



New South Wales

# Fisheries Management (Abalone Share Management Plan) Amendment Regulation 2005

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

## Explanatory note

The object of this Regulation is to provide for a new method of calculating the community contribution payable by shareholders in the abalone share management fishery. The new community contribution will be levied as a percentage of gross revenue per share, with the percentage varying on a sliding scale determined by:

- (a) adjusting the average annual beach price for abalone to account for movements in the consumer price index, and
- (b) further adjusting the average annual beach price for abalone to account for changes in the total allowable catch for abalone (both recent changes and historical changes).

The Regulation also makes amendments of a law revision nature.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 60, 77 and 289 (the general regulation-making power).

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Clause 1

Fisheries Management (Abalone Share Management Plan) Amendment  
Regulation 2005

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**Fisheries Management (Abalone Share Management  
Plan) Amendment Regulation 2005**

under the

Fisheries Management Act 1994

**1 Name of Regulation**

This Regulation is the *Fisheries Management (Abalone Share Management Plan) Amendment Regulation 2005*.

**2 Amendment of Fisheries Management (Abalone Share Management  
Plan) Regulation 2000**

The *Fisheries Management (Abalone Share Management Plan) Regulation 2000* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 2)

- [1] **Clause 3 Amendment of Fisheries Management (General) Regulation 1995**  
Omit the clause.
- [2] **The whole Appendix (except clause 37)**  
Omit “Director” and “Director’s” wherever occurring.  
Insert instead “Director-General” and “Director-General’s”, respectively.
- [3] **The whole Appendix (except column 2 of item 2 of the Table to clause 3)**  
Omit “NSW Fisheries” wherever occurring.  
Insert instead “the Department of Primary Industries”.
- [4] **The whole Appendix**  
Omit “*Fisheries Management (General) Regulation 1995*” wherever occurring.  
Insert instead “*Fisheries Management (General) Regulation 2002*”.
- [5] **Appendix, clause 2**  
Omit “clause 107” from paragraph (d) of the definition of *serious fisheries offence* in clause 2 (1).  
Insert instead “clause 108”.
- [6] **Appendix, clause 3**  
Omit “clause 7” from column 1 of item 2 of the Table to the clause.  
Insert instead “clause 9”.
- [7] **Appendix, clause 23**  
Omit “clause 157” from clause 23 (2).  
Insert instead “clause 165”.
- [8] **Appendix, clause 24**  
Omit “Clause 7” from the note.  
Insert instead “Clause 9”.

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### [9] Appendix, clause 26

Omit “clause 145 (1) (b)” from clause 26 (3).

Insert instead “clause 153 (1) (b)”.

### [10] Appendix, Part 6A

Insert after Part 6 of the Appendix:

## Part 6A Community contribution

### 34A Definitions

(1) In this Part:

*average beach price for abalone* during a fishing period means the average beach price for abalone (per kilogram) during the fishing period, determined by the Minister on the basis of records kept by the Director-General.

*CPI* means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

*flow through TAC adjustment*—see clause 34E.

*immediate TAC adjustment*—see clause 34D.

*TAC* means the total allowable catch of abalone.

(2) For the purposes of this Part, the *percentage change in TAC* for a fishing period is determined by calculating the difference between the TAC for the fishing period and the TAC for the previous fishing period, and expressing the difference so obtained as a percentage of the TAC for the previous fishing period, rounded to the nearest whole percentage point (and, if the amount to be rounded is half a percentage point, it is to be rounded up).

(3) A monetary amount determined under this Part is to be rounded to the nearest whole dollar (and, if the amount to be rounded is 50 cents, it is to be rounded up).

### 34B Community contribution

(1) For the purposes of section 77 of the Act, a community contribution is payable by each shareholder for each fishing period.

(2) The community contribution is payable by a shareholder 2 months after the end of the fishing period, or on such later date as may be determined by the Minister and notified in writing to the shareholder.

- (3) The community contribution is calculated as follows:

$$CC = RP \times \frac{S}{TS} \times TC \times BP$$

where:

**CC** is the community contribution.

**RP** is the relevant percentage (as defined by subclause (4)).

**S** is the number of shares in the fishery held by the shareholder on the last day of the fishing period.

**TS** is the total number of shares in the fishery.

**TC** is the total catch (in kilograms) of abalone by shareholders in the fishery during the fishing period, determined by the Minister on the basis of records kept by the Director-General.

**BP** is the average beach price for abalone during the fishing period.

- (4) For the purposes of subclause (3), the relevant percentage (**RP**) is calculated as follows:
- (a) if the adjusted beach price for the fishing period is less than \$43, the relevant percentage is zero (and no community contribution is payable),
  - (b) if the adjusted beach price for the fishing period is not less than \$43 but is less than \$53, the relevant percentage is 0.5% plus another 0.5% for each \$1 by which the adjusted beach price exceeds \$43,
  - (c) if the adjusted beach price for the fishing period is not less than \$53 but is less than \$62, the relevant percentage is 6% plus another 1% for each \$1 by which the adjusted beach price exceeds \$53,
  - (d) if the adjusted beach price for the fishing period is not less than \$62, the relevant percentage is 15%.
- (5) The Director-General is to calculate the community contribution for each shareholder at the end of the fishing period and advise shareholders of the amount that they are liable to pay.
- (6) Interest is payable on late payments of the community contribution at the rate payable from time to time in respect of judgments of the Supreme Court.
- (7) The community contribution may, with the approval of the Minister, be paid by instalments on such terms as the Minister approves.

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- (8) If an instalment is not paid by the due date, the balance then becomes due and payable (together with the interest payable for late payment).
- (9) In this clause:  
*adjusted beach price* for a fishing period means:
  - (a) in the case of the fishing period ending on 30 June 2005—the average beach price for abalone during the fishing period, and
  - (b) in the case of a fishing period ending on or after 30 June 2006—the adjusted beach price for the fishing period, determined in accordance with this Part.

### 34C CPI adjustment of average beach price

- (1) For the purpose of determining the adjusted beach price for a fishing period, the average beach price for abalone during that fishing period is to be adjusted to account for movements in the CPI since December 2004.
- (2) For that purpose, the average beach price for abalone during the fishing period is to be divided by the CPI number for the December quarter in that fishing period and then multiplied by the CPI number for the December quarter in 2004.
- (3) The amount obtained after such an adjustment is referred to in this Part as the *CPI adjusted price* for the fishing period.
- (4) The *adjusted beach price* for a fishing period is the CPI adjusted price for the fishing period, unless an immediate TAC adjustment or flow through TAC adjustment (or both) is required by this Part to be made to the CPI adjusted price.

### 34D Immediate TAC adjustment

- (1) An adjustment (referred to in this Part as an *immediate TAC adjustment*) is required to be made to the CPI adjusted price for a fishing period if the percentage change in TAC for the fishing period is 10% or more, whether that change reflects an increase or a decrease in TAC.
- (2) If the percentage change in TAC for a fishing period is an increase of 10% or more, the CPI adjusted price for the fishing period is to be increased by \$1 for each full 10% of the percentage change in TAC.

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- (3) If the percentage change in TAC for a fishing period is a decrease of 10% or more, the CPI adjusted price for the fishing period is to be decreased by \$1 for each full 10% of the percentage change in TAC.
  - (4) The *adjusted beach price* for a fishing period in which an immediate TAC adjustment is required is the CPI adjusted price as adjusted under this clause, unless one or more flow through TAC adjustments are also required to be made to the CPI adjusted price for the same fishing period.

**Note.** For example, if the percentage change in TAC for the fishing period is a decrease of 20%, the adjusted beach price for that fishing period is the CPI adjusted price decreased by \$2 (assuming no flow through TAC adjustment is required).

#### **34E Flow through TAC adjustments—significant changes in TAC**

- (1) If there is a significant change in TAC in a fishing period, an adjustment (referred to in this Part as a *flow through TAC adjustment*), calculated as provided by this clause, is required to be made to the CPI adjusted price in each subsequent fishing period until no further adjustment is required under this clause as a consequence of that significant change in TAC.
- (2) For the purposes of this clause, a *significant change in TAC* is a percentage change in TAC of 20% or more (whether that change reflects an increase or decrease in TAC).
- (3) If the significant change in TAC was a decrease of 20% or more, the adjustment required is a decrease to the CPI adjusted price in each subsequent fishing period of half the dollar amount (before rounding) of the relevant adjustment in the previous fishing period, until the amount of the decrease (after rounding) first reaches \$1. No further adjustment is required as a consequence of the significant change in TAC after the amount of the decrease first reaches \$1.

**Note.** For example, if the percentage change in TAC in a fishing period (fishing period 1) is a decrease of 40%, the CPI adjusted price must be decreased by \$4 in the year in which the decrease occurs as a result of the immediate TAC adjustment. Under this subclause, the CPI adjusted price would also be decreased in the next fishing period (fishing period 2) by \$2 (half of the relevant adjustment in the previous fishing period), and by \$1 in the fishing period after that (fishing period 3). A flow through TAC adjustment would not be required in fishing period 4.

- (4) If the significant change in TAC was an increase of 20% or more, the adjustment required is an increase to the CPI adjusted price in each subsequent fishing period of half the dollar amount (before rounding) of the relevant adjustment in the previous fishing period, until the amount of the increase (after rounding) first

reaches \$1. No further adjustment is required as a consequence of the significant change in TAC after the amount of the increase first reaches \$1.

**Note.** For example, if the percentage change in TAC in a fishing period (fishing period 1) is an increase of 30%, the CPI adjusted price must be increased by \$3 as a result of the immediate TAC adjustment. Under this subclause, the CPI adjusted price in the next fishing period (fishing period 2) would also be increased by \$1.50 (rounded up to \$2) and by 75 cents (rounded up to \$1) in the fishing period after that (fishing period 3). A flow through TAC adjustment would not be required in fishing period 4.

- (5) For the purpose of calculating the amount of a flow through TAC adjustment required under this clause, the *relevant adjustment in the previous fishing period* is the immediate TAC adjustment or flow through TAC adjustment made to the CPI adjusted price in the previous fishing period, unless subclause (6) applies.
- (6) If clause 34F (Aggregate TAC adjustments) applied to the adjustment of the CPI adjusted price in the previous fishing period, the *relevant adjustment in the previous fishing period* is the adjustment that would have been made to the CPI adjusted price in that previous fishing period if the only adjustment made to the CPI adjusted price in that previous fishing period had been the immediate TAC adjustment, or flow through TAC adjustment, required as a consequence of the significant change in TAC for which the flow through TAC adjustment is being calculated in the current fishing period.

**Note.** The purpose of subclause (6) is to prevent aggregate TAC adjustments made under clause 34F from having a snowballing effect on flow through TAC adjustments. For example, say the TAC in fishing period 1 is 100, the TAC in fishing period 2 is 140, the TAC in fishing period 3 is 154 and the TAC in fishing period 4 is also 154. In fishing period 2 an immediate TAC adjustment to the CPI adjusted price is required, being an increase of \$4 (this reflects the increase in TAC from 100 to 140).

In fishing period 3 a flow through TAC adjustment is required as a consequence of the significant change in TAC in fishing period 2, being an increase to the CPI adjusted price of \$2 (that is, half the adjustment made to the CPI adjusted price in fishing period 2). However, in this case, an immediate TAC adjustment is also required to reflect the increase in TAC in fishing period 3 from 140 to 154. Accordingly, clause 34F applies and the total adjustment to the CPI adjusted price in fishing period 3 is the aggregate of the 2 increases, being an increase of \$3.

In fishing period 4, the flow through TAC adjustment is calculated on the basis of half the adjustment that would have been made to the CPI adjusted price in fishing period 3 if only a flow through TAC adjustment had been made in that fishing period. Accordingly, the flow through TAC adjustment in fishing period 4 is an increase of \$1 (half of the flow through TAC adjustment that would have been made in fishing period 3), not an increase of half the total adjustment made to the CPI adjusted price in fishing period 3.



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- (7) The *adjusted beach price* for a fishing period in which a flow through TAC adjustment is required is the CPI adjusted price as adjusted under this clause, unless:
- (a) an immediate TAC adjustment is also required to be made to the CPI adjusted price for the same fishing period, or
  - (b) more than one flow through TAC adjustment is required to be made to the CPI adjusted price for the same fishing period.

**34F Aggregate TAC adjustments**

- (1) This clause applies if (but for this clause):
- (a) both an immediate TAC adjustment and one or more flow through TAC adjustments are required to be made to the CPI adjusted price for a fishing period, or
  - (b) more than one flow through TAC adjustment is required to be made to the CPI adjusted price for a fishing period.
- (2) If (but for this clause) all adjustments would result in the CPI adjusted price being decreased, or all those adjustments would result in the CPI adjusted price being increased, the *adjusted beach price* for the fishing period is the CPI adjusted price adjusted by the aggregate of all those adjustments.

**Note. Example 1.** The TAC in fishing period 1 is 100. In fishing period 2 the TAC is 130 (an increase of 30%). In the next fishing period (fishing period 3) the TAC is 143 (a further increase in TAC of 10%). Consequently, in fishing period 3 an increase in the CPI adjusted price of \$2 is required because of the flow through TAC adjustment and an increase in the CPI adjusted price of \$1 is required because of the immediate TAC adjustment. In such a case, the CPI adjusted price for fishing period 3 is to be adjusted on the basis of the aggregate of the 2 adjustments, in total an increase of \$3.

**Example 2.** The TAC for fishing period 1 is 100. The TAC for fishing period 2 is 80 (a decrease of 20%). In the next fishing period (fishing period 3) the TAC is 72 (a further decrease in TAC of 10%). Consequently, in fishing period 3 a decrease in the CPI adjusted price of \$1 is required because of the flow through TAC adjustment and a decrease in the CPI adjusted price of \$1 is required because of the immediate TAC adjustment. In such a case, the CPI adjusted price for fishing period 3 is to be adjusted on the basis of the aggregate of the 2 adjustments, in total a decrease of \$2.

- (3) If (but for this clause), any adjustment required to be made to the CPI adjusted price for the fishing period would be in the opposite direction from any other adjustment required to be made to the CPI adjusted price for the fishing period (that is, one adjustment increases the CPI adjusted price and another decreases it), the following provisions apply:

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- (a) the percentage change in TAC for the fishing period is to be recalculated using the TAC figure for the base fishing period in place of the TAC figure for the previous fishing period,
  - (b) the CPI adjusted price for the fishing period is to be adjusted on the basis of the immediate TAC adjustment that would be required (if any) if the figure calculated under paragraph (a) were the percentage change in TAC for the fishing period,
  - (c) the *adjusted beach price* for the fishing period is the CPI adjusted price for the fishing period as so adjusted, and no flow through TAC adjustment is required in the fishing period.
- (4) For the purposes of subclause (3), the *base fishing period* means the fishing period immediately before the fishing period in which there was a significant change in TAC (within the meaning of clause 34E) as a consequence of which a flow through TAC adjustment would be required (but for this clause) in the current fishing period.
- (5) If more than one fishing period would qualify as the base fishing period (because more than one flow through TAC adjustment would be required, but for this clause, in the current fishing period), the base fishing period is the earliest of them.

**Note. Example 3.** The TAC in fishing period 1 is 100. In fishing period 2 it is 160, representing an increase of 60%. In fishing period 3 the TAC decreases to 128 (a decrease of 20%). In fishing period 4, the TAC decreases to 115 (a decrease of 10%).

In fishing period 2 an increase of \$6 to the CPI adjusted price must be made because of the immediate TAC adjustment.

In fishing period 3 an increase to the CPI adjusted price of \$3 is required because of the flow through TAC adjustment from fishing period 2 and a decrease to the CPI adjusted price of \$2 is required because of the immediate TAC adjustment. For fishing period 3, the base fishing period is fishing period 1, because that is the fishing period immediately before the fishing period in which there was a significant change in TAC as a consequence of which a flow through TAC adjustment is required in the current fishing period. Accordingly, the adjusted beach price is calculated on the basis of the difference in TAC between fishing period 1 and 3 (100 to 128). This is an increase of 28%. Accordingly, the CPI adjusted price must be increased by \$2.

In fishing period 4, both a flow through TAC adjustment from fishing period 2 (an increase of \$2, which is half the flow through TAC adjustment for the previous period) and an immediate TAC adjustment is required (a decrease of \$1). The base fishing period is still fishing period 1, so the adjusted beach price is calculated on the basis of the difference in TAC between fishing period 1 and 4 (100 to 115). This is an increase of 15%. Accordingly, the CPI adjusted price must be increased by \$1.

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**[11] Appendix, clause 35**

Omit “clause 107” from clause 35 (1) (d).

Insert instead “clause 108”.

**[12] Appendix, clause 35, note**

Omit “Clause 133”.

Insert instead “Clause 139”.

**[13] Appendix, clause 37**

Omit the clause.

**[14] Appendix, clause 39**

Omit “clause 7” from the note.

Insert instead “clause 9”.

**[15] Appendix, clause 41A**

Insert after clause 41:

**41A Changes to community contribution**

- (1) Part 6A, as inserted by the *Fisheries Management (Abalone Share Management Plan) Amendment Regulation 2005*, applies in respect of the community contribution payable for a fishing period ending on or after 30 June 2005.
- (2) However, the community contribution (if any) payable by a shareholder for the fishing period ending on 30 June 2005 does not become payable until a date after the commencement of the *Fisheries Management (Abalone Share Management Plan) Amendment Regulation 2005* determined by the Minister and notified in writing to the shareholder (despite clause 34B (2)).
- (3) Clause 37, as in force immediately before its repeal by the *Fisheries Management (Abalone Share Management Plan) Amendment Regulation 2005*, continues to apply in respect of any community contribution payable for a fishing period ending before 30 June 2005.