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**FISH RESOURCES MANAGEMENT ACT 1994**  
**WEST COAST ROCK LOBSTER MANAGED FISHERY MANAGEMENT**  
**PLAN AMENDMENT 2016**

FD 8867/15 [1264]

Made by the Minister under section 54.

**1. Citation**

This instrument is the *West Coast Rock Lobster Managed Fishery Management Plan Amendment 2016*.

**2. Management plan amended**

The amendments in this instrument are to the *West Coast Rock Lobster Managed Fishery Management Plan 2012*.

**3. Clauses 19A and 19B inserted**

After clause 19, insert—

**19A. Notice in respect of exceeding entitlement**

(1) Where the CEO is satisfied that the entitlement of a licence has been exceeded, the CEO may by notice given in writing to either—

- (a) the holder of the relevant licence; or
- (b) a person acting on behalf of the holder of the licence,

require that person to pay the amount of money specified in the notice to the Fisheries Research and Development Account within 14 days of the date of the notice.

Note: The notice in writing is to include details of the right of review under clause 19B and reasons for decision: s.20(1) and s.21(1) *State Administrative Tribunal Act 2004*.

(2) The CEO must determine the amount of money to be specified in a notice given under subclause (1) as payable in respect of the exceeding of the entitlement of a licence by—

- (a) determining the market price of rock lobster (per kilogram) on the day that the entitlement of the licence was exceeded; and
- (b) multiplying the amount of rock lobster taken in excess of the entitlement of the licence by the market price of rock lobster (per kilogram) determined under paragraph (a).

(3) The CEO may, at any time, withdraw a notice given under subclause (1).

(4) It is a condition of a licence that the authority conferred by the licence is of no effect during the period from five days following the day on which a notice was given by the CEO under subclause (1) in respect of that licence until—

- (a) the day on which the full amount of money specified in the notice is paid; or
- (b) the notice is withdrawn under subclause (3).

**19B. Review of CEO notice by SAT**

A person who has received a notice under clause 19A(1) and who has paid 90% of the amount of money payable under that notice to the Fisheries Research and Development Account may apply to the State Administrative Tribunal for a review of the CEO's determination under clause 19A(2).

**4. Clause 20 replaced**

Delete clause 20 and insert—

**20. Defence to s.74(2) of the Act**

(1) It is a defence in proceedings for an offence against section 74(2) of the Act in respect of contravening clause 19 for the person charged to prove that—

- (a) the person is the holder of the relevant licence; and
- (b) the amount of rock lobster by which the entitlement of the relevant licence was exceeded is not more than 30 kilograms; and
- (c) the person or a person acting on their behalf, not more than 21 days after the landing of the rock lobster, paid to the Fisheries Research and Development Account an amount of money equal to the product of the number of kilograms by which the entitlement was exceeded and the prescribed value (per unit of weight) for the rock lobster, as specified in Schedule 9 to the regulations; and
- (d) the person or a person acting on their behalf has not paid an amount of money to the Fisheries Research and Development Account in relation to exceeding the entitlement of a licence in the 12 months prior to the date on which clause 19 was contravened.

(2) It is a defence in proceedings for an offence against section 74(2) of the Act in respect of contravening clause 19 for the person charged to prove that—

- (a) the person was acting on behalf of the holder of the relevant licence; and
- (b) the amount of rock lobster by which the entitlement of the relevant licence was exceeded is not more than 30 kilograms; and

- (c) the person or the relevant licence holder, not more than 21 days after the landing of the rock lobster, paid to the Fisheries Research and Development Account an amount of money equal to the product of the number of kilograms by which the entitlement was exceeded and the prescribed value (per unit of weight) for the rock lobster, as specified in Schedule 9 to the regulations; and
- (d) the person or the relevant licence holder has not paid an amount of money to the Fisheries Research and Development Account in relation to exceeding the entitlement of a licence in the 12 months prior to the date on which clause 19 was contravened.

**5. Clause 23 amended**

In clause 23(2), after “ 71, ” insert—

72, 72A,

**6. Clause 24 amended**

After subclause (2), insert—

- (3) The CEO may refuse to transfer a licence or part of an entitlement conferred by a licence to another licence on the grounds that—
  - (a) the CEO has issued a notice under clause 19A(1) in respect of the transferor’s licence; and
  - (b) the person who received the notice has not paid the amount of money specified in the notice to the Fisheries Research and Development Account; and
  - (c) the CEO has not withdrawn the notice under clause 19A(3).

**7. Clause 36 replaced**

Delete clause 36 and insert—

**36. Master to make post-landing nomination**

- (1) Where using IVR to make nominations, the master of an authorised boat who has removed or permitted the removal of rock lobster from the authorised boat in an approved landing area must make a post-landing nomination by IVR immediately upon weighing the last consignment of rock lobster.
- (2) Where using IVR to make nominations, the master of an authorised boat operating in Zone A who has delivered rock lobster to a carrier boat must make a post-landing nomination by IVR within 30 minutes of delivering the rock lobster to the carrier boat.
- (3) Where the master of an authorised boat makes a post-landing nomination under subclause (1), the master must—
  - (a) record the post-landing confirmation number issued by IVR in respect of the nomination in Part 1D of a CDR form; and
  - (b) acknowledge receipt by IVR of the post-landing confirmation number issued in respect of the nomination.
- (4) Where the master of an authorised boat operating in Zone A has delivered rock lobster to a carrier boat and has made a post-landing nomination under subclause (2), the master must—
  - (a) record the post-landing confirmation number issued by IVR in respect of the nomination in the duplicate of a CDR form; and
  - (b) acknowledge receipt by IVR of the post-landing confirmation number issued in respect of the nomination.
- (5) Where using Fish Eye to make nominations, the master of an authorised boat who has removed or permitted the removal of rock lobster from the authorised boat in an approved landing area must make a post-landing nomination by—
  - (a) submitting a post-landing nomination form in Fish Eye immediately upon weighing each consignment of rock lobster landed from the trip; and
  - (b) recording the receipt number issued by Fish Eye in respect of the nomination; and
  - (c) recording the consignment number issued by Fish Eye for each consignment of rock lobster.
- (6) Where using Fish Eye to make nominations, the master of an authorised boat operating in Zone A who has delivered rock lobster to a carrier boat must make a post-landing nomination by—
  - (a) submitting a post-landing nomination form in Fish Eye within 30 minutes of delivering the rock lobster to the carrier boat; and
  - (b) recording the receipt number issued by Fish Eye in respect of the nomination; and
  - (c) recording the consignment number issued by Fish Eye for each consignment of rock lobster; and
  - (d) recording the consignment number issued by Fish Eye in respect of each consignment on a carrier boat consignment form.

**8. Clause 37 amended**

In clause 37, delete subclause (6) and insert—

(6) The master of an authorised boat must ensure that all rock lobster on or attached to the boat are removed from the boat immediately upon bringing that rock lobster into an approved landing area.

#### **9. Clause 41 replaced**

Delete clause 41 and insert—

##### **41. Use of landing tags**

(1) A landing tag required to be used under this plan must be attached to any container holding rock lobster by passing the tag through the lid of that container and the container itself, and securing the tag through its locking device in such a manner that the tag is locked and intact and no rock lobster can be added to or removed from that container without breaking one or more landing tags.

(2) A person must not use more than 4 landing tags in respect of a container.

(3) The master of an authorised boat must ensure that rock lobster are held in sealed containers with landing tags attached to those containers in accordance with subclause (1) before the rock lobster is—

- (a) removed from the boat; or
- (b) delivered to a carrier boat.

(4) The master of an authorised boat must at all times keep safe and secure all unused landing tags and produce the landing tags to a fisheries officer where required by the fisheries officer to produce the landing tags for inspection.

(5) A person must not remove rock lobster from an authorised boat unless that rock lobster is held in a sealed container with a landing tag attached in respect of that container in accordance with this clause.

(6) A person must not—

- (a) remove a landing tag that has been attached to a container; or
- (b) open the container to which a landing tag is attached,

unless that container is at a registered receiver's premises, and the rock lobster in that container have been consigned to that registered receiver.

(7) Subclause (6) does not apply to containers of rock lobster retained for personal consumption where a person who was a crew member on the authorised boat when the rock lobster was taken removes a landing tag or opens a container to which a landing tag is attached at the address specified at Part 1D of a CDR form or in a post-landing nomination form.

(8) Subclauses (3) and (5) do not apply in respect of rock lobster held in a designated holding area in accordance with this plan.

#### **10. Clause 42 amended**

In clause 42, delete subclause (3) and insert—

(3) A person transporting rock lobster under subclause (2) must have a receipt, transport docket or other document regarding the rock lobster in the person's actual possession which shows—

- (a) the weight (in kilograms) or number of rock lobster being transported; and
- (b) that the rock lobster being transported were lawfully purchased or obtained in accordance with this plan.

#### **11. Clause 43 amended**

(a) In clause 43(1), delete paragraph (c)(ii) and insert—

(ii) at a weighing point specified in Schedule 13 bearing the same designation as an approved landing area specified in Schedule 11, and in an area where the weighing may be clearly observed by a fisheries officer and is not within a building,

(b) After clause 43(4), insert—

(4a) Where the net weight recorded in a post-landing nomination under clause 36(5) or clause 36(6) is not the same as the net weight recorded under clause 62(8), the higher net weight is to be taken to be a quantity of rock lobster that was taken under the authority of the licence.

#### **12. Clause 50 replaced**

Delete clause 50 and insert—

##### **50. Consignment of rock lobster by master**

(1) The master of an authorised boat must not consign rock lobster taken in respect of a trip to any person other than—

- (a) a registered receiver; or
- (b) a person acting on behalf of a registered receiver; or
- (c) a person currently recorded as a crew member on the crew list log sheet in respect of the licence who receives rock lobster taken in respect of a trip for personal consumption; or
- (d) a person recorded as a crew member for a trip in the pre-landing nomination form in Fish Eye in respect of the licence who receives rock lobster taken in respect of that trip for personal consumption.

(2) The master of an authorised boat must not consign rock lobster to a registered receiver or a person acting on behalf of a registered receiver unless the person to whom the rock lobster is to be consigned is present at the time that the master transfers possession of the rock lobster.

**13. Clause 51 amended**

In clause 51, delete subclause (3) and insert—

(3) The holder of a commercial fishing licence must not act for or on behalf of a registered receiver on the same day as the licence holder has undertaken a trip in the Fishery.

**14. Clause 59 amended**

(a) In clause 59(1), delete “ has elected to use Fish Eye ” and insert—  
has used Fish Eye to make nominations

(b) In clause 59(3), delete “ elects to make records using Fish Eye ” and insert—  
uses Fish Eye to make nominations

(c) In clause 59(4), delete “ has elected to make records using Fish Eye ” and insert—  
has used Fish Eye to make nominations

**15. Clause 60 amended**

In clause 60(1), delete “ elects to make records using Fish Eye ” and insert—  
uses Fish Eye to make nominations

**16. Clause 61 amended**

In clause 61(1), delete “ elects to make records using Fish Eye ” and insert—  
uses Fish Eye to make nominations

**17. Clause 71 amended**

In clause 71, delete subclause (2) and insert—

(2) Subclause (1) does not apply to the holder of a licence who provides the temporary master PIN issued by IVR to the person nominated as the master of an authorised boat in accordance with clause 33(2).

(3) A person who has been issued a PIN to access IVR, a Fish Eye user identification or a Fish Eye password must keep that PIN, user identification or password secure at all times.

**18. Clause 72A inserted**

After clause 72, insert—

**72A. Prohibition in respect of CDR forms and holding over forms**

A person must not provide any false or misleading information in a CDR form or a holding over form.

**19. Clause 75 amended**

In clause 75, after “ 72, ” insert—

72A,

**20. Schedule 10 amended**

In item (2) of Schedule 10, delete “ in respect of the holder of a licence or person fishing on their behalf “ and insert—

in respect of the master of an authorised boat

**21. Schedule 11 amended**

Delete Area 37 and insert—

**Area 37: Seabird**

All waters bounded by a line commencing at 31°16.328' south latitude and 115°26.379' east longitude, thence to a point at 31°16.452' south latitude and 115°26.088' east longitude, thence to a point at 31°17.024' south latitude and 115°26.434' east longitude, thence to a point at 31°16.900' south latitude and 115°26.650' east longitude, thence along a line to the commencement point.

**22. Schedule 13 amended**

Delete the description of “ Seabird ” and insert—

**Seabird**

The weighing point is within 50 metres of 31°16.614' south latitude and 115°26.520' east longitude.

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Dated the 12th day of January 2016.

K. BASTON, Minister for Fisheries.