

1995—No. 92

FISHERIES MANAGEMENT ACT 1994—REGULATION

(Establishing a shellfish quality assurance program for New South Wales)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Fisheries Management Act 1994, has been pleased to make the Regulation set forth hereunder.

I. R. CAUSLEY,
Minister for Agriculture and Fisheries.

Commencement

1. This Regulation commences on 1 May 1995.

Amendments

2. The Fisheries Management (Aquaculture) Regulation 1895 is amended:

- (a) by inserting in the heading to Division 3 of Part 2 after the words “permit holders” the words “to pay for research”;
- (b) by inserting in clause 8 (1) after the word “separate” the word “research”;
- (c) by inserting in clause 8 (1) before the words “trust account” the word “research”;
- (d) by omitting from clause 10 the words “the trust” and by inserting instead the words “a research trust”;
- (e) by omitting from clause 11 the words “the trust” where firstly occurring and by inserting instead the words “a research trust”;
- (f) by inserting in clause 12 before the words “trust accounts” the word “research”;
- (g) by inserting the following Division after Division 3 of Part 2:

Division 4—New South Wales Shellfish Quality Assurance Programs

Definitions

12A. In this Division:

“**estuarine waters**” means waters located within the estuary of a New South Wales river;

“**local committee**” means a local shellfish quality assurance committee appointed under clause 12C (3);

“**local program**” means a local shellfish quality assurance program established or determined under clause 12B for a specified area or areas of estuarine waters, and, if the program has been varied under clause 12F, means the program as varied;

“**New South Wales Committee**” means the New South Wales Shellfish Quality Assurance Committee appointed under clause 12C (1);

“**New South Wales Program**” means the New South Wales Shellfish Quality Assurance Program established under clause 12B;

“**New South Wales Program Trust Account**” means the New South Wales Shellfish Quality Assurance Program Trust Account established under clause 12I;

“**shellfish**” means bi-valve molluscs.

Minister to determine plan to assure quality of shellfish

12B. (1) The Minister is required to determine as a commercial aquaculture industry development plan a program to assure the quality of shellfish taken from estuarine waters for sale for human consumption.

(2) The plan is to consist of the New South Wales Shellfish Quality Assurance Program, which is to include local shellfish quality assurance programs for those estuarine waters where holders of class A permits operate aquaculture farms.

(3) The objective of the New South Wales Program is:

- (a) to ensure that shellfish are taken from estuarine waters to be sold for human consumption only if
 - (i) the shellfish meet the quality standards specified in or under the program; and
 - (ii) those waters meet environmental standards so specified; and

- (b) to supervise the co-ordination of local programs; and
- (c) to ensure that local programs meet the objectives specified in paragraph (a).

(4) The Minister is responsible for establishing the New South Wales Program in consultation with the New South Wales Committee.

(5) If there is an inconsistency between the New South Wales Program and a local program, the New South Wales Program is to prevail.

Note: Section 143 of the Act empowers the Minister to determine plans for the development of the commercial aquaculture industry.

Minister to appoint New South Wales and local committees

12C. (1) The Minister is required to appoint an advisory committee, to be called the New South Wales Shellfish Quality Assurance Committee.

(2) The New South Wales Committee is to have 6 members of whom:

- (a) one is to be appointed by the Minister as chairperson; and
- (b) four are to be persons who are individuals who hold class A permits or are the nominees of corporations that hold such permits; and
- (c) the other is to be the Director of Fisheries or, if the Director has nominated an officer of NSW Fisheries as a member, that officer.

(3) The Minister is also required to appoint a local shellfish quality assurance committee for each area or group of areas of estuarine waters to which the New South Wales Program relates.

(4) In appointing members of a local committee, the Minister:

- (a) must consult the New South Wales Committee and representatives of holders of class A permits whose aquaculture farms are located within the relevant estuarine waters; and
- (b) may only appoint as members of the committee individuals who hold such permits or are the nominees of corporations that hold such permits.

(5) Neither the New South Wales Committee nor a local committee is subject to the control or direction of the Minister, but the Minister may require it to reconsider any decision that it has made.

(6) The Minister may remove from office all or any of the members of the New South Wales Committee or a local committee.

(7) Schedule 2 applies to the New South Wales Committee and to each local committee.

Responsibilities of New South Wales Shellfish Quality Assurance Committee

12D. The New South Wales Committee is responsible for:

- (a) supervising the administration of the New South Wales Program; and
- (b) advising the Minister with respect to the establishment and operation of the New South Wales Program and local programs; and
- (c) advising the Minister on the appointment of a person as manager of the New South Wales Program; and
- (d) developing and implementing programs for the education of aquaculture farmers and the general community in public health and environmental issues.

Responsibilities of local shellfish quality assurance committees

12E. (1) A local committee is responsible for establishing and administering a local shellfish quality assurance program for the estuarine waters for which the committee is appointed.

(2) A local program must include any minimum standards specified in the New South Wales program for the quality of shellfish cultivated in the relevant estuarine waters and for the purity of those waters.

(3) A local program does not have effect unless approved by the Minister or unless determined under subclause (4).

(4) If a local committee:

- (a) fails to submit a draft local program to the Minister for the Minister's approval within 3 months after the appointment of the committee or within such extended period as the Minister allows; or
- (b) having submitted such a draft program within that period or extended period—fails to comply with the Minister's conditions for approval of the program within 1 month after being notified in writing of those conditions,

the Minister may determine a local shellfish quality assurance program for the area or areas of estuarine waters concerned.

Variation of local programs

12F. (1) A local committee may vary a local program but only with the approval of the Minister acting in consultation with the New South Wales Committee.

(2) The Minister may, on consultation with the New South Wales Committee, vary a local program but only after consulting the local committee concerned.

Condition of aquaculture permit that holder complies with requirements of Shellfish Quality Assurance Program

12G. (1) It is a condition of a class A permit that the permit holder complies with the requirements of the New South Wales Program and of the local program applicable to the estuarine waters where the permit holder's aquaculture farms are located.

(2) It is also a condition of a class A permit that the permit holder:

- (a) pay to the relevant local committee such charges as are from time to time fixed by the committee and levied on, and notified in writing to, the permit holder in accordance with subclause (3); and
- (b) pay for any relevant test required to be conducted under the local program on shellfish located within the aquaculture farm or farms operated by the permit holder.

(3) A local committee may from time to time fix and levy a charge to be paid by each holder of a class A permit who operates an aquaculture farm located within the estuarine waters for which the committee is appointed.

(4) The total amount of charges fixed and levied by a local committee under subclause (3) must not exceed the costs incurred by the committee in carrying out its responsibilities under this Division.

Aquaculture permit holders liable to pay contributions for Shellfish Quality Assurance Programs

12H. (1) Each holder of a class A permit must pay to the Minister an annual contribution of the prescribed amount for the period of 12 months beginning on 1 July 1995 and on 1 July in each following year.

(2) Annual contributions payable under this clause may be applied only for the purposes of meeting:

- (a) the cost of operating the New South Wales Program; and
- (b) the costs incurred in maintaining the New South Wales Committee; and

(c) the costs incurred by that Committee in carrying out its responsibilities.

(3) The prescribed amount of contribution is \$200 and \$8 for each hectare, or part of a hectare, of the area of the aquaculture farm or farms to which the relevant aquaculture permit relates.

(4) If the total area of the aquaculture farm or farms to which a class A permit relates is less than 1 hectare, the contribution payable by the holder of the permit under this clause is that payable for 1 hectare.

(5) A contribution under this clause must be paid on or before 31 July 1995 and 31 July in each following year.

(6) A class A permit holder may pay a contribution by instalments. For that purpose, the Minister is required:

(a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated; and

(b) to notify those amounts or the manner of their calculation to the permit holder concerned.

(7) If there is a failure to make a payment in accordance with such a notice, the Minister may treat the total unpaid balance as an overdue amount of contribution even if payment by instalments has begun.

Minister to establish and maintain New South Wales Shellfish Quality Assurance Program Trust Account

12I. (1) The Minister is required to establish and maintain at a bank located in New South Wales a trust account for the operation of the New South Wales Program.

(2) The trust account is to be called the “New South Wales Shellfish Quality Assurance Program Trust Account” and is to consist of:

(a) all contributions paid or recovered under clause 12H by or from permit holders; and

(b) the interest or other income accruing from investing the money in the trust account.

(3) The money held in the New South Wales Program Trust Account is vested in the Minister as trustee and is to be applied in accordance with this Division.

(4) The Minister must ensure that all money referred to in subclause (2) is paid to the credit of the New South Wales Program Trust Account.

(5) Subject to this Division, the Minister is responsible for determining the manner in which the New South Wales Program Trust Account is to be operated.

Money held in New South Wales Shellfish Quality Assurance Program Trust Account can be invested

12J. The Minister may invest money held in the New South Wales Program Trust Account that is not immediately required for the purposes of this Division:

- (a) in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds; or
- (b) on deposit with the Treasurer.

Local shellfish quality assurance committee to establish and maintain local shellfish quality assurance program trust account

12K. (1) Each local committee is required to establish and maintain at a bank located in New South Wales a trust account for the operation of the relevant local program.

(2) Such a trust account must include the name of the local committee and the words “shellfish quality assurance program trust account”, in its title and is to consist of

- (a) all charges paid or recovered under clause 12G by or from permit holders; and
- (b) the interest or other income accruing from investing the money in the trust account.

(3) The money held in a local program trust account is vested in the members of the local committee as trustees and is to be applied in accordance with this Division.

(4) A local committee must ensure that all money referred to in subclause (2) is paid to the credit of the relevant local program trust account.

(5) Subject to this Division, a local committee is responsible for determining the manner in which the relevant local program trust account is to be operated.

Money held in local shellfish quality assurance program trust account can be invested

12L. A local committee may invest money held in the relevant local program trust account that is not immediately required for the purposes of this Division:

- (a) in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds; or
- (b) on deposit with the Treasurer.

Purposes for which money held in trust account can be used

12M. Money held in a trust account established for the purposes of this Division may be applied only for:

- (a) meeting the costs incurred in carrying out the purposes for which the trust account was established; and
 - (b) meeting the expenses incurred by the Minister or the relevant local committee in administering the trust account.
- (h) by omitting from the heading to Schedule 2 the words “IN RESPECT OF TRUST ACCOUNTS”;
 - (i) by omitting from Schedule 2 the matter “(Cl. 12)” and by inserting instead the matter “(C11. 12, 12C)”;
 - (j) by omitting from clause 1 of Schedule 2 the definition of “committee” and by inserting instead the following definition:
“committee” means:
 - (a) a committee appointed by the Minister in respect of a trust account under section 157 (4) of the Act; or
 - (b) the New South Wales Shellfish Quality Assurance Committee appointed under clause 12C (1) of this Regulation; or
 - (c) a local shellfish quality assurance committee appointed under clause 12C (3) of this Regulation;
 - (k) by inserting in the note to clause 2 of Schedule 2 after the words “a committee” the words “to advise the Minister as to the amount of contributions that are to be paid into a trust account established under section 157 (2) of the Act and of the money held in the trust account”;
 - (l) by inserting in clause 6 (d) of Schedule 2 after the words “of the Act” the words “or clause 12C (6) of this Regulation”.
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EXPLANATORY NOTE

The object of this Regulation is to provide for the determination of a commercial aquaculture industry development plan to ensure that shellfish taken for sale for human consumption from estuarine waters in New South Wales are of the highest quality and, in particular, are free from disease and pollutants. The plan is to consist of a New South Wales Shellfish Quality Assurance Program, which is to include local shellfish quality assurance programs for estuarine waters in New South Wales where shellfish aquaculture is carried on. It will be a condition of all class A aquaculture permits that permit holders comply with the requirements of the New South Wales Program and the relevant local program.

The plan will be financed at 3 levels. The cost of financing the New South Wales Program (including the New South Wales Shellfish Quality Assurance Committee) will be met from annual contributions required to be paid by all holders of class A aquaculture permits. The costs associated with carrying out a local shellfish quality assurance program (including environmental testing of local estuarine waters) will be met from charges fixed and levied on those permit holders whose aquaculture farms are located in those waters. The cost of carrying out testing of shellfish cultivated on a particular aquaculture farm will be met by the holder of the permit for that farm.

This Regulation is made under the Fisheries Management Act 1994, including sections 152, 156, 191 and section 289 (the general regulation making power).
