

South Australia

Fisheries Management (Vessel Monitoring Scheme) Regulations 2017

under the *Fisheries Management Act 2007*

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Schedule 1—Revocation of *Fisheries Management (Vessel Monitoring Scheme) Regulations 2007*

Legislative history

1—Short title

These regulations may be cited as the *Fisheries Management (Vessel Monitoring Scheme) Regulations 2017*.

2—Commencement

These regulations will come into operation on 15 January 2018.

3—Interpretation

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

Act means the *Fisheries Management Act 2007*;

approved means approved by the Minister under these regulations;

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

fishing season, in relation to a fishery referred to in the definition of ***prescribed fishing activity***, means any period during which the holder of a licence in respect of the fishery may lawfully engage in a prescribed fishing activity;

Inmarsat-C means the Inmarsat-C satellite system;

operating, in relation to a VMS unit fitted to a boat, means that the unit is capable of—

- (a) transmitting the geographical position and course of the boat as required; and
- (b) receiving and accurately responding to electronic data;

prescribed fishing activity—

- (a) in relation to a fishery authority in respect of the Marine Scalefish Fishery—means the taking of sardines in coastal waters for a commercial purpose;
- (b) in relation to a fishery authority in respect of the Miscellaneous Fishery—means the taking of giant crab in a giant crab fishing zone for a commercial purpose;
- (c) in relation to a fishery authority in respect of the Northern Zone Rock Lobster Fishery—means the taking of giant crab or rock lobster in the Northern Zone for a commercial purpose;
- (d) in relation to a fishery authority in respect of the Southern Zone Rock Lobster Fishery—means the taking of giant crab or rock lobster in the Southern Zone for a commercial purpose;
- (e) in relation to a fishery authority in respect of the Southern Zone Abalone Fishery—means the taking of abalone in the Southern Zone for a commercial purpose;

registered boat means—

- (a) a registered boat used under a fishery authority in respect of the Marine Scalefish Fishery subject to a condition fixing a sardine quota entitlement, other than a registered boat that—
 - (i) has an overall length not exceeding 7.5 metres; and
 - (ii) is not used for the purposes of taking sardines under that authority; or
- (b) a registered boat used under a fishery authority in respect of the Miscellaneous Fishery subject to a condition fixing a giant crab quota entitlement; or
- (c) a registered boat used under a fishery authority in respect of the Northern Zone Rock Lobster Fishery, other than a registered boat that—
 - (i) has an overall length not exceeding 7.5 metres; and
 - (ii) is not used for the purposes of taking giant crab or rock lobster under that authority; or
- (d) a registered boat used under—
 - (i) a fishery authority in respect of the Southern Zone Rock Lobster Fishery; and

- (ii) a Victorian licence; or
- (e) a registered boat used under a fishery authority in respect of the Southern Zone Abalone Fishery;

satellite communication system means a communication system designed for receiving and transmitting data via satellites and earth stations;

sleep mode, in relation to a VMS unit, means a standby mode in which the unit is only capable of operating at specified intervals;

system, in relation to a vessel monitoring system, includes component subsystems of—

- (a) power supply; and
- (b) communication hardware and software located at base stations and fitted on boats; and
- (c) communication service provider;

vessel monitoring system or ***VMS*** means a navigational measuring system that—

- (a) determines the geographical position and course of a boat; and
- (b) is capable of transmitting that information via a satellite communication system;

VMS administrator means the person for the time being designated by the Minister by notice published in the Gazette as the VMS administrator for the purposes of these regulations;

VMS unit means that component of a vessel monitoring system known as an automatic location communicator.

(2) In these regulations—

- (a) ***coastal waters, Marine Scalefish Fishery, sardine, sardine net*** and ***sardine quota entitlement*** have the same respective meanings as in the *Fisheries Management (Marine Scalefish Fisheries) Regulations 2017*;
- (b) ***giant crab, giant crab fishing zone, giant crab quota entitlement*** and ***Miscellaneous Fishery*** have the same respective meanings as in the *Fisheries Management (Miscellaneous Fishery) Regulations 2015*;
- (c) ***Northern Zone, Northern Zone Rock Lobster Fishery, rock lobster, Southern Zone Rock Lobster Fishery*** and ***Victorian licence*** have the same respective meanings as in the *Fisheries Management (Rock Lobster Fisheries) Regulations 2017*;
- (d) ***Southern Zone***—
 - (i) in relation to the Southern Zone Abalone Fishery—has the same meaning as in the *Fisheries Management (Abalone Fisheries) Regulations 2017*;
 - (ii) in relation to the Southern Zone Rock Lobster Fishery—has the same meaning as in the *Fisheries Management (Rock Lobster Fisheries) Regulations 2017*;

- (e) *Southern Zone Abalone Fishery* has the same meaning as in the *Fisheries Management (Abalone Fisheries) Regulations 2017*;
 - (f) a reference to **using a boat** for the purpose of engaging in a prescribed fishing activity includes a reference to using a boat for the purpose of engaging in an act preparatory to, or involved in, a prescribed fishing activity.
- (3) The Minister may, by notice published in the Gazette, approve or revoke an approval of—
- (a) a VMS unit; or
 - (b) a person as an installer of approved VMS units,
- for the purposes of these regulations.

4—Requirement to install VMS unit

- (1) The registered owner of a registered boat must ensure that the boat is fitted with an approved VMS unit installed by an approved installer.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) If a registered boat to which an approved VMS unit is fitted is used to take sardines under a fishery authority in respect of the Marine Scalefish Fishery subject to a condition fixing a sardine quota entitlement, the registered owner of the boat must ensure that a personal computer or data terminal capable of sending and receiving email via Inmarsat-C is connected to the VMS unit.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) This regulation does not apply in relation to a registered boat that is used only for either or both of the following purposes:
- (a) the transportation of persons, fish or devices to or from another registered boat;
 - (b) the setting of sardine nets.

5—Requirement to ensure operation of VMS unit during fishing season

- (1) The registered owner of a registered boat to which an approved VMS unit is fitted must ensure that the VMS unit is operating at all times during a fishing season.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) If a personal computer or data terminal is connected to a VMS unit fitted to a registered boat, the registered owner of the boat must ensure that, at all times while the VMS unit is in operation, the personal computer or data terminal is operating and able to send and receive email via Inmarsat-C.
Maximum penalty: \$5 000.
Expiation fee: \$315.

- (3) The registered owner of the registered boat must take reasonable measures to ensure that, if the VMS unit, or a personal computer or data terminal connected to the VMS unit, ceases to operate, the registered owner is made aware of that fact.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) The registered owner of the registered boat must, immediately after becoming aware that the VMS unit has ceased to operate, notify the Department, in the manner and form determined by the Minister, of that fact.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) This regulation does not apply to the registered owner of the registered boat while there is in force an approval under regulation 6 for the VMS unit to be switched off or in sleep mode.

6—Approval for VMS unit to be switched off or placed in sleep mode

- (1) The registered owner of a registered boat to which an approved VMS unit is fitted may, with the written approval of the Minister, cease to operate the VMS unit by switching off the VMS unit or placing the VMS unit in sleep mode.

- (2) If a VMS unit is switched off or placed in sleep mode under subregulation (1), a personal computer or data terminal connected to the VMS unit may be switched off.

- (3) An approval under this regulation—

(a) is subject to—

(i) a condition that the registered owner of the registered boat must not, while the VMS unit is switched off or in sleep mode, use the boat for the purpose of engaging in a prescribed fishing activity; and

(ii) such other conditions (if any) as are specified in the approval; and

(b) expires at the end of the period specified in the approval.

- (4) If a condition of an approval under this regulation is contravened or not complied with, the registered owner of the registered boat is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) If a condition of an approval under this regulation is contravened or not complied with, the Minister may, by notice given to the registered owner of the registered boat, revoke the approval.

- (6) Notice of the revocation of an approval may be given in any manner that the Minister considers appropriate (but must, if not given in writing, be confirmed in writing).

- (7) If the VMS unit fitted to a registered boat has been switched off or placed in sleep mode, the registered owner of the boat must, before using the boat for the purpose of engaging in a prescribed fishing activity, ensure that—

(a) the VMS unit has been switched on; and

(b) the operation of the VMS unit has been tested; and

- (c) the VMS administrator has confirmed that the VMS unit is operating.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (8) If—

- (a) the VMS unit fitted to a registered boat has been switched off or placed in sleep mode; and
- (b) a personal computer or data terminal connected to the VMS unit has been switched off,

the registered owner of the boat must, before using the boat for the purpose of engaging in a prescribed fishing activity, ensure that—

- (c) the personal computer or data terminal is switched on; and
- (d) the ability of the personal computer or data terminal to send and receive email via Inmarsat-C has been tested; and
- (e) the VMS administrator has confirmed that the personal computer or data terminal is able to send and receive email via Inmarsat-C.

Maximum penalty: \$5 000.

Expiation fee: \$315.

7—Requirement to test and confirm operation of VMS unit following servicing or repairing of boat

If a registered boat to which an approved VMS unit is fitted undergoes servicing or repairs while the VMS unit is switched on, the registered owner of the boat must, before using the boat for the purpose of engaging in a prescribed fishing activity, ensure that—

- (a) the operation of the VMS unit has been tested; and
- (b) the VMS administrator has confirmed that the VMS unit is operating.

Maximum penalty: \$5 000.

Expiation fee: \$315.

8—Power of Minister to require modification or replacement of VMS unit

- (1) The Minister may, by notice in writing given to the registered owner of a registered boat to which an approved VMS unit is fitted, require the registered owner to modify or replace the VMS unit within a specified period (being a period that is not less than 90 days from the date on which the notice is given).
- (2) The registered owner of a registered boat to whom a notice is given under subregulation (1) must not fail to comply with the requirements of the notice.

Maximum penalty: \$5 000.

Expiation fee: \$315.

9—VMS unit not to be installed, serviced, repaired etc except by approved installer

- (1) A person other than an approved installer must not—
- (a) install a VMS unit on a registered boat; or
 - (b) attach a seal to a VMS unit fitted to a registered boat; or
 - (c) service or repair a VMS unit fitted to a registered boat; or
 - (d) remove or interfere with—
 - (i) a VMS unit fitted to a registered boat; or
 - (ii) a seal on a VMS unit fitted to a registered boat.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) If subregulation (1) is contravened, the registered owner of the registered boat is guilty of an offence unless the registered owner proves that the contravention did not result from any failure on the registered owner's part to take all reasonable and practicable measures to prevent the contravention.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) The Minister, a fisheries officer or the VMS administrator may give directions with respect to the testing, servicing or repair of an approved VMS unit fitted to a registered boat to an approved installer or to the registered master or registered owner of the boat.
- (4) Subregulation (1) does not apply in relation to anything done in compliance with a direction given by the Minister, a fisheries officer or the VMS administrator under this regulation.

10—Requirement to ensure alternative means of communication with boat

- (1) The registered owner of a registered boat to which an approved VMS unit is fitted must ensure that—
- (a) there is on the boat a radio, telephone or other means of instantaneous electronic communication (*alternative means of communication*) capable of providing communication between the boat's crew and a fisheries officer or the VMS administrator at all times during a fishing season; and
 - (b) the Department is notified, in a manner and form, and within the time, determined by the Minister, of the call sign or other identifier that enables the boat's crew to be contacted by the alternative means of communication on the boat; and
 - (c) the Department is provided in a manner and form, and within the time, determined by the Minister, with the name and contact details of a person (the *nominated contact person*) that the Department may contact if there is reason to believe that the VMS unit has ceased to operate or the boat's crew cannot be contacted directly by a fisheries officer or the VMS administrator; and

- (d) the alternative means of communication on the boat is operating at all times during a fishing season; and
- (e) any direction given by a fisheries officer or the VMS administrator in respect of the alternative means of communication on the boat is complied with.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) The registered owner of the registered boat must, within 14 days of any change in the name or contact details of the nominated contact person, notify the Department in a manner and form determined by the Minister, of the new name or contact details (as the case may require).

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) If—

- (a) the VMS administrator has reason to believe that a VMS unit fitted to a registered boat has ceased to operate; and
- (b) the VMS administrator is unable to contact the boat's crew,

the VMS administrator may notify the nominated contact person that the VMS unit is not operating.

- (4) If the VMS administrator notifies the nominated contact person for a registered boat that the VMS unit fitted to the boat is not operating, the person must immediately inform the registered master of the boat by the alternative means of communication on the boat that the VMS unit is not operating.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) It is a defence in proceedings for an offence against subregulation (4) for the defendant to prove that communication using the alternative means of communication on a boat was not able to be carried out because of a systems failure beyond the control of any person.

11—Power of Minister to require manual reporting of vessel data etc

- (1) If the Minister is notified or becomes aware that the VMS unit fitted to a registered boat has ceased to operate, the Minister may give the registered owner or registered master of the boat such directions as the Minister considers necessary to ensure that the activities of the boat are able to be monitored.
- (2) Without limiting subregulation (1), the directions may include directions—
 - (a) requiring the geographical position and course of the boat to be notified to a fisheries officer at specified intervals during a specified period by the alternative means of communication on the boat;
 - (b) requiring the boat to be moved to a specified port.
- (3) Directions given under this regulation may be given in such manner as the Minister considers appropriate (but must, if not given in writing, be confirmed in writing).

12—Requirement to comply with directions

A person must not, without reasonable excuse, fail to comply with any directions given to the person by the Minister, a fisheries officer or the VMS administrator under these regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

13—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 they are 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.

Schedule 1—Revocation of *Fisheries Management (Vessel Monitoring Scheme) Regulations 2007*

The *Fisheries Management (Vessel Monitoring Scheme) Regulations 2007* are repealed.

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.

Principal regulations

Year	No	Reference	Commencement
2017	236	<i>Gazette</i> 8.8.2017 p3468	15.1.2018: r 2