use agreement with the State under which it is agreed that a licence in respect of the fishery will be issued to the corporation; or
- (d) an Aboriginal corporation or incorporated association that—
 - (i) has a business plan for a charter boat fishing business; and
 - (ii) has been established by a native title group for the purpose of implementing an indigenous land use agreement with the State under which it is agreed that a licence in respect of the fishery will be issued to the corporation or association;

fishery means the Charter Boat Fishery constituted by these regulations;

incorporated association has the same meaning as in the *Associations Incorporation Act 1985*;

indigenous land use agreement means an indigenous land use agreement registered under Part 2 Division 3 of the *Native Title Act 1993* of the Commonwealth;

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

policy of insurance includes a cover note that is binding on the insurer;

recreational fishing means the taking of fish in waters other than inland waters for a purpose other than trade or business;

SARDI means the South Australian Research and Development Institute.

- (2) 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.

4—Constitution of fishery

- (1) The Charter Boat Fishery is constituted.
- (2) The Charter Boat Fishery consists of facilitating recreational fishing by persons by the provision of charter boat fishing services to the persons under charter boat fishing agreements.

5—Issue of licences

- (1) The Director may issue licences in respect of the fishery.
- (2) An application for a licence in respect of the fishery must—
 - (a) be made in writing in a form approved by the Director; and
 - (b) be completed in accordance with the instructions contained in the form; and
 - (c) be signed by the applicant; and
 - (d) be accompanied by the documents required by the instructions contained in the form; and
 - (e) be verified by statutory declaration.
- (3) Before granting a licence in respect of the fishery the Director must be satisfied that—
 - (a) the applicant is an eligible person; and
 - (b) there is in force a policy of public liability insurance under which the applicant is indemnified in an amount of at least \$10 000 000 in relation to death, bodily injury or property damage caused by or arising out of the use of any charter boat operated by the applicant; and
 - (c) no conviction for an offence involving a breach of any legislation relating to fishing has, within the period of 3 years preceding the date of the application, been recorded in the State or elsewhere in Australia against the applicant, or, where the applicant is a body corporate, against a member of the governing body of the body corporate; and
 - (d) 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 applicant, or, where the applicant is a body corporate, against a member of the governing body of the body corporate.
- (4) The Director may not grant a licence in respect of the fishery unless the applicant has paid—
 - (a) the licence fee specified in Schedule 1; or
 - (b) the first instalment of the licence fee specified in Schedule 1, in accordance with subregulation (5).
- (5) A licence fee may be paid by instalments as follows:
 - (a) in the case of a licence issued for the term of a licence period—by 4 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;

- (b) in any other case—by instalments of such amounts, and payable on such dates, as are fixed by the Director.
- (6) If an instalment of a licence fee is not paid in full within 21 days after the due date for payment, an additional amount equal to 10 per cent of the amount of the instalment is payable.
- (7) If—
 - (a) an instalment of a licence fee is not paid in full on or before the due date; or
 - (b) an additional fee 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.

6—Expiry of licences

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

7—Renewal of licences

- (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
 - (c) be completed in accordance with the instructions contained in the form; and
 - (d) be signed by the applicant; and
 - (e) be accompanied by the documents required by the instructions contained in the form.
- (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) Before renewing a licence in respect of the fishery the Director must be satisfied that there is in force a policy of public liability insurance under which the applicant is indemnified in an amount of at least \$10 000 000 in relation to death, bodily injury or property damage caused by or arising out of the use of any charter boat operated by the applicant.
- (6) The Director may not renew a licence unless the applicant has paid—
 - (a) —
 - (i) the renewal fee specified in Schedule 1; or

- (ii) the first instalment of the renewal fee specified in Schedule 1, in accordance with subregulation (7); and
 - (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.
- (7) Where an application to renew a licence is made before or within 3 months after the expiry of the licence, the renewal fee may be paid by 4 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.
- (8) If an instalment of a renewal fee is not paid in full within 21 days after the due date for payment, an additional amount equal to 10 per cent of the amount of the instalment is payable.
- (9) 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.

8—Refund on surrender of licence

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.

9—Transfer of licence

- (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) An application for consent to the transfer of a licence must—
 - (a) be made in writing in a form approved by the Director; and
 - (b) be completed in accordance with the instructions contained in the form; and
 - (c) contain a nomination by the holder of the licence of the person to whom the licence is to be transferred; and
 - (d) be accompanied by the documents required by the instructions contained in the form; and
 - (e) 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
 - (c) the application fee specified in Schedule 1.
- (5) Before consenting to the transfer of a licence, the Director must be satisfied that—
 - (a) the licence to be transferred has not been suspended; and
 - (b) no proceedings alleging an offence under the Act are pending or likely to be commenced in the State against the holder of the licence; and
 - (c) there is in force a policy of public liability insurance under which the transferee is indemnified in an amount of at least \$10 000 000 in relation to death, bodily injury or property damage caused by or arising out of use of any charter boat operated by the applicant; and
 - (d) no conviction for an offence involving a breach of any legislation relating to fishing has, within the period of 3 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 body corporate, against a member of the governing body of the body corporate; and
 - (e) 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 body corporate, against a member of the governing body of the body corporate.

10—Registration of boats

- (1) An application to register a boat to be used pursuant to a licence in respect of 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 an application for the registration of a boat the Director must be satisfied that the applicant is the holder of a licence in respect of the fishery.

11—Registration as master

An application for registration of a person as the master of a boat to be used pursuant to a licence in respect of 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.

12—Revocation of registration

- (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.

13—Conditions limiting number of boats that may be used etc

The Director may impose conditions on a licence in respect of the fishery—

- (a) limiting the number of boats registered by endorsement of the licence that may be used pursuant to the licence at any 1 time;

- (b) limiting the number of devices that may be carried on boats registered by endorsement of the licence and otherwise regulating the carrying of devices on such boats;
- (c) limiting the area of waters within which boats registered by endorsement of the licence may be used pursuant to the licence.

14—Furnishing of returns

- (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 Chief Executive Officer of SARDI, with the approval of the Minister, 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 office of the Chief Executive Officer of SARDI within 15 days of the end of the month to which it relates.

Penalty: Division 6 fine.

Expiation fee: Division 9 fee.

- (2) If no fish is taken by use of a boat registered by endorsement of the licence during a particular calendar month, the holder of the licence is required by subregulation (1) to furnish a return in respect of that period indicating that no fish were taken.

15—Copies of returns must be made

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 Chief Executive Officer of SARDI; and
- (b) retain the copy for the period of one year from the last day of the month to which the return relates.

Maximum penalty: \$2 500.

16—Fees

The fees set out in Schedule 1 are prescribed for the purposes of the Act and these regulations.

Schedule 1—Fees

| | | |
|---|--|------------|
| 1 | On application for the issue or renewal of a licence in respect of the fishery | \$1 375.00 |
| 2 | On application for the registration of a boat to be used pursuant to a licence in respect of the fishery— | |
| | (a) if the certificate of survey in force in respect of the boat specifies that the boat may carry up to unberthed 6 passengers | \$344.00 |
| | (b) if the certificate of survey in force in respect of the boat specifies that the boat may carry up to unberthed 12 passengers | \$688.00 |

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| | | |
|-----|--|------------|
| (c) | if the certificate of survey in force in respect of the boat specifies that the boat may carry more than unberthed 12 passengers | \$1 375.00 |
| 3 | On application for the transfer of a licence in respect of the fishery | \$300.00 |

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Principal regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|-------------|------------|---------------------------------------|---|
| 2005 | 168 | <i>Gazette 21.7.2005 p2467</i> | 1.8.2005: r 2 |
| 2006 | 136 | <i>Gazette 15.6.2006 p1859</i> | Pt 6 (rr 11 & 12)—15.6.2006: r 2 |
| 2006 | 138 | <i>Gazette 15.6.2006 p1870</i> | Pt 6 (r 8)—1.7.2006: 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>15.6.2006</i> |
| Sch 1 | substituted by 136/2006 r 11 | 15.6.2006 |
| | varied by 138/2006 r 8 | 1.7.2006—not incorporated |

Transitional etc provisions associated with regulations or variations

Fisheries (Fees) Variation Regulations 2006 (No 136 of 2006)

12—Transitional provision

- (1) A fee prescribed by Schedule 1 of the principal regulations as substituted by this Part applies in relation to the licence period commencing on 1 July 2006.
- (2) Despite regulation 11, a 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 the licence period that commenced on 1 July 2005.

Appendix—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 | — |

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| Division | Maximum imprisonment | Maximum fine | Expiation fee |
|-----------------|-----------------------------|---------------------|----------------------|
| 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 |

Note: This appendix is provided for convenience of reference only.