

Reprint
as at 12 November 2018



Rock Oyster Farming Regulations 1964 (SR 1964/207)

Bernard Fergusson, Governor-General

Order in Council

At the Government House at Wellington this 16th day of December 1964

Present:

His Excellency the Governor-General in Council

Pursuant to the Rock Oyster Farming Act 1964, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

Contents

	Page
1 Title and commencement	3
2 Interpretation	3
3 Application	4

Part 1

Leases for rock oyster farming

Applications for leases

4 Applications for leases	5
5 Age of applicants	5

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry for Primary Industries.

6	Applications by several persons	5
7	Marking of areas applied for	5
8	Advertising of applications	6
9	Deposit paid on application	6
10	Priority in applications	6
<i>Leases</i>		
11	Grant of leases	6
12	Harbour Boards and local authorities	7
13	Notification of grant of a lease	7
14	Survey of area	7
15	Modification of boundaries of leased area	7
16	Marking of leased area	7
17	Navigational marks	8
18	Rental	8
19	Royalty payable	9
20	Lessees in arrears, etc	10
21	Land included in lease	10
22	Property and rights conferred by lease	10
23	Occupiers' Liability Act 1962	10
<i>Conditions of leases</i>		
24	Acceptance of conditions	10
25	Covenants and conditions	10
26	Conditions as to access	11
27	Drainage of land upon leased areas	11
28	Lease-land to be acquired for sole use and benefit	11
29	Lease held in trust	11
30	Erection of structures	11
31	Conditions as to structures	12
32	Removal of structures	12
33	Lessee to give bond for removal of structures	12
34	Access to lease-land	13
35	Way of access	13
36	Marking ways of access	14
37	Removal or destruction of marks	14
38	Returns	14
39	Oyster stealing by lessee	14
40	Subleasing prohibited	15
41	Assignment of lease	15
<i>Forfeiture of leases</i>		
42	Lease may be forfeited	15

Part 2

Renewal of lease and re-offering of lease-land

43	Renewal of leases	16
44	Preferment rights	16
45	Offer of land for lease	16
46	Improvements to be purchased by incoming lessee	17
47	Valuation of improvements	17

Part 3

Management of oyster farms and lease-land

48	Lessees to utilise leased areas	18
49	Report on cultivation	18
50	Lessee to facilitate inspection	18
51	Cultivation	19
52	Closure of areas	19
53	Spelling of areas	20
54	Disposal of waste	20
55	Diseased or contaminated oysters	20
56	Unmarketable oysters	21
57	Marketing of oysters	21
58	Use of oysters	21
59	Oysters not to be taken between sunset and sunrise	21

Part 4

Miscellaneous provisions

60	Fees and other payments	22
61	Lease-land required for public purposes	22
62	Protection of harbour works	22
63	Service of notices	22
64	Notification of cancellation or forfeiture of lease	23
65	Offences	23
66	Offences punishable on conviction	23

Schedule	24
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Regulations

1 Title and commencement

- (1) These regulations may be cited as the Rock Oyster Farming Regulations 1964.
- (2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2 Interpretation

In these regulations and in any lease, unless the context otherwise requires,—

Act means the Rock Oyster Farming Act 1964

department means the Marine Department

disease means any condition of oysters which causes mortality amongst them or which renders their consumption as food undesirable in the interests of public health; and includes infestation with marine worms, borers or other pests

fishery officer means a fishery officer under section 4 of the Fisheries Act 1908 or an honorary fishery officer under subsection (1) of section 9 of the Fisheries Amendment Act 1959

leased area means an area of lease-land leased under the Act

lease-land means any part of the bed of the sea or of a river, whether within the ebb and flow of the tide at ordinary spring tides or not

lessee means a person holding a lease under the Act; and includes the executors, administrators, assignees, and successors of the lessee

lessor, in relation to lease-land comprised in any lease that is land vested in the Crown, means the Minister, and, in relation to any lease-land comprised in any lease that is land vested in a Harbour Board or local authority, means the Harbour Board or local authority

Minister means the Minister of Marine

rock oyster includes the kinds of oyster known as *Ostrea purpurea*, *Saxostrea glomerata*, *Crassostrea glomerata*, *Ostrea glomerata*, *Ostrea mordax*, shore oyster, drift oyster, mangrove oyster, or any oyster of a like kind by whatever name it may locally be known or wherever it may occur

Secretary means the Secretary for Marine appointed under the Shipping and Seamen Act 1952; and includes his deputy.

Other expressions defined in the Act have the meanings so defined.

Regulation 2 **fishery officer**: inserted, on 19 August 1966, by regulation 27(2) of the Rock Oyster Farming Regulations 1964, Amendment No 1 (SR 1966/142).

Regulation 2 **rock oyster**: replaced, on 19 August 1966, by regulation 27(1) of the Rock Oyster Farming Regulations 1964, Amendment No 1 (SR 1966/142).

3 Application

The provisions of these regulations shall apply to every lease, except so far as expressly negatived or modified or inconsistent with the express provisions of the lease.

Part 1

Leases for rock oyster farming

Applications for leases

4 Applications for leases

- (1) Where the fee simple of lease-land is not vested in a Harbour Board or a local authority, applications for a lease of lease-land for use for the cultivation of rock oysters shall be made to the Secretary or a person authorised by him to receive such applications.
- (2) Where the fee simple of the lease-land is vested in a Harbour Board or a local authority, the application shall be made to the Secretary or other officer designated by the board or local authority to receive such applications.
- (3) Every application shall be in duplicate in form 1 of the Schedule, and shall be supported by—
 - (a) a deposit of £10:
 - (b) 2 copies of each page of the newspapers giving notice of the application:
 - (c) 2 copies of a vertical aerial photograph annotated to show clearly thereon the boundaries of the area to be leased and its relationship to adjacent land-boundary surveys or approved survey monuments, or, where no such photograph is available, 2 copies of a plan showing the boundaries of the area to be leased and its relationship to adjacent land-boundary surveys or approved survey monuments.
- (4) In this regulation the term **approved survey monument** means any survey mark whose position is recorded in the survey records of the Department of Lands and Survey.

Regulation 4(3)(c): amended, on 19 August 1966, by regulation 28(1) of the Rock Oyster Farming Regulations 1964, Amendment No 1 (SR 1966/142).

5 Age of applicants

No person under the age of 21 years may become a lessee under any lease.

6 Applications by several persons

Two or more persons may make application to take or lease as joint tenants or tenants in common any lease-land available for leasing pursuant to the Act.

7 Marking of areas applied for

An applicant for a lease shall mark and keep marked each corner of the area applied for for a period commencing on the day of the first notification of the application required to be published in a newspaper and until the expiration of a period of 14 days after that first notification, with a stake or post with a white board or batten attached bearing in black letters not less than 7.5 cm in height the words “LEASE APPLIED FOR—[*name of applicant*]”.

Regulation 7: amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

8 Advertising of applications

The notice required to be published pursuant to section 4 of the Act shall be in form 2 of the Schedule.

9 Deposit paid on application

- (1) Where an applicant for a lease withdraws his application, the deposit paid shall become forfeited to the Crown, the Harbour Board, or the local authority, as the case may be.
- (2) Where the Minister, the Harbour Board, or the local authority refuses to grant a lease or the Minister refuses his consent to a lease by a Harbour Board or local authority, the deposit paid shall be refunded or credited to the applicant.

10 Priority in applications

- (1) Subject to the provisions of regulation 44, where more than 1 application to lease the same area of lease-land is received, the Minister, in the case of lease-land vested in the Crown, and the Harbour Board or local authority, where the lease-land is vested in the Board or authority, shall determine the priority in the allocation of a lease in such manner as the Minister, the Harbour Board, or the local authority, as the case may be, sees fit.
- (2) Every such determination may, in the discretion of the Minister, the Harbour Board, or the local authority, as the case may be, be by lot, or by having regard to the financial or other circumstances of the applicant, or to the likelihood of the applicant being able successfully to develop an oyster farm, and the determination of the Minister, the Board, or the local authority, as the case may be, shall be final.

Leases

11 Grant of leases

- (1) It shall be in the absolute discretion of the Minister to grant or refuse an application for a lease where the lease-land is vested in the Crown.
- (2) Where the lease-land is vested in a Harbour Board or a local authority, it shall be in the absolute discretion of the Board or local authority to grant or refuse an application for a lease:

provided that a Harbour Board or a local authority shall not grant any lease unless the consent of the Minister to the granting of a lease has first been obtained under section 3 of the Act.
- (3) Every lease shall be in form 3 of the Schedule, with such modifications as may be necessary in the circumstances of any particular case.

12 Harbour Boards and local authorities

- (1) Where a lessor is a Harbour Board or a local authority, every lease granted by the Board or local authority for the purposes of permitting the development of oyster farming shall be granted subject to the provisions of the Act and these regulations, and every such lease shall include as a condition thereof that the lessee shall comply with these regulations.
- (2) All rent payable under any lease received by a Harbour Board or local authority shall be paid to the Harbour Fund, District Fund, or County Fund as the case may be.

13 Notification of grant of a lease

Notice of the granting of any lease shall be published in the *Gazette*.

14 Survey of area

- (1) Where the Minister, Harbour Board, or local authority, as the case may be, gives notice in writing to an applicant for a lease of the intent to grant the lease, the applicant, if required by the Secretary, shall forthwith or within any specified time during the currency of the lease, cause the area comprised or to be comprised in the lease to be surveyed and a plan prepared and certified by a registered surveyor showing the boundaries of the area on a scale of not less than 60 m to 2.5 cm and showing the division of the area into lots and access ways as provided for in this regulation.
- (2) Every leased area shall be divided into lots of 2 ha each (be the same a little more or less), rectangular in shape, and with access ways of not less than 10 m in width between and bounding each lot.
- (3) Two copies of each survey plan that may be required pursuant to this regulation shall be forwarded by the lessee to the Secretary.

Regulation 14(1): amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

Regulation 14(2): amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

15 Modification of boundaries of leased area

The Minister may at any time modify the boundaries of a leased area for the purpose of rectifying errors or for the purpose of more clearly defining the boundaries of the area.

16 Marking of leased area

- (1) Every lessee shall, within 1 month after the grant of a lease to him, mark or cause to be marked the leased area, and shall thereafter during the currency of the lease keep marked the leased area, by the erection at the intersection of each right line forming the boundary of the leased area of a post painted white which shows at least 1.2 m above high water at ordinary spring tides.

- (2) Any lessee who fails to comply with this regulation commits an offence, and is liable to a fine not exceeding £5.
- (3) Every lessee shall paint or cause to be painted upon a crossbar or batten attached near the top of the corner marks marking the boundaries of the leased area, in white oil colour on a black ground in letters and figures not less than 51 mm in height and 10 mm in width, the words “Oyster Lease No [*specify*]” (inserting the distinguishing number of the lease):

provided that if the Minister is of the opinion that the marking of a leased area in the manner prescribed is impracticable or unsuitable, the area may be marked in such other manner as he approves by writing given to the lessee.

Regulation 16(1): amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

Regulation 16(3): amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

17 Navigational marks

- (1) In addition to the markings prescribed in regulation 16, the lessee of any leased land which is adjacent to any navigable channel shall, if so required by the Secretary or any person so authorised by the Secretary, mark and keep marked the boundary or boundaries of the leased area which are contiguous with or adjacent to that channel by the erection of such mark or marks as the Secretary or other person authorised by him in that behalf requires by writing given to the lessee.
- (2) Any requirement for the erection of any mark or marks required pursuant to subclause (1) may include provision for the marks to be lighted in such manner as the Secretary or other person giving the notice requires.
- (3) Every lessee required to provide lights pursuant to this regulation shall at all times during the hours of darkness exhibit and maintain at the cost of the lessee the light or lights so required.
- (4) Notwithstanding that his lease has expired or been cancelled, revoked, or surrendered, the lessee shall, if the Minister so requires by notice in writing given to the lessee, continue to exhibit the light or lights required pursuant to this regulation, pending the removal to the satisfaction of the Minister of any structures or other hazards to navigation erected or occasioned in the leased land by the lessee or any former lessee.
- (5) Every lessee who fails within 1 month after the date on which the notice is given to him, or within such longer period as may be specified therein, to comply with any requirement of the Minister or the Secretary or other person under this regulation is liable to a fine not exceeding £200.

18 Rental

- (1) The rental payable under any lease shall, subject to this regulation, be determined by the Minister in the case of a lease granted or renewed by the Minister,

and by the Harbour Board or local authority in the case of a lease granted or renewed by a Harbour Board or local authority.

- (2) The rental determined by the lessor on an application for renewal of a lease shall be notified to the applicant. If the applicant is dissatisfied with that determination, he may, at any time within 30 days of the date on which the notice was received, apply to the lessor in writing to refer the matter to arbitration for determination in accordance with the Arbitration Act 1908, and the lessor shall refer the matter accordingly.
- (3) In determining the rental payable pursuant to this regulation the value of improvements made by the lessee or any former lessee shall not be taken into account.
- (4) Rent for leases shall be paid to the Secretary in the case of lease-land vested in the Crown, and to the Harbour Board or local authority in the case of lease-land vested in a Board or local authority, as follows:
 - (a) on notification of the grant of a lease, 1 year's rental shall be payable:
 - (b) thereafter the rent shall be payable yearly in advance on each anniversary of the date of the commencement of the lease in each year during the currency of the lease:
 - (c) in cases where a renewal of a lease is granted, the provisions of paragraphs (a) and (b) shall apply to the payment of rent under any renewal lease in the same manner as in the case of the original lease.
- (5) Where a lease is terminated for any reason other than through the misconduct or failure of the lessee to comply with the terms and conditions of the lease, the Act, or these regulations, the lessee shall be liable only for payment of that proportion of the rental covering the period up to the date of termination, and shall be entitled to a refund of any rent paid by him in respect of any period subsequent to the date of termination.
- (6) Where as the result of the application of any provision of these regulations relating to the closure of an area through no fault of the lessee, or where the production of rock oysters has in the opinion of the lessor been reduced as the result of natural causes (such as flood, storm, disease, or contamination through no fault of the lessee), the lessor may release the lessee from payment of rent for the period of that reduction or for a period of 3 years, whichever is the shorter.

19 Royalty payable

In every lease there shall be implied a condition that, in addition to the rent payable in respect of the lease, there shall also be payable by the lessee such royalties as are from time to time prescribed pursuant to the Act.

20 Lessees in arrears, etc

- (1) It shall be a condition of every lease that if the lessee is in arrears with any rent or payment of any royalty in respect of any 1 or more leased areas he shall not take rock oysters from any area save with the prior consent in writing of the lessor.
- (2) Any lessee to whom subclause (1) applies shall not be entitled to lease a further area until the overdue payment of rent or royalty has been paid.
- (3) Every lease shall be liable to forfeiture if the rent or any royalty in respect of any leased area is not paid within a time determined by the lessor.

21 Land included in lease

The rights, powers, and privileges conferred by any lease shall extend and apply only to the lease-land mentioned in the lease at the site shown on the plan referred to in the lease.

22 Property and rights conferred by lease

Every lease shall vest in the lessee all rock oysters adhering to structures erected by the lessee or by any former lessee on the lease-land comprised in the lease and the exclusive right during the currency of the lease of propagating and picking those rock oysters, but subject always to the provisions of the Act and these regulations.

23 Occupiers' Liability Act 1962

Every lessee shall be deemed to be the occupier of the leased area within the meaning of the Occupiers' Liability Act 1962.

*Conditions of leases***24 Acceptance of conditions**

The occupation by the lessee of the lease-land referred to in a lease shall be sufficient evidence of the acceptance by the lessee of the terms and conditions of the lease (including the provisions of these regulations).

25 Covenants and conditions

- (1) Every covenant expressed in any lease or implied in any lease by any provision of these regulations shall be deemed to be entered into on the part of the lessee for himself, his executors, administrators, and permitted assigns.
- (2) Every covenant implied by any provision of these regulations shall be binding on the lessee as if fully set out in the lease, and nonfulfilment of any such covenant shall be a breach of the covenants and conditions of the lease entitling the lessor to declare the lease to be cancelled under the Act or forfeited under these regulations.

- (3) Every lease may contain such further express covenants and conditions on the part of the lessee, not inconsistent with the Act or these regulations, as the lessor determines.

26 Conditions as to access

Every lease shall be held subject to the right of the owner and lawful occupier of any land upon which the leased area abuts to pass and repass from and to that land over the waters and foreshore within the leased area, subject to the provisions of regulation 35.

27 Drainage of land upon leased areas

Every lease shall be held subject to the right of the owner or lawful occupier of the land abutting on any leased area to drain the surface water off the land into the leased area, and the holder of the lease shall not be entitled to any compensation for any damage that may result to the leased area or to the oysters or spat thereon by reasonable exercise of the right conferred by this regulation.

28 Lease-land to be acquired for sole use and benefit

- (1) Subject to the provisions of these regulations, no person shall, by himself or through any other person for him, be entitled to acquire, obtain, or hold, either by original application or by transfer or otherwise in any manner, any lease-land under any lease unless it is exclusively for his own use or benefit.
- (2) No person who, at the time of making his application for a lease, has made any arrangement or agreement to permit any other person to acquire the use of the land in respect of which his application is made or any part thereof or the applicant's interest therein shall be entitled to obtain a lease of that lease-land or any part thereof.

29 Lease held in trust

The executors, administrators, or trustees of a deceased lessee may continue to hold the lease in trust for the persons beneficially entitled thereto under the will or intestacy of the deceased pending the vesting of the lease in the persons entitled or during the minority of any beneficiary, as if they were the lessee.

30 Erection of structures

- (1) No person shall erect or cause to be erected on any lease-land any structure other than a structure directly related to and necessary for the purpose of the cultivation of rock oysters and as may be authorised in the lease of that lease-land.
- (2) The lessor may, on the request in writing of a lessee and, in the case of a lease by a Harbour Board or local authority, with the consent of the Minister, amend any lease to permit the erection or modification of any structure which in the lessor's opinion is necessary for the management of the oyster farm, but for no other purpose.

- (3) Before authorising the erection of any structure on lease-land, the lessor may require the lessee to submit such detailed information as to the design of the proposed structure as the lessor or the Minister may require.

31 Conditions as to structures

- (1) Every structure on any leased area shall be maintained in good order and repair by the lessee during the continuance of the lease and for such period after the expiry or revocation or surrender of the lease as may be required pursuant to these regulations.
- (2) No person shall erect any structure in any leased area unless it is constructed on piles or pillars between which there is ample space for the ebb and flow of the tide.
- (3) No person shall erect any structure in any leased area which may cause or tend to cause erosion or accretion.
- (4) The Minister may, by notice in writing to any lessee, require the lessee to repair, remove, renovate, redesign, or resite any structure which in the Minister's opinion creates or is likely to create any unreasonable or unnecessary despoilment of the natural beauty of any area or which may constitute a hazard to navigation.
- (5) No person shall erect any structure in any leased area unless the structure is designed and constructed with due regard to such circumstances as might reasonably be expected to arise from tidal action, stress of weather, storm, flood, or like occurrences which may constitute a hazard to navigation in the event of the structure or any part thereof breaking adrift.

32 Removal of structures

- (1) Subject to the provisions of regulations 46 and 47, it shall be a condition of every lease that the lessee shall be responsible, on the expiry, surrender, cancellation, or forfeiture of a lease, for the removal of all structures on the leased area and for the restoration of the site to its original condition before the area was first leased if he is required by notice in writing to do so by the lessor.
- (2) If any lessee fails to comply with a notice given by the lessor under subclause (1) within the time specified in the notice, the lessor may cause the structures to be removed and the site to be restored to its original condition, and all costs incurred in the removal and restoration shall be paid by the lessee and may be recovered as a debt due to the Crown or, as the case may be, to the Harbour Board or local authority.

33 Lessee to give bond for removal of structures

- (1) No lessee shall erect any structure on any leased area unless there is for the time being in force a bond to the lessor in the sum of £500 given by a surety or sureties approved by the lessor and conditioned to secure the liability of the

lessee to remove structures from the area comprised in the lease and to restore the area to its original condition.

- (2) Every such bond shall be in a form approved by the lessor.
- (3) The sum named in a bond under this regulation shall be deemed not to be a penalty, but shall be recoverable in full as a debt due by the surety or sureties to the lessor unless the surety or sureties prove performance of every condition upon which the bond is defeasible.
- (4) Every sum so recovered shall be applied—
 - (a) in compensating the lessor for the cost of the removal of structures and for the restoration of the site to its original condition:
 - (b) in refunding to the surety or sureties any balance left after payment of that cost.

34 Access to lease-land

- (1) The Secretary, or any person authorised by him in that behalf, and any fishery officer or other person in the service of the Government acting in the execution of his duties under any enactment, shall at all times have free ingress, passage, and egress into, through, over, and out of any lease-land.
- (2) If any lease contains a provision that any person or class of persons shall have access through the lease-land or any part thereof, the lessee shall permit all such persons, at such time or at all times as may be specified in the lease, freely to pass and repass through the lease-land or the part thereof specified in the lease.
- (3) If any lease contains a provision that any person or class of persons shall have free use and access to any structure upon payment of dues approved by the Minister, the lessee shall permit all such persons upon payment of those due to have full and free liberty at all reasonable times to use the structures referred to in the provision and all rights of ingress and egress thereto and therefrom for such use.

35 Way of access

- (1) The Minister, on receipt of an application in that behalf from a lessee of a leased area or the owner or occupier of any land adjoining any such area, or without any such application, and after serving notice on the lessee and the owner or occupier of the adjoining land, may, if he thinks fit, determine a way of access to that adjoining land over a specified part of the leased area.
- (2) In determining a way of access under subclause (1), the Minister may impose such conditions on the lessee, and direct him to do such work for facilitating access, as the Minister thinks reasonable.

- (3) Any person who uses the lease-land for access otherwise than by the way determined as aforesaid commit an offence against these regulations, and is liable to a fine not exceeding £10:

provided that it shall be a defence in any proceedings for an offence against this subclause if the court is satisfied that any of the conditions imposed on or directions given to the lessee under this regulation have not been complied with.

36 Marking ways of access

Where a way of access over a leased area has been determined by the Minister, the lessee of the leased area shall, within the time determined by the Minister and notified to the lessee by notice in writing, mark and keep marked that way by posts showing at least 1.2 m above high water at ordinary spring tides, and each post shall bear at or near the top thereof a cross bar or batten painted white with the words “WAY OF ACCESS” painted thereon in black letters at least 7.5 cm in height.

Regulation 36: amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

37 Removal or destruction of marks

Every person commits an offence who without lawful authority removes, destroys, injures, or interferes with any marks required to be erected by or pursuant to these regulations, or defaces, obliterates, or interferes with any letters, numerals, attachments, lights, or signs displayed or attached to any such marks.

38 Returns

Every lessee shall forward to the Secretary the following returns:

- (a) *monthly*: within 14 days after the end of each month a return in the form supplied by the Secretary of the rock oysters picked either for marketing or for the purpose of maturing, or, if no such oysters have been picked, a “nil” return stating the reasons why no pickings were made during that month:
- (b) *annually*: on 1 June in each year a return in the form supplied by the Secretary showing the area under cultivation by reference to battens or trays set out for the collection of oyster spat and for the maturing of oysters.

39 Oyster stealing by lessee

There shall be an implied condition in every lease that if any lessee is convicted of stealing oysters from any leased area or of unlawfully receiving oysters stolen from a leased area or of any offence against Part 1 of the Fisheries Amendment Act 1965 or the Oyster Fishing Regulations 1946 (SR 1946/108), the Minister may, without payment of compensation, cancel the lease by notice published in the *Gazette*. Upon publication of such a notice all rights and priv-

ileges granted by the lease and the unexpired term thereof shall cease and determine.

Regulation 39: amended, on 19 August 1966, by regulation 29 of the Rock Oyster Farming Regulations 1964, Amendment No 1 (SR 1966/142).

40 Subleasing prohibited

The lessee shall not sublease or sublet the whole or any portion of any lease-land included in his lease.

41 Assignment of lease

The lessee shall not assign his lease, whether as to the whole or any part of the lease-land included therein, except with the prior consent in writing of the lessor.

Forfeiture of leases

42 Lease may be forfeited

- (1) Where the lessor has reason to believe that any lessee is not fulfilling the conditions of his lease in a bona fide manner according to their true intent and purport, the lessor, after holding inquiry into the case and giving the lessee an opportunity of explaining the non-fulfilment of the conditions and being satisfied that any one of the grounds specified in subclause (3) has been established, may, by notice in writing served on the lessee, declare the lease to be forfeited.
- (2) For the purposes of this regulation, the lessor may appoint such person or persons as the lessor thinks fit to hold due inquiry and hear the lessee and to report to the lessor on the same.
- (3) The grounds on which a lease may be declared forfeited may be any one of the following:
 - (a) that the rent or other payments under the lease have not been paid within 2 months after the time when payment was due:
 - (b) that the lessee has not used the lease-land comprised in the lease exclusively for his own use and benefit, or, while using the said land for his own use and benefit nominally, has permitted other persons to derive the virtual use and benefit thereof:
 - (c) that the lessee has not complied with the conditions implied in his lease by the Act or these regulations relating to the proper use and management of the lease-land for the cultivation of rock oysters, or with any other conditions expressed or implied in his lease:
 - (d) that the lessee has left New Zealand or cannot be found, or has abandoned the lease-land comprised in his lease, or is deceased and no claimant for the lease can be found.
- (4) Subject to a right of appeal to the Minister within 1 month after the date on which the notice that the lease has been declared forfeited has been served on

the lessee, where any lease is declared to be forfeited under this regulation, the interest of the lessee shall cease absolutely and determine as at the date of that declaration, and the lease-land comprised in the lease with all improvements thereon shall revert to the lessor, and the lessee shall not be entitled to any compensation.

- (5) The decision of the Minister on any such appeal shall be final.

Part 2

Renewal of lease and re-offering of lease-land

43 Renewal of leases

- (1) It shall be a condition of every lease that the lessor, on the application of the lessee made during the last year but one of the term of the lease, shall, if the lessor is satisfied that the lessee has substantially observed and performed the covenants and conditions of the lease and has complied with these regulations, grant a further lease at a rental to be determined in accordance with these regulations and subject to the provisions of these regulations and to such other terms and conditions as the lessor may determine.
- (2) The provisions of this regulation shall not be construed to give the lessee a right to more than 1 such further lease.

44 Preferment rights

- (1) Subject to the provisions of regulation 43, the lessee of any leased area who has, in the opinion of the lessor, substantially observed and performed the covenants and conditions of the lease shall have a preferment right to any lease of the leased area subsequently granted.
- (2) The preferment right shall arise where the lessee has made such an application during the period of 3 months immediately preceding the expiration of the renewal of the lease or of the lease of the further term.
- (3) The preferment right conferred by subclause (1) shall be a right, as against any other applicant, to a lease of the area or of a substantial part of the area.
- (4) Nothing in this regulation shall be construed to make it obligatory on the lessor to grant a lease of any area.

45 Offer of land for lease

- (1) The Minister, in the case of lease-land vested in the Crown, and the Harbour Board or local authority, in the case of lease-land vested in a Harbour Board or local authority, may offer by public tender or public auction the lease of any area of lease-land which becomes available for acquisition at a rental or subject to payment of royalties as may be prescribed pursuant to the Act.
- (2) It shall be a condition of any public auction or public tender at which a lease of any such area is offered that the successful bidder or tenderer shall pay, in add-

ition to the rental and any premium offered, the value of the improvements as determined under regulation 47.

- (3) If the successful bidder or tenderer is the lessee under the expired lease, the Minister or, as the case may be, the Harbour Board or local authority shall waive payment of the value of the improvements.
- (4) If the successful bidder or tenderer is not the lessee under the expired lease, the Minister or, as the case may be, the Harbour Board or local authority shall pay to that lessee when it is received the value of the improvements as determined under regulation 47 less any deductions provided for in that regulation.

46 Improvements to be purchased by incoming lessee

- (1) Where any lease-land is acquired by an incoming lessee pursuant to regulation 45, the value of the improvements shall be paid by him in cash before he is admitted into possession of the lease-land:

provided that the lessor may in his or it discretion allow the value of the said improvements to be paid by instalments over a period of years subject to such conditions as the lessor thinks fit:

provided also that in any case where the former lessee is entitled as hereinafter provided to receive payment of any amount in respect of the whole or any part of the value of the improvements, the lessor may, with the prior consent of the person entitled to receive the payment, allow the amount to be secured by way of mortgage to that person under such conditions as the lessor thinks fit.

- (2) All payments under subclause (1), other than any payments secured by mortgage given pursuant to the second proviso thereto, shall be made to the lessor. Where the lease-land is vested in the Crown, the payment shall be made to the department and shall be paid into a deposit account.
- (3) From the amount payable by the incoming lessee there shall be deducted—
 - (a) any money due to the lessor in respect of the lease-land by the lessee:
 - (b) any expenses incurred in recovering possession of the land and in respect of its redisposal.

47 Valuation of improvements

- (1) Where a lease expires and a new lease is granted to any person other than the outgoing lessee, the valuation of the improvements shall be as agreed upon between the outgoing and the incoming lessee.
- (2) Where no such agreement can be reached or where no offer has been received for the lease, the lessor may cause a valuation to be made in such manner as the lessor directs of the improvements effected or purchased by the outgoing lessee.
- (3) As soon as possible after the valuation referred to in subclause (2) is made, the lease shall be offered for acquisition in accordance with the provisions of these

regulations weighted with the value of the improvements effected or purchased by the outgoing lessee, as determined by that valuation.

- (4) Where the lessor is of the opinion that the disposal of a lease is being hindered by reason of the value of the improvements as provided for in this regulation being excessive, the lessor may in his or its discretion from time to time reduce the value of the improvements and again offer the lease for acquisition. No claim shall be against the lessor by reason of any such reduction of valuation.
- (5) For the purpose of any valuation provided for in this regulation, the lessor may establish a board composed of not more than 3 persons to consider and report on the value of the improvements and the lessor may after considering any such report determine the value of the improvements.
- (6) The lessor shall, if so requested by the outgoing lessee, establish the board referred to in subclause (5), and the board shall give opportunity for the outgoing lessee to be heard and receive evidence and submissions made on his behalf.
- (7) A fee of £20 shall be payable by the lessee to the lessor before a board is established under subclause (6).

Part 3

Management of oyster farms and lease-land

48 Lessees to utilise leased areas

It shall be the duty of the lessee of every leased area during the first year of the currency of the lease, and from year to year thereafter, to take steps for the proper utilisation of the leased area for the cultivation of rock oysters by the laying out of such material for the catchment of spat or by laying out spat or young rock oysters to mature or by taking such other steps as may be necessary or desirable for the use of the area for the artificial culture of rock oysters.

49 Report on cultivation

On the grant of any lease and from time to time thereafter, the Secretary shall furnish or cause to be furnished to the Minister a report on the steps taken to cultivate the leased area, and it shall be indicated therein whether sufficient use is being made of the area for the production of rock oysters.

50 Lessee to facilitate inspection

It shall be the duty of every lessee to facilitate by all reasonable means the exercise by the Secretary or any officer authorised by the Secretary in that behalf entry and access at all times upon the leased area for the purposes of obtaining information as to the condition of the leased area and to permit the examination of the structures on the area and the oysters growing or stored thereon, and to do all things reasonable to enable that person to obtain information relevant to the preparation of a report on the area.

51 Cultivation

- (1) It shall be a condition of every lease that the Minister, on receipt of a report from the Secretary that any area is being so overstocked or stripped of oysters or otherwise so mismanaged that the production of oysters thereon has been or is likely to be so prejudicially affected or so reduced as to threaten its partial or total destruction as an oyster-bearing area, may, by notice in writing, require the lessee in any such area to take such action as may be specified in the notice with a view to remedying the position.
- (2) Any lessee who fails to take such action as may be specified in the notice referred to in subclause (1) commits an offence.
- (3) Any person whose lease has been forfeited for failure to comply with this regulation may not be granted a lease for a period of 5 years from the date of conviction for an offence against this regulation.

52 Closure of areas

- (1) If the Minister, on receipt of a report from the Secretary, is satisfied that the whole or any part of any area used for the cultivation of rock oysters is diseased, affected by marine pests, or contaminated or likely to be contaminated by sewage or other cause to such an extent as to render the rock oysters thereon unfit for human consumption or dangerous to human life or to such an extent that the production of oysters in the area is likely to be prejudiced, he may, by notice in the *Gazette*, declare any such area to be diseased, affected by marine pests, contaminated, or likely to be contaminated.
- (2) In so declaring any area to be diseased, contaminated, or likely to be contaminated, the Minister may in the notice prohibit the taking of rock oysters from any such area, or he may determine conditions under which rock oysters may be taken from any such area.
- (3) In determining the conditions under which rock oysters may be taken from any area to which this regulation refers, the Minister may generally notify conditions in the *Gazette* or he may, by notice in writing served on a lessee or lessees in the area affected, require such steps to be taken for the inspection, purification, and treatment of rock oysters so taken as he considers necessary, or he may specify such steps to be taken by a lessee or lessees in the area to rid the area of disease or contamination as he thinks fit.
- (4) Any conditions notified by the Minister or requirements determined by him pursuant to this regulation may include the destruction or removal of any structures, or oysters, or any material in the leased area.
- (5) The Minister may, by a like notice, rescind wholly or in part any notice given pursuant to this regulation, or he may amend any such notice.
- (6) Where in any area the taking of rock oysters has been prohibited by the operation of this regulation, the Minister may release the lessee or lessees in the

area from payment of rent for the period of the prohibition or for a period of 4 successive years, whichever is the shorter.

- (7) It shall be a condition of every lease that no compensation shall be payable for any loss sustained by any lessee by reason of any requirement issued pursuant to this regulation.
- (8) It shall be the duty of every lessee to take steps to keep the leased area free from disease, contamination, or infestation by pests that may be within his knowledge or resources.
- (9) Every person commits an offence who fails to comply with any declaration or notice issued pursuant to this regulation.

53 Spelling of areas

Any lessee may, with the written consent of the Minister, spell any area or such parts thereof for such period or periods as the Minister may approve, and the provisions of these regulations relating to the usage of an area for rock oyster cultivation shall not apply during that period or those periods.

54 Disposal of waste

- (1) Every person commits an offence who deposits or casts any used or waste material, posts, stakes, battens, rubbish, or other material (including shell) in any leased area, and is liable to a fine not exceeding £50.
- (2) Every person commits an offence who fails to remove to the satisfaction of the Secretary any of the waste material or rubbish referred to in subclause (1) within 7 days of the receipt of a notice addressed to him by the Secretary requiring him to remove that material, and is liable to a fine not exceeding £50.

55 Diseased or contaminated oysters

- (1) Every person commits an offence who knowingly sells, offers for sale, consigns for sale, or exposes for sale any diseased rock oysters or any contaminated rock oysters not in a fit condition for food.
- (2) Every person commits an offence who, without the prior consent of the Minister given in writing, knowingly removes diseased or contaminated oysters from one leased area to another leased area or who knowingly places or casts any such oysters into any tidal water.
- (3) Every person commits an offence who knowingly sells, offers for sale, consigns for sale, or exposes for sale any rock oysters taken from any area that is for the time being subject to the declaration or notice of any requirements under regulation 52 except in compliance with any conditions specified in the declaration or notice.

56 Unmarketable oysters

- (1) A rock oyster which, unopened, will pass through a firm circular metal ring having a clear inside diameter of 37 mm shall be deemed to be an unmarketable oyster.
- (2) No person shall take, consign, sell, or offer for sale any unmarketable oysters: provided that it shall not be an offence for a lessee to remove unmarketable oysters from one leased area to another leased area nor to sell or dispose of unmarketable oysters to another lessee for the purpose of maturing those oysters on a leased area.
- (3) No person shall acquire by any means whatsoever any unmarketable rock oysters except for the purpose of maturing those oysters on a leased area.

Regulation 56(1): amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

57 Marketing of oysters

- (1) All containers of rock oysters (whether in the shell or otherwise) taken from a leased area shall be marked with the number of the leased area from which they were taken.
- (2) Every person commits an offence who for the purposes of sale consigns oysters to any destination in any container not marked as provided for in this regulation.

58 Use of oysters

- (1) Except as provided in subclause (2), no person shall use for any purpose other than as food rock oysters cultivated on any leased land.
- (2) The Minister may authorise in writing the use of oysters unfit for food for such purposes as he may specify in writing given to a person applying for a permit to use such rock oysters for those purposes.

59 Oysters not to be taken between sunset and sunrise

- (1) No person shall remove rock oysters from any lease-land during the hours between sunset and sunrise.
- (2) Any person who between the hours of sunset and sunrise is found on any tidal water in a boat containing rock oysters (not being a boat engaged in overseas or coastwise carrying trade) shall, until the contrary is proved, be deemed to have taken the oysters in breach of subclause (1).

Part 4

Miscellaneous provisions

60 Fees and other payments

Until such time as any deposit, fee, or rental prescribed or determined by or under these regulations or any royalty prescribed pursuant to the Act has been paid, the lessor or the Secretary may decline to do any act or permit any act to be done, or to receive any document in respect of which the payment is due.

61 Lease-land required for public purposes

Nothing in these regulations shall derogate from the provisions of any other enactment providing for the acquisition of lease-land for any public purpose.

62 Protection of harbour works

- (1) It shall not be lawful for the lessee of any leased area which includes any works, plant, or equipment for the improvement, protection, management, or utilisation of a harbour to remove, displace, disturb, or damage in any way any such works, plant or equipment, or to do anything which may cause any such works, plant, or equipment to be damaged or to become ineffective.
- (2) Any person acting in contravention of this regulation shall, in addition to any penalty under these regulations or any other enactment, be liable to pay compensation to the Harbour Board or, where the powers and duties of a Harbour Board are vested in a local authority or the Governor-General, to the local authority or the Crown, as the case may be, for any damage to any works, plant, or equipment related to or arising out of his act.
- (3) It shall be lawful for the Minister to cancel, without payment of compensation, any lease held by any person convicted who contravenes this regulation.

63 Service of notices

- (1) Any notice or other document to be given to or served on any lessee for the purposes of the Act or these regulations may be given or served by causing the same to be delivered to that person, or to be left at his usual or last known place of abode or business or at the address stated by him in any application or other document under the Act or these regulations, or to be sent by registered letter addressed to him at that place of abode or business or address, or affixed upon any structure for the time being erected upon the lease-land referred to in the lease.
- (2) If there is at any time more than 1 lessee, service upon any or either lessee shall be good service on each and every lessee.
- (3) Service as aforesaid shall be good service notwithstanding that there may not be any legal representative of a deceased lessee appointed, and notwithstanding that the notice or document may not be addressed to any person by name.

- (4) Any notice sent by registered letter shall be deemed to be served at the time when it would be delivered at its destination in the ordinary course of registered post.
- (5) If at any time a lessee changes his address to one that is different from that given in the application for his lease, he shall forthwith notify the Secretary in writing of the change.

Regulation 63(5): inserted, on 19 August 1966, by regulation 30 of the Rock Oyster Farming Regulations 1964, Amendment No 1 (SR 1966/142).

64 Notification of cancellation or forfeiture of lease

Where any lease that is registered under the Land Transfer Act 2017—

- (a) is cancelled by the Minister pursuant to section 6 of the Act; or
 - (b) is cancelled or forfeited pursuant to any provision of these regulations,—
- the Minister or, as the case may be, the lessor may send notice of the cancellation or forfeiture to the Registrar-General of Land, who shall enter a memorial thereof on the register.

Regulation 64: amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

65 Offences

- (1) Every person commits an offence against these regulations who, without lawful excuse, proof of which excuse shall lie on him, acts in contravention of, or fails to comply with, any provisions of these regulations.
- (2) Except as otherwise expressly stated in these regulations, every person who commits an offence against these regulations is liable to a fine not exceeding £500 in addition and without prejudice to any other liability by way of revocation or suspension of lease or otherwise to which he may be exposed.

66 Offences punishable on conviction

Every offence against these regulations shall be punishable on conviction.

Regulation 66 heading: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Regulation 66: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Schedule

Form 1

Application for a lease for an oyster farm

r 4(3)

Rock Oyster Farming Act 1964

(Notes for guidance in completing this application are attached)

The Secretary for Marine (or [*name*] Harbour Board) (or [*name of local authority*]):

I/We the undersigned hereby apply under the provisions of the Rock Oyster Farming Act 1964 and the regulations made thereunder for a lease for a term of [*number*] years¹ for the purpose of oyster farming of the area² shown in the attachment and described hereunder.

I/We submit the following particulars in support of this application:

1³

Surname(s)	Christian name(s) in full	Residential address(es)	Age	Occupation(s)
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2 Name and business address of person to whom correspondence should be addressed:⁴

Name: [*specify*]

Address: [*specify*]

Telephone number: [*specify*]

Exchange: [*specify*]

3 Locality and description of area:⁵ [*specify*]

4 Area in hectares: [*specify*]

5 Detail of structures to be erected:⁶ [*specify*]

6 Adjoining land is owned or controlled by: [*specify*]

7 Notice of this application for a lease of the area comprised in this application was first published in the [*name of newspaper*] on [*date*] and again in the [*name of newspaper*] on [*date*] and a copy of the notice was posted by registered post to [*insert name and address of registered proprietors of land adjoining foreshore or the foreshore reserve contiguous with the foreshore or, where that land is a domain or national park or public reserve, name of Domain Board or National Park Board or administering body of reserve*] on [*date*] as required under the Rock Oyster Farming Act 1964, and the area was marked on the ground on [*date*] and remained marked until [*date*].

I/We enclose:

(a) the sum of £10.

- (b) 2 copies of each page of the newspaper giving notice in the prescribed form of this application.
- (c) 2 copies of a vertical aerial photograph annotated to show clearly thereon the boundaries of the area comprised in this application and its relationship to adjacent land-boundary surveys or survey marks whose position is recorded in the survey records of the Department of Lands and Survey.
(or, where no such aerial map is available)
- (c) 2 copies of a plan showing the boundaries of the area comprised in this application and its relationship to adjacent land-boundary surveys or survey marks whose position is recorded in the survey records of the Department of Lands and Survey.

I/We undertake on the grant of a lease of the area comprised in this application to take steps to develop an oyster farm on the area in compliance with the provisions of the Rock Oyster Farming Act 1964 and any regulations made thereunder.

Date:

Signature:

Date:

Signature:

Date:

Signature:

Notes

- 1 The maximum period provided for in the Act is 14 years.
- 2 A separate application is required in respect of each area to be comprised in a lease.
- 3 It is essential that the full name including Christian name be given together with residential address and occupation.
- 4 Where more than 1 applicant is involved, the name, etc, of the person designated to manage the partnership must be given.
- 5 General description must be given sufficiently accurately to identify the area including the access to it for inspection purposes.
- 6 Outline nature of proposed structures for spat catching and for maturing oysters, stating size of timber to be used as bearers and posts, fastenings to be used, and depth of posts into the ground. Details of any other structures proposed to be erected, eg, sheds, jetties, fences, must be given. Use separate sheets as necessary and attach plans of structures other than growing racks.

Schedule form 1: amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

Schedule form 1: amended, on 19 August 1966, by regulation 28(2) of the Rock Oyster Farming Regulations 1964, Amendment No 1 (SR 1966/142).

Form 2
Notice of application for a lease for an oyster farm

r 8

Rock Oyster Farming Act 1964

I [*full name*] of [*residential address*] pursuant to the above Act hereby give notice that I have applied for a lease of the area described hereunder for the purpose of developing a rock oyster farm.

Any objection to the granting of a lease of the area applied for must in terms of section 4 of the Rock Oyster Farming Act 1964 be addressed to the Secretary for Marine and must be lodged with the Marine Department, Auckland, not later than [*date*].

This is the (first) (second) publication of this notice (which was first published on [*date*]).

A plan of the area comprised in the application has been lodged with the Marine Department at Auckland.

Area

All that area situated in [*specify*] and marked in accordance with the Rock Oyster Farming Regulations 1964.

Form 3
Oyster farm lease

r 11(4)

Whereas lease-land within the meaning of the Rock Oyster Farming Act 1964 (hereinafter referred to as the said **Act**) is vested in Her Majesty the Queen (*or* the [*name*] Harbour Board) (*or* [*name of local authority*]) (hereinafter referred to as the **Lessor**)

And whereas [*full name, occupation, and address*] in New Zealand has duly applied under the provisions of the said Act to the Secretary for Marine (hereinafter referred to as the **Secretary**) (*or* to the [*name*] Harbour Board) (*or* to [*name of local authority*]) for a lease of lease-land hereinafter described for the purpose of developing an oyster farm for the cultivation of rock oysters

And whereas all things required by law have been done to enable a lease of the land to be duly granted

And whereas the Minister of Marine (hereinafter referred to as the **Minister**) (*or, as the case may be*) is empowered under the said Act to grant a lease of the land

Now therefore in pursuance of the provisions of the said Act the Lessor

Hereby leases to the said [*full name*] (who with his executors, administrators, and permitted assigns is hereinafter referred to as the **Lessee**)

All that piece or parcel of lease-land containing [*number*] hectares more or less and situated in [*specify*] and as delineated in the plan recorded in the Marine Department at Wellington and numbered MD [*specify*] (*or such fuller description as may be necessary where registration in the Land Registry Office is intended*) (hereinafter referred to as the **leased area**)

And grants to the Lessee the exclusive right during the currency of this lease of laving and planting rock oysters on structures erected in the leased area and of taking rock oysters from those structures

To hold the leased area as an oyster farm for the term of [*number*] years commencing on [*date*]

But subject always to the provisions of the said Act and any regulations thereunder and to the reservations, exceptions, conditions, and provisions herein contained

Yielding and paying therefor as hereinafter mentioned the yearly rent of [*number*] pounds [*number*] shillings [*number*] pence together with any royalty payable pursuant to the said Act

And it is hereby declared that all conditions and provisions contained in the said Act and any regulations thereunder are, so far as the same are applicable, embodied and incorporated in these presents as covenants, conditions, and provisions of the lease hereby expressed to be granted

And it is hereby further expressly declared as follows:

- 1 That the Lessee shall and will duly pay annually in advance to the Secretary (Lessor) the rent hereby reserved on or before the anniversary of the commencing date herein mentioned.
- 2 That the Lessee will utilise and cultivate in a proper manner the leased area as an oyster farm and in accordance with the said Act or any regulations, notices, or requirements made or issued pursuant thereto.
- 3 That the lessee shall, subject to and in accordance with the provisions of the said Act and any regulations thereunder, mark and keep marked the boundaries of the leased land, any way or ways of access duly determined by the Minister or required herein, and any navigational marks required to be erected and maintained until released by the Minister from such obligation.
- 4 That the Lessee shall take such steps as may be necessary to keep the leased area free from disease, contamination, or the possibility of contamination as may be within his resources or as may be required by the Minister or the Secretary (the Lessor) in the exercise of their powers under the said Act and any regulations thereunder.
- 5 That the Lessee will maintain in good order and repair the structures authorised herein to be erected and will not permit any structure so to deteriorate through want of repair as to become a potential hazard to navigation or to constitute a despoilment of the area.
- 6 That the Lessee will permit the lawful occupier of any land upon which the leased area abuts to pass and repass from and to that land (*where a way of access has been defined under the Rock Oyster Farming Regulations 1964, add by means of a way of access defined pursuant to regulations under the said Act*).
- 7 That the Lessee will hold the leased area exclusively for his own use and benefit.
- 8 That if required by the Lessor to do so the lessee will forthwith (*or before [date]*) at his own expense cause the leased area to be surveyed and a plan prepared and certified by a registered surveyor setting out the area in rectangular 2-hectare lots (be the same a little more or less) and access ways and will deposit 2 copies of the said plan with the Secretary (Lessor).
- 9 That the Lessee will accept any modification of the boundaries of the leased area as may be determined by the Lessor for the purpose of rectifying errors or for more clearly defining the boundaries.
- 10 That the Lessee will at his expense and if required by the Lessor to do so remove any or all structure or structures on the leased area and restore the area to its original condition as existing before the area was leased to him or to his predecessors.
- 11 That the Lessee accepts full responsibility as occupier of the leased area within the meaning of the Occupiers' Liability Act 1962.

- 12 That the Lessee will permit and facilitate free ingress, passage, and egress to the Secretary and any person designated by the Secretary (*or* any person designated by the Lessor) and all other persons acting in the execution of their duty in pursuance of any enactment, through, over, and out of the leased area.
- 13 That the Lessee will promptly comply with any notice served upon him by the Lessor in respect of the determination of a way of access through the leased area.
- 14 That the Lessee will not during the currency of this lease remove or take oysters or permit or cause oysters to be removed or taken from the leased area or any part thereof—
 - (a) at any time during which payment of the rent hereby reserved or royalty prescribed pursuant to the said Act shall be in arrear unless the written consent of the Lessor shall have been previously obtained.
 - (b) at any time between sunset and sunrise.
 - (c) at any time during which the taking of oysters from the leased area or any part thereof is prohibited under any notice under the said Act or regulations thereunder for the time being in force.
- 15 That the Lessee will not at any time during the currency of this lease or at any other time make any claim for alleged damage of any kind whatsoever to the leased area or in anywise connected therewith arising out of or through the construction and maintenance of any harbour works by the Lessor or any other authority authorised to so do by the Lessor.
- 16 That the Lessee will erect in the leased area only the following structures:
 - (a) posts and bearers comprising stands for the laying out of battens horizontally for the collection of rock oyster spat and for battens and trays for the maturing of rock oysters.
 - (b) [*insert description of other structures.*]
 - (c) [*insert description of other structures.*]
- 17 [*Insert any further conditions applicable.*]

That there is reserved to the Lessor the right to grant to the owner or lawful occupier of land abutting on the leased area or separated therefrom merely by the foreshore or by the foreshore reserve contiguous with that area authority to erect under licence on that part of the foreshore adjoining or opposite that land boatsheds, landing places, wharves, stores, freezing works, cool chambers, and bathing sheds of such kinds as may be permitted under any enactment and upon the issue of such a licence the Lessee will allow the aforesaid structures to be erected, used, repaired, and renewed by the said owner or occupier and his tenants, servants, and agents and the Lessee shall not be entitled to any compensation or diminution of rental by reason of the erection, use, repair, and renewal of any such structure.

That nothing in this lease expressed or implied shall abridge or in any way curtail or affect the reclamation rights conferred by any enactment on the Lessor nor the right

of the Lessor to carry out public works upon the area leased or in its immediate vicinity and the Lessee shall not be entitled to any compensation in respect thereof.

[*To be omitted in the case of a renewal lease*] That subject to the leased area not being required for any public purpose and subject to a revaluation of the rental hereinbefore prescribed the Lessee shall if he so requires on the expiration of the said period of [number] years be entitled to a renewal of this lease for a further period of [number] years from the date of expiry of the lease.

Provided always that should the leased area be required for protective works or any other harbour works the Lessor may at any time determine this demise by 3 calendar months' notice in writing to the Lessee and on the expiration of that notice the tenancy hereby created shall determine and the Lessee shall have no claim against the Lessor for compensation on any account whatsoever by reason of that determination other than a claim for refund of a proportionate part of any rent paid in advance prior to that determination and it is hereby declared that in the event of a determination as aforesaid the Lessor will give preference to the Lessee to a lease of any similar area of lease-land which may at the time of the determination be available for acquisition.

Provided always that these presents are upon this express condition that if and whenever the rent hereby reserved or any royalties payable by the Lessee or any part thereof are not paid as hereinbefore provided or there is a breach or non-observance by the Lessee of any other condition or provision herein expressed or implied and on the part of the Lessee to be observed or performed the Lessor may, by notice published in the *Gazette*, cancel and forfeit this lease and upon the publication of the notice these presents shall become of no effect and the term hereby granted shall absolutely cease and determine but without releasing the Lessee from liability in respect of the breach, non-observance, or non-performance of any condition or provision herein expressed or implied.

Provided further and it is hereby declared that such of the provisions and conditions of this lease as require or prescribe any act or thing to be done or not to be done by the Lessee shall, in addition to being read and construed as conditions of this lease, be also read and construed as covenants by the Lessee with the Lessor and Her (its) successors to observe and perform the said provisions and conditions.

The term **Minister** when herein used shall include the Minister of Marine for the time being or other Minister of the Crown for the time being charged with the administration of the said Act and the term **Secretary** shall include the person so defined in the said Act and a person who by the provisions of the Shipping and Seamen Act 1952 is for the time being his appointed deputy.

The Lessee the said [full name] hereby accepts this lease of the above-described lands to be held by him as tenant and subject to the conditions, restrictions, and covenants above set forth.

Date:

Signed by the Honourable [*name*] Minister of Marine for and on behalf of Her Majesty the Queen, as Lessor; in the presence of [*name*] (*or, as the case may be in the case of a Harbour Board or local authority*) [*name*].

Signed by the said [*name*] as Lessee in the presence of [*name*].

Schedule form 3: amended, on 25 July 1975, by regulation 2(1) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

T J Sherrard,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 17 December 1964.

Rock Oyster Farming Regulations 1964, Amendment No 1 (SR 1966/142)

Bernard Fergusson, Governor-General

Order in Council

At the Government House at Wellington this 17th day of August 1966

Present:

His Excellency the Governor-General in Council

Pursuant to the Rock Oyster Farming Act 1964, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

Regulations

1 Title and commencement

- (1) These regulations may be cited as the Rock Oyster Farming Regulations 1964, Amendment No 1, and shall be read together with and deemed part of the Rock Oyster Farming Regulations 1964 (SR 1964/207) (hereinafter referred to as the “principal regulations”).
- (2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

Part 1

Licences to pick rock oysters

2 Interpretation

In this Part and in any licence, unless the context otherwise requires,—

employee in relation to a lessee means an agent, independent contractor, or servant of a lessee

employee’s licence means a licence issued in respect of an employee of a lessee

lessee’s licence means a licence issued to a lessee

licence means a lessee's licence or an employee's licence granted under this Part authorising the licensee to pick rock oysters

lot means a quantity of rock oysters measured in the shell and not exceeding 18 litres

Secretary means the Secretary for Marine appointed under the Shipping and Seamen Act 1952; and includes any officer of the Marine Department authorised by the Secretary to do anything on his behalf

supervising fishery officer means a fishery officer whom the Secretary has designated in a licence to supervise the picking of oysters, or their removal from the vicinity of a rock oyster bed.

Regulation 2 **lot**: amended, on 25 July 1975, by regulation 2(2) of the Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192).

3 Application of this Part

The provisions of this Part shall apply to every licence, except in so far as they are expressly negated or modified by or are inconsistent with the express conditions of a licence.

4 Licences not to derogate from other Acts or regulations

Nothing in any licence shall derogate from the provisions of the Act, the Fisheries Act 1908, or any regulations thereunder (except in so far as authorised thereby), and in any case where an ambiguity or inconsistency arises the provisions of the enactment or regulation, as the case may be, shall prevail over the provisions of the licence.

5 Limitations on taking or receiving rock oysters

Subject to any other enactment or regulation to the contrary, every person, whether or not he is a lessee or lessee's employee, commits an offence against these regulations if, otherwise than pursuant to a licence for the time being in force, he—

- (a) picks any rock oyster; or
- (b) receives into his possession any rock oyster which he knows has been unlawfully picked or removed as aforesaid.

6 Applications for licences

- (1) Any lessee may apply for a licence permitting the picking of rock oysters from any area, and the application may be for either—
 - (a) a lessee's licence for the lessee's own use; or
 - (b) an employee's licence for the use of any specified employee of the lessee:

provided that a lessee may not apply for an employee's licence if the employee in respect of whom the application is made is a person—

- (a) under 16 years of age; or
 - (b) whose fishing permit issued under Part 1 of the Fisheries Amendment Act 1963 has been forfeited pursuant to section 62 of the Fisheries Act 1908.
- (2) Every application for a licence shall be made to the Secretary in the form from time to time prescribed by him, and shall be accompanied by the fee prescribed by regulation 8.
- (3) The Secretary may require an applicant to give such additional relevant information as may be necessary to determine the application, and, until that information has been supplied, the Secretary shall be under no obligation to proceed with the determination.

7 False representation

- (1) Every person commits an offence against this Part who, by means of any false pretence, induces or attempts to induce the Secretary to issue a licence to him or to an employee.
- (2) For the purposes of this regulation, the term **false pretence** shall have the same meaning as defined in section 245 of the Crimes Act 1961.

8 Fees

The fee payable on application for a licence shall be in accordance with the following scale:

	£	s	d
(a) a lessee's licence— for each lot authorised to be taken under the licence	0	1	0
(b) an employee's licence— for each licence	1	0	0
(c) for any duplicate licence issued in lieu of a licence lost, destroyed, or defaced	0	10	0

9 Form of licence

- (1) Every licence shall be in such form as the Secretary may prescribe, but shall nevertheless contain the following:
- (a) in the case of a lessee's licence—
 - (i) the name and address of the lessee and the legal description of his leased area:
 - (ii) the name and address of each employee of the lessee who has been granted a licence to pick rock oysters for or on behalf of the lessee:
 - (iii) the number of lots authorised to be picked under the licence:
 - (iv) the area or areas from which the rock oysters may be picked and the number of lots which may be taken from each area:

- (v) the period for which the licence is issued:
- (b) in the case of an employee's licence—
 - (i) the name and address of the holder of the licence:
 - (ii) the name and address of the lessee and the legal description of the leased area or areas of the lessee:
 - (iii) the number of lots authorised to be picked under the licence:
 - (iv) the areas from which rock oysters may be picked and the number of lots which may be taken from each area:
 - (v) the period for which the licence is issued.
- (2) Every licence shall have endorsed thereon such terms and conditions additional to those expressed or implied in these regulations as the Secretary may determine as applicable in any particular case.

10 Grant of licences

- (1) The Secretary may grant, or refuse to grant a licence, or grant a licence on such conditions as may be authorised by these regulations, and, on granting a licence, shall designate the area or areas from which rock oysters may be picked.
- (2) No employee's licence may be granted in respect of any person unless the lessee by whom he is employed is the holder of a lessee's licence.
- (3) No licence authorising the picking of less than 100 lots during the period for which it is issued may be granted.
- (4) Any person whose application for a licence has been declined may appeal to the Minister, who shall forthwith determine the appeal after consideration of the issues. The appellant shall submit his case in writing to the Minister. The decision of the Minister shall be final.

11 Conditions of licences

- (1) It shall be lawful for licences to be issued containing conditions in respect of the following matters:
 - (a) the places or waters designated in the licence from which rock oysters may be picked:
 - (b) the size or quality of rock oysters which may be picked:
 - (c) the methods of picking:
 - (d) the disposal of debris:

provided that if the Secretary notifies the lessee in writing of any conditions relating to the foregoing matters which have been subsequently imposed, those conditions shall be deemed to be incorporated in the licence as from the date of notification, or the date when the notification would be received in the ordinary course of post, as the case may be.

- (2) It shall be an implied condition of every licence issued under these regulations that the lessee will put out in his leased land in an approved manner 4 approved battens (or other approved material for the catching of rock oyster spat) in respect of each lot of oysters picked.
- (3) The battens (or other approved material) shall be put out within such period as the Secretary may specify in the licence, or notify the lessee in writing.
- (4) It shall be the duty of the lessee to maintain the structures and the spat catching material and to cultivate the rock oysters growing thereon to the best of his knowledge and ability until the spat collected or a substantial proportion thereof, has matured to such a size that it has ceased to be an unmarketable oyster as defined in regulation 56 of the principal regulations.
- (5) Every rock oyster taken pursuant to a licence by or on behalf of a lessee shall be put out on trays or other approved material, and the lessee shall not sell or otherwise dispose of any oyster so taken until the expiration of 3 months from the date on which it was picked:
provided that the Secretary may authorise, under such conditions as he may determine,—
 - (a) the transfer of rock oysters (being rock oysters picked pursuant to a licence) from one leased area to another; or
 - (b) the destruction or disposal of oysters so picked if it appears that—
 - (i) they are unlikely to mature to a marketable size; or
 - (ii) they are infected with any disease, affected by marine pests, or affected by any other cause to such an extent as to render them unsuitable for cultivation or unfit for human consumption.
- (6) The provisions of this regulation shall not in any way be limited by anything in regulation 30 of the principal regulations.

12 Validity of licences

- (1) No lessee's permit shall become valid until the lessee to whom it has been issued has signed his name, written in his usual handwriting in the place provided for that purpose.
- (2) No employee's licence shall become valid until the lessee on whose behalf the permit was issued and the employee named therein have signed their names, written in their usual handwriting in the places provided for that purpose.
- (3) Any licence issued under these regulations shall cease to be valid in any case where the lessee in respect of whom it has been issued is in arrears with payment of rent or royalties due under his lease.
- (4) The signature of a lessee on any lessee's or employee's licence shall be deemed to be acceptance of the conditions of the licence, including those imposed by these regulations.

- (5) A licence holder shall not pick rock oysters between the hours of sunset and sunrise.
- (6) A licence shall remain in force until the expiry date specified therein, and shall expire with that date. If no expiry date is specified, the licence shall remain in force until the expiration of 3 months from the date of issue.
- (7) It shall be the responsibility of a lessee, on whose application a licence has been issued, to surrender forthwith that licence to the Secretary, or to the supervising fishery officer named therein, as soon as it has expired or has been lawfully cancelled, whichever first occurs.

13 Offence to use expired or cancelled licences

Every lessee or lessee's employee commits an offence against these regulations if, with intent to deceive, he uses or attempts to use as valid any licence which has expired, or has been cancelled, or is otherwise invalid.

14 Obligations of lessees to notify the Secretary, etc, of employee ceasing to be employed by him

- (1) The lessee shall forthwith obtain any licence held by an employee who has ceased to be employed by him, and shall return it to the Secretary or the supervising fishery officer.
- (2) If for any reason the lessee fails to obtain a licence from an employee formerly employed by him, he shall immediately notify the Secretary or the supervising fishery officer of the fact and also that the employee named in the licence has ceased to be employed by him.
- (3) An employee's licence shall be deemed to be cancelled as soon as the employee named therein ceases to be employed by the lessee.

15 Licence not to confer right of entry

A licence shall not be deemed to confer a right of entry on any land without the consent of the lawful occupier thereof.

16 Defacing of licences

Every person who, with intent to deceive, alters or obliterates any particulars endorsed on any licence, or who defaces a licence, commits an offence against these regulations.

17 Licences not transferable

- (1) No licence shall be transferable or be deemed to authorise any person who is not the lawful holder thereof to pick rock oysters or receive them into his possession.
- (2) Every person commits an offence against these regulations if,—
 - (a) he uses or attempts to use a licence of which he is not the lawful holder;
 - or

- (b) being a licence holder,—
 - (i) he transfers any licence to any other person; or
 - (ii) he permits any other person to pick oysters pursuant to his licence; or
 - (iii) he facilitates or connives at the unlawful picking of oysters by giving his licence to another person.

18 Licence to be produced

- (1) Every person who is picking rock oysters in any place, or who is in possession of rock oysters, shall on the demand of any fishery officer or constable give his true name and place of residence and, on like demand, produce and show to any such officer or constable his licence and the contents of his bag, container, or receptacle, including any receptacle which is part of a vehicle, and, if required to do so, shall make or give, legibly and clearly, a specimen signature for comparison with the signature of the holder which is endorsed on the licence as required by regulation 12.
- (2) Every person commits an offence against these regulations if he—
 - (a) refuses to produce his licence; or
 - (b) fails to produce his licence when lawfully required to do so; or
 - (c) produces a licence of which he is not the lawful holder; or
 - (d) forges the name of the person who is named in the licence as the holder:
provided that no person shall be deemed to have committed an offence against paragraph (b) if he produces his licence to a fishery officer or other officer of the Marine Department within 7 days of the original demand.
- (3) If it appears to the fishery officer or constable that the person found picking or in possession of oysters as aforesaid is not the person named in a licence produced by him as the holder, that person commits a further offence against these regulations if, after being required to do so by the officer or constable, he—
 - (a) refuses to disclose his true name or place of residence; or
 - (b) gives a false name or address; or
 - (c) gives a description of his place of residence that is illusory for the purpose of discovery.

19 Modification of licences

- (1) The Secretary may at any time, for the purpose of preserving a bed or ensuring that a bed is not unduly depleted, amend, modify, extend, or cancel any of the conditions specified in a licence (not being any conditions expressed or implied by these regulations).

- (2) No compensation shall be payable to a lessee by reason of the exercise of the powers of the Secretary under this regulation, provided the powers are exercised reasonably, having regard to all the circumstances of the case.
- (3) The Secretary shall notify the lessee in writing of the amendment to, or modification, extension, or cancellation of, any conditions of a licence and that amendment, modification, extension, or cancellation as the case may be shall be deemed to be incorporated in the licence as from the date of notification, or the date when the notification would be received in the ordinary course of post.

20 Cancellation of licences

- (1) A licence shall be deemed to be cancelled if—
 - (a) the lease associated with the issue of the licence has been surrendered, or has been forfeited under regulation 42 of the principal regulations; or
 - (b) the lessee, or in the case of an employee's licence the employee of the lessee, is, during the currency of the licence, convicted of an offence against the Act, or against any regulations made thereunder (including these regulations), or against Part 1 of the Fisheries Act 1908 or any regulations made under that Part; or
 - (c) the lessee, or in the case of an employee's licence the employee, dies.
- (2) In any case where for any reason a lessee's licence is cancelled or ceases to be valid, every licence issued in respect of an employee of that lessee shall be deemed cancelled.
- (3) No licence holder whose licence has been cancelled by virtue of paragraph (b) of subclause (1) shall be eligible for a further licence until the expiry of 1 year from the date of conviction:
provided that in no such case shall a new licence be granted unless the approval of the Minister has been first obtained.

21 Duties of licence holders

- (1) Every licence holder shall—
 - (a) ensure that a minimum of injury is occasioned to every area designated in his licence from which he may pick rock oysters:
 - (b) dispose of all shell and debris resulting from picking operations in the manner specified in the licence:
 - (c) leave the rock or other surface to which the rock oysters have adhered clear of shell or debris in order to ensure the availability of a suitable surface for spat to settle in subsequent seasons.
- (2) Every person, before commencing to pick rock oysters pursuant to a licence, shall ascertain from the supervising fishery officer the size, class, and quality of rock oysters which may be picked, and it shall then be the responsibility of the officer to indicate—

- (a) examples of rock oysters that may be picked:
 - (b) the boundaries of the area from which rock oysters may be taken.
- (3) Every licence holder commits an offence if he knowingly picks or receives any rock oyster into his possession in contravention of subclause (2).

22 Rock oysters not to be removed except under supervision

- (1) No licence holder, and no person acting under the direction of the lessee, shall remove any rock oysters from the vicinity of the area from which they were picked until he has been authorised to do so by the supervising fishery officer.
- (2) Every supervising fishery officer shall, if so requested by the licence holder or person acting under the direction of the lessee produce his warrant of appointment.
- (3) The supervising fishery officer shall endorse in the space provided on the licence the number of lots which are being, or are about to be, removed from the designated area.
- (4) The Secretary may from time to time appoint a person other than the fishery officer named in the licence to supervise the removal of rock oysters as afore-said and the provisions of this regulation shall apply as if that person were a supervising fishery officer.

23 Ownership of rock oysters

All rock oysters picked pursuant to a licence shall be deemed to be the property of, and in the possession of, the lessee in respect of whose lease the licence has been granted.

24 Seizure of rock oysters

- (1) It shall be lawful for any fishery officer to seize and take possession of any rock oyster which he has reasonable and probable cause to believe has been unlawfully picked and also all receptacles, gear, implements, or other apparatus which are being used or which he has reasonable and probable cause to believe have been used or are intended to be used in contravention of these regulations.
- (2) Rock oysters seized pursuant to this regulation shall be disposed of in such manner as the Minister may determine, and the person from whom the rock oysters were seized shall not be entitled to any compensation:
provided that, if it is proved that the rock oysters were lawfully picked, he shall be entitled to receive the proceeds (if any) from the sale of the rock oysters taken from him.
- (3) In the case of all other property so seized, the property shall be retained by the Secretary pending the trial of the person for the offence in respect of which the property was seized, and shall be disposed of as follows:

- (a) on conviction of the person for any such offence the property shall be deemed to be forfeited to Her Majesty the Queen to be disposed of in such manner as the Minister directs:
- (b) if in any such proceedings the charge is dismissed, or if no such proceedings are commenced within 6 months after the seizure, the property shall be returned to the person last in possession thereof.

25 Offences and penalty

- (1) Every person commits an offence who does any act in contravention of or fails to comply with any provision of this Part.
- (2) Every person who commits an offence against these regulations is liable on summary conviction to a fine not exceeding £250, which shall be in addition and without prejudice to any other liability by way of cancellation of his licence under regulation 20 and forfeiture of any property under regulation 24.

26 Service of notices

- (1) Any notice or other document to be given to or served on any licence holder for the purposes of this Part may be given or served by causing the same to be delivered to that person, or to be left at his usual or last known place of abode or business or at the address stated by him in any application or other document under the Act or these regulations, or to be sent by registered letter addressed to him at that place of abode or business or address, or affixed on any structure for the time being erected upon the leased area in respect of which the licence was issued.
- (2) Any notice sent by registered letter shall be deemed to be served at the time when it would be delivered at its destination in the ordinary course of registered post.
- (3) If at any time a licence holder changes his address to one that is different from that given in the application for his licence, he shall forthwith notify the Secretary in writing of the change.

T J Sherrard,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Rock Oyster Farming Regulations 1964 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Land Transfer Act 2017 (2017 No 30): section 250

Criminal Procedure Act 2011 (2011 No 81): section 413

Rock Oyster Farming Regulations 1964, Amendment No 2 (SR 1975/192)

Rock Oyster Farming Regulations 1964, Amendment No 1 (SR 1966/142)