



WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

1713



PERTH, FRIDAY, 30 MAY 2014 No. 78

SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 12.30 PM

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Fish Resources Management Act 1994

Fish Resources Management Amendment Regulations 2014

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Fish Resources Management Amendment Regulations 2014*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette* (***gazettal day***);
- (b) Parts 2 and 3 — on the day after gazettal day;
- (c) Part 4 — on 1 July 2014.

3. Regulations amended

These regulations amend the *Fish Resources Management Regulations 1995*.

Fish Resources Management Amendment Regulations 2014**Part 2** Miscellaneous amendments**r. 4**

Part 2 — Miscellaneous amendments**4. Regulation 3 amended**

- (1) In regulation 3 delete the definition of *waters of Shark Bay*.
- (2) In regulation 3 insert in alphabetical order:

Abrolhos Islands Fish Habitat Protection Area means the area of WA waters adjacent to the Abrolhos Islands from the high water mark to the seaward limits of the coastal waters of the State;

- (3) In regulation 3 in the definition of ***Freycinet Estuary*** after “means the waters of” insert:

the

- (4) In regulation 3 in the definition of ***waters of the Shark Bay eastern gulf*** delete “of Shark Bay”.
- (5) In regulation 3 in the definition of ***waters of the Shark Bay western gulf*** delete “of Shark Bay (including the waters of Denham Sound and Freycinet Estuary)”.

5. Regulation 14 amended

In regulation 14(1) in the Table item 4 delete “the waters of Shark Bay” and insert:

the waters of the Shark Bay western gulf and the waters of the Shark Bay eastern gulf

Fish Resources Management Amendment Regulations 2014

Miscellaneous amendments

Part 2**r. 6**

6. Regulation 16GE amended

In regulation 16GE(1) in the Table delete item 1 and insert:

1. Billfish (marlins, sailfish and spearfish) and 0 swordfish
Tuna, Southern Bluefin
Tuna, Longtail (Northern Bluefin)

7. Regulation 16H amended

In regulation 16H(2) delete “one pink snapper and that the pink snapper —” and insert:

2 pink snapper and that each of those pink snapper —

8. Regulation 16K amended

Delete regulation 16K(b) and insert:

- (b) in the Abrolhos Islands Fish Habitat Protection Area,

9. Regulation 57 deleted

Delete regulation 57.

Fish Resources Management Amendment Regulations 2014**Part 2** Miscellaneous amendments**r. 10**

10. Regulation 64AA inserted

At the end of Part 4 Division 8 insert:

64AA. No fish taken for recreational purpose to be at certain premises

- (1) In this regulation —

commercial premises means premises at which a person engages for a commercial purpose in an activity mentioned in regulation 64(2)(d) to (i).

- (2) A person must not, at commercial premises, be in possession of fish that were taken for a recreational purpose.

Penalty: In the case of an individual, a fine of \$5 000 or, in the case of a body corporate, a fine of \$10 000 and in either case, the penalty provided in section 222 of the Act.

- (3) For the purposes of subregulation (2) fish is to be taken to have been taken for a recreational purpose if no record of the purchase or receipt of the fish has been kept under regulation 64.
- (4) It is a defence in proceedings for an offence under subregulation (2) for the person charged to prove that the person was in possession of the fish on a part of the premises that is a residence.

Fish Resources Management Amendment Regulations 2014

Miscellaneous amendments

Part 2**r. 11****11. Regulation 64CA inserted**

At the beginning of Part 4A Division 2 insert:

64CA. Prohibited fishing methods

A person must not fish using —

- (a) a firearm; or
- (b) a jag hook unless the jag hook is attached to a lure or is baited.

Penalty: a fine of \$2 000.

12. Regulation 64J amended

In regulation 64J(d) delete “of Shark Bay”.

13. Regulation 69A inserted

After regulation 68 insert:

69A. Classes of fish prescribed (Act s. 92A(4))

- (1) In this regulation —

live import list means the list of specimens that are to be taken to be suitable for live import established under the *Environmental Protection and Biodiversity Conservation Act 1999* (Commonwealth) section 303EB as amended from time to time;

ornamental fish means fish of a species that is —

- (a) included in the live import list Part 1 or Part 2;
and
- (b) not referred to in Schedule 3.

Fish Resources Management Amendment Regulations 2014**Part 2** Miscellaneous amendments**r. 14**

- (2) For the purposes of section 92A(4) of the Act the fish referred to in the Table are prescribed fish.

Table

Barramundi
Bream, Black
Clams of species <i>Tridacna derasa</i>
Clams of species <i>Tridacna maxima</i>
Cod, Murray
Gilgie
Koonac
Marron
Ornamental fish
Perch, Golden
Perch, Silver
Trout, Brown
Trout, Rainbow
Yabbie, Common
Yabbie, White

14. Regulation 111 deleted

Delete regulation 111.

Fish Resources Management Amendment Regulations 2014

Miscellaneous amendments

Part 2**r. 15**

15. Part 9A Division 1A inserted

At the beginning of Part 9A insert:

**Division 1A — Abrolhos Islands Fish Habitat
Protection Area****113AA. Notice of travel to Abrolhos Islands Fish Habitat
Protection Area**

- (1) The master of a boat must not use the boat to travel to the Abrolhos Islands Fish Habitat Protection Area unless the master gives notice to the CEO of the period of stay of the boat in the Abrolhos Islands Fish Habitat Protection Area in accordance with this regulation.

Penalty: a fine of \$500.

- (2) Notice of the period of stay of a boat is given in accordance with this regulation if —
- (a) the notice is given in a manner and form approved by the CEO; or
 - (b) the notice is given under a management plan that applies in respect of the travel; or
 - (c) the notice is given in connection with an approval to carry out building work or maintenance work in the Abrolhos Islands Fish Habitat Protection Area or the Abrolhos Islands reserve.

**113AB. Notice of stay in Abrolhos Islands Fish Habitat
Protection Area**

The master of a boat in respect of which a post-landing nomination has been made under the *West Coast Rock Lobster Managed Fishery Management Plan 2012*

Fish Resources Management Amendment Regulations 2014**Part 2** Miscellaneous amendments**r. 16**

must not allow the boat to remain in the Abrolhos Islands Fish Habitat Protection Area unless —

- (a) the master gives notice to the CEO of the boat's departure from the Abrolhos Islands Fish Habitat Protection Area in a manner and form approved by the CEO; and
- (b) the departure day is within a period of 5 days commencing on the making of the post-landing nomination.

Penalty: a fine of \$500.

16. Regulation 124B amended

- (1) In regulation 124B(1) insert in alphabetical order:

day has the meaning given in section 50 of the Act.

- (2) In regulation 124B(1) in the definition of *boat* delete “motor.” and insert:

motor;

- (3) Delete regulation 124B(3) and (4) and insert:

- (3) A person (an *unlicensed person*) is not required to hold a recreational (boat) fishing licence to fish by use of a boat if —

- (a) at least one person who holds a recreational (boat) fishing licence is on the boat with the unlicensed person; and

Fish Resources Management Amendment Regulations 2014

Miscellaneous amendments

Part 2**r. 16**

- (b) on the day on which the unlicensed person fishes by use of the boat, the quantity of fish taken or brought onto land by use of the boat does not exceed any combined bag limit calculated under subregulation (5A).
- (4) The master of a boat must ensure that the quantity of fish taken or brought onto land by use of the boat on a day does not exceed any combined bag limit calculated under subregulation (5A).
- (5A) For the purposes of subregulations (3)(b) and (4), if —
 - (a) fish are taken or brought onto land using a boat; and
 - (b) a bag limit is prescribed in respect of those fish for a region or area,the combined bag limit for the boat in relation to those fish and that region or area is calculated by multiplying the bag limit by the number of persons who on the day are on the boat and hold a recreational (boat) fishing licence.
- (5B) It is a defence in proceedings for an offence under subregulation (4) for the person charged to prove that —
 - (a) the person took all reasonable steps to determine which of the other persons on the boat on that day held a recreational (boat) fishing licence; and
 - (b) the person held a reasonable, but mistaken, belief that a person on the boat on the day held a recreational (boat) fishing licence; and
 - (c) if the person's belief had not been mistaken, the quantity of fish taken or brought onto land by use of the boat on that day would not have exceeded the relevant combined bag limit.

Fish Resources Management Amendment Regulations 2014**Part 2** Miscellaneous amendments**r. 17**

17. Regulation 147B inserted

At the end of Part 13 insert:

147B. Installation of fish aggregating device without approval of CEO

A person must not install any part of a fish aggregating device in WA waters unless —

- (a) the person has submitted a proposal for the fish aggregating device to the CEO in the approved form; and
- (b) the CEO has notified the person in writing that the proposal is approved.

Penalty: In the case of an individual, a fine of \$5 000
or, in the case of a body corporate, a fine of
\$10 000.

18. Regulation 156 amended

In regulation 156 in the Table after “64(5),” insert:

64AA(2),

19. Schedule 2 amended

- (1) Delete Schedule 2 Part 2 Division 3 Subdivision 1 clause 2(2).
- (2) In Schedule 2 Part 2 Division 3 Subdivision 2 in the 1st Table in the item for Snapper, Pink delete paragraph (b) and insert:
 - (b) when taken or brought onto land from the waters of the Shark Bay western gulf or from the waters of the Shark Bay eastern gulf (other than during a relevant period referred to in Subdivision 1 item 1) 500

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Miscellaneous amendments

Part 2**r. 20**

- (3) In Schedule 2 Part 2 Division 3 Subdivision 2 in the 2nd Table in the item for Snapper, Pink delete “the waters of Shark Bay, other than in an area and during a period referred to in Subdivision 1 paragraph (a) or in the waters of the Freycinet Estuary” and insert:

the waters of the Shark Bay western gulf or from the waters of the Shark Bay eastern gulf (other than during a relevant period referred to in Subdivision 1 item 1)

20. Schedule 3 amended

- (1) In Schedule 3 Part 1 Division 1 in the Table delete “in the waters of Shark Bay” (each occurrence) and insert:

in the waters of the Shark Bay western gulf or the waters of the Shark Bay eastern gulf

- (2) In Schedule 3 Part 2 in the Table in the item relating to Tuna delete “Mackerel, Northern Bluefin,” and insert:

Mackerel, Longtail (Northern Bluefin),

- (3) In Schedule 3 Part 6:

- (a) delete “Ark Shell, Cockle and Pipis” and insert:

Ark Shell, Cockle, Pipis and Clam, Venus

- (b) delete “Clam, Venus” and insert:

Clam, Giant (other than *Tridacna gigas*)

Fish Resources Management Amendment Regulations 2014**Part 2** Miscellaneous amendments**r. 21**

21. Schedule 4 amended

In Schedule 4 Category 1 fish delete “Tuna, Northern” and insert:

Tuna, Longtail (Northern Bluefin)

22. Schedule 7 amended

- (1) In Schedule 7 Division 1 delete the items for:

Tuna, Longtail

Tuna, Northern Bluefin

- (2) In Schedule 7 Division 1 insert in alphabetical order:

Tuna, Longtail (Northern Bluefin) *Thunnus tonggol*

- (3) In Schedule 7 Division 4 after the item for Ark Shell insert:

Clam, Giant Family Tridacnidae

23. Schedule 9 amended

In Schedule 9 delete “Tuna, Northern Bluefin” and insert:

Tuna, Longtail (Northern Bluefin)

24. Schedule 12 amended

In Schedule 12 Part 2:

- (a) in item 3 delete “123(1), 124B(2),”;
- (b) in item 4 delete “57(1),”;

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Miscellaneous amendments

Part 2**r. 24**

(c) in item 4 after “64,” insert:

64AA(2),

(d) in item 4 after “113E(1),” insert:

123(1), 124B(2),

(e) after item 7 insert:

8. Regulation 59(2) 500

Fish Resources Management Amendment Regulations 2014**Part 3** Amendments relating to fishing tours**r. 25**

Part 3 — Amendments relating to fishing tours**25. Regulation 128IA inserted**

At the beginning of Part 11 Division 5 insert:

128IA. Term used: boat

In this Division —

boat means a vessel propelled by a motor.

26. Regulation 128I replaced

Delete regulation 128I and insert:

128I. Requirements for person conducting fishing tour using boat

A person who uses a boat to conduct a fishing tour for a commercial purpose in a zone set out in Schedule 15 —

- (a) must be the master of the boat; and
- (b) must be authorised under a fishing tour operator's licence or a restricted fishing tour operator's licence for that zone to conduct the fishing tour.

Penalty: a fine of \$10 000.

Fish Resources Management Amendment Regulations 2014

Amendments relating to fishing tours

Part 3**r. 27**

27. Regulation 128J amended

(1) In regulation 128J(2):

(a) after paragraph (a) insert:

(ba) specify the name of each person authorised to conduct a fishing tour under the licence; and

(b) delete paragraph (e);

(c) delete paragraphs (g) and (h) and insert:

(g) specify the following in relation to each boat that may be used in connection with a tour conducted under the licence —

(i) the name of the boat;

(ii) the length of the boat;

(iii) the licence number of the boat (if any);

and

(h) specify the number of passengers nominated by the holder of the licence as the maximum number of passengers participating in a tour conducted under the licence.

(2) After regulation 128J(2) insert:

(3) A person must not be specified under subregulation (2)(ba) on a fishing tour operator's licence, or restricted fishing tour operator's licence, unless the CEO is satisfied that the person is a fit and proper person to conduct a fishing tour under the licence.

Fish Resources Management Amendment Regulations 2014**Part 3** Amendments relating to fishing tours**r. 28**

- (4) A person must not continue to be specified under subregulation (2)(ba) on a fishing tour operator's licence or a restricted fishing tour operator's licence if the CEO ceases to be satisfied that the person is a fit and proper person to conduct a fishing tour under the licence.

28. Regulation 128L amended

- (1) In regulation 128L(1):
 - (a) delete "master or person in charge of a boat, vehicle or aircraft" and insert:

master of a boat
 - (b) in paragraph (a) delete "of the person conducting the tour; and" and insert:

under which the conduct of the tour is authorised; and
 - (c) in paragraph (b) delete "crew, vehicle or aircraft" and insert:

crew
- (2) In regulation 128L(2) delete "boat, vehicle or aircraft or class of boats, vehicles or aircraft." and insert:

boat or a class of boat.

Fish Resources Management Amendment Regulations 2014

Amendments relating to fishing tours

Part 3**r. 29**

(3) In regulation 128L(3):

- (a) delete “master or person in charge of a boat, vehicle or aircraft” and insert:

master of a boat

- (b) delete “the boat, vehicle or aircraft.” and insert:

the boat.

29. Regulation 128MA inserted

After regulation 128L insert:

128MA. Boats used in connection with fishing tour

A fishing tour operator’s licence or a restricted fishing tour operator’s licence is subject to the following conditions —

- (a) that no more than one tour may be conducted under the licence at any one time;
- (b) that no more than one boat with a length of 7.5 metres or longer will be used in connection with a fishing tour conducted under the licence at any one time;
- (c) that during a fishing tour conducted under the licence, each boat used in connection with the tour must be within 5 nautical miles of each other boat used in connection with the tour.

Fish Resources Management Amendment Regulations 2014**Part 3** Amendments relating to fishing tours**r. 30**

30. Regulation 128M amended

In regulation 128M:

- (a) delete “in charge of” and insert:

conducting

- (b) delete “trip” (each occurrence).

31. Regulation 128OA amended

- (1) In regulation 128OA(1) delete “trip”.

- (2) In regulation 128OA(2):

- (a) delete “in charge of a fishing tour trip” and insert:

conducting a fishing tour

- (b) in paragraphs (a), (b) and (c) delete “trip” and insert:

tour

32. Regulation 128R amended

In regulation 128R delete “in charge of a fishing tour conducted by virtue of” and insert:

conducting a fishing tour under

33. Regulation 128S amended

In regulation 128S(4) delete “A person in charge of” and insert:

The master of a boat being used for

Fish Resources Management Amendment Regulations 2014

Amendments relating to fishing tours

Part 3**r. 34****34. Schedule 1 amended**

- (1) In Schedule 1 Part 3 item 4 delete “or restricted fishing tour operator’s licence”.
- (2) Delete Schedule 1 Part 3 item 5 and insert:

5.	Fishing tour operator’s licence (r. 128J(1)) —	
(a)	if the nominated maximum number of passengers participating in a fishing tour conducted under the licence is —	
	(i) 5 passengers or fewer	1 200.00
	(ii) between 6 and 10 passengers	1 700.00
	(iii) between 11 and 15 passengers	2 200.00
	(iv) between 16 and 20 passengers	2 700.00
	(v) between 21 and 25 passengers	3 200.00
	(vi) 26 passengers or more	3 700.00
(b)	in addition to the fee determined under item 5(a), if the licence authorises the conduct of a fishing tour in more than one zone, for each additional zone	700.00

Fish Resources Management Amendment Regulations 2014**Part 3** Amendments relating to fishing tours**r. 34**

(c) in addition to the fee determined under item 5(a), if the licence is varied to increase the aggregate maximum surveyed passenger carrying capacity of all of the boats that may be used to conduct a fishing tour under the licence	The amount that is the difference between the fee for the licence before the variation and the fee determined under item 5(a) for the licence as varied
6A. Restricted fishing tour operator's licence (r. 128J(2)) —	
(a) for all restricted fishing tour operator's licences	500.00
(b) in addition to the fee specified in item 6A(a), if the licence authorises the conduct of a fishing tour in more than one zone, for each additional zone	500.00

Fish Resources Management Amendment Regulations 2014

Amendments to commence on 1 July 2014

Part 4**r. 35****Part 4 — Amendments to commence on 1 July 2014****35. Part 4 Division 7C inserted**

After Part 4 Division 7B insert:

Division 7C — Requirements relating to aquatic eco-tourism**55G. Activities and fish prohibited on aquatic eco-tour**

- (1) The master of a boat used for an aquatic eco-tour must not allow a participant in the tour to —
 - (a) take any fish while on the boat; or
 - (b) keep any fish on the boat; or
 - (c) bring onto land any fish from the boat.

Penalty: a fine of \$2 000 and the penalty provided in section 222 of the Act.

- (2) The person in charge of any boat, vehicle or aircraft being used for an aquatic eco-tour must not —
 - (a) commence the tour with any fish on the boat, vehicle or aircraft; or
 - (b) allow any fish to remain on the boat, vehicle or aircraft at the end of the tour.

Penalty: a fine of \$10 000 and the penalty provided in section 222 of the Act.

- (3) It is a defence in proceedings for an offence against subregulation (2)(a) or (b) for the person charged to prove that the fish was purchased from a person other than a participant in the tour for the purpose of providing meals for participants in the tour.

Fish Resources Management Amendment Regulations 2014**Part 4** Amendments to commence on 1 July 2014**r. 35**

55H. Shark tourism activities prohibited on aquatic eco-tour

- (1) A participant in an aquatic eco-tour must not —
- (a) use a safety cage the purpose of which is to protect swimmers or divers from sharks; or
 - (b) engage in the tagging or marking of sharks; or
 - (c) use blood, berley or any vibrating, visual, sonic, electronic, electromagnetic or other equipment for the purpose of attracting sharks.

Penalty: a fine of \$2 000.

- (2) The person in charge of an aquatic eco-tour must not —
- (a) provide or use, or allow participants in the tour to use, a safety cage the purpose of which is to protect swimmers or divers from sharks; or
 - (b) engage, or allow participants in the tour to engage, in the tagging or marking of sharks; or
 - (c) provide or use, or allow participants in the tour to use, blood, berley or any vibrating, visual, sonic, electronic, electromagnetic or other equipment for the purpose of attracting sharks.

Penalty: a fine of \$10 000.

55I. Boat not to be used for both commercial fishing and aquatic eco-tour during single trip

A person who uses a licensed fishing boat for or in connection with commercial fishing and an aquatic eco-tour in the course of a single trip commits an offence.

Penalty: a fine of \$5 000.

Fish Resources Management Amendment Regulations 2014

Amendments to commence on 1 July 2014

Part 4**r. 36**

36. Part 11 Division 4 deleted

Delete Part 11 Division 4.

37. Regulation 128MA amended

- (1) In regulation 128MA delete “A fishing” and insert:

(1) A fishing

- (2) At the end of regulation 128MA insert:

- (2) The holder of a fishing tour operator’s licence or a restricted fishing tour operator’s licence must ensure that a boat used in connection with a fishing tour conducted under the licence is identified in such manner as the CEO specifies in a written notice given to the holder of the licence.

Penalty for an offence under this subregulation: a fine of \$2 000.

38. Regulation 130A deleted

Delete regulation 130A.

39. Regulation 149 amended

In regulation 149(a) delete “aquatic eco-tourism,”.

40. Regulation 155 amended

In regulation 155(a) delete “aquatic eco-tourism,”.

Fish Resources Management Amendment Regulations 2014**Part 4** Amendments to commence on 1 July 2014**r. 41**

41. Regulation 156 amended

In regulation 156 in the Table:

- (a) after “45(2),” insert:

55G(1), 55G(2),

- (b) delete “128G(1), 128G(2),”.

42. Regulation 158 amended

In regulation 158 in the Table under the heading “**Provisions of these regulations**”:

- (a) after “38,” insert:

55G(1), 55G(2), 55H(2),

- (b) delete “128G(1), 128G(2), 128HA(2), 128OA(2), 128O, 128P, 130(4), 130A,” and insert:

128MA(2), 128OA(2), 128O, 128P, 130(4),

43. Regulation 181A amended

Delete regulation 181A(g).

44. Schedule 1 amended

- (1) In Schedule 1 Part 2 item 19 delete “Aquatic eco-tourism operator’s licence (reg. 128B) or restricted fishing tour operator’s licence (reg. 128J)” and insert:

Restricted fishing tour operator’s licence (reg. 128J)

- (2) Delete Schedule 1 Part 3 item 4.

Fish Resources Management Amendment Regulations 2014

Amendments to commence on 1 July 2014

Part 4**r. 45**

45. Schedule 12 amended

In Schedule 12 Part 2:

- (a) in item 3 delete “128D, 128E(2) (in the case of an individual), 128L(3), 130A” and insert:

128L(3), 128MA(2)

- (b) in item 4 after “41,” insert:

55I,

- (c) in item 4 delete “128A(1), 128C, 128E(1), 128E(2) (in the case of a body corporate), 128E(4), 128E(6), 128H,”;

- (d) in item 5 after “45(2),” insert:

55G(1) and (2),

- (e) in item 5 delete “128G(1) and (2),”.

46. Schedule 15 amended

Delete the reference after the heading to Schedule 15 and insert:

[r. 128J]

G. MOORE, Clerk of the Executive Council.
