



New South Wales

Fisheries Management (General) Amendment (Abalone, Sea Urchin and Turban Shell) Regulation 1999

under the
Fisheries Management Act 1994

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

Bob Martin
Minister for Fisheries

Explanatory note

The object of this Regulation is to make further provision with respect to:

- (a) the limited access stage of the abalone share management fishery, and
- (b) the sea urchin and turban shell restricted fishery.

Previously, abalone, sea urchin and turban shell (sometimes called “turban snail”) were a restricted fishery. Abalone is now a share management fishery under Schedule 1 to the Act and ceased to be a restricted fishery when limited access to the share management fishery commenced. Sea urchin and turban shell continued to be a restricted fishery.

Schedule 1 to this Regulation provides for the limited access stage of the abalone share management fishery. This includes provision for transfers of shares, special licence conditions for shareholders and endorsement holders, endorsement fees, quota and quota transfers.

Schedule 2 to this Regulation replaces the obsolete abalone, sea urchin and turban shell restricted fishery provisions (ie obsolete because abalone is no longer a restricted fishery). The Regulation provides for the continuation of

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the sea urchin and turban shell restricted fishery and for endorsements in the fishery, nominated fishers, special licence conditions, quota, quota transfers and other matters.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 40, 71 (5), 111, 113, 116 and 289 (the general regulation-making power).

Fisheries Management (General) Amendment (Abalone, Sea Urchin and Turban Shell) Regulation 1999

1 Name of Regulation

This Regulation is the *Fisheries Management (General) Amendment (Abalone, Sea Urchin and Turban Shell) Regulation 1999*.

2 Amendment of Fisheries Management (General) Regulation 1995

The *Fisheries Management (General) Regulation 1995* is amended as set out in Schedules 1 and 2.

3 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments relating to abalone

(Clause 2)

[1] Clause 130A Endorsement fees—abalone, sea urchin and turban shell

Omit the clause.

[2] Clause 132 Transfers and other dealings in shares—general

Insert after clause 132 (1):

(1A) In addition, in the case of shares in the abalone share management fishery:

(a) the transferee must be a person who satisfies the Director that:

(i) he or she does not already hold shares in the fishery, and

(ii) he or she does not have any interest in any body corporate or trust that holds shares in the fishery, such as by being a shareholder in, or director of, the body corporate or a beneficiary of the trust, and

(b) the transferee must acquire the whole of the shareholder's restricted fishery fishing business (ie the fishing business that is determined by the Director to be associated with the taking of sea urchin or turban shell (or both) for sale by the shareholder).

[3] Part 6, Division 3

Insert after Division 2 of Part 6:

Division 3 Abalone share management fishery—limited access stage

134I Application of Division

This Division applies to the abalone fishery but only while it is a limited access fishery (within the meaning of section 54 of the Act).

134J Definitions

In this Division:

abalone fishery means the abalone share management fishery specified in Schedule 1 to the Act.

quota means the maximum quantity of abalone that may be taken for sale by or on behalf of a shareholder during any period, as determined by the Director pursuant to clause 134L.

shareholder means a holder of shares in the abalone fishery.

Note. This Division deals with the limited access stage of the abalone share management fishery. Formerly, abalone was a restricted fishery. Section 55 of the Act provides that a share management fishery that is also a restricted fishery ceases to be a restricted fishery on the commencement of limited access to the share management fishery. Further, an endorsement of a commercial fishing licence to take abalone in the restricted fishery becomes, on the fishery ceasing to be a restricted fishery, an endorsement under Part 3 of the Act to take abalone in the share management fishery.

The Minister may give an endorsement to a shareholder or to a person duly nominated in the Share Register by the shareholder to take fish in the abalone fishery on behalf of the shareholder. Section 68 of the Act provides that an application for endorsement is to be made in a form and manner approved by the Minister. An endorsement remains in force, unless sooner suspended or cancelled, for a specified fishing period. Until the commencement of the management plan for the fishery, this period is to be determined by the Minister. Until the plan commences, the Minister may also determine the reasons for which an endorsement may be suspended or cancelled.

134K Endorsement fee

- (1) For the purposes of section 68 (5) of the Act, the prescribed fee in respect of an endorsement that authorises a commercial fisher to take abalone in the abalone share management fishery is \$22,000 in respect of each period, or further period, of 12 months in respect of which the endorsement is given.

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- (2) If the endorsement is given for a period of less than 12 months, the prescribed fee is an appropriate proportion of \$22,000 (that is, the proportion that the period for which the endorsement is given bears to the period of 12 months).
- (3) The Director may approve the payment of the fee by instalments in accordance with guidelines approved from time to time by the Director.
- (4) An approval may require interest to be paid on late instalments, at a rate not exceeding the rate payable on judgments of the Supreme Court.
- (5) If a person fails to pay an instalment on or before the due date, the total amount of all instalments unpaid on that date, together with any interest, becomes due and payable.

Note. Section 76 of the Act also provides for the payment of management charges by shareholders. The Minister may determine what management charges are payable by shareholders and may authorise the payment of management charges by instalment.

134L Quotas for abalone

- (1) The Director may from time to time determine the maximum quantity of abalone that may be taken in the abalone fishery by or on behalf of a shareholder during a particular period.
- (2) The Director is to give written notice of such a quota determination to the shareholder concerned and to any person who holds a licence that is endorsed under Part 3 of the Act for the taking of abalone in the fishery on behalf of the shareholder.
- (3) Quotas are to be determined for shareholders in proportion to their shareholdings in the abalone fishery.
- (4) However, subclause (3) does not prevent the Director from adjusting the quota of a shareholder in an appropriate manner to take account of the shareholder

having exceeded his or her quota in a previous period or to take account of any mistake in the calculation of quota in a previous period.

- (5) If an adjustment results in a shareholder's quota being reduced, the amount by which it is so reduced is not to be allocated to another shareholder.
- (6) A quota (or any unused part of it) may not be carried over from one period to another.
- (7) For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that is endorsed under Part 3 of the Act for the taking of abalone in the abalone fishery that the licensee (whether or not a shareholder) does not cause the quota of a shareholder to be exceeded.
- (8) Such a condition has effect on and from the date notice in writing of the quota of the shareholder is served on the shareholder or, if the shareholder has duly nominated a commercial fisher to take abalone in the abalone fishery on the shareholder's behalf, on the person so nominated.

134M Transfer of quota

- (1) A quota for a period (or any part of it) is transferable within that period, but only with the approval of the Director.
- (2) An application for the Director's approval:
 - (a) is to be made to the Director, in a form approved by the Director, and
 - (b) is to specify the amount of quota to be transferred, and
 - (c) is to be accompanied by a fee of \$125.
- (3) Quota may be transferred only in 100 kilogram lots, unless otherwise approved by the Director.
- (4) The Director may transfer the quota or refuse to transfer the quota.

- (5) Without limiting subclause (4), the Director may refuse to transfer the quota (or any part of the quota) of a shareholder whose endorsement for the taking of abalone in the abalone fishery is suspended or cancelled.
- (6) A transfer of quota takes effect when the Director gives notice in writing of his or her approval of the transfer to the shareholders whose quotas are affected.
- (7) The Director must also give notice in writing of the transfer to any person who has been duly nominated to take abalone in the abalone fishery on behalf of either of the shareholders whose quotas are affected.
- (8) The conditions of a commercial fishing licence that is endorsed under Part 3 of the Act for the taking of abalone in the abalone fishery are taken to be amended in accordance with a transfer of quota approved under this clause, with effect on and from the date notice of the approved transfer is served on the licensee.

134N Special licence conditions for shareholders who nominate fishers

For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that the licensee, if he or she is a shareholder who has duly nominated another commercial fisher to take abalone in the abalone fishery on the shareholder's behalf:

- (a) must not assist, encourage or permit that other commercial fisher to contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence in connection with the taking of abalone in the abalone fishery, and
- (b) must take all reasonable steps to ensure that the other commercial fisher does not contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence in connection with the taking of abalone in the abalone fishery.

[4] Clause 138, note

Omit the note from clause 138. Insert instead:

Note. Additional licence conditions apply to endorsement holders in share management fisheries and in restricted fisheries (see Part 6 and Part 8).

Schedule 2 Amendments relating to sea urchin and turban shell

(Clause 2)

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

sea urchin and turban shell restricted fishery means the restricted fishery declared under Division 1 of Part 8.

[2] Clause 135 Who may hold commercial fishing licence

Insert before clause 135 (1) (e):

- (d) an individual who satisfies the Minister that he or she is eligible for an endorsement in the sea urchin and turban shell restricted fishery,

[3] Part 8, Division 1

Omit the Division. Insert instead:

Division 8 Sea urchin and turbanshell 160 Definitions

In this Division:

endorsement means an endorsement on a commercial fishing licence that authorises the holder of the licence to take sea urchin or turban shell (or both) for sale.

endorsement holder means the holder of a commercial fishing licence that has an endorsement.

entitlement holder means a person who is eligible for an endorsement in the fishery as provided for by clause 163 or 164, but does not include any person who is eligible for an endorsement only because the person is the nominated fisher of another person.

nominated fisher means a person duly nominated by a person to take sea urchin or turban shell (or both) for sale on behalf of the person.

quota means the maximum quantity of sea urchin and turban shell that may be taken for sale by or on behalf of an entitlement holder during any period, as determined by the Director pursuant to clause 171.

restricted fishery means the restricted fishery declared under this Division.

161 Sea urchin and turban shell are a restricted fishery

For the purposes of section 111 of the Act, sea urchin and turban shell are declared to be a restricted fishery.

162 Types of endorsement in restricted fishery

The following classes of endorsement are available in the restricted fishery:

- **Sea urchin endorsement.** This endorsement authorises the holder to take sea urchin for sale.
- **Turban shell endorsement.** This endorsement authorises the holder to take turban shell for sale.

163 Eligibility for endorsements

- (1) Eligibility for an endorsement in the restricted fishery is as follows:
 - (a) A person who holds shares in the abalone share management fishery at the relevant date is eligible for both a sea urchin endorsement and a turban shell endorsement.
 - (b) A person who acquires, after the relevant date, a restricted fishery fishing business is eligible for an endorsement of the type determined by the Minister to be relevant to the operation of that fishing business (that is, a sea urchin endorsement).

a turban shell endorsement or both), but only if the Minister is satisfied that the person has acquired the fishing business:

- (i) in accordance with guidelines relating to the transfer of fishing businesses issued from time to time by the Director, or
- (ii) in connection with a transfer of shares in the abalone share management fishery that is allowed by clause 132 or by the management plan for that fishery.

Note. Abalone, sea urchin and turban shell were initially a restricted fishery. The fishery was later split into the abalone fishery (which became a share management fishery) and the sea urchin and turban shell fishery (which continued to be a restricted fishery).

- (2) Only one person is eligible for an endorsement in respect of each shareholding or fishing business. That is, it does not matter that a shareholding or a fishing business is owned by more than one person, only one of them (being a person designated by the owners or, in the absence of such a designation, by the Director) is eligible for an endorsement.
- (3) If a person referred to in subclause (1) sells or otherwise disposes of any part of a restricted fishery fishing business, the person ceases to be eligible for an endorsement of the type or types determined by the Minister to be relevant to the operation of that fishing business.

Note. Clause 132 requires a person who transfers shares in the abalone share management fishery to another person to also transfer his or her restricted fishery fishing business to that other person.

- (4) In this clause:

relevant date means the date of commencement of Schedule 2 to the *Fisheries Management (General) Amendment (Abalone, Sea Urchin and Turban Shell) Regulation 1999*.

restricted fishery fishing business means a fishing business that is determined by the Director to be associated with the taking of sea urchin or turban shell (or both) for sale, being a fishing business that, at the relevant date, was owned by a shareholder in the abalone share management fishery.

transfer of shares, includes an assignment or transmittance of shares, but excludes a mortgage.

164 Public tender for issue of further endorsements

- (1) The Minister may, at any time after considering the status of stock levels in the restricted fishery, call for public tenders for the issue of further endorsements in the restricted fishery.
- (2) Notice of the public tender is to be published in the Gazette.
- (3) The conditions of the public tender are to be determined by the Minister and published in the Gazette notice.
- (4) A person is eligible for an endorsement in the restricted fishery if the person is a successful tenderer.

165 Nominated fishers

- (1) An entitlement holder may nominate a person (being a natural person) to take sea urchin or turban shell (or both) for sale on behalf of the entitlement holder.
- (2) The nomination:
 - (a) is to be made in a form approved by the Director, and
 - (b) is to include the written consent of the nominee to the nomination. and
 - (c) is to be accompanied by a fee of \$300.

- (3) No more than one person may be nominated by the entitlement holder to take sea urchin or turban shell (or both) on behalf of the entitlement holder at any one time. If the entitlement holder is eligible for both a sea urchin and a turban shell endorsement, one person must be nominated to take both sea urchin and turban shell on the entitlement holder's behalf.
- (4) A nomination has no effect unless it is approved by the Director. The Director may impose conditions on the grant of such an approval.
- (5) The Director may refuse to approve a nomination if:
 - (a) the nominated fisher has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the nominated fisher has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage of fishing gear or a boat, or
 - (c) the nominated fisher has, in the opinion of the Minister, contravened a condition of his or her commercial fishing licence or of an endorsement on that licence, or
 - (d) the nominated fisher already holds an endorsed licence, or
 - (e) any fee due and payable in connection with the endorsement has not been paid, or
 - (f) the entitlement holder's endorsement or commercial fishing licence is suspended or has been cancelled.
- (6) If the Director approves the nomination, the nominated fisher is eligible for an endorsement (of the same type or types as the entitlement holder).
- (7) Any endorsement held by the entitlement holder is revoked when the nomination takes effect.
- (8) A nomination is to have effect for a period of not less than 4 weeks, unless otherwise approved by the Director.

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- (9) An entitlement holder may, subject to subclause (S), revoke the entitlement holder's nomination of a nominated fisher by notice in writing served on the Director. The nominated fisher then ceases to be eligible for an endorsement under this clause.
- (10) Division 4C of this Part does not apply in respect of the restricted fishery.

Note. Division 4C provides for similar matters to those provided for by this clause, namely, the entitlement of owners of fishing businesses in certain circumstances to nominate fishers to take fish on their behalf.

166 Endorsement of commercial fishing licences

- (1) The Minister may endorse the commercial fishing licence of a person if the person satisfies the eligibility requirements for an endorsement.
- (2) The Minister may refuse to endorse the commercial fishing licence of a person who is otherwise eligible if:
- (a) the person or, if the person is a nominated fisher, the entitlement holder who nominated the person has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the person or, if the person is a nominated fisher, the entitlement holder who nominated the person has, in the opinion of the Minister, contravened a condition of his or her commercial fishing licence or of any endorsement on that licence, or
 - (c) the person or, if the person is a nominated fisher, the entitlement holder who nominated the person has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the person (being an entitlement holder in the fishery) has duly nominated a person to take sea urchin or turban shell (or both) on his or her behalf, or
 - (e) any fee due and payable in connection with the endorsement has not been paid.

- (3) An application for an endorsement is to be made to the Minister in a form approved by the Director.

167 Endorsement of licence for further period

- (1) The Minister may, on application in a form approved by the Director, endorse the commercial fishing licence of a person who has an endorsement (a *current endorsement*) for such further period as the Minister determines.
- (2) The Minister may refuse such an application only if:
- (a) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has, in the opinion of the Minister, contravened a condition of an endorsement or a commercial fishing licence, or
 - (c) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder ceases to be eligible for an endorsement, or
 - (e) the endorsement holder (being an entitlement holder in the fishery) has duly nominated a person to take sea urchin or turban shell (or both) on his or her behalf, or
 - (f) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or

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- (g) any fee due and payable in connection with the endorsement has not been paid.
- (3) If an application is duly made for the endorsement of a commercial fishing licence for a further period before the expiration of the current endorsement, and the application is not granted or refused before the expiration of the current endorsement:
- (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

168 Endorsement fee

- (1) The fee payable for an endorsement in the restricted fishery is as follows:
 - (a) in the case of a sea urchin endorsement—\$400,
 - (b) in the case of a turban shell endorsement—\$200.
- (2) The fee is payable in respect of each period, or further period, of 12 months in respect of which the endorsement is given.
- (3) If the endorsement is given for a period of less than 12 months, the fee payable is an appropriate proportion of the fee referred to in subclause (1) (that is, the proportion that the period for which the licence is endorsed bears to the period of 12 months).
- (4) The Director may approve the payment of the fee by instalments in accordance with guidelines approved from time to time by the Director.
- (5) An approval may require interest to be paid on late instalments, at a rate not exceeding the rate payable on judgments of the Supreme Court.

- (6) If a person fails to pay an instalment on or before the due date, the total amount of all instalments unpaid on that date, together with any interest, becomes due and payable.

169 Suspension and cancellation of endorsements

The Minister may suspend or cancel an endorsement if:

- (a) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has, in the opinion of the Minister, contravened a condition of an endorsement or a commercial fishing licence, or
- (c) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder ceases to be eligible for an endorsement, or
- (e) any fee payable in connection with the endorsement has not been paid.

170 Total allowable catch

- (1) The Minister may, from time to time by notice published in the Gazette, determine a total allowable catch for the restricted fishery in any period.

- (2) This clause does not prevent the Minister from requiring the TAC Committee to determine the total allowable catch for the restricted fishery under section 28 (3) of the Act.

171 Quotas for sea urchin and turban shell

- (1) If there is a total allowable catch for any period, the Director is to determine the maximum quantity of sea urchin and turban shell that may be taken for sale by or on behalf of each entitlement holder during that period.
- (2) The Director is to make that determination by allocating the total allowable catch for the period equally between entitlement holders.
- (3) The Director is to give written notice of the quota determination in respect of an entitlement holder to the entitlement holder and, if the entitlement holder has a nominated fisher, to the nominated fisher.
- (4) For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that is endorsed for the taking of sea urchin or turban shell (or both) in the restricted fishery that the endorsement holder (whether or not an entitlement holder) does not cause the quota of an entitlement holder to be exceeded.

172 Transfer of quota

- (1) A quota for a period (or any part of it) is transferable within that period, but only with the approval of the Director.
- (2) An application for the Director's approval:
 - (a) is to be made to the Director, in a form approved by the Director, and
 - (b) is to specify the amount of quota to be transferred, and
 - (c) is to be accompanied by a fee of \$150.

- (3) The Director may transfer the quota or refuse to transfer the quota.
- (4) Without limiting subclause (3), the Director may refuse to transfer the quota (or any part of the quota) of an entitlement holder whose endorsement is suspended or cancelled.
- (5) A transfer of quota takes effect when the Director gives notice in writing of his or her approval of the transfer to the entitlement holders whose quotas are affected.
- (6) The Director must also give notice in writing of the approval to any nominated fishers of the entitlement holders.
- (7) The conditions of a commercial fishing licence that is endorsed are taken to be amended in accordance with a transfer of quota approved under this clause, with effect on and from the date notice of the approved transfer is served on the licensee.

173 Special licence conditions for licence holders who nominate fishers

For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that the licensee, if he or she has duly nominated another commercial fisher to take sea urchin or turban shell (or both) on his or her behalf:

- (a) must not assist, encourage or permit that commercial fisher to contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence or of an endorsement on that licence in connection with the taking of such sea urchin or turban shell, and
- (b) must take all reasonable steps to ensure that the other commercial fisher does not contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial

fishing licence or of an endorsement on that licence in connection with the taking of sea urchin or turban shell.

173A Savings and transitional

- (1) The restricted fishery declared under this Division is a continuation of, and the same restricted fishery as, the restricted fishery that had effect under this Regulation immediately before the amendment date.
- (2) An endorsement on a commercial fishing licence that authorised the licence holder to take sea urchin and turban shell (or turban snail) for sale, being an endorsement that had effect immediately before the amendment date, is taken, on that date, to be both a sea urchin endorsement and a turban shell endorsement.
- (3) A reference in this Division to an offence or to a contravention of a condition of an endorsement or of a commercial fishing licence includes an offence that was committed, or a contravention that occurred, before the amendment date.
- (4) In this clause:

amendment date means the date of commencement of Schedule 2 to the *Fisheries Management (General) Amendment (Abalone, Sea Urchin and Turban Shell) Regulation 1999*.