

FISHERIES (REMEDIAL ISSUES) AMENDMENT BILL

EXPLANATORY NOTE

General Policy Statement

This Bill amends errors and omissions in the Fisheries Act 1996.

The errors and omissions are primarily of a technical nature although some amendments are required to ensure that the policy contained in the Fisheries Act 1996 is able to be enacted as intended.

In addition the Bill contains the ability for the chief executive of the Ministry of Fisheries to declare a temporary closure of fisheries by species or by the exclusion of a fishing method. This is not a technical amendment but is Government policy which partially discharges obligations of the Crown under the Ngāi Tahu Deed of Settlement 1997.

Clause by Clause Analysis

Clause 1 is the Short Title and commencement clause. In general terms, amendments to sections of the Fisheries Act 1996 that are already in force will come into force on the day the Bill receives the Royal assent, while other amendments will come into force on the same day as the provisions that they amend.

Clause 2 amends section 2 of the Act, the interpretation provision.

Subclause (1) amends the definition of “fishing year” to specify southern blue whiting as a stock that has a fishing year commencing on 1 April.

Subclauses (2) and (3) amend the definitions of “individual transferable quota” and “provisional individual transferable quota” to include quota allocated under Part IIA of the Fisheries Act 1983 that has been converted to quota shares under section 343 of the 1996 Act.

Subclause (4) includes in the definition of “total allowable commercial catch” a reference to total allowable commercial catches set under the Fisheries Act 1983.

Clause 3 amends the definition of “associated person” by omitting a reference to an “estate” in quota. This reference is inappropriate since quota is personal property, not real property.

Clause 4 amends section 11 (5) of the Act, which relates to sustainability measures, to clarify that in appropriate cases the Minister is to have regard to the

provisions of both section 13 (2) and section 21 (1), rather than just one of them, when setting catch limits.

Clause 5 amends section 13 of the Act, which deals with the requirements for setting total allowable catches.

The first amendment inserts an explicit reference to the alteration of quota management areas under sections 25 and 26 of the Act, which will have an effect on the total allowable catch.

The second amendment moves the reference to environmental factors currently specified in subparagraph (i) of section 13 (2) (b), which deals with setting a target stock level for stocks currently below the maximum sustainable yield level, to subparagraph (ii), which deals with the period over which any change in stock level will occur. This is because the effects of changing environmental factors could well be relevant in considering the rate at which a stock size will change.

The third and fourth amendments make it clear that, when varying or increasing a total allowable catch, the Minister is to have regard to the same factors as apply when setting an initial total allowable catch.

The fifth amendment corrects a wrong cross-reference.

Clause 6 amends section 20 of the Act, which relates to the setting and variation of total allowable commercial catches, by inserting an explicit reference to the alteration of the quota management area for the relevant stock under sections 25 and 26 of the Act.

Clause 7 amends section 26 of the Act in relation to the effects of an alteration in a quota management area.

Section 26 (2) provides for the new allocation of quota, and is amended both by making it specifically subject to the appeal provisions in section 52 of the Act, and by providing that the allocation is to be made in the proportions provided for in the quota owners' agreement (rather than "in accordance with" the agreement - which could be expressed in tonnage rather than percentage terms).

Clause 8 amends section 33 of the Act, which specifies the qualifying years for determining eligibility to provisional catch history. The existing section 33 (a) implies that a person who was issued a permit under section 2 (2) of the Fisheries Act 1994 in place of a special permit must have held an authority to take fish for the whole 12-month period of the qualifying year. This was not intended, and the amended paragraph (a) simply refers to the first consecutive 12 months following the date on which the person was first authorised to take fish under the permit.

Clause 9 amends section 35 of the Act, which provides for the chief executive to notify persons of their eligibility to receive provisional catch history.

Subclauses (1) and (2) clarify some confusion as to the various notification time frames referred to in the section.

Subclause (3) amends section 35 (6) to specifically provide that provisional catch history held by the Crown is to be excluded when determining whether the total provisional catch history for a fishstock specified in the Fourth Schedule of the Act is of such an amount that a separate Act is required to bring it under the quota management system.

Clause 10 amends section 36 (1) of the Act by removing from paragraph (a) a requirement to notify that is repeated in paragraph (c).

Clause 11 amends section 37 of the Act to allow provisional catch history to be transferred to the Crown.

Clause 12 amends section 49 of the Act, which provides for unallocated total allowable commercial catch to be held by the Crown only as provisional individual transferable quota where any relevant disputes or appeals are being pursued, to carry the reference to disputes through to subsection (3) of the section.

Clause 13 amends section 50 of the Act, which deals with the Crown's position in relation to quota, to extend the application of the section to provisional catch history and to specifically allow the Crown to cancel any provisional catch history that it holds.

Clause 14 amends section 58 of the Act, which provides for quota or annual catch entitlement owned by overseas persons to be forfeit, by correcting a wrong section cross-reference.

Clause 15 amends section 67 of the Act to clarify the elements involved in the calculation of annual catch entitlement allocations.

Clause 16 amends section 71 of the Act, which in certain cases limits the defences available to an individual fisher who has failed to comply with the recording and reporting requirements of the Act, to provide that the section will not apply in the case of a minor and non-material failure to comply.

Clause 17 amends section 76 (3) of the Act to make it clear that the option of acquiring extra annual catch entitlement to satisfy a deemed value obligation exists only up until the time limit specified in section 134 of the Act (that is, 15 days after the end of the fishing year).

Clause 18 amends section 78 of the Act, which allows fishers to offer an "executed transfer" of an amount of annual catch entitlement to the chief executive of the Ministry under the bycatch trade-off system. The amendment makes it clear that it is only the commercial fisher who need sign the transfer, not both the fisher and the chief executive.

Clause 19 (1) amends section 80 (1) of the Act to correct a timing reference that on its face would require the chief executive to notify fishers of reported catch that hadn't yet been caught.

Subclause (2) amends section 80 (11), which requires the chief executive to notify the Registrar of any changes to a fisher's reported catch as a result of a review commenced under the section, to also include a reference to appeals.

Clause 20 reorders the wording of the exclusive economic zone offence set out in section 84 of the Act to make it clear that the whole provision relates to the exclusive economic zone only.

Clause 21 amends section 89 of the Act, which among other things provides for written fishing agreements authorising approved employees or agents to fish under the authority of a permit in specified cases. Subsection (8) presently allows the chief executive to set a limit on the number of persons who may be named in any such agreement. The new *subsection (8)* limits this power to the case of permits authorising the taking of freshwater eels, as was the case under the equivalent section 62 of the Fisheries Act 1983.

Clause 22 repeals as redundant section 91 (4) of the Act, which provides that no fishing permit may be issued to an applicant to authorise the taking of any stock managed by individual catch entitlements unless the applicant actually holds an individual catch entitlement for that stock.

Clause 23 recasts section 92 of the Act to remove the need for all quota management system stocks to be individually noted on permits.

Clause 24 amends section 99 of the Act to make it clear that the same person may be appointed to be Registrar of both the Fishing Vessel Register and the Permit Register.

Clause 25 (1) amends section 103 (5) of the Act to ensure that vessels owned or operated by overseas persons who may hold quota or other interests by virtue of sections 56 and 57 of the Act are subject to New Zealand labour laws, as they would have been if they required the chief executive's specific consent to their registration under section 103 (4).

Subclause (2) adds a new subsection that specifically excludes from the requirement to be registered vessels that are used to take fish, aquatic life, or seaweed produced as part of a lawful fish farming operation.

Clause 26 amends section 107 of the Act to ensure that the chief executive may cancel the registration of a vessel if the conditions of registration are breached.

Clause 27 amends section 111 of the Act, which deems fish on a registered vessel to have been taken for the purpose of sale unless taken in accordance with an approval of the chief executive, to clarify that any taking under such an approval must be in accordance with any conditions imposed on the approval.

Clause 28 amends the wording of section 159 of the Act, which sets out registration procedures, to cater for the situation where a Registrar is required to register something by virtue of a particular provision of the Act, rather than on an application by a party to a private transaction.

Clauses 29 and 30 amend sections 161 and 162 of the Act to explicitly provide for the registration of interests where there is a transfer of provisional catch history by operation of law. The sections currently provide for the registration of interests in quota shares and annual catch entitlements, but not in provisional catch history.

Clause 31 amends section 171 of the Act to insert a section cross-reference whose absence might debar a person aggrieved by a mistake or wrongdoing of a Registrar from suing the Crown for damages.

Clause 32 amends section 186 (2) of the Act, which has incorrectly carried over from the Fisheries Act 1983 the priority relationship that exists between customary fishing regulations and all other fisheries regulations (not just taiapure-local fisheries regulations). The new paragraph (a) restores the position as it existed under the 1983 Act.

Clause 33 amends section 188 of the Act to impose on the chief executive a requirement to consult before setting conversion factors.

Clause 34 amends section 190 of the Act, which allows the chief executive to require returns and records additional to those specified in regulations, to add a specific offence provision for contravention of subsection (1)(b) of the section. (A contravention of subsection (1)(a) is sufficiently covered by section 230 (1) of the Act.)

Clause 35 amends section 215 of the Act to correctly reflect the intention of the Primary Production Select Committee in relation to the extent to which fisheries officers may exercise their powers beyond New Zealand fisheries waters, as expressed in the Interim Report of that committee. The present wording of the

section allows the powers to be exercised in limited circumstances in the case of foreign vessels, but does not authorise their use in the case of New Zealand vessels.

Clause 36 (1) amends section 243 (1) of the Act, which provides defences in relation to specified quota management stocks, to make it clear that the fish, aquatic life, or seaweed referred to in paragraph (a) must be of the relevant stock, as is the case in paragraph (b).

Section 243 (2) (b) of the Act currently provides that a defence will not be available to a fisher who, by virtue of a failure to comply with the recording and reporting provisions of the Act, is subject to section 71 of the Act. *Subclause (2)* amends paragraph (b) to clarify that the application of section 71 must be in respect of the same stock as that to which the offence relates before a fisher is deprived of a defence under the section.

Clause 37 amends the penalty provisions in section 252 of the Act to provide penalties for offences created under other clauses of the Bill (see *clauses 34, 43, 44, 45, and 53*).

Clause 38 amends section 255 of the Act, which provides for the forfeiture of fish, property, or quota on conviction for an offence. There is no specific provision in the existing section for offences where the penalty exceeds \$100,000. Section 255 (4) is accordingly amended to apply to all offences carrying a penalty of between \$100,000 and \$250,000.

Clause 39 expands a reference to property in section 256 of the Act to make it reflect the defined term "property used in the commission of the offence" in section 255.

Clause 40 amends section 266 of the Act, which sets out the consultation requirements before cost recovery levies may be made, to remove the financial year-related limit on the date by which consultation must be completed.

Clause 41 repeals section 269 of the Act, which relates to consultation requirements under the Act in relation to fisheries services to be performed by outside agencies, and substitutes a new section that specifically extends its application to conservation services.

Clause 42 corrects a wrong cross-reference in section 297 of the Act, the general regulation-making provision.

Clause 43 inserts a new *section 311A* into the Act that allows the chief executive to temporarily close an area or restrict fishing methods where he or she considers that such a closure or restriction is likely to assist in restocking, or in recognising and making provision for the use and management practices of Maori in the exercise of non-commercial fishing rights.

Clause 44 amends section 312 of the Act, which relates to the southern scallop fishery, by adding a specific offence provision for persons who contravene the section.

Clause 45 similarly adds a specific offence provision for commercial fishers who take scallops contrary to a prohibition imposed by the chief executive under section 313 of the Act.

Clause 46 amends section 332 (5) of the Act, which provides that New Zealand labour law will apply to foreign crew on New Zealand fishing vessels prior to the new vessel registry being established. The section is a transitional section that was

intended to mirror the requirements of section 103 (5) of the Act, but currently has no equivalent to section 103 (5) (c) in relation to the assessment of hours of work and the payment of crew. The clause inserts an equivalent paragraph.

Clause 47 amends section 343 of the Act in relation to the conversion of quota holdings from the old register to the new register. New *subsection (3) (b)* explicitly provides that quota converted under the section has the same characteristics as quota allocated under section 47 of the Act. New *subsection (3) (c)* specifically provides that quota may be converted to provisional individual transferable quota as if under section 47 of the Act, to cover the situation where an appeal in respect of the quota may not have been finally determined.

Clause 48 corrects a wrong cross-reference in section 347 of the Act, which relates to the registration of leases.

Clause 49 corrects 2 wrong cross-references in section 361 of the Act, which is a transitional provision relating to offences and penalties.

Clause 50 inserts a new *section 361A* into the Act to allow the staggered setting under section 13 of the Act of total allowable catches for different stocks and quota management areas. The transitional period runs until 1 October 2001, by which time total allowable catches for all stocks and areas must be set. During that time the Minister must however set a total allowable catch for any stock and area for which he or she also proposes to set or vary a total allowable commercial catch under section 20 of the Act.

Clause 51 amends a wrong cross-reference in section 362 of the Act, which is a transitional provision relating to the allocation of quota for bait.

Clause 52 corrects a wrong cross-reference in section 366 of the Act, which is a transitional provision in relation to the southern scallop enhancement programme.

Clause 53 amends section 369 of the Act, which relates to Northland scallops, by adding a specific offence provision for persons who take Northland scallops for sale outside the Northland scallop fishery season.

Clause 54 amends the First Schedule of the Act, which describes fishery and quota management areas.

Subclause (1) inserts notes at the beginning of the Schedule which set out various explanations or rules of general application.

Subclause (2) corrects a number of wrong co-ordinates or references in the descriptions of fishery and quota management areas.

Clause 55 amends the Ninth Schedule of the Act to correct an error in the list of jack mackerel quota allocations.

Clause 56 amends the Fisheries Act 1983.

Subclause (1) amends the definition of "fishing year" to specify southern blue whiting as a stock that has a fishing year commencing on 1 April.

Subclauses (2) to (4) amend sections 2, 28AB, 28BB and 28CA to substitute references to the management areas specified in the First Schedule of the Fisheries Act 1996 for existing references to paua and rock lobster management areas specified in the Third Schedule of the Maori Fisheries Act 1989 and Schedule 1DA of the Fisheries Act 1983.

Subclause (5) amends section 28W, which is the provision that imposes restrictions on the amount of quota that may be held by any one person, to

ensure that people will not be treated as being associated merely because they have an association with the Treaty of Waitangi Fisheries Commission.

Clause 57 amends section 3H of the Marine Mammals Act 1978, which relates to the procedure for the preparation and approval of population management plans and was inserted by section 316 of the Fisheries Act 1996, to insert a missing paragraph that deals with the approval of a plan by the Minister of Fisheries.

Clause 58 amends section 30 (2) of the Resource Management Act 1991 to prevent the duplication of the word "conserve" effected by an amendment made by section 316 of the Fisheries Act 1996.

Clause 59 (1) corrects a reference to the wrong Act in the Fisheries (Catch Against Quota) Regulations 1993.

Subclause (2) relieves persons who before 1 October 1997 were liable to pay the Canterbury Bight and Pegasus Bay gill net fishery levy under the Fisheries (Cost Recovery Levies) Order 1996 from the obligation to pay the levy where no demand for it was made before 1 October 1997.

FISHERIES (REMEDIAL ISSUES) AMENDMENT

ANALYSIS

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22. Issue of fishing permit	55. Ninth Schedule amended
23. Fishing permit may be issued subject to conditions	<i>Amendments to Other Acts, Etc</i>
24. Appointment of Registrars	56. Fisheries Act 1983 amended
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A BILL INTITULED

An Act to amend the Fisheries Act 1996 and related legislation

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 (Remedial Issues) Amendment Act 1997, and is part of the Fisheries Act 1996* (“the principal Act”).

(2) Sections 6, 7, 13 to 30, 34 to 39, 43 to 48, and 51 each come into force on the day on which the provision of the principal Act that they amend or insert is brought into force by Order in Council made under section 1 (2) of that Act.

(3) The other provisions of this Act come into force on the day on which this Act receives the Royal Assent.

*1996, No. 88

2. Interpretation—(1) Section 2 (1) of the principal Act is amended by inserting in paragraph (a) of the definition of “fishing year”, after the words “Northland scallops,”, the words “southern blue whiting,”.

(2) Section 2 (1) of the principal Act is amended by inserting in the definition of “individual transferable quota”, after paragraph (b), the following paragraph:

“(ba) Individual transferable quota allocated under Part IIA of the Fisheries Act 1983 that has been converted into quota shares under section 343 of this Act:”.

(3) Section 2 (1) of the principal Act is amended by inserting in the definition of “provisional individual transferable quota”, after paragraph (a), the following paragraph:

“(aa) Guaranteed minimum individual transferable quota allocated under Part IIA of the Fisheries Act 1983 that has been converted into quota shares under section 343 of this Act:”.

(4) Section 2 (1) of the principal Act is amended by inserting in the definition of “total allowable commercial catch”, after the words “section 20 of this Act”, the words “, and includes any total allowable commercial catch set by or under the Fisheries Act 1983”.

3. Meaning of term “associated person”—Section 3 (1) (c) of the principal Act is amended by omitting the words “estate or”.

4. Sustainability measures—Section 11 (5) of the principal Act is amended by omitting the words “of this Act”, and substituting the words “or both those sections”.

5 **5. Total allowable catch**—(1) Section 13 (1) of the principal Act is amended by adding the words “, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26”.

(2) Section 13 (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

10 “(b) Enables the level of any stock whose current level is below that which can produce the maximum sustainable yield to be altered—

15 “(i) In a way and at a rate that will result in the stock being restored to or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; and

20 “(ii) Within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock; or”.

(3) Section 13 (4) of the principal Act is amended by adding the words “When considering any variation, the Minister is to have regard to the matters specified in subsections (2) and (3).”

25 (4) Section 13 (7) of the principal Act is amended by inserting, after the words “Second Schedule to this Act,”, the words “and after having regard to the matters specified in subsections (2) and (3),”.

30 (5) Section 13 (8) of the principal Act is amended by omitting the expression “subsection (6)”, and substituting the expression “subsection (7)”.

6. Setting and variation of total allowable commercial catch—Section 20 (1) of the principal Act is amended by adding the words “, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26”.

7. Effect on quota if quota management area altered—(1) Section 26 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

40 “(2) Subject to sections 43 and 52, the chief executive must allocate quota in accordance with the proportion of shares

provided for in the agreement referred to in section 25 (4), and the allocation—

“(a) Is to be in the form in which the quota was held immediately before the alteration in the quota management area takes effect; and 5

“(b) Takes effect at the same time as that alteration.”

(2) Section 26 (3) (b) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) To be given a schedule that sets out the allocation of quota shares to all other quota owners for each new stock by reference to the proportion of shares provided for in the quota owner agreement referred to in section 25 (4),—” 10

8. Qualifying years—Section 33 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph: 15

“(a) In the case of a person eligible under section 32 (1) (a) (ii) to receive provisional catch history by virtue of a fishing permit issued under section 2 (2) of the Fisheries Amendment Act 1994, the first consecutive 12 months following the date of issue of the permit:” 20

9. Notification of eligibility to receive provisional catch history—(1) Section 35 (2) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraphs: 25

“(e) The date on which the notice under this section is issued:

“(ea) The date by which objections must be lodged (which date must be at least 60 working days after the date specified under paragraph (e)):” 30

(2) Section 35 (3) of the principal Act is amended by omitting all the words occurring after the end of paragraph (c), and substituting the words “and the notice under this subsection must be published a second time at least 10 working days but not more than 20 working days after the date of its first public notification.” 35

(3) Section 35 (6) of the principal Act is amended by inserting, after the words “provisional catch history for that stock”, the words “(excluding provisional catch history held or likely to be held by the Crown)” 40

10. Notification of allocation of provisional catch history—Section 36 (1) (a) of the principal Act is amended by omitting the words “and notify the person concerned of his or her determination”.

5 **11. Transfer of provisional catch history**—Section 37 (1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

 “(b) The transferee is a current fishing permit holder or is the Crown; and”.

10 **12. Unallocated total allowable commercial catch to be held by Crown**—Section 49 (3) of the principal Act is amended by inserting, after the words “unencumbered provisional individual transferable quota until”, the words “all disputes of a kind referred to in subsection (1) (b) and”.

15 **13. Rights of Crown in relation to quota**—Section 50 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

 “(1) Without limiting any other provision of this Act, the chief executive may, on behalf of the Crown,—

20 “(a) Purchase any individual transferable quota or provisional catch history:

 “(b) Hold any quota allocated or acquired, or any provisional catch history, without being obliged to offer it to any person:

25 “(c) Transfer any individual transferable quota or provisional catch history held by or on behalf of the Crown:

 “(d) Cancel any provisional catch history held by the Crown (and notify the Registrar accordingly).”

30 **14. Quota or annual catch entitlement owned by overseas persons to be forfeit**—Section 58 (1) of the principal Act is amended by omitting the expression “section 57 (2)”, and substituting the expression “section 57 (3)”.

35 **15. Allocation of annual catch entitlement**—Section 67 (2) of the principal Act is amended by omitting paragraph (b) of item c, and substituting the following paragraph:

40 “(b) The amount (expressed in kilograms) by which reported catch for the immediately preceding fishing year for the relevant stock exceeds the total amount of

annual catch entitlement allocated to quota owners for that immediately preceding fishing year (other than any annual catch entitlement held by the Crown under subsection (3) for that immediately preceding fishing year).”

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16. Defences available to individual fishers— Section 71 (3) of the principal Act is amended by inserting, after the word “fails”, the words “(other than in any minor and non-material respect)”.

17. Catch to be counted against annual catch entitlement— Section 76 (3) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

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“(b) Acquiring, for the relevant fishing year (and within the time limit specified in section 134), annual catch entitlement for the relevant stock; or”.

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18. Bycatch trade-off— Section 78 (1) of the principal Act is amended by omitting the words “an executed transfer”, and substituting the words “a transfer executed by the fisher”.

19. Conclusive balances—(1) Section 80 (1) of the principal Act is amended by omitting the words “15th day of each month”, and substituting the words “15th day after the end of each month”.

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(2) Section 80 (11) (b) of the principal Act is amended by inserting, after the words “request for review”, the words “or an appeal”.

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20. Licensing offences— Section 84 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) No person may take any fish, aquatic life, or seaweed within the exclusive economic zone using a foreign fishing vessel except—

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“(a) Under the authority of—

“(i) A licence issued under section 83 of this Act;

or

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“(ii) If the vessel is used for the purposes of fisheries research or experimentation (including gear and equipment trials) or recreation, the prior written consent of the Minister; and

“(b) In accordance with any conditions of that licence or consent.”

5 **21. All fishing to be authorised by fishing permit unless specific exemption held**—Section 89 of the principal Act is amended by repealing subsection (8), and substituting the following subsection:

10 “(8) The chief executive may, under **section 92 (1)**, set a condition on a fishing permit authorising the taking of freshwater eels that limits the total number of persons who may be named in any agreement under subsection (5) of this section.”

22. Issue of fishing permit—Section 91 of the principal Act is amended by repealing subsection (4).

15 **23. Fishing permit may be issued subject to conditions**—Section 92 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

 “(1) A fishing permit—

20 “(a) Must state whether or not it applies to stocks subject to the quota management system; and

 “(b) Must specify all other stocks to which it relates; and

25 “(c) May be subject to such conditions as the chief executive considers appropriate (including conditions relating to areas, quantities, methods, the use or non-use of vessels and the specific vessel or types of vessels (if any) that may be used, types and amounts of fishing gear, the taking or handling of fish, aquatic life, or seaweed, places where fish, aquatic life, or seaweed may be landed, and periods of time).”

30 **24. Appointment of Registrars**—Section 99 (1) of the principal Act is amended by inserting, at the end of both paragraph (a) and paragraph (b), the words “(or both)”.

35 **25. Fishing vessels must be registered**—
(1) Section 103 (5) of the principal Act is amended by inserting, after the words “registration of any vessel,” the words “or a vessel is owned or operated by an overseas person who is exempt under section 56 or granted permission under section 57,”.

40 (2) Section 103 of the principal Act is amended by adding the following subsection:

“(8) Nothing in this section requires registration of a vessel to the extent that it is used to take fish, aquatic life, or seaweed produced as part of a lawful fish farming operation.”

26. Cancellation of registration of fishing vessel— Section 107 (1) (b) of the principal Act is amended by inserting, after the words “imposed under”, the words “section 103 (1) (c) or”. 5

27. Fish on registered vessel deemed to have been taken for purpose of sale—Section 111 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 10

“(1) For the purpose of this Act, all fish, aquatic life, or seaweed on board or unloaded from any fishing vessel or fish carrier registered under this Act is deemed to have been taken or possessed for the purpose of sale, unless— 15

“(a) The taking or possession of the fish, aquatic life, or seaweed was in accordance with a general or particular approval of the chief executive and any conditions imposed on the approval; and

“(b) The taking or possession occurred after the approval was given.” 20

28. Registration procedure—Section 159 of the principal Act is amended—

(a) By inserting, after the words “the relevant Registrar,”, the words “or where a Registrar is required by section 154 or section 163 or any other provision of this Act to record any transfer or other transaction on the Register,”: 25

(b) By inserting in paragraph (c), after the word “transaction”, the words “(if any)”. 30

29. Person claiming under operation of law may apply to have interest registered—(1) Section 161 of the principal Act is amended—

(a) By inserting in subsection (1), after the words “or caveator of any quota shares,”, the words “or as the holder of any provisional catch history,”: 35

(b) By inserting in subsection (2), after the words “caveator of the quota shares,”, the words “or as the holder of any provisional catch history,”.

(2) Section 161 of the principal Act is amended by adding the following subsection: 40

“(3) Every application in relation to provisional catch history must be submitted within the transfer period referred to in section 37 (2).”

5 **30. Procedure on application**—Section 162 of the principal Act is amended by inserting, after the words “caveator of any quota,” the words “or as the holder of any provisional catch history,”.

10 **31. Compensation for mistake or wrongdoing of Registrar**—Section 171 (1) of the principal Act is amended by inserting, after the expression “section 168” where it occurs after paragraph (c), the expression “or section 170”.

15 **32. Regulations relating to customary fishing**—Section 186 (2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

15 “(a) Declare the relationship between such regulations and general fishing regulations and regulations relating to taiapure-local fisheries; and declare that the first-mentioned regulations are to prevail over the other regulations:”.

20 **33. Conversion factors**—Section 188 (1) of the principal Act is amended by inserting, after the words “notice in the *Gazette*,” the words “after consultation with such bodies or persons as the chief executive considers appropriate in the circumstances,”.

25 **34. Accounts, records, returns, and other information**—Section 190 of the principal Act is amended by adding the following subsection:

30 “(2) Every person who fails to comply with a specification of the chief executive under subsection (1) (b) commits an offence and is liable to the penalty specified in section 252 (6).”

35 **35. General powers**—Section 215 (2) (c) of the principal Act is amended by omitting the words “to the extent specified in subsection (3) of this section”.

35 **36. Defence for specified quota management stocks**—(1) Section 243 (1) (a) of the principal Act is amended by inserting, before the words “taken by that commercial fisher”, the words “of that stock”.

(2) Section 243 (2) (b) of the principal Act is amended by inserting, after the words “of this Act”, the words “in respect of the relevant stock”.

37. Penalties—(1) Section 252 (5) of the principal Act is amended by adding the following paragraphs: 5

“(m) **Section 311A** (contravention by commercial fisher of notice closing area or prohibiting or restricting fishing methods):

“(n) Sections 312 and 313 (taking scallops outside of season or fishery, or when fishery closed): 10

“(o) Section 369 (taking Northland scallops outside fishery season).”

(2) Section 252 (6) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) **Section 190 (2)** (failure to comply with specification of chief executive in relation to records, returns, etc):” 15

(3) Section 252 (6) of the principal Act is amended by adding the following paragraph:

“(c) **Section 311A** (contravention by person other than commercial fisher of notice closing area or prohibiting or restricting fishing methods).” 20

38. Forfeiture of fish, property, or quota on conviction—Section 255 (3) of the principal Act is amended by omitting the words “but does not exceed \$100,000”, and substituting the words “(other than an offence to which subsection (4) applies)”. 25

39. Provisions relating to forfeit property—Section 256 (1) of the principal Act is amended by repealing paragraph (b) of the definition of the term “forfeit property”, and substituting the following paragraph: 30

“(b) Property used in the commission of an offence; or”.

40. Consultation on fisheries services required before levy order (other than amending order) made—Section 266 of the principal Act is amended—

(a) By omitting from subsection (2) the words “in the financial year preceding that year”: 35

(b) By omitting from subsection (3) the words “financial year in which consultation takes place”, and substituting the words “end of the financial year in which consultation commenced”: 40

(c) By inserting in subsection (4), after the word “consultation”, the word “commenced”.

5 **41. Consultation on services to be performed by outside agencies**—The principal Act is amended by repealing section 269, and substituting the following section:

10 “269. (1) If the Minister or chief executive, or the Minister of Conservation or Director-General of the Department of Conservation, proposes to enter into any arrangement or contract for the provision of any fisheries services or conservation services, nothing in section 266 or section 267 of this Act requires consultation on the costs of particular projects and activities which are to be the subject of that arrangement or contract, and it is sufficient compliance with section 266 (4) or section 267 (2) if the relevant Minister consults on groups of projects and activities, whether by fishstock, fishstocks, or otherwise, and the estimated maximum total cost of those groups of projects and activities.

15 “(2) If the Minister or chief executive, or the Minister of Conservation or Director-General of the Department of Conservation, has entered into any arrangement or contract for the provision of any fisheries services or conservation services, except where that arrangement or contract is to be materially varied, the Minister or chief executive or Director-General, as the case may be, is not required during the term of that arrangement or contract to consult on the fisheries services or conservation services which are the subject of that arrangement or contract.”

20 **42. General regulations**—Section 297 (1)(p) of the principal Act is amended by omitting the expression “section 56 (3)”, and substituting the expression “section 56 (4)”.

30 **43. Temporary closure of fishing or restriction on fishing methods**—The principal Act is amended by inserting, after section 311, the following section:

35 “311A. (1) The chief executive may from time to time, by notice in the *Gazette*,—

 “(a) Temporarily close any area of New Zealand fisheries waters in respect of any species of fish, aquatic life, or seaweed; or

40 “(b) Temporarily restrict or prohibit the use of any fishing method in respect of any area of New Zealand fisheries waters and any species of fish, aquatic life, or seaweed.

“(2) The chief executive may only impose such a closure, restriction, or prohibition if he or she considers that—

“(a) It is likely to assist in replenishing the stock of the species of fish, aquatic life, or seaweed in the area concerned; or

5

“(b) It is likely to assist in recognising and making provision for the use and management practices of Maori in the exercise of non-commercial fishing rights.

“(3) A notice given under **subsection (1)** must be publicly notified.

10

“(4) A notice given under **subsection (1)**—

“(a) May not be in force beyond 2 years after the date of its notification in the *Gazette*:

“(b) Subject to **paragraph (a)**, may be expressed to be in force for any particular year or period, or for any particular date or dates, or for any particular month or months of the year, week or weeks of the month, or day or days of the week.

15

“(5) Nothing in **subsection (4) (a)** prevents a further notice being given under **subsection (1)** in respect of any stock and area before or on or about the expiry of an existing notice that relates to that stock and area.

20

“(6) Before giving a notice under **subsection (1)**, the chief executive must—

“(a) Consult such persons as the chief executive considers are representative of persons having an interest in the stock concerned or in the effects of fishing in the area concerned, including tangata whenua, environmental, commercial, recreational, and local community interests; and

25

“(b) Provide for the participation in the decision-making process of tangata whenua with a non-commercial interest in the stock or the effects of fishing in the area concerned, having regard to kaitiakitanga.

30

“(7) Every person commits an offence who, in contravention of a notice given under **subsection (1)**,—

35

“(a) Takes any fish, aquatic life, or seaweed from a closed area; or

“(b) Takes any fish, aquatic life, or seaweed using a prohibited fishing method.

40

“(8) A person who commits an offence against **subsection (7)** is liable—

“(a) In the case of a commercial fisher, to the penalty specified in section 252 (5):

“(b) In any other case, to the penalty specified in section 252 (6).”

5 **44. Prohibition on taking southern scallops for sale outside scallop season**—Section 312 of the principal Act is amended by adding the following subsection:

 “(4) Every person commits an offence and is liable to the penalty set out in section 252 (5) who contravenes subsection (1) or subsection (2) of this section.”

10 **45. Closure of southern scallop fishery**—Section 313 of the principal Act is amended by adding the following subsection:

 “(3) Every commercial fisher commits an offence and is liable to the penalty set out in section 252 (5) who takes any scallop in contravention of a prohibition made under subsection (1) of this section.”

20 **46. Transitional provisions relating to registration of vessels where consent required under section 57 (8) of Fisheries Act 1983**—Section 332 (6) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

 “(ba) For the purpose of determining whether the payment to any person engaged or employed to do work on any such vessel meets the requirements of the Minimum Wage Act 1983, the hours of work of, the payments received by, and the entitlements to payment of that person are to be assessed in relation to the whole of each period of such engagement or employment in New Zealand fisheries waters.”

30 **47. Conversion of holdings from old register to new register**—Section 343 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

35 “(3) Notwithstanding anything in any other enactment or rule of law—

 “(a) The conversion of quota under this section does not constitute an allocation of new quota; and

40 “(b) Any quota converted under this section has the same characteristics as quota allocated under section 47 of this Act as if it were quota allocated under that section; and

“(c) Any quota converted under this section may be allocated as provisional individual transferable quota as if it were quota allocated as provisional individual transferable quota under section 47 of this Act.”

48. Provisions relating to registration of leases— 5
Section 347 (3) of the principal Act is amended by omitting the expression “subsection (3)”, and substituting the expression “subsection (2)”.

49. Transitional offences and penalties—Section 361 (1) 10
of the principal Act is amended by omitting the expression “section 15 (3) or section 16 (5)” where it twice occurs, and substituting in each case the expression “section 15 (6) or section 16 (6)”.

50. Transitional provisions in relation to setting of total allowable catches—The principal Act is amended by 15
inserting, after section 361, the following section:

“361A. Nothing in section 13 requires the Minister to set an initial total allowable catch for any quota management area and any stock at any time before 1 October 2001, unless and 20
until such time as the Minister also proposes to set or vary a total allowable commercial catch for that area and stock under section 20.”

51. Allocation of quota for bait—Section 362 (6) of the 25
principal Act is amended by omitting the expression “section 339”, and substituting the expression “section 343”.

52. Southern scallop enhancement programme—
Section 366 (1) of the principal Act is amended by omitting the expression “section 28ZZG”, and substituting the expression “section 28ZZE”.

53. Allocation of Northland scallop quota—Section 369 30
of the principal Act is amended by adding the following subsection:

“(7) Every person commits an offence and is liable to the penalty specified in section 252 (5) who contravenes 35
subsection (5) of this section.”

54. First Schedule amended—(1) The First Schedule of the principal Act is amended by inserting, immediately before the heading “PART I”, the following heading and notes:

“NOTES

“1. The mean high-water coastline used in this Schedule is based on the 1:50,000 coastline map series maintained by the Department of Survey and Lands Information.

5 “2. The boundary of the exclusive economic zone is based on that described in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 and maintained by the Royal New Zealand Naval Hydrographer.

10 “3. For the purposes of this Act, all waters inland from the defined coastline will be considered as part of the quota management area or fishery management area with which they are contiguous and into which they flow directly.

15 “4. All positions and directions described in this Schedule are based on a geographic latitude/longitude co-ordinate system, using a Mercator projection and the World Geodetic Standard 1984 spheroid.”

(2) The First Schedule of the principal Act is amended—

20 (a) By omitting from paragraph (d) of the item Fishery Management Area 9—Auckland (West) in Part I the expression “43° 24.8’S”, and substituting the expression “34° 24.8’S”:

25 (b) By omitting from paragraph (d) of the item Fishery Management Area 2B—Central (Wairarapa) in Part II the expression “175° 17.0’E”, and substituting the expression “175° 16.4’E”:

(c) By omitting from paragraph (b) of the item Quota Management Area SCA 1—Northland Scallop Fishery in Part III the word “south-easterly”, and substituting the word “north-easterly”.

30 **55. Ninth Schedule amended**—Part II of the Ninth Schedule of the principal Act is amended by omitting the item relating to the Southland Fishermen Co-operative Society Limited, and substituting the following item:

“Southfish Limited..... 8492272..... 150.00”.

35 *Amendments to Other Acts, Etc*

56. Fisheries Act 1983 amended—(1) Section 2 (1) of the Fisheries Act 1983 is amended by inserting in paragraph (a) of the definition of the term “fishing year”, after the words “rock lobster”, the words “and southern blue whiting”.

40 (2) Section 2 (1) of the Fisheries Act 1983 is amended by repealing the definition of the term “PAU 5A” and the other definitions referred to in that definition (as inserted by section 2

of the Fisheries Amendment Act 1995), and substituting the following definition and related definitions:

“‘PAU 5A’ or ‘Quota management area PAU 5A—Fiordland’, ‘PAU 5B’ or ‘Quota management area PAU 5B—Stewart Island’, or ‘PAU 5D’ or ‘Quota management area PAU 5D—Southland and Otago’ means the area having that name and reference number and described in Part III of the First Schedule of the Fisheries Act 1996.” 5

(3) Section 2 (1) of the Fisheries Act 1983 is amended by 10
repealing the definition of the term “quota management area”,
and substituting the following definition:

“‘Quota management area’ means any fishery management area or quota management area described in the First Schedule of the Fisheries Act 1996.” 15

(4) The Fisheries Act 1983 is amended—

(a) By omitting from both section 28BA (1) and section 28CA (1) the words “in the Third Schedule to the Maori Fisheries Act 1989”, and substituting in 20
each case the words “as spiny rock lobster (CRA) or packhorse rock lobster (PHC) management areas in Part III of the First Schedule of the Fisheries Act 1996”:

(b) By omitting from section 28BB (1) (as inserted by section 3 of the Fisheries Amendment Act 1995) the words 25
“, as defined in Part I of Schedule 1DA to this Act,”:

(c) By omitting from section 28CA the words “to that Act”, and substituting the words “of the Maori Fisheries Act 1989”. 30

(5) Section 28W of the Fisheries Act 1983 is amended by adding the following subsection:

“(10) Notwithstanding anything in this section, for the purposes of this section—

“(a) The Commission is not to be treated as being associated with any other person; and 35

“(b) No person is to be treated as being associated with another person merely because either or both of those persons are associated with the Commission.”

(6) Section 2 (3) of the Fisheries Amendment Act (No. 2) 1992 is consequentially repealed. 40

57. Marine Mammals Protection Act 1978 amended—
Section 3H (1) of the Marine Mammals Protection Act 1978 (as

inserted by section 316 of the Fisheries Act 1996) is amended by inserting, after paragraph (n), the following paragraph:

“(o) The Minister, with the concurrence of the Minister of Fisheries, may approve the plan:”.

5 **58. Resource Management Act 1991 amended—**
Section 30 (2) of the Resource Management Act 1991 (as amended by section 316 of the Fisheries Act 1996) is amended by omitting the word “conserve,” where it second appears.

10 **59. Fisheries regulations amended—**(1) Rule 1 of the Second Schedule of the Fisheries (Catch Against Quota) Regulations 1993 (S.R. 1993/28) is amended by omitting from paragraph (b) (as substituted by section 317 of the Fisheries Act 1996) the words “of this Act”, and substituting the words “of the Fisheries Act 1983”.

15 (2) Notwithstanding section 272 of the principal Act or regulation 14 (2) of the Fisheries (Cost Recovery Levies) Order 1996 (S.R. 1996/267), no person who before 1 October 1997 was liable to pay any levy pursuant to regulation 7 of the Fisheries (Cost Recovery Levies) Order 1996 is obliged to pay that levy unless demand was made for its payment before that date.

20 (3) The regulations amended by this section may be amended as if the amendments made by this section had been effected by regulation and not by this section.