

Reprint
as at 1 October 2017



Fisheries (Reporting) Amendment Regulations (No 2) 2009

(SR 2009/247)

Fisheries (Reporting) Amendment Regulations (No 2) 2009: revoked, on 1 October 2017, pursuant to regulation 52 of the Fisheries (Reporting) Regulations 2017 (LI 2017/154).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 24th day of August 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 297(1)(h) and (u) of the Fisheries Act 1996, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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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.

Electronic transmission of returns

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Regulations

- 1 Title**
These regulations are the Fisheries (Reporting) Amendment Regulations (No 2) 2009.
- 2 Commencement**
These regulations come into force on 1 October 2009.
- 3 Principal regulations amended**
These regulations amend the Fisheries (Reporting) Regulations 2001.

4 New regulation 34 substituted

Regulation 34 is revoked and the following regulation substituted:

34 Duplicate returns must be retained for 7 years

- (1) A person who is required by these regulations to provide a return must retain in the person's custody, for a period of not less than 7 years after the date of completion of the return,—
 - (a) in the case of a return made in accordance with regulation 30, the duplicate or second copy of the return; or
 - (b) in the case of a return made under Part 4A, a copy of the return.
- (2) Subclause (1) does not apply to the following returns:
 - (a) a monthly harvest return:
 - (b) a monthly harvest return amendment:
 - (c) a licensed fish receiver return:
 - (d) a licensed fish receiver return amendment.

5 Method of entering certain details on return

Regulation 36(3) is amended by adding the following paragraph:

- (d) all paua weights in PAU 4 must be recorded in greenweight kilograms using the appropriate conversion factor set out in any notice given by the chief executive under section 188(1) of the Act to translate the shucked weight to greenweight.

Electronic transmission of returns

6 New Part 4A inserted

The following Part is inserted after regulation 41:

Part 4A

Electronic transmission of returns

41A Interpretation

In this Part, unless the context otherwise requires,—

access identifier means an identifier that—

- (a) is issued to an individual by the chief executive for the purpose of completing and providing returns using electronic software; and
- (b) uniquely identifies that individual

authorised user means a person approved by the chief executive under regulation 41C to complete and provide returns using electronic software

electronic software means software that—

- (a) is approved by the chief executive under regulation 41N; and
- (b) must be used by every authorised user for completing and providing returns under this Part.

41B Application of this Part

This Part—

- (a) applies to all returns approved for electronic transmission by the chief executive under section 296(1) of the Act; but
- (b) does not limit the application of the other provisions of these regulations to returns completed or provided under this Part, unless otherwise specified in this Part.

Approval of authorised users

41C Approval as authorised user

- (1) A permit holder may apply to the chief executive—
 - (a) for approval as an authorised user; and
 - (b) for any other person to be approved as an authorised user so that the person may act on behalf of the permit holder.
- (2) An application made under subclause (1) must be made in the approved form, accompanied by the prescribed fee (if any).
- (3) The chief executive must give written notice to the permit holder and any person acting as an authorised user on behalf of that permit holder—
 - (a) of the decision on the application; and
 - (b) of the date on and from which the permit holder and any authorised user acting on behalf of the permit holder must complete and provide returns using electronic software.
- (4) Regulation 30(1)(b) to (d) and (2)(b) does not apply to an authorised user completing and providing returns under this Part, except in the circumstances described in regulations 41G(1)(a) and 41J(1)(a).

41D Obligations on authorised user

- (1) A permit holder or any authorised user acting on behalf of the permit holder must, from the date specified by notice given under regulation 41C(3), complete and provide all returns for which the permit holder is approved under that regulation, using electronic software.
- (2) A permit holder contravenes this regulation if the permit holder, or an authorised user acting on behalf of the permit holder, fails to complete and provide returns as required by subclause (1) on and from the date specified in the notice given under regulation 41C(3)(b).

Changes to approvals

41E Chief executive may direct

- (1) The chief executive may, by notice in the *Gazette*, direct a permit holder or class of permit holders to complete and provide returns to the chief executive using electronic software.
- (2) A notice given under subclause (1) must specify the date on and from which the direction applies.

41F Alternative requirements may be specified

- (1) The chief executive may, by notice in the *Gazette*, direct a permit holder or class of permit holders to complete and provide returns using electronic software to the chief executive at intervals, after periods, or on dates that the chief executive determines.
- (2) The chief executive must consult with the Minister before giving notice under subclause (1).
- (3) A permit holder contravenes this regulation if the permit holder, or an authorised user acting on behalf of that permit holder, fails to complete and provide a return in accordance with a direction given under subclause (1).

41G Failure of electronic software

- (1) If, because the electronic software fails or for any other reason beyond the control of the authorised user, an authorised user is unable to complete or provide a return using electronic software,—
 - (a) the authorised user must complete and provide a return in accordance with regulation 30; and
 - (b) as soon as practicable, the permit holder on whose behalf the authorised user is acting must notify the chief executive that the authorised user is unable to complete or provide a return using electronic software.
- (2) A permit holder contravenes this regulation if a return is not able to be completed or provided using electronic software unless—
 - (a) the authorised user acting on behalf of the permit holder completes and provides a return in accordance with regulation 30; and
 - (b) the permit holder notifies the chief executive as required by subclause (1)(b).

41H Chief executive may cancel or vary approval of authorised user

- (1) The chief executive may, on his or her own initiative, cancel or vary the approval of the following persons as authorised users:
 - (a) a permit holder;
 - (b) an authorised user acting on behalf of a permit holder.

- (2) Before the chief executive may cancel or vary an approval under subclause (1), the chief executive must—
 - (a) give written notice of the proposal to do so to the permit holder or authorised user acting on behalf of the permit holder; and
 - (b) give that person a reasonable opportunity to make submissions to the chief executive on the proposal; and
 - (c) consider any submissions made by the permit holder or any authorised user.
- (3) The chief executive must give notice in writing to the permit holder or authorised user—
 - (a) of the decision; and
 - (b) of the date on which any cancellation or variation of an approval takes effect.

41I Application by permit holder to cancel or vary approval

- (1) A permit holder may apply to the chief executive to cancel or vary the approval as an authorised user—
 - (a) of the permit holder; or
 - (b) of an authorised user acting on behalf of that permit holder.
- (2) An application under subclause (1) to vary an approval must be made in the approved form, accompanied by the prescribed fee (if any).
- (3) In the case of an application to cancel or vary the approval of an authorised user acting on behalf of the permit holder, the chief executive must give written notice of the application to the authorised user concerned.
- (4) When the chief executive has determined an application, written notice of the decision and the date on which any cancellation or variation takes effect must be given to—
 - (a) the permit holder; and
 - (b) any authorised user acting on behalf of that permit holder who is the subject of the decision.

41J Consequences of cancellation or variation of approval

- (1) A permit holder whose approval as an authorised user is cancelled under regulation 41H or 41I—
 - (a) must comply with the requirements of regulation 30(1)(b) to (d) and (2)(b); and
 - (b) contravenes this regulation if the permit holder—
 - (i) purports to complete or provide a return by electronic software on or after the date specified in the notice; or

- (ii) fails to comply with the requirements of regulation 30(1)(b) to (d) and (2)(b).
- (2) A permit holder whose approval as an authorised user is varied under regulation 41H or 41I contravenes this regulation if the permit holder fails to complete and provide a return using electronic software in accordance with the approval as varied.

Access identifier

41K Chief executive to issue access identifiers

- (1) The chief executive must issue an access identifier to every person approved as an authorised user.
- (2) The access identifier may be in a form or of a kind determined by the chief executive.
- (3) The chief executive may, by written notice to the authorised user, impose conditions for the use and security of the access identifier that apply—
 - (a) to all authorised users generally; or
 - (b) to a particular authorised user.

41L Use of access identifier

- (1) The access identifier issued to an authorised user must not be used except by that person.
- (2) If a return is completed and provided using an access identifier issued to an authorised user, the completion or provision of that return is, in the absence of proof to the contrary, sufficient evidence that the authorised user to whom the access identifier was issued has completed and provided that return.
- (3) If an access identifier is used by a person other than by the person to whom it was issued, subclause (2) does not apply provided, before any unauthorised use occurs, the chief executive is notified that the access identifier is no longer secure by—
 - (a) the authorised user to whom it was issued; or
 - (b) the permit holder on whose behalf the authorised user is acting.

Electronic software

41M Requirements for electronic software

- (1) The chief executive may issue circulars setting out the requirements that apply to electronic software.
- (2) Different requirements may be set out for different types of electronic software.
- (3) Without limiting subclauses (1) and (2), a circular may specify the following matters:

- (a) the organisations authorised to test electronic software:
- (b) the minimum requirements for the operation of electronic software.

41N Approval of electronic software

- (1) Any person may apply to the chief executive to approve electronic software.
- (2) An application must be accompanied by the prescribed fee (if any).
- (3) If the electronic software submitted for approval complies with the requirements set out in the circulars issued under regulation 41M, the chief executive must—
 - (a) approve that software; and
 - (b) notify its approval in the *Gazette*.
- (4) The chief executive may, by notice in the *Gazette*, vary or cancel an approval given under this regulation.

7 Offences

- (1) Regulation 42(b) is amended by—
 - (a) omitting “6(3A)” and substituting “6(2), (3A),”; and
 - (b) omitting “11A(3),” and substituting “11A(2) or (3),”; and
 - (c) omitting “12(3),” and substituting “12(2) or (3),”; and
 - (d) omitting “13(3),” and substituting “13(2) or (3),”.
- (2) Regulation 42(c) is amended by—
 - (a) omitting “6(2) or (3B),” and substituting “6(3B),”; and
 - (b) omitting “11(2) or (4),” and substituting “11(4),”; and
 - (c) omitting “12(2) or (4),” and substituting “12(4),”; and
 - (d) omitting “13(2) or (4),” and substituting “13(4),”; and
 - (e) omitting “or 40:” and substituting “40, 41D(2), 41F(3), 41G(2), or 41J(1) and (2):”.

8 Schedule 3 amended

Table 1 of Part 1 of Schedule 3 is amended by inserting the item set out in the Schedule of these regulations in its appropriate alphabetical order.

Schedule

Amendments to table 1 of Part 1 of Schedule 3

r 8

Species or class of fish	Quota management area reference number set out in table 2 of this Part	Other area reference number set out in any other table of this Part	Fishstock code to be used (species/area)

Redbait	1, 2	RBT 1
	3, 4, 5, 6	RBT 3
	7, 8, 9	RBT 7
	10	RBT 10

Rebecca Kitteridge,
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, which come into force on 1 October 2009, amend the Fisheries (Reporting) Regulations 2001 in 4 respects as follows.

Electronic reporting

The regulations enable returns to be made and transmitted by electronic software, as envisaged by section 296 of the Act. In particular, *new Part 4A*—

- provides for the chief executive to approve a permit holder as an authorised user who must provide returns under *new Part 4A*; and
- provides for other persons nominated by a permit holder to be approved as authorised persons who will act on behalf of the permit holder to create and transmit returns under *new Part 4A*; and
- includes alternative arrangements that may be made for completing and providing returns if these cannot for any reason be created and transmitted electronically, including arrangements if the electronic software fails; and
- provides for the chief executive to—
 - issue circulars setting out the requirements for electronic software that may be used for reporting electronically under *new Part 4A*; and
 - approve electronic software before it may be so used; and
 - issue a unique identifier to every authorised user.

The regulations make provision for transitional arrangements relating to the introduction of electronic reporting, including the continuing application of the reporting regulations except as otherwise specified.

Chatham Island fishery (PAU4)

The regulations provide for a change in the reporting of commercial paua in the Chatham Island fishery (PAU 4). The greenweight is to be recorded using the conversion factor issued by the chief executive under section 188 of the Act.

Offences and penalties

The regulations also amend the existing offence and penalty provisions by—

- reducing the penalty from a high end (maximum fine of \$100,000) to low end (maximum fine of \$20,000) commercial penalty for certain offences relating to catch land returns, trawl catch, effort and processing returns, squid jigging catch effort returns, and tuna longlining catch effort returns; and
- creating an offence for not completing a longlining catch effort return, with a maximum fine of \$20,000; and
- creating offences in relation to completing and providing returns by electronic transmission under *new Part 4A*, with a maximum fine of \$20,000 in each case.

Redbait fishery: new reporting codes

Table 1 of Part 1 of Schedule 3 is amended by adding 4 new redbait reporting codes for use by commercial fishers when redbait stocks are brought within the quota management system.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 27 August 2009.

Reprints notes

1 *General*

This is a reprint of the Fisheries (Reporting) Amendment Regulations (No 2) 2009 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*

Fisheries (Reporting) Regulations 2017 (LI 2017/154): regulation 52