



New South Wales

Fisheries Management Legislation Amendment (Quota Management) Regulation 2017

under the

Fisheries Management Act 1994

The Administrator, 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 require the Total Allowable Fishing Committee to make fishing determinations (being determinations of the total allowable catch or total allowable fishing effort) for various species and various classes of shares in the estuary general, ocean hauling, abalone and lobster share management fisheries, and the sea urchin and turban shell restricted fishery, for every 12-month fishing period,
- (b) to require the Secretary of the Department of Industry to allocate each fishing determination as quota among the relevant shareholders or entitlement holders in each fishery,
- (c) to provide for the transfer of quota among the relevant shareholders and entitlement holders,
- (d) to provide for the transfer of quota shares among fishing businesses,
- (e) to make other minor amendments as a consequence of the *Fisheries Management Amendment Act 2015*.

This Regulation amends the following Regulations:

- (a) the *Fisheries Management (Abalone Share Management Plan) Regulation 2000*,
- (b) the *Fisheries Management (Lobster Share Management Plan) Regulation 2000*,
- (c) the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*,
- (d) the *Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006*,
- (e) the *Fisheries Management (General) Regulation 2010*,
- (f) the *Fisheries Management (Supporting Plan) Regulation 2006*.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 34T, 37, 37AA, 40, 40B, 40C, 40Q, 40T, 40U, 65, 68 (6A), 276 and 289 (the general regulation-making power) and clause 2 of Schedule 7.

Fisheries Management Legislation Amendment (Quota Management) Regulation 2017

under the

Fisheries Management Act 1994

1 Name of Regulation

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

2 Commencement

This Regulation commences on 6 October 2017 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Fisheries Management (General) Regulation 2010

- [1] **Clause 4 The share management plan for a fishery prevails over this Regulation**
Omit “or any fishing closure” and “or fishing closure” from the note.
- [2] **Clause 74 Use of chemical substances**
Omit “a permit issued under section 37 of the Act” from clause 74 (2) (c).
Insert instead “an approval granted under section 37 of the Act”.
- [3] **Clause 98 Fee for permits under section 37 of Act**
Omit “section 37 (6)”. Insert instead “section 37AA (2)”.
- [4] **Clause 98**
Insert “application” before “fee”.
- [5] **Clause 98 (d)**
Omit “section 37 (1) (e)”. Insert instead “section 37 (1) (f)”.
- [6] **Clause 99 Contravention of condition of approval under section 37 of Act**
Omit “a permit issued”. Insert instead “an approval granted”.
- [7] **Clause 108 Definitions**
Insert in alphabetical order:
quota share means a quota share created and issued to a shareholder in a fishery under the management plan for the fishery (pursuant to section 71A of the Act).
Note. Quota shares have been issued in the estuary general, ocean hauling and ocean trap and line fisheries.
- [8] **Clause 109 Application of Division**
Insert after clause 109 (3):
(4) Unless otherwise provided, this Division extends to the transfer of quota shares.
- [9] **Clause 111 Transfer to owners in other fisheries**
Insert “(other than a quota share)” after “A share” in clause 111 (1).
- [10] **Clause 111 (2)**
Insert “(not being a quota share)” after “the share”.
- [11] **Clause 111 (3)**
Insert after clause 111 (2):
(3) A quota share in a fishery that is a component of a fishing business may be transferred by the owner of the fishing business to another person if the person is, immediately before the transfer, an owner of a fishing business the components of which include a share in a relevant share management fishery.

[12] Clause 112 Other transfers

Insert “(other than a quota share)” after “A share”.

[13] Clause 124A Information not required to be made available for inspection

Omit “(including any postal or email address or land-line or mobile phone number, whether residential or business, of a party or witness)”.

Insert instead “(including any home, business or postal address, any personal or business email address or any home, business or mobile telephone number)”.

[14] Clause 125 Who may hold commercial fishing licence

Insert “, or who is authorised under an order,” after “permit” in clause 125 (c).

[15] Clauses 130 (4) (d) and 131 (d)

Omit “a permit issued to him or her under the Act” wherever occurring.

Insert instead “an approval granted under section 37 of the Act”.

[16] Clause 154 Definitions

Insert in alphabetical order:

fishing period means each period of 12 months commencing on 1 January and ending on 31 December or such other period as the Minister may determine after consultation with any relevant advisory council or advisory group.

sea urchin entitlement holder means an entitlement holder who is eligible for a sea urchin endorsement.

[17] Clause 154, definition of “quota”

Omit the definition.

[18] Clauses 162–164C

Omit clauses 162–164. Insert instead:

162 TAF Committee to make TAC determination for red sea urchin

- (1) The TAF Committee is required to make a TAC determination for red sea urchin.
- (2) A TAC determination is to be made in respect of each fishing period.
Note. Under section 40K of the Act, the Minister may direct the TAF Committee as to the matters to be taken into account when making a fishing determination.

163 Allocation of quota for red sea urchin

- (1) The Secretary is required to allocate the TAC determination for red sea urchin among the sea urchin entitlement holders, subject to any direction given by the Minister under section 40Q (3) of the Act.
- (2) The whole of the TAC determination is not required to be allocated.
- (3) The TAC determination is to be allocated equally between sea urchin entitlement holders.
- (4) The Secretary may, at any time during a fishing period, adjust the quota of a sea urchin entitlement holder to rectify any errors in the calculation of the quota in the fishing period or in a previous fishing period.
- (5) This clause also applies to any interim TAC determination for red sea urchin made by the Secretary under section 40I of the Act.

164 Sea urchin entitlement holder to notify nominated fishers of quota

- (1) A sea urchin entitlement holder who is notified of an allocation of quota by the Secretary under section 40R of the Act must, as soon as reasonably practicable, ensure each nominated fisher of the entitlement holder is notified of the particulars of the quota.
- (2) A sea urchin entitlement holder who transfers or acquires quota under clause 164A must, as soon as reasonably practicable, ensure each nominated fisher of the entitlement holder is notified of the particulars of the quota transfer.

Maximum penalty: 10 penalty units.

164A Transfer of quota

- (1) Quota may be transferred only between sea urchin entitlement holders.
- (2) Quota may be transferred only within the fishing period to which the quota applies.

Note. A sea urchin entitlement holder is not authorised:

- (a) to transfer to the next fishing period any part of the entitlement holder's quota for the current fishing period that is not taken during the current fishing period, or
 - (b) to transfer to the current fishing period part of the entitlement holder's quota for the next fishing period.
- (3) For the purposes of section 40U (3) of the Act, the prescribed fee for a manual transfer of quota is \$233.

Note. No fee is prescribed under section 40U (2) for an electronic transfer of quota using the online transfer system.

164B Allocation of quota following replacement TAC determination

- (1) If an interim TAC determination for a fishing period is subsequently replaced by a TAC determination made by the TAF Committee for the same fishing period, the Minister may give directions to the Secretary as to the manner in which the Secretary is to allocate the replacement TAC determination among sea urchin entitlement holders.
- (2) Without limiting subclause (1), a direction may require the Secretary to have regard to the following:
 - (a) any quota of red sea urchin taken by a sea urchin entitlement holder during the interim fishing period,
 - (b) the transfer of any quota between sea urchin entitlement holders during the interim fishing period,
 - (c) the transfer of any sea urchin endorsements during the interim fishing period.

- (3) In this clause:

interim fishing period means the part of a fishing period in respect of which an interim TAC determination was in force.

interim TAC determination means an interim TAC determination made by the Secretary under section 40I of the Act.

164C Quota arrangements for 2017 fishing period

- (1) The determination of total allowable catch for red sea urchin made by the TAC Committee for the 2017 fishing period has effect as if it had been made by the TAF Committee under clause 162 as substituted by the amending Regulation.

- (2) Accordingly, the determination is taken to be a TAC determination for the purposes of Part 2A of the Act.
- (3) The allocation of quota among sea urchin entitlement holders for the 2017 fishing period made by the Secretary under clause 163 (as in force at the time) has effect as if it had been made by the Secretary under clause 163 as substituted by the amending Regulation.
- (4) Accordingly, the quota allocated to each sea urchin entitlement holder is taken to be quota for the purposes of Part 2A of the Act.
- (5) Any transfer of quota in respect of the 2017 fishing period that was duly made before 6 October 2017 has effect as if it had been made under clause 164A as inserted by the amending Regulation.
- (6) In this clause:
2017 fishing period means the period of 1 January 2017 to 31 December 2017.
amending Regulation means the *Fisheries Management Legislation Amendment (Quota Management) Regulation 2017*.

[19] Clause 220 Records and reports by registered fish receivers

Omit “a permit issued in relation to” wherever occurring in clause 220 (1) (d) and (2) (d).
Insert instead “an approval under section 37 of the Act granted in relation to”.

[20] Clause 348 Penalty notices

Omit the clause.

[21] Clause 357

Insert after clause 356:

357 Section 37 permits

A permit issued under section 37 of the Act, as in force before its substitution by the *Fisheries Management Amendment Act 2015*, is taken, on that substitution, to have been issued under section 37 of the Act as substituted by that Act.

[22] Schedule 7 Penalty notice offences

Omit “(Clause 348)”.

[23] Schedule 7

Insert the following before the table:

- (1) For the purposes of section 276 of the Act:
 - (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.
- (2) If the reference to a provision in this Schedule is qualified by words that restrict its operation to specified kinds of offence or to offences committed in specified circumstances, an offence created by the provision is an offence for which a penalty notice may be issued only if it is an offence of a kind so specified or is committed in the circumstances so specified.

- (3) For the purposes of section 276 (6) of the Act, a fisheries officer is prescribed as an authorised officer in relation to each offence referred to in this Schedule.

[24] Schedule 7, Part 1

Omit the matter relating to sections 121 (5), 122 (6) and 122A (4).

[25] Schedule 7, Part 1

Insert in appropriate order:

Section 40S (1)	\$1,000
Section 40S (2)	\$1,000
Section 121 (5) (a)	\$200
Section 121 (5) (b)	\$200
Section 122 (6) (a)	\$300
Section 122 (6) (b)	\$300
Section 122A (4) (a)	\$200
Section 122A (4) (b)	\$200

[26] Schedule 7, Part 4

Omit the Part. Insert instead:

Part 4 Offences under Fisheries Management (Aquaculture) Regulation 2017

Clause 55 (1)	\$200
Clause 55 (4)	\$200
Clause 55 (5)	\$200
Clause 56 (4)	\$200
Clause 57 (6)	\$200

[27] Schedule 8 Fees

Omit items 7–10. Insert instead:

7	Application for marine park permit or renewal of permit (clause 98 (a))	\$79
8	Application for permit or renewal of permit for research purposes (clause 98 (b))	\$388
9	Application for permit or renewal of permit for aquarium collection purposes (clause 98 (c))	\$184
10	Application for permit or renewal of permit for a purpose approved by the Minister (clause 98 (d))	\$388

Schedule 2 Amendment of Fisheries Management (Supporting Plan) Regulation 2006

[1] Appendix

Insert in alphabetical order in clause 2 (1):

fishing period means the period in respect of which a fishing determination is made.

shareholder means a holder of shares in a fishery.

[2] Appendix, clause 2 (1), definition of “quota share”

Omit “share created and issued to a shareholder in a fishery under section 71A of the Act”.

Insert instead “quota share created and issued to a shareholder in a fishery under the management plan for the fishery (pursuant to section 71A of the Act)”.

[3] Appendix, Part 2A

Insert after Part 2:

Part 2A Quota management

4B Allocation of quota

- (1) The Secretary is required to allocate each of the following fishing determinations among the relevant shareholders, subject to any direction given by the Minister under section 40Q (3) of the Act:
 - (a) total allowable catch of mud crab, blue swimmer crab and longfin and shortfin river eel in the estuary general fishery,
 - (b) total allowable fishing effort for the following classes of shares in the estuary general fishery:
 - (i) Estuary general—meshing shares—Regions 1–7,
 - (ii) Estuary general—category one hauling shares—Regions 1–7,
 - (iii) Estuary general—category two hauling shares—Regions 1–7,
 - (c) total allowable catch of eastern sea garfish in the ocean hauling fishery.
- (2) The whole of a fishing determination is not required to be allocated.
- (3) The allocation of a fishing determination among the relevant shareholders is to be made in proportion to the number of shares held by each relevant shareholder.
- (4) The Secretary may, at any time during a fishing period, adjust the quota of a shareholder to rectify any errors in the calculation of the quota in the fishing period or in a previous fishing period.
- (5) This clause also applies to any interim fishing determination made by the Secretary under section 40I of the Act in relation to any species of fish or class of share referred to in subclause (1).
- (6) In this clause:

relevant shareholder means:

 - (a) in relation to the allocation of total allowable catch of a species of fish—a holder of quota shares for that species, and
 - (b) in relation to the allocation of total allowable effort for a class of share—a holder of a share of that class.

4C Transfer of quota

- (1) Quota allocated from a determination of total allowable catch for a species specified in Column 1 of the Table to this clause may only be transferred to a holder of any of the shares specified opposite in Column 2.

Table—Transfer of catch quota

Column 1	Column 2
Quota	Shares
Mud crab	Estuary general—handline and hauling crew shares—Regions 1–7
	Estuary general—meshing shares—Regions 1–7
	Estuary general—prawning shares—Regions 1–7
	Estuary general—trapping shares—Regions 1–7
	Estuary general—mud crab trapping shares—Regions 1–7
	Estuary general—category one hauling shares—Regions 1–7
	Estuary general—mud crab quota shares
Blue swimmer crab	Estuary general—handline and hauling crew shares—Regions 1–7
	Estuary general—meshing shares—Regions 1–7
	Estuary general—prawning shares—Regions 1–7
	Estuary general—trapping shares—Regions 1–7
	Estuary general—mud crab trapping shares—Regions 1–7
	Estuary general—category one hauling shares—Regions 1–7
	Estuary general—blue swimmer crab quota shares
Eel	Estuary general—handline and hauling crew shares—Regions 1–7
	Estuary general—meshing shares—Regions 1–7
	Estuary general—prawning shares—Regions 1–7
	Estuary general—eel trapping shares—Regions 1–7
	Estuary general—category one hauling shares—Regions 1–7
	Estuary general—eel quota shares
Eastern sea garfish	Ocean hauling—garfish net (hauling) shares—Regions 1–7
	Ocean hauling—eastern sea garfish quota shares

- (2) Quota allocated from a determination of total allowable fishing effort for a class of shares may only be transferred to holders of that class of shares.
- (3) Quota may be transferred only within the fishing period to which the quota applies.

Note. A shareholder is not authorised:

- (a) to transfer to the next fishing period any part of the shareholder's quota for the current fishing period that is not taken during the current fishing period, or
- (b) to transfer to the current fishing period part of the shareholder's quota for the next fishing period.

- (4) For the purposes of section 40U (3) of the Act, the prescribed fee for a manual transfer of quota is \$233.

Note. No fee is prescribed under section 40U (2) for an electronic transfer of quota using the online transfer system.

4D Shareholder to notify nominated fishers of quota

- (1) A shareholder who is notified of an allocation of quota by the Secretary under section 40R of the Act must, as soon as reasonably practicable, ensure each nominated fisher of the shareholder is notified of the particulars of the quota.
- (2) A shareholder who transfers or acquires quota under clause 4C must, as soon as reasonably practicable, ensure each nominated fisher of the shareholder is notified of the particulars of the quota transfer.
- (3) For the purposes of section 65 of the Act, contravention of this clause is an offence.

4E Seized fish count towards quota

To avoid doubt, any fish of a species that is subject to a TAC determination that are seized by a fisheries officer do not cease to be considered to have been taken for sale just because they have been seized. Accordingly, any seized fish are to be counted towards the quota of the shareholder from whom the fish have been seized.

4F Allocation of quota following replacement fishing determination

- (1) If an interim fishing determination for a fishing period is subsequently replaced by a fishing determination made by the TAF Committee for the same fishing period, the Minister may give directions to the Secretary as to the manner in which the Secretary is to allocate the replacement fishing determination among shareholders.
- (2) Without limiting subclause (1), a direction may require the Secretary to have regard to the following:
- (a) any quota used during the interim fishing period,
 - (b) the transfer of any quota between shareholders during the interim fishing period,
 - (c) the transfer of any shares during the interim fishing period.
- (3) In this clause:

interim fishing period means the part of a fishing period in respect of which an interim fishing determination was in force.

interim fishing determination means an interim fishing determination made by the Secretary under section 40I of the Act.

[4] Appendix, clause 22 and Schedule 2

Omit the provisions.

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

[1] Appendix

Omit the definition of *fishing period* from clause 2 (1). Insert instead:

fishing period means each period of 12 months commencing on 1 January and ending on 31 December or such other period as the Minister may determine after consultation with any relevant advisory council or advisory group.

[2] Appendix, clause 2 (1), definition of “quota”

Omit the definition.

[3] Appendix, Part 5

Omit the Part. Insert instead:

Part 5 Total allowable catch and quota

14 TAF Committee to make TAC determination

- (1) The TAF Committee is required to make a TAC determination for abalone.
- (2) A TAC determination is to be made in respect of each fishing period.

Note. Under section 40K of the Act, the Minister may direct the TAF Committee as to the matters to be taken into account when making a fishing determination.

15 Allocation of quota

- (1) The Secretary is required to allocate the TAC determination for abalone among shareholders, subject to any direction given by the Minister under section 40Q (3) of the Act.
- (2) The whole of the TAC determination is not required to be allocated.
- (3) The allocation of the TAC determination is to be made in proportion to the number of shares held by each shareholder.
- (4) The Secretary may, at any time during a fishing period, adjust the quota of a shareholder to rectify any errors in the calculation of the quota in the fishing period or in a previous fishing period.
- (5) This clause also applies to any interim TAC determination for abalone made by the Secretary under section 40I of the Act.

16 Shareholder to notify nominated fishers of quota

- (1) A shareholder who is notified of an allocation of quota by the Secretary under section 40R of the Act must, as soon as reasonably practicable, ensure each nominated fisher of the shareholder is notified of the particulars of the quota.
- (2) A shareholder who transfers or acquires quota under clause 18 must, as soon as reasonably practicable, ensure each nominated fisher of the shareholder is notified of the particulars of the quota transfer.
- (3) For the purposes of section 65 of the Act, contravention of this clause is an offence.

17 Seized abalone count towards quota

To avoid doubt, any abalone that are seized by a fisheries officer do not cease to be considered to have been taken for sale just because they have been

seized. Accordingly, any seized abalone are to be counted towards the quota of the shareholder from whom the abalone have been seized.

18 Transfer of quota

- (1) Quota may be transferred only between shareholders.
- (2) Quota may be transferred only within the fishing period to which the quota applies.

Note. A shareholder is not authorised:

- (a) to transfer to the next fishing period any part of the shareholder's quota for the current fishing period that is not taken during the current fishing period, or
 - (b) to transfer to the current fishing period part of the shareholder's quota for the next fishing period.
- (3) For the purposes of section 40U (3) of the Act, the prescribed fee for a manual transfer of quota is \$233.

Note. No fee is prescribed under section 40U (2) for an electronic transfer of quota using the online transfer system.

19 Allocation of quota following replacement TAC determination

- (1) If an interim TAC determination for a fishing period is subsequently replaced by a TAC determination made by the TAF Committee for the same fishing period, the Minister may give directions to the Secretary as to the manner in which the Secretary is to allocate the replacement TAC determination among shareholders.
- (2) Without limiting subclause (1), a direction may require the Secretary to have regard to the following:
 - (a) any quota of abalone taken by a shareholder during the interim fishing period,
 - (b) the transfer of any quota between shareholders during the interim fishing period,
 - (c) the transfer of any shares during the interim fishing period.
- (3) In this clause:

interim fishing period means the part of a fishing period in respect of which an interim TAC determination was in force.

interim TAC determination means an interim TAC determination made by the Secretary under section 40I of the Act.

[4] Appendix, clause 35 (1) (a) and (a1)

Omit clause 35 (1) (a). Insert instead:

- (a) an offence committed by the shareholder against section 40S (1) of the Act (Authority holder not to contravene quota), if the shareholder has a record of contravening the section,
- (a1) an offence committed by the nominated fisher of a shareholder against section 40S (2), if the shareholder has a record of contravening section 40S (1),

[5] Appendix, clause 35 (3)

Omit “*a clause*”. Insert instead “*a provision*”.

[6] Appendix, clause 35 (3)

Omit “the clause” wherever occurring. Insert instead “the provision”.

[7] Appendix, clause 35 (5)

Omit “section 75 (5)”. Insert instead “section 75B (2)”.

[8] Appendix, clause 41

Omit clauses 41 and 41A. Insert instead:

41 Quota arrangements for 2017 fishing period

- (1) The determination of total allowable catch for abalone made by the TAC Committee for the 2017 fishing period has effect as if it had been made by the TAF Committee under clause 14 of this Plan as substituted by the amending Regulation.
- (2) Accordingly, the determination is taken to be a TAC determination for the purposes of Part 2A of the Act.
- (3) The allocation of quota among shareholders for the 2017 fishing period made by the Minister under section 78 of the Act (as in force at the time) has effect as if it had been made by the Secretary under clause 15 of this Plan as substituted by the amending Regulation.
- (4) Accordingly, the quota allocated to each shareholder is taken to be quota for the purposes of Part 2A of the Act.
- (5) Any transfer of quota in respect of the 2017 fishing period that was duly made before 6 October 2017 has effect as if it had been made under clause 18 of this Plan as substituted by the amending Regulation.
- (6) In this clause:
2017 fishing period means the period of 1 January 2017 to 31 December 2017.
amending Regulation means the *Fisheries Management Legislation Amendment (Quota Management) Regulation 2017*.

Schedule 4 Amendment of Fisheries Management (Lobster Share Management Plan) Regulation 2000

[1] Appendix

Omit the definition of *fishing period* from clause 2 (1). Insert instead:

fishing period means each period of 12 months commencing on 1 August and ending on the following 31 July, or such other period as the Minister may determine after consultation with any relevant advisory council or advisory group.

[2] Appendix, clause 2 (1), definition of “quota”

Omit the definition.

[3] Appendix, Part 5

Omit the Part. Insert instead:

Part 5 Total allowable catch and quota

14 TAF Committee to make TAC determination

- (1) The TAF Committee is required to make a TAC determination for eastern rock lobster.
- (2) A TAC determination is to be made in respect of each fishing period.
Note. Under section 40K of the Act, the Minister may direct the TAF Committee as to the matters to be taken into account when making a fishing determination.

15 Allocation of quota

- (1) The Secretary is required to allocate the TAC determination for eastern rock lobster among the shareholders, subject to any direction given by the Minister under section 40Q (3) of the Act.
- (2) The whole of the TAC determination is not required to be allocated.
- (3) The allocation of the TAC determination is to be made in proportion to the number of shares held by each shareholder.
- (4) The Secretary may, at any time during a fishing period, adjust the quota of a shareholder to rectify any errors in the calculation of the quota in the fishing period or in a previous fishing period.
- (5) This clause also applies to any interim TAC determination for eastern rock lobster made by the Secretary under section 40I of the Act.

16 Shareholder to notify nominated fishers of quota

- (1) A shareholder who is notified of an allocation of quota by the Secretary under section 40R of the Act must, as soon as reasonably practicable, ensure each nominated fisher of the shareholder is notified of the particulars of the quota.
- (2) A shareholder who transfers quota to, or acquires quota from, another shareholder under clause 18 must, as soon as reasonably practicable, ensure each nominated fisher of the shareholder is notified of the particulars of the quota transfer.
- (3) For the purposes of section 65 of the Act, contravention of this clause is an offence.

17 Seized eastern rock lobster count towards quota

To avoid doubt, any eastern rock lobster that are seized by a fisheries officer do not cease to be considered to have been taken for sale just because they have been seized. Accordingly, any seized eastern rock lobster are to be counted towards the quota of the shareholder from whom the lobster have been seized.

18 Transfer of quota

- (1) Quota may be transferred only between shareholders.
- (2) Quota may be transferred only within the fishing period to which the quota applies.

Note. A shareholder is not authorised:

- (a) to transfer to the next fishing period any part of the shareholder's quota for the current fishing period that is not taken during the current fishing period, or
 - (b) to transfer to the current fishing period part of the shareholder's quota for the next fishing period.
- (3) A shareholder may not acquire by transfer more than twice the amount of the shareholder's initial quota for the fishing period.
 - (4) For the purposes of section 40U (3) of the Act, the prescribed fee for a manual transfer of quota is \$233.

Note. No fee is prescribed under section 40U (2) for an electronic transfer of quota using the online transfer system.

19 Allocation of quota following replacement TAC determination

- (1) If an interim TAC determination for a fishing period is subsequently replaced by a TAC determination made by the TAF Committee for the same fishing period, the Minister may give directions to the Secretary as to the manner in which the Secretary is to allocate the replacement TAC determination among shareholders.
- (2) Without limiting subclause (1), a direction may require the Secretary to have regard to the following:
 - (a) any quota of eastern rock lobster taken by a shareholder during the interim fishing period,
 - (b) the transfer of any quota between shareholders during the interim fishing period,
 - (c) the transfer of any shares during the interim fishing period.
- (3) In this clause:

interim fishing period means the part of a fishing period in respect of which an interim TAC determination was in force.

interim TAC determination means an interim TAC determination made by the Secretary under section 40I of the Act.

[4] Appendix, clause 21

Omit "total allowable catch". Insert instead "TAC determination".

[5] Appendix, clauses 29 (2) (e) and (f) and 37

Omit the provisions.

[6] Appendix, clause 52

Omit "section 75 (5)" from clause 52 (5). Insert instead "section 75B (2)".

[7] Appendix, clause 52, Table

Omit “arising from a contravention of clause 16 of this Plan (Contravention of quota)” from the first item in Column 1.

Insert instead “against section 40S of the Act (Authority holder not to contravene quota)”.

[8] Appendix, clause 58

Insert before clause 59:

58 Quota arrangements for 2017/2018 fishing period

- (1) The determination of total allowable catch for eastern rock lobster made by the TAC Committee for the 2017/2018 fishing period has effect as if it had been made by the TAF Committee under clause 14 of this Plan as substituted by the amending Regulation.
- (2) Accordingly, the determination is taken to be a TAC determination for the purposes of Part 2A of the Act.
- (3) The allocation of quota among shareholders for the 2017/2018 fishing period made by the Minister under section 78 of the Act (as in force at the time) has effect as if it had been made by the Secretary under clause 15 of this Plan as substituted by the amending Regulation.
- (4) Accordingly, the quota allocated to each shareholder is taken to be quota for the purposes of Part 2A of the Act.
- (5) Any transfer of quota in respect of the 2017/2018 fishing period that was duly made before 6 October 2017 has effect as if it had been made under clause 18 of this Plan as substituted by the amending Regulation.
- (6) In this clause:
2017/2018 fishing period means the period of 1 August 2017 to 31 July 2018.
amending Regulation means the *Fisheries Management Legislation Amendment (Quota Management) Regulation 2017*.

Schedule 5 Amendment of Fisheries Management (Estuary General Share Management Plan) Regulation 2006

[1] Appendix

Omit “shares” from the heading to Part 3A. Insert instead “management”.

[2] Appendix, clauses 6E and 6F

Insert after clause 6D:

6E TAF Committee required to make fishing determinations

- (1) The TAF Committee is required to make the following fishing determinations:
 - (a) a TAC determination for each of the following species of fish:
 - (i) mud crab (*Scylla serrata*),
 - (ii) blue swimmer crab (*Portunus armatus*),
 - (iii) longfin river eel (*Anguilla reinhardtii*) and shortfin river eel (*Anguilla australis*),
 - (b) a TAE determination for each of the following classes of shares:
 - (i) Estuary general—meshing shares—Regions 1–7,
 - (ii) Estuary general—category one hauling shares—Regions 1–7,
 - (iii) Estuary general—category two hauling shares—Regions 1–7.
- (2) A TAE determination is to specify the total number of days during a specified period in which fish may be taken in the fishery.
- (3) A fishing determination is to be made in respect of each period of 12 months commencing on 1 July and ending on 30 June in the following year or such other period as the Minister may determine after consultation with any relevant advisory council or advisory group.
- (4) A fishing determination is to be made in accordance with Division 2 of Part 2A of the Act.
- (5) This clause is subject to Part 9 of this Plan.

Note. Part 9 provides for the Secretary, and not the TAF Committee, to make the fishing determinations specified in this clause during the transition period, which commences on 6 October 2017 and ends on 30 June 2024.

6F Taking fish without quota

- (1) For the purposes of section 68 (6A), it is a condition of an endorsement authorising the taking of any of the following species of fish that the endorsement holder does not take that species in the fishery unless the endorsement holder has quota for that species:
 - (a) mud crab (*Scylla serrata*),
 - (b) blue swimmer crab (*Portunus armatus*),
 - (c) longfin river eel (*Anguilla reinhardtii*) and shortfin river eel (*Anguilla australis*).

Note. It is also an offence under section 40S of the Act for a shareholder to take fish, or use a fishing method, or to cause or permit an agent to do so, in contravention of the shareholder's quota.
- (2) For the purposes of section 65 of the Act, contravention of this clause is an offence.

- (3) A shareholder cannot be proceeded against or convicted for both an offence against section 65 and section 68 in respect of the same conduct.

[3] Appendix, Part 9

Insert after clause 37:

Part 9 Transitional fishing determinations

38 Transition period

In this Part, *transition period* means the period starting on 6 October 2017 and ending on 30 June 2024.

39 Secretary required to make fishing determinations during transition period

- (1) The Secretary, and not the TAF Committee, is required to make any fishing determinations that the TAF Committee would otherwise be required to make under clause 6E for any fishing period ending on or before 30 June 2024.
- (2) The first fishing determination is to be made in respect of the period beginning on 1 December 2017 and ending on 30 June 2018. After that, a fishing determination is to be made in respect of each period of 12 months commencing on 1 July and ending on 30 June in the following year.
- (3) A fishing determination under this clause is to be made in accordance with Division 3 of Part 2A of the Act, subject to clause 40.

40 Transition to TAF Committee fishing determinations

- (1) The Minister may, during the transition period, give directions to the Secretary as to the matters to which the Secretary is to have regard in making any fishing determination for the fishery that the Secretary is required to make during the transition period.
- (2) A direction may exempt the Secretary from the requirement to have regard to a scientific assessment in making a fishing determination, in which case section 40M (1) of the Act does not apply to the fishing determination.
- (3) The direction is to be given by order in writing.
- (4) The Minister may give a direction under this clause only if the Minister is of the opinion that the direction is necessary to facilitate the structural adjustment of the fishery to TAF Committee fishing determinations.
- (5) Without limiting subclause (1), a direction may require the Secretary to have regard to the following:
 - (a) historical catch or fishing effort in the fishery,
 - (b) the objective of gradually transitioning the fishery to TAF Committee fishing determinations.
- (6) The Secretary is to make any fishing determination that the Secretary is required to make for the fishery during the transition period in accordance with any direction given by the Minister under this clause.
- (7) In this clause, *TAF Committee fishing determination* means a fishing determination made by the TAF Committee under Division 2 of Part 2A of the Act.

Schedule 6 Amendment of Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006

[1] Appendix

Omit “shares” from the heading to Part 3A. Insert instead “management”.

[2] Appendix, clauses 6E and 6F

Insert after clause 6D:

6E TAF Committee required to make TAC determinations

- (1) The TAF Committee is required to make a TAC determination for eastern sea garfish.
- (2) A TAC determination is to be made in respect of each period of 12 months commencing on 1 July and ending on 30 June in the following year or such other period as the Minister may determine after consultation with any relevant advisory council or advisory group.
- (3) A TAC determination is to be made in accordance with Division 2 of Part 2A of the Act.
- (4) This clause is subject to Part 9 of this Plan.

Note. Part 9 provides for the Secretary, and not the TAF Committee, to make the TAC determination for eastern sea garfish during the transition period, which commences on 6 October 2017 and ends on 30 June 2024.

6F Taking fish without quota

- (1) For the purposes of section 68 (6A) of the Act, it is a condition of an endorsement authorising the taking of eastern sea garfish that the endorsement holder does not take that species in the fishery unless the endorsement holder has quota for that species.
Note. It is also an offence under section 40S of the Act for a shareholder to take fish, or use a fishing method, or to cause or permit an agent to do so, in contravention of the shareholder's quota.
- (2) For the purposes of section 65 of the Act, contravention of this clause is an offence.
- (3) A shareholder cannot be proceeded against or convicted for both an offence against section 65 and section 68 in respect of the same conduct.

[3] Appendix, Part 9

Insert after clause 20:

Part 9 Transitional TAC determinations

21 Transition period

In this Part, *transition period* means the period starting on 6 October 2017 and ending on 30 June 2024.

22 Secretary required to make TAC determinations during transition period

- (1) The Secretary, and not the TAF Committee, is required to make any TAC determinations that the TAF Committee would otherwise be required to make under clause 6E for any fishing period ending on or before 30 June 2024.

- (2) The first TAC determination is to be made in respect of the period beginning on 1 December 2017 and ending on 30 June 2018. After that, a TAC determination is to be made in respect of each period of 12 months commencing on 1 July and ending on 30 June in the following year.
- (3) A TAC determination under this clause is to be made in accordance with Division 3 of Part 2A of the Act, subject to clause 23.

23 Transition to TAF Committee fishing determinations

- (1) The Minister may, during the transition period, give directions to the Secretary as to the matters to which the Secretary is to have regard in making any TAC determination for the fishery that the Secretary is required to make during the transition period.
- (2) A direction may exempt the Secretary from the requirement to have regard to a scientific assessment in making a TAC determination, in which case section 40M (1) of the Act does not apply to the TAC determination.
- (3) The direction is to be given by order in writing.
- (4) The Minister may give a direction under this clause only if the Minister is of the opinion that the direction is necessary to facilitate the structural adjustment of the fishery to TAF Committee fishing determinations.
- (5) Without limiting subclause (1), a direction may require the Secretary to have regard to the following:
 - (a) historical catch or fishing effort in the fishery,
 - (b) the objective of gradually transitioning the fishery to TAF Committee fishing determinations.
- (6) The Secretary is to make any TAC determination that the Secretary is required to make for the fishery during the transition period in accordance with any direction given by the Minister under this clause.
- (7) In this clause, *TAF Committee fishing determination* means a fishing determination made by the TAF Committee under Division 2 of Part 2A of the Act.