

## FISHERIES (QUOTA OPERATIONS VALIDATION) BILL

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### EXPLANATORY NOTE

#### *General Policy Statement*

The purpose of this Bill is to confirm and where necessary validate the manner in which certain quota transactions have been treated by the quota trading system.

Under section 28P of the Fisheries Act 1983, the chief executive of the Ministry of Fisheries is required to maintain a register in respect of each quota management area for each species or class of fish within the quota management system administered under that Act. The quota register is in an electronic format known as the Quota Trading System, and is the means by which the ownership and possession of quota is determined in respect of commercial fishers. In addition, under the quota management system, quota rights are generated annually from quota, which rights include under and overfishing rights.

This Bill is intended to confirm that the operation of the monthly balancing system, being a system within the quota management system, accords with the principles expressed in the Fisheries Act 1983 regarding the treatment of under and overfishing rights, as understood by both the Crown and the fishing industry.

The Bill is also intended to validate situations where—

- (a) the quota register has not taken into account the consequential effects which later transactions can have on leases where, as a result of those later transactions, quota holders end up leasing quota directly to themselves; and
- (b) variations to leases have not been kept in a time-series manner.

#### *Clause by Clause Analysis*

*Clause 1* is the Short Title clause.

*Clause 2* sets out the general intent of the Bill. The Bill is primarily directed at the validation of entries made in the quota registers and the manner in which catch has been allocated against quota. Also protected is advice given and actions taken in reliance on the validity of matters recorded in the registers and the manner in which catch has been allocated against quota.

*Clause 3* is the interpretation clause. Most terms used in the Bill have the same meaning as in the Fisheries (Catch Against Quota) Regulations 1993.

*Clause 4* deals with the interpretation of the under and overfishing provisions in section 28V of the Fisheries Act 1983. Possible doubts have arisen about the extent

to which the spirit behind that section should authorise the recognition and transferability of under and overfishing rights and entitlements along with their associated quota parcels. This clause aims to remove those doubts.

*Subclauses (1)(a) and (1)(c)* resolve an ambiguity in the wording of section 28v (6) as to whether an established underfishing entitlement arising from a preceding year's underfishing can be used only where there is continuity of ownership of the quota concerned. That continuity is not necessary.

*Subclause (1)(b)* makes it clear that an underfishing entitlement carried forward from a preceding year can be used up before catch will be allocated against the core quota holding. This is of relevance where in year 2 a quota owner catches the exact amount authorised by his or her quota (say 10 tonnes). Allocation of the first tonne of catch to the previous year's underfishing entitlement means that at the end of year 2 the quota owner will be able to carry forward a further 1 tonne underfishing entitlement. If catch could only be allocated against underfishing entitlements *after* allocation to the core quota amount, the original underfishing entitlement would lapse at the end of year 2, and no further underfishing entitlement could be carried forward to year 3.

*Subclauses (1)(d) and (1)(e)* are included only to underline the general principle of transferability of overfishing rights along with the quota to which they relate, and to emphasise that it is possible to take account of these rights and notify them in monthly quota balances, notwithstanding that technically they might be seen as accruing only at the end of a fishing year once the full core quota amount has been fished.

*Subclause (1)(f)* provides for the allocation of catch in light of the matters specified in *subclause (1)(a) to (e)*.

*Subclause (2)* deals with the particular position of leases registered before 1 April 1990, before which time under and overfishing rights could be transferred along with leasehold interests in quota.

These rights were grandparented by section 22 of the Fisheries Amendment Act 1990, and the subclause effectively continues this grandparenting by providing leasehold equivalents to *paragraphs (a), (c), and (e) of subclause (1)*.

*Subclause (3)* provides that, once an established underfishing entitlement or overfishing right has been extinguished in any year in the hands of one quota owner, the provisions of *subclause (1)* and section 28v will not allow it to be reactivated in the hands of a later owner.

The clause applies from the commencement of the quota management system, and will continue to apply until section 28v of the 1983 Act is replaced by the equivalent provision in the Fisheries Act 1996.

*Clause 5 (1)* validates the operation of the quota register system in those cases where it has failed to recognise that quota may no longer be subject to a lease where the lessee subsequently acquires ownership of the quota concerned. The register currently treats the lease as still existing, notwithstanding that it has been subsumed within the greater ownership interest.

*Subclause (2)* makes similar provision for other situations where leasehold interests may change and be subsumed within other interests by reason of dealings within the chain of interests in a particular parcel of quota.

The clause will generally apply only up until the "appointed date" (31 December 1997, or an earlier date fixed by Order in Council), the earliest date by which the register's recording system can be corrected. This period is extended indefinitely in the case of forfeit quota held by the Crown. In such cases there is advantage in retaining the quota subject to all existing leasehold interests until all legal proceedings and decisions as to disposition of the quota have been finalised.

*Clause 6* validates the register's "retrospective" treatment of later variations to the terms of leases and other transactions recorded in the register as if those variations had been part of the original lease or transaction.

This treatment impacts mainly on the ordering of allocation of landed catch against quota, with, generally, the Fisheries (Catch Against Quota) Regulations 1993 requiring that catch be first allocated against the shortest term or smallest interest in quota. Distortions can arise where, for example, the term of a lease is shortened. Failure to recognise the variation only with effect from the time of its registration can lead to retrospective re-ordering of previously allocated catch.

As with *clause 5*, this clause applies up until 31 December 1997 or such other earlier date by which the recording system can be corrected.

*Clause 7* validates advice given and action taken in reliance on the matters confirmed and validated by *clauses 4 to 6*.

*Clause 8* provides that the Bill will apply for the purposes of proceedings commenced on or after 22 April 1997, the date of the Bill's introduction, whether or not those proceedings are completed before the date on which the Bill receives the Royal assent.

*Clause 9* authorises the making of regulations that set rules or provide a framework for the addressing of issues arising from or relating to the matters dealt with in the Bill, having regard to the interests of persons affected and of the fishing industry generally. The regulations may include provision for funding the development or implementation of any such measures, or of other related matters agreed between the Crown and the fishing industry.

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*Hon John Luxton*

## FISHERIES (QUOTA OPERATIONS VALIDATION)

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### ANALYSIS

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### A BILL INTITULED

#### **An Act to confirm and validate certain matters in relation to the quota management system**

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

5     **1. Short Title**—This Act may be cited as the Fisheries (Quota Operations Validation) Act 1997, and is part of the Fisheries Act 1983\* (“the Act”).

**2. Purpose**—The purpose of this Act is to confirm and validate—

10     (a) The manner in which, in relation to the matters referred to in **sections 4 to 6** of this Act,—

      (i) Matters have been recorded in the quota registers kept under the Fisheries Act 1983; and

15     (ii) Landed catch has been allocated against quota or established underfishing entitlements or overfishing rights; and

      (b) Any advice given on quota balances to fishers and others, and any other advice given and actions taken (including the assessment and collection of deemed

\*R.S. Vol. 27, p. 137

Amendments: 1991, No. 149; 1992, Nos. 90, 137; 1993, No. 67; 1994, Nos. 87, 141; 1995, No. 51

value amounts), in reliance on the matters recorded in quota registers and on the manner in which landed catch has been allocated against quota or established underfishing entitlements or overfishing rights.

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**3. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Appointed date” means either—

(a) 31 December 1997; or

(b) Such earlier date as may be appointed under subsection (3):

“Regulations” means the Fisheries (Catch Against Quota) Regulations 1993.

(2) The terms “core catch rights”, “established underfishing entitlement”, “landed catch”, “overfishing right”, “quota”, “quota register”, and “underfishing right” have the same meanings as in the Regulations.

(3) The Governor-General may by Order in Council declare an appointed date earlier than 31 December 1997 for the purposes of sections 5 and 6.

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**4. Overfishing and underfishing rights and entitlements**—(1) For the avoidance of doubt, section 28v of the Fisheries Act 1983 is to be treated for all purposes of that Act, and of the Fisheries Act 1996, as authorising, and having since 1 August 1986 authorised,—

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(a) The utilisation by an owner (but not lessee) of quota of an established underfishing entitlement arising from the preceding year’s underfishing of that quota, to the extent permitted by section 28v (6) and (8) or by the Regulations, notwithstanding that the quota may have been owned by another person during that preceding year; and

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(b) In relation to any established underfishing entitlement, the allocation during a fishing year of any landed catch against that entitlement before catch is allocated or fully allocated against the core catch rights of the quota to which the entitlement relates; and

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(c) The transfer (otherwise than by way of lease or sublease) of an established underfishing entitlement along with the quota to which it relates, to the extent that landed catch has not already been allocated against

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that entitlement under the Act or the Regulations;  
and

- (d) The treating of any overfishing right as arising other than at the end of a fishing year; and
- 5 (e) The transfer (otherwise than by way of lease or sublease) of any overfishing right along with the quota to which it relates; and
- (f) The allocation of landed catch against quota and established underfishing entitlements and overfishing rights, and the assessment of deemed values, under  
10 the Act and the Regulations accordingly.

(2) In the case of a lease of quota that was registered before 1 April 1990, section 28v of the Fisheries Act 1983 is to be treated for all purposes of that Act, and of the Fisheries Act  
15 1996, as authorising, and having since 1 August 1986 authorised,—

- (a) The utilisation by the lessee of an established underfishing entitlement arising from the preceding year's underfishing of that quota, to the extent  
20 permitted by section 22 of the Fisheries Amendment Act 1990 and section 28v of the Act as formerly in force, notwithstanding that the quota may have been owned or leased or subleased by another person during that preceding year; and
- 25 (b) The transfer by the lessee of any overfishing right or established underfishing entitlement (to the extent that landed catch has not already been allocated against that entitlement under the Act or the Regulations) along with the transfer or granting of an  
30 interest in the lease; and
- (c) The allocation of landed catch against quota and established underfishing entitlements and overfishing rights, and the assessment of deemed values, under  
the Act and the Regulations accordingly.

35 (3) Nothing in **subsection (1)** of this section or section 28v of the Act authorises, or is deemed ever to have authorised, a quota owner to utilise an established underfishing entitlement or overfishing right in any fishing year in respect of quota acquired by the owner during that year if a prior owner of the  
40 quota has leased out all that prior owner's quota at any time during that year.

**5. Lessee acquiring ownership of quota, etc—**(1) If during the term of a registered lease of quota the lessee acquires ownership of the quota, then, notwithstanding that

the rights and obligations under the lease may have ceased to exist by virtue of the subsequent ownership of the quota by the lessee,—

- (a) The quota is nevertheless deemed for the purposes of the Act to have always been and to be still subject to that lease until the earlier of— 5
- (i) The expiry of the term of the lease; and
  - (ii) The close of the appointed date; and
- (b) The lease is accordingly deemed to be and to have always been validly recorded against the quota in the quota register until the relevant date determined under **paragraph (a)**; and 10
- (c) The allocation of landed catch against the quota or established underfishing entitlements or overfishing rights, and the assessment of deemed values, are to be determined under the Act and the Regulations accordingly. 15
- (2) Similarly, where the status, rights, or obligations of any party to a registered lease or sublease of quota changes by virtue of a novation or the acquisition of any different interest within the chain of interests in the quota,— 20
- (a) The quota is nevertheless deemed for the purposes of the Act to have always been and to be still subject to the relevant lease or sublease, notwithstanding that the rights or obligations under the lease or sublease may have changed or ceased to exist by virtue of the novation or the acquisition of the different interest, until the earlier of— 25
- (i) The expiry of the term of the relevant lease or sublease; and 30
  - (ii) The close of the appointed date; and
- (b) The lease or sublease is accordingly deemed to be and to have always been validly recorded against the quota in the quota register until the relevant date determined under **paragraph (a)**; and 35
- (c) The allocation of landed catch against the quota or established underfishing entitlements or overfishing rights, and the assessment of deemed values, are to be determined under the Act and the Regulations accordingly. 40
- (3) This section applies throughout the period from 1 August 1986 to the appointed date (both dates inclusive) to any lease or sublease registered on the quota register at any time during that period.

5 (4) **Subsections (1) and (2)** also apply on and after the appointed date in respect of any quota and any lease or sublease (whenever registered) for so long as the quota or lease or sublease is held by the Crown as forfeit quota under section 107B of the Act, but as if **subsections (1) (a) (ii) and (2) (a) (ii)** were omitted.

**6. Retrospective treatment of variation of leases, etc—**

10 (1) Where a variation to a lease or other transaction recorded in the quota register has been notified to the Ministry and registered, the treatment of the lease or transaction as if the variation had been part of the original lease or transaction is deemed to be and to have always been valid for all purposes of the Act, and—

15 (a) The lease or other transaction as varied is deemed to have been always validly recorded in the quota register; and

20 (b) The allocation of landed catch against quota or established underfishing entitlements or overfishing rights, and the assessment of deemed values, are to be determined under the Act and the Regulations accordingly.

(2) This section applies to all variations notified at any time during the period from 1 August 1986 to the appointed date (both dates inclusive).

25 **7. Advice given and other actions taken in reliance on matters specified in sections 4 to 6—**All advice given on quota balances to fishers and others, and any other advice given and actions taken (including the assessment and collection of deemed value amounts), in reliance on the  
30 matters confirmed and validated by **sections 4 to 6**, are for all purposes deemed to the extent of that reliance to have been validly given and taken.

**8. Proceedings commenced on or after 22 April 1997—**

35 This Act has effect for the purpose of determining any proceedings commenced on or after 22 April 1997, whether or not completed before the date on which this Act receives the Royal assent.

**9. Regulations—**The Governor-General may from time to time, by Order in Council, make regulations—

40 (a) Setting rules or providing a framework for the manner in which any issues relating to or arising from the



matters dealt with in this Act (whether directly or indirectly) may be addressed having regard to the interests of persons affected and of the fishing industry generally:

- (b) Providing for the funding or method of funding of the development or implementation of any such measures, or of other related matters agreed between the Crown and representatives of the fishing industry. 5