

1994—No. 330

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, M.P.,
Minister for Agriculture and Fisheries.

Commencement

1. This Regulation commences on 15 July 1994.

Amendments

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

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

“allocation” means the maximum quantity of eastern rock lobster a permit holder may take for the purposes of sale in the fishing period in which the permit is in force in accordance with a condition imposed under clause 24IA;

“fishing period” means a period of 12 months ending on 30 June;

- (b) by inserting after clause 24E (2) (e) the following word and paragraph:

; or

- (f) the applicant has not paid any fee due and payable under or in connection with the permit

- (c) by omitting clause 24F and by inserting instead the following clause:

Duration of permit

24F. A permit remains in force for the period specified in the permit when it is issued or renewed, except to the extent that its duration is affected by suspension, or unless it is cancelled.

- (d) by inserting after clause 24H (3) the following subclause:

(4) The Director may suspend a permit if the permit holder sells or disposes of the licensed boat used by the permit holder in connection with the taking of rock lobster until such time as the Director is satisfied that the permit holder has acquired another licensed boat of the same type to be used in connection with the taking of rock lobster.

- (e) by inserting after clause 24I the following clause:

Allocation of total allowable catch among permit holders

24IA. (1) The Director may issue or renew a permit on condition that the permit holder does not take more than the maximum quantity of eastern rock lobster allocated to the permit holder for the purposes of sale in respect of the fishing period in which the permit is in force.

(2) The Minister may determine that part only of the total allowable catch of eastern rock lobster is to be allocated between permit holders in a fishing period.

(3) However, whether the whole or part only of the total allowable catch is to be allocated in a fishing period, the allocation is to be made by the Director among permit holders in proportion to their catch history in the eastern rock lobster fishery during the best 3 out of 4 years during the years 1987 to 1990 inclusive.

(4) The catch history of permit holders is to be determined by the Director having regard to such information as the Director considers appropriate.

(5) In this clause, “**total allowable catch**” means the maximum quantity of eastern rock lobster that may be taken from the rock lobster restricted fishery in a fishing period, specified in an order under section 22A (3) of the Act.

- (f) by omitting clause 24J (1) and by inserting instead the following subclauses:

(1) It is a condition of the issue or renewal of a permit that:

- (a) the permit holder; or

(b) a member of the crew of a licensed boat being used by the permit holder, in the presence of the permit holder,

attach a tag issued by the Director to each eastern rock lobster taken by the permit holder for the purpose of sale before it is landed on shore or is transferred from the boat on which it was taken to any other boat.

(1A) An officer of NSW Fisheries may attach a tag to an eastern rock lobster.

(g) by inserting in clause 24J (3) before the word “period” the word “fishing”;

(h) by inserting after clause 24J (3) the following subclause:

(4) A person must not attach a tag to an eastern rock lobster unless the person:

(a) is a permit holder; or

(b) is a member of the crew of a licensed boat being used by a permit holder and attaches the tag in the presence of the permit holder; or

(c) is an officer of NSW Fisheries.

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

(i) by omitting clauses 24K and 24L and by inserting instead the following clauses:

Application for tags

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 minimum number of tags that a permit holder may apply for is 150 tags or 25% of the number of tags available to the permit holder in the fishing period to which the permit relates, whichever is the greater. If the number of tags available to the permit holder in the fishing period to which the permit relates, or the balance of that period, is less than 150, the permit holder may only apply for all of the tags available to the permit holder.

(3) An application must be accompanied by a fee of \$2 for each tag.

(4) A permit holder must, before 31 March in each year, apply and pay for all tags available to the permit holder in the fishing period to which the permit relates.

(5) If a permit holder fails to apply and pay for all tags available to the permit holder in accordance with subclause (4), the Director may suspend, and refuse to renew, the permit until such time as the permit holder pays for the tags.

Determination of number of tags available to a permit holder

24KA. (1) For the purposes of this Part, the number of tags available to a permit holder in the fishing period to which the permit relates is the number of tags that the Director determines will be required by the permit holder to allow him or her to take the whole or his or her allocation of eastern rock lobster for that period.

(2) For the purposes of this Part, the number of tags available to a permit holder for the balance of a fishing period is (if an earlier issue or issues of tags has been made to the permit holder or the permit holder has received tags from another permit holder in accordance with a transfer of allocation) the number of tags that the Director determines will be required by the permit holder to allow him or her to take the balance of his or her allocation of eastern rock lobster for that period.

(3) In determining the number of tags required by a permit holder the Director is to have regard to the average weight of eastern rock lobster taken by the permit holder in the fishing period to which the permit relates or in previous fishing periods.

(4) The average weight of eastern rock lobster taken by a permit holder in a particular period is to be determined by the Director having regard to such information as the Director considers appropriate.

Issue of tags by Director

24L. (1) The Director is not to issue any tags to a person unless:

- (a) the person is a permit holder or the issue of tags to the person is accompanied by the issue of a permit to that person or the renewal of his or her permit; and
- (b) the fees for the issue of the tags applied for has been paid; and
- (c) the Director is satisfied that the number of tags to be issued does not exceed the number of tags available to the person for the fishing period to which the permit relates or for the balance of that period (if an earlier issue or issues of tags has been made to the permit holder or the permit holder has received tags from another permit holder in accordance with a transfer of allocation).

(2) It is a condition of the issue or renewal of any permit that a tag issued to, but not used by, a permit holder during the fishing period to which the permit relates must be surrendered to the Director within 30 days after the end of that period.

(3) A person who is issued with a tag may, subject to subclause (2), surrender the unused tag to the Director at any other time.

Tags not transferable

24LA. (1) Tags remain the property of the Director of NSW Fisheries.

(2) 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:

- (a) it is surrendered to the Director; or
- (b) it is attached to an eastern rock lobster in such a manner that it cannot be removed without being broken; or
- (c) it is given to another permit holder (together with a transfer of allocation to that permit holder) in accordance with the approval of the Director referred to in clause 24LB (6) (b).

Transfer of allocation by amendment of permit conditions

24LB. (1) If the Director has made an allocation to a permit holder and has imposed conditions accordingly, the allocation may be transferred in accordance with this clause.

(2) The Director may issue guidelines as to when the Director will approve transfers but the issue of guidelines does not fetter the exercise of the Director's discretion under subclause (5).

(3) An application for a transfer may be made in writing to the Director, in such manner as the Director approves, jointly by the holder of a permit, specifying the allocation concerned, and the holder of another permit who intends to purchase any transferable portion of the allocation.

(4) The application is to be accompanied by a fee of \$100.

(5) The Director may, in the Director's discretion, transfer the relevant portion of the allocation (by amendment of the conditions attached to each permit) or refuse to transfer any such portion.

(6) At the time of the transfer, the Director may:

- (a) require the permit holder the portion of whose allocation is being transferred to surrender to the Director the number of tags that the Director specifies is appropriate in respect of the portion of the allocation being transferred; or

(b) if the Director considers it appropriate, approve that the permit holder the portion of whose allocation is being transferred give the number of tags that the Director specifies is appropriate to the permit holder to whom that portion is being transferred.

(7) The Director is to refund the fee of \$2 per tag in respect of each tag surrendered in accordance with clause 24LB (6) (a).

(8) The permit holder to whom an allocation is transferred under this clause may apply for the issue of tags in respect of that allocation in accordance with this Part.

EXPLANATORY NOTE

Currently, rock lobster is declared to be a restricted fishery under section 22A (1) of the Fisheries and Oyster Farms Act 1935. The Fisheries and Oyster Farms (General) Regulation 1989 sets out procedures dealing with the issue, renewal and cancellation of permits in respect of that fishery.

In addition, by an order under section 22A (3) (a) of the Fisheries and Oyster Farms Act 1935, the Minister for Agriculture and Fisheries has specified the maximum quantity of eastern rock lobster that may be taken from the rock lobster restricted fishery during the period 1 July 1994 to 30 June 1995 (inclusive).

The object of this Regulation is to make further provision with respect to the rock lobster restricted fishery and, in particular, with respect to the taking and tagging of eastern rock lobster. Provision is made so as:

- (a) to enable the Director of NSW Fisheries to refuse to renew a restricted fishery permit in respect of rock lobster if an applicant has failed to pay any outstanding fees under the permit; and
- (b) to provide that permits are to be in force for the period specified in the permit on its issue or renewal (reference to a minimum term of 1 year being omitted); and
- (c) to provide that permit holders must have a licensed fishing boat for use in the rock lobster fishery; and
- (d) to enable the Director, by permit condition, to require that permit holders do not exceed a specified allocation of eastern rock lobster (calculated as a maximum quantity) in the period in which their permits are in force; and
- (e) to revise and expand the provisions concerning the tagging of eastern rock lobster so as:
 - to provide that lobster must be tagged by the permit holder or a member of the permit holder's crew before the lobster is brought ashore or transferred to another boat; and
 - to provide that an officer of NSW Fisheries may tag lobster; and
 - to provide that permit holders must take up a specified number of tags, based on their allocation for the period in which their permits are in force, at a fee of \$2 per tag; and

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- to provide that permits may be suspended, or not renewed, if permit holders fail to take up and pay for tags to which they are entitled; and
- to provide that the Director is to issue tags to permit holders only and is not to issue tags if the fees for their issue are unpaid or if the issue of tags to a permit holder would exceed his or her allocation of the lobster catch; and
- to provide for the transfer of tags under certain circumstances and for the surrender of tags; and
- to provide for the transfer of catch allocations from one permit holder to another by amendment of permit conditions.

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