

LIVING MARINE RESOURCES MANAGEMENT ACT 1995
SECTION 75 - MINISTERIAL GUIDELINE

SUBJECT: REMOVAL OF A SUPERVISOR FROM A LICENCE

This guideline replaces the guideline dated 1 April 2003.

BACKGROUND:

The *Living Marine Resources Management Act 1995* (LMRMA) at section 89 details the requirement for the holder of a licence to ensure that any activity carried out under the authority of a licence is supervised by a supervisor. Section 87 provides the Minister with discretion to grant approval for the use of licences by other persons subject to resource management constraints.

Whereby the Act clearly provides for the adding of a supervisor to a licence, the Act does not provide for the removal of a supervisor from a licence. To date, the majority of supervisors that are removed from a licence are removed by mutual agreement of the licence holder and the supervisor. It was thought to be prudent to consider a procedure for the removal of a supervisor from a licence at the request of a licence holder where the supervisor either is unaware of the intention to have them removed or for some reason does not want to be removed.

For the removal of a supervisor from a fishing licence (abalone dive) (FLAD), special consideration needs to be given. This is due to the complex nature of the business rules that relate to the authorisation of abalone quota to a FLAD. Abalone quota is authorised specifically to a diver who is either the FLAD holder themselves or has been authorised onto the licence as an authorised supervisor (ie the person who is actually harvesting the fish). If an authorised supervisor is removed from a FLAD, the quota, which has been authorised to them and not yet caught, is automatically removed from the licence by way of a computer-generated process.

POLICY STATEMENT:

A supervisor will only be removed from a licence with their knowledge or when the formal notification process has been followed. Also, all reasonable steps will be taken to ensure the supervisor has complied with the requirement to return documentation, such as quota docket books, fishing returns and catch logbooks. All reasonable steps will be taken to preserve any uncaught abalone quota that may be authorised on a FLAD.

OBJECTIVES OF POLICY:

The proposed administrative arrangement will significantly reduce the risk of a supervisor being removed from a licence without prior knowledge. This will minimise the possibility of a supervisor inadvertently participating in a fishery illegally and will ensure that any documentation has been returned to the Secretary.

ADMINISTRATION:

Any licence holder who requires a supervisor to be removed from their licence must apply in writing by completing the approved 'Removal of Supervisor' form. The form is to be signed by both the licence holder and the supervisor.

Should the licence holder be unable or unwilling to cause the supervisor to sign the form or if the supervisor cannot be contacted or refuses to sign the form, the Department will take all reasonable steps to contact the supervisor. This will include notification in writing of the intention to remove the supervisor from the licence. The supervisor will also need to be informed of any documentation that is to be returned to the Secretary, such as catch returns or quota docket books etc.

The supervisor will be given 14 days from the date of the letter to respond and where necessary return any relevant documentation. If the supervisor fails to respond within the 14 day period, a second letter will be sent (by registered mail) advising the supervisor that they will be removed on a date not less than 14 days from the date of the second notice. The Marine and Rescue Services of Tasmania Police will be advised accordingly and a Fisheries Officer will collect the outstanding documents from the supervisor as soon as possible after the date of removal.

Should the request to remove a supervisor relate to a FLAD with uncaught or partially caught quota units authorised on the licence, the following is to occur:

- If the units are uncaught, they are to be de-authorised and will be available for the quota holder to reauthorise to another diver.
- If the units are partially caught, then in accordance with current management policy, the units cannot be de-authorised unless exceptional circumstances exist. In such cases the quota holder and supervisor will be notified in writing of the potential loss of the uncaught quota. The quota holder or supervisor will also be notified in writing of the option to make a written application to the Department if either believes that exceptional circumstances exist.

- The request should be made to the General Manager (Primary Industries) as soon as possible and should outline the details of the exceptional circumstances. If medical grounds are the basis for the request, a medical certificate should be forwarded with the request for de-authorisation and re-authorisation.
- 'Exceptional circumstances' will be interpreted within a broad 'common sense' plain English context, but without such a broad interpretation as to nullify or undermine the intent of this policy.

Such exceptional circumstances could include circumstances such as an existing supervisor being rendered unfit to dive for medical reasons or being charged with fisheries or other criminal offences. (In such cases, a medical certificate will be required to be forwarded to the General Manager (Primary Industries).

Should there be a dispute between a supervisor and licence holder that results in legal action between the parties, the Department will seek advice from the Office of the Solicitor General and will act accordingly.

Approved by  Date 24/07 / 2006

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