

**Reprint
as at 11 November 2004**



**Fisheries (Order of Transactions)
Regulations 2001**
(SR 2001/191)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 23rd day of July 2001

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to sections 297 and 354 of the Fisheries Act 1996, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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.

These regulations are administered by the Ministry of Fisheries.

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Regulations

1 Title

These regulations are the Fisheries (Order of Transactions) Regulations 2001.

2 Commencement

These regulations come into force on 1 September 2001.

3 How these regulations affect rule about registration in chronological order of receipt

- (1) These regulations are to be read with section 158(1) of the Act, which provides that instruments presented for registration under the Act are to be registered in the chronological order in which they are received.
- (2) These regulations prescribe when particular instruments are to be treated as having been received and the order in which certain actions are to be taken by the chief executive.

4 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Fisheries Act 1996

joint instrument application means an application on the approved form that is presented with a group of instruments relating to quota and specifies the order in which those instruments must be registered

received, in relation to the registration of an instrument, has the meaning set out in regulation 5

registry computer system means a computer system operated for registry purposes by the chief executive.

5 Meaning of received

- (1) An instrument is **received**, for the purpose of determining the order of registration under the Act, when the time and date of the entry of the relevant instrument into the registry computer system is recorded by that system.
- (2) A joint instrument application is not received until all instruments that form part of the entire application are registered.
- (3) Subclauses (1) and (2) apply regardless of—
 - (a) whether the relevant instrument is presented by hand, post, fax, or email, or by way of the registry webpage or other electronic means; and
 - (b) whether the entry is generated automatically by the registry computer system as a result of the method of presentation, or by the registry computer system after a person has completed the entry of the details of the transaction into the system.

6 Receipt of transfers of provisional catch history where dispute involved

- (1) If the chief executive is notified within the applicable transfer period under section 37 of the Act that a dispute under section 38 of the Act about a transfer of provisional catch history has been referred to a court, the chief executive must not treat the disputed transfer as having been received while the dispute is still before the court.
- (2) Subclause (1) does not prevent the chief executive rejecting any other transfer application that relates to provisional catch history that is subject to the transfer dispute if that other transfer application is received after the disputed transfer application.
- (3) The chief executive must not register any transfer of provisional catch history during the applicable transfer period under section 37 of the Act.

7 Registration of joint instrument applications

- (1) A joint instrument application must be actioned in the order requested by the applicant.

- (2) If any instrument that forms part of a joint instrument application is unable to be registered, all transactions that form part of the entire application are to be treated as rejected and as not having been received even though some of the individual transactions may have been registered.

8 Registration of interests conferred by operation of law

- (1) This regulation applies to applications under section 161 of the Act by persons claiming to be entitled by operation of law to be registered as—
- (a) the owner, mortgagee, or caveator of any quota shares; or
 - (b) the owner or caveator of any annual catch entitlement; or
 - (c) the owner of any provisional catch history.
- (2) The chief executive must not treat the application as having been received until—
- (a) he or she is satisfied that the applicant is entitled to have an interest registered; and
 - (b) he or she has completed any instruments that are required to give effect to the necessary transaction; and
 - (c) those instruments have been received for the purposes of registration under the Act by the registry computer.

Order in which transactions to be actioned

9 Actions covered by these regulations take precedence over other actions

The chief executive must action transactions and other matters in accordance with regulations 10 to 15 before actioning any other transaction presented for registration under the Act.

10 Order of transactions at close of October 2000/September 2001 fishing year

[Revoked]

Regulation 10: revoked, on 11 November 2004, by regulation 3 of the Fisheries (Order of Transactions) Amendment Regulations 2004 (SR 2004/355).

11 Order of transactions on 1 October 2001*[Revoked]*

Regulation 11: revoked, on 11 November 2004, by regulation 4 of the Fisheries (Order of Transactions) Amendment Regulations 2004 (SR 2004/355).

12 Order of transactions for fishing periods 1 October 2001 to 31 March 2002, and 1 October 2001 to 30 September 2002*[Revoked]*

Regulation 12: revoked, on 11 November 2004, by regulation 5 of the Fisheries (Order of Transactions) Amendment Regulations 2004 (SR 2004/355).

13 Order of transactions on first day of any fishing year other than 1 October 2001

- (1) This regulation applies to transactions to be actioned by the chief executive on the first day of any fishing year other than 1 October 2001.
- (2) The chief executive must take the following actions (if applicable) in the order indicated:
 - (a) firstly, record the total allowable catch for each stock on the relevant quota register under section 13 of the Act:
 - (b) secondly, record the total allowable commercial catch for each stock on the relevant quota register under section 20 of the Act:
 - (c) thirdly, allocate and register quota for any new stocks introduced into the quota management system under sections 44 and 47 of the Act:
 - (d) fourthly,—
 - (i) allocate and register quota for new stocks created by the alteration of a quota management area under section 26, and adjust and register any caveats and mortgages over the new quota under section 154 of the Act; and
 - (ii) register settlement quota interests over any quota shares allocated under section 44 of the Fisheries Act 1996:
 - (e) fifthly, give effect to any total allowable commercial catch reductions under sections 22 and 345 of the Act:
 - (f) sixthly, give effect to any total allowable commercial catch increases under section 23 of the Act:

- (g) seventhly, adjust any caveats and mortgages over quota shares under section 153 of the Act:
- (h) eighthly, action any forward transfers of quota under section 348 of the Act:
- (i) ninthly, generate annual catch entitlement under section 66 of the Act:
- (j) tenthly, allocate and register annual catch entitlement under section 67 of the Act:
- (k) eleventhly, place caveats in accordance with section 58 of the Act over any annual catch entitlement owned by persons who are determined by the chief executive to be overseas persons under that section:
- (l) twelfthly, action under section 347 of the Act any transfers of annual catch entitlement to lessees of quota where leases are recorded on the transitional register:
- (m) thirteenthly, action any forward transfers of annual catch entitlement under section 133 of the Act:
- (n) fourteenthly, place caveats in accordance with section 58 of the Act over any annual catch entitlement owned by persons who are determined by the chief executive to be overseas persons under that section.

Regulation 13(2)(d): substituted, on 11 November 2004, by regulation 6 of the Fisheries (Order of Transactions) Amendment Regulations 2004 (SR 2004/355).

14 Order of transactions on any day (other than first day) during fishing year

On any day during a fishing year other than the first day of that fishing year, the chief executive must take the following actions (if applicable) in the order indicated:

- (a) firstly, action any forward transfers of quota under section 348 of the Act:
- (b) secondly, allocate and register any additional annual catch entitlement created by the Minister under section 68 of the Act:
- (c) thirdly, allocate and register additional annual catch entitlement for Foveaux Strait dredge oysters under section 67(2B):
- (d) fourthly, allocate and register underfishing annual catch entitlement under section 67A of the Act:

- (e) fifthly, place caveats in accordance with section 58 of the Act over any annual catch entitlement owned by persons who are determined by the chief executive to be overseas persons under that section:
- (f) sixthly, action under section 347 of the Act any transfers of annual catch entitlement to lessees of quota where leases are recorded on the transitional register.

15 Order of transactions on last day of fishing year other than 30 September 2001

On the last day of a fishing year other than 30 September 2001, the chief executive must take the following actions (if applicable) in the order indicated:

- (a) firstly, give effect to any decisions that relate to a provisional catch history appeal or to a dispute about a transfer of provisional catch history in accordance with section 52 of the Act:
- (b) secondly, give effect to any decisions that relate to provisional maximum individual transferable quota or to provisional maximum transferable term quota in accordance with section 337 of the Act:
- (c) thirdly, adjust caveats and mortgages over quota in accordance with section 153 of the Act:
- (d) fourthly, cancel quota shares, mortgages, leases on the transitional registers, and caveats for stocks subject to a quota management system alteration under sections 26 and 345 of the Act.

15A Order of transactions where settlement quota subject to forfeiture under Act

- (1) This regulation applies to forfeitures, under the Act, of quota shares subject to a settlement quota interest.
- (2) The chief executive must take the following actions (as applicable) in the order listed:
 - (a) remove the Crown caveat registered over the quota shares subject to a settlement quota interest in relation to the forfeiture proceedings:
 - (b) remove any settlement quota interest that is registered over those quota shares:

- (c) transfer the required number of quota shares as directed by the forfeiture order to the Crown Settlement Quota Encumbered Account:
- (d) register a settlement quota interest over the forfeited quota shares.

Regulation 15A: inserted, on 11 November 2004, by regulation 7 of the Fisheries (Order of Transactions) Amendment Regulations 2004 (SR 2004/355).

*Provisions relating to order in which leases are
to be actioned*

16 Order in which leases to be actioned

- (1) This regulation applies if 1 or more leases of quota require a transfer of annual catch entitlement on the same day.
- (2) The chief executive must action the transactions on that day in the order in which the leases were notified to the chief executive under section 28Q of the Fisheries Act 1983.
- (3) However, if a lease has 1 or more subleases requiring a transfer of annual catch entitlement on the same day as the lease from which the subleases derive, those subleases must be actioned in the order in which each sublease was notified to the chief executive under section 28Q of the Fisheries Act 1983 immediately after the head lease is actioned.

*Order of actions involving caveats and
mortgages*

**17 Applicant to state which form of quota is to be subject
to mortgage or caveat**

A person who applies to register a mortgage or caveat over quota shares must state whether the mortgage or caveat is to be registered over individual transferable quota or provisional individual transferable quota.

**18 Mortgage or caveat relates to specified number of quota
shares or annual catch entitlement**

- (1) If a mortgage is in order for registration, the chief executive must register the mortgage over the number of quota shares stated on the mortgage.

- (2) If a caveat is in order for registration, the chief executive must register the caveat over the number of quota shares or annual catch entitlement stated on the caveat.

19 Order in which mortgage registered by consent of caveator

In registering a mortgage with the consent of a caveator, the chief executive must take the following actions in the order indicated:

- (a) firstly, remove all or part of the caveat (so far as may be necessary); and
- (b) secondly, register the mortgage over the uncaveated shares; and
- (c) thirdly, re-register the caveat.

19A Order of transactions in relation to caveat or mortgage where section 153 of Act applies

- (1) If the circumstances described in section 153(1) or (3) of the Act exist, the chief executive must reduce the number of shares secured by the mortgage or caveat by applying the quota share reduction principles set out in section 153(4) of the Act in the manner prescribed by subclause (3) or subclause (5) or subclause (7), as appropriate.
- (2) Subclause (3) applies if,—
 - (a) a mortgage has been registered after a caveat has been registered; and
 - (b) after deduction of quota shares under section 23 or section 52 of the Act, the total number of shares subject to the caveat and mortgage exceeds the total number of shares held by the quota owner.
- (3) If the circumstances described in subclause (2) exist, the chief executive must—
 - (a) reduce the number of shares secured by the last registered mortgage so that the total number of shares subject to the mortgage and caveat equals the number of shares held by the quota owner; and
 - (b) if the reduction in shares is insufficient to satisfy the requirements of paragraph (a) and the next last mortgage has been registered after the caveat, reduce the number

of shares secured by the next last mortgage in the manner described in paragraph (a).

- (4) Subclause (5) applies if the total number of shares subject to all mortgages exceeds the total number of shares held by the quota owner after deduction of quota shares under section 23 or section 52 of the Act.
- (5) If the circumstances described in subclause (4) exist, the chief executive must—
 - (a) reduce the number of shares secured by the last registered mortgage so that the total number of shares subject to all mortgages equals the number of shares held by the quota owner; and
 - (b) if the reduction in shares secured by the last registered mortgage does not satisfy the requirement of paragraph (a), reduce the next last registered mortgage and, if necessary, any other previously registered mortgages until the total number of shares secured by all mortgages equals the total number of shares held by the quota owner.
- (6) Subclause (7) applies if the total number of shares subject to an individual caveat exceeds the total number of shares held by the quota owner after deduction of quota shares under section 23 or section 52 of the Act.
- (7) If the circumstances described in subclause (6) exist, the chief executive must reduce the number of shares subject to the caveat so that the number of shares subject to the caveat equals the number of shares held by the quota owner.

Regulation 19A: inserted, on 11 November 2004, by regulation 8 of the Fisheries (Order of Transactions) Amendment Regulations 2004 (SR 2004/355).

20 Action to be taken if quota or annual catch entitlement reduced due to forfeiture

If the number of quota shares or amount of annual catch entitlement is reduced because of forfeiture, the chief executive must take the following actions in the order indicated:

- (a) firstly, remove the Crown caveat registered over the quota or annual catch entitlement in relation to the forfeiture proceedings:

- (b) secondly, transfer the required number of quota shares or amount of annual catch entitlement as directed by the forfeiture order to the Crown Encumbered Account.

Marie Shroff,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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Notes

1 *General*

This is a reprint of the Fisheries (Order of Transactions) Regulations 2001. The reprint incorporates all the amendments to the regulations as at 11 November 2004, 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/editorial-conventions/> or Part 8 of the *Tables of New Zealand 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)*

Fisheries (Order of Transactions) Amendment Regulations 2004 (SR 2004/355)
