

Fisheries (Commercial Dive) Rules 2011

I make the following rules under the *Living Marine Resources Management Act 1995*.

1 February 2011

BRYAN GREEN

Minister for Primary Industries and Water

PART 1 - Preliminary

1. Short title

These rules may be cited as the *Fisheries (Commercial Dive) Rules 2011*.

2. Commencement

These rules take effect on the day on which their making is notified in the *Gazette*.

3. Interpretation

In these rules –

"**abalone**" means fish of the genus *Haliotis*;

"**Act**" means the *Living Marine Resources Management Act 1995*;

"**commercial dive direct sales receipt**" means a receipt in a form approved by the Secretary that –

(a) relates to the sale, transfer or transit of fish taken under the authority of a fishing licence (commercial dive); and

(b) is part of the records required to be kept under the Act;

"**commercial dive fishery**" means the taking, for commercial purposes, of fish other than abalone and rock lobster by diving in State waters;

"**commercial diver's docket**" means a docket in a form approved by the Secretary that –

(a) relates to the taking of fish under the authority of a fishing licence (commercial dive); and

(b) is part of the records required to be kept under the Act;

"**controlled fish**" means –

(a) periwinkles; or

(b) sea urchins; or

(c) fish of a kind specified in an endorsement on a licence under rule 9;

"**direct sale**", of controlled fish, means a sale of controlled fish –

(a) that have not been purged or in some other way processed; or

(b) to a person other than a fish processor;

"**diving**" means diving or swimming below the surface of the water;

"**fish cauf**" means fishing apparatus used for holding fish in State waters;

"**fish processor**" means the holder of a fish processing licence;

"**Grade 1 penalty**" means the penalty specified in regulation 5 of the Fisheries Penalties Regulations 2001;

"**Grade 2 penalty**" means the penalty specified in regulation 6 of the Fisheries Penalties Regulations 2001;

"**Grade 3 penalty**" means the penalty specified in regulation 7 of the Fisheries Penalties Regulations 2001;

"**holder of a fishing licence**" includes a person who has approval to use the licence under section 87(2) of the Act;

"**kind**" includes genus and family;

"**landing site**" means an area specified in Schedule 1;

"**licensing year**" means the period beginning on 1 September each year and ending at midnight on 31 August the following year;

"**on**", a vessel, includes being on any dinghy, tender or other small auxiliary craft being used in connection with the vessel;

"**periwinkle**" means mollusc of the genus *Turbo*;

"**point of sale**" means the point at which a purchaser of controlled fish (or the purchaser's agent) takes possession of the controlled fish;

"**rock lobster**" means rock lobster of the genus *Jasus*;

"**sea urchin**" means sea urchin of the genus *Heliocidaris* or *Centerostephanus*;

"**Undaria**" means –

(a) exotic marine alga *Undaria pinnatifida* (commonly known as wakame); and

(b) sporophyll of that alga.

4. Application of rules

These rules apply to the commercial dive fishery.

5. Duration of rules

These rules continue in effect for 10 years.

6. Consultation arrangements

The Minister is to consult with the relevant fishing body in relation to the commercial dive fishery about any changes relating to –

(a) the areas where fishing may occur; and

(b) any matter relating to the characteristics of controlled fish; and

- (c) the opening and closing of the fishery; and
- (d) fishing gear; and
- (e) limits on the taking and possession of controlled fish.

7. Classes of fishing licence

For the purposes of these rules, a fishing licence is one of the following classes:

- (a) class commercial dive, fishing licence (commercial dive);
- (b) class personal, fishing licence (personal);
- (c) class vessel, fishing licence (vessel).

PART 2 - Licences

8. Authority of licences

A fishing licence (commercial dive) authorises the holder of the licence to –

- (a) take controlled fish; and
- (b) take shellfish by diving if the holder of the licence also holds a fishing licence (shellfish); and
- (c) take Undaria by diving if the holder of the licence is acting under an authority to take Undaria.

9. Endorsement of licences

The Secretary may endorse a fishing licence (commercial dive) to allow the holder of the licence to take fish of a kind specified in the endorsement.

10. Cap on number of licences

The Minister is to ensure that no more than 55 fishing licences (commercial dive) are in force at any one time.

11. Restrictions on holding and use of licences

(1) The holder of a fishing licence (commercial dive) must not hold more than one fishing licence (commercial dive) at any one time.

Penalty:

Grade 3 penalty.

(2) A fishing licence (commercial dive) is not capable of being held or used other than by a natural person.

(3) The holder of a fishing licence (commercial dive) may only apply for approval under section 87 of the Act if the application is –

- (a) to allow another person to use the licence for a period not exceeding 3 months; and
- (b) justified by exceptional circumstances.

PART 3 - General Management of Fishery

12. Closed and open seasons, &c.

(1) The Minister, by public notice, may determine –

- (a) the dates of the closed season for all or part of the commercial dive fishery; and
- (b) the dates of the open season for all or part of the commercial dive fishery.

(2) The Minister, by public notice, may also determine any part of the commercial dive fishery to be closed to or in respect of such activities for such periods as are specified in the notice.

(3) The holder of a fishing licence (commercial dive) must not take controlled fish of a particular kind from State waters that are closed to the commercial dive fishery for controlled fish of that kind.

Penalty:

Grade 3 penalty.

(4) The holder of a fishing licence (commercial dive) must not dive in State waters that are closed to the commercial dive fishery for controlled fish of a particular kind if that licensee already has controlled fish of that kind on board the vessel from which that diving takes place.

Penalty:

Grade 3 penalty.

(5) The holder of a fishing licence (commercial dive) must not contravene a determination in force under subrule (2) in respect of the commercial dive fishery.

Penalty:

Grade 3 penalty.

(6) A public notice under this rule may be –

- (a) combined with another such notice; and
- (b) revoked by another such notice.

13. Minimum size limits

(1) The Minister, by public notice, may determine a minimum size limit for controlled fish of any kind.

(2) The holder of a fishing licence (commercial dive) is guilty of an offence if –

(a) the licensee is in possession of a quantity of controlled fish of a kind for which a minimum size limit has been determined under subrule (1); and

(b) in number, more than 10% of the controlled fish are smaller than that minimum size limit.

Penalty:

Grade 3 penalty.

14. Catch limits

(1) The Minister, by public notice, may, for controlled fish of any kind, determine the maximum live weight of controlled fish that may be taken during such periods as are specified in the notice from –

(a) the commercial dive fishery; or

(b) any part of the commercial dive fishery.

(2) In this rule –

"**live weight**" means the whole weight of a fish before it is dismembered, dried or otherwise processed.

15. Holding of controlled fish by licensees

The holder of a fishing licence (commercial dive) must not, in State waters, hold controlled fish other than in –

(a) a fish cauf site that is endorsed on that licensee's licence; or

(b) a fishing vessel; or

(c) a marine farm.

Penalty:

Grade 3 penalty.

16. Possession, &c., of fish caufs by licensees

The holder of a fishing licence (commercial dive) must not, in State waters –

(a) be in possession of a fish cauf; or

(b) place controlled fish in a fish cauf –

unless the licence is endorsed for the use of a fish cauf.

Penalty:

Grade 3 penalty.

17. Use of fish caufs by licensees

(1) This rule applies to a fishing licence (commercial dive) that is endorsed for the use of a fish cauf.

(2) The holder of the licence must not, in State waters –

(a) use a fish cauf anywhere other than at a place specified in the licence for that use; or

(b) place controlled fish in a fish cauf on any day unless the commercial diver's docket for the controlled fish has been completed for that day; or

(c) place in a fish cauf controlled fish that have been taken –

(i) under the authority of another licence; or

(ii) for recreational purposes.

Penalty:

Grade 3 penalty.

(3) The holder of the licence, in using fish caufs, must ensure that –

(a) controlled fish taken on any day are not placed in the same fish cauf as controlled fish taken on any other day; and

(b) controlled fish of one kind taken on any day are not placed in the same fish cauf as controlled fish of a different kind taken on the same day; and

(c) each fish cauf holding controlled fish is clearly marked with the following:

(i) the date on which the controlled fish were placed in the fish cauf;

(ii) the number of the commercial diver's docket completed in relation to the controlled fish.

Penalty:

Grade 1 penalty.

(4) The holder of the licence must not, at any time after the first 30 days of a new licensing year, hold in a fish cauf any controlled fish taken in the previous licensing year.

Penalty:

Grade 1 penalty.

(5) The holder of the licence, on placing controlled fish in a fish cauf, must record –

(a) the kind and quantity of the controlled fish; and

(b) the time and date of the placement.

Penalty:

Grade 3 penalty.

(6) The holder of the licence, on removing controlled fish from a fish cauf, must record –

(a) the kind and quantity of the controlled fish; and

(b) the time and date of the removal.

Penalty:

Grade 3 penalty.

(7) The holder of the licence must keep a record made under subrule (5) or (6) –

(a) for at least 5 years; and

(b) in good condition.

Penalty:

Grade 2 penalty.

PART 4 - Records and Reporting

18. Commercial diver's docket – Part A

(1) The holder of a fishing licence (commercial dive) must complete the information relating to the taking of controlled fish in Part A of a commercial diver's docket –

(a) on the day on which the controlled fish are taken; and

(b) before the controlled fish leave the landing site; and

(c) before the controlled fish are transferred or sold to any person.

Penalty:

Grade 2 penalty.

(2) The holder of a fishing licence (commercial dive) must ensure that information entered on Part A of a commercial diver's docket pursuant to subrule (1) is recorded and maintained in a clear and legible manner on each sheet of that docket.

Penalty:

Grade 2 penalty.

19. Commercial diver's docket – Part B

(1) The holder of a fishing licence (commercial dive) must not purge or in any other way process controlled fish of any kind in a fish cauf unless –

(a) the controlled fish were weighed, separately from controlled fish of any other kind, before being placed in the fish cauf; and

(b) after the controlled fish were so weighed –

(i) the licensee accurately recorded their total weight in Part B(1) of the commercial diver's docket relating to the controlled fish; and

(ii) the licensee completed Part B(1) of that docket with the word "self" to indicate that the licensee would be the processor of the controlled fish.

Penalty:

Grade 2 penalty.

(2) The holder of a fishing licence (commercial dive) must ensure that information entered on Part B of a commercial diver's docket pursuant to subrule (1) is recorded and maintained in a clear and legible manner on each sheet of that docket.

Penalty:

Grade 2 penalty.

20. Further requirements relating to commercial diver's docket – Part B

(1) This rule applies to the holder of a fishing licence (commercial dive) if the licensee sells controlled fish of any kind without having first purged or in some other way processed them in a fish cauf.

(2) The licensee must, at the point of sale –

(a) if the purchaser is a fish processor, give the fish processor the commercial diver's docket relating to the controlled fish to enable the fish processor to complete Part B(1) of that docket; or

(b) if the purchaser is not a fish processor, accurately record the total weight of the controlled fish in Part B(2) of the commercial diver's docket relating to the controlled fish.

Penalty:

Grade 2 penalty.

(3) The licensee must ensure that information entered on Part B of a commercial diver's docket pursuant to subrule (2) is recorded and maintained in a clear and legible manner on each sheet of that docket.

Penalty:

Grade 2 penalty.

21. Completed commercial diver's docket – duty of licensee

(1) The holder of a fishing licence (commercial dive) must ensure that, once Part B of a commercial diver's docket has been completed, the pink sheet of the docket is sent to the Secretary within 48 hours.

Penalty:

Grade 2 penalty.

(2) The holder of a fishing licence (commercial dive) must keep the white sheet of a completed commercial diver's docket –

(a) for at least 5 years; and

(b) in good condition.

Penalty:

Grade 2 penalty.

22. Completed commercial diver's docket – duty of fish processor

(1) A fish processor must not take possession of controlled fish from the holder of a fishing licence (commercial dive) unless the fish processor has been given –

(a) if the controlled fish were at any time held in a fish cauf before the fish processor took possession of them, the original copy of the commercial dive direct sales receipt relating to the sale or transfer of the controlled fish; or

(b) in any other case, the yellow sheet of the completed commercial diver's docket relating to the controlled fish.

Penalty:

Grade 2 penalty.

(2) A fish processor who takes possession of controlled fish from the holder of a fishing licence (commercial dive) must –

(a) keep the yellow sheet of the completed commercial diver's docket, or the original copy of the commercial dive direct sales receipt, relating to the controlled fish with the controlled fish while they are being processed; and

(b) keep that yellow sheet of the docket or original direct sales receipt –

(i) for at least 5 years; and

(ii) in good condition.

Penalty:

Grade 2 penalty.

(3) A fish processor who is given a commercial diver's docket by the holder of a fishing licence (commercial dive) under rule 20(2)(a) in relation to any controlled fish must immediately complete Part B(1) of that docket and return that docket to the licensee.

Penalty:

Grade 1 penalty.

23. Commercial dive direct sales receipt

(1) The holder of a fishing licence (commercial dive) who makes a direct sale of controlled fish of any kind must –

(a) on removing the controlled fish from a fish cauf for the purposes of the sale, immediately complete a commercial dive direct sales receipt; and

(b) ensure that the commercial dive direct sales receipt accompanies the controlled fish to the point of sale; and

(c) at the point of sale, issue the original copy of the completed commercial dive direct sales receipt to the purchaser of the controlled fish (or the purchaser's agent); and

(d) after the sale, keep a copy of the completed commercial dive direct sales receipt –

(i) for at least 5 years; and

(ii) in good condition.

Penalty:

Grade 2 penalty.

(2) It is a defence in proceedings for an offence under subrule (1)(b) or (c) if the defendant establishes that the defendant was unable to comply with the relevant requirements of that subrule because the point of sale was –

(a) outside the State; or

(b) within the State but remotely located from the normal residence or place of business of the defendant.

PART 5 - Controls and offences

24. Taking fish for commercial purposes by diving

(1) A person must not take fish for commercial purposes by diving unless the person is the holder of –

(a) a fishing licence (commercial dive); and

(b) a fishing licence (personal).

Penalty:

Grade 3 penalty.

(2) Subrule (1) does not apply to the taking of abalone by the holder of a fishing licence (abalone dive).

25. Taking controlled fish for commercial purposes

A person must not take controlled fish for commercial purposes unless the person is the holder of –

(a) a fishing licence (commercial dive); and

(b) a fishing licence (personal).

Penalty:

Grade 3 penalty.

26. Licensees not to engage in other fishing

(1) The holder of a fishing licence (commercial dive) must not take fish other than controlled fish under the authority of the licence.

Penalty:

Grade 3 penalty.

(2) A person must not, while fishing under the authority of a fishing licence (commercial dive), engage in any recreational fishing for which a licence is required under the Act.

Penalty:

Grade 2 penalty.

27. Certain vessels not to be used in fishery

The holder of a fishing licence (commercial dive) must not take controlled fish using a fishing vessel that is not specified in a fishing licence (vessel).

Penalty:

Grade 3 penalty.

28. Diving, &c., from vessels used in fishery

A person must not dive or otherwise enter the water from a vessel that is being used by another person for fishing under the authority of a fishing licence (commercial dive) unless the first-mentioned person is also the holder of –

(a) a fishing licence (commercial dive); or

(b) a fishing licence (abalone dive).

Penalty:

Grade 2 penalty.

29. Possession of abalone on vessels used in fishery

(1) A person who is on a vessel being used for fishing under the authority of a fishing licence (commercial dive) must not be in possession of abalone in State waters unless each diver on the vessel is the holder of –

(a) a fishing licence (commercial dive); and

(b) a fishing licence (abalone dive).

Penalty:

Grade 3 penalty.

(2) In this rule –

"**diver**", on a vessel, means –

(a) a person who has gone diving from the vessel; or

(b) a person on the vessel who –

(i) is preparing to go diving from the vessel; or

(ii) has just been diving from the vessel; or

(iii) though subparagraph (i) or (ii) may not instantly apply, is wearing any diving attire or diving equipment; or

(iv) though subparagraph (i), (ii) or (iii) may not instantly apply, is in possession of diving attire or diving equipment that he or she either owns or has borrowed for personal use.

30. Possession of rock lobster barred on vessels used in fishery

A person who is on a vessel being used for fishing under the authority of a fishing licence (commercial dive) must not be in possession of rock lobster in State waters.

Penalty:

Grade 3 penalty.

31. Possession of certain equipment barred on vessels used in fishery

(1) A person who is on a vessel being used for fishing under the authority of a fishing licence (commercial dive) must not be in possession on that vessel of any of the following:

(a) a rock lobster pot;

- (b) a rock lobster ring;
- (c) a fishing net;
- (d) a fish trap.

Penalty:

Grade 3 penalty.

(2) In this rule –

"fish trap" means a rigid or semi-rigid mesh trap that –

- (a) is no more than 2 metres long by 2 metres wide by one metre deep; and
- (b) has a fixed rectangular entrance no more than 250 millimetres wide by 57 millimetres high; and
- (c) has a mesh size of more than 25 square millimetres;

"rock lobster pot" means –

(a) a basket, trap, cage or other contrivance (other than a rock lobster ring) that is designed for use, or is capable of being used, for or in connection with the taking of rock lobster; or

(b) a component part of such a basket, trap, cage or contrivance;

"rock lobster ring" means a net that –

- (a) consists only of a single fixed ring or hoop to which a mesh of string or twine is attached; and
- (b) is designed for use, or is capable of being used, for or in connection with the taking of rock lobster;

"taking" is not restricted to taking by diving.

(3) For the purposes of this rule, the mesh size of a trap is taken to be the average measurement of 10 adjoining meshes in the trap.

32. Permitted methods for taking sea urchins

(1) The holder of a fishing licence (commercial dive) must not take sea urchins other than –

- (a) by hand; or
- (b) with tongs; or
- (c) with a single pronged hook.

Penalty:

Grade 2 penalty.

(2) In this rule –

"tongs" means an apparatus –

(a) used for holding things; and

(b) consisting of 2 arms each having a single prong or flattened end no more than 100 millimetres wide.

PART 6 - Miscellaneous

33. Transitional provision

(1) A public notice under the former rules that had force and effect immediately before the commencement day is taken to be a public notice under and for the purposes of these rules, having force and effect according to its terms until whichever of the following first occurs:

(a) the public notice is rescinded;

(b) the public notice is spent in its application.

(2) In this rule –

"commencement day" means the day on which these rules take effect;

"former rules" means the *Fisheries (Commercial Dive) Rules 2005*.

34. Infringement notice offences and penalties

For section 234 of the Act –

(a) an offence under a rule specified in column 2 of Schedule 2 is prescribed as an offence in respect of which an infringement notice may be served; and

(b) the penalty specified in column 3 of that Schedule in respect of offence is the applicable penalty for that offence.

35. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

SCHEDULE 1 - Landing Sites

Rule 3

1. The following areas are landing sites for the purposes of these rules:

(a) at Great Musselroe Bay, the area within a radius of 200 metres on the landward side from the high-tide mark closest to the point of landing in Great Musselroe Bay;

(b) at Bluff Hill Point, the area within a radius of 200 metres on the landward side from the high-tide mark closest to the point of landing in Mawson Bay;

- (c) at Couta Rocks, the area within a radius of 200 metres on the landward side from the high-tide mark closest to the point of landing at Couta Rocks;
- (d) at Garden Point near Port Arthur, the area within a radius of 500 metres on the landward side from the high-tide mark closest to the launching ramp in Long Bay;
- (e) at a place within 5 kilometres of Granville Harbour, the area within a radius of 1 500 metres on the landward side from the high-tide mark closest to the point of landing;
- (f) at Green Point near Marrawah, the area of Green Point Road to the intersection of Green Point Road and Comeback Road;
- (g) at Ocean Beach, the area within a radius of 200 metres on the landward side from the high-tide mark closest to the point of landing at Braddon Point;
- (h) at Petal Point, the area within a radius of 150 metres on the landward side from the high-tide mark closest to the commencement of the access road at the southern end of Lemons Beach;
- (i) at South Arm, the area within a radius of 500 metres on the landward side from the high-tide mark closest to the launching ramp in Halfmoon Bay;
- (j) at Temma, the area within a radius of 200 metres on the landward side from the high-tide mark closest to the point of landing in Temma Harbour;
- (k) at Trial Harbour, the area within a radius of 300 metres on the landward side from the high-tide mark closest to the point of landing in Trial Harbour;
- (l) at Southport, at the boat ramp on the northern side of the Southport narrows, an area that is within 50 metres of the landward side of the high-water mark of that boat ramp, including Kingfish Beach Road in an easterly direction from that boat ramp until that road intersects with the Huon Highway, and an area 30 metres in any direction from the centre of that intersection;
- (m) at any other place, the area within a radius of 50 metres on the landward side from the high-tide mark closest to the point of landing.

SCHEDULE 2 - Infringement notice offences and penalties

Rule 34

Column 1	Column 2	Column 3
Item	Rule	Penalty (penalty units)
1.	<u>Rule 12(3)</u>	5
2.	<u>Rule 12(4)</u>	5
3.	<u>Rule 12(5)</u>	5
4.	<u>Rule 13(2)</u>	2
5.	<u>Rule 15</u>	2

6.	<u>Rule 16</u>	2
7.	<u>Rule 17(2)(a)</u>	2
8.	<u>Rule 17(2)(b)</u>	2
9.	<u>Rule 17(2)(c)</u>	2
10.	<u>Rule 17(3)</u>	2
11.	<u>Rule 17(4)</u>	2
12.	<u>Rule 17(5)</u>	2
13.	<u>Rule 17(6)</u>	2
14.	<u>Rule 17(7)</u>	2
15.	<u>Rule 18(1)</u>	2
16.	<u>Rule 18(2)</u>	2
17.	<u>Rule 19(1)</u>	2
18.	<u>Rule 19(2)</u>	2
19.	<u>Rule 20(2)</u>	2
20.	<u>Rule 20(3)</u>	2
21.	<u>Rule 21(1)</u>	2
22.	<u>Rule 21(2)</u>	2
23.	<u>Rule 22(1)</u>	2
24.	<u>Rule 22(2)</u>	2
25.	<u>Rule 23(1)</u>	2
26.	<u>Rule 24(1)</u>	4
27.	<u>Rule 25</u>	4
28.	<u>Rule 26(1)</u>	4
29.	<u>Rule 26(2)</u>	3
30.	<u>Rule 27</u>	2
31.	<u>Rule 28</u>	3
32.	<u>Rule 29(1)</u>	3
33.	<u>Rule 30</u>	3
34.	<u>Rule 31(1)</u>	3
35.	<u>Rule 32(1)</u>	4

SCHEDULE 3 - Legislation rescinded

Displayed and numbered in accordance with the [Rules Publication Act 1953](#).

Notified in the *Gazette* on 16 February 2011.

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

Table Of Amendments

Citation	Serial Number	Date of commencement
Fisheries (Commercial Dive) Rules 2011	S.R. 2011, No. 6	16.2.2011
