



New South Wales

Fisheries Management (General) Amendment (Rock Lobster) Regulation 1996

under the

Fisheries Management Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1996*.

BOB MARTIN

Minister for Mineral Resources and Minister for Fisheries

Explanatory note

The object of this Regulation is to provide for the commencement of limited access to the lobster share management fishery under the *Fisheries Management Act 1994*.

At present rock lobsters are a restricted fishery. This means that it is an offence for a commercial fisher to take rock lobster for sale from any waters unless the fisher has an endorsement on his or her commercial fishing licence authorising him or her to do so.

The lobster fishery is also a share management fishery under Schedule 1 to the Act. The Act provides that if a share management fishery is also a restricted fishery, it ceases to be a restricted fishery when limited access to the share management fishery commences. Limited access commences, on a date appointed by the Minister, after shares have been provisionally issued in the share management fishery. When limited access commences, access to the fishery is limited to persons who hold licences that are endorsed for the taking of lobster in the share management fishery. A shareholder is entitled to be endorsed to take lobster in the fishery or to nominate another commercial fisher to be endorsed to take lobster on the shareholder's behalf.

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Explanatory note

This Regulation makes provision for the commencement of limited access to the lobster share management fishery, including the imposition of quotas on the taking of rock lobster and of a maximum shareholding in the lobster fishery. It also continues existing requirements for the tagging of eastern rock lobsters taken for sale.

This Regulation is made under the *Fisheries Management Act 1994*, including section 40, particularly section 40 (2) (g) (relating to tagging of fish), section 289 (the general regulation making power) and the sections referred to in the Regulation.

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1 Name of Regulation

This Regulation is the *Fisheries Management (General) Amendment (Rock Lobster) Regulation 1996*.

2 Commencement

This Regulation commences on 1 July 1996.

3 Amendment of Fisheries Management (General) Regulation 1995

The *Fisheries Management (General) Regulation 1995* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

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(Clause 3)

[1] **Clause 118, note**

Omit the note after clause 118.

[2] **Part 5, Division 5A**

Insert after Division 5 in Part 5:

Division 5A Tagging of eastern rock lobsters taken for sale

119A Definitions

In this Division:

fishing period means a period of 12 months ending on 30 June.

lobster fishery means the lobster share management fishery specified in Schedule 1 to the Act.

shareholder means a holder of shares in the lobster fishery.

tag means a commercial fishing tag issued by the Director under this Division for attachment to eastern rock lobsters taken for sale.

119B Issue of tags by Director

- (1) The Director may issue commercial fishing tags for attachment to eastern rock lobsters taken for sale.
- (2) The Director may issue such tags only to a shareholder in the lobster fishery. However, this subclause does not prevent the Director from issuing tags to a person who is duly nominated in the Share Register by a shareholder to take lobster in the lobster fishery on the shareholder's behalf and who applies for the tags on behalf of that shareholder.

- (3) The Director may also issue tags to officers of NSW Fisheries for attachment to eastern rock lobsters for the purposes of enforcement or administration of the Act or this Regulation.

119C Application for tags

- (1) An application for tags may be made by or on behalf of a shareholder in the lobster fishery.
- (2) The application must be in writing and must specify the number of tags applied for.
- (3) The application must be accompanied by a fee of \$2 for each tag.
- (4) The minimum number of tags that may be applied for is 50 tags.
- (5) A shareholder must apply and pay for any tags the shareholder wishes to use in a fishing period before June 15 in the year in which the fishing period expires.

119D Number of tags issued to correspond with quota of applicant

- (1) The Director is not to issue tags to a shareholder unless:
 - (a) the fee for the issue of the tags applied for has been paid, and
 - (b) the Director is satisfied that the number of tags to be issued does not exceed the number of tags available to the shareholder in the fishing period for which the tags are issued or for the balance of that period (if tags have already been issued to the shareholder or the shareholder has received tags from another shareholder in accordance with a transfer of quota).
- (2) The number of tags available to a shareholder in a fishing period is the number of tags that the Director determines will be required by the shareholder to allow the shareholder to take the whole of the shareholder's quota for the fishing period.

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- (3) The number of tags available to a shareholder for the balance of a fishing period is the number of tags that the Director determines will be required by the shareholder to allow the shareholder to take the remainder of the shareholder's quota for the period, having regard to any previous issue or issues of tags to the shareholder and any tags received by the shareholder pursuant to a transfer of quota.
- (4) The quota for a shareholder for a fishing period is the maximum quantity that may be taken by or on behalf of the shareholder in that period, determined by the Director under Division 2 of Part 6 (Lobster fishery—limited access stage).
- (5) In determining the number of tags required by a shareholder to take any quota, the Director is to have regard to the average weight of eastern rock lobster taken by or on behalf of the shareholder in the fishing period or in previous fishing periods.
- (6) The average weight of eastern rock lobster taken by or on behalf of a shareholder in a particular period is to be determined by the Director having regard to such information as the Director considers appropriate.

119E Eastern rock lobsters taken for sale to have tags attached

- (1) For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that is endorsed under the Act for the taking of lobster in the lobster fishery that:
 - (a) the holder of the licence, or
 - (b) a member of the crew of a licensed boat being used by the holder of the endorsed licence, in the presence of the holder of the endorsed licence,

attach a tag to each eastern rock lobster taken for sale by the holder of the endorsed licence before it is landed on shore or is transferred from the boat on which it was taken.

- (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 commercial fishing tag that is issued by the Director for use in the period in which the rock lobster is taken.
- (4) A person must not attach a tag to an eastern rock lobster unless the person:
 - (a) is the holder of a commercial fishing licence that is endorsed for the taking of lobster in the lobster fishery, or
 - (b) is a member of the crew of a licensed boat being used by the holder of the endorsed licence and attaches the tag in the presence of the holder of the endorsed licence, or
 - (c) is an officer of NSW Fisheries acting in accordance with this clause.

Maximum penalty: 100 penalty units.

- (5) An officer of NSW Fisheries may attach a tag to an eastern rock lobster for the purposes of the administration or enforcement of the Act or this Regulation.

119F Eastern rock lobster must be sold with tag attached

- (1) A person must not sell (within the meaning of the Act) a whole eastern rock lobster, or the tail of an eastern rock lobster, that 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.

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- (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.

119G Surrender of unused tags

- (1) A shareholder must, within 30 days after the end of a fishing period, ensure that any unused tag that was issued or given to the shareholder (or to another person on the shareholder's behalf) is surrendered to the Director.

Maximum penalty: 50 penalty units.

- (2) A person who is issued or given a tag may, subject to subclause (1), surrender the unused tag to the Director at any other time.
- (3) The Director is to refund the fee of \$2 per tag in respect of each tag surrendered in accordance with this clause.
- (4) In this clause:

unused tag means a tag issued for use in a particular fishing period that has not been used in that fishing period.

119H Tags not transferable

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

- (2) A shareholder must not part with possession of a tag except as authorised by subclause (3).

Maximum penalty: 50 penalty units.

- (3) A shareholder may part with possession of a tag as follows:

- (a) by surrendering the tag to the Director, or

- (b) if the shareholder is an endorsement holder, by attaching the tag to an eastern rock lobster in such a manner that it cannot be removed without being broken, or
 - (c) if the shareholder is not an endorsement holder, by giving the tag to the person who is duly nominated in the Share Register to take lobster in the lobster fishery on behalf of the shareholder, or
 - (d) by giving the tag to another shareholder (together with a transfer of quota to that shareholder) in accordance with the approval of the Director referred to in clause 134H (1) (b), or
 - (e) by giving the tag to a person who has acquired all of the shares of the shareholder, but only with the prior written approval of the Director.
- (4) A shareholder who parts with possession of a tag or tags in the circumstances referred to in subclause (3) (d) or (e) must, within 30 days after doing so, give notice in writing to the Director of the following:
- (a) the date the tag or tags were given to the other shareholder or person,
 - (b) the name of the shareholder or person acquiring the tag or tags,
 - (c) the number of tags given to that shareholder or person,
 - (d) the tag numbers assigned to those tags by the Director,
 - (e) the fishing period for which the tags were issued.
- Maximum penalty: 50 penalty units.
- (5) An endorsement holder who is not a shareholder must not part with possession of a tag except as authorised by subclause (6).
- Maximum penalty: 50 penalty units.

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- (6) An endorsement holder may part with possession of a tag as follows:
- (a) by surrendering the tag to the Director, or
 - (b) by attaching the tag to an eastern rock lobster in such a manner that it cannot be removed without being broken, or
 - (c) by giving the tag to the shareholder on whose behalf the endorsement holder takes lobster in the lobster fishery.
- (7) In this clause:

endorsement holder means a person who is the holder of a commercial fishing licence that is endorsed under the Act for the taking of lobster in the lobster fishery.

119I Division does not affect other requirements as to lawful taking of eastern rock lobster

Nothing in this Division authorises the taking or possession of rock lobster contrary to the requirements of the Act (particularly the requirements in relation to the taking of fish in a share management fishery) or to any other requirements of this Regulation, such as those contained in Part 2 (Protected fish, prohibited size fish and bag limits).

Note. Part 2 of this Regulation contains bag limits and maximum and minimum size requirements for rock lobster.

[3] Clause 132 Transfers and other dealings in shares

Insert after clause 132 (1):

- (1A) In addition, in the case of shares in the lobster share management fishery, the transfer, assignment or transmittance must not result in the transferee's shareholding in the lobster share management fishery exceeding 5% of the number of shares provisionally issued in the fishery.

[4] Part 6, Division 2

Insert after Division 1 in Part 6:

Division 2 Lobster fishery—limited access stage**134C Application of Division**

This Division applies to the lobster fishery but only while it is a limited access fishery (within the meaning of section 54 of the Act).

134D Definitions

In this Division:

fishing period means a period of 12 months ending on 30 June.

lobster fishery means the lobster share management fishery specified in Schedule 1 to the Act.

shareholder means a holder of shares in the lobster fishery.

Note

Immediately before the commencement of this Division rock lobsters were a restricted fishery under Division 2 of Part 8. The Act provides that a share management fishery that is also a restricted fishery ceases to be a restricted fishery on the commencement of limited access to the share management fishery. (See section 55 of the Act.) Further, an endorsement of a commercial fishing licence to take rock lobster in the restricted fishery becomes, on the fishery ceasing to be a restricted fishery, an endorsement under Part 3 of the Act to take rock lobster in the share management fishery.

The Minister may give an endorsement to a shareholder or to a person duly nominated in the Share Register by the shareholder to take fish in the lobster fishery on behalf of the shareholder. Section 68 of the Act provides that an application for endorsement is to be made in a form and manner approved by the Minister. An endorsement remains in force, unless sooner suspended or cancelled, for a specified fishing period. Until the commencement of the management plan for the fishery, this period is to be determined by the Minister. Until the plan commences, the Minister may also determine the reasons for which an endorsement may be suspended or cancelled.

A shareholder may transfer his or her shares to another person, provided the shareholder transfers all of his or her shares in the fishery to that person and the transfer does not result in that person's shareholding exceeding 5% of the shares provisionally issued in the fishery. (See section 71 of the Act and clause 132 of this Regulation.) The person acquiring the shares can then apply for an endorsement. (See section 54 of the Act and clause 130 of this Regulation.)

134E Total allowable catch

- (1) The Minister may, from time to time by notice published in the Gazette, determine the maximum quantity of eastern rock lobster that may be taken from the lobster fishery during any period.
- (2) The total allowable catch is to be determined by the Minister after consultation with industry.

134F Quotas for eastern rock lobster

- (1) The Director may determine from time to time the maximum quantity of eastern rock lobster that may be taken in the rock lobster fishery by or on behalf of a shareholder during a particular fishing period.
- (2) The Director is to give written notice of such a quota determination to the shareholder concerned and to any person who holds a licence that is endorsed under Part 3 of the Act for the taking of rock lobster in the fishery on behalf of the shareholder.
- (3) The Director is to determine quotas by allocating the total allowable catch for the relevant fishing period between shareholders in proportion to their shareholdings.
- (4) This clause does not prevent the Director from adjusting the quota of a shareholder in an appropriate manner to take account of the shareholder exceeding his or her quota in a previous period or to take account of any mistake in the calculation of quota in a previous period.
- (5) The Minister may determine that part only of the total allowable catch of eastern rock lobster is to be allocated between shareholders in a fishing period.

- (6) For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that is endorsed under Part 3 of the Act for the taking of lobster in the lobster fishery that the licensee (whether or not a shareholder) does not cause the quota of a shareholder to be exceeded.
- (7) Such a condition has effect on and from the date notice in writing of the quota determination for a shareholder is served on the shareholder or, if the shareholder has duly nominated a commercial fisher to take lobster in the lobster fishery on the shareholder's behalf, the person so nominated.

134G Transfer of quota

- (1) A quota for a fishing period (or any part of it) is, to such extent as may be advised from time to time by the Director, transferable within that period in accordance with this clause.
- (2) An application for transfer of quota is to be made in writing to the Director jointly by the shareholder seeking to transfer quota and the shareholder seeking to acquire quota. The application must specify the amount of quota to be transferred.
- (3) The application is to be accompanied by a fee of \$100.
- (4) The Director may transfer the quota or refuse to transfer the quota.
- (5) Without limiting subclause (4), the Director may refuse to transfer the quota (or any part of the quota) of a shareholder whose endorsement for the taking of lobster in the lobster fishery is suspended or cancelled.
- (6) The Director transfers quota by giving notice in writing of the transfer to the shareholders affected by the transfer.

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- (7) The Director must also give notice in writing of the transfer to any person who holds a commercial fishing licence that is endorsed under Part 3 of the Act for the taking of lobster in the lobster fishery on behalf of the shareholders affected by the transfer.
- (8) The conditions of a commercial fishing licence that is endorsed for the taking of lobster in the lobster fishery are taken to be amended in accordance with the transfer of quota, with effect on and from the date notice of the transfer is served on the licensee.

134H Transfer of tags in connection with quota transfer

- (1) At the time of a transfer of quota, the Director may:
 - (a) require the shareholder whose quota is being transferred to surrender to the Director the number of tags that the Director determines is appropriate in respect of the quota being transferred, or
 - (b) if the Director considers it appropriate, approve that the shareholder whose quota is being transferred give the number of tags that the Director determines is appropriate to the shareholder to whom the quota is being transferred.
- (2) The Director is to refund the fee of \$2 per tag in respect of each tag surrendered in accordance with subclause (1) (a).
- (3) A shareholder may request that the Minister review a determination of the Director under this clause and the Director is to give effect to the determination of the Minister in respect of that review.
- (4) In this clause:

tag means a commercial fishing tag issued by the Director for attachment to an eastern rock lobster taken for sale in accordance with Division 5A of Part 5.

[5] Clause 138, note

Insert at the end of the note after clause 138:

Shareholders in the lobster share management fishery are subject to certain additional licence conditions. See Division 5A of Part 5 for tagging requirements in relation to eastern rock lobsters and Division 2 of Part 6 for other licence conditions.

[6] Part 8, Division 2

Omit the Division (clauses 174—191).

[7] Schedule 5 Penalty notices

Insert in Part 2 in appropriate order:

Clause 119F \$200

[8] Schedule 5

Omit from Part 2 the matter relating to clause 19I.