

1970/35

THE FISHING INDUSTRY BOARD LEVY REGULATIONS 1970

ELIZABETH R.
ORDER IN COUNCIL

At the Court at Government House, Wellington, this 12th day of March 1970

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

PURSUANT to the Fishing Industry Board Act 1963 and the Royal Powers Act 1953, Her Majesty the Queen, acting by and with the advice and consent of Her Executive Council, is pleased to make the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Fishing Industry Board Levy Regulations 1970.

(2) These regulations shall come into force on the 1st day of April 1970.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“The Act” means the Fishing Industry Board Act 1963:

“Board” means the Fishing Industry Board constituted under section 3 of the Act:

“Boat-fishing permit” means a boat-fishing permit issued under section 10 or section 10A of the Fisheries Amendment Act 1963:

“Fisherman” means a person who takes fish for the purpose of sale; and includes—

(a) The holder of a boat-fishing permit or a shore-fishing permit:

(b) The lessee under a lease of a rock oyster farm granted under the Rock Oyster Farming Act 1964:

(c) The lessee under a lease of a marine farm granted under the Marine Farming Act 1968:

“Fisherman’s levy” means a levy payable to the board by a fisherman under regulation 3 (1) of these regulations:

“Levy” means a fisherman’s levy, a wholesaler’s levy, or a retailer’s levy, as the case may require:

“Owner”, in relation to a fishing boat, includes a lessee or charterer of the boat:

“Packing” includes canning:

“Port price”, in relation to fish, means the price of the fish determined in accordance with regulation 4 (2) of these regulations:

“Prescribed”, in relation to a levy, means prescribed by the board under section 14 of the Act by notice in the *Gazette*:

“Prescribed form” means a form prescribed by the board:

“Processor”, in relation to fish, includes any person who—

(a) Manufactures or processes fish products; or

(b) Packs fish or fish products, having purchased the fish in one state, whether fresh or otherwise, and sold them in another state (being a packed or processed state) with or without other ingredients; or

(c) Packs fish or fish products on behalf of a fisherman in consideration of being paid a commission or other payment for so doing—

and “processing”, “processed”, and “to process” have corresponding meanings:

“Retailer” means any person who catches fish or purchases fish either from a fisherman or wholesaler, and sells the fish, whether in its natural state or in its processed state, directly to members of the public; and includes any person who purchases fish for consumption in any hospital, penal institution, or other institution accommodating substantial numbers of persons, or any hotel, motel, lodginghouse, or restaurant, or any other catering establishment of any description whatsoever:

“Retailer’s levy” means a levy payable to the board under regulation 3 (3) of these regulations:

“Sell”, in relation to any fish, means to dispose of the fish for valuable consideration; and includes bartering the fish, agreeing or attempting to sell the fish, offering or exposing the fish for sale, and sending or delivering the fish for sale, processing, or export:

“Selling price”, in relation to fish, means the selling price of the fish determined in accordance with regulation 4 (1) of these regulations:

“Shore-fishing permit” means a permit issued under section 11 of the Fisheries Amendment Act 1963:

“Wholesaler” means any person carrying on the business of purchasing or selling fish wholesale, whether in its natural state or in a processed state; and includes any processor, exporter, or fisherman purchasing or selling fish wholesale:

“Wholesaler’s levy” means a levy payable to the board by a wholesaler under regulation 3 (2) of these regulations:

“Wholesale price”, in relation to fish, means the wholesale price determined in accordance with regulation 5 of these regulations:

(2) The expressions that are defined in the Act and used in these regulations have the meanings so defined.

3. Fishermen’s, wholesalers’, and retailers’ levies—(1) Subject to regulations 7 to 9 of these regulations, every fisherman who sells any fish, whether to a processor, wholesaler, or retailer, or to any other person whatsoever, shall be liable to the board to pay in respect of the fish a fisherman’s levy at the prescribed rate.

(2) Subject to regulations 7 to 9 of these regulations, every wholesaler who catches any fish, or who purchases any fish from a fisherman, shall be liable to the board to pay in respect of the fish a wholesaler’s levy at the prescribed rate.

(3) Subject to regulations 7 to 9 of these regulations, every retailer who catches any fish, or who purchases any fish from a fisherman or from a wholesaler, shall be liable to the board to pay in respect of the fish a retailer’s levy at the prescribed rate. No retailer’s levy shall be payable in respect of fish exported from New Zealand.

(4) If a fisherman carries on business as a wholesaler and sells fish wholesale to another wholesaler, then, notwithstanding anything to the contrary in these regulations, the fisherman shall be liable for the payment of the wholesaler’s levy payable in respect of the fish as well as the appropriate fisherman’s levy.

4. Determination of selling price of fish—(1) For the purposes of calculating the amounts of levies payable to the board under these regulations, the selling price of fish shall be determined in accordance with the following provisions:

- (a) In relation to a fisherman’s levy, the selling price shall be the price at which the fish are sold by the fisherman by whom they were taken, or, in any case where the fisherman is also a wholesaler or retailer, the port price for the port at which the fish are landed:
- (b) In relation to a wholesaler’s levy, the selling price shall be the price at which the fish are sold to the wholesaler by the fisherman by whom they were taken, or in any case where the wholesaler or retailer is also the fisherman, the port price for the port at which the fish are landed:
- (c) In relation to a retailer’s levy, the selling price shall be the price at which the fish are sold to the retailer by a wholesaler, or in any case where the fisherman or wholesaler is also a retailer, the ruling wholesale price for the port at or area in which the fish are landed:
- (d) In relation to a fisherman’s levy and a wholesaler’s levy, where fish is packed and exported by or on behalf of a fisherman and that fisherman retains the property in that fish at the time of export, the selling price shall be the port price for the port at which the fish are landed:

- (e) In relation to a fisherman's levy, a wholesaler's levy, and a retailer's levy, where a fisherman sells fish directly to the public otherwise than through a retail shop owned by him, the selling price shall be the price at which it is sold by the fisherman to the public:
- (f) Where a fisherman owns a retail shop and sells fish caught from any boat owned or controlled by him through the shop, the selling price—
- (i) In relation to a fisherman's levy and a wholesaler's levy, shall be the port price for the port at which the fish are landed; and
- (ii) In relation to a retailer's levy, shall be the ruling wholesale price determined in accordance with regulation 5 of these regulations:
- (g) If the owner of a boat is also a wholesaler and has share fishermen operating his boats, and those share fishermen are paid a share based on the fixed price for fish, the selling price for fish shall, in relation to a fisherman's levy and a wholesaler's levy, be the port price at the port at which the fish are landed:
- (h) If the owner of a boat is also a wholesaler and pays the crew on that boat by a fixed wage (whether or not it is in addition to a production bonus) and a fixed rate for each case of fish caught from that boat, the selling price, in relation to a fisherman's levy and a wholesaler's levy, shall be the port price at the port at which the fish are landed:
- (i) Where fish are used in the processing of any product, whether with or without any additives, the selling price, in relation to a retailer's levy, shall be—
- (i) The price at which the fish are bought from a fisherman or from a wholesaler; or
- (ii) In any case where the fish are processed and were caught from a boat owned by the processer, the price as determined in accordance with paragraphs (g) and (h) of this subclause:
- (j) In relation to a retailer's levy, the selling price of processed oysters (including shelled oysters) shall be the price at which the processer sells the oysters, whether to a wholesaler or to a retailer or otherwise.
- (2) For the purposes of enabling the selling price of fish to be determined under subclause (1) of this regulation, the port price shall be—
- (a) The price agreed on at the port between wholesalers and fishermen, whether acting collectively or through organisations of wholesalers or of fishermen; or
- (b) Where share fishermen are paid a share based on a fixed price for fish, the price agreed on at the port between owners of fishing boats and fishermen, whether acting collectively or through organisations of owners or of fishermen, as the basis for determining the share to be paid to fishermen; or
- (c) Where no such price has been agreed on, the price established by a district advisory committee of the board as the agreed price between fishermen and wholesalers at a port; or
- (d) Where no such price is agreed on or established, the price fixed by the board:

Provided that the board in fixing a port price under paragraph (c) of this subclause shall have regard to the prices from time to time paid or established in respect of fish in areas adjacent to the port with which the board is for the time being concerned.

5. Determination of wholesale price of fish—For the purposes of calculating the amount of levy payable to the board in respect of fish sold wholesale, the wholesale price of the fish shall be the ruling price paid by retailers to wholesalers in the area in which the fish are sold, or, if there is no such ruling price, the wholesale price shall be determined by the board:

Provided that the board in fixing the wholesale price under this regulation shall have regard to wholesale prices paid from time to time or ruling in areas adjacent to that with which the board is for the time being concerned.

6. Maximum levies payable in respect of fish—Levies payable to the board in respect of fish sold in New Zealand or exported or to be exported from New Zealand shall not exceed the following rates:

- (a) In the case of a fisherman's levy, 0.42 percent of the total selling price of all fish sold by the fisherman (including fish sold otherwise than to a wholesaler):
- (b) In the case of a wholesaler's levy, 0.42 percent of the total fisherman's selling price of all fish purchased by the wholesaler from a fisherman:
- (c) In the case of a retailer's levy, 0.21 percent of the total wholesaler's selling price of all fish purchased by the retailer from a wholesaler or from a fisherman.

7. Wholesalers to be liable for collection and payment of levies—(1) Subject to regulation 8 of these regulations,—

- (a) Every wholesaler who purchases any fish from a fisherman shall be liable to the board for the collection of the fisherman's levy payable in respect of the fish; and
 - (b) Every wholesaler who sells any fish to a retailer shall be liable to the board for the collection of the retailer's levy payable in respect of the fish.
- (2) Every such wholesaler shall pay to the board all fishermen's and retailers' levies received by him, in addition to the wholesaler's levy due from him under these regulations.
- (3) Notwithstanding anything to the contrary in this regulation, where a wholesaler purchases eels from a fisherman, he may, with the prior consent of the board, pay the fisherman's levy payable by the fisherman in respect of the eels in addition to the wholesaler's levy.

(4) A wholesaler shall pay the wholesaler's levy due from him and the fishermen's and retailers' levies collected by him at the same time as filing with the board the return required by regulation 10 of these regulations.

(5) Every levy collected by a wholesaler under this regulation shall, when collected by him, be the property of the board.

8. Processers to be liable for collection and payment of certain levies—

(1) Notwithstanding anything to the contrary in these regulations, the processor of any fish shall be liable to the board—

- (a) In addition to being liable for the payment of the appropriate wholesaler's levy and for the collection of the appropriate fisherman's levy, for the collection of the retailer's levy (if any) payable in respect of the fish, if the fish were purchased by him from a fisherman, or where he is also a fisherman, were caught by him, and the fish—
 - (i) Are manufactured by him into fish products; or
 - (ii) Are oysters which are processed by him:
- (b) If the fish are processed by the processor on behalf of a fisherman for export from New Zealand, for the collection of the fisherman's levy and wholesaler's levy payable in respect of the fish:
- (c) If the fish are processed by the processor on behalf of a fisherman for sale in New Zealand, for the collection of the fisherman's levy, the wholesaler's levy, and the retailer's levy payable in respect of the fish.

(2) The processor shall pay to the board every levy collected pursuant to subclause (1) of this regulation not later than the 20th day of the month following the month of collection.

(3) Every levy collected by a processor under this regulation shall, when collected by him, be the property of the board.

9. Fishermen selling otherwise than to a wholesaler—If a fisherman sells fish to a person other than a wholesaler, the fisherman shall, for the purposes of these regulations, be deemed to be a wholesaler in respect of that fish, and shall be liable for the collection and payment to the board of the appropriate fisherman's levy and wholesaler's levy, and the retailer's levy (if any), payable in respect of the fish; and all the provisions of these regulations relating to wholesalers, so far as they are applicable and with any necessary modification, shall apply to the fisherman accordingly.

10. Returns of fish purchased, sold, or processed—(1) Every wholesaler shall, not later than 20 days after the end of each month, file with the board a return in the prescribed form specifying—

- (a) The total value of all fish sold to him during that month by fishermen based on the selling price of the fish:
- (b) The total value of his sales based on the selling price of all fish sold by him during that month, whether to a retailer or not.

(2) In any case where a wholesaler does not purchase or does not sell any fish during any month, he shall nevertheless file with the board a return indicating that he has not purchased or sold any fish during that month.

(3) Every fisherman who in any month sells fish to a person other than a wholesaler shall, not later than 20 days after the end of that month, file with the board a return in the prescribed form specifying the total selling price of all such fish:

Provided that if the board considers that the total payment due from a fisherman under these regulations is unlikely to exceed \$36 in the year in question, it may by notice in writing to the fisherman accept returns and payment of levy at intervals less frequent than 1 month.

(4) Every processor who in any month processes fish on behalf of a fisherman, whether for export or otherwise, shall, not later than 20 days after the end of that month, file with the board a return in the prescribed form specifying the total selling price of all such fish.

(5) If any wholesaler, for any reason, ceases to purchase fish for the purposes of resale, he shall, not later than 20 days thereafter, file with the board a return in the prescribed form of the total fisherman's selling price of all fish purchased by him from fishermen and the total wholesaler's selling price of all fish sold by him during the period from the end of the month for which the last return was made to the date of the last purchase or sale of fish or, if no fish is purchased or sold by him during that period, he shall file a return stating the reason why he did not purchase or sell any fish during that period. The provisions of the subclause shall apply only so long as he has not permanently ceased catching or selling fish.

(6) Every fisherman shall, if so required by the board by notice in writing, not later than the 31st day of May in each year, file with the board a return in the prescribed form specifying the total weight of all fish (if any) caught by him during the period of 12 months ending with the 31st day of March in that year, and specifying—

- (a) The weight and species caught and sold by him during the year, or, if no fish were caught and sold by him during that year, that he has not caught or sold any fish during that year:
- (b) The weight and species of fish packed by him during the year, or, if no fish were packed by him during that year, that he has not packed any fish during that year:
- (c) The weight and species of fish retained in his possession and control at the end of the year, or, if no fish were so retained by him, that he did not retain any such fish in his possession at that time:
- (d) The names and addresses of the persons to whom he sold fish during the year and the value of the sale to each person, or, if no fish were sold by him during that year, that he has not sold any such fish during that year:

Provided that where fish are sold directly to the public, it shall be sufficient to specify only the total value of the sales:

Provided also that it shall be sufficient compliance with this regulation if any information required by paragraph (a) of this subclause to be provided by a fisherman and available to the Marine Department is, with the consent of the fisherman, given by an officer of the Department.

(7) Every wholesaler shall, if so required by the board by notice in writing, file with the board a return in the prescribed form specifying—

- (a) The names and addresses of the fishermen from whom he has purchased fish during that month and the total value of fish purchased by him from each fisherman with whom he has dealt during the month, or, if no such fish were purchased by him, that he purchased no fish from fishermen during that month:
- (b) The name and address of every wholesaler to whom he has sold fish during each month, together with the value of the fish sold to each wholesaler, or, if no such fish were sold, that he did not sell any such fish to wholesalers during that month.

(8) Every retailer who purchases fish for resale through a retail fish shop shall, if so required by the board by notice in writing, file with the board not later than 20 days after the end of each month a return in the prescribed form specifying—

- (a) The name and address of every fisherman from whom he has purchased fish during that month, together with the value of the fish purchased from each such fisherman, or, if no such fish were purchased by him, that he purchased no fish from fishermen during that month;
- (b) The name and address of every wholesaler from whom he has purchased fish during that month, together with the value of fish purchased from such wholesaler, or, if no such fish were purchased by him, that he purchased no fish from wholesalers during that month.

(9) Every processor who packs fish, whether for export or otherwise, and every person who exports fish on behalf of a fisherman on the basis of the payment of a packing fee or a commission, shall, if so required by the board by notice in writing, file with the board not later than 20 days from the end of each month a return in the prescribed form specifying—

- (a) The name and address of every fisherman on whose behalf fish were packed or exported during that month;
- (b) The quantity of fish packed or exported, as the case may be, for the fisherman:

Provided that if no such fish were packed or exported during that month the processor or exporter shall nevertheless file a return stating that fact.

(10) Every person (not being a fisherman, wholesaler, or processor) who exports fish shall, if so required by the board by notice in writing, file with the board not later than 20 days after the end of each month a return in the prescribed form specifying—

- (a) The name and address of each fisherman, wholesaler, or processor from whom he has purchased during that month fish for export or on whose behalf he has exported fish, whether processed or not; and
- (b) The quantity of fish exported during that month and its “free on board” value.

(11) Notwithstanding anything to the contrary in subclauses (6) to (10) of this regulation, the board may authorise persons required by those subclauses to file returns to do so at intervals of more than 1 month; and, where any such authorisation is given, the subclause concerned shall be construed and modified accordingly.

(12) Any return required to be filed under this regulation may be filed personally or through an agent. If any return required to be filed under this regulation is made by an agent, it shall be countersigned by the fisherman, wholesaler, retailer, or processor to whom it relates, or in the case of a company carrying on the business of fishing or selling fish wholesale or retail or of processing fish, by a director or a responsible officer of the company.

11. Change of address to be notified to board—(1) Every person who makes a return under regulation 10 of these regulations shall state in it the address of his usual or principal place of business.

(2) Where any such person moves from one such place of business to another, he shall, as soon as practicable after the move, give notice in writing to the board informing the board of the new address of his usual or principal place of business.

12. Inspection of records, etc.—(1) Where any fisherman, wholesaler, processor, or retailer fails to pay the whole or any part of any levy payable by him, or where the board has reasonable grounds for believing that any fisherman, wholesaler, processor, or retailer has failed to pay any levy, or that any person (including an exporter of fish who is required by regulation 10 of these regulations to file a return with the board) has made a statement to the board (whether oral or written) which is false in a material particular, the board may, by resolution, authorise any of its members or officers or any other person named in the resolution, or empower its chairman to authorise in writing any person—

(a) To examine all stocks of fish for the time being—

(i) In the possession or under the control of that fisherman, wholesaler, processor, or retailer, or of any person (being a fisherman, wholesaler, processor, or retailer) to whom he has disposed of any fish; or

(ii) In the possession or under the control of any person on behalf of that fisherman, wholesaler, processor, or retailer, or on behalf of any such person to whom he has disposed of any fish:

(b) To inspect all dockets, invoices, and other records—

(i) In the possession or under the control of any person required by regulation 10 of these regulations to forward returns to the board relating to the catching, treatment, purchase, receipt, storage, sale, or disposal of fish by him; or

(ii) In the possession or under the control of any person from whom a fisherman, wholesaler, processor, retailer, or any other person has acquired any fish or to whom any fisherman, wholesaler, processor, retailer, or other person has disposed of any fish:

(c) To make copies of or take extracts from any such documents.

(2) No member or officer of the board, and no person exercising any powers under subclause (1) of this regulation, shall divulge or communicate to any person any matter or thing coming to his notice in the course of any examination or inspection carried out under that subclause, except for the purpose of carrying into effect the provisions of the Act and these regulations.

(3) Where any person is authorised by resolution of the board under subclause (1) of this regulation, or by the chairman pursuant to any such resolution, to exercise in respect of any fisherman, wholesaler, processor, or retailer, or any other person the powers specified in that subclause, the production by the person so authorised of a copy of the resolution certified by the chairman to be a true copy, or, as the case may be, the production of his authority signed by the chairman, shall for all purposes be sufficient evidence of his authority to exercise those powers.

(4) Every fisherman, wholesaler, processor, retailer, or other person to whom a resolution of the board made under subclause (1) of this regulation applies shall, at all times during ordinary business hours, when so required by a person authorised by any such resolution to

exercise the powers specified in the said subclause (1), permit him to exercise the powers specified in paragraph (a) of the said subclause (1).

(5) Every person referred to in paragraph (b) of subclause (1) of this regulation who has in his possession or under his control any documents to which that paragraph relates shall, at all times during ordinary business hours, when so required by a person authorised by a resolution under that subclause, produce those documents for his inspection and allow him to make copies of or take extracts from them.

13. False or misleading statement—Every person commits an offence against these regulations who—

- (a) Makes any statement to the board or to any person acting under the authority of the board, whether written or oral, which he knows to be false or misleading in a material particular; or
- (b) Knowingly concurs in the making of any such statement by any other person.

14. Offences generally—Every person commits an offence against these regulations who, without lawful justification or excuse, proof of which justification or excuse shall lie on him,—

- (a) Fails to file with the board any return required to be filed by him under regulation 10 of these regulations; or
- (b) Fails to comply with any other provision of these regulations or with any lawful direction made under the authority of these regulations; or
- (c) Wilfully does any act in contravention of these regulations.

15. Penalty for offences—Every person who commits an offence against these regulations is liable on summary conviction to a penalty not exceeding that provided for in section 34 of the Act.

16. Revocations—The following regulations are hereby revoked—

- (a) The Fishing Industry Board Levy Regulations 1964*;
- (b) The Fishing Industry Board Levy Regulations 1964, Amendment No. 1†.

*S.R. 1964/203
†S.R. 1968/162

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 consolidate the Fishing Industry Board Levy Regulations 1964. The regulations provide for the payment of levies by fishermen, wholesalers of fish, and retailers of fish to finance the functions of the Fishing Industry Board. The maximum rate of levy is to be 0.42 percent of the total selling price of fish in the case of fish sold by fishermen, 0.42 percent of the total purchase price of fish in the case of fish purchased by wholesalers, and 0.21 percent of the total purchase price of fish in the case of fish purchased by retailers.

Issued under the authority of the Regulations Act 1936.
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These regulations are administered in the Marine Department.