



New South Wales

Fisheries Management Legislation Amendment (Miscellaneous) Regulation 2006

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*.

Minister for Primary Industries

Explanatory note

The object of this Regulation is to amend legislation made under the *Fisheries Management Act 1994*:

- (a) to give the Minister power to cancel NSW shares, licences and endorsements if the owner of a fishing business that operates in both NSW waters and Commonwealth or other State or Territory waters transfers fishing entitlements in those other waters and fails to transfer or surrender all associated NSW fishing entitlements (so as to prevent licence splitting by those dual operators), and
- (b) to simplify the implementation of the estuary prawn trawl and estuary general share management fisheries, if those fisheries are redefined to exclude the waters of Port Jackson from the fishery, and
- (c) to make minor alterations to the boundary of the recreational fishing haven of the Manning River, and
- (d) to make further provision with respect to the charges levied in the abalone and lobster share management fisheries, and
- (e) for law revision purposes.

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Explanatory note

In relation to the estuary prawn trawl and estuary general share management fisheries, the Regulation modifies the application of Part 3 of the Act to the implementation of those fisheries if those fisheries (as described in Schedule 1 to the Act) are redefined to exclude the waters of Port Jackson. The waters of Port Jackson have been closed to fishing by a fishing closure under section 8 of the Act. Consequently, it is proposed to redefine the estuary prawn trawl and estuary general fisheries to exclude those waters. It is also proposed to clarify the distinction between the estuary general fishery and the ocean hauling fishery. If the fisheries are redefined, shares provisionally issued in the fisheries will be cancelled as a consequence of section 44 (2) of the Act and new shares (in the redefined fisheries) will have to be issued. This Regulation ensures that the entitlements of provisional shareholders in the corresponding existing fisheries (other than entitlements to take fish in Port Jackson) are continued in the redefined fisheries and provides for the continuation of limited access arrangements and of any appeals relating to the issue of shares in existing fisheries.

In relation to the abalone and lobster share management fisheries, the Regulation makes further provision with respect to the determination of management charges in the abalone and lobster share management fisheries. The share management plans for those fisheries permit a management charge of up to \$325 per share (in the case of the abalone fishery) or \$80 per share (in the case of the lobster fishery) to be levied by the Minister pursuant to section 76 of the Act. This Regulation clarifies the types of costs that may be attributed to industry for the purposes of determining that management charge. The Regulation also enables the Director-General of the Department of Primary Industries to waive (in part or in full) certain administrative fees otherwise payable with respect to those fisheries.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 20, 34T, 45, 76 and 289 (the general regulation-making power).

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under the

Fisheries Management Act 1994

1 Name of Regulation

This Regulation is the *Fisheries Management Legislation Amendment (Miscellaneous) Regulation 2006*.

2 Amendment of Fisheries Management (General) Regulation 2002

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

3 Amendment of other Fisheries Management legislation

The Regulations specified in Schedule 2 are amended as set out in that Schedule.

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Schedule 1 Amendment of Fisheries Management (General) Regulation 2002

Schedule 1 Amendment of Fisheries Management (General) Regulation 2002

(Clause 2)

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

Omit paragraph (a) of the matter relating to Manning River in the first column of the Table to the clause.

Insert instead:

- (a) Ghinni Ghinni Creek, from a line drawn from a point on the south western shoreline at the mouth of Ghinni Ghinni Creek at 31° 52' 984"S, 152° 33' 565"E (using Datum WGS84) directly across the Manning River in a generally easterly direction to the eastern shoreline on Oxley Island at 31° 53' 066"S, 152° 34' 011"E (using Datum WGS84), and

[2] Part 5A

Insert after Part 5:

Part 5A Fishing business transfer rules

133C Definitions

- (1) Expressions used in this Part have the same meaning as they have in Division 4C of Part 2 of the Act.
- (2) In this Part:
 - dual operator fishing business* means a fishing business the components of which include one or more NSW fishing authorities and one or more external fishing authorities.
 - external fishing authority* means a fishing authority that is not a NSW fishing authority.

133D Surrender of fishing authority to be treated as transfer

- (1) For the purposes of the definition of *transfer* in section 34P of the Act, a transfer of a component of a fishing business includes the surrender of an external fishing authority that is a component of a fishing business.

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- (2) For the purposes of this Part, the *surrender* of an external fishing authority means the surrender, voluntary cancellation or relinquishment of an external fishing authority that is a component of a fishing business (whether or not for consideration).

133E Transfer of external fishing authorities by dual operator fishing businesses

- (1) An external fishing authority that is a component of a dual operator fishing business is not to be transferred (other than by surrender of the authority) to a person unless:
- (a) all components of the fishing business (other than NSW fishing authorities) are transferred to that same person, and
 - (b) all NSW fishing authorities that are a component of the fishing business are transferred to that same person or surrendered to the Minister for cancellation.
- (2) An external fishing authority that is a component of a dual operator fishing business is not to be transferred by surrender of the authority unless all NSW fishing authorities that are components of the fishing business are surrendered to the Minister for cancellation.
- (3) If an external fishing authority that is a component of a dual operator fishing business is transferred in contravention of subclause (1) or (2), the Minister may take one or more of the following actions:
- (a) cancel or refuse to renew any NSW fishing authority that is a component of the fishing business,
 - (b) refuse to transfer a NSW fishing authority that is a component of the dual operator fishing business, or refuse to issue a new NSW fishing authority, to any person to whom a component of the dual operator fishing business is transferred,
 - (c) refuse to issue a new NSW fishing authority if eligibility for that fishing authority is determined on the basis of catch history that is a component of the dual operator fishing business,
 - (d) impose (in accordance with the Act) conditions on any NSW fishing authority that is a component of the fishing business, so as to restrict the fishing activities of the fishing business, or exercise any other powers conferred on the Minister by the Act so as to restrict the fishing activities of the fishing business.

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- (4) Despite a contravention of subclause (2), the Minister may defer taking any action under subclause (3) until an assessment is undertaken of the actual or potential level of fishing effort by the fishing business, or by fishing businesses generally, in any waters to which the Act applies since the surrender of an external fishing authority or a class of external fishing authorities.
- (5) The Director-General may refuse an application to revoke or amend a fishing business determination in respect of a dual operator fishing business if satisfied that:
 - (a) the purpose of the application is to avoid the requirements of subclause (1) or (2), or
 - (b) a component of the fishing business has been transferred in contravention of subclause (1) or (2).

[3] Part 6, Division 1

Insert before clause 134:

Division 1 General

[4] Part 6, Division 2

Insert after clause 142:

Division 2 Application of Part 3 of the Act to redefined share management fisheries

142A Preliminary

- (1) Pursuant to section 45 of the Act, this Division modifies the application of Part 3 of the Act in respect of any redefinition of the estuary general fishery or the estuary prawn trawl fishery (or both) that is effected by means of a relevant proclamation made on or after the commencement of this Division and before the commencement of the management plan for the fishery.
- (2) For the purposes of this Division, a *relevant proclamation* means a proclamation under section 42 of the Act that omits the description of the estuary general fishery or the estuary prawn trawl fishery from Schedule 1 to the Act and inserts a new description of the fishery in Schedule 1 to the Act that operates to exclude the waters of Port Jackson from the description of the fishery (whether or not any other changes are made to the description of the fishery).

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- (3) In this Division:
- existing fishery** means the estuary general fishery, or the estuary prawn trawl fishery, as described in Schedule 1 to the Act immediately before the commencement of this Division.
- Port Jackson** includes Sydney Harbour.
- redefined fishery** means the estuary general fishery, or the estuary prawn trawl fishery, as described in Schedule 1 to the Act immediately after a relevant proclamation in relation to that fishery takes effect.
- share cancellation date**, in relation to an existing fishery, means the date the description of the fishery is omitted from Schedule 1 to the Act by means of a relevant proclamation (being the date on which shares in the fishery are cancelled as a consequence of section 44 (2) of the Act).
- (4) To avoid doubt, a reference in this Division to a fishery that corresponds to another fishery is a reference to a fishery with the same name as the other fishery.
- (5) For the purposes of this Division, a share is taken to confer an **entitlement** to take fish in particular waters if the shareholder is entitled, as a result of holding that share, to have his or her commercial fishing licence endorsed for the taking of fish in those waters or to nominate another person to have his or her commercial fishing licence so endorsed (or would be so entitled had all shares held by the person been issued to the person on a provisional basis in the initial issue of shares in the fishery).
- Note.** Section 44 (2) of the Act provides that if the description of a fishery is omitted from Schedule 1 to the Act (including for the purpose of redefining an existing share management fishery), all shares in the fishery are cancelled. It is intended that the estuary general fishery and estuary prawn trawl fisheries will be redefined to exclude the waters of Port Jackson from the fisheries and to make other changes by way of clarification to the description of the estuary general fishery. This Division modifies the application of Part 3 of the Act in respect of the redefined fisheries.

142B Consultation

The Minister is not required to consult relevant commercial fishing industries bodies about whether a redefined fishery should be a share management fishery.

142C Identification of fishery and shareholders

- (1) Sections 46, 47, 48, 50 and 51 of the Act do not apply in respect of a redefined fishery.

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- (2) The Minister is to issue shares in a redefined fishery to persons who are eligible for shares in the redefined fishery in accordance with their entitlement to shares under this Division.
- (3) The persons who are eligible for shares in a redefined fishery are the persons who, immediately before the share cancellation date for the corresponding existing fishery, hold shares provisionally issued in that existing fishery.
- (4) A person who is eligible for shares in a redefined fishery is, subject to this clause, eligible for the same number of shares, and shares of the same class, or conferring the same entitlements, as the shares held by the person in the corresponding existing fishery immediately before the share cancellation date.
- (5) A person who, immediately before the share cancellation date in relation to an existing fishery, holds shares in the existing fishery that confer an entitlement to take fish in the waters of Port Jackson (or shares that would do so, but for a fishing closure under section 8 of the Act) is not, on that basis, eligible for shares in the corresponding redefined fishery.
- (6) However, if the person holds any shares in an existing fishery that confer an entitlement to take fish in estuarine waters other than the waters of Port Jackson, the person is eligible for shares in the corresponding redefined fishery that confer the same entitlements in respect of those other waters as the shares held by the person in the existing fishery immediately before the share cancellation date.
- (7) Shares in a redefined fishery are to be issued by the Minister on a provisional basis pending the commencement of the management plan for the redefined fishery.
- (8) On or as soon as practicable after the share cancellation date in relation to an existing fishery, the Minister is to give each person who, immediately before that date, holds shares in the fishery or is an applicant for shares in the fishery who has duly lodged an appeal to the Share Appeal Panel that is still pending, a notice that:
 - (a) advises the person that the fishery has been redefined and, as a result, shares in the fishery are cancelled, and
 - (b) advises the person of the number of shares (if any) provisionally issued to the person in the corresponding redefined fishery and the date the provisional issue of shares in the redefined fishery takes effect, and

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- (c) contains such other information in relation to the redefinition of the fishery as the Minister considers appropriate.
 - (9) Shares issued in a redefined fishery may be described or identified in the same manner as shares issued in the corresponding existing fishery if the Minister considers it appropriate.
 - (10) Nothing in this Division permits shares to be issued in the estuary general fishery that confer any entitlement to take fish in the waters of Jervis Bay by use of a fishing method in those waters that falls within the description of the ocean hauling fishery (as described in Schedule 1 to the Act).

142D Appeals pending on share cancellation date

- (1) There is no appeal against a decision relating to the provisional issue of shares in a redefined fishery, except to the extent provided by this clause.
- (2) If an appeal in relation to the provisional issue of shares in an existing fishery was duly made to the Share Appeal Panel before the share cancellation date in relation to the fishery and the appeal is still pending before the Share Appeal Panel on the share cancellation date, that appeal is to be heard and determined by the Panel under Part 3 of the Act as if the existing fishery had not been redefined.
- (3) If, as a result of a decision of the Share Appeal Panel on such an appeal, a person is eligible for shares in an existing fishery, the person is taken as a consequence of that decision to be eligible for shares in the corresponding redefined fishery of the same class or that confer the same entitlements.
- (4) Subclause (3) applies only if the Share Appeal Panel decides the person is eligible for shares in an existing fishery that confer an entitlement to take fish in estuarine waters other than the waters of Port Jackson.
- (5) Any shares issued in a redefined fishery as a result of a decision of the Share Appeal Panel may be issued on a provisional basis, pending the final issue of shares in the redefined fishery.
- (6) Sections 52, 52A and 54 (2) (a) of the Act apply in relation to a redefined fishery as if a reference to an appeal to the Share Appeal Panel were a reference to an appeal referred to in subclause (2).

142E Final issue of shares

Section 52 (3) of the Act applies in relation to a redefined fishery as if a reference to an applicant for shares were a reference to an applicant for shares in the corresponding existing fishery.

142F Continuation of limited access arrangements

- (1) Section 53 of the Act does not apply in respect of a redefined fishery.
- (2) Shares issued provisionally in a redefined fishery take effect on the date advised by the Minister under clause 142C as the date on which the provisional issue of shares in the redefined fishery takes effect. That date is taken, for the purposes of section 54 (1) and (2) of the Act, to be the day appointed for the commencement of limited access to the redefined fishery.

Note. From the commencement of the limited access stage, only shareholders in the redefined fishery will be entitled to take fish in the fishery or nominate other persons to do so (see section 54 (2) of the Act).

- (3) A holder of shares in a redefined fishery that is a limited access fishery is not entitled to have his or her licence endorsed to take fish in the redefined fishery (or to nominate another person to do so) if all shares held by the person in the corresponding existing fishery immediately before the share cancellation date were acquired by dealings after the initial issue of shares in that existing fishery, unless the acquisition concerned was of a type declared by the regulations to be an authorised acquisition for the purposes of section 54 (3) of the Act.
- (4) Subclause (3) applies in respect of a redefined fishery in addition to the provisions of section 54 (3) of the Act.

Note. Section 54 (3) of the Act contains a similar provision to subclause (3) that prevents a shareholder from acquiring an entitlement to an endorsement in the redefined fishery if all shares in the fishery are acquired after the initial issue of shares in the redefined fishery.
- (5) Until a redefined fishery becomes a limited access fishery, a commercial fishing licence does not authorise a person to take fish in the redefined fishery unless:
 - (a) the licensee is a person who held shares in the corresponding existing fishery immediately before the share cancellation date or is an applicant for shares in the corresponding existing fishery who duly lodged an appeal to the Share Appeal Panel and whose appeal was pending immediately before the share cancellation date, or

(b) the licensee is duly nominated in the Share Register by a person referred to in paragraph (a) to take fish on behalf of that person,

and the licence is duly endorsed under Part 3 of the Act for the taking of fish in the corresponding existing fishery.

142G Continuation of endorsements, nominations and regulations relating to existing fisheries

- (1) The endorsement of a commercial fishing licence to take fish in an existing fishery (other than a Port Jackson endorsement) becomes, when the redefined fishery becomes a limited access fishery, an endorsement under Part 3 of the Act to take fish in the corresponding redefined fishery, subject to this clause.
- (2) Any such endorsement does not authorise the taking of fish in the waters of Port Jackson.
- (3) A person duly nominated in the Share Register to take fish on behalf of a shareholder in an existing fishery, immediately before the share cancellation date for the fishery, is taken, when the corresponding redefined fishery becomes a limited access fishery, to have been duly nominated in the Share Register to take fish on behalf of the shareholder in the redefined fishery.
- (4) Any provisions of the regulations that apply to an existing fishery immediately before the share cancellation date, including any restricted fishery provisions that applied to the existing fishery as a consequence of section 55 (3) of the Act, are taken to continue to apply, on and from the share cancellation date, to the corresponding redefined fishery (with any necessary modifications), until those provisions are repealed or until the commencement of the management plan for the redefined fishery (whichever occurs first).
- (5) In this clause, a *Port Jackson endorsement* means an endorsement on a commercial fishing licence issued before the commencement of this Division, being an endorsement that authorises the taking of fish in the waters of Port Jackson and no other waters.

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[5] Clause 194 Eligibility for endorsement

Insert after clause 194 (6):

- (6A) A person does not cease to be eligible for a southern zone endorsement because of the surrender, voluntary cancellation or relinquishment of a permit referred to in clause 194 (2) (a) (despite clause 277 (1)). However, in such a case, the Minister may cancel, or refuse to renew or issue a southern zone endorsement, as provided by the fishing business transfer rules set out in Part 5A.

[6] Clause 209A Endorsement to specify authorised area of operations

Omit “Sydney Harbour” from the fourth column of the Table to the clause.

Schedule 2 Amendment of other Fisheries Management legislation

(Clause 3)

2.1 Fisheries Management (Abalone Share Management Plan) Regulation 2000

[1] Appendix Abalone Share Management Plan

Insert after clause 10 (7) (before the note):

- (8) The Director-General may waive all or part of the administrative fee for the nomination.

[2] Appendix, clause 19

Insert after clause 19 (2):

- (2A) The Director-General may waive all or part of the application fee referred to in subclause (2) (b).

[3] Appendix, clause 36

Insert after clause 36 (1):

- (1A) For the purposes of section 76 (2) of the Act, the following costs of management are attributed to industry:
 - (a) the cost of developing, reviewing, implementing and ensuring compliance with strategies, policies, and legislation relating to the fishery (including for the purpose of promoting ecologically sustainable development of the fishery),
 - (b) the cost of providing administrative services in connection with the operation of the fishery,
 - (c) the costs incurred in connection with the establishment and operation of the Management Advisory Committee for the fishery,
 - (d) the costs incurred in connection with the following research (or such part of those costs as the Minister determines):
 - (i) ongoing research into the management and sustainability of the fishery or of commercial fisheries generally,
 - (ii) specific research projects relating to the management and sustainability of the fishery or of commercial fisheries generally,

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- (e) such other costs of management of the fishery as may be determined by the Minister after consultation with the Management Advisory Committee for the fishery.
- (1B) The costs of management attributed to industry may be reduced in any manner the Minister considers appropriate to recognise any saving, or any public benefit or benefit to any other fishing sector, that is achieved in the management of the fishery.

2.2 Fisheries Management (Lobster Share Management Plan) Regulation 2000

[1] Appendix Lobster Share Management Plan

Omit “Director” wherever occurring. Insert instead “Director-General”.

[2] Appendix, clause 10

Insert after clause 10 (7) (before the note):

- (8) The Director-General may waive all or part of the administrative fee for the nomination.

[3] Appendix, clause 19

Insert after clause 19 (2):

- (2A) The Director-General may waive all or part of the application fee referred to in subclause (2) (b).

[4] Appendix, clause 53

Insert after clause 53 (1):

- (1A) For the purposes of section 76 (2) of the Act, the following costs of management are attributed to industry:
 - (a) the cost of developing, reviewing, implementing and ensuring compliance with strategies, policies, and legislation relating to the fishery (including for the purpose of promoting ecologically sustainable development of the fishery),
 - (b) the cost of providing administrative services in connection with the operation of the fishery,
 - (c) the costs incurred in connection with the establishment and operation of the Management Advisory Committee for the fishery,

- (d) the costs incurred in connection with the following research (or such part of those costs as may be determined by the Minister):
 - (i) ongoing research into the management and sustainability of the fishery or of commercial fisheries generally,
 - (ii) specific research projects relating to the management and sustainability of the fishery or of commercial fisheries generally,
 - (e) such other costs of management of the fishery as may be determined by the Minister after consultation with the Management Advisory Committee for the fishery.
- (1B) The costs of management attributed to industry may be reduced in any manner the Minister considers appropriate to recognise any saving, or any public benefit or benefit to any other fishing sector, that is achieved in the management of the fishery.