



New South Wales

# Fisheries Management Legislation Further Amendment 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:

- (a) to make provision for the conduct of a poll of shareholders affected by a redefinition proposal, which is a proposal by the Minister for Primary Industries to change the description of a share management fishery or to amalgamate or replace classes of shares in a share management fishery, and
- (b) to remove the requirement for a person to be registered as an eligible fisher before the person can be nominated by a fishing business owner in a share management fishery or a restricted fishery to take fish on behalf of the fishing business owner.

The Regulation amends the following Regulations:

- (a) *Fisheries Management (General) Regulation 2010*,
- (b) *Fisheries Management (Supporting Plan) Regulation 2006*,
- (c) *Fisheries Management (Abalone Share Management Plan) Regulation 2000*,
- (d) *Fisheries Management (Lobster Share Management Plan) Regulation 2000*.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 40, 55E, 57A, 69, 103, 276 and 289 (the general regulation-making power).

## **Fisheries Management Legislation Further Amendment Regulation 2017**

under the

Fisheries Management Act 1994

### **1 Name of Regulation**

This Regulation is the *Fisheries Management Legislation Further Amendment Regulation 2017*.

### **2 Commencement**

This Regulation commences on 15 December 2017 and is required to be published on the NSW legislation website.

## **Schedule 1 Amendment of Fisheries Management (General) Regulation 2010**

**[1] Clause 3 Interpretation**

Omit the definition of *eligible fisher* from clause 3 (1).

**[2] Clause 125 Who may hold commercial fishing licence**

Omit clause 125 (b). Insert instead:

- (b) an individual who the owner of a fishing business proposes to nominate (under section 69 of the Act in respect of a share management fishery or under Division 4 of Part 9 of this Regulation in respect of a restricted fishery) to take fish on behalf of the owner and who does not already hold a Class 1 commercial fishing licence,

**[3] Clause 194 Procedure for nomination of fisher**

Omit clause 194 (1).

**[4] Clause 194 (2)**

Omit “an eligible fisher”.

Insert instead “a person to take fish on behalf of a fishing business owner in a restricted fishery”.

**[5] Clause 195 One nominated fisher per fishing business**

Omit “An eligible fisher” from clause 195 (1). Insert instead “A person”.

**[6] Clause 195 (2) and (5)**

Omit “eligible fisher” wherever occurring. Insert instead “person”.

**[7] Clause 195 (3)**

Omit “an eligible fisher”. Insert instead “a person”.

**[8] Clause 196 Revocation of nomination of commercial fisher**

Omit clause 196 (4) (b). Insert instead:

- (b) the nominated fisher ceases to be the holder of a current Class 1 commercial fishing licence, or
- (c) there are grounds for suspending or cancelling the commercial fishing licence of the nominated fisher, or an endorsement on that commercial fishing licence (whether or not the licence or endorsement is in fact suspended or cancelled), or
- (d) the fishing business owner transfers the fishing business or any component of the fishing business to another person.

**[9] Part 10 Registration of persons eligible to be nominated fishers**

Omit the Part.

**[10] Schedule 7 Penalty notice offences**

Insert the following in appropriate order in Part 1:

Section 124A (5)

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

- [1] **Appendix**  
Omit the definition of *eligible fisher* from clause 2 (1).
- [2] **Appendix, clause 4C Transfer of quota**  
Omit “and hauling crew” wherever occurring in Column 2 of the Table to clause 4C (1).
- [3] **Appendix, clause 5 Nomination of fisher**  
Omit clause 5 (1).
- [4] **Appendix, clause 5 (2) and (3)**  
Omit “an eligible fisher” wherever occurring. Insert instead “a commercial fisher”.
- [5] **Appendix, clause 5 (4)**  
Omit “an eligible fisher”.  
Insert instead “a person to take fish on behalf of the shareholder in the fishery”.
- [6] **Appendix, clause 6 One nominated fisher per fishing business**  
Omit “An eligible fisher” from clause 6 (1). Insert instead “A person”.
- [7] **Appendix, clause 6 (2) and (5)**  
Omit “eligible fisher” wherever occurring. Insert instead “person”.
- [8] **Appendix, clause 6 (3)**  
Omit “an eligible fisher”. Insert instead “a person”.
- [9] **Appendix, clause 7 Revocation of nomination of commercial fisher**  
Omit clause 7 (4) (b). Insert instead:  
    (b) the nominated fisher ceases to be the holder of a current Class 1 commercial fishing licence, or  
    (b1) there are grounds for suspending or cancelling the commercial fishing licence of the nominated fisher, or an endorsement on that commercial fishing licence (whether or not the licence or endorsement is in fact suspended or cancelled), or  
    (b2) the owner of the relevant fishing business transfers the fishing business or any component of the fishing business to another person, or
- [10] **Appendix, clause 22**  
Insert after clause 21:  
**22 Poll on redefinition proposal**  
    (1) This clause applies in relation to a poll of shareholders affected by a redefinition proposal, which is arranged by the Secretary under Division 4A of Part 3 of the Act.  
    (2) For the purposes of section 55E (2) of the Act, a redefinition proposal has majority support if more than 50% of the value of votes cast in the poll are in support of the proposal.

- (3) For the purposes of section 55E (3) of the Act, shareholders who fail to vote in a poll are to be disregarded when determining whether a redefinition proposal has majority support.
- (4) For the purposes of section 55E (4) of the Act, the value of each vote cast in the poll is the percentage determined by dividing the number of affected shares held by the shareholder who casts the vote by the total number of relevant shares and multiplying that number by 100 (calculated to 3 decimal places).
- (5) For the purposes of subclause (4):
  - (a) the ***number of affected shares*** held by a shareholder is:
    - (i) in the case of a redefinition proposal that involves a change to a description of a share management fishery—the number of shares in that fishery held by the shareholder, or
    - (ii) in the case of a redefinition proposal that involves the amalgamation of 2 or more classes of shares or replacing classes of shares—the number of shares in the classes concerned held by the shareholder, and
  - (b) the ***total number of relevant shares*** is:
    - (i) in the case of a redefinition proposal that involves a change to a description of a share management fishery—the total number of shares in that fishery held by the shareholders who cast a vote in the poll, or
    - (ii) in the case of a redefinition proposal that involves the amalgamation of 2 or more classes of shares or replacing classes of shares—the total number of shares in the classes concerned held by the shareholders who cast a vote in the poll.

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

### **Appendix**

Omit clause 39A. Insert instead:

#### **39A    Adoption of certain provisions of Supporting Plan**

For the purposes of section 57A (5) of the Act, the following provisions of the *Fisheries Management Supporting Plan* set out in the Appendix to the *Fisheries Management (Supporting Plan) Regulation 2006*, as they relate to the fishery, and as in force from time to time, are adopted by this Plan:

- (a) Part 3,
- (b) clause 22.

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

### **Appendix**

Omit clause 56A. Insert instead:

#### **56A    Adoption of certain provisions of Supporting Plan**

For the purposes of section 57A (5) of the Act, the following provisions of the *Fisheries Management Supporting Plan* set out in the Appendix to the *Fisheries Management (Supporting Plan) Regulation 2006*, as they relate to the fishery, and as in force from time to time, are adopted by this Plan:

- (a) Part 3,
- (b) clause 22.