

TABLING NOTE FOR SUBORDINATE LEGISLATION

SUBORDINATE LEGISLATION NO. 44 OF 2016

FISHERIES AMENDMENT REGULATIONS 2016

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Purpose

To amend the *Northern Territory Fisheries Regulations* as a follow up action after the recent amendments to the *Northern Territory Fisheries Act* (the Act).

Summary of key provisions

Powers for Fisheries Inspectors

To enable elements of the Blue Mud Bay agreements to be implemented, the *Fisheries Act* was recently amended to provide the ability to issue fisheries enforcement powers to Aboriginal marine rangers (known as Fisheries Inspectors in the Act), commensurate with their skills, knowledge and experience.

While section 7A of the revised Act provides for the establishment of Fisheries Inspectors, the powers associated with this new classification of authorised officer are to be articulated in subordinate regulations.

Under the changes incorporated into the *Fisheries Act* in 2016, two classes of Fishery Inspector will be created in the *Fisheries Regulations*. Fisheries Inspector Class 1 and Fisheries Inspector Class 2 will have powers and authority commensurate with training, experience and skill.

The powers of a Fisheries Inspector relate to questioning, examining, searching and entering where a Fisheries Inspector has reasonable grounds to suspect an offence has been committed. This complements the current role of a Fisheries Officer, which includes all Police Officers, who have full investigative powers and duties under the Act.

It is envisaged that Fisheries Inspectors operating under this policy could transition to a Fisheries Officer with the appropriate level of training. Fisheries Inspectors will continue to work in collaboration with the Water Police Section on fisheries compliance matters.

Aboriginal Coastal Licence

Three broad amendments have been made to the Aboriginal Coastal Licence (ACL) Regulations, as follows:

- To prescribe trepang (sea cucumber) as a no-take species to remove the confusion with the interaction of this licence and other commercial fishing licences that already exist;

- To clarify that the involvement of Local / Community Councils in the granting of an ACL is to provide proof of residence for the applicant and not whether the individual should or should not be granted a licence; and
- To remove the limit on ACL holders being able to be a deckhand on a commercial fishing vessel, as this provision is currently at odds with Government policy to aim to use the ACL as a stepping stone to full commercial fishing (and hence greater economic prosperity for Aboriginal people).

Trepang Fishery

The *Fisheries Regulations* controlling the activity of the Trepang Fishery have been amended to accommodate new licence conditions introduced into this fishery in 2015-16. The previous *Regulations* divided the fishery into two zones extending east and west of the coastline from Cape Grey. This was an arbitrary split to enable management to occur separately in the two regions. However, the split was found to hamper development and did not improve the management of the resource.

Following approaches from industry to reduce red tape and improve resource management, the Government undertook extensive consultation and negotiation with industry on this restriction and, subsequently earlier this year, agreed to a set of licence conditions to introduce 60 X 60 nautical mile grid based quota management system. Catch limits have been set for each grid which has improved the spatial management of the fishery and led to improved resource protection and increased certainty for the licensees (they know how much they can fish in each grid). It also helps to spread fishing effort and to reduce the risk of localised depletion.

The implementation of new arrangements will result in substantial improvements in the management of this fishery and increased flexibility for the licence holder.

Possession of Giant Clams

The regulations close a loop-hole in the *Fisheries Regulations* in relation to offences related to protected species (such as Giant Clams) to make it an offence to possess the species without proper authority. The current offences relate only to fishing (taking) and not possessing the species.

The regulations also make a range of minor amendments (primarily regarding consistency of terminology and drafting style).

Legislative Authority

Section 47 (1) of the *Fisheries Act*.

NORTHERN TERRITORY OF AUSTRALIA

FISHERIES AMENDMENT REGULATIONS 2016

Subordinate Legislation No. 44 of 2016

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 44 of 2016*

Fisheries Amendment Regulations 2016

I, John Laurence Hardy, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Fisheries Act*.

Dated 19 December 2016

J. L. HARDY
Administrator

By His Honour's Command

L. J. MOSS
Minister for Environment and Natural Resources
acting for
Minister for Primary Industry and Resources

* Notified in the *Northern Territory Government Gazette* on 20 December 2016.

1 Citation

These Regulations may be cited as the *Fisheries Amendment Regulations 2016*.

2 Commencement

These Regulations commence on the commencement of the *Fisheries Legislation Amendment Act 2016*.

3 Regulations amended

These Regulations amend the *Fisheries Regulations*.

4 Regulation 9 amended

- (1) Regulation 9, heading, after "**taken**"

insert

or possessed

- (2) Regulation 9(1), after "take"

insert

or have possession of

- (3) Regulation 9(2)

omit, insert

- (2) It is a defence to a charge of an offence against subregulation (1) if the defendant proves the fish were taken or possessed under a licence or permit.

5 Regulation 135 replaced

Regulation 135

repeal, insert

135 Number of licences

The Director must not grant more than 6 Trepang Fishery licences.

6 Regulation 183 replaced

Regulation 183

repeal, insert

183 Application for licence

An Aboriginal person may apply to the Director for an Aboriginal Coastal licence if:

- (a) the person is a member of a community or group in respect of which land has been granted to a trust for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of that land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth); and
- (b) the person is permanently resident on the land; and
- (c) persons accepted by the majority of the community or group to be its leaders indicate their support for the application.

7 Regulation 187 replaced

Regulation 187

repeal, insert

187 Licensee restrictions in relation to commercial fishing

An Aboriginal Coastal licensee must not:

- (a) hold a commercial fishing licence; or
- (b) engage in fishing operations under the Aboriginal Coastal licence while being an assistant of the holder of a commercial fishing licence.

8 Regulation 191A amended

(1) Regulation 191A, heading

omit, insert

191A Certain fish not to be taken or sold

(2) Regulation 191A(a), after "mackerel"

insert

, trepang

After regulation 205

insert

Part 11A Fisheries Inspectors

205AA Classes of Fisheries Inspectors

- (1) A Fisheries Inspector is to be appointed under section 7A of the Act as:
 - (a) a Fisheries Inspector (Class 1); or
 - (b) a Fisheries Inspector (Class 2).
- (2) The identity card issued to the Fisheries Inspector under section 8 of the Act must identify the Fisheries Inspector's class.

205AB Powers of Fisheries Inspectors

- (1) This regulation applies if a Fisheries Inspector believes it is necessary to exercise a power under subregulation (2):
 - (a) to assist in the conservation or management of a fishery; or
 - (b) for the enforcement of the Act, these Regulations or a management plan.
- (2) The Fisheries Inspector may:
 - (a) require a person the Fisheries Inspector believes on reasonable grounds is engaged in taking fish or aquatic life to give the Fishing Inspector:
 - (i) the person's name and address; and
 - (ii) the number of the licence or permit (if any) that authorises the taking of the fish or aquatic life; and
 - (b) examine any fishing gear the Fisheries Inspector believes on reasonable grounds is being used for taking fish or aquatic life.

205AC Additional powers of Fisheries Inspectors (Class 2)

(1) This section applies if:

- (a) a Fisheries Inspector (Class 2) believes on reasonable grounds that a person is or has been engaged in taking fish or aquatic life; and
- (b) the Fisheries Inspector (Class 2) believes it is necessary to exercise a power under subregulation (2):
 - (i) to assist in the conservation or management of a fishery; or
 - (ii) for the enforcement of the Act, these Regulations or a management plan.

(2) The Fisheries Inspector (Class 2) may at all reasonable times without warrant:

- (a) do any of the following:
 - (i) stop, enter and examine a vehicle or vessel;
 - (ii) examine fishing gear, fish or aquatic life;
 - (iii) open and examine the contents of a container; and
- (b) require a person to unlock a vehicle, vessel or container, if the person:
 - (i) is the owner of, is in possession of, or is the person who locked the thing required to be unlocked; and
 - (ii) is in the immediate vicinity; and
- (c) require:
 - (i) a person to answer a question; and
 - (ii) the master of a vessel, or any other person, to give an explanation or information about the vessel or a vehicle, fishing gear, fish, aquatic life or container; and
- (d) require a person mentioned in paragraph (c) to produce within 7 days a licence, permit, special permit or other authority or certificate issued in relation to the vessel, vehicle, person or thing.

(3) In this regulation:

Fisheries Inspector (Class 2) means a Fisheries Inspector mentioned in regulation 205AA(1)(b).

205AD Fisheries Inspector to produce evidence of identity

At the request of a person in relation to whom a Fisheries Inspector is exercising a power under regulation 205AB or 205AC, the Fisheries Inspector must produce evidence that they are a Fisheries Inspector authorised to exercise the power.

Notes for regulation 205AD

- 1 Section 8(4) of the Act provides that the production of an identity card is sufficient authority for a Fisheries Inspector to exercise powers.
- 2 Section 39(1) of the Act makes it an offence to obstruct a Fisheries Inspector in the exercise of powers and section 35A makes it an offence to give misleading information or documents to a Fisheries Inspector.

10 Regulations further amended

The Schedule has effect.

11 Expiry of Regulations

These Regulations expire on the day after they commence.

Schedule Regulations further amended

regulation 10

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
regulation 46AAC(2)(b)(iii) and (3)(b)(iii)	then	than
regulation 56(2) and (3)	subsection	subregulation
regulation 71(1)(a)	Fishery/Display	Fishing/Display
regulation 96B(5)	a Off-shore	an Off-shore
regulation 122K	tranferred	transferred
regulation 122L, heading	tranferred	transferred

