



New South Wales

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

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*.

EDWARD OBEID, M.L.C.,

Minister for Fisheries

Explanatory note

The object of this Regulation is to provide for the regulation and management of guided recreational charter fishing in the marine and estuarine charter fishing sector.

The Regulation will require a charter fishing boat that is used for any guided recreational charter fishing that involves any of the following activities to be licensed under the Act:

- (a) estuarine fishing,
- (b) nearshore bottom fishing and sportfishing,
- (c) gamefishing,
- (d) deep sea bottom fishing.

The Regulation sets out eligibility criteria for a charter fishing boat licence, and provides for a panel to review any decision of the Minister to refuse to issue a licence on the basis that the applicant does not meet the eligibility criteria.

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Explanatory note

The Regulation also provides for the establishment of an advisory committee for the marine and estuarine charter fishing sector.

This Regulation is made under the *Fisheries Management Act 1994*, including section 127B, 127C, 127E and section 289 (the general regulation-making power).

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

1 Name of Regulation

This Regulation is the *Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000*.

2 Amendment of Fisheries Management (General) Regulation 1995

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

3 Notes

The explanatory note does not form part of this Regulation.

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats)
Regulation 2000

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

charter fishing boat has the meaning given by section 127A of the Act.

[2] Part 9A

Insert after Part 9:

Part 9A Charter fishing management

Division 1 Preliminary

226A Object

The object of this Part is to provide for the regulation and management of guided recreational charter fishing in the marine and estuarine charter fishing sector.

226B Definitions

(1) In this Part:

Advisory Committee means the Marine and Estuarine Recreational Charter Management Advisory Committee established under this Part.

appointed member of the Advisory Committee means a member of the Advisory Committee appointed by the Minister.

carrying capacity of a boat means the number of crew and passengers that may be carried on the boat in accordance with the certificate of survey for the boat.

certificate of survey of a boat means the certificate of survey issued by or in accordance with the requirements of the Waterways Authority or another relevant authority approved by the Director.

coastal waters means ocean waters that are west of the 183 metre isobath.

commencement date means the date of commencement of this Part.

deep sea bottom fishing means any recreational fishing activity that involves taking or attempting to take fish in ocean waters, being fish of a species listed in Part 1 of the Table.

estuarine fishing means any recreational fishing activity that involves taking or attempting to take fish from estuarine waters, being fish of a species listed in Part 3 or 4 of the Table.

gamefishing means any recreational fishing activity that involves taking or attempting to take fish in ocean waters, being fish of a species listed in Part 2 or 3 of the Table.

guided recreational charter fishing—see clause 226C.

industry member of the Advisory Committee means a member of the Advisory Committee who is elected by licence holders.

licence means a charter fishing boat licence.

marine and estuarine charter fishing sector—see clause 226D.

nearshore bottom fishing and sportfishing means any recreational fishing activity that involves taking or attempting to take fish in ocean waters, being fish of a species listed in Part 3 or 4 of the Table.

non-industry member of the Advisory Committee means an appointed member of the Advisory Committee, other than an industry member.

Table means the table of fish species set out at the end of this Part.

- (2) A reference in this Part to an activity that involves the taking of fish includes an activity that involves taking, and later releasing, fish.

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats)
Regulation 2000

Schedule 1 Amendments

226C Guided recreational charter fishing—meaning

In this Part, *guided recreational charter fishing* means the use of a boat as a charter fishing boat under an arrangement where a person is provided, for payment or other consideration, to operate the charter fishing boat or to guide or instruct the persons using the boat in fishing operations.

226D Marine and estuarine charter fishing sector—meaning

In this Part, the *marine and estuarine charter fishing sector* means that part of the charter fishing boat industry in which charter fishing boats are used for the purpose of any of the following recreational fishing activities:

- (a) estuarine fishing,
- (b) nearshore bottom fishing and sportfishing,
- (c) gamefishing,
- (d) deep sea bottom fishing.

Division 2 Licences

226E What boats must be licensed?

- (1) For the purposes of section 127B of the Act, it is declared that a charter fishing boat is required to be licensed under Part 4A of the Act if it is used for any guided recreational charter fishing that involves:
 - (a) estuarine fishing, or
 - (b) nearshore bottom fishing and sportfishing, or
 - (c) gamefishing, or
 - (d) deep sea bottom fishing.

Note. There is an exemption for boats used by Lord Howe Island residents in the waters around Lord Howe Island. See Division 6.

- (2) This clause does not take effect until 13 November 2000.

226F Annual licence fee

- (1) The fee for the issue or renewal of a licence is \$375, plus \$75 for each authorised activity specified on the licence, for each year or part of a year for which the licence is issued or renewed.
- (2) In this clause, *authorised activity* means a recreational fishing activity authorised by the Minister as referred to in clause 226P.

Note. Section 127C of the Act provides that an application for a licence may be made by the owner of a boat or a person authorised by the owner (eg a lessee). An application for a licence is to be in a form approved by the Minister.

226G Classes of licence

There are two classes of licence, as follows:

- (a) transferable,
- (b) non-transferable.

226H Eligibility criteria—transferable licence

- (1) A person is eligible for a transferable licence in respect of a boat owned or otherwise under the control of the person if the person satisfies the Minister that:
 - (a) the person is entitled to claim a history of operations in respect of a boat that:
 - (i) was actively used for guided recreational charter fishing activities in the marine and estuarine charter fishing sector before 22 October 1997, and
 - (ii) was actively used for those activities for at least 100 days during any period of 24 consecutive months between 22 October 1995 and 4 August 1999, and
 - (iii) was used in accordance with the requirements of the certificate of survey for the boat at all times during the period in which it was used for those activities, and

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

- (b) the certificate of survey for the boat referred to in paragraph (a) was, at all times during the period in which it was used for those activities, consistent with the type of licence applied for by the person.

Note. 22 October 1997 is the date on which the Minister announced a ministerial warning against further investment in the New South Wales recreational charter fishing boat industry, because of moves to cap the number of operators in the industry at the level then present (see second reading speech for the *Fisheries Management Amendment Bill 1997*, which inserted Part 4A in the Act, *Hansard* of 22 October 1997, page 1208).

- (2) If any one of the eligibility criteria is not satisfied, the person is not eligible for a transferable licence.
- (3) A person can be eligible only for the same number of licences as boats in respect of which the person is entitled to claim a history of operations. That is, if the person is entitled to claim a history of operations in respect of one boat, the person can be eligible for a licence in respect of one boat only.

226I Eligibility criteria—non-transferable licence

- (1) A person is eligible for a non-transferable licence in respect of a boat owned or otherwise under the control of the person if the person satisfies the Minister that:
- (a) the person is entitled to claim a history of operations in respect of a boat that:
- (i) was actively used for guided recreational charter fishing activities in the marine and estuarine charter fishing sector before 22 October 1997, and
 - (ii) was actively used for those activities for at least 50 days during any period of 24 consecutive months between 22 October 1995 and 4 August 1999, and
 - (iii) was used in accordance with the requirements of the certificate of survey for the boat at all times during the period in which it was used for those activities, and

- (b) the certificate of survey for the boat referred to in paragraph (a) was, at all times during the period in which it was used for those activities, consistent with the type of licence applied for by the applicant.
- (2) If any one of the eligibility criteria is not satisfied, the applicant is not eligible for a non-transferable licence.
- (3) A person can be eligible only for the same number of licences as boats in respect of which the person is entitled to claim a history of operations. That is, if the person is entitled to claim a history of operations in respect of one boat only, the person can be eligible for a licence in respect of one boat only.

226J Entitlement to claim a history of operations

- (1) For the purposes of this Part, a person is entitled to claim a history of operations in respect of a boat if:
 - (a) the boat was used by the person for guided recreational charter fishing activities in the marine and estuarine charter fishing sector during the periods relevant for the purposes of the eligibility criteria for a licence, and the person has not transferred his or her entitlement to that history of operations pursuant to a transfer made:
 - (i) before the commencement date, in accordance with the policies of NSW Fisheries with respect to such transfers, or
 - (ii) on or after the commencement date, in accordance with clause 226L, or
 - (b) the person has acquired a history of operations of a kind referred to in paragraph (a) in respect of a boat from another person pursuant to a transfer made:
 - (i) before the commencement date, in accordance with the policies of NSW Fisheries with respect to such transfers, or
 - (ii) on or after the commencement date, in accordance with clause 226L.
- (2) Only one person is entitled to claim a history of operations with respect to one boat.

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

- (3) If more than one person claims a history of operations of a kind referred to in subclause (1) (a) in respect of a boat, the person who is entitled to make that claim is the person who, in the opinion of the Minister, was principally responsible for the use of the boat for guided recreational charter fishing activities in the marine and estuarine sector during the periods relevant for the purpose of determining eligibility for a licence.

226K Eligibility—time limit on applications

- (1) Despite clauses 226H and 226I, eligibility for a licence in respect of a history of operations lapses if no licence has been applied for in respect of that history of operations by 30 September 2000.
- (2) This clause does not apply in any case where the Minister is satisfied that there were good reasons why the licence was not applied for by 30 September 2000.

226L Transfer of entitlement to history of operations

- (1) A person who holds a transferable licence may transfer the person's entitlement to a history of operations in respect of a boat, being the history of operations relied on by the person to satisfy the eligibility criteria for the licence.
- (2) Such a transfer may be made only with the approval of the Minister.
- (3) An application for the Minister's approval is to be in an approved form and accompanied by a fee of \$250.
- (4) If the Minister approves the transfer:
 - (a) the person who acquires the entitlement is entitled to claim the history of operations in respect of the boat, for the purposes of the eligibility criteria for a licence, and
 - (b) the person who transfers the entitlement ceases to be entitled to claim the history of operation in respect of the boat, for the purposes of the eligibility criteria for a licence.

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- (5) A transfer of a history of operations need not be accompanied by a transfer of the boat concerned. However, a person who transfers a history of operations without transferring the boat ceases to be eligible for a licence in respect of the boat (because the person ceases to be entitled to claim the history of operations).

226M Issue of licence

- (1) The Minister is authorised to refuse an application for a licence for a boat if:
- (a) the Minister is not satisfied that the applicant is eligible to be issued with the licence, or the class of licence applied for, in respect of the boat, or
 - (b) the Minister is satisfied that the carrying capacity of the boat exceeds the carrying capacity (as at 22 October 1997) of the boat relied on by the applicant to satisfy the eligibility criteria for the licence (that is, the boat referred to in clause 226H or 226I), or
 - (c) the applicant has been convicted of an offence under the Act, the regulations made under the Act, or an offence relating to commercial or recreational fishing under a law of the Commonwealth or of another State or a Territory or of New Zealand, or
 - (d) the applicant 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
 - (e) the applicant has been convicted of an offence relating to an assault on a fisheries official, or
 - (f) the applicant has not paid any fee due and payable in connection with the licence.

Note. Under clause 226S a person who is refused a licence because the Minister is not satisfied that the person is eligible for the licence may request a review of that decision.

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

- (2) If the Minister issues a licence for a boat, the Director is to cause notice of the decision to be published in the Gazette and in a newspaper circulating in the area in which the boat is used as a charter fishing boat.

Note. Under clause 226T a third party can request a review of the Minister's decision to issue a licence to a person.

226N Renewal of licence

- (1) An application for renewal of a licence is to be made in a form approved by the Minister.
- (2) The Minister is authorised to refuse to renew a licence if:
- (a) the holder of the licence is not eligible for the licence, or
 - (b) the Minister is satisfied that the carrying capacity of the boat exceeds the carrying capacity (as at 22 October 1997) of the boat relied on by the licence holder to satisfy the eligibility criteria for the licence (that is, the boat referred to in clause 226H or 226I), or
 - (c) the holder of the licence has been convicted of an offence under the Act, the regulations made under the Act, or an offence relating to commercial or recreational fishing under a law of the Commonwealth or of another State or a Territory or of New Zealand, or
 - (d) the holder of the licence 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
 - (e) the holder of the licence has been convicted of an offence relating to an assault on a fisheries official, or
 - (f) the Minister is satisfied that the holder of the licence has contravened a condition of the licence, or
 - (g) the holder of the licence has not paid any fee due and payable in connection with the licence.
- (3) If an application is duly made for renewal of a licence and is received by the Minister before the expiration of the period in which it remains in force, and the licence is not renewed before the expiration of that period, the licence:

- (a) is taken to continue to be in force until the licence is renewed or the application for renewal is refused, whichever happens first, and
 - (b) may be renewed despite the fact that, but for this subclause, the licence would have expired.
- (4) If an application for renewal of a licence is not received by the Minister before the expiration of the period in which it remains in force, the licence:
- (a) is taken to continue to be in force for 30 days after the date the licence would have expired (but for this subclause), or until the licence is renewed or the application for renewal is refused, whichever happens first, and
 - (b) may be renewed despite the fact that, but for this subclause, the licence would have expired.
- (5) If an application for renewal of a licence is received by the Minister more than 30 days after the date the licence would have expired (but for subclause (4)), an additional licence fee of \$100 is payable.
- (6) If an application for renewal of a licence is received by the Minister more than 90 days after the date the licence would have expired (but for subclause (4)), the Minister may refuse to renew the licence.

226O Cancellation or suspension of licence

The Minister may cancel or suspend a licence if:

- (a) the holder of the licence ceases to be eligible for the licence, or
- (b) the Minister is satisfied that the carrying capacity of the boat exceeds the carrying capacity (as at 22 October 1997) of the boat relied on by the licence holder to satisfy the eligibility criteria for the licence (that is, the boat referred to in clause 226H or 226I), or
- (c) the holder of the licence is convicted of an offence under the Act, the regulations made under the Act, or an offence relating to commercial or recreational fishing

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

- under a law of the Commonwealth or of another State or a Territory or of New Zealand, or
- (d) the holder of the licence is convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (e) the holder of the licence is convicted of an offence relating to an assault on a fisheries official, or
 - (f) the Minister is satisfied that the holder of the licence has contravened a condition of the licence, or
 - (g) the holder of the licence fails to pay any fee due and payable in connection with the licence, or
 - (h) the boat is lost at sea or otherwise disposed of by the holder of the licence.

226P Conditions of licence—authorised activities

- (1) The Minister may, by means of an endorsement on a licence for a boat, authorise the use of the boat for guided recreational charter fishing that involves one or more of the following recreational fishing activities (as indicated by the endorsement):
 - (a) estuarine fishing,
 - (b) nearshore bottom fishing and sportfishing,
 - (c) gamefishing,
 - (d) deep sea bottom fishing.
- (2) It is a condition of a licence for a boat that the boat, while being used for any activity for which it is required to be licensed under this Part, is not used for any of the recreational fishing activities referred to in subclause (1) unless the licence authorises the use of the boat for that activity.
- (3) The Minister may refuse to authorise the use of a boat for a recreational fishing activity if the Minister is not satisfied that the certificate of survey for the boat relied on by the licence holder to satisfy the eligibility criteria for the licence (that is, the boat referred to in clause 226H or 226I) was, at all times during the periods relevant for the purposes of determining eligibility for a licence, consistent with that type of activity.

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- (4) Despite subclause (2):
- (a) if a licence authorises the use of a boat for gamefishing, the taking of one fish of a species listed in Part 1 or Part 4 of the Table for each person who is on the boat, is permitted, and
 - (b) if a licence authorises the use of a boat for nearshore bottom fishing and sportfishing, the taking of one fish of a species listed in Part 1 or Part 2 of the Table, for each person who is on the boat, is permitted, and
 - (c) if a licence authorises the use of a boat for estuarine fishing, the taking of one fish of a species listed in Part 1 or Part 2 of the Table, for each person who is on the boat, is permitted.
- (5) This clause:
- (a) does not affect the application of any bag limits or possession limits in force under section 17 or 18 of the Act, and
 - (b) does not authorise the use of a boat to take any protected fish.

226Q Other conditions of licences

It is a condition of a licence for a charter fishing boat that any fish taken while the boat is used for any activity for which it is required to be licensed under this Part, and that are retained, have their right side pectoral fin removed, just above the fin base, before being removed from the boat.

Note. The Act also provides that it is a condition of a licence that the boat, while being used for recreational fishing activities for which it is required to be licensed:

- (a) is not also used to take fish for sale, and
- (b) is not equipped with fishing gear for use to take fish for sale (except as authorised by the licence).

226R Records of catch

- (1) The master of a charter fishing boat must make a record of fish taken by persons on the boat when used for guided recreational charter fishing.

Note. It is an offence to contravene the requirements set out in this clause (see section 127E of the Act).

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

- (2) A record is to be made in relation to each trip that is made by the boat, being a trip during which the boat was used for any activity for which it is required to be licensed.
- (3) A record is to be made in a form or forms approved by the Minister and provided to licence holders by NSW Fisheries.
- (4) A copy of the record is to be sent to the Director within 7 days after the end of the calendar month in which the trip to which the record relates was made.

Division 3 Review panel

Note. This Part provides for the review of decisions relating to the issue of a licence by a panel established by the Minister. A decision relating to a licence may also be appealed to the Administrative Decisions Tribunal under the Act.

226S Application for review of refusal to issue a licence

- (1) A person who is refused a licence because the Minister is not satisfied that the person is eligible for the licence may request a review of that decision.
- (2) The review request must:
 - (a) be made within 60 days after notice of the refusal is given to the person, and
 - (b) be made in a form approved by the Minister, and
 - (c) be lodged with the Director, and
 - (d) be accompanied by a fee of \$100.
- (3) The Minister may direct that the required fee (or part of the fee) for a review request be refunded if the Minister is of the opinion that it is appropriate in the circumstances of the case, for instance, because the review confirms submissions made by the person requesting the review.
- (4) A review request cannot be made under this clause after 31 March 2001.

226T Application for review by third party

- (1) Any person may request a review of a decision of the Minister to issue a licence to another person.

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- (2) The review request must:
 - (a) be made in a form approved by the Minister, and,
 - (b) be lodged with the Director within 60 days after notice of the Minister's decision to issue the licence is published in the Gazette, and
 - (c) be accompanied by a fee of \$100.
 - (3) The Minister may direct that the required fee (or part of the fee) for a review request be refunded if the Minister is of the opinion that it is appropriate in the circumstances of the case, for instance, because the review confirms submissions made by the person requesting the review.
 - (4) A review request cannot be made under this clause after 31 March 2001.

226U Establishment of panel to review decision

- (1) If a review request is duly made under this Division, the Minister is to establish a panel to conduct the review.
- (2) The panel is to consist of 3 members, as follows:
 - (a) one person who, in the opinion of the Minister, has no pecuniary interest in the charter fishing boat industry and who is not engaged in the administration of the Act,
 - (b) one person who, in the opinion of the Minister, has experience in the charter fishing boat industry and who is not engaged in the administration of the Act,
 - (c) an officer of NSW Fisheries.
- (3) The member of the panel referred to in subclause (2) (a) is to be chairperson of the panel.
- (4) Despite subclause (1), the Minister may reject a review request without establishing a panel to conduct the review if:
 - (a) the matter has already been the subject of a review by a panel under this Division, or
 - (b) the Minister is of the opinion that the review request is frivolous or vexatious.

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

226V Conduct of review

- (1) The panel is to review the decision that is the subject of the review request and provide the Minister with a written report on the matter within the time specified by the Minister or any extension of that time granted by the Minister.
- (2) A panel that conducts a review of a decision of the Minister to refuse to issue a licence to a person may recommend that the person be issued with a licence, but only if:
 - (a) the panel is satisfied that the person is eligible for the licence, or
 - (b) the panel is not so satisfied, but the panel is satisfied that the person:
 - (i) was actively engaged in guided recreational charter fishing activities in the marine and estuarine charter fishing sector before 22 October 1997, and
 - (ii) would have satisfied the eligibility criteria but for circumstances beyond the control of the person, for example illness or delays in the repair of a boat.
- (3) A panel that conducts a review of a decision of the Minister to issue a licence to a person may recommend that the licence be cancelled, but only if the panel is satisfied that:
 - (a) the person is not eligible for the licence, or
 - (b) there are other grounds for the cancellation of the licence.

226W Procedure to be followed by panel

- (1) A decision of the panel is a decision supported by the majority of its members.
- (2) The procedure of the panel is to be determined by the panel, subject to this clause and to any guidelines approved by the Minister.

226X Action by Minister following review

- (1) On receipt of a report by a panel, the Minister may:
 - (a) in the case of a review of a decision to refuse to issue a licence, confirm the refusal or set that decision aside and substitute a new decision in accordance with the recommendations of the panel, or
 - (b) in the case of a review of a decision to issue a licence, confirm the issue of the licence or cancel the licence in accordance with the recommendations of the panel, or
 - (c) in any case, refer the matter back to the panel (together with comments or recommendations) for further consideration.
- (2) The Minister may, following a review, determine that a person is eligible for a licence even though the person does not satisfy the eligibility criteria for the licence only if the panel recommends that the person be issued with a licence. If the Minister makes such a determination, the person is taken, for the purposes of the provisions of this Part that deal with eligibility for a licence, to be eligible for the licence.
- (3) A person who applies for a review under this Division is to be notified of the outcome of the application as soon as practicable after it is known.

226Y Interim licence

- (1) If a decision to refuse to issue a licence to a person is referred to a panel for a review under this Division, the Minister may issue a licence to the person on an interim basis.
- (2) After the panel has reviewed the decision concerned and made recommendations to the Minister, the Minister is to either cancel the licence, or confirm the issue of the licence, by notice in writing to the holder.
- (3) For avoidance of doubt, the fee for the licence is as provided for by clause 226F.
- (4) The holder of a licence issued under this clause cannot transfer his or her entitlement to a history of operations in respect of a boat, despite clause 226L.

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

- (5) If the Minister confirms the issue of the licence, and the licence is a transferable licence, subclause (4) ceases to apply in respect of the licence.
- (6) If the Minister cancels the licence, an appropriate proportion of the annual licence fee (the fee paid by the applicant under clause 226F) is refundable.
- (7) The refund payable is to be calculated as follows:

$$R = F \times \frac{Wr}{52}$$

where:

R is the refund payable,

F is the annual licence fee paid by the applicant (under clause 226F),

Wr is the number of weeks remaining on the licence (that is, the number of weeks during which the licence would have remained in force if the Minister had not cancelled the licence).

Division 4 Advisory Committee

226Z Advisory Committee

- (1) The Minister may establish an advisory committee for the charter fishing industry, to be known as the Marine and Estuarine Recreational Charter Management Advisory Committee.
- (2) The Advisory Committee is to be composed of the following members:
 - (a) 7 industry members, being persons who are elected by licence holders in accordance with Division 5 and appointed by the Minister,
 - (b) one person appointed by the Minister on the nomination of the Nature Conservation Council,
 - (c) other persons selected and appointed by the Minister,
 - (d) the Director or a nominee of the Director.

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- (3) Of the members referred to in subclause (2) (c):
- (a) one is to be a person who, in the opinion of the Minister, has expertise in commercial fishing, and
 - (b) one is to be a person who, in the opinion of the Minister, has expertise in Aboriginal culture, and
 - (c) one is to be a person who, in the opinion of the Minister, has expertise in recreational fishing.
- (4) Subclause (3) does not prevent the Minister from selecting and appointing additional persons as members of the Advisory Council.
- (5) The Minister is to appoint one of the members referred to in subclause (2) (a), (b) or (c) as chairperson of the Advisory Committee.
- (6) The Minister may, by advertisement published in a newspaper circulation throughout the State, call for expressions of interest in membership of the Advisory Committee.
- (7) For the purpose of subclause (2) (b), the Minister is to request the Nature Conservation Council to nominate 2 candidates for appointment to the Advisory Committee.
- (8) The Minister may decline to accept the nomination of any candidate. In such a case the Minister:
- (a) is to advise the Nature Conservation Council of that decision and of the reason for that decision, and
 - (b) if the Minister considers it appropriate, is to give the Nature Conservation Council an opportunity to nominate another candidate.
- (9) If the Nature Conservation Council fails to nominate a candidate within 60 days after being requested to do so by the Minister, or fails to nominate within that period a candidate whose nomination is accepted by the Minister, the Minister may appoint any person whom the Minister considers suitable to represent the interests of the Council as a member of the Advisory Committee, instead of a person nominated by the Council.

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

226ZA Functions of Advisory Committee

The functions of the Advisory Committee are as follows:

- (a) to assist with the development of and monitor the implementation of a management plan for the marine and estuarine charter fishing sector,
- (b) to advise the Minister on whether the objectives of the management plan are being attained,
- (c) to make recommendations to the Minister concerning the management plan, including to recommend any changes to the plan or to this Part that it considers necessary or desirable for the purpose of attaining the objectives of the management plan,
- (d) such other functions as may be conferred on the Advisory Committee by the Minister.

226ZB Deputies of members

- (1) An appointed member may, from time to time, appoint a person to be the deputy of the member, and may at any time revoke any appointment.
- (2) Such an appointment may only be made with the approval of the Minister. The Minister may revoke such approval at any time.
- (3) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is to be taken to be the member.
- (4) A person, while acting in the place of a member, is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

226ZC Terms of office

Subject to this Part:

- (a) an industry member holds office for a term of 3 years but is eligible (if otherwise qualified) for re-election and re-appointment, and

- (b) a non-industry member holds office for the term specified in his or her appointment (not exceeding 3 years) but is eligible (if otherwise qualified) for re-appointment.

226ZD Allowance for members

An appointed member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

226ZE Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-elected or re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the Advisory Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person.
- (2) The Minister may remove an industry member from office if the member:
 - (a) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

- (b) is convicted of an offence under the Act, this Regulation or any other regulation made under the Act or an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) ceases to be qualified to be elected to the Committee.
- (3) The Minister may remove a non-industry member from office at any time.

226ZF Filling of vacancy in office of member

- (1) If the office of an industry member becomes vacant because the term of office of the member has ended, an election is to be held in accordance with Division 5 of this Part for the purpose of appointing a new member.
- (2) If a vacancy occurs in the office of an industry member otherwise than because the term of office of the member has ended, the Minister may appoint a person to fill the office for the remainder of that term, being a person who would be qualified to be elected to the office and who the Minister decides, after consultation with the relevant industry sector, is appropriate for that office.
- (3) Any person so appointed is taken to be an industry member for the purposes of this Part.

226ZG General procedure for calling and holding meetings

- (1) The procedure for the calling and holding of meetings of the Advisory Committee is to be determined by the chairperson of the Advisory Committee.
- (2) The chairperson is to call at least 2 meetings of the Advisory Committee each calendar year, unless otherwise determined by the Advisory Committee.

226ZH Quorum

The quorum for a meeting of the Advisory Committee consists of the majority of its industry members for the time being.

226ZI Decisions

A decision supported by a majority of members at a meeting of the Advisory Committee at which a quorum is present is the decision of the Advisory Committee.

Division 5 Election of industry members of Advisory Committee**226ZJ Regions for which members are to be elected**

- (1) The 7 industry members of the Advisory Committee are to be elected to represent the different regions of the industry as follows:
 - (a) 1 member for the Far North Coast region (the part of the State between 28°10'S and 29°40'S),
 - (b) 1 member for the Solitary Islands Reserve region (the part of the State between 29°40'S and 30°19'S),
 - (c) 1 member for the Mid North Coast and Central Coast region (the part of the State between 30°19'S and 32°26'S),
 - (d) 2 members for the Sydney and Illawarra region (the part of the State between 32°26'S and 34°50'S),
 - (e) 1 member for the Mid South Coast region (the part of the State between 34°50'S and 36°10'S),
 - (f) 1 member for the Far South Coast region (the part of the State between 36°10'S and 37°30'S).
- (2) A map setting out the boundaries for the regions described in subclause (1) is to be made available for inspection in offices of NSW Fisheries.

226ZK Qualifications for election

In order to qualify for election as an industry member of the Advisory Committee, a person must:

- (a) hold a licence for a charter fishing boat, or be a person nominated by the holder of a licence for a charter fishing boat, and

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

- (b) reside in the region which the person seeks to be elected to represent.

226ZL General restrictions on election

- (1) A person is not qualified to be elected as an industry member of the Advisory Committee if the person:
 - (a) is already a member of the Advisory Committee (unless the person is seeking re-election to the Advisory Committee) or of a Management Advisory Committee appointed under section 230 of the Act, or
 - (b) is already a candidate for election to any such other Management Advisory Committee.
- (2) Officers and employees of NSW Fisheries are not qualified to be elected as an industry member.

226ZM Voting entitlements

- (1) In order to be qualified to vote in an election for an industry member of the Advisory Committee, a person must be:
 - (a) the holder of a charter fishing boat licence for a boat, and
 - (b) reside in the region which the industry member is to be elected to represent.
- (2) A person who is qualified to vote in an election is entitled to one vote only, regardless of the number of charter fishing boats for which the person holds a licence.

226ZN Election procedure

- (1) Division 3 of Part 11, with any necessary modifications, applies to an election of industry members of the Advisory Committee in the same way as it applies to an election of a Management Advisory Committee for a restricted fishery.
- (2) In the application of those provisions, clauses 244 and 245 are to be excluded, and subclause (3) is to be applied instead.
- (3) If by the close of nominations in an election, the number of candidates duly nominated for election to represent a region does not exceed the number of industry members to be elected to represent that region, the returning officer is to declare those

candidates elected. If more than that number are nominated, a ballot must be held.

226ZO Continuity of membership of Committee—transitional

- (1) Four of the first industry members appointed as members of the Advisory Committee are to hold office for a term of 18 months (rather than 3 years).
- (2) As soon as practicable after the returning officer for the election has determined the results of the election of the first industry members of the Advisory Committee, the returning officer is to determine, by lot, the names of the industry members who are to hold office for an 18 month term.
- (3) The determination by lot is to be made as follows:
 - (a) the names of each of the industry members are to be written on separate and similar slips of paper,
 - (b) each slip is to be folded so as to prevent identification of the name on it,
 - (c) the slips are to be mixed and one is to be drawn at random,
 - (d) the name on the slip drawn is the name determined by lot.

Division 6 Miscellaneous

226ZP Exemption for Lord Howe Island residents

- (1) A licence is not required in respect of a boat if:
 - (a) the boat is owned or under the control of a person who is a resident of Lord Howe Island, and
 - (b) the boat is used for guided recreational charter fishing principally in the Lord Howe Island area.
- (2) For the purpose of determining whether a person is eligible for a licence in respect of a boat, any activities for which the boat was used during a period in which the boat was used for guided recreational charter fishing activities principally in the Lord Howe Island area are to be disregarded. That is, the

2000 No 342

Fisheries Management (General) Amendment (Charter Fishing Boats) Regulation 2000

Schedule 1 Amendments

activities for which the boat was used during that period cannot be relied on to satisfy the eligibility criteria.

(3) In this clause:

Lord Howe Island area means the waters within 3 nautical miles of the high water mark on Lord Howe Island.

Table—Fish species

Part 1

Common name	Scientific name
Hapuka	<i>Polyprion oxygeneios</i>
Bass groper	<i>Polyprion americanus</i>
Blue-eye trevalla	<i>Hyperoglyphe antarctica</i>
Bar cod	<i>Epinephelus ergastularius</i>
Gemfish	<i>Rexea solandri</i>

Part 2

Common name	Scientific name
Billfishes	
Sailfish	<i>Istiophorus platypterus</i>
Black marlin	<i>Makaira indica</i>
Blue marlin	<i>Makaira mazara</i>
Striped marlin	<i>Tetrapturus audax</i>
Shortbill spearfish	<i>Tetrapturus angustirostris</i>
Broadbill swordfish	<i>Xiphias gladius</i>
Sharks	
Shortfin mako	<i>Isurus oxyrinchus</i>
Tiger shark	<i>Galeocerdo cuvier</i>
Hammerhead shark	<i>Sphyrna spp.</i>
Thresher shark	<i>Alopias spp.</i>
Porbeagle shark	<i>Lamna nasus</i>

Fisheries Management (General) Amendment (Charter Fishing Boats)
Regulation 2000

Amendments

Schedule 1

Common name	Scientific name
Tunas	
Albacore	<i>Thunnus alalunga</i>
Yellowfin tuna	<i>Thunnus albacares</i>
Southern bluefin tuna	<i>Thunnus maccoyii</i>
Longtail tuna	<i>Thunnus tonggol</i>
Bigeye tuna	<i>Thunnus obesus</i>

Part 3

Common name	Scientific name
Yellowtail, jack mackerel, trevally, rainbow runner, kingfish, samson fish, amberjack	Family CARANGIDAE
Mackerel, wahoo, bonito, skipjack tuna, mackerel tuna	Family SCOMBRIDAE (excluding <i>Thunnus spp.</i>)
Cobia	<i>Rachycentron canadum</i>
Tailor	<i>Pomatomus saltatrix</i>
Dolphinfish	<i>Coryphaena hippurus</i>
Australian salmon	<i>Arripis trutta</i>
Whaler shark, blue shark	Family CARCHARHINIDAE (excluding <i>Galeocerdo cuvier</i>)
Barracuda, snook, striped seapike	Family SPHYRAENIDAE

Part 4

All species of fish other than those listed in Parts 1, 2 and 3.

Note. The scientific names set out in the Table are the scientific names as at the commencement date.

BY AUTHORITY