

Version
as at 23 December 2023



Fisheries (Aquaculture Compensation Methodology) Regulations 2012

(SR 2012/335)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 5th day of November 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 186ZR of the Fisheries Act 1996, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Ministry for Primary Industries.

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Regulations

1 Title

These regulations are the Fisheries (Aquaculture Compensation Methodology) Regulations 2012.

2 Commencement

These regulations come into force on 7 December 2012.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Fisheries Act 1996

conversion factor means a conversion factor set under section 188 of the Act

fishing means commercial fishing in relation to which the chief executive has made a reservation under section 186E of the Act

party means—

- (a) the holder of a coastal permit in relation to which the chief executive has made a reservation; or
- (b) an affected quota owner
- (c) *[Revoked]*

proposed aquaculture activities means aquaculture activities authorised by a coastal permit in relation to which the chief executive has made a reservation.

Regulation 3 **party** paragraph (b): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Regulation 3 **party** paragraph (c): revoked, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Regulation 3 **proposed aquaculture activities**: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

4 Methodology for determining whether proposed aquaculture activities or fishing of materially greater economic value to New Zealand

Schedule 1 sets out the methodology to be followed by an arbitrator in determining, under section 186ZP(2) of the Act, the question of which of the following is of materially greater economic value to New Zealand:

- (a) the proposed aquaculture activities; or
- (b) the fishing in relation to which the chief executive has made a reservation.

5 Methodology for determining compensation payable to quota owners

Schedule 2 sets out the methodology to be followed by an arbitrator in determining, under section 186ZQ of the Act, the compensation payable to quota owners.

Schedule 1
Methodology for determining whether proposed aquaculture activities or fishing of materially greater economic value to New Zealand

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1 Comparison of economic value

- (1) An arbitrator must determine the economic value of proposed aquaculture activities in accordance with clause 2.
- (2) The arbitrator must determine the economic value of fishing in accordance with clause 3.
- (3) The arbitrator must determine the relevant time period over which the economic value of the proposed aquaculture activities and fishing are to be compared.
- (4) If the economic value of the proposed aquaculture activities is greater than the economic value of fishing, the arbitrator must determine whether the difference means the proposed aquaculture activities are of materially greater economic value.
- (5) If the economic value of the proposed aquaculture activities is not less than 5 times greater than the economic value of fishing, the arbitrator must (in the absence of overriding data or analysis to the contrary) determine that the economic value of the proposed aquaculture activities is of materially greater economic value.

Economic value of proposed aquaculture activities

2 Determination of economic value of proposed aquaculture activities

- (1) The economic value of the proposed aquaculture activities in the area subject to a reservation must be determined in accordance with the following formula:

$$\text{economic value} = \text{ep} \times \text{gp} \times \text{a}$$

where—

- a is the area of the aquaculture activity, in hectares, to be productively farmed, excluding any area occupied by support structures
 - ep is the greenweight export price, in dollars per kilogram, of the relevant aquaculture species
 - gp is the greenweight production per hectare per annum, in kilograms, of the relevant aquaculture species.
- (2) The arbitrator must determine the relevant aquaculture species for the purposes of subclause (1) based on data provided by the parties or by reference to the coastal permit application.

(3) *[Revoked]*

Schedule 1 clause 2(2): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Schedule 1 clause 2(3): revoked, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Economic value of fishing

3 Determination of economic value of fishing

- (1) The economic value of fishing must be determined by aggregating the value of each commercial fish stock in relation to which the chief executive has made a reservation in accordance with the following formula:

$$\text{economic value} = \text{ep} \times \text{cl}$$

where—

cl is the average annual catch loss for the fish stock, in kilograms, as specified in the aquaculture decision made by the chief executive under section 186E of the Act

ep is the greenweight export price, in dollars per kilogram, of the fish stock.

- (2) To avoid doubt, all commercial fish stocks in the area subject to the reservation must be included in the formula in subclause (1), whether or not the fish stock is subject to the quota management system.
- (3) A fish stock may be excluded from the calculation under subclause (1) only if—
- (a) export price data for the fish stock is unavailable; and
 - (b) excluding the fish stock would make no significant difference to the economic value.

Schedule 1 clause 3(1) formula item cl: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

General provisions

4 Determination of greenweight export price

- (1) The greenweight export price is determined by dividing the export price per kilogram of the most valuable export product state of a fish stock (being the state to which a fish is processed that accounts for the highest overall value of exported product for that species) by the conversion factor for that product state.
- (2) If no conversion factor has been prescribed for a fish stock, the arbitrator may use the conversion factor for a similar fish stock or an appropriate conversion factor provided by either party.

- (3) If the parties provide more than 1 conversion factor, the arbitrator must decide which conversion factor to use to determine the greenweight export price.

5 Data and analysis requirements

- (1) The data and analysis provided by the parties under section 186ZP(3) of the Act must be in the form determined by the arbitrator, unless the parties have agreed on the form of the data and analysis prior to arbitration.
- (2) If the arbitrator is not satisfied with the quality of the data and analysis provided by the parties, the arbitrator may require further data and analysis from the parties.
- (3) If it is not possible to obtain the data and analysis required by the arbitrator for the methodology in clauses 2 and 3, or if the arbitrator is not satisfied that the data and analysis available are of sufficient quality, the arbitrator may use other data and analysis provided by the parties to determine the economic value of the proposed aquaculture activities and fishing.

Schedule 2

Methodology for determining compensation for loss of value of quota affected by aquaculture activities

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1 Determination of compensation

- (1) The amount of compensation payable to a quota owner must be determined in accordance with the following formula:

$$\text{compensation payable} = (\text{cl} \times \text{qv} \times \text{qs}) \times \text{dc}$$

where—

- cl is the percentage of the estimated average annual catch loss for the fish stock (as specified in the reservation made under section 186E of the Act) above the threshold at which the chief executive considers the potential catch loss for that stock is undue (taking into account any increased fishing costs)
- dc is 1.2 (the multiple by which the arbitrator must increase the compensation payable to account for any consequential disruption costs that the quota owners may incur as a result of the proposed aquaculture activities, which includes a sum by way of solatium)
- qs is the number of quota shares for that fish stock held by the quota owner
- qv is the value, in dollars, of 1 quota share.
- (2) The arbitrator may adjust the compensation payable to take account of any proposed complementary uses of the site submitted by the parties under section 186ZQ(2) of the Act.

Schedule 2 clause 1(2): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

2 Determination of quota value

- (1) To determine the quota value for a fish stock for the purposes of clause 1(1), the arbitrator must consider—
- (a) the ACE trade price (divided by an appropriate discount factor to derive the net present value) or the quota trade price, or both; and
- (b) any recent transfers of the quota or associated ACE.
- (2) If, in the arbitrator's opinion, the ACE trade price and the quota trade price do not provide a reliable indication of the quota value for a fish stock, the arbitrator may consider other data provided by the parties to determine the quota value.
- (3) The arbitrator may adjust the quota value for inflation, using data and analysis provided by the parties to determine the appropriate adjustment.
- (4) In this clause,—

ACE means annual catch entitlement

ACE trade price means the ACE transfer price as published from time to time by Commercial Fisheries Services Limited, or a person specified by the chief executive by notice in the *Gazette*

appropriate discount factor means the appropriate discount factor, as determined by the arbitrator

quota trade price means the transfer price of quota as published from time to time by Commercial Fisheries Services Limited, or a person specified by the chief executive by notice in the *Gazette*.

Michael Webster,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 8 November 2012.

Notes

1 *General*

This is a consolidation of the Fisheries (Aquaculture Compensation Methodology) Regulations 2012 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6