

# Fisheries Management (Supporting Plan) Regulation 2006

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New South Wales

## Status Information

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# Fisheries Management (Supporting Plan) Regulation 2006



New South Wales

## 1 Name of Regulation

This Regulation is the *Fisheries Management (Supporting Plan) Regulation 2006*.

## 2 Commencement

This Regulation commences on 5 February 2007.

## 3 Fisheries Management Supporting Plan

The *Fisheries Management Supporting Plan* set out in the Appendix to this Regulation has effect.

## Appendix

(Clause 3)

## Part 1 Preliminary

### 1 Name of Plan

This is the *Fisheries Management Supporting Plan*.

### 2 Definitions

(1) In this Plan:

***abalone share*** means a share in the abalone fishery.

***approved*** means approved by the Secretary.

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

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

***fishery*** means a share management fishery (as described in Schedule 1 to the Act).

**fishing business card** has the same meaning as in the *Fisheries Management (General) Regulation 2010*.

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

**lobster share** means a share in the lobster fishery.

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

**Note—**

Various classes of quota shares have been issued in the estuary general, ocean hauling and ocean trap and line fisheries. See the management plans for those fisheries.

**shareholder** means a holder of shares in a 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, longitude and latitude coordinates are in WGS84 datum, unless otherwise provided.
- (2A) In this Plan, a reference to a share management plan is a reference to a management plan for a share management fishery.
- (3) Notes in this Plan do not form part of the Plan.

**Note—**

This Plan has effect only in respect of those share management fisheries that adopt this Plan in their individual share management plans.

## Part 2 Dealings in shares

### 3 Persons prohibited to hold shares

Clause 117 (1) (a) of the *Fisheries Management (General) Regulation 2010* continues to apply in respect of all fisheries.

**Note—**

This clause prohibits foreign-owned bodies from holding shares in a share management fishery.

### 4 Provisions relating to transfers

For the purposes of section 71 (4) of the Act, a transfer, assignment, transmission, or mortgage of shares in a fishery is permitted only in accordance with the fishing business transfer rules made under section 34T of the Act.

#### **4A Appeals to Share Appeal Panel relating to issue of quota shares**

- (1) This clause applies to a person who has been issued with quota shares under a share management plan that provides for an appeal to the Share Appeal Panel in relation to the number of quota shares issued to the person by the Minister.
- (2) An appeal to the Share Appeal Panel:
  - (a) must be lodged within 21 days after the person making the appeal is notified of the number of quota shares issued to the person, and
  - (b) must be made in a form approved by the Secretary, and
  - (c) must be accompanied by the fee of \$386.
- (3) The Secretary is to notify the person making the appeal of the receipt of the appeal.

### **Part 2A Quota management**

#### **4B Allocation of quota**

- (1) The Secretary is required to allocate each of the following fishing determinations among the relevant shareholders, subject to any direction given by the Minister under section 40Q (3) of the Act:
  - (a) total allowable catch of mud crab, blue swimmer crab and longfin and shortfin river eel in the estuary general fishery,
  - (b) total allowable fishing effort for the following classes of shares in the estuary general fishery:
    - (i) Estuary general—meshing shares—Regions 1-7,
    - (ii) Estuary general—category one hauling shares—Regions 1-7,
    - (iii) Estuary general—category two hauling shares—Regions 1-7,
  - (c) total allowable catch of eastern sea garfish in the ocean hauling fishery,
  - (d) total allowable catch of spanner crab in the ocean trap and line fishery,
  - (e) total allowable catch of abalone in the abalone fishery,
  - (f) total allowable catch of lobster in the lobster fishery.
- (2) The whole of a fishing determination is not required to be allocated.
- (3) The allocation of a fishing determination among the relevant shareholders is to be made in proportion to the number of shares held by each relevant shareholder.
- (4) The Secretary may, at any time during a fishing period, adjust the quota of a

shareholder to rectify any errors in the calculation of the quota in the fishing period or in a previous fishing period.

(5) This clause also applies to any interim fishing determination made by the Secretary under section 40I of the Act in relation to any species of fish or class of share referred to in subclause (1).

(6) In this clause:

**relevant shareholder** means:

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

#### 4C Transfer of quota

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

##### Table—Transfer of catch quota

Column 1	Column 2
Quota	Shares
Mud crab	Estuary general—handline shares—Regions 1-7
	Estuary general—meshing shares—Regions 1-7
	Estuary general—prawning shares—Regions 1-7
	Estuary general—trapping shares—Regions 1-7
	Estuary general—mud crab trapping shares—Regions 1-7
	Estuary general—category one hauling shares—Regions 1-7
	Estuary general—mud crab quota shares
Blue swimmer crab	Estuary general—handline shares—Regions 1-7
	Estuary general—meshing shares—Regions 1-7



	Estuary general—prawning shares—Regions 1-7
	Estuary general—trapping shares—Regions 1-7
	Estuary general—mud crab trapping shares—Regions 1-7
	Estuary general—category one hauling shares—Regions 1-7
	Estuary general—blue swimmer crab quota shares
Eel	Estuary general—handline shares—Regions 1-7
	Estuary general—meshing shares—Regions 1-7
	Estuary general—prawning shares—Regions 1-7
	Estuary general—eel trapping shares—Regions 1-7
	Estuary general—category one hauling shares—Regions 1-7
	Estuary general—eel quota shares
Eastern sea garfish	Ocean hauling—garfish net (hauling) shares—Regions 1-7
	Ocean hauling—eastern sea garfish quota shares
Spanner crab	Ocean trap and line—spanner crab northern zone shares
	Ocean trap and line—spanner crab southern zone shares
	Ocean trap and line—spanner crab quota shares
Abalone	Abalone shares
Lobster	Lobster shares

(2) Quota allocated from a determination of total allowable fishing effort for a class of shares may only be transferred to holders of that class of shares.

(3) Quota may be transferred only within the fishing period to which the quota applies.

**Note—**

A shareholder is not authorised:

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

(3A) A holder of lobster shares may not acquire by transfer more than twice the amount of the shareholder's initial quota for the fishing period.

(4) For the purposes of section 40U (3) of the Act, the prescribed fee for a manual transfer of quota is \$237.

**Note—**

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

#### **4D Shareholder to notify nominated fishers of quota**

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

#### **4E Seized fish count towards quota**

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

#### **4F Allocation of quota following replacement fishing determination**

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

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

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

## **Part 3 Nomination of fishers**

### **5 Nomination of fisher**

- (1) (Repealed)
- (2) For the purposes of section 69 (6) (a) of the Act, the nomination of a commercial fisher who is the nominated fisher of another shareholder in the same fishery is authorised in all fisheries.
- (3) For the purposes of section 69 (6) (b) of the Act, the nomination of a commercial fisher who is the nominated fisher of another shareholder in another fishery is authorised in all fisheries.
- (4) The nomination of a person to take fish on behalf of the shareholder in the fishery does not take effect until:
  - (a) the nomination is given to the Secretary in the form and manner required by section 69 (3) of the Act, and
  - (b) if the shareholder has been issued with a fishing business card in respect of the fishing business to which the nomination applies, possession of the fishing business card is given to the nominated fisher.

#### **Note—**

Section 69 (3) of the Act requires the nomination to be made in a form and manner approved by the Secretary.

- (5) A nomination has effect for a minimum period of 48 hours, or a lesser period approved by the Secretary.
- (6) If a nomination is revoked before the end of the period of 48 hours (or the lesser period approved by the Secretary), a further nomination cannot be made until the end of the relevant period.

### **5A Nominated fishers entitled to take fish under own shares**

Any shares in a fishery held by a person who is also a nominated fisher of another shareholder in the same fishery do, for the purposes of section 69 (5) of the Act, confer an entitlement on the nominated fisher to take fish in the fishery.

### **6 One nominated fisher per fishing business**

- (1) A person nominated to take fish on behalf of a shareholder must be nominated in respect of all shares held by the shareholder that are a component of the same fishing business and all endorsements in a restricted fishery that are a component of that fishing business.

- (2) A shareholder may nominate one (and not more than one) person to take fish on behalf of the shareholder for each fishing business of which he or she is the owner.
- (3) A nomination applies in respect of the fishing business indicated by the shareholder and operates to authorise a person to take fish only in respect of those shares (and endorsements) that are a component of the relevant business.
- (4) A separate nomination must be made in respect of each separate fishing business.
- (5) If shares held by a shareholder are components of more than one fishing business, either the same or a different person may be nominated in respect of each separate fishing business.
- (6), (7) (Repealed)
- (8) This clause is subject to section 69 (2) of the Act.

**Note—**

Section 69 (2) prevents a shareholder from nominating a person to take fish on behalf of the shareholder unless the shareholder has the minimum shareholding in the fishery required.

**7 Revocation of nomination of commercial fisher**

- (1) A shareholder's nomination of a person to take fish on behalf of the shareholder may be revoked:
  - (a) by the shareholder, or
  - (b) by the Secretary, if revocation by the Secretary is authorised by this clause.
- (2) A revocation of a nomination by a shareholder is to be made in a form and manner approved by the Secretary.
- (3) The shareholder must inform the nominated fisher of the revocation of the nomination.
- (4) The Secretary is authorised to revoke a shareholder's nomination of a person to take fish on behalf of the shareholder (without the consent of the shareholder) if:
  - (a) the nominated fisher requests the revocation, in a form and manner approved by the Secretary, or
  - (b) the nominated fisher ceases to be the holder of a current Class 1 commercial fishing licence, or
  - (b1) there are grounds for suspending or cancelling the commercial fishing licence of the nominated fisher, or an endorsement on that commercial fishing licence (whether or not the licence or endorsement is in fact suspended or cancelled), or
  - (b2) the owner of the relevant fishing business transfers the fishing business or any

component of the fishing business to another person, or

- (c) the shareholder is not entitled to nominate the person to take fish on behalf of the shareholder under section 69 (6) of the Act, this Plan or the share management plan for the fishery.
- (5) The Secretary revokes a nomination by giving the shareholder notice in writing of the revocation.
- (6) The Secretary must, by notice in writing, inform the person whose nomination has been revoked of that revocation.

## **Part 4 Endorsements**

### **8 Cancellation and suspension of endorsements**

An endorsement may be suspended or cancelled if the endorsement holder:

- (a) is convicted, or found guilty, of an offence against the Act, or any regulations made under the Act or of an offence relating to commercial fishing operations under a law of the Commonwealth, another State, a Territory or New Zealand, or
- (b) is convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (c) has, in the opinion of the Minister, contravened a condition of the endorsement, or
- (d) is no longer eligible for an endorsement under the Act, this Plan or the share management plan for the fishery, or
- (e) is convicted or found guilty of an offence under the [Marine Parks Act 1997](#) or the regulations made under that Act.

### **9 (Repealed)**

## **Part 5 Management charges and community contributions**

### **10 Management charge**

- (1) For the purposes of section 76 (2) of the Act, the following costs of management are attributed to industry:
  - (a) the costs of developing, reviewing, implementing and ensuring compliance with strategies, policies and legislation relating to a fishery (including for the purpose of promoting ecologically sustainable development of a fishery),
  - (b) the costs of providing administrative services in connection with the operation of a 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 a fishery or of commercial fisheries generally,
    - (ii) specific research projects relating to the management and sustainability of a fishery or of commercial fisheries generally,
  - (e) such other costs of management of a fishery as may be determined by the Minister after consultation with any relevant advisory council or advisory group.
- (2) 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 a fishery.
- (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 chargeable under section 76).

**10A Management charge—special provisions**

- (1) The management charge payable under section 76 of the Act by holders of shares in a relevant share management fishery is to be calculated by applying the following principles:
- (a) a separate management charge is payable in respect of each fishing business the components of which include shares in one or more relevant share management fisheries (accordingly, if the shares of a shareholder are components of separate fishing businesses, separate management charges are payable in respect of those shareholdings), and
  - (b) a single management charge is payable in respect of each fishing business, even if the fishing business is comprised of, or includes, shares in more than one relevant share management fishery.
- (2) If the components of a fishing business include shares (of any class) in one or more relevant share management fisheries, the management charge in respect of that fishing business (the **maximum management charge**) is not to exceed the total of the following amounts:
- (a) for the first class of shares held by the fishing business—\$1,169,

(b) for the second class of shares held by the fishing business—\$1,169,

(c) for the third and each subsequent class of shares held by the fishing business—the discounted amount for that class of shares.

(d) (Repealed)

(3) The **discounted amount** for a class of shares is calculated as follows:

(a) for the third class of shares held by the fishing business—\$701 (being 60% of \$1,169, rounded to the nearest dollar),

(b) for the fourth class of shares held by the fishing business—60% of the discounted amount for the third class of shares held by the fishing business (rounded to the nearest dollar),

(c) for the fifth class of shares held by the fishing business—60% of the discounted amount for the fourth class of shares held by the fishing business (rounded to the nearest dollar),

(d) for the sixth class of shares held by the fishing business—60% of the discounted amount for the fifth class of shares held by the fishing business (rounded to the nearest dollar),

(e) and so on until all classes of shares held by the fishing business have been accounted for.

(3A) If the components of a fishing business for which a management charge is payable include a southern fish trawl endorsement, the calculation of the maximum management charge is modified as follows:

(a) the endorsement is to be treated as if it were the first class of shares held by the fishing business,

(b) in subclause (2) (a), the amount to be added for that first class of shares is nil.

**Note—**

No management charge is included for the endorsement because a contribution of \$1,169 is payable in respect of the endorsement under section 115A of the Act.

(3B) When rounding amounts under this clause, an amount of 50 cents is to be rounded down.

(3C) For the purposes of this clause, a class of shares is held by a fishing business if the shares are a component of that fishing business.

(4) This clause does not affect any requirement that a shareholder pay a separate or additional management charge in respect of shares in a share management fishery

that is not a relevant share management fishery, even if those shares are a component of a fishing business that includes shares in a relevant share management fishery.

(5) In this clause:

**class of share** means a class of share, other than a class of quota shares, in a relevant share management fishery, as listed in:

- (a) clause 5 of the Appendix to the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*, or
- (b) clause 5 of the Appendix to the *Fisheries Management (Estuary Prawn Trawl Share Management Plan) Regulation 2006*, or
- (c) clause 5 of the Appendix to the *Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006*, or
- (e) clause 4 of the Appendix to the *Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006*, or
- (d) clause 4 of the Appendix to the *Fisheries Management (Ocean Trawl Share Management Plan) Regulation 2006*.

**relevant share management fishery** means any of the following share management fisheries, as described in Schedule 1 to the Act:

- (a) the estuary general fishery,
- (b) the estuary prawn trawl fishery,
- (c) the ocean hauling fishery,
- (d) the ocean trawl fishery,
- (e) the ocean trap and line fishery.

**southern fish trawl endorsement** has the same meaning as it has in the *Fisheries Management (General) Regulation 2010*.

## 11 Community contribution

- (1) For the purposes of section 77 of the Act, a community contribution is payable by a shareholder in a fishery, in respect of each fishing business of the shareholder, for each financial year.
- (2) The community contribution is payable 2 months after the end of each financial year, or on such later date as may be determined by the Minister.
- (3) No community contribution is payable for the financial year commencing on 1 July



2006.

- (4) The community contribution for each subsequent financial year is \$100 for each fishing business the components of which include shares in a fishery.
- (5) A shareholder is liable for only one community contribution under this clause in respect of a fishing business (even if the fishing business includes components in more than one fishery).
- (6) If a community contribution is unpaid after the due date for its payment, the balance then becomes due and payable (together with any interest that may be charged on the overdue amount).
- (7) Interest may be charged, at the discretion of the Minister, if a community contribution is unpaid after the due date for its payment, on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court.
- (8) In this clause, **financial year** means the period of 12 months commencing on 1 July and ending on 30 June in the following year.

## Part 5A Fishing gear

### Note—

The individual share management plans contain additional provisions relating to the types of fishing gear that may be lawfully used in the fishery (and the conditions of use).

### 11A Landing net

- (1) It is lawful for an endorsement holder in a fishery to use a landing net for taking fish (other than prawns) in the waters set out in the Table to this clause if the net complies with the description set out in relation to those waters in that Table and the net is used only as an ancillary aid to any fishing method that it is lawful for the endorsement holder to use to take fish in the waters of the fishery concerned.
- (2) For the purposes of this Plan or any other instrument under the Act, a net described in this clause may be referred to as a landing net.

### Table Landing net

(a) *Waters*—Any waters.

- 1 (b) *Description of net*—Net consisting of a hoop or ring not exceeding 0.6 metre in its greatest diameter and which is attached to netting or other soft material.

## Part 5B General provisions relating to lawful use of fishing gear

### Note—

Section 24 of the Act makes it an offence for a person to use a net or trap for taking any fish unless its use by the person for taking those fish is declared by the regulations to be a lawful use of the net or trap. This Part sets out general restrictions on the use of fishing gear in share management fisheries.

### **11B Application of this Part**

This Part applies in respect of the use of fishing gear in any share management fishery unless the management plan for the relevant share management fishery expressly authorises a departure from the provisions of this Part.

### **11C Relaying of hauling lines prohibited**

- (1) It is unlawful for a person, in the hauling of any net in any waters:
  - (a) to relay the hauling lines, or either of them, from the point at which the casting of the net was commenced and finished, or
  - (b) to adopt any means for extending the depth or length of a haul so as to embrace in the haul any area not included in the haul when the net and both hauling lines were first cast.
- (2) Subclause (1) applies whether or not the net is cast from the shore, a sand bar, a boat or from any device or thing or from any place.

### **11D Joining of nets**

- (1) It is unlawful for a person to use in any waters 2 or more nets joined together for the purpose of taking fish.
- (2) It is also unlawful for a person to use in any waters 2 or more nets for the purpose of taking fish, being nets that are joined or placed together side by side (either on the cork line or otherwise) in such a manner that the effective mesh or meshes of those combined nets are reduced to a size less than the minimum mesh or meshes described as lawful under the management plan for the relevant fishery.

### **11E Illegally reducing mesh size or lateral mesh openings of nets**

- (1) It is unlawful for a person to use a net in which any meshes (or any bars) are wholly or partly covered or twisted in any manner:
  - (a) so as to reduce the mesh size of the meshes to less than that specified under the share management plan for a fishery as lawful, or
  - (b) so as to reduce the size of the lateral mesh openings in the net.
- (2) It is unlawful for a person to use a net in which any string, rope, wire, cord, netting or other material is fixed to any meshes or placed around the net in any manner:
  - (a) so as to reduce the mesh size of the meshes to less than that specified under the share management plan for a fishery as lawful, or

(b) so as to reduce the size of the lateral mesh openings in the net.

**11EA Illegally reducing mesh size or lateral mesh openings of traps**

- (1) It is unlawful for a person to use a trap in which any meshes are wholly or partly covered in any manner:
  - (a) so as to reduce the mesh size of the meshes to less than that specified under the share management plan for a fishery as lawful, or
  - (b) so as to reduce the size of the lateral mesh openings in the trap.
- (2) It is unlawful for a person to use a trap in which any string, rope, wire, cord, netting or other material is fixed to any meshes or placed around the trap in any manner:
  - (a) so as to reduce the mesh size of the meshes to less than that specified under the share management plan for a fishery as lawful, or
  - (b) so as to reduce the size of the lateral mesh openings in the trap.

**11F Monofilament and certain multi-strand nets prohibited**

It is unlawful for a person to use a net any mesh of which is constructed of synthetic material that comprises less than 7 strands.

**11G Method of dragging or drawing nets**

It is unlawful for any person to drag or draw ashore any net containing fish in such a way or to such a distance from the water as to prevent prohibited size fish from escaping through the meshes or by the wings of the net into the water, or to allow such prohibited size fish to remain on the shore.

**11H Measuring length and mesh size of nets**

- (1) For the purposes of testing or determining its length, a net must be measured along the cork line or head line of the net from the first hanging to the last hanging.
- (2) For the purposes of testing or determining the mesh size of a net that is described in a management plan for a fishery as being lawful (other than a net specified in the Table to this clause) the device described in subclause (3) must be used in the manner set out in subclause (4).
- (3) The device (which must be verified in such manner as the Secretary may determine) must comply with the following description:
  - (a) it consists of a fixed member (in the form of a metal cylinder) in which is fitted a sliding member weighing 225 grams,
  - (b) both members have attached a fixed knife edge,

- (c) when in use, the device is suspended from, or held by, the metal clip at the top of the fixed member,
  - (d) a scale and a point is marked on both members.
- (4) The device must be used in the following manner:
- (a) the net (the mesh size of which is to be measured) must be soaked in water for a period of not less than 5 minutes, after which both knife edges must be inserted in a mesh of the net, so that the mesh is supported by the knife edge of the fixed member at a knot while the knife edge of the sliding member is supported by the mesh at the knot diagonally opposite,
  - (b) the mesh being measured, when suspended as above, must hang in a plane parallel to the body of the device,
  - (c) the size of the mesh must then, without any unnecessary delay, be determined as the distance between the inside edges of the knots, as read from the scale on the sliding member, at a point indicated by a mark on the fixed member.
- (5) For the purposes of testing or determining the mesh size of a net specified in the Table to this clause, the device described in subclause (3) must be used in the manner set out in subclause (4) except that:
- (a) the weight specified in relation to that net in that Table must be attached to the sliding member, and
  - (b) the net (the mesh size of which is to be measured) must be soaked in water for a period of not less than 10 minutes.
- (6) In testing or determining the mesh size of a knotless net (being a net in which the mesh is formed by the fusion or interweaving of two or more threads of the netting material) or square mesh (whether or not knotless) the same method must apply, except that the knife edges of the members must be inserted in a mesh at diagonally opposite corners and the measurements taken from the inside of those corners.
- (7) The mesh size specified in respect of a lawful net in the management plan for a fishery is taken to be the mesh size, when determined in the manner and by the use of the measuring device, described in this clause.

**Table Measuring length and mesh size of nets**

- 1 (a) *Nets*—Hauling net (general purpose)—estuary general fishery, hauling net (general purpose)—ocean hauling fishery, otter trawl net (prawns)—estuary prawn trawl fishery, otter trawl net (prawns)—ocean trawl fishery, prawn net (hauling), prawn net (set pocket), garfish net (hauling)—estuary general fishery, garfish net (hauling)—ocean hauling fishery, prawn running net, seine net (prawns), hand-hauled prawn net, push or scissors net, try net (prawns).
- (b) *Weight attached*—1,585 grams.
- 2 (a) *Nets*—Otter trawl net (fish)—ocean trawl fishery, danish seine trawl net (fish)—ocean trawl fishery.
- (b) *Weight attached*—2,945 grams.

### 11I Measuring length and circumference of codend

- (1) For the purpose of testing or determining the length of a codend of a net, the codend must be measured from the draw or closing string in a straight line to the point of attachment to the body of the net (or extension piece).
- (2) For the purpose of testing or determining the circumference of the codend of a net, or the body of the net, the net must be measured with the codend or body stretched transversely.

## Part 5C Rights of priority—recognised fishing grounds

### Note—

This Part sets out the rights of priority between endorsement holders on recognised fishing grounds. Rights of priority between commercial fishers and recreational fishers on recognised fishing grounds are set out in the [Fisheries Management \(General\) Regulation 2010](#). Rights of priority between endorsement holders in share management fisheries are set out in the share management plans for the fisheries.

## Division 1 General

### 11J Recognised fishing grounds

In this Part, **recognised fishing ground** has the same meaning as it has in the [Fisheries Management \(General\) Regulation 2010](#).

### 11K Fishing contrary to rights of priority

For the purposes of section 68 (6A) of the Act, it is a condition of an endorsement that the endorsement holder does not take fish on a recognised fishing ground contrary to the rights of priority provided for by this Part after being directed not to do so:

- (a) by a fisheries officer, or
- (b) by another endorsement holder (who is using or intending to use a net or other fishing

gear in accordance with this Part).

**11L Endorsement holders must use fishing gear in accordance with this Part**

For the purposes of section 68 (6A) of the Act, it is a condition of an endorsement that the endorsement holder does not use a net or other fishing gear in a manner that is contrary to the provisions of this Part.

**Division 2 Rights of priority**

**11M Priority to be given to method for which recognised fishing ground is created**

An endorsement holder who is taking or who intends to take fish on a recognised fishing ground, by the method for which the area concerned is a recognised fishing ground, has priority over any other endorsement holder who is taking or intends to take fish on the recognised fishing ground by any other method.

**11N Priority between endorsement holders using nets on recognised fishing grounds**

- (1) The rights of priority between endorsement holders taking or intending to take fish on the same recognised fishing ground, by the method for which the area concerned is a recognised fishing ground, are determined as follows:
  - (a) the first turn belongs to the crew that first arrives at a recognised fishing ground with a boat and with a net laid ready for use by the relevant method,
  - (b) the next turn belongs to the crew that next arrives with such a boat and net, and so on,
  - (c) a turn concludes when a crew has shot its net, but in no case extends over a longer period than 24 hours as against any other crew ready and waiting to haul,
  - (d) during its turn a crew has exclusive rights to so much of a recognised fishing ground or ocean beach area as equals in length, measured along the foreshore from the point where the boat belonging to that crew is or was positioned or lying, the total length of the net in use or intended to be used, in the direction in which the net is shot or laid ready for shooting,
  - (e) a crew is not entitled to a second turn until all other crews on the fishing ground or ocean beach area have had their first turn,
  - (f) the crew of a boat waiting for a turn automatically forfeits its turn if any member of that crew acts as a member of the crew of a boat making a haul,
  - (g) 2 or more turns may be taken simultaneously if the waters being fished admit of double-banking, provided that no net is shot around an inner net within 7.5 metres of the cork line of that inner net without the consent of the crew operating that inner net.

- (2) In this clause, **crew** means such number of endorsement holders as are required to effectively operate the net in use or intended to be used from the boat from which it is being or will be used.
- (3) A fisheries officer is to determine the number of endorsement holders required to effectively operate a net and that determination is final and conclusive.

## **Part 6 General**

### **12 Protected fish**

An endorsement does not authorise an endorsement holder to take any species of fish that is declared to be protected fish (whether before or after the commencement of this Plan) under section 19 of the Act.

**Note—**

Clause 5 of the *Fisheries Management (General) Regulation 2010* lists species that are protected fish.

### **13 Fish protected from commercial fishing**

- (1) An endorsement does not authorise an endorsement holder to take any species of fish which are protected from commercial fishing for the purposes of section 20 (1) of the Act.
- (2) The *Fisheries Management (General) Regulation 2010* specifies the fish that are protected from commercial fishing under section 20 (1) of the Act.

### **14 Prohibited size fish**

- (1) The entitlement of an endorsement holder to take fish in a fishery is subject to the provisions of the *Fisheries Management (General) Regulation 2010* with respect to the prohibited size for any fish that may be taken in the fishery.
- (2) An endorsement does not authorise an endorsement holder to take fish in a fishery in contravention of those provisions.

### **15 Use of fishing gear**

An endorsement does not authorise an endorsement holder to take fish using a net, trap or other fishing gear in contravention of the requirements of Part 3 of the *Fisheries Management (General) Regulation 2010*, unless a provision of the share management plan for the fishery expressly authorises a departure from those requirements.

### **16 Priorities in the use of fishing gear**

An endorsement does not authorise an endorsement holder to take fish in contravention of any relevant rights of priority contained in Part 4 of the *Fisheries Management (General) Regulation 2010*, unless a provision of the share management plan for the fishery expressly authorises a departure from those priority rights.

## **17 Miscellaneous provisions relating to fisheries management**

An endorsement does not authorise a person to contravene the provisions of Part 5 of the *Fisheries Management (General) Regulation 2010*, unless a provision of the share management plan for the fishery expressly authorises a departure from those provisions.

## **18 (Repealed)**

## **19 Aquatic reserves regulation**

An endorsement does not authorise a person to contravene the provisions of any regulation relating to aquatic reserves made under section 197 of the Act.

## **20 Fishing entitlements are subject to licence conditions**

- (1) An endorsement does not authorise an endorsement holder to take fish in a fishery in contravention of any conditions of his or her commercial fishing licence (whether those conditions are prescribed by the regulations or imposed by the Minister under section 104 of the Act).
- (2) Any endorsement conditions prescribed by this Plan or the share management plan for a fishery are in addition to any commercial fishing licence conditions prescribed by the *Fisheries Management (General) Regulation 2010* or imposed by the Minister under section 104 of the Act.
- (3) An endorsement does not authorise the use of a boat to take fish in a fishery in contravention of the conditions of a fishing boat licence (whether those conditions are prescribed by the *Fisheries Management (General) Regulation 2010* or imposed by the Minister under section 108 of the Act).

### **Note—**

Section 107 of the Act provides that a fishing boat licence is required to use a boat for commercial fishing boat activities that are declared by the regulations to be activities for which a fishing boat licence is required.

- (4) Any fishing boat licence conditions prescribed by this Plan or the share management plan for a fishery are in addition to any fishing boat licence conditions prescribed by the *Fisheries Management (General) Regulation 2010* or imposed by the Minister under section 108 of the Act.

## **21 Contravention of share management plan and endorsement condition**

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

## **22 Poll on redefinition proposal**

- (1) This clause applies in relation to a poll of shareholders affected by a redefinition proposal, which is arranged by the Secretary under Division 4A of Part 3 of the Act.



- (2) For the purposes of section 55E (2) of the Act, a redefinition proposal has majority support if more than 50% of the value of votes cast in the poll are in support of the proposal.
- (3) For the purposes of section 55E (3) of the Act, shareholders who fail to vote in a poll are to be disregarded when determining whether a redefinition proposal has majority support.
- (4) For the purposes of section 55E (4) of the Act, the value of each vote cast in the poll is the percentage determined by dividing the number of affected shares held by the shareholder who casts the vote by the total number of relevant shares and multiplying that number by 100 (calculated to 3 decimal places).
- (5) For the purposes of subclause (4):
  - (a) the **number of affected shares** held by a shareholder is:
    - (i) in the case of a redefinition proposal that involves a change to a description of a share management fishery—the number of shares in that fishery held by the shareholder, or
    - (ii) in the case of a redefinition proposal that involves the amalgamation of 2 or more classes of shares or replacing classes of shares—the number of shares in the classes concerned held by the shareholder, and
  - (b) the **total number of relevant shares** is:
    - (i) in the case of a redefinition proposal that involves a change to a description of a share management fishery—the total number of shares in that fishery held by the shareholders who cast a vote in the poll, or
    - (ii) in the case of a redefinition proposal that involves the amalgamation of 2 or more classes of shares or replacing classes of shares—the total number of shares in the classes concerned held by the shareholders who cast a vote in the poll.

### **23 Waters closed permanently to commercial fishing**

The entitlement of an endorsement holder to take fish in a fishery is subject to any prohibition made under section 20 (2) of the Act that prohibits, in the waters specified in the Column 1 of Schedule 3, all commercial fishing, or a class of commercial fishing, as indicated next to the waters concerned in Column 2 of the Schedule.

### **24 Application of Plan—general**

The provisions of this Plan apply in relation to all share management fisheries, subject to section 57A (5) of the Act.

## 25 Authorised amendments to Plan

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

## Part 7 Savings and transitional

### 26 Nominated fishers—savings consequent on commencement of share management plans

- (1) A person duly nominated to take fish on behalf of another in a share management fishery and whose nomination was in force immediately before the commencement of this Plan is taken, on that commencement, to have been registered as an eligible fisher in respect of the fishing business concerned under Part 10 of the *Fisheries Management (General) Regulation 2010*.
- (2) Any such person is taken to have been nominated to take fish on behalf of the relevant shareholder in accordance with Part 3 of this Plan.
- (3) Subclause (2) does not apply in respect of a fishing business owned by a partnership if, immediately before the commencement of this Plan, there is more than one nominated fisher in respect of the fishing business.
- (4) This clause does not affect the power of the Secretary to revoke a nomination under Part 3 or to cancel the registration of an eligible fisher under Part 10 of the *Fisheries Management (General) Regulation 2010*.

## Schedules 1, 2 (Repealed)

## Schedule 3 Waters closed permanently to fishing

(Clause 23)

Column 1	Column 2
Waters	Class of commercial fishing prohibited
Back Lake (also known as Back Lagoon):  the whole of the waters of Back Lake, including all its tributaries, creeks, bays and inlets, from its confluence with the South Pacific Ocean upstream to its source.	All commercial fishing.
Bega River:  the whole of the waters of Bega River, including all its tributaries, creeks, bays and inlets, from its confluence with the South Pacific Ocean upstream to its source.	All commercial fishing.
Bellinger River (including Kalang River):	

the whole of the waters of Bellinger River, from its confluence with the Pacific Ocean upstream to its source, including Kalang River and all their tributaries, creeks, bays, inlets and lagoons.

All commercial fishing.

Bermagui River:

the whole of the waters of Bermagui River, from a line drawn between the eastern extremity of the northern breakwall south to Bermagui Point upstream to its source, including all its tributaries, creeks, bays and inlets.

All commercial fishing, except the carriage of stowed fishing gear by boat directly from Bermagui Harbour to ocean waters.

Botany Bay:

the whole of the waters of Botany Bay, together with all its tributaries, creeks, bays and inlets.

All commercial fishing, other than the taking of lobsters and abalone in accordance with the relevant share management plan.

Burrill Lake:

the whole of the waters of Burrill Lake and Burrill Lake Entrance Channel, together with all their tributaries, creeks, bays and inlets.

All commercial fishing.

Camden Haven River:

the whole of the waters of Camden Haven River from a line drawn between the eastern extremities of its northern and southern breakwalls upstream to North Haven Bridge and Dunbogan Bridge, which waters include the waters under those bridges, Gogleys Lagoon and all tributaries, creeks, bays and inlets.

All commercial fishing.

Clarence River:

(a) the waters enclosed within a line drawn across the river entrance from the eastern extremity of the northern breakwall to the eastern extremity of the southern breakwall, and then upstream to a line drawn from the Maritime Authority of NSW Front Lead Beacon No 122 at mean high water mark on the northern side of Hickey Island, then northwesterly to the Maritime Authority of NSW Navigation Aid No 097 located on the downstream side of the most easterly opening in Middle Wall, then northeasterly across to the western extremity of Moriartys Wall,

All commercial fishing, except the class of commercial fishing that consists of the lawful use of a hauling net (general purpose) on and from 1 April in any year up to and including 31 August in that year in the waters adjacent to Wave Trap Beach located at the western end of the northern breakwall at the entrance of the Clarence River.

- (b) the whole of the waters of Oyster Channel from a line drawn from the Department marker post RFH1, located on the southern shore adjacent to the intersection of Micalo and Yamba Roads, northeasterly to the Department marker post RFH2 located on the shore north of Whyana Island, then following the mean high water mark upstream to a Department marker post RFH3 beneath the second set of powerlines crossing Oyster Channel, located approximately 420 metres upstream of the Oyster Channel Road Bridge, then westerly following the powerlines to a Department marker post RFH4 on the shore of Micalo Island, All commercial fishing.
- (c) the whole of the waters of Romiaka Channel south from a line drawn from the Department marker post RFH5, located on the shore of the northern extremity of Romiaka Island, northerly across to the Department marker post RFH6 on the shore at Palmers Island, west of Ungundam Island, and then upstream to a line drawn from the Department marker post RFH7 located on the shore of Romiaka Island at the southern end of the rock retaining wall on "Burn's farm", then westerly across Romiaka Channel to the Department marker post RFH8 on the shore of Palmers Island, All commercial fishing.
- (d) the whole of the waters of the North Arm of the Clarence River within the following boundaries, commencing at the Department marker post RFH9 located on the shore beneath the multiple overhead powerlines crossing the waters of the North Arm near Marandowie Drive, Iluka, then westerly directly beneath those powerlines for 100 metres, then upstream and parallel to the shore to a line parallel to the powerlines drawn from the Department marker post RFH10 located on the shore near the northern end of the rock retaining wall at the entrance to Saltwater Inlet. All commercial fishing.

Deep Creek:

the whole of the waters of Deep Creek, from its confluence with the Pacific Ocean upstream to its source, including all its tributaries, creeks, bays and inlets. All commercial fishing.

Hastings River:

the whole of the waters of Hastings River from a line drawn between the eastern extremities of the northern and southern breakwalls upstream to its source, including all its tributaries, creeks, bays and inlets. All commercial fishing.

Lake Brunderee:

the whole of the waters of Lake Brunderee, together with all its tributaries, creeks, bays and inlets. All commercial fishing.

Lake Conjola:

the whole of the waters of Lake Conjola (and Berringer Lake), together with all their tributaries, creeks, bays and inlets. All commercial fishing.

Lake Macquarie:

the whole of the waters of Lake Macquarie, together with all its tributaries, creeks, bays and inlets. All commercial fishing.

Little Lake (also known as Little Tilba Lake and Hoyers Lake):

the whole of the waters of Little Lake immediately south of Tilba Lake, including all its tributaries, creeks, bays and inlets. All commercial fishing.

Manning River:

the whole of the waters of Manning River, from its confluences with the South Pacific Ocean upstream to and including:

(a) Ghinni Ghinni Creek, from a line drawn from a point on the south western shoreline at the mouth of Ghinni Ghinni Creek at 31°52.984'S, 152°33.565'E in a generally easterly direction to the shoreline of Oxley Island at 31°53.066'S, 152°34.011'E, and All commercial fishing.

(b) Berady Creek, from a line drawn from the upriver bank of Berady Creek due east to the eastern side of the Manning River, in the south channel,

which waters include Scotts Creek and all tributaries, creeks, bays and inlets.

Meroo Lake:

the whole of the waters of Meroo Lake, together with all its tributaries, creeks, bays and inlets. All commercial fishing.

Mummaga Lake (also known as Dalmeny Lake):

the whole of the waters of Mummaga Lake, together with all its tributaries, creeks, bays and inlets. All commercial fishing.

Narrawallee Inlet:

the whole of the waters of Narrawallee Inlet, together with all its tributaries, creeks and bays. All commercial fishing.

Nelson Lagoon (also known as Nelson Lake):

the whole of the waters of Nelson Lagoon, including all its tributaries, creeks, bays and inlets, from its confluence with the South Pacific Ocean upstream to its source. All commercial fishing.

Nullica River:

the whole of the waters of Nullica River, including all its tributaries, creeks, bays and inlets, from its confluence with Twofold Bay upstream to its source. All commercial fishing.

Pambula River and Yowaka River:

the whole of the waters of Pambula River and Yowaka River, including all their tributaries, creeks, bays and inlets, upstream of a line drawn from the southern end of Tea Tree Point and then due west to the boat ramp. All commercial fishing.

Richmond River:

(a) from a line drawn between the eastern extremities of the northern and southern breakwalls upstream to a line drawn across the River between the Burns Point Ferry ramps, including all the tributaries, creeks, bays, inlets and canal estates within those boundaries, All commercial fishing, except the class of commercial fishing that consists of the lawful use of a hauling net (general purpose) to take sea mullet (*Mugil cephalus*) during April to July each year from the waters enclosed north of a line drawn from the southernmost extremity of the rock embankment at the eastern end of Missingham Bridge to a point approximately 225 metres in an east south east direction along the northern breakwater adjacent to Shaws Bay.

(b) from a line drawn across the River between the Burns Point Ferry ramps upstream to a line drawn east across the River from the south-eastern corner of Portion 21 at the eastern end of Emigrant Point Lane, including Emigrant Creek and all other tributaries, creeks, bays, inlets and canal estates within those boundaries. All commercial fishing, except the class of commercial fishing that consists of the lawful use of a crab trap or an eel trap.

St Georges Basin:

the whole of the waters of St Georges Basin, together with all its tributaries, creeks, bays and Sussex Inlet. All commercial fishing.

Tabourie Lake:

the whole of the waters of Tabourie Lake, together with all its tributaries, creeks, bays and inlets. All commercial fishing.

Tomaga River:

the whole of the waters of Tomaga River, together with all its tributaries, creeks, bays and inlets. All commercial fishing.

Towamba River (also known as Kiah River):

the whole of the waters of Towamba River, including all its tributaries, creeks, bays and inlets, from its confluence with Twofold Bay upstream to its source. All commercial fishing.

Tuross Lake (including Tuross River and Borang Lake):

the whole of the waters of Tuross Lake, together with all its tributaries, creeks, bays, inlets and lagoons, including Tuross River and Borang Lake. All commercial fishing.

Tweed River:

the following waters of the Tweed River:

- (a) from a line drawn between the eastern extremities of the northern and southern breakwalls upstream to Boyds Bay Bridge (including the waters under the bridge) and a line drawn from the southern point of Rocky Point due east to Fingal Road, including Jack Evans Boat Harbour, the Southern Boat Harbour and all the tributaries, creeks, bays, inlets and canal estates within those boundaries,
- (b) the canal estate off Bingham Bay known as Seagulls Canal, as well as its continuation on the other side of The Lakes Drive,
- (c) the canal estate off Cobaki Broadwater known as Tweed West Canals, All commercial fishing.
- (d) the tributary behind Caddy's Island known as Blue Water Canals,
- (e) the canal estate behind Crystal Waters Drive known as Crystal Waters Canal,
- (f) the canal estate west of Boyd's Island known as Endless Summer Canal Estate,
- (g) the canal estate generally north of Chinderah Island known as Oxley Cove,
- (h) Wommin Lagoon,
- (i) Wommin Lake.

Wonboyn River and Wonboyn Lake:

the whole of the waters of Wonboyn River, including Wonboyn Lake, and all the tributaries, creeks, bays and inlets, from its confluence with the South Pacific Ocean upstream to its source. All commercial fishing.

Wonboyn Beach:

the whole of the waters adjacent to the shoreline and 500 metres seaward of the mean high water mark of the entire length of Wonboyn Beach between Green Cape Peninsula in the north and Greenglade in the south, including Bay Cliff Headland. All methods of net fishing.