

# Fisheries Management (Abalone Share Management Plan) Regulation 2000

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New South Wales

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New South Wales

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# Fisheries Management (Abalone Share Management Plan) Regulation 2000



New South Wales

## 1 Name of Regulation

This Regulation is the *Fisheries Management (Abalone Share Management Plan) Regulation 2000*.

## 2 Abalone Share Management Plan

The *Abalone Share Management Plan* set out in the Appendix to this Regulation has effect.

## 3 Amendment of **Fisheries Management (General) Regulation 1995**

The *Fisheries Management (General) Regulation 1995* is amended by inserting at the end of clauses 130B and 134A the following subclause (with appropriate subclause numbering):

- ( ) This clause ceases to have effect in respect of the abalone share management fishery on the commencement of the management plan for that fishery.

## 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation (including the Appendix) do not form part of this Regulation.

## Appendix

### Abalone Share Management Plan

#### Part 1 Preliminary

##### 1 Name of Plan

This is the *Abalone Share Management Plan*.

##### 2 Definitions

In this Plan:

**abalone offence** means an offence against this Plan or an offence against the Act or the regulations under the Act relating to the taking or sale of abalone.

**abalone processor** means a person who receives abalone, for resale or other commercial use, from an endorsement holder or shareholder, or from any person transporting the abalone on behalf of the endorsement holder or shareholder.

**approved** means approved by the Director.

**endorsement** means an endorsement on a commercial fishing licence that authorises the taking of abalone in the fishery.

**endorsement holder** means a person who holds a commercial fishing licence that has an endorsement.

**endorsement holder offence**—see clause 38.

**fishery** means the abalone fishery (as described in Schedule 1 to the Act).

**fishing period** means a period of 12 months commencing on 1 January and ending on the following 31 December, or such other period in respect of which a determination of total allowable catch is made (as referred to in clause 14 (2)).

**Note—**

The first fishing period for the fishery is taken to be the period commencing on 1 January 2000 and ending on 31 December 2000.

**nominated fisher** means a commercial fisher nominated by a shareholder to take abalone in the fishery on behalf of the shareholder.

**quota** means a shareholder's allocation of the total allowable catch for the fishery.

**serious fisheries offence** means any of the following offences:

- (a) an offence against section 121 of the Act,
- (b) an offence against section 124 of the Act,
- (c) an offence against section 247 of the Act,
- (d) an offence against clause 107 of the *Fisheries Management (General) Regulation 1995*,
- (e) an offence arising from the theft of fishing gear.

**shareholder** means a holder of shares in the fishery.

**the Act** means the *Fisheries Management Act 1994*.

## Part 2 Objectives of Plan

### 3 Objectives, performance indicators and triggers for review

- (1) The objectives of this Plan are set out in Column 1 of the Table to this clause.
- (2) For the purposes of section 57 (2) (a) of the Act, the performance indicator in relation to each objective of this Plan is set out in Column 2 of the Table to this clause next to the objective concerned.
- (3) For the purposes of section 57 (2) (b) of the Act, a review of this Plan is required if the Minister is satisfied of the existence of a matter referred to in Column 3 of the Table to this clause (in relation to the objective and performance indicator set out next to that matter in the Table).

#### Table

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Objective</b>	<b>Performance indicator</b>	<b>Trigger for review</b>
1.	Promote commercial fishing practices for abalone that do not adversely impact on the broader ecosystem	Commercial fishing practices for abalone do not have an adverse environmental impact on the broader ecosystem	Research conducted by or on behalf of NSW Fisheries indicates that commercial fishing for abalone is having an adverse environmental impact on the broader ecosystem
2.	Maintain or increase the biomass of mature and legal sized abalone (ie abalone that is not a prohibited size fish (as specified in clause 7 of the <a href="#">Fisheries Management (General) Regulation 1995</a> ))	Biomass of mature and legal sized abalone increase or do not change in any area to which a total allowable catch applies (using a model based assessment, with survey of abalone stock conducted by NSW Fisheries in 1994 to be used as a benchmark)	(a) The biomass of mature or legal sized abalone in an area in which a total allowable catch applies falls below the 1994 benchmark by more than 15 percent  (b) There is a more than 50 percent chance of (a) occurring in the next 5 years if the total allowable catch is unchanged

3.	Ensure management arrangements for the fishery do not have a significant impact on the cost of taking abalone for sale	Management charge for the fishery (under section 76 of the Act) does not increase significantly, disregarding any increase that is attributable to the provision of additional resources by NSW Fisheries (eg the provision of additional compliance officers)	Management charge for the fishery increases in any year at a rate that exceeds the rate of inflation (as measured by the consumer price index), disregarding any increase that is attributable to the provision of additional resources by NSW Fisheries after the commencement of this Plan
4.	Promote cost efficient management of the fishery	Independent review of the management arrangements for the fishery, conducted periodically at the request of the Minister, determines that management arrangements are appropriate	Independent review determines that the management arrangements for the fishery are inappropriate
5.	Ensure that the fishery remains economically viable	Standardised commercial catch rates remain relative to 1994	Standardised commercial catch rates fall by more than 15 percent from 1994 benchmark
		There is a buying market for quota	20 percent (or more) of quota available for trading cannot be traded
		There is a buying market for shares in the fishery	15 percent (or more) of shares available for trading cannot be sold
		Value of shares in the fishery is maintained or increased	Value of share packages for a fishing period decreases by more than 10 percent (using 1999 value as a benchmark)
6.	Ensure appropriate research and monitoring in relation to the fishery	Necessary data is available for assessment of abalone stocks	Insufficient data is available for the purpose of setting the total allowable catch for abalone



7.	Minimise the number of offences committed by fishers in relation to abalone	Number of offences relating to abalone committed by fishers annually, as indicated by quality inspections conducted by NSW Fisheries, indicates substantial compliance with the Act, this Plan and the other regulations under the Act	Overall rate of compliance with the Act, this Plan and the other regulations under the Act (estimated annually by the Director) is less than 70 percent
8.	Ensure that the number of persons authorised to take abalone for sale does not increase significantly	There is no significant increase in the number of persons eligible for an endorsement after the commencement of this Plan	Number of persons eligible for an endorsement exceeds 42

#### 4 Operational plans and strategies

The Minister may develop and implement operational plans and strategies for the purpose of achieving the objectives of this Plan.

### Part 3 Dealings in shares

#### 5 Minimum shareholding

The minimum shareholding in the fishery is 70 shares.

**Note—**

A person who holds shares in the share management fishery is not entitled to take fish in the fishery or to nominate another person to do so on the shareholder’s behalf unless the shareholder has the minimum shareholding for the fisher (see sections 66 and 67 of the Act).

#### 6 Maximum shareholding

The maximum shareholding in the fishery is 210 shares.

#### 7 Dealings in shares—general

(1) Shares in the fishery may be transferred, assigned, transmitted or mortgaged only as provided for by the following:

- (a) a shareholder may transfer, transmit or mortgage a package of shares or any number of packages of shares, or such other number of shares as may be approved by the Minister, to one person,
- (b) a shareholder may transfer, transmit, mortgage or assign all shares held by the shareholder to one person,

- (c) a shareholder may assign shares only if the assignment transfers to the person to whom the shares are assigned all of the interests of the shareholder in the shares concerned.
- (2) This clause does not prevent a transfer referred to in section 71 (2) of the Act (ie a transfer for the purpose of enabling 2 or more shareholders to hold their shares jointly).
- (3) In this clause, a **package of shares** means a group of 10 shares held by the same shareholder.

**Note—**

A transaction that purports to have the effect of transferring, assigning, transmitting or mortgaging a share does not have effect until it is registered in the Share Register (see section 91 of the Act).

**8 Special provisions relating to transfers and assignments**

- (1) In addition to the restrictions imposed by clause 7, shares in the fishery may be transferred or assigned only with the approval of the Director.
- (2) The Director may refuse to approve a transfer or assignment of shares if:
  - (a) the transaction would contravene the Act or this Plan, or
  - (b) the person to whom the shares are to be transferred or assigned is a person who:
    - (i) is prohibited from holding shares, or
    - (ii) is a natural person who may not be nominated by a shareholder to take abalone on behalf of the shareholder under clause 10, or
    - (iii) is a commercial fisher who could be refused an endorsement under clause 11,  
or
  - (c) the Director is satisfied that the purpose of the transaction is to avoid share forfeiture, or
  - (d) any fee, contribution or other amount owing under the Act in respect of the shares has not been paid, or
  - (e) any assignment or mortgage that applies to the shares has not been discharged or cancelled, or
  - (f) there is a nominated fisher in respect of the shares and the nomination has not been revoked by the shareholder transferring the shares.
- (3) If shares in the fishery are transferred or assigned with the approval of the Director, any unused quota that was allocated in respect of those shares is to be transferred to the person who acquires the shares.

- (4) An application for the Director's approval under this clause:
  - (a) is to be made jointly by the shareholder and the person to whom the shares are to be transferred or assigned, and
  - (b) is to be in an approved form, and
  - (c) is to be accompanied by the share certificate (or certificates) of the shareholder and the person to whom the shares are to be transferred or assigned (if that person is a shareholder).
- (5) The approved form of application under this clause may include or be comprised of the approved form of application for registration of the transaction under section 91 of the Act, so as to enable the applications for approval and registration to be dealt with together.
- (6) A shareholder who proposes to transfer or assign shares may request that the Minister review a determination of the Director under this clause in relation to the transfer or assignment within 30 days after notice of the determination is given to the shareholder.
- (7) The Director is to give effect to any determination made by the Minister in respect of that review.

## **9 Registration of share transactions**

- (1) For the purposes of section 90 (1) (d) of the Act, an entry in the Share Register in relation to a share is to include the identification number assigned to the share by the Minister.
- (2) For the purposes of section 91 (3) (d) of the Act:
  - (a) the fee for an application for registration of a transaction that purports to have the effect of transferring, assigning or transmitting a share in the fishery is \$208, and
  - (b) the fee for an application for registration of a transaction that purports to have the effect of mortgaging a share in the fishery is \$364.

## **Part 4 Endorsements and nominated fishers**

### **10 Nominated fishers**

- (1) A person may not be nominated by a shareholder to take abalone on behalf of the shareholder if:
  - (a) the person has been convicted, within the period of 5 years before the nomination is made, of an abalone offence or a serious fisheries offence, or
  - (b) the person has been charged with or summoned for an abalone offence or a

serious fisheries offence and proceedings in respect of that offence are pending.

- (2) No more than one person may be nominated to take abalone on the shareholder's behalf at any one time.
- (3) A shareholder is not entitled to nominate a person to take abalone on behalf of the shareholder for less than a 4 week period, unless otherwise approved by the Director.
- (4) The Minister may refuse to endorse the commercial fishing licence of a person nominated by a shareholder to take abalone on the shareholder's behalf if the nomination is made in contravention of this clause.
- (5) If the Minister endorses the commercial fishing licence of a nominated fisher of a shareholder, and the shareholder already holds an endorsed commercial fishing licence, the shareholder's endorsement is void.
- (6) If the shareholder revokes his or her nomination, as provided for by section 69 (7) of the Act, the Minister may endorse the licence of the shareholder again or endorse the licence of another commercial fisher nominated by the shareholder.
- (7) A nomination is to be accompanied by an administrative fee of \$312.

**Note—**

A nomination of a commercial fisher is to be made in writing and served on the Director. The nomination is to be accompanied by the written consent of the nominee to the nomination. The Director is to record the nomination, and any revocation of the nomination, in the Share Register. The nomination (and any revocation of the nomination) has effect when it is recorded in the Share Register. (See section 69 of the Act.)

Under section 69 of the Act, a shareholder may nominate a commercial fisher who is a shareholder in the same fishery. However, the shares of the nominated fisher do not, while the fisher is so nominated, confer any entitlement to take fish in the fishery.

## **11 Eligibility for endorsement**

The Minister may refuse to endorse the commercial fishing licence of a commercial fisher if:

- (a) the commercial fisher has been convicted of an abalone offence, or a serious fisheries offence, within the period of 5 years before the application for endorsement is made, or
- (b) the commercial fisher is nominated by a shareholder who has been convicted of a serious fisheries offence within the period of 5 years before the application for endorsement is made.

**Note—**

Section 68 of the Act provides that an application for endorsement is to be made in the form and manner approved by the Minister.

## **12 Grounds for suspension or cancellation of endorsement**

- (1) The Minister may suspend or cancel an endorsement of a nominated fisher if:
  - (a) the fisher does anything that would be grounds for cancellation or suspension of the fisher's commercial fishing licence, or
  - (b) the Minister is satisfied that the fisher has contravened a provision of this Plan, or
  - (c) the shareholder who nominated the fisher:
    - (i) revokes the nomination, or
    - (ii) nominates another commercial fisher to take abalone in the fishery on the shareholder's behalf, or
    - (iii) is convicted of an abalone offence or a serious fisheries offence, or
    - (iv) becomes the nominated fisher of another shareholder in the same fishery.
- (2) The Minister may suspend or cancel an endorsement of a commercial fisher who is a shareholder if:
  - (a) the shareholder is convicted of an abalone offence or a serious fisheries offence, or
  - (b) if the Minister is satisfied that the shareholder has contravened a provision of this Plan, or
  - (c) the shareholder becomes the nominated fisher of another shareholder in the same fishery.
- (3) The Minister may suspend an endorsement for a specified period of no less than 4 weeks at the request of the holder of the endorsed licence. The suspension period may be shortened or lengthened by the Minister on request of the holder of the endorsement.

### **Note—**

An endorsement may be suspended or cancelled if the holder of the licence ceases to be eligible to have the licence endorsed, for instance, because the holder holds less than the minimum shareholding in the fishery. The endorsement may also be cancelled or suspended if the shareholder fails to pay any community contribution, management charge or other amount due under Part 3 of the Act. (See section 68 (7) of the Act.) If an endorsement of a shareholder is suspended or cancelled, the shareholder is not entitled to nominate another person to take abalone on the shareholder's behalf (see section 68 (8) of the Act).

## **13 Nominated fisher to notify shareholder of alleged offence**

- (1) A nominated fisher must notify the shareholder who nominated him or her to take abalone in the fishery on the shareholder's behalf if the person is charged with or summoned for an offence against this Plan, the Act or the regulations under the Act.

- (2) The notice must be given to the shareholder within 24 hours after the nominated fisher is charged with the offence.
- (3) Contravention of this clause is an endorsement holder offence.

## **Part 5 Total allowable catch and quota allocations**

### **14 Total allowable catch**

- (1) The TAC Committee is to determine a total allowable catch for abalone.
- (2) The determination is to be made in respect of the period of 12 months commencing on the next 1 January and ending on the following 31 December, or such other period as the Minister may determine after consultation with the Management Advisory Committee for the fishery.

**Note—**

Under section 29 of the Act, the Minister may direct the TAC Committee as to the matters to be taken into account when determining total allowable catch.

### **15 Determination of quota**

- (1) The total allowable catch is to be allocated among shareholders as provided for by section 78 of the Act.

**Note—**

Section 78 of the Act provides that the Minister is to allocate the whole of the total allowable catch among shareholders in proportion to their shareholdings.

- (2) If the TAC Committee recommends that the total allowable catch be allocated to a particular area or areas of the fishery, or be taken in particular periods, the Minister may, after consultation with the Management Advisory Committee, determine:
  - (a) the areas in which the total allowable catch may be taken, and
  - (b) the amount or proportion of quota that may be taken by or on behalf of a shareholder during a specified part or parts of the fishing period.
- (3) Such a determination must not be made so as to prevent shareholders from taking the whole of the total allowable catch in a fishing period.
- (4) The Minister may adjust the quota of a shareholder to take account of a mistake in the calculation of the shareholder's quota in the fishing period or in a previous fishing period.
- (5) The Director is to ensure that each shareholder, and any nominated fisher of the shareholder, is notified of the shareholder's quota and any adjustments to that quota, and of any determination as to the periods in which that quota may be taken.

## **16 Contravention of quota**

- (1) A person, being a shareholder or a nominated fisher for a shareholder, must not:
  - (a) take abalone for sale in contravention of the shareholder's quota, or
  - (b) take abalone for sale in contravention of a determination by the Minister under clause 15 (2).
- (2) For the purposes of section 65 of the Act, contravention of this clause is an offence.
- (3) Contravention of this clause is also an endorsement holder offence.
- (4) 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.

## **17 No carry over or borrowing of quota**

- (1) Shareholders are not authorised to transfer to the next fishing period any part of their quota for the current fishing period that is not taken during the current fishing period.
- (2) Shareholders are not authorised to borrow any part of their quota from a future fishing period.

## **18 Transfer of quota**

- (1) Quota is transferable, but only with the approval of the Director.
- (2) Quota may be transferred only in lots of 100 kilograms or as otherwise approved by the Director.
- (3) Subclause (2) does not prevent a shareholder from transferring the whole of his or her quota in a single lot.
- (4) Quota may be transferred only within the fishing period to which the quota relates.
- (5) A shareholder may not acquire by any such transfer more than twice the amount of the shareholder's initial quota for the fishing period.

## **19 Application for approval of quota transfer**

- (1) An application for approval of a transfer of quota is to be made to the Director jointly by the shareholder who proposes to transfer quota and the shareholder who proposes to acquire that quota.
- (2) The application:
  - (a) is to be in an approved form, and
  - (b) is to be accompanied by a fee of \$156.

- (3) The Director may approve the application or refuse to approve the application.
- (4) If approved, the transfer takes effect when the Director gives notice of that approval to the shareholder who transferred the quota.
- (5) The Director is also to give notice of that approval to the shareholder who acquired the quota and any person who is nominated to take abalone for sale on behalf of either the shareholder who transferred the quota or the shareholder who acquired the quota.
- (6) A shareholder may request the Minister to review a determination of the Director under this clause and the Director is to give effect to the determination of the Minister in respect of that review.

## **Part 6 Provisions relating to crew, boats, records and other matters**

### **20 Definitions**

- (1) In this Part:

**daily log sheet** means a form known as the “Abalone Daily Catch Register” provided to endorsement holders by NSW Fisheries.

**docket book** means a booklet issued by NSW Fisheries containing daily log sheets.

**monthly reconciliation form** means a form known as the “Abalone Non-Fishing & Reconciliation Form” provided to endorsement holders by NSW Fisheries.

- (2) In this Part, **hanging** abalone refers to the practice of storing abalone that has been taken for sale in a bin or other container that is in the water, without landing the abalone.

### **21 Registration of crew**

- (1) A person may apply to the Director to be registered as an abalone fishery crew member.
- (2) A person is not entitled to be registered as a abalone fishery crew member unless:
  - (a) the person holds first aid qualifications of an approved standard, and
  - (b) the registration of the person is recommended by a person who holds a current endorsement in the fishery.
- (3) The Director may refuse to register a person as an abalone fishery crew member if the person has been convicted of any of the following offences, within the period of 5 years before the application for registration is made:
  - (a) an offence under the Act or the regulations under the Act or an offence relating to



commercial fishing operations under a law of the Commonwealth, another State, a Territory or New Zealand,

(b) an offence relating to theft of fish, fishing gear or a boat,

(c) an offence relating to an assault on a fisheries official.

(4) An application for registration as an abalone fishery crew member is to be in an approved form.

(5) This clause does not affect any requirement to be registered as a crew member under section 110 of the Act. However, the approved form of application for registration as an abalone fishery crew member may be comprised of or include an application for registration as a crew member under section 110 of the Act, so as to enable the applications to be dealt with together.

**Note—**

Under section 110 of the Act crew members of licensed fishing boats must be registered by the Director. The fee for such an application is \$100.

(6) Registration as an abalone fishery crew member remains in force for a period of one year from the date of registration or such other period as may be notified by the Director when the crew member is registered.

## **22 Limited use of unauthorised crew**

(1) An endorsement holder must not take or attempt to take abalone for sale more than 2 times in any calendar month while using a fishing boat that has a crew member who is not an authorised crew member, except with the approval of the Director.

(2) An endorsement holder must not take or attempt to take abalone for sale while using a fishing boat that has a crew member who is not an authorised crew member unless the endorsement holder has notified a local fisheries officer, before leaving port, of his or her intention to do so.

(3) Contravention of this clause is an endorsement holder offence.

(4) In this clause:

**authorised crew member** means any crew member who is registered as an abalone fishery crew member under this Part or who holds a commercial fishing licence.

## **23 Crew details to be recorded on daily log sheet**

(1) An endorsement holder who takes or attempts to take abalone for sale on any day must include in the daily log sheet the names and registration or licence details of all members of the crew of the boat (if any) used by the endorsement holder to take abalone in the fishery.

- (2) Subclause (1) applies in addition to any requirement that applies in relation to the endorsement holder under clause 157 of the *Fisheries Management (General) Regulation 1995* (which requires the holder of a fishing boat licence to keep a record on the boat regarding crew members).
- (3) A contravention of subclause (1) is an endorsement holder offence.

#### **24 Measuring device to be carried**

- (1) An endorsement holder must not take or attempt to take abalone for sale unless the endorsement holder has on his or her person an instrument suitable for measuring abalone.
- (2) A contravention of this clause is an endorsement holder offence.

**Note—**

Clause 7 of the *Fisheries Management (General) Regulation 1995* prescribes a minimum size of 11.5 centimetres for abalone.

#### **25 Scales and weights to be carried**

- (1) An endorsement holder must not take or attempt to take abalone for sale unless the endorsement holder has in his or her possession scales suitable for weighing abalone.
- (2) An endorsement holder must not take or attempt to take abalone for sale unless the endorsement holder has in his or her possession a 10 kilogram trade weight for the purpose of testing the scales used by the endorsement holder to weigh abalone.
- (3) On any day that abalone is taken, the endorsement holder must use the 10 kilogram trade weight to test the scales for accuracy before weighing the abalone.
- (4) A contravention of this clause is an endorsement holder offence.

#### **26 Display of operating information on boat**

- (1) An endorsement holder must not use any licensed fishing boat in connection with taking abalone for sale unless there is displayed on the outside of both sides of the bow of the boat and on the outside of the top of the wheelhouse of the boat in clearly visible letters (in a colour which contrasts with that of the background) the letter “A” and the home port initials of the boat and those letters are:
  - (a) in the case of a boat that is more than 7.5 metres long—not less than 300 millimetres in height and 150 millimetres in width, or
  - (b) in any other case—not less than 150 millimetres in height.
- (2) The **home port initials** of a boat are the initials of the port from which the boat usually operates.

(3) This clause applies in addition to the requirements of clause 145 (1) (b) of the *Fisheries Management (General) Regulation 1995* (which requires the letters “LFB” and other licence details to be displayed on a licensed fishing boat).

(4) A contravention of a subclause (1) is an endorsement holder offence.

## **27 Use of boat for recreational purposes**

(1) An endorsement holder must not permit any licensed fishing boat that is used by the endorsement holder in connection with the taking of abalone in the fishery to be used to take abalone for recreational purposes (ie for purposes other than sale):

(a) while there is commercial abalone fishing gear on the boat, or

(b) while there is any functioning underwater breathing apparatus on the boat.

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

(3) In this clause:

**commercial abalone fishing gear** means fishing gear that may lawfully be used for taking abalone only by a commercial fisher.

## **28 Fishers to fish only while in possession of docket book**

(1) 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 by the endorsement holder in the current fishing period.

(2) An endorsement holder must keep the docket book in a safe place.

(3) An endorsement holder must not give, sell or lend to another person, or otherwise make available for use by another person, a daily log sheet or docket book that was issued for use by the endorsement holder.

(4) Subclause (3) does not prevent an endorsement holder from giving a form to a fisheries officer authorised to take possession of the form.

(5) If a docket book issued for use by an endorsement holder is lost, stolen, destroyed or damaged, the endorsement holder must notify the Director of that fact within 24 hours after becoming aware of that fact.

(6) If the endorsement of an endorsement holder is suspended or cancelled, the endorsement holder must immediately return to the Director the docket book issued for use by the endorsement holder in the current fishing period, together with any unused daily log sheets in his or her possession or control.

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

### **29 Catch not to be transferred between boats**

- (1) An endorsement holder must not transfer any abalone from one licensed fishing boat to another without the approval of a fisheries officer.
- (2) A contravention of this clause is an endorsement holder offence.

### **30 Hanging of daily catch**

- (1) An endorsement holder who hangs any abalone must, as soon as practicable after coming ashore (and in any case before moving more than 50 metres from the point at which the endorsement holder came ashore) record in his or her daily log sheet for that day:
  - (a) the estimated weight of the abalone, and
  - (b) the number of bins or containers used for the purpose of hanging the abalone, and
  - (c) the number of abalone in each bin or container.
- (2) If more than one day's catch of abalone is hung, the catch for each day must be recorded as provided for by subclause (1) in the relevant part of the daily log sheet.
- (3) A bin or container used for the purpose of hanging abalone must be clearly identified and securely sealed.
- (4) An endorsement holder must, within 1 hour after hanging any abalone, provide the nearest office of NSW Fisheries with the following information:
  - (a) the name of the endorsement holder,
  - (b) the location of the abalone,
  - (c) the estimated weight of the abalone,
  - (d) the number of bins or containers used for the purpose of hanging the abalone.
- (5) A contravention of this clause is an endorsement holder offence.

### **31 Steps to be taken after landing abalone**

- (1) An endorsement holder must, as soon as practicable but not later than 30 minutes after landing abalone:
  - (a) weigh the abalone using accurate scales, and
  - (b) place the abalone in a container of a kind suitable for the transport of abalone, and
  - (c) complete Part A on all copies of the daily log sheet for that day, and

- (d) insert the original and duplicate copy of the completed daily log sheet (**the relevant documentation**) in a waterproof envelope of an approved kind and attach the envelope to the container in which the abalone, or any part of the abalone, is placed.
- (2) The endorsement holder must take all reasonable steps to ensure that:
  - (a) any abalone landed is not moved more than 50 metres from the point of landing until subclause (1) has been complied with, and
  - (b) the abalone is transported together with the relevant documentation, attached to the container as required by subclause (1), and
  - (c) the relevant documentation remains attached to the container until it reaches the premises of an approved abalone processor.
- (3) An endorsement holder must not be in possession of abalone for sale on land unless the abalone is in a container to which the relevant documentation is attached.
- (4) Subclause (3) does not apply if the endorsement holder is less than 50 metres from the point of landing the abalone.
- (5) A contravention of this clause is an endorsement holder offence.

### **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 complete the appropriate sections of the daily log sheet for that day in accordance with the instructions provided on the log sheet immediately after returning to shore and before entering any premises, and before moving more than 50 metres from the point at which the endorsement holder came ashore.
- (2) The endorsement holder must ensure that the original copy of the daily log sheet is lodged with the Director, or is sent by facsimile transmission to the Director, in accordance with the instructions on the daily log sheet, within 24 hours after the end of the day concerned. If facsimile transmission is used, the original copy itself must be sent to the Director as soon as practicable after the facsimile transmission.
- (3) A contravention of this clause is an endorsement holder offence.

### **33 Monthly reconciliation**

- (1) An endorsement holder must, within 7 days after the end of each month:
  - (a) complete a monthly reconciliation form for that month in accordance with the instructions provided on the form, and
  - (b) forward the original copy of the completed form to the Director.

- (2) An endorsement holder must not give, sell or lend to another person, or otherwise make available for use by another person, a monthly reconciliation form that was issued for the use of the endorsement holder.
- (3) Subclause (2) does not prevent an endorsement holder from giving a form to a fisheries officer authorised to take possession of the form.
- (4) A contravention of this clause is an endorsement holder offence.

#### **34 False or misleading information**

- (1) An endorsement holder must not, in connection with a requirement under this Part, make any statement or provide any information that the person knows is false or misleading in a material particular.
- (2) A contravention of this clause is an endorsement holder offence.

### **Part 7 General**

#### **35 Share forfeiture offences**

- (1) For the purposes of section 75 (1) of the Act, the following offences are share forfeiture offences in respect of a shareholder:
  - (a) an offence arising from a contravention of clause 16 of this Plan (Contravention of quota) by the shareholder or a nominated fisher of the shareholder, if the shareholder has a record of contravening the clause,
  - (b) an offence arising from a contravention of clause 31 of this Plan (Steps to be taken after landing abalone) by the shareholder or a nominated fisher of the shareholder, if the shareholder has a record of contravening the clause,
  - (c) an offence arising from a contravention of clause 33 of this Plan (Monthly reconciliation) by the shareholder or a nominated fisher of the shareholder, if the shareholder has a record of contravening the clause,
  - (d) an offence arising from a contravention of clause 107 of the *Fisheries Management (General) Regulation 1995* (Interference with set fishing gear) by the shareholder or a nominated fisher of the shareholder,
  - (e) an offence committed by the shareholder against the Act or the regulations under the Act that is punishable by imprisonment.
- (2) An offence is not a share forfeiture offence if it was committed by a nominated fisher of a shareholder, and the court that convicts the nominated fisher is satisfied that the nominated fisher committed the offence without the knowledge or permission of the shareholder.

- (3) For the purposes of this clause, a shareholder has a **record of contravening a clause** if the shareholder has contravened the clause on at least 2 previous occasions and those contraventions have been proved. A contravention of the clause by a nominated fisher of the shareholder is to be counted as a contravention by the shareholder, as long as the contravention has been proved.
- (4) A contravention of this Plan is **proved** if the contravention gives rise to a conviction for an offence or if a court finds the contravention proved but does not proceed to a conviction.
- (5) Following the sale of any forfeited shares by public tender, as provided for by section 75 (5) of the Act, and after deduction of the expenses reasonably incurred in connection with the sale, the Minister is authorised to pay any person (other than the shareholder or shareholders) who had an interest in the shares such part of the purchase price as the Minister considers approximate to the value of the person's interest in the shares.

**Note—**

Clause 133 of the [Fisheries Management \(General\) Regulation 1995](#) also provides for share forfeiture for a failure to pay a community contribution or other amount due under Part 3 of the Act.

### **36 Management charge**

- (1) The management charge payable under section 76 of the Act by shareholders in the fishery is not to exceed \$325 per share.
- (2) Interest is payable on late payments at the rate payable from time to time in respect of judgments of the Supreme Court.
- (3) The management charge may, with the approval of the Minister, be paid by instalments on such terms as the Minister approves.

**Note—**

Section 76 of the Act provides that if an instalment is not paid by the due date, the balance then becomes due and payable (together with any interest for late payment prescribed by this Plan).

The management charge may be affected by the introduction of a goods and services tax (or GST).

### **37 Community contribution**

- (1) For the purposes of section 77 of the Act, the community contribution is payable by each shareholder for each fishing period.
- (2) The community contribution is payable 2 months after the end of the fishing period, or on such later date as may be determined by the Minister.
- (3) The community contribution is calculated as follows:

- (a) For the **first fishing period** (the period from 1 January 2000 to 31 December 2000):

No community contribution is payable

- (b) For the **second fishing period** (the fishing period immediately following the first fishing period):

$$CC = S/TS \times 2/100 \times TAC \times P$$

- (c) For the **third fishing period** (the fishing period immediately following the second fishing period):

$$CC = S/TS \times 4/100 \times TAC \times P$$

- (d) For the **fourth fishing period** (the fishing period immediately following the third fishing period) and each fishing period after that:

$$CC = S/TS \times 6/100 \times TAC \times P$$

Where:

**CC** is the community contribution.

**S** is the number of shares in the fishery held by the shareholder on the last day of the fishing period.

**TS** is the total number of shares in the fishery.

**TAC** is the total allowable catch for abalone (in kilograms) for the fishing period.

**P** is the average beach price for abalone (in kilograms) during the fishing period that was last completed before the date on which the community contribution is payable, determined by the Minister on the basis of records kept by the Director.

- (4) The Director is to calculate the community contribution for each shareholder at the end of each fishing period and advise shareholders of the amount that they are liable to pay.
- (5) Interest is payable on late payments of the community contribution at the rate payable from time to time in respect of judgments of the Supreme Court.
- (6) The community contribution may, with the approval of the Minister, be paid by instalments on such terms as the Minister approves.
- (7) If an instalment is not paid by the due date, the balance then becomes due and payable (together with the interest payable for late payment).



### **38 Endorsement holder offences**

An endorsement holder is guilty of an offence if the endorsement holder contravenes a provision of this Plan and the contravention is designated by this Plan as an endorsement holder offence.

Maximum penalty: 100 penalty units.

### **39 Plan does not affect other restrictions on fishing**

- (1) This Plan does not affect any restriction on the taking of abalone that has effect by virtue of the Act or the *Fisheries Management (General) Regulation 1995*.
- (2) In particular, the following provisions apply to the taking of abalone by an endorsement holder, unless otherwise provided for by those provisions:
  - (a) the provisions of any fishing closure under section 8 of the Act that prohibits or restricts the taking of abalone in any waters,
  - (b) the provisions of the *Fisheries Management (General) Regulation 1995* with respect to the prohibited size for abalone.

#### **Note—**

At present there is a minimum size for abalone of 11.5 centimetres (see clause 7 of the *Fisheries Management (General) Regulation 1995*). It is an offence under the Act to take abalone that are less than the minimum size.

### **40 Amendment of Plan**

For the purposes of section 64 of the Act, any amendment to this Plan is authorised.

## **Part 8 Savings and transitional**

### **41 Continuation of quota arrangements for first fishing period**

- (1) For the purposes of this Plan, the period commencing on 1 January 2000 and ending on 31 December 2000 is taken to be the first fishing period for the fishery.
- (2) The total allowable catch for that fishing period is the total allowable catch determined by the TAC Committee for that period before the commencement of this Plan, subject to any further determination that may be made by the TAC Committee under clause 14.
- (3) Any determination made by the Minister before the commencement of this Plan in respect of the allocation of that total allowable catch for that period has effect as if it had been made under this Plan.
- (4) Any transfer of quota in respect of that period that was duly made before the commencement of this Plan has effect as if it had been made under this Plan.

## **42 General saving**

- (1) A reference in this Plan to an endorsement includes an endorsement given before the commencement of this Plan that had effect immediately before the commencement of this Plan.
- (2) A nomination of a fisher to take abalone from the fishery on behalf of a shareholder that had effect immediately before the commencement of this Plan continues in force despite that commencement, and may be revoked at any time by the shareholder. A reference in this Plan to a nominated fisher includes a person who is the subject of such a nomination.
- (3) A person who was registered by the Director as an abalone fishery crew member before the commencement of this Plan is taken to have been registered under this Plan.