

1971/31



THE ELECTRIC FISHING MACHINE REGULATIONS 1971

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 15th day of February 1971

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Fisheries Act 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Electric Fishing Machine Regulations 1971.

(2) These regulations shall come into force on the 14th day after the date of their notification in the *Gazette*.

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

“Electric fishing machine” means any device, engine, or machine designed or used for the taking or killing by means of electric current of any species of fish or for the production of electro-narcosis of any species of fish; but does not include any electrical device erected in any waters for the purpose of preventing or controlling the movement of fish:

“Waters” means any salt, brackish, or fresh waters in New Zealand, or on the coasts or bays thereof; and includes private waters and artificial waters:

Other expressions defined in section 78 of the Fisheries Act 1908 have the meanings so defined.

3. Other regulations not affected—Nothing in these regulations shall be construed as authorising the taking of fish from any waters in contravention of the Freshwater Fisheries Regulations 1951*, or of any modification notices issued by the Minister pursuant to those regulations, or of any regulations under the Fisheries Act 1908 having force and effect only in specified districts or waters, or of the Fisheries (General) Regulations 1950†, or of any other regulations under the Fisheries Act 1908.

4. Certificate of competency and certificate of approval required for use of electric fishing machines—(1) No person shall use any electric fishing machine for the taking or killing of any species of fish in any waters, unless he holds a valid certificate of competency issued under these regulations authorising him to operate that machine, or fishing machines of the type to which that machine belongs.

(2) No person shall use any electric fishing machine for the taking or killing of any species of fish in any waters, unless there is in force in respect of that machine a valid certificate of approval issued under these regulations authorising its use under these regulations and in accordance with any conditions prescribed by these regulations.

(3) Notwithstanding the foregoing provisions of this regulation, no person shall use any electric fishing machine for the purpose of killing or processing fish in any premises used for the purpose of killing or processing fish.

5. Operator to be accompanied—No person shall operate an electric fishing machine unless he is accompanied by a person competent to assist him in dealing with emergency situations likely to arise.

6. Use of electric fishing machines—(1) Nothing in these regulations shall be construed as authorising any person to use an electric fishing machine for the purpose of taking fish for the purposes of sale without there being in force a valid fishing permit issued pursuant to Part I of the Fisheries Amendment Act 1963 authorising the taking of fish for the purposes of sale using any method involving the use of an electric fishing machine.

(2) Notwithstanding any provision of these regulations, no person shall use an electric fishing machine for the taking of fish without first obtaining the written permission of the acclimatisation society for the

*S.R. 1951/15 (Reprinted with Amendments Nos. 1 to 8: S.R. 1964/196)

Amendment No. 9: S.R. 1965/170

Amendment No. 10: S.R. 1966/208

Amendment No. 11: S.R. 1970/101

†S.R. 1950/147 (Reprinted with Amendments Nos. 1 to 8: S.R. 1966/20)

Amendment No. 9: S.R. 1967/112

Amendment No. 10: S.R. 1968/104

Amendment No. 11: S.R. 1968/218

Amendment No. 12: S.R. 1969/98

Amendment No. 13: S.R. 1970/62

Amendment No. 14: S.R. 1970/160

acclimatisation district in which the waters fished are situated, or of the Secretary for Internal Affairs in the case of a district administered by the Department of Internal Affairs.

(3) Where the acclimatisation society refuses to give the permission referred to in subclause (2) of this regulation, the society shall notify that fact to the Secretary for Marine. On receipt of that notification, the Secretary for Marine shall ascertain the grounds for the refusal, and shall report that refusal and the grounds thereof to the Minister of Marine, who, if he is satisfied that the grounds for refusing permission are unreasonable, shall issue the permission.

(4) The Secretary for Internal Affairs shall not refuse to give the permission referred to in subclause (1) of this regulation except after consultation by him with the Secretary for Marine.

7. Certificates of competency—(1) Certificates of competency having endorsed thereon any conditions applicable thereto issued under these regulations shall be signed by the Secretary for Marine, and shall be delivered to the person entitled thereto by a Superintendent of Mercantile Marine or other authorised officer of the Marine Department.

(2) Certificates of competency shall be in a form from time to time provided by the Secretary for Marine.

(3) The Secretary for Marine shall not issue a certificate of competency to any person, unless that person has attained the age of 18 years, and has attended a course of instruction and passed such examination as the Secretary from time to time prescribes as being a course and examination that ensures that the applicant for the certificate has shown such knowledge and ability in the use, handling, and maintenance of an electric fishing machine as to ensure the safety of the operator and other persons in the vicinity of the machine and the well-being of fish populations in the waters intended to be fished.

(4) No certificate of competency shall be of any effect until it has been signed by the person to whom it relates.

(5) If the Secretary for Marine believes that any person to whom a certificate of competency has been granted is not operating or maintaining an electric fishing machine in conformity with safe and effective practice, he may, by notice in writing to that person, suspend that certificate until that person has satisfied the Secretary by attendance at a course of instruction and passing such examination as the Secretary considers necessary in the interests of the safety of the operator and other persons in the vicinity of the machine and the well-being of fish populations that he is capable of using, handling, and maintaining an electric fishing machine in accordance with accepted safe practices.

(6) The Secretary for Marine may refuse to issue or may cancel any certificate of competency, if he is satisfied that the person to whom it relates should not be permitted to operate and maintain an electric fishing machine in the interests of his own safety or the safety of persons in the vicinity of the machine. Any person who has been refused a certificate or whose certificate has been cancelled pursuant to this regulation may appeal to the Minister, and the decision of the Minister shall be final.

(7) Where the holder of a certificate of competency under these regulations becomes a committed patient or a special patient of a hospital under the Mental Health Act 1969, his certificate of competency shall be deemed to be cancelled.

(8) Where the holder of a certificate of competency suffers any physical injury of a nature likely in the opinion of the Secretary for Marine to affect his ability to operate an electric fishing machine in safety, the Secretary may by notice in writing to the holder suspend the certificate until a registered medical practitioner nominated by the Secretary certifies to the satisfaction of the Secretary that in his opinion the person concerned is physically able to operate an electric fishing machine in safety.

8. Restriction on the issue of certificates of competency—(1) Subject to regulation 7 of these regulations, a certificate of competency may be issued only to a person who is sponsored, engaged, or employed by a Government department, a university, or a registered acclimatisation society, and shall have effect only while he is acting in either a paid or honorary capacity or under contract. Every such certificate shall be endorsed to indicate clearly the restrictions provided for in this regulation.

(2) Where any person holding a valid certificate of competency is engaged or employed by any person to take eels or is so engaged on his own behalf, he shall in writing notify the Secretary for Marine accordingly, and, in using any electric fishing machine for that purpose, shall be subject to such special conditions as the Secretary may specify, by notice in writing to that person, as to the use of the machine, including, but without limiting the generality of the conditions that may be specified, restrictions or requirements as to waters, areas, seasons, techniques, and quantities.

9. Certificates of approval of electric fishing machines—(1) Every certificate of approval of an electric fishing machine and any conditions applicable thereto issued under these regulations shall be signed by the Secretary for Marine and shall be valid for such period not exceeding 12 months as is specified therein.

(2) Certificates of approval shall be in a form from time to time provided by the Secretary for Marine.

(3) A certificate of approval shall be issued only in respect of an electric fishing machine which the Secretary for Marine is satisfied has been manufactured in accordance with specifications laid down from time to time by him and constructed by a person or manufacturer approved by the Secretary for the purpose.

(4) Before issuing any certificate of approval, the Secretary for Marine may require that the electric fishing machine shall be tested by such person or organisation as he specifies. The cost of such a test shall be borne by the applicant for the certificate.

(5) The Secretary for Marine may at any time revoke or amend any certificate of approval if he believes that such action is necessary in the interests of safety of the operator and persons in the vicinity of the machine or in the interests of the well-being of fish populations.

(6) The Secretary for Marine may at any time require that any electric fishing machine in respect of which a certificate of approval is in force shall be produced for inspection. On due notification in writing

being given to the owner of the electric fishing machine of the requirement to produce it for inspection, the certificate shall be deemed to be suspended until the Secretary, or other officer of the Marine Department authorised by him, has endorsed the certificate to the effect that an inspection has been made and the certificate is again in force.

(7) The Secretary for Marine may issue any certificate of approval subject to any conditions applicable to the operation, maintenance, or handling of the electric fishing machine, the areas or waters in which it may be used, the species and sizes of fish which may be taken or killed, and conditions under which such fish may be disposed of by way of sale or otherwise. Any such conditions may be revoked, amended, or added to at any time by the Secretary by notice in writing to the owner of the machine.

(8) The owner of an electric fishing machine in respect of which a certificate of approval is in force under this regulation shall on disposal of the machine to any other person notify the Secretary for Marine in writing of the disposal, giving the full name and residential address of such other person, not less than 14 clear days before handing over the machine to the new owner.

(9) The new owner referred to in subclause (8) of this regulation shall, on taking possession of the electric fishing machine, forthwith notify the Secretary for Marine in writing of that fact and of his intentions as to the use of the machine and the name or names of the person or persons holding valid certificates of competency proposed as operators thereof.

(10) Where any electric fishing machine in respect of which a certificate of approval is or has at any time been in force is disposed of by being dismantled, destroyed, or broken down into component parts, the owner shall forthwith notify the Secretary for Marine of that fact, and any certificate of approval for that machine then in force shall be deemed to be cancelled.

10. Marking of electric fishing machines—(1) The owner of an electric fishing machine in respect of which a certificate of approval has been issued under these regulations shall have marked on the machine in indelible characters, or by such means and on such component parts as the Secretary for Marine may require, such identification marks as will identify to the satisfaction of the Secretary the machine and its component parts as being the machine to which the certificate of approval relates.

(2) No person shall operate an electric fishing machine without the machine and its component parts being marked in accordance with this regulation.

(3) No person shall remove, deface, obliterate, or otherwise interfere with any identification mark required to be displayed pursuant to this regulation.

11. Certificates to be carried and produced—(1) Every person operating an electric fishing machine shall on the demand of any fishery officer or honorary fishery officer under the Fisheries Act 1908—

(a) Produce for inspection his certificate of competency; and

(b) Give a specimen of his signature if required to do so; and

(c) Give his correct surname, christian names, and place of residence.

(2) Every person operating an electric fishing machine shall—

- (a) Carry with him or conveniently near him when operating the machine the certificate of approval issued in respect of the machine; and
- (b) On the demand of any fishery officer or honorary fishery officer under the Fisheries Act 1908, produce that certificate for inspection at any time while the machine is being operated or being assembled or transported preparatory to being operated; and
- (c) On the demand of any such fishery officer or honorary fishery officer, give his correct surname, christian names, and place of residence.

(3) Where pursuant to any provision of this regulation any person is required to produce any certificate and he is unable to do so at the time of that requirement, he shall be deemed to have complied with that requirement if, within such reasonable period, not exceeding 7 days, as the person requiring that production specifies, he produces the certificate to that person or to any other person specified by the person requiring its production.

12. Certificates equivalent to Secretary's permission to use electric device—Where under section 85 of the Fisheries Act 1908 (as substituted by section 21 (1) of the Fisheries Amendment Act 1968) the permission of the Secretary for Marine is required to the use of any electric device for the purpose of catching or destroying fish in any waters, it shall be a sufficient compliance with that requirement, in the case of an electric device which is an electric fishing machine within the meaning of these regulations, if—

- (a) The person operating the device is the holder of a certificate of competency for the time being in force issued under these regulations which authorises him to operate that device; and
- (b) A certificate of approval in respect of that device issued under these regulations is for the time being in force; and
- (c) The device is operated in compliance with the provisions of these regulations and with any conditions or restrictions subject to which either of those certificates has been issued.

13. Amendment, etc., of certificates—Every person holding a certificate issued under these regulations shall, on receipt of notification in writing from the Secretary for Marine or other authorised officer of the Marine Department that the certificate is required for amendment, endorsement, or cancellation, forthwith surrender the certificate to the Secretary or other officer.

14. Service of notices—(1) Any notice or other document to be given or served for the purposes of these regulations on any person holding a certificate issued under these regulations may be given or served by causing it to be delivered to him personally, or to be left at his place of abode or business notified by him to the Secretary for Marine or such other address as that person may nominate, or to be posted by registered post addressed to him at the address so notified or nominated.

(2) Any notice or other document sent by registered post shall be deemed to be served at the time when it would be delivered at its destination in the ordinary course of registered post.

15. Notification of address—Every person holding a certificate issued under these regulations shall advise the Secretary for Marine in writing of any change in his last notified address within 7 days after that change occurring.

16. Expenses of application for certificate or in complying with requirements—All expenses incurred by an applicant for any certificate under these regulations or in complying with any lawful requirement of the Secretary for Marine in prescribing any test or examination or in attending any course of instruction shall be borne by the applicant or the holder of the certificate or the owner of the machine, as the case may be.

17. Offences and penalties—(1) Every person commits an offence against these regulations who, without lawful excuse or justification (proof of which excuse or justification shall be upon him), does any act in contravention of these regulations or fails to comply with any provisions of these regulations or with any condition or restriction expressed or implied in any certificate issued under these regulations.

(2) Every person who commits an offence against these regulations is liable on summary conviction to—

- (a) A fine not exceeding \$300; and
- (b) A further fine not exceeding \$5 for each fish in respect of which the offence was committed; and
- (c) In the case of a continuing offence, a further fine not exceeding \$5 for every day on which the offence has continued.

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations make provision with respect to the use of electric fishing machines for the taking or killing of fish.

The regulations provide that no person shall use an electric fishing machine for such purposes unless he is the holder of a certificate of competency issued under the regulations which authorises him to use that machine, and unless there is in force a certificate of approval issued under the regulations in respect of that machine. The regulations prescribe the procedure for the issue of such certificates, the duties of the holders of certificates, and incidental matters.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 18 February 1971.

These regulations are administered in the Marine Department.