

# Fisheries Management (Abalone Share Management Plan) Regulation 2000

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New South Wales

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# Fisheries Management (Abalone Share Management Plan) Regulation 2000



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## 3 (Repealed)

## 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

(1) 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 Secretary.

**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** has the meaning given by clause 14.

**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 66 of the *Fisheries Management (General) Regulation 2010*,
- (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*.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Plan.

- (2) In this Plan, a reference to a transfer of a share includes a reference to an assignment of a share.

## **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 the Department of Primary Industries 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 11 of the <i>Fisheries Management (General) Regulation 2010</i> ))	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 the Department of Primary Industries (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 the Department of Primary Industries 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 the Department of Primary Industries, 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 Secretary) 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, transmitted or mortgaged only as provided 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 or mortgage all shares held by the shareholder to one person.
- (1A) A transfer of a share is not permitted unless the transfer is permanent.
- (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, 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

- (1) In addition to the restrictions imposed by clause 7, shares in the fishery may be transferred only with the approval of the Secretary.

- (2) The Secretary may refuse to approve a transfer 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 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 Secretary 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 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 with the approval of the Secretary, 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 Secretary'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, 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 (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 91B 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 shares may request that the Minister review a determination of the Secretary under this clause in relation to the transfer within 30 days after notice of the determination is given to the shareholder.

- (7) The Secretary is to give effect to any determination made by the Minister in respect of that review.

## **9 Registration of share transactions**

- (1) (Repealed)
- (2) For the purposes of section 91B (2) (d) of the Act:
- (a) the fee for an application for registration of a transaction that purports to have the effect of transferring or transmitting a share in the fishery is \$310, 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 \$544.

## **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)-(8) (Repealed)

#### **Note—**

See Part 3 of the *Fisheries Management Supporting Plan* set out in the [Fisheries Management \(Supporting Plan\) Regulation 2006](#) for further provisions in relation to nomination of fishers.

### **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 each fishing period.
- (3) In this clause, **fishing period** means each period of 12 months commencing on 1 July and ending on 30 June in the following year or such other period as the Minister may determine after consultation with any relevant advisory council or advisory group.

**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 any relevant advisory council or advisory group, 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 Secretary is to ensure that each 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.
- (6) A shareholder who is notified by the Secretary of any matter under subclause (5) must ensure that any nominated fisher of the shareholder is notified of that matter as soon as reasonably practicable.
- (7) For the purposes of section 65 of the Act, contravention of subclause (6) is an offence.

#### **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 Secretary.
- (2) Quota may be transferred only in lots of 100 kilograms or as otherwise approved by the Secretary.
- (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 Secretary 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 \$233.
- (2A) (Repealed)
- (3) The Secretary may approve the application or refuse to approve the application.
- (4) If approved, the transfer takes effect when the Secretary gives notice of that approval to the shareholder who transferred the quota.
- (5) The Secretary is also to give notice of that approval to the shareholder who acquired the quota.
- (5A) A shareholder who transferred or acquired a quota under this clause must ensure that any person who is nominated to take abalone for sale on behalf of the shareholder is notified of the transfer as soon as reasonably practicable after the transfer.
- (5B) For the purposes of section 65 of the Act, contravention of subclause (5A) is an offence.
- (6) A shareholder may request the Minister to review a determination of the Secretary under this clause and the Secretary 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 the form known as the “NSW DPI Abalone Fishery Daily Catch and Effort Record” provided to shareholders by the Department.

**docket book** means the booklet containing daily log sheets and known as the “NSW DPI Abalone Fishery Catch and Effort Logbook” provided to shareholders by the Department.
- (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, 22 (Repealed)**

**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 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 150 of the *Fisheries Management (General) Regulation 2010* (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 11 of the *Fisheries Management (General) Regulation 2010* prescribes a minimum size of 11.7 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 138 (1) (b) of the [Fisheries Management \(General\) Regulation 2010](#) (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 Provision and use of docket books**

- (1) A shareholder must ensure that any endorsement holder who is a nominated fisher of the shareholder is provided with a docket book as is required for use during fishing periods.
- (2) 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 to a shareholder:
  - (a) who is the endorsement holder, or
  - (b) who provided the docket book to the endorsement holder in accordance with this clause, because the endorsement holder is a nominated fisher of the shareholder.
- (3) The possessor of a docket book must keep it in a safe place.

- (4) The possessor of a docket book must not give, sell or lend to another person, or otherwise make available for use by another person the docket book or any part of the docket book.
- (5) Subclause (4) does not prevent:
  - (a) a person from giving a form to a fisheries officer authorised to take possession of the form, or
  - (b) a shareholder providing a docket book to a nominated fisher of the shareholder, or
  - (c) a nominated fisher of a shareholder providing a docket book to the shareholder.
- (6) The possessor of a docket book must, within 24 hours of becoming aware that the docket book is lost, stolen, destroyed or damaged, notify that fact to:
  - (a) the Secretary, or
  - (b) if the possessor is a nominated fisher of a shareholder and was provided the docket book by that shareholder—the shareholder.
- (7) A shareholder who is notified under subclause (6) (b) of the fact that a docket book is lost, stolen, destroyed or damaged must, within one business day of being notified, notify the fact to the Secretary.
- (8) The possessor of a docket book who is an endorsement holder must, if the endorsement is suspended or cancelled, immediately return the docket book (including any unused daily log sheets) to:
  - (a) the Secretary, or
  - (b) if the possessor is a nominated fisher of a shareholder and was provided the docket book by that shareholder—the shareholder.
- (9) A shareholder to whom a docket book is provided under subclause (8) (b) must immediately return the docket book (including any unused daily log sheets) to the Secretary.
- (10) A contravention of subclause (2), (3), (4), (6) or (8) is an endorsement holder offence.
- (11) For the purposes of section 65 of the Act, contravention of subclause (1), (7) or (9) is an offence.
- (12) In this clause:

**business day** means any day other than a Saturday, a Sunday or a public holiday throughout New South Wales.

**possessor of a docket book** means the shareholder to whom the docket book was issued or if the shareholder has provided the docket book to a nominated fisher of the shareholder in accordance with this clause, the nominated fisher.

### **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 validated weight of the abalone (being the weight determined by weighing the abalone with accurate scales), and
  - (b) the number of abalone hung, and
  - (c) the latitude and longitude of the place where the abalone are hung.
- (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 the Department of Primary Industries with the following information:
  - (a) the name of the endorsement holder,
  - (b) each of the matters required to be recorded in relation to the abalone under subclause (1).
  - (c), (d) (Repealed)
- (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 all copies of the daily log sheet for that day in accordance with the instructions in the docket book, and
  - (d) insert the 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.
- (4A) An endorsement holder must forward a copy of a daily log sheet, completed in accordance with the instructions in the docket book, to the Secretary by facsimile transmission (or other means as may be approved by the Secretary) within 24 hours after the end of the day on which the daily log sheet was required to be completed.
- (5) A contravention of this clause is an endorsement holder offence.

### **31A Taking abalone prohibited in certain waters**

For the purposes of section 20 (2) of the Act, it is declared that the waters specified in Schedule 1 are waters in which the class of commercial fishing that consists of the taking of abalone is prohibited.

### **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:
- (a) complete, in accordance with the instructions in the docket book, the appropriate sections of the daily log sheet for that day immediately after returning to shore and before entering any premises or moving more than 50 metres from the point

at which the endorsement holder came ashore, and

(b) lodge the sheet with the Secretary within 24 hours after the end of the day on which the sheet was required to be completed.

(2) An endorsement holder who takes no abalone during a calendar month because the endorsement holder did not attempt to take abalone during that month must:

(a) on the last day of that month, complete a nil fishing activity report to show nil returns for that month, and

(b) lodge the report with the Secretary within 24 hours after the end of the day on which the report was required to be completed.

(3) A requirement that a sheet or report be lodged with the Secretary under this clause is satisfied if:

(a) a copy of the sheet or report is sent to the Secretary by facsimile transmission (or other means as may be approved by the Secretary) within the required time, and

(b) the original copy is sent to the Secretary as soon as practicable.

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

(5) In this clause:

***nil fishing activity report*** means the form known as the “NSW DPI Nil Fishing Activity Report” provided to shareholders by the Department.

### **33 (Repealed)**

### **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 6A Community contribution**

### **34A Definitions**

(1) In this Part:

***average beach price for abalone*** during a fishing period means the average beach price for abalone (per kilogram) during the fishing period, determined by the Minister on the basis of records kept by the Secretary.

***CPI*** means the Consumer Price Index (All Groups Index) for Sydney issued by the

Australian Statistician.

**flow through TAC adjustment**—see clause 34E.

**immediate TAC adjustment**—see clause 34D.

**TAC** means the total allowable catch of abalone.

- (2) For the purposes of this Part, the **percentage change in TAC** for a fishing period is determined by calculating the difference between the TAC for the fishing period and the TAC for the previous fishing period, and expressing the difference so obtained as a percentage of the TAC for the previous fishing period, rounded to the nearest whole percentage point (and, if the amount to be rounded is half a percentage point, it is to be rounded up).
- (3) A monetary amount determined under this Part is to be rounded to the nearest whole dollar (and, if the amount to be rounded is 50 cents, it is to be rounded up).

### 34B Community contribution

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

$$CC = RP \times \frac{S}{TS} \times TC \times BP$$

where:

**CC** is the community contribution.

**RP** is the relevant percentage (as defined by subclause (4)).

**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.

**TC** is the total catch (in kilograms) of abalone by shareholders in the fishery during the fishing period, determined by the Minister on the basis of records kept by the Secretary.

**BP** is the average beach price for abalone during the fishing period.

- (4) For the purposes of subclause (3), the relevant percentage (**RP**) is calculated as

follows:

- (a) if the adjusted beach price for the fishing period is less than \$43, the relevant percentage is zero (and no community contribution is payable),
  - (b) if the adjusted beach price for the fishing period is not less than \$43 but is less than \$53, the relevant percentage is 0.5% plus another 0.5% for each \$1 by which the adjusted beach price exceeds \$43,
  - (c) if the adjusted beach price for the fishing period is not less than \$53 but is less than \$62, the relevant percentage is 6% plus another 1% for each \$1 by which the adjusted beach price exceeds \$53,
  - (d) if the adjusted beach price for the fishing period is not less than \$62, the relevant percentage is 15%.
- (5) The Secretary is to calculate the community contribution for each shareholder at the end of the fishing period and advise shareholders of the amount that they are liable to pay.
  - (6) 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.
  - (7) The community contribution may, with the approval of the Minister, be paid by instalments on such terms as the Minister approves.
  - (8) 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).
  - (9) In this clause:

***adjusted beach price*** for a fishing period means:

- (a) in the case of the fishing period ending on 30 June 2005—the average beach price for abalone during the fishing period, and
- (b) in the case of a fishing period ending on or after 30 June 2006—the adjusted beach price for the fishing period, determined in accordance with this Part.

### **34C CPI adjustment of average beach price**

- (1) For the purpose of determining the adjusted beach price for a fishing period, the average beach price for abalone during that fishing period is to be adjusted to account for movements in the CPI since December 2004.
- (2) For that purpose, the average beach price for abalone during the fishing period is to be divided by the CPI number for the December quarter in that fishing period and then multiplied by the CPI number for the December quarter in 2004.

- (3) The amount obtained after such an adjustment is referred to in this Part as the **CPI adjusted price** for the fishing period.
- (4) The **adjusted beach price** for a fishing period is the CPI adjusted price for the fishing period, unless an immediate TAC adjustment or flow through TAC adjustment (or both) is required by this Part to be made to the CPI adjusted price.

#### **34D Immediate TAC adjustment**

- (1) An adjustment (referred to in this Part as an **immediate TAC adjustment**) is required to be made to the CPI adjusted price for a fishing period if the percentage change in TAC for the fishing period is 10% or more, whether that change reflects an increase or a decrease in TAC.
- (2) If the percentage change in TAC for a fishing period is an increase of 10% or more, the CPI adjusted price for the fishing period is to be increased by \$1 for each full 10% of the percentage change in TAC.
- (3) If the percentage change in TAC for a fishing period is a decrease of 10% or more, the CPI adjusted price for the fishing period is to be decreased by \$1 for each full 10% of the percentage change in TAC.
- (4) The **adjusted beach price** for a fishing period in which an immediate TAC adjustment is required is the CPI adjusted price as adjusted under this clause, unless one or more flow through TAC adjustments are also required to be made to the CPI adjusted price for the same fishing period.

#### **Note—**

For example, if the percentage change in TAC for the fishing period is a decrease of 20%, the adjusted beach price for that fishing period is the CPI adjusted price decreased by \$2 (assuming no flow through TAC adjustment is required).

#### **34E Flow through TAC adjustments—significant changes in TAC**

- (1) If there is a significant change in TAC in a fishing period, an adjustment (referred to in this Part as a **flow through TAC adjustment**), calculated as provided by this clause, is required to be made to the CPI adjusted price in each subsequent fishing period until no further adjustment is required under this clause as a consequence of that significant change in TAC.
- (2) For the purposes of this clause, a **significant change in TAC** is a percentage change in TAC of 20% or more (whether that change reflects an increase or decrease in TAC).
- (3) If the significant change in TAC was a decrease of 20% or more, the adjustment required is a decrease to the CPI adjusted price in each subsequent fishing period of half the dollar amount (before rounding) of the relevant adjustment in the previous fishing period, until the amount of the decrease (after rounding) first reaches \$1. No



further adjustment is required as a consequence of the significant change in TAC after the amount of the decrease first reaches \$1.

**Note—**

For example, if the percentage change in TAC in a fishing period (fishing period 1) is a decrease of 40%, the CPI adjusted price must be decreased by \$4 in the year in which the decrease occurs as a result of the immediate TAC adjustment. Under this subclause, the CPI adjusted price would also be decreased in the next fishing period (fishing period 2) by \$2 (half of the relevant adjustment in the previous fishing period), and by \$1 in the fishing period after that (fishing period 3). A flow through TAC adjustment would not be required in fishing period 4.

- (4) If the significant change in TAC was an increase of 20% or more, the adjustment required is an increase to the CPI adjusted price in each subsequent fishing period of half the dollar amount (before rounding) of the relevant adjustment in the previous fishing period, until the amount of the increase (after rounding) first reaches \$1. No further adjustment is required as a consequence of the significant change in TAC after the amount of the increase first reaches \$1.

**Note—**

For example, if the percentage change in TAC in a fishing period (fishing period 1) is an increase of 30%, the CPI adjusted price must be increased by \$3 as a result of the immediate TAC adjustment. Under this subclause, the CPI adjusted price in the next fishing period (fishing period 2) would also be increased by \$1.50 (rounded up to \$2) and by 75 cents (rounded up to \$1) in the fishing period after that (fishing period 3). A flow through TAC adjustment would not be required in fishing period 4.

- (5) For the purpose of calculating the amount of a flow through TAC adjustment required under this clause, the **relevant adjustment in the previous fishing period** is the immediate TAC adjustment or flow through TAC adjustment made to the CPI adjusted price in the previous fishing period, unless subclause (6) applies.
- (6) If clause 34F (Aggregate TAC adjustments) applied to the adjustment of the CPI adjusted price in the previous fishing period, the **relevant adjustment in the previous fishing period** is the adjustment that would have been made to the CPI adjusted price in that previous fishing period if the only adjustment made to the CPI adjusted price in that previous fishing period had been the immediate TAC adjustment, or flow through TAC adjustment, required as a consequence of the significant change in TAC for which the flow through TAC adjustment is being calculated in the current fishing period.

**Note—**

The purpose of subclause (6) is to prevent aggregate TAC adjustments made under clause 34F from having a snowballing effect on flow through TAC adjustments. For example, say the TAC in fishing period 1 is 100, the TAC in fishing period 2 is 140, the TAC in fishing period 3 is 154 and the TAC in fishing period 4 is also 154. In fishing period 2 an immediate TAC adjustment to the CPI adjusted price is required, being an increase of \$4 (this reflects the increase in TAC from 100 to 140).

In fishing period 3 a flow through TAC adjustment is required as a consequence of the significant change in TAC in fishing period 2, being an increase to the CPI adjusted price of \$2 (that is, half the adjustment made to the CPI adjusted price in fishing period 2). However, in this case, an immediate TAC adjustment is also required to reflect the increase in TAC in fishing period 3 from 140 to 154. Accordingly, clause 34F applies

and the total adjustment to the CPI adjusted price in fishing period 3 is the aggregate of the 2 increases, being an increase of \$3.

In fishing period 4, the flow through TAC adjustment is calculated on the basis of half the adjustment that would have been made to the CPI adjusted price in fishing period 3 if only a flow through TAC adjustment had been made in that fishing period. Accordingly, the flow through TAC adjustment in fishing period 4 is an increase of \$1 (half of the flow through TAC adjustment that would have been made in fishing period 3), not an increase of half the total adjustment made to the CPI adjusted price in fishing period 3.

- (7) The **adjusted beach price** for a fishing period in which a flow through TAC adjustment is required is the CPI adjusted price as adjusted under this clause, unless:
- (a) an immediate TAC adjustment is also required to be made to the CPI adjusted price for the same fishing period, or
  - (b) more than one flow through TAC adjustment is required to be made to the CPI adjusted price for the same fishing period.

### 34F Aggregate TAC adjustments

- (1) This clause applies if (but for this clause):
- (a) both an immediate TAC adjustment and one or more flow through TAC adjustments are required to be made to the CPI adjusted price for a fishing period, or
  - (b) more than one flow through TAC adjustment is required to be made to the CPI adjusted price for a fishing period.
- (2) If (but for this clause) all adjustments would result in the CPI adjusted price being decreased, or all those adjustments would result in the CPI adjusted price being increased, the **adjusted beach price** for the fishing period is the CPI adjusted price adjusted by the aggregate of all those adjustments.

#### Note—

**Example 1.** The TAC in fishing period 1 is 100. In fishing period 2 the TAC is 130 (an increase of 30%). In the next fishing period (fishing period 3) the TAC is 143 (a further increase in TAC of 10%). Consequently, in fishing period 3 an increase in the CPI adjusted price of \$2 is required because of the flow through TAC adjustment and an increase in the CPI adjusted price of \$1 is required because of the immediate TAC adjustment. In such a case, the CPI adjusted price for fishing period 3 is to be adjusted on the basis of the aggregate of the 2 adjustments, in total an increase of \$3.

**Example 2.** The TAC for fishing period 1 is 100. The TAC for fishing period 2 is 80 (a decrease of 20%). In the next fishing period (fishing period 3) the TAC is 72 (a further decrease in TAC of 10%). Consequently, in fishing period 3 a decrease in the CPI adjusted price of \$1 is required because of the flow through TAC adjustment and a decrease in the CPI adjusted price of \$1 is required because of the immediate TAC adjustment. In such a case, the CPI adjusted price for fishing period 3 is to be adjusted on the basis of the aggregate of the 2 adjustments, in total a decrease of \$2.

- (3) If (but for this clause), any adjustment required to be made to the CPI adjusted price for the fishing period would be in the opposite direction from any other adjustment required to be made to the CPI adjusted price for the fishing period (that is, one

adjustment increases the CPI adjusted price and another decreases it), the following provisions apply:

- (a) the percentage change in TAC for the fishing period is to be recalculated using the TAC figure for the base fishing period in place of the TAC figure for the previous fishing period,
  - (b) the CPI adjusted price for the fishing period is to be adjusted on the basis of the immediate TAC adjustment that would be required (if any) if the figure calculated under paragraph (a) were the percentage change in TAC for the fishing period,
  - (c) the **adjusted beach price** for the fishing period is the CPI adjusted price for the fishing period as so adjusted, and no flow through TAC adjustment is required in the fishing period.
- (4) For the purposes of subclause (3), the **base fishing period** means the fishing period immediately before the fishing period in which there was a significant change in TAC (within the meaning of clause 34E) as a consequence of which a flow through TAC adjustment would be required (but for this clause) in the current fishing period.
- (5) If more than one fishing period would qualify as the base fishing period (because more than one flow through TAC adjustment would be required, but for this clause, in the current fishing period), the base fishing period is the earliest of them.

**Note—**

**Example 3.** The TAC in fishing period 1 is 100. In fishing period 2 it is 160, representing an increase of 60%. In fishing period 3 the TAC decreases to 128 (a decrease of 20%). In fishing period 4, the TAC decreases to 115 (a decrease of 10%).

In fishing period 2 an increase of \$6 to the CPI adjusted price must be made because of the immediate TAC adjustment.

In fishing period 3 an increase to the CPI adjusted price of \$3 is required because of the flow through TAC adjustment from fishing period 2 and a decrease to the CPI adjusted price of \$2 is required because of the immediate TAC adjustment. For fishing period 3, the base fishing period is fishing period 1, because that is the fishing period immediately before the fishing period in which there was a significant change in TAC as a consequence of which a flow through TAC adjustment is required in the current fishing period. Accordingly, the adjusted beach price is calculated on the basis of the difference in TAC between fishing period 1 and 3 (100 to 128). This is an increase of 28%. Accordingly, the CPI adjusted price must be increased by \$2.

In fishing period 4, both a flow through TAC adjustment from fishing period 2 (an increase of \$2, which is half the flow through TAC adjustment for the previous period) and an immediate TAC adjustment is required (a decrease of \$1). The base fishing period is still fishing period 1, so the adjusted beach price is calculated on the basis of the difference in TAC between fishing period 1 and 4 (100 to 115). This is an increase of 15%. Accordingly, the CPI adjusted price must be increased by \$1.

## 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) (Repealed)
  - (d) an offence arising from a contravention of clause 66 of the *Fisheries Management (General) Regulation 2010* (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 121 of the *Fisheries Management (General) Regulation 2010* 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 \$388 per share.
- (1A) For the purposes of section 76 (2) of the Act, the following costs of management are attributed to industry:
  - (a) the cost of developing, reviewing, implementing and ensuring compliance with strategies, policies, and legislation relating to the fishery (including for the purpose of promoting ecologically sustainable development of the fishery),
  - (b) the cost of providing administrative services in connection with the operation of the fishery,
  - (c) the costs incurred in connection with the establishment and operation of any relevant advisory council or advisory group,
  - (d) the costs incurred in connection with the following research (or such part of those costs as the Minister determines):
    - (i) ongoing research into the management and sustainability of the fishery or of commercial fisheries generally,
    - (ii) specific research projects relating to the management and sustainability of the fishery or of commercial fisheries generally,
  - (e) such other costs of management of the fishery as may be determined by the Minister after consultation with any relevant advisory council or advisory group.
- (1B) The costs of management attributed to industry may be reduced in any manner the Minister considers appropriate to recognise any saving, or any public benefit or benefit to any other fishing sector, that is achieved in the management of the fishery.
- (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 Shucking of abalone**

For the purposes of section 68 (6A) of the Act, it is a condition of an endorsement that the endorsement holder does not shuck abalone, or have shucked abalone in his or her possession, at any place other than:

- (a) a place approved for the purpose by the Secretary, or
- (b) premises registered under the regulations made under the *Export Control Act 1982* of the Commonwealth for the preparation of abalone for export.

### **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 2010*.
- (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 2010* with respect to the prohibited size for abalone.

#### **Note—**

At present there is a minimum size for abalone of 11.7 centimetres (see clause 11 of the *Fisheries Management (General) Regulation 2010*). It is an offence under the Act to take abalone that are less than the minimum size.

### **39A Adoption of Part 3 of Supporting Plan**

For the purposes of section 57A (5) of the Act, the provisions of Part 3 of the *Fisheries Management Supporting Plan* set out in the *Fisheries Management (Supporting Plan) Regulation 2006*, as they relate to the fishery, and as in force from time to time, are adopted by this Plan.

### **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.

### **41A Changes to community contribution**

- (1) Part 6A, as inserted by the *Fisheries Management (Abalone Share Management Plan) Amendment Regulation 2005*, applies in respect of the community contribution payable for a fishing period ending on or after 30 June 2005.
- (2) However, the community contribution (if any) payable by a shareholder for the fishing period ending on 30 June 2005 does not become payable until a date after the commencement of the *Fisheries Management (Abalone Share Management Plan) Amendment Regulation 2005* determined by the Minister and notified in writing to the shareholder (despite clause 34B (2)).
- (3) Clause 37, as in force immediately before its repeal by the *Fisheries Management (Abalone Share Management Plan) Amendment Regulation 2005*, continues to apply in respect of any community contribution payable for a fishing period ending before 30 June 2005.

### **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 Secretary as an abalone fishery crew member before the commencement of this Plan is taken to have been registered under this Plan.

## **Schedule 1 Waters in which taking of abalone prohibited**

(Clause 31A)

The whole of the waters enclosed by the following coordinates:

33°27.887'S, 151°27.301'E

Ex-HMAS Adelaide Reserve

33°27.767'S, 151°27.374'E

33°27.852'S, 151°27.574'E

33°27.973'S, 151°27.502'E

Port Jackson (Sydney Harbour)

The waters of Port Jackson and its tributaries, upstream of a line drawn from the northern extremity of South Head to the southern extremity of North Head.