



**RULES ON THE USE AND ADMINISTRATION OF THE
AUSTRALIAN WILD ABALONE (AWA) CERTIFICATION
TRADEMARK**



**Abalone Council
Australia Ltd**

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RULES ON THE USE AND ADMINISTRATION OF THE AUSTRALIAN WILD
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AUSTRALIA

1. Introduction

- 1.1. Abalone Council Australia Ltd (ACA) is one of the peak industry bodies for the wild harvest abalone industry in Australia. Among the primary functions of the ACA is to oversee and manage national Research and Development (R&D) investment in abalone related research. The ACA has partnered with the Fisheries Research and Development Corporation (FRDC) to ensure that investment in abalone-related R&D supports and underpins the developmental needs of the Australian wild harvest abalone industry. Other roles include the support of industry bodies and governments in protecting and sustaining the long-term viability of the Australian wild catch abalone industry and to promote the industry. Its mission is to support a healthy fishery resource managed for the benefit of all of the abalone industry and the Australian community. As part of this mission, it has created a Certification Trade Mark to assist domestic and international consumers to identify wild-caught Australian abalone that meets certain prescribed standards.
- 1.2. The following rules ("*Rules*") govern the use of the AWA Certification Trademark set out in item 1 of the Schedule ("*Trade Mark*").
- 1.3. In these Rules:
- (a) "*Administration Fee*" means the administration fee as determined by the Executive Committee from time to time;
 - (b) "*Applicant*" means a person who applies for approval to use the Trade Mark in accordance with Article 4;
 - (c) "*Application Fee*" means the application fee as determined by the Executive Committee from time to time;
 - (d) "*Approved Brand Protection System*" means a tamper-evident packaging system for ensuring the integrity of the Goods, as approved by the Executive Committee from time to time;
 - (e) "*Australian Export Authority*" means the Commonwealth Government Department of Agriculture or other authority responsible for controlling the export of the Goods;
 - (f) "*Australian Export Requirements*" means all laws, regulations, codes and Commonwealth Government policies applicable to the export of the Goods;

- (g) *“Australian Waters”* has the same meaning as “coastal waters of the State”, as defined in the *Coastal Waters (State Powers) Act 1980* (Cth), in respect of New South Wales, Victoria, Tasmania, South Australia and Western Australia, but excludes coastal waters of the Northern Territory and Queensland;
- (h) *“Executive Committee”* means the committee as determined in accordance with Article 7;
- (i) *“Goods”* means the goods set out in item 2 of the Schedule;
- (j) *“Licence Agreement”* means an agreement between the Owner and a Licensee in relation to the Licensee’s use of the Trade Mark;
- (k) *“Licensee”* means a person who is authorised to use the Trade Mark in accordance with Article 4.6;
- (l) *“Owner”* means the owner(s) of the Trade Mark, as set out in item 4 of the Schedule;
- (m) *“Renewal Fee”* means the renewal fee as determined by the Executive Committee from time to time;
- (n) *“Services”* means the services set out in item 3 of the Schedule;
- (o) a reference to a law, regulation, code or policy includes any subordinate instruments made under it and any amendments, consolidations, re-enactments or replacements of any of them as made from time to time;
- (p) a reference to a regulatory body or authority includes any replacement or substitute body or authority that assumes or is delegated responsibility for the original body or authority’s powers from time to time.

2. **General Provisions**

2.1. These Rules are made in order:

- (a) to promote and support the supply of certified, wild-caught Australian abalone and derivative products;
- (b) to increase consumer awareness of the Goods and Services;
- (c) to build a distinctive Trade Mark for the Goods and Services;
- (d) to build and maintain the reputation of the Trade Mark in the global market; and
- (e) to encourage strong consumer preference for and confidence in the Goods and Services bearing the Trade Mark.

- 2.2. These Rules are made according to the laws, regulations and measures applying to certification trade marks in the jurisdictions in which the Trade Mark is registered.
- 2.3. The Trade Mark is approved by the relevant statutory bodies in the jurisdictions in which it is registered and used for proving the special quality of the Goods and Services.
- 2.4. The Owner is the owner of the Trade Mark and enjoys the exclusive rights to the Trade Mark.
- 2.5. Any person who intends to use the Trade Mark must first be approved according to these Rules.

3. **Conditions for Use of the Trade Mark**

- 3.1. The consistency and integrity of the Goods and Services are maintained by ensuring that the Trade Mark is only applied to Goods and Services which meet the criteria set out in this Article 3 and in accordance with these Rules.
- 3.2. The Trade Mark may only be applied to Goods that meet the following criteria:
 - (a) *Australian*: the Goods are, or are derived from, abalone which have been fished from Australian Waters;
 - (b) *Wild Caught*: the abalone constituting or contained in the Goods must, prior to being harvested, have lived an entire uninterrupted life-cycle, in Australian Waters, and must not have been ranched or farmed at any point in its life-cycle;
 - (c) *Purity*: the Goods must not contain or be combined with any abalone which does *not* comply with both 3.2(a) and 3.2(b);
 - (d) *No Tampering*: where the Goods are packaged for sale, the packaging must be in a form that is tamper-evident and use an Approved Brand Protection System;
 - (e) *Approved*: the Goods must only be processed and packed from a registered establishment that is approved for export by the Australian Export Authority, regardless of whether the Goods are to be exported or sold domestically;
 - (f) *Legal Compliance*: the Goods must comply with all relevant State/Territory, Commonwealth and foreign laws and regulations pertaining to the fishing, production, labelling, exporting, importation, trade and customs clearance of the Goods for human consumption.
- 3.3. The Trade Mark may only be applied to Services that relate to Goods which meet the criteria in Article 3.2.

- 3.4. Licensees must not use the Trade Mark in a way that is likely to mislead or cause confusion. Licensees must only use the Trade Mark in connection with Goods that meet the criteria in Article 3.2 and Services that meet the criteria in Article 3.3 (“*Approved Goods/Services*”).
- 3.5. A Licensee must not supply Goods or provide Services in relation to abalone or abalone-derived products that are not approved in accordance with these Rules (“*Unapproved Goods/Services*”) using this Trade Mark. It is the Licensee’s responsibility to clearly distinguish between the Approved Goods/Services and Unapproved Goods/Services.

4. **Procedures for Application on the Use of the Trade Mark**

- 4.1. An Applicant may submit a written application for use of the Trade Mark (“*Application*”) to the Owner. The Application must:
 - (a) be submitted in a form approved by the Owner;
 - (b) be accompanied by payment of the Application Fee (if any);
 - (c) enclose such documentation as may be required, as determined by the Executive Committee from time to time; and
 - (d) be sent to the address as specified by the Owner for the receipt of applications.
- 4.2. Applicants must be honest in their dealings with the Owner and the Executive Committee at all times. An Applicant must not provide any information, whether as part of an Application or otherwise, that is false, dishonest or misleading.
- 4.3. Applications submitted in accordance with Article 4.1 will be referred to a Executive Committee for review. The Executive Committee will review each Application for compliance with these Rules in accordance with Article 6 and make a determination by a majority vote. In the absence of a majority decision, the Application will be rejected.
- 4.4. The Owner will notify the Applicant in writing of the decision and, in the case where the Application does not pass the examination process, the reasons for the decision.
- 4.5. If an Application passes the above examination process:
 - (a) The Applicant and Owner must both sign a Licence Agreement regarding the Applicant’s use of the Trade Mark; and
 - (b) The Applicant must pay the Administration Fee (if any) to the Owner within 30 days of the date of an invoice issued by the Owner. If payment of the Administration Fee is not received within this timeframe, the Executive Committee may, at its discretion, terminate or suspend the Applicant’s licence or allow additional time to pay the Administration Fee.

- 4.6. Upon fulfilment of the process in Article 4.5, the Applicant will become a Licensee and will be licensed to use the Trade Mark, subject to these Rules, for a period of one (1) year.
- 4.7. A Licensee may submit a written application to renew its licence (“*Renewal Application*”) to the Owner, prior to the expiration of its current term. The Renewal Application must:
- (a) be submitted in a form approved by the Owner;
 - (b) be accompanied by payment of the Renewal Fee (if any);
 - (c) enclose such documentation as may be required, as determined by the Executive Committee from time to time; and
 - (d) be sent to the address as specified by the Owner for the receipt of applications.
- 4.8. A Renewal Application will be assessed and the licensee will be notified in accordance with the provisions for new Applications set out in Articles 4.2–4.4. Upon approval by the Executive Committee, the Licensee’s licence will be extended for a period of one (1) year from the existing expiry date. For the avoidance of doubt, the requirements in Article 4.5 will not apply to Renewal Applications.
- 4.9. If a Renewal Application is not received and approved prior to the expiration of the existing licence term:
- (a) the licence will be automatically terminated at the end of the licence term;
 - (b) the former Licensee must stop all use of the Trade Mark within seven (7) days from the end of the licence term; and
 - (c) if the former Licensee wishes to use the Trade Mark again, it must submit a new Application in accordance with Article 4.1.

5. Rights and Obligations of the Licensee of the Trade Mark

- 5.1. A Licensee who is approved in accordance with Article 4 will have the rights to use the Trade Marks in connection with its Approved Goods/Services, subject to these Rules and the terms of any Licence Agreement, during the term of its licence.
- 5.2. Each Licence must, during the term of its licence, as a condition of its licence to use the Trade Marks:
- (a) maintain the standards applicable to Approved Goods/Services in accordance with Article 3 of these Rules;

- (b) designate specific people to account for the administration and use of the Trade Marks and compliance with these Rules by the Licensee;
- (c) maintain and promote the reputation of the Trade Marks;
- (d) not disparage the Trade Marks or the Goods or Services to which the Trade Marks are to be applied;
- (e) be honest in its dealings with the Owner and the Executive Committee at all times, and must not provide any information that is false, dishonest or misleading;
- (f) allow the Executive Committee to conduct audits in accordance with Article 6 at any time during the term of its licence;
- (g) comply with the terms of its Licence Agreement.

5.3. If a Licensee breaches any aspect of these Rules or fails in an audit, the Owner may, in its absolute discretion:

- (a) require the Licensee to take corrective action in order to ensure compliance with the Rules;
- (b) suspend the Licensee's licence to use the Trade Marks until it is satisfied that the Licensee has taken corrective action as necessary to ensure compliance with the Rules;
- (c) terminate the Licensee's licence to use the Trade Marks immediately.

6. **Review/Audit**

6.1. The Executive Committee:

- (a) must conduct a review in accordance with this Article 6 when considering an Application; and
- (b) may conduct a desk audit in accordance with this Article 6 at any time during the term of a Licensee's licence;

to ensure compliance with these Rules.

6.2. Reviews and desk audits will be based on documentation issued by appropriately qualified authorities, namely:

- (a) approval by the applicable State Government fisheries authorities for receiving and processing the Goods; and
- (b) approval by the Australian Export Authority for export under an "Approved Arrangement".

- 6.3. The Executive Committee may also inform itself by:
- (a) requesting additional information from the Applicant or Licensee;
 - (b) conducting its own further investigations; and
 - (c) considering any other evidence that it considers relevant.
- 6.4. Following a review or audit, the Executive Committee will send a written report to the Owner setting out:
- (a) its decision whether the Applicant or Licensee is compliant with the Rules; and
 - (b) if its decision is that the Applicant or Licensee is not compliant, providing reasons for that decision.

7. Executive Committee

- 7.1. The Owner will appoint an Executive Committee. The Owner may, from time to time, appoint additional members of the Executive Committee or remove members of the Executive Committee. The Executive Committee must have a minimum of three (3) members and a maximum of six (6) members at any given time.
- 7.2. The Owner must be satisfied that each member of the Executive Committee is suitable and has the necessary qualifications, skill and knowledge to perform his or her duties in accordance with the Rules. Without limiting the generality of the foregoing:
- (a) the Owner must be satisfied that the Executive Committee collectively has a sound knowledge of the abalone industry and its governance requirements, including fishing requirements, export requirements, and licensing requirements;
 - (b) a minimum of two (2) members of the Executive Committee must each have a minimum of five (5) years experience in a managerial role within an abalone export establishment.
- 7.3. The Executive Committee has the following powers:
- (a) to review Applications to use the Trade Mark;
 - (b) to review renewal applications;
 - (c) to conduct desk audits on Licensees to ensure ongoing compliance in accordance with Article 6;
 - (d) to determine the Application Fee, Administration Fee and Renewal Fee from time to time;

- (e) to approve any Approved Brand Protection System and withdraw approval for any Approved Brand Protection System from time to time, based on the following requirements:
 - (i) it must include a tamper-evident seal;
 - (ii) it must incorporate evidence of the entity that sealed the product;
 - (iii) it must not be easily replicated or forged.

7.4. Decisions of the Executive Committee will be taken by a majority vote. The quorum required for a vote to be taken is a minimum of two (2) members. Votes may be taken by a meeting or poll of the members conducted electronically. In the event of a tie:

- (a) in the case of a review or audit, the Applicant or Licensee will be taken not to have passed;
- (b) in the case of any other decision, the motion will not pass.

8. **Disputes: Reviews and Appeals**

8.1. Any person ("*Complainant*") may request a review of any decision made under these Rules or other issue relating to the Trade Mark by a written request to the Owner within twenty-eight (28) days of the decision, setting out the reasons for its objection.

8.2. Within twenty-eight (28) days of receiving a Complaint in accordance with Article 8.1, the Owner will take steps to undertake a review of the decision and notify the Complainant that the review is being undertaken. As soon as reasonably possible, the Owner will take such further action that it deems appropriate to review the decision, which may include a further audit, and notify the Complainant in writing of the outcome of the review.

8.3. In the event that a Complainant is dissatisfied with the outcome of a review in accordance with Article 8.2, the Complainant may appeal by notifying the Owner in writing within twenty-eight (28) days of being notified of the review decision. An appeal will be referred to an independent dispute resolution expert as agreed between the Owner and the Complainant or, if the parties do not reach an agreement within fourteen (14) days of the Owner receiving the notification of the complaint, a mediator appointed by the Institute of Arbitrators and Mediators Australia (IAMA). The cost of the independent dispute resolution expert or mediator:

- (a) must be paid for by the Complainant prior to the appeal being considered;
- (b) will be reimbursed by the Owner to the Complainant in the event that the appeal is fully upheld;

- (c) will be shared between the Owner and the Complainant in the event that the appeal is partly upheld.

9. **Administration**

- 9.1. The Owner is responsible for the administration of the Trade Marks and for making and implementing these Rules, including overseeing compliance with the Rules by Licensees.
- 9.2. The Owner will maintain a register that identifies the authorised Licensees, the term of each Licensee's licence, and any other information that the Owner deems appropriate.
- 9.3. The Trade Marks remain the property of the Owner and are protected by law. Nothing in these Rules transfers or assigns ownership of the Trade Marks to any other person.
- 9.4. In the event of suspected or alleged counterfeiting, infringement or unauthorised use of the Trade Marks or non-compliance with the Rules, upon the reasonable request of the Owner, Licensees will be required to assist in providing evidence to assist the Owner to pursue such action as may be appropriate.

SCHEDULE

<p>1. Trade Mark:</p>	
<p>2. Goods:</p>	<p>abalone products, including but not limited to live abalone, frozen abalone products, individual quick frozen abalone, frozen on shell abalone, dried abalone, preserved abalone, processed abalone, smoked abalone, canned abalone, tinned abalone, vacuum pouched abalone, modified atmosphere packaged abalone, high pressure processed abalone, edible abalone oil, food products derived from Australian wild abalone</p>
<p>3. Services:</p>	<p>market research; advertising; and promotional services (excluding the transport thereof) in the promotion of the interests of members; advisory and consultancy services in relation to the foregoing; the provision of all such services through a computer network or other electronic or wireless means</p>
<p>4. Owners:</p>	<div style="display: flex; align-items: center;">  <div> <p>Abalone Council Australia Ltd</p> </div> </div> <p style="margin-top: 10px;">Abalone Council Australia Ltd (ACN 108 092 271)</p> <p style="margin-top: 10px;">262 Argyle Street, Hobart, Tasmania, 7000, Australia</p> <p style="margin-top: 10px;">www.abalonecouncil.com.au contact@australianwildabalone.com.au</p> <p style="margin-top: 10px;">澳大利亚鲍鱼协会有限公司 澳大利亚，塔斯马尼亚，霍巴特，亚皆街，262号；邮编 7000</p>