



Fisheries Management Legislation Amendment (Miscellaneous) Regulation 2004

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*.

IAN MICHAEL MACDONALD, M.L.C.,
Minister for Primary Industries

Explanatory note

The object of this Regulation is to make miscellaneous amendments to the *Fisheries Management (General) Regulation 2002* and the *Fisheries Management (Aquaculture) Regulation 2002*. The amendments:

- (a) make it clear that Wonboyn Beach is closed to all commercial net fishing, rather than commercial fishing generally,
- (b) impose a minimum size requirement in relation to Balmain bugs (so as to replace a fishing closure that imposes the minimum size requirement),
- (c) revise the requirements relating to the lawful use of a hauling net (general purpose), garfish net (bullringing), garfish net (hauling), pilchard, anchovy and bait net (hauling), purse seine net, meshing net, flathead net, hoop or lift net, push or scissor net, fish trap, crab trap and yabby trap,
- (d) make further provision with respect to the rights of priority between commercial fishers working on an ocean beach area,
- (e) introduce new requirements relating to the labelling, packaging and receipt of abalone for sale,
- (f) introduce new offences relating to the possession of fish that have been shucked or mutilated,
- (g) impose additional licence conditions relating to the taking of sea urchin and turban shell, co-operation with persons exercising functions under the Act, and the replacement of engines of boats used for prawn trawling,

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- (h) impose additional conditions on the use of traps and nets in the estuary general restricted fishery,
- (i) allow a non-transferable charter fishing boat licence to be cancelled or suspended where the ownership of the boat concerned has changed,
- (j) increase the fee for the issue of certain permits,
- (k) revise the list of noxious fish and marine vegetation,
- (l) exempt certain fish from the prohibition on importing live fish,
- (m) make further provision for the qualifications that are required in order to be elected to a Management Advisory Committee,
- (n) prescribe various offences as penalty notice offences for the purposes of the Act and prescribe the penalty to be paid if an offence is dealt with by issue of a penalty notice,
- (o) change the period for aquaculture contributions and payment of rent on aquaculture leases from a calendar year to a financial year,
- (p) declare various diseases for the purposes of the various offences in the Act that aim to prevent the spread of diseases in fish and marine vegetation,
- (q) make various other miscellaneous changes.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 23, 24 and 289 (the general regulation-making power) and the sections referred to in this Regulation.

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under the

Fisheries Management Act 1994

1 Name of Regulation

This Regulation is the *Fisheries Management Legislation Amendment (Miscellaneous) Regulation 2004*.

2 Commencement

- (1) This Regulation commences on 1 December 2004, except as otherwise provided by this clause.
- (2) Schedule 1 [22]–[29] commence on 1 February 2005.

3 Amendment of Fisheries Management (General) Regulation 2002

The *Fisheries Management (General) Regulation 2002* is amended as set out in Schedule 1.

4 Amendment of Fisheries Management (Aquaculture) Regulation 2002

The *Fisheries Management (Aquaculture) Regulation 2002* is amended as set out in Schedule 2.

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Schedule 1 Amendment of Fisheries Management (General) Regulation 2002

Schedule 1 Amendment of Fisheries Management (General) Regulation 2002

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

public holiday means a day that is observed as a public holiday throughout New South Wales.

[2] Clause 8A Prohibition on certain classes of commercial fishing

Omit “All commercial fishing, except hand gathering.” from the matter relating to Wonboyn Beach in the column headed “Class of commercial fishing prohibited” in the Table to clause 8A.

Insert instead “All methods of net fishing.”

[3] Clause 9 Prohibited size fish

Insert after clause 9 (2) (b):

(b1) in the case of Balmain bug—the width of the carapace is to be measured at its widest point from spike to spike (whether or not damaged),

[4] Clause 9, Table 1

Insert after the matter relating to Abalone in Part 2:

Balmain bug	<i>Ibacus peronii</i> or <i>ibacus chacei</i>	10
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[5] Part 2, Division 3 Bag limits

Omit the Note from Part 3 of the Table to the Division (following clause 15).

Insert instead:

Note. The taking of silver perch from all waters (other than backed up waters of dams and impoundments) is prohibited by a fishing closure notice under section 8 of the Act (published in the Gazette of 24 January 2003 at page 461) which has effect from 5 February 2003 to 4 February 2008, inclusive.

[6] Clause 19 Fishing gear cannot be used in contravention of other restrictions

Insert after clause 19 (2) (f):

- (g) the taking of fish in contravention of a condition of a commercial fishing licence or an endorsement on a commercial fishing licence.

[7] Clause 26 Hauling net (general purpose)

Omit clause 26 (1) (f). Insert instead:

- (f) the length of each hauling line attached to the net does not exceed:
 - (i) 190 metres in length in the waters of that part of the entrance to Wallaga Lake, together with all its inlets and tributaries, extending seawards from the bridge and embankment on the Narooma–Bermagui Road to the Pacific Ocean, or
 - (ii) 725 metres in length in the waters of that part of Wallaga Lake extending upwards from the bridge and embankment on the Narooma–Bermagui Road, the Broadwater of the Clarence River, Lake Innes, Smiths Lake, Myall Lake, Booloombayt Lake, the Broadwater of Myall Lakes and Lake Illawarra, or
 - (iii) 1000 metres in length in the waters of Tuggerah Lakes and Wallis Lake (excluding Wollomba, Wallingat, Cooloongolok and Wang Wauk Rivers).

[8] Clause 26 (1) (ia)

Insert after clause 26 (1) (i):

- (ia) in the waters of Jervis Bay and in ocean waters:
 - (i) at least 80% of the catch resulting from each haul comprises all or any of the *target fish* (being Australian salmon, big eye tuna, blue mackerel, bonito, dart, mulloway, diamond fish, frigate mackerel, luderick, mackerel tuna, longtail tuna, yellowfin tuna, sand whiting, sea mullet (or any other species of mullet included in the family Mugilidae), silver trevally, spanish mackerel, sweep, tarwhine and yellowfin bream), and
 - (ii) any fish in the catch that are not target fish are other fish that may lawfully be taken by commercial fishers from the waters concerned,

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[9] Clause 26, Table

Insert “; no rings or other devices attached to net (including on lead line) that facilitate the pursing of the net” after “mm” in item 7 (b) (i) and (ii) wherever lastly occurring.

[10] Clause 26, Table

Insert after item 7:

- 7A (a) *Waters*—Jervis Bay.
- (b) *Description of net*
 - (i) from 1 March to 31 July in each year—Total length not exceeding 400 metres; length of bunt not exceeding one-third of the total length of net; mesh of bunt not less than 50 mm nor more than 65 mm; mesh of wings not less than 65 mm nor more than 86 mm; no rings or other devices attached to net (including on lead line) that facilitate the pursing of the net.
 - (ii) during any other period—Total length not exceeding 375 metres; length of bunt not exceeding 90 metres or one-quarter of the total length of the net (whichever is the lesser) made up as follows: centre piece not exceeding 50 metres nor less than 25 metres in length, of mesh not less than 30 mm nor more than 50 mm; remainder of bunt not exceeding 50 metres in length, of mesh not less than 50 mm; mesh of wings not less than 80 mm; no rings or other devices attached to net (including on lead line) that facilitate the pursing of the net.

[11] Clause 28 Garfish net (bullringing)

Insert “ocean waters,” after “except” in item 3 (a) of the Table to the clause.

[12] Clause 29 Garfish net (hauling)

Insert after clause 29 (1) (c):

- (d) in the waters of Jervis Bay specified in the Table to this clause and in ocean waters:
 - (i) at least 80% of the catch resulting from each haul comprises sea garfish, and
 - (ii) any fish in the catch that are not sea garfish are other fish that may lawfully be taken by commercial fishers from the waters concerned, and

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- (iii) the hauling of the net once commenced (that is, when any part of the net other than the hauling line has been shot or cast) is continued without any interruption or delay until completed, and
 - (iv) if the hauling of the net is conducted from a boat, no more than one boat is used, and the boat remains stationary while the net is being retrieved, and
 - (v) the net is operated by at least 2 commercial fishers.

[13] Clause 29, Table

Omit “; that part of Jervis Bay within New South Wales, together with all the bays and beaches of that part, generally westerly from a line drawn between Point Perpendicular and Bowen Island” from item 1 (a).

[14] Clause 29, Table

Omit “Mesh” from item 2 (b).

Insert instead “Total length not exceeding 300 metres; no rings or other devices attached to net (including on lead line) that facilitate the pursing of the net; mesh”.

[15] Clause 29, Table

Insert after item 2:

- 3 (a) *Waters*—Jervis Bay.
- (b) *Description of net*—Total length not exceeding 300 metres; no rings or other devices attached to net (including on lead line) that facilitate pursing the net; mesh of not less than 28 mm not more than 36 mm.

[16] Clause 30 Pilchard, anchovy and bait net (hauling)

Insert after clause 30 (1) (b):

- (c) in ocean waters:
 - (i) at least 80% of the catch resulting from each haul comprises all or any of the *target fish* (being anchovy, blue mackerel, pilchard, sandy sprat (whitebait and glassfish) and yellowtail), and
 - (ii) any fish in the catch that are not target fish are other fish that may lawfully be taken by commercial fishers from the waters concerned, and

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- (iii) the hauling of the net once commenced (that is, when any part of the net other than the hauling line has been shot or cast) is continued without any interruption or delay until completed, and
- (iv) if the hauling of the net is conducted from a boat, no more than one boat is used, and the boat remains stationary while the net is being retrieved, and
- (v) the net is operated by at least 2 commercial fishers.

[17] Clause 30, Table

Omit "Mesh" from item 1 (b).

Insert instead "Total length (excluding hauling lines) not exceeding 300 metres; total length of hauling lines not exceeding 500 metres; no rings or other devices attached to net (including on lead line) that facilitate the pursing of the net; mesh".

[18] Clause 31 Purse seine net

Omit "in that Table." from clause 31 (1). Insert instead:

in that Table and the following conditions are complied with:

- (a) the net is cast or shot from, and retrieved to, a boat,
- (b) at least 80% of the catch resulting from each haul comprises all or any of the *target fish* (being anchovy, Australian salmon, blue mackerel, bonito, jack mackerel, pilchard, sandy sprat (whitebait and glassfish), silver trevally, sweep and yellowtail),
- (c) any fish in the catch that are not target fish are other fish that may lawfully be taken by commercial fishers from the waters concerned,
- (d) the hauling of the net once commenced (that is, when any part of the net other than the hauling line has been shot or cast) is continued without any interruption or delay until completed, and is conducted from a single boat.

[19] Clause 31, Table

Insert "; rings and purse rope or other devices that facilitate pursing attached to lead line; mesh throughout not more than 150 mm" after "275 metres" in item 1 (b).

[20] Clause 31, Table

Omit “Mesh” from item 2 (b).

Insert instead “Total length not exceeding 1,000 metres; rings and purse rope or other devices that facilitate pursing attached to lead line; mesh”.

[21] Clauses 38 (3) (b) (and item 2 (a) of the Table to the clause), 41 (item 1 (a) of the Table to the clause), 153 (1) (e) and 217 (1) (e)

Omit “Lake Woollooweyah” wherever occurring.

Insert instead “Lake Wooloweyah”.

[22] Clause 41 Meshing net

Omit clause 41 (1) and (2) (but not the Table to the clause). 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 conditions set out in subclauses (2)–(7) are complied with.
- (2) The net must be 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
 - (b) as a set net, but only:
 - (i) from 1 February to 30 November in any year, and
 - (ii) between sunset and sunrise, and
 - (iii) for no more than 3 hours at a time.
- (3) The 3 hour time limit referred to in subclause (2) (b) (iii) (the **3-hour limit**) does not apply:
 - (a) from 1 June to 31 August in any year in the waters of primary fishing regions 1, 2 and 3, and
 - (b) from 1 June to 30 September in any year in the waters of primary fishing regions 4, 5, 6 and 7.
- (4) If used as a set net, the net must not be set until on or after sunset and it must be retrieved, or be in the process of being retrieved, by the relevant deadline. If more than one net has been set by a fisher, all nets must have been retrieved by the relevant deadline. Alternatively, all nets, but one, must have been retrieved by the relevant deadline and the last one must be in the process of being retrieved.

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- (5) For the purpose of subclause (4), the *relevant deadline* is sunrise or, if the 3-hour limit applies, the end of the 3-hour limit (whichever occurs first).
- (6) Both ends of a set net must be marked on the surface of the water by a white buoy displaying, in clearly visible figures and letters that are not less than 50 mm in height, the letters “FL” followed by the commercial fishing licence number of the fisher who set the net, followed by the letter “M”. The buoy is to have a diameter above the water of not less than 300mm and a weight (of not less than 50 grams) attached to the rope connecting the buoy and the net. The weight is to be suspended not less than 1.5 metres under the buoy.
- (7) If the net is used as a set net by a person in excess of 3 hours and in combination with, or in the same waters as, a flathead net being used by the person, the combined total length of the nets must not exceed 1450 metres.
- (8) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a meshing net.
- (9) In this clause, a reference to a *primary fishing region* is a reference to a primary fishing region described in the Table to clause 209A.

[23] Clause 41, Table

Omit “80 mm” in items 1 (b), 2 (b), 3 (b) and 4 (b) wherever occurring.

Insert instead “95 mm when the net is used as a set net in excess of 3 hours and 80 mm in any other case”.

[24] Clause 43 Flathead net

Insert “and blue swimmer crab” after “taking flathead” in clause 43 (1).

[25] Clause 43 (1) (c)

Omit clause 43 (1) (c). Insert instead:

- (c) the net is not used, set or left in any other waters:
 - (i) from 1 November to 31 March in any year, or
 - (ii) between sunrise and sunset during any other period,

[26] Clause 43 (1) (e) (ii)

Omit “0.5 metre”. Insert instead “0.8 metre”.

[27] Clause 43 (1) (f)–(h)

Insert after clause 43 (1) (e):

- (f) if the net is set after sunset:
 - (i) it must be retrieved, or be in the process of being retrieved, by sunrise, and
 - (ii) if more than one net has been set by a fisher, all nets must have been retrieved by sunrise or all nets, but one, must have been retrieved by sunrise and the last one must be in the process of being retrieved,
- (g) if the net is used, set or left after sunset by a person in combination with, or in the same waters as, a meshing net being used by the person, the combined total length of the nets must not exceed 1450 metres,
- (h) both ends of a set net must be marked on the surface of the water by a white buoy displaying, in clearly visible figures and letters that are not less than 50 mm in height, the letters “FL” followed by the commercial fishing licence number of the fisher who set the net, followed by the letter “F”. The buoy is to have a diameter above the water of not less than 300mm and a weight (of not less than 50 grams) attached to the rope connecting the buoy and the net. The weight is to be suspended not less than 1.5 metres under the buoy.

[28] Clause 43, Table

Omit item 1 (b). Insert instead:

- (b) *Description of net*—Total length not exceeding 725 metres; depth of net not exceeding 16 meshes; mesh throughout not less than 80 mm.

[29] Clause 43, Table

Omit item 2 (b). Insert instead:

- (b) *Description of net*—Total length not exceeding 375 metres; depth of net not exceeding 16 meshes; mesh throughout not less than 80 mm.

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[30] Clause 48 Hoop or lift net

Omit clause 48 (1) (b) and (c). Insert instead:

- (b) the net is not set or left in the water in the period between sunset and sunrise,
- (c) if the net is used or set by a commercial fisher, the net is identified by the fisher's commercial fishing licence number, in the manner required by clause 69,
- (d) not more than 5 nets are used by any person (other than a commercial fisher) at any one time,
- (e) if the fisher is a commercial fisher who holds an endorsement authorising the fisher to take fish for sale in the estuary general restricted fishery, the commercial fisher does not set or use the net in contravention of any conditions of that endorsement.

Note. See clauses 214A–214C for restrictions on the use of hoop nets by commercial fishers in the estuary general restricted fishery.

[31] Clause 59 Fish trap

Omit clause 59 (1) (c).

[32] Clause 59 (1) (e)

Insert after clause 59 (1) (d):

- (e) if the commercial fisher holds an endorsement authorising the fisher to take fish for sale in the estuary general restricted fishery, the commercial fisher does not set or use the trap in contravention of any conditions of that endorsement.

Note. See clauses 214A and 214C for restrictions on the use of fish traps by commercial fishers in the estuary general restricted fishery.

[33] Clause 59, Table

Omit “(other than inland waters or ocean waters)” from item 1 (a).

Insert instead “(other than inland waters or waters referred to elsewhere in this Table)”.

[34] **Clause 59, Table**

Insert after item 2:

- 3 (a) *Waters*—That part of Wallis Lake included within the following boundaries: commencing at a post marked “FD” situated at the high water mark of Pipers Bay (located by a line bearing 186 degrees from an electricity pole numbered 14808 situated at the eastern end of Pipers Bay Drive Forster) then bounded by a line bearing 217 degrees to a second post marked “FD” situated at the high water mark on the southern side of Big Island, then to a third post marked “FD” situated at the high water mark of Wallis Island, bearing 245 degrees from the second post, then southerly, westerly and northerly along the high water mark of Wallis Island to a jetty located on the western side of Wallis Island, then westerly along the length of the jetty to its end, then to a fourth post marked “FD”, situated at the high water mark on the foreshore of Coomba Park, bearing 246 degrees and 30 minutes from the end of the jetty, then generally southerly, easterly and northerly by the high water mark of Wallis Lake to the point of commencement.
- (b) *Description of trap*—Not exceeding 2 metres in length, 1.5 metres in width and 1 metre in depth; consisting of mesh (having a measurement from one plain wire to the opposite plain wire of not less than 50 mm); having an entrance funnel or funnels other than in the top; having at least 1 panel in a side or the top of not less than 30 cm long by 30 cm wide consisting of galvanised wire.
- 4 (a) *Waters*—That part of Port Stephens Broadwater commencing at Nelson Head then along the high water mark to Mud Point then by a line drawn south west intersecting the northern extremity of Bull Island to the high water mark at Lemon Tree Passage then along the high water mark to Tanilba Point then by a line drawn in a north-westerly direction to Cockleshell Point then along the high water mark to Carcair Point then by a line drawn to the easternmost point of Wurrung Island then to Tahlee Point then along the high water mark to Baromee Point then by a line drawn in an easterly direction to Fame Point then by a line drawn in an easterly direction to Oringall Point then in an easterly direction to the southernmost point of Corrie Island then in an easterly direction to Barnes Rocks then by a line drawn in a south-easterly direction to the point of commencement.

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- (b) *Description of trap*—Not exceeding 2 metres in length, 1.5 metres in width and 1 metre in depth; consisting of mesh (having a measurement from one plain wire to the opposite plain wire of not less than 50 mm); having an entrance funnel or funnels other than in the top; having at least 1 panel in a side or the top of not less than 30 cm long by 30 cm wide consisting of galvanised wire.

[35] Clause 61 Crab trap

Omit “displays “LFB” followed by the licence number of the boat used to set the trap” from clause 61 (1) (a) (iv).

Insert instead “displays “FL” followed by the commercial fishing licence number of the commercial fisher who set the trap”.

[36] Clause 61 (1)

Omit clause 61 (1) (c) and (d).

[37] Clause 61 (1) (g)

Insert after clause 61 (1) (f):

- (g) if the fisher is a commercial fisher who holds an endorsement authorising the fisher to take fish for sale in the estuary general restricted fishery, the commercial fisher does not set or use the trap in contravention of any conditions of that endorsement.

Note. See clauses 214B and 214C for restrictions on the use of crab traps by commercial fishers in the estuary general restricted fishery.

[38] Clause 63 Yabby trap

Insert “and does not leave any trap set for more than 24 hours in any period of 48 consecutive hours” after “at any one time” in clause 63 (1) (b).

[39] Clause 63, Table

Omit item 1 (a) and (b). Insert instead:

- 1 (a) *Waters*—Inland waters, other than:
- (i) waters east of the Newell Highway,
 - (ii) the Murray River from the Newell Highway at Tocumwal downstream to the Echuca road bridge,

- (iii) the Edward River from the Murray River at Picnic Point downstream to Stevens Weir,
 - (iv) the Murrumbidgee River from Narrandera to the Darlington Point road bridge.
- (b) *Description of trap*—Not exceeding 1 metre in length, 0.6 metre in width and 0.3 metre in depth; constructed of netting or mesh (not being rigid mesh, such as metal or hard plastic) not less than 13 mm; has entrance funnel or funnels containing a rigid ring with a maximum internal diameter of 90 mm permanently affixed at some point along the funnel or funnels.

[40] Clauses 84 (1) and 85 (1)

Insert “or ocean beach area (whether or not a recognised fishing ground)” after “recognised fishing ground” in clause 84 (1) where firstly occurring and in clause 85 (1).

[41] Clause 84 (1) (a) and (d)

Insert “or ocean beach area” after “recognised fishing ground” wherever occurring.

[42] Clause 84 (1) (e)

Insert “or ocean beach area” after “fishing ground”.

[43] Clause 116 Measuring length and mesh size of nets

Insert “, push or scissor net” after “hand-held prawn net” in item 1 (a) of the Table to the clause.

[44] Part 5, Division 4B

Insert after clause 116A:

Division 4B Labelling of abalone for sale

116B Abalone not to be sold unless labelled

A person must not sell abalone unless the immediate packaging of the abalone is marked or labelled in accordance with clause 289 (3).

Maximum penalty: 100 penalty units.

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116C Abalone packaging not to be removed or damaged

- (1) A person must not remove, deface, damage or destroy any immediate packaging of abalone (or label attached to the packaging) that contains the details required by clause 289 (3).
Maximum penalty: 20 penalty units.
- (2) Subclause (1) does not prevent a person from removing packaging or a label from abalone at a place where the abalone is to be cooked or eaten, immediately before it is cooked or eaten.

[45] Clause 129 Shucking of intertidal invertebrates

Insert “, or have such a shucked intertidal invertebrate in his or her possession,” after “turban snail” in clause 129 (1).

[46] Clause 129 (2)

Insert “, or have shucked rock lobster or turban snail in his or her possession,” after “turban snail”.

[47] Clause 130 Shucking of abalone

Insert “, or have shucked abalone in his or her possession,” after “shuck abalone” in clause 130 (1).

[48] Clause 130 (2)

Insert “, or have shucked abalone in his or her possession,” after “abalone”.

[49] Clause 130 (3)

Insert after clause 130 (2) (before the maximum penalty):

- (3) A person in possession of shucked abalone does not commit an offence against this clause as a result of that possession if the person establishes that the abalone were shucked at a place or premises referred to in subclause (1).

[50] Clause 131 Mutilation of fish

Insert after clause 131 (2):

- (2A) A person must not have in his or her possession in or on or adjacent to any waters any fish of a class specified in clause 9 (Prohibited size fish) that has been mutilated in any manner other than by gutting or by removing the gills or scales.
Maximum penalty: 50 penalty units.
- (2B) A person (other than a commercial fisher) does not commit an offence under subclause (2A) if the person establishes that the fish was mutilated in accordance with subclause (2).

[51] Clause 146 Prescribed conditions of commercial fishing licences

Insert at the end of clause 146 (1) (c) (v):

or

- (vi) to take sea urchin or turban shell in the sea urchin and turban shell restricted fishery in accordance with paragraph (f),

[52] Clause 146 (1) (f) and (g)

Insert after clause 146 (1) (e):

- (f) the holder of the licence, being a licence that is endorsed under the Act for the taking of sea urchin or turban shell (or both) in the sea urchin and turban shell restricted fishery, must not use any unlicensed crew member on a boat being used by the licence holder for the taking of sea urchin or turban shell from the fishery unless the crew member is assisting the licence holder in the operation of the boat or other fishing equipment and is not taking sea urchin or turban shell from the fishery on the licence holder's behalf,
- (g) the holder of the licence must co-operate with, and provide any assistance reasonably required by, a fisheries officer or other person exercising functions conferred by the Act or the regulations.

[53] Clause 153 Prescribed conditions of fishing boat licences

Insert at the end of clause 153 (1) (d) (v):

or

- (vi) to take sea urchin or turban shell in the sea urchin and turban shell restricted fishery in accordance with clause 146 (1) (f),

[54] Clause 153 (1) (e1)

Insert after clause 153 (1) (e):

- (e1) in the case of a licence that authorises the use of the boat for prawn trawling in Port Jackson:
 - (a) the boat is not used with an engine other than the engine that was in use when the licence was issued (the *original engine*), unless the engine to be used (the *replacement engine*) replaces the original engine and complies with the following conditions:

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- (i) if the original engine had a power rating of 60 kW or less—the replacement engine must not have a power rating greater than 60 kW,
 - (ii) if the original engine had a power rating greater than 60 kW—the replacement engine must not have a power rating more than 10% greater than the original engine, and
- (b) the engine of the boat is not replaced without the written consent of the Director-General.

[55] Clause 153 (2)

Omit “subclause (1) (e)”. Insert instead “subclause (1) (e) and (e1)”.

[56] Clause 209 Types of endorsement in restricted fishery

Insert after clause 209 (1) (d):

Note. This endorsement extends to the taking of blue swimmer crabs from estuarine waters using the trap or net referred to above.

[57] Clause 209 (1) (f)

Insert “and a hoop or lift net” after “crab trap”.

[58] Clauses 214A–214C

Insert after clause 214:

214A Use of traps and nets by trapping endorsement holders

- (1) This clause applies if a person holds a trapping endorsement, but not a mud crab trapping endorsement.
- (2) It is a condition of a trapping endorsement that the fisher taking fish under the endorsement does not set or use a fish trap or hoop net (or both) in any waters in contravention of this clause.
- (3) A fisher must not set or use in the waters of Wallis Lake Broadwater or Port Stephens Broadwater (or both) at any one time:
 - (a) a total of more than 20 fish traps, or
 - (b) a total of more than 10 hoop nets.
- (4) A fisher must not set or use in any other waters at any one time:
 - (a) a total of more than 10 fish traps, or
 - (b) a total of more than 10 hoop nets.

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- (5) Without affecting subclauses (3) and (4), if fish traps or hoop nets (or both) are set or used by a fisher in the waters of Wallis Lake Broadwater or Port Stephens Broadwater (or both) and in other waters, the fisher must not set or use at any one time:
- (a) a total of more than 20 fish traps, or
 - (b) a total of more than 10 hoop nets.

214B Use of traps and nets by mud crab trapping endorsement holders

- (1) This clause applies if a person holds a mud crab trapping endorsement, but not a trapping endorsement.
- (2) It is a condition of a mud crab trapping endorsement that the fisher taking fish under the endorsement does not set or use a crab trap or hoop net (or both) in any waters in contravention of this clause.
- (3) A fisher must not set or use in any waters at any one time:
 - (a) a total of more than 10 crab traps, or
 - (b) a total of more than 10 hoop nets.
- (4) In addition, a fisher must not set or use in any waters at any one time a combined total of crab traps and hoop nets that exceeds 10. Accordingly, for every one crab trap the fisher sets or uses, the maximum number of hoop nets he or she is permitted to use at the same time is reduced by one.

Note. Accordingly, a fisher who uses 1 crab trap is permitted to use only 9 hoop nets, a fisher who uses 2 crab traps is permitted to use only 8 hoop nets, a fisher who uses 3 crab traps is permitted to use only 7 hoop nets, and so on.

214C Use of traps and nets by dual endorsement holders

- (1) This clause applies if a person holds both a trapping endorsement and a mud crab trapping endorsement.
- (2) It is a condition of a trapping endorsement and a mud crab trapping endorsement that the fisher taking fish under the endorsements does not set or use a fish trap, hoop net or crab trap (or any combination of those traps and nets) in any waters in contravention of this clause.
- (3) A fisher must not set or use in the waters of Wallis Lake Broadwater or Port Stephens Broadwater (or both) at any one time:
 - (a) a total of more than 20 fish traps, or
 - (b) a total of more than 20 hoop nets, or

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- (c) a total of more than 10 crab traps.
- (4) A fisher must not set or use in any other waters at any one time:
 - (a) a total of more than 10 fish traps, or
 - (b) a total of more than 20 hoop nets, or
 - (c) a total of more than 10 crab traps.
- (5) Without affecting subclauses (3) and (4), if fish traps, hoop nets or crab traps (or any combination of those traps or nets) are set or used by a fisher in the waters of Wallis Lake Broadwater or Port Stephens Broadwater (or both) and in other waters, the fisher must not set or use at any one time:
 - (a) a total of more than 20 fish traps, or
 - (b) a total of more than 20 hoop nets, or
 - (c) a total of more than 10 crab traps.
- (6) In addition, a fisher must not set or use in any waters, at any one time, a combined total of crab traps and hoop nets that exceeds 20. Accordingly, for every one crab trap the fisher sets or uses, the maximum number of hoop nets he or she is permitted to use at the same time is reduced by one.

Note. Accordingly, a fisher who uses 1 crab trap is permitted to use only 19 hoop nets, a fisher who uses 2 crab traps is permitted to use only 18 hoop nets, a fisher who uses 3 crab traps is permitted to use only 17 hoop nets, and so on. A fisher who uses the maximum number of crab traps he or she is permitted to use (that is, 10 crab traps) is permitted to use only 10 hoop nets.

[59] Clause 256A Prohibition on commercial fishing in ocean hauling fishery in certain waters

Omit “Armonas Bay” wherever occurring in the matter relating to Region 7 in the Table to the clause.

Insert instead “Armonds Bay”.

[60] Clause 289

Omit the clause. Insert instead:

289 Fish consignments by registered fish receivers to be labelled

- (1) For the purposes of section 118 (5) (a) of the Act, the registration of a fish receiver is subject to the conditions set out in subclause (2) and, if relevant, subclause (3).
- (2) A registered fish receiver must not receive fish in a container or consign fish in a container for sale unless the container is labelled in a manner approved by the Director.

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- (3) A registered fish receiver who, in that capacity, receives abalone must, before consigning the abalone, mark the outside of the immediate packaging of the abalone with the following details (or affix a label containing those details to that packaging):
- (a) the name and address of the commercial fisher from whom the abalone was received,
 - (b) the registered fish receiver's registration number, or the number issued to the fish receiver by the Australian Quarantine and Inspection Service,
 - (c) the net weight in kilograms, and the number, of the abalone,
 - (d) the date that the abalone were packaged by or on behalf of the registered fish receiver.

[61] Clause 304 Limitation on eligibility

Omit clause 304 (2).

[62] Clause 309 Cancellation or suspension of licence

Omit clause 309 (h).

[63] Clause 309 (2)

Insert at the end of clause 309:

- (2) In addition, in the case of a non-transferable licence, the Minister may cancel or suspend the licence if:
- (a) the licence is held by, or the boat is owned by, one or more natural persons and:
 - (i) one or more of those persons has become bankrupt, or
 - (ii) a person has acquired or disposed of a beneficial interest in the boat, or
 - (b) the licence is held or otherwise under the control of a corporation, or the boat is owned by a corporation, and:
 - (i) a person has acquired or disposed of a controlling interest in the corporation, or
 - (ii) the corporation has become the subject of a winding up order or a controller or administrator has been appointed for the corporation.

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[64] Clause 309A

Insert after clause 309:

309A Voluntary suspension of licence

- (1) The Minister may, from time to time, on the application of a licence holder, suspend the licence by placing the licence in abeyance for such period, not exceeding two years, as the Minister may specify.
- (2) Such an application may be granted in any case where the Minister is satisfied that there is sufficient reason for the suspension (for example, because the boat has been disposed of or lost at sea or because the licence holder has temporarily ceased trading).
- (3) The Minister may, on written application by the licence holder, extend a period of suspension under this clause if satisfied that there is sufficient reason for the extension.
- (4) The total period for which a licence is suspended under this clause must not exceed 3 years.
- (5) The annual licence fee payable in respect of a licence continues to be payable in respect of any year or part of a year for which a licence is suspended under this clause.
- (6) The Minister may cancel a licence suspended under this clause if:
 - (a) any fee payable in connection with the licence is not paid by the end of the suspension period or such further period as the Minister may allow, or
 - (b) the holder of the licence fails (without lawful excuse) to comply with any request for information in connection with the suspension that is made by the Minister by notice in writing to the holder.
- (7) A notice referred to in subclause (6) (b) must specify a period (of not less than 14 days) in which the request for information must be complied with.
- (8) Nothing in this clause limits the powers of the Minister under clause 309.
- (9) The Minister is to refuse an application for suspension under this clause (not being an application for an extension of a suspension) if the licence has previously been suspended on the application of the holder and the period of suspension ended less than 3 years before the application is made.

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- (10) Subclause (9) does not apply if the Minister is satisfied that, in the circumstances of the case, the suspension should be granted because the boat to which the licence applies has been lost at sea or damaged beyond repair.

[65] Clause 339

Omit the clause. Insert instead:

339 Fees for permits under Part 7 of the Act

- (1) An application for a permit under Part 7 of the Act is to be accompanied by a fee of \$200, except as otherwise provided by this clause.
- (2) The fee for an application for a permit under Part 7 of the Act that authorises a person to harm any marine vegetation to which section 205 of the Act applies is:
- (a) if the Director-General is of the opinion that an inspection of the relevant area is required before the application can be determined—\$111, or
 - (b) if the Director-General is not of that opinion—\$56.
- (3) The Minister may waive all or part of a fee payable under this clause in such cases as the Minister considers appropriate.

[66] Clause 340 Noxious fish and noxious marine vegetation (section 209 of the Act)

Omit clause 340 (1). Insert instead:

- (1) For the purpose of section 209 (1) (a) of the Act, the following fish are declared to be noxious fish:
- (a) **Class 1**
 - (i) tilapia (*Oreochromis mossambicus*, *Tilapia zillii*, *Tilapia mariae*),
 - (ii) black striped mussel (all species of the genus *Mytilopsis*),
 - (iii) plague minnow (*Gambusia holbrooki*), but only in waters other than the waters specified in paragraph (c) (ii).
 - (b) **Class 2**
 - (i) banded grunter (*Amniataba percoides*),
 - (ii) Pacific oysters (*Crassostrea gigas*), but only in estuarine and ocean waters (other than Port Stephens),

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(iii) speckled mosquito fish (*Phalloceros caudimaculatus*).

(c) **Class 3**

- (i) carp (*Cyprinus carpio*),
- (ii) plague minnow (*Gambusia holbrooki*), but only in waters in the local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, City of Sydney, Fairfield, Gosford, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lake Macquarie, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Warringah, Waverley, Willoughby, Wollongong, Woollahra and Wyong.

[67] **Clause 340 (3)**

Omit "Class 1". Insert instead "Class 3".

[68] **Clause 340 (4)**

Omit "Section 213". Insert instead "Sections 211 and 213".

[69] **Clause 340AA**

Insert after clause 340:

340AA Importation of certain live fish (section 217 of the Act)

- (1) The following classes of fish are exempt from the operation of section 217 of the Act:
 - (a) fish traded in the aquarium industry,
 - (b) fish imported for human consumption.
- (2) This clause does not apply to the following fish:
 - (a) fish declared as noxious fish under section 209 (1) (a) of the Act,
 - (b) fish listed in the Table to this clause.

Table

Common name	Species/Family
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Piranha	<i>Serrasalmus</i> spp., <i>Pygocentrus</i> spp.
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Common name	Species/Family
Airbreathing/ walking catfish	All species in the Family Clariidae
Grass carp	<i>Ctenopharyngodon idella</i>
Roach	<i>Rutilus rutilus</i>
Tench	<i>Tinca tinca</i>
Electric eels	All species in the Family Gymnotidae
Snakeheads	<i>Channa</i> spp., <i>Parachanna</i> spp.
Bluegills	<i>Lepomis</i> spp.
Largemouth bass	<i>Micropterus</i> spp.
African tigerfish	<i>Hydrocynus</i> spp.
South American tigerfish or trahira	<i>Erythrinus</i> , <i>Hoplerythrinus</i> and <i>Hoplias</i> spp.
Parasitic (or candiru or pencil) catfish	All species in the Family Trichomycteridae
Nile perch (live)	<i>Lates niloticus</i>
Pike cichlid	<i>Crenicichla</i> spp.
Tiger catfish	<i>Pseudoplatystoma fasciatum</i>
Electric catfish	All species in the Family Malapteruridae
African lung fish	<i>Protopterus annectens</i>
Channel catfish	<i>Ictalurus punctatus</i>
Freshwater stingrays	<i>Himantura</i> spp.
Pikes	All species in the Family Esocidae
Freshwater Garfish	All species in the Family Lepisosteidae
Sticklebacks	All species in the Family Gasterosteidae
Bichirs	All species in the Family Polypteridae
Schilbe catfish	<i>Schilbe</i> spp.
Redfin perch	<i>Perca fluviatilis</i>
Barcoo Grunter	<i>Scortum barcoo</i>
Welchs Grunter	<i>Bidyanus welchi</i>
Sooty Grunter	<i>Hephaestus fuliginosus</i>
Sleepy cod	<i>Oxyeleotris lineolatus</i>

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Common name	Species/Family
Any hybrid between species in the Family Terapontidae including Barcoo Grunter, Welchs Grunter, Silver Perch, Banded Grunter, Sooty Grunter or Spangled Perch.	
Atlantic salmon	<i>Salmo salar</i>
Brook trout	<i>Salvelinus fontinalis</i>
Brown trout	<i>Salmo trutta</i>
Rainbow trout	<i>Oncorhynchus mykiss</i>
Barramundi	<i>Lates calcarifer</i>
Marron	<i>Cherax tenuimanus</i>
Redclaw	<i>Cherax quadricarinatus</i>
Abalone	<i>Haliotis</i> spp.

[70] Clause 371 General restrictions on election to a MAC

Insert after clause 371 (2):

- (3) A person is not qualified to stand as a candidate in an election for a period of 5 years after the person:
- (a) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or 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) is dealt with under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of an offence referred to in paragraph (b).

Note. Under section 10 of the *Crimes (Sentencing Procedure) Act 1999* a Court may find a person guilty of an offence without proceeding to a conviction (having regard to such matters as the character, antecedents, age, health and mental condition of the offender, the trivial nature of the offence and the extenuating circumstances in which the offence was committed).

[71] Clauses 422 and 423

Insert after clause 421:

422 Change in ownership of charter fishing boat licence

- (1) Clause 309 (2), as inserted by the *Fisheries Management Legislation Amendment (Miscellaneous) Regulation 2004*, does not authorise the suspension or cancellation of a licence on account of any act or omission that occurred before 1 December 2004.
- (2) Clause 309 (h), as in force immediately before 1 December 2004, continues to apply in respect of any change in ownership or shareholding of a non-transferable licence that occurred before 1 December 2004.

423 Voluntary suspension of charter fishing boat licence—clause 309A

- (1) If a licence was suspended by the Minister under clause 309 (g), before the commencement of this clause, on the application of the licence holder and that suspension had effect immediately before the commencement of clause 309A, as inserted by the *Fisheries Management Legislation Amendment (Miscellaneous) Regulation 2004*, the licence is taken, on that commencement, to have been suspended under clause 309A and that clause applies in respect of the suspension.
- (2) However, clause 309A does not require an annual licence fee to be paid in respect of any period during which a licence was suspended before the commencement of this clause and any such period is to not to be counted for purpose of clause 309A (4) and (9).

[72] Schedule 4 Waters in which spearfishing is prohibited

Insert “, together with the waters of the South Pacific Ocean for a distance of 50 metres from the northern breakwall of the River” after “South Pacific Ocean” in the matter relating to “Evans River”.

[73] Schedule 5 Penalty notice offences

Omit “Clause 409”. Insert instead “Clause 413”.

[74] Schedule 5, Part 1

Omit “\$5,500” from column 2 of the matter relating to sections 200 (1), 201 (1), 204B (2), 219 (1) (a), 219 (1) (b) and 219 (1) (c).

Insert instead “\$1,000”.

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[75] Schedule 5, Part 1

Omit "\$300" from column 2 of the matter relating to section 205 (2).

Insert instead "\$500".

[76] Schedule 5, Part 1

Insert in columns 1 and 2 in numerical order of section:

Section 220I (4)	\$100
Section 220ZA in relation to the offence of harming fish or marine vegetation of an endangered species, population or ecological community	\$2,500
Section 220ZA in relation to the offence of harming fish or marine vegetation of a vulnerable species	\$1,000
Section 220ZB (1) in relation to the offence of buying, selling or having in possession fish or marine vegetation of an endangered species	\$2,500
Section 220ZB (1) in relation to the offence of buying, selling or having in possession fish or marine vegetation of a vulnerable species	\$1,000
Section 220ZD	\$2,500
Section 221D (3)	\$500
Section 221J	\$2,500
Section 221O (5)	\$5,000

[77] Schedule 5, Part 1

Omit "\$500" from column 2 of the matter relating to section 220ZC (1).

Insert instead "\$5,500".

[78] Schedule 5, Part 2

Insert in columns 1 and 2 in numerical order of clause:

Clause 116B	\$200
Clause 116C	\$100
Clause 131 (2A)	\$100

Schedule 2 Amendment of Fisheries Management (Aquaculture) Regulation 2002

(Clause 4)

[1] Clause 23 Contributions to be made by certain class A permit holders

Omit clause 23 (1) and the note before that subclause. Insert instead:

- (1) A class A permit holder to whom this Division applies must pay to the Minister, to secure the due performance of the permit holder's payment obligations under the Act, an annual contribution of \$40 for each hectare, or part of a hectare, of the aquaculture farm or farms to which the permit relates, in respect of each period of 12 months beginning on 1 July in any year.

[2] Clause 23 (3)

Omit the subclause. Insert instead:

- (3) A contribution required by this clause must be paid, at the permit holder's option, either:
 - (a) on or before 31 July in the period of 12 months for which it is payable, or
 - (b) by instalments.

[3] Clause 40 Minimum rent for leased area

Insert after the note following clause 40 (2):

- (3) For the purpose of this Division, a *year* is a period of 12 months beginning on 1 July in any year.

[4] Clause 41 How rent for an aquaculture lease is to be calculated

Omit "31 December" from the definition of *DR* in clause 41 (2).

Insert instead "30 June".

[5] Clause 41 (3), definition of "DR"

Omit "beginning on 1 January in the year concerned".

Insert instead "beginning on the previous 1 July".

[6] Clause 42 When rent payable

Omit clause 42 (2). Insert instead:

- (2) After the first payment, the rent under an aquaculture lease must be paid in advance, either (at the lessee's option):

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- (a) on or before 31 July in each year, or
- (b) by instalments.

[7] Clause 60 Diseases declared for purposes of Division 4 of Part 6 of the Act

Insert after clause 60 (2) (a) (x):

- (xi) European catfish virus,
- (xii) European sheatfish virus,
- (xiii) *Oncorhynchus masou* virus disease,
- (xiv) spring viraemia of carp,
- (xv) channel catfish virus disease,
- (xvi) infectious salmon anaemia,
- (xvii) piscirickettsiosis (*Piscirickettsia salmonis*),
- (xviii) gyrodactylosis (*Gyrodactylus salaris*),
- (xix) red sea bream iridoviral disease,
- (xx) koi mass mortality,

[8] Clause 60 (2) (b) (vii)

Insert after clause 60 (2) (b) (vi):

- (vii) akoya oyster disease,

[9] Clause 60 (2) (c) (vii)–(xi)

Omit clause 60 (2) (c) (vii). Insert instead:

- (vii) white spot disease,
- (viii) gill-associated virus,
- (ix) taura syndrome,
- (x) spawner-isolated mortality virus disease,
- (xi) necrotising hepatopancreatitis.

BY AUTHORITY