

NORTHERN TERRITORY OF AUSTRALIA
AMENDMENTS OF FISHERIES REGULATIONS

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 1998, No. 15*

Regulations under the *Fisheries Act*

I, NEIL RAYMOND CONN, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Fisheries Act*.

Dated 26 June 1998.

N R CONN
Administrator

AMENDMENTS OF FISHERIES REGULATIONS

1. PRINCIPAL REGULATIONS

The Fisheries Regulations are in these Regulations referred to as the Principal Regulations.

2. REPEAL AND SUBSTITUTION

Division 10 of Part 8 of the Principal Regulations is repealed and the following substituted:

"Division 10 - Pearl Oyster Fishery

"Subdivision 1 - Preliminary

"117. DEFINITIONS

"In this Division, unless the contrary intention appears -

'allocation', in relation to a Pearl Oyster Fishery licensee, means the number of pearl oyster fishing units allocated to him or her under regulation 122E for a licensing year;

* Notified in the *Northern Territory Government Gazette* on 1 July 1998.

Fisheries Regulations

'Committee' means the Northern Territory Pearl Industry Advisory Committee established under section 24 of the Act;

'half pearl' means the concretion formed on the inner surface of either valve of a pearl oyster as a result of a person adhering an object permanently to that surface;

'holding area' means a site at which, under a Pearl Oyster Culture Industry licence, pearl oysters taken from the wild or produced in a hatchery are held for seeding and related operations;

'mother-of-pearl' means the smooth, shining, iridescent substance forming the inner layers of the shell of a pearl oyster;

'pearl' includes a whole, half, baroque, seedless or blister pearl from a pearl oyster, whether the pearl is natural or cultured;

'pearl culture unit' means a pearl oyster fishing unit or a pearl oyster hatchery unit;

'pearl farm lease' means a lease granted to a licensee under section 55 of the Act for the purposes of a Pearl Oyster Culture industry licence;

'pearl oyster' means an oyster of the genus *Pinctada* and includes -

- (a) a part of a pearl oyster; and
- (b) pearl oyster spat;

'Pearl Oyster Culture Industry' means the managed fishery relating to -

- (a) the holding, culturing and sale of production from wildstock or hatchery produced pearl oysters; and
- (b) activities associated with the activities specified in paragraph (a),

declared by notice in Gazette No. G28 of 17 July 1991 at page 2;

'Pearl Oyster Culture Industry Management Plan' means the fishery management plan in force in respect of the Pearl Oyster Culture Industry;

Fisheries Regulations

'pearl oyster dump site' means a site where pearl oysters taken from the wild are placed and held before movement to a holding area or a pearl farm lease, but does not include an area of land held under a pearl farm lease;

'pearl oyster fishing unit' has the meaning it has in regulation 122D(2);

'pearl oyster hatchery unit' has the meaning it has in the Pearl Oyster Culture Industry Management Plan;

'take' includes sever, remove, damage, destroy or otherwise displace a pearl oyster from the wild but does not include the taking of a pearl oyster from a pearl oyster dump site, holding area or an area of land held under a pearl farm lease;

'total allowable catch' has the meaning it has in regulation 122C(1).

"118. DECLARATION OF PEARL OYSTER FISHERY

"The industry of taking, harvesting, transporting from the wild, holding or selling species of bivalves of the genus *Pinctada* (pearl oysters) is the Pearl Oyster Fishery.

"119. USE AND SALE OF PEARL OYSTERS

"A Pearl Oyster Fishery licensee may --

- (a) subject to this Division, take pearl oysters;
- (b) use in accordance with a Pearl Oyster Culture Industry licence, pearl oysters taken in accordance with the Pearl Oyster Fishery licence;
- (c) sell pearls;
- (d) sell pearl meat;
- (e) sell pearl oysters for their mother-of-pearl content; and
- (f) subject to this Division, transfer pearl oysters to another Pearl Oyster Fishery licensee.

Fisheries Regulations

"Subdivision 2 - Grant, Renewal
and Transfer of Licences

"120. GRANT OF LICENCE

"(1) The Director may not grant a Pearl Oyster Fishery licence to a person unless -

- (a) the person holds a Pearl Oyster Culture Industry licence; and
- (b) the Director has approved the permanent transfer to the person of 20 pearl culture units in accordance with subregulation (2).

"(2) For the purposes of subregulation (1), the 20 pearl culture units may be comprised of -

- (a) pearl oyster fishing units permanently transferred under Subdivision 5; or
- (b) a combination of pearl oyster fishing units permanently transferred under Subdivision 5 and pearl oyster hatchery units permanently transferred under Part 4 of the Pearl Oyster Culture Industry Management Plan, providing that at least 5 of the pearl culture units are pearl oyster fishing units.

"121. RENEWAL OF LICENCE

"(1) The Director may renew a Pearl Oyster Fishery licence held by a person only if the Director has renewed the person's Pearl Oyster Culture Industry licence.

"(2) Where the Director renews a Pearl Oyster Fishery licence, he or she must specify on the licence -

- (a) the total allowable catch; and
- (b) the licensee's allocation of pearl oyster fishing units,

for the licensing year for which the licence is renewed.

"122. TRANSFER OF LICENCE

"The Director may approve the transfer of a Pearl Oyster Fishery licence to a person under the Act only if the Director has approved the transfer to the person of a Pearl Oyster Culture Industry licence.

Fisheries Regulations

"Subdivision 3 - Taking of Pearl Oysters

"122A. NUMBER OF PEARL OYSTERS THAT MAY BE TAKEN

"(1) A Pearl Oyster Fishery licensee must not, during a licensing year, take more than the number of pearl oysters represented by -

- (a) the licensee's allocation of pearl oyster fishing units for the licensing year; and
- (b) pearl oyster fishing units transferred to the licensee by -
 - (i) a permanent transfer during the licensing year, before the pearl oysters are taken; or
 - (ii) a temporary transfer that was in force at the time the pearl oysters are taken,

less the number, if any, of pearl oysters represented by pearl oyster fishing units that are -

- (c) permanently transferred by him or her to another person under the Fisheries Regulations during the licensing year; or
- (d) temporarily transferred by him or her to another person under the Fisheries Regulations under a transfer that is in force in the licensing year.

"(2) Subregulation (1) does not apply in relation to pearl oyster spat collected under clause 9 of the Pearl Oyster Culture Industry Management Plan.

"122B. METHOD OF TAKING PEARL OYSTERS

"A Pearl Oyster Fishery licensee may take pearl oysters only by hand harvest or by another method determined by the Director.

*"Subdivision 4 - Allocation of
Pearl Oyster Fishing Units*

"122C. TOTAL ALLOWABLE CATCH

"(1) The Minister must, before the commencement of each licensing year, determine the number, if any, of pearl oysters that may be taken in the Pearl Oyster Fishery (in this regulation called 'the total allowable catch').

Fisheries Regulations

"(2) The Minister may, at any time during a licensing year, vary the total allowable catch for the licensing year.

"(3) The Minister may only vary the total allowable catch under subregulation (2) if the Minister -

- (a) thinks it is necessary to do so for the management of the Pearl Oyster Fishery; and
- (b) has consulted with the Committee as he or she thinks fit.

"(4) Where the Minister varies the total allowable catch under subregulation (2) the Director must note the total allowable catch, as so varied, on each Pearl Oyster Fishery licence.

"(5) A Pearl Oyster Fishery licensee must, at the request of the Director, return his or her licence to the Director for the purposes of subregulation (4).

"122D. PEARL OYSTER FISHING UNITS

"(1) The maximum number of pearl oyster fishing units is 120.

"(2) A pearl oyster fishing unit represents a right, during a licensing year, to do one of the following:

- (a) take a number of pearl oysters from the wild that represents a one hundred and twentieth part of the total allowable catch for the licensing year;
- (b) under a Pearl Oyster Culture Industry licence, seed in accordance with clause 11(1)(b) and (4) of the Pearl Oyster Culture Industry Management Plan a number of pearl oysters taken from the wild or from hatchery-produced spat that represents a one hundred and twentieth part of the total allowable catch for the licensing year;
- (c) take a number of pearl oysters from the wild, and, under a Pearl Oyster Culture Industry licence, seed in accordance with clause 11(1)(b) and (4) of the Pearl Oyster Culture Industry Management Plan a number of pearl oysters taken from the wild or from hatchery-produced spat, or both, where the total number of pearl oysters taken or seeded under this regulation is not more than the number that represents a one hundred and twentieth part of

the total allowable catch for the licensing year.

"122E. ALLOCATION OF PEARL OYSTER FISHING UNITS

"Subject to this Division, the Director must, on the renewal of a Pearl Oyster Fishery licence, allocate a number of pearl oyster fishing units to the licensee for the licensing year for which the licence is renewed, being comprised of -

- (a) the licensee's allocation of pearl oyster fishing units for the previous licensing year; and
- (b) the number of pearl oyster fishing units, if any, permanently transferred to him or her under these Regulations in the previous licensing year,

less the number of pearl oyster fishing units permanently transferred by him or her to another person under these Regulations during the previous licensing year.

*"Subdivision 5 - Transfer of
Pearl Oyster Fishing Units*

"122F. TRANSFER OF PEARL OYSTER FISHING UNIT MUST BE IN ACCORDANCE WITH THIS DIVISION

"A pearl oyster fishing unit is not transferable except in accordance with this Division.

"122G. APPLICATION FOR TRANSFER

"(1) A licensee may apply to the Director, in the approved form, to -

- (a) permanently or temporarily transfer a pearl oyster fishing unit to a Pearl Oyster Fishery licensee; or
- (b) permanently transfer a pearl oyster fishing unit to an applicant for, or a person who intends to apply for, a Pearl Oyster Fishery licence.

"(2) A Pearl Oyster Fishery licensee must not, during a licensing year, apply under subregulation (1) to transfer a pearl oyster fishing unit to a person if, were the transfer to be approved -

- (a) the number of pearl oysters that may during the licensing year be taken under regulation 122A by the licensee; or

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- (b) the number of pearl oysters that may during the licensing year be seeded in accordance with clause 11(1)(b) of the Pearl Oyster Culture Industry Management Plan by the licensee,

would be less than the number of pearl oysters taken or seeded by the licensee during the licensing year.

"122H. DIRECTOR MUST APPROVE OR REFUSE APPLICATION

"(1) The Director must approve or refuse to approve an application under regulation 122G(1).

"(2) The Director must notify the applicant in writing of the Director's decision under subregulation (1).

"122J. COMMENCEMENT AND DURATION OF TRANSFER

"(1) Where the Director approves an application under regulation 122G(1)(a) for the transfer of a pearl oyster fishing unit to a licensee, the transfer takes effect on the day specified in the transfer.

"(2) Where the Director approves an application under regulation 122G(1)(b) for the transfer of a pearl oyster fishing unit to an applicant for, or a person who intends to apply for, a Pearl Oyster Fishery licence, the transfer takes effect on the grant of the licence to the person.

"(3) A temporary transfer of a pearl oyster fishery unit remains in force until the expiration of 30 June of the licensing year specified in the transfer to be the last year for which the transfer remains in force.

"122K. WHERE UNITS TRANSFERRED TO LICENSEE

"Where the Director approves an application under regulation 122G(1)(a) for the transfer of one or more pearl oyster fishing units to a licensee, the Director must specify the number of units transferred on the Pearl Oyster Fishery licences of both the transferor and the transferee.

"122L. WHERE UNITS TRANSFERRED TO PERSON WHO INTENDS TO APPLY FOR LICENCE

"(1) Where the Director approves an application under regulation 122G(1)(b) for the transfer of one or more pearl oyster fishing units to an applicant for, or a person who intends to apply for, a Pearl Oyster Fishery licence, the Director must specify on the transferor's Pearl Oyster Fishery licence the number of units to be

transferred from the licensee on the grant of the licence to the person.

"(2) Where the Director approves an application under regulation 122G(1)(b) for the transfer of one or more pearl oyster fishing units to an applicant for, or a person who intends to apply for, a Pearl Oyster Fishery licence, the Director must specify on the Pearl Oyster Fishery licence granted to the person -

- (a) the number of pearl oyster fishing units permanently transferred to him or her on the grant of the licence; and
- (b) the total allowable catch in respect of the licensing year in which the pearl oyster fishing units are transferred.

"122M. LICENCE REVOKED IF MINIMUM NUMBER OF PEARL CULTURE UNITS NOT HELD AFTER TRANSFER

"Where a Pearl Culture Industry licence held by a person is revoked under regulation 180, his or her Pearl Oyster Fishery licence is, by force of this regulation, revoked.

"Subdivision 6 - Miscellaneous

"122N. TRANSFER OF PEARL OYSTERS

"A Pearl Oyster Fishery licensee must not transfer pearl oysters to another person except in accordance with the Pearl Oyster Culture Industry Management Plan.

"122P. PEARL OYSTER FISHERY DUMP SITES

"(1) A Pearl Oyster Fishery licensee may place on a pearl oyster dump site pearl oysters taken under the Pearl Oyster Fishery licence.

"(2) The licensee must inform the Director, in writing, of the location of a pearl oyster dump site within 7 days after establishing it.

"122Q. LICENSEE MUST PERMIT INSPECTION OF PEARL OYSTERS

"It is a condition of a Pearl Oyster Fishery licence that the licensee must permit the inspection, by a person authorised in writing by the Director, of all pearl oysters in the possession of the licensee.

"122R. NO UNAUTHORISED REMOVAL OF PEARL OYSTERS

"A Pearl Oyster Fishery licensee or a Pearl Oyster Culture Industry licensee must not remove a pearl oyster from -

- (a) a pearl oyster dump site;
- (b) a holding area; or
- (c) an area of land to which a pearl farm lease relates,

except with the consent of the holder of the licence to which the site, area or farm relates.

Penalty: \$5,000."

3. NO AQUACULTURE WITHOUT LICENCE

Regulation 170 of the Principal Regulations is amended -

(a) by omitting "A person may" and substituting "(1) A person may"; and

(b) by adding at the end the following:

"(2) For the purposes of subregulation (1), 'fish' does not include a member of the genus *Pinctada* (pearl oysters)."

4. REPEAL AND SUBSTITUTION

Division 3 of Part 10 of the Principal Regulations is repealed and the following substituted:

"Division 3 - Pearl Oyster Culture Industry

"176. DEFINITIONS

"In this Division, unless the contrary intention appears -

'allocation', in relation to a person, means -

- (a) in relation to a pearl oyster fishing unit - the number of pearl oyster fishing units allocated to him or her under regulation 122E for a licensing year; and

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- (b) in relation to a pearl oyster hatchery unit — the number of pearl oyster hatchery units allocated to him or her for a licensing year under clause 13 of the Pearl Oyster Culture Industry Management Plan;

'holding area' means a site at which, under a Pearl Oyster Culture Industry licence, pearl oysters taken from the wild or produced in a hatchery are held for seeding and related operations;

'pearl culture unit' means a pearl oyster fishing unit or a pearl oyster hatchery unit;

'pearl oyster' means an oyster of the genus *Pinctada* and includes —

- (a) a part of a pearl oyster; and
- (b) pearl oyster spat;

'pearl oyster dump site' means a site where pearl oysters taken from the wild are placed and held before movement to a holding area or a pearl farm lease, but does not include an area of land held under a pearl farm lease;

'pearl oyster fishing unit' has the meaning it has in regulation 122D(2);

'pearl oyster hatchery unit' has the meaning it has in the Pearl Oyster Culture Industry Management Plan;

'pearl farm lease' means a lease granted to a licensee under section 55 of the Act for the purposes of a Pearl Oyster Culture industry licence.

"177. GRANT OF LICENCE

"The Director must not grant a Pearl Oyster Culture Industry licence to an applicant unless he or she intends to grant a Pearl Oyster Fishery licence to the applicant.

"178. RENEWAL OF LICENCE

"(1) The Director must not renew a Pearl Oyster Culture Industry licence unless —

- (a) he or she is satisfied that —
 - (i) the applicant has applied for renewal of his or her Pearl Oyster Fishery licence;

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- (ii) the applicant's allocation in relation to his or her Pearl Oyster Fishery licence for the licensing year for which it would be renewed would be 5 pearl oyster fishing units or more; and
- (iii) the Director intends to renew the Pearl Oyster Fishery licence; and
- (b) the applicant has complied with the Act and any other instrument of a legislative or administrative character applicable to the Pearl Oyster Fishery.

"(2) Where the Director renews a Pearl Oyster Culture Industry licence, he or she must specify on the licence -

- (a) the allocation of pearl oyster fishing units in relation to the licensee's Pearl Oyster Fishery licence for the licensing year for which that licence is renewed; and
- (b) the licensee's allocation of pearl oyster hatchery units under clause 13 of the Pearl Oyster Culture Industry Management Plan for the licensing year for which the Pearl Oyster Culture Industry licence is renewed.

"179. TRANSFER OF LICENCE

"The Director must not consent to the transfer of a Pearl Oyster Culture Industry licence to a person unless -

- (a) application has been made to the Director for the transfer of the licensee's Pearl Oyster Fishery licence to the same person; and
- (b) the Director intends to approve the transfer of the Pearl Oyster Fishery licence to that person.

"180. LICENCE REVOKED IF LICENSEE NOT PERMITTED TO SEED MINIMUM NUMBER OF PEARL CULTURE UNITS

"Where -

- (a) the sum of -
 - (i) the number of pearl oysters that may be seeded under clause 11(1)(b) of the Pearl Oyster Culture Industry Management Plan by the holder of a Pearl Oyster Culture Industry licence; and

- (ii) the number of pearl oysters that may be seeded under clause 11(1)(c) of the Pearl Oyster Culture Industry Management Plan by the holder of a Pearl Oyster Culture Industry licence,

is less than the number represented by 20 pearl culture units; or

- (b) less than 5 of the units in that sum are pearl oyster fishing units,

the Pearl Oyster Culture licence is, by force of this regulation, revoked.

"181. HOLDING AREAS

"A Pearl Oyster Culture Industry licensee may place pearl oysters on a holding area approved by the Director.

"181A. LICENSEE MUST PERMIT INSPECTION OF PEARL OYSTERS

"It is a condition of a Pearl Oyster Culture Industry licence that the licensee must permit the inspection, by a person authorised in writing by the Director, of all pearl oysters in the possession of the licensee.

"181B. CANCELLATION, REVOCATION OR EXPIRY OF LICENCE

"(1) As soon as practicable after a Pearl Oyster Culture Industry licence is cancelled, revoked or expires, the Director is to grant a restricted licence to the person who held the licence immediately before it was cancelled or revoked or it expired.

"(2) So as to enable the licensee to harvest the remaining pearl production, the holder of a restricted licence may farm, hold and sell all live pearl oysters held at the licensee's holding areas, pearl oyster dump sites and an area of land to which a pearl farm lease relates.

"(3) A restricted licence remains in force until -

- (a) all the pearl oysters are sold; or
- (b) the expiry of 6 months after the cancellation, revocation or expiry of his or her Pearl Oyster Culture Industry licence,

whichever occurs first.

Fisheries Regulations

"(4) The holder of a restricted licence must, as soon as practicable after the expiry of a licence under subregulation (3), provide to the Director details of sales under subregulation (2).

"(5) Where a person who held a restricted licence under this regulation has not, before the expiry of the licence, sold all pearl oysters under the licence, he or she must surrender all remaining oysters to the Director for disposal.

"(6) Where pearl oysters surrendered to the Director under subregulation (5) are disposed of by the Director by sale for money or other valuable consideration, the Director must -

- (a) retain from the proceeds of the sale an amount sufficient to cover the cost of disposal of the pearl oysters; and
- (b) deliver the remainder of the proceeds of sale, if any, to the licensee.

"(7) For the purposes of this regulation, a Pearl Oyster Culture Industry licence is to be taken to expire at the beginning of the 6 month period referred to in section 12(2) of the Act."

5. TRANSITIONAL

(1) An unrestricted Pearl Oyster Fishery licence in force under the former Fisheries Regulations immediately before the commencement day is, on and after that day, to be taken to be a Pearl Oyster Fishery licence under the amended Fisheries Regulations.

(2) An unrestricted Pearl Culture Industry licence in force under the former Fisheries Regulations immediately before the commencement day is, on and after that day, to be taken to be a Pearl Culture Industry licence under the amended Fisheries Regulations.

(3) A person to whom subregulation (1) applies is, on and after the commencement day, to be taken to have been allocated under section 122E of the amended Fisheries Regulations for the current licensing year -

- (a) the number of pearl oyster fishing units he or she was allocated in respect of the licensing year under regulation 122D of the former Fisheries Regulations; and

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- (b) the number of pearl oyster fishing units, if any, permanently transferred to him or her under the former Fisheries Regulations in the current licensing year,

less the number of pearl oyster fishing units he or she permanently transferred to another licensee under the former Fisheries Regulations during that licensing year.

(4) A temporary transfer of a pearl oyster fishing unit in force under the former Regulations immediately before the commencement day continues in force on and after that day as if it were a temporary transfer under the amended Fisheries Regulations.

(5) The total allowable catch, within the meaning of regulation 122D of the former Fisheries Regulations, is to be taken to be the total allowable catch within the meaning of regulation 122C(1) of the amended Fisheries Regulations for the current licensing year.

(6) As soon as practicable after the commencement day, the Director is to specify on each Pearl Oyster Fishery licence held immediately after the commencement day -

- (a) the number of pearl oyster fishing units the person is taken to have been allocated in accordance with subregulation (2) for the current licensing year;
- (b) the total allowable catch, as determined in accordance with subregulation (5), for the current licensing year; and
- (c) the number of pearl oyster fishing units that are transferred to the person under a transfer continued in force under subregulation (4).

(7) In this regulation -

"amended Fisheries Regulations" means the Fisheries Regulations as amended by these Regulations;

"commencement day" means the day on which these Regulations commence;

"current licensing year" means the licensing year in which these Regulations commence;

"former Fisheries Regulations" means the Fisheries Regulations as in force immediately before the commencement day.