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FISH RESOURCES MANAGEMENT ACT 1994

WEST COAST ROCK LOBSTER MANAGEMENT PLAN AMENDMENT (No. 2) 1997

FD 995/97 [169]

Made by the Minister under section 54(2).

Citation

1. This amendment may be cited as the *West Coast Rock Lobster Management Plan Amendment (No. 2) 1997*.

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 arrangement to the principal Plan is amended by—

- (a) deleting “11. Access to the Cape Inscription area”;
- (b) deleting “15. Transfer of pot entitlement
16. Replacement of the licensed boat” and substituting the following—
 - “ 15. Grounds for refusal to transfer licence or pot entitlement
15A. Grounds for cancelling licence
16. Use of a boat not specified on a licence”;
- (c) deleting “19. Applications and prescribed fees” and substituting the following—
“ 19. Payment of fees by instalments”;
- (d) deleting “SCHEDULE 5 CAPE INSCRIPTION AREA”; and
- (e) inserting after “SCHEDULE 6 TEMPORARY POT ENTITLEMENT” the following—
“SCHEDULE 7 PAYMENT OF FEES BY INSTALMENTS”.

Clause 1 amended

4. Clause 1 of the principal Plan is amended by deleting “Limited Entry Fishery Notice” and substituting the following—

“Management Plan”.

Clause 2 amended

5. Clause 2 of the principal Plan is amended by—

- (a) deleting the item commencing “Cape Inscription area”;
- (b) deleting from the item commencing “Fishery” the words “limited entry fishery declared” and substituting the following—
“managed fishery described”;
- (c) deleting the item commencing “licence” and substituting the following—
“ “licence” means a managed fishery licence which authorises a person to fish for rock lobster in the Fishery; ”;
- (d) deleting from the item commencing “operate” the word “pots” and inserting the following—
“ pots but excludes the mere carrying of not more than two unbaited and unrigged pots”;
- (e) deleting the item commencing “pot” and inserting after the item commencing “rock lobster” the following—
“ “rock lobster pot” has the meaning provided for in the regulations;”;
- (f) deleting the item commencing “registration number” and inserting after the item commencing “licence” the following—
“ “licensed fishing boat” has the meaning provided for in the regulations;
“licensed fishing boat number” has the meaning provided for in the regulations;”;

- (g) deleting the item commencing "Regulations" and substituting the following—
"regulations" means the *Fish Resources Management Regulations 1995*;
- (h) deleting the item commencing "rock lobster" and substituting the following—
"rock lobster" means fish of that common name described by the scientific classification opposite that name in column 2 of Schedule 7 of the regulations;"; and
- (i) inserting after the item commencing "temporary pot entitlement" the following—
"total fee" means the product of the fee (per pot) specified in item 28 of part 3 of Schedule 1 of the regulations and the total pot entitlement specified on the relevant licence;".

Clause 3 amended

6. Clause 3 of the principal Plan is amended by—

- (a) deleting "It is declared that rock lobster" and substituting the following—
"All fishing for rock lobster in the waters described in Schedule 1, previously declared under the repealed Act to"; and
- (b) deleting "in the waters described in Schedule 1." and substituting the following—
"and taken to be a managed fishery under item 8 of Schedule 3 of the Act, is a managed fishery and may be referred to as the West Coast Rock Lobster Managed Fishery."

Clause 4 amended

7. Clause 4 of the principal Plan is amended—

- (a) in paragraph (a) by deleting "professional fisherman's licence issued under regulations made under the Act" and substituting the following—
"commercial fishing licence"; and
- (b) in paragraph (b) by deleting "boat that, under clause 13, is licensed to be so operated." and substituting the following—
"boat—
 - (i) the name and licensed fishing boat number of which are specified in a licence;
 - (ii) specified in a written authority given under regulation 132; or
 - (iii) in accordance with clause 16."

Clause 5 amended

8. Clause 5 of the principal Plan is amended by deleting "Unless other means are approved by the Minister, a " and substituting the following—

"A".

Clause 10 amended

9. Clause 10(1) of the principal Plan is amended by deleting "Minister" and substituting the following—
"Executive Director".

Clause 11 deleted

10. Clause 11 of the principal Plan is deleted.

Clause 13 amended

11. Clause 13 of the principal Plan is amended by—

- (a) deleting subclauses 13(2), 13(3), 13(4) and 13(6); and
- (b) deleting paragraph (b) of subclause (5) and substituting the following—
"(b) the name, licensed fishing boat number and length of the licensed fishing boat which may be used for fishing in the Fishery under the authority of the licence;".

Clause 14 amended

12. Clause 14(1) of the principal Plan is amended by deleting "the number obtained by multiplying the length of the boat by 10" and substituting the following—

"150".

Clause 15 deleted and substituted

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

" Grounds for refusal to transfer licence or pot entitlement

15. (1) The Executive Director may refuse to transfer a part of a pot entitlement from under one licence to another licence where the transfer would result in a licence conferring and specifying a total pot entitlement of—

- (a) less than 63; or
- (b) more than 150.

(2) The Executive Director may refuse to transfer a licence or any part of a total pot entitlement where the total fee for the transferor's licence has not been paid."

Clause 15A inserted

14. The principal Plan is amended by inserting after clause 15 the following—

“ Grounds for cancelling licence

15A. The Executive Director may cancel a licence where the total pot entitlement conferred by and specified on a licence is nil.”.

Clause 16 deleted and replaced

15. The principal Plan is amended by deleting clause 16 and replacing the following—

“Use of a boat not specified on a licence

16. (1) Notwithstanding any other clause in this Plan, a Senior Fisheries Officer may by notice in writing, and on written application by the holder of a licence, authorise the holder of the licence to use in the place of the boat specified on the licence not more than 3 other boats, being boats specified on other licences, for a period not exceeding 10 days.

(2) An application for an authority under subclause (1) must be made on a form approved for that purpose by the Executive Director.

(3) A Senior Fisheries Officer must not give an authority under subclause (1) unless the Senior Fisheries Officer is satisfied that—

- (a) the boat first mentioned in subclause (1) is disabled;
- (b) each boat to be used in the place of the boat referred to in paragraph (a) is a boat specified on a licence;
- (c) the holder of the licence first mentioned in subclause (1) is unable to make an application to vary the licence or for an authority under regulation 132 for reasons beyond the persons control; and
- (d) the master of each boat to be used in the place of the boat specified in paragraph (a) has given written consent to the giving of the authority under this clause and written acknowledgment of subclause (4).

(4) It is a condition of a managed fishery licence that, where the boat specified in the licence is also the subject of an authority given under this clause, the master of the boat must immediately upon taking any rock lobster with the use of a pot other than a pot the use of which is authorised by the licence, clearly segregate and label the rock lobsters with the details of the relevant licence under the authority of which they were taken.

(5) It is a condition of a managed fishery licence that, where the boat specified in the licence is also the subject of an authority given under this clause, the boat shall not be used to fish for rock lobster unless the master of the boat is the person who gave the written acknowledgment for the purposes of subclause (3)(d).

(6) An authority given by a Senior Fisheries Officer under this clause may be given subject to such conditions as the Senior Fisheries Officer thinks fit, and may be amended from time to time or revoked by further notice in writing.

(7) An authority given by a Senior Fisheries Officer under this clause may be surrendered by the delivery to a Senior Fisheries Officer of notices in writing surrendering the authority made by the masters of each boat specified in the authority .”

Clause 18 amended

16. Clause 18 of the principal Plan is amended—

- (a) in subclause (3) by deleting “that boat.” and substituting the following—

“that boat unless—

- (a) the person is operating in accordance with the written approval of a Senior Fisheries Officer;
- (b) the number of pots being operated below the surface of the waters of the Fishery at any one time is not more than the temporary pot entitlement; and
- (c) the number of pots being operated at any one time is not more than twice the number that is the temporary pot entitlement.”;

- (b) in subclause (4) by deleting “1995 and 1996” and substituting the following—

“1995, 1996 and 1997”; and

- (c) deleting subclause (5).

Clause 19 deleted and substituted

17. The principal Plan is amended by deleting clause 19 and substituting the following—

“ Payment of fees by instalments

19. (1) For the purposes of regulation 137(2) of the regulations, the total fee may be paid by instalments as specified in Schedule 7 if—

- (a) an election to pay by instalments is made by the holder of a licence in accordance with subclause (2); and
- (b) there is no other fee, charge or levy in respect of the licence which has not been paid at the time the election is received at the head office of the Department.

- (2) An election for the purposes of subclause (1) must be—
- (a) made in writing;
 - (b) received at the head office of the Department prior to the commencement of the licensing period to which the election relates; and
 - (c) accompanied by the first instalment plus the surcharge.
- (3) For the purposes of regulation 137(3) of the regulations, the surcharge shall be 3.13% of the total fee.
- (4) The holder of a licence, or a person acting on that persons behalf, must not fish in the Fishery at any time when any fee or surcharge payable in respect of the licence is outstanding. ”.

Clause 21 amended

18. Clause 21 of the principal Plan is amended by deleting “Regulations” and substituting the following—
“regulations”.

Schedule 5 deleted

19. The principal Plan is amended by deleting Schedule 5.

Schedule 7 inserted

20. The principal Plan is amended by inserting after Schedule 6 the following—

“Schedule 7—Payment of fees by instalments

1. (a) the first instalment is 25% of the total fee and is due for payment on or before 1 October of the year in which the licence is to be granted or renewed;
- (b) the second instalment is 25% of the total fee and is due for payment on or before 1 January immediately following the period specified in paragraph (a); and
- (c) the third instalment is the total fee less the instalments provided for in paragraphs (a) and (b) and is due for payment on or before 1 April immediately following the period specified in paragraph (a).”

*[*Published in the Gazette of 2 November 1993. For amendments to 25 September 1997 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 and the West Coast Rock Lobster Management Plan Amendment 1997 published in the Gazette of 21 February 1997.*

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 30th day of September 1997.

M. G. HOUSE, Minister for Fisheries.

