

# Fisheries Management (Lobster Share Management Plan) Regulation 2000

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New South Wales

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# Fisheries Management (Lobster Share Management Plan) Regulation 2000



New South Wales

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# Fisheries Management (Lobster Share Management Plan) Regulation 2000



New South Wales

## 1 Name of Regulation

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

## 2 Lobster Share Management Plan

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

## 3 (Repealed)

## 4 Notes

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

## Appendix Lobster Share Management Plan

### Part 1 Preliminary

#### 1 Name of Plan

This is the *Lobster Share Management Plan*.

#### 2 Definitions

(1) In this Plan:

**approved** means approved by the Secretary.

**daily log sheet** means the form known as the “NSW DPI Lobster 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 Lobster Fishery Catch and Effort Logbook” provided to shareholders by the Department.

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

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

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

**endorsement holder offence**—see clause 55.

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

**fishing period** means each period of 12 months commencing on 1 August and ending on the following 31 July, or such other period as the Minister may determine after consultation with any relevant advisory council or advisory group.

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

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

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

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

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

- (a) an offence against the Act or the regulations under the Act that is punishable by imprisonment,
- (b) an offence against clause 66 of the *Fisheries Management (General) Regulation 2010*,
- (c) an offence punishable under the *Crimes Act 1900*.

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

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

**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.	Increase the biomass of eastern rock lobster stock	Levels of eastern rock lobster stock increase or remain stable (with 1998–1999 levels being used as a benchmark), or are likely to do so, having regard to total allowable catch	Annual catch per unit effort (CPUE) is below 1998–99 levels in 2 consecutive years
2.	Promote commercial fishing practices for rock lobster that do not have an adverse environmental impact on the broader ecosystem	Research conducted periodically by or on behalf of NSW Fisheries indicates that commercial fishing practices for rock lobster do not have an adverse environmental impact on the broader ecosystem	Research conducted by or on behalf of NSW Fisheries indicates that commercial fishing practices for rock lobster are having an adverse environmental impact on the broader ecosystem
3.	Ensure management arrangements for the fishery do not have a significant impact on the costs of taking eastern rock lobster for sale	Management charge for the fishery (under section 76 of the Act) does not increase significantly, disregarding any increase that is attributable to the provision of additional resources by NSW Fisheries (eg the provision of additional compliance officers)	Management charge for the fishery increases in any year at a rate that exceeds the rate of inflation (as measured by the consumer price index), disregarding any increase that is attributable to the provision of additional resources by NSW Fisheries after the commencement of this Plan

4.	Promote cost efficient management	Independent review of the management arrangements for the fishery, conducted periodically at the request of the Minister, determines that management arrangements are appropriate	Independent review determines that the management arrangements for the fishery are inappropriate
5.	Ensure appropriate research and monitoring in relation to the fishery	Sufficient data is available for assessment of rock lobster stocks	Insufficient data is available for the purpose of setting the total allowable catch for rock lobster
6.	Minimise the number of offences committed by fishers in relation to rock lobster	Number of offences in relation to rock lobster committed annually, as indicated by quality inspections conducted by NSW Fisheries, indicates substantial compliance with the Act, this Plan and the other regulations under the Act	Overall rate of compliance with the Act, this Plan and the other regulations under the Act in relation to rock lobster (estimated annually by the Secretary) is less than 70 percent

**4 (Repealed)**

**Part 3 Dealings in shares**

**5 Minimum shareholding**

- (1) The minimum shareholding in the fishery is 55 shares.
- (2) Despite subclause (1), the minimum shareholding in respect of a person who held shares in the fishery at the commencement of this Plan is 12 shares.
- (3) If a person who held shares at the commencement of this Plan transfers any of those shares the minimum shareholding in respect of the person increases to 55 shares.

**Note—**

A person who holds shares in the share management fishery is not entitled to take fish in the fishery or to nominate another person to do so on the shareholder’s behalf unless the shareholder has the minimum shareholding for the fishery (see sections 66 and 67 of the Act). This clause applies a minimum shareholding of 55 shares to a person who first acquires shares in the fishery after the commencement of this Plan, and to any person who held shares in the fishery at the commencement of this Plan and who transfers any of them.

**6 Maximum shareholding**

The maximum shareholding in the fishery is 350 shares.



## **7-9 (Repealed)**

# **Part 4 Endorsements and nominated fishers**

## **10 Nominated fishers**

- (1) A person may not be nominated by a shareholder to take rock lobster on behalf of the shareholder if:
  - (a) the person has been convicted, within the period of 3 years before the nomination is made, of a rock lobster offence or a serious offence, or
  - (b) the person has been charged with or summoned for a rock lobster offence or a serious offence and proceedings with respect to that offence are pending.
- (2)-(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 a rock lobster offence, or a serious offence, within the period of 3 years before the application for endorsement is made, or
- (b) the commercial fisher is nominated by a shareholder who has been convicted of a serious offence within the period of 3 years before the application for endorsement is made.

### **Note—**

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

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

- (1) The Minister may suspend or cancel an endorsement of a nominated fisher if:
  - (a) the fisher does anything that would be grounds for cancellation or suspension of the fisher's commercial fishing licence, or
  - (b) the Minister is satisfied that the fisher has contravened a provision of this Plan, or
  - (c) the shareholder who nominated the fisher:
    - (i) revokes the nomination, or

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

**Note—**

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

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

- (1) A nominated fisher must notify the shareholder who nominated him or her to take rock lobster in the fishery on the shareholder's behalf if the person is charged with an offence against this Plan, the Act or the regulations under the Act.
- (2) The notice must be given to the shareholder within 24 hours after the nominated fisher is charged with the offence.
- (3) A contravention of this clause is an endorsement holder offence.

**Part 5**

**15-19 (Repealed)**

## Part 6 Tags for rock lobster

### Division 1 Preliminary

#### 20 Definitions

In this Part:

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

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

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

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

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

#### 21 Application of Part

This Part applies only in respect of rock lobster that is subject to a TAC determination.

**Note—**

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

### Division 2 Use of tags

**Note—**

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

#### 22 Rock lobster to have tag attached

- (1) An endorsement holder who takes rock lobster in the fishery must attach a tag to the rock lobster as follows:
  - (a) if, before landing the rock lobster, the endorsement holder transfers the rock lobster from the boat used by the endorsement holder to another boat or transfers the rock lobster to a holding pen, before the rock lobster is so transferred,

(b) if paragraph (a) does not apply, immediately after the rock lobster is landed, but in any case no more than 25 metres from the point of landing (that is, the place where the rock lobster is brought ashore) and before entering any premises.

- (2) The tag that is attached must be a tag that was issued by the Secretary for use in the fishing period in which the rock lobster is taken.
- (3) The tag must be attached in such a manner that it cannot be removed without being broken.
- (4) The endorsement holder must, immediately after attaching the tag to the rock lobster, trim the tail of the tag so that it is flush with the locking mechanism.
- (5) For the purposes of section 65 of the Act, contravention of this clause is an offence.
- (6) A contravention of this clause is also an endorsement holder offence.

### **23 Unauthorised use of tag**

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

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

Maximum penalty: 100 penalty units.

### **24 Use of tags issued to others**

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

### **25 Tags to be used in sequential order**

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

## **26 Tags not to be re-used**

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

## **27 Lost, stolen or destroyed tags**

- (1) If a tag issued for the use of an endorsement holder is lost, stolen or destroyed, the endorsement holder must, as soon as practicable after becoming aware that the tag has been lost, stolen or destroyed, give the Secretary written notice of that fact.
- (2) The notification is to include the tag number of the tag lost, stolen or destroyed.
- (3) An endorsement holder must not, without lawful excuse, be in possession of a used tag:
  - (a) while taking or attempting to take rock lobster for sale, or
  - (b) while on any premises used in connection with the taking of rock lobster for sale by the endorsement holder.
- (4) If a tag issued for the use of an endorsement holder is damaged in such a manner that the tag number is not fully legible, or cannot be attached to a rock lobster in the required manner, the endorsement holder must, within 7 days after becoming aware of that fact, give or send the tag to the Secretary, together with a notice that includes:
  - (a) the tag number of the tag concerned, and
  - (b) a written explanation of the circumstances in which the tag became damaged (in so far as they are known to the endorsement holder).
- (5) If a tag is damaged after being attached to a rock lobster, so that the tag number is not fully legible, the endorsement holder must:
  - (a) immediately remove the tag from the rock lobster and destroy it by cutting the locking mechanism in half, and
  - (b) give or send the tag to the Secretary within 7 days, together with a notice that includes:
    - (i) the tag number of the tag concerned, and
    - (ii) a written explanation of the circumstances in which the tag became damaged (in so far as they are known to the endorsement holder), and

- (c) attach a new tag to the rock lobster, in the manner required by this Plan.
- (6) If a tag falls off a rock lobster after attachment, and it is not possible to re-attach the tag in the required manner, the endorsement holder must:
  - (a) immediately destroy the tag by cutting the locking mechanism in half, and
  - (b) give or send the tag to the Secretary within 7 days, together with a notice that includes a written explanation of the circumstances, and
  - (c) attach a new tag to the rock lobster, in the manner required by this Plan.
- (7) An endorsement holder must not use a tag knowing that the tag has been reported to the Secretary as being lost, stolen or destroyed.
- (8) A contravention of this clause is an endorsement holder offence.

## **28 Production of tags when required**

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

## **29 Shareholder not to give tag to another person**

- (1) A shareholder must not give to another person a tag issued for the use of the shareholder or the shareholder's nominated fisher, except as permitted by subclause (2).
- (2) A shareholder may give a tag to any of the following persons:
  - (a) the nominated fisher of the shareholder,
  - (b) a crew member, but only for the purpose of enabling the crew member to attach the tag in the presence of the shareholder to a rock lobster taken on behalf of the shareholder,
  - (c) the Secretary,
  - (d) an officer of NSW Fisheries.
  - (e), (f) (Repealed)
- (3) For the purposes of section 65 of the Act, contravention of this clause is an offence.
- (4) This clause does not prevent a shareholder from giving a tag that is attached to a rock

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

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

### **30 Nominated fisher not to give tag to another person**

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

### **31 Unused tags to be returned to Secretary at end of fishing period**

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

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

- (1) If the endorsement of an endorsement holder in the fishery is cancelled or suspended, the endorsement holder must immediately surrender any unused tags in the endorsement holder's possession or control:
- (a) in the case of an endorsement holder who is the nominated fisher of a

shareholder—to the Secretary or the shareholder, or

(b) in any other case—to the Secretary or a person authorised by the Secretary to accept the surrender of tags on the Secretary's behalf.

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

### **Division 3 Administration**

#### **33 Issue of tags for use on rock lobster**

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

#### **34 Application for issue of tags**

- (1) An application for tags may be made by a shareholder.
- (2) The application is to be made in an approved form.
- (3) The Secretary may refuse to issue any tags until any management charge, or instalment of the management charge, that is payable by the shareholder has been paid.

#### **35 Number of tags issued to correspond with quota**

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



### **35A Shareholder to provide tags to nominated fisher**

- (1) A shareholder who is issued tags by the Secretary must, as soon as reasonably practicable after being so issued, ensure that any nominated fisher of the shareholder is provided with those tags.
- (2) For the purposes of section 65 of the Act, contravention of this clause is an offence.

### **36 Tags property of NSW Fisheries**

Tags remain the property of the Secretary.

### **37 (Repealed)**

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

### **38 Definition**

In this Part:

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

**inshore lobster trap** means a trap that consists of a rectangular base or floor not exceeding 1.2 metres by 1.2 metres (or a circular base or floor not exceeding 1.2 metres in diameter) and that does not contain any compartments or contain any material that would prevent the free movement of rock lobsters within the trap.

**offshore lobster trap** means a trap, other than an inshore lobster trap, not exceeding 2 metres in length, 2 metres in width and 2 metres in depth that consists of mesh (having a measurement from one plain wire to the opposite plain wire of not less than 50 millimetres) and that does not contain any compartments or contain any material that would prevent the free movement of rock lobsters within the trap.

### **39 Lobster to be taken by hand or trap only**

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

### **40 Commercial lobster trap**

- (1) It is lawful for an endorsement holder to use a trap for taking rock lobster for sale in the waters specified in the Table to this clause if the trap complies with the description set out in relation to those waters in that Table and the conditions referred to in subclauses (2) and (2A) (if applicable) are complied with.
- (2) A commercial lobster trap must not be set or used unless its position is indicated by:

- (a) a buoy that:
  - (i) is moored so as to be positioned above the trap, and
  - (ii) has a diameter above the water of not less than 100 millimetres, and
  - (iii) has a weight of not less than 50 grams suspended not less than 1.5 metres under the float so that no rope is floating on the surface of the water, and
  - (iv) displays the number allocated to the endorsement holder by NSW Fisheries for use on the trap, in clearly legible figures that are not less than 50 millimetres in height and are of a colour that clearly contrasts with that of the buoy, or
- (b) a plastic tag, or a concrete block, that:
  - (i) is of a size and type approved by the Secretary, and
  - (ii) is submerged, and
  - (iii) displays the number allocated to the endorsement holder by NSW Fisheries for use on the trap, in clearly legible figures that are not less than 50 millimetres in height.

(2A) If the commercial trap is set or used in waters specified in a register maintained by the Secretary for the purposes of this clause and notified in writing to shareholders, the position of the trap must be indicated as specified in subclause (2) (b) and not as specified in subclause (2) (a).

(3) Subclauses (2) and (2A) do not apply in respect of a trap used that is set or used in ocean waters more than 10 metres deep (contour) if the trap (including any rope and float attached to the trap) is submerged and set using a time release mechanism.

(4) It is also lawful for an endorsement holder to use a trap for taking other fish (other than any prohibited size fish) in ocean waters more than 10 metres deep (contour) if the other fish are taken by the trap when it is being lawfully used for taking rock lobster.

(5) For the purposes of this Plan or any other instrument under the Act, a trap referred to in this clause may be referred to as a commercial lobster trap.

**Table**  
**Commercial lobster trap**

<b>Waters</b>	<b>Description of trap</b>
---------------	----------------------------

Any waters (other than inland waters and any waters more than 10 metres deep (contour)) Inshore lobster trap

Ocean waters more than 10 metres deep (contour) Offshore lobster trap

**Note—**

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

Note that “prohibited size fish” are fish that do not comply with the maximum or minimum size requirements (if any) specified for the fish in clause 11 of the [Fisheries Management \(General\) Regulation 2010](#).

#### **40A Use of lobster traps 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 use of a lobster trap or commercial lobster trap to take fish is prohibited.

#### **41 Traps to be used only if endorsement holder’s quota has not been taken**

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

#### **42 Storage of live rock lobsters**

- (1) An endorsement holder must not set or use a holding pen for the purpose of storing live rock lobsters unless:
  - (a) the dimensions of the holding pen do not exceed the dimensions of a commercial lobster trap that may lawfully be used to take rock lobster in those waters, and
  - (b) the holding pen is sealed (so that rock lobsters cannot get in or out), and

- (c) the holding pen displays the endorsement holder's name and the number allocated to the endorsement holder by NSW Fisheries for use on the holding pen in clearly visible figures.
- (2) An endorsement holder must record the following on his or her daily log sheet, on each occasion that he or she adds any live rock lobster to a holding pen:
  - (a) the latitude and longitude of each such pen,
  - (b) the number of rock lobsters added to a pen,
  - (c) the tag number of each rock lobster added to a pen.
- (2A) An endorsement holder must record the following on his or her daily log sheet, on each occasion that he or she removes any live rock lobster from a holding pen:
  - (a) the number of rock lobsters removed from a pen,
  - (b) the tag number of each rock lobster removed from a pen.
- (3) If an endorsement holder changes the location of a holding pen used by him or her to store live rock lobsters, the endorsement holder must, as soon as practicable, record the new location of the holding pen on his or her daily log sheet.
- (4) An endorsement holder must record the following on his or her daily log sheet, on each occasion that he or she adds any live rock lobster to a place or thing other than a holding pen:
  - (a) the latitude and longitude of the place or thing,
  - (b) the number of rock lobsters added to the place or thing.
- (5) A contravention of this clause is an endorsement holder offence.

#### **43 Inspection of storage facilities by fisheries officers**

- (1) A fisheries officer may require an endorsement holder to make available for inspection by the fisheries officer, at a time and place specified by the fisheries officer, any holding pen or thing used by the endorsement holder to store rock lobster taken for sale by the endorsement holder.
- (2) It is a condition of a commercial fishing licence that has an endorsement that the endorsement holder comply with such a requirement.

#### **44 Use of fishing boats**

- (1) An endorsement holder must not use a boat to take rock lobster for sale unless the boat displays the letters "RL" immediately before "LFB" on both sides of the outside of the bow or wheelhouse in clearly visible letters that are of a colour that contrasts with

that of the boat and that are:

- (a) in the case of a boat that is more than 7.5 metres long—not less than 300 mm in height and 150 mm in width, or
- (b) in the case of any other boat—not less than 150 mm in height.

(1A) This clause applies in addition to any boat marking requirements in the *Fisheries Management (General) Regulation 2010*.

(2) An endorsement holder may transfer rock lobster from the boat used by the endorsement holder to a lighter for the purpose of landing the rock lobster, but only while the boat used by the endorsement holder is moored at the place where it is ordinarily moored when not in use.

(3) An endorsement holder must not cause or permit any rock lobster to be transferred from one boat to another, except as authorised by subclause (2).

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

(5) In this clause:

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

#### **45 Endorsement holders to carry measurement devices**

(1) An endorsement holder must not take or attempt to take rock lobster for sale unless the endorsement holder has in his or her possession an instrument suitable for measuring the length of the rock lobster in the manner provided for by the *Fisheries Management (General) Regulation 2010*.

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

#### **Note—**

The *Fisheries Management (General) Regulation 2010* sets a minimum and maximum size for certain species of rock lobster and prescribes the method of measuring rock lobster. The length of the carapace of the rock lobster is to be measured along the straight line from the point of union of the second antennae to the centre of the posterior margin of the carapace (ignoring any hairs attached to the carapace) (see clause 11 (3) (g) of that Regulation).

#### **46 Use of fish spikes and other implements**

(1) An endorsement holder must not, while on board a boat being used to take fish in the fishery, use a knife, fish spike, club or similar implement to pierce, impale, beat or otherwise injure any fish or other organism taken in any catch.

(2) Subclause (1) does not apply to the use of a knife to kill or process any fish taken in the catch that are to be retained.

- (3) An endorsement holder must not, while on board a boat being used to take fish in the fishery, be in possession of a fish spike, club or similar implement that could be used to pierce, impale, beat or otherwise injure any fish or other organism.
- (4) Subclause (3) does not apply to the possession of a knife.
- (5) It is a defence to a prosecution of an offence constituted by contravening subclause (3) if the person charged proves that the implement concerned was in his or her possession for a purpose that is not unlawful.
- (6) It is a condition of an endorsement that the endorsement holder does not contravene this clause.

#### **46A Bag limits for certain species**

- (1) For the purposes of section 17 (1) of the Act, the daily limit of a species of fish described in Column 1 of Schedule 2 is, when the fish are taken by an endorsement holder from waters specified opposite that species of fish in Column 3 of that Schedule, the quantity specified next to that species in Column 2 of that Schedule.
- (2) For the purposes of section 17B (1) (a) of the Act, the possession limit of fish of a species described in Column 1 of Schedule 2 is, when the fish are taken by an endorsement holder from waters specified opposite that species of fish in Column 3 of that Schedule, the quantity specified next to that species in Column 2 of that Schedule.
- (3) For the purposes of section 21 (1) (d) of the Act, it is a defence to a prosecution for an offence under section 18 (2) of the Act that is constituted by being in possession of fish in contravention of a possession limit imposed by this Plan if the person charged satisfies the court that the fish were lawfully taken from outside the fishery.

#### **47 (Repealed)**

#### **48 Provision and custody 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) 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.
- (3) Subclause (2) 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.

(4) A contravention of subclause (2) is an endorsement holder offence.

(5) For the purposes of section 65 of the Act, contravention of subclause (1) is an offence.

(6) In this clause:

**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.

#### **49 Use of docket books and daily log sheets**

(1) An endorsement holder must ensure that when taking or attempting to take rock lobster 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.

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

(a) immediately after landing any rock lobster taken on that day or transferring the rock lobster to or from a holding pen, or

(b) if the endorsement holder did not take any rock lobster on that day, immediately after returning to shore,

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

(3) An endorsement holder who disposes of rock lobster during a month must on the last day of the month complete the appropriate sections of the daily log sheet in accordance with the instructions in the docket book to show the total amount of rock lobster disposed of during that month.

(4) An endorsement holder must forward a copy of a completed daily log sheet, by facsimile transmission or other means as may be approved by the Secretary, to the Secretary within 48 hours after the end of the day on which the daily log sheet was required to be completed.

(5) An endorsement holder who takes no rock lobster during a calendar month because

the endorsement holder did not attempt to take rock lobster 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) forward a copy of the completed report, by facsimile transmission or other means as may be approved by the Secretary, to the Secretary within 48 hours after the end of that day.

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

(7) 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.

#### **50 Real time reporting of catch**

(1) For the purposes of section 124A (1) of the Act, an endorsement holder is required to provide the following information to the Secretary in relation to each catch of eastern rock lobster taken by the endorsement holder (a ***catch report***):

- (a) the registration number of the commercial fishing licence of the endorsement holder,
- (b) the number of the fishing business of which the endorsement is a component,
- (c) the weight of the catch of eastern rock lobster taken (and not discarded).

(2) For the purposes of section 124A (3) (a) of the Act, a catch report must be made:

- (a) before any of the catch is placed in a holding pen, or
- (b) before any of the catch is taken out of New South Wales, or
- (c) within 2 hours of landing the catch,

whichever occurs first.

(3) For the purposes of section 68 (6A) of the Act, it is a condition of an endorsement that the endorsement holder must remain in the immediate vicinity of the catch until the catch report has been made.

(4) For the purposes of section 65 of the Act, contravention of subclause (3) is an offence.

(5) For the purposes of this clause, the weight of a catch of eastern rock lobster is to be determined by accurate scales and rounded to 1 decimal place.

#### **50A Reporting when real time reporting system not available**

For the purposes of section 124A (4) of the Act, if an endorsement holder cannot make a



catch report under clause 50 because the real time reporting system malfunctions or is not available, the endorsement holder must:

- (a) complete the form approved by the Secretary for the purposes of this clause in accordance with any instructions in the form, and
- (b) send the completed form to the Secretary within the time specified in the form.

#### **51 False or misleading information**

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

### **Part 8 General**

#### **52 Share forfeiture offences**

- (1) For the purposes of section 75 (1) of the Act, the offences described in Column 1 of the Table to this clause are designated as share forfeiture offences.
- (2) If a shareholder, or a nominated fisher of a shareholder, is convicted of a share forfeiture offence, the Secretary is to record in the Share Register, under the name of the shareholder concerned, a description of the offence and the number of demerit points applicable to the offence, as specified in Column 2 of the Table to this clause next to the offence concerned.
- (3) Demerit points are not cancelled by the expiration of time.
- (4) The Minister may order that all shares in the fishery held by a shareholder be forfeited to the Minister if the total number of demerit points recorded under the name of the shareholder reaches or exceeds 6 demerit points.
- (5) Following the sale of any forfeited shares by public tender, as provided for by section 75B (2) of the Act, and after deduction of the expenses reasonably incurred in connection with the sale, the Minister is authorised to pay to any person (other than the shareholder or shareholders) who had an interest in the shares such part of the purchase price as the Minister considers approximate to the value of the person's interest in the shares.

#### **Table Share forfeiture scheme**

<b>Column 1</b>	<b>Column 2</b>
<b>Description of share forfeiture offence</b>	<b>Number of demerit points</b>

Offence against section 40S of the Act (Authority holder not to contravene quota)	2
Offence arising from a contravention of clause 22 of this Plan (Rock lobster to have tag attached)	2
Offence arising from a contravention of clause 49 of this Plan (Daily log sheet)	2
Offence arising from a contravention of clause 66 of the <i>Fisheries Management (General) Regulation 2010</i>	3
Any offence against the Act or the regulations under the Act that is punishable by imprisonment	3

**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.

## **52A TAF Committee to make TAC determination**

- (1) The TAF Committee is required to make a TAC determination for eastern rock lobster.
- (2) A TAC determination is to be made in respect of each fishing period.

**Note—**

Under section 40K of the Act, the Minister may direct the TAF Committee as to the matters to be taken into account when making a fishing determination.

## **53 Management charge**

- (1) The management charge payable under section 76 of the Act by shareholders in the fishery is not to exceed \$97 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 may be determined by the Minister):
    - (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).

**54 Community contribution**

- (1) For the purposes of section 77 of the Act, the community contribution is payable by each shareholder for each fishing period.
- (2) The community contribution is payable 2 months after the end of the fishing period, or on such later date as may be determined by the Minister.
- (3) (Repealed)
- (4) The community contribution for each subsequent fishing period is \$115.
- (5) Interest is payable on late payments of the community contribution at the rate payable from time to time in respect of judgments of the Supreme Court.
- (6) The community contribution may, with the approval of the Minister, be paid by instalments on such terms as the Minister approves.
- (7) If an instalment is not paid by the due date, the balance then becomes due and payable (together with the interest payable for late payment).

## 55 Endorsement holder offence

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

Maximum penalty: 100 penalty units.

## 56 Other restrictions on fishing

- (1) This Plan does not affect any restriction on the taking of rock lobster that has effect under the Act or the regulations under the Act.
- (2) In particular, the following provisions apply to the taking of rock lobster by an endorsement holder, unless otherwise specified in those provisions:
  - (a) the provisions of any fishing closure under section 8 of the Act that prohibits or restricts the taking of rock lobster in any waters, or
  - (b) the provisions of the *Fisheries Management (General) Regulation 2010* with respect to prohibited size for rock lobster.

### Note—

At present the minimum size for eastern rock lobster is 10.4 centimetres, the minimum size for southern rock lobster (male) is 11 centimetres and the minimum size for southern rock lobster (female) is 10.5 centimetres (see clause 11 of the *Fisheries Management (General) Regulation 2010*). It is an offence under the Act for a person to have any rock lobster that is less than the minimum size in his or her possession or to sell any rock lobster that is less than the minimum size. Eastern rock lobster is also subject to a maximum size of 18 centimetres.

In addition, clause 96 of the *Fisheries Management (General) Regulation 2010* makes it an offence to take, sell or be in possession of any rock lobster carrying ova externally. It is also an offence to be in possession of a rock lobster from which any ova have been deliberately removed.

## 56A Adoption of certain provisions of Supporting Plan

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

- (a) Part 2A,
- (b) Part 3,
- (c) clause 21,
- (d) clause 22.

## 57 Amendment of Plan

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

## Part 9 Savings and transitional

### 58 Quota arrangements for 2017/2018 fishing period

- (1) The determination of total allowable catch for eastern rock lobster made by the TAC Committee for the 2017/2018 fishing period has effect as if it had been made by the TAF Committee under clause 14 of this Plan as substituted by the amending Regulation.
- (2) Accordingly, the determination is taken to be a TAC determination for the purposes of Part 2A of the Act.
- (3) The allocation of quota among shareholders for the 2017/2018 fishing period made by the Minister under section 78 of the Act (as in force at the time) has effect as if it had been made by the Secretary under clause 15 of this Plan as substituted by the amending Regulation.
- (4) Accordingly, the quota allocated to each shareholder is taken to be quota for the purposes of Part 2A of the Act.
- (5) Any transfer of quota in respect of the 2017/2018 fishing period that was duly made before 6 October 2017 has effect as if it had been made under clause 18 of this Plan as substituted by the amending Regulation.
- (6) In this clause:

**2017/2018 fishing period** means the period of 1 August 2017 to 31 July 2018.

**amending Regulation** means the [Fisheries Management Legislation Amendment \(Quota Management\) Regulation 2017](#).

### 59 General saving

- (1) A reference in this Plan to an endorsement includes an endorsement given before the commencement of this Plan that had effect immediately before the commencement of this Plan.
- (2) A reference in this Plan to a tag includes a tag issued by the Secretary before the commencement of this Plan for attachment to rock lobsters taken for sale.
- (3) A nomination of a fisher to take rock lobster from the fishery on behalf of a shareholder that had effect immediately before the commencement of this Plan continues in force despite that commencement, and may be revoked at any time by the shareholder. A reference in this Plan to a nominated fisher includes a person who

is the subject of such a nomination.

(4) (Repealed)

**60 (Repealed)**

**Schedule 1 Waters in which use of lobster trap prohibited**

(Clause 40A)

Iluka—Woody Bay

The whole of the waters of Woody Bay enclosed by a line drawn from the broad arrow mark engraved in the rock at the north easterly end of the Woody Head camping ground (29°21.890'S, 153°22.440'E), then in a northerly direction for approximately 300 metres to the broad arrow mark engraved in the rock labelled FD near Seagull Hole (29°21.780'S, 153°22.430'E), then in a south-westerly direction to the Maritime Authority of NSW navigation buoy (29°21.850'S, 153°22.274'E), then in a south-westerly direction to the post marked "NSWF" on the foreshore (29°21.940'S, 153°22.260'E), then along the mean high water mark to the point of commencement.

Evans River—Entrance

The waters of Evans River including its creeks and tributaries, from a line drawn between the most northerly points of the eastern and western breakwaters at the entrance to Evans River, upstream to the Elm Street road bridge.

Coffs Harbour Entrance

All waters within the following boundaries:

Commencing at the northern extremity of the eastern breakwater (30°18.535'S, 153°09.164'E) then northerly to position 30°18.200'S, 153°09.100'E, then easterly to position 30°18.200'S, 153°09.500'E, then southerly to position 30°18.800'S, 153°09.500'E, then westerly to position 30°18.800'S, 153°09.100'E, then northerly to the point of commencement, but exclusive of all land area so enclosed.

Coffs Harbour—Harbour

The whole of the waters of Coffs Harbour, west of a line drawn from the northern extremity of the eastern breakwater (30°18.535'S, 153°09.164'E), north to Muttonbird Island, but exclusive of waters enclosed by the following bearings:

30°18.400'S, 153°08.800'E

30°18.500'S, 153°08.800'E

30°18.500'S, 153°09.100'E

30°18.400'S, 153°09.100'E

Crowdy Head Boat Harbour	<p>The whole of the waters of the boat harbour at Crowdy Head and the adjoining South Pacific Ocean up to a line drawn from the most northern extremity of the southern breakwater to the most western extremity of the northern breakwater, that part of the South Pacific Ocean extending 100 metres in a westerly direction from the abovementioned line, and also that part of the South Pacific Ocean extending 100 metres on the seaward side of the breakwaters of the Crowdy Head boat harbour from the beginning of the breakwaters to their extremities.</p>
Wallis Lake	<p>The whole of the waters within the following boundaries: Commencing at the entrance to Wallis Lake at the eastern extremity of the northern breakwater and bounded then by that breakwater and a part of the foreshores of the village of Tuncurry generally southerly to the prolongation of the western side of Wharf Street; then by a line bearing approximately 239 degrees to the north-eastern corner of Oyster Lease 71.295; then by a line bearing approximately 168 degrees to the north-western corner of Oyster Lease 70.434 and by a line bearing approximately 155 degrees across the water to the south-western corner of Oyster Lease 57.295 on Godwin Island; then by the northern foreshore of that island north-easterly to its most northern point; then by a line bearing 60 degrees to the foreshore of the village of Forster at the prolongation of the southern boundary of Section 27; then by that foreshore generally northerly to the southern breakwater, by that breakwater north-easterly to its eastern extremity and by a line across the entrance to the point of commencement.</p>
Ex-HMAS Adelaide Reserve	<p>The whole of the waters enclosed by the following coordinates:</p> <p>33°27.887'S, 151°27.301'E,</p> <p>33°27.767'S, 151°27.374'E,</p> <p>33°27.852'S, 151°27.574'E,</p> <p>33°27.973'S, 151°27.502'E.</p>
Hawkesbury River—Brisbane Water/ Broken Bay	<p>That part of the Hawkesbury River Water/Broken Bay) north of a line drawn between Little Box Head and the northernmost point of Mount Ettalong.</p>
Dee Why Lagoon, Curl Curl Lagoon and Manly Lagoon	<p>The whole of the waters of Dee Why Lagoon, Curl Curl Lagoon and Manly Lagoon together with their affluents and tributaries.</p>
Port Jackson (Sydney Harbour)	<p>The whole of 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.</p>

Bellambi Point

The whole of the waters adjacent to Bellambi Point from a line drawn from the northernmost point of the breakwater nearest to Bellambi Point boat ramp in a direction of 55 degrees north-easterly for a distance of 150 metres, then in a direction of 360 degrees due north for a distance of 85 metres to a line bearing 270 degrees due west for a distance of 280 metres, then in a direction of 180 degrees due south to the foreshore at the mean high water mark, then along the foreshore in a generally easterly direction to the breakwater, then along the breakwater at the mean high water mark to the point of commencement.

## Schedule 2 Bag limits

(Clause 46A)

Column 1	Column 2	Column 3
Species of fish	Daily limit and possession limit	Waters
Blue swimmer crab ( <i>Portunus armatus</i> ).	0.	All waters.
Eastern sea garfish ( <i>Hyporhamphus australis</i> ).	0.	All waters.
Longfin river eel ( <i>Anguilla reinhardtii</i> ).	0.	All waters.
Mud crab ( <i>Scylla serrata</i> ).	0.	All waters.
Shortfin river eel ( <i>Anguilla australis</i> ).	0.	All waters.
Spanner crab ( <i>Ranina ranina</i> ).	0.	All waters.
Wobbegong shark ( <i>Orectolobus</i> spp.).	6 comprised of any single species or a combination of species.	All waters.
Australian sardine ( <i>Sardinops neopilchardus</i> ).	0.	All waters.
Bass grouper ( <i>Polyprion americanus</i> ).	0.	All waters.
Hapuku ( <i>Polyprion oxygeneios</i> ).	0.	All waters.
Bigeye ocean perch ( <i>Helicolenus barathri</i> ).	0.	All waters.
Blue-eye trevalla ( <i>Hyperoglyphe antarctica</i> ).	0.	All waters.
Pink ling ( <i>Genypterus blacodes</i> ).	0.	All waters.
Gemfish ( <i>Rexea solandri</i> ).	0.	All waters.



Tiger flathead ( <i>Platycephalus richardsoni</i> ).	0.	All waters.
Bluespotted flathead ( <i>Platycephalus caeruleopunctatus</i> ).	0.	All waters.
Eastern school whiting ( <i>Silago flindersi</i> ).	0.	All waters.
Stout whiting ( <i>Silago robusta</i> ).	0.	All waters.