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FISH RESOURCES MANAGEMENT ACT 1994

**FISH RESOURCES
MANAGEMENT AMENDMENT
REGULATIONS 2001**

Fish Resources Management Act 1994

Fish Resources Management Amendment Regulations 2001

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Fish Resources Management Amendment Regulations 2001*.

2. The regulations amended

The amendments in these regulations are to the *Fish Resources Management Regulations 1995**.

[* *Reprinted as at 2 March 2001.*

*For amendments to 28 May 2001 see Gazette
27 March 2001.]*

3. Regulation 3 amended

Regulation 3(1) is amended by inserting, in the appropriate alphabetical position, the following definition —

“

“**aircraft**” includes a float plane and an air cushioned craft;

”.

Fish Resources Management Amendment Regulations 2001**r. 4**

4. Regulation 64 amended

Regulation 64(2) is amended after paragraph (j) by deleting the full stop and inserting —

“

;

(k) conducting a fishing tour.

”.

5. Division 1 heading inserted in Part 11

Before regulation 117 in Part 11 the following heading is inserted —

“ **Division 1 — Commercial fishing** ”.

6. Regulation 117 amended

Regulation 117(7) is amended by deleting “holds a commercial fishing licence.” and inserting instead —

“

—

(a) holds a commercial fishing licence; or

(b) is a participant in an aquatic eco-tour or a fishing tour on or from a boat.

”.

7. Division 2 heading inserted in Part 11

After regulation 122 the following heading is inserted —

“ **Division 2 — Recreational fishing** ”.

8. Division 3 heading inserted in Part 11

After regulation 124 the following heading is inserted —

“

Division 3 — Specific fish or specific methods of fishing

”.

Fish Resources Management Amendment Regulations 2001

r. 9**9. Divisions 4 and 5 inserted**

After regulation 128 the following Divisions are inserted —

“

Division 4 — Aquatic eco-tourism operators**128A. Aquatic eco-tourism operator's licence**

- (1) Subject to subregulations (2) and (3), a person who engages in aquatic eco-tourism for a commercial purpose in a zone set out in Schedule 15 must hold an aquatic eco-tourism operator's licence for that zone.
Penalty: \$10 000.
- (2) Subregulation (1) does not apply if —
 - (a) a person who engages in eco-tourism for a commercial purpose has a licence to do so issued under, or who is otherwise authorised to do so under, the *Conservation and Land Management Act 1984* or regulations made under that Act; and
 - (b) the eco-tourism operation is conducted wholly within a marine nature reserve or an area of a marine park from which recreational or commercial fishing is excluded under the *Conservation and Land Management Act 1984*.
- (3) Subregulation (1) does not apply if a person who engages in eco-tourism for a commercial purpose has a fishing tour operator's licence.

128B. Grant of aquatic eco-tourism operator's licence

- (1) If a person applies to the Executive Director for the grant of an aquatic eco-tourism operator's licence to engage in aquatic eco-tourism for a commercial

Fish Resources Management Amendment Regulations 2001***r. 9***

purpose in a zone set out in Schedule 15 and the Executive Director is satisfied that —

- (a) the person is a fit and proper person to hold the licence; and
- (b) it is in the interests of the management of aquatic eco-tourism and commercial and recreational fishing to grant the licence,

the Executive Director may grant to the person an aquatic eco-tourism operator's licence for that zone.

- (2) An aquatic eco-tourism operator's licence is to —
 - (a) specify the name and business address of the holder of the licence;
 - (b) specify the licence number;
 - (c) specify the period for which the licence has been granted;
 - (d) specify the zone in which an aquatic eco-tour may be conducted under the licence;
 - (e) specify whether the tour may be conducted using one or more of the following —
 - (i) a boat;
 - (ii) a vehicle;
 - (iii) an aircraft;
 - (f) specify any conditions that the Executive Director has imposed in relation to the grant of the licence;
 - (g) specify the name of any boat that may be used for or in connection with a tour conducted under the licence, its length, licence number (if it has one), and its surveyed passenger carrying capacity; and

Fish Resources Management Amendment Regulations 2001

r. 9

- (h) specify details of the identity of any vehicle or aircraft which may be used for or in connection with a tour conducted under the licence.

128C. Duty of master to give notice of aquatic eco-tourism trip by a licensed fishing boat

If a boat —

- (a) is specified in an aquatic eco-tour operator's licence; and
- (b) is a licensed fishing boat,

and the boat is to be used to fish for a commercial purpose, the master of the boat must, before leaving port for that purpose, give notice of the trip in a manner and form approved by the Executive Director to the office of the Department nearest to that port.

Penalty: \$2 000.

128D. Documents to be carried by master or person in charge of a boat, vehicle, or aircraft

- (1) The master or person in charge of a boat, vehicle, or aircraft used in connection with an aquatic eco-tour must unless regulation 128A(2) applies to the tour cause to be kept on board the boat, vehicle, or aircraft —
 - (a) the aquatic eco-tourism operator's licence or the fishing tour operator's licence, as the case may be, of the person conducting the tour; and
 - (b) any other authorisation relating to the boat or its crew, vehicle, or aircraft required to be held under the Act,

or legible copies of those documents.

Penalty: \$2 000.

Fish Resources Management Amendment Regulations 2001**r. 9**

- (2) Where the Executive Director considers that it would be impractical to require a person to comply with subregulation (1), the Executive Director may in writing exempt that person from that subregulation in relation to a boat, vehicle, or aircraft or class of boats, vehicles, or aircraft.
- (3) The master or person in charge of a boat, vehicle, or aircraft used in connection with an aquatic eco-tour must cause the exemption or a legible copy of it to be kept on board the boat, vehicle, or aircraft.
Penalty: \$500.

128E. Certain records to be kept and returns submitted to the Department

- (1) The holder of an aquatic eco-tourism operator's licence must keep records relevant to operations conducted under that licence relating to the following matters and must retain those records for a period of not less than 7 years —
 - (a) the quantity of each type of fish caught by a participant in an aquatic eco-tour;
 - (b) times and places of carrying out fishing;
 - (c) times and places of carrying out aquatic eco-tourism for a commercial purpose.
- (2) Subject to subregulation (5), a person who must keep records under this regulation must submit a return to the Department regarding the operations each month and, where there have been no operations in the month, the return must be marked "Nil".
- (3) If the Executive Director has approved a form for that return, a person who must submit a return must use the relevant form approved by the Executive Director.

Fish Resources Management Amendment Regulations 2001

r. 9

- (4) A person who must submit a return must send the return relating to each month to the head office of the Department in Perth to arrive not later than the 15th day of the next month.
- (5) The Executive Director may in writing exempt a person who must keep records under this regulation from submitting a monthly return under subregulation (2) for the period of time, or in respect of the operation, specified in writing and sent to the person who is to be exempt.
- (6) A person must not make an entry or statement that is false or misleading in a material particular in a record kept or a return submitted under this regulation.
Penalty: In the case of an individual \$5 000 or, in the case of a body corporate, \$10 000.

128F. Prohibition on advertising that fish may be taken

A person advertising an aquatic eco-tourism trip must not advertise that fish may be taken on the trip.

Penalty: \$10 000.

128G. Fishing on an aquatic eco-tour

- (1) The master of a boat used for an aquatic eco-tourism trip must not allow a participant in the tour to —
 - (a) take any fish while on the boat;
 - (b) keep any fish on the boat; or
 - (c) bring ashore any fish from the boat.Penalty: \$2 000.
- (2) The master of a boat being used for an aquatic eco-tourism trip must not —
 - (a) commence the tour with any fish on the boat;

Fish Resources Management Amendment Regulations 2001**r. 9**

- (b) allow any fish to remain on the boat at the end of the tour; or
- (c) sell any fish caught from the boat during the tour.

Penalty: \$10 000.

- (3) It is a defence in proceedings for an offence against subregulation (1)(a) for the person charged to prove that the fish was caught —
 - (a) by a person on the boat who at the time the fish was caught was holding one line or one rod and line; and
 - (b) for the purposes of providing a reasonable quantity of fish for a meal for those on the boat at the time the fish was taken.
- (4) It is a defence in proceedings for an offence against subregulation (1)(b), (2)(a) or (2)(b) for the person charged to prove that the fish was purchased from a person other than a participant in the tour for the purpose of providing meals for participants in a tour on the boat.

128H. Boat not to be used for both commercial fishing and an aquatic eco-tour in a 24 hour period

If a boat —

- (a) is specified in an aquatic eco-tourism operator's licence; and
- (b) is a licensed fishing boat,

and the boat is used for or in connection with both commercial fishing and an aquatic eco-tour in a period of 24 hours commencing at midnight any person who uses the boat for either of those purposes during that period commits an offence.

Penalty: \$5 000.

Fish Resources Management Amendment Regulations 2001

r. 9

Division 5 — Fishing tour operators**128I. Fishing tour operator's licence**

A person who conducts a fishing tour for a commercial purpose in a zone set out in Schedule 15 must hold a fishing tour operator's licence for that zone.

Penalty: \$10 000.

128J. Grant of fishing tour operator's licence

- (1) If a person applies to the Executive Director for the grant of a fishing tour operator's licence to conduct a fishing tour for a commercial purpose in a zone set out in Schedule 15 and the Executive Director is satisfied that —
 - (a) the person is a fit and proper person to hold the licence; and
 - (b) it is in the interests of the management of commercial and recreational fishing to grant the licence,

the Executive Director may grant to the person a fishing tour operator's licence for that zone.

- (2) A fishing tour operator's licence is to —
 - (a) specify the name and business address of the holder of the licence;
 - (b) specify the licence number;
 - (c) specify the period for which the licence has been granted;
 - (d) specify the zone or a part of a zone in which a fishing tour may be conducted under the licence;
 - (e) specify whether the tour may be conducted using one or more of the following —
 - (i) a boat;

Fish Resources Management Amendment Regulations 2001**r. 9**

- (ii) a vehicle;
- (iii) an aircraft;
- (f) specify any conditions that the Executive Director has imposed in relation to the grant of the licence;
- (g) specify the name of any boat that may be used for or in connection with a tour conducted under the licence, its length, licence number (if it has one), and its surveyed passenger carrying capacity; and
- (h) specify details of the identity of any vehicle or aircraft which may be used for or in connection with a tour conducted under the licence.

128K. Duty of master to give notice of commercial fishing trip by a boat

If a boat that is authorised to be used on a fishing tour is also a licensed fishing boat, the master of the boat must, before taking the boat from the port to fish for a commercial purpose, give notice of the trip in a manner and form approved by the Executive Director to the office of the Department nearest to that port.

Penalty: \$2 000.

128L. Documents to be carried by master or person in charge of a boat, vehicle, or aircraft

- (1) The master or person in charge of a boat, vehicle, or aircraft used for or in connection with a fishing tour must cause to be kept on board the boat, vehicle, or aircraft —
 - (a) the fishing tour operator's licence of the person conducting the tour; and

Fish Resources Management Amendment Regulations 2001

r. 9

- (b) any other authorisation relating to the boat or its crew, vehicle, or aircraft required to be held under the Act,

or legible copies of those documents.

Penalty: \$2 000.

- (2) Where the Executive Director considers that it would be impractical to require a person to comply with subregulation (1), the Executive Director may in writing exempt that person from that subregulation in relation to a boat, vehicle, or aircraft or class of boats, vehicles, or aircraft.
- (3) The master or person in charge of a boat, vehicle, or aircraft used in connection with a fishing tour must cause the exemption or a legible copy of it to be kept on board the boat, vehicle, or aircraft.

Penalty: \$500.

128M. Participants in a fishing tour to be required to comply with written law applicable to recreational fishing

A person who holds a fishing tour operator's licence or a person who is in charge of a fishing tour trip must not permit or suffer any person aboard a boat being used for or in connection with a fishing tour to engage in fishing in a manner contrary to the provisions of the Act applicable to recreational fishing.

Penalty: \$2 000.

128N. Participants in a fishing tour to use one line or one rod and line

A participant in a fishing tour trip must not fish from a boat being used on the trip other than by holding one line or one rod and line.

Penalty: \$2 000.

Fish Resources Management Amendment Regulations 2001**r. 10**

128O. Prohibition on sale of fish taken on a fishing tour

A person who holds a fishing tour operator's licence or a person acting on that person's behalf must not sell any fish taken on a tour conducted under the licence.

Penalty: \$10 000.

128P. Boat not to be used for both commercial fishing and a fishing tour in a 24 hour period

If a boat —

(a) is specified in a fishing tour operator's licence; and

(b) is a licensed fishing boat,

and the boat is used for or in connection with both commercial fishing and a fishing tour in a period of 24 hours commencing at midnight any person who uses the boat for either of those purposes during that period commits an offence.

Penalty: \$5 000.

”.

10. Division 6 heading inserted in Part 11

Before regulation 129 the following heading is inserted —

“ **Division 6 — General** ”.

11. Regulation 130A inserted

After regulation 130 the following regulation is inserted —

“

130A. Identification of boat used for aquatic eco-tourism or a fishing tour

The holder of an aquatic eco-tour operator's licence or a fishing tour operator's licence must ensure that a boat

Fish Resources Management Amendment Regulations 2001**r. 12**

or vehicle used for or in connection with an aquatic eco-tour or a fishing tour, as the case may be, is identified in such manner as the Executive Director specifies in a written notice given to the holder of the licence.

Penalty: \$2 000.

”.

12. Regulation 131 amended

After regulation 131(b) the following paragraph is inserted —

“

- (ba) where the holder has 2 or more authorisations and all of those authorisations are not simultaneously being transferred to the same transferee, in the opinion of the Executive Director, it is not in the best interests of the fishery to transfer the authorisation;

”.

13. Regulation 156 amended

The Table to regulation 156 is amended by inserting after “121” —

“ , 128G(1), 128G(2), 128O ”.

14. Regulation 158 amended

- (1) The Table to regulation 158 is amended in the part headed “Provision of these regulations” by inserting after “125(2),” —

“ 128G(1), 128G(2), 128O, 128P ”.

- (2) The Table to regulation 158 is amended in the part headed “Provision of these regulations” after “130(4),” by inserting —

“ 130A, ”.

Fish Resources Management Amendment Regulations 2001**r. 15**

15. Schedule 1 amended

- (1) After Schedule 1 Part 2 item 19 the following items are inserted —

“

- | | | |
|-----|---|-------|
| 20. | Aquatic eco-tourism operator's licence
(reg. 128B) | 50.00 |
| 21. | Fishing tour operator's licence (reg. 128J) | 50.00 |

”

- (2) After Schedule 1 Part 3 item 3 the following items are inserted —

“

- | | | |
|----|--|----------|
| 4. | Aquatic eco-tourism operator's licence
Types of operation — | |
| | (1)(a) Using — | |
| | (i) one boat with a surveyed length of more than 7.5 m and an open water passenger capacity of 20 persons or less and an associated power boat with a length of 7.5 m or less but 4.5 m or more, in one zone; or | |
| | (ii) one or more boats with a surveyed length of 7.5 m or less and a combined open water passenger carrying capacity of 20 persons or less, in one zone | \$200.00 |
| | (b) In addition to the fee specified in 4(1)(a) — | |
| | (i) for each additional 10 passengers or part thereof | \$100.00 |
| | (ii) for each additional associated power boat with a surveyed length of 7.5 m or less but 4.5 m or more | \$200.00 |

Fish Resources Management Amendment Regulations 2001**r. 15**

-
- | | | |
|--------|---|----------|
| (iii) | for a licence to operate the boat in more than one zone, for each additional zone | \$100.00 |
| (iv) | for each additional boat specified in the licence with a surveyed length of more than 7.5 m and an open water passenger capacity of 20 persons or less | \$200.00 |
| (2)(a) | A land based operation authorised to operate in one zone with not more than 20 tourists taking part in the tour | \$200.00 |
| (b) | In addition to the fee specified in 4(2)(a) — | |
| (i) | for each additional capacity of 10 tourists | \$100.00 |
| (ii) | for a licence to operate in more than one zone, for each additional zone | \$100.00 |
| (3)(a) | A combination of boat and land or boat and aircraft operations with a total passenger carrying capacity of 20 persons or less, authorised to operate in one zone and a maximum of 2 boats with a surveyed length of 7.5 m or less but more than 4.5 m | \$200.00 |
| (b) | In addition to the fee specified in 4(3)(a) — | |
| (i) | for each additional capacity of 10 tourists or part thereof | \$100.00 |
| (ii) | for each additional associated power boat with a surveyed length not less than 4.5 m but not more than 7.5 m | \$200.00 |

Fish Resources Management Amendment Regulations 2001**r. 15**

- (iii) for a licence to operate a boat in more than one zone, for each additional zone \$100.00
5. Fishing tour operator's licence
- Types of operation —
- (1)(a) Using a boat with a surveyed length of more than 7.5 m and an open water passenger capacity of 20 persons or less and an associated power boat with a length of 7.5 m or less but 4.5 m or more in one zone \$500.00
- (b) In addition to the fee specified in 5(1)(a) —
- (i) for each additional associated power boat with a surveyed length of more than 7.5 m and a maximum passenger carrying capacity of 20 passengers or less ... \$500.00
- (ii) for each additional associated power boat with a surveyed length of more than 4.5 m but less than 7.5 m \$250.00
- (iii) for each additional passenger carrying capacity of 10 passengers or a part thereof \$250.00
- (iv) for a licence to operate in more than one zone, for each additional zone \$500.00
- (2)(a) A land based operation, authorised to operate in one zone with a maximum capacity of 20 passengers \$200.00

Fish Resources Management Amendment Regulations 2001**r. 16**

- (b) In addition to the fee specified in 5(2)(a) —
- (i) for each additional 10 passenger carrying capacity or part thereof \$100.00
 - (ii) for a licence to operate in more than one zone, for each additional zone \$100.00
- (3)(a) A combination of boat and land or boat and aircraft operations with a total passenger carrying capacity of 20 persons or less, authorised to operate in one zone and a maximum of 2 boats with a surveyed length of 7.5 m or less but more than 4.5 m \$500.00
- (b) In addition to the fee specified in 5(3)(a) —
- (i) for each additional capacity of 10 passengers or part thereof \$250.00
 - (ii) for each additional associated power boat with a surveyed length not less than 4.5 m but not more than 7.5 m \$250.00
 - (iii) for a licence to operate a boat in more than one zone, for each additional zone \$500.00

”.

16. Schedule 12 amended

Schedule 12 Part 2 is amended as follows:

- (a) in item 3 by inserting after “127(1),” —
 “ 128D, 128L, 128N, ”;

Fish Resources Management Amendment Regulations 2001**r. 17**

(b) in item 4 by inserting after “121(2)” —

“

, 128A(1), 128C, 128F, 128H, 128I, 128K, 128M,
130A

”;

(c) in item 5 by deleting “and 55L(1)” and inserting
instead —

“ , 55L(1), 128E, 128G(1), 128G(2), 128O, and 128P ”.

17. Schedule 15 added

After Schedule 14 the following Schedule is inserted —

“

Schedule 15 — Tour management zones

[r. 128A, 128J]

1. Zone 1: Pilbara/Kimberley

All land and waters, and the waters off the coast of Western Australia east of 114° 50' east longitude, north of 21° 46' south latitude, and west of the longitude passing through the border of Western Australia and the Northern Territory.

2. Zone 2: Gascoyne

All waters off the coast of Western Australia west of 114° 50' east longitude and north of 27° 00' south latitude, and all land and waters north of 27° 00' south latitude, south of 21° 46' south latitude, and west of the longitude passing through the border of Western Australia and the Northern Territory or South Australia.

3. Zone 3: West Coast

All land and waters, and all waters off the coast of Western Australia south of 27° 00' south latitude but excluding the land and waters of Zone 4.

Fish Resources Management Amendment Regulations 2001

r. 17

4. Zone 4: South Coast

All land and waters, and the waters off the coast of Western Australia east of 115° 30' east longitude, south of 33° 32' south latitude, and west of the longitude passing through the border of Western Australia and South Australia.

”.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.
