



New South Wales

Fisheries Management (General) Amendment (Miscellaneous Provisions) Regulation 2001

under the

Fisheries Management Act 1994

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

The Hon EDWARD OBEID, M.L.C.,

Minister for Fisheries

Explanatory note

The object of this Regulation is to amend the *Fisheries Management (General) Regulation 1995* (the **principal Regulation**) so as:

- (a) to substitute Division 5B of Part 5, and so update and expand its provisions concerning recreational fishing fees, as a result of amendments made to the *Fisheries Management Act 1994* (the **principal Act**) by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* (with new provision being made for certain exemptions from, and reductions in, the fishing fee payable, and the issue of fishing fee exemption certificates), and
- (b) to update certain references in the principal Regulation as a result of those amendments, and
- (c) to provide for the constitution of a panel to review matters concerning compensation payable for acquired commercial fishing entitlements, and
- (d) to increase the annual contribution payable by commercial fishers to the cost of research and to other industry costs from \$275 to \$315, and

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- (e) to enable a licence for charter fishing boat to be cancelled, or an application for renewal of such a licence to be refused, if the boat has been used to allow more people to fish at any one time than the carrying capacity of the boat as at 4 August 1999 (the end of the assessment period referred to in clause 226H of the principal Regulation), and
- (f) to increase the membership of the Marine and Estuarine Recreational Charter Management Advisory Council from 7 to 9, with additional members from the Central Coast and Illawarra regions, and
- (g) to penalise the giving of false or misleading information in connection with the management of charter fishing boats, and
- (h) to enable the Minister for Fisheries to approve a regime for the payment by instalments of fees, charges and other sums of money due under the principal Act and the principal Regulation, and
- (i) to enable certain offences against the principal Act and principal Regulation to be dealt with by way of penalty notice, and
- (j) to make other provisions of a minor, consequential or ancillary nature.

This Regulation is made under the *Fisheries Management Act 1994*, including section 289 (the general regulation-making power) and various other sections referred to in the Regulation.

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1 Name of Regulation

This Regulation is the *Fisheries Management (General) Amendment (Miscellaneous Provisions) Regulation 2001*.

2 Commencement

This Regulation commences on 23 March 2001.

3 Amendment of Fisheries Management (General) Regulation 1995

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

4 Notes

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 105 Identification of recognised fishing grounds

Omit “Director” wherever occurring. Insert instead “Minister”.

[2] Part 5 Miscellaneous provisions relating to fisheries management

Omit Division 5B of Part 5. Insert instead:

Division 5B Recreational fishing fee

119J Definition

In this Division:

fishing fee means a fishing fee payable under Division 4A of Part 2 of the Act.

119K Exempt bodies of water

- (1) Any body of water comprising the backed up waters of a dam or impoundment located on private land is exempt for the purposes of section 34C (2) (g) of the Act if the surface area of the body of water (at full capacity) does not exceed 2 hectares.
- (2) For the purposes of this clause, a body of water is located on private land if the land on which it is located is not public water land.

119L Exempt fishers

- (1) For the purposes of section 34C (2) (h) of the Act, the following recreational fishers are exempt from paying a fishing fee:
 - (a) a fisher who holds a current pensioner concession card,
 - (b) a fisher who is of or over the age of 18 years of age and is only assisting a fisher under 18 years of age to take fish by means of a single dip or scoop net (prawns).

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- (2) It is a condition of an exemption referred to in subclause (1) (a) that, if required to do so by a fisheries officer, a person who claims such an exemption must produce his or her current pensioner concession card for the fisheries officer's inspection.
- (3) In this clause, *pensioner concession card* means a card known as a "pensioner concession card" and issued by Centrelink or the Commonwealth Department of Veterans' Affairs, or any other card approved by the Minister as being equivalent to that card.

119M Reductions in fishing fee for fishing in far north

For the purposes of section 34F of the Act, the amount of the fishing fee payable by a recreational fisher for fishing:

- (a) in the tidal waters of the Tweed River, upstream of a line joining the eastern extremities of the Tweed River Breakwaters to:
- (i) Bray Park Weir on the Tweed River, and
 - (ii) Boat Harbour Bridge, Numinbah Road, on the Rous River, and
 - (iii) Scenic Drive Road Bridge on Duroby Creek, and
 - (iv) Scenic Drive Road Bridge on Bilambil Creek, and
 - (v) Robinson Road Bridge on Cobaki Creek, or
- (b) from the Tweed River Breakwaters, or
- (c) from the rocks and beach north of the Tweed River Breakwaters to the Queensland border, or
- (d) from the rocks and beach south of the Tweed River Breakwaters to the lighthouse at Fingal Head,

is reduced by 50 per cent of the fee otherwise payable.

119N Issue of replacement receipts

On payment of a fee of \$5, the Director may issue a replacement receipt for an official receipt issued under section 34G of the Act if satisfied that the original receipt is lost, damaged or destroyed.

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119O Additional classes of persons to whom fishing fee exemption certificates may be issued

- (1) For the purposes of section 34I (3) (c) of the Act, the following persons are prescribed as classes of persons to whom fishing fee exemption certificates may be issued:
 - (a) an owner or lessee of private land on which there is a body of water comprising the backed up waters of a dam or impoundment, but only in relation to recreational fishing activities undertaken in those waters,
 - (b) a Local Aboriginal Land Council, but only in relation to traditional cultural fishing undertaken in tidal waters within its Local Aboriginal Land Council area or in State waters immediately east of that area:
 - (i) by Aboriginal persons whose names are included in the roll kept under the *Aboriginal Land Rights Act 1983* in respect of that Council, or
 - (ii) by Aboriginal persons who are in the company of an Aboriginal person referred to in subparagraph (i).
- (2) For the purposes of this clause, a body of water is located on private land if the land on which it is located is not public water land.

119P Fishing fee exemption certificates: period for which in force

- (1) Subject to this clause, a fishing fee exemption certificate under section 34I of the Act has effect for one year.
- (2) The Minister may issue an exemption certificate for a period determined by the Minister that is longer or shorter than one year.

119Q Fishing fee exemption certificates: fees

- (1) For the purposes of section 34I (4) of the Act:
 - (a) the fee for a one year exemption certificate under section 34I (3) (a) of the Act that operates to exempt up to 4 persons at a time carrying out recreational fishing activities under supervision or guidance is \$100, and

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- (b) the fee for a one year exemption certificate under section 34I (3) (b) of the Act that operates to exempt:
- (i) up to 4 passengers at a time carrying out recreational fishing activities on a boat is \$100, or
 - (ii) between 5 and 9 passengers at a time carrying out recreational fishing activities on a boat is \$100, plus \$25 for the fifth and each additional passenger to be exempted, or
 - (iii) 10 or more passengers at a time carrying out recreational fishing activities on a boat is \$250.

Note. No fee is payable for an exemption certificate issued to a person referred to in clause 119O.

- (2) Any fee for an exemption certificate under section 34I (3) (a) or (b) of the Act is reduced by 50 per cent if the activities to which the certificate relates take place only in waters referred to in clause 119M.
- (3) If the Minister issues an exemption certificate under section 34I (3) (a) or (b) of the Act for a period that is longer or shorter than one year, the fee for the certificate is to be varied in proportion to the amount by which the period for which the certificate is issued differs from one year.
- (4) The fee for an exemption certificate must be paid before the certificate is issued.
- (5) An exemption certificate is to be in the form approved by the Minister and may be issued subject to such conditions as the Minister considers appropriate.

119R Amendment and cancellation of exemption certificates

- (1) The Minister may amend or cancel a fishing fee exemption certificate at any time by notice in writing to the holder of the certificate.
- (2) Without limiting subclause (1), the Minister may amend or cancel a fishing fee exemption certificate on the application of the holder of the certificate.

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- (3) The following fees are payable in respect of an amendment of an exemption certificate under subclause (2):
 - (a) an application fee of \$10,
 - (b) a supplementary fee equivalent to the amount (if any) by which the fee payable for an exemption certificate in the form of the amended certificate exceeds the sum of all fees that had been paid for the certificate before the application was made.

Division 5C Acquisition of commercial fishing entitlements

119S Constitution of compensation review panel

- (1) For the purposes of section 34O (2) of the Act, a panel is to consist of 3 members appointed by the Minister, of whom:
 - (a) one is to be a person who, in the opinion of the Minister, has expertise in valuation and is otherwise appropriately qualified to conduct the review (not being a person who is engaged in the administration of the Act or in commercial fishing), and
 - (b) one is to be a person who, in the opinion of the Minister, has extensive practical experience in the commercial fishing industry (not being a person who is engaged in the administration of the Act or a person who has a financial interest in the fishery to which the review relates), and
 - (c) one is to be an officer of NSW Fisheries.
- (2) The member referred to in subclause (1) (a) is to be the chairperson of the panel.
- (3) A decision supported by the majority of the members of a panel is the decision of the panel.
- (4) Subject to subclause (3), the procedure of the panel is to be determined by the Minister.

[3] Clause 134K Endorsement fee

Omit clause 134K (3), (4) and (5).

[4] Clause 142 Annual contribution to cost of research and to other industry costs

Insert “and before 1 July 2001” after “1 February 1996” in clause 142 (1).

[5] Clause 142 (1A)

Insert after clause 142 (1):

(1A) For the purposes of section 106 of the Act, the annual contribution payable by a person who holds a Class 1, Class 2, Class 3 or Class 5 commercial fishing licence which is issued or renewed on or after 1 July 2001 is \$315.

[6] Clause 142 (3)

Insert after clause 142 (2):

(3) The contribution payable under this clause in relation to a commercial fishing licence is additional to any other contribution, fee or charge that is payable under the Act in relation to the licence.

[7] Clause 168 Endorsement fee

Omit clause 168 (4), (5) and (6).

[8] Clause 198 Director may approve payment of fees by instalments

Omit the clause.

[9] Clause 200I Endorsement fees

Omit clause 200I (5) and (6).

[10] Clause 200M Transfer fee

Omit clause 200M (3) and (4).

[11] Clause 226K Eligibility—time limit on applications

Omit “30 September 2000” from clause 226K (1).

Insert instead “30 April 2001”.

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Schedule 1 Amendments

[12] Clause 226M Issue of licence

Omit clause 226M (1) (b).

[13] Clause 226M (2)

Omit “If the Minister issues a licence for a boat, the Director”.

Insert instead “If before 31 May 2001 the Minister decides to issue a licence for a boat, the Minister”.

[14] Clause 226M (2)

Insert “, or is to be used,” after “the boat is used”.

[15] Clause 226N Renewal of licence

Omit clause 226N (2) (b).

[16] Clause 226O Cancellation or suspension of licence

Omit clause 226O (b).

[17] Clause 226Q Other conditions of licence

Insert at the end of clause 226Q (before the note to that clause):

- (2) Despite subclause (1), the removal of the right side pectoral fin may be delayed until immediately after weigh-in if the fish is to be weighed:
 - (a) for the purpose of claiming a record, or
 - (b) in accordance with the rules of a fishing tournament in connection with which the fish has been caught.
- (3) Subclause (1) applies to the following species of fish only, namely, yellowfin tuna, southern bluefin tuna, all species of marlin, yellowtail kingfish and snapper.
- (4) It is a condition of a licence for a charter fishing boat that the boat displays the letters “CFB” adjacent to, and in the same size and colour of lettering as, the permit number for the boat wherever appearing on the outside of the hull.
- (5) It is a condition of a licence for a charter fishing boat that the number of persons permitted to fish from the boat at any one

time does not exceed the carrying capacity (as at 4 August 1999) of the boat relied on by the licence holder to satisfy the eligibility criteria for the licence under clause 226H or 226I, as the case requires.

[18] Clause 226S Application for review of refusal to issue a licence

Omit clause 226S (4). Insert instead:

- (4) A review request cannot be made under this clause after 30 June 2001.

[19] Clause 226T Application for review by third party

Omit “60” from clause 226T (2) (b). Insert instead “30”.

[20] Clause 226T (4)

Omit the subclause. Insert instead:

- (4) This clause does not apply to:
 - (a) a licence for which an application is made following the transfer under clause 226L of a person’s entitlement to a history of operations in respect of a boat, or
 - (b) a licence that has been renewed under clause 226N.

[21] Clause 226V Conduct of review

Insert at the end of clause 226V (2) (b) (ii):

- , and
- (iii) had, prior to 22 October 1997, clearly demonstrated his or her financial investment or commitment in a boat for use in connection with marine and estuarine charter fishing in New South Wales.

[22] Clause 226V (2A)

Insert after clause 226V (2):

- (2A) Regardless of the nature of licence originally applied for, a panel may recommend the issue of either a transferable or a non-transferable licence.

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[23] Clause 226X Action by Minister following review

Insert after clause 226X (3):

- (4) If before 30 June 2002 the Minister decides to issue a licence for a boat following a review under this clause, the Minister 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, or is to be used, as a charter fishing boat.

[24] Clause 226Z Advisory Committee

Omit “7” from clause 226Z (2) (a). Insert instead “9”.

[25] Clause 226Z (2) (e)

Insert at the end of clause 226Z (2):

- (e) a chairperson of the Committee, being a person who is neither engaged in the administration of the Act nor engaged in charter fishing.

[26] Clause 226Z (4)

Omit “Council”. Insert instead “Committee”.

[27] Clause 226Z (5)

Omit the subclause. Insert instead:

- (5) The chairperson of the Advisory Committee is entitled to attend and chair meetings of the Committee but is not entitled to vote at any such meeting.

[28] Clause 226ZA Functions of Advisory Committee

Omit “management plan” from clause 226ZA (a).

Insert instead “fishery management strategy”.

[29] Clause 226ZA

Omit “management plan” and “plan” wherever occurring in clause 226ZA (b) and (c).

Insert instead “strategy”.

[30] Clause 226ZJ Regions for which members are to be elected

Omit “7” from clause 226ZJ (1). Insert instead “9”.

[31] Clause 226ZJ (1) (d), (d1) and (d2)

Omit clause 226ZJ (1) (d). Insert instead:

- (d) 1 member for the Central Coast region (the part of the State between 32°26’S and 33°35’S),
- (d1) 2 members for the Sydney region (the part of the State between 33°35’S and 34°05’S),
- (d2) 1 member for the Illawarra region (the part of the State between 34°05’S and 34°50’S),

[32] Clause 226ZQ

Insert after clause 226ZP:

226ZQ False or misleading information

A person must not furnish information, knowing it to be false or misleading in a material particular, in or in connection with:

- (a) any application for a licence, or
- (b) any catch record referred to in clause 226R.

Maximum penalty: 100 penalty units.

[33] Clauses 231, 235 (2), 256, 262, 264, 266, 267 and 267A

Omit “Director” wherever occurring. Insert instead “Minister”.

[34] Clause 267A (1)

Omit “or the Director’s nominee”.

[35] Clause 267D Inland restricted fishery MAC—transitional arrangements

Omit the clause.

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Schedule 1 Amendments

[36] Part 12, Division 4

Insert after Division 3 of Part 12:

Division 4 Miscellaneous

271A Payment by instalments

- (1) Despite any other provision of this Regulation, but subject to the Act, the Minister may approve the payment by instalments of any fee, charge or other sum of money payable under the Act or this Regulation.
- (2) An approval may establish guidelines in accordance with which instalments are to be paid.
- (3) 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.
- (4) 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.

[37] Part 13 Savings and Transitional

Insert after clause 275:

276 Provision consequent on enactment of Fisheries Management and Environmental Assessment Legislation Amendment Act 2000

Anything done or omitted to be done by the Director before the commencement of Schedule 3 [14] and [15] to the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* in connection with the exercise of a function under the Act or this Regulation, being a function that after that commencement is exercisable by the Minister, is taken to have been done or omitted by the Minister.

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Amendments

Schedule 1

[38] Schedule 5 Penalty notice offences and short descriptions

Omit the matter relating to section 34I (1) (a) and (b) from Part 1.

Insert instead, in appropriate order:

Section 34J (1)	\$200	7001	Fail to pay fishing fee
Section 34J (2)	\$200	7002	Fail to have official receipt in possession
Section 127B (2)	\$200	8123	Use of unlicensed charter fishing boat
Section 127B (3)	\$500	8124	Permit use of unlicensed charter fishing boat
Section 127C (7)	\$200	8125	Contravene charter fishing boat licence

[39] Schedule 5, Part 2

Insert after the matter relating to clause 159:

Clause 226ZQ	\$500	8130	Provide false information
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BY AUTHORITY