

Fisheries Management (Lobster 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 (Lobster Share Management Plan) Regulation 2000



New South Wales

1 Name of Regulation

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

2 Lobster Share Management Plan

The *Lobster 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 as follows:

- (a) by omitting clause 59 (2),
- (b) by omitting clause 59 (3) (a) (iv),
- (c) by omitting from clause 59 (3) (a) (v) the words “in the case of any other trap—”,
- (d) by omitting from clause 59 (3) (b) the words “(other than a commercial fisher who is authorised to take rock lobster for sale)”,
- (e) by omitting clause 59 (4) and by inserting instead the following subclause and note:

- (4) This clause does not apply to or in respect of a commercial fisher who is taking rock lobster (that is, fish of the species *Jasus verreauxi*, *Jasus edwardsii*, *Panulirus longipes* and *Panulirus ornatus*) for sale.

Note—

The specifications for lobster traps used by commercial fishers are set out in the *Lobster Share Management Plan* (see *Fisheries Management (Lobster Share Management Plan) Regulation 2000*).

- (f) by omitting item 2 from the Table to clause 59,
- (g) 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 lobster 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 notes in the Appendix) do not form part of this Regulation.

Appendix Lobster Share Management Plan

Part 1 Preliminary

1 Name of Plan

This is the *Lobster Share Management Plan*.

2 Definitions

In this Plan:

approved means approved by the Director.

daily log sheet means a form known as the *NSW Fisheries Eastern Rock Lobster Daily Log Sheet* provided to endorsement holders by NSW Fisheries.

eastern rock lobster means fish of the species *Jasus verreauxi*.

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

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

endorsement holder offence—see clause 55.

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

fishing period means a period of 12 months commencing on 1 July and ending on the following 30 June, 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 July 1999 and ending on 30 June 2000.

holding pen means any enclosure used to store or hold live rock lobsters in ocean or estuarine waters, but does not include a trap used in compliance with this Plan (see clause 40).

monthly reconciliation form means a form known as the *Eastern Rock Lobster Non-Fishing Reconciliation Form* provided to endorsement holders by NSW Fisheries.

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

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

rock lobster means fish of the species *Jasus verreauxi*, *Jasus edwardsii*, *Panulirus longipes* and *Panulirus ornatus*.

rock lobster offence means an offence against this Plan or an offence against the Act or the regulations under the Act relating to the taking of rock lobster.

serious offence means any of the following offences:

- (a) an offence against the Act or the regulations under the Act that is punishable by imprisonment,
- (b) an offence against clause 107 of the *Fisheries Management (General) Regulation 1995*,
- (c) an offence punishable under the *Crimes Act 1900*.

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

Column 1	Column 2	Column 3
Objective	Performance Indicator	Trigger for Review

1.	Increase the biomass of eastern rock lobster stock	Levels of eastern rock lobster stock increase or remain stable (with 1998-1999 levels being used as a benchmark), or are likely to do so, having regard to total allowable catch	Annual catch per unit effort (CPUE) is below 1998-99 levels in 2 consecutive years
2.	Promote commercial fishing practices for rock lobster that do not have an adverse environmental impact on the broader ecosystem	Research conducted periodically by or on behalf of NSW Fisheries indicates that commercial fishing practices for rock lobster do not have an adverse environmental impact on the broader ecosystem	Research conducted by or on behalf of NSW Fisheries indicates that commercial fishing practices for rock lobster are having an adverse environmental impact on the broader ecosystem
3.	Ensure management arrangements for the fishery do not have a significant impact on the costs of taking eastern rock lobster 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	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 appropriate research and monitoring in relation to the fishery	Sufficient data is available for assessment of rock lobster stocks	Insufficient data is available for the purpose of setting the total allowable catch for rock lobster

6.	Minimise the number of offences committed by fishers in relation to rock lobster	Number of offences in relation to rock lobster committed 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 in relation to rock lobster (estimated annually by the Director) is less than 70 percent
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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

- (1) The minimum shareholding in the fishery is 55 shares.
- (2) Despite subclause (1), the minimum shareholding in respect of a person who held shares in the fishery at the commencement of this Plan is 12 shares.
- (3) If a person who held shares at the commencement of this Plan transfers or assigns any of those shares the minimum shareholding in respect of the person increases to 55 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 fishery (see sections 66 and 67 of the Act). This clause applies a minimum shareholding of 55 shares to a person who first acquires shares in the fishery after the commencement of this Plan, and to any person who held shares in the fishery at the commencement of this Plan and who transfers or assigns any of them.

6 Maximum shareholding

The maximum shareholding in the fishery is 350 shares.

7 Dealings in shares—general

- (1) Shares in the fishery may be transferred only if the shareholder transfers a package of shares or a number of packages of shares, or such other number of shares as may be approved by the Minister, to one person.
- (2) The shares of a shareholder may be assigned, transmitted or mortgaged only if all the shares held by the shareholder are assigned, transmitted or mortgaged to one person.

- (3) The shares of a shareholder may be assigned 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.
- (4) 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).
- (5) 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 rock lobster 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 Fee for 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 \$214, 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 \$375.

Part 4 Endorsements and nominated fishers

10 Nominated fishers

- (1) A person may not be nominated by a shareholder to take rock lobster on behalf of the shareholder if:
 - (a) the person has been convicted, within the period of 3 years before the nomination is made, of a rock lobster offence or a serious offence, or
 - (b) the person has been charged with or summoned for a rock lobster offence or a

serious offence and proceedings with respect to that offence are pending.

- (2) No more than one person may be nominated by a shareholder to take rock lobster on the shareholder's behalf at any one time.
- (3) A shareholder is not entitled to nominate a person to take rock lobster 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 rock lobster 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 endorsement, the endorsement held by the shareholder is void.
- (6) If a 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 \$321.

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 a rock lobster offence, or a serious offence, within the period of 3 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 offence within the period of 3 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 rock lobster in the fishery on the shareholder's behalf, or
 - (iii) is convicted of a rock lobster offence or a serious 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 a rock lobster offence or a serious offence, or
 - (b) 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 rock lobster 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 rock lobster in the fishery on the shareholder's behalf if the person is charged with 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) A contravention of this clause is an endorsement holder offence.

Part 5 Total allowable catch and quota

14 Total allowable catch

- (1) The TAC Committee is to determine a total allowable catch for eastern rock lobster, and for such other species of rock lobster as the Minister specifies, when required by the Minister.
- (2) The determination is to be made in respect of the period of 12 months commencing on the next 1 July and ending on the following 30 June, or such other period as the Minister may determine after consultation with the Management Advisory Committee for the fishery.
- (3) The Minister is to endeavour to ensure that the determination is published, as required by section 33 (1) of the Act, not less than 4 weeks before the start of the fishing period to which the determination relates.

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) The Minister may, after consultation with the Management Advisory Committee for the fishery, determine 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 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 of any determination by the Minister 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 rock lobster for sale in contravention of the shareholder's quota, or
 - (b) take rock lobster 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) A contravention of this clause is also an endorsement holder offence.
- (4) Any rock lobsters 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) The minimum amount of quota that may be transferred is 10 percent of the quota of the shareholder who is transferring the quota (***the transferor***), or 50 kilograms, whichever is the greater, unless otherwise approved by the Director.
- (3) Subclause (2) does not prevent a shareholder from transferring the whole of the shareholder's quota.
- (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 \$161, or such other amount as the Director determines to be payable from time to time.

(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 rock lobster 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 Tags for rock lobster

Division 1 Preliminary

20 Definitions

In this Part:

tag means a tag issued by the Director for attachment to a rock lobster taken for sale.

tag number means the unique identification number stamped on or otherwise affixed to a tag by NSW Fisheries.

unused tag means a tag that has not been attached to a rock lobster, or is broken or otherwise damaged.

use a tag means attach the tag to a rock lobster in such a manner that the tag cannot be removed without being broken.

used tag means a tag that appears to have previously been attached to a rock lobster and is no longer attached to a rock lobster, but excludes a tag that has been destroyed by the method of cutting the locking mechanism in half.

21 Application of Part

This Part applies only in respect of rock lobster that is subject to a total allowable catch.

Note—

At present only eastern rock lobster are subject to a total allowable catch. Accordingly, the tagging requirements in this Plan apply only to eastern rock lobster.

Division 2 Use of tags

Note—

This Division contains a number of offences. An offence may be designated as either a shareholder offence under section 65 of the Act or an endorsement holder offence under clause 55 of this Plan. If a provision is designated as an offence for the purposes of section 65 of the Act, a contravention of the provision by the shareholder, or a person nominated by the shareholder to take fish in the fishery, results in the shareholder being guilty of an offence. The offence attracts a maximum penalty of 1,000 penalty units (in the case of a corporation) or 500 penalty units (in the case of an individual). If a provision is designated as an offence under clause 55 of this Plan, a contravention of the provision results only in the endorsement holder being guilty of an offence. That offence attracts a maximum penalty of 100 penalty units.

22 Rock lobster to have tag attached

- (1) An endorsement holder who takes rock lobster in the fishery must attach a tag to the rock lobster as follows:
 - (a) if, before landing the rock lobster, the endorsement holder transfers the rock lobster from the boat used by the endorsement holder to another boat or transfers the rock lobster to a holding pen, before the rock lobster is so transferred,
 - (b) if paragraph (a) does not apply, immediately after the rock lobster is landed, but in any case no more than 25 metres from the point of landing (that is, the place where the rock lobster is brought ashore) and before entering any premises.
- (2) The tag that is attached must be a tag that was issued by the Director for use in the fishing period in which the rock lobster is taken.
- (3) The tag must be attached in such a manner that it cannot be removed without being broken.
- (4) The endorsement holder must, immediately after attaching the tag to the rock lobster, trim the tail of the tag so that it is flush with the locking mechanism.
- (5) For the purposes of section 65 of the Act, contravention of this clause is an offence.
- (6) A contravention of this clause is also an endorsement holder offence.

23 Unauthorised use of tag

A person must not attach a tag to a rock lobster unless the person:

- (a) is an endorsement holder, or
- (b) is a member of the crew of a licensed fishing boat being used by an endorsement holder and he or she attaches the tag in the presence of the endorsement holder, or
- (c) is an officer of NSW Fisheries acting for the purposes of the enforcement or administration of the Act or this Plan.

Maximum penalty: 100 penalty units.

24 Use of tags issued to others

- (1) An endorsement holder must not use a tag that was issued for the use of another endorsement holder, except as authorised by the Director.
- (2) An endorsement holder must not, without lawful excuse, be in possession of a tag that was issued for the use of another endorsement holder:
 - (a) while taking or attempting to take rock lobster for sale, or
 - (b) while on any premises used in connection with the taking of rock lobster for sale by the endorsement holder.
- (3) A contravention of this clause is an endorsement holder offence.

25 Tags to be used in sequential order

An endorsement holder must use the tags issued for the endorsement holder's use in sequential order of the tag number (ie from lowest to highest number).

26 Tags not to be re-used

- (1) An endorsement holder must not use a tag that has previously been attached to a rock lobster or that is broken.
- (2) This clause does not prevent an endorsement holder from re-attaching a tag to the rock lobster if the tag falls off the rock lobster.
- (3) A contravention of this clause is an endorsement holder offence.

27 Lost, stolen or destroyed tags

- (1) If a tag issued for the use of an endorsement holder is lost, stolen or destroyed, the endorsement holder must, as soon as practicable after becoming aware that the tag has been lost, stolen or destroyed, give the Director written notice of that fact.
- (2) The notification is to include the tag number of the tag lost, stolen or destroyed.
- (3) An endorsement holder must not, without lawful excuse, be in possession of a used tag:
 - (a) while taking or attempting to take rock lobster for sale, or
 - (b) while on any premises used in connection with the taking of rock lobster for sale by the endorsement holder.
- (4) If a tag issued for the use of an endorsement holder is damaged in such a manner that the tag number is not fully legible, or cannot be attached to a rock lobster in the required manner, the endorsement holder must, within 7 days after becoming aware of that fact, give or send the tag to the Director, together with a notice that includes:

- (a) the tag number of the tag concerned, and
 - (b) a written explanation of the circumstances in which the tag became damaged (in so far as they are known to the endorsement holder).
- (5) If a tag is damaged after being attached to a rock lobster, so that the tag number is not fully legible, the endorsement holder must:
- (a) immediately remove the tag from the rock lobster and destroy it by cutting the locking mechanism in half, and
 - (b) give or send the tag to the Director within 7 days, together with a notice that includes:
 - (i) the tag number of the tag concerned, and
 - (ii) a written explanation of the circumstances in which the tag became damaged (in so far as they are known to the endorsement holder), and
 - (c) attach a new tag to the rock lobster, in the manner required by this Plan.
- (6) If a tag falls off a rock lobster after attachment, and it is not possible to re-attach the tag in the required manner, the endorsement holder must:
- (a) immediately destroy the tag by cutting the locking mechanism in half, and
 - (b) give or send the tag to the Director within 7 days, together with a notice that includes a written explanation of the circumstances, and
 - (c) attach a new tag to the rock lobster, in the manner required by this Plan.
- (7) An endorsement holder must not use a tag knowing that the tag has been reported to the Director as being lost, stolen or destroyed.
- (8) A contravention of this clause is an endorsement holder offence.

28 Production of tags when required

- (1) A fisheries officer may require an endorsement holder to produce any unused tags in the possession of the endorsement holder.
- (2) An endorsement holder must not, without reasonable excuse, fail to comply with such a requirement.
- (3) A contravention of this clause is an endorsement holder offence.

29 Shareholder not to give tag to another person

- (1) A shareholder must not give to another person a tag issued for the use of the shareholder or the shareholder's nominated fisher, except as permitted by subclause

(2).

- (2) A shareholder may give a tag to any of the following persons:
- (a) the nominated fisher of the shareholder,
 - (b) a crew member, but only for the purpose of enabling the crew member to attach the tag in the presence of the shareholder to a rock lobster taken on behalf of the shareholder,
 - (c) the Director,
 - (d) an officer of NSW Fisheries,
 - (e) another shareholder, in conjunction with a transfer of quota approved by the Director and in accordance with the terms of that approval,
 - (f) a person who has acquired shares from the shareholder in accordance with this Plan.
- (3) For the purposes of section 65 of the Act, contravention of this clause is an offence.
- (4) This clause does not prevent a shareholder from giving a tag that is attached to a rock lobster to any person who purchases or otherwise acquires possession of the rock lobster.
- (5) In this clause, **giving** a tag to another person includes lending the tag to another person or otherwise making the tag available for the use of another person.

30 Nominated fisher not to give tag to another person

- (1) A nominated fisher must not give to another person a tag issued for the use of the nominated fisher, except as permitted by subclause (2).
- (2) A nominated fisher may give a tag to any of the following persons:
- (a) a crew member, but only for the purpose of enabling the crew member to attach the tag in the presence of the nominated fisher to a rock lobster taken by the nominated fisher,
 - (b) the Director,
 - (c) an officer of NSW Fisheries,
 - (d) the shareholder on whose behalf the nominated fisher takes rock lobster in the fishery.
- (3) A contravention of this clause is an endorsement holder offence.
- (4) This clause does not prevent a nominated fisher from giving a tag that is attached to

a rock lobster to any person who purchases or otherwise acquires possession of the rock lobster.

- (5) In this clause, **giving** a tag to another person includes lending the tag to another person or otherwise making the tag available for the use of another person.

31 Unused tags to be returned to Director at end of fishing period

- (1) A shareholder must ensure that any unused tag issued for use in a particular fishing period, which is in the possession or control of the shareholder (or the nominated fisher of the shareholder), is surrendered to the Director within 30 days after the end of the fishing period.
- (2) For the purposes of section 65 of the Act, contravention of this clause is an offence.

32 Surrender of unused tags in case of cancellation or suspension of endorsement

- (1) If the endorsement of an endorsement holder in the fishery is cancelled or suspended, the endorsement holder must immediately surrender any unused tags in the endorsement holder's possession or control:
- (a) in the case of an endorsement holder who is the nominated fisher of a shareholder—to the Director or the shareholder, or
- (b) in any other case—to the Director or a person authorised by the Director to accept the surrender of tags on the Director's behalf.
- (2) A contravention of this clause is an endorsement holder offence.

Division 3 Administration

33 Issue of tags for use on rock lobster

- (1) The Director may issue tags for attachment to rock lobsters taken for sale.
- (2) The Director may issue such tags only to shareholders or their nominated fishers.
- (3) Each tag is to have a unique identification number stamped on or otherwise affixed to the tag.
- (4) The Director may also issue tags to officers of NSW Fisheries for attachment to rock lobsters for the purposes of the enforcement or administration of the Act or this Plan.

34 Application for issue of tags

- (1) An application for tags may be made by a shareholder or by a nominated fisher on behalf of a shareholder.
- (2) The application is to be made in an approved form.

- (3) The Director may refuse to issue any tags until any management charge, or instalment of the management charge, that is payable by the shareholder has been paid.

35 Number of tags issued to correspond with quota

- (1) The number of tags to be issued to a shareholder (or the shareholder's nominated fisher) is to be the number of tags that the Director considers will allow the shareholder (or the shareholder's nominated fisher) to take the whole of the shareholder's quota of rock lobster in the fishing period in respect of which the tags are issued.
- (2) The Director may issue further tags to a shareholder (or the shareholder's nominated fisher) if the Director is satisfied that the previous issue of tags was insufficient to allow the shareholder (or the shareholder's nominated fisher) to take the whole of the shareholder's quota.
- (3) In determining the number of tags required by a shareholder (or the shareholder's nominated fisher), the Director is to have regard to the average weight or number of rock lobster taken by or on behalf of the shareholder in the fishing period or previous fishing periods.
- (4) The average weight of rock lobster taken by or on behalf of a shareholder in a particular fishing period is to be determined by the Director, having regard to such information as the Director considers appropriate.

36 Tags property of NSW Fisheries

Tags remain the property of the Director.

37 Tags transferable in certain circumstances

- (1) Tags may be transferred only as provided for by this clause.
- (2) The Director may approve the transfer of tags in conjunction with the following:
 - (a) an approved quota transfer,
 - (b) an approved share transfer.
- (3) If the Director proposes to approve a quota transfer or share transfer, the Director is to determine the number of tags (if any) to be transferred by the shareholder who is transferring the quota or shares to the person who is acquiring the quota or shares.
- (4) The Director may, as a condition of such approval, require the shareholder who is transferring the quota or shares to surrender those tags to the Director or to the person who is acquiring the quota or shares.
- (5) Tags that are transferred in accordance with an approval are taken, for the purposes

of this Part, to have been issued for the use of the shareholder to whom they are transferred or the nominated fisher of that shareholder.

Part 7 Provisions relating to fishing gear, boats, crew, records and other matters

38 Definition

In this Part:

commercial lobster trap means a trap referred to in clause 40.

39 Lobster to be taken by hand or trap only

- (1) An endorsement holder must not take lobster in the fishery except by hand or by use of a commercial lobster trap.
- (2) A contravention of this clause is an endorsement holder offence.

40 Commercial lobster trap

- (1) It is lawful for an endorsement holder to use a trap for taking rock lobster for sale in the waters specified in the Table to this clause if the trap complies with the description set out in relation to those waters in that Table and the conditions referred to in subclauses (2) and (2A) (if applicable) are complied with.
- (2) A commercial lobster trap must not be set or used unless its position is indicated by:
 - (a) a buoy that:
 - (i) is moored so as to be positioned above the trap, and
 - (ii) has a diameter above the water of not less than 100 millimetres, and
 - (iii) has a weight of not less than 50 grams suspended not less than 1.5 metres under the float so that no rope is floating on the surface of the water, and
 - (iv) displays the number allocated to the endorsement holder by NSW Fisheries for use on the trap, in clearly legible figures that are not less than 50 millimetres in height and are of a colour that clearly contrasts with that of the buoy, or
 - (b) a plastic tag, or a concrete block, that:
 - (i) is of a size and type approved by the Director, and
 - (ii) is submerged, and
 - (iii) displays the number allocated to the endorsement holder by NSW Fisheries for use on the trap, in clearly legible figures that are not less than 50

millimetres in height.

- (2A) If the commercial trap is set or used in waters specified in a register maintained by the Director for the purposes of this clause and notified in writing to shareholders, the position of the trap must be indicated as specified in subclause (2) (b) and not as specified in subclause (2) (a).
- (3) Subclauses (2) and (2A) do not apply in respect of a trap used that is set or used in ocean waters more than 10 metres deep (contour) if the trap (including any rope and float attached to the trap) is submerged and set using a time release mechanism.
- (4) It is also lawful for an endorsement holder to use a trap for taking other fish (other than any prohibited size fish) in ocean waters more than 10 metres deep (contour) if the other fish are taken by the trap when it is being lawfully used for taking rock lobster.
- (5) For the purposes of this Plan or any other instrument under the Act, a trap referred to in this clause may be referred to as a lobster trap or a commercial lobster trap.

Table

Commercial lobster trap

Waters	Description of trap
Any waters (other than inland waters and any waters more than 10 metres deep (contour))	Consists of a rectangular base or floor not exceeding 1.2 metres by 1.2 metres (or a circular base not exceeding 1.2 metres in diameter); internal structure of the trap is not to contain any compartments or be obstructed by any material that would prevent the free movement of rock lobsters within the trap
Ocean waters more than 10 metres deep (contour)	Trap not exceeding 2 metres in length, 2 metres in width and 2 metres in depth; consisting of mesh (having a measurement from one plain wire to the opposite plain wire of not less than 50 mm); internal structure of the trap is not to contain any compartments or be obstructed by any material that would prevent the free movement of rock lobsters within the trap

Note—

Section 24 of the Act provides that a person must not use a trap for taking any fish unless the use by the person for taking those fish is declared by the regulations to be a lawful use of the trap. The offence carries a maximum penalty of 1,000 penalty units (in the case of a corporation) or 200 penalty units or imprisonment for 6 months, or both (in the case of an individual).

Note that “prohibited size fish” are fish that do not comply with the maximum or minimum size requirements (if any) specified for the fish in the [Fisheries Management \(General\) Regulation 1995](#).

41 Traps to be used only if endorsement holder's quota has not been taken

- (1) An endorsement holder must not set or use a commercial lobster trap to take rock lobster for sale unless:
 - (a) the endorsement holder or, in the case of an endorsement holder who is a nominated fisher for a shareholder, the shareholder has been allocated a quota for the period concerned by the Minister or has acquired quota in respect of the period concerned in accordance with clause 19, and
 - (b) the whole of that quota has not been taken.
- (2) An endorsement holder must remove from the water any commercial lobster trap set or used by the endorsement holder as soon as practicable after taking his or her quota of eastern rock lobster.
- (3) A contravention of this clause is an endorsement holder offence.

42 Storage of live rock lobsters

- (1) An endorsement holder must not set or use a holding pen for the purpose of storing live rock lobsters unless:
 - (a) the dimensions of the holding pen do not exceed the dimensions of a commercial lobster trap that may lawfully be used to take rock lobster in those waters, and
 - (b) the holding pen is sealed (so that rock lobsters cannot get in or out), and
 - (c) the holding pen displays the endorsement holder's name and the number allocated to the endorsement holder by NSW Fisheries for use on the holding pen in clearly visible figures.
- (2) An endorsement holder must, on each occasion that he or she stores any live rock lobster in a holding pen, record the location of the holding pen on his or her daily log sheet.
- (3) If an endorsement holder changes the location of a holding pen used by him or her to store live rock lobsters, the endorsement holder must, as soon as practicable, record the new location of the holding pen on his or her daily log sheet.
- (4) An endorsement holder who stores live rock lobster in any place or thing other than a holding pen must, on each occasion that he or she stores any live rock lobster in that place or thing, record the location of the place or thing on his or her daily log sheet.
- (5) A contravention of this clause is an endorsement holder offence.

43 Inspection of storage facilities by fisheries officers

- (1) A fisheries officer may require an endorsement holder to make available for inspection

by the fisheries officer, at a time and place specified by the fisheries officer, any holding pen or thing used by the endorsement holder to store rock lobster taken for sale by the endorsement holder.

- (2) It is a condition of a commercial fishing licence that has an endorsement that the endorsement holder comply with such a requirement.

44 Use of fishing boats

- (1) An endorsement holder must not use a boat to take rock lobster in the fishery unless:
- (a) the boat is a licensed fishing boat, and
 - (b) the boat displays on the hull and the upper deck in clearly visible letters (in a colour that contrasts with that of the background) the letters “RL”, immediately before the letters “LFB” (displayed in accordance with the *Fisheries Management (General) Regulation 1995*).
- (2) An endorsement holder may transfer rock lobster from the licensed fishing boat used by the endorsement holder to a lighter for the purpose of landing the rock lobster, but only while the licensed fishing boat used by the endorsement holder is moored at the place where it is ordinarily moored when not in use.
- (3) An endorsement holder must not cause or permit any rock lobster to be transferred from one boat to another, except as authorised by subclause (2).
- (4) A contravention of this clause is an endorsement holder offence.
- (5) In this clause:

lighter means a boat used for the purpose of loading and unloading boats that are not brought to wharf and for the purpose of transporting goods.

Note—

The *Fisheries Management (General) Regulation 1995* requires the holder of a commercial fishing boat licence to display the letters “LFB” on certain parts of the boat, in a manner that makes the letters clearly visible.

45 Endorsement holders to carry measurement devices

- (1) An endorsement holder must not take or attempt to take rock lobster for sale unless the endorsement holder has in his or her possession an instrument suitable for measuring the length of the rock lobster in the manner provided for by the *Fisheries Management (General) Regulation 1995*.
- (2) A contravention of this clause is an endorsement holder offence.

Note—

The *Fisheries Management (General) Regulation 1995* sets a minimum and maximum size for certain species of

rock lobster and prescribes the method of measuring rock lobster. The length of the carapace of the rock lobster is to be measured along the straight line from the point of union of the second antennae to the centre of the posterior margin of the carapace (ignoring any hairs attached to the carapace) (see clause 7 (2) (f) of that Regulation).

46 Registration of crew

- (1) A person may apply to the Director to be registered as a lobster fishery crew member.
- (2) A person is not entitled to be registered as a lobster fishery crew member unless 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 a lobster fishery crew member if the person has been convicted of any of the following offences, within the period of 3 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 a lobster 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 a lobster 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 \$107.

- (6) Registration as a lobster 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.

47 Limited use of unauthorised crew

- (1) An endorsement holder must not take or attempt to take rock lobster in the fishery more than 2 times in any calendar month while using a fishing boat on which any member of the crew of the boat is not an authorised crew member, except with the approval of the Director.
- (2) A contravention of this clause is an endorsement holder offence.

(3) In this clause:

authorised crew member means a crew member who is registered as a lobster fishery crew member under this Part or who holds a commercial fishing licence.

48 Daily log sheet

(1) An endorsement holder who takes or attempts to take rock lobster in the fishery on any day must complete the appropriate sections of the daily log sheet for that day in accordance with the instructions provided on the log sheet:

- (a) immediately after landing any rock lobster taken on that day or transferring the rock lobster to or from a holding pen, or
- (b) if the endorsement holder did not take any rock lobster on that day, immediately after returning to shore,

and, in any case, must do so before moving more than 25 metres from the point at which the endorsement holder came ashore and before entering any premises.

(2) Without limiting the generality of subclause (1), the endorsement holder must include in the daily log sheet the names and registration details of all members of the crew of the boat (if any) used by the endorsement holder to take rock lobster in the fishery.

(3) Subclause (2) 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).

(4) The endorsement holder must forward a copy of the completed daily log sheet, in accordance with the instructions provided on the log sheet, to the Director within 7 days after the day concerned.

(5) 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 that was issued for the use of the endorsement holder.

(6) Subclause (5) does not prevent an endorsement holder from giving a form to a fisheries officer authorised to take possession of the form.

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

49 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.

50 Records of sale and possession of rock lobster

- (1) For the purposes of section 123 of the Act, the prescribed quantity of rock lobster is 3 kilograms.
- (2) For the purposes of section 123 (1) of the Act, a prescribed record concerning the sale of rock lobster must include the following information:
 - (a) the marketing name and weight of each species of rock lobster sold,
 - (b) the number of rock lobsters sold,
 - (c) the date of the sale,
 - (d) the price per kilogram at which each species of rock lobster was sold,
 - (e) the total price for each species of rock lobster sold,
 - (f) the full name and address of the seller,
 - (g) the full name and address of the purchaser,
 - (h) the full name, address and signature of the person completing the record.
- (3) For the purposes of section 123 (2) and (3) of the Act, a prescribed record concerning the possession of fish must include the following information:
 - (a) the marketing name and weight of each species of rock lobster purchased or otherwise acquired,
 - (b) the number of rock lobsters purchased or otherwise acquired,
 - (c) the date when the rock lobster was purchased or otherwise acquired,
 - (d) the full name and address of the person who purchased or otherwise acquired the rock lobster,
 - (e) the full name and address of the person from whom the rock lobster was purchased or, if not purchased, details of how the rock lobster was acquired,

(f) the full name, address and signature of the person completing the record.

Note—

Section 123 of the Act requires a person who sells or is in possession of not less than the prescribed quantity of fish to make and keep a prescribed record in respect of the sale or possession.

51 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 8 General

52 Share forfeiture offences

- (1) For the purposes of section 75 (1) of the Act, the offences described in Column 1 of the Table to this clause are designated as share forfeiture offences.
- (2) If a shareholder, or a nominated fisher of a shareholder, is convicted of a share forfeiture offence, the Director is to record in the Share Register, under the name of the shareholder concerned, a description of the offence and the number of demerit points applicable to the offence, as specified in Column 2 of the Table to this clause next to the offence concerned.
- (3) Demerit points are not cancelled by the expiration of time.
- (4) The Minister may order that all shares in the fishery held by a shareholder be forfeited to the Minister if the total number of demerit points recorded under the name of the shareholder reaches or exceeds 6 demerit points.
- (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 to 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.

Table
Share forfeiture scheme

Column 1	Column 2
Description of share forfeiture offence	Number of demerit points

Offence arising from a contravention of clause 16 of this Plan (Contravention of quota)	2
Offence arising from a contravention of clause 22 of this Plan (Rock lobster to have tag attached)	2
Offence arising from a contravention of clause 48 of this Plan (Daily log sheet)	2
Offence arising from a contravention of clause 49 of this Plan (Monthly reconciliation)	2
Offence arising from a contravention of clause 107 of the <i>Fisheries Management (General) Regulation 1995</i> (Interference with set fishing gear)	3
Any offence against the Act or the regulations under the Act that is punishable by imprisonment	3

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.

53 Management charge

- (1) The management charge payable under section 76 of the Act by shareholders in the fishery is not to exceed \$80 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).

54 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 fishing period commencing on 1 July 2002 and ending on 30 June 2003:
No community contribution is payable
- (b) For the fishing period commencing on 1 July 2003 and ending on 30 June 2004:
No community contribution is payable
- (c) For the fishing period commencing on 1 July 2004 and ending on 30 June 2005:
 $CC = S/TS \times 1/100 \times TAC \times P$
- (d) For the fishing period commencing on 1 July 2005 and ending on 30 June 2006 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 rock lobster (in kilograms) for the fishing period.

P is the average beach price for rock lobster (in kilograms) during the fishing period, 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).

55 Endorsement holder offence

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.

56 Other restrictions on fishing

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

Note—

At present the minimum size for eastern rock lobster is 10.4 centimetres, the minimum size for southern rock lobster (male) is 11 centimetres and the minimum size for southern rock lobster (female) is 10.5 centimetres (see clause 7 of the *Fisheries Management (General) Regulation 1995*). It is an offence under the Act for a person to have any rock lobster that is less than that minimum size in his or her possession or to sell any rock lobster that is less than the minimum size. Eastern rock lobster is also subject to a maximum size of 20 centimetres.

In addition, the *Fisheries Management (General) Regulation 1995* makes it an offence to take, sell or be in possession of any rock lobster carrying ova externally. It is also an offence to be in possession of a rock lobster from which any ova have been removed.

57 Amendment of Plan

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

Part 9 Savings and transitional

58 Continuation of quota arrangements for first fishing period

- (1) For the purposes of this Plan, the period commencing on 1 July 1999 and ending on 30 June 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 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.

59 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 reference in this Plan to a tag includes a tag issued by the Director before the commencement of this Plan for attachment to rock lobsters taken for sale.
- (3) A nomination of a fisher to take rock lobster 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.
- (4) A person who was registered by the Director as a lobster fishery crew member before the commencement of this Plan is taken to have been registered under this Plan.

60 Community contribution for 2001/2002 fishing period

- (1) On the commencement of this clause, a community contribution is no longer payable in respect of the fishing period commencing on 1 July 2001 and ending on 30 June 2002.
- (2) Any community contribution paid in respect of that period before the commencement of this clause is to be refunded to the shareholder who paid it.