

TASMANIA

**FISHERIES (ABALONE) AMENDMENT RULES
2019**

STATUTORY RULES 2019, No. 63

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FISHERIES (ABALONE) AMENDMENT RULES 2019

I make the following rules under the *Living Marine Resources Management Act 1995*.

Dated 23 September 2019.

GUY BARNETT
Minister for Primary Industries and Water

PART 1 – PRELIMINARY

1. Short title

These rules may be cited as the *Fisheries (Abalone) Amendment Rules 2019*.

2. Commencement

- (1) Except as provided by this rule, these rules take effect on the day on which the making of these rules is notified in the *Gazette*.
- (2) Part 2 takes effect on 1 November 2019.
- (3) Part 3 takes effect on 1 January 2020.

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**PART 2 – FISHERIES (ABALONE) RULES 2017
AMENDED**

3. Principal Rules

In this Part, the *Fisheries (Abalone) Rules 2017** are referred to as the Principal Rules.

4. Rule 3 amended

Rule 3 of the Principal Rules is amended as follows:

- (a) by renumbering the text of the rule as subrule (1);
- (b) by inserting the following definition after the definition of *abalone container* in subrule (1):

abalone iron means a lever that –

- (a) is broadly flat-bladed and chisel-like; and
 - (b) has a blade this is not less than 18 millimetres in width;
- (c) by inserting the following definition after the definition of *diving team docket* in subrule (1):

eastern region means –

*S.R. 2017, No. 94

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- (a) all State waters lying eastwards of –
- (i) (in the north) an imaginary line running due north from the northernmost extremity of Point Sorell to the outer limit of State waters; and
 - (ii) (in the south) an imaginary line running due south from the southernmost extremity of Whale Head to the outer limit of State waters; and
- (b) all islands and tidal sandbars lying within the State waters referred to in paragraph (a) of this definition, with the exception of Flinders Island, Cape Barren Island and Bruny Island;
- (d) by inserting the following definition after the definition of *marine farmer* in subrule (1):

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measuring device includes the following:

- (a) a vernier caliper;
- (b) a gauge that indicates the minimum size limits for abalone;
- (c) a knife or abalone iron with prominent markings, or extended prongs, that indicate the minimum size limits for abalone;
- (e) by inserting the following subrule after subrule (1):
 - (2) In these rules, a reference to the holder of a fishing licence includes a person who has approval to use the licence under section 87(2) of the Act.

5. Rule 12A inserted

After rule 12 of the Principal Rules, the following rule is inserted in Part 3:

12A. Person under 10 years not eligible to hold recreational fishing licence

A person who has not attained the age of 10 years is not eligible to hold a fishing licence (recreational abalone).

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6. Rule 15 amended (Restrictions on fishing licence (abalone dive))

Rule 15(7) of the Principal Rules is amended by omitting paragraph (b).

7. Rule 16 amended (Restrictions on fishing licence (recreational abalone))

Rule 16 of the Principal Rules is amended as follows:

- (a) by inserting in subrule (2)(b) “practicable after” after “soon as”;
- (b) by omitting paragraph (b) from subrule (3);
- (c) by omitting from subrule (3)(c) “it returns to port” and substituting “any abalone on the vessel are landed”;
- (d) by omitting from subrule (3)(d) “rule 18” and substituting “rules 18 and 18A (as applicable)”.

8. Rule 17 amended (Taking abalone from State waters)

Rule 17 of the Principal Rules is amended as follows:

- (a) by omitting from subrule (1)(b) “undertaking” and substituting “engaging in”;

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- (b) by omitting from subrule (2)(b) “undertaking” and substituting “engaging in”;
- (c) by inserting the following subrules after subrule (3):
 - (4) A person must not, in State waters between sunset and sunrise, dive or swim for abalone, or otherwise remove abalone from the water.

Penalty: Grade 3 penalty.

- (5) A person must not, in State waters, take abalone other than with –
 - (a) a commercially manufactured knife that has a blade that is not less than 18 millimetres wide (excluding that part of the blade that is within 50 millimetres of the tip of the blade); or
 - (b) an abalone iron.

Penalty: Grade 3 penalty.

- (6) Subrule (5) does not apply to a person if the person is an Aborigine who is engaging in an Aboriginal activity.

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9. Rule 18 amended (Quantity of abalone)

Rule 18 of the Principal Rules is amended as follows:

- (a) by omitting from subrule (2) “5” and substituting “2”;
- (b) by omitting from subrule (2)(c) “undertaking” and substituting “engaging in”;
- (c) by omitting from subrule (3) “20” and substituting “10”.

10. Rule 18A inserted

After rule 18 of the Principal Rules, the following rule is inserted in Division 1:

18A. Quantity of abalone in eastern region

- (1) A person must not take more than 5 abalone from the eastern region in any one day unless the person is the holder of a fishing licence (abalone dive).

Penalty: Grade 3 penalty.

- (2) The person in charge of a vessel that is in the eastern region must not have more than 25 abalone on board that vessel at any one time unless –
 - (a) the vessel is being used by the holder of a fishing licence

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(abalone dive) to take abalone for commercial purposes; or

- (b) the person has a receipt relating to the purchase of the abalone from a fish merchant with the abalone to which the receipt relates.

Penalty: Grade 3 penalty.

11. Rule 19 amended (Possessing abalone on vessel)

Rule 19 of the Principal Rules is amended as follows:

- (a) by omitting from subrule (1)(c) “undertaking” and substituting “engaging in”;
- (b) by omitting subrules (3) and (4) and substituting the following subrules:
 - (3) Subrules (1) and (2) do not apply if the person is on a trading vessel.
 - (4) Subrule (2) does not apply to a person if –
 - (a) the person is the holder of a fishing licence (recreational abalone) or an Aborigine who is engaging in an Aboriginal activity; and

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- (b) the person only detaches one abalone from its shell per day; and
- (c) the shell is retained on board the vessel until the vessel returns to port or any abalone on the vessel are landed; and
- (d) the detached abalone is part of the quantity that the person is permitted to take and possess under rules 18 and 18A (as applicable).

12. Rule 30 amended (Vessel monitoring system on fishing vessel)

Rule 30 of the Principal Rules is amended as follows:

- (a) by omitting from paragraph (a) “licensee’s” and substituting “licence holder’s”;
- (b) by omitting from paragraph (b) “licensee” and substituting “licence holder”.

13. Rule 38 amended (Diving teams)

Rule 38(3) of the Principal Rules is amended by omitting “licensees” and substituting “licence holders”.

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14. Rule 48 amended (Commercial abalone dive docket)

Rule 48 of the Principal Rules is amended as follows:

- (a) by omitting from subrule (2)(a) “licensee” twice occurring and substituting “licence holder”;
- (b) by omitting from subrule (2)(b) “licensee” and substituting “licence holder”;
- (c) by omitting from subrule (3) “licensee” and substituting “licence holder”.

15. Rule 55 amended (Records by holders of fishing licence (abalone dive))

Rule 55(2) of the Principal Rules is amended by omitting “licensee” and substituting “licence holder”.

16. Rule 57 amended (Over-catch more than 20%)

Rule 57(2)(a) of the Principal Rules is amended by omitting “licensee’s” and substituting “licence holder’s”.

17. Rule 58 amended (Over-catch more than 30%)

Rule 58(1) of the Principal Rules is amended by omitting “licensee’s” and substituting “licence holder’s”.

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18. Rule 60 amended (Landing areas)

Rule 60 of the Principal Rules is amended by inserting after paragraph (a) the following paragraph:

- (ab) at Great Musselroe Bay, the area within a radius of 400 metres on the landward side from the high-tide mark closest to the point of landing in Little Musselroe Bay;

19. Rule 60A inserted

After rule 60 of the Principal Rules, the following rule is inserted in Part 7:

60A. Presumption as to possession of abalone held by children

- (1) In this rule –

adult supervisor, of a child at any place, means –

- (a) the child's nearest adult relative who is present at the place; or
- (b) if no nearest adult relative of the child is present at the place, a guardian or carer of the child who is present at the place; or
- (c) if an adult referred to in paragraph (a) or (b) is not

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present at the place but the child is in a vehicle or on a vessel, the adult in charge of the vehicle or vessel (whether that adult is, at the relevant time, physically in or on the vehicle or vessel);

child means a natural person who has not attained the age of 10 years;

nearest adult relative, of a child at any place, means –

- (a) a parent of the child who is present at the place; or
- (b) if no parent of the child is present at the place, a step-parent of the child who is present at the place; or
- (c) if no person referred to in paragraph (a) or (b) is present at the place, a grandparent of the child who is present at the place; or
- (d) if no person referred to in paragraph (a), (b) or (c) is present at the place, an adult uncle or adult aunt of the child who is present at the place; or

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- (e) if no person referred to in paragraph (a), (b), (c) or (d) is present at the place, an adult brother or adult sister who is present at the place; or
 - (f) if no person referred to in paragraph (a), (b), (c), (d) or (e) is present at the place, an adult half-brother or adult half-sister of the child who is present at the place.
- (2) For the purposes of these rules and any proceedings for offences under these rules, it is to be presumed that –
- (a) a child cannot, regardless of his or her capacity, be in possession of abalone; and
 - (b) any abalone that a child may be holding, or have about himself or herself, at any place is in the possession of the adult supervisor, if any, of that child at that place.

20. Schedule 1 amended (Infringement notice offences)

Schedule 1 to the Principal Rules is amended as follows:

- (a) by inserting after item 12 the following:

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12A.	Rule 17(4)	5
12B.	Rule 17(5)	2

(b) by inserting after item 15 the following:

15A.	Rule 18A(1)	5
15B.	Rule 18A(2)	5

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**PART 3 – FISHERIES (ABALONE) RULES 2017
FURTHER AMENDED**

21. Principal Rules

In this Part, the *Fisheries (Abalone) Rules 2017** are referred to as the Principal Rules.

22. Rule 3 amended (Interpretation)

Rule 3(1) of the Principal Rules is amended by omitting “Arthur River” from the definition of *northern area* and substituting “Wild Wave River near Sandy Cape”.

23. Rule 24 amended (Taking abalone in northern area)

Rule 24(6)(c) of the Principal Rules is amended by omitting “Arthur River” and substituting “Wild Wave River near Sandy Cape”.

24. Rule 25 amended (Taking abalone in Bass Strait area)

Rule 25(4)(d) of the Principal Rules is amended by omitting “at the line of longitude 145° 22’ 42” East”.

*S.R. 2017, No. 94

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Part 3 – Fisheries (Abalone) Rules 2017 Further Amended

25. Rule 31 amended (Vessel monitoring system for Bass Strait area)

The definition of *designated port* in rule 31(1) of the Principal Rules is amended as follows:

(a) by inserting the following paragraphs after paragraph (k):

(ka) Smithton;

(kb) Stanley;

(b) by inserting the following paragraph after paragraph (l):

(la) Woolnorth Anchorage;

26. Rule 43 amended (Leaving area report)

Rule 43(1) of the Principal Rules is amended by omitting “rule 22” and substituting “rule 26”.

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 2 October 2019.

These rules are administered in the Department of Primary Industries, Parks, Water and Environment.

EXPLANATORY NOTE

(This note is not part of the rules)

These rules amend the *Fisheries (Abalone) Rules 2017* by –

- (a) amending certain definitions; and
- (b) including Smithton, Stanley and Woolnorth Anchorage as designated ports; and
- (c) defining “measuring device”; and
- (d) providing that persons under the age of 10 years are not eligible to hold a fishing licence (recreational abalone); and
- (e) prohibiting persons from taking abalone from State waters at night; and
- (f) reducing the quantity of abalone that may be taken by a person from State waters or possessed on a vessel in certain circumstances; and
- (g) making other miscellaneous amendments.