

SOUTH AUSTRALIA

**SCHEME OF MANAGEMENT (RIVER FISHERY) REGULATIONS 1991**

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## REGULATIONS UNDER THE FISHERIES ACT 1982

### *Scheme of Management (River Fishery) Regulations 1991*

being

No. 113 of 1991: *Gaz.* 27 June 1991, p. 2197<sup>1</sup>

as varied by

No. 182 of 1991: *Gaz.* 22 August 1991, p. 637

No. 104 of 1992: *Gaz.* 25 June 1992, p. 1925<sup>2</sup>

No. 127 of 1993: *Gaz.* 24 June 1993, p. 2075<sup>3</sup>

No. 9 of 1994: *Gaz.* 10 March 1994, p. 702<sup>4</sup>

No. 98 of 1994: *Gaz.* 23 June 1994, p. 1814<sup>5</sup>

No. 145 of 1995: *Gaz.* 29 June 1995, p. 3157<sup>6</sup>

No. 155 of 1996: *Gaz.* 20 June 1996, p. 3012<sup>7</sup>

No. 126 of 1997: *Gaz.* 13 May 1997, p. 1954<sup>8</sup>

No. 181 of 1997: *Gaz.* 7 August 1997, p. 317<sup>9</sup>

No. 135 of 1998: *Gaz.* 11 June 1998, p. 2546<sup>10</sup>

<sup>1</sup> Came into operation 27 June 1991: reg. 2.

<sup>2</sup> Came into operation 25 June 1992: reg. 2.

<sup>3</sup> Came into operation 24 June 1993: reg. 2.

<sup>4</sup> Came into operation 10 July 1994: reg. 2.

<sup>5</sup> Came into operation 23 June 1994: reg. 2.

<sup>6</sup> Came into operation 29 June 1995: reg. 2.

<sup>7</sup> Came into operation 20 June 1996: reg. 2.

<sup>8</sup> Came into operation 13 May 1997: reg. 2.

<sup>9</sup> Came into operation 7 August 1997: reg. 2.

<sup>10</sup> Came into operation 11 June 1998: reg. 2.

*Note:* Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.

**Citation**

1. These regulations may be cited as the *Scheme of Management (River Fishery) Regulations 1991*.

**Commencement**

2. These regulations will come into operation on 27 June 1991.

**Revocation**

3. The *Scheme of Management (River Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1687), as varied, are revoked.

**Interpretation**

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

"**the Act**" means the *Fisheries Act 1982*:

"**the fishery**" means the River Fishery as constituted by these regulations:

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

"**River Murray**" means all waters of the River Murray, including its anabranches, tributaries and lagoons, situated upstream of the punt that services the main road joining the township of Wellington to the township of Wellington East:

"**shrimp**" means freshwater shrimp (*Macrobrachium australiensis*):

"**the revoked regulations**" means the regulations revoked by regulation 3:

"**SARDI**" means the South Australian Research and Development Institute:

"**shrimp trap**" has the same meaning as in the *Fisheries (General) Regulations 1984*:

"**yabbie pot**" has the same meaning as in the *Fisheries (General) Regulations 1984*.

(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 see Appendix 2.*

**Constitution of the fishery**

5. (1) The River Fishery is constituted.

(2) The River Fishery consists of—

(a) the taking of fish specified in schedule 1 in the River Murray;

and

(b) the taking of shrimp for the purpose of bait in the River Murray.

**Conditions limiting certain fishing activities to specified reaches**

6. The Director may impose a condition of a licence in respect of the fishery limiting to specified reaches of the River Murray the fishing activities (other than the use of yabbie pots or shrimp traps) that may be engaged in pursuant to the licence.

**No further licences are to be granted**

7. The licences in respect of the fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the fishery subject to the provisions of the Act and these regulations, and no other licence may be granted in respect of the fishery.

**Expiry of licences**

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

**Renewal of licences**

9. (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) a fee of \$3 070;

or

(ii) the first instalment of that fee, in accordance with subregulation (6);

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.

4.

(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**

**10.** 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**

**10A.** (1) A licence in respect of the fishery may be transferred with the consent of the Director if the total number of licences in force in respect of the fishery does not exceed 30.

(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;

(b) must contain the information specified in schedule 2;

(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.

5.

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

- (a) the licence to be transferred;
- (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) an application fee of \$200.

(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 a natural person who—

- (i) is at least 15 years of age;

and

- (ii) has not, within the period of three years preceding the date of application, been convicted in the State or elsewhere in Australia of an offence involving a breach of any legislation relating to fishing;
- (e) 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;
- (f) that the transferee does not already hold a licence in respect of the fishery or any other fishery;
- (g) that the transferee is not an associate of a person who holds such a licence;
- (h) 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

6.

(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 the boat the Director must be satisfied that the applicant is the holder of a licence in respect of the fishery.

### **Registration as master**

**12.** No person other than the holder of the licence may be registered as the master of a boat used pursuant to a 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.

### **Fishing activities on the shore**

**14.** (1) The holder of a licence in respect of the fishery must not cause or permit—

(a) a person to be engaged on the shore as his or her agent in a fishing activity of a class that constitutes the fishery unless—

(i) the holder of the licence is at the same time also engaged on the shore in a fishing activity of a class that constitutes the fishery;

and

(ii) the holder of the licence and the other persons remain, while so engaged, within 500 metres of each other;

or

(b) more than two other persons to be engaged at the same time on the shore as his or her agents in a fishing activity of a class that constitutes the fishery.

Penalty: Division 6 fine.

**Furnishing of returns**

**15.** (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;
- (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.

(2) Where the holder of a licence in respect of the fishery takes no fish pursuant to the licence 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**

**16.** 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.

Penalty: Division 6 fine.

**SCHEDULE 1***Fish prescribed for the River Fishery*

The following fish are specified for the river fishery:

*Scalefish*

Blackfish, two spined (*Gadopsis bispinosus*)  
 Bony bream (*Nematalosa erebi*)  
 Carp (All species) (Family Cyprinidae)  
 Congolli (*Pseudaphritis urvilli*)  
 Eel, short finned (*Anguilla australis*)  
 Galaxias, common (*Galaxias maculatus*)  
 Galaxias, flat headed (*Galaxias rostratus*)  
 Galaxias, mountain (*Galaxias olidus*)  
 Gudgeon, dwarf flat headed (*Philypnodon sp, 1*)  
 Gudgeon, firetail (*Hypseleotris galii*)  
 Gudgeon, flat headed (*Philypnodon grandiceps*)  
 Gudgeon, lake's carp (*Hypseleotris sp,5*)  
 Gudgeon, Midgley's carp (*Hypseleotris sp,4*)  
 Gudgeon, western carp (*Hypseleotris klunzingeri*)  
 Hardyhead, freshwater (*Craterocephalus stercusmuscarum*)  
 Hardyhead, Lake Eyre (*Craterocephalus eyresii*)  
 Lamprey, pouched (*Geotria australis*)  
 Lamprey, short headed (*Modacia mordax*)  
 Murray cod (*Maccullochella peeli*)  
 Perch, estuary (*Macquaria colonorum*)  
 Perch, golden (callop) (*Macquaria ambigua*)  
 Perch, macquarie (*Macquaria australasica*)  
 Perch, redfin (*Perca fluviatilis*)  
 Perch, spangled (*Lieopotherapon unicolor*)  
 Rainbow fish, crimson spotted (*Melanotaenia fluviatilis*)  
 Smelt, Australian (*Retropinna semoni*)  
 Trout, brown (*Salmo trutta*)  
 Trout, rainbow (*Oncorhynchus mykiss*)  
 All other non-native fish

*Crustaceans*

Yabbie (*Cherax destructor*)

**SCHEDULE 2**  
*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, date of birth, address (residential and postal) and telephone number of the transferee.
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);
  - (b) the number of its current survey certificate;
  - (c) the year of its construction;
  - (d) the material of which its hull is made;
  - (e) its main colour;
  - (f) its name;
  - (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;
  - (b) whether or not the transferee is the associate of a person who holds a licence in respect of any fishery;
  - (c) whether or not the transferee is a party to a contract, arrangement or understanding, the purpose or effect of which is that the transferee 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;

10.

(d) whether or not the transferee 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 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.

**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. 104 of 1992, reg. 6.*

6. (1) The licence renewal fee prescribed by regulation 9 of the principal regulations as varied by these regulations applies in relation to a licence year commencing after the commencement of these regulations.

(2) Notwithstanding regulation 3, the licence renewal fee prescribed by regulation 9 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence year that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**" means the period of 12 months from 1 September in any year.

*Transitional provision from Regulation No. 127 of 1993, reg. 7.*

7. (1) The licence renewal fee prescribed by regulation 9 of the principal regulations as varied by these regulations applies in relation to a licence year commencing after the commencement of these regulations.

(2) Notwithstanding regulation 4, a licence renewal fee prescribed by regulation 9 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence year that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**" means the period of 12 months from 1 October in any year.

*Transitional provision from Regulation No. 98 of 1994, reg. 4*

4. (1) A licence renewal fee prescribed by regulation 9 of the principal regulations as varied by these regulations applies in relation to a licence year commencing after the commencement of these regulations.

(2) Notwithstanding regulation 3, a licence renewal fee prescribed by regulation 9 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence year that commenced before the commencement of these regulations.

(3) In this regulation—

"**licence year**" means the period of 12 months from 1 September in any year.

*Transitional provision from Regulation No. 145 of 1995, reg. 7*

7. (1) A licence renewal fee prescribed by regulation 9 of the principal regulations as varied by these regulations applies in relation to a licence period commencing after the commencement of these regulations.

(2) Notwithstanding regulation 5, a licence renewal fee prescribed by regulation 9 of the principal regulations as in force immediately before the commencement of these regulations continues to apply in relation to a licence period commencing before the commencement of these regulations.

(3) In this regulation—

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

*(Transitional provision from Regulation No. 126 of 1997, reg. 4)*

4. (1) A licence renewal fee prescribed by regulation 9 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 3, a licence renewal fee prescribed by regulation 9 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.

*(Transitional provision from Regulation No. 135 of 1998, reg. 4)*

4. (1) A licence renewal fee prescribed by regulation 9 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 3, a licence renewal fee prescribed by regulation 9 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 4(1):	definition of "licence period" inserted by 145, 1995, reg. 3; substituted by 181, 1997, reg. 3
Regulation 8:	definition of "SARDI" inserted by 127, 1993, reg. 3
Regulation 9(1):	substituted by 145, 1995, reg. 4; 181, 1997, reg. 4
Regulation 9(2):	varied by 145, 1995, reg. 5(a)
Regulation 9(5):	substituted by 182, 1991, reg. 2(a)
Regulation 9(6):	inserted by 182, 1991, reg. 2(b); varied by 104, 1992, reg. 3; 127, 1993, reg. 4; 98, 1994, reg. 3; 145, 1995, reg. 5(b); 155, 1996, reg. 3; 126, 1997, reg. 3; 135, 1998, reg. 3(a)
Regulation 9(7) and (8):	inserted by 182, 1991, reg. 2(b)
Regulation 10:	substituted by 145, 1995, reg. 6
Regulation 10A:	inserted by 181, 1997, reg. 5
Regulation 15(1):	varied by 104, 1992, reg. 4; 127, 1993, reg. 5
Regulation 16:	varied by 127, 1993, reg. 6
Schedule 1:	varied by 9, 1994, reg. 3; substituted by 181, 1997, reg. 6
Schedule 2:	revoked by 104, 1992, reg. 5; inserted by 181, 1997, reg. 6

**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

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