

FI302*

Fish Resources Management Act 1994

**Fish Resources Management Amendment
Regulations (No. 8) 2006**

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

1. Citation

These regulations are the *Fish Resources Management Amendment Regulations (No. 8) 2006*.

2. The regulations amended

The amendments in these regulations are to the *Fish Resources Management Regulations 1995**

[* Reprint 5 as at 14 October 2005.

For amendments to 1 November 2006 see *Western Australian Legislation Information Tables for 2005, Table 4, and Gazette 7 February, 7 and 31 March, 23 May and 5 September 2006.*]

3. Regulation 11 replaced

Regulation 11 is repealed and the following regulation is inserted instead —

“

11. Defences for offences against s. 46 or 47

- (1) For the purposes of section 48(b) of the Act all fish the subject of an aquaculture licence are fish of a prescribed class.
- (2) For the purposes of section 48(c) of the Act it is a defence that the fish was taken by a person acting under an authority to fish for fish for scientific purposes issued under regulation 178.
- (3) For the purposes of section 48(c) of the Act it is a defence that the person is a person to whom, or in relation to whom, section 90 of the Act does not apply due to the operation of section 91 of the Act.

(4) For the purposes of section 48(c) of the Act, where the fish the subject of an offence —

- (a) is a shark or ray that is commercially protected; and
- (b) in the case of a dusky shark, has an interdorsal fin length of less than 70 cm,

it is a defence that the fish was taken by a person acting under a managed fishery licence granted in respect of —

- (c) the Marine Aquarium Fish Managed Fishery; or
- (d) the Kimberley Gillnet and Barramundi Managed Fishery; or
- (e) any other managed fishery the management plan for which specifically allows for the taking of sharks or rays; or
- (f) if the fish is an Eagle Ray, the South Coast Estuarine Managed Fishery.

(5) In subregulation (4)(b) —

“**interdorsal fin length**” means the distance between the first and second dorsal fins measured —

- (a) from —
 - (i) the first dorsal fin origin; or
 - (ii) if all or part of that fin has been removed so that point of origin cannot be ascertained, the anterior end of the cut made to remove the fin or that part of the fin;
- (b) to —
 - (i) the second dorsal fin insertion; or
 - (ii) if all or part of that fin has been removed so that point of insertion cannot be ascertained, the posterior end of the cut made to remove the fin or that part of the fin.

”.

4. **Regulation 16B replaced**

Regulation 16B is repealed and the following regulation is inserted instead —

“

16B. Sharks and rays — finning and filleting by commercial fishers

(1) A master of a fishing boat must not have on the boat any shark or ray other than a whole shark or ray.

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

- (2) Subregulation (1) does not prevent the master of a fishing boat from having on the boat a shark or ray that is not a whole shark or ray if —
- (a) all of the parts of the shark or ray (other than disposable parts) are on the boat together; and
 - (b) either —
 - (i) the only parts (other than disposable parts) that have been removed from the shark or ray are one or more of the fins; or
 - (ii) both —
 - (I) the boat is north of 26° south latitude; and
 - (II) the fish is not a dusky shark.
- (3) A person must not bring onto land any shark or ray taken for a commercial purpose in accordance with an authorisation other than a whole shark or ray.
- Penalty: \$10 000 and the penalty provided in section 222 of the Act.
- (4) Subregulation (3) does not prevent a person bringing onto land a shark or ray that is not a whole shark or ray if —
- (a) all of the parts of the shark or ray (other than the disposable parts) are brought onto land together; and
 - (b) either —
 - (i) the only parts (other than disposable parts) that have been removed from the shark or ray are one or more of the fins; or
 - (ii) both —
 - (I) the place where the fish is brought onto land is north of 26° south latitude; and
 - (II) the fish is not a dusky shark.
- (5) In this regulation —
- “disposable part”** means any of the following —
- (a) the head;
 - (b) the tail;
 - (c) the parts removed during gutting;
- “whole shark or ray”** means a shark or ray that is —
- (a) entire; or
 - (b) entire except that any or all of the disposable parts have been removed.

5. Regulation 36 amended

Regulation 36(1) is amended as follows:

- (a) after paragraph (a) by inserting —
“ and ”;
- (b) by deleting paragraph (c) and inserting instead —
“
 - (c) more than 4 rock lobster pots to be pulled by persons on board the boat —
 - (i) if the boat makes more than one voyage in a day, during any one voyage; or
 - (ii) if the boat —
 - (I) makes only one voyage in a day; or
 - (II) is on a voyage lasting more than one day,
during any one day.”.

6. Regulation 38 amended

Regulation 38 is amended as follows:

- (a) by inserting at the beginning of the regulation —
“
 - (1) In this regulation —
 - “**internal SLED**” means a sea lion exclusion device consisting of a rod inside a rock lobster pot secured to the base of the pot and rising vertically towards the neck;
 - “**sea lion protection zone**” means the waters off the west coast bounded by a line commencing at the high water mark at 30° 51.06' south latitude (south of Wedge Island) and extending —
 - west along the parallel to the intersection with 115° 10.32' east longitude;
 - then north north westerly along the geodesic to the point 30° 30.54' south latitude and 115° 0.06' east latitude;
 - then northerly along the geodesic to the point 30° 25.02' south latitude and 114° 58.5' east longitude;
 - then northerly along the geodesic to the point 30° 12.42' south latitude and 114° 57' east longitude;
 - then northerly along the geodesic to the point 30° 4.2' south latitude and 114° 54.42' east longitude;
 - then northerly along the geodesic to the point 29° 54.96' south latitude and 114° 53.52' east longitude;”.

then north north westerly along the geodesic to the point 29° 47.82' south latitude and 114° 50.64' east longitude;
 then north easterly along the geodesic to the point 29° 44.28' south latitude and 114° 52.2' east longitude;
 then northerly along the geodesic to the point 29° 35.16' south latitude and 114° 53.58' east longitude;
 then east along the parallel to its intersection with the high water mark (north of Freshwater Point);
 then generally southerly along the high water mark to the commencement point.

”;

- (b) by inserting before “A person” the subregulation designation “(2)”;
- (c) at the end of the regulation by inserting —

“

- (3) A person must not use a rock lobster pot to fish for rock lobster in the sea lion protection zone unless the pot is constructed with, or has fitted to it, a device (a “**sea lion exclusion device**”) that —
 - (a) prevents a spherical object with a diameter of 132 mm being able to enter the pot through the neck; and
 - (b) complies with subregulation (4).
- (4) A sea lion exclusion device complies with this subregulation if —
 - (a) it is made of non-flexible material; and
 - (b) it is —
 - (i) constructed; and
 - (ii) secured to the pot,

in such a way that it is unlikely that it could be bent, broken, pushed aside or removed by a sea lion; and
 - (c) it does not have any sharp points, spikes or sharp edges; and
 - (d) in the case of an internal SLED, at every point along the device (but not including any bracket or other thing used to secure the rod to the base of the pot) —
 - (i) the shortest cross-sectional measurement is not less than 10 mm; and
 - (ii) the longest cross-sectional measurement is not more than 30 mm.

”.

7. Regulation 156 amended

The Table to regulation 156 is amended by inserting after “16A(1),” —

“ 16B, ”.

8. Regulation 157 replaced

Regulation 157 is repealed and the following regulation is inserted instead —

“

157. Determining the value of fish

(1) For the purposes of section 222(4)(a) of the Act, the value per unit of weight of the fish is —

- (a) for a fillet of finfish, \$15 per kg; or
- (b) for a fin of a shark or ray removed from the fish trunk, \$120 per kg; or
- (c) otherwise, the amount per kg of fish set out in Schedule 9 for fish of that kind.

(2) For the purposes of section 222(4)(b) of the Act, the value per fish is —

- (a) for a fin of a shark or ray removed from the fish trunk, \$24 per fin; or
- (b) otherwise, the amount per fish set out in Schedule 9 for that kind of fish.

”.

9. Regulation 158 amended

The Table to regulation 158 is amended under the heading “Provision of these regulations” by inserting after “13,” —

“ 16B, ”.

10. Schedule 2 amended

Schedule 2 Part 1 is amended after the item for “Billfish” by inserting —

“

Sharks and Rays, other than sharks or rays that are totally protected fish.

”.

11. Schedule 4 amended

Schedule 4 is amended as follows:

- (a) after “Marron” by inserting —
“ Rays ”;
- (b) by deleting “Whale Shark” and inserting instead —
“ Sharks ”;
- (c) by deleting “Sharks, except Whale Shark”.

12. Schedule 7 amended

Schedule 7 is amended under the heading “Marine or fluvio-marine fish” by inserting in the appropriate alphabetical position —

“

Ray, Eagle	<u>Family</u> Myliobatidae
Shark, Dusky	<i>Carcharhinus obscurus</i>

”.

13. Schedule 9 amended

Schedule 9 is amended as follows:

- (a) under the heading “Category 1 Fish”, by inserting in the appropriate alphabetical positions —

“

Rays	8	120
Sharks	8	120

”;

- (b) under the heading “Category 2 Fish”, by deleting the item for “Sharks, except Whale Shark”.

14. Schedule 13 amended

Schedule 13 Part 2 clause 2 is amended as follows:

- (a) by inserting before “A rock” the subclause designation “(1)”;
- (b) at the end of the clause by inserting the following subclause —

“

(2) A rock lobster pot does not fail to comply with the specification set out in this clause by reason only that it is constructed with, or has fitted to it, a sea lion exclusion device (as defined in regulation 38).

”.

15. Schedule 14 amended

Schedule 14 Form 3 is amended as follows:

- (a) by deleting paragraphs 1 and 2 and inserting instead —

“

1. You may dispose of this matter within 28 days of the service of this notice by paying the modified penalty in person at any Post Office or Post Office Agency.

OR

2. Elect to have this matter dealt with before a COURT by completing the Court Election on the reverse side.

”.

(b) at the end of the form by inserting —

“

Election for Court

To have this matter dealt with by a Court, complete the details on back of this form and send it to —

Prosecutions Officer
Department of Fisheries
3rd Floor, The Atrium
168 St George's Terrace
Locked Bag 39, Cloisters Square
PERTH WA 6000

A summons will then be issued to you.

[Back of Form 3]

I elect to have this matter heard by a Court.

(Please use block letters)

Surname _____

Given Names _____

Address _____

Postcode _____

Signature _____

Date ____/____/____

”

16. Schedule 16 replaced

Schedule 16 is repealed and the following Schedule is inserted instead —

“

Schedule 16 — Abalone zones

[r. 38D]

1. Abalone Zone 1: Busselton Jetty to the Greenough River mouth

All —

- (a) WA waters; and
- (b) all land in the State,

that are on the seaward side of the high water mark and are —

- (c) in the area that is —
 - (i) south of 28° 51.9' south latitude; and
 - (ii) north of 33° 29' south latitude; and
 - (iii) west of the high water mark along the west coast between those 2 parallels;

or

- (d) in the area that is bounded by a line commencing at the intersection of 115° 20.675' east longitude and the high water mark in Geographe Bay (Busselton Jetty) and extending —
 - (i) north along that meridian to its intersection with 33° 29' south latitude; and
 - (ii) east along that parallel to its intersection with the high water mark; and

- (iii) then generally south westerly along the high water mark to the intersection with 115° 20.675' east longitude.

2. Abalone Zone 2: Greenough River mouth to Northern Territory Border

All —

- (a) WA waters; and
(b) land in the State,

that are on the seaward side of the high water mark and north of 28° 51.9' south latitude.

3. Abalone Zone 3: Busselton Jetty to South Australian Border

All —

- (a) WA waters; and
(b) land in the State,

that are on the seaward side of the high water mark and south of 28° 51.9' south latitude excluding Abalone Zone 1.

By Command of the Lieutenant-Governor
and deputy of the Governor,

G. M. PIKE, Clerk of the Executive Council.