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Primary Produce Safety (Seafood) Regulations 2014

Version current from 1 April 2014 to date (accessed 19 October 2018 at 15:55)

Primary Produce Safety (Seafood) Regulations 2014

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 Primary Produce Safety Act 2011 .

3 February 2014

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 Primary Produce Safety (Seafood) Regulations 2014 .

2. Commencement

These regulations take effect on 1 April 2014.

3. Interpretation

(1) In these regulations –

abalone means fish of the genus *Haliotis*;

accredited seafood producer means the proprietor of a seafood business who is an accredited producer;

Act means the Primary Produce Safety Act 2011 ;

approved area means an area classified as an approved area under regulation 18 as published under regulation 19 ;

approved seafood food safety auditor means a food safety auditor approved under Part 11 of the Act to audit food safety programs in respect of seafood;

approved seafood food safety program means a food safety program in respect of seafood that is an approved food safety program;

bivalve molluscs includes cockles, clams, mussels, oysters, pipis and scallops;

classification notice means a notice under regulation 18(1) ;

commercial fishing licence means a fishing licence under the Living Marine Resources Management Act 1995 other than –

- (a) a licence issued under that Act for recreational fishing within the meaning of that Act; or
- (b) a marine farming licence;

fish means any aquatic animal, whether dead or alive, of any species (other than amphibians, mammals or reptiles) which, in the normal course of events, spends part or all of its life in the aquatic environment;

full-time seafood handler means an individual who directly engages in the primary production of seafood –

- (a) as an employee or agent of a seafood business; and
- (b) for 38 hours in a week;

marine farm has the same meaning as in the Living Marine Resources Management Act 1995 ;

marine farming licence has the same meaning as in the Living Marine Resources Management Act 1995 ;

primary production of seafood means any of the following activities undertaken to supply seafood to a food business, within the meaning of the Food Act 2003 , or a seafood business:

- (a) the growing, cultivating, picking, harvesting, collecting or catching of seafood;
- (b) the growing on of seafood;
- (c) the transportation or delivery of seafood;
- (d) the holding of live seafood;
- (e) seafood processing;

regulated fish includes –

- (a) abalone; and
- (b) bivalve molluscs; and
- (c) any other species, or class, of fish determined under regulation 4 to be regulated fish;

relaying, of regulated fish, means the transfer of regulated fish from one area to another for the purpose of –

- (a) the growing on of the regulated fish; or
- (b) eliminating or controlling pathogenic organisms, toxins or contaminants in the regulated fish, by using the change of ambient environment as a treatment process;

relevant standard means *Standard 4.2.1 – Primary Production and Processing Standard for Seafood* in the Food Standards Code;

restricted area means an area classified as a restricted area under regulation 18 as published under regulation 19 ;

seafood business means a primary produce business, or a proposed primary produce business, that consists, in whole or in part, of the primary production of seafood;

seafood processing, other than the cooking or handling of seafood to prepare a meal for a person or the sale or service of seafood by way of retail, includes –

- (a) the killing, cutting or gutting of seafood; and
- (b) the depuration of seafood; and
- (c) the shucking or peeling of seafood; and
- (d) the cooking, including steaming or boiling, of seafood; and
- (e) the brining of seafood; and
- (f) the smoking of or crumbing of, or addition of other food to, seafood; and
- (g) the packing, treating, washing, freezing, refrigerating, canning or storing of seafood;

seafood producer means a producer who engages in, or is proposing to engage in, the primary production of seafood;

spat means the juvenile spawn of molluscs that are taken or cultivated for the sole purpose of growing on;

taking, of seafood, means the capturing, picking, harvesting or collecting of seafood (other than the capturing, picking, harvesting or collecting of seafood from wet storage) and includes the capturing, picking, harvesting and collecting of seafood from an enclosure or pond used in marine farming;

wet storage means the storage of live seafood in a tank, cistern or container that contains water and is not located in the sea or other natural water body.

(2) For avoidance of doubt, a notice made under these regulations is not –

- (a) a statutory rule for the purposes of the Rules Publication Act 1953 ; or
- (b) subordinate legislation for the purpose of the Subordinate Legislation Act 1992 .

4. Determination of regulated fish

(1) The Chief Inspector may determine a species, or class, of fish to be regulated fish for the purposes of these regulations.

(2) At least 28 days before making a determination under subregulation (1) , the Chief Inspector must –

- (a) publish a notice of the proposed determination in the *Gazette*; and

(b) specify, in the notice, a period of no less than 21 days from the publication of the notice during which the Chief Inspector will accept comments and submissions on the proposed determination.

(3) The Chief Inspector must take into account any comments and submissions received under subregulation (2)(b) in respect of the proposed determination before the Chief Inspector makes any relevant determination under subregulation (1) .

(4) A determination under subregulation (1) takes effect on the day on which its making is notified in the *Gazette* or such later day as is specified in the determination.

5. Meaning of primary production activity

For the purposes of section 5(1)(j) of the Act, seafood processing is prescribed as a primary production activity to the extent that it is not already covered by section 5(1) of the Act.

6. Seafood food safety scheme

(1) These regulations establish, in Part 2 , a food safety scheme in respect of seafood.

(2) In any document, a reference to the seafood food safety scheme is taken to be a reference to Part 2 of these regulations, as amended from time to time.

7. Periodic fees and returns

For the purposes of section 16 of the Act –

(a) the period prescribed as the period for which payment of the fee under subsection (1) of that section must be paid is the period of 12 months ending on the last day of June in any calendar year; and

(b) the date prescribed for the payment of the fee, and the lodgement of a return, under subsection (1) of that section is the 1 July immediately after the period prescribed under paragraph (a); and

(c) the fee prescribed to be paid under subsection (1) of that section is the relevant annual fee specified in item 4 of Schedule 1 ; and

(d) the fee prescribed as a penalty for default under subsection (2) of that section is the penalty for default specified in item 5 of Schedule 1 .

8. Fees generally

(1) In this regulation –

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth.

(2) The fees specified in Schedule 1 –

(a) are, unless otherwise specified, exclusive of GST; and

(b) are prescribed as the fees payable in respect of the matters to which they relate.

(3) The Chief Inspector may exempt a person, or class of persons, from all or any part of a fee payable under these regulations in any of the following circumstances:

(a) the seafood business carried on by the person involves the export of seafood, to another country, in accordance with a law of the Commonwealth;

(b) the seafood business carried on by the person forms part of, or is attached to, a food business registered under the Food Act 2003 that is carried on by that person at the same premises as the seafood business;

(c) the person is an Aboriginal person engaging in a primary production activity of traditional or cultural significance within the Tasmanian Aboriginal community;

(d) the person holds, or has applied for, accreditation under two or more food safety schemes;

(e) the seafood business carried on by the person is carried on by the person primarily for a charitable, educational or other non-commercial purpose;

(f) the circumstances are exceptional circumstances in which it would be just and equitable to exempt the person from all or part of the fee.

9. Application for accreditation to take into account certain offences

The following Acts are prescribed Acts for the purposes of section 14(3)(a)(iii) of the Act:

(a) Agricultural and Veterinary Chemicals (Control of Use) Act 1995 ;

(b) Agricultural and Veterinary Chemicals (Tasmania) Act 1994 ;

(c) Animal (Brands and Movement) Act 1984 ;

(d) Animal Health Act 1995 ;

(e) Animal Welfare Act 1993 ;

(f) Environmental Management and Pollution Control Act 1994 ;

(g) Living Marine Resources Management Act 1995 ;

(h) Public Health Act 1997 .

PART 2 - Seafood Food Safety Scheme

Division 1 - General

10. Application of seafood food safety scheme

- (1) This seafood food safety scheme applies to –
 - (a) all primary produce comprised, in whole or in part, of seafood; and
 - (b) all primary production activities involving the primary production of seafood.
- (2) The following persons must comply with this seafood food safety scheme:
 - (a) a person who supplies primary produce to which this seafood food safety scheme applies;
 - (b) a person who engages in, or proposes to engage in, a primary production activity to which this seafood food safety scheme applies.

11. Standard applying under seafood food safety scheme

A person who is required to comply with this seafood food safety scheme must comply with the relevant standard as applicable.

12. Requirement to be accredited

The proprietor of a seafood business that is involved in the primary production of any regulated fish is required to be accredited under this seafood food safety scheme.

13. Requirement for accreditation

It is a requirement for accreditation under this seafood food safety scheme that the applicant for the accreditation –

- (a) has made appropriate arrangements to comply with the requirements of the Act and this seafood food safety scheme; or
- (b) proposes to make appropriate arrangements to comply with the requirements of the Act and this seafood food safety scheme and has the capacity to make those arrangements before the accreditation is to commence.

14. Requirement to prepare and implement a food safety program

- (1) Subject to subregulation (2), an accredited seafood producer must prepare and implement a food safety program in respect of each activity involving seafood for which the accredited seafood producer holds accreditation under this seafood food safety scheme.
- (2) The Chief Inspector may, by written notice, exempt an accredited seafood producer from the requirement to prepare and implement an approved seafood food safety program if the Chief Inspector is satisfied that –
 - (a) the accredited seafood producer –
 - (i) farms regulated fish under a marine farming licence; and
 - (ii) moves any regulated fish so farmed to the marine farm of another accredited seafood producer (who has prepared and implemented an approved seafood food safety program) for growing on before the regulated fish are sold or supplied for human consumption; or
 - (b) the accredited seafood producer –
 - (i) takes wild regulated fish under a commercial fishing licence; and
 - (ii) supplies any regulated fish so taken to another accredited seafood producer (who has prepared and implemented an approved seafood food safety program) for processing or

additional primary production before the regulated fish are sold or supplied for human consumption.

15. Auditing requirements

An approved seafood food safety program must be audited by an approved seafood food safety auditor –

- (a) at intervals determined by the Chief Inspector in respect of the approved seafood food safety program, or approved seafood food safety programs generally, as notified in writing to the accredited seafood producer in respect of the approved seafood food safety program; or
- (b) if no such intervals are specified, at least once every 12 months.

16. Register of accreditation

- (1) The Chief Inspector is to establish a register of accredited seafood producers.
- (2) The register established under this regulation is to contain the following particulars in respect of an accreditation granted to a seafood producer:
 - (a) the granting of such an accreditation;
 - (b) any conditions attached to such an accreditation;
 - (c) any variation or revocation of a condition attached to such an accreditation;
 - (d) any suspension of such an accreditation;
 - (e) if such an accreditation is cancelled or revoked, the cancellation or revocation of the accreditation;
 - (f) if such an accreditation is surrendered, the surrender of the accreditation;
 - (g) if such an accreditation is transferred, the transfer of the accreditation.
- (3) The register established under this regulation is to be available for inspection, without charge and during normal business hours, on a written request to the Chief Inspector.
- (4) A person inspecting the register under subregulation (3) may, on payment of any reasonable fee determined by the Chief Inspector that does not exceed 50 fee units, do either or both of the following:
 - (a) obtain an extract of an entry in the register established under this regulation;
 - (b) obtain a copy of anything contained in the register established under this regulation.

Division 2 - Specific requirements

17. Requirements for accredited seafood producers

- (1) An accredited seafood producer must ensure that the following requirements are complied with in respect of regulated fish to be used in the primary production of seafood by the producer:
 - (a) subject to paragraph (b), the taking of regulated fish, other than spat, must only be carried out in an approved area, or part of an approved area, that is open in respect of the class or species of regulated fish;
 - (b) regulated fish must not be taken from a restricted area that is open, or an approved area that is closed, or part of that restricted area or approved area, in respect of the class or species of regulated fish unless –
 - (i) the regulated fish are not to be supplied for human consumption; or
 - (ii) the taking of the regulated fish is carried out solely for the purposes of relaying the regulated fish;
 - (c) regulated fish, other than spat, must not be brought into an approved area unless, immediately before being brought into the area, the regulated fish were taken from –

- (i) another approved area, or part of that approved area, in respect of that class or species of regulated fish; or
 - (ii) a restricted area, or part of a restricted area, that is open in respect of that class or species of regulated fish;
 - (d) regulated fish must not be relayed, to an approved area that is open in respect of that class or species of regulated fish, from –
 - (i) an approved area, or part of an approved area, that is closed in respect of the class or species of regulated fish; or
 - (ii) a restricted area, or part of a restricted area, that is open in respect of the class or species of regulated fish –
- except in accordance with a written authorisation (a **relaying authorisation**) issued by the Chief Inspector;
- (e) regulated fish that have been relayed to an approved area, or part of an approved area, under a relaying authorisation –
 - (i) must be kept in an area that is clearly marked as a relaying area; and
 - (ii) must be adequately separated from other regulated fish and seafood so as to avoid cross-contamination and mingling; and
 - (iii) must be treated in accordance with each requirement or condition of the relaying authorisation, if any, including requirements or conditions relating to the elimination or control of pathogenic organisms, toxins and contaminants in the fish;
 - (f) regulated fish intended for human consumption must not be held in wet storage unless –
 - (i) held in wet storage in accordance with a written authorisation (a **wet storage authorisation**) issued by the Chief Inspector; and
 - (ii) each requirement or condition of the wet storage authorisation, if any, has been complied with, including any requirements or conditions relating to the testing of the water in which the regulated fish have been stored;
 - (g) regulated fish taken for human consumption must –
 - (i) be stored and handled in a manner that ensures it can be readily distinguished from any regulated fish taken on a different day, or from a different area; and
 - (ii) before being supplied to another person, be identified with –
 - (A) the name of the accredited seafood producer; and
 - (B) the number of the accredited seafood producer's accreditation; and
 - (C) the date on which the specific regulated fish was taken; and
 - (D) details identifying the approved area, or restricted area, from which the specific regulated fish was taken;
 - (h) if the accredited seafood producer is exempt under regulation 14(2)(a) from the requirement to have an approved seafood food safety program, any regulated fish farmed under a marine farming licence must be moved to the marine farm of another accredited seafood producer (who is not exempt from the requirement to prepare and implement an approved seafood food safety program) for growing on before being taken for sale or supply for human consumption;
 - (i) if the accredited seafood producer is exempt under regulation 14(2)(b) from the requirement to have an approved seafood food safety program, any wild regulated fish taken under a commercial fishing licence must be supplied to another accredited seafood producer (who is not exempt from the requirement to prepare and implement an approved seafood food safety program) for processing or further primary production before being sold or supplied for human consumption;

- (j) regulated fish must not be sold or supplied for human consumption unless –
 - (i) the processing of the regulated fish has been done in accordance with each condition that applies under regulation 18(2) ; or
 - (ii) the sale or supply of the regulated fish is to another accredited seafood producer who complies with each condition that applies under regulation 18(2) before selling or supplying the regulated fish for human consumption;
 - (k) the accredited seafood producer must, in accordance with a written or verbal request of an authorised officer –
 - (i) provide samples of seafood and water for testing; and
 - (ii) facilitate the taking and testing of samples of seafood or water by, or under the authority of, the authorised officer;
 - (l) if the accredited seafood producer forms the belief or suspicion that any seafood, supplied by the accredited seafood producer for human consumption, may be unsafe or unsuitable for human consumption, the accredited seafood producer must notify the Chief Inspector of the belief or suspicion as soon as is reasonably practicable after forming the belief or suspicion.
- (2) If an authorised officer makes a verbal request as referred to in subregulation (1)(k) , the authorised officer must, as soon as practicable after making the verbal request, confirm the request in writing and provide it to the accredited seafood producer who was the subject of the request.

18. Classification and opening of certain areas

- (1) The Chief Inspector may, by written notice published in accordance with regulation 19 –
- (a) classify, for the purposes of this seafood food safety scheme, an area as –
 - (i) an approved area for the taking of the class or species of regulated fish specified in the notice; or
 - (ii) a restricted area for the taking of the class or species of regulated fish specified in the notice; or
 - (b) temporarily close all or part of an approved area, or restricted area, in respect of all regulated fish or any class or species of regulated fish specified in the notice; or
 - (c) vary or revoke a notice made under this subregulation.
- (2) A classification notice may be made subject to any conditions the Chief Inspector considers appropriate.
- (3) The Chief Inspector is to take into account the following before making a classification notice:
- (a) the objectives of the Act;
 - (b) the relevant standard;
 - (c) any program, code, standard, document or guideline relating to safety or suitability of seafood that the Chief Inspector has notified in the *Gazette*;
 - (d) any advice or direction given to the Chief Inspector by the Director of Public Health or the Director of the Environment Protection Authority in respect of the safety or suitability of seafood that may be taken from the area to which the classification notice relates.
- (4) The Chief Inspector must provide the Director of Public Health and the Director of the Environment Protection Authority with a reasonable opportunity to assess and comment on a program, code, standard, document or guideline the Chief Inspector intends to notify under subregulation (3)(c) .
- (5) Without limiting subregulation (4) , the Chief Inspector provides a reasonable opportunity under that subregulation if the Chief Inspector provides a written copy of the proposed notice to the Director of Public Health and the Director of the Environment Protection Authority at least 28 days before the notice is to be published in the *Gazette*.

19. Form and publication of classification notice

- (1) A classification notice is to –
 - (a) specify –
 - (i) the day on which the classification notice takes effect; or
 - (ii) that the classification notice takes effect on publication; and
 - (b) clearly identify the area or areas to which the classification notice relates; and
 - (c) specify any conditions that the classification notice is subject to.
- (2) A classification notice may specify –
 - (a) the period during the year when an area classified in the classification notice is, or parts of that area are, to be open; and
 - (b) the class or species of regulated fish for which an area, or part of an area, classified in the classification notice is to be open.
- (3) If a classification notice does not specify –
 - (a) the period when an area, or part of an area, is to be open under subregulation (2)(a) ; or
 - (b) the class or species of regulated fish for which the area, or part of an area, is to be open under subregulation (2)(b) –

the area is taken to be open throughout the year, or open in respect of all classes and species of regulated fish, respectively.
- (4) The Chief Inspector is to publish a classification notice by one or more of the following means:
 - (a) sending a copy of the classification notice by –
 - (i) electronic mail to the email address of each affected accredited seafood producer; or
 - (ii) any other electronic means to each affected accredited seafood producer who has agreed to receive classification notices in that format;
 - (b) causing a copy of the classification notice to be published electronically on a website able to be viewed or accessed by the general public;
 - (c) publishing a copy of the classification notice in the *Gazette*.
- (5) An accredited seafood producer is taken to have received a classification notice –
 - (a) in the case of a classification notice published in accordance with subregulation (4)(a) , on the day and at the time a copy of the classification notice is sent by electronic mail, or other electronic means, to the producer; and
 - (b) in the case of a classification notice published in accordance with subregulation (4)(b) , on the day and at the time of the electronic publication of a copy of the classification notice; and
 - (c) in the case of a classification notice published in accordance with subregulation (4)(c) , on the day a copy of the classification notice is published in the *Gazette*.

PART 3 - Offences

20. Seafood must be lawfully produced

(1) A person must not supply any seafood that has not been lawfully produced for human consumption.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues; or

(b) an individual, a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(2) An offence against this regulation is an offence of strict liability.

(3) For the purposes of this regulation, seafood is taken to have been lawfully produced for human consumption if –

(a) in the case of seafood that has been produced outside of Australia, it has been lawfully imported into Australia; and

(b) in any other case, to the extent to which the seafood has been produced or processed in Australia, the production or processing has been carried out –

(i) in accordance with the requirements of the Act; or

(ii) in accordance with any applicable corresponding law if the production or processing occurred in another State or a Territory.

21. Infringement notices

(1) The offences that are created by the provisions of these regulations specified in column 2 of the table in Schedule 2 are prescribed offences for the purposes of section 53 of the Act.

(2) The prescribed penalty for each of the prescribed offences is the penalty specified opposite that offence in column 3 of the table in Schedule 2 .

SCHEDULE 1 - Fees

Regulations 7 and 8

		Fee units
1.	Application under section 12 of the Act for accreditation of a seafood producer	350
2.	Application under section 18 of the Act for variation of accreditation of a seafood producer –	
	(a) if the variation does not involve the approval or variation of a seafood food safety program	250
	(b) if the variation involves the variation of an approved seafood food safety program for the accreditation	300
	(c) if the variation involves the approval of a new seafood food safety program for the accreditation that is in addition to, or in substitution for, an existing approved seafood food safety program for the accreditation	300
3.	Application under section 19 of the Act for transfer of accreditation of a seafood producer	300
4.	Annual fee for accredited seafood producer whose maximum number of persons employed or engaged, by that producer at any point during the 12 months preceding the calculation of the fee, was equivalent to the following:	
	(a) fewer than 5 full-time seafood handlers	175
	(b) 5-50 full-time seafood handlers	350
	(c) more than 50 full-time seafood handlers	750
5.	Penalty for default in respect of an accredited seafood producer	75

SCHEDULE 2 - Infringement Notice Offences

Regulation 21

	Column 2 Regulation	Column 3 Penalty (penalty units)	
		Individual	Body corporate
1.	Regulation 20(1)	5	10

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

Notified in the *Gazette* on 12 February 2014

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