



New South Wales

Fisheries Management Legislation Amendment (Quota Shares) Regulation 2017

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 objects of this Regulation are as follows:

- (a) to amend the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*, the *Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006* and the *Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006* as follows:
 - (i) to provide for the creation and issue of new shares in the estuary general, ocean hauling and ocean trap and line share management fisheries (referred to as *quota shares*),
 - (ii) to specify the classes of fishers who are eligible for quota shares and to provide for the allocation of quota shares among eligible fishers,
 - (iii) to enable a fisher to appeal to the Share Appeal Panel against the Minister's determination of the number of quota shares issued to the fisher,
- (b) to make consequential amendments to the *Fisheries Management (Supporting Plan) Regulation 2006* and the *Fisheries Management (General) Regulation 2010*,
- (c) to update references to the Director-General in various share management plans.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 40, 60, 71A, 84 and 289 (the general regulation-making power).

Fisheries Management Legislation Amendment (Quota Shares) Regulation 2017

under the

Fisheries Management Act 1994

1 Name of Regulation

This Regulation is the *Fisheries Management Legislation Amendment (Quota Shares) Regulation 2017*.

2 Commencement

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

Schedule 1 Amendment of Fisheries Management (Estuary General Share Management Plan) Regulation 2006

[1] **Appendix, clause 5**

Omit “63”. Insert “66”.

[2] **Appendix, clause 5**

Insert after clause 5 (i):

- (j) Estuary general—mud crab quota shares,
- (k) Estuary general—blue swimmer crab quota shares,
- (l) Estuary general—eel quota shares.

[3] **Appendix, clause 5**

Omit the note. Insert instead:

Note. The classes of shares referred to in paragraphs (a)–(i) correspond to the types of endorsements available in the fishery and the region in which an endorsement authorises the holder to take fish.

The classes of shares referred to in paragraphs (j)–(l) were issued as further classes of shares under section 71A of the Act. See Part 3A of this Plan for provisions relating to those shares.

[4] **Appendix, Part 3A**

Insert after clause 6:

Part 3A Quota shares

6A New classes of shares

- (1) The following classes of shares are available in the fishery:
 - (a) Estuary general—mud crab quota shares,
 - (b) Estuary general—blue swimmer crab quota shares,
 - (c) Estuary general—eel quota shares.
- (2) These shares are created as further classes of shares under section 71A of the Act and are referred to in this Plan as *quota shares*.

6B Criteria for issue of quota shares

- (1) A person is eligible to be issued with quota shares if the person is an eligible shareholder in relation to those shares.
- (2) A person is an *eligible shareholder* in relation to a class of quota shares specified in Column 1 of the Table to this subclause if, on the relevant date, the person holds shares of a class specified opposite in Column 2.

Table Eligibility for quota shares

Column 1	Column 2
Quota shares	Existing shares
Estuary general—mud crab quota shares	Estuary general—meshing shares—Regions 1–7

Column 1	Column 2
Quota shares	Existing shares
	Estuary general—mud crab trapping shares— Regions 1–7
Estuary general—blue swimmer crab quota shares	Estuary general—meshing shares—Regions 1–7
	Estuary general—trapping shares—Regions 1–7
	Estuary general—category one hauling shares— Regions 1–7
Estuary general—eel quota shares	Estuary general—eel trapping shares—Regions 1–7

- (3) The Minister is to determine the number of quota shares to be issued to each eligible shareholder.
- (4) The determination is to be made on the basis of an allocation formula set out in a notice published by the Secretary in the Gazette.
- (5) The allocation formula is also to be made available on the Department’s website.
- (6) The *relevant date* is the date specified as the relevant date in the notice published by the Secretary under subclause (4).

6C Issue of quota shares

- (1) The Minister is to issue quota shares to eligible shareholders in accordance with the determination under clause 6B for each class of quota shares.
- (2) The Minister must, as soon as practicable after issuing quota shares:
 - (a) notify each shareholder of the number of quota shares issued to the shareholder, and
 - (b) give each shareholder a statement in writing of any rights of appeal by the shareholder to the Share Appeal Panel.

6D Appeals to Share Appeal Panel

- (1) A person who has been issued with quota shares may appeal to the Share Appeal Panel against the Minister’s determination of the number of quota shares issued to the person.
- (2) When a person lodges an appeal, the quota shares issued to the person are shares that are *subject to appeal*.
- (3) The transfer of, or any other registrable dealing in, quota shares that are subject to appeal is not permitted.
- (4) On completion of an appeal, the Minister may cancel or issue shares in order to give effect to a decision of the Share Appeal Panel.
- (5) No compensation is payable by or on behalf of the State for the cancellation by the Minister of shares that are subject to appeal in order to give effect to a decision of the Share Appeal Panel.
- (6) For the purposes of section 90 (1) (e) of the Act, shares that are subject to appeal are to be registered as such on the Share Register.

- (7) Shares cease to be subject to appeal if:
- (a) the appeal to the Share Appeal Panel is withdrawn, or
 - (b) the appeal to the Share Appeal Panel is finalised and the Minister has done anything necessary to give effect to the decision of the Share Appeal Panel.

Note. The Supporting Plan contains provisions relating to lodging an appeal to the Share Appeal Panel in relation to the issue of quota shares.

[5] Whole Appendix

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

Schedule 2 Amendment of Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006

[1] **Appendix, clause 5**

Omit “29”. Insert “30”.

[2] **Appendix, clause 5**

Insert after clause 5 (e):

- (f) Ocean hauling—eastern sea garfish quota shares.

[3] **Appendix, clause 5**

Omit the note. Insert instead:

Note. The classes of shares referred to in paragraphs (a)–(e) correspond to the types of endorsements available in the fishery and the region in which an endorsement authorises the holder to take fish.

The shares referred to in paragraph (f) were issued as a further class of shares under section 71A of the Act. See Part 3A of this Plan for provisions relating to those shares.

[4] **Appendix, Part 3A**

Insert after clause 6:

Part 3A Quota shares

6A New class of shares

- (1) The class of shares known as ocean hauling—eastern sea garfish quota shares are available in the fishery.
- (2) These shares are created as a further class of shares under section 71A of the Act and are referred to in this Plan as *quota shares*.

6B Criteria for issue of quota shares

- (1) A person is eligible to be issued with quota shares if the person is an eligible shareholder in relation to those shares.
- (2) A person is an *eligible shareholder* in relation to ocean hauling—eastern sea garfish quota shares if, on the relevant date, the person holds ocean hauling—garfish net (hauling) shares—Regions 1–7.
- (3) The Minister is to determine the number of quota shares to be issued to each eligible shareholder.
- (4) The determination is to be made on the basis of an allocation formula set out in a notice published by the Secretary in the Gazette.
- (5) The allocation formula is also to be made available on the Department’s website.
- (6) The *relevant date* is the date specified as the relevant date in the notice published by the Secretary under subclause (4).

6C Issue of quota shares

- (1) The Minister is to issue quota shares to eligible shareholders in accordance with the determination under clause 6B.

- (2) The Minister must, as soon as practicable after issuing quota shares:
 - (a) notify each shareholder of the number of quota shares issued to the shareholder, and
 - (b) give each shareholder a statement in writing of any rights of appeal by the shareholder to the Share Appeal Panel.

6D Appeals to Share Appeal Panel

- (1) A person who has been issued with quota shares may appeal to the Share Appeal Panel against the Minister's determination of the number of quota shares issued to the person.
- (2) When a person lodges an appeal, the quota shares issued to the person are shares that are *subject to appeal*.
- (3) The transfer of, or any other registrable dealing in, quota shares that are subject to appeal is not permitted.
- (4) On completion of an appeal, the Minister may cancel or issue shares in order to give effect to a decision of the Share Appeal Panel.
- (5) No compensation is payable by or on behalf of the State for the cancellation by the Minister of shares that are subject to appeal in order to give effect to a decision of the Share Appeal Panel.
- (6) For the purposes of section 90 (1) (e) of the Act, shares that are subject to appeal are to be registered as such on the Share Register.
- (7) Shares cease to be subject to appeal if:
 - (a) the appeal to the Share Appeal Panel is withdrawn, or
 - (b) the appeal to the Share Appeal Panel is finalised and the Minister has done anything necessary to give effect to the decision of the Share Appeal Panel.

Note. The Supporting Plan contains provisions relating to lodging an appeal to the Share Appeal Panel in relation to the issue of quota shares.

[5] Whole Appendix

Omit "Director-General" wherever occurring. Insert instead "Secretary".

Schedule 3 Amendment of Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006

[1] Appendix, clause 4

Insert after clause 4 (f):

- (g) Ocean trap and line—spanner crab quota shares.

[2] Appendix, clause 4

Omit the note. Insert instead:

Note. The classes of shares referred to in paragraphs (a)–(f) correspond to the types of endorsements available in the fishery.

The shares referred to in paragraph (g) were issued as a further class of shares under section 71A of the Act. See Part 3A of this Plan for provisions relating to those shares.

[3] Appendix, Part 3A

Insert after clause 5:

Part 3A Quota shares

5A New class of shares

- (1) The class of shares known as ocean trap and line—spanner crab quota shares are available in the fishery.
- (2) These shares are created as a further class of shares under section 71A of the Act and are referred to in this Plan as *quota shares*.

5B Criteria for issue of quota shares

- (1) A person is eligible to be issued with quota shares if the person is an eligible shareholder in relation to those shares.
- (2) A person is an *eligible shareholder* in relation to ocean trap and line—spanner crab quota shares if, on the relevant date, the person holds ocean trap and line—spanner crab northern zone shares or ocean trap and line—spanner crab southern zone shares.
- (3) The Minister is to determine the number of quota shares to be issued to each eligible shareholder.
- (4) The determination is to be made on the basis of an allocation formula set out in a notice published by the Secretary in the Gazette.
- (5) The allocation formula is also to be made available on the Department's website.
- (6) The *relevant date* is the date specified as the relevant date in the notice published by the Secretary under subclause (4).

5C Issue of quota shares

- (1) The Minister is to issue quota shares to eligible shareholders in accordance with the determination under clause 5B.
- (2) The Minister must, as soon as practicable after issuing quota shares:
 - (a) notify each shareholder of the number of quota shares issued to the shareholder, and

- (b) give each shareholder a statement in writing of any rights of appeal by the shareholder to the Share Appeal Panel.

5D Appeals to Share Appeal Panel

- (1) A person who has been issued with quota shares may appeal to the Share Appeal Panel against the Minister's determination of the number of quota shares issued to the person.
- (2) When a person lodges an appeal, the quota shares issued to the person are shares that are *subject to appeal*.
- (3) The transfer of, or any other registrable dealing in, quota shares that are subject to appeal is not permitted.
- (4) On completion of an appeal, the Minister may cancel or issue shares in order to give effect to a decision of the Share Appeal Panel.
- (5) No compensation is payable by or on behalf of the State for the cancellation by the Minister of shares that are subject to appeal in order to give effect to a decision of the Share Appeal Panel.
- (6) For the purposes of section 90 (1) (e) of the Act, shares that are subject to appeal are to be registered as such on the Share Register.
- (7) Shares cease to be subject to appeal if:
 - (a) the appeal to the Share Appeal Panel is withdrawn, or
 - (b) the appeal to the Share Appeal Panel is finalised and the Minister has done anything necessary to give effect to the decision of the Share Appeal Panel.

Note. The Supporting Plan contains provisions relating to lodging an appeal to the Share Appeal Panel in relation to the issue of quota shares.

Schedule 4 Amendment of Fisheries Management (Supporting Plan) Regulation 2006

[1] Appendix, clause 2

Insert in alphabetical order in clause 2 (1):

quota share means a share created and issued to a shareholder in a fishery under section 71A of the Act.

Note. Various classes of quota shares have been issued in the estuary general, ocean hauling and ocean trap and line fisheries. See the management plans for those fisheries.

[2] Appendix, clause 4A

Insert after clause 4:

4A Appeals to Share Appeal Panel relating to issue of quota shares

- (1) This clause applies to a person who has been issued with quota shares under a share management plan that provides for an appeal to the Share Appeal Panel in relation to the number of quota shares issued to the person by the Minister.
- (2) An appeal to the Share Appeal Panel:
 - (a) must be lodged within 21 days after the person making the appeal is notified of the number of quota shares issued to the person, and
 - (b) must be made in a form approved by the Secretary, and
 - (c) must be accompanied by the fee of \$379.
- (3) The Secretary is to notify the person making the appeal of the receipt of the appeal.

[3] Appendix, clause 10A

Insert “, other than a class of quota shares,” after “class of share” in the definition of *class of share* in clause 10A (5).

**Schedule 5 Amendment of Fisheries Management (Estuary
Prawn Trawl Share Management Plan) Regulation
2006**

Whole Appendix

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

Schedule 6 Amendment of Fisheries Management (General) Regulation 2010

- [1] Clause 122 Appeals to Share Appeal Panel**
Omit the clause.

- [2] Schedule 8 Fees and contributions**
Omit item 13.