

# Amendments Overview

## *Aquaculture (Miscellaneous) Amendment Regulations 2023*

### Background

This document provides an overview of the amendments contained within the *Aquaculture (Miscellaneous) Amendment Regulations 2023*, which amended the *Aquaculture Regulations 2016* (the Aquaculture Regulations) on 9 December 2023. There are amendments applicable to solely aquaculture tourism developments, solely the activity of aquaculture or both, and these have been identified below. The amendments support the implementation of the *Aquaculture (Tourism Development) Amendment Act 2021* and improve current administrative arrangements for the efficient and effective regulation of the aquaculture industry.

### Amendments

#### ***3-Amendment of existing regulation 3 – Interpretation***

'*aquaculture tourism site*' – this is a **new** definition and means the site of an aquaculture tourism development. In practice, this will be determined via GPS coordinates on the aquaculture tourism development authorisation (issued certificate), consistent with how aquaculture lease and licence sites are identified (**Tourism Amendment**).

'*large marine vertebrates*' – this is an **existing** definition which now include turtles, as sea turtles are known to occur within State waters, including Leatherback and Green turtles, and puts beyond reasonable doubt that turtles are a large marine vertebrate. Marine-based aquaculture licence holders are currently required under the Aquaculture Regulations to have an approved aquaculture strategy including a strategy for avoiding or minimising adverse impacts/interactions with large marine vertebrates and a response plan for dealing with these if they occur. A person carrying on a commercial tourism activity is proposed to take all reasonable and practical measures to minimise any adverse impacts/interactions with large marine vertebrates under a new separate regulation below (**Tourism & Marine Aquaculture Amendment**).

'*unusually high mortality rate*' – this is an **existing** definition which now also applies to live aquatic organisms (e.g. fresh live seafood) held on an aquaculture tourism site. The purpose of this definition is to provide a threshold for when the mortality rate of live aquatic organisms is deemed unusually high (i.e. not consistent with normal/routine mortality during tourism operations), and a person carrying on a commercial tourism activity is required to take certain actions (e.g. reporting/quarantine) under new separate regulations below. This is to ensure timely detection of disease and prevent spread of disease (**Tourism Amendment**).

#### ***4-Amendment of existing regulation 4 – Approvals by Minister***

This regulation has been amended to not only provide a discretionary power for the Minister to apply conditions to an approval for an aquaculture licensee under the Aquaculture Regulations, but also to a person holding a tourism lease or tourism licence or aquaculture tourism development authorisation (**Tourism Amendment**).



### **5-Amendment of existing regulation 5 – Procedures for making aquaculture policies**

The list of prescribed bodies for referring draft aquaculture policies (e.g. aquaculture zone policies) for feedback is amended (**Tourism & Aquaculture Amendment**):

- South Australian Aquaculture Council has been removed as it no longer exists.
- Wildcatch Fisheries SA Incorporated no longer exists and has been replaced with Seafood Industry South Australia Incorporated.
- Addition of any person holding a tourism lease or tourism licence over an area to which a draft policy applies. This is consistent with aquaculture lease and licence holder requirements.
- Addition of a person or body which in the opinion of the Minister promotes tourism within South Australia (e.g. South Australian Tourism Commission) to gauge expert opinion on tourism matters.
- If any prescribed body ceases to exist in the future, a provision is now included that allows the Minister to specify via Gazette notice a replacement body that has the same or similar functions. This will improve legislative efficiencies for making corrections to the Aquaculture Regulations.

### **6-Substitution of existing regulation 6 – Certain amendments may be made by Gazette notice only**

A provision has been added to allow the Minister to amend an aquaculture policy (i.e. aquaculture zone policy) by Gazette notice to specify the amount of hectares prescribed for all aquaculture zones within that policy for aquaculture tourism development purposes. This is to provide an efficient manner to amend all current twelve aquaculture zone policies to insert a limitation on the maximum area that can be used for aquaculture tourism prior to their next scheduled zone policy review under the *Aquaculture Act 2001* (the Aquaculture Act) should that be necessary. It is deemed low risk as the amount of hectares to be prescribed would be minimal, there is currently no limit on the amount that could be applied for, and this would not impact the amount of hectares for aquaculture. Consultation with stakeholders would be undertaken before such action is taken (**Tourism Amendment**).

### **7-Amendment of existing regulation 7 – Reference of matters to EPA**

The referral period to the Environment Protection Authority (EPA) for both aquaculture and aquaculture tourism development authorities is amended from 6 weeks (i.e. 42 days) to 30 business days to be consistent with current referral period terminology to the EPA under the *Planning Development and Infrastructure Act 2016* for these types of developments. It should be noted that there has been no change to the powers of the EPA under the Aquaculture Act (**Tourism & Aquaculture Amendment**).

### **8-Amendment of existing regulation 10 – Use of chemical substances**

Amended by removing the reference to 'antifoulant', as these chemicals should be used in accordance with national legislation. It is not considered appropriate for the Minister to approve antifoulant chemicals which do not meet the requirements of this legislation (**Aquaculture Amendment**).

### **9-Amendment of existing regulation 15 – Stock register**

The expiation fee for a breach of the requirement for an aquaculture licence holder to maintain a stock register under regulation 15(1) is amended from \$315 to \$500 to be consistent with other expiations under the Aquaculture Regulations (**Aquaculture Amendment**).

### ***10-Amendment of existing regulation 18 – Aquaculture strategies***

An editorial change has been made to regulation 18 to separate out the strategy and response plan topics that may apply to an aquaculture licensee and to remove the “or” option in favour of “and” in sub-regulation 18(2)(b)(ii) and (iii) as sub-regulation 18(2)(b) is clear that one or more of the topics may apply to a licensee. In addition, the mandatory requirement to identify whether regulations 26 and 27 (notification requirements for escape of stock or entanglement of protected animals) apply to an aquaculture licensee in sub-regulation 18(2)(c) has been deleted as regulations 26 and 27 already provide an exception to their application where the strategy of a licensee specifies that the notification requirements do not apply. The mandatory requirement in regulation 18(2)(c) was therefore unnecessary as if a strategy was silent as to the operation of regulations 26 and 27 then it is clear that the latter requirements will apply (**Marine Aquaculture Amendment**).

### ***11-Amendment of existing regulation 22 – Annual reporting on general environmental matters***

Specific references to old geocentric datums of Australia formerly prescribed to help identify the exact location of farming structures under regulation 22(a)(i) of the Aquaculture Regulations have been removed in favour of allowing this to be determined by the Minister. The former descriptions in this regulation limited the datum that could be used to identify the locations of farming structures in the licence area (**Marine Aquaculture Amendment**).

### ***12-Amendment of existing regulation 24 – Marking-off lease areas***

References to corresponding aquaculture licences in regulation 24 have been removed as marking-off is only a condition of a lease not a corresponding licence. Reference to “or” in this regulation has been removed because both sub-regulations 24(a) and (b) are requirements of aquaculture lease holders (**Marine Aquaculture Amendment**).

### ***13-Insertion of new regulation 24A – Navigational Markers***

This new regulation, with expiation and penalty provisions and similar to existing regulation 24, requires aquaculture lease holders to correctly install and maintain navigational marker equipment/infrastructure in good working condition. This supports existing aquaculture lease condition requirements for navigational markers and is to ensure risks of what could be catastrophic collisions by the public (vessels) are reduced in addition to adverse impacts to the environment (from debris). This will improve social licence of the aquaculture industry. It also provides an additional mechanism to address non-compliance with existing aquaculture lease conditions governing navigational markers, as opposed to solely a carry out work order or cancellation of the lease under sections 48A and 25B of the Aquaculture Act (**Marine Aquaculture Amendment**).

### ***14-Insertion of new Part 3A – Regulation of aquaculture tourism development activities***

#### ***New regulation 31A – Aquaculture tourism waste***

New regulation, similar to existing regulation 11 for aquaculture licence holders, to require a person carrying on a commercial tourism activity to ensure that waste generated in the course of the activity doesn't cause an unsightly or offensive condition at the site, and is secured or treated in a manner to prevent it from being blown, washed or swept off the site. Expiation and penalty offence provisions apply. This is to reduce risks to the environment (e.g. entanglement) and improve social licence of the tourism industry (**Tourism Amendment**).

### ***New regulation 31B – Recovery of aquaculture tourism equipment or waste blown, washed or swept off-site***

New regulation, similar to existing regulation 12 for aquaculture licence holders, to require a person carrying on a commercial tourism activity to ensure that if any waste/structure/equipment/goods are blown/washed/swept off the site, it is recovered as soon as practicable, but in any event within seven days. Expiation and penalty offence provisions apply. This is to reduce risks to the environment (e.g. entanglement) and improve social licence of the tourism industry (**Tourism Amendment**).

### ***New regulation 31C – Stock register***

New regulation, similar to existing regulation 15 for aquaculture licence holders, to require a person carrying on a commercial tourism activity to maintain a stock register that includes: information about the origin of **live** aquatic organisms, movement of **live** aquatic organisms from a tourism site to another tourism site, and death of aquatic organisms during tourism operations (excluding customer consumption and meal preparation). Expiation and penalty offence provisions apply. This is to enable effective and efficient tracing in the event of an emergency disease response, and to reduce the spread of disease, not only to the aquaculture tourism sector but also the broader aquaculture industry and environment (**Tourism Amendment**).

### ***New Regulation 31D – Control of aquatic organisms affected with disease***

New regulation, similar to existing regulation 14 for aquaculture licence holders, to require a person carrying on a commercial tourism activity to ensure that if they know or ought reasonably to know that aquatic organisms proposed to be introduced to the site are or may be affected with a disease, they are not introduced into the site without the prior written approval of the Minister. Further, if a person carrying on a commercial tourism activity knows, or ought reasonably to know, that aquatic organisms held on a site are or may be affected with a disease, the person must ensure that the organisms are not removed from the site unless they are removed for disease testing, disposal, or in accordance with written approval of the Minister. Penalty offence provisions apply. This is to reduce the spread of disease, not only to the aquaculture tourism sector but also the broader aquaculture industry and environment (**Tourism Amendment**).

### ***New regulation 31E – Notification of unusually high mortality rate and duty to isolate unaffected organisms***

New regulation, similar to existing regulation 13 for aquaculture licence holders, to require a person carrying on a commercial tourism activity to ensure that if the mortality rate for aquatic organisms is unusually high (see definition under regulation 3), and the person knows, or ought reasonably to know, that the organisms are affected with a disease, the person must notify the Minister and take all reasonable measures to quarantine the organisms. Expiation and penalty offence provisions apply. This is to reduce the spread of disease, not only to the aquaculture tourism sector but also the broader aquaculture industry and environment (**Tourism Amendment**).

### ***New regulation 31F – Notification of entanglement or confinement of protected animals***

New regulation, similar to existing regulation 27 for aquaculture licence holders, to require a person carrying on a commercial tourism activity to provide notifications within specified timeframes to the Minister if protected animals become entangled/confined in a tourism structure/equipment. The definition of a protected animal is the same as regulation 27. Expiation and penalty offence provisions apply. This is to minimise risks to protected animals and improve social licence of the tourism industry (**Tourism Amendment**).

### ***New regulation 31G – Mitigation of impacts on and interactions with seabirds and large marine vertebrates***

New regulation, similar to existing clause 35 of the *Aquaculture (Standard Lease and Licence Conditions) Policy 2022* for marine-based aquaculture licence holders, to require a person carrying on a commercial tourism activity to take all reasonable and practical measures to minimise any adverse impacts on, or adverse interactions with, seabirds and large marine vertebrates (see definition under regulation 3). Expiation and penalty offence provisions apply. This is to minimise risks to seabirds and large marine vertebrates and improve social licence of the tourism industry **(Tourism Amendment)**.

### ***New regulation 31H – Power to require or carry out work***

New regulation, similar to existing section 58 of the Aquaculture Act for aquaculture licence holders, to allow the Minister to direct a person carrying on a commercial tourism activity to undertake required works if they failed to abide by an applicable regulation (e.g. recovery of waste under regulation 31B). The Minister has the discretion to undertake the required works and recover the cost from the person as a debt if the direction is not complied with. Penalty offence provisions apply. This is to minimise risks to the environment and improve social licence of the tourism industry **(Tourism Amendment)**.

### ***15-Amendment of existing Regulation 43 – Defects in applications***

Amended to include an ability for the Minister to request an applicant for a tourism lease or tourism licence or aquaculture tourism development authorisation to remedy a defect/deficiency in an application or accompanying document or information required under the Aquaculture Act or Aquaculture Regulations within a specified timeframe (i.e. 3 months). In addition, the Minister may request outstanding fees/reports/information be paid/provided within this timeframe, excluding applications for the grant of a tourism authority. This is to maintain the efficient and effective regulation of the tourism industry, and is consistent with existing provisions under this regulation for aquaculture lease and licence holders **(Tourism Amendment)**.