

[AS REPORTED FROM THE PRIMARY PRODUCTION COMMITTEE]
House of Representatives, 31 October 1991.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

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
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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). 5

(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. 10

New

1A. Notice of quota allocations to be given—Section 28G (2) (b) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by omitting the words “not earlier than the 28th day”, and substituting the expression “3 months”. 15

1B. Notice of quota allocations for rock lobster—Section 28GA (2) (b) of the principal Act (as inserted by section 53 of the Maori Fisheries Act 1989) is hereby amended by omitting the words “not earlier than the 28th day”, and substituting the expression “3 months”. 20

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

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(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”. 25

*1983, No. 14

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

New

(1) Section 28H (1) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended—

5 (a) By omitting the expression “28 days”, and substituting the expression “3 months”:

(b) By omitting the words “or such longer period as the Quota Appeal Authority may allow, appeal to that Authority”, and substituting the words “appeal to the Quota Appeal Authority”.

10 (1A) Section 28H (2) of the principal Act (as so inserted) is hereby amended by omitting the words “or such later date as the Quota Appeal Authority may allow, appeal to that Authority”, and substituting the words “, appeal to the Quota Appeal Authority”.

15 (1B) Section 28H (3) of the principal Act (as so inserted) is hereby amended—

(a) By omitting the expression “28 days”, and substituting the expression “3 months”:

20 (b) By omitting the words “or such later date as the Quota Appeal Authority may allow, appeal”, and substituting the words “, appeal to the Quota Appeal Authority”.

25 (1C) Section 28H (4) of the principal Act (as so inserted) is hereby amended by omitting the words “or such later date as the Quota Appeal Authority may allow, appeal”, and substituting the words “, appeal to the Quota Appeal Authority”.

30 (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—

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35 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”,

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wherever they occur, the words “in exceptional circumstances”.

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(1) 5
Section 28_{HA} (1) of the principal Act (as inserted by section 54 of the Maori Fisheries Act 1989) is hereby amended—

(a) By omitting the expression “28 days”, and substituting the expression “3 months”:

(b) By omitting the words “or within such longer period as the Quota Appeal Authority may allow, appeal to that Authority”, and substituting the words “, appeal to the Quota Appeal Authority”. 10

(1A) Section 28_{HA} (2) of the principal Act (as so inserted) is hereby amended by omitting the words “or such later date as the Quota Appeal Authority may allow, appeal to that Authority”, and substituting the words “, appeal to the Quota Appeal Authority”. 15

(1B) Section 28_{HA} (3) of the principal Act (as so inserted) is hereby amended— 20

(a) By omitting the expression “28 days”, and substituting the expression “3 months”:

(b) By omitting the words “or within such longer period as the Quota Appeal Authority may allow”.

(1C) Section 28_{HA} (4) of the principal Act (as so inserted) is hereby amended by omitting the words “or such later date as the Quota Appeal Authority may allow”. 25

(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. 30

4. Interpretation of provisions relating to compensation—(1) Section 28_{OF} (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: 35

“(ia) The amount referred to in **section 280J (1) (aa)** of this Act; and”.

5 (2) Section 280F (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 280J (1) (aa)** of this Act; and”.

10 (3) Section 280F (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,—

15 “(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 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—

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

30 “(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

35 “(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

40 “(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—

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“(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

“(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

“(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;—

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.”.

5. Compensation for reductions in individual transferable quota for species other than rock lobster during transitional compensation period—

New

(1A) Section 28OG (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by omitting the words “subsection (5) of this section and to”.

(1) Section 28OG of the principal Act (as *inserted by section 15 of the Fisheries Amendment Act 1990*) so inserted) is hereby amended by repealing subsection (3), and substituting the following subsections:

“(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.

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

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“(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—

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

“(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

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“(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.

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

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

New

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(2) Section 28OG of the principal Act (as so inserted) is hereby further amended by repealing subsections (5), (6), and (7).

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

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:

“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.

“(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.

“(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.

“(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.

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“(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.

5 “(6) Where on any appeal to the Quota Appeal Authority any provisional maximum transferable term quota is decreased under section 281 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.

10 “(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
20 for the purposes of this section.”

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
30 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
35 the Crown).”

(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.”

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 5
forthwith from public money without further
appropriation than this section; and”.

(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 10
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”.

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

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

“(d) Any amounts paid to or recovered by the Crown under **section (28OH (4))** 28OH (6) of this Act.”

(5) Section 28OJ of the principal Act (as so inserted) is hereby further amended by inserting, after subsection (1), the following 25
subsection:

“(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 30
making payments under **section 28OH (2)** of this Act in priority to any payments under section 28OG or section 28OI of this Act.”

(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 35
period”.

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(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”. 40

*New***8A. Determination of preliminary percentage of compensation payable before end of transitional compensation period—**

5 Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by omitting the expression “section 28OL (1) (a)”, and substituting the expression “section 28OL (1) (b)”.

10 (2) Section 28OK of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

“(5) No preliminary percentage of compensation shall be payable in respect of rock lobster.”

8B. Manner and timing of payment of compensation—

15 (1) Section 28OL (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

20 “(a) In the case of compensation payable pursuant to section 28OH or section 28OI of this Act in respect of rock lobster, the Crown shall pay the amount of compensation that is then due as soon as practicable after the end of the quarter in which the allocation or reduction occurred.”

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

30 (3) Section 28OL (3) of the principal Act (as so inserted) is hereby further amended by repealing paragraph (a), and substituting the following paragraphs:

35 “(a) First, there shall be paid (if the compensation balance is sufficient), to each person who has not yet received the amount of compensation that is then due to that person under section 28OH of this Act, such amount as may be necessary to bring the level of compensation paid to that person up to that amount:

40 “(aa) Secondly, there shall be paid (if the compensation balance is sufficient), to each person who has not yet received the amount of compensation that is then due to that person under section 28OI of this Act,

New

such amount as may be necessary to bring the level of compensation paid to that person up to that amount:

“(ab) Thirdly, there shall be paid in full (if the compensation balance is sufficient), to each person who has not yet received the agreed preliminary percentage of the amount of compensation payable to that person, such amount as may be necessary to bring the level of compensation paid to that person up to that percentage.”.

(4) No person shall have any claim against the Crown, the Minister, the Association, the Federation, or the Commission by reason of any delay in the payment of compensation that became payable under the principal Act before the commencement of this Act.

(5) Notwithstanding anything in the principal Act, where compensation is payable under any of sections 280C to 280I of that Act in respect of any allocation or reduction that occurred before the commencement of this Act, the following provisions shall apply:

(a) In the case of rock lobster (if the compensation balance is sufficient), the payment due shall be paid out of the compensation balance as at the date of the commencement of this Act and be paid before the close of the next quarter after that date of commencement:

(b) In the case of any other species of fish (if the compensation balance is sufficient), the full amount of the agreed preliminary percentage of compensation shall be paid out of the compensation balance as at that date of commencement and be paid before the close of the next quarter after that date of commencement:

(c) If the compensation balance is insufficient to enable the payments referred to in paragraphs (a) and (b) of this section, the payments due shall be paid in accordance with the priorities set out in section 280L (2) of the principal Act.

8c. Additional amounts payable by Crown in respect of goods and services tax—(1) Section 280N of the principal Act

New

(as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2), and substituting the following subsection:

5 “(2) Where the Crown is required to pay any amount of compensation pursuant to sections 28OF to 28OM of this Act to any person who is registered under the Goods and Services Tax Act 1985, the amount so required to be paid shall be increased by an additional amount equal to the amount of goods and
10 services tax payable in respect of that compensation under the Goods and Services Tax Act 1985.”

(2) Section 28ON of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

15 “(4) Nothing in subsection (2) of this section applies in respect of any amount of compensation if—

 “(a) The Director-General requests the person to whom that amount is payable to provide that person’s registration number under the Goods and Services Tax Act 1985; and

20 “(b) That person fails to provide that information to the Director-General within 6 months after the date on which the demand is made.”

9. Registers and forms of leases—(1) Section 28P (1) of the principal Act (as substituted by section 16 (1) of the Fisheries
25 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:

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

35 “(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
40 following details:

“(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.” 5

(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. 10

(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: 15

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

“(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: 20 25

“(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: 30

“(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. 35

“(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 40

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 the person has the current right to take fish to an amount not less than that specified in that subsection.

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

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“(a) The Commission (as defined in section 28OF of this Act) leasing an amount of shellfish quota that is not less than 1 tonne but is less than the amount specified in **subsection (1) (b)** of this section, if the lease is registered before the 31st day of October 1992; or

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“(b) The holder of any such quota taking shellfish pursuant to that quota at any time while that person has the current right to take not less than 1 tonne of shellfish.

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

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“(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 specified in **subsection (1)** of this section; or

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“(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—

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“(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.

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“(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

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“(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) Nothing in **subsection (1)** or **subsection (2)** of this section shall prevent— 5
- “(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
- “(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— 15
- “(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 20
- “(ii) If the amount so held is subsequently increased pursuant to section 28OE of this Act, the amount of that quota as so increased.
- “(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
- “(9) Where any person holds at least the minimum holding of transferable term quota specified in **subsection (1) (c)** of this 45

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.

5 “(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—

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

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

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

20 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.

25 “(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.

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30 “(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.

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“(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 species or class of fish subject to a quota management system under the authority of quota held by any other person, unless the first-mentioned person holds or leases in respect of such species or class of fish the required minimum amount of individual transferable quota or transferable term quota specified in **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:

“(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:

“(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.

“(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.”

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:

“(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.

“(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.

“(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.”

(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.”

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

“(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:

“(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.”

12. Restriction on amount of quota that may be held by any one person—(1) Section 28^w 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:

“(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:

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

“(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

“(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

“(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) a Registrar; and no notice rescinding the authority has been served as required by subsection (2A) of this section on the

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“(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

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“(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

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

“(2B) Where—

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“(a) One or more current authorities have been given by a holder or lessee of quota pursuant to subsection (2) of this section; and

“(b) The written authority or authorities have not been rescinded and notice of any such rescission given to *(the appropriate)* a Registrar, as required by subsection (2A) of this section; and

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“(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,—

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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 liability for any offence against this Act.”

New

13A. Commercial fishermen may be required to pay deemed value of excess or unauthorised quota fish—

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(1) Section 28ZD of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended by adding the following subsection:

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“(3) A demand under subsection (1) of this section may be made at any time before the close of the 31st day of March in the year after the fishing year in which the fish are taken.”

New

(2) Demands may be made under section 28ZD of the principal Act (as so inserted) in respect of fish taken before the commencement of this Act; and subsection (3) of that section (as inserted by subsection (1) of this section) shall apply to such demands as if it were in force when those fish were taken. 5

14. Fisherman may offer lease of quota in lieu of paying deemed value—

Struck Out

(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 days”, and substituting the expression “15 days”. 10

New

(1) Section 28ZG (1) of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended— 15

- (a) By omitting the expression “20”, and substituting the expression “15”;
- (b) By inserting, after the words “target species”, the words “or associated species”. 20

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

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

“(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: 30

“(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:

5 “(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:

10 “(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—

15 “(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

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

20 “(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

25 “(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.”

New

30 (3) Section 28zG (4) (a) of the principal Act (as so inserted) is hereby amended by omitting the word “target”.

15. Taking fish, etc., commercially without permit prohibited—(1) Section 62 (1A) (a) of the principal Act (as inserted by section 31 of the Fisheries Amendment Act 1990) is hereby amended by omitting the words “commercial fisherman named in the permit”, and substituting the words “holder of that permit”.

40 (2) Section 62 (1A) of the principal Act (*as inserted by section 31 of the Fisheries Amendment Act 1990*) as so inserted) is hereby further amended by adding the expression “; and”, and the following paragraph:

“(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.”

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:

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

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)* any Fishery Officer by name or generally to every Fishery Officer, and in either case may be executed by any Fishery Officer:

“(b) The authorisation may be given *(upon an oral application)* on an application in writing made on oath or on an application made on oath orally, 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)* by day or by night:

Struck Out

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

Struck Out

5 “(i) If practicable on first entering the place,
 garden, curtilage, or reservation concerned; and
 “(ii) Whenever subsequently reasonably requested
 to do so.”

New

10 “(d) It is the duty of every person exercising the power of
 entry conferred by the authorisation to have the
 authorisation with him or her and to produce it if
 required to do so.”

15 **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:

20 “(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.

25 “(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.

30 “(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.”

35 **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”.

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:

“(e) Providing for the application for, issue, revocation, renewal, variation, 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:”.

(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.

New

20A. Ownership and possession of fish—Section 99 (1) (c) of the principal Act (as substituted by section 46 of the Fisheries Amendment Act 1990) is hereby amended by omitting the words “the Registrar at the port where the vessel is registered”, and substituting the words “a Registrar”.

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:

“(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.”

22. Variation of resource rentals by Order in Council—Section 107G of the principal Act (as inserted by section 28 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after subsection (4A) (as inserted by section 55 (1) of the Fisheries Amendment Act 1990), the following subsection:

“(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.”

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—

(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

(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—

(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 (being an original request or demand or being a request or demand made in place of one that was made and

subsequently cancelled or withdrawn by the Crown before the commencement of this Act); or

(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, subject to subsection (1A) of this section, 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

(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.

New

(1A) Section 13A of the Ministry of Agriculture and Fisheries Act 1953 shall apply to debts due under this section as if such debts are payable within 6 months after the date on which this Act comes into force.

(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.