

1993—No. 562

FISHERIES AND OYSTER FARMS ACT 1935—REGULATION *

(Relating to the rock lobster fishery)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Fisheries and Oyster Farms Act 1935, has been pleased to make the Regulation set forth hereunder.

I. R. CAUSLEY
Minister for Agriculture and Fisheries.

Commencement

1. This Regulation commences on 29 November 1993.

Amendments

2. The Fisheries and Oyster Farms (General) Regulation 1989 is amended:

- (a) by inserting in clause 24A, in alphabetical order, the following definition:

“**tag**” means a tag issued by the Director in accordance with this Part for attachment to an eastern rock lobster.

- (b) by inserting after clause 24D the following clause:

Permit fee

24DA. (1) The fee for the issue of a permit (“**the permit fee**”) is \$1,000 in respect of each 12 month period or part of that period for which the permit is issued.

(2) The Director is not to issue a permit under clause 24D unless the applicant for the issue of the permit has paid the permit fee or at least \$500 of the fee on or before the issue of the permit,

* Published in error—has no effect. See correction notice published in G.G. No. 138 of 17.12.93, p. 7304.

(3) Any part of the permit fee which is not paid on or before the issue of the permit must be paid by the permit holder on or before the date which is 6 months after the date of issue of the permit.

(4) The Director may cancel a permit if the permit holder fails to pay the permit fee in accordance with this clause.

(c) by inserting at the end of clause 24E (2) the following matter:

; or

(d) the applicant has, in the opinion of the Director, breached a condition to which the permit is subject; or

(e) the applicant has been convicted of an offence relating to the theft of fish or fishing gear.

(d) by inserting after clause 24H (2) the following subclause:

(3) The Director may suspend or cancel a permit if the permit holder:

(a) has, in the opinion of the Director, breached a condition to which the permit is subject; or

(b) has been convicted of an offence relating to the theft of fish or fishing gear.

(e) by inserting after clause 24H the following clauses:

Use of permit by another person

241. (1) The holder of a permit may apply in writing to the Director for authorisation for the permit to be used by another person (being a licensed fisherman) for a specified period.

(2) The Director may, in writing, authorise such a person to use that permit if the Director is satisfied that special circumstances exist (such as the permit holder being incapacitated) and as a result the permit holder is, or is likely to be, unable to take rock lobster for sale during the specified period.

(3) If the Director authorises such a person to use the permit, then during the period of such authorisation:

(a) that person is taken to be the permit holder; and

(b) the takings of rock lobster for sale by that person are taken to be takings by the permit holder.

(4) The Director may refuse to authorise the use of a permit by a person who:

(a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act; or

(b) has been convicted of an offence relating to commercial fishing operations under the laws of the Commonwealth or of another State or of a Territory; or

(c) has been convicted of an offence relating to the theft of fish or fishing gear.

(5) Except as provided by this clause, a permit is not transferable.

Eastern rock lobsters to have tags attached

24J. (1) It is a condition of the issue or renewal of a permit that the permit holder attach a tag issued to the permit holder by the Director to each eastern rock lobster taken by the permit holder for the purpose of sale as soon as it is landed.

(2) The tag must be attached in such a manner that it cannot be removed without being broken.

(3) The tag attached must be a tag that is issued by the Director for use in the period in which the rock lobster is taken.

Issue of tags by Director

24K. (1) An application for tags must be in writing and must specify the number of tags applied for. If the person applying for tags is not a permit holder the application must accompany an application for the issue or renewal of a permit.

(2) The Director must not issue any tags to a person unless:

(a) the Director is satisfied that the person is a permit holder;
or

(b) the issue of the tags to the person accompanies the issue of a permit to that person or renewal of his or her permit.

(3) A person who is issued with a tag may surrender the unused tag to the Director.

Tags not transferable

24L. It is a condition of the issue or renewal of any permit that a tag issued to the permit holder must not be given to any other person unless it is surrendered to the Director or attached to an eastern rock lobster in such a manner that it cannot be removed without being broken.

Eastern rock lobster must be sold with tag attached

24M. (1) A person must not sell (within the meaning of the Act) a whole eastern rock lobster which does not have a tag attached to it in such a manner that the tag cannot be removed without being broken.

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

(2) A person does not commit an offence if the rock lobster the subject matter of the charge was taken elsewhere than in the waters of or adjacent to New South Wales.

(3) In this clause, “**whole eastern rock lobster**” includes an eastern rock lobster which has had parts (other than the abdomen of the rock lobster) removed.

EXPLANATORY NOTE

At present, rock lobsters are a restricted fishery by order under section 22A (1) of the Fisheries and Oyster Farms Act 1935. The Fisheries and Oyster Farms (General) Regulation 1989 sets out procedures relating to the issue, renewal and cancellation of permits in respect of that fishery.

The object of this Regulation is to make further provision with respect to the rock lobster fishery, in particular:

- (a) to prescribe a fee of \$1,000 for the issue of a permit, which fee may be paid in instalments over the first 6 months of the period of the permit; and
- (b) to allow the Director of NSW Fisheries to refuse to renew a permit, or suspend or cancel a permit, if the permit holder breaches a condition of the permit or is convicted of an offence relating to the theft of fish or fishing gear; and
- (c) to allow the holder of a permit who is unable to take rock lobster in a period to obtain the Director’s authorisation for another person to use the permit in that period; and
- (d) to allow the Director to issue tags to permit holders to be attached to eastern rock lobsters which are taken for the purpose of sale; and
- (e) to provide that a permit holder is entitled, upon application to the Director, to be issued with such tags; and
- (f) to make it a condition of any permit that the permit holder attach the tags issued to him or her to all eastern rock lobsters taken by the permit holder for the purpose of sale; and
- (g) to make it an offence to sell a whole eastern rock lobster which does not have such a tag attached in such a manner that it cannot be removed without being broken.

This Regulation is made under the Fisheries and Oyster Farms Act 1935, including sections 22A (4) (relating to restricted fishery permits), 120 (1) (general regulation making power), 120 (2) (d) (permit fees), 120 (2) (w) (consignment of fish for sale), 120 (2) (hh) (storing of fish for sale), 120 (2) (rr) (regulation of fisheries) and 121 (penalties and application of regulations).
