

South Australia

# Fisheries Management (Charter Boat Fishery) Regulations 2016

under the *Fisheries Management Act 2007*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *Fisheries Management (Charter Boat Fishery) Regulations 2016*.

### 3—Interpretation

- (1) In these regulations, unless the contrary intention appears—

**Aboriginal and Torres Strait Islander corporation** has the same meaning as in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth;

**Act** means the *Fisheries Management Act 2007*;

**charter boat** means a boat that is used for recreational fishing under charter boat fishing agreements;

**charter boat fishing agreement** means an agreement made by a person in the course of a business under which the person agrees, for money or other consideration, to facilitate recreational fishing by persons by the provision of charter boat fishing services to the persons;

**charter boat fishing business** means the business of facilitating recreational fishing by persons by the provision of charter boat fishing services to the persons under charter boat fishing agreements;

**charter boat fishing services** means carrying persons as passengers on a boat and otherwise assisting or enabling the persons to engage in recreational fishing from the boat;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**current company extract** means a document prepared by the Australian Securities and Investment Commission from its national database kept under the Corporations Act that contains current details of the following in relation to a company:

- (a) the company's name;
- (b) the address of the company's registered office;
- (c) the date of registration of the company;
- (d) the State or Territory in which the company is taken to be registered under the Corporations Act;
- (e) the company's Australian Company Number;
- (f) whether the company is a proprietary company or a public company;
- (g) the full name of each director of the company;
- (h) the full name of each secretary (if any) of the company;

**Department** means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the Act;

**eligible person** means—

- (a) a natural person or company carrying on a charter boat fishing business that was established on or before 28 November 2003; or
- (b) a natural person or company carrying on a charter boat fishing business that was in the process of being established on 28 November 2003; or
- (c) an Aboriginal and Torres Strait Islander corporation that—
  - (i) has a business plan for a charter boat fishing business; and
  - (ii) is a party to an indigenous land use agreement with the State under which it is agreed that a licence in respect of the fishery will be issued to the corporation; or
- (d) an Aboriginal and Torres Strait Islander corporation or incorporated association that—
  - (i) has a business plan for a charter boat fishing business; and
  - (ii) has been established by a native title group for the purpose of implementing an indigenous land use agreement with the State under which it is agreed that a licence in respect of the fishery will be issued to the corporation or association;

**fishery** means the Charter Boat Fishery constituted by these regulations;

**incorporated association** has the same meaning as in the *Associations Incorporation Act 1985*;

**indigenous land use agreement** means an indigenous land use agreement registered under Part 2 Division 3 of the *Native Title Act 1993* of the Commonwealth;

*policy of insurance* includes a cover note that is binding on the insurer.

- (2) In these regulations—
  - (a) unless the contrary intention appears, *company, director, proprietary company* and *public company* have the same respective meanings as in the Corporations Act;
  - (b) a reference to the *taking of aquatic resources* includes a reference to an act preparatory to, or involved in, the taking of the aquatic resources.

#### **4—Constitution of fishery**

- (1) The Charter Boat Fishery is constituted.
- (2) The Charter Boat Fishery consists of facilitating recreational fishing by persons by the provision of charter boat fishing services to the persons under charter boat fishing agreements.

#### **5—Application of regulations**

These regulations do not apply in relation to recreational fishing in inland waters.

#### **6—Issue of licences**

- (1) The Minister may issue licences in respect of the fishery.
- (2) Before granting a licence in respect of the fishery, the Minister must be satisfied of all of the following:
  - (a) that the applicant is an eligible person;
  - (b) if the applicant is a natural person, that the person is a fit and proper person to hold a licence in respect of the fishery;
  - (c) if the applicant is a body corporate, that every member of the governing body of the body corporate is a fit and proper person to be a member of the governing body of a body corporate that holds a licence in respect of the fishery.

#### **7—Transfer of licences**

- (1) Licences in respect of the fishery are transferable.
- (2) An application for consent to the transfer of a licence must be accompanied by—
  - (a) the licence to be transferred; and
  - (b) a form of return as required by regulation 13 completed by the holder of the licence up to the date of application; and
  - (c) if the transferee is a company—a current company extract relating to the transferee issued not more than 1 month immediately preceding the date of application.
- (3) The Minister may only consent to the transfer of a licence if satisfied as to the following:
  - (a) that any fees or other amounts payable in relation to the licence under the Act have been paid in full;
  - (b) that the licence to be transferred has not been suspended;

- (c) that no proceedings alleging an offence against the Act are pending or likely to be commenced in the State against the holder of the licence;
- (d) if the transferee is a natural person, that the transferee is at least 15 years of age and is a fit and proper person to hold a licence in respect of the fishery;
- (e) if the transferee is a body corporate, that every member of the governing body of the body corporate is a fit and proper person to be a member of the governing body of a body corporate that holds a licence in respect of the fishery;
- (f) if a boat is registered for use under the licence, that there is in force a policy of public liability insurance under which the transferee is insured or indemnified in an amount of at least \$10 000 000 in relation to death or bodily injury or property damage that may be caused by or arise out of the use of the boat under the licence.

## **8—Registration**

- (1) An application by the holder of a licence in respect of the fishery—
  - (a) to register a boat or device for use under the licence; or
  - (b) to register a person as a master of a boat that may be used under the licence,must be accompanied by the documents specified in the application form.
- (2) The Minister may only grant an application to register a boat for use under a licence in respect of the fishery if satisfied that there is in force a policy of public liability insurance under which the applicant is insured or indemnified in an amount of at least \$10 000 000 in relation to death or bodily injury or property damage that may be caused by or arise out of the use of the boat under the licence.

## **9—Revocation of registration**

- (1) The Minister may, on application by the holder of a licence in respect of the fishery, revoke the registration of—
  - (a) a boat or device used under the licence; or
  - (b) a person as a master of a boat that may be used under the licence.
- (2) An application for revocation of registration must—
  - (a) be made in a manner and form approved by the Minister; and
  - (b) be completed in accordance with the instructions contained in the form; and
  - (c) be accompanied by the documents specified in the application form.

## **10—Conditions limiting number of boats that may be used etc**

The Minister may impose conditions on a licence in respect of the fishery—

- (a) limiting the number of registered boats that may be used under the licence at any 1 time;
- (b) limiting the number of devices that may be carried on registered boats used under the licence and otherwise regulating the carrying of devices on such boats;

- (c) limiting the area of waters within which registered boats may be used under the licence.

### **11—Prohibition on use, possession etc of recreational rock lobster pot**

- (1) A person to whom this regulation applies must not, aboard a registered boat that is being used under a licence in respect of the fishery, use or have possession or control of a rock lobster pot that is registered in the name of that person for use for non-commercial fishing.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (2) This regulation applies to—
  - (a) the holder of the licence and any agent of the holder of the licence; and
  - (b) if the holder of the licence is not the registered master of the registered boat—the registered master of the registered boat.

### **12—Information to be provided—use of registered boat**

- (1) If a registered boat is, or is to be, used under a licence in respect of the fishery, the Department must be notified, in the manner and form, and at such times, as determined by the Minister, of the information specified by the Minister in the determination.
- (2) If the determination of the Minister made for the purposes of subregulation (1) is not complied with, the registered owner and registered master of the registered boat are each guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$500.

### **13—Periodic returns**

- (1) The holder of a licence in respect of the fishery must provide the Department with such returns in the manner and form, at such times and containing such information, as determined by the Minister.
- (2) The holder of a licence must keep a record of each return that the licence holder provides to the Department under this regulation in such manner, and for such period, as determined by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$500.

### **14—Provision relating to keeping of records**

A person required under these regulations to keep a record for a period of time must ensure that the record—

- (a) is maintained in a good condition and is legible; and
- (b) is kept so that it is readily accessible; and

(c) is produced for inspection by a fisheries officer on request.

Maximum penalty: \$2 500.

Expiation fee: \$210.

### **15—Minister's determinations**

- (1) The Minister may make a determination for the purposes of a regulation.
- (2) A determination may—
  - (a) be of general or limited application; and
  - (b) make different provision according to the persons, things or circumstances to which it is expressed to apply.
- (3) If the Minister makes a determination, notice of the determination—
  - (a) must be published on the Department's website; and
  - (b) may also be published in the Gazette.
- (4) As soon as practicable after a determination of the Minister is made, a notice in writing setting out the date on which notice of the determination is published and the terms of the determination must be given to the persons bound by the determination in a manner and form that, in the opinion of the Minister, will bring the determination to the attention of those persons.
- (5) The Minister may, by further determination, vary or revoke a determination made for the purposes of a regulation.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Fisheries Management (Charter Boat Fishery) Regulations 2016* revoked the following:

*Fisheries Management (Charter Boat Fishery) Regulations 2005*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2016	233	<i>Gazette 6.10.2016 p3953</i>	6.2.2017: r 2
<b>2017</b>	<b>222</b>	<b><i>Gazette 8.8.2017 p3183</i></b>	<b>15.1.2018: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>15.1.2018</i>
r 3		
r 3(1)		
Department	inserted by 222/2017 r 4	15.1.2018
r 9		
r 9(2)	varied by 222/2017 r 5	15.1.2018
rr 12 and 13	substituted by 222/2017 r 6	15.1.2018
rr 14 and 15	inserted by 222/2017 r 6	15.1.2018
<i>Sch 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>15.1.2018</i>