

FISHERIES ACT 1905
COCKBURN SOUND (MUSSEL) LIMITED ENTRY FISHERY NOTICE 1995
Arrangement

Clause

1. Citation
 2. Commencement
 3. Interpretation
 4. Declaration of limited entry fishery
 5. Prohibition on taking or selling mussels
 6. Criteria for a person to operate in the Fishery
 7. Criteria for issue of a licence
 8. Licence
 9. Procedure before this Plan may be amended or revoked
 10. Licensee or nominated operator to control operations within Fishery
 11. Permitted means of operating in the Fishery
 12. Boat replacement
 13. Grounds to refuse to transfer a licence
 14. Offences and major provisions
- Schedule

FISHERIES ACT 1905
COCKBURN SOUND (MUSSEL) LIMITED ENTRY FISHERY NOTICE 1995
NOTICE No. 664

FD 968/85

Made by the Minister under Section 32.

Citation

1. This Notice may be cited as the *Cockburn Sound (Mussel) Limited Entry Fishery Notice 1995*.

Commencement

2. This Notice shall commence operation on 1 March 1995.

Interpretation

3. In this Notice unless the contrary intention appears —
 - "authorization" means any limited entry fishing licence issued or renewed pursuant to a limited entry fishery notice including this Notice made under s.32 of the Act in respect of Cockburn Sound or any of the waters of the Indian Ocean between the mouth of the Moore River and Tim's Thicket;
 - "authorised boat" means
 - (a) a licensed fishing boat, the name, licensed fishing boat number and length of which are specified in a licence; or
 - (b) a boat specified in a written authority under regulation 132 where that boat is to be used in place of a boat described in (a);
 - "authorized person" means the nominated operator of a licence, or if no nominated operator then the licensee of a licence;

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- "Cockburn Sound" means the area of water described in the Schedule;
- "Fishery" means the Cockburn Sound (Mussel) Limited Entry Fishery declared under clause 4;
- "licence" means any limited entry fishery licence issued or renewed pursuant to this Notice, that authorizes a person to use a licenced fishing boat to operate in the Fishery or any part of the Fishery;
- "licensed fishing boat" has the same meaning as provided in the Regulations;
- "measured length" means the measured length of the boat as defined by and determined in accordance with the Department of Transport Instruction to Surveyors notice 7/87 (reworked September 1994) effective from 21 September 1994, as reworked or superseded from time to time;
- "mussels" means the species *Mytilus edulis*;
- "nominated diver" means a person approved by the Director as a nominated diver of a licence in accordance with clause 8;
- "nominated operator" means the person approved by the Director as the nominated operator of a licence in accordance with clause 8;
- "operate" means —
- (a) to search for mussels;
 - (b) to attempt to take mussels;
 - (c) to take mussels; or
 - (d) to engage in any other activity that can reasonably be expected to result in the taking of mussels;
- "Regulations" means the *Fish Resources Management Regulations 1995*;
- "supplementary licence" means a limited entry fishery licence issued pursuant to clause 9 that is endorsed as a "supplementary licence" or any such licence subsequently renewed;
- "transfer" means the passing of any ownership or effective control of a licence from one person to another person.

Declaration of limited entry fishery

4. It is hereby declared that the taking of mussels or otherwise operating from the waters described in the Schedule shall constitute a limited entry fishery named the *Cockburn Sound (Mussel) Limited Entry Fishery*.

Prohibition on taking or selling mussels

5. (1) A person, other than a person to whom section 32(5) of the Act applies, shall not operate in the Fishery other than in accordance with this Notice.
- (2) A person shall not sell, dispose of or otherwise deal with, or attempt to sell, dispose of or otherwise deal with mussels taken from the Fishery in contravention of this Notice.

Criteria for a person to operate in the Fishery

6. A person, other than a person to whom section 32(5) of the Act applies, shall not operate in the Fishery unless —
- (a) the person holds a professional fisherman's licence issued pursuant to the Regulations; and
 - (b) the person operates from an authorized boat or is authorized by licence to so operate.

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Criteria for issue of a licence

7. (1) The criteria that shall be applied to determine whether a licence may be issued in relation to a licensed fishing boat are that —

- (a) the boat —
 - (i) was used to take mussels in Cockburn Sound during 1984 and during 1985 prior to 30 April 1985;
 - (ii) was used to take more than 5 000 kilograms in any one year in the three years from 1 May 1982 to 30 April 1985; and
 - (iii) was used to take at least 5 000 kilograms of mussels in Cockburn Sound each year in at least three of the four years from 1 May 1985 to 30 April 1989; or
- (b) the boat has replaced a boat to which paragraph (a) applies.

(2) In this clause, "year" means the period from 1 May in any year to 30 April in the following year.

Licence

8. (1) The licensee of a licensed fishing boat as described in Clause 7 may apply to the Director for a licence to operate in the Fishery.

(2) Where more than one person (whether natural persons or otherwise) or a body corporate is the proposed licensee, the proposed licensee must nominate one natural person to be the nominated operator and a licence shall not issue unless the Director approves such nomination.

(3) The nominated operator of a licence shall not be replaced.

(4) A proposed licensee shall nominate no more than two persons who each hold a professional fisherman's licence to be the nominated divers for the proposed licence, and a licence shall not issue unless the Director approves such nomination and such nominated divers are endorsed on the licence.

(5) At any one time no more than two nominated divers may be endorsed on a licence.

(6) A licensee may, subject to the written approval of the Director, apply to replace any nominated diver.

(7) A nomination made under sub-clause (2), (4), or (6) shall be in writing to the Director on the approved form.

(8) A licensee may apply to the Director for the renewal of a licence at any time within 30 days before the licence expires.

(9) If the Director considers that it is appropriate to do so, the Director may in the case of an application under —

- (a) subclause (1) - approve the issue of a licence;
- (b) subclause (7) - approve the person nominated to be the nominated operator of the licence;
- (c) subclause (7) - approve a person nominated to be a nominated diver of the licence; or
- (d) subclause (8) - approve the renewal of a licence.

(10) Where the Director has approved the issue or renewal of a licence, the licence expires on 31 December of the year for which the licence was issued.

(11) A licence may be issued or renewed subject to conditions that shall be endorsed on it.

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(12) When a licence is issued or renewed, the licence shall be endorsed to show —

- (a) the name and licensed fishing boat number in respect of which it is issued;
- (b) the name and address of the licensee, nominated operator (if any) and nominated divers of that boat;
- (c) the name of the Fishery;
- (d) the licence number;
- (e) the date of issue or renewal;
- (f) the period for which the licence is valid; and
- (g) any conditions imposed on the licence.

Procedure before this Plan may be amended or revoked

9. For the purposes of section 65 of the Act, the licensees are the persons that are to be consulted before this Plan is amended or revoked.

Licensee or nominated operator to control operations within Fishery

10. Unless otherwise authorized in writing by the Director, an authorized person shall -

- (a) not operate in the Fishery from a boat other than the authorized boat;
- (b) when the authorized boat is in the waters of the Fishery, be in physical proximity to the authorized boat; and
- (c) when the authorized boat is being used to operate in the waters of the Fishery, be in control of or in charge of those activities.

Permitted means of operating in the Fishery

11. (1) Mussels may only be taken in the Fishery —

- (a) by diving; and
- (b) by a nominated diver.

(2) During any 16 hour period commencing at 0400 hours on any one day, only one nominated diver may take or attempt to take mussels, from an authorized boat.

(3) Unless otherwise authorized in writing by the Director, no more than three persons may be on board an authorized boat at any one time when it is in the waters of the Fishery.

Boat replacement

12. (1) An authorized boat may only be replaced by another licensed fishing boat with the prior written approval of the Director.

(2) An authorized boat —

- (a) which is less than 5.5 metres measured length; and
- (b) in respect of which no authorization other than a licence is in force,

may be replaced on application made to the Director by another licensed fishing boat which is not more than 5.5 metres measured length.

(3) An authorized boat to which sub clause (2) does not apply may only be replaced on application made to the Director by another licensed fishing boat of measured length less than or equal to that of the authorized boat.

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(4) The measured length of a boat shall, in the case of any disagreement or where otherwise necessary, be determined by an officer of the Department of Transport nominated in writing by the Director and appointed in writing by the licensee of the boat at the licensee's cost.

(5) Any change effected to the measured length of an authorized boat shall be, for the purposes of this Notice, taken to be a replacement of the authorized boat.

(6) Where an authorized boat is replaced other than in accordance with this clause, the replacement boat shall not be an authorized boat for the purposes of this Notice.

Grounds to refuse to transfer a licence

13. It shall be grounds for the Executive Director to refuse to transfer a licence if the transferee is not the holder of an aquaculture licence granted under section 92 of the Act which authorises the holder to engage in the aquaculture of mussels in Cockburn Sound.

Offences and major provisions

14. A person who contravenes a provision of clause 5, 6, 10 or 11 commits an offence and for the purposes of section 75 of the Act these are major provisions.

Schedule

(Clauses 3 and 4)

The waters of the Indian Ocean bounded by a line commencing at a point on the high water mark at the western extremity of the South Mole at the entrance to Fremantle Harbour and extending westerly to the southern most rock of the Straggler Rocks; thence south easterly to the high water mark on the northern most point of Mewstone; thence generally southerly along the high water mark on the eastern shore of Mewstone to its southern most point; thence southerly to the high water mark on the northern most point of Carnac Island; thence generally southerly along the high water mark on the eastern shore of that island to its southern most point; thence southerly to the high water mark at Entrance Point on Garden Island; thence generally southerly along the high water mark on the eastern shore of that island to south west point; thence southerly to the high water mark at John Point on the mainland; thence along the high water mark to the commencing point.

Dated this 17th day of February 1995.

MONTY HOUSE, Minister For Fisheries

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