



New South Wales

Fisheries Management (General) Amendment (Inland Restricted Fishery) Regulation 1999

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, MP.,
Minister for Fisheries

Explanatory note

The object of this Regulation is to declare a new restricted fishery. The restricted fishery, to be known as the inland restricted fishery, consists of the following:

- (a) the taking of yabbies for sale from inland waters,
- (b) the taking of carp for sale from inland waters,
- (c) the taking of native finfish for sale from inland waters.

If a fishery is a restricted fishery, a person may take fish for sale in the fishery only if the person is authorised, by means of an endorsement on his or her commercial fishing licence, to take fish for sale in the fishery. This Regulation provides for different classes of endorsement in the restricted fishery, eligibility for an endorsement, the grounds on which the Minister may refuse to issue an endorsement or suspend or cancel an endorsement, transferability and other matters relating to endorsements.

The Regulation enables certain endorsement holders to use unlicensed crew members on their boats to assist them in taking yabbies and carp for sale.

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The Regulation also provides for the establishment of a Management Advisory Committee for the restricted fishery and the membership of that Committee.

This Regulation is made under the *Fisheries Management Act 1994*, including sections 111, 112, 114, 116, 230 and 289 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Fisheries Management (General) Amendment (Inland Restricted Fishery) Regulation 1999*.

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 135 Who may hold commercial fishing licence

Insert after clause 135 (1) (c4):

- (d) an individual who satisfies the Minister that he or she is eligible for an endorsement in the inland restricted fishery,

[2] Clause 138 Prescribed conditions of commercial fishing licence

Insert at the end of clause 138 (1) (c) (iv):

, or

- (v) to take yabbies or carp in the inland restricted fishery in accordance with paragraph (c2),

[3] Clause 638 (1) (c2)

Insert after clause 138 (1) (c1):

- (c2) the holder of the licence must not use any unlicensed crew member on a boat being used by the licence holder to take yabbies or carp in the inland restricted fishery unless:
 - (i) if the boat is being used to take yabbies, the licence holder is using no more than one unlicensed crew member to assist in that purpose and the licence holder is authorised to take yabbies in the inland restricted fishery pursuant to a class A endorsement in the fishery, or
 - (ii) if the boat is being used to take carp, the licence holder is authorised to take carp in the inland restricted fishery pursuant to a class A, class B or class D endorsement in the fishery,

[4] Clause 141 Classes of commercial fishing licences

Omit “or (c4)” from the matter relating to class 3 licences.
Insert instead “, (c4) or (d)”.

[5] Clause 145 Prescribed conditions of fishing boat licences

Insert at the end of clause 145 (1) (d) (iv):

, or

- (v) to take yabbies or carp in the inland restricted fishery in accordance with clause 138 (1) (c2),

[6] Part 8, Division 3A

Insert after Division 3 of Part 8:

Division 3A Inland restricted fishery**200A Definitions**

In this Division:

carp means all species of carp, including goldfish, and any other species of finfish not indigenous to inland waters of New South Wales, such as redfin perch (*Perca fluviatilis*).

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take fish for sale in the restricted fishery.

native finfish means any species of finfish indigenous to inland waters in New South Wales, such as Murray cod (*Maccullochella peelii*), golden perch (*Macquaria ambigua*) and bony herring (*Nematalosa erebi*), and excludes carp.

restricted fishery means the restricted fishery declared under this Division.

yabby means a fish of the species *Cherax destructor*.

200B Inland fishery is a restricted fishery

- (1) For the purposes of section 111 of the Act, the inland fishery is declared to be a restricted fishery.
- (2) The inland fishery comprises the following:
 - (a) the taking of yabbies for sale from inland waters,
 - (b) the taking of carp for sale from inland waters,
 - (c) the taking of native finfish for sale from inland waters.
- (3) The taking of native finfish for sale from inland waters ceases to be part of the inland fishery on 1 September 2001 and, accordingly, ceases to be part of the restricted fishery on that date.

Note. Native finfish are currently the subject of a fishing closure order under section 8 of the Act (see Government Gazette No 158 of 6 November 1998, at page 8703). The order prohibits the taking of freshwater native finfish from non-tidal waters by all methods and takes effect on 1 September 2001.

- (4) The restricted fishery may be referred to in this Regulation as the inland restricted fishery.

200c Types of endorsement in restricted fishery

The following classes of endorsement are available in the restricted fishery:

- **Class A: Yabby and carp endorsement (transferable).** This endorsement authorises the holder to take yabbies and carp for sale from inland waters and is transferable in accordance with clause 200L.
- **Class B: Carp endorsement (transferable).** This endorsement authorises the holder to take carp for sale from inland waters and is transferable in accordance with clause 200L.

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- **Class C: Yabby and carp endorsement (non-transferable).** This endorsement authorises the holder to take yabbies and carp for sale from inland waters, but not from inland waters that are closed to commercial fishing by an order in force under section 8 of the Act (whether made before or after the commencement of this Division). This endorsement is not transferable.
 - **Class D: Carp endorsement (non-transferable).** This endorsement authorises the holder to take carp for sale from inland waters as specified in the endorsement. This endorsement is not transferable.
 - **Class E: Native finfish endorsement (non-transferable).** This endorsement authorises the holder to take native finfish for sale from inland waters and is not transferable. This endorsement is not available after 31 August 2001.

Note. All class E endorsements are cancelled on 1 September 2001.

200D Eligibility for endorsement

- (1) **Class A endorsement.** A person is eligible for a class A endorsement if the Minister is satisfied that:
 - (a) the person holds a commercial fishing licence that authorises the person to take fish for sale from inland waters, and
 - (b) the licence is unrestricted (that is, the conditions of the licence do not prevent the person from taking any particular species of fish or require the person to take finfish only while under supervision).

However, if the person was invited by the Director to elect to participate in the restricted fishery, and failed to elect to do so in accordance with that invitation by 30 October 1998, the person is not eligible for a class A endorsement (but may be eligible for a class C or class E endorsement).

- (2) **Class B endorsement.** A person is eligible for a class B endorsement if the Minister is satisfied that the person is eligible for assistance under the scheme known as the Carp Production Incentive Scheme, conducted by NSW Fisheries, or is a member of a group that is eligible for assistance under that scheme.
- (3) **Class C endorsement.** A person is eligible for a class C endorsement if the Minister is satisfied that:
- (a) the person holds a commercial fishing licence that authorises the person to take fish for sale from inland waters, and
 - (b) the licence is unrestricted (that is, the conditions of the licence do not prevent the person from taking any particular species of fish or require the person to take fish only while under supervision).
- (4) **Class D endorsement.** A person is eligible for a class D endorsement if the Minister is satisfied that the person holds a commercial fishing licence or permit that authorises the person to take carp for sale from inland waters.
- (5) **Class E endorsement.** A person is eligible for a class E endorsement if the Minister is satisfied that:
- (a) the person holds a commercial fishing licence that authorises the person to take native finfish for sale from inland waters, and
 - (b) the licence is unrestricted (that is, the conditions of the licence do not prevent the person from taking any particular species of native finfish or require the person to take native finfish only while under supervision).
- (6) **Persons who surrender their commercial fishing licences not eligible.** A person is not eligible for an endorsement under this clause if the person enters into an agreement (whether before or after the commencement of this clause) to surrender his or her commercial fishing licence to the Director.

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- (7) **Closing date for applications under this clause.** A person is not eligible for an endorsement under this clause unless the person applies for an endorsement, in accordance with clause 200G (1), by 30 April 1999. However, failure to do so does not prevent the person from becoming eligible for an endorsement by means of a ballot or tender under clause 200E or by means of a transfer under clause 20QL.

200E Ballot or tender for issue of further endorsements

- (1) The Minister may, at any time after considering the status of stock levels in the restricted fishery:
- (a) conduct a ballot for the issue of further class A or class B endorsements in the restricted fishery (or both), or
 - (b) call for public tenders for the issue of further class A or class B endorsements in the restricted fishery (or both).
- (2) Notice of the ballot or public tender is to be published in the Gazette.
- (3) The conditions of the ballot or public tender are to be determined by the Minister and published in the Gazette notice.
- (4) A person is eligible for an endorsement in the restricted fishery if the person is successful in such a ballot or is a successful tenderer.

200F General restrictions on eligibility

- (1) Despite anything to the contrary in this Division, a person is not eligible for, and may not hold:
- (a) both a class A and a class B endorsement, or
 - (b) both a class C and a class D endorsement, or
 - (c) both a transferable endorsement (ie a class A or class B endorsement) and a non-transferable endorsement (ie a class C, class D or class E endorsement).

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- (2) A person is not eligible for an endorsement unless the person is a natural person.

Note. Section 103 (1) of the Act prevents corporations from holding commercial fishing licences.

- (3) Division 4C of this Part does not apply in respect of the restricted fishery.

200G Applications for endorsement

- (1) An application for an endorsement is to be made to the Minister in a form approved by the Director.
- (2) The Minister may endorse the commercial fishing licence of a person only if the person satisfies the eligibility requirements for an endorsement.
- (3) The Minister may refuse to endorse the commercial fishing licence of a person who is otherwise eligible if the person:
- (a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
 - (b) has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) has not paid any fee due and payable in connection with the endorsement.

200H Endorsement of licence for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (*a current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director.

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- (3) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (4) The Minister may refuse an application only if:
- (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
 - (b) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement or a condition of his or her commercial fishing licence, or
 - (c) the applicant has been 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
 - (d) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (e) the applicant has not paid any fee due and payable in connection with the endorsement, or
 - (f) in the case of an application relating to a class B endorsement, the applicant has, in the opinion of the Minister:
 - (i) failed to comply with any agreement relating to the taking of carp that the holder made with the Director or with NSW Fisheries. or
 - (ii) not attempted to take carp for a period of 12 months, or
 - (g) the applicant is no longer eligible for the endorsement.
- (5) If application is duly made for the endorsement of a commercial fishing licence for a further period and the licence is not so endorsed before the expiration of the current endorsement:

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- (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.
- (6) A commercial fishing licence cannot be endorsed with a class E endorsement for any period that extends beyond 31 August 2001 and, despite subclause (5), a class E endorsement does not continue in force after that day.

200I Endorsement fees

- (1) The following fees are payable for an endorsement in the restricted fishery:
 - (a) in the case of a class A endorsement—\$2,000,
 - (b) in the case of a class B endorsement—\$250,
 - (c) in the case of a class C endorsement—\$1,000,
 - (d) in the case of a class D endorsement—\$250,
 - (e) in the case of a class E endorsement—\$1,000.
- (2) The fee is payable in respect of each period, or further period, of 12 months in respect of which the endorsement is given.
- (3) If the endorsement is given for a period of less than 12 months, the fee payable is an appropriate proportion of the fee referred to in subclause (1) (that is, the proportion that the period for which the licence is endorsed bears to the period of 12 months).
- (4) The fee is to be paid before the endorsement is given.
- (5) The Director may approve the payment of the fee by instalments payable at such times as the Director approves, in accordance with guidelines approved from time to time by the Director.

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

200J Duration of endorsement

- (1) An endorsement takes effect from the date it is given and remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension and unless it is sooner cancelled.
- (2) All class E endorsements are taken to be cancelled on 1 September 2001, unless sooner cancelled.

200K Cancellation and suspension of endorsements

The Minister may cancel or suspend an endorsement if:

- (a) the endorsement holder has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
- (b) the endorsement holder has, in the opinion of the Minister, contravened a condition of the endorsement or of his or her commercial fishing licence, or
- (c) the endorsement holder has been 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
- (d) in the case of a class B endorsement, the endorsement holder has, in the opinion of the Minister:
- (i) failed to comply with any agreement relating to the taking of carp that the holder made with the Director or with NSW Fisheries, or
- (ii) not attempted to take carp for a period of 12 months. or

- (e) the endorsement holder ceases to be eligible for the endorsement.

200L Transfer of class A and class B endorsements

- (1) The holder of a commercial fishing licence with a class A or class B endorsement may transfer that endorsement to another person (being a natural person), but only with the approval of the Director.
- (2) An application for the Director's approval is to be made to the Director in a form approved by the Director.
- (3) The Director may refuse to approve the transfer if:
 - (a) the person to whom the endorsement is to be transferred has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
 - (b) the person to whom the endorsement is to be transferred has been 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) the person to whom the endorsement is to be transferred already holds a class A or class B endorsement in the restricted fishery, or
 - (d) the person to whom the endorsement is to be transferred already holds a non-transferable endorsement in the restricted fishery, unless the person agrees to the cancellation of all non-transferable endorsements held by the person, or
 - (e) the transfer does not comply with any guidelines relating to the transfer of endorsements that are from time to time approved by the Director.

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- (4) If the transfer of an endorsement is approved, the person transferring the endorsement ceases to be eligible for the endorsement and the person to whom the endorsement is transferred becomes eligible for the endorsement.
 - (5) If the person to whom the endorsement is to be transferred already holds a non-transferable endorsement, the person ceases to be eligible for the non-transferable endorsement.
 - (6) An endorsement that is suspended or cancelled is not transferable under this clause.
 - (7) In this clause:
non-transferable endorsement means a class C, class D or class E endorsement.

200M Transfer fee

- (1) The fee payable for an approval of a transfer of an endorsement is \$2,500.
- (2) The fee is to be paid before the transfer is approved.
- (3) The Director may approve the payment of the fee by instalments payable at such times as the Director approves, in accordance with guidelines approved from time to time by the Director.
- (4) If a person fails to pay an instalment on or before the due date, the total amount of all instalments unpaid on that date becomes due and payable.

200N Class A, B, C and D endorsement holders must not take or possess native finfish

- (1) For the purpose of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that is endorsed with a class A, class B, class C or class D endorsement that the holder of the endorsed licence does not:
 - (a) take native finfish for sale, or
 - (b) have native finfish in his or her possession for sale.

Note. Contravention of a condition of a commercial fishing licence is an offence under section 104 (7) of the Act and attracts a

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maximum penalty of 100 penalty units. Contravention of a licence condition is also grounds for cancellation or suspension of an endorsement.

Section 105 of the Act provides that the fact that a person holds a commercial fishing licence is evidence that fish taken by the person or in the person's possession were fish taken or in possession for sale.

- (2) This clause does not apply in respect of the holder of a commercial fishing licence with a class E endorsement, but only while the class E endorsement is in force.

Note. All class E endorsements are cancelled on 1 September 2001.

2000 Transitional arrangements

- (1) A person who, immediately before the commencement of this Division, was authorised to take fish for sale in inland waters, is taken to be authorised to take fish for sale in inland waters, subject to any restrictions that had effect in respect of the person immediately before that commencement, but only until:
- (a) 30 April 1999, or
 - (b) the person is given an endorsement (of any class) in the restricted fishery, or
 - (c) the person's application for an endorsement in the restricted fishery is refused by the Minister,
- whichever happens first.
- (2) If a person referred to in subclause (1) applies for an endorsement on or before 30 April 1999, and the application is not granted or refused by that date, the person is taken to be authorised to take fish for sale in inland waters, subject to any restrictions that had effect in respect of the person immediately before the commencement of this Division, but only until:
- (a) 30 June 1999, or
 - (b) the person is given an endorsement (of any class) in the restricted fishery, or
 - (c) the person's application for an endorsement is refused by the Minister,
- whichever happens first.

[7] Clause 212T Braining endorsement

Insert “, except the inland restricted fishery” after “all restricted fisheries” in subclause (1).

[8] Part 8, Division 46

Insert after the heading to Division 4C:

Note. This Division does not apply in respect of the inland restricted fishery.

[9] Clause 231, Table

Insert in Part B of the Table, after the matter relating to the estuary prawn trawl restricted fishery:

Inland restricted fishery	3	1 member representing class A endorsement holders 1 member representing class B endorsement holders 1 member representing persons who hold a class C endorsement, a class D endorsement or a class E endorsement (or any combination of the three)
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[10] Clause 261 NNon-electedmembersbers

Insert after clause 261 (3):

- (4) This clause does not apply in respect of the MAC for the inland restricted fishery.

[11] Clause 261A

Insert after clause 261:

261 A Non-elected members—inlandrestricted fishery

In the case of the MAC for the inland restricted fishery, non-elected members are to be appointed from the following interested groups:

- (a) NSW Fisheries,
- (b) groups representing recreational fishers,
- (c) the Nature Conservation Council,
- (d) groups representing indigenous Australians.

[12] Clause 267C Voting

Insert at the end of clause 267C:

- (2) In the case of the MAC for the inland restricted fishery, a decision supported by a majority of votes cast at a meeting of a MAC at which a quorum is present, and by a majority of industry members for the time being, is a decision of the MAC.

[13] Part 11, Division 5

Insert after Division 4 of Part 11:

Division 5 Transitional

267D Inland restricted fisheryMA C—transitionarrangements

- (1) The Director may, after the commencement of Division 3A of Part 8, appoint 3 persons to hold office as members of the Management Advisory Committee for the inland restricted fishery on an interim basis until the next Management Advisory Committee elections are held.
- (2) Of those 3 persons:
 - (a) one is to be a commercial fisher appointed to represent persons who hold a class A endorsement in the restricted fishery, being a commercial fisher who holds a class A endorsement in the fishery, and
 - (b) one is to be a commercial fisher appointed to represent persons who hold a class B endorsement in the restricted fishery, being a commercial fisher who holds a class B endorsement in the fishery, and
 - (c) one is to be a commercial fisher appointed to represent persons who hold a class C, class D or class E endorsement in the restricted fishery (or any combination of those endorsements), being a commercial fisher who holds a class C, class D or class E endorsement in the fishery (or any combination of those endorsements).

- (3) A member appointed under this clause (an *interim member*) holds office for the term specified in his or her instrument of appointment (not exceeding 18 months) and ceases to hold office when an industry member is elected to take his or her place on the Management Advisory Committee.
- (4) While an interim member holds office, he or she has all the functions of an industry member and is taken, for the purposes of clauses 267B (Quorum) and 267C (Voting) to be an industry member.
- (5) This clause ceases to have effect when all of the first industry members of the Management Advisory Committee for the inland restricted fishery have been elected and appointed by the Director.

