



Antarctic Seals Conservation Regulations 1986

Statutory Rules 1986 No. 398 as amended

made under the

Antarctic Treaty (Environment Protection) Act 1980

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1 **Name of Regulations** [see Note 1]

These Regulations are the *Antarctic Seals Conservation Regulations 1986*.

2 **Interpretation** [see Note 2]

(1) In these Regulations, unless the contrary intention appears:

authorised person means a person authorised by the Minister by notice published in the *Gazette* for the purpose of the provision in which the expression occurs.

commercial purpose includes any manufacturing or trading purpose.

Convention area means the area of seas south of 60° south latitude.

craft means an aircraft, a hovercraft or a vessel.

master, in relation to a craft, means the person in charge or command of the craft.

permit means a permit in force under these Regulations.

prescribed species, in relation to a seal, means any of the following species:

- (a) *Arctocephalus*;
- (b) *Hydrurga leptonyx*;
- (c) *Leptonchotes weddelli*;
- (d) *Lobodon carcinophagus*;
- (e) *Mirounga leonina*;
- (f) *Ommatophoca rossi*.

seal means a seal of a species that is indigenous to the Antarctic.

sealing expedition means an expedition for the purpose of killing or taking seals of a prescribed species in the Convention area or for a purpose that includes that purpose.

take, in relation to a seal, includes take a dead seal.

the Act means the Antarctic Treaty (Environment Protection) Act 1980.

- (2) Except so far as the contrary intention appears, an expression that is used in these Regulations and in the Seals Convention (whether or not a particular meaning is assigned to it by that Convention) has, in these Regulations, the same meaning as in that Convention.

3 Permits — applications

- (1) An application for a permit to carry on an activity of a kind referred to in subregulation 11 (1), (2), (3) or (4):
 - (a) shall be made to the Minister;
 - (b) shall be in writing signed by the applicant; and
 - (c) shall specify the name, address and occupation (if any) of the applicant.

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- (2) An application under subregulation (1) for a permit to kill or take seals shall include the following information:
 - (a) the number of seals to be killed or taken identified by reference to their respective species;
 - (b) the purpose for which the seals are to be killed or taken;
 - (c) the method proposed for the killing or taking;
 - (d) the period during which, and the area in which, it is intended to kill or take the seals.
- (3) An application under subregulation (1) by an Australian organization, or in respect of an Australian expedition, shall specify:
 - (a) in the case of the organization — every person authorised by the organization to act on its behalf; or
 - (b) in the case of the expedition — every member of the expedition.

4 Grant or refusal of permit relating to seals

- (1) Where a person has made an application in accordance with regulation 3 for a permit, the Minister shall, subject to subregulations (2) to (3) (inclusive):
 - (a) grant the permit, in writing, subject to such conditions as are specified in the permit; or
 - (b) refuse to grant the permit.
- (2) The Minister shall not grant a permit for the carrying on of an activity of a kind referred to in subregulation 11 (1) except:
 - (a) where paragraph (b) does not apply — where the Commission for the Conservation of Antarctic Marine Living Resources has recommended the carrying on of that activity; or
 - (b) for a purpose referred to in paragraph (1) (b) or (c) of Article 4 of the Seals Convention;and, in particular, shall not grant such a permit for an activity that would, if the permit were granted, be carried on directly or indirectly for a commercial purpose.

- (2A) The Minister may grant a permit only if he or she is satisfied that:
- (a) the number of seals of any species that may be killed or taken under the permit and any other permits granted under paragraph (1) (a) or under a corresponding law is not greater than the increase in the number of seals of the species in the next breeding season by natural reproduction; and
 - (b) the present variety of species, the habitats essential to their existence and the present balance of the natural ecological systems existing within the Antarctic will be maintained.
- (2B) The Minister must not grant a permit to kill or take a seal of a species in the genus *Arctocephalus* or of the species *Ommatophoca rossii*:
- (a) except for a compelling scientific purpose; and
 - (b) unless the Minister is satisfied that the activities authorised by the permit will not jeopardise the survival or recovery of that species or of the local population of that species.
- (2C) A permit to carry on an activity that is:
- (a) described in regulation 11; and
 - (b) an activity to which Part 3 of the Act applies;
- may be granted only if the Minister has authorised the activity under Part 3 of the Act.
- (2D) A permit to carry on an activity described in regulation 11 at a CEMP site may be granted only if the permit-holder is allowed to enter the site under a permit granted under regulations made under the *Antarctic Marine Living Resources Conservation Act 1981*.
- (2E) The Minister may grant a permit for an activity described in subregulation 11 (4) only for:
- (a) the construction or operation of scientific support facilities; or
 - (b) the provision of specimens for scientific research, public education (including display in museums, zoological gardens or other educational or cultural institutions) or such other purposes of that kind as the Minister thinks fit.

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- (3) In making a decision under subregulation (1), the Minister shall:
- (a) where the decision relates to the killing or taking of seals of a prescribed species in the Convention area — have due regard to the obligations of Australia under the Seals Convention; and
 - (b) if the decision relates to killing or taking seals, or to an activity referred to in subregulation 11 (4) — have regard to Australia's obligations under the Madrid Protocol.
- (4) A permit granted under subregulation (1) to an organization, or in respect of an expedition, may be expressed to apply to each person authorised by the organization to act on its behalf or to each member of the expedition, or to such of them as is specified in the permit.
- (5) Where, subsequent to the grant of a permit to an organization, the persons authorised to act on behalf of the organization include a person not specified in the application for the permit, the organization shall forthwith inform the Minister accordingly, and the Minister may, by notice in writing given to the organization, extend or refuse to extend the application of the permit to that person.
- (6) Where the Minister makes a decision under subregulation (1) or (5) the Minister shall:
- (a) give written notice of the decision to the person in respect of whom the decision is made; and
 - (b) cause a notice containing particulars of the decision to be published in the *Gazette*.
- (7) Where the Minister:
- (a) makes a decision under subregulation (1):
 - (i) refusing to grant a permit to a person; or
 - (ii) to grant a permit to a person subject to a condition;or
 - (b) makes a decision under subregulation (5) refusing to extend the application of a permit to a person;
- the notice referred to in paragraph (6) (a) that is given to the person shall set out the reasons for the decision.

5 Permits — register of

- (1) The Minister shall cause to be kept a register of permits in force from time to time, showing the purpose for which and the conditions upon which each permit was granted and such other matters relating to each permit as the Minister thinks fit.
- (2) The register of permits, or a copy of it, shall be open for public inspection during ordinary office hours at the central office of the Department and such other places (if any) as the Secretary of the Department from time to time directs.

6 Conditions on permits

- (1) A permit must specify as a condition of the permit:
 - (a) the area in which it allows an activity to be carried on; and
 - (b) the purposes for which the allowed activity may be undertaken; and
 - (c) that a seal killed, taken, injured, disturbed or otherwise interfered with under the permit must be dealt with in the manner that involves the least degree of pain and suffering practicable; and
 - (d) if the permit allows seals to be killed or taken:
 - (i) the number of seals of a particular species that may be killed or taken; and
 - (ii) the method by which seals may be killed or taken; and
 - (iii) the period during which seals may be killed or taken; and
 - (e) that, within 30 days of killing or taking a seal of a prescribed species in the Convention area or on floating sea ice in an area north of 60° south latitude, the permit-holder must give the Minister a written report.
- (2) A report under paragraph (1) (e) must include the following details:
 - (a) the date on which the seal was killed or taken; and
 - (b) the zone or other area in which the seal was killed or taken; and

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- (c) the age, sex and apparent reproductive condition of the seal; and
 - (d) the purpose for which the seal was killed or taken; and
 - (e) if the seal was killed or taken by a person who was, when he or she killed or took the seal, the master, a crew member or a passenger on a vessel:
 - (i) the name; and
 - (ii) the port or place of registration; and
 - (iii) the net tonnage; and
 - (iv) the gross tonnage; and
 - (v) the brake horsepower; and
 - (vi) the number of crew members;
of the vessel.
- (3) The permit may specify other conditions that the Minister considers appropriate.

7 Permits — effect of

- (1) Subject to these Regulations, a permit authorises the person to whom it is granted to carry on, subject to any condition specified in the permit, an activity of a kind referred to in subregulation 11 (1), (2), (3) or (4) that is specified in the permit.
- (2) Subject to these Regulations, a permit remains in force for such period as is specified in the permit.

7A Request for variation of permit

- (1) The holder of a permit may request the Minister to vary the permit.
- (2) The request must:
 - (a) be made in writing; and
 - (b) set out reasons for varying the permit.

8 Variation of permits

- (1) The Minister may vary a permit or a condition on a permit, if the Minister is satisfied that:
 - (a) the variation is necessary to give effect to:
 - (i) Australia's obligations under the Seals Convention;
or
 - (ii) Australia's obligations under the Madrid Protocol;
or
 - (b) if the permit-holder has requested the variation:
 - (i) the reasons set out in the request justify the variation; and
 - (ii) the variation of the permit would not allow any activity that is likely to affect adversely the conservation or protection of the fauna of the Antarctic.
- (2) A variation of a permit, or of a condition to which a permit is subject, takes effect on the day on which written notice of the variation is given to the holder of the permit or on such later day (if any) as is specified in the notice.
- (3) A notice referred to in subregulation (2) shall set out the reasons for the decision in respect of which it is given.
- (4) The Minister shall cause a notice containing particulars of each decision under subregulation (1) to be published in the *Gazette*.

9 Permits — suspension

- (1) Subject to this regulation, the Minister may, suspend a permit where the Minister has reasonable grounds for believing that a provision of the Act or these Regulations relating to the permit, or a condition to which the permit is subject, has been contravened.
- (2) A suspension of a permit takes effect on the day on which written notice of the suspension, setting out the reasons for the suspension, is given to the holder of the permit.
- (3) The Minister shall cause a notice containing particulars of each decision under subregulation (1) to be published in the *Gazette*.

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- (4) Where the Minister suspends a permit, the Minister shall investigate the matter in respect of which the permit is suspended.
- (5) Where the investigation referred to in subregulation (4) does not disclose a ground for revocation of the permit, the Minister shall:
 - (a) remove the suspension forthwith; and
 - (b) notify the holder of the permit in writing of the removal.
- (6) Subject to subregulation (7) the suspension of a permit ceases to have effect upon the expiration of the period of 60 days commencing on the day on which the suspension takes effect.
- (7) Where proceedings for an offence in relation to a permit are commenced during the period of suspension of the permit, the suspension may be continued until the proceedings (including any appeal) are completed.
- (8) During the period of suspension of a permit, the permit has no force or effect but the period of currency of the permit continues to run.
- (9) The suspension of a permit does not prevent its revocation.

10 Permits — revocation

- (1) Subject to this regulation, the Minister may revoke a permit where the holder of the permit has contravened:
 - (a) a provision of the Act or these Regulations relating to the permit; or
 - (b) a condition to which the permit is subject.
- (2) The Minister shall not revoke a permit unless the Minister has given the holder of the permit a notice in writing that:
 - (a) specifies the ground on which the Minister intends to revoke the permit;
 - (b) states the facts and circumstances that, in the opinion of the Minister, constitute that ground; and
 - (c) informs the holder of the permit that the holder may, within the period of 28 days after the date of the notice, by

notification in writing, place before the Minister any matters in answer to the matters stated in the notice.

- (3) For the purpose of exercising the power under subregulation (1), the Minister shall have regard to any matter placed before the Minister in accordance with a notice given pursuant to subregulation (2).
- (4) Where the Minister revokes a permit under this regulation, the revocation takes effect on the day on which written notice of the revocation is given to the holder of the permit.
- (5) The Minister shall cause a notice containing particulars of each decision under subregulation (1) to be published in the *Gazette*.

11 Offences in relation to seals

- (1) A person who:
 - (a) is an Australian citizen; or
 - (b) is the master, a member of the crew, or a passenger, on a vessel that is Australian property;must not take, or engage in conduct that results in the death of, a seal of a prescribed species in the Convention area.

Penalty: 20 penalty units or imprisonment for 12 months, or both.
- (2) A person must not take, or engage in conduct that results in the death of, a seal that is:
 - (a) in the Convention area; and
 - (b) not a seal of a prescribed species.
Penalty: 20 penalty units.
- (3) A person must not take, or engage in conduct that results in the death of, a seal that is in a part of the Antarctic that is not in the Convention area.

Penalty: 20 penalty units.
- (4) A person must not, in the Antarctic:
 - (a) engage in conduct that results in injury to a seal; or

- (b) use an aircraft, vehicle or vessel in a manner that causes disturbance to a concentration of seals; or
- (c) use an explosive in a manner that causes disturbance to a concentration of seals; or
- (d) use a firearm in a manner that causes disturbance to a concentration of seals; or
- (e) while on foot, engage in conduct that causes disturbance to a concentration of seals; or
- (f) engage in conduct that results in a significant adverse modification of the habitat of a species, or population, of seals.

Penalty: 10 penalty units.

(5) However:

- (a) it is a defence to a prosecution under subregulation (1) if the person is acting in accordance with a permit; and
- (b) it is a defence to a prosecution under subregulation (2), (3) or (4) if the person is acting in accordance with:
 - (i) a permit; or
 - (ii) a recognised foreign authority; and
- (c) it is a defence to a prosecution under subregulation (1), (2), (3) or (4) if the action is taken in an emergency with the intention of:
 - (i) saving a person from death or serious injury; or
 - (ii) securing the safety of a vessel or aircraft or the safety of equipment or facilities of high value; or
 - (iii) protecting the environment; and
- (d) it is a defence to a prosecution under subregulation (4), in relation to action of a kind mentioned in paragraph (4) (b), (c) or (e), if the action is reasonably necessary to establish, supply or maintain a station.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (5) (see section 13.3 of the *Criminal Code*).

- (5A) If a person takes an action described in subregulation (1), (2), (3) or (4):
 - (a) in an emergency with the intention of:
 - (i) saving a person from death or serious injury; or

- (ii) securing the safety of a vessel or aircraft or the safety of equipment or facilities of high value; or
- (iii) protecting the environment; and
- (b) otherwise than in accordance with a permit or a recognised foreign authority;

the person must, unless he or she has a reasonable excuse, give the Minister or an authorised person notice of the action within 30 days of starting the action.

Penalty for each day on which the offence continues: 2 penalty units.

- (5B) Before the end of a further 30 days, the person must, unless he or she has a reasonable excuse, have given the Minister or an authorised person a written report:
 - (a) describing the activity that was taken; and
 - (b) explaining why the activity was taken.

Penalty for each day on which the offence continues: 2 penalty units.

- (5C) An offence under subregulation (5A) or (5B) is an offence of strict liability.

Note 1 For **strict liability**, see section 6.1 of the *Criminal Code*.

Note 2 A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (6) In this regulation:
 - concentration of seals** means a group of more than 20 seals.
 - permit** includes all conditions to which a permit is subject.

12 Notice of proposed sealing expedition

- (1) The master of a vessel shall not permit the vessel to depart from a port or place in Australia on a sealing expedition unless the master has, not later than 60 days before the departure, notified the Minister in accordance with subregulation (2).

Penalty: 10 penalty units.

- (2) Notification under subregulation (1) shall be in writing and shall set out the following particulars:
- (a) in respect of the vessel:
 - (i) its name;
 - (ii) the port or place in which it is registered;
 - (iii) its net tonnage;
 - (iv) its gross tonnage;
 - (v) its brake horsepower; and
 - (vi) the number of crew members;
 - (b) the number of persons who propose to take part in the expedition;
 - (c) the period during which the expedition is to take place;
 - (d) the number of seals to be killed or taken identified by reference to their respective species;
 - (e) the zone or zones in which it is proposed to kill or take the seals;
 - (f) the method proposed for killing or taking the seals;
 - (g) the purpose for which the seals are to be killed or taken.

14 Service of notices in the Antarctic

Where written notice of a decision is required or permitted by these Regulations to be given to a person and the person is the master, a member of the crew or a passenger, on a craft that is in, or travelling to or from, the Antarctic:

- (a) details of the contents of the notice may be transmitted by any means to the craft; and
- (b) the notice shall be deemed to have been given to the person when the transmission is received by a person on board that craft.

15 Review of decisions

- (1) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under regulation 4, 8, 9 or 10.

- (2) In subregulation (1), *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

16 Statement to accompany notice of decision

- (1) Where the Minister makes a decision of a kind referred to in regulation 15 and gives to the person or persons whose interests are affected by the decision notice in writing of the making of the decision, the notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.
- (2) Any failure to comply with the requirements of subregulation (1) in relation to a decision does not affect the validity of the decision.
- (3) A reference in subregulation (1) to a notice in writing includes a reference to a notice that is deemed by virtue of regulation 14 to have been given to a person.

Table of Statutory Rules

Notes to the *Antarctic Seals Conservation Regulations 1986***Note 1**

The *Antarctic Seals Conservation Regulations 1986* (in force under the *Antarctic Treaty (Environment Protection) Act 1980*) as shown in this compilation comprise Statutory Rules 1986 No. 398 amended as indicated in the Tables below.

Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1986 No. 398	12 Jan 1987	8 Jan 1987 (<i>see Gazette</i> 1986, No. S660)	
1993 No. 289	5 Nov 1993	R. 3.3: 24 Nov 2002 [see r. 1.1] Rr. 4.6, 7.2, 8.2 and 8.4: 1 Mar 1998 (see r. 1.2 and <i>Gazette</i> 1998, GN8) Remainder: 5 Nov 1993	—
2002 No. 8	21 Feb 2002	21 Feb 2002	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 1	am. 2002 No. 8
R. 2	am. 1993 No. 289
R. 4	am. 1993 No. 289
R. 6	rs. 1993 No. 289
R. 7A.....	ad. 1993 No. 289
R. 8	am. 1993 No. 289
R. 11.....	am. 1993 No. 289; 2002 No. 8
R. 12.....	am. 1993 No. 289
R. 13.....	rep. 1993 No. 289