

1976/316



THE FISH LEVY REGULATIONS 1976

DENIS BLUNDELL, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 20th day of December 1976

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Fishing Industry Board Act 1963, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Fish Levy Regulations 1976.

(2) These regulations shall come into force on the 1st day of March 1977.

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 by section 3 of the Act:

“Exporter” means a person who exports fish, whether in its natural state, a processed state, or manufactured into fish products, and whether on his own behalf or on behalf of any other person; and includes a person who takes fish within New Zealand fisheries waters (within the meaning of the Fisheries Act 1908) or the waters of the sea adjacent thereto and lands them elsewhere than in New Zealand; and “export” and “exported” have corresponding meanings:

“Fish” includes every description of fish and shellfish taken in New Zealand fisheries waters (as defined in the Fisheries Act 1908) or the waters of the sea adjacent thereto; and also includes any part of any such fish or shellfish; but does not include whitebait:

“Fisherman” means a person who takes or catches fish for the purposes of sale, and includes the holder of a boat-fishing permit issued under section 10 or section 10A of the Fisheries Amendment Act 1963, the holder of a shore-fishing permit issued under section 11 of that Act, and a fish farmer:

“Fish farmer” means a licensee under the Freshwater Fish Farming Regulations 1972 or a lessee or licensee under the Marine Farming Act 1971:

“Fish levy” means the levy required to be paid to the Board pursuant to regulation 5 of these regulations:

“Packing” includes canning:

“Prescribed form” means a form for the time being prescribed by the Board:

“Processor” means a person who packs fish or processes fish into fish products, with or without the addition of other ingredients, whether on his own behalf or on behalf of a fisherman for a commission or other payment or consideration, and includes a person who so packs fish or fish products; and “process” and “processing” have corresponding meanings:

“Retailer” means a person who sells fish or fish products by retail:

“Sale” means disposal for valuable consideration, and includes bartering, raffling, offering or exposing for sale, sending or delivering for sale, processing, manufacture, or export, and agreeing or attempting to do so; and “sell” and “sold” have corresponding meanings:

“Take” includes the taking of farmed fish, by any means whatsoever; and “taken” and “took” have corresponding meanings:

“Wholesaler”, subject to subclause (2) of this regulation, means a person who sells fish or fish products by wholesale in New Zealand or exports fish or fish products by wholesale from New Zealand for sale:

(2) A fisherman who sells some or all of the fish taken by him to a person who is not a wholesaler, or exports them, shall to that extent be deemed to be a wholesaler.

(3) Expressions defined in the Act have the meanings so defined.

3. Application—These regulations apply to all fish.

4. Primary price—(1) Subject to regulation 6 of these regulations, the primary price of any fish shall be the price at which those fish are sold by the fisherman who took them.

(2) Subject to regulation 6 of these regulations, all fish processed by the fisherman who took them or on his behalf are hereby deemed to be sold by him at the price at which the products made from those fish are sold.

5. Fish levy—(1) Subject to subclause (2) of this regulation, every wholesaler shall pay to the Board a fish levy on all fish taken or purchased by him (otherwise than from another wholesaler) of an amount fixed by the Board by notice in the *Gazette*, which amount shall not exceed 1.2 percent of the primary price of those fish.

(2) Subclause (1) of this regulation shall not apply to fish purchased in a live state for fish farming within the territorial limits of New Zealand.

6. Notional primary price—(1) A wholesaler who is also a fisherman may apply to the Board for it to approve a notional primary price for any fish caught by him that he intends to sell or has within the 3 months before the date of his application sold.

(2) Subject to subclause (3) of this regulation, if the Board is satisfied that the wholesaler making any such application is the fisherman who took or will take the fish in respect of which the application is made it shall approve a price for those fish which shall be deemed to be the primary price of those fish and shall be:

- (a) A price determined by any Act, regulation, or Order in Council for fish of that species; or
- (b) Where no price has so been determined, the price for fish of that species last agreed between wholesalers and fishermen at a port in, or in an area of, New Zealand, whether agreement was reached by individuals, collectively, or through representative organisations; or
- (c) Where no price has so been determined or agreed, the price for fish of that species last published by a district advisory committee appointed pursuant to section 9 of the Act as the price agreed between wholesalers and fishermen at a port in, or in an area of, New Zealand; or
- (d) Where no price has so been determined, agreed, or published, a price for fish of that species fixed by the Board in the light of prices from time to time and from place to place paid for fish of that species; or
- (e) Where no price has so been determined, agreed, published, or fixed, a price fixed by the Board after consultation with the applicant.

(3) In determining a notional primary price for dredged oysters, the Board shall have regard to all special conditions applying to the dredging of oysters that may tend to make it desirable to fix a notional primary price for dredged oysters lower than the ruling market price of bagged dredged oysters from boats; and the Board may fix a notional primary price for dredged oysters lower than that ruling market price by such amount as the Board may consider necessary in the light of those conditions.

(4) A processor who sells fish or fish products on behalf of fishermen and deducts from the proceeds therefrom and pays to the Board pursuant to regulation 10 of these regulations the fish levy in respect of the fish or, as the case may be, the fish from which those products are made, may apply to the Board pursuant to this regulation as if he were the wholesaler of those fish and they had been caught by him; and the Board may fix a notional primary price for those fish and accept payment of the fish levy calculated on the basis of that notional primary price accordingly.

7. Fisherman's contribution—A wholesaler who has paid the fish levy in respect of any fish sold to him by a fisherman may recover from that fisherman an amount equal to one third of the fish levy so paid; and that amount shall be recoverable in any Court of competent jurisdiction as a debt due to the wholesaler.

8. Retailer's contribution—(1) Subject to subclause (3) of this regulation, a wholesaler who has paid the fish levy in respect of any fish or fish products sold by him in New Zealand may recover from the purchaser thereof an amount equal to one third of the fish levy so paid; and that amount shall be recoverable in any Court of competent jurisdiction as a debt due to the wholesaler.

(2) Where a wholesaler sells in New Zealand fish or fish products sold to him by another wholesaler he may recover from the purchaser thereof any amount recovered from him pursuant to subclause (1) of this regulation in respect of those fish or fish products; and that amount shall be recoverable in any Court of competent jurisdiction as a debt due to that first-mentioned wholesaler.

(3) No amount recovered pursuant to subclause (1) of this regulation shall exceed one five hundredth of the price at which the fish are sold by the wholesaler in the case of shelled oysters, or one three hundredth of that price in any other case.

9. Contributions deemed held in trust in certain cases—Notwithstanding any rule of law to the contrary, for so long as a wholesaler has not paid the fish levy in respect of any fish but has collected any amount in respect thereof, purporting to do so under regulation 7 or regulation 8 (1) of these regulations, all amounts so collected shall be deemed to be money held in trust for the Board by the wholesaler.

10. Processors to deduct fish levy in certain cases—(1) Notwithstanding regulation 5 (1) of these regulations, every person who processes and sells fish on behalf of the fisherman who took them and accounts to him for the proceeds shall deduct from the amount payable to the fisherman the fish levy in respect of any fish so processed and sold and pay it to the Board; and no amount so deducted and paid shall be required to be accounted for to the fisherman.

(2) Notwithstanding any rule of law to the contrary, every amount so deducted shall be deemed to be money held in trust for the Board by the processor.

(3) A processor who pays the fish levy to the Board in respect of any fish shall for the purposes of regulation 11 of these regulations be deemed to be the wholesaler of those fish.

11. Date for payment of levy—Every amount required to be paid to the Board pursuant to regulation 5 (1) or regulation 10 (1) of these regulations shall so be paid on or before the 20th day of the month following the month in which the fish in respect of which the amount is required to be paid were sold.

12. Export refund—(1) Subject to subclause (2) of this regulation, a wholesaler who himself or by an agent, but without any subsequent intermediary, exports fish or fish products, shall be refunded by the Board, in accordance with this regulation, an amount equal to one third of the fish levy paid in respect of those fish or fish products.

(2) This regulation shall not apply to live eels less than 34 mm in length or to any species or size of fish or sort of fish product that the Minister, on the recommendation of the Board, has by notice in the *Gazette* declared to be excluded from the operation of this regulation.

(3) Every person wishing to obtain a refund of fish levy pursuant to this regulation shall submit to the Board a declaration of export in the prescribed form, and if the Board is satisfied that the information therein set out is accurate it shall make him a refund accordingly.

13. Levy returns by wholesalers—Every wholesaler shall, not later than 20 days after the end of each month, file with the Board a levy return in the prescribed form specifying the total primary price of all fish taken or purchased by him during that month; and if he has not taken or purchased any fish during any month he shall file a return to that effect which return shall give brief reasons for his not so taking or purchasing any fish.

14. Purchase returns by wholesalers—(1) The Board may, by notice in writing served on or posted by registered letter to any wholesaler, require that wholesaler to file with the Board a purchase return in the prescribed form specifying the names and addresses of all fishermen from whom he has purchased fish between dates specified in the notice, and the total primary price of the fish purchased from each such fisherman during the period or, if he has not so purchased any fish, a purchase return in the prescribed form to that effect giving brief reasons for his not purchasing any fish.

(2) Every purchase return required to be filed with the Board by a wholesaler pursuant to subclause (1) of this regulation shall so be filed within 1 month of the date of service or posting, as the case may be, of the notice requiring its filing.

15. Price return by wholesaler—(1) The Board may, by notice in writing served on or posted by registered letter to any wholesaler, require that wholesaler to file with the Board a price return in the prescribed form specifying the actual price (if any) last paid by him to a fisherman during the preceding month for each species of fish specified in the notice.

(2) Every price return required to be filed with the Board by a wholesaler pursuant to subclause (1) of this regulation shall be filed within 21 days of the date of service or posting, as the case may be, of the notice requiring its filing.

16. Levy return by processors—Every processor shall, not later than 20 days after the end of each month, file with the Board a return in the prescribed form specifying the total primary price of all fish processed by him for export on behalf of any other person during that month; and if he has not so processed any fish he shall file a levy return to that effect which return shall give brief reasons for his not so processing any fish.

17. Export returns—(1) The Board may, by notice in writing served on any exporter, require that exporter to file with the Board an export return in the prescribed form setting out—

- (a) The names and addresses of all persons from whom he has purchased fish for export, or for processing and export, between dates specified in the notice and the quantity and primary price of fish so purchased from each such person; and
- (b) The names and addresses of all persons on whose behalf he has exported or processed for export any fish between dates specified in the notice, and the primary price of the fish so exported or processed for each such person—

or if he has not so purchased, exported, or processed any fish, an export return in the prescribed form to that effect, giving brief reasons for his not doing so.

(2) Every export return required to be filed with the Board by an exporter pursuant to subclause (1) of this regulation shall be so filed within 1 month of the date of service or posting, as the case may be, of the notice requiring its filing.

18. Levy returns by fishermen—A fisherman who sells fish, other than fish sold or exported on his behalf by a processor, to a person other than a wholesaler shall, not later than 20 days after the end of each month, file with the Board a levy return in the prescribed form specifying the total primary price of all fish so sold during that month or, if he has not so sold any fish, a levy return in the prescribed form to that effect giving brief reasons for his not so selling any fish:

Provided that if the Board is satisfied that the total quantity of fish so sold by a fisherman during any year is likely to be such that the fish levy payable in respect of it will be less than \$120 it may by notice in writing specify some period longer than 1 month no later than 20 days after the end of which the fisherman must submit levy returns in respect of fish sold during it; and in that case he shall file levy returns accordingly.

19. Other returns by fishermen—(1) The Board may, by notice in writing served on or posted by registered letter to any fisherman, require him to file with the Board a return in the prescribed form specifying all or any of the following information in respect of a period specified in the notice:

- (a) The total weight of fish of each species taken and sold by him during that period or, if he had not taken any fish during that period, brief reasons for his not doing so:
- (b) The total weight of fish of each species packed by him during that period or, if he has not packed any fish during that period, brief reasons for his not doing so:

- (c) The weight of fish of each species in his possession and control at the beginning and end of that period or, if no fish were then in his possession and control, a return in the prescribed form to that effect:
- (d) The names and addresses of all persons, other than persons purchasing fish for their own consumption, to whom he sold fish during that period, and the total primary price of the fish so sold to each person:
- (e) The total primary price of all fish sold during that period to persons purchasing fish for their own consumption or, if he has not so sold any fish during that period, a return in the prescribed form to that effect giving brief reasons for not so selling any fish.

(2) A fisherman may in writing consent to the giving of information required to be given to the Board by him pursuant to subclause (1) (a) of this regulation by the Director-General of Agriculture and Fisheries; and where that information is so given the fisherman shall be deemed to have complied with the provisions of that subclause.

(3) Subject to subclause (2) of this regulation, every return required to be filed with the Board by a processor pursuant to subclause (1) of this regulation shall so be filed within 1 month of the date of service or posting, as the case may be, of the notice requiring its filing.

20. Returns by retailers—The Board may, by notice in writing served on or posted by registered letter to any retailer, require him to file with the Board a return in the prescribed form specifying the name and address of every person from whom he has purchased fish or fish products during the period specified in the notice and the total amount paid to each such person during that period in respect of fish or fish products or, if no fish or fish products were purchased by him during that period, a return to that effect.

21. Notice of discontinuance—Every person who in respect of any month files with the Board a return pursuant to regulation 13, regulation 16, or regulation 18 of these regulations shall, for the purposes of regulations 13 to 19 (inclusive) and regulation 23 of these regulations, thereafter be deemed to continue to be a wholesaler, processor, or fisherman, as the case may be, until he files with the Board a notice of discontinuance in the prescribed form stating that he has discontinued his business as a wholesaler, processor, or fisherman, as the case may be, and giving brief reasons for his doing so.

22. Filing of returns—Every return required to be filed under these regulations may be filed personally or by mail and shall be signed by the fisherman, wholesaler, retailer or exporter to whom it relates or, in the case of a company, by a director or other responsible officer of the company.

23. Address and change of address to be notified to Board—(1) Every person required to file a return under these regulations shall state in the return the address of his usual or principal place of business.

(2) Where any such person changes his usual or principal place of business he shall as soon as practicable after the change notify it to the Board in writing.

24. Inspection of records, etc.—(1) The Board by resolution may authorise any of its members or officers or any other person named in the resolution, or empower its Chairman to authorise in writing any such person:

- (a) To examine all stocks of fish for the time being in the possession or under the control of any person:
- (b) To inspect all dockets, invoices and other records in the possession or under the control of any person relating to fish taken, processed, purchased, exported, received, stored or sold, by him or any other person since the date of the last examination of the dockets, invoices and other records in his possession or under his control and to make copies of or take extracts from any such document.

(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 subclause (1) of this regulation, except for the purpose of carrying into effect the provisions of the Act and these regulations.

(3) Where any person purports to exercise any power specified in subclause (1) of this regulation, the production by him of a written notice to that effect signed by a person authorised by the Act to sign notices on behalf of the Board or by the Chairman as the case may be, shall for all purposes be sufficient evidence of his so having been authorised to do so.

(4) Every person in respect of whom any other person is pursuant to subclause (1) of this regulation authorised to examine any stocks of fish or examine and copy any documents shall during ordinary business hours render that other person such assistance as may be necessary to enable him expeditiously to do so; and no person shall hinder that other person in or prevent him from doing so.

25. False and misleading documents—No person shall falsify any docket, invoice or other record relating to fish taken, processed, purchased, exported, received, stored, or sold, or file with the Board any return required to be filed pursuant to these regulations that he knows is false or misleading in any material particular.

26. Offences—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 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.

27. Penalties—Every person who commits an offence against these regulations is liable on summary conviction to a fine not exceeding \$500 and, where the offence is a continuing one, to a further fine of \$10 for every day on which the offence has continued.

28. Revocation—The Fishing Industry Board Levy Regulations 1970* are hereby revoked.

P. G. MILLEN,
Clerk of the Executive Council.

*S.R. 1970/35

EXPLANATORY NOTE

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

These regulations replace the Fishing Industry Board Levy Regulations 1970. They provide for the payment of a levy on all fish caught, farmed, or harvested for sale in New Zealand or for export, to finance the functions of the Fishing Industry Board. The maximum levy is to be 1.2 percent of the primary price or the notional primary price of the fish, provided that the maximum levy in respect of any fish which is to be exported in any form is reduced to 0.8 percent by way of a refund. The regulations set out the liabilities of fishermen, wholesalers, retailers, fish farmers and other persons for their respective share of the levy and generally their liability for the filing of returns.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 22 December 1976.

These regulations are administered in the Ministry of Agriculture and Fisheries.