

South Australia

**SCHEME OF MANAGEMENT (MISCELLANEOUS FISHERY)
REGULATIONS 2000**

REGULATIONS UNDER THE FISHERIES ACT 1982

Scheme of Management (Miscellaneous Fishery) Regulations 2000

being

No. 221 of 2000: *Gaz.* 31 August 2000, p. 1222¹

¹ Came into operation 1 September 2000: reg. 2.

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Citation

1. These regulations may be cited as the *Scheme of Management (Miscellaneous Fishery) Regulations 2000*.

Commencement

2. These regulations will come into operation on 1 September 2000.

Revocation

3. The *Scheme of Management (Miscellaneous Fishery) Regulations 1984* (see *Gazette* 14 June 1984 p. 1686), as varied, are revoked.

Interpretation

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

"Act" means the *Fisheries Act 1982*;

"director", in relation to a body corporate, has the same meaning as in the *Corporations Law*;

"fishery" means the Miscellaneous Fishery constituted by these regulations;

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

"revoked regulations" means the regulations revoked by regulation 3;

"SARDI" means the South Australian Research and Development Institute.

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

(a) they are partners; or

(b) they are parties to a contract, arrangement or understanding, the purpose or effect of which is that one will act at the direction of, or in accordance with the wishes or instructions of, another when, for the purpose of trade or business, he or she engages or refrains from engaging in a fishing activity of a class that constitutes a fishery; or

(c) one is a body corporate and the other is a director or secretary of, or the holder of a share in, that body corporate; or

(d) they are bodies corporate that are related to each other for the purposes of the *Corporations Law*; or

(e) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or

(f) a chain of relationships can be traced between them under one or more of the above paragraphs.

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(3) For the purposes of these regulations—

(a) 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

(b) a person has a relevant interest in a share in a body corporate if the person has a relevant interest in the share for the purposes of the *Corporations Law*.

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

Constitution of the fishery

5. (1) The Miscellaneous Fishery is constituted.

(2) The Miscellaneous Fishery consists of the taking of fish specified in Schedule 1 in the waters of the State.

Issue of licences

6. (1) 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.

(2) If—

(a) the Director considers that it would not be detrimental to the living resources of the waters of the fishery to issue an additional licence in respect of the fishery; or

(b) a licence that was in force in respect of the fishery has ceased to be held by any person,

the Director may make a call for applications in respect of that licence in accordance with the competitive tender procedure prescribed by Schedule 2.

(3) If a person who is a successful applicant at a tender conducted in accordance with the procedure prescribed by Schedule 2—

(a) fails to make an application for the licence in respect of which he or she was a successful applicant; or

(b) having made an application for that licence, the licence is for any reason not granted,

the Director must call for applications in respect of that licence in accordance with the competitive tender procedure prescribed by Schedule 2.

(4) An application for a licence in respect of the fishery must—

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

(b) contain the information specified in Schedule 3; and

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(c) be signed by the applicant.

(5) Before granting a licence in respect of the fishery the Director must be satisfied of the following matters:

(a) that the applicant—

(i) is a natural person of at least 15 years of age; and

(ii) does not already hold a licence in respect of the fishery or any other fishery; and

(iii) is not an associate of a person who holds such a licence; and

(iv) was a successful applicant for the licence at a tender conducted in accordance with the procedure prescribed by Schedule 2;

(b) that no conviction for an offence involving a breach of any legislation relating to fishing has, within the period of three years preceding the date of the application, been recorded in the State or elsewhere in Australia against the applicant;

(c) 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 applicant.

(6) The Director may not grant a licence in respect of the fishery unless the applicant has paid—

(a) the licence fee specified in Schedule 4 less \$90; or

(b) the first instalment of the licence fee specified in Schedule 4, in accordance with subregulation (7).

(7) A licence fee payable in respect of a licence for a term of more than three months may be paid by instalments as follows:

(a) in the case of a licence issued for the term of a licence period—by four instalments of 25 per cent payable on or before the date of the grant of the licence and 1 October, 1 January and 1 April following the date of the grant of the licence;

(b) in any other case—by instalments of such amounts, and payable on such dates, as are fixed by the Director.

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

(9) If—

(a) an instalment of a licence fee is not paid in full on or before the due date; or

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- (b) an additional fee is required to be paid for late payment of an instalment of a licence fee,

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

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

Expiry of licences

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

Renewal of licences

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

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

(a) be made by the holder of the licence or, if the licence has expired, by the person who last held the licence; and

(b) be made in writing in a form approved by the Director and signed by the applicant.

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

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

(a) —

(i) the renewal fee specified in Schedule 4 less \$90; or

(ii) the first instalment of the renewal fee specified in Schedule 4, in accordance with subregulation (6); and

(b) the amount of any licence fee or previous renewal fee remaining payable in respect of the licence, together with any additional fee payable for late payment of an instalment of the licence fee or renewal fee.

(6) If 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 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 fee not exceeding 10 per cent of the amount of any instalment not paid in full within 21 days after the instalment became payable.

(8) If—

- (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 fee is required to be paid for late payment of an instalment of a renewal fee,

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

Refund on surrender of licence

9. If 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 licence or 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.

Power of Director to limit fishing activities

10. The Director may impose conditions on a licence in respect of the fishery limiting the class of fishing activities that may be engaged in pursuant to the licence.

Individual giant crab quota system

11. (1) This regulation applies only in relation to licences in respect of the fishery that authorise the taking of giant crabs by use of rock lobster pots.

(2) In this regulation—

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

"**giant crab quota**", in relation to a licence in respect of the 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—

- (a) the unit entitlement of that licence; and
- (b) 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;

"**rock lobster pot**" has the same meaning as in the *Fisheries (General) Regulations 2000*;

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

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

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

- (a) all licences in respect of the fishery must be allocated numbers of giant crab units to be determined by the Director having regard to—
 - (i) the respective number of rock lobster pots that the holders of the licences are permitted to use pursuant to the licences to take giant crab; and
 - (ii) the respective quantities of giant crab taken pursuant to the licences during a period determined by the Director (as recorded on returns lodged under regulation 16 or the corresponding regulation previously in force);
- (b) 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 the fishery and the licence period;
- (c) 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;
- (d) the Director may, if the total giant crab catch taken pursuant to a licence 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) where 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) where the catch exceeded the quota by more than 20 kilograms but not more than 50 kilograms of giant crab—by two kilograms for each kilogram in excess of the quota;
- (e) any variation of—
 - (i) a unit entitlement made pursuant to paragraph (c); or
 - (ii) a giant crab quota made pursuant to paragraph (d),must be expressed to apply only for the licence period during which the variation is made;
- (f) unit entitlements and giant crab quotas must not be varied except as provided by this regulation.

(4) If—

- (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 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.

Registration of boats

12. (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 an application for registration of a boat the Director must be satisfied that the applicant is the holder of a licence in respect of the fishery.

Registration as master

13. (1) 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.

(2) 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

14. (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 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.

Fishing activities on the shore

15. 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 person remain, while so engaged, within 700 metres of each other; or
- (b) more than two 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.

Maximum penalty: \$2 500.

Furnishing of returns

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

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

Maximum penalty: \$2 500.

(2) If 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.

(3) If the fishery has been closed for a whole calendar month, the holder of a licence need not furnish a return for that month.

Copies of returns must be made

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

- (a) make a copy of each return that he or she fills out pursuant to these regulations before the return is sent or delivered to the Chief Executive Officer of SARDI; and
- (b) retain the copy for the period of one year from the last day of the month to which the return relates.

Maximum penalty: \$2 500.

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SCHEDULE 1

Fish prescribed for the Miscellaneous Fishery

The following fish are specified for the fishery:

All fish other than—

- Abalone of all species (*Haliotis* spp.)
- Southern rock lobster (*Jasus novaehollandiae*)
- Western king prawn (*Penaeus latisulcatus*).

SCHEDULE 2*Competitive tender procedure for issue of licences***Competitive tender procedure**

1. (1) If the Director proposes to call applications for the issue of a licence in respect of the fishery, the Director must cause an advertisement, in a form determined by the Director, to be published in the *Gazette* and in a newspaper circulating generally throughout the State—

- (a) calling for tenders for such number of licences in respect of the fishery as are to be granted; and
- (b) fixing a time and date on which tenders will close (being a date that is at least one month after the publication of the advertisement); and
- (c) requiring each tender to be accompanied by an ADI guarantee equal to 10% of the amount tendered; and
- (d) requiring all tenders to be made in a manner and form approved by the Director.

(2) All tenders must be enclosed in a sealed envelope and forwarded to the office of the Director.

(3) The Director must provide at his or her office a locked box into which all tenders must be deposited.

(4) All tenders deposited in the locked box must remain there until the close of tenders.

(5) A person must not interfere with or remove a tender from the locked box prior to the close of tenders.

Maximum penalty: \$1 250.

(6) At the close of tenders the Director must open the locked box in the presence of two persons appointed by the Director for this purpose.

(7) One of those persons must remove each of the envelopes from the box taking each one singly and at random and, after removing an envelope from the box, that person must open the envelope and hand the contents to the other person.

(8) On receiving the contents of an envelope the other person must prepare a schedule of tenderers containing—

- (a) the name of each tenderer; and
- (b) the amount tendered; and
- (c) the order in which the envelopes containing the tenders were removed from the box.

(9) When all the tenders have been removed from the box and the schedule of tenderers has been completed the Director must examine each tender and the schedule of tenderers.

(10) If one licence in respect of the fishery is to be granted—

- (a) the amount payable for the licence will be an amount equal to the highest amount tendered; and
- (b) the successful applicant will be the person who tenders an amount equal to the highest amount.

(11) If one licence in respect of the fishery is to be granted and more than one person tenders an amount equal to the highest amount—

- (a) one of the persons who tendered an amount equal to the highest amount will be the successful applicant; and
- (c) the successful applicant will be the person whose tender was removed from the box before the tenders of the other persons who tendered an amount equal to the highest amount.

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(12) If more than one licence in respect of the fishery is to be granted and the number of licences to be granted is equal to the number of persons who have tendered an amount equal to or greater than the clearing price, those persons who have tendered an amount equal to or greater than the clearing price will be the successful applicants.

(13) If the number of licences to be granted in respect of the fishery is less than the number of persons who have tendered an amount equal to or greater than the clearing price, the successful applicants will be selected as follows:

- (a) each of the persons who tendered an amount greater than the clearing price will be a successful applicant; and
- (b) the name of the other persons who have tendered an amount equal to the clearing price will be put on a list in the order in which their tender was removed from the box and the successful applicant will be the person whose name appears first on the list; and
- (c) if, after following the procedure specified in paragraph (b), there remains one or more licences to be granted in respect of the fishery, the successful applicant or applicants in respect of that licence or those licences will be the person whose name appears next on the list prepared under paragraph (b) and so on in descending order until a successful applicant has been determined in respect of each licence to be granted.

(14) If more than one licence is to be granted in respect of the fishery the amount payable for that licence will be the clearing price determined by the Director at the close of tenders.

(15) If person makes a tender that is successful but—

- (a) the person fails, within a reasonable time, to make an application for the licence in respect of which his or her tender was accepted; or
- (b) the person makes such an application but for any reason does not accept the licence that the Director is prepared to grant in the person's favour,

the person forfeits an amount equal to 10 per cent of the amount tendered on the Director making a demand on the guarantee referred to in subclause (1).

(16) If a person makes a tender that is not successful, or the tender is successful but the Director is not prepared to grant the licence in the person's favour, the person does not forfeit the amount of 10 per cent of the amount tendered.

(17) In this Schedule—

"**clearing price**" means an amount equal to the lowest amount that, having regard to the number of licences to be granted in respect of the fishery, would have to be tendered by an applicant to enable that applicant to be a successful applicant.

SCHEDULE 3

Information required to be included in application for licence

The following information must be contained in an application for a licence:

1. Full name, date of birth, address (for service, residential and postal) and telephone number of the applicant.
2. Details of any boat to be used by the applicant to take fish including, in respect of each boat:
 - (a) length (where surveyed—surveyed length); and
 - (b) number of current survey certificate; and
 - (c) year of construction; and
 - (d) material of which hull is made; and
 - (e) main colour; and
 - (f) name; and
 - (g) registration number.
3. Details of the number of persons who are to assist the applicant to take fish from the boat or otherwise.
4. Details of the person who is to be the registered master of the boat.
5. Details of any device to be used to take fish.
6. Statements by the applicant as to—
 - (a) whether or not the applicant holds a licence in respect of any fishery; and
 - (b) whether or not the applicant is the associate of a person who holds a licence in respect of any fishery; and
 - (c) whether or not the applicant is a party to a contract, arrangement or understanding, the purpose or effect of which is that the applicant will act at the direction of, or in accordance with, the wishes or instruction of another in relation to the applicant's activities pursuant to the licence; and
 - (d) whether or not the applicant 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 applicant 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 applicant.
7. Details in respect of any of the statements made by the applicant in respect of the matters referred to in clause 6.

SCHEDULE 4

Fees

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

- (a) on application for the issue or renewal of a licence in respect of the fishery—
 - (i) in the case of a licence for the term of the licence period \$3 183
 - (ii) in the case of a licence for a term of less than the term of the licence period—a proportion of the fee specified in subparagraph (i), being the proportion that the number of months (part of a month being treated as a whole month) in the term of the licence bears to the number of months in the licence period;
- (b) on application under regulation 11 by the holder of a licence in respect of the fishery to vary a condition of the licence so as to decrease the unit entitlement of the licence in respect of giant crab and increase the unit entitlement under one or more other licences—\$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.