

As in force at 14 June 2002.

South Australia

**SCHEME OF MANAGEMENT (ROCK LOBSTER FISHERIES)  
REGULATIONS 1991**

## REGULATIONS UNDER THE FISHERIES ACT 1982

### *Scheme of Management (Rock Lobster Fisheries) Regulations 1991*

being

No. 107 of 1991: *Gaz.* 27 June 1991, p. 2143<sup>1</sup>

as varied by

- No. 112 of 1992: *Gaz.* 25 June 1992, p. 1942<sup>2</sup>  
No. 128 of 1993: *Gaz.* 24 June 1993, p. 2077<sup>3</sup>  
No. 94 of 1994: *Gaz.* 23 June 1994, p. 1806<sup>4</sup>  
No. 154 of 1994: *Gaz.* 1 September 1994, p. 686<sup>5</sup>  
No. 166 of 1994: *Gaz.* 29 September 1994, p. 883<sup>6</sup>  
No. 175 of 1994: *Gaz.* 20 October 1994, p. 1248<sup>7</sup>  
No. 143 of 1995: *Gaz.* 29 June 1995, p. 3151<sup>8</sup>  
No. 156 of 1996: *Gaz.* 20 June 1996, p. 3013<sup>9</sup>  
No. 162 of 1996: *Gaz.* 27 June 1996, p. 3164<sup>10</sup>  
No. 223 of 1996: *Gaz.* 26 September 1996, p. 1245<sup>11</sup>  
No. 127 of 1997: *Gaz.* 13 May 1997, p. 1955<sup>12</sup>  
No. 136 of 1998: *Gaz.* 11 June 1998, p. 2547<sup>13</sup>  
No. 159 of 1998: *Gaz.* 30 July 1998, p. 297<sup>14</sup>  
No. 139 of 1999: *Gaz.* 1 July 1999, p. 47<sup>15</sup>  
No. 139 of 2000: *Gaz.* 22 June 2000, p. 3365<sup>16</sup>  
No. 139 of 2001: *Gaz.* 28 June 2001, p. 2443<sup>17</sup>  
No. 252 of 2001: *Gaz.* 6 December 2001, p. 5297<sup>18</sup>  
No. 259 of 2001: *Gaz.* 13 December 2001, p. 5412<sup>19</sup>  
**No. 47 of 2002: *Gaz.* 14 June 2002, p. 2153<sup>20</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 23 June 1994: reg. 2.  
<sup>5</sup> Came into operation 1 September 1994: reg. 2.  
<sup>6</sup> Came into operation 1 October 1994: reg. 2.  
<sup>7</sup> Came into operation 20 October 1994: reg. 2.  
<sup>8</sup> Came into operation 29 June 1995: reg. 2.  
<sup>9</sup> Came into operation 20 June 1996: reg. 2.  
<sup>10</sup> Came into operation 27 June 1996: reg. 2.  
<sup>11</sup> Came into operation 26 September 1996: reg. 2.  
<sup>12</sup> Came into operation 13 May 1997: reg. 2.  
<sup>13</sup> Came into operation 11 June 1998: reg. 2.  
<sup>14</sup> Came into operation 1 September 1998: reg. 2.  
<sup>15</sup> Came into operation 1 July 1999: reg. 2.  
<sup>16</sup> Came into operation 22 June 2000: reg. 2.  
<sup>17</sup> Came into operation 28 June 2001: reg. 2.  
<sup>18</sup> Came into operation 31 December 2001: reg. 2.  
<sup>19</sup> Came into operation 15 January 2002: reg. 2.  
<sup>20</sup> **Regs. 32-35 came into operation 14 June 2002: reg. 2.**

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last consolidation.
- For the legislative history of the regulations see Appendix 1.

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### **Citation**

1. These regulations may be cited as the *Scheme of Management (Rock Lobster Fisheries) Regulations 1991*.

### **Commencement**

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

### **Revocation**

3. The following regulations are revoked:

(a) the *Scheme of Management (Northern Zone Rock Lobster Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1625), as varied;

and

(b) the *Scheme of Management (Southern Zone Rock Lobster Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1636), as varied.

### **Interpretation**

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

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

"**coastal waters**" means the waters of the ocean and all bays, gulfs, straits, passages, inlets and estuaries of the State that are subject to the tidal influence of the sea, but does not include the waters of the Coorong between the barrages and the Murray Mouth:

"**closed season**", in relation to a rock lobster fishery, means a period, as specified in the *Fisheries (General) Regulations 2000* during which the taking of rock lobster in the Zone for that fishery is unlawful by virtue of section 41 of the Act and those regulations:

"**director**", in relation to a body corporate, has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

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

"**Northern Zone**" means the coastal waters westerly of a line commencing at the point where the meridian of longitude 139°E intersects the shore of South Australia, then due south to position latitude 36°20.0'S and longitude 139°E, then due west to position latitude 36°20.0'S and longitude 138°40.0'E, then due south to position latitude 36°40.0'S and longitude 138°40.0'E, then due west to position latitude 36°40.0'S and longitude 138°20.0'E, then due south to position latitude 37°S and longitude 138°20.0'E, then due west to position latitude 37°S and longitude 138°E, then continuing due south along the meridian of longitude 138°E:

"**prescribed Victorian licence**" means a Victorian licence that is held by the holder of a licence in respect of the Southern Zone Rock Lobster Fishery as a result of a transfer made before 28 June 1990:

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

"**rock lobster**" means southern rock lobster (*Jasus edwardsii*):

"**rock lobster fishery**" means—

(a) the Northern Zone Rock Lobster Fishery;

or

(b) the Southern Zone Rock Lobster Fishery,

constituted by these regulations:

"**rock lobster pot**" means a fish trap designed and constructed for the purpose of taking rock lobster:

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

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

"**Southern Zone**" means the coastal waters easterly of a line commencing at the point where the meridian of longitude 139°E intersects the shore of South Australia, then due south to position latitude 36°20.0'S and longitude 139°E, then due west to position latitude 36°20.0'S and longitude 138°40.0'E, then due south to position latitude 36°40.0'S and longitude 138°40.0'E, then due west to position latitude 36°40.0'S and longitude 138°20.0'E, then due south to position latitude 37°S and longitude 138°20.0'E, then due west to position latitude 37°S and longitude 138°E, then continuing due south along the meridian of longitude 138°E:

"**Victorian licence**" means a licence, permit, authority or other entitlement that authorizes the holder to take fish for sale from waters of the State of Victoria that are adjacent to or adjoin the Southern Zone.

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

(a) they are partners;

(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 purpose of trade or business, he or she engages or refrains from engaging in a fishing activity of a class that constitutes a fishery;

(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;

(d) they are bodies corporate that are related to each other for the purpose of the *Corporations Act 2001* of the Commonwealth;

(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

5.

(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—

\* \* \* \* \*

(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;

and

(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 Act 2001* of the Commonwealth.

(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 2.*

### **Constitution of fisheries**

5. (1) The following fisheries are constituted:

(a) the Northern Zone Rock Lobster Fishery;

and

(b) the Southern Zone Rock Lobster Fishery.

(2) The Northern Zone Rock Lobster Fishery consists of—

(aa) the taking of rock lobster in the waters of the Northern Zone; and

(a) the taking of fish specified in schedule 1 in the waters of the Northern Zone; and

(b) the taking of razor fish (*Pinna bicolor*) in the waters of the Northern Zone for the purpose of bait.

(3) The Southern Zone Rock Lobster Fishery consists of—

(aa) the taking of rock lobster in the waters of the Southern Zone; and

(a) the taking of fish specified in schedule 1 in the waters of the Southern Zone; and

6.

- (b) the taking of razor fish (*Pinna bicolor*) in the waters of the Southern Zone for the purpose of bait.

**No further licences are to be granted**

6. (1) The licences in respect of the Northern Zone Rock Lobster Fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the Northern Zone Rock Lobster Fishery subject to the provisions of the Act and these regulations, and no other licence may be granted in respect of the fishery.

(2) The licences in respect of the Southern Zone Rock Lobster Fishery in force under the revoked regulations immediately before the commencement of these regulations continue in force as licences in respect of the Southern Zone Rock Lobster 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**

7. A licence in respect of a rock lobster fishery expires on 30 June following the date of its last renewal.

**Renewal of licences**

8. (1) A licence in respect of a rock lobster 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 a rock lobster 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.

(4a) The Director must not renew a licence in respect of the Southern Zone Rock Lobster Fishery unless a rock lobster pot entitlement of not less than 40 is endorsed on the licence.

(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); and

7.

- (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 such renewal fee.

(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) 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.

(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**

**8A.** Where a licence in respect of a rock lobster 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**

**9.** (1) A licence in respect of a rock lobster fishery may be transferred with the consent of the Director.

\* \* \* \* \*

(3) 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.

(4) The application—

- (a) must be made in writing in a form approved by the Director;

- (b) must contain the information specified in schedule 3;

- (c) must contain a nomination by the holder of the licence of the person to whom the licence is to be transferred;

and

8.

(d) must be verified by the applicants by statutory declaration.

(5) 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

(d) the application fee specified in schedule 2.

(6) 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 the 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 a rock lobster fishery or any other fishery;

(g) that the transferee is not an associate of a person who holds such a licence;

and

- (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 (other than a prescribed Victorian licence)—
- (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**

**10.** (1) An application to register a boat to be used in a rock lobster 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—

(a) that the applicant is the holder of a licence in respect of the fishery;

and

(b) that—

(i) where the applicant holds a licence in respect of the Northern Zone Rock Lobster Fishery—no more than one other boat is registered by endorsement of the applicant's licence in respect of the fishery;

or

(ii) where the applicant holds a licence in respect of the Southern Zone Rock Lobster Fishery—

(A) the boat in respect of which the application is made is not already registered by endorsement of any licence in respect of a rock lobster fishery;

and

- (B) no other boat is registered by endorsement of the applicant's licence in respect of the Southern Zone Rock Lobster Fishery.

**Use of second registered boat in Northern Zone**

**11.** (1) Where two boats are registered by endorsement of a licence in respect of the Northern Zone Rock Lobster Fishery, the holder of the licence must not use both boats, or cause, suffer or permit both boats to be used, at the same time for taking fish pursuant to the licence unless the use made of one of the boats is limited to the setting and retrieval of bait nets and mesh nets.

Penalty: Division 6 fine.

(2) Any second registered boat that is being used for the setting and retrieval of nets as referred to in subregulation (1) need not be in the charge of a registered master.

**Registration as master**

**12.** An application to be registered 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 a rock lobster fishery, revoke a registration effected by endorsement of the licence.

(2) An application for revocation of a 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.

**Rock lobster pot entitlement**

**14.** (1) The Director may impose or vary conditions on licences in respect of a rock lobster fishery fixing rock lobster pot entitlements as follows:

- (a) a rock lobster pot entitlement may be fixed by condition of a licence but must—
  - (i) in the case of a licence in respect of the Northern Zone Rock Lobster Fishery—be not more than 60 and not less than 25;
  - (ii) in the case of a licence in respect of the Southern Zone Rock Lobster Fishery—be not more than 100 and not less than 40;
- (b) the rock lobster pot entitlement fixed by any such condition of a licence must be the number endorsed on the licence as the rock lobster pot entitlement under the revoked regulations immediately before the commencement of these regulations subject to any subsequent variation made in accordance with this regulation;
- (c) the rock lobster 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 a rock lobster fishery;

- (d) subject to paragraph (e), the rock lobster pot entitlements fixed by the conditions of any two licences in respect of the same fishery may, on application made by the holders of those licences in a manner and form approved by the Director and payment of the fee specified in Schedule 2, be varied so as to increase the entitlement under one of the licences and decrease the entitlement under the other by a corresponding number;
- (e) a variation must not be made as referred to in paragraph (d)—
- (i) if it would result in the entitlement under one of the licences exceeding the upper limit referred to in paragraph (a);
- or
- (ii) subject to paragraph (h), if it would result in the entitlement under one of the licences falling below the lower limit referred to in paragraph (a) except where—
- (A) the licence is surrendered to the Director;
- and
- (B) 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 (other than a prescribed Victorian licence)—that other licence, permit, authority or entitlement is also surrendered;
- (f) notwithstanding any other provisions of this regulation, where the rock lobster pot entitlement under a licence in respect of the Southern Zone Rock Lobster Fishery was, immediately before the commencement of these regulations, less than 40, the entitlement under that licence may, until the licence is transferred, continue to be fixed at a number less than 40;
- (g) notwithstanding any other provisions of this regulation, a variation may be made in accordance with paragraph (c) in respect of the Northern Zone Rock Lobster Fishery despite the fact that it would result in the rock lobster pot entitlement under a licence falling below 25, and, in that event, the entitlement under that licence may, until the licence is transferred, continue to be fixed at a number less than 25 but may not be decreased subsequently except to a number not less than 25;
- (h) notwithstanding any other provision of this regulation, a variation may be made in accordance with paragraph (d) in respect of the Southern Zone Rock Lobster Fishery despite the fact that it would result in the rock lobster pot entitlement under a licence falling below 40, and in that event, the entitlement under that licence may, until the expiry of the licence, continue to be fixed at a number less than 40.

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

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

#### **Individual catch quota system—Southern Zone**

**14A.** (1) In this regulation—

"**the fishery**" means the Southern Zone Rock Lobster Fishery;

"**rock lobster quota**", in relation to a licence in respect of the fishery, means the maximum number of kilograms of rock lobster that may be lawfully taken by the holder of the licence during a licence period, being the product of—

(a) the unit entitlement of that licence;

and

(b) the unit value for the fishery and that licence year,

subject to any variation of the rock lobster quota of the licence applying during that licence period;

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

"**unit value**" means the number of kilograms of rock lobster determined by the Director to be the value of a rock lobster unit for the fishery and a licence period.

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

(a) all licences in respect of the fishery must be allocated numbers of rock lobster units to be determined by the Director having regard to—

(i) the respective rock lobster pot entitlements under the licences;

and

(ii) the respective quantities of rock lobster taken pursuant to the licences during a specified period (as recorded on returns lodged under regulation 15 or the corresponding regulation previously in force);

(b) the numbers of rock lobster units allocated to the licences may be varied by the Director for succeeding licence periods up until (and including) the licence period expiring in 1998 so as progressively to bring the number of rock lobster units allocated to each licence into relationship only with the rock lobster pot entitlement under the licence;

- (c) the Director must, on the commencement of each licence period, determine the number of kilograms of rock lobster that is to be the value of a rock lobster unit for the fishery and the licence period;
- (d) the conditions of any two licences in respect of the fishery may, on application made to the Director by the holders of those licences in a manner and form approved by the Director, be varied so as to increase the unit entitlement of one of the licences and decrease the unit entitlement of the other licence by a corresponding number of units;
- (e) the Director may, if the total rock lobster catch taken pursuant to a licence during a licence period exceeded the rock lobster 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 rock lobster—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 rock lobster—by two kilograms for each kilogram in excess of the quota;
- (f) any variation of—
  - (i) a unit entitlement made pursuant to paragraph (d);
  - or
  - (ii) a rock lobster quota made pursuant to paragraph (e),
 must be expressed to apply only for the licence period during which the variation is made;
- (g) unit entitlements and rock lobster 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 rock lobster quota on the licence;
- and
- (b) the conduct constituting the offence involved the taking of more than 50 kilograms of rock lobster 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 rock lobster 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.

**Individual giant crab catch quota system**

**14B.** (1) In this regulation—

"**giant crab**" means giant crab (*Pseudocarcinus gigas*);

"**giant crab quota**"—

- (a) in relation to a licence in respect of a rock lobster fishery—means the maximum number of kilograms of giant crab that may be lawfully taken by the holder of the licence during a licence period, being the product of—
  - (i) the unit entitlement of that licence; and
  - (ii) the unit value for the fishery and that licence period,subject to any variation of the giant crab quota of the licence applying during that licence period;
- (b) in relation to a licence in respect of the Miscellaneous Fishery—has the same meaning as in regulation 11 of the *Scheme of Management (Miscellaneous Fishery) Regulations 2000*;

"**Miscellaneous Fishery**" means the fishery of that name constituted by the *Scheme of Management (Miscellaneous Fishery) Regulations 2000*;

"**unit entitlement**"—

- (a) in relation to a licence in respect of a rock lobster fishery—means the number of giant crab units for the time being allocated to the licence;
- (b) in relation to a licence in respect of the Miscellaneous Fishery—has the same meaning as in regulation 11 of the *Scheme of Management (Miscellaneous Fishery) Regulations 2000*;

"**unit value**" means the number of kilograms of giant crab determined by the Director to be the value of a giant crab unit for a rock lobster fishery and a licence period.

(2) For the purposes of the formula set out in subregulation (3)(a), the following fishing periods are prescribed:

- (a) in relation to the Northern Zone Rock Lobster Fishery—
  - (i) the period commencing on 1 January 1997 and ending on 31 May 1997; and
  - (ii) the period commencing on 1 November 1997 and ending on 31 May 1998; and
  - (iii) the period commencing on 1 November 1998 and ending on 31 May 1999; and
  - (iv) the period commencing on 1 November 1999 and ending on 31 May 2000;

(b) in relation to the Southern Zone Rock Lobster Fishery—

- (i) the period commencing on 1 January 1997 and ending on 30 April 1997; and
- (ii) the period commencing on 1 October 1997 and ending on 30 April 1998; and
- (iii) the period commencing on 1 October 1998 and ending on 30 April 1999; and
- (iv) the period commencing on 1 October 1999 and ending on 30 April 2000.

(3) The Director may impose or vary conditions on licences in respect of a rock lobster fishery imposing or varying giant crab quotas (and may vary conditions on licences in respect of the Miscellaneous Fishery varying giant crab quotas) as follows:

(a) on the commencement of this regulation a licence referred to in Schedule 4 may be allocated a number of giant crab units determined in accordance with the following formula:

$$A = \frac{B \times 350}{C}$$

where—

- A is the number of giant crab units to be allocated to the licence (rounded up to two decimal points)
  - B is the aggregate number of kilograms of giant crab taken pursuant to the licence during prescribed fishing periods (as recorded on completed returns lodged under regulation 15 before 31 May 2001)
  - C is the aggregate number of kilograms of giant crab taken pursuant to licences in respect of the fishery specified in Schedule 4 during prescribed fishing periods (as recorded on completed returns lodged under regulation 15 before 31 May 2001);
- (b) if the aggregate number of giant crab units allocated to licences in respect of a rock lobster fishery under paragraph (a) is less than 350, an additional number of units equal to the difference between the aggregate number allocated under that paragraph and 350 may be allocated to those licences, and in that case the conditions of each licence must be varied so as to increase the unit entitlement of the licence by a number of units that bears to the aggregate number of units to be allocated under this paragraph the same proportion as the number of units allocated to that licence under paragraph (a) bears to the aggregate number of units allocated to licences in respect of the fishery under that paragraph;

- (c) during the licence period ending on 30 June 2002, the conditions of each licence in respect of a rock lobster fishery endorsed with a condition fixing a giant crab quota on the licence must be varied so as to reduce the quota of the licence for that licence period by one kilogram for each kilogram of giant crab taken pursuant to the licence during the period commencing on 1 July 2001 and ending on 14 January 2002 (as recorded on completed returns lodged under regulation 15);
- (d) the Director must, on the commencement of this regulation, determine the number of kilograms of giant crab that is to be the value of a giant crab unit for a rock lobster fishery and the licence period ending on 30 June 2002;
- (e) the Director must, on the commencement of each licence period, determine the number of kilograms of giant crab that is to be the value of a giant crab unit for a rock lobster fishery and the licence period;
- (f) on application made to the Director by the holders of any two licences in respect of the same rock lobster fishery endorsed with conditions fixing giant crab quotas on the licences, the conditions of the licences may be varied so as to increase the unit entitlement of one of the licences and decrease the unit entitlement of the other licence by a corresponding number of units;
- (g) on application made to the Director by the holder of a licence in respect of the Northern Zone Rock Lobster Fishery endorsed with a condition fixing a giant crab quota on the licence (the "**first licence**") and the holder of a licence in respect of the Miscellaneous Fishery endorsed with a condition fixing a giant crab quota on the licence in relation to the Northern Zone (the "**second licence**")—
  - (i) the conditions of the first licence may be varied so as to decrease the unit entitlement of that licence and the conditions of the second licence may be varied so as to increase the unit entitlement of that licence in respect of the Northern Zone by a corresponding number of units; or
  - (ii) the conditions of the first licence may be varied so as to increase the unit entitlement of that licence and the conditions of the second licence may be varied so as to decrease the unit entitlement of that licence in respect of the Northern Zone by a corresponding number of units;
- (h) on application made to the Director by the holder of a licence in respect of the Southern Zone Rock Lobster Fishery endorsed with a condition fixing a giant crab quota on the licence (the "**first licence**") and the holder of a licence in respect of the Miscellaneous Fishery endorsed with a condition fixing a giant crab quota on the licence in relation to the Southern Zone (the "**second licence**")—
  - (i) the conditions of the first licence may be varied so as to decrease the unit entitlement of that licence and the conditions of the second licence may be varied so as to increase the unit entitlement of that licence in respect of the Southern Zone by a corresponding number of units; or

- (ii) the conditions of the first licence may be varied so as to increase the unit entitlement of that licence and the conditions of the second licence may be varied so as to decrease the unit entitlement of that licence in respect of the Southern Zone by a corresponding number of units;
- (i) the Director may, if the total giant crab catch taken pursuant to a licence in respect of a rock lobster fishery during a licence period exceeded the giant crab quota of the licence for that licence period, vary the conditions of the licence so as to decrease the quota—
  - (i) if the catch exceeded the quota by not more than 20 kilograms of giant crab—by one kilogram for each kilogram in excess of the quota; or
  - (ii) if the catch exceeded the quota by more than 20 kilograms but not more than 50 kilograms—by two kilograms for each kilogram in excess of the quota;
- (j) any variation of a giant crab quota made under paragraph (i) must be expressed to apply only for the licence period during which the variation is made;
- (k) unit entitlements and giant crab quotas must not be varied except as provided by this regulation or the *Scheme of Management (Miscellaneous Fishery) Regulations 2000*.
- (4) If—
  - (a) a court convicts the holder of a licence in respect of a rock lobster fishery of an offence of contravening a condition of the licence imposing a giant crab quota on the licence; and
  - (b) the conduct constituting the offence involved the taking of more than 50 kilograms of giant 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 giant 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.

(5) An application under subregulation (3)(f), (g) or (h) must be made in a manner and form approved by the Director.

(6) A variation of a unit entitlement under subregulation (3)(f), (g) or (h) cannot take effect before 1 July 2002.

### **Furnishing of returns**

**15.** (1) The holder of a licence in respect of a rock lobster 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 a rock lobster 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.

(3) Where a rock lobster fishery has been closed for a whole calendar month, the holder of a licence need not furnish a return for that month in respect of rock lobster.

#### **Copies of returns must be made**

**16.** The holder of a licence in respect of a rock lobster fishery must—

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

#### **Victorian licences**

**17.** A person who is the holder of a licence in respect of the Southern Zone Rock Lobster Fishery must—

- (a) where he or she becomes the holder of a Victorian licence, give written notice within 14 days informing the Director of that fact;

or

- (b) where he or she ceases to hold a Victorian licence, give written notice within 14 days informing the Director of that fact.

Penalty: Division 6 fine.

#### **Sale of rock lobster during closed season**

**18.** (1) A holder of a licence in respect of a rock lobster fishery must not sell live rock lobster during a closed season for that fishery.

Penalty: Division 6 fine.

(2) It is a defence to a charge of an offence against subregulation (1) if it is proved that the defendant did not take the rock lobster to which the charge relates in the zone for the rock lobster fishery in respect of which he or she holds a licence.

**SCHEDULE 1***Fish prescribed for rock lobster fisheries*

The following fish are specified for the rock lobster fisheries:

*Scalefish*

Anchovy (*Engraulis australis*)  
 Barracouta (*Thyrsites atun*)  
 Bluethroated wrasse (*Notolabrus tetricus*)  
 Bream (*Acanthopagrus butcheri*)  
 Cod (marine species) (Family Moridae)  
 Dory (Family Zeidae)  
 Flathead (Family Platycephalidae)  
 Flounder (Family Pleuronectidae) (Family Bothidae)  
 Garfish (*Hyporhamphus melanochir*)  
 Horse mackerel (*Trachurus declivis*)  
 Leather jacket (Family Aluteridae)  
 Ling (*Genypterus blacodes*)  
 Mackerel (*Scomber australasicus*)  
 Morwong (Family Cheilodactylidae)  
 Mullet (Family Mugilidae)  
 Mulloway (*Argyrosomus hololepidotus*)  
 Nannygai, Red snapper, Swallowtail (Family Berycidae)  
 Pilchard (*Sardinops neopilchardus*)  
 Red mullet (*Upeneichthys porosus*)  
 Salmon (*Arripis truttaceus*)  
 Snapper (*Chrysophrys auratus*)  
 Snook (*Sphyraena novaehollandiae*)  
 Sole (*Aserragodes haackeanus*)  
 Sweep (*Scorpius aequipinnis*)  
 Tommy ruff (*Arripis georgianus*)  
 Trevalla (*Hyperoglyphe antarctica*)  
 Trevally (*Usacaranx georgianus*)  
 Whiting (Family Sillaginidae)

*Crustaceans*

Crab, giant (*Pseudocarcinus gigas*)  
 Crab, velvet (*Nectocarcinus tuberculatus*)

*Molluscs*

Cockle (Suborder Teledonta)  
 Cuttlefish (*Sepia* spp.)  
 Mussels (*Mytilus* spp.)  
 Octopus (*Octopus* spp.)  
 Oyster (Family Ostridae)  
 Scallop (Family Pectinidae)  
 Squid, calamary (*Sepioteuthis australis*)  
 arrow (*Nototodarus gouldi*)

*Annelids*

Beachworm	}	
Bloodworm	}	(Class Polychaeta)
Tubeworm	}	

*Shark*

All species other than white pointer shark	}	
( <i>Carcharodon carcharias</i> )	}	(Class Elasmobranchii)
Skate		
Rays		

**SCHEDULE 2***Fees*

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

\$

(a)	on application for the renewal of a licence in respect of the Northern Zone Rock Lobster Fishery—	
(i)	in the case of a licence that will, on its renewal, be subject to a condition limiting the holder of the licence to the taking of rock lobster, octopus and giant crab . . . . .	6 628.00
(ii)	in the case of a licence that will, on its renewal, be subject to a condition limiting the holder of the licence to the taking of—	
	(A) rock lobster, octopus and giant crab; and	
	(B) fish of a species (other than octopus or giant crab) prescribed by Schedule 1 for the purpose of bait only . . . . .	7 108.00
(iii)	in any other case . . . . .	8 310.00
	An additional fee of an amount obtained by multiplying \$88 by the number equal to the rock lobster pot entitlement fixed by condition of a licence under regulation 14 is payable.	

On application for the renewal of a licence endorsed with a condition fixing a giant crab quota on the licence, an additional fee of an amount obtained by multiplying \$26.67 by the number of giant crab units allocated to the licence is payable.

(ab)	on application for the renewal of a licence in respect of the Southern Zone Rock Lobster Fishery—	
(i)	in the case of a licence that will, on its renewal, be subject to a condition limiting the holder of the licence to the taking of rock lobster, octopus and giant crab . . . . .	5 616.00
(ii)	in the case of a licence that will, on its renewal, be subject to a condition limiting the holder of the licence to the taking of—	
	(A) rock lobster, octopus and giant crab; and	
	(B) fish of a species (other than octopus or giant crab) prescribed by Schedule 1 for the purpose of bait only . . . . .	6 096.00
(iii)	in any other case . . . . .	7 298.00
	An additional fee of an amount obtained by multiplying \$96 by the number equal to the rock lobster pot entitlement fixed by condition of a licence under regulation 14 is payable.	

On application for the renewal of a licence endorsed with a condition fixing a giant crab quota on the licence, an additional fee of an amount obtained by multiplying \$26.67 by the number of giant crab units allocated to the licence is payable.

(b)	on application for transfer of a licence in respect of either rock lobster fishery . . . . .	300
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- (c) on application under reg. 14(1)(d) by the holder of a licence in respect of a rock lobster fishery to vary a condition of the licence so as to decrease the rock lobster pot entitlement under the licence and increase the rock lobster pot entitlement under one or more other licences in respect of that fishery—\$100 plus a fee of an amount obtained by multiplying \$20 by the number of licences the rock lobster pot entitlement of which is to be increased.
  
- (d) on application under regulation 14B by the holder of a licence in respect of a rock lobster fishery to vary the conditions of the licence so as to decrease the unit entitlement of the licence in respect of giant crab and increase the unit entitlement of one or more licences in respect of that fishery or the Miscellaneous Fishery—\$100 plus a fee of an amount obtained by multiplying \$20 by the number of licences the unit entitlements of which are 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, 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 any 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 whether or not the transferee—
  - (a) holds a licence in respect of any fishery;
  - (b) is the associate of a person who holds a licence in respect of any fishery;
  - (c) is a party to a contract, arrangement or understanding, the purpose or effect of which is that he or she will act at the direction of, or in accordance with, the wishes or instructions of another in relation to the transferee's activities pursuant to the licence;
  - (d) 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) 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 in the State or elsewhere in Australia against him or her.

23.

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

**SCHEDULE 4***Licences to which giant crab units may be allocated*

Northern Zone Rock Lobster Fishery licence number		
N009		
N014		
N039		
N040		
N056		
N097		
Southern Zone Rock Lobster Fishery licence number		
S036	S115	S165
S049	S117	S167
S052	S119	S175
S053	S122	S176
S074	S127	S189
S077	S134	S193
S078	S152	S217
S097	S164	S241

## APPENDIX 1

### LEGISLATIVE HISTORY

#### Transitional Provisions

*(Transitional provision from Regulation No. 112 of 1992, reg. 10)*

10. (1) A licence renewal fee prescribed by schedule 2 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 8, 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 year that commenced before the commencement of these regulations.

(3) An additional fee of one-twelfth of the licence renewal fee prescribed by schedule 2 of the principal regulations as in force immediately before the commencement of these regulations is payable on 1 September 1992 by each holder of a licence in respect of a rock lobster fishery in force on that date.

(4) Where a fee payable under subregulation (3) is not paid by the due date, the fee may be recovered from the holder of the licence or the person who last held the licence as a debt due to the Crown.

(5) In this regulation—

"**licence year**" means the period from the date of expiry of licences in one year to the date of expiry of licences in the next year.

*(Transitional provision from Regulation No. 128 of 1993, reg. 9)*

9. (1) A licence renewal fee prescribed by schedule 2 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 8, 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 year that commenced before the commencement of these regulations.

(3) In this regulation—

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

*(Transitional provision from Regulation No. 94 of 1994, reg. 4)*

4. (1) A licence renewal fee prescribed by schedule 2 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 schedule 2 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 November in any year.

*(Transitional provision from Regulation No. 143 of 1995, reg. 9)*

9. (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) Notwithstanding regulation 8, 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 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. 136 of 1998, reg. 6)*

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

(2) Despite regulation 5, 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 year 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. 139 of 1999, reg. 6)*

6. (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.

*(Transitional provision from Regulation No. 139 of 2000, reg. 5)*

5. (1) A 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 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.

*(Transitional provision from Regulation No. 139 of 2001, reg. 6)*

6. (1) A 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 5, 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 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. 47 of 2002, reg. 35)*

**35. (1) A fee prescribed by Schedule 2 of the principal regulations as varied by this Part applies in relation to a licence period commencing after the commencement of this Part.**

**(2) Despite regulation 34, a fee prescribed by Schedule 2 of the principal regulations as in force immediately before the commencement of this Part continues to apply in relation to a licence period that commenced before the commencement of this Part.**

**(3) In this regulation—**

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

#### Legislative History

*(entries in bold type indicate amendments incorporated since the last consolidation)*

<b>Regulation 4(1):</b>	definition of "closed season" varied by 139, 2001, reg. 3 <b>definition of "director" substituted by 47, 2002, reg. 33(a)</b> definition of "licence period" substituted by 136, 1998, reg. 3 definition of "renewal fee" revoked by 252, 2001, reg. 3 definition of "rock lobster" varied by 154, 1994, reg. 3 definition of "SARDI" inserted by 128, 1993, reg. 3 definition of "licence period" inserted by 143, 1995, reg. 3
<b>Regulation 4(2):</b>	<b>varied by 47, 2002, reg. 33(b)</b>
<b>Regulation 4(3)(a):</b>	<b>revoked by 47, 2002, reg. 33(c)</b>
<b>Regulation 4(3):</b>	<b>varied by 47, 2002, reg. 33(d)</b>
Regulation 5(2):	substituted by 162, 1996, reg. 3; varied by 223, 1996, reg. 3(a)
Regulation 5(3):	substituted by 162, 1996, reg. 3; varied by 223, 1996, reg. 3(b)
Regulation 6(2):	varied by 252, 2001, reg. 4
Regulation 7:	varied by 112, 1992, reg. 3; substituted by 143, 1995, reg. 4; 252, 2001, reg. 5
Regulation 8(1):	varied by 143, 1995, reg. 5(a)
Regulation 8(4a):	inserted by 159, 1998, reg. 3
Regulation 8(5):	varied by 128, 1993, reg. 4; 139, 1999, reg. 3
Regulation 8(6):	substituted by 143, 1995, reg. 5(b); 136, 1998, reg. 4
Regulation 8(7):	substituted by 139, 2001, reg. 4
Regulation 8a:	inserted by 112, 1992, reg. 4; substituted by 128, 1993, reg. 5; 143, 1995, reg. 6
Regulation 9(2):	revoked by 252, 2001, reg. 6
Regulation 9(2a):	inserted by 166, 1994, reg. 3; revoked by 252, 2001, reg. 6
Regulation 9(5)(c):	revoked by 112, 1992, reg. 5
Regulation 10(2):	varied by 159, 1998, reg. 4

Regulation 14(1):	varied by 112, 1992, reg. 6; 166, 1994, reg. 4(a); 159, 1998, reg. 5; 139, 1999, reg. 4
Regulation 14(3):	inserted by 166, 1994, reg. 4(b)
Regulation 14A:	inserted by 166, 1994, reg. 5
Regulation 14A(1):	definition of "rock lobster quota" varied by 143, 1995, reg. 7(a) definition of "licence year" revoked by 143, 1995, reg. 7(b) definition of "unit value" varied by 143, 1995, reg. 7(c)
Regulation 14A(2):	varied by 143, 1995, reg. 7(d)-(h)
Regulation 14A(3):	varied by 143, 1995, reg. 7(i), (j)
Regulation 14B:	inserted by 139, 2000, reg. 3; substituted by 259, 2001, reg. 3
Regulation 15(1):	varied by 112, 1992, reg. 7; 128, 1993, reg. 6
Regulation 16:	varied by 128, 1993, reg. 7
Schedule 1:	varied by 154, 1994, reg. 4; 162, 1996, reg. 4
<b>Schedule 2:</b>	substituted by 112, 1992, reg. 8; 128, 1993, reg. 8; 94, 1994, reg. 3; <b>varied by</b> 175, 1994, reg. 3; 143, 1995, reg. 8; 156, 1996, reg. 3; 127, 1997, reg. 3; 136, 1998, reg. 5; 139, 1999, reg. 5; 139, 2000, reg. 4; 139, 2001, reg. 5; 259, 2001, reg. 4; <b>47, 2002, reg. 34</b>
Schedule 4:	revoked by 112, 1992, reg. 9; inserted by 259, 2001, reg. 5

**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.*