



New South Wales

Fisheries Management Legislation Amendment Regulation 2015

under the

Fisheries Management Act 1994

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

NIALL BLAIR, MLC
Minister for Primary Industries

Explanatory note

The object of this Regulation is to make miscellaneous amendments to regulations made under the *Fisheries Management Act 1994*. These include the following amendments:

- (a) to expand the definition of *restricted species of fish* to include certain invertebrates,
- (b) to abolish the Advisory Council on Recreational Fishing and establish instead the Recreational Fishing NSW Advisory Council,
- (c) to restrict recreational fishing of Murray Crayfish from inland waters,
- (d) to impose an indefinite fishing closure in certain waters downstream from the South Dubbo Weir,
- (e) to amend the way in which the movement of oysters between estuaries is regulated,
- (f) to amend the minimum shareholding in relation to certain ocean trap and line share management fisheries.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 15, 17 (1), 18 (1), 20 (2), 20A (2), 21 (1) (d), 37 (6), 67, 148 (1A), 152 (1) (a), 165 (4), 167 (7), 174 (2), 191 (k), 229, 276 (6) and 289 (the general regulation-making power).

Fisheries Management Legislation Amendment Regulation 2015

under the

Fisheries Management Act 1994

1 Name of Regulation

This Regulation is the *Fisheries Management Legislation Amendment Regulation 2015*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Fisheries Management (General) Regulation 2010

[1] Clause 3 Interpretation

Omit “Column 1 of Part 1 or Part 3 of Table 1 in” from the definition of *restricted species of fish* in clause 3 (1).

Insert instead “either of the Tables to”.

[2] Clause 11 Prohibited size fish

Omit all of the matter in Part 4 of Table 1 to clause 11.

Insert instead:

Common name	Column 1 Species	Column 2 Minimum measurement in centimetres
Spiny Crayfish, Eastern Freshwater Crayfish (other than Murray Crayfish)	<i>Euastacus</i> spp. (other than <i>Euastacus armatus</i>)	9
Murray Crayfish	<i>Euastacus armatus</i>	10

[3] Clause 11, Table 2, Part 3

Insert after Part 2:

Part 3 Invertebrates—Freshwater or estuarine

Murray Crayfish	<i>Euastacus armatus</i>	12
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[4] Part 2, Division 4, Table

Omit paragraph (d) of the matter relating to “Sharks and Rays (other than Wobbegongs)” from Columns 2 and 3 in Part 1 of the Table.

Insert instead:

(d) *Sphyrna zygaena* (Smooth Hammerhead Shark).

[5] Part 2, Division 4, Table

Omit “5 (only 1 of which can be longer than 12 cm) during the months of May, June, July and August” from Column 3 of the matter relating to “Murray Crayfish” in Part 4 of the Table.

Insert instead “2”.

[6] Part 2, Division 4, Table

Omit “10 (only 1 of which can be longer than 12 cm) during the months of May, June, July and August” from Column 4 of the matter relating to “Murray Crayfish” in Part 4 of the Table.

Insert instead “4”.

[7] Clause 28 Hoop or lift net

Insert after clause 28 (3), before the Table:

- (4) For the purposes of this clause, *restricted species of fish* does not include the following:
 - (a) *Portunus armatus* (Blue Swimmer Crab or Sand Crab),
 - (b) *Scylla serrata* (Mud Crab, Black Crab or Mangrove Crab),
 - (c) *Euastacus* spp. (Spiny Crayfish, Eastern Freshwater Crayfish or Murray Crayfish).

[8] Clause 64 Identification of recognised fishing grounds

Omit “Advisory Council on Recreational Fishing” from clause 64 (5) (a).

Insert instead “Recreational Fishing NSW Advisory Council”.

[9] Clause 98

Omit the clause. Insert instead:

98 Fee for permits under section 37 of Act

For the purposes of section 37 (6) of the Act, the fee for a permit under section 37 with respect to the following matters is the amount specified in Column 3 of Schedule 8 opposite the description of the matter in Column 2 of the Schedule:

- (a) a marine park declared under the *Marine Estate Management Act 2014*,
- (b) a permit to take and possess fish or marine vegetation for research purposes under section 37 (1) (a) of the Act,
- (c) a permit to take and possess fish or marine vegetation for aquarium collection purposes under section 37 (1) (c) of the Act,
- (d) a permit for a purpose approved by the Minister under section 37 (1) (e) of the Act.

[10] Clause 176A

Insert after clause 176:

176A Limits on taking or possessing Wobbegong

- (1) For the purposes of section 17 (1) of the Act, the daily limit of Wobbegong (*Orectolobus* spp.), when taken by an endorsement holder from the southern fish trawl fishery, is 6, comprising any single species or a combination of species.
- (2) For the purposes of section 18 (1) of the Act, the possession limit of Wobbegong (*Orectolobus* spp.), when taken from the southern fish trawl fishery and the person in possession of the Wobbegong is an endorsement holder, is 6, comprising any single species or a combination of species.
- (3) For the purposes of section 21 (1) (d) of the Act, it is a defence to a prosecution for an offence under section 18 (2) of the Act if the person charged satisfies the court that the fish were lawfully taken from outside the southern fish trawl fishery.

[11] Clause 263A Exemption for certain work

Omit “by Roads and Maritime Services”. Insert instead “on the Department’s website”.

[12] Clause 286 Establishment of advisory councils

Omit clause 286 (b). Insert instead:

- (b) a Recreational Fishing NSW Advisory Council,

[13] Clause 288

Omit the clause. Insert instead:

288 Recreational Fishing NSW Advisory Council

- (1) The Recreational Fishing NSW Advisory Council is to comprise the following members:
 - (a) persons who, in the opinion of the Minister, individually have:
 - (i) significant experience, and
 - (ii) a sound understanding of major recreational fishing and resource management issues,in the recreational fishing sector in at least 1 of the regions determined by the Minister under subclause (2), and collectively have such experience and understanding in all such regions,
 - (b) one person with expertise in spearfishing,
 - (c) one person with expertise in charter boat fishing,
 - (d) the person appointed to the Ministerial Fisheries Advisory Council under clause 287 (1) (b),
 - (e) a nominee of the Secretary,
 - (f) such other persons as the Minister considers appropriate.
- (2) The Minister is, by notice published in the Gazette, to determine regions for the purposes of subclause (1) (a).
- (3) The Minister may, by advertisement published in a newspaper circulating throughout the State, call for expressions of interest in membership of the Recreational Fishing NSW Advisory Council.

[14] Clauses 295 (f), 300 (1) and 302 (1)

Omit “Advisory Council on Recreational Fishing” wherever occurring.

Insert instead “Recreational Fishing NSW Advisory Council”.

[15] Schedule 4 Fish and waters protected from recreational fishing

Insert after clause 147:

148 Inland waters—Murray Crayfish

- (1) **Waters:** All inland waters other than:
 - (a) that part of Murrumbidgee River between the Hume Highway road bridge at Gundagai downstream to a line 100 metres upstream of the weir face at Berembed Weir near Ganmain, and
 - (b) that part of Murray River between a line 130 metres below the weir face at Hume Weir near Albury downstream to the Newell Highway road bridge at Tocumwal.
- (2) **Prohibited fishing method:** Any method.

- (3) **Species of fish that must not be taken:** Murray Crayfish (*Euastacus armatus*).
- (4) **Period:** September in each year to May in each following year (inclusive).

[16] Schedule 4, clause 171A

Insert after clause 171:

171A Macquarie River (South Dubbo Weir)

- (1) **Waters:** The whole of the waters of Macquarie River and its tributaries, downstream from a line across the river that is 75 metres downstream from the weir face at South Dubbo Weir.
- (2) **Prohibited fishing method:** Any method.
- (3) **Species of fish that must not be taken:** Any species of fish.
- (4) **Period:** All year.

[17] Schedule 7 Penalty notice offences

Insert after the matter relating to clause 74 (1) in Part 2 of Schedule 7:

Clause 75 (1)	\$500
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[18] Schedule 8 Fees and contributions

Omit "clause 98" from Column 2 of the matter relating to Item 7.

Insert instead "clause 98 (a)".

[19] Schedule 8

Insert after the matter relating to Item 7:

7A	Permit or renewal of permit for research purposes (clause 98 (b))	\$375
7B	Permit or renewal of permit for aquarium collection purposes (clause 98 (c))	\$178
7C	Permit or renewal of permit for a purpose approved by the Minister (clause 98 (d))	\$375

Schedule 2 Amendment of Fisheries Management (Aquaculture) Regulation 2012

[1] Part 2, Division 2, heading

Insert “**and variation**” after “**issue**”.

[2] Clause 6A

Insert after clause 6:

6A Fee payable when requesting variation of aquaculture permit

- (1) A request by the holder of an aquaculture permit to vary the aquaculture permit under section 148 (1) of the Act must be accompanied by the fee specified in Schedule 3.
- (2) If a permit holder makes more than one request to vary an aquaculture permit at the same time, the total fee required to be paid for those requests is:
 - (a) if the request is to make the same variation to each aquaculture permit and the aquaculture permits are of the same class—a single fee, being the fee that applies to a permit of that class, or
 - (b) if the request is to make the same variation to each aquaculture permit and the aquaculture permits are of different classes—a single fee, being the highest fee that applies to any one of those requests, or
 - (c) in all other cases—the sum of the highest fee that applies to any one of those requests and the amount specified in Item 2B of Schedule 3 for each other request.

[3] Clause 7A Definitions

Insert in alphabetical order:

Oyster Shipment IVR system means an electronic interactive voice response system for recording, communicating and accessing information relating to the movement of oysters implemented by the Department for purposes that include the purpose of complying with conditions imposed by this Division or of complying with the Act.

[4] Clause 7E Prior notification and record keeping required if oysters, catching material or cultivation material are moved from oyster-producing estuaries

Omit “or to any other premises” wherever occurring in clause 7E (1) (a) and (b) and (4).

[5] Clause 7E (2)

Omit “by telephone or in person, not less than 48 hours and not more than 2 weeks prior to movement.”.

Insert instead:

by the Oyster Shipment IVR system, by telephone or in person:

- (a) in the case of culled oysters, catching material or clean cultivation material moved from:
 - (i) a high-risk oyster-producing estuary to a low-risk oyster-producing estuary, or
 - (ii) a high-risk oyster-producing estuary, or a low-risk oyster-producing estuary, to a no-risk oyster-producing estuary, not less than 48 hours and not more than 2 weeks prior to movement, or

- (b) in all other cases—not less than 2 hours and not more than 2 weeks prior to movement.

[6] Clause 7E (4)

Insert “or using the Oyster Shipment IVR system” after “Oyster Shipment Log Book”.

[7] Clause 7E (5)

Omit “Four”.

Insert instead “In the case where a record is made under subclause (4) in the Oyster Shipment Log Book, four”.

[8] Clause 31 Minister’s obligations when granting an aquaculture lease

Omit clause 31 (1) (c).

[9] Clause 31 (2) and (3)

Omit the subclauses. Insert instead:

- (2) The Minister must not grant an aquaculture lease unless the proposed lessee, within 90 days (or such further period as the Minister may allow) of being provided by the Minister with the documents under subclause (1), lodges with the Minister the draft lease document (signed by the proposed lessee).
- (3) After granting an aquaculture lease, the Minister must:
 - (a) provide the lessee with a statement of the fees, rents or other amounts payable by the lessee in connection with the grant of the lease and the date by which such amounts must be paid, and
 - (b) publish in the Gazette notice of the granting of the lease and the person to whom it is granted.
- (4) The lessee must pay all amounts referred to in subclause (3) (a) in full by the date notified by the Minister in the statement referred to in the subclause.

[10] Clause 33 Process for renewing an aquaculture lease

Omit clause 33 (1) (c).

[11] Clause 33 (2)

Omit the subclause. Insert instead:

- (2) The Minister must not renew an aquaculture lease unless the applicant for renewal, within 90 days (or such further period as the Minister may allow) of being provided by the Minister with the documents under subclause (1), lodges with the Minister the draft lease document (signed by the applicant).

[12] Clause 33 (4)

Omit the subclause. Insert instead:

- (4) After renewing an aquaculture lease, the Minister must:
 - (a) provide the lessee with a statement of the fees, rents or other amounts payable by the lessee in connection with the renewal of the lease and the date by which such amounts must be paid, and
 - (b) publish in the Gazette notice of the renewal of the lease.
- (5) The lessee must pay all amounts referred to in subclause (4) (a) in full by the date notified by the Minister in the statement referred to in the subclause.

[13] Clause 36 When rent payable

Omit “before the lease is granted or renewed or within such period after the grant or renewal as the Minister allows” from clause 36 (1).

Insert instead “by the date notified by the Minister in the statement referred to in clause 31 (3) (a) or clause 33 (4) (a)”.

[14] Clauses 42 (6) and 43 (7)

Omit “section” wherever occurring. Insert instead “clause”.

[15] Clause 45 Minister’s duties with respect to endorsing lease documents

Insert after clause 45 (5):

- (6) A request made by a lessee for the Minister’s endorsement under subclause (2) must be accompanied by the processing fee specified in Schedule 3.
- (7) If a lessee makes more than one request for the Minister’s endorsement under subclause (2) at the same time and the request is to make the same endorsement on each of the aquaculture lease documents, a single fee, being the fee specified in Schedule 3, is required to be paid.

[16] Clause 47A

Insert after clause 47:

47A Applications under Part 4—lost, destroyed or stolen lease documents

If an application made under this Part is required to be accompanied by the relevant aquaculture lease document and the lease document or a plan annexed to the lease document is lost, destroyed or stolen, the applicant may lodge with the Minister, instead of the original lease document or plan, a statutory declaration setting out the circumstances in which the original lease document or plan was lost, destroyed or stolen.

[17] Schedule 3 Fees, charges and contributions

Insert after the matter relating to Item 2:

2A	Request for variation of an aquaculture permit (clause 6A (1))	
(a)	for a class A permit	\$150
(b)	for a class B permit	\$150
(c)	for a class C permit	\$226
(d)	for a class D permit	\$376
(e)	for a class E permit	\$301
(f)	for a class F permit	\$226
(g)	for a class G permit	\$376
(h)	for a class H permit	\$376
2B	Each additional request for variation of an aquaculture permit (clause 6A (2) (c))	\$75

[18] Schedule 3

Insert after the matter relating to Item 10:

10A	Each additional application for consent to sublet lodged on same day (clause 38 (1))	\$76
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[19] Schedule 3

Insert after the matter relating to Item 21:

21A	Request for endorsement (clause 45 (6))	\$150
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[20] Schedule 3

Omit "\$150" from Column 3 of the matter relating to Item 22. Insert instead "\$178".

Schedule 3 Amendment of Fisheries Management (Ocean Trawl Share Management Plan) Regulation 2006

[1] Appendix, clause 7A Otter trawl net (prawns)

Insert after clause 7A (2):

- (2A) For the purposes of subclause (2), *bars* includes a reference to meshes in the case of a codend that is a diamond shaped mesh codend.

[2] Appendix, Schedule 2 Waters closed to ocean trawling

Omit the matter under the heading **Tweed Heads** from Column 1. Insert instead:

The whole of the waters within the area bounded by a line commencing at the mean high water mark and 28°09.878408' S, then north east to the point 28°08.445075' S and 153°36.360055' E, then south to 28°15.000' S and 153°36.360' E, then west to the mean high water mark, then generally north along the mean high water mark to the point of commencement (references to directions are indicative only).

Schedule 4 Amendment of Fisheries Management (Estuary Prawn Trawl Share Management Plan) Regulation 2006

[1] Appendix, clause 17A Otter trawl net (prawns)

Insert after clause 17A (2):

- (2A) For the purposes of subclause (2), *bars* includes a reference to meshes in the case of a codend that is a diamond shaped mesh codend.

[2] Appendix, clause 17A (4B) (b)

Omit “does not consist of a greater amount of net in circumference than that part of the net immediately forward of the codend when stretched transversely”.

Insert instead “has a circumference not exceeding 200 meshes”.

Schedule 5 Amendment of Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006

[1] Appendix, clause 2 Definitions

Insert in alphabetical order in clause 2 (1):

Director-General means the Secretary.

Secretary means the Secretary of the Department of Industry, Skills and Regional Development.

[2] Appendix, clause 6 Minimum shareholdings

Omit clause 6 (2)–(6). Insert instead:

- (2) Despite subclause (1), the minimum shareholding in relation to ocean trap and line—spanner crab northern zone shares if the shareholder held the shares immediately before the commencement of the amendments to this clause made by the *Fisheries Management Legislation Amendment Regulation 2015* is 5 shares of that class.

[3] Appendix, clause 7B Spanner crab net

Omit clause 7B (1) (a) and (b). Insert instead:

- (a) in the case of the holder of a spanner crab southern zone endorsement who is:
- (i) a single commercial fisher, not more than 20 spanner crab nets are used at any one time, or
 - (ii) a crew comprising a commercial fisher and 1 or more commercial fishers or crew members, not more than 30 spanner crab nets are used at any one time,
- (b) in the case of the holder of a spanner crab northern zone endorsement, not more than 30 spanner crab nets are used at any one time,