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FISH RESOURCES MANAGEMENT ACT 1994

**FISH RESOURCES MANAGEMENT
AMENDMENT REGULATIONS
(No. 10) 2001**

**WEST COAST ROCK LOBSTER
FISHERY MANAGEMENT PLAN
AMENDMENT (No. 2) 2001**

Fish Resources Management Act 1994

Fish Resources Management Amendment Regulations (No. 10) 2001

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Fish Resources Management Amendment Regulations (No. 10) 2001*.

2. Schedule 1 to the *Fish Resources Management Regulations 1995* amended

Schedule 1 Part 3 to the *Fish Resources Management Regulations 1995** is amended by deleting item 3(28) and inserting the following subitem instead —

“

- | | |
|--|--------|
| (28) West Coast Rock Lobster Managed Fishery (per unit) (as defined in the <i>West Coast Rock Lobster Management Plan 1993</i>) | 138.00 |
|--|--------|

”.

[* Reprinted as at 2 March 2001.

For amendments to 25 September 2001 see Gazette 27 March, 29 June, 13 July and 25 September 2001.]

By Command of the Governor,

ROD SPENCER, Clerk of the Executive Council.

FISH RESOURCES MANAGEMENT ACT 1994
WEST COAST ROCK LOBSTER FISHERY MANAGEMENT PLAN
AMENDMENT (No. 2) 2001

FD 1064/01 [414]

Made by the Minister under section 54(2).

Citation

1. This amendment may be cited as the *West Coast Rock Lobster Fishery Management Plan Amendment (No. 2) 2001*.

Principal Plan

2. In this amendment the *West Coast Rock Lobster Management Plan 1993* is referred to as the principal Plan.

Arrangement amended

3. The principal Plan is amended by deleting the Arrangement and substituting the following—

Clause	“Arrangement
1.	Citation
2.	Interpretation
3.	Declaration of the Fishery
4.	Criteria to operate in the Fishery
5.	Taking rock lobster otherwise than by means of pots prohibited
6.	Rock lobster season
7.	Zones
8.	Soaking and baiting outside the season
9.	Operation of a boat under a licence relating to zone A
10.	Access to Big Bank area limited
12.	Prohibition on selling rock lobster
13.	Licences
13A.	Duration of a licence
13B.	Items specified on a licence
14.	Capacity of zones A and B of the Fishery
14A.	Capacity of zone C of the Fishery
14B.	Executive Director to publish notice of any change of capacity
14C.	Licence entitlements to equal capacity
14D.	Licence entitlements to be expressed in terms of units
14E.	Unit values
14F.	Temporary transfer of a unit of entitlement
14G.	Variation of entitlements of licences relating to zone A and zone B
14H.	Surrender of licence and reallocation of usual entitlement
14I.	Prohibition on operating in excess of entitlement
14J.	Authority of licence of no effect where usual or current entitlement is less than 63 units of entitlement
15.	Grounds for refusing to transfer a licence or part of an entitlement
15A.	Grounds to cancel a licence
16.	Use of a boat not specified on a licence
19.	Payment of fees by instalments
20.	How the Director may give notice
21A.	Offences and major provisions
21B.	Procedure before amending this Plan
22.	Revocation

Schedule 1

The West Coast Rock Lobster Limited Entry Fishery

Schedule 2

Zones

Schedule 3

Abrolhos Islands Area

Schedule 4

Big Bank Area

Schedule 7

Payment of fees by instalments ”.

Clause 2 amended

4. Clause 2 of the principal Plan is amended by;

(a) deleting the items commencing—

- “normal pot entitlement”;
- “rock lobster pot”;
- “surplus pot entitlement”;
- “temporary pot entitlement”;
- “total fee”; and
- “total pot entitlement” ; and

(b) inserting in the appropriate alphabetical position the following—

- “current entitlement” means the total entitlement of the licence including units of entitlement temporarily transferred to the licence and excluding units of entitlement temporarily transferred from the licence;”;
- “pot” means a rock lobster pot as defined in the regulations and which conforms to the specifications set out in Part 2 of Schedule 13 to those regulations;”;
- “total fee” means the product of the fee (per unit) specified in item 28 of Part 3 of Schedule 1 of the regulations and the number of units of usual entitlement specified on the relevant licence;”;
- “unit value” means the value of a unit, in terms of pots, determined in accordance with clause 14E;” and
- “usual entitlement” means the entitlement of the licence disregarding any temporary transfers of units of entitlement to or from the licence; and”.

Clause 7 amended

5. The principal Plan is amended in clause 7 by deleting subclauses (2) and (3) and substituting the following—

“(2) For the purposes of subclause (1) and subject to subclause (3), the zone endorsed on a licence shall be the zone that was endorsed on the licence on 30 September 2001.

(3) The Executive Director may vary a licence that relates to zone A or zone B by varying the zone endorsed on the licence from zone A or zone B to zone B or zone A, as the case may be—

- (a) upon the application of the holder of the licence;
- (b) at any time other than during a season;
- (c) provided that the holder, or any person operating under the authority of the licence, has kept and submitted every return that is required to be kept and submitted under the Act; and
- (d) provided that the Executive Director considers that it is appropriate to do so, having regard to both the number of boats and the number of pots that may be operated in each of zones A and B.

(4) Where the zone endorsed on a licence is varied in accordance with subclause (3), the class of the usual entitlement of the licence shall be converted to correspond to the zone to which the licence relates.”.

Clause 13 amended

6. Clause 13 of the principal Plan is amended—

- (a) in subclauses (1) and (3) by deleting “total pot” and substituting “usual” in each place where it occurs; and
- (b) in subclause (3) by deleting “14A” and substituting “14H”.

Clause 13B amended

7. Clause 13B of the principal Plan is amended by—

- (a) deleting paragraphs (g), (h), and (i); and
- (b) inserting after paragraph (f) the following—
 - “(g) the usual entitlement of the licence;
 - (h) the current entitlement of the licence;
 - (i) the unit value and the maximum number of pots that may be operated under the licence; and
 - (j) any conditions imposed on the licence by the Executive Director.”.

Clauses 14, 14A and 14B deleted and clauses 14, 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H, 14I and 14J substituted and inserted

8. The principal Plan is amended by deleting clauses 14, 14A and 14B and substituting and inserting the following—

“Capacity of zones A and B of the Fishery

14. (1) Subject to subclauses (2), (3) and (4) the combined capacity of zones A and B of the Fishery is 27,509 pots.

(2) The capacity of zones A and B of the Fishery shall be reduced upon the making of an order under section 76(2) of the Act in respect of a zone A or zone B licence, such reduction being equal to the number of pots by which the entitlement of the licence was exceeded for the purposes of subsection 76(2) of the Act.

(3) The capacity of zones A and B of the Fishery shall be reduced upon—

- (a) the surrender of a zone A or zone B licence under section 144 of the Act;
- (b) the cancellation or non-renewal of a zone A or zone B licence under section 143 of the Act; or
- (c) the expiry of the 60 day period provided for in section 139 of the Act without an application for renewal of a zone A or zone B licence having been made,

such reduction being equal to the number of pots which could have been operated under the authority of the licence.

(4) The capacity of zones A and B of the Fishery shall be increased upon the increasing of the entitlement of a licence pursuant to clause 14H, such increase being equal to the increase in the number of pots that may be operated under the licence.

Capacity of zone C of the Fishery

14A. (1) Subject to subclauses (2), (3) and (4) the capacity of zone C of the Fishery is 29,304 pots.

(2) The capacity of zone C of the Fishery shall be reduced upon the making of an order under section 76(2) of the Act in respect of a zone C licence, such reduction being equal to the number of pots by which the entitlement of the licence was exceeded for the purposes of subsection 76(2) of the Act.

(3) The capacity of zone C of the Fishery shall be reduced upon—

- (a) the surrender of a zone C licence under section 144 of the Act;
- (b) the cancellation or non-renewal of a zone C licence under section 143 of the Act; or
- (c) the expiry of the 60 day period provided for in section 139 of the Act without an application for renewal of a zone C licence having been made,

such reduction being equal to the number of pots which could have been operated under the authority of the licence.

(4) The capacity of zone C of the Fishery shall be increased upon the increasing of the entitlement of a licence pursuant to clause 14H, such increase being equal to the increase in the number of pots that may be operated under the licence.

Executive Director to publish notice of any change of capacity

14B. The Executive Director shall, as soon as practicable following any change in the capacity of zones A and B or Zone C of the Fishery, publish notice of the change in the Gazette.

Licence entitlements to equal capacity

14C. (1) The aggregate of the entitlements of all the zone A and zone B licences is to equal the capacity of zones A and B as provided for in clause 14.

(2) The aggregate of the entitlements of all the zone C licences is to equal the capacity of zone C as provided for in clause 14A.

Licence entitlements to be expressed in terms of units

14D. (1) The entitlement to use pots conferred by a licence is to be expressed in terms of units of entitlement.

(2) Where a licence is renewed pursuant to an application for renewal made on or before 29 November 2001, the unit entitlement of the licence shall upon renewal be—

- (a) equal, in number, to the number of total pot entitlements of the licence when it last expired; and
- (b) of a class referring to the zone endorsed on the licence.

Unit values

14E. (1) The unit value of a class A or class B unit of entitlement is equal to the quotient of the capacity of zones A and B of the Fishery and N, rounded to the second decimal place, where N is the number of units conferred by all the licences relating to zones A and B.

(2) The unit value of a class C unit of entitlement is equal to the quotient of the capacity of zone C of the Fishery and N, rounded to the second decimal place, where N is the number of units conferred by all the licences relating to zone C.

Temporary transfer of a unit of entitlement

14F. (1) Subject to subclause (2), part of an entitlement under a licence may be temporarily transferred to another licence for a period ending at the time the licences expire.

(2) Part of an entitlement under a licence may only be temporarily transferred to another licence where—

- (a) both licences relate to the same zone of the Fishery;
- (b) the current entitlement of each licence would, as a result of the temporary transfer, be not less than 63 or greater than 150 units; and
- (c) the proposed temporary transfer is of a whole number of units of entitlement.

Variation of entitlements of zone A and zone B licences

14G. The Executive Director may increase or reduce the unit entitlement of a zone A licence and correspondingly reduce or increase, as the case may be, the unit entitlement of a zone B licence—

- (a) upon the application of both licence holders;
- (b) at any time other than during a season; and
- (c) provided that, as a result of the variations, both the usual entitlement and the current entitlement of each licence would not be less than 63 or greater than 150 units.

Surrender of licence and reallocation of usual entitlement

14H. (1) Subject to subclauses (2) and (3), the Executive Director may increase the entitlement conferred by a licence—

- (a) upon the application of the holder of the licence;
- (b) where another licence has been surrendered under section 144 of the Act;
- (c) where the fishing boat licence specified in the surrendered licence has been surrendered under section 144 of the Act; and
- (d) provided that the person who was the holder of the surrendered licence has consented to the application referred to in paragraph (a).

(2) The entitlement of a licence must not be increased—

- (a) by more than the usual entitlement of the surrendered licence; and
- (b) to more than 150 units of usual or current entitlement.

(3) Subclause (1) applies once in connection with the surrender of any licence.

(4) For the purposes of subclause (1)(a) a reference to a licence includes a reference to a licence which has been applied for in accordance with clause 13.

Prohibition on operating in excess of entitlement

14I. (1) The maximum number of pots that may be operated under the authority of a licence is the lesser of—

- (a) 150; and
- (b) the product of the current entitlement of the licence and the relevant unit value.

(2) If the result of the multiplication in subclause (1)(b) is not a whole number, then any fraction of, or greater than, half is rounded upwards and any other fraction is rounded downwards, to a whole number.

(3) Subject to subclause (4) a person fishing under the authority of a licence must not operate more than the maximum number of pots provided for in subclause (1).

(4) A Senior Fisheries Officer may, in writing, authorise a person fishing under the authority of a licence to operate up to twice the maximum number of pots provided for in subclause (1) for the purpose of gear replacement.

(5) A person who is fishing under the authority of a licence and has an authority given under subclause (4) must—

- (a) comply with any conditions of the authority given under subclause (4); and
- (b) not operate more pots below the surface of the water than the maximum number of pots provided for in subclause (1).

Authority of licence of no effect where usual or current entitlement is less than 63 units of entitlement

14J. The authority conferred by a licence is of no effect at any time when either the usual or the current entitlement of the licence is less than 63 units of entitlement.”.

Clause 15 deleted and substituted

9. The principal Plan is amended by deleting clause 15 and substituting the following—

“Grounds for refusing to transfer a licence or part of an entitlement

15. (1) The Executive Director may refuse to transfer a licence or part of an entitlement from under one licence to another licence where the total fee in respect of the transferor’s licence has not been paid.

(2) The Executive Director may refuse to transfer part of an entitlement from under one licence (the “transferor’s licence”) to another licence (the “transferee’s licence”) on the grounds that—

- (a) the usual entitlement of the transferor’s licence would, after the transfer, be less than 63 units;
- (b) the usual entitlement of the transferee’s licence would, after the transfer, be greater than 150 units;
- (c) the current entitlement of the transferee’s licence would, after the transfer, be greater than 150 units;
- (d) the Executive Director is of the opinion that the holder of the transferor’s licence may be liable to prosecution for an offence which has been prescribed for the purposes of section 224 of the Act; or
- (e) the proposed transfer is not of a whole unit or whole number of units.”.

Clause 15A amended

10. Clause 15A of the principal Plan is amended—
- (a) in subclause 15(a) by deleting “total pot”; and
 - (b) in subclause 15(b) by deleting “pot”.

Clause 18 deleted

11. Clause 18 of the principal Plan is deleted.

Clause 21A amended

12. Clause 21A of the principal Plan is amended—
- (a) in paragraph (a) by deleting “11, 12 or 18” and substituting the following—
“12, 14I, or 19(4)”; and
 - (b) in paragraph (b) by deleting “or 20” and substituting the following—
“or 16”.

Schedule 4 amended

13. The principal Plan is amended by deleting Schedule 4 and substituting the following—
- “All of the waters of the Indian Ocean bounded by a line commencing at the intersection of 27°30'S latitude and 112°37'E longitude; thence in a north westerly direction to the intersection of 25°30'S latitude and 112°45'E longitude; thence north along 112°45'E longitude to its intersection with 21°44'S latitude; thence due west along 21°44'S latitude to its intersection with the boundary of the Australian Fishing Zone; thence generally in a south easterly direction along that boundary to its intersection with 27°30'S latitude; thence east along 27°30'S latitude to the starting point.”.

Schedule 6 deleted

14. The principal Plan is amended by deleting Schedule 6.

[*Published in the Gazette of 2 November 1993. For amendments to 30 September 2001 see Notice No. 684 published in the Gazette of 25 November 1994, Notice No. 688 published in the Gazette of 13 December 1994, Notice No. 706 published in the Gazette of 12 May 1995, Notice No. 731 published in the Gazette of 29 September 1995, the West Coast Rock Lobster Management Plan Amendment 1996 published in the Gazette of 5 November 1996, the West Coast Rock Lobster Management Plan Amendment 1997 published in the Gazette of 21 February 1997, the West Coast Rock Lobster Management Plan Amendment (No. 2) 1997 published in a Special Gazette of 30 September 1997, the West Coast Rock Lobster Management Plan Amendment 1998 published in the Gazette of 13 November 1998, the West Coast Rock Lobster Management Plan Amendment (No.2) 1999 published in the Gazette of 12 November 1999, the West Coast Rock Lobster Fishery Management Plan Amendment 2000 published in the Gazette of 29 August 2000 and the West Coast Rock Lobster Fishery Management Plan Amendment 2001 published in the Gazette of 10 August 2001. See regulation 183 of the Fish Resources Management Regulations 1995 concerning the citation of notices made under the Fisheries Act 1905 immediately before the commencement of those regulations.*]

Dated this 10th day of October 2001.

K. M. CHANCE, Minister for Agriculture, Forestry and Fisheries.

