



New South Wales

Fisheries Management Legislation Amendment (Catch Reporting) Regulation 2009

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, MLC
Minister for Primary Industries

Explanatory note

The object of this Regulation is to make provision with respect to the following:

- (a) the notification to a nominated fisher of a shareholder in a fishery of matters relating to the shareholder's quota,
- (b) the matters to be included in the prescribed record that is required to be kept by commercial fishers and the making of those records by nominated fishers on behalf of fishing employers,
- (c) the making of records concerning the sale and possession of fish taken by a commercial fisher under a permit,
- (d) the use of standard names rather than marketing names to identify species,
- (e) the issuing of penalty notices,
- (f) the provision of docket books to shareholders and nominated fishers, the use and custody of docket books and the use, completion and lodgement of daily log sheets and nil fishing activity reports,
- (g) the use of lobster traps,
- (h) the provision of tags to shareholders and nominated fishers in the lobster fishery,
- (i) extending the transitional period in respect of the minimum shareholding for certain types of shares in the ocean trap and line fishery.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 57, 60, 122, 123 (1) and 289 (the general regulation-making power).

2009 No 357

Clause 1

Fisheries Management Legislation Amendment (Catch Reporting)
Regulation 2009

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1 Name of Regulation

This Regulation is the *Fisheries Management Legislation Amendment (Catch Reporting) Regulation 2009*.

2 Commencement

This Regulation commences on 31 July 2009 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Fisheries Management (General) Regulation 2002

[1] Clause 3 Definitions

Insert in alphabetical order:

lobster trap means a recreational lobster trap or a commercial lobster trap.

[2] Clause 60 Recreational lobster trap

Insert “recreational” before “lobster trap” in clause 60 (4).

[3] Clause 180 Quotas for sea urchin and turban shell

Omit “and, if the entitlement holder has a nominated fisher, to the nominated fisher” from clause 180 (3).

[4] Clause 180 (3A)

Insert after clause 180 (3):

- (3A) An entitlement holder who is notified by the Director-General of a quota determination under subclause (3) must ensure that any nominated fisher of the entitlement holder is notified of that quota determination as soon as reasonably practicable.

Maximum penalty: 10 penalty units.

[5] Clause 181 Transfer of quota

Omit clause 181 (6). Insert instead:

- (6) An entitlement holder who is notified by the Director-General of an approval of a transfer under subclause (5) must ensure that any nominated fisher of the entitlement holder is notified of that approval as soon as reasonably practicable.

Maximum penalty: 10 penalty units.

[6] Clause 290 Definitions

Omit “In this Division, *prescribed record* means a record that includes any of the following information:”.

Insert instead:

In this Division:

prescribed record means a record that includes any of the following information:

2009 No 357

Fisheries Management Legislation Amendment (Catch Reporting)
Regulation 2009

Schedule 1 Amendment of Fisheries Management (General) Regulation 2002

[7] Clause 290, definition of “prescribed record”

Insert after paragraph (d):

- (d1) particulars of the endorsement on a commercial fishing licence that authorised those fishing activities,

[8] Clause 290, definition of “prescribed record”

Insert “or found” after “lost” in paragraph (e).

[9] Clause 290, definition of “standard name”

Insert in alphabetical order:

standard name in relation to a fish species means the name of the species:

- (a) as defined in the Australian Standard Fish Names List in Annex A to the Australian Standard entitled AS SSA 5300—2007, *Australian Fish Names Standard*, or
- (b) if the species is not defined in that list, as defined by the Director-General.

[10] Clause 290B Records to be made by fishing employers

Insert after clause 290B (2):

- (2A) The records required to be made by a fishing employer under this clause in respect of fishing activities engaged in by a nominated fisher may be made by that nominated fisher on behalf of the fishing employer.

[11] Clauses 292 (1) (a) and (2) (a) and 293 (1) (a) and (2) (c)

Omit “marketing name” wherever occurring. Insert instead “standard name”.

[12] Clauses 292 (1) (i) and (2) (i) and 293 (1) (ca) and (2) (ca)

Insert “, or under a permit issued in relation to,” after “component of” wherever occurring.

[13] Clauses 292 (1) (j) and (2) (j) and 293 (1) (cb) and (2) (cb)

Omit the paragraphs.

[14] Clause 293 Records and reports by registered fish receivers

Omit “and address” from clause 293 (2) (a).

[15] Schedule 5 Penalty notice offences

Insert in Part 2 in order of clause number in Columns 1 and 2 respectively:

Clause 180 (3A)	\$200
Clause 181 (6)	\$200

[16] Schedule 5, Part 2A

Insert after Part 2:

Part 2A Offences under Fisheries Management (Abalone Share Management Plan) Regulation 2000

Clause 38 of the Appendix to the Regulation (except in respect of a breach of clause 34 (1) of that Appendix) \$200

[17] Schedule 5, Part 5

Insert after Part 4:

Part 5 Offences under Fisheries Management (Lobster Share Management Plan) Regulation 2000

Clause 55 of the Appendix to the Regulation (except in respect of a breach of clause 27 (7) or 51 (1) of that Appendix) \$200

2009 No 357

Fisheries Management Legislation Amendment (Catch Reporting)
Regulation 2009

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

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

[1] Appendix Abalone Share Management Plan

Omit “, and any nominated fisher of the shareholder,” from clause 15 (5).

[2] Appendix, clause 15 (6) and (7)

Insert after clause 15 (5):

- (6) A shareholder who is notified by the Director-General of any matter under subclause (5) must ensure that any nominated fisher of the shareholder is notified of that matter as soon as reasonably practicable.
- (7) For the purposes of section 65 of the Act, contravention of subclause (6) is an offence.

[3] Appendix, clause 19 (5)–(5B)

Omit clause 19 (5). Insert instead:

- (5) The Director-General is also to give notice of that approval to the shareholder who acquired the quota.
- (5A) A shareholder who transferred or acquired a quota under this clause must ensure that any person who is nominated to take abalone for sale on behalf of the shareholder is notified of the transfer as soon as reasonably practicable after the transfer.
- (5B) For the purposes of section 65 of the Act, contravention of subclause (5A) is an offence.

[4] Appendix, clause 20 (1)

Omit the subclause. Insert instead:

- (1) In this Part:
 - daily log sheet* means the form known as the “NSW DPI Abalone Fishery Daily Catch and Effort Record” provided to shareholders by the Department.
 - docket book* means the booklet containing daily log sheets and known as the “NSW DPI Abalone Fishery Catch and Effort Logbook” provided to shareholders by the Department.

[5] Appendix, clause 23 (1)

Omit “and registration or licence details”.

[6] Appendix, clause 24, note

Omit “11.5 centimetres”. Insert instead “11.7 centimetres”.

[7] Appendix, clause 28

Omit the clause. Insert instead:

28 Provision and use of docket books

- (1) A shareholder must ensure that any endorsement holder who is a nominated fisher of the shareholder is provided with a docket book as is required for use during fishing periods.
- (2) An endorsement holder must ensure that when taking or attempting to take abalone the endorsement holder has in his or her possession or control a docket book issued for use to a shareholder:
 - (a) who is the endorsement holder, or
 - (b) who provided the docket book to the endorsement holder in accordance with this clause, because the endorsement holder is a nominated fisher of the shareholder.
- (3) The possessor of a docket book must keep it in a safe place.
- (4) The possessor of a docket book must not give, sell or lend to another person, or otherwise make available for use by another person the docket book or any part of the docket book.
- (5) Subclause (4) does not prevent:
 - (a) a person from giving a form to a fisheries officer authorised to take possession of the form, or
 - (b) a shareholder providing a docket book to a nominated fisher of the shareholder, or
 - (c) a nominated fisher of a shareholder providing a docket book to the shareholder.
- (6) The possessor of a docket book must, within 24 hours of becoming aware that the docket book is lost, stolen, destroyed or damaged, notify that fact to:
 - (a) the Director-General, or
 - (b) if the possessor is a nominated fisher of a shareholder and was provided the docket book by that shareholder—the shareholder.

2009 No 357

Fisheries Management Legislation Amendment (Catch Reporting)
Regulation 2009

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

- (7) A shareholder who is notified under subclause (6) (b) of the fact that a docket book is lost, stolen, destroyed or damaged must, within one business day of being notified, notify the fact to the Director-General.
- (8) The possessor of a docket book who is an endorsement holder must, if the endorsement is suspended or cancelled, immediately return the docket book (including any unused daily log sheets) to:
 - (a) the Director-General, or
 - (b) if the possessor is a nominated fisher of a shareholder and was provided the docket book by that shareholder—the shareholder.
- (9) A shareholder to whom a docket book is provided under subclause (8) (b) must immediately return the docket book (including any unused daily log sheets) to the Director-General.
- (10) A contravention of subclause (2), (3), (4), (6) or (8) is an endorsement holder offence.
- (11) For the purposes of section 65 of the Act, contravention of subclause (1), (7) or (9) is an offence.
- (12) In this clause:
 - business day* means any day other than a Saturday, a Sunday or a public holiday throughout New South Wales.
 - possessor of a docket book* means the shareholder to whom the docket book was issued or if the shareholder has provided the docket book to a nominated fisher of the shareholder in accordance with this clause, the nominated fisher.

[8] Appendix, clause 30 (1) (b) and (c)

Omit the paragraphs. Insert instead:

- (b) the number of abalone hung, and
- (c) the latitude and longitude of the place where the abalone are hung.

[9] Appendix, clause 30 (4) (b)

Omit clause 30 (4) (b)–(d). Insert instead:

- (b) each of the matters required to be recorded in relation to the abalone under subclause (1).

[10] Appendix, clause 31 (1) (c)

Omit “Part A on all copies of the daily log sheet for that day”.

Insert instead “all copies of the daily log sheet for that day in accordance with the instructions in the docket book”.

[11] Appendix, clause 31 (1) (d)

Omit “original and”.

[12] Appendix, clause 31 (4A)

Insert after clause 31 (4):

- (4A) An endorsement holder must forward a copy of a daily log sheet, completed in accordance with the instructions in the docket book, to the Director-General by facsimile transmission (or other means as may be approved by the Director-General) within 24 hours after the end of the day on which the daily log sheet was required to be completed.

[13] Appendix, clause 32

Omit the clause. Insert instead:

32 Nil returns

- (1) An endorsement holder who attempts to take abalone for sale on any day, and does not take any abalone on that day, must:
- (a) complete, in accordance with the instructions in the docket book, the appropriate sections of the daily log sheet for that day immediately after returning to shore and before entering any premises or moving more than 50 metres from the point at which the endorsement holder came ashore, and
 - (b) lodge the sheet with the Director-General within 24 hours after the end of the day on which the sheet was required to be completed.
- (2) An endorsement holder who takes no abalone during a calendar month because the endorsement holder did not attempt to take abalone during that month must:
- (a) on the last day of that month, complete a nil fishing activity report to show nil returns for that month, and
 - (b) lodge the report with the Director-General within 24 hours after the end of the day on which the report was required to be completed.

2009 No 357

Fisheries Management Legislation Amendment (Catch Reporting)
Regulation 2009

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

- (3) A requirement that a sheet or report be lodged with the Director-General under this clause is satisfied if:
 - (a) a copy of the sheet or report is sent to the Director-General by facsimile transmission (or other means as may be approved by the Director-General) within the required time, and
 - (b) the original copy is sent to the Director-General as soon as practicable.
- (4) A contravention of this clause is an endorsement holder offence.
- (5) In this clause:
nil fishing activity report means the form known as the “NSW DPI Nil Fishing Activity Report” provided to shareholders by the Department.

[14] Appendix, clauses 33 and 35 (1) (c)

Omit the clause and paragraph.

Schedule 3 Amendment of Fisheries Management (Lobster Share Management Plan) Regulation 2000

[1] Appendix Lobster Share Management Plan

Omit the definitions of *daily log sheet* and *monthly reconciliation form* from clause 2 (1).

Insert in alphabetical order:

daily log sheet means the form known as the “NSW DPI Lobster Fishery Daily Catch and Effort Record” provided to shareholders by the Department.

docket book means the booklet containing daily log sheets and known as the “NSW DPI Lobster Fishery Catch and Effort Logbook” provided to shareholders by the Department.

[2] Appendix, clause 15 (5)

Omit “, and any nominated fisher of the shareholder.”.

[3] Appendix, clause 15 (6) and (7)

Insert after clause 15 (5):

(6) A shareholder who is notified by the Director-General of any matter under subclause (5) must ensure that any nominated fisher of the shareholder is notified of that matter as soon as reasonably practicable.

(7) For the purposes of section 65 of the Act, contravention of subclause (6) is an offence.

[4] Appendix, clause 19 (5)–(5B)

Omit clause 19 (5). Insert instead:

(5) The Director-General is also to give notice of that approval to the shareholder who acquired the quota.

(5A) A shareholder who transferred or acquired a quota under this clause must ensure that any person who is nominated to take rock lobster for sale on behalf of the shareholder is notified of the transfer as soon as reasonably practicable after the transfer.

(5B) Contravention of subclause (5A) is designated as an offence for the purposes of section 65 of the Act.

2009 No 357

Fisheries Management Legislation Amendment (Catch Reporting)
Regulation 2009

Schedule 3 Amendment of Fisheries Management (Lobster Share Management Plan)
Regulation 2000

[5] Appendix, clause 33 (2)

Omit “or their nominated fishers”.

[6] Appendix, clause 34 (1)

Omit “or by a nominated fisher on behalf of a shareholder”.

[7] Appendix, clause 35 (1) and (2)

Omit the subclauses. Insert instead:

- (1) The number of tags to be issued to a shareholder is to be the number of tags that the Director-General considers will allow the whole of the shareholder’s quota of rock lobster to be taken in the fishing period in respect of which the tags are issued.
- (2) The Director-General may issue further tags to a shareholder if the Director-General is satisfied that the previous issue of tags was insufficient to allow the taking of the whole of the shareholder’s quota of rock lobster.

[8] Appendix, clause 35 (3)

Omit “(or the shareholder’s nominated fisher)”.

[9] Appendix, clause 35A

Insert after clause 35:

35A Shareholder to provide tags to nominated fisher

- (1) A shareholder who is issued tags by the Director-General must, as soon as reasonably practicable after being so issued, ensure that any nominated fisher of the shareholder is provided with those tags.
- (2) For the purposes of section 65 of the Act, contravention of this clause is an offence.

[10] Appendix, clause 38

Insert in alphabetical order:

inshore lobster trap means a trap that consists of a rectangular base or floor not exceeding 1.2 metres by 1.2 metres (or a circular base or floor not exceeding 1.2 metres in diameter) and that does not contain any compartments or contain any material that would prevent the free movement of rock lobsters within the trap.

offshore lobster trap means a trap, other than an inshore lobster trap, not exceeding 2 metres in length, 2 metres in width and 2 metres in depth that consists of mesh (having a measurement

from one plain wire to the opposite plain wire of not less than 50 millimetres) and that does not contain any compartments or contain any material that would prevent the free movement of rock lobsters within the trap.

[11] Appendix, clause 40 (5)

Omit “a lobster trap or”.

[12] Appendix, clause 40, Table

Omit the Table. Insert instead:

Table

Commercial lobster trap

Waters	Description of trap
Any waters (other than inland waters and any waters more than 10 metres deep (contour))	Inshore lobster trap
Ocean waters more than 10 metres deep (contour)	Offshore lobster trap

[13] Appendix, clause 42 (2) and (2A)

Omit clause 42 (2). Insert instead:

- (2) An endorsement holder must record the following on his or her daily log sheet, on each occasion that he or she adds any live rock lobster to a holding pen:
- (a) the latitude and longitude of each such pen,
 - (b) the number of rock lobsters added to a pen,
 - (c) the tag number of each rock lobster added to a pen.
- (2A) An endorsement holder must record the following on his or her daily log sheet, on each occasion that he or she removes any live rock lobster from a holding pen:
- (a) the number of rock lobsters removed from a pen,
 - (b) the tag number of each rock lobster removed from a pen.

2009 No 357

Fisheries Management Legislation Amendment (Catch Reporting)
Regulation 2009

Schedule 3 Amendment of Fisheries Management (Lobster Share Management Plan)
Regulation 2000

[14] Appendix, clause 42 (4)

Omit the subclause. Insert instead:

- (4) An endorsement holder must record the following on his or her daily log sheet, on each occasion that he or she adds any live rock lobster to a place or thing other than a holding pen:
 - (a) the latitude and longitude of the place or thing,
 - (b) the number of rock lobsters added to the place or thing.

[15] Appendix, clauses 48 and 49

Omit the clauses. Insert instead:

48 Provision and custody of docket books

- (1) A shareholder must ensure that any endorsement holder who is a nominated fisher of the shareholder is provided with a docket book as is required for use during fishing periods.
- (2) The possessor of a docket book must not give, sell or lend to another person, or otherwise make available for use by another person the docket book or any part of the docket book.
- (3) Subclause (2) does not prevent:
 - (a) a person from giving a form to a fisheries officer authorised to take possession of the form, or
 - (b) a shareholder providing a docket book to a nominated fisher of the shareholder, or
 - (c) a nominated fisher of a shareholder providing a docket book to the shareholder.
- (4) A contravention of subclause (2) is an endorsement holder offence.
- (5) For the purposes of section 65 of the Act, contravention of subclause (1) is an offence.
- (6) In this clause:
possessor of a docket book means the shareholder to whom the docket book was issued or if the shareholder has provided the docket book to a nominated fisher of the shareholder in accordance with this clause, the nominated fisher.

49 Use of docket books and daily log sheets

- (1) An endorsement holder must ensure that when taking or attempting to take rock lobster the endorsement holder has in his or her possession or control a docket book issued for use to a shareholder:
 - (a) who is the endorsement holder, or
 - (b) who provided the docket book to the endorsement holder in accordance with this clause, because the endorsement holder is a nominated fisher of the shareholder.
- (2) An endorsement holder who takes or attempts to take rock lobster in the fishery on any day must complete the appropriate sections of the daily log sheet for that day in accordance with the instructions in the docket book:
 - (a) immediately after landing any rock lobster taken on that day or transferring the rock lobster to or from a holding pen, or
 - (b) if the endorsement holder did not take any rock lobster on that day, immediately after returning to shore,and, in any case, must do so before moving more than 25 metres from the point at which the endorsement holder came ashore and before entering any premises.
- (3) An endorsement holder who disposes of rock lobster during a month must on the last day of the month complete the appropriate sections of the daily log sheet in accordance with the instructions in the docket book to show the total amount of rock lobster disposed of during that month.
- (4) An endorsement holder must forward a copy of a completed daily log sheet, by facsimile transmission or other means as may be approved by the Director-General, to the Director-General within 48 hours after the end of the day on which the daily log sheet was required to be completed.
- (5) An endorsement holder who takes no rock lobster during a calendar month because the endorsement holder did not attempt to take rock lobster during that month must:
 - (a) on the last day of that month, complete a nil fishing activity report to show nil returns for that month, and
 - (b) forward a copy of the completed report, by facsimile transmission or other means as may be approved by the Director-General, to the Director-General within 48 hours after the end of that day.

2009 No 357

Fisheries Management Legislation Amendment (Catch Reporting)
Regulation 2009

Schedule 3 Amendment of Fisheries Management (Lobster Share Management Plan)
Regulation 2000

(6) A contravention of this clause is an endorsement holder offence.

(7) In this clause:

nil fishing activity report means the form known as the “NSW DPI Nil Fishing Activity Report” provided to shareholders by the Department.

[16] Clause 50 (2) (a) and (3) (a)

Omit “marketing name” wherever occurring. Insert instead “standard name”.

[17] Clause 50 (4)

Insert at the end of clause 50:

(4) In this clause:

standard name in relation to a species means the name of the species:

- (a) as defined in the Australian Standard Fish Names List in Annex A to the Australian Standard entitled AS SSA 5300—2007, *Australian Fish Names Standard*, or
- (b) if the species is not defined in that list, as defined by the Director-General.

[18] Appendix, clause 52, Table

Omit the matter relating to a contravention of clause 49 from Columns 1 and 2 respectively.

Schedule 4 Amendment of Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006

Appendix

Omit clause 6 (6). Insert instead:

- (6) For the purposes of this clause, the *transitional period* is:
- (a) the period of 2 years and 6 months commencing on the commencement of this Plan, or
 - (b) in the case of:
 - (i) ocean trap and line—spanner crab northern zone shares, or
 - (ii) ocean trap and line—spanner crab southern zone shares,

the period commencing on the commencement of this Plan and ending on 5 January 2010 or such later day as may be prescribed by the Director-General by order published in the Gazette.