

Reprint  
as at 1 April 2008



**Animal Products (Regulated Control Scheme—Bivalve  
Molluscan Shellfish) Regulations 2006**  
(SR 2006/38)

Silvia Cartwright, Governor-General

**Order in Council**

At Wellington this 6th day of March 2006

Present:

Her Excellency the Governor-General in Council

Pursuant to section 166 of the Animal Products Act 1999 and section 25 of the Animal Products (Ancillary and Transitional Provisions) Act 1999, Her Excellency the Governor-General, on the recommendation of the Minister given in accordance with section 39 of the Animal Products Act 1999, and acting on the advice and with the consent of the Executive Council, makes the following regulations.

**Contents**

	Page
1 Title	4
2 Commencement	4

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**The Animal Products (Regulated Control Scheme—Bivalve Molluscan Shellfish) Regulations 2006 are administered by the Ministry of Agriculture and Forestry.**

**Part 1**  
**Preliminary provisions**

3	Regulated control scheme imposed	4
4	Prime purpose of scheme	4
5	Activities to which scheme applies	4
6	Persons to whom scheme applies	5
7	Relationship between scheme and other regulations, etc	5
8	Interpretation	5

**Part 2**  
**Standards, obligations, and requirements**

*Standards*

9	BMS to be suitable for processing	7
10	Minimisation of contamination or deterioration	7
11	BMS to be examined, sampled, and tested	8
12	Standards related to vessel and vehicle suitability	8
13	Standards related to persons whose presence or actions may result in contamination of BMS	8
14	Standards related to packing, packaging, and storage	8
15	Storage requirements	9
16	Standards related to relaying, wet storage, and depuration	9
17	Standards relating to identification, labelling, and record keeping	9
18	BMS not to be associated with false or misleading representation	9

*Obligations and requirements*

19	Obligations of growers	10
20	Obligation of harvest operators to be registered	10
21	Obligation of relay operators to hold permit	10
22	Obligation of transport, sorting shed, and BMS depot operators to be listed	10
23	Duties of harvest operators	10
24	Duty to supply information	11
25	Limits on harvesting	11
26	Verification	12
27	Laboratories	12
28	Required measuring equipment to be calibrated and function as intended	12

*Growing areas*

29	Classification of growing areas	12
30	Sanitary surveys	13
31	Monitoring of growing areas	13
32	Status of growing area as open or closed for harvesting	13
33	Listing of growing areas	13

**Part 3**  
**Registration, permits, and listings of BMS-related operators**

*Registration of harvest operators*

34	Director-General to maintain register of harvest operators	14
35	Matters to be shown in register	14
36	Application for registration	15
37	Renewal of registration	15
38	Registration of harvest operators	16
39	Refusal to register	16
40	Conditions on registration	17
41	Registration may not be transferred	17
42	Suspension of operations of registered harvest operator	17
43	Deregistration of harvest operators	18
44	Surrender of registration	19

*Permitting of relay operators*

45	Grant of permit to operate as relay operator	20
46	Conditions on permit	20
47	Revocation of permit	20

*Listing of growing areas and of transport, sorting shed, and BMS depot operators*

48	Director-General to maintain list of growing areas, transport operators, sorting shed operators, and BMS depot operators	21
49	Matters to be shown in list of growing areas, transport operators, sorting shed operators, and BMS depot operators	21
50	Applications for listing	22
51	Listing of transport, sorting shed, and BMS depot operators	22
52	Refusal to list	22
53	Delisting	22
54	Review of decision to refuse to list, or to delist	23
55	Listing fee payable	23

**Part 4**  
**Miscellaneous provisions**

*Offences*

56	Offences	23
----	----------	----

*Transitional provisions*

57	Transitional provisions: interpretation	24
58	Harvest operators, vessels, and vehicles	24
59	Certain relay operators deemed to hold permits	24
60	Carry-over of current listing or classification of growing areas, transport operators, and sorting shed operators	25

*Amendments to other regulations*

61	Food (Safety) Regulations 2002 amended	25
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**Regulations****1 Title**

These regulations are the Animal Products (Regulated Control Scheme—Bivalve Molluscan Shellfish) Regulations 2006.

**2 Commencement**

These regulations come into force on 1 June 2006.

**Part 1****Preliminary provisions****3 Regulated control scheme imposed**

- (1) These regulations impose a regulated control scheme in relation to bivalve molluscan shellfish (**BMS**) intended for human consumption.
- (2) The scheme comprises these regulations together with any associated specifications, specific requirements, and determinations given or made by the Director-General.

**4 Prime purpose of scheme**

The prime purpose of the scheme is to identify, monitor, evaluate, and manage the risks associated with—

- (a) the commercial growing, harvesting, sorting, and transporting of BMS intended for human consumption; and
- (b) other related activities or conditions affecting the suitability for processing or fitness for intended purpose of BMS.

**5 Activities to which scheme applies**

- (1) This regulated control scheme applies in relation to—
  - (a) all activities involved in growing, harvesting, sorting, and transporting BMS for commercial purposes up until the time when—
    - (i) the BMS are received by a wholesaler or retailer or sold direct to the consumer, in the case of BMS that does not undergo primary processing; or
    - (ii) the BMS undergo primary processing, in any other case:
  - (b) the collection and analysis of samples of BMS and associated things for monitoring under this scheme.

- (2) The activities referred to in subclause (1)(a)—
- (a) include, but are not limited to, relaying, temporary storage, and wet storage occurring in a coastal marine area or a land-based aquaculture facility; but
  - (b) do not include wet storage or other forms of primary processing that are covered by a risk management programme.
- (3) In this regulation, **primary processing** has the meaning given it by clauses 7 and 8 of the Animal Products (Definition of Primary Processor) Notice 2000.

## **6 Persons to whom scheme applies**

This regulated control scheme applies to the following persons:

- (a) persons with overall management or control of the growing of BMS for commercial purposes on marine farms or land-based farms or in the wild:
- (b) persons with overall management or control of the harvesting of BMS for commercial purposes on marine farms or land-based farms or in the wild:
- (c) laboratories, and persons in those laboratories, carrying out analysis of samples of BMS or associated things:
- (d) persons who transport, sort, or store BMS:
- (e) persons involved in undertaking specialist functions in relation to BMS under this scheme, such as samplers, recognised persons, and animal product officers.

## **7 Relationship between scheme and other regulations, etc**

To the extent that there is any inconsistency between this scheme and the provisions of any other regulations or specifications made under the Act, this scheme prevails over those provisions.

## **8 Interpretation**

In these regulations, unless the context otherwise requires,—

**Act** means the Animal Products Act 1999

**BMS** means all species of bivalve molluscan shellfish, including oysters, clams, mussels, and scallops

**BMS depot** means a depot, refrigerated container unit, or other building or structure used for holding BMS in a temperature-controlled environment prior to delivery to a processor, wholesaler, or retailer

**BMS depot operator** means a person who is the owner or other person in control of a business involving the holding of BMS in a depot

**coastal marine area** means the foreshore, seabed, and coastal water—

- (a) of which the seaward boundary is the outer limits of the exclusive economic zone (as defined in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977); and
- (b) of which the landward boundary is the line of mean high-water springs, except that where that line crosses a river, the landward boundary at that point is whichever is the lesser of—
  - (i) 1 kilometre upstream from the mouth of the river; or
  - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5

**commercial purposes** means for purposes of trade or reward (otherwise than as an employee)

**deputation** means the process of reducing pathogens or other contaminants that may be present in BMS by using a managed aquatic environment as the treatment process

**growing area** means any coastal marine area, and any land-based aquaculture facility used for the cultivation of BMS for commercial purposes, that—

- (a) contains natural deposits of BMS harvested for commercial purposes; or
- (b) is used for cultivation of BMS for commercial purposes

**harvest** means the act of removing BMS, for wet storage, relay, retail sale, wholesale, or processing, from a growing area and its placement on or in a harvest vessel, vehicle, or container

**harvest operator** means a person who is the owner or other person in control of a business involving harvesting of BMS

**IAIS 005.1** means the current Industry Agreed Implementation Standard series 005.1 issued under regulation 19 of the Fish Export Processing Regulations 1995 (SR 1995/54)

**land-based aquaculture facility** means a facility designed, constructed, and used for the cultivation of BMS for commercial purposes

**operator** means a harvest operator, transport operator, sorting shed operator, BMS depot operator, or relay operator

**recognised verifier** or **recognised verifying agency** means a person or agency recognised under section 103 of the Act to perform verification functions or activities for the purposes of this scheme

**relay** means to transfer BMS from a growing area to another growing area for the purpose of reducing pathogens or other contaminants by using the ambient coastal marine area environment or a land-based aquaculture facility as the treatment process

**relay operator** means a person who is the owner or other person in control of a business involving relay activities

**sanitary survey** means the written evaluation report of all the environmental factors, including actual and potential pollution sources, that have a bearing on the quality of water or BMS in a growing area

**scheme** or **regulated control scheme**, means these regulations and any associated specifications, specified requirements, and determinations given or made by the Director-General

**sorting shed** means a building or structure where BMS are handled directly after harvesting to enable separation of BMS for farm management, wet storage, relaying, or culling, prior to transport to a processor, wholesaler, or retailer

**sorting shed operator** means a person who is the owner or other person in control of a business involving sorting BMS in sorting sheds

**specification** means a requirement specified by notice under section 167(1) of the Act

**specified person** means a person specified in specifications for the purposes of this scheme

**transport operator** means a person who is the owner or other person in control of a business involving transporting BMS by road, rail, sea, or air

**vehicle** means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and includes a hovercraft

**vessel** means any description of vessel, aircraft, hovercraft, submersible vessel, or other vessel of whatever size

**wet storage** means the transfer and temporary storage of BMS from a growing area to another growing area for the purposes of desanding, conditioning, or storage, prior to harvest for retail sale, wholesale, or processing.

## Part 2

### Standards, obligations, and requirements

#### *Standards*

#### 9 **BMS to be suitable for processing**

BMS that is harvested for processing into animal product or for wholesale or retail sale must be suitable for that purpose taking into account any specifications that have been issued relating to biological, chemical, or physical hazards, or any extraneous objects, materials, or substances that might affect the suitability of the BMS or BMS product for its purpose.

#### 10 **Minimisation of contamination or deterioration**

All persons engaged in the harvesting of BMS must ensure that the harvesting and related activities, including relaying, washing, and refrigeration, are carried out in a manner that minimises contamination or deterioration of the BMS.

**11 BMS to be examined, sampled, and tested**

All operators and other specified persons must ensure that—

- (a) BMS, and associated things, are examined, sampled, and tested in accordance with any relevant specifications that are appropriate to the description of the BMS or process concerned, or the risk factor to be managed, or any combination of these; and
- (b) any necessary actions arising as a result of the examination, sampling, or testing are taken.

**12 Standards related to vessel and vehicle suitability**

Operators and other specified persons must ensure that vessels, vehicles, and buildings for which they are responsible are suitable for the harvest, transport, sorting, or storage of BMS or BMS product (as relevant) and are—

- (a) designed, constructed, and equipped to minimise contamination, deterioration, or decomposition of BMS; and
- (b) maintained; and
- (c) operated, including cleaned, to minimise the exposure of the BMS or associated things to risk factors having regard to the operational capability and capacity of the vessel and vehicle.

**13 Standards related to persons whose presence or actions may result in contamination of BMS**

All operators and other specified persons must ensure that persons, including visitors, involved with harvesting, sorting, transporting, post-harvest treatment, storing, packing, or handling, whose presence or actions may result in contamination of BMS,—

- (a) follow an appropriate personal hygiene routine; and
- (b) behave in such a manner as may be necessary or desirable to minimise contamination to BMS and associated things.

**14 Standards related to packing, packaging, and storage**

All operators and other specified persons must ensure that any packaging materials and containers (including reusable packaging) used for BMS and associated things are designed, made, stored, and used in a manner that—

- (a) maintains the status of the BMS as suitable for use in processing; and
- (b) maintains the status of the BMS as suitable for wholesale or retail sale where no primary processing occurs; and
- (c) maintains the status of BMS product as fit for its intended purpose; and
- (d) minimises contamination of the BMS; and
- (e) displays any required labelling.

**15 Storage requirements**

Operators and other specified persons must ensure that BMS are stored in a manner that—

- (a) maintains the status of the BMS as suitable for use in processing; and
- (b) maintains the status of the BMS as suitable for wholesale or retail sale where no primary processing occurs; and
- (c) maintains the status of BMS product as fit for its intended purpose; and
- (d) minimises contamination of the BMS; and
- (e) maintains any label or identification required.

**16 Standards related to relaying, wet storage, and depuration**

All operators and other specified persons must ensure that the status of BMS as suitable for relaying, wet storage, and depuration is maintained.

**17 Standards relating to identification, labelling, and record keeping**

- (1) All operators and other specified persons must have a tracking system, as required by specifications, that—
  - (a) allows for the identification of BMS; and
  - (b) enables the movement of BMS to be traced from its origin, and through the operator's operation, to the next recipient of the BMS.
- (2) BMS must be labelled or identified in accordance with any relevant specifications.
- (3) Any labelling or identification required by specifications must—
  - (a) clearly relate to the BMS to which it applies; and
  - (b) contain information that accurately describes or differentiates so as to identify the BMS to which it applies.
- (4) All records and returns that are required by specifications to be kept or made by any operator or other specified person in respect of BMS or associated things must be—
  - (a) complete; and
  - (b) accurate; and
  - (c) of sufficient quality; and
  - (d) appropriately stored and readily accessible (in the case of records); and
  - (e) promptly supplied (in the case of returns).

**18 BMS not to be associated with false or misleading representation**

BMS for processing or wholesale or retail sale must not be associated with a false or misleading representation of any kind concerning its nature or origin or its suitability for processing or for sale or its fitness for its intended purpose.

*Obligations and requirements***19 Obligations of growers**

Every person with overall management or control of the growing of BMS for commercial purposes on marine farms or land-based farms or in the wild must—

- (a) ensure that the operation of the farm or other growing area does not contravene the requirements of this scheme; and
- (b) give relevant specified persons such freedom and access as will allow them to carry out their functions and activities under this scheme, including verification functions and activities; and
- (c) ensure that sufficient information is provided to the Director-General to enable the Director-General to maintain in the list of growing areas the particulars referred to in regulation 49(1)(b).

**20 Obligation of harvest operators to be registered**

No person may harvest BMS for commercial purposes unless the person is registered as a harvest operator under regulation 38.

**21 Obligation of relay operators to hold permit**

No person may operate as a relay operator unless the person holds a relay permit issued under regulation 45 by an animal product officer.

**22 Obligation of transport, sorting shed, and BMS depot operators to be listed**

No person may operate as a transport operator, sorting shed operator, or BMS depot operator unless the person is listed as such an operator under regulation 48.

**23 Duties of harvest operators**

- (1) A harvest operator has the following duties:
  - (a) to ensure the harvesting operation and any related vessel or vehicle does not contravene the relevant requirements of this regulated control scheme, including ensuring that—
    - (i) the recognised verifier's requirements relating to verification are complied with; and
    - (ii) a nominated person (or more than 1 person) is responsible for the day-to-day management of the harvesting operation;
  - (b) to ensure that all harvesting operations under the scheme are adequately implemented and resourced, including provision for the instruction, training, and supervision of personnel to ensure the BMS are suitable for processing into animal product or for wholesale or retail sale:

- (c) to ensure that relevant recognised and specified persons have such freedom and access as will allow them to carry out their functions and activities under this scheme, including verification functions and activities:
  - (d) where BMS are recalled because they are or may not be suitable for processing into animal product or for wholesale or retail sale, to notify the operator's recognised verifying agency as soon as practicable after the decision or direction to recall the BMS made:
  - (e) to maintain procedures and processes to demonstrate that the record-keeping requirements of and under this scheme in relation to the harvesting of BMS are being complied with.
- (2) A harvest operator must notify the Director-General, in advance where practicable, and otherwise as soon as possible, of any change in the operator's recognised verifying agency.
- (3) A person must notify the Director-General, in advance where practicable, and otherwise as soon as possible, if the person is no longer operating as a harvest operator under this scheme.

#### **24 Duty to supply information**

- (1) Where required by specifications, the harvest operator or supplier of BMS for processing or sale must provide information, in accordance with the specifications, relating to the status of the BMS. Such information may include—
- (a) the BMS's origin:
  - (b) its nature and description:
  - (c) its exposure to risk factors, if any:
  - (d) its suitability for processing or sale:
  - (e) its fitness for its intended purpose.
- (2) The information supplied must be accurate.

#### **25 Limits on harvesting**

- (1) BMS may be harvested only as permitted by and in accordance with specifications.
- (2) No person may harvest BMS from a growing area—
- (a) that is not open for harvesting; or
  - (b) where harvesting of BMS is prohibited under specifications.
- (3) No person may harvest BMS using a vessel or vehicle other than a vessel or vehicle specified in the register under regulation 35(d).
- (4) Despite subclause (2), a person may harvest BMS from a growing area that is not open if—
- (a) it is for the purpose of relaying, depuration, or other post-harvest treatment that minimises contamination and deterioration; and

- (b) that relaying, depuration, or other treatment is carried out in accordance with specifications.

## 26 Verification

- (1) The ongoing performance of harvest operators must be verified by a recognised verifier at frequencies and intensities specified in the relevant specifications.
- (2) In preparing the initial verification report on each vessel and vehicle used in the harvesting operation referred to in regulation 36(1)(a), the recognised verifier must, if required by specifications, conduct an on-board assessment of the harvesting vessel or vehicle to assess—
  - (a) the vessel's or vehicle's suitability for the harvesting operations to be undertaken; and
  - (b) the vessel's or vehicle's compliance with the design and construction requirements of this scheme.
- (3) The applicant must make appropriate arrangements to enable the recognised verifier to undertake the initial verification assessment required.
- (4) The initial verification and the report must be completed by the recognised verifier in accordance with the relevant specifications.
- (5) The ongoing performance of transport operators, sorting shed operators, BMS depot operators, and relay operators must be verified by a recognised verifier at frequencies and intensities specified in any relevant specifications.

## 27 Laboratories

A laboratory that conducts microbiological, chemical, marine biotoxin, phytoplankton, or any other types of analysis of BMS and associated things must comply with the requirements of any specifications.

## 28 Required measuring equipment to be calibrated and function as intended

- (1) All specified persons must ensure that measuring equipment that is used to carry out a critical measurement is properly calibrated and functions as intended.
- (2) **Critical measurement** means a parameter identified as critical in any specifications or otherwise in this scheme.

### *Growing areas*

## 29 Classification of growing areas

- (1) The Director-General or an animal product officer may classify growing areas for the growing of BMS, based on the quality of water and BMS, and in accordance with specifications.
- (2) A classification may include harvest criteria.

### **30 Sanitary surveys**

- (1) A sanitary survey must be completed before initial classification of a growing area, except for a classification as a prohibited area.
- (2) Further sanitary surveys must be undertaken in accordance with specifications that set out—
  - (a) the nature and frequency of the surveys; and
  - (b) who is to carry out any such survey; and
  - (c) any other requirements in relation to surveys.

### **31 Monitoring of growing areas**

- (1) Growing areas must be monitored in accordance with specifications to ensure—
  - (a) the validity of the growing area's classification and its latest sanitary survey; and
  - (b) that the BMS in the growing area is suitable for harvest.
- (2) Specifications made for the purpose of this scheme may require animal product officers to prepare management plans for any growing area to ensure harvesting is carried out in accordance with the requirements of the specifications.

### **32 Status of growing area as open or closed for harvesting**

- (1) The status of a growing area refers to whether the area is open or is closed for the harvesting of BMS, and that status is separate and distinct from the area's classification.
- (2) The Director-General or an animal product officer may, in accordance with specifications, declare a growing area to be open or, where necessary to prevent contaminated or potentially contaminated BMS being consumed, to be closed.
- (3) The Director-General or an animal product officer must notify affected harvest operators in writing of the status of a growing area and of any change in that status (other than a change in status referred to in subclause (5)).
- (4) For the purposes of subclause (3),—
  - (a) the Director-General may approve systems for the automatic issue of notifications; and
  - (b) any such automatic notification is deemed to be issued by the Director-General or an animal product officer.
- (5) Nothing in this regulation affects the power of the Director-General to impose controls in respect of any growing area under section 81B of the Act.

### **33 Listing of growing areas**

The Director-General must list all growing areas that the Director-General is aware of in accordance with regulations 48 and 49.

## Part 3

### Registration, permits, and listings of BMS-related operators

#### *Registration of harvest operators*

#### **34 Director-General to maintain register of harvest operators**

- (1) The Director-General must keep and maintain a register of harvest operators that records persons authorised under this scheme to harvest BMS for commercial purposes.
- (2) The purpose of the register is—
  - (a) to facilitate the control of the harvesting of BMS; and
  - (b) to enable members of the public to know which harvest operators are subject to this regulated control scheme, and who is responsible for various functions related to harvesting under this scheme; and
  - (c) to facilitate the ability of the Director-General to provide official assurances for the entry of BMS into overseas markets; and
  - (d) to facilitate the compliance, audit, and other supporting and administrative functions of the Ministry under the Act and this regulated control scheme.
- (3) The Director-General must—
  - (a) keep the register open for public inspection, without fee, during ordinary office hours at the head office of the Ministry and such other places as the Director-General determines; and
  - (b) on request, supply to any person copies of all or part of the register on payment of a reasonable charge for the production of the copies.
- (4) The register may be kept in such manner as the Director-General thinks fit.

#### **35 Matters to be shown in register**

The register of harvest operators must contain the following particulars in relation to each operator:

- (a) the name and address (including the electronic address, if available) of the operator;
- (b) the name, position, or designation of the person or persons nominated by the operator as responsible for the day-to-day management of the harvesting operations (if applicable);
- (c) the date on which the operator was registered, the latest date of renewal of registration, and the period for which the operator is registered;
- (d) the name or unique identification number of each vessel and vehicle used in the harvesting operation (if any):

- (e) the name of the recognised verifying agency responsible for the verification function in relation to the harvesting operation:
- (f) the most recent date (and periods, if appropriate) of any deregistration or surrender of registration under this scheme:
- (g) a brief indication of the reason for the most recent deregistration (if any):
- (h) such other particulars as may be required by or under this scheme.

### **36 Application for registration**

- (1) An application for registration must be made in writing in a form or manner provided in specifications or approved by the Director-General, and be accompanied by—
  - (a) a copy of an initial verification report on each vessel and vehicle used in the harvesting operation made by a recognised verifier not more than 3 months before the date of the application for registration:
  - (b) the name of the recognised verifying agency that has indicated it is prepared to undertake the verification functions in respect of the harvesting operation:
  - (c) such further information and other material as may be required by the Director-General:
  - (d) the fee prescribed in regulations made under the Act (if any).
- (2) The application must specify the matters to be shown on the register under regulation 35(a), (b), and (d).
- (3) The Director-General may require an applicant to supply further information or other material before determining whether or not to register a harvest operator.
- (4) If the information or material is not supplied within 3 months of the date of request, or within such further time as the Director-General allows, the application for registration lapses.

### **37 Renewal of registration**

- (1) An application for renewal of registration of a harvest operator must be made by the operator and received by the Director-General at least 1 month before the expiry of the operator's current registration.
- (2) Regulations 36 (except for regulation 36(1)(a) unless the Director-General determines that it is to apply), 38, and 39 apply to an application for renewal as if it were an application for registration, with all necessary modifications.
- (3) If the Director-General fails to determine the application for renewal before the date the harvest operator's current registration expires, the operator is nevertheless deemed to be registered under this scheme until the date the Director-General notifies the operator of his or her determination on the application.

**38 Registration of harvest operators**

- (1) Subject to subclause (2), the Director-General must register an applicant as a harvest operator if satisfied that—
  - (a) the initial verification report confirms that the applicant's vessel or vehicle meets the suitability requirements; and
  - (b) the applicant is resident in New Zealand within the meaning of section YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007.
- (2) The Director-General may decline to register an applicant if he or she considers that—
  - (a) there has in the past been a serious or repeated failure by the applicant to comply with the duties specified in regulation 23; or
  - (b) there are other good grounds for considering that the applicant is likely in the future to fail to comply with the duties specified in regulation 23.
- (3) Registration may be subject to such reasonable conditions as to harvesting operations as the Director-General may specify.
- (4) The Director-General must, as soon as practicable after registering a harvest operator, supply the operator with a notice of registration specifying—
  - (a) the registration identifier of the operator; and
  - (b) the period of registration; and
  - (c) any conditions imposed under subclause (3).
- (5) Registration of a harvest operator under this regulation continues in force for the period specified on the notice of registration, unless—
  - (a) the operator is deregistered under regulation 43; or
  - (b) the registration is surrendered under regulation 44.

Regulation 38(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**39 Refusal to register**

- (1) If, after considering an application and any further information or material supplied under regulation 36, the Director-General proposes to refuse to register a person as a harvest operator, the Director-General must give the applicant—
  - (a) a notice containing such particulars as will clearly inform the applicant of the grounds on which the Director-General proposes to refuse to register; and
  - (b) a reasonable opportunity to make written submissions or be heard in respect of the matter.
- (2) Where the Director-General finally determines to refuse to register a person as a harvest operator, the Director-General must as soon as practicable notify that fact to the applicant in writing, giving reasons.

- (3) If a person acting under the delegated authority of the Director-General declines to register a person as a harvest operator, the applicant may seek a review of that decision under section 162 of the Act.

#### **40 Conditions on registration**

- (1) The Director-General may from time to time, by written notification, impose on a person registered as a harvest operator reasonable conditions as to harvesting operations, or revoke or amend any conditions imposed under regulation 38(3) or this subclause.
- (2) The imposition, revocation, or amendment takes effect on the date specified in the notification, which may not be before the date on which the notice is received.
- (3) If a person acting under the delegated authority of the Director-General imposes or amends any conditions under this regulation or under regulation 38(3), the harvest operator may seek a review of that decision under section 162 of the Act.

#### **41 Registration may not be transferred**

- (1) The registration of a harvest operator applies only to that particular operator specified in the register, and may not be transferred to a different harvest operator.
- (2) For the purposes of this regulation, the following circumstances will, except as otherwise specified in specifications, be treated as involving a change in the operator, and so require a new registration of the harvest operator:
  - (a) a change in the name of a company (but not in a company's shareholding);
  - (b) a change in the members of a partnership (but not in a member's respective shares in the partnership);
  - (c) the death, bankruptcy, receivership, or liquidation of the operator.

#### **42 Suspension of operations of registered harvest operator**

- (1) The Director-General may at any time suspend any or all the operations of a registered harvest operator (including the use of any vessel or vehicle) for a period of up to 3 months if satisfied that—
  - (a) there has been a serious or repeated failure by the operator to comply with the duties specified in regulation 23; or
  - (b) the harvest operator has failed to comply with any conditions imposed under regulation 38(3) or regulation 40.
- (2) The Director-General may impose conditions and requirements in respect of the implementation and operation of a suspension under this regulation.
- (3) Where the Director-General suspends all or any operations of a harvest operator, he or she must give written notice of that fact to the operator, specifying—

- (a) the reason for the suspension; and
  - (b) the period of the suspension; and
  - (c) the date on which or time at which it commences (which may not be earlier than the date or time of notification); and
  - (d) the operations to which the suspension applies; and
  - (e) any conditions or requirements in relation to the suspension.
- (4) If the Director-General considers it necessary in the circumstances, and after having notified the harvest operator of the proposed extension and the reasons for it and having given the operator a reasonable opportunity to be heard, the period of suspension may be extended for such further period not exceeding 3 months as the Director-General notifies to the operator in writing before the expiry of the original suspension.
  - (5) The Director-General must notify the appropriate recognised verifying agency of any suspension under this regulation.
  - (6) The Director-General may notify any suspension under this regulation in the *Gazette*.
  - (7) A suspension does not affect any other actions that the Director-General may take under this regulation.
  - (8) Where operations are suspended under this regulation, the Director-General may direct the operator or person in charge to take action appropriate to deal with any affected BMS, and may exercise any of his or her other powers under section 82 of the Act.
  - (9) If a person acting under the delegated authority of the Director-General suspends any operations under this section, the harvest operator may seek a review of the suspension under section 162 of the Act.

#### **43 Deregistration of harvest operators**

- (1) The Director-General may remove a harvest operator from the register of harvest operators if satisfied that—
  - (a) there has been a serious or repeated failure by the operator to comply with the duties specified in regulation 23; or
  - (b) the operator fails to comply with regulation 38(1)(b), or fails to comply with any condition imposed under regulation 38(3) or regulation 40, being a failure to comply that—
    - (i) arose after the operator's registration; or
    - (ii) first came to the attention of the Director-General after the operator's registration; or
  - (c) any failure to pay the registration fee or any other charge or fee prescribed under regulations made under the Act by the due date has persisted for more than 30 days; or

- (d) the harvest operator is no longer operating as a harvest operator under this scheme.
- (2) Before removing a harvest operator from the register, the Director-General must—
  - (a) notify the operator in writing of his or her intention, giving the reasons for that intention and the facts and assumptions on which it is based; and
  - (b) give the operator a reasonable opportunity, within the time specified in the written notice, to provide evidence, information, and submissions as to why the operator should not be removed from the register.
- (3) After considering the material (if any) supplied by the operator under subclause (2)(b), the Director-General must—
  - (a) make a final decision as to whether or not to remove the harvest operator from the register; and
  - (b) as soon as practicable—
    - (i) notify the operator of the decision in writing, giving reasons and the facts or assumptions on which the decision is based, in the case of a decision to deregister the operator; and
    - (ii) notify the relevant recognised verifying agency of the decision to remove the harvest operator from the register.
- (4) Where a harvest operator is removed from the register under this regulation, the Director-General may direct the operator or person in charge to take action appropriate to deal with any affected BMS, and may exercise any of his or her other powers under section 82 of the Act.
- (5) If a person acting under the delegated authority of the Director-General deregisters a harvest operator, the person who was the operator may seek a review of that decision under section 162 of the Act.

#### **44 Surrender of registration**

- (1) A harvest operator may at any time surrender the operator's registration by notice in writing to the Director-General.
- (2) Where the operator ceases to manage or control a harvesting operation, that operator must, within 14 days of so ceasing,—
  - (a) notify the Director-General in writing of that fact; and
  - (b) surrender the notice of registration to the Director-General; and
  - (c) notify the appropriate recognised verifying agency of that fact.
- (3) At the same time as an operator gives notification under subclause (1) or subclause (2), the operator must also notify the Director-General of how it is proposed to deal with any remaining BMS covered by this regulated control scheme.

- (4) The Director-General may approve or agree to any such proposal subject to conditions, and the operator must comply with those conditions.
- (5) On being notified of a surrender of registration under this regulation—
  - (a) the Director-General must record the surrender on the register of harvest operators; and
  - (b) the surrender takes effect on and from the date stated in the register.

*Permitting of relay operators*

**45 Grant of permit to operate as relay operator**

An animal product officer must grant a relay permit to a person applying for it if the officer is satisfied that the applicant—

- (a) will meet the requirements of any relevant specifications; and
- (b) has paid any prescribed fee.

**46 Conditions on permit**

- (1) An animal product officer may, by written notification, either on the initial grant of the permit or subsequently, attach any reasonable conditions to a permit granted under regulation 45 for the purpose of ensuring the suitability of BMS for its intended purpose.
- (2) An animal product officer may revoke or reasonably amend any conditions imposed under subclause (1).

**47 Revocation of permit**

- (1) An animal product officer may revoke a permit granted under regulation 45 if satisfied that—
  - (a) the permit holder has failed to comply with—
    - (i) any relevant specifications; or
    - (ii) any condition attached to the permit under regulation 46; or
  - (b) any failure to pay the prescribed permit fee or other charge or fee prescribed under regulations made under the Act by the due date has persisted for more than 30 days.
- (2) Before revoking a permit, the animal product officer must—
  - (a) notify the permit holder in writing of his or her intention, giving the reasons for that intention and the facts and assumptions on which it is based; and
  - (b) give the permit holder a reasonable opportunity, within the time specified in the written notice, to provide evidence, information, and submissions as to why the permit should not be revoked.
- (3) After considering the material (if any) supplied by the permit holder under subclause (2)(b), the animal product officer must—

- (a) make a final decision as to whether or not to revoke the permit; and
  - (b) as soon as practicable, notify the permit holder of the decision in writing, giving reasons and the facts or assumptions on which the decision is based, in the case of a decision to revoke the permit.
- (4) A person whose permit has been revoked under this regulation may seek a review of the decision by the Director-General or by a person designated by the Director-General who was not involved in the decision to revoke the permit, and subsections (3) to (8) of section 162 of the Act apply in relation to any such review.

*Listing of growing areas and of transport, sorting shed, and BMS depot operators*

**48 Director-General to maintain list of growing areas, transport operators, sorting shed operators, and BMS depot operators**

- (1) The Director-General must keep and maintain a list of growing areas, transport operators, sorting shed operators, and BMS depot operators.
- (2) The purpose of the list is—
  - (a) to enable industry members and members of the public to know which are the growing areas that are covered by the scheme, and who is recognised by law to act as transport operators, sorting shed operators, and BMS depot operators; and
  - (b) to facilitate the compliance, audit, and other functions of the Ministry as the agency with regulatory functions under this scheme.
- (3) The Director-General must—
  - (a) keep the list open for public inspection, without fee, during ordinary office hours at the head office of the Ministry and at such other places as the Director-General determines; and
  - (b) supply to any person copies of all or part of the list on request and payment of a reasonable charge for the production of the copies.
- (4) The list may be kept in such manner as the Director-General thinks fit.

**49 Matters to be shown in list of growing areas, transport operators, sorting shed operators, and BMS depot operators**

- (1) The list of growing areas must contain the following particulars in relation to each area:
  - (a) the name and number assigned by an animal product officer to the growing area;
  - (b) the associated current identification of each permit or registration under the Fisheries Act 1996, Resource Management Act 1991, or any other relevant Act.

- (2) The list of transport operators, sorting shed operators, and BMS depot operators must contain the following particulars in relation to each of them:
- (a) the name and address (including the electronic address, if available) of the operator;
  - (b) the premises or place or area of operations (including the name or unique identifier of any vessels and vehicles used in the relevant operations) of the operator where transporting, sorting, or holding of BMS is carried out;
  - (c) the date on which the person was listed;
  - (d) such other particulars as may be prescribed in specifications.

#### **50 Applications for listing**

A person who wishes to be a transport operator, sorting shed operator, or BMS depot operator may apply to the Director-General in a manner approved by the Director-General for listing as such an operator.

#### **51 Listing of transport, sorting shed, and BMS depot operators**

- (1) On receipt of a properly made application accompanied by the prescribed fee (if any), the Director-General must list the applicant as a transport, sorting shed, or BMS depot operator if satisfied that the applicant is complying or will comply with the requirements of any relevant specifications.
- (2) Where the Director-General determines to list an applicant as a transport, sorting shed, or BMS depot operator, the Director-General must—
  - (a) include the applicant and the applicant's operation on the list under regulation 48; and
  - (b) notify the applicant in writing accordingly.

#### **52 Refusal to list**

If the Director-General determines to refuse to list an applicant as a transport, sorting shed, or BMS depot operator, the Director-General must, as soon as practicable, notify the applicant in writing of—

- (a) the decision; and
- (b) the reasons for the decision, and the facts or assumptions on which it is based.

#### **53 Delisting**

- (1) The Director-General may remove any transport, sorting shed, or BMS depot operator from the list if—
  - (a) the listed operator so requests; or

- (b) the Director-General is satisfied that the criteria referred to in regulation 51 no longer apply, or the person no longer operates as a transport, sorting shed, or BMS depot operator; or
  - (c) any failure to pay the listing fee (if any) by the due date has persisted for more than 30 days.
- (2) Before delisting an operator on any of the grounds referred to in subclause (1)(b) and (c), the Director-General must—
- (a) notify the operator in writing of his or her intention; and
  - (b) give the operator a reasonable opportunity, within the time specified in the written notice, to explain why he or she should not be delisted, or to pay the unpaid fee.
- (3) The delisting of an operator under this section does not affect the right of a person to make a further application for listing under regulation 50.

**54 Review of decision to refuse to list, or to delist**

If a person acting under the delegated authority of the Director-General refuses an application to list a person as a transport, sorting shed, or BMS depot operator, or delists an operator, the person aggrieved by the decision may seek a review of the decision under section 162 of the Act.

**55 Listing fee payable**

Every person listed as a transport, sorting shed, or BMS depot operator is liable to pay, either annually or at such greater intervals as may be prescribed, the prescribed fee (if any) in respect of their continued listing.

**Part 4  
Miscellaneous provisions**

*Offences*

**56 Offences**

- (1) A person commits an offence for the purposes of section 135(1)(b) of the Act who fails to comply with—
- (a) regulation 19 (obligations of growers); or
  - (b) regulation 20 (obligation of harvest operators to register); or
  - (c) regulation 21 (obligation of relay operators to hold permit); or
  - (d) regulation 22 (obligation of transport, sorting shed, and BMS depot operators to be listed); or
  - (e) regulation 23 (duties of harvest operators); or
  - (f) regulation 25(2) or 25(3) (harvesting from growing area in certain circumstances); or

- (g) any conditions imposed under regulation 38(3) or regulation 40 or regulation 46.
- (2) A person who commits such an offence is liable to the penalty specified in section 135(3) of the Act.

### *Transitional provisions*

#### **57 Transitional provisions: interpretation**

In regulations 58 to 60, the **1995 Circular** means the *New Zealand Fishing Industry Agreed Implementation Standards IAIS 005.1 Shellfish Quality Assurance Circular 1995*, available at offices of the Ministry.

#### **58 Harvest operators, vessels, and vehicles**

- (1) Every person who is listed as a shellfish harvester in the list referred to in section 5.2.3 of the 1995 Circular is deemed to be registered as a harvest operator under regulation 38 until the earliest of the following:
  - (a) the expiry of the term of that listing; or
  - (b) the expiry of 6 months from the date of commencement of these regulations (but subject to subclause (3)); or
  - (c) the deregistration of the person under regulation 43.
- (2) Every vessel or vehicle approved under section 5.2.4 of the 1995 Circular may be used in the relevant harvest operator's harvest operations until the earliest of the following:
  - (a) the expiry of the term of the approval; or
  - (b) the expiry of 6 months from the date of commencement of these regulations (but subject to subclause (3)); or
  - (c) the suspension of the use of the vessel or vehicle in the harvest operations under regulation 42.
- (3) Despite subclauses (1) and (2), if a person to whom subclause (1) applies submits a properly made application for registration as a harvest operator under regulation 36 not less than 30 days before the expiry of the 6-month period referred to in subclause (1)(b), that person is deemed to be registered as a harvest operator, and may use any vessel or vehicle to which subclause (2) applies, until the application for registration is determined.

#### **59 Certain relay operators deemed to hold permits**

Every person who holds a permit referred to in section 4.3.1 of the 1995 Circular is deemed to hold a permit to operate as a relay operator granted under regulation 45 until the earlier of—

- (a) the expiry of the permit according to its terms; or
- (b) the revocation of the permit by an animal product officer.

**60 Carry-over of current listing or classification of growing areas, transport operators, and sorting shed operators**

- (1) Every growing area is deemed to hold the same classification as it holds under section 3.3 of the 1995 Circular until the earlier of—
  - (a) its reclassification under this scheme; or
  - (b) the expiry of 6 months from the date of commencement of these regulations.
- (2) Every person who is listed as a shellfish harvester or road transport operator in the list referred to in section 5.2.3 of the 1995 Circular is deemed to be listed as a transport operator under regulation 48 until the earlier of—
  - (a) the expiry of the term of that listing; or
  - (b) the expiry of 6 months from the date of commencement of these regulations.
- (3) Every person who operates a sorting shed that is approved under section 5.7.2 or is on the list of approved sorting sheds referred to in section 5.7.4 of the 1995 Circular is deemed to be listed as a sorting shed operator under regulation 48 until the earlier of—
  - (a) the expiry of the term of the approval; or
  - (b) the expiry of 6 months from the date of commencement of these regulations.

*Amendments to other regulations*

**61 Food (Safety) Regulations 2002 amended**

The Food (Safety) Regulations 2002 are amended—

- (a) by revoking the definition of **shellfish** in regulation 3(1);
- (b) by revoking regulations 18 and 19;
- (c) by omitting from regulation 22(1)(b)(ii) the words “or regulation 19”;
- (d) by revoking regulation 23(1)(l) and (m).

Diane Morcom,  
Clerk of the Executive Council.

**Contents**

- 1 General
- 2 Status of reprints
- 3 How reprints are prepared
- 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
- 5 List of amendments incorporated in this reprint (most recent first)

**Notes****1 General**

This is a reprint of the Animal Products (Regulated Control Scheme—Bivalve Molluscan Shellfish) Regulations 2006. The reprint incorporates all the amendments to the Animal Products (Regulated Control Scheme—Bivalve Molluscan Shellfish) Regulations 2006 as at 1 April 2008, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/legislation/reprints.shtml> or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

**4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted

enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)

- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Income Tax Act 2007 (2007 No 97): section ZA 2(1)