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Fisheries (Penalties) Regulations 2011

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Fisheries (Penalties) Regulations 2011

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the Living Marine Resources Management Act 1995 .

21 February 2011

PETER G. UNDERWOOD

Governor

By His Excellency's Command,

BRYAN GREEN

Minister for Primary Industries and Water

PART 1 - Preliminary

1. Short title

These regulations may be cited as the Fisheries (Penalties) Regulations 2011 .

2. Commencement

These regulations take effect on 7 March 2011.

3. Interpretation

In these regulations –

abalone has the same meaning as in the Fisheries (Abalone) Rules 2009 ;

Act means the Living Marine Resources Management Act 1995 ;

commercial licence means a licence issued for commercial purposes;

first offence means a first offence against any fisheries regulation or fisheries rule;

fisheries regulation means a regulation made and in force under the Act;

fisheries rule means a rule made and in force under Part 3 or 5 of the Act;

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015] ***fish trap*** has the same meaning as in the Fisheries (Scalefish) Rules 2015 ;

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015] ***giant crab*** has the same meaning as in the Fisheries (Giant Crab) Rules 2013 ;

level 1 offence means an offence that involves –

(a) less than –

(i) 10 rock lobsters; or

(ii) 2 giant crabs; or

(iii) 100 scallops; or

(iv) 5 sharks; or

(v) 20 abalone; or

(vi) 20 kilograms of abalone; or

(vii) 20 fish of any other species; or

(b) less than –

(i) 3 rock lobster pots; or

(ii) 4 rock lobster rings; or

(iii) 3 fish traps; or

(c) less than 1% of the total number of rock lobster, giant crab, abalone or scallops taken by, or in the possession of, the person convicted of the offence if the person was operating under a subsisting commercial licence for that species when the offence was committed;

level 2 offence means an offence that involves –

(a) not less than –

(i) 10 rock lobsters; or

(ii) 2 giant crabs; or

- (iii) 100 scallops; or
- (iv) 5 sharks; or
- (v) 20 abalone; or
- (vi) 20 kilograms of abalone; or
- (vii) 20 fish of any other species; or
- (b) not less than –
 - (i) 3 rock lobster pots; or
 - (ii) 4 rock lobster rings; or
 - (iii) 3 fish traps; or
- (c) not less than 1% of the total number of rock lobster, giant crab, abalone or scallops taken by, or in the possession of, the person convicted of the offence if the person was operating under a subsisting commercial licence for that species when the offence was committed;

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015] **rock lobster** has the same meaning as in the Fisheries (Rock Lobster) Rules 2011 ;

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015] **rock lobster pot** has the same meaning as in the Fisheries (Rock Lobster) Rules 2011 ;

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015] **rock lobster ring** has the same meaning as in the Fisheries (Rock Lobster) Rules 2011 ;

scallop has the same meaning as in the Fisheries (Scallop) Rules 2010 ;

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015]

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015] **second offence** means an offence against any fisheries regulation, or fisheries rule, committed by a person who has previously been convicted of one offence under the same or a different –

- (a) fisheries regulation; or
- (b) fisheries rule; or
- (c) section of the Act;

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015] **shark** has the same meaning as in Schedule 1 to the Fisheries (Scalefish) Rules 2015 ;

[Regulation 3 Amended by S.R. 2015, No. 102, Applied:24 Dec 2015] **third or subsequent offence** means an offence against any fisheries regulation, or fisheries rule, committed by a person who has previously been convicted of 2 or more offences under the same or different –

- (a) fisheries regulations; or
- (b) fisheries rules; or
- (c) sections of the Act.

4. References to applicable Grade penalties

A reference in any fisheries regulation, fisheries rule or management plan to a fine not exceeding an applicable Grade penalty includes a reference to a fine of not less than the minimum specified for that penalty.

PART 2 - Penalties

5. Grade 1 penalties

The penalty for an offence against any fisheries regulation or fisheries rule specified as a Grade 1 penalty is a fine of not less than one penalty unit and not more than 20 penalty units.

6. Grade 2 penalties

The penalty for an offence against any fisheries regulation or fisheries rule specified as a Grade 2 penalty is a fine of –

- (a) not less than one penalty unit and not more than 1 000 penalty units, for a first offence; or
- (b) not less than 2 penalty units and not more than 1 000 penalty units, for a second offence; or
- (c) not less than 5 penalty units and not more than 1 000 penalty units, for a third or subsequent offence.

7. Grade 3 penalties

(1) The penalty for an offence against any fisheries regulation or fisheries rule specified as a Grade 3 penalty is as follows:

(a) for a level 1 offence –

- (i) a fine of not less than one penalty unit and not more than 5 penalty units, for a first offence; or
- (ii) a fine of not less than 2 penalty units and not more than 100 penalty units, for a second offence; or
- (iii) a fine of not less than 5 penalty units and not more than 200 penalty units or a term of imprisonment not exceeding 6 months, or both, for a third or subsequent offence;

(b) for a level 2 offence –

- (i) a fine of not less than 2 penalty units and not more than 5 000 penalty units or a term of imprisonment not exceeding 6 months, or both, for a first offence; or
- (ii) a fine of not less than 5 penalty units and not more than 5 000 penalty units or a term of imprisonment not exceeding 12 months, or both, for a second offence; or
- (iii) a fine of not less than 10 penalty units and not more than 5 000 penalty units or a term of imprisonment not exceeding 2 years, or both, for a third or subsequent offence;

(c) for any other offence –

- (i) a fine of not less than one penalty unit and not more than 5 000 penalty units or a term of imprisonment not exceeding 6 months, or both, for a first offence; or
- (ii) a fine of not less than 2 penalty units and not more than 5 000 penalty units or a term of imprisonment not exceeding 12 months, or both, for a second offence; or
- (iii) a fine of not less than 5 penalty units and not more than 5 000 penalty units or a term of imprisonment not exceeding 2 years, or both, for a third or subsequent offence.

(2) A reference in any fisheries regulation or fisheries rule to a fine not exceeding the applicable Grade 3 penalty includes a reference to a term of imprisonment as specified in that penalty.

Displayed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 2 March 2011

These regulations are administered in the Department of Primary Industries, Parks, Water and Environment.

