



New South Wales

Fisheries Management (General) Amendment (Miscellaneous) 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* so as:

- (a) to extend the defence to the charge of having possession of prohibited size fish to all species of mullet, and
- (b) to describe more accurately the method of catching garfish known as “bullringing”, and to ensure that the length of any hauling line attached to a garfish bullringing net does not exceed 25 metres, and
- (c) to amend the circumstances in which a meshing net may be used, and
- (d) to permit an officer of NSW Fisheries or a person acting on behalf of the Director of NSW Fisheries to use a beach safety meshing net for the purposes of shark meshing activities, and to prescribe the specifications for such a net, and
- (e) to repeal clauses which allow the use of a drum net or a gill net, and
- (f) to exempt a fisher from being required to pay a fishing fee if the following conditions are met:

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- (i) the fisher is engaged in a shore-based fishing activity as part of a guided recreational charter fishing trip,
 - (ii) the charter operation holds a fishing fee exemption certificate,
 - (iii) the fisher is in the immediate vicinity of the charter boat, and
- (g) to introduce a new category of fishing fee exemption certificate, that will permit up to 80 people at a time to carry out supervised recreational fishing on private land as part of a commercial tourism business operation, and
- (h) to create a new class of endorsement on commercial fishing licences for the ocean hauling restricted fishery, that allows species of fish specified in the endorsement to be taken for sale in the ocean hauling restricted fishery by use of a purse seine net in certain specified ocean waters, and
- (i) to enable the Minister to accept charter boat licence applications after 30 April 2001, if the Minister is satisfied that there are good reasons why a licence was not applied for by that date, and
- (j) to permit a person who holds a transferable or a non-transferable charter fishing boat licence to replace the boat to which the licence is attached provided the replacement is approved by the Minister and the appropriate fee is paid, and
- (k) to permit the Minister to cancel or suspend a charter fishing boat licence if the Minister is satisfied that the ownership or shareholding of a non-transferable licence has changed, and
- (l) to increase the number of grounds on which a panel can recommend that a person be issued with a charter fishing boat licence when the panel is conducting a review of a decision of the Minister not to issue a licence, and
- (m) to enable the Minister to determine the procedure for calling and holding meetings of the Marine and Estuarine Recreational Charter Management Advisory Committee and to require the Minister to call at least two meetings of that Committee each calendar year unless the Committee otherwise determines, and
- (n) to declare that *caulerpa taxifolia* is a species of noxious marine vegetation in all coastal waters except those adjacent to Lord Howe Island and Balls Pyramid and that the black striped mussel is a general noxious fish, and
- (o) to replace the person appointed to represent the interests of inland commercial fishers on the Advisory Council for Commercial Fishing with a representative of the inland restricted fishery, and

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- (p) to increase the number of regions of the estuary general restricted fishery and the number of members of the Management Advisory Committee representing that fishery from 7 to 8 by splitting the central region into a central region north and a central region south, and
- (q) to modify the requirements in relation to voting and election for a Management Advisory Committee for share management fisheries and restricted fisheries and to broaden the class of persons eligible for nomination.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 21, 24, 34C, 34I, 40, 116, 127C, 209, 231 and 289 (the general regulation-making power).

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Clause 1 Fisheries Management (General) Amendment (Miscellaneous)
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1 Name of Regulation

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

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.

Schedule 1 Amendments

(Clause 2)

[1] Clause 8 Defence—taking of mullet for bait

Omit clause 8 (a). Insert instead:

- (a) the prohibited size fish concerned are mullet, and

[2] Clause 22 Application of Division

Insert “, except for a beach safety meshing net which may be lawfully used only by an officer of NSW Fisheries or a person acting on behalf of the Director” after “fisher”.

[3] Clause 25 Garfish net (bullringing)

Omit “immediately splashing the water in the vicinity, then picking up the net, all of which is” from clause 25 (1) (b).

Insert instead “then retrieving the net to the vessel, both of which are”.

[4] Clause 25 (1) (c)

Insert after clause 25 (1) (b):

- (c) The length of any hauling line attached to the net does not exceed 25 metres.

[5] Clause 37 Meshing net

Omit clause 37 (1). Insert instead:

- (1) It is lawful to use a meshing net for taking fish in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the net is used:
- (a) by the method of splashing (that is, shooting the net, immediately splashing and retrieving it as a continuous operation) at any time, or

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- (b) as a set net, but only:
 - (i) between February and November (inclusive) in any year, and
 - (ii) between sunset and sunrise, and
 - (iii) for no more than 3 hours at a time.

[6] Clause 37A

Insert after clause 37:

37A Beach safety meshing net

- (1) It is lawful for an officer of NSW Fisheries or a person acting on behalf of the Director to use a beach safety meshing net for the purposes of shark meshing activities.
- (2) The meshing net may only be used as a sunk net. No part of the net (other than that used for the purposes of tagging) may be on the surface.
- (3) A meshing net must comply with the following specifications:
 - (a) **Floatline**
150 metres of not less than 8 mm diameter, synthetic rope with a breaking strain of not less than 900 kg.
 - (b) **Leadline**
150 metres of not less than 8 mm diameter, synthetic rope with a breaking strain of not less than 900 kg.
 - (c) **Floats**
Gill net floats used must be of not less than 10 cm diameter and not less than 5 cm thickness, or a float of equivalent buoyancy approved by the Director and spaced at not more than 5 metre centres.
 - (d) **Netting twine**
The twine must be continuous synthetic filament with a breaking strain of not less than 60 kg.
 - (e) **Mesh size**
The mesh size must be not less than 50 cm and not more than 60 cm. To measure the mesh size the net is to be soaked in water for a period of not less than 5 minutes, then stretched out and the distance between the

inside edges of the knots measured using a steel rule certified in accordance with the *Trade Measurement Act 1989*.

(f) **Meshes depth**

The number of meshes for each mesh size must be as follows:

- (i) 60 cm mesh—not less than 12 meshes deep,
- (ii) 55 cm mesh—not less than 13 meshes deep,
- (iii) 50 cm mesh—not less than 14 meshes deep,

so that the height is approximately 6 metres when set.

- (4) Nets must be tagged at the surface with a minimum of 25 cm bubbles and clearly marked “Beach Safety Meshing Net”.

[7] Clauses 42 and 43

Omit the clauses.

[8] Clause 115 Measuring length and mesh size of nets

Insert “or a beach safety meshing net referred to in clause 37A” after “Table to this clause” in clause 115 (2).

[9] Clause 119L Exempt fishers

Insert after clause 119L (1) (b):

- (c) a fisher who is engaged in bait gathering, shore-based fishing or other activities ancillary to guided recreational charter fishing (within the meaning of clause 226C), if:
 - (i) a fishing fee exemption certificate under section 34I (3) (b) of the Act is already held in respect of the charter fishing boat, and
 - (ii) the fisher is in the immediate vicinity of the charter fishing boat.

[10] Clause 119Q Fishing fee exemption certificates: fees

Insert after clause 119Q (1) (a):

- (a1) the fee for a one year exemption certificate under section 34I (3) (a) of the Act that operates to exempt up to 80 persons at a time carrying out recreational fishing

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activities under supervision or guidance on or from private land as part of a commercial tourism business operation is \$2,000, and

[11] Clause 212D Types of endorsement in restricted fishery

Insert at the end of clause 212D (1):

- **Class D endorsement.** This endorsement authorises the holder to take fish for sale (being fish of a species specified in the endorsement) by the use of a purse seine net from ocean waters that lie north of latitude 32° south within 3 miles of the natural coast line (as defined in Schedule 1).

[12] Clause 212E Application for endorsement

Insert at the end of clause 212E (3) (c):

- , or
- (d) in the case of an application for a class D endorsement—\$31 if the applicant is the holder of a class A endorsement or \$260 in any other case.

[13] Clause 212F Eligibility for an endorsement

Insert after clause 212F (2B):

- (2C) A person is eligible for a class D endorsement if the Minister is satisfied that:
 - (a) the person owns a licensed fishing boat, and
 - (b) the person owns a purse seine net:
 - (i) that was registered in the person's name before 1 January 1991, and
 - (ii) that was used, in at least one of the years from 1991 to 1994 (inclusive), to take fish for sale, and
 - (c) the person has, in the years from 1986 to 1993 (inclusive), using a purse seine net, taken for sale:
 - (i) at least 10 tonnes of pilchard, anchovy, whitebait, mackerel, yellowtail or Australian salmon, or

- (ii) at least 10 tonnes of any combination of those fish,
from ocean waters that lie north of latitude 32° south within 3 miles of the natural coast line (as defined in Schedule 1), and
 - (d) the person submitted at least 3 catch returns to the Director in the years from 1991 to 1994 (inclusive) that record purse seining as a catch method, and
 - (e) the person has, in the years from 1986 to 1990 (inclusive), using a purse seine net, taken for sale at least 2.5 tonnes of each species of fish for which the endorsement is sought from ocean waters that lie north of latitude 32° south within 3 miles of the natural coast line (as defined in Schedule 1).
- (2D) A person is also eligible for a class D endorsement if the Minister is satisfied that:
- (a) the person owns a fishing business that is a recognised fishing operation (within the meaning of clause 135), and
 - (b) the fishing business includes a purse seine net:
 - (i) that was registered in the person's name before 1 January 1991, and
 - (ii) that was used, in at least one of the years from 1991 to 1994 (inclusive), to take fish for sale, and
 - (c) the catch history associated with the fishing business of the person (determined in accordance with clause 135) satisfies the criteria set out in subclause (2C) (c), (d) and (e).

[14] Clause 212N Holder of class A, C or D endorsement unable to take fish

Omit "or class C" wherever occurring.

Insert instead ", class C or class D".

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[15] Clause 212O Application for endorsement of licence for further period

Insert at the end of clause 212O (3) (c):

, or

- (d) in the case of an application for a class D endorsement for a further period—\$31 if the applicant is the holder of a class A endorsement or \$260 in any other case.

[16] 226K Eligibility—time limit on applications

Omit “September 2000” from clause 226K (2). Insert instead “April 2001”.

[17] Clause 226LA

Insert after clause 226L:

226LA Boat replacement

- (1) A person who holds a transferable or a non-transferable licence in respect of a licenced charter fishing boat may replace the boat if:
 - (a) the replacement is approved by the Minister, and
 - (b) the application for the Minister’s approval is accompanied by a fee of \$260.
- (2) When the Minister approves the replacement, the person’s entitlement to a history of operations, in respect of the boat being replaced, is transferred to the replacement boat.
- (3) Nothing in this clause permits a person who holds a non-transferable licence to transfer that licence to another person.

[18] 226O Cancellation or suspension of licence

Insert at the end of clause 226O:

, or

- (i) the Minister is satisfied that the ownership or shareholding of a non-transferable licence has changed.

[19] Clause 226V Conduct of review

Omit clause 226V (2). Insert instead:

- (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 the panel is satisfied that:
 - (a) the person is eligible for the licence, or
 - (b) the person:
 - (i) 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), and
 - (ii) was actively engaged in guided recreational charter fishing activities in the marine and estuarine charter fishing sector before 22 October 1997, or
 - (c) the person had, before 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 and:
 - (i) the boat has been actively used for guided recreational charter fishing activities in the marine and estuarine charter fishing sector for at least 50 days during any period of 24 consecutive months between 22 October 1995 and 4 August 1999, or
 - (ii) there are valid reasons why the person failed to satisfy the eligibility criteria in paragraph (i) and it is fair and reasonable in the circumstances to grant the person a licence.

[20] Clause 226ZG General procedure for calling and holding meetings

Omit “chairperson of the Advisory Committee” from clause 226ZG (1).
Insert instead “Minister”.

[21] Clause 226ZG (2)

Omit “chairperson”. Insert instead “Minister”.

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[22] Clause 229

Omit the clause. Insert instead:

229 Noxious fish and vegetation (section 209 of the Act)

(1) For the purposes of the Act, the following fish are declared to be noxious fish:

(a) **Class 1 (General noxious fish):**

- (i) Tilapia (*Oreochromis mossambicus*, *Tilapia zillii*, *Tilapia mariae*),
- (ii) black striped mussel (all species of the genus *Mytilopsis*).

(b) **Class 2 (Noxious fish in specific waters):**

Pacific oyster (*Crassostrea gigas*) but only in estuarine waters and ocean waters (other than the waters of Port Stephens).

(2) For the purposes of the Act, the following marine vegetation is declared to be noxious marine vegetation:

Class 3 (Noxious marine vegetation in specific waters):

Caulerpa taxifolia in all coastal waters other than those coastal waters adjacent to Lord Howe Island and Balls Pyramid.

[23] Clause 229D Advisory Council on Commercial Fishing

Omit “8” from clause 229D (1) (a). Insert instead “9”.

[24] Clause 229D (1) (a) (ix)

Insert after clause 229D (1) (a) (viii):

- (ix) inland restricted fishery,

[25] Clause 229D (1) (b)

Omit the paragraph.

[26] Clause 231 Composition of MAC

Omit from Part B of the Table to clause 231 the matter relating to “Estuary general restricted fishery”.

Insert instead:

Estuary general restricted fishery	8	8 members representing commercial fishers who hold an endorsement in each region of the fishery (that is, 1 member for each region)
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[27] Clause 231, Notes to Table

Omit “, the estuary general restricted fishery” from paragraph (3).

[28] Clause 231, Notes to Table

Insert after paragraph (3):

- (3A) For the purposes of the estuary general restricted fishery, the following are the regions of the fishery:
- Upper north coast. That part of the State lying generally between the border between the States of Queensland and New South Wales and the parallel 29°15' south latitude.
 - Clarence. That part of the State lying generally between the parallel 29°15' south latitude and the parallel 29°45' south latitude.
 - North coast. That part of the State lying generally between the parallel 29°45' south latitude and the parallel 31°44' south latitude.
 - Central north. That part of the State lying generally between the parallel 31°44' south latitude and the parallel 32°30' south latitude.
 - Central south. That part of the State lying generally between the parallel 32°30' south latitude and the parallel 33°25' south latitude.
 - Metropolitan. That part of the State lying generally between the parallel 33°25' south latitude and the parallel 34°20' south latitude.
 - Upper south coast. That part of the State lying generally between the parallel 34°20' south latitude and the parallel 35°25' south latitude.

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- Lower south coast. That part of the State lying generally between the parallel 35°25' south latitude and the border between the States of New South Wales and Victoria.

[29] **Clause 232**

Omit the clause. Insert instead:

232 Qualifications for election to a MAC

(1) **Share management fisheries**

In order to qualify for election as an industry member for a MAC for a share management fishery, a person must be:

- a shareholder in the fishery, or
- a person the Minister considers likely to be a shareholder in the fishery, or
- an individual nominated by a person in paragraph (a) or (b) who:
 - is the fisher nominated by that person under section 69 of the Act, or
 - owns the highest (or equal highest) percentage of that person's fishing business and is directly involved in the administration of that business, or
 - owns at least 25 per cent of that person's fishing business and is directly involved in the administration of that business.

Only one nomination is permitted per shareholder or likely shareholder in relation to each election.

(2) **Restricted fisheries**

In order to qualify for election as an industry member for a MAC for a restricted fishery specified in Column 1 of Part B of the Table, a person must be:

- a commercial fisher who holds an endorsement in the fishery of the type specified in Column 3 of Part B of the Table next to the fishery concerned, or
- an individual nominated by a commercial fisher in paragraph (a) who:

- (i) owns the highest (or equal highest) percentage of the commercial fisher's fishing business and is directly involved in the administration of that business, or
- (ii) owns at least 25 per cent of the commercial fisher's fishing business and is directly involved in the administration of that business.

Only one nomination is permitted per commercial fisher in relation to each election.

[30] Clause 234

Omit the clause. Insert instead:

234 Qualifications to vote

(1) **Share management fisheries**

In order to be qualified to vote in an election for the position of industry member on a MAC for a share management fishery, a person must be:

- (a) a shareholder in the fishery, or
- (b) a person the Minister considers likely to be a shareholder in the fishery, or
- (c) if the person in paragraph (a) or (b) is not a natural person, an individual nominated by that person.

(2) **Restricted fisheries**

In order to be qualified to vote in an election for the position of industry member on a MAC for a restricted fishery (as specified in Column 3 of Part B of the Table in relation to each fishery), a person must be a commercial fisher who holds an endorsement in the fishery of the type specified in Column 3 of Part B of the Table next to the fishery concerned.

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[31] Clauses 277 and 278

Insert after clause 276:

277 Inland commercial fishery nomination to Advisory Council on Commercial Fishing

The person holding office under clause 229D (1) (b) immediately before its repeal is taken to have been appointed as the person to represent the inland restricted fishery under clause 229D (1) (a) (ix), but only for the remainder of the term for which the person was appointed to hold office under clause 229D (1) (b).

278 Central region estuary general MAC representatives

- (1) The person holding office under Part 11 as the restricted fishery MAC representative for the central region of the estuary general restricted fishery immediately before the commencement of this clause continues to hold office for the remainder of the term for which the person was elected to the MAC.
- (2) Persons are not required to be elected under Part 11 as restricted fishery MAC representatives for the central north region and central south region of the estuary general restricted fishery until the election for the MAC first occurring after the commencement of this clause.

BY AUTHORITY
