



New South Wales

Fisheries Management (General) Amendment (Licensing) Regulation 1996

under the

Fisheries Management Act 1994

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

Bob Martin

Minister for Mineral Resources and Minister for Fisheries

Explanatory note

The object of this Regulation is to set out new criteria for the issue of a commercial fishing licence.

At present, one of the grounds on which an individual may obtain a commercial fishing licence is that the individual has sufficient boats and catch history to maintain a viable fishing operation. This allows a person who acquires an established fishing business to obtain a commercial fishing licence. This Regulation replaces this ground for obtaining a licence with more specific criteria. Specifically, it authorises the grant of a commercial fishing licence to a person who owns (or acquires) the whole of a recognised fishing operation. (See Schedule 1 [2]) The types of fishing businesses that qualify as recognised fishing operations are set out in Schedule 1 [3].

Another way in which a person may establish eligibility for a commercial fishing licence is by satisfying the Minister that, if a licence is not issued to the person, an available fisheries resource would not be utilised. That criteria is amended to require the person also to satisfy the Minister that the manner in which it is proposed to utilise the fisheries resource will not threaten the sustainability of the resource and will not result in an inequitable allocation of the resource. (See Schedule 1 [2])

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The Regulation also allows commercial fishing licences to be issued for training purposes, to enable the taking of bait for lawful tuna fishing and to enable persons to skipper boats in certain fisheries. (See Schedule 1 [2] and [4])

The Regulation makes it clear that a person who sells his or her shares in a share management fishery to another person must also transfer to the purchaser the whole of the fishing business that is associated with those shares. (See Schedule 1 [1])

This Regulation is made under the *Fisheries Management Act 1994*, including section 71 (5) (regulations relating to transfers and other dealings in shares), section 103 (1) (c) (regulations may authorise an individual to hold a commercial fishing licence), section 104 (8) (regulations may make provision for or with respect to commercial fishing licences) and section 289 (the general regulation making power).

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1 Name of Regulation

This Regulation is the *Fisheries Management (General) Amendment (Licensing) Regulation 1996*.

2 Amendment of Fisheries Management (General) Regulation 1995

The *Fisheries Management (General) Regulation 1995* is amended as set out in Schedule 1.

3 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 2)

[1] Clause 132 Transfers and other dealings in shares

Omit clause 132 (1) (b). Insert instead:

- (b) the transferee acquires the whole of the shareholder's fishing business (that is, licensed fishing boats, associated fishing gear and associated catch history) that the Director determines to be associated with the taking of fish in those fisheries and to be a separate and identifiable business.

[2] Clause 135 Who may hold commercial fishing licence

Omit clause 135 (b) and (c). Insert instead:

- (b) an individual who satisfies the Minister that he or she (either alone or together with other individuals) owns the whole of a recognised fishing operation,
- (c) an individual who satisfies the Minister that if a licence is not issued to the person an available fisheries resource would not be utilised and that the manner in which the individual proposes to utilise the fisheries resource will not threaten its sustainability and will not result in an inequitable allocation of the resource,
- (c1) an individual who satisfies the Minister that he or she requires the licence for the purpose of training a person who has purchased his or her fishing business,
- (c2) an individual who satisfies the Minister that he or she requires the licence for the purpose of training to become a commercial fisher.

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- (c3) an individual who is authorised under any law of the Commonwealth to take fish for sale in the fishery known as the “Commonwealth tuna long line fishery” and who satisfies the Minister that he or she requires a commercial fishing licence in order to be able to use fishing gear lawfully to take bait,
- (c4) an individual who satisfies the Minister that he or she is employed as a skipper on a fishing boat that may be used lawfully to take fish in any one of the following fisheries:
- (i) the fishery known as the “offshore prawn trawl fishery” (but only if the licence for the fishing boat has an endorsement from the Director of a kind known as “P1” or “P2”),
 - (ii) the fishery known as the “Commonwealth tuna long line fishery”,
 - (iii) the fishery known as the “south east trawl fishery” (but only if a quota for the taking of fish in that fishery has been imposed on the person),

[3] Clause 135 (2)

Insert before the note at the end of clause 135:

- (2) For the purposes of this clause, a ***recognised fishing operation*** is a fishing business (that is, a business that includes one or more licensed fishing boats, associated fishing gear and associated catch history) that the Director determines to be a separate and identifiable business and that falls into any of the following categories:
- (a) the catch history associated with the business (as determined by the Director in accordance with this clause) exceeds 5 tonnes, or \$10,000 in value, in at least 2 years out of the years 1986 to 1990 (inclusive) and 1 year out of the years 1991 to 1993 (inclusive),

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Schedule 1 Amendments

- (b) at least one of the licensed fishing boats that form part of the business may lawfully be used to take fish in any one of the following fisheries:
 - (i) the fishery known as the “offshore prawn trawl fishery” (but only if the licence for the fishing boat has an endorsement from the Director of a kind known as “P1” or “P2”),
 - (ii) the fishery known as the “estuary prawn trawl fishery”,
 - (iii) the fishery known as the “Commonwealth tuna long line fishery”,
 - (iv) the fishery known as the “south east trawl fishery”(but only if a quota for the taking of fish in that fishery has been imposed on the person).

- (3) The catch history associated with a fishing business is the historical takings of fish for sale by or in connection with a fishing business. The catch history is to be determined by the Director in such manner as the Director considers appropriate, having regard to the records, kept by the Director, of fish taken for sale by any person involved in the business, or of fish taken for sale by use of a licensed fishing boat operated by the business, or to a combination of both. If a fishing business is sold by a person, the catch history associated with that business is transferable only in accordance with guidelines issued by the Director from time to time.

[4] Clause 141 Classes of commercial fishing licence

Insert “, (c1), (c2), (c3), (c4)” after “(c)” in the matter relating to class 3 in clause 141.