

**1996—No. 33**

**FISHERIES MANAGEMENT ACT 1994—REGULATION\***

(Relating to the limited access stage of the abalone share management fishery and to sea urchin and turban shell)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Fisheries Management Act 1994, has been pleased to make the Regulation set forth hereunder.

R. S. AMERY, M.P.,  
Acting Minister for Mineral Resources, and Minister for Fisheries.

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**Commencement**

1. This Regulation commences on 9 February 1996.

**Amendments relating to limited access stage of abalone share management fishery**

2. The Fisheries Management (General) Regulation 1995 is amended:
  - (a) by inserting before clause 127 the following heading:

**Division 1—General**

- (b) by inserting after clause 130 the following clause:

**Nomination of commercial fisher by holder of shares**

130A. (1) A nomination under section 69 of the Act (a nomination by a shareholder of a commercial fisher to take fish on behalf of the shareholder in a share management fishery) is to be accompanied by a fee of \$300.

(2) Until the commencement of the management plan for a fishery, only one commercial fisher may be nominated to take fish in the fishery on behalf of the shareholder at any one time.

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\* Disallowed. Legislative Council, 30.4.96.

(c) by inserting after clause 132 (1) the following subclause:

(1A) In addition, in the case of shares in the abalone share management fishery, the transferee must be a person who is not already a shareholder in the fishery.

(d) by inserting after clause 134 the following Division:

**Division 2—Abalone share management fishery—limited access stage**

**Application of Division**

134A. This Division applies to the abalone fishery but only while it is a limited access fishery (within the meaning of section 54 of the Act).

**Definitions**

134B. In this Division:

**“abalone fishery”** means the abalone share management fishery specified in Schedule 1 to the Act;

**“Shareholder”** means a holder of shares in the abalone fishery.

**Note:** Immediately before the commencement of this Division abalone were a restricted fishery under Division 1 of Part 8. The Act provides that a share management fishery that is also a restricted fishery ceases to be a restricted fishery on the commencement of limited access to the share management fishery. (See section 55 of the Act.) Further, an endorsement of a commercial fishing licence to take abalone in the restricted fishery becomes, on the fishery ceasing to be a restricted fishery, an endorsement under Part 3 of the Act to take abalone in the share management fishery.

The Minister may give an endorsement to a shareholder or to a person duly nominated in the Share Register by the shareholder to take fish in the abalone fishery on behalf of the shareholder. Section 68 of the Act provides that an application for endorsement is to be made in a form and manner approved by the Minister. An endorsement remains in force, unless sooner suspended or cancelled, for a specified fishing period. Until the commencement of the management plan for the fishery, this period is to be determined by the Minister. Until the plan commences, the Minister may also determine the reasons for which an endorsement may be suspended or cancelled.

A shareholder may transfer his or her shares to another person (who is not already a shareholder), provided the shareholder transfers all of his or her shares in the fishery to that person. (See section 71 of the Act and clause 132 of this Regulation.) The person acquiring the shares can then apply for an endorsement. (See section 54 of the Act and clause 130 of this Regulation).

**Fee to accompany application for endorsement**

134C. (1) For the purposes of section 68 (5) of the Act, the prescribed fee is \$19,500 in respect of each period, or further period, of 12 months in respect of which an endorsement is given.

(2) If an endorsement is given for a period of less than 12 months, the prescribed fee is an appropriate proportion of the fee referred to in subclause (1). That is, the proportion that the period for which the endorsement is given bears to the period of 12 months.

#### **Director may approve payment of fee in instalments**

134D. (1) The Director may approve the payment of the fee referred to in clause 134C in instalments payable at such times as the Director determines.

(2) If a person fails to pay an instalment on or before the date on which it is due, the total amount of all instalments unpaid on that date becomes due and payable.

#### **Quotas for abalone**

134E. (1) The Director may from time to time determine the maximum quantity of abalone that may be taken in the abalone fishery by or on behalf of a shareholder during a particular period.

(2) The Director is to give written notice of such a quota determination to the shareholder concerned and to my person? who holds a licence that is endorsed under Part 3 of the Act for the taking of abalone in the fishery on behalf of the shareholder.

(3) Quotas are to be determined for shareholders in proportion to their shareholdings in the abalone fishery.

(4) However, subclause (3) does not prevent the Director from adjusting the quota of a person in an appropriate manner to take account of the person exceeding his or her quota in a previous period or to take account of any mistake in the calculation of quota in a previous period.

(5) A quota (or any unused part of it) may not be carried over from one period to another.

(6) For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that is endorsed under Part 3 of the Act for the taking of abalone in the abalone fishery that the licensee (whether or not a shareholder) does not cause the quota of a shareholder to be exceeded.

(7) Such a condition has effect on and from the date notice in writing of the quota determination for the shareholder is served on the shareholder or, if the shareholder has duly nominated a commercial fisher to take abalone in the abalone fishery on the shareholder's behalf, the person so nominated.

**Transfer of quota**

134F. (1) A quota for a period (or any part of it) is, to such extent as may be advised from time to time by the Director, transferable within that period in accordance with this clause.

(2) An application for transfer of quota is to be made in writing to the Director jointly by the shareholder seeking to transfer quota and the shareholder seeking to acquire quota. The application must specify the amount of quota to be transferred.

(3) The application is to be accompanied by a fee of \$50.

(4) The Director may transfer the quota or refuse to transfer the quota.

(5) The Director transfers quota by giving notice in writing of the transfer to the shareholders concerned.

(6) The Director must also give notice in writing of the transfer to any person who holds a commercial fishing licence that is endorsed under Part 3 of the Act for the taking of abalone in the abalone fishery on behalf of a shareholder concerned.

(7) The conditions of a commercial fishing licence that is endorsed under Part 3 of the Act for the taking of abalone in the abalone fishery are taken to be amended in accordance with a transfer of quota, with effect on and from the date notice of the transfer is served on the licensee.

**Special licence conditions for shareholders who nominate persons to take abalone on their behalf**

134G. For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that the licensee, if he or she is a shareholder who has duly nominated another commercial fisher to take abalone in the abalone fishery on the shareholder's behalf

- (a) must not assist, encourage or permit that other commercial fisher to contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence in connection with the taking of abalone in the abalone fishery; and
- (b) must take all reasonable steps to ensure that that other commercial fisher does not contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence in connection with the taking of abalone in the abalone fishery.

- (e) by inserting after clause 138 the following note:

**Note:** Shareholders in the abalone share management fishery and persons nominated by them to take abalone in the fishery on their behalf are subject to certain additional licence conditions. See Division 2 of Part 6.

### **Amendments relating to sea urchin and turban shell**

**3.** The Fisheries Management (General) Regulation 1995 is further amended:

- (a) by inserting at the end of the note to clause 138 (as inserted by clause 2 (e) of this Regulation) the following paragraph:  
Persons who nominate another person to fish for them in the sea urchin and turban shell restricted fishery are subject to similar special licence conditions (see clause 171B).
- (b) by omitting from the heading to Division 1 of Part 8 the word "Abalone" and by inserting instead the words "Sea urchin and turban shell";
- (c) by omitting the definition of "abalone" from clause 160;
- (d) by omitting the definition of "endorsement" from clause 160 and by inserting instead the following definition:

**"endorsement"** means an endorsement on a commercial fishing licence authorising the holder of the licence to take sea urchin and turban shell for sale in the restricted fishery, and includes an endorsement in force under this Division immediately before abalone ceased to be a restricted fishery;

- (e) by omitting the definition of "original endorsement" from clause 160;
- (f) by omitting from the definitions of "quota" and "total allowable catch" in clause 160 the word "abalone" wherever occurring and by inserting instead the words "sea urchin and turban shell";
- (g) by omitting the note to clause 160 and by inserting instead the following note:

**Note:** When this Regulation commenced, abalone, sea urchin and turban shell were a restricted fishery under this Division. Afterwards, abalone became a share management fishery by amendment to Schedule 1 to the Act. The Act provides that a share management fishery that is also a restricted fishery ceases to be a restricted fishery on the commencement of limited access to the share management fishery (see section 55). Accordingly, abalone ceased to be a restricted fishery under this Division when limited access to the abalone share management fishery commenced. (For provisions relating to the limited access stage of the abalone fishery see Division 2 of Part 6 of this Regulation.) Sea urchin and turban shell continue to be a restricted fishery under this Division and an endorsement that was in force immediately before abalone ceased to be a restricted fishery continues as an endorsement under this Division.

- (h) by omitting clause 161 and by inserting instead the following clause:

**Sea urchin and turban shell are a restricted fishery**

161. For the purposes of section 111 of the Act, sea urchin and turban shell are declared to be a restricted fishery.

- (i) by inserting at the end of clause 162 the following subclause:

(2) This clause does not prevent the Minister from giving a temporary endorsement to a commercial fisher who is nominated (under clause 171A) by the holder of an endorsed licence to take sea urchin and turban shell for sale on his or her behalf.

- (j) by omitting from clause 163 (1) the word “abalone” and by inserting instead the words “sea urchin and turban shell”;

- (k) by omitting clause 163 (2) and by inserting instead the following subclause:

(2) This clause does not prevent the Minister from requiring the TAC Committee to determine the total allowable catch under section 28 (3) of the Act.

- (l) by omitting clauses 164 and 165 and by inserting instead the following clause:

**Invitation to apply for new endorsements**

164. (1) The Minister may, by public notice, invite commercial fishers to apply for an endorsement in the restricted fishery, having regard to the maximum number of commercial fishing licences that may be endorsed in respect of the fishery under clause 162.

(2) The Minister may take action under this clause in anticipation of an increase in the maximum number of commercial fishing licences that may be endorsed in respect of the fishery.

- (3) The notice is to specify:

(a) how an application for endorsement is to be made; and

(b) the period in which the Minister will receive applications for endorsement (being a period that commences after the day the notice is published); and

(c) the basis on which priority for the issue of endorsements will be determined.

(4) Without limiting subclause (3) (c), the notice may provide for the issue of endorsements by public tender, subject to such conditions as are specified in the notice.

(5) The Minister may, subject to clause 162, endorse the commercial fishing licence of a successful applicant.

(6) The Minister may refuse to endorse the commercial fishing licence of a successful applicant unless the applicant has paid an endorsement fee of \$300.

(m) by inserting after clause 166 (1) the following subclause:

(1A) The application is to be accompanied by a fee of \$300.

(n) by omitting from clause 166 (2) the words “clauses 162 and 167” and by inserting instead the words “clause 162”;

(o) by inserting after clause 166 (3) (b) the following word and paragraph:

; or

(c) the applicant has not paid any fee due and payable in connection with the endorsement.

(p) by omitting clauses 167 and 168;

(q) by omitting from clause 170 the word “abalone” and by inserting instead the words “sea urchin and turban shell”;

(r) by inserting after clause 170 (2) the following subclause:

(3) A quota (or any unused part of it) may not be carried over from one period to another.

(s) by inserting at the end of clause 171 the following subclause:

(7) For the purposes of this clause, a reference to the holder of an endorsed licence is taken to include any person whose endorsement is suspended temporarily under clause 171A because he or she has nominated another person to take sea urchin and turban shell on his or her behalf. The other person may not apply to transfer quota under this clause.

(t) by inserting after clause 171 the following clause:

**Holder of endorsed licence may nominate another person to take fish on his or her behalf**

171A. (1) The holder of an endorsed licence may apply in writing to the Minister for approval for another commercial fisher to take sea urchin and turban shell on behalf of the holder of the endorsed licence for a specified period.

(2) Only one commercial fisher may be nominated at any one time by the holder of the endorsed licence.

(3) The Minister may refuse to approve the application if the person nominated:

- (a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act; or
- (b) has been convicted of an offence relating to commercial fishing operations under the laws of the Commonwealth or of another State or of a Territory; or
- (c) has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage of fishing gear or a boat; or
- (d) has, in the opinion of the Minister, contravened a condition of his or her commercial fishing licence or of an endorsement on that licence; or
- (e) already holds an endorsed licence.

(4) If the Minister approves the application, the Minister may give the commercial fisher nominated a temporary endorsement, with effect during the period specified in the endorsement, and suspend temporarily the endorsement of the person who nominated the commercial fisher to take fish on his or her behalf.

(5) The Minister may, on the written request of the person who nominated the other person to take sea urchin and turban shell on his or her behalf, cancel the temporary endorsement given to that other person and reinstate the endorsement of the person who nominated the other person. This subclause does not prevent the Minister from cancelling or suspending an endorsement under clause 173.

(6) For the purposes of section 112 (2) of the Act, it is a condition of an endorsement that is given to a person temporarily under this clause that the person does not cause the quota of the person who nominated him or her under this clause to be exceeded.

(7) Any takings of sea urchin and turban shell for sale by a person who holds a temporary endorsement under this clause are, for the purposes of section 51 of the Act (Catch history) and subclause (6), considered to be the takings of the person who nominated him or her.

**Special licence conditions for endorsement holders who nominate persons to take sea urchin and turban shell on their behalf**

171B. For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that the licensee, if he

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or she has duly nominated another commercial fisher to take sea urchin and turban shell on his or her behalf:

- (a) must not assist, encourage or permit that other commercial fisher to contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence or of an endorsement on that licence in connection with the taking of such sea urchin and turban shell; and
  - (b) must take all reasonable steps to ensure that that other commercial fisher does not Contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence or of an endorsement on that licence in connection with the taking of sea urchin and turban shell.
- (u) by omitting clause 172 (c) and by inserting instead the following paragraph:
- (c) has not paid any fee due and payable in connection with the endorsement.
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**EXPLANATORY NOTE**

The object of this Regulation is to provide for the commencement of limited access to the abalone share management fishery and the continuation of sea urchin and turban shell as a restricted fishery under the Fisheries Management Act 1994.

At present, abalone, sea urchin and turban shell (sometimes called “turban snail”) are together a restricted fishery. This means that a commercial fisher cannot take abalone, sea urchin or turban shell for sale unless the fisher has an endorsement on his or her fishing licence authorising him or her to do so.

Abalone is also a share management fishery under Schedule 1 to the Act. The Act provides that if a share management fishery is also a restricted fishery, it ceases to be a restricted fishery when limited access to the share management fishery commences. Limited access commences, on a date appointed by the Minister, after shares have been provisionally issued in the share management fishery. When limited access commences, access to the fishery is limited to persons who hold licences that are endorsed for the taking of abalone in the share management fishery. A shareholder is entitled to be endorsed to take abalone in the fishery or to nominate another commercial fisher to be endorsed to take abalone on the shareholder's behalf.

This Regulation makes provision for the commencement of limited access to the abalone share management fishery. It sets out special licence conditions for shareholders or other persons who hold an endorsed licence (such as compliance with quota determinations) and provides for the imposition of a fee for endorsements in the share management fishery and other miscellaneous matters relating to the fishery.

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The Regulation also provides for the continuation of sea urchin and turban shell as a restricted fishery (despite abalone ceasing to be a restricted fishery), including the continuation of endorsements in the restricted fishery. New provisions give the Minister power to invite commercial fishers to apply for new endorsements in the fishery and allow a fisher to nominate another person to take sea urchin and turban shell on his or her behalf in the fishery.

This Regulation is made under the Fisheries Management Act 1994, including section 40 (relating to general management of fisheries), section 71 (5) (relating to transfers and other dealings in shares), section 116 (relating to restricted fisheries), section 289 (the general regulation making power) and the sections referred to in the Regulation.

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