

FISHERIES (LICENSED FISH RECEIVERS) REGULATIONS 1997

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 3rd day of November 1997

Present:

His Excellency the Governor-General in Council

PURSUANT to section 89 of the Fisheries Act 1983 and section 297 of the Fisheries Act 1996, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations.

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REGULATIONS

1. Title and commencement---(1) These regulations may be cited as the Fisheries (Licensed Fish Receivers) Regulations 1997.

(2) These regulations come into force on the 28th day after the date of their notification in the Gazette.

2. Interpretation---In these regulations, unless the context otherwise requires,---

- ``Audit trail" refers to the ability to trace the species, state, and weight of fish product through the relevant systems of a licensed fish receiver or person acting as an agent of a licensed fish receiver:
- ``Auditor" means an auditor properly appointed under regulation 16 to undertake an audit of a licensed fish receiver's systems and internal controls:
- ``Certificate of recognition" means a certificate of recognition issued or renewed under the Fisheries (Licensed Fish Receivers) Regulations 1986:
- ``Fish receiving" means receiving fish for handling or processing from a commercial fisher in circumstances to which section 67 (2) of the Fisheries Act 1983 does not apply; but does not include the receiving of fish by the Crown:
- ``Handling and processing", in relation to fish, means the weighing, washing, grading, opening, shucking, cutting, filleting, trimming, smoking, drying, freezing, canning, bagging, packaging, preserving, reducing, or other processing; but does not include the cooking of fish or fish products to form the whole or part of a meal sold or supplied at or from the premises where the fish or fish products are cooked:
- ``Key internal controls" means the specific controls or procedures that are fundamental to the prevention or detection of errors that could undermine the adequacy or reliability of the audit trail in relation to systems or subsystems of a licensed fish receiver:
- ``Licensed fish receiver" means a holder of a fish receiver licence or certificate of recognition granted under these regulations or

under the Fisheries (Licensed Fish Receivers) Regulations 1986:

``Premises" means any premises or location at which---

- (a) Fish is received from commercial fishers or processed or distributed; and
- (b) Any prescribed source document or other record required by the Fisheries (Recordkeeping) Regulations 1990

S.R. 1990/219

is kept or required to be kept by the licensed fish receiver:

``Prescribed source document" has the meaning given in regulation 11 of the Fisheries (Recordkeeping) Regulations 1990*:

``Related party", in relation to a licensed fish receiver,---

(a) Means---

- (i) Any person or body who has the ability, directly or indirectly, to control or exercise significant influence over the licensed fish receiver in making operating, investing, or financing decisions; and
- (ii) Any person or body over whom the licensed fish receiver has the ability, directly or indirectly, to exercise significant influence or control; and

(b) Includes---

- (i) Any person or body where both that person or body and the licensed fish receiver are subject to common control or significant influence by a third party:
- (ii) Persons specified in regulation 16 (3) (a) and (b):

``Source documents", in relation to the operations of any person or entity, means the original records of any transaction that occurs between that person or entity and any third party, or that occurs within the internal operations of that person or entity:

``Species" means the species specified in Part II of the Second Schedule of the Fisheries (Reporting) Regulations 1990

S.R. 1990/214

:

``State" means a state specified in Part III or Part IIIA of the Second Schedule of the Fisheries (Reporting) Regulations 1990.

PART 1

Licensing of Fish Receivers

3. Fish receivers must be licensed---No person may engage in fish receiving unless the person is at the time the holder of a fish receiver's licence or a certificate of recognition.

4. Applications for licences---Every application for a fish receiver's licence must be made to the chief executive on a form provided for that

purpose by the chief executive and accompanied by the prescribed fee (if any).

5. Chief executive may require information from applicant---(1) The chief executive may require an applicant to produce evidence that---

- (a) All premises to which the fish receiver's licence would relate comply with the Food Hygiene Regulations 1974

S.R. 1974/169

(if appropriate); and

- (b) All premises to which the fish receiver's licence would relate are licensed by the local authority under the Health (Registration of Premises) Regulations 1966

S.R. 1966/73

(if appropriate); and

- (c) The source documents, accounting records, and systems that are to be used by the applicant will meet the requirements of the Fisheries (Recordkeeping) Regulations 1990

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(2) The chief executive may require an applicant to provide details of the address or location of all premises that will be owned, operated, or used by the applicant where fish purchased by, acquired by, or in the possession of the applicant is to be stored, sold by wholesale or retail, handled or processed, or otherwise disposed of.

6. Grant of fish receiver's licence---(1) The chief executive must issue a fish receiver's licence to an applicant if---

- (a) The applicant has produced all, or in the opinion of the chief executive, a sufficient amount of the information required under regulation 5 of these regulations; and
- (b) The chief executive is satisfied that the applicant is operating or intends to operate a fish receiving business.

(2) Notwithstanding subclause (1), the chief executive may not issue a fish receiver's licence to an applicant if the chief executive is satisfied that---

- (a) The applicant or any person likely to be involved in the fish receiving operations has been convicted of any offence involving fish; or
- (b) The applicant or any person likely to be involved in the management of the fish receiving operations has been involved in the management of the fish receiving operations of a body corporate that has been convicted of any offence involving

fish,---

unless the chief executive is satisfied that the fish receiving operations will be conducted in a proper manner.

(3) After consulting the applicant, the chief executive may impose on any licence issued to the applicant under subclause (1) such conditions relating to---

- (a) The location and type of fish receiving operations; and
- (b) The location and type of fish receiving premises; and
- (c) The quantity, species, or source of the fish received; and
- (d) The involvement in the operation of persons convicted of any offence involving or relating to fish,---

as the chief executive considers necessary to enable the chief executive to enforce the provisions of these regulations and to audit the operation for the purpose of ensuring compliance with these provisions.

(4) After consulting the holder of a fish receiver's licence or certificate of recognition, the chief executive may, by notice in writing to the holder,---

- (a) Amend or revoke any conditions imposed on the licence or certificate; or
- (b) Impose on the licence or certificate any new conditions that could be imposed on a licence under subclause (3).

7. Certificates of recognition---(1) All certificates of recognition issued under the Fisheries (Licensed Fish Receivers) Regulations 1986 that are current on the commencement of these regulations continue, subject to these regulations, to have effect as a fish receiver's licence.

(2) Every holder of a current certificate of recognition is to be treated for the purposes of the Fisheries Act 1983 and the Fisheries Act 1996, and of these regulations, as having been granted a fish receiver's licence under these regulations or under the Fisheries (Licensed Fish Receivers) Regulations 1986.

8. Obligations on licence holders---(1) The chief executive may require any holder of a fish receiver's licence or a certificate of recognition to demonstrate that the source documents, accounting records, and systems being used by the holder meet the requirements of the Fisheries (Recordkeeping) Regulations 1990

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(2) Every holder of a fish receiver's licence or certificate of recognition must notify the chief executive of---

- (a) Any change of the address or location of any premises used by the holder, and the address or location of any additional premises used by the holder and any change of those premises; and
- (b) Any conviction for any offence involving or relating to fish that

is entered against---

- (i) The holder; or
 - (ii) Any person employed in the fish receiving operations; or
 - (iii) Any person involved in the management of the fish receiving operations---
- during the currency of the licence or certificate.

9. Duration of licences and certificates---Every fish receiver's licence, and every certificate of recognition, continues to have effect until---

- (a) In the case of a certificate of recognition, the holder ceases to hold a current fish export licence or fish packing house licence; or
 - (b) The licence or certificate is revoked by the Director-General or is surrendered,---
- whichever first occurs.

10. Revocation of licences and certificates---(1) The chief executive may revoke a fish receiver's licence or a certificate of recognition if satisfied that, since the issue or latest renewal of the licence or certificate---

- (a) The holder or any person involved in the fish receiving operations has been convicted of any offence involving fish; or
 - (b) The circumstances of the fish receiving operations or the persons involved have so changed that if the holder were to apply for the licence or certificate that licence or certificate would not be granted; or
 - (c) The holder has contravened or failed to comply with any condition imposed on the licence under regulation 6 (3).
- (2) In considering whether or not to revoke a licence or certificate under subclause (1) (a), the chief executive is to have regard to---
- (a) Whether the person convicted of the offence is involved in the management of the operations or is employed in some other capacity in or related to the operations; and
 - (b) The nature and extent of the offending, and its implications for the manner in which the operations are likely to be undertaken; and
 - (c) Such other matters as the chief executive considers relevant.
- (3) In considering whether or not to revoke a licence or certificate under subclause (1) (b), the chief executive is to have regard to---
- (a) The nature of the change, and whether or not (in the case of a change in the circumstances of persons involved in the operations) the changed circumstances relate to a person involved in the management of the operations or employed in some other capacity in or related to the operations; and
 - (b) Such other relevant matters as the chief executive considers relevant.

11. Chief executive to give notice of intention to revoke or decline licence or certificate---(1) If the chief executive proposes to revoke

any fish receiver's licence or certificate of recognition, or to decline any application for a fish receiver's licence, the chief executive must---

- (a) Give the holder or applicant written notice of that intention, and the information on which it is based; and
- (b) Give the holder or applicant a reasonable opportunity to be heard in respect of the matter.

(2) If the chief executive revokes any licence or certificate, the chief executive must give notice of the revocation in a newspaper circulating in the area or areas where the holder of the licence or certificate carried out fish receiving operations, and in such other publications as the chief executive considers appropriate.

SPART : Annual Inventory Returns

PART 2

Inventory and Audit

Annual Inventory Returns

12. Annual stocktake for purposes of making annual inventory return---(1) Every licensed fish receiver must at least once during each fishing year (being a year commencing on 1 October) carry out a physical stocktake in accordance with this regulation for the purpose of furnishing an annual inventory return under regulation 13.

(2) The physical stocktake---

- (a) May be undertaken on such date within the fishing year as the licensed fish receiver determines, being a date that is at least 6 months after the date of any previous stocktake in respect of which an annual inventory is furnished under regulation 13:
- (b) Must be undertaken, as at the same day, in respect of all operating premises and storage locations of the licensed fish receiver:
- (c) Must cover all categories of inventory owned and all categories of inventory held by the licensed fish receiver as at the date of the stocktake, including the following categories:
 - (i) Processed fish that are ready for sale:
 - (ii) Fish in the course of being processed:
 - (iii) Unprocessed fish:
 - (iv) Fish in transit (being fish that is being transported from one location to another, whether or not either location is owned by the licensed fish receiver):
 - (v) Fish owned by the licensed fish receiver that is held by a person other than the licensed fish receiver:
 - (vi) Fish held by the licensed fish receiver that is owned by another person:
 - (vii) Bait:
 - (viii) Any other category of fish not included within the categories specified in subparagraphs (i) to (vii).

SPART : Annual Inventory Returns

13. Licensed fish receivers to furnish annual inventory returns---(1)
Every licensed fish receiver must furnish to the chief executive an annual inventory return in respect of each fishing year (being a year commencing on 1 October).

- (2) The annual inventory return for any fishing year must---
 - (a) Relate to the physical stocktake carried out in accordance with regulation 12 during the fishing year; and
 - (b) Be furnished to the chief executive in the same manner and at the same time as the audit report furnished under regulation 21.

(3) The annual inventory return must include, in respect of all categories of fish referred to in regulation 12 (2) (c), the following information:

- (a) The species and state of all such fish:
- (b) The number of fish containers, the net weight of the fish in each container, and the total net weight of each species of fish:
- (c) In the case of fish in transit, the locations from and to which they are being transported, and the name of the carrier:
- (d) In the case of fish held by a person other than the licensed fish receiver, sufficient details to identify that person and the location where the fish are held:
- (e) In the case of fish held but not owned by the licensed fish receiver, sufficient details to identify the owner, and the species, state, and weight of all fish held on behalf of each owner.

(4) A nil return must be furnished in respect of a nil inventory.

- (5) Every annual inventory return must---
 - (a) Certify that the physical stocktake to which the return relates was undertaken as at the date specified; and
 - (b) Certify that the return does not contain false or misleading information, and is a true representation of all inventory owned and all inventory held by the licensed fish receiver as at that date; and
 - (c) Be signed by the licensed fish receiver or a person authorised to act on behalf of the licensed fish receiver.

SPART : Annual Inventory Returns

14. Chief executive may require further annual inventory return---(1)
Where the chief executive considers on reasonable grounds that an annual inventory return fails to meet the requirements of these regulations, the chief executive may, by notice in writing, require the licensed fish receiver concerned---

- (a) To furnish a fresh return in respect of the matters specified in the notice; or
- (b) To undertake, within the same fishing year, another physical stocktake, and to furnish an annual inventory return in respect of that stocktake.

(2) A notice given under subclause (1) (a) must specify the manner and form in which the return is to be completed, and a reasonable time within which the return is to be furnished.

(3) Every licensed fish receiver who receives a notice given under subclause (1) must comply with that notice.

SPART : Audits and Audit Reports

Audits and Audit Reports

15. Licensed fish receivers to be audited and furnish annual audit reports---(1) Every licensed fish receiver must---

- (a) Ensure that an annual audit is carried out of the licensed fish receiver's fish-related operations in respect of each fishing year (being a year commencing on 1 October); and
- (b) Furnish to the chief executive an annual audit report or reports in respect of those operations.

(2) There must be a minimum period of 6 months between audits for different fishing years.

(3) The first audit of a newly licensed fish receiver must be carried out within 6 months after the granting of the licence.

SPART : Audits and Audit Reports

16. Licensed fish receiver to appoint suitable person as auditor---(1) It is the responsibility of the licensed fish receiver to appoint a suitably qualified person to carry out the audit of the licensed fish receiver's fish-related operations and make a report or reports on that audit.

(2) A person is suitably qualified only if---

- (a) The person holds a certificate, degree, diploma, registration, or similar qualification, whether obtained in New Zealand or elsewhere, that is relevant to the current practices of accounting and auditing; or
- (b) The person is sufficiently skilled in the specialised area of identifying and interpreting the systems and relevant internal controls of the business activities of a licensed fish receiver to give a reasoned opinion on the adequacy of such systems and internal controls.

(3) A licensed fish receiver may not appoint as auditor for the purposes of these regulations a person who is---

- (a) Closely related by blood or marriage to the licensed fish receiver; or
- (b) An officer, employee, or shareholder of the licensed fish receiver; or
- (c) A person associated (in terms of paragraph (a) or paragraph (b)) with a related party.

SPART : Audits and Audit Reports

17. Contents of audit report---(1) Each audit report by the auditor must contain the information and documentation specified in the Schedule under each of the following section headings:

- (a) Systems section:
- (b) Internal controls section:
- (c) Supporting information section.

(2) Each audit report and each section of an audit report must clearly identify the premises to which the report or section relates.

SPART : Audits and Audit Reports

18. Audit reports for multiple premises---(1) Where a licensed fish receiver operates from more than one set of premises,---

- (a) Only one audit report need be made and furnished in respect of all those premises if the fish-related activities in all those premises are substantially the same both as to the nature of the species dealt with and the nature of the handling and processing operations in relation to those species; but
- (b) Separate audit reports must be made and furnished in respect of premises where the fish-related activities are not substantially the same both as to the nature of the species dealt with and the nature of the handling and processing operations in relation to those species.

(2) Where the fish-related activities in separate premises are substantially the same both as to the nature of the species and the nature of the handling and processing operations, but different systems or subsystems of documentation, internal controls, or disposal and selling methods apply in those premises, the relevant information relating to each such system and subsystem must be reported on separately within the audit report.

(3) Each audit report and each separate section of an audit report must clearly identify the premises to which it applies and their location.

SPART : Audits and Audit Reports

19. Licensed fish receiver to sign off audit report---(1) After receiving an audit report, the licensed fish receiver, or a person authorised to act on behalf of the licensed fish receiver, must certify that the licensed fish receiver has read, understood, and, subject to any reservations noted by the licensed fish receiver, accepted the results of the report.

(2) If the licensed fish receiver does not accept any or all of the results of the audit, the licensed fish receiver must, in writing, identify and record the areas of non-acceptance, giving reasons.

SPART : Audits and Audit Reports

20. Licensed fish receiver to furnish rectification report where appropriate---Where in an audit report the auditor identifies a deficiency within the nature and extent of the audit, or a failure to comply with any of the specific requirements of the Fisheries (Recordkeeping) Regulations 1990

, the licensed fish receiver must furnish to the chief executive, along with the audit report, a separate rectification report outlining the steps taken or proposed to be taken to rectify the deficiency or failure to comply.

SPART : Audits and Audit Reports

21. Audit report, etc, to be furnished to chief executive within 21 days of receipt from auditor---(1) Within 21 days after receiving the audit report from the auditor, the licensed fish receiver must furnish to the chief executive---

- (a) That audit report; and
- (b) The certification and any written reservations referred to in regulation 19; and
- (c) Any rectification report required by regulation 20; and
- (d) The annual inventory return for the same fishing year required by regulation 13.

(2) The licensed fish receiver must also, either on or before the day on which the audit report is furnished to the chief executive, notify the chief executive in writing of---

- (a) The name of the auditor; and
- (b) Any professional qualifications held by the auditor; and
- (c) The reasons why the licensed fish receiver considers the auditor to be suitably qualified.

SPART : Audits and Audit Reports

22. Chief executive may waive requirements in certain cases---(1) If the chief executive is satisfied in relation any person or class of person required to furnish returns and reports under this Part that---

- (a) Compliance with any requirement of this Part would cause undue hardship or would be impracticable; and
- (b) The purpose behind the requirement could be equally well achieved by some other method,---

the chief executive may exempt any person or class of persons from the need to comply with that requirement.

(2) An exemption granted by the chief executive under subclause (1)---

- (a) May be subject to such conditions, or be for such limited period, as the chief executive may specify;
- (b) May apply to any particular person or class or description of persons;
- (c) May apply in respect of fish generally, or any species or class or description of fish;
- (d) May apply in respect of any particular premises or any class or description of premises.

(3) An exemption granted under this regulation, including any conditions to which the exemption is subject,---

- (a) Must be notified in writing to the person or persons concerned or,

if it relates to or affects a class of persons, may be notified in the Gazette or in any New Zealand publication that relates primarily to commercial fishing:

- (b) May be withdrawn by the chief executive at any time in the manner specified in paragraph (a).

PART 3

Miscellaneous Provisions

23. Offences---(1) Every person commits an offence against these regulations who---

- (a) Engages in fish receiving in contravention of regulation 3; or
- (b) Being a person who is required by regulation 13 to furnish an annual inventory return, fails to furnish such a return in the manner or within the time specified by or under these regulations; or
- (c) Being a person who is required to comply with a notice given under regulation 14 (1), fails to comply with that notice; or
- (d) Being a person who is required by any of paragraphs (a) to (c) of regulation 21 (1) to furnish a report or certification, fails to furnish the report or certification in the manner or within the time specified by or under these regulations; or
- (e) Makes any false or misleading statement or entry of information in any return or report required by these regulations.

(2) Every person who commits an offence against these regulations is liable on conviction to a fine not exceeding \$10,000.

(3) The offence specified in subclause (1) (a) is a quota management offence for the purposes of the Fisheries Act 1983.

24. Revocations---The following regulations are revoked:

- (a) The Fisheries (Licensed Fish Receivers) Regulations 1986 (S.R. 1986/190):
- (b) The Fisheries (Licensed Fish Receivers) Regulations 1986, Amendment No. 3 (S.R. 1990/215):
- (c) The Fisheries (Licensed Fish Receivers) Regulations 1986, Amendment No. 5 (S.R. 1994/180):
- (d) The Fisheries (Licensed Fish Receivers) Amendment Regulations 1997 (S.R. 1997/193).

SCHEDULE

Reg. 17

Contents of Audit Report

A. Systems Section

1. Identify all source documents generated to support each and every identifiable system or subsystem within the licensed fish receiver's fish-related activity, and document by way of flowcharts (ie, a separate flowchart for each identifiable system or subsystem).

A narrative description of any of the identified systems or subsystems may be provided if in the opinion of the auditor it is more appropriate. The auditor should give reasons for this.

2. Identify on the flowchart (or in the narrative if applicable) for each relevant system and subsystem the source document which in the opinion of the auditor represents the "prescribed source document" required under Part II of the Fisheries (Recordkeeping) Regulations 1990

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3. Document for each of the "prescribed source documents" the extent to which they comply with the requirements of the Fisheries (Recordkeeping) Regulations 1990 in terms of---

(a) Manner and form:

(b) Content:

(c) Retention;---

and report exceptions in a manner that provides maximum assistance to the licensed fish receiver to enable subsequent compliance.

4. Append to the audit report a photocopy of a completed example of each source document which in the opinion of the auditor constitutes a "prescribed source document" within the meaning of regulation 11 of the Fisheries (Recordkeeping) Regulations 1990.

5. Give an opinion with supporting reasons on the adequacy of the audit trail in terms of tracing species, state, and weight of fish product through each of the systems and subsystems (including processing) having regard to any specific requirements relating to systems set out in the Fisheries (Recordkeeping) Regulations 1990.

B. Internal Controls Section

1. Provide an opinion with supporting reasons on the nature and extent of the internal control environment having regard to the size of the business and number of personnel involved.

2. Provide an opinion with supporting reasons on the existence or non-existence of key internal controls that support each of the systems and subsystems.

3. Provide an opinion with supporting reasons on the effectiveness and verifiability of the internal control system supporting the information that is furnished to the Ministry on any return relevant to the function of the licensed fish receiver (eg, licensed fish receiver return, annual inventory return).

4. Reconcile the current annual inventory return with internal

supporting workpapers and review the return in terms of compliance with the requirements set out in regulation 13. Provide positive confirmation of reconciliation and review and also document any unresolved areas of concern.

C. Supporting Information Section

1. Disclose any relationship with or interests the auditor has in the licensed fish receiver or a related party AND the nature and extent of any services provided, or intended or contracted to be provided, to the licensed fish receiver.

2. State whether the auditor has obtained all information and explanations required.

3. Describe the nature and extent of the fish-related activities of the licensed fish receiver (e.g. specify whether also fisher and/or quota holder).

4. Provide a chart setting out the various activities, divisions, and locations relevant to the licensed fish receiver's business operation, and identify the premises or locations that form the basis of the audit opinion.

5. Provide a flowchart or diagram indicating the relationship between the licensed fish receiver and related parties of the licensed fish receiver, showing, where the interests are fish-related, the location and activities of their related interests.

MARIE SHROFF,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in Gazette: 6 November 1997.

These regulations are administered in the Ministry of Fisheries.