

FISHERIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Fisheries Act 1983 in a number of respects in relation to the quota management system.

Clause 1 relates to the Short Title and commencement. Except for *clause 5* (which is deemed to have come into force on 1 April 1990) the Bill will come into force on the day on which it receives the Royal assent.

Clause 2 amends section 28H by providing that the Quota Appeal Authority may, in exceptional circumstances, extend the time allowed for lodging appeals against the allocation of or failure to allocate provisional maximum individual transferable quota. Presently, the Authority can extend such time as it sees fit.

Clause 3 makes an identical amendment to section 28HA, which relates to appeals against the allocation of, or failure to allocate, provisional maximum transferable term quota.

Clause 4 amends section 28OF which defines various expressions relating to the compensation provisions contained in sections 28OG to 28OO.

A new definition of “extended compensation period” is substituted. At present the period over which compensation can be paid can be extended by up to 3 years in the event that the total allowable commercial catch for hoki is reduced by various specified percentages.

Under the substituted definition the period over which compensation can be paid will also be extended by one year in the event that the total allowable commercial catch for orange roughy in the combined quota management areas 3B, 4, 5A, and 6 is, on 1 October 1992, less than 18,787 tonnes. Alternatively, where the total allowable commercial catch for those quota management areas is increased as a result of successful appeals to the Quota Appeal Authority, at any time between 1 October 1990 and 30 September 1992, then the 1-year extension will occur if the total allowable commercial catch for orange roughy management areas is less than the total of 18,787 tonnes plus any such increased tonnage.

Under the new *paragraph (a)* of the amended definition, if the compensation period is extended by 1 year, as a result of the orange roughy total allowable catch being less than the specified tonnage at any time during the relevant year, then any further extension which occurs as a result of reduction in the total

allowable commercial catch for hoki, will take effect after the 1-year extension caused by the orange roughy reductions.

The maximum extension to the period over which compensation can be paid will remain at 3 years, namely, up until 30 September 1994. Accordingly, if any orange roughy reductions cause a 1-year extension to the compensation period, then the compensation period can only be extended for 2 further years as a consequence of the reduction in the hoki total allowable commercial catch.

Clause 5, which is deemed to have come into force on 1 April 1990, amends section 280G (which came into force on that date). The effect is to achieve the original intention of the section which was that, where a person was not the holder of relevant quota, that person would qualify for compensation only if the person was a lessee from the Crown in respect of a particular type of lease.

Clause 6 amends the compensation system in respect of provisional maximum transferable term quota for rock lobster. As the precise rate of compensation is now known, it is expressed as \$1,871 per tonne.

There has been a problem in the present system in that no payments have been made because there have been some appeals to the Quota Appeal Authority, and there are expected to be delays in completing the proceedings of that Authority. The new *subsection (1)*, in setting a specific rate, allows for the immediate payment of compensation for the initial reductions of provisional maximum transferable term quota.

Under the proposed new system, where there is an appeal to the Quota Appeal Authority, successful appellants will also be paid at the rate of \$1,871 in respect of each additional tonne of provisional maximum transferable term quota reduced following a successful appeal.

The sums paid to successful appellants must not exceed in the aggregate the sum of \$400,000. It is not anticipated that this limit will be reached as this would require there to be successful appeals involving the allocation of more than 712 tonnes more provisional maximum transferable term quota above the initial allocation of 4,700 tonnes and this is most unlikely.

In order to give some finality to the process, compensation is not payable if the decision of the Quota Appeal Authority is given after the end of the transitional compensation period (30 September 1994), or, if appropriate, the extended compensation period (up to 30 September 1997), or if the appeal is lodged with the Authority after 31 March 1992.

The decisions of the Quota Appeal Authority on the appeals themselves and quota entitlements will not be affected.

Clause 7 amends section 280I (which relates to compensation for reduction in transferable term quota for rock lobster). The main amendment is the addition of new *subsections (4) and (5)*. These subsections clarify the present provision, which does not make clear who is to be the recipient of compensation for transferable term quota for rock lobster where a total allowable commercial catch is reduced. The recipient will be the holder of the quota on the date of the relevant reduction. This excludes any lessee or subsequent holder of the quota. The Crown is also excluded. A minor amendment is made to *subsection (3)* of section 280I to clarify that provision.

Clause 8 makes a number of amendments to section 280J.

The new *paragraph (aa)* increases the compensation available under section 280J by providing for the Crown to make a payment of \$5,000,000.

At present the extended compensation period takes effect if the total allowable commercial catch for hoki is reduced by more than 20 percent. An

amendment to *subsection (1) (b)* alters this to 19 percent and makes an amendment to reflect the new definition of “extended compensation period” provided for in *clause 4*.

The new *subsection (1A)* provides for the upper limit on total compensation payable to be increased by any amounts recovered by the Crown under section 28OH where, on appeal, a provisional maximum transferable term quota is reduced.

It also provides that the \$400,000 for compensation to appellants is to be set aside from the amounts available for compensation generally and is payable in priority to other payments.

At present there are a number of incorrect references to “extended payment period”. These are changed to “extended compensation period”.

Clause 9 makes various amendments clarifying the information which needs to be shown on the public Register maintained by the Director-General and on forms approved by the Director-General.

As a result of these amendments the amount of monetary consideration paid in respect of a transfer or lease will no longer be shown on the public Register.

Clause 10 repeals section 28s (which relates to minimum holdings of quota and interests in quota), and substitutes a new section.

The minimum tonnage of shellfish that may be held by any person is increased from 1 tonne to 3 tonnes.

A new *subsection (5)* provides a transitional regime under which any person who held at least 1 tonne of shellfish quota but less than 3 tonnes of shellfish quota before the enactment of the new *section 28s* may continue to hold that quota and take shellfish pursuant to it.

The new *subsection (13)* provides that where a person has the right to take fish while holding or leasing less than the minimum quota and that person sells any of that quota, the person must sell or otherwise dispose of all of that quota. This does not apply to leases of quota.

Where a person holds or leases less than the minimum quota and has the right to take fish under that quota (because it is an initial allocation), and that person acquires or leases more quota, but is still below the otherwise minimum limit, the person may take fish under all of that quota. This reverses the present position.

Where a person who holds or leases less than the minimum quota limit and has the right to take fish under the quota, subsequently acquires quota that takes the holding above the minimum limit, any rights under section 28s are extinguished. This prevents the taking of fish where subsequent sales or leases reduce holdings below the minimum limits.

The new *subsection (14)* allows a holder of less than the minimum shellfish or rock lobster quota on an initial allocation or a reduction of total allowable catch to acquire and take fish under less than the minimum finfish quota. The right to take finfish is lost if the shellfish or rock lobster quota is disposed of other than by lease.

Clause 11 amends section 28v (which relates to underfishing and overfishing quota amounts).

At present, only the holder of quota may take advantage of the 10 percent overfishing right. No lessee may do so, nor may the holder if all the quota is leased during the fishing year.

Under the new *section 28v (4)*, it will be possible for a holder of quota (and any person fishing on behalf of the holder) to exercise the 10 percent overfishing

right, even if part of the quota has been leased during the fishing year, so long as the holder retains some of the quota during that fishing year. Under the new sections 28v (1A) and 28v (6), a holder of quota may exercise the right to take fish not taken under the quota in the previous year (i.e. the underfishing right) so long as the holder holds the right to take some fish under that quota in the following year.

Where there is underfishing, then at present only the holder can carry forward the tonnage not taken. The tonnage carried forward cannot be leased, nor can a lessee carry forward unused quota. These restrictions will remain.

Examples

1. A holds 1,000 tonnes of quota and leases all except 1 tonne of it to B for 1 year. B can take 999 tonnes but no more. A can take the 1 tonne A retained and a 100 tonnes overfishing right. If B takes only 900 tonnes, then A can, in year 2,—

- (i) Take 1,100 tonnes (1,000 tonnes of quota and a 100 tonnes underfishing right carried forward) in the next year, plus a 100 tonnes overfishing right; or
- (ii) Lease 1,000 tonnes to B; or
- (iii) Lease, say, 999 tonnes to B, and retain 101 tonnes (1 tonne quota plus a 100 tonnes underfishing right carried forward) plus a 100 tonnes overfishing right for that year.

If the overfishing right in (i) or (iii) above is exercised, it will reduce the catch right available in year 3 to 900 tonnes if fully leased, or 1,000 tonnes if not fully leased (i.e. lease 899 tonnes, keep 1 tonne plus a further 100 tonnes overfishing right).

2. If A holds 1,000 tonnes of quota and takes only 900 tonnes in year 1, then A can, in year 2,—

- (i) Lease 1,000 tonnes to B; or
- (ii) Lease 999 tonnes to B and take 201 tonnes (a 100 tonnes underfishing right carried forward, 1 tonne quota retained, and a 100 tonnes overfishing right).

3. If A holds 1,000 tonnes of quota and takes 1,100 tonnes in year 1, then if the quota is sold to C, C can only take 900 tonnes in year 2, plus a 100 tonnes overfishing right.

4. If A leases 1,000 tonnes of quota to B, B takes only 900 tonnes, and in the next year A sells the quota to C, then C can use the underfishing right from the previous year.

5. If A leases 1,000 tonnes of quota to B for 5 years, then B can take 1,000 tonnes each year. There are no overfishing rights within the term of the lease, and underfishing cannot be carried forward from one year to another within the period of the lease.

Clause 12 amends section 28w (which relates to the amount of quota that may be held by any one person).

In some quota management areas the total allowable commercial catch for some species of finfish is so low that the maximum permitted percentage of quota that may be held by one person is less than the minimum quota holding levels prescribed in new section 28s. Section 28w is therefore amended to enable persons in such situations to hold up to the minimum quota holding level, even though the actual tonnage held as a result may exceed the maximum permitted percentage specified in the amended section 28w.

Clause 13 amends section 28ZA in relation to the use of written authorities enabling a person to fish under the authority of quota held by or leased from another person.

The new *subsection (2A)* provides that all such agreements will remain in force until a notice rescinding the authority is served on the person authorised to take the fish and notice of the rescission is given to the Registrar.

The new *subsection (2B)* provides that, until a notice of rescission is served and the Registrar is given notice of that rescission, the person who granted the written authority will, for the purposes of this section, be deemed to have taken for sale any fish actually taken by any person acting under the written authority.

Clause 14 amends section 28ZG in a number of respects. The time period for making an offer to the Director-General of a lease of quota in lieu of paying the deemed value of bycatch is shortened by 5 days to accord with other time limits.

The new *subsection (2)* takes account of subleases as well as leases, and includes references to more than one quota management area. This is necessary to allow greater flexibility because, for example, a bycatch species such as barracouta may have a total allowable commercial catch which is combined over several adjoining quota management areas, while the total allowable catch for the target or associated species might be set on an area by area basis. A further matter that may be specified by the Director-General in the bycatch notice is the method by which the bycatch species must have been taken.

The new *subsection (3)* deals with the matters that the Director-General must take into account. The present requirement is to take account of any disparity between the total allowable commercial catches for the bycatch and target species. The new requirement includes a reference to the catch rates, which is frequently more relevant than the total allowable commercial catches as it indicates the likelihood of total allowable catches being met.

Clause 15 relates to the taking of fish, aquatic life, or seaweed other than from a vessel pursuant to a permit by persons who are not permit holders but are acting under a written agreement with the permit holder. The Director-General is given the power to specify the maximum number of persons to which the agreement may relate, and those persons must be natural persons.

The Director-General may refuse to recognise any such agreement if he or she considers that a sufficient number of persons are already authorised to act under a permit.

Clause 16 enables licensed fish receivers and commercial fishermen to purchase whitebait from persons who are not commercial fishermen or licensed fish receivers.

Clause 17 amends section 79 and provides that an authorisation given to a Fishery Officer to enable him or her to enter a private dwelling place or a Maori reservation—

- (a) Shall be directed to a named person or generally to any Fishery Officer;
- (b) May be given by a District Court Judge or a Justice upon an oral application;
- (c) May be executed at any time that is reasonable in the circumstances;
- (d) Must be produced on initial entry and subsequently whenever that officer is reasonably requested to do so.

Clause 18 provides that the Court may extend, by up to 60 days, the period within which transfers of quota may not be registered pending a decision by the

Director-General as to whether or not criminal proceedings will be taken in respect of an alleged quota management offence.

Clause 19 extends the power to make regulations relating to notification of the order and manner in which fish caught has been counted against quota, so as to allow notification of these matters to be made at any time during the fishing year.

Clause 20 extends the power to make regulations in relation to the licensing of fresh water farming operations and the prescribing of fees payable for such licences.

Clause 21 provides that a certificate as to the manner or order in which a fish catch has been counted against quota in accordance with regulations is, in the absence of proof to the contrary, sufficient evidence of that matter. It will not be evidence that the regulations have been complied with.

Clause 22 provides that the resource rentals payable for the fishing year commencing on 1 October 1991 shall be the same as for the fishing year commencing on 1 October 1990.

Clause 23 relates to fish that were taken during the period 1986 to 1990. The fish concerned were taken unlawfully as an inevitable consequence of the lawful taking of other fish. Section 88 (1)(c) required such fish to be disposed of or surrendered to the Crown in a manner directed by a Fishery Officer, and its successor, section 105A, required such fish to be surrendered to the Crown and disposed of in accordance with the directions of a Registrar. The fish were actually disposed of to licensed fish receivers.

In its administration of sections 88 (1)(c) and 105A in these cases, the Ministry gave several options to fishermen and licensed fish receivers. One of the options was that the fishermen or receivers pay the Crown the value of the fish concerned. Where this option was taken up, the Ministry sent out invoices, in some cases to fishermen and in other cases to receivers. However, invoices were not sent out in all cases and some of the amounts invoiced have not been paid.

There are doubts about the validity of the action taken by the Ministry in these cases. The clause validates the action taken by the Ministry and provides for the recovery of the outstanding amounts.

Hon. Doug Kidd

FISHERIES AMENDMENT

ANALYSIS

Title	
1. Short Title and commencement	12. Restriction on amount of quota that may be held by any one person
2. Appeal against allocation or failure to allocate provisional maximum individual transferable quota	13. Fish subject to quota fishing cannot be taken for sale other than under quota
3. Appeal against allocation or failure to allocate provisional maximum transferable term quota	14. Fisherman may offer lease of quota in lieu of paying deemed value
4. Interpretation of provisions relating to compensation	15. Taking fish, etc., commercially without permit prohibited
5. Compensation for reductions in individual transferable quota for species other than rock lobster during transitional compensation period	16. Restrictions on purchase or acquisition of fish by certain persons
6. Compensation in respect of initial allocation of transferable term quota for rock lobster	17. Powers of Fishery Officers
7. Compensation for reduction in transferable term quota for rock lobster	18. Director-General may direct that transfer or lease of quota not be registered pending laying of information for quota management offence
8. Limit on total compensation payable	19. Regulations
9. Registers and forms of leases	20. Special regulations relating to freshwater fish farming
10. Minimum holdings of quota and interests in quota	21. Certificates and official documents
11. Taking fish in excess of quota, and carrying forward unused quota	22. Variation of resource rentals by Order in Council
	23. Payments to Crown in lieu of disposal or surrender of fish taken contrary to Act

A BILL INTITULED

An Act to amend the Fisheries Act 1983

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Fisheries Amendment Act 1991, and shall be read together with and deemed part of the Fisheries Act 1983* (hereinafter referred to as the principal Act).

(2) Except as provided in **section 5 (2)** of this Act, this Act shall come into force on the day on which it receives the Royal assent.

*1983, No. 14

Amendments: 1986, No. 34; 1989, No. 159, Part II; 1990, No. 29; 1990, No. 85

2. Appeal against allocation or failure to allocate provisional maximum individual transferable quota—

(1) Section 28H of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the words “as the Quota Appeal Authority may” wherever they occur, the words “in exceptional circumstances”.

(2) Nothing in this section affects the validity, or prevents the continuation, of any appeal lodged before the date of the commencement of this section.

3. Appeal against allocation or failure to allocate provisional maximum transferable term quota—

(1) Section 28HA of the principal Act (as inserted by section 54 of the Maori Fisheries Act 1989) is hereby amended by inserting, after the words “as the Quota Appeal Authority may” wherever they occur, the words “in exceptional circumstances”.

(2) Nothing in this section affects the validity, or prevents the continuation, of any appeal lodged before the date of the commencement of this section.

4. Interpretation of provisions relating to compensation—

(1) Section 28OF (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by inserting in paragraph (a) of the definition of the term “compensation balance”, after subparagraph (i), the following subparagraph:

“(ia) The amount referred to in section 28OJ (1) (aa) of this Act; and”.

(2) Section 28OF (1) of the principal Act (as so inserted) is hereby further amended by inserting in paragraph (b) of the definition of the term “compensation balance”, after subparagraph (i), the following subparagraph:

“(ia) The amount referred to in section 28OJ (1) (aa) of this Act; and”.

(2) Section 28OF (1) of the principal Act (as so inserted) is hereby further amended by repealing the definition of the term “extended compensation period”, and substituting the following definition:

“‘Extended compensation period’ means,—

“(a) In any case where the total allowable commercial catch applying to orange roughy in quota management areas 3B, 4, 5A, and 6 combined is, on the 1st day of October 1992, less than 18,787 tonnes

5 plus any increase in the total allowable commercial catch (if any) for orange roughy in quota management areas 3B, 4, 5A, and 6 combined, during the period commencing on the 1st day of October 1990 and ending with the close of the 30th day of September 1992, by virtue of section 28J (2) of this Act, the period commencing on the 1st day of October 1994 and ending with the close of—

10 “(i) The 30th day of September 1995; or

15 “(ii) The 30th day of September 1996, if the total allowable commercial catch applying to hoki in quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 19 percent but not more than 40 percent lower than that applying on the 1st day of October 1989; or

20 “(iii) The 30th day of September 1997, if the total allowable commercial catch applying to hoki in quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 40 percent lower than that applying on the 1st day of October 1989; or

25 “(b) In any case to which **paragraph (a)** of this definition does not apply, the period commencing on the 1st day of October 1994 and ending with the close of—

30 “(i) The 30th day of September 1995, if the total allowable commercial catch applying to hoki in quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 19 percent but not more than 40 percent lower than that applying on the 1st day of October 1989; or

35 “(ii) The 30th day of September 1996, if the total allowable commercial catch applying to hoki in quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 40 percent but not more than 60 percent lower than that applying on the 1st day of October 1989; or

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“(iii) The 30th day of September 1997, if the total allowable commercial catch applying to hoki in the quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 60 percent lower than that applying on the 1st day of October 1989;— 5

and where neither paragraph (a) nor any of subparagraphs (i), (ii), and (iii) of paragraph (b) of this definition apply, there shall be no extended compensation period.”. 10

5. Compensation for reductions in individual transferable quota for species other than rock lobster during transitional compensation period—(1) Section 28OG of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (3), and substituting the following subsections: 15

“(3) Any amount payable as compensation under this section in respect of any reduction in individual transferable quota shall be payable by the Crown to every person who, on the date of the relevant reduction, was a specified person, in such amount or such proportion as may be agreed between the Minister, the Association, the Federation, and the Commission. 20

“(3A) For the purposes of subsection (3) of this section, ‘specified person’ means— 25

“(a) The holder (but not any lessee or sublessee) of the relevant quota; or

“(b) The lessee of the relevant quota, where the lease was granted to that person by the Crown and—

“(i) The lease requires the payment of a fixed rental to the Crown; and 30

“(ii) The Crown has undertaken that that lessee will not be otherwise required to meet the cost of any resource rental payable in respect of the quota; and 35

“(iii) The lease grants that lessee the right to acquire the quota outright at the expiry of the lease;—

but does not include the Crown.

“(3B) No person shall have any claim against the Crown, the Minister, the Association, the Federation, or the Commission by reason of that person being entitled to compensation under section 28OG (3) of this Act (as enacted by section 15 of the Fisheries Amendment Act 1990) but not being entitled to 40

compensation under **section 28OG (3)** of this Act (as enacted by **section 5 (1)** of the Fisheries Amendment Act 1991).”

(2) This section shall be deemed to have come into force on the **1st day of April 1990**.

5 **6. Compensation in respect of initial allocation of transferable term quota for rock lobster**—The principal Act is hereby amended by repealing section 28OH (as inserted by section 15 of the Fisheries Amendment Act 1990), and substituting the following section:

10 “28OH. (1) Where the amount of transferable term quota allocated to any person under section 28OA of this Act in respect of rock lobster on or before the specified date is less than the amount of provisional maximum transferable term quota allocated to that person under section 28EA of this Act, the Crown shall, subject to section 28OJ of this Act, pay compensation to that person in respect of the difference between those allocations at the rate of \$1,871 per tonne.

15 “(2) Where any person appeals to the Quota Appeal Authority under section 28HA of this Act in respect of the allocation or non-allocation of provisional maximum transferable term quota in respect of rock lobster and the provisional maximum transferable term quota allocated to that person is increased by the Quota Appeal Authority acting under section 28I of this Act, the Crown shall, (subject to **subsection (3)** of this section and to section 28OJ of this Act, pay compensation to the person concerned at the rate of \$1,871 per tonne in respect of the difference (if any) between the additional amount of provisional maximum transferable term quota allocated by the Quota Appeal Authority under section 28I of the Act and the additional amount of transferable term quota allocated under section 28OA as a consequence of that decision of the Quota Appeal Authority.

25 “(3) No payment shall be made under **subsection (2)** of this section if the effect of that payment would be to increase the total amount of payments made under that subsection to a sum exceeding \$400,000.

30 “(4) No compensation shall be payable under **subsection (2)** of this section in any case where the decision of the Quota Appeal Authority under section 28I of this Act on the appeal is given after the end of the transitional compensation period or (if appropriate) the extended compensation period.

40 “(5) No compensation shall be payable under **subsection (2)** of this section in any case where the appeal to the Quota Appeal

Authority is lodged with the Authority after the 31st day of March 1992.

“(6) Where on any appeal to the Quota Appeal Authority any provisional maximum transferable term quota is decreased under section 2801 of this Act, and compensation has previously been paid under this section, the compensation paid in respect of that part of the provisional maximum transferable term quota that is decreased shall be repayable to the Crown, and may be recovered as a debt due to the Crown. 5

“(7) For the purposes of subsection (1) of this section, the expression ‘specified date’ means— 10

“(a) The 3rd day of April 1990; or

“(b) In the case of quota management areas 2 and 3 (as defined in the Third Schedule to the Maori Fisheries Act 1989), the 6th day of May 1990; or 15

“(c) In any case where the Director-General had lodged an appeal against the allocation of provisional maximum transferable term quota with the Quota Appeal Authority and that appeal was subsequently withdrawn, the date notified by the Director-General by notice in the *Gazette* as the specified date for the purposes of this section.” 20

7. Compensation for reduction in transferable term quota for rock lobster—(1) Section 2801 of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2), and substituting the following subsection: 25

“(2) No compensation shall be payable under subsection (1) of this section to the extent that the reduction (if any) of the combined total allowable commercial catch for all quota management areas for rock lobster within New Zealand fisheries waters during the period commencing on the 1st day of April 1989 and ending with the close of the 30th day of September 1994 exceeds in total 500 tonnes (excluding any reductions that are made to quota held by the Crown and any reductions made as a result of the cancellation of quota held by the Crown).” 30 35

(2) Section 2801(3) of the principal Act (as so inserted) is hereby amended by omitting the word “single”.

(3) Section 2801 of the principal Act (as so inserted) is hereby further amended by adding the following subsections: 40

“(4) The compensation payable under this section shall be payable to the person who is the holder (not being a lessee or sublessee) of the quota on the date of the relevant reduction.

“(5) No compensation shall be payable under this section to the Crown.”

5 **8. Limit on total compensation payable**—(1) Section 28OJ (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by inserting, after paragraph (a), the following paragraph:

 “(aa) A payment by the Crown of \$5,000,000 to be paid forthwith from public money without further appropriation than this section; and”.

10 (2) Section 28OJ (1) (b) of the principal Act (as so inserted) is hereby amended by omitting the expression “20 percent lower than that applying on the 1st day of October 1989”, and substituting the expression “19 percent lower than that applying on the 1st day of October 1989, or where **paragraph (a)** of the definition of the term extended compensation period applies”.

15 (3) Section 28O (1) (c) of the principal Act (as so inserted) is hereby amended by omitting the expression “extended payment period”, and substituting the expression “extended compensation period”.

20 (4) Section 28OJ (1) of the principal Act (as so inserted) is hereby further amended by adding to subsection (1) the expression “, and”, and the following paragraph:

25 “(d) Any amounts paid to or recovered by the Crown under **section 28OH (4)** of this Act.”

(5) Section 28OJ of the principal Act (as so inserted) is hereby further amended by inserting, after subsection (1), the following subsection:

30 “(1A) Notwithstanding section 28OL of this Act, there shall be set aside, out of the amount described in subsection (1) of this section, the sum of \$400,000 which shall be applied towards making payments under **section 28OH (2)** of this Act in priority to any payments under section 28OG or section 28OI of this Act.”

35 (6) Section 28OJ (2) of the principal Act (as so inserted) is hereby amended by omitting the words “extended payment period”, and substituting the words “extended compensation period”.

40 (7) Section 28OL (3) of the principal Act (as so inserted) is hereby consequentially amended by omitting the words “extended payment period”, and substituting the words “extended compensation period”.

9. Registers and forms of leases—(1) Section 28P (1) of the principal Act (as substituted by section 16 (1) of the Fisheries

Amendment Act 1990), is hereby amended by repealing paragraphs (c) and (d), and substituting the following paragraphs:

“(c) In respect of every transfer of an individual transferable quota or of transferable term quota, whether by operation of law or agreement of the parties, that has been notified to the Director-General, the following details: 5

“(i) The name and address of the transferor and transferee: 10

“(ii) The tonnage of quota transferred:

“(iii) The date on which the transfer occurred or is to occur:

“(d) In respect of every lease under section 28Q of this Act that has been notified to the Director-General, the following details: 15

“(i) The name and address of the lessor and lessee:

“(ii) The tonnage of quota leased:

“(iii) The date on which the lease is to commence and the date on which the lease is to terminate.” 20

(2) Section 28Q (3) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby consequentially repealed.

(3) Section 28R (2) (d) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby repealed. 25

(4) Section 28R (3) of the principal Act (as so inserted) is hereby consequentially repealed.

10. Minimum holdings of quota and interests in quota—The principal Act is hereby amended by repealing section 28s (as inserted by section 19 (1) of the Fisheries Amendment Act 1990), and substituting the following section: 30

“28s. (1) Except as otherwise provided in this section, no person may purchase or take on lease— 35

“(a) Less than 5 tonnes of individual transferable quota for any quota management area for any species or class of finfish unless the total individual transferable quota held or held on lease by that person for all species or classes of finfish (including that quota) in one or more quota management areas is or exceeds 5 tonnes: 40

5 “(b) Less than 3 tonnes of individual transferable quota for any quota management area for any species or class of shellfish unless the total individual transferable quota held or held on lease by that person for all species or classes of shellfish (including that quota) in one or more quota management areas is or exceeds 3 tonnes:

10 “(c) Less than 3 tonnes of transferable term quota for rock lobster for any quota management area unless the total transferable term quota held or held on lease by that person for rock lobster (including that quota) in that quota management area is or exceeds 3 tonnes.

15 “(2) Notwithstanding that a person may have purchased or taken on lease not less than the minimum amount of quota specified in **subsection (1)** of this section, that person shall not take fish pursuant to any such quota at any time when the person has disposed of, in whole or in part, the right to take fish under the quota (whether by way of lease or otherwise), unless
20 the person has the current right to take fish to an amount not less than that specified in that subsection.

“**(3)** Nothing in **subsection (1)** or **subsection (2)** of this section shall prevent—

25 “(a) The allocation under section 28F or section 28FA of this Act of guaranteed minimum individual transferable quota or guaranteed minimum transferable term quota or the allocation under section 28O or section 28OA of this Act of individual transferable quota or transferable term quota in amounts less than those
30 specified in **subsection (1)** of this section; or

“**(b)** The taking of fish pursuant to any such quota by the person to whom it was allocated at any time when the person has the current right to take fish to an amount not less than—

35 “**(i)** The amount so allocated; or

“**(ii)** If the amount so allocated is subsequently increased pursuant to section 28OE of this Act, the amount of that quota as so increased.

40 “**(4)** Nothing in **subsection (1)** or **subsection (2)** of this section shall prevent—

“**(a)** The reduction, pursuant to section 28OD, of quota to amounts less than those specified in **subsection (1)** of this section; or

45 “**(b)** The taking of fish pursuant to any such reduced quota by the person whose quota was so reduced at any

time when the person has the current right to take fish to an amount not less than—

“(i) The amount of the reduced quota; or

“(ii) If the reduced quota is subsequently increased pursuant to section 28OE of this Act, the amount of that quota as so increased. 5

“(5) Nothing in **subsection (1)** or **subsection (2)** of this section shall prevent—

“(a) The holding or holding on lease of quota of an amount less than that specified in **subsection (1) (b)** of this section by any person who held or held on lease at least one tonne of shellfish quota immediately before the amount specified in **subsection (1) (b)** of this section was increased to 3 tonnes by virtue of the substitution of this section by **section 10 of the Fisheries Amendment Act 1991**; or 10 15

“(b) The taking of shellfish pursuant to any such quota so held by the holder of the quota at any time when that person has the current right to take shellfish to an amount not less than— 20

“(i) The amount of quota so held immediately before the amount specified in **subsection (1) (b)** of this section was increased to 3 tonnes; or

“(ii) If the amount so held is subsequently increased pursuant to section 28OE of this Act, the amount of that quota as so increased. 25

“(6) Nothing in **subsection (1)** of this section shall prevent the purchase or taking on lease of individual transferable quota or transferable term quota by any person who intends to acquire over a period at least the minimum individual transferable quota or at least the minimum transferable term quota, and who does not take any fish or rock lobster, as the case may be, pursuant to that quota until the person holds at least the minimum amount of quota specified in that subsection. 30

“(7) Nothing in **subsection (1)** of this section shall apply to the holder of any controlled fishery licence issued under Part III of this Act. 35

“(8) Where any person holds at least the minimum holding of individual transferable quota specified in **subsection (1) (b)** of this section, that person may purchase or take or lease less than the minimum of any individual transferable quota specified in **subsection (1) (a)** of this section, and may take fish pursuant to any such quota at any time during which the person has the current right to take shellfish to an amount not less than that specified in **subsection (1) (b)** of this section. 40 45

“(9) Where any person holds at least the minimum holding of transferable term quota specified in **subsection (1) (c)** of this section, that person may purchase or take on lease less than the minimum of any individual transferable quota specified in **subsection (1) (a)** of this section, and may take fish pursuant to any such quota at any time during which the person has the current right to take rock lobster to an amount not less than that specified in **subsection (1) (c)** of this section.

“(10) No person may sell or otherwise dispose of (other than by lease) individual transferable quota or transferable term quota where that sale or disposal would reduce the total individual transferable quota or transferable term quota held by that person to less than—

“(a) Five tonnes of finfish in one or more quota management areas; or

“(b) Three tonnes of shellfish in one or more quota management areas; or

“(c) Three tonnes of rock lobster for any quota management area,—

unless all the individual transferable quota for finfish or shellfish or all the transferable term quota for rock lobster, as the case may be, held or leased by the person are disposed of.

“(11) No person may dispose of or grant a lease of, and no person may acquire or take on lease less than 100 kilograms of, any individual transferable quota or transferable term quota, unless, in the case of the disposal or granting of a lease, the person disposes of or grants a lease of all the individual transferable quota or transferable term quota held by that person for that species or class of finfish or shellfish or rock lobster, as the case may be, for a quota management area.

“(12) No agreement shall be entered into, whether notified under this Act or otherwise, or if entered into shall not be effective, to the extent that it authorises any person to take any fish subject to a quota management system on behalf of any other person, unless the first-mentioned person has the current right to take fish subject to a quota management system to an amount not less than that specified in **paragraph (a)** or **paragraph (b)** or **paragraph (c)** of **subsection (1)** of this section.

“(13) Notwithstanding any other provision of this section, where any person is the holder or lessee of less than the minimum amount of individual transferable quota or transferable term quota specified in **subsection (1)** of this section and has the right to take fish under that quota by virtue of **subsection (3) (b)** or **subsection (4) (b)** or **subsection (5) (b)** of this section,—

- “(a) That person may not sell or otherwise dispose of that quota (other than by lease) unless all the individual transferable quota or transferable term quota, as the case may be, held by that person and to which **subsection (3) (b)** or **subsection (4) (b)** or **subsection (5) (b)** of this section relates is sold or otherwise disposed of: 5
- “(b) That person may acquire or take on lease additional quota if the effect is that the total held is less than the minimum quota, and that person may take fish under all of that quota; but none of the quota initially held or later acquired may be sold or otherwise disposed of (other than by lease) unless all such quota is sold or otherwise disposed of: 10
- “(c) If that person becomes the holder of more than the minimum amount of any class of quota specified in **subsection (1)** of this section, all rights conferred upon that person by this section in respect of that class of quota shall be extinguished; but nothing in this paragraph shall prevent the person acquiring further rights under **subsection (4)** of this section in respect of that class of quota. 15 20

“(14) Any person who holds less than the minimum holding of individual transferable quota or transferable term quota specified in **subsection (1) (b)** or **subsection (1) (c)** of this section, and has the right to take fish under that quota by virtue of **subsection (3) (b)** or **subsection (4) (b)** or **subsection (5) (b)** of this section, may acquire or take on lease less than the minimum holding of individual transferable quota specified in **subsection (1) (a)** of this section for any species or class of finfish, and may take finfish under that quota; but if the person sells or otherwise disposes of (other than by lease) the quota specified in **subsection (3)** or **subsection (4)** or **subsection (5)** of this section or any increase in that quota allowed under **subsection (13) (b)** of this section, the person may not take finfish unless that person holds at least the minimum quota specified in **subsection (1) (a)** of this section.” 25 30 35

11. Taking fish in excess of quota, and carrying forward unused quota—(1) Section 28v of the principal Act (as substituted by section 22 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections: 40

“(1) Subject to the provisions of this section and the requirements of this Act relating to fishing permits, any holder of individual transferable quota may, unless the holder has leased all of that quota at any time during the year in question,

in any fishing year take in total not more than 10 percent more fish than is specified in that quota, or such greater amount as may be permitted under **subsection (2)** of this section.

5 “(1A) For the purposes of **subsection (1)** of this section, a person shall continue to be regarded as the holder of quota notwithstanding that the quota may have been leased to another person or persons, but only if not all of that quota has been so leased.

10 “(2) The Director-General may, by notice in writing to the holder of the quota, and subject to such conditions as he or she thinks fit, permit that person to take in any fishing year a specified percentage or amount of fish that is greater than 10 percent more fish than is specified in the quota.”

15 (2) Section 28v of the principal Act (as so substituted) is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Nothing in **subsection (1)** or **subsection (2)** of this section shall permit the taking in any fishing year by any lessee of any quota of more fish than is specified in the quota.”

20 (3) Section 28v of the principal Act (as so substituted) is hereby amended by repealing subsection (6), and substituting the following subsection:

25 “(6) Where in any fishing year the total tonnage of fish specified in any quota is not taken, the holder of the quota (but not any lessee of the quota) may take in the next fishing year, in addition to any amount authorised by the quota, whichever is the lesser of the following:

“(a) The tonnage that was not taken:

30 “(b) Ten percent of the total tonnage specified in the quota in the year in which the total tonnage of fish was not taken;—

unless the holder has leased all of that quota at any time during that next fishing year.”

35 **12. Restriction on amount of quota that may be held by any one person**—(1) Section 28w of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by inserting, after subsection (2A) (as substituted by section 67 (1) of the Maori Fisheries Act 1989), the following subsection:

40 “(2B) Where the maximum permitted percentage of individual transferable quota or transferable term quota, as specified in subsection (1) of this section, for any species or class of fish in any quota management area is less than the minimum permitted quota holding specified in **section 28s (1)** of this Act,

nothing in subsection (1) of this section shall prevent any person from holding up to the minimum permitted quota holding specified in **section 28s** of this Act.”

13. Fish subject to quota fishing cannot be taken for sale other than under quota—Section 28ZA of the principal Act (as inserted by section 26 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2), and substituting the following subsections: 5

“(2) For the purposes of this section, a person shall be deemed not to take fish under the authority of any quota, unless— 10

“(a) That person is the holder of the quota; or

“(b) That person is a lessee of the quota; or

“(c) That person is named in a written authority that—

“(i) Is in the prescribed form or a form approved by the Director-General; and 15

“(ii) Is signed by the holder or lessee, as the case may be, of the quota and the person being authorised to take fish under the authority of the holder’s or lessee’s quota; and 20

“(iii) Has, before the fish are taken, been furnished to the Registrar at the port where the vessel to be used to take fish is registered, or, where the fishing is to be carried out otherwise than from a vessel, to the Registrar of the port nearest to the place of business or abode of the quota or lease holder; and no notice rescinding the authority has been served as required by **subsection (2A)** of this section on the person named in the written authority. 25 30

“(2A) Where any quota holder or lessee of quota authorises any person to take fish under the authority of quota in accordance with **subsection (2) (c)** of this section, that written authority shall remain in effect according to its tenor until the quota holder or lessee of quota, as the case may be,— 35

“(a) Serves notice of rescission of the authority in accordance with section 88A of this Act on the person authorised to take the fish; and

“(b) Gives written notice to the appropriate Registrar of service of the notice of rescission and the date from which the rescission is effective. 40

“(2B) Where—

- “(a) One or more current authorities have been given by a holder or lessee of quota pursuant to **subsection (2)** of this section; and
- 5 “(b) The written authority or authorities have not been rescinded and notice of any such rescission given to the appropriate Registrar, as required by **subsection (2A)** of this section; and
- 10 “(c) At any time the total amount of fish taken, by the holder or lessee and by persons acting under the authority of that quota, exceeds the total amount of quota held by the holder or lessee,—
- the holder or lessee shall for the purposes of this Act be deemed to have taken such excess for sale; but nothing in this subsection shall exonerate the person who took the fish from
- 15 liability for any offence against this Act.”

14. Fisherman may offer lease of quota in lieu of paying deemed value—(1) Section 28ZG (1) of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended by omitting the expression “20

20 days”, and substituting the expression “15 days”.

(2) Section 28ZG of the principal Act (as so inserted) is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

25 “(2) The Director-General may, by notice in the *Gazette*, specify in relation to any quota management area or combination of such areas—

30 “(a) Any bycatch species of fish in respect of which a lease or sublease of quota for a target species (or associated species if the Director-General thinks fit) may be accepted in lieu of the payment under section 28ZD of this Act of the deemed value of the fish:

35 “(b) In relation to any such bycatch species, any target species (or associated species if the Director-General thinks fit) for which a lease or sublease of quota may be so accepted:

40 “(c) The ratio at which, or other basis or conditions on which, a lease or sublease of quota of the target species (or associated species if the Director-General thinks fit) may be accepted in relation to the amount of the bycatch species for which the offer of quota is made:

“(d) The method or methods by which the bycatch species must have been taken while fishing for the target species (or associated species if the Director-General thinks fit).

“(3) In making any notice under subsection (2) of this section, the Director-General shall have regard to—

“(a) The closeness of the association between the bycatch species and the target species (or associated species if the Director-General thinks fit) in the quota management area or areas concerned; and 5

“(b) The degree to which there is a disparity between—

“(i) The ratio at which the bycatch species is caught in relation to the target species (or associated species if the Director-General thinks fit) in the quota management area or areas concerned; and 10

“(ii) The ratio of the maximum extent to which quota for the bycatch species could be fished in relation to the maximum extent to which quota for the target species (or associated species as the Director-General thinks fit) could be fished, in the quota management area or areas concerned.” 15

15. Taking fish, etc., commercially without permit prohibited—Section 62 (1A) of the principal Act (as inserted by section 31 of the Fisheries Amendment Act 1990) is hereby amended by adding the expression “; and”, and the following paragraph: 20

“(c) In any case where the Director-General so requires, the written agreement has been amended to specify not more than a number of persons specified by the Director-General, being persons who are natural persons named in the agreement; and, in any case where the Director-General considers there is already a sufficient number of persons authorised to take fish, aquatic life, or seaweed under any permit, the Director-General may decline to recognise the agreement and it shall be of no effect for the purposes of this section”. 25 30

16. Restrictions on purchase or acquisition of fish by certain persons—Section 67A of the principal Act (as substituted by section 13 (1) of the Fisheries Amendment Act 1986 and amended by section 35 (2) of the Fisheries Amendment Act 1990) is hereby amended by adding the following subsection: 35

“(6) For the purposes of this section, the expression ‘fish’ does not include whitebait”. 40

17. Powers of Fishery Officers—Section 79 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) The following provisions shall apply in relation to every authorisation given under subsection (2) of this section:

“(a) The authorisation shall be directed either to a named Fishery Officer or generally to any Fishery Officer, and in either case may be executed by any Fishery Officer:

“(b) The authorisation may be given upon an oral application, if the District Court Judge or Justice considers it appropriate to do so; and, in such a case, that Judge or Justice shall make a written note of the grounds of the application:

“(c) The authorisation may be executed at any time that is reasonable in the circumstances:

“(d) The person exercising the power of entry conferred by the authorisation shall produce the authorisation—

“(i) If practicable on first entering the place, garden, curtilage, or reservation concerned; and

“(ii) Whenever subsequently reasonably requested to do so.”

18. Director-General may direct that transfer or lease of quota not be registered pending laying of information for quota management offence—Section 80A of the principal Act (as inserted by section 39 (1) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) Upon application to the Court by the Director-General, or any Fishery Officer, the Court may extend the duration of any direction given under subsection (1) of this section for a further period of 60 days from the date on which the current order would otherwise expire, or such lesser period as the Court sees fit, and upon such conditions as the Court may specify.

“(2B) Any application under **subsection (2A)** of this section shall be made before the expiry of the current direction and the application shall have the effect of extending the duration of the current direction for a period of 14 days, or until the Court makes an order determining the application, whichever first occurs.

“(2C) No application under **subsection (2A)** of this section shall be heard by the Court unless it is satisfied that notice of the application has been served on any person who is to be the

subject of the direction at least 7 days before the hearing of the application.”

19. Regulations—Section 89 (1) (kc) (i) of the principal Act (as inserted by section 42 (3) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the words “fishing year”, the words “or from time to time during any fishing year”. 5

20. Special regulations relating to freshwater fish farming—(1) Section 91 of the principal Act is hereby amended by repealing paragraph (e) (as amended by section 25 of the Fisheries Amendment Act 1986 and section 2 (1) of the Fisheries Amendment Act (No. 2) 1990), and substituting the following paragraph: 10

“(e) For the application for, issue, revocation, renewal, and transfer of licences in respect of any such operation, and the form and contents of any such licence; and prescribing the fees payable in advance in respect of any such matter relating to any such licence and the fees payable annually or six-monthly in advance for the continued validity of any such licence:” 15 20

(2) The following enactments are hereby consequentially repealed:

- (a) Section 25 of the Fisheries Amendment Act 1986;
- (b) Section 2 (1) of the Fisheries Amendment Act (No. 2) 1990. 25

21. Certificates and official documents—Section 106 (1) of the principal Act (as substituted by section 51 of the Fisheries Amendment Act 1990) is hereby amended by adding the following paragraph: 30

“(g) Any certificate purporting to be signed by the Director-General or any Registrar stating the manner or order in which the fish catch of any person was counted against any quota in respect of any fishing year or from time to time during any fishing year, or any other matter provided for in regulations made pursuant to paragraph (kb) or paragraph (kc) of section 89 (1) of this Act.” 35

22. Variation of resource rentals by Order in Council—Section 107C of the principal Act (as inserted by section 28 (1) of the Fisheries Amendment Act 1986) is hereby 40

amended by inserting, after subsection (4A) (as inserted by section 55 (1) of the Fisheries Amendment Act 1990), the following subsection:

5 “(4B) Notwithstanding subsections (1) and (4A) of this section, the resource rentals for each species or class of fish for the fishing year commencing on the 1st day of October 1991 shall be the same as the resource rental for that species or class of fish for the fishing year that commenced on the 1st day of October 1990.”

10 **23. Payments to Crown in lieu of disposal or surrender of fish taken contrary to Act**—(1) Where, in relation to any fish taken before the commencement of this section,—

(a) Any person either—

15 (i) Has notified or notifies a Fishery Officer or any employee of the Ministry of the matters notifiable under section 88 (1) (c) (i) of the principal Act (as added by section 22 of the Fisheries Amendment Act 1986) or section 105A (1) (c) (ii) of that Act or regulation 30A (3) (c) of the Fisheries (Commercial Fishing) Regulations 1986; or

20 (ii) Has furnished or furnishes the Director-General or the Ministry with a return in a form purporting to be required by the Director-General under section 66 of the principal Act or under the Fisheries (Reporting) Regulations 1990, being a return showing that, when the fish were taken, a quantity of fish was taken in excess of the quota (if any) held by that person for that class or species of fish or, in the case of salmon, showing a quantity of fish taken in contravention of regulation 30A of the Fisheries (Commercial Fishing) Regulations 1986; and

(b) That person or a licensed fish receiver—

35 (i) Has paid to the Crown a sum sought by the Crown in respect of the value of the fish referred to in the notice or return; or

(ii) Has received or receives a request or demand from the Crown to pay a sum in respect of the value of the fish referred to in the notice or return; or

40 (iii) Has entered into any agreement or made any arrangement with the Crown in respect of the fish referred to in the notice or return,—

then, as the case may be,—

(c) The sum paid shall be deemed to have been validly paid and the Crown shall be entitled to retain that sum; or

- (d) The request or demand shall be deemed to have been validly made and shall be treated as a lawful debt due to the Crown by the person or licensed fish receiver, and that debt shall be deemed to be a statutory debt within the meaning of section 13A of the Ministry of Agriculture and Fisheries Act 1953 and may be recovered in any Court of competent jurisdiction; or 5
- (e) The agreement or arrangement shall be deemed to have been validly made and both the Crown and that person shall be bound by it. 10
- (2) Nothing in **subsection (1)** of this section affects any demand made under section 28ZD of the principal Act or any payment made under that section.