

1994—No. 434

**NATIONAL PARKS AND WILDLIFE ACT 1974—
REGULATION**

(National Parks and Wildlife (Fauna Protection) Regulation 1994)

NEW SOUTH WALES



[Published in Gazette No. 108 of 26 August 1994]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the National Parks and Wildlife Act 1974, has been pleased to make the Regulation set forth hereunder.

CHRISTOPHER HARTCHER, M.P.,
Minister for Environment.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the National Parks and Wildlife (Fauna Protection) Regulation 1994.

Commencement

2 This Regulation commences on 1 September, 1994.

Definitions

3. (1) In this Regulation:

“**fauna provisions of the Act**” means Parts 7, 7A and 9 of the Act and, to the extent to which any other provisions of the Act relate to fauna, those other provisions;

“**tag**” includes a label, slip or other object for affixing or attaching to the skins or carcases of fauna;

“**the Act**” means the National Parks and Wildlife Act 1974.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

Notes to clauses

4. Notes to clauses do not form part of this Regulation.

PART 2—LICENCES AND CERTIFICATES

Applications for licences or registration certificates

5. (1) Applications for the issue of licences or registration certificates under the Act must be made in a form approved by the Director-General.

(2) If a form of application requires a fee or charge to accompany it, that fee or charge must be lodged with the application.

Terms of licences or registration certificates

6. A licence or registration certificate issued under the Act is in force (unless cancelled):

- (a) until midnight on 31 December following the date of issue; or
- (b) if an expiry date is specified in the licence or certificate—until midnight on that date.

Authorisation for issue of licences: sec. 119

7. In accordance with paragraph (b) (ii) of the definition of “authorised officer” in section 119 of the Act, each of the following is a prescribed office, position or rank for the purposes of the provisions of Part 9 of the Act:

- Head, Wildlife Conservation and Regulatory Services Branch
- Executive Officer (Wildlife)

Issue of tags

8. (1) The Director-General or an officer authorised by the Director-General may (on payment of such fees or charges as may be fixed by the Director-General) issue tags for affixing or attaching to the skin or carcase of any fauna in compliance with a condition of a licence under Part 9 of the Act.

(2) Commercial tags may be issued for affixing or attaching to the skins or carcases of kangaroos, wallaroos or wallabies taken or killed for sale.

(3) Non-commercial tags may be issued for affixing or attaching to the skins or carcases of kangaroos, wallaroos or wallabies taken or killed otherwise than for sale.

(4) A separate series of commercial tags is to be issued for each year. Commercial tags may be used only during the year for which they are issued.

Supply of tags to trappers

9. An occupier's licence authorising the licensee to permit a person to take or kill kangaroos, wallaroos or wallabies is subject to the following condition:

- The licensee must make available to any person permitted to take or kill kangaroos, wallaroos or wallabies under the licence a quantity of commercial tags or non-commercial tags equal in number to the number of kangaroos, wallaroos or wallabies that the person is permitted to take or kill.

Grounds for refusing import or export licence: sec. 126

10. For the purposes of section 126 (3) of the Act, the grounds on which an application for an import or export licence may be refused are as follows:

- (a) that, in the opinion of the Director-General, the proposed import or export of protected fauna, if effected:
 - (i) could be detrimental to the protection and conservation of fauna in the State; or
 - (ii) could result in a person contravening a law of the State; or
 - (iii) could result in a person contravening a law of the place from which it is intended to import, or to which it is intended to export, the protected fauna; or
 - (iv) could introduce species of protected fauna which do not normally occur in the State and which may constitute a threat to agricultural or horticultural activities in the State; or
 - (v) could introduce species of protected fauna which cannot readily be kept in captivity or confinement;
- (b) that the applicant is not the holder of a licence under the Act (other than an import or export licence) that authorises dealings with the protected fauna proposed to be imported or exported;
- (c) that the applicant has not given a written undertaking to the Director-General:

- (i) in the case of an application for an import licence—to notify an authorised officer of details of the protected fauna imported, and of the time of import, within the 48 hours immediately following that time; or
- (ii) in the case of an application for an export licence—to notify the authority (if any) responsible for the protection of fauna at the place to which the protected fauna is proposed to be exported of details of the protected fauna, and of the time of intended export, within the 48 hours immediately preceding that time;
- (d) that the applicant has, within the period of 2 years immediately preceding the making of the application, been convicted of
 - (i) an offence under a provision of Part 7 of the Act or an offence under a similar provision of the fauna protection legislation of another State or Territory; or
 - (ii) an offence under the Wildlife Protection (Regulation of Exports and Imports) Act 1982 of the Commonwealth.

Grounds for cancelling import or export licence: sec. 134

11. For the purposes of section 134 (2) of the Act, the grounds on which an import or export licence may be cancelled are as follows:

- (a) that the licensee has made a statement that is false in a material particular in, or in connection with, the application for the licence;
- (b) that the licensee has been convicted of an offence under a provision of Part 7 of the Act or an offence under a similar provision of the fauna protection legislation of another State or Territory;
- (c) that the licensee has been convicted of an offence under the Wildlife Protection (Regulation of Exports and Imports) Act 1982 of the Commonwealth.

Payment of royalty: sec. 142

12. (1) A fauna dealer (kangaroo) who deals as a wholesaler must pay to the Director-General, at times determined by the Director-General, a royalty of 60 cents for each skin or carcase of a kangaroo, wallaroo or wallaby received from the holder of a trapper's licence.

(2) The holder of a trapper's licence (birds) must, in accordance with the conditions of the licence, pay a royalty of \$2.50 for each bird taken or killed.

(3) In this clause:

“fauna dealer (kangaroo)” means a person licensed under section 124 of the Act to deal in the carcases or skins of kangaroos, wallaroos or wallabies (but not in the carcases or skins of any other kind of fauna);

“trappers licence (birds)” means a trapper’s licence (issued under section 123 of the Act) which authorises a person to take or kill birds for the purpose of sale;

“wholesaler” means a person who deals in kangaroos, wallaroos or wallabies otherwise than by retail or as a skin dealer.

NOTE. Section 142 (2) of the Act provides that royalty is not payable in respect of a skin or carcase to which there has been affixed or attached (in compliance with a condition of a licence) a tag for which a fee or charge has been paid pursuant to regulations made under section 154 (e) of the Act.

PART 3—CARE AND PROTECTION OF FAUNA

Caging and confinement of protected fauna

13. (1) A person who consigns or offers for sale any protected fauna must comply with the conditions set out in Schedule 2.

Maximum penalty: 10 penalty units.

(2) A person who keeps any protected fauna must comply with the conditions specified in items (5)–(10) of Schedule 2.

Maximum penalty: 10 penalty units.

(3) A person must comply with any requirement of the Director-General or an officer duly authorised by the Director-General to ring, band or otherwise mark or identify protected fauna kept in captivity by the person.

Maximum penalty: 10 penalty units.

(4) A person must not remove or interfere with any such ring, band, mark or identification unless authorised to do so by the Director-General.

Maximum penalty: 10 penalty units.

(5) This clause does not apply:

(a) to birds being transported or consigned to, or exhibited at, a show conducted or sponsored by a recognised avicultural association, society or other organisation which adopts internationally accepted standards for display and showing; or

- (b) to sick or injured fauna held temporarily in strict confinement for the purpose of treatment; or
- (c) to fauna being transported or consigned to, or held for treatment by, a registered veterinary surgeon; or
- (d) to fauna being transported, consigned or kept under a licence issued under the Act for the purpose of scientific research.

Consignment or sale of young birds

14. A person must not consign or offer for sale any of the following:

- (a) a young bird that is (except in the case of a naturally flightless bird) incapable of flight unaided;
- (b) a young bird that cannot stand unaided;
- (c) a young bird that is incapable of feeding itself;
- (d) a sulphur crested cockatoo that is under the age of 1 year before 1 February immediately preceding the consignment or offering for sale;
- (e) a galah that is under the age of 1 year before 1 December immediately preceding the consignment or offering for sale.

Maximum penalty: 10 penalty units.

Native waterfowl not to be interbred with non-native waterfowl

15. (1) A person must not interbreed, or allow the interbreeding of, native ducks, geese or swans that are under the person's control with ducks, geese or swans that are not native.

Maximum penalty: 10 penalty units.

(2) In this clause, “native” means native to Australia.,

Minimum approach distances to certain marine mammals

16. (1) This clause applies to the following marine mammals:

- (a) such of the members of the families Balaenopteridae, Balaenidae, Physeteridae and Ziphiidae as are described in Part 3 of Schedule 12 to the Act; and
- (b) the following species of the family Delphinidae:
 - *Pseudorca crassidens* (False killer whale)
 - *Orcinus orca* (Killer whale)

- *Globicephala macrorhynchus* (Short-finned pilot whale)
- *Peponocephala electra* (Melon-headed whale)

(2) For the purposes of section 99 (1) (c) of the Act, the following distances are prescribed in respect of a marine mammal to which this clause applies:

- (a) 30 metres, if the person approaching the mammal is a swimmer or diver;
- (b) 300 metres, if the person approaching the mammal:
 - (i) is in an aircraft (including a glider or hang-glider but not including a helicopter); or
 - (ii) is in or on a vessel (powered or unpowered but not including a jet ski);
- (c) 400 metres, if the person approaching the mammal:
 - (i) is in a helicopter; or
 - (ii) is on a jet ski.

(3) However:

- (a) if a slow speed approach is made by a vessel (other than a jet ski) from a distance of at least 300 metres, the minimum approach distance is:
 - (i) 200 metres, if the mammal is a calf or accompanying a calf; and
 - (ii) 100 metres, in any other case; or
- (b) if a slow speed approach is made by a jet ski from a distance of at least 400 metres, the minimum approach distance is 300 metres.

(4) The prescription of a distance under this clause does not apply to a person approaching a sick, injured or stranded marine mammal if an officer of the Service has given a direction as to the manner of approaching the mammal and the person is approaching the mammal in accordance with that direction.

(5) In this clause:

“slow speed approach” means an approach at a constant, slow, no wake speed that is no faster than the speed of the mammal (or slowest mammal) being approached;

“vessel” includes boat, surf boat, boogie board, wind surfer, wave jumper, sail board and any other water-borne craft used or capable of being used for the conveyance of a person (including use wholly or partly submerged).

PART 4—MISCELLANEOUS**Ex-officio rangers: secs. 16, 19**

17. (1) For the purposes of section 16 (2) of the Act, the following classes and descriptions of officers and employees of the Forestry Commission are prescribed:

- Regional Foresters
- Deputy Regional Foresters
- District Foresters
- Foresters
- Forest Assistants
- Foremen under the Forestry Employees (Forestry Commission of New South Wales) Award
- Forest Rangers under the Forestry Employees (Forestry Commission of New South Wales) Award

(2) For the purposes of section 19 (1) of the Act, ex-officio rangers have and may exercise such functions as are conferred or imposed by or under sections 157 (1) and 158 of the Act on officers of the Service.

(3) This clause applies to and in respect of matters arising under the fauna provisions of the Act only.

Notification of possession of certain animals: sec. 101

18. For the purposes of section 101 (5) (c) (ii) of the Act:

- (a) the prescribed manner of notification is by a notice in writing to the Director-General; and
- (b) the prescribed time is the period ending 7 days after the animal comes into the person's possession.

Prescribed substances: sec. 110

19. (1) For the purposes of section 110 of the Act (use of certain substances for taking or killing fauna), the following substances are prescribed:

- (a) the substances stated in the Poisons List (proclaimed under section 8 of the Poisons Act 1966) as in force for the time being;
- (b) copper sulphate;
- (c) birdlime, glue, adhesive substances and viscid substances.

(2) A person authorised to use a prescribed substance by the Director (or an officer of the Service authorised by the Director) is exempt from the provisions of section 110 (1) and (2) of the Act if the person uses the prescribed substance in accordance with the authorisation.

Notice of preparation of plan of management for marine mammals: sec. 112D

20. For the purposes of section 112D (1) of the Act, the prescribed notice is a notification published in the Gazette.

Powers of entry and seizure—prescribed evidence of authority: secs. 164, 165

21. For the purposes of sections 164 and 165 of the Act, the prescribed evidence of authority of a person exercising powers under the fauna provisions of the Act is a written instrument of authority signed by the Director-General that identifies the person who is authorised.

Receipts for seized animals, articles or records: sec. 164

22. The receipt to be given under section 164 (1) (a) (iii) of the Act in relation to animals, articles or records seized under the fauna provisions of the Act is to be in Form 1.

Proceedings for offences—prescribed officers of the Service who may issue evidentiary certificates: sec. 181

23. (1) For the purposes of section 181 (5) of the Act, the following are prescribed officers:

- a Deputy Director
- the Manager, Natural Resources Management Division
- the Head, Wildlife Conservation and Regulatory Services Branch
- the Chief Law Enforcement Officer

(2) This clause applies to and in respect of matters arising under the fauna provisions of the Act only.

Repeal

24. (1) The Fauna Protection Regulations 1949 are repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Fauna Protection Regulations 1949, had effect under those Regulations is taken to have effect under this Regulation.

SCHEDULE 1—FORMS**Form 1**

(Cl.22)

SEIZURE RECEIPT

(National Parks and Wildlife Act 1974)

No.

I.

acknowledge receipt of the following

Number	Description	Number	Description

seized by me from

of at

time/date

under the National Parks and Wildlife Act 1974.

.....
Owner/Person present.....
Authorised officer

SCHEDEULE 2—CAGING OF PROTECTED FAUNA

(Cl. 13)

- (1) Cages used for the housing of birds offered for sale must contain a removable tray having a flat base.
- (2) Birds offered for sale in cages must be housed in cages of a box type enclosed all over (with the exception of the front, which must be wired).
- (3) Birds consigned for sale in cages must be housed in cages of a box type.
- (4) Birds must be housed in cages so as to provide adequate ventilation (to the satisfaction of the Director-General or an officer authorised by the Director-General) with direct or indirect draughts avoided as far as reasonably possible.
- (5) Cages used in the housing of birds must be maintained in an adequate sanitary state to the satisfaction of the Director-General or an officer authorised by the Director-General.
- (6) Cages used in the housing of birds must contain (in addition to roosting perches) one or two perches for the purpose of steps, but one perch is sufficient for one bird.
- (7) A sufficient number of roosting perches of a size adequate for the bird or birds housed must be provided in a cage, the perches being so situated that:
 - (a) each bird has sufficient room to turn around and sit without any part of its plumage touching the cage; and
 - (b) each bird's tail does not rub the sides or bottom of the cage nor its head touch the top when it is perched; and
 - (c) drinking vessels and food receptacles in the cage will not be fouled.
- (8) Drinking vessels and food receptacles containing sufficient clean water and food to sustain the fauna in the cage must be placed in each cage.
- (9) Sufficient space must be provided in each cage to enable the birds in it to roost comfortably without overcrowding.
- (10) Mammals such as kangaroos or wallabies, and large birds such as emus, being consigned or offered for sale in cages must be given sufficient room to enable them to turn completely around, stand erect at full height and have free movement.

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SCHEDULE 1—FORMS

SCHEDULE 2—CAGING OF PROTECTED FAUNA

EXPLANATORY NOTE

The object of this Regulation is to repeal the Fauna Protection Regulations 1949 and to remake, with modifications, the provisions of those Regulations which are still required. The Fauna Protection Regulations 1949, which were made under the Fauna Protection Act 1948 (now repealed), are taken to have been made under the National Parks and Wildlife Act 1974. The Regulation makes provision in respect of the following matters:

- (a) applications for, and the issue of, licences and registration certificates under the fauna provisions of the Act (clauses 5–7);
- (b) the tagging of skins or carcases of fauna taken or killed (clauses 8 and 9);
- (c) the refusal and cancellation of protected fauna import or export licences (clauses 10 and 11);
- (d) the payment of royalty on fauna taken or killed or on the skins or carcases of fauna (clause 12);
- (e) the conditions applying to the caging and confinement of protected fauna (clause 13);
- (f) the consignment or sale of young birds (clause 14);
- (g) the interbreeding of native waterfowl with non-native waterfowl (clause 15);
- (h) the minimum approach distances to certain marine mammals (clause 16);
- (i) other matters of a minor, consequential or ancillary nature (Parts 1 and 4).

This Regulation is made under the provisions of the National Parks and Wildlife Act 1974, including Part 7 (Fauna), Part 7A (Marine mammals), Part 9 (Licensing etc. in respect of fauna), section 142 (Royalty) and Part 13 (the general regulation making powers).

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
