

REPLACEMENT MASTERS GUIDELINES

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**Government
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Replacement Masters Guidelines

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1 GUIDELINES STATEMENT

There are a number of fisheries in South Australia that are largely managed through the use of input controls, which aim to limit the total amount of effort which can be directed into the fishery to ensure the sustainability of the aquatic resources on which the fishery is based.

A key effort control is the owner-operator rule implemented through fishery regulations. Under owner-operator arrangements, the use of a registered master to operate the licence in addition to the licence holder is not permitted. There are also several quota managed fisheries in South Australia with entitlements to take fish in owner-operator fisheries.

There are some exceptions to the owner-operator rule where, in certain situations, it is permitted for a master other than the licence holder to operate the licence. For example, the *Fisheries Management (Marine Scalefish Fishery) Regulations 2017* provide for the following circumstances where the licence holder is not required to be the operator of a Marine Scalefish Fishery (MSF) licence:

- a. The licence holder holds another MSF licence and is registered as the master of that licence¹; or
- b. The licence authorises the use of certain gear types (e.g. ocean jacket trap or sand crab pot) or quota entitlements (e.g. pipi), in which case a registered master can be endorsed on that licence for the purpose of operating that gear type, or fishing a quota entitlement only.

In addition, the *Fisheries Management Act 2007* (the Act) gives the Minister the power to consent to the use of a natural person who may act in the place of a registered master of a boat that may be used under the licence. These guidelines establish a framework for the consideration of applications for consent under section 53 of the Act for the use of a replacement master for circumstances other than those provided for in individual fishery regulations.

The owner-operator rule which restricts the operation of the licence by the licence holder only prevents the licence holder employing other people to work the licence in his/her absence and restricts the total effort expended to the level that the individual licence holder is willing or capable of undertaking. The owner-operator provision also reduces the ability for licence holders from being able to undertake activities away from their fishing businesses without losing income derived from their fishing activity.

It is considered appropriate for a registered master other than the licence holder to operate a fishery licence for a limited number of days while allowing the licence holder to maintain an income from their fishing licence during that period. These guidelines consider the following circumstances:

1. Illness and injury (medically unable to operate the licence)
2. Official business and training
3. General replacement master days

The holder of the licence and a replacement master are not permitted to operate the licence at the same time or on the same day, as this would be inconsistent with controls to limit effort in the fishery.

Administrative resources are required to manage and monitor the operation of replacement masters. As such, restrictions on the reporting and number of days are considered in these guidelines.

¹ Where a person holds multiple licences, that person is still required to be the owner-operator of one of those licences.

2 PURPOSE

The purpose of these guidelines is to provide direction to decision-makers in making discretionary decisions involving the use of replacement masters within the regulatory framework established under the Act.

3 APPLICATION OF GUIDELINES

These guidelines apply from 1 July 2021.

The exercise of the discretion to consent to the use of a replacement master has previously been the subject of other guidelines used by the Department of Primary Industries and Regions (PIRSA) Fisheries and Aquaculture. These guidelines replace all previous guidelines or determinations in relation to the use of replacement masters under the *Fisheries Management Act 2007* for the fisheries to which it applies.

These guidelines apply to the Marine Scalefish Fishery for the entire year, and the Northern Zone Rock Lobster Fishery from the period 1800 hours 31 May to 1200 hours 1 November each year.

These guidelines do not apply in circumstances contemplated under section 57(7) of the Act where the licence holder is deceased.

4 DEFINITIONS AND ABBREVIATIONS

Term	Meaning
A day	For the purposes of these guidelines, means a period commencing at midnight and ending at midnight the following day.
Official business and training	Includes absence to attend official business or approved training as follows: Meetings of recognised industry associations where PIRSA is attending. Meetings of Australian Government industry-associated committees. Accredited training courses for a Certificate of Competency. Other official business or training approved by the Executive Director, Fisheries and Aquaculture.

5 LEGISLATION

Section 53(1) of the Act provides a person must not, for a commercial purpose, use a boat or cause, suffer or permit a boat to be used, for the purpose of engaging in a fishing activity unless the boat is registered for use under a permit and is in the charge of a natural person who is registered as a master on the same licence or permit.

However, section 53(1)(b)(ii) also provides, a registered boat may be used if it is in the charge of a person who is acting in the place of a registered master with the consent of the Minister (a replacement master). This consent may be given with conditions.

The discretionary power of the Minister to consent in this circumstance has been delegated to the position of Executive Director, Fisheries and Aquaculture. The Executive Director has further delegated

this power to the positions of Director of Operations, Fisheries Officers who also hold the position of Regional Manager and Fisheries Officers who are also Fishwatch Duty Officers at the time of the request.

6 GUIDELINES DETAILS

6.1 Consideration of the use of a replacement master

All applications for consent to allow a replacement master to be in charge of a registered boat will be considered by the decision maker on a case-by-case basis, taking into account the guidelines set out below.

1. Consent should not be granted if the proposed replacement master has been convicted of a fisheries-related offence in any jurisdiction in the previous three years. Consideration may also be given to whether the proposed replacement master is a fit and proper person to undertake fishing activities under the licence in which the sustainability of fish stocks, protection of the marine environment, and safety of crew and other users of State waters applies.
 - a. While nothing in these guidelines derogates from the Minister's discretion to determine who is a fit and proper person to hold a licence, the decision maker should be satisfied the proposed replacement master is a fit and proper person to operate a commercial fishing vessel.
 - b. Accordingly when considering a relevant application, the decision maker should satisfy him/herself about the prevailing standards of honesty and good character generally applying to persons seeking to operate licences.
2. To ensure the decision maker has relevant information, all applications should be made in writing, using the appropriate form for the circumstance (see www.pir.sa.gov.au/fisheries for details).
3. Licence holders are responsible for nominating a replacement master to operate their licence. This responsibility includes a duty to ensure the replacement master understands and is aware of the rules in the fishery. If an offence is committed while the replacement master is in command of the boat, the licence holder, in addition to the replacement master, may receive demerit points.
4. In addition to the above, the licence holder and replacement master should note they are responsible for ensuring the fishing activities are conducted in accordance with appropriate marine qualifications and vessel survey requirements.
5. Where the decision maker is of the opinion consent is to be given for the use of a replacement master the following conditions should be considered:
 - a. Consent may be granted to allow a replacement master to take the place of the licence holder (who is also the registered master) to be in charge of the registered boat or fishing activity for a maximum of 28 days per financial year per licence for purposes specified in these guidelines.
 - b. A replacement master should only be used where the licence holder has obtained a certificate of consent for boats under the licence.
 - c. A limit of up to four replacement masters may receive consent and be listed on the Certificate of Consent. The replacement masters listed on a Certificate of Consent can be amended by application at any time, or may be revoked.

- d. It is mandatory for licence holders to report the use of a replacement master prior to the commencement of fishing activities, keep records of the number of days utilised and carry appropriate documentation. It is the licence holder's responsibility to ensure the limit of 28 replacement master days per licence are not exceeded.
6. The consent may be subject to further conditions, consistent with the implementation of these guidelines.
7. A replacement master listed on a certificate of consent will continue to be recorded as the replacement master for the licence holder for the term of the consent unless varied or revoked by the Minister (or his/her delegate).

6.2 Applications for certificate of consent (consent to use a replacement master)

1. An application for a replacement master should be submitted on the approved application form and nominate the proposed replacement master(s). The application may be lodged to seek consent for up to four persons to act as a replacement master during the period of the consent.
2. The decision maker will resolve to finalise an application within seven (7) working days of receiving the application.
3. The decision maker will assess applications in accordance with these guidelines and will consider any relevant issues or information. This process will also include administrative checks to ensure the licence is not suspended or the proposed replacement master is a fit and proper person and has not been disqualified under the Act.
4. Licence holders must inform the Minister (or his/her delegate) if at any time they become aware of any circumstances which may give rise to a nominated replacement master no longer being a fit and proper person, including the conviction of a fisheries-related offence, or if they become disqualified under the Act.
5. Replacement masters must inform the Minister (or his/her delegate) should they be convicted of a fisheries-related offence, or if circumstances arise in which they may no longer be a fit and proper person to undertake fishing activities under the licence in which the sustainability of fish stocks, protection of the marine environment, and safety of crew and other users of State waters applies.

6.3 General replacement master days (up to 28 days per licence)

Based on what are minimum requirements of consent under these guidelines the following information describes the use of general replacement master days.

1. Only one master (either the licence holder or replacement master) may operate the licence on any single day.
2. The licence holder and replacement masters must apply for and hold a current Certificate of Consent before a replacement master may operate a commercial fishing vessel.
3. After receiving a certificate from the Minister (or his/her delegate) approving a person as a replacement master, the days of any proposed fishing activity that will be undertaken by a

replacement master will need to be nominated by the licence holder by telephone to PIRSA Fishwatch on 1800 065 522, or via PIRSA's commercial fishing App, at least one hour prior to commencement of the activity.

4. The normal conditions of consent will stipulate that the use of a replacement master must be taken in nominated days. The licence holder may, by telephone to PIRSA Fishwatch, or via PIRSA's commercial fishing App (select 'Other – Relief Days' report title), extend or shorten this time, or cancel the operation of the replacement master against that licence for the remaining days of the nominated period. This must be done prior to commencement of the nominated day. The licence holder may NOT fish under the licence on dates that are the same as nominated as being fished by the replacement master.
5. A prior report by the licence holder will trigger the decrementation of the nominated period of general replacement master days from the commencement of 0001 hours on the first day nominated, regardless of whether the replacement master operates the licence or not, for the nominated period.
6. It is the responsibility of the licence holder to provide the replacement master with required information and documentation. The replacement master must carry the Certificate of Consent at all times when fishing pursuant to the licence, as well as a copy of the licence, and abide by any conditions of consent.
7. Approved nominated days will only apply within a single financial year and must be applied for prior to use. The maximum number of days that can be nominated cannot exceed 28 days in a single financial year.
8. Nominated replacement masters will remain on the Certificate of Consent unless the Minister (or his/her delegate) is otherwise advised, or they are revoked.

6.4 Illness and injury (medically unable to operate the licence)

Consent may be granted to allow a replacement master to be in charge of a registered boat if the holder of the licence (who is also the registered master) is suffering an illness or injury that prevents him/her from fishing. It should be noted the 28 general replacement master days may also be used in such circumstances.

1. An application for a replacement master should be submitted on the approved application form for illness and injury. Any applications requesting a replacement master due to illness or injury must include a certificate from a medical practitioner including the reason why they cannot fish and the period they are unable to fish. Consent may be given for a maximum period of three months or the length of the medical certificate, whichever is shorter. A verbal application may be made to PIRSA where it is for sudden and serious illness, injury or death.
2. Recurring applications for a replacement master on the basis of illness or injury may not be approved on the basis a licence holder should make more permanent arrangements if he/she has a long term illness or injury which may prevent him/her returning to work.
3. PIRSA will resolve to finalise any application within seven (7) working days of receiving the application. Applications for sudden and serious illness or injury will be responded to within 24 hours where possible.

4. Where an application is approved, a letter of consent and a certificate will be provided to the licence holder. It is the responsibility of the licence holder to provide the replacement master with required information and documentation. The replacement master must carry this certificate at all times when fishing pursuant to the licence, as well as a copy of the licence. It may include conditions of consent. The replacement master must not undertake any fishing activities until the approval has been granted and he or she is in possession of a copy of the approval certificate.
5. Applications to cancel the use of a replacement master for illness or injury may only be made in writing to the decision maker.
6. Where the application is approved by the Minister (or his/her delegate) for sudden and serious illness or injury, they will provide initial written confirmation of the approval to the licence holder for a short period to allow for immediate arrangements to be made. Any longer-term arrangements need to be applied for in accordance with these guidelines.

6.5 Official business and training (for Marine Scalefish Fishery only)

1. Consent for the use of a replacement master in the Marine Scalefish Fishery for a maximum of 7 individual days per year may be granted for official business or training activities (noting the 28 general replacement master days may also be used to undertake such activities).
2. Provided the replacement master is already listed as a replacement master on the licence, the licence holder may be granted consent to use the master for official business or training activities after notifying PIRSA Fishwatch on 1800 065 522, that a training day is to be used, at least one hour prior to commencement of the activity.
3. Should the registered master not already be listed as a replacement master on the licence, applications for consent to the use of a replacement master on the grounds of the need of the Marine Scalefish Fishery licence holder to attend official business or training must be in writing, providing information of the course and the dates of the meeting/s provided or supported with documentary proof of registration, at least 10 working days prior to the meeting. Where such as an application is made:
 - a. The decision maker will resolve to finalise any application within seven (7) working days of receiving the application.
 - b. Where a written application is approved, a letter of consent and a certificate will be provided to the licence holder. It is the responsibility of the licence holder to provide the replacement master with required information and documentation. The replacement master must carry this certificate at all times when fishing pursuant to the licence, as well as a copy of the licence. It may include conditions of consent. The replacement master must not undertake any fishing activities until the approval has been granted and he or she is in possession of a copy of the approval certificate.

6.6 Exceptional circumstances

1. Applications may be made on a case-by-case basis for exceptional circumstances which are not explicitly considered by these guidelines. Appropriate consideration and scrutiny will be given to such applications to ensure effort does not significantly increase in the fishery or negatively impact sustainability outcomes. Individual applications may also be considered in respect to setting a precedent for other licence holders in the fishery.

2. An application for a replacement master should be submitted in writing, detailing the reasons of the exceptional circumstances and the time period requested. The decision maker may seek additional information as required to assist consideration of the application.
3. The decision maker will resolve to finalise any formal applications within 10 working days of receiving the application.
4. Consideration will be given to how many times a licence holder has applied for a replacement master for the same or similar exceptional circumstances.
5. Where an application is approved, a letter of consent and a certificate will be provided to the licence holder. It is the responsibility of the licence holder to provide the replacement master with required information and documentation. The replacement master must carry this certificate at all times when fishing pursuant to the licence, as well as a copy of the licence. It may include conditions of consent. The replacement master must not undertake any fishing activities until the approval has been granted and he or she is in possession of a copy of the approval certificate.

7 ENFORCEMENT, MONITORING, EVALUATION AND REVIEW

If the conditions of consent are breached the Minister (or his/her delegate) may prosecute the licence holder for breaching the condition of consent under section 53 of the Fisheries Management Act 2007, and/ or withdraw the consent to utilise replacement masters for individual licence holders.

Monitoring, evaluation and review of these guidelines will occur on an as needs basis to ensure it is effective and continues to facilitate the use of replacement masters within sustainable fisheries management arrangements.

PIRSA will continue to monitor fishing effort across the fishery/fisheries these guidelines apply to and will consider this information in any evaluation or review of these guidelines.

Compliance with the conditions of consent will also be monitored and considered in an evaluation or review of these guidelines in the future.