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FISHERIES ACT 1905

**FISHERIES
(ABROLHOS ISLANDS)
BY-LAWS 1995**

WESTERN AUSTRALIA

**FISHERIES (ABROLHOS ISLANDS) BY-
LAWS 1995**

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FISHERIES ACT 1905

FISHERIES (ABROLHOS ISLANDS) BY-LAWS 1995

Made by the Minister for Fisheries under section 31A.

PART 1 — PRELIMINARY

Citation

1. These by-laws may be cited as the *Fisheries (Abrolhos Islands) By-laws 1995*.

Commencement

2. These by-laws come into operation on 15 March 1995.

Interpretation

3. In these by-laws, unless the contrary intention appears —

“approved” means approved by the Director;

“associated camp” means a camp, including any associated jetty, in the reserve which is allocated to an operator by virtue of that licence;

“camp” includes all structures on or adjoining any island in the reserve which are associated with a licence;

“jetty” means a jetty which is attached to and leads onto land within the reserve;

“licence” means a licence, issued under section 32 of the Act, to take rock lobster from Zone A of the West Coast Rock Lobster Limited Entry Fishery;

“licensed boat” means a boat operated under a licence;

“operator” means the person in charge of a licensed boat;

“share arrangement” means a valid written agreement to share facilities under by-law 23;

“the reserve” means Reserve No. 20253 classified as of Class “A”.

Application

4. These by-laws apply to all land, down to the low water mark, within the reserve.

PART 2 — JETTIES**Siting of jetties**

5. (1) A person who wishes to construct a jetty must first apply to the Director in the approved form.

(2) If the Director gives his approval following an application under sub-by-law (1), that approval may be subject to such conditions as the Director considers are necessary in the particular case.

(3) A person referred to in sub-by-law (1) shall not commence construction of a jetty unless the written approval of the Director has been obtained.

Penalty: not less than \$100 or more than \$1 000.

Unauthorized use of jetties

6. (1) A person, other than —

- (a) the owner of;
- (b) a person who is a party to a share arrangement in relation to the jetty; or
- (c) the person responsible for,

a jetty, shall not use that jetty without the written permission, in the approved manner, of a person set out in paragraph (a), (b) or (c).

Penalty: not less than \$40 or more than \$400.

(2) Where written permission has been obtained in accordance with sub-by-law (1) —

- (a) a copy of the written permission must be filed with the Geraldton or Dongara office of the Department before the jetty is used by the person obtaining that permission; and
- (b) a copy of the written permission must be retained on board the appropriate boat and presented to an inspector upon demand.

(3) Subject to sub-by-law (1) and (2), a person shall not cause a boat, other than a licensed boat or an approved boat, to tie up to a jetty overnight.

Penalty: not less than \$40 or more than \$400.

(4) This by-law does not apply to —

- (a) an emergency situation; or
- (b) a jetty which is an approved public use jetty.

PART 3 - BUILDINGS AND FACILITIES

Director may waive requirements

7. (1) The Director may waive or vary any of the requirements in this Part, on a case-by-case basis, if the circumstances are considered to be exceptional, or of sufficient public or heritage interest to do so.

(2) Any waiver or variation must be in writing, and must specify to whom or what it applies, and under what circumstances.

Transfer of facilities

8. (1) The holder of a licence who applies to —

- (a) transfer a licence;
- (b) redistribute a total pot entitlement on a licence; or
- (c) acquire a further licence and amalgamate that licence with another licence,

shall, at the same time, apply in the approved manner to either transfer or remove the associated camp (as the case requires).

(2) If the Director considers it appropriate, the Director may approve an application, made under sub-by-law (1), to transfer or remove an associated camp, and the Director may make that approval subject to conditions which must be endorsed on the approval.

(3) A person who does not comply with the conditions endorsed on an approval to transfer or remove an associated camp commits an offence.

Penalty: not less than \$100 or more than \$1 000.

(4) A licence holder may apply, in the approved manner, to relocate from a former camp to another associated camp.

(5) If the Director considers it appropriate, the Director may approve an application, made under sub-by-law (4), to relocate, and the Director may make that approval subject to conditions which must be endorsed on the approval.

(6) A person who does not comply with the conditions endorsed on an approval to relocate commits an offence.

Penalty: not less than \$100 or more than \$1 000.

(7) An operator must not operate from more than one camp at any one time during any single rock lobster season, but the crew may live aboard the boat during any period away from the camp.

Penalty: not less than \$100 or more than \$1 000.

Camp may become unauthorized structure**9. (1) Where a person —**

- (a) does not comply with the conditions endorsed on an approval under by-law 8; or
- (b) purports to transfer a camp without the approval of the Director,

the camp is an unauthorized structure for the purposes of Part 5.

(2) An amount determined by the Director from time to time shall be paid by the owner of the camp prior to an application for —

- (a) a transfer, a redistribution of pot entitlement or a further acquisition referred to in by-law 8 (1); or
- (b) a relocation referred to in by-law 8 (4),

being approved and that amount shall —

- (c) be returned to the owner (at the time of the application) of the camp upon compliance with the conditions of any approval issued by the Director; or
- (d) be used to defray the actual costs, including the administrative costs, involved in removing part or all of a camp that becomes an unauthorized structure under sub-by-law (1).

Buildings — general

10. (1) The owner of a building which is to be constructed in the reserve must ensure that all work to be undertaken on that building complies with the written laws of the State relating to the control of building works.

(2) Where, in the opinion of an inspector, the owner of a building in the reserve fails to adequately maintain that building to an acceptable standard (other than a standard relating to structural soundness), an inspector may order the owner to undertake, or cause to be undertaken, remedial work which —

- (a) is sufficient to bring the building up to an acceptable standard; and
- (b) shall be completed within the time period set out in the order.

(3) Where an inspector suspects that a building in the reserve does not meet the appropriate standard relating to structural soundness, an inspector may order the owner to obtain, and produce to an inspector, a report from a registered builder stating whether or not that building complies with the written laws of the State relating to the minimum structural requirements for that type of building.

(4) If a report obtained under sub-by-law (3) states that a building does not meet the minimum structural requirements for that type of building, an inspector may order the owner to undertake, or cause to be undertaken, remedial work which —

- (a) is sufficient in the opinion of a registered builder to bring the building up to the minimum standards; and
- (b) must be completed within the time period set out in the order.

(5) A person who does not comply with an order under sub-by-law (2), (3) or (4) commits an offence.

Penalty: not less than \$100 or more than \$1 000.

Buildings — minor changes

11. (1) The owner of a building in the reserve who wishes to make any minor structural change to the building —

- (a) shall, if required by an inspector, obtain and produce a written report of a registered builder stating that the changes will be safe and structurally sound;
- (b) shall file plans of the change, together with the report obtained under paragraph (a), with the Department; and
- (c) shall not allow work to commence until the Director has given his approval.

Penalty: not less than \$25 or more than \$250.

(2) For the purposes of this by-law, a minor structural change is a modification or alteration to the building which does not increase or modify the floor space or height of the building (including the addition of shade-cloth, pergolas, verandahs and similar weather protection), but does not include —

- (a) re-roofing that involves re-pitching that roof;
- (b) internal work that involves the installation of split-level living areas or the like; nor
- (c) re-cladding of walls that increases the external dimensions or floorspace of the building.

Buildings — major changes and new buildings

12. (1) The owner of an existing building or the person proposing to construct a new building in the reserve shall, prior to commencing any major change to an existing building or commencing the construction of a new building, as the case requires —

- (a) obtain and provide full structural plans approved by a registered builder;

- (b) endeavour to obtain the opinions of a majority of the operators with associated camps adjacent to the building or proposed building for the consideration of the Director prior to the Director giving or withholding approval; and
- (c) obtain the written approval of the Director.

(2) Approval under sub-by-law (1) is subject to such conditions that the Director considers are necessary in the particular case.

(3) For the purposes of sub-by-law (1), the requisite opinions must be obtained after each relevant operator, referred to in sub-by-law (1) (b), is informed of (as a minimum) the proposed common access areas, pathways, drains, power plants and other like infrastructure.

(4) For the purposes of this by-law a major change is any modification or alteration to a building which increases or modifies the floor space or height of that building.

(5) A new camp or a camp being set up through the transfer of camp facilities under by-law 8 made up of more than —

- (a) 3 living dwellings;
- (b) 1 store shed;
- (c) 1 ablution block;
- (d) the approved number of generator sheds for that camp; or
- (e) the approved number of jetties for that camp,

(not including on-jetty storage facilities) will not be approved.

(6) A building which is, or is being, constructed without complying with this by-law is an unauthorized structure for the purposes of Part 5, unless the Director exempts the building, in writing, from compliance with the specific building provisions with which it does not comply.

PART 4 — POWER AND MAINTENANCE**Electrical power and wiring**

13. (1) This by-law does not apply to 12 volt wiring.

(2) An operator shall ensure that any power facilities in the operator's associated camp conform to the Standards Association of Australia (SAA) wiring rules for 240 volts.

(3) A person who installs or replaces any electrical wiring other than under sub-bylaw (1) shall comply with such safe working standards as are prescribed for electrical wiring work under the *Electricity Act 1945*.

(4) A person shall, before installing wiring for a new camp site, present a circuit diagram (single line diagram) to the Electricity Corporation and obtain the Corporation's approval for the wiring in that diagram, and shall file a copy of the diagram and the approval with the Department.

(5) A person shall not undertake any electrical wiring work unless that person is authorized to carry out that type of work under the *Electricity Act 1945*.

Penalty: \$500.

Gas

14. (1) An operator shall ensure that all gas cylinders, tanks, regulators and fittings in that operator's associated camp comply with the relevant provisions of the *Gas Standards Regulations 1983*.

(2) In addition to complying with sub-bylaw (1), an operator shall ensure that any gas cylinders are installed on flat and level ground, or on flat, level concrete or concrete slabs, and secured in an approved manner.

(3) A person shall not undertake gas fitting work unless —

(a) the person holds a certificate of competency or a permit endorsed for class C and class D work in gas fitting under the *Gas Standards Regulations 1983*; and

(b) the work is done in accordance with the requirements of the *Gas Standards Regulations 1983*.

Penalty: \$500.

Water tank maintenance

15. Where the water supply to any premises which is intended for human consumption is drawn, or partly drawn, from a water tank, the occupier of the premises must —

(a) maintain the roof forming the catchment for the tank, together with the spouting and downpipes appurtenant to the roof in a clean and functional state;

- (b) at least once a year, during the months of April and May thoroughly check any water tank, the water from which is used for human consumption for any sludge or detritus buildup, and, where necessary, clean the tank;
- (c) ensure that every water tank on the premises containing water for human consumption is fitted with a tight fitting, light-proof, water-proof and secure cover; and
- (d) when ordered to do so by an inspector, empty, cleanse and disinfect any water tank on the premises.

Penalty: \$250.

Generators

16. (1) A person shall, before installing a generator —
- (a) obtain the opinion in writing of the majority of operators likely to be affected by the noise emitted by that generator for the consideration of the Director prior to the Director giving or withholding approval; and
 - (c) obtain the written approval of the Director.

Penalty: \$500.

(2) Subject to by-law 17, a person who installs a generator shall ensure that the generator is soundproofed and silenced to ensure that noise emissions do not exceed those set out in by-law 35.

Penalty: \$500.

Machinery noise

17. (1) Where undue noise is being emitted by any machinery, an inspector may, in writing, order the owner of, or person in charge of, the machinery to undertake work to ensure that the machinery noise level is reduced so that noise emissions do not exceed those set out in by-law 35.

(2) A person to whom an order is given under sub-by-law (1) shall comply with that order within the time specified in that order.

Penalty: \$500.

**PART 5 — UNAUTHORIZED STRUCTURES AND TERMINATION
OF TENANCY**

Interpretation

18. In this Part —

“**structure**” means any building, jetty, power plant, or any other like facility;

“**unauthorized structure**” means —

- (a) a structure that has been erected without approval, abandoned, or is unsafe or is not secure, or does not conform with these by-laws, or becomes an unauthorized structure as a result of the operation of by-law 9 or 12 (6); and
- (b) has not been claimed by the Crown for its use or for specific community purpose use.

Notice by Director

19. (1) The Director may, by written notice served in accordance with by-law 20 and identifying the unauthorized structure to which it relates, direct a person in occupation or control of an unauthorized structure to remove it, together with its contents.

(2) A copy of the notice referred to in sub-by-law (1) shall be affixed (where practicable) to the unauthorized structure, and shall be published —

- (a) in the *Gazette*; and
- (b) in one or more daily newspapers circulating in Geraldton and the Mid-West area.

Service of notice

20. (1) A notice under by-law 19 (1) may be served on the owner of, the occupier of or the person in control of, an unauthorized structure (or all of them, as the case may be) —

- (a) in person; or
- (b) by post,

in accordance with sections 75 and 76 of the *Interpretation Act 1984*.

(2) Notwithstanding sub-by-law (1), where the owner, occupier or person in control of an unauthorized structure is unknown, or known to be absent from the State, the notice may be served by using the procedure in by-law 19 (2), and, when the person to whom it is to be addressed is unknown, the notice may be addressed to “the person in or control of” the unauthorized structure (identifying it) to which the notice refers, without further name or description.

(3) If more than one person is in apparent occupation or control of an unauthorized structure, it is sufficient to serve the notice on one of them and address it to that one with the addition of the words "and others" or "and another" as the case requires.

(4) Non-service on the person in apparent control of the unauthorized structure does not affect the validity of service on the person in apparent occupation of the unauthorized structure, and non-service on the person in apparent occupation of the unauthorized structure does not affect the validity of service on the person in apparent control of the unauthorized structure.

Non-compliance with notice

21. Where a person fails to comply with a notice served on him or her under by-laws 19 or 20 within a period of 2 months from the time of service, and the Director is satisfied —

- (a) that the structure is an unauthorized structure;
- (b) that the notice has been properly served; and
- (c) that the person has not complied with the notice within the period,

the Director may, in writing —

- (d) authorize an inspector to arrange for the removal of the unauthorized structure and its contents;
- (e) authorize the destruction or sale of the unauthorized structure, or part of that structure, or its contents, or both the structure and its contents;
- (f) authorize the sale of the unauthorized structure or its contents or both on condition that it or they are removed upon sale;
- (g) authorize the recovery of costs, incurred in the removal, destruction or sale of the unauthorized structure, from the owner, occupier or person in control of that structure; or
- (h) where the unauthorized structure or its contents are offered for sale under paragraph (e) or (f) and —
 - (i) have not been sold; or
 - (ii) do not raise a sufficient amount at sale to defray the cost of removal, destruction or sale of that unauthorized structure or its contents,

authorize the recovery of costs, or of the unsatisfied balance of the costs, from the person, or occupier, in control of the unauthorized structure or the owner, or both.

Site of unauthorized structure to be cleared completely

22. A person who is directed to remove an unauthorized structure under by-law 19 (1) shall clear the site of residual materials and rubbish.

Penalty: \$400.

PART 6 — SHARE ARRANGEMENTS AND DISPUTE PROCEDURE**Documentation of share arrangement**

23. (1) Where it is agreed between 2 or more parties to share camp facilities, jetties, power outlets or lighting plants, the parties to that agreement must sign a written agreement in the approved form, together with illustrative diagrams relating to that agreement (if appropriate).

(2) A written agreement under sub-by-law (1) is not valid unless a copy of the signed, written agreement is filed with the Department.

(3) A written agreement cannot be amended without the written approval of the Director.

Dispute over use of shared buildings, facilities, etc.

24. (1) If a dispute arises which relates to the use of a building, structure or facility in the reserve, and which is the subject of a share arrangement, the following procedure may be used to resolve the dispute —

- (a) a party to the dispute may write to the Minister advising of the existence of the dispute and may seek invocation of the dispute procedure set out in this Part;
- (b) the Minister may, if he or she feels it is justified, invoke this dispute procedure and appoint an independent arbitrator to deal with the dispute.

(2) The Director may appoint an independent arbitrator to deal with disputes that have been running for longer than 6 months without signs of resolution.

Duties of independent arbitrator

25. (1) The independent arbitrator shall, following his or her appointment —

- (a) write to the parties known to be involved in the dispute seeking, from each of them, a written statement of the grounds of the dispute; and
- (b) upon receipt of the grounds requested in paragraph (a), or after a reasonable time if either or both do not reply, inform each party of the known grounds of dispute.

(2) After obtaining advice, if required, from the Director or other relevant person, and allowing sufficient time to enable each party to put their side of the dispute, and following due consideration, the independent arbitrator shall make a determination.

Determination to be referred to Minister

26. (1) A determination under by-law 25 (2) shall be referred by the independent arbitrator to the Minister who may decide to accept or reject the determination, and who shall inform the parties of the decision.

(2) The decision of the Minister is binding upon the parties.

PART 7 — DISPOSAL OF WASTE**General prohibition of waste disposal**

27. A person shall not dump or dispose of any waste on any island in the reserve, other than in accordance with these by-laws.

Penalty: \$400.

Food waste

28. (1) A person may dispose of food waste —

- (a) by dumping that waste at sea; or
- (b) by incinerating the waste in an incinerator.

(2) Where any unburnt residue remains after incineration of waste under sub-by-law (1), the person incinerating the waste shall ensure that the residue is returned to the mainland for disposal, or disposed of at an approved dumping site.

Penalty: \$400.

Paper, plastic, cardboard, bait bags, etc.

29. (1) A person shall not dispose of paper, plastic, cardboard, bait bags, or other combustible materials by dumping them at sea.

Penalty: \$400.

(2) A person may dispose of paper, plastic, cardboard, bait bags and other combustible items of a like nature —

- (a) by returning these items to the mainland for disposal; or
- (b) by incinerating these items in an incinerator.

(3) Where any unburnt residue remains after incineration under sub-by-law (2), the person incinerating the items shall ensure that the residue is disposed of by bagging or otherwise containing it, and dumping it at an approved refuse dumping site.

Penalty: \$400.

Non-hazardous and non-combustible waste

30. (1) A person may dispose of non-hazardous and non-combustible materials, including cray-pots, water tanks, household and building materials —

- (a) by returning those materials to the mainland for disposal; or
- (b) by dumping those materials at an approved refuse dumping site.

(2) A person who disposes of the material referred to in sub-bylaw (1) by dumping them in an area other than the mainland or an approved refuse disposal site commits an offence.

Penalty: \$1 000.

Hazardous waste including oil, fuel, filters, batteries etc.

31. A person shall not dispose of any oil, fuel, engine filter or battery other than by returning it to the mainland.

Penalty: \$1 000.

Campsite waste

32. (1) The operator shall provide an associated camp with fly-proof and vermin-proof waste receptacles which may be used for the disposal of putrescible material.

(2) An operator who establishes, or is in control of an associated camp is responsible for keeping that camp, and any associated jetty or beach areas, free from waste and rubbish.

(3) An inspector may order the operator of a camp to remove waste or rubbish from any part of a camp or adjacent beach areas.

(4) An operator who does not comply with an order under sub-bylaw (3) commits an offence and in addition to any penalty to which that operator is liable, will be liable for any costs incurred if removal of the waste or rubbish is undertaken by another person at the request of the Director.

Penalty: \$500, and a daily penalty of \$20.

Sewage

33. A person shall not dispose of sewage in any manner other than —

- (a) where practicable, by use of a saltwater flushing outfall pipe feeding directly into the sea;
- (b) through a septic tank disposal system; or
- (c) by use of an approved sewage disposal system at an approved site.

Penalty: \$500.

Incinerators

34. (1) An incinerator for the disposal of waste —

- (a) shall be constructed in a manner which allows combustion to occur in an efficient manner;

- (b) if constructed wholly or partly of mesh, shall be made using a mesh of not more than 50 millimetres; and
 - (c) shall be sited —
 - (i) in an area approved in writing by an inspector; and
 - (ii) so that correct use does not cause smoke to become a nuisance.
- (2) An operator who uses an incinerator shall ensure —
- (a) that the incinerator is cleaned after use to avoid leaving unburnt residues to remain or smoulder; and
 - (b) that he or she does not use the incinerator before noon, or such other time as is determined by an inspector.

Penalty: \$250.

PART 8 — MISCELLANEOUS**Control of noise**

35. (1) A resident or visitor shall ensure that the noise emissions from premises or motors in the reserve (other than boats), under his or her control, do not exceed the following levels —

- (a) 50dB(A), between the hours of 6.00 a.m. and 7.00 p.m., on any day; or
- (b) 40dB(A), between the hours of 7.00 p.m. on any day and 6.00 a.m. on the following day,

and shall ensure that tonal noise or impulses of noise which are unreasonably loud are not emitted.

(2) If an inspector receives a complaint alleging that a person is responsible for noise in excess of the levels set out in sub-by-law (1), an inspector may investigate that complaint and, if appropriate, request the person to undertake reasonable measures to lower the level of noise to comply with sub-by-law (1).

(3) A person shall not, without a lawful excuse, refuse to carry out a request under sub-by-law (2).

Penalty: \$500.

(4) For the purposes of this by-law, "dB(A)" means the reading in decibels on a sound level meter or other sound level measuring equipment using the A-weighting network specified for sound level meters in Part I or Part II, whichever is applicable to the measuring equipment in question, of Australian Standard AS 1259 of 1976.

Vehicles

36. (1) A person shall not bring a vehicle into the reserve unless a permit has been issued by the Director stating the conditions that are to be complied with when the vehicle is in the reserve.

Penalty: \$1 000.

(2) Conditions under sub-by-law (1) may include, but are not limited to, restrictions on —

- (a) the time of day that the specified vehicle may be used;
- (b) the person or persons that are allowed to use that vehicle;
- (c) the period for which the permit is valid; and
- (d) the purposes for which that vehicle can be used.

(3) A person shall not use a vehicle in the reserve in contravention of a permit.

Penalty: \$500.

No domestic pets allowed

37. A person shall not —

- (a) keep a domestic pet in the reserve;
- (b) allow or cause a boat with a domestic animal on board to secure to or come alongside any jetty in the reserve; or
- (c) allow or cause any domestic animal to be landed onto any island in the reserve.

Penalty: \$1 000.

Introduction of flora and fauna not allowed

38. A person shall not introduce any species of flora or fauna to the reserve, unless that person has first obtained the written permission of the Director and the Department of Conservation and Land Management.

Penalty: \$1 000.

Control of noxious or introduced plants, pests, vermin, etc.

39. (1) When carrying out measures for noxious or introduced plant control, a resident of the reserve shall only use approved preventive and control methods.

Penalty: \$250.

(2) A resident shall not carry out noxious or introduced plant control in an area that has not been approved by an inspector.

Penalty: \$250.

(3) When carrying out measures to control rodents, cockroaches, mosquitos or flies, a resident of the reserve shall only use approved preventive and control methods.

Penalty: \$250.

(4) A resident shall not carry out any rodent or pest baiting programme in the reserve unless the resident has first obtained the approval of the Director.

Penalty: \$250.

Behaviour of persons when in the reserve

40. (1) A person, while in the reserve, shall not engage in behaviour which falls short of normal community standards and an inspector may direct a person to leave the reserve if, in the opinion of both an inspector and a majority of residents in the area, that standard of behaviour is not maintained by that person.

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(2) A person shall comply with a direction under sub-by-law (1) within 24 hours of that direction being given.

Penalty: \$500.

Dated this 14th day of February 1995.

MONTY HOUSE, Minister for Fisheries



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