

South Australia

## Fisheries (Vessel Monitoring Scheme) Regulations 2003

under the *Fisheries Act 1982*

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### Contents

- 1 Short title
- 3 Interpretation
- 4 Requirement to install VMS unit
- 5 Requirement to ensure operation of VMS unit during fishing season
- 6 Approval for VMS unit to be switched off or placed in sleep mode
- 7 Requirement to test and confirm operation of VMS unit following servicing or repairing of boat
- 8 Power of Director to require modification or replacement of VMS unit
- 9 VMS unit not to be installed, serviced, repaired etc except by approved installer
- 10 Requirement to ensure alternative means of communication with boat
- 11 Power of Director to require manual reporting of vessel data etc
- 12 Requirement to comply with directions

Legislative history

Appendix—Divisional penalties and expiation fees

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### 1—Short title

These regulations may be cited as the *Fisheries (Vessel Monitoring Scheme) Regulations 2003*.

### 3—Interpretation

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

*Act* means the *Fisheries Act 1982*;

*approved* means approved by the Director under these regulations;

*fishing season*—

- (a) in relation to the Marine Scalefish Fishery—means the period commencing on 1 January in any year and ending on 31 December in the same year;
- (b) in relation to the Miscellaneous Fishery—means the period commencing on 1 October in any year and ending on 31 May in the following year;
- (c) in relation to the Northern Zone Rock Lobster Fishery—means the period commencing on 1 November in any year and ending on 31 May in the following year;

*Inmarsat-C* means the Inmarsat-C satellite system;

**operating**, in relation to a VMS unit fitted to a boat, means that the unit is capable of—

- (a) transmitting the geographical position and course of the boat as required; and
- (b) receiving and accurately responding to electronic data;

**prescribed fishing activity**—

- (a) in relation to a licence in respect of the Marine Scalefish Fishery—means the taking of pilchards in coastal waters for the purpose of trade or business;
- (b) in relation to a licence in respect of the Miscellaneous Fishery—means the taking of giant crab in a giant crab fishing zone for the purpose of trade or business;
- (c) in relation to a licence in respect of the Northern Zone Rock Lobster Fishery—means the taking of rock lobster in the Northern Zone for the purpose of trade or business;

**registered boat** means—

- (a) a registered boat used pursuant to a licence in respect of the Marine Scalefish Fishery endorsed with a condition fixing a pilchard quota on the licence; or
- (b) a registered boat used pursuant to a licence in respect of the Miscellaneous Fishery endorsed with a condition fixing a giant crab quota on the licence; or
- (c) a registered boat used pursuant to a licence in respect of the Northern Zone Rock Lobster Fishery;

**satellite communication system** means a communication system designed for receiving and transmitting data via satellites and earth stations;

**sleep mode**, in relation to a VMS unit, means a standby mode in which the unit is only capable of operating at specified intervals;

**system**, in relation to a vessel monitoring system, includes component subsystems of—

- (a) power supply; and
- (b) communication hardware and software located at base stations and fitted on boats; and
- (c) communication service provider;

**vessel monitoring system** or **VMS** means a navigational measuring system that—

- (a) determines the geographical position and course of a boat; and
- (b) is capable of transmitting that information via a satellite communication system;

**VMS administrator** means the person for the time being designated by the Director by notice published in the Gazette as the VMS administrator for the purposes of these regulations;

**VMS unit** means that component of a vessel monitoring system known as an automatic location communicator.

- (2) Unless the contrary intention appears—
- (a) terms used in these regulations that are defined in the *Fisheries (Scheme of Management—Marine Scalefish Fisheries) Regulations 1991* have the same respective meanings as in those regulations;
  - (b) terms used in these regulations that are defined in the *Fisheries (Scheme of Management—Miscellaneous Fishery) Regulations 2000* have the same respective meanings as in those regulations;
  - (c) terms used in these regulations that are defined in the *Fisheries (Scheme of Management—Rock Lobster Fisheries) Regulations 1991* have the same respective meanings as in those regulations.
- (2a) In these regulations, a reference to using a boat for the purpose of engaging in a prescribed fishing activity includes a reference to using a boat for the purpose of engaging in an act preparatory to, or involved in, a prescribed fishing activity.
- (3) The Director may, by notice published in the Gazette, approve or revoke an approval of—
- (a) a VMS unit; or
  - (b) a person as an installer of approved VMS units,
- for the purposes of these regulations.

#### **4—Requirement to install VMS unit**

- (1) The registered owner of a registered boat must ensure that the boat is fitted with an approved VMS unit installed by an approved installer.  
Penalty: Division 6 fine.  
Expiation fee: Division 6 fee.
- (2) If a registered boat to which an approved VMS unit is fitted is used to take pilchards pursuant to a licence in respect of the Marine Scalefish Fishery endorsed with a condition fixing a pilchard quota on the licence, the registered owner of the boat must ensure that a personal computer or data terminal capable of sending and receiving e-mail via Inmarsat-C is connected to the VMS unit.  
Penalty: Division 6 fine.  
Expiation fee: Division 6 fee.
- (3) This regulation does not apply in relation to a registered boat that is only used for 1 or both of the following purposes:
- (a) the transportation of persons, fish or devices to or from another registered boat;
  - (b) the setting of pilchard nets.

#### **5—Requirement to ensure operation of VMS unit during fishing season**

- (1) The registered owner of a registered boat to which an approved VMS unit is fitted must ensure that the VMS unit is operating at all times during a fishing season.  
Penalty: Division 6 fine.  
Expiation fee: Division 6 fee.

- (1a) If a personal computer or data terminal is connected to a VMS unit fitted to a registered boat, the registered owner of the boat must ensure that, at all times while the VMS unit is in operation, the personal computer or data terminal is operating and able to send and receive e-mail via Inmarsat-C.
- Penalty: Division 6 fine.
- Expiation fee: Division 6 fee.
- (2) The registered owner of the registered boat must take reasonable measures to ensure that, if the VMS unit, or a personal computer or data terminal connected to the VMS unit, ceases to operate, he or she is made aware of that fact.
- Penalty: Division 6 fine.
- Expiation fee: Division 6 fee.
- (3) The registered owner of the registered boat must, immediately after becoming aware that the VMS unit has ceased to operate, notify the Director of that fact.
- Penalty: Division 6 fine.
- Expiation fee: Division 6 fee.
- (4) This regulation does not apply to the registered owner of the registered boat while there is in force an approval under regulation 6 for the VMS unit to be switched off or in sleep mode.

#### **6—Approval for VMS unit to be switched off or placed in sleep mode**

- (1) The registered owner of a registered boat to which an approved VMS unit is fitted may, with the written approval of the Director, cease to operate the VMS unit by switching off the VMS unit or placing the VMS unit in sleep mode.
- (1a) If a VMS unit is switched off or placed in sleep mode under subregulation (1), a personal computer or data terminal connected to the VMS unit may be switched off.
- (2) An approval under this regulation—
- (a) is subject to—
- (i) a condition that the registered owner of the registered boat must not, while the VMS unit is switched off or in sleep mode, use the boat for the purpose of engaging in a prescribed fishing activity; and
- (ii) such other conditions (if any) as are specified in the approval; and
- (b) expires at the end of the period specified in the approval.
- (3) If a condition of an approval under this regulation is contravened or not complied with, the registered owner of the registered boat is guilty of an offence.
- Penalty: Division 6 fine.
- Expiation fee: Division 6 fee.
- (4) If a condition of an approval under this regulation is contravened or not complied with, the Director may, by notice given to the registered owner of the registered boat, revoke the approval.
- (5) Notice of the revocation of an approval may be given in any manner that the Director considers appropriate (but must, if not given in writing, be confirmed in writing).

- (6) If the VMS unit fitted to a registered boat has been switched off or placed in sleep mode, the registered owner of the boat must, before using the boat for the purpose of engaging in a prescribed fishing activity, ensure that—
- (a) the VMS unit has been switched on; and
  - (b) the operation of the VMS unit has been tested; and
  - (c) the VMS administrator has confirmed that the VMS unit is operating.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

- (7) If—
- (a) the VMS unit fitted to a registered boat has been switched off or placed in sleep mode; and
  - (b) a personal computer or data terminal connected to the VMS unit has been switched off,

the registered owner of the boat must, before using the boat for the purpose of engaging in a prescribed fishing activity, ensure that—

- (c) the personal computer or data terminal is switched on; and
- (d) the ability of the personal computer or data terminal to send and receive e-mail via Inmarsat-C has been tested; and
- (e) the VMS administrator has confirmed that the personal computer or data terminal is able to send and receive e-mail via Inmarsat-C.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

### **7—Requirement to test and confirm operation of VMS unit following servicing or repairing of boat**

If a registered boat to which an approved VMS unit is fitted undergoes servicing or repairs while the VMS unit is switched on, the registered owner of the boat must, before using the boat for the purpose of engaging in a prescribed fishing activity, ensure that—

- (a) the operation of the VMS unit has been tested; and
- (b) the VMS administrator has confirmed that the VMS unit is operating.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

### **8—Power of Director to require modification or replacement of VMS unit**

- (1) The Director may, by notice in writing given to the registered owner of a registered boat to which an approved VMS unit is fitted, require the registered owner to modify or replace the VMS unit within a specified period (being a period that is not less than 90 days from the date on which the notice is given).

- (2) The registered owner of a registered boat to whom a notice is given under subregulation (1) must not fail to comply with the requirements of the notice.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

### **9—VMS unit not to be installed, serviced, repaired etc except by approved installer**

- (1) A person other than an approved installer must not—
- (a) install a VMS unit on a registered boat; or
  - (b) attach a seal to a VMS unit fitted to a registered boat; or
  - (c) service or repair a VMS unit fitted to a registered boat; or
  - (d) remove or interfere with—
    - (i) a VMS unit fitted to a registered boat; or
    - (ii) a seal on a VMS unit fitted to a registered boat.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

- (2) If subregulation (1) is contravened, the registered owner of the registered boat is guilty of an offence unless he or she proves that the contravention did not result from any failure on his or her part to take all reasonable and practicable measures to prevent the contravention.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

- (3) The Director, a fisheries officer or the VMS administrator may give directions with respect to the testing, servicing or repair of an approved VMS unit fitted to a registered boat to an approved installer or to the registered master or registered owner of the boat.
- (4) Subregulation (1) does not apply in relation to anything done in compliance with a direction given by the Director, a fisheries officer or the VMS administrator under this regulation.

### **10—Requirement to ensure alternative means of communication with boat**

- (1) The registered owner of a registered boat to which an approved VMS unit is fitted must ensure that—
- (a) there is on the boat a radio, telephone or other means of instantaneous electronic communication (*alternative means of communication*) capable of providing communication between the boat's crew and a fisheries officer or the VMS administrator at all times during a fishing season; and
  - (b) the Director is notified in writing of the call sign or other identifier that enables the boat's crew to be contacted by the alternative means of communication on the boat; and

- (c) the Director is provided in writing with the name and contact details of a person (the *nominated contact person*) that the Director may contact if the Director has reason to believe that the VMS unit has ceased to operate or that the boat's crew cannot be contacted directly by a fisheries officer or the VMS administrator; and
- (d) the alternative means of communication on the boat is operating at all times during a fishing season; and
- (e) any direction given by a fisheries officer or the VMS administrator in respect of the alternative means of communication on the boat is complied with.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

- (2) The registered owner of the registered boat must, within 14 days of any change in the name or contact details of the nominated contact person, notify the Director in writing of the new name or contact details, as the case may require.

Penalty: Division 10 fine.

Expiation fee: Division 10 fee.

- (3) If—

- (a) the VMS administrator has reason to believe that a VMS unit fitted to a registered boat has ceased to operate; and
- (b) the VMS administrator is unable to contact the boat's crew,

the VMS administrator may notify the nominated contact person that the VMS unit is not operating.

- (4) If the VMS administrator notifies the nominated contact person for a registered boat that the VMS unit fitted to the boat is not operating, the person must immediately inform the registered master of the boat by the alternative means of communication on the boat that the VMS unit is not operating.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

- (5) It is a defence in proceedings for an offence against subregulation (4) for the defendant to prove that communication using the alternative means of communication on a boat was not able to be carried out because of a systems failure beyond the control of any person.

## **11—Power of Director to require manual reporting of vessel data etc**

- (1) If the Director is notified or becomes aware that the VMS unit fitted to a registered boat has ceased to operate, the Director may give the registered owner or registered master of the boat such directions as the Director considers necessary to ensure that the activities of the boat are able to be monitored.
- (2) Without limiting subregulation (1), the directions may include directions—
  - (a) requiring the geographical position and course of the boat to be notified to a fisheries officer at specified intervals during a specified period by the alternative means of communication on the boat;
  - (b) requiring the boat to be moved to a specified port.

- (3) Directions given under this regulation may be given in such manner as the Director considers appropriate (but must, if not given in writing, be confirmed in writing).

**12—Requirement to comply with directions**

A person must not, without reasonable excuse, fail to comply with any directions given to the person by the Director, a fisheries officer or the VMS administrator under these regulations.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2003	220	<i>Gazette 30.10.2003 p3947</i>	30.10.2003: r 2
2005	206	<i>Gazette 29.9.2005 p3550</i>	1.10.2005: r 2
<b>2005</b>	<b>218</b>	<b><i>Gazette 20.10.2005 p3749</i></b>	<b>20.10.2005: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under the Legislation Revision and Publication Act 2002</i>	<i>1.10.2005</i>
r 3		
r 3(1)		
fishing season	substituted by 206/2005 r 4(1)	1.10.2005
Inmarsat-C	inserted by 206/2005 r 4(1)	1.10.2005
prescribed fishing activity	substituted by 206/2005 r 4(2)	1.10.2005
registered boat	substituted by 206/2005 r 4(2)	1.10.2005
r 3(2)	substituted by 206/2005 r 4(3)	1.10.2005
r 3(2a)	inserted by 206/2005 r 4(3)	1.10.2005
r 4		
r 4(1)	r 4 redesignated as r 4(1) by 206/2005 r 5	1.10.2005
r 4(2)	inserted by 206/2005 r 5	1.10.2005
<b>r 4(3)</b>	<b>inserted by 218/2005 r 4</b>	<b>20.10.2005</b>
r 5		
r 5(1a)	inserted by 206/2005 r 6(1)	1.10.2005
r 5(2)	varied by 206/2005 r 6(2)	1.10.2005
r 6		

r 6(1a)	inserted by 206/2005 r 7(1)	1.10.2005
r 6(7)	inserted by 206/2005 r 7(2)	1.10.2005

## Historical versions

1.10.2005

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version 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.*