

FISHERIES (FOVEAUX STRAIT DREDGE OYSTER FISHERY) AMENDMENT BILL

AS REPORTED FROM THE PRIMARY PRODUCTION
COMMITTEE

COMMENTARY

Recommendation

The Primary Production Committee has examined the Fisheries (Foveaux Strait Dredge Oyster Fishery) Amendment Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Fisheries (Foveaux Strait Dredge Oyster Fishery) Amendment Bill was referred to the Primary Production Committee on 25 September 1997. The closing date for submissions was 21 October 1997. We received and considered four submissions from fishing industry organisations. All four submissions were heard orally. On 17 December 1997 we sent an issues paper outlining the options and their costs for introducing the Foveaux Strait dredge oyster fishery into the Quota Management System (QMS) to all submissioners for comment. The submissioners gave evidence at a further hearing on 28 January 1998, which was held in private. Two hours and forty-one minutes were spent on the hearing of evidence, and consideration took two hours and twenty-five minutes. Advice was received from the Ministry of Fisheries.

We were required to report the bill back to the House by 4 February 1998. A core component of the Coalition Agreement in the fisheries policy area is a commitment to bring all commercial fisheries under the QMS in the shortest possible time frame. The Fisheries Act 1996 identifies nine fully developed fisheries, including the Foveaux Strait oyster fishery, for which further legislation is required in order to introduce the fishery into the QMS and undertake allocations of quota to both existing fishers and Māori.

In the settlement of proceedings taken by the Treaty of Waitangi Fisheries Commission (TOWFC), the Crown has undertaken to endeavour to enact such legislation for the Foveaux Strait oyster fishery as soon as possible. The report

back date also allows time for the appropriate systems to be put in place for the 1 April 1998 introduction of the Foveaux Strait oyster fishery into the QMS.

Purpose of the bill

The bill amends the Fisheries Act 1996 and declares the Foveaux Strait oyster fishery to be subject to the QMS from 1 April 1998.

The inclusion of the fishery within the QMS will allow transferable access rights to the fishery to be allocated to existing fishers, which may provide a catalyst for improved efficiency in the harvesting and processing of Foveaux Strait oysters. The allocation of 20 percent of oyster quota to the TOWFC on behalf of Māori is a further step towards the completion of obligations to Māori under the Deed of Settlement of Māori fisheries claims.

The regime set for the fishery within the QMS should ensure the sustainability of the fishery and includes provisions to manage particular features of the fishery such as localised over-fishing and the susceptibility of the oyster beds to the disease *Bonamia* and to the effects of dredging at certain times of the year.

Measure of catch

Clause 2 of the bill proposes measuring catch in terms of greenweight. Greenweight is the weight of the oyster before any processing commences and before any part is removed. Catch for the past two seasons from Foveaux Strait has been measured both in terms of greenweight and oyster number. Prior to this, catches were measured on the basis of greenweight (sacks) for the fishery. All other fisheries in New Zealand are measured in weight.

The Bluff Oyster Management Company Limited (BOMCL) and the New Zealand Seafarers' Union submitted that the total allowable catch (TAC) and total allowable commercial catch (TACC) should be set in oyster number rather than greenweight, and that catch against quota should be monitored on this basis. The TOWFC thought that both measures should be used.

Submissioners considered a number-based catch system would increase accuracy and consistency within the fishery as oysters are caught, graded, opened and sold by number, and surveys are expressed in oyster number. They also said a greenweight measure would create an unnecessary incentive for fishers to target light or small oysters, as the average weight of oyster varies considerably because of shell weight. The New Zealand Seafarers' Union also pointed out that yield based on size and weight of sacks has been contentious because the number of oysters in each sack can vary.

At our direction, the Ministry of Fisheries consulted with representatives of the fishing industry on the options for converting from greenweight to a number-based catch system. The parties agreed that the oyster fishery should enter the QMS from 1 April 1998 managed on the basis of oyster numbers. To avoid the costly exercise of converting ministry systems for managing and monitoring the QMS to incorporate a fishery managed on the basis of number rather than greenweight, the bill will permit weight related references in systems, documentation and reports to be read as references to numbers in the case of this fishery.

This means that fishers will report their catch in terms of numbers of oysters landed, and quota transactions will take place in numbers of oysters. These will be entered into ministry systems as oyster numbers, although these systems will display and report this information as greenweight. To mitigate this problem, over time ministry generated reports will highlight that in the case of the Foveaux Strait dredge oyster fishery, references to kilogrammes should be read as oyster

numbers. Furthermore, a new species and fishstock code (OYU and OYU5) will assist in drawing a distinction between information related to this fishery and that for others managed on a greenweight basis.

The agreed solution will only be required to operate until such time as new systems are operative under the provisions of Part IV of the Fisheries Act 1996, which is expected to occur from 1 October 1999.

The industry said it is prepared to pay off the cost of implementing this option in the year in which it is incurred, but only because the estimated sum is relatively small. We do not see this action as a precedent for the ministry to recover all their costs of introducing other species to the QMS within one year. Other fisheries may incur greater implementation costs which may require longer periods of time to be recovered.

We consider the ministry and industry have worked well together in developing a common position for measuring catch. We recommend that this option be adopted and that the bill be amended accordingly. While the number-based system for the Foveaux Strait dredge oyster fishery should not be considered a precedent for every species, we do not believe that this kind of measurement system be considered only for this fishery. The implementation of the Fisheries Act 1996 needs to be flexible enough to accommodate other species for which a number-based system is appropriate.

TAC and TACC

Alteration of TAC and TACC during the fishing year

The Minister of Fisheries is allowed under clause 2 (5) of the bill to alter the TAC and/or the TACC for Foveaux Strait dredge oysters at any time during any fishing year. This clause was intended to allow the results of stock surveys and assessments undertaken following any season to be implemented prior to the start of the next season. The provisions of clause 2 (7) and, more particularly, the emergency measures provisions of the Fisheries Act 1996 (section 16), were intended as the mechanisms to manage any future emergency situations in the fishery.

BOMCL and TOWFC considered the bill should not allow adjustments to the TAC and TACC to be made during the fishing year and pointed out that there is no similar provision in other New Zealand shell-fisheries. They said a mechanism would be required to exempt fishers who had already exceeded their allocation as a result of a mid-season reduction in TACC, and that it is inappropriate for the bill to indicate that a TAC or TACC will only apply for a limited period of time. Inherently, TACs and TACCs always apply for a full fishing year, and it would be a fundamental distortion of the QMS to have it otherwise.

Scientists recommend that oyster surveys be undertaken in spring. To allow the TAC and TACC to be adjusted within a sensible timeframe under an October fishing year following a survey, the Ministry of Fisheries considered it preferable to provide for the TAC and TACC to be adjusted within the fishing year. The ministry intended that adjustments would take place prior to the commencement of the oyster season, which presently lasts from 1 June to 31 August, so no mechanism would be required to exempt fishers who have exceeded their allocation.

We recommend that the Minister of Fisheries be allowed to alter the TAC and/or the TACC for Foveaux Strait dredge oysters during the fishing year, but not during the oyster fishing season.

Initial TAC

In the bill, the TACC has been set at 1,526 tonnes (14.95 million oysters) and the TAC at 2,654 tonnes (26 million oysters). BOMCL considered that the TAC is too high, and equates to a non-commercial allocation of 1,128 tonnes. It said the TAC should be reduced to 1,726 tonnes, as there is no basis for allocation beyond the historical level of 200 tonnes.

The TAC and TACC set by the bill do not represent an estimate of non-commercial harvest in the fishery. Rather, the relatively low TACC reflects the cautious approach taken by the Minister in consultation with commercial harvesters when setting commercial catch, while the TAC represents the estimate of current sustainable yield for the fishery based on the 1995 survey of the oyster beds. The TAC clearly accommodates any reasonable estimate of non-commercial harvest for the fishery and fulfils the requirement in the Fisheries Act 1996 to take non-commercial harvest into account when setting the TACC.

We consider that as the TAC is equivalent to the current total sustainable yield estimate for the fishery, the TAC is appropriate, and note that it will be reviewed prior to the next oyster season in any case.

Third Schedule

BOMCL submitted the bill should add the fishery to the Third Schedule of the Fisheries Act 1996, to allow the Minister to set a TAC which is not constrained by the determined maximum sustainable yield (MSY) for the fishery. This would provide flexibility should the fishery be managed on an enhanced or rotational basis in the future.

If enhancement became more important or if the fishery became managed on a rotational basis, we consider there is scope to accommodate harvest levels for individual beds which are higher than the MSY within the overall TAC set for the fishery as a whole. We also note that the fishery is able to be added to the Third Schedule by Order in Council, so recommend no change.

Quota management area

In the bill, the spatial area of the fishery under the QMS, the quota management area (QMA), is equivalent to the current bounds of the fishery.

BOMCL and TOWFC submitted that the area of the fishery should be equivalent to Fisheries Management Area (FMA) 5. They said that the QMA should include all of FMA 5 as this wider area will be needed in future years as the enhancement programme expands. They also said that aligning the QMA for Foveaux Strait dredge oysters with the more general QMA applicable in the region reflects the requirement of the Fisheries Act 1996, which states that the same QMAs should be maintained for different species where it is practical to do so. Dredge oysters are known to occur outside the current fishery. The New Zealand Seafarers' Union did not support this proposition, preferring management within the current bounds of the fishery.

The Ministry of Fisheries said that, while it is intended that oyster stocks in the balance of FMA 5 will be introduced into the QMS at some stage in the future, currently there is insufficient stock information to enable QMAs to be defined or sustainability measures to be applied, beyond the discrete Foveaux Strait oyster stock.

Given that the fishery is still in the process of rebuilding, we consider the current bounds of the fishery provide ample scope for medium term enhancement initiatives. In the longer term, when FMA 5 oysters outside of the Foveaux Strait fishery enter the QMS, quota holders in the Foveaux Strait oyster fishery will have

the opportunity to obtain quota in adjacent QMAs for enhancement purposes. Thus we recommend no change.

Minimum holding of quota

The bill does not have any specific provision relating to minimum quota holdings. BOMCL submitted that a provision in the bill which specifies a five tonne minimum quota holding is required, as the three tonne holding which will apply by default under section 28s of the Fisheries Act 1983 is too low. It said that it is not in the best interests of the fishery to have a fragmentation of quota holdings below five tonnes.

We note that a minimum holdings provision does not constrain the number of vessels that may be used by an entrant in the fishery. We see no reason why a fisher who can make a living from fishing three tonnes of quota should not be able to do so.

We recommend that a provision be included in the bill stating the minimum holding of quota be 29,000 oysters, which is the equivalent of three tonnes.

Aggregation limits

The bill adds dredge oysters to Schedule 1A of the Fisheries Act 1983. This means that any quota holder can hold up to 35 percent of the quota in the two combined dredge oyster fisheries (Nelson-Marlborough and Foveaux Strait). An identical result will arise under the Fisheries Act 1996 as Foveaux Strait dredge oysters will fall into the 35 percent “catch all” category contained in section 59 of that Act. For the purposes of aggregation, 980 Foveaux Strait oysters will be equivalent to 100 kilogrammes.

We recommend by majority that the aggregation percentage remain at 35 percent to be consistent with the more relaxed aggregation limits contained within the Fisheries Act 1996.

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

New (Majority)

Subject to this Act,

Text inserted by a majority

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

<Subject to this Act,>

Words inserted by a majority

Hon John Luxton

FISHERIES (FOVEAUX STRAIT DREDGE OYSTER FISHERY) AMENDMENT

ANALYSIS

Title		
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A BILL INTITULED

An Act to amend the Fisheries Act 1996 in relation to the Foveaux Strait dredge oyster fishery

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 (Foveaux Strait Dredge Oyster Fishery) Amendment Act 1997, and is part of the Fisheries Act 1996 (“the principal Act”).

(2) This Act comes into force on 1 April 1998.

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New (Unanimous)

PART 1

AMENDMENTS TO FISHERIES ACT 1996

1A. Part to be part of Fisheries Act 1996—This Part is part of the Fisheries Act 1996* (“the principal Act”).

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*1996, No. 88

1B. Interpretation—(1) Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Dredge oyster’ means the mollusc known as *Tiostrea chilensis*:

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“‘Foveaux Strait dredge oyster’ means any dredge oyster found in the Foveaux Strait dredge oyster fishery:

“‘Foveaux Strait dredge oyster fishery’ means the Foveaux Strait Dredge Oyster Fishery defined in regulation 2 of the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986.”

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(2) Section 2 (1) of the principal Act is amended by inserting in the definition of “quota weight equivalent”, after the words “in kilogrammes”, the words “(or, in the case of Foveaux Strait dredge oysters, the figure in oyster numbers)”.

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1C. Aggregation limits—Section 59 of the principal Act is amended by inserting, after subsection (6), the following subsection:

“(6A) For the purposes of subsection (1) (e) of this section and section 60 (1) (c), in determining the aggregate percentage ownership of any person in relation to both Foveaux Strait dredge oysters and any other dredge oyster stock,—

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“(a) 980 Foveaux Strait dredge oysters (or such other number as may be fixed by the Minister under section 188 (5) of this Act or section 3A (6) of the Fisheries Act 1983) are to be treated as equivalent to 100 kilogrammes; and

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New (Unanimous)

5 “(b) The total allowable commercial catch for Foveaux Strait dredge oysters and the quota weight equivalent of quota shares held by any person for Foveaux Strait dredge oysters are to be calculated in kilogrammes accordingly before being aggregated with the relevant weight-related figures in respect of the other dredge oyster stock.”

1D. Allocation of annual catch entitlement—

10 (1) Section 67 of the principal Act is amended by inserting, at the beginning of subsection (2), the words “Subject to **subsections (2A) and (2B)** in the case of Foveaux Strait dredge oysters,”.

(2) Section 67 of the principal Act is amended by inserting, after subsection (2), the following subsections:

15 “(2A) An allocation under subsection (2) of a further amount of annual catch entitlement for Foveaux Strait dredge oysters is to be made on or before the first day of the Foveaux Strait dredge oyster season in the relevant fishing year, rather than on or before the 15th day of the second month of the fishing
20 year.

“(2B) If between the beginning of a fishing year and the beginning of the Foveaux Strait dredge oyster season in that year there is an increase or decrease in the total allowable commercial catch for Foveaux Strait dredge oysters,—

25 “(a) No allocation of a further amount of annual catch entitlement is to be made to any person under subsection (2); but

“(b) The chief executive must calculate the amount of annual catch entitlement that each person would have received in aggregate under subsections (1) and (2) if the altered total allowable commercial catch had been in effect at the beginning of the fishing year, and annual catch entitlement had been generated under section 66 accordingly; and

35 “(c) The chief executive must, on or before the first day of the Foveaux Strait dredge oyster season, allocate to each person who receives an amount of annual catch entitlement under subsection (1) for Foveaux Strait dredge oysters a further amount of annual

New (Unanimous)

catch entitlement for that stock calculated in accordance with the following formula:

$$a - b = c$$

where—

“a is the amount calculated under **paragraph (b)** of this subsection in respect of the person; and

“b is the amount of annual catch entitlement allocated to the person under subsection (1); and

“c is the further amount of annual catch entitlement to be allocated under this subsection; and

“(d) For the purposes of subsection (3), the amount of annual catch entitlement remaining unallocated is to be determined as if the altered total allowable commercial catch had been in effect at the beginning of the fishing year.”

(3) Section 67 of the principal Act is amended by inserting in both subsection (3) and in item b in subsection (4), in each case after the expression “subsection (2)”, the expression “or **subsection (2b)**”.

1E. Minimum holdings of annual catch entitlement—

(1) Section 74 (1) (b) of the principal Act is amended by inserting, after the words “southern scallops”, the words “and Foveaux Strait dredge oysters”.

(2) Section 74 (1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) In the case of Foveaux Strait dredge oysters, not less than 29 000 oysters.”

(3) Section 74 (2) of the principal Act is amended—

(a) By inserting in paragraph (b), after the words “fishing year in which the reduction takes effect”, the words “(or as at the beginning of the Foveaux Strait dredge oyster season, where a reduction in the total allowable commercial catch for those oysters occurs after the beginning of the fishing year but before the commencement of that season in that year)”:

New (Unanimous)

- 5 (b) By adding at the end of the subsection, after the words “of that year”, the words “(or, if appropriate, at the beginning of the Foveaux Strait dredge oyster season)”.
- (4) Section 74 (3) of the principal Act is amended by inserting, after the words “or paragraph (c)”, the words “or paragraph (ca)”.
- 10 (5) Section 74 (6) of the principal Act is amended—
- (a) By inserting, after the words “or paragraph (c)”, the words “or paragraph (ca)”:
- (b) By omitting the words “(other than southern scallops), or southern scallops”, and substituting the words “(other than southern scallops or Foveaux Strait dredge oysters), southern scallops, or Foveaux Strait dredge oysters”.
- 15 (6) Section 74 (8) of the principal Act is amended by inserting, after the words “or paragraph (c)”, the words “or paragraph (ca)”.
- 20 **1f. Conversion factors**—Section 188 of the principal Act is amended by adding the following subsections:
- “**(5)** The chief executive may, for any purpose referred to in section 59 (6A) or section 368A (11) of this Act or section 28W (10) of the Fisheries Act 1983, by notice in the *Gazette* or where
25 appropriate by notice to an individual fisher or other person affected,—
- “(a) Set conversion factors for translating numbers of Foveaux Strait dredge oysters into weights, or vice versa:
- 30 “(b) Specify the circumstances in which or purpose for which any such Foveaux Strait dredge oyster conversion factors may or must be used, including the making of returns and records.
- “(6) Any conversion factors specified under subsection (5) are to
35 be used for determining the weight or number (as the case may require) of Foveaux Strait dredge oysters only for the purposes specified in the *Gazette* notice or the notice to the individual fisher or other person affected.”

New (Unanimous)

- 1G. Disposal of fish by commercial fishers**—Section 191 (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:
- “(b) Six kilogrammes of shellfish (other than Foveaux Strait dredge oysters or shellfish of Class Crustacea); or 5
“(ba) Sixty Foveaux Strait dredge oysters; or”.
- 1H. Penalties**—Section 252 (5) of the principal Act is amended by adding the following paragraph:
- “(m) **Section 368A** (taking Foveaux Strait dredge oyster outside 10
season or from prohibited area).”

- 2. Foveaux Strait dredge oyster fishery subject to quota system**—The principal Act is amended by inserting, after section 368, the following section:
- “368A. (1) On 1 April 1998, Foveaux Strait dredge oysters 15
become subject to the quota management system under Part IIA of the Fisheries Act 1983.
- “(2) Each person named in the first column of **Part V** of the Ninth Schedule of this Act is allocated the amount of individual transferable quota for dredge oysters stated in the third column 20
of that schedule opposite that person’s name.
- “(3) The initial total allowable catch for the Foveaux Strait dredge oyster fishery is ~~(2654 greenweight tonnes)~~ 26 000 000 oysters.
- “(4) The initial total allowable commercial catch for the 25
fishery is ~~(1526 tonnes)~~ 14 950 000 oysters.

Struck Out (Unanimous)

- “(5) Notwithstanding anything in section 20 of this Act or section 28OB of the Fisheries Act 1983, the Minister may, by notice in the *Gazette*,— 30
- “(a) Alter the total allowable catch or the total allowable commercial catch for Foveaux Strait dredge oysters, or both, at any time during any fishing year:
- “(b) Specify the date from which or period for which any particular total allowable catch or total allowable 35
commercial catch for the fishery applies.

Struck Out (Unanimous)

“(6) The fishing year ending immediately before 1 October 1998 is deemed to be the period 1 April 1998 to 30 September 1998 (both dates inclusive).

5 “(7) The Minister may, by notice in the *Gazette*, prohibit the taking of Foveaux Strait dredge oysters—

“(a) During any specified period; or

“(b) From any specified area.

10 “(8) No person may take any Foveaux Strait dredge oyster for the purpose of sale in contravention of a prohibition made under **subsection (7)**.

“(9) In this section—

“‘Dredge oyster’ means the mollusc known as *Tiostrea chilensis*:

15 “‘Foveaux Strait dredge oyster fishery’, or ‘fishery’, means the Foveaux Strait Dredge Oyster Fishery defined in regulation 2 of the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986.”

20 *New (Unanimous)*

“(5) The Minister may, by notice in the *Gazette*,—

“(a) Specify any Foveaux Strait dredge oyster season before the season commences:

25 “(b) Extend or shorten any Foveaux Strait dredge oyster season while it is current.

“(6) Notwithstanding anything in section 13 or section 20 of this Act or section 280B of the Fisheries Act 1983,—

30 “(a) The Minister may, at any time after the commencement of a fishing year but before the commencement of the Foveaux Strait dredge oyster season in that year, alter the total allowable catch or the total allowable commercial catch (or both) for Foveaux Strait dredge oysters; and

35 “(b) Where the Minister does so, the altered total allowable catch or total allowable commercial catch has effect on and from the first day of that Foveaux Strait dredge oyster season.

New (Unanimous)

“(7) The fishing year ending immediately before 1 October 1998 is deemed to be the period 1 April 1998 to 30 September 1998 (both dates inclusive).

“(8) The Minister may, by notice in the *Gazette*, prohibit the taking of Foveaux Strait dredge oysters from any specified area. 5

“(9) Every person commits an offence and is liable to the penalty set out in section 252 (5) who, for the purpose of sale,— 10

“(a) Takes any Foveaux Strait dredge oyster at any time other than during the Foveaux Strait dredge oyster season; or

“(b) Takes any Foveaux Strait dredge oyster from any prohibited area specified in a notice under subsection (8). 15

“(10) For the purposes of the application of this Act in relation to the Foveaux Strait dredge oyster fishery—

“(a) The references to kilogrammes in sections 65 (1) (d), 66 (2) and (3), 67 (2), (4), and (5), 76 (1) (b), 128 (1), 133 (3), 343 (2), and 348 (4) are to be read as references to oyster numbers; and 20

“(b) The references to weight in section 69 (2) (b), and greenweight or meatweight in section 305 (a) (iii), are to be read as references to oyster numbers. 25

“(11) Notwithstanding anything in this Act or in any regulations made under this Act or under the Fisheries Act 1983, where any such regulations or any records, returns, or other documents prescribed by or referred to in such regulations contain a weight-related reference or requirement the chief executive may, by notice in the *Gazette* or by individual written notice to any affected fisher or other person affected, specify that any such reference or requirement is to be treated in any specified situation or for any specified purpose (and requiring the application, if appropriate, of any conversion factor specified under section 188 (5) of this Act or section 3A (6) of the Fisheries Act 1983) as a reference to oyster numbers in the case of matters affecting the Foveaux Strait dredge oyster fishery, and the regulations, records, returns, or other documents are to have effect accordingly. 30 35 40

New (Unanimous)

“(12) In this section the term ‘Foveaux Strait dredge oyster season’ means a season fixed by the Minister under subsection (5).”

5 **3. Quota management area defined**—Part III of the First Schedule of the principal Act is amended by inserting, after the heading “*Dredge Oyster (OYS) Management Areas*”, the item set out in **Schedule 1** of this Act.

10 **4. Fourth Schedule amended**—The Fourth Schedule of the principal Act is amended by repealing the item relating to Foveaux Strait oysters.

5. Foveaux Strait dredge oysters subject to monthly balancing regime—The Eighth Schedule of the principal Act is amended by adding the following item:

15 “Foveaux Strait dredge Foveaux Strait dredge oyster
 oysters fishery”.
 (*Tiostrea chilensis*)

20 **6. Quota allocations**—(1) The Ninth Schedule of the principal Act is amended by omitting from the schedule heading the expression “NELSON-MARLBOROUGH”.

 (2) The Ninth Schedule of the principal Act is amended by adding the new **Part V** set out in **Schedule 2** of this Act.

Struck Out (Unanimous)

25 **7. Amendment to Fisheries Act 1983**—Schedule 1A of the Fisheries Act 1983 is amended by inserting, before the item “Hake”, the item “Dredge oysters”.

8. Fisheries (Cost Recovery Levies) Order 1997 amended—(1) The Fisheries (Cost Recovery Levies) Order 1997 (S.R. 1997/189) is amended—

30 (a) By omitting from clause 5 (1) the words “, Coromandel scallops, or Foveaux Strait oysters”, and substituting the words “or Coromandel scallops”:

Struck Out (Unanimous)

(b) By inserting in Part A of the Schedule, immediately before the item relating to the fishstock “OYS 7”, the following item:

“OYS 5 43.12”.

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(2) The Fisheries (Cost Recovery Levies) Order 1997 may be amended as if the amendments effected by this section had been effected by order and not by this section.

New (Unanimous)

PART 2

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AMENDMENTS TO FISHERIES ACT 1983

7. Part to be part of Fisheries Act 1983—This Part is part of the Fisheries Act 1983*.

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

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

8. Interpretation—Section 2 (1) of the Fisheries Act 1983 is amended by inserting, in their appropriate alphabetical order, the following definitions: 15

“‘Dredge oyster’ means the mollusc known as *Tiostrea chilensis*:

“‘Foveaux Strait dredge oyster’ means any dredge oyster found in the Foveaux Strait dredge oyster fishery: 20

“‘Foveaux Strait dredge oyster fishery’ means the Foveaux Strait Dredge Oyster Fishery defined in regulation 2 of the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986:” 25

9. Conversion factors—Section 3A of the Fisheries Act 1983 is amended by adding the following subsections:

“(6) The chief executive may, for any purpose referred to in section 28w (10) of this Act or section 59 (6A) or section 368A (11) of the Fisheries Act 1996, by notice in the *Gazette* or where appropriate by notice to an individual fisher or other person affected,— 30

New (Unanimous)

“(a) Set conversion factors for translating numbers of Foveaux Strait dredge oysters into weights, or vice versa:

5 “(b) Specify the circumstances in which or purpose for which any such Foveaux Strait dredge oyster conversion factors may or must be used, including the making of returns and records.

10 “(7) Any conversion factors specified under **subsection (6)** are to be used for determining the weight or number (as the case may require) of Foveaux Strait dredge oysters only for the purposes specified in the *Gazette* notice or the notice to the individual fisher or other person affected.”

15 **10. Registers, transfers, and leases of quota**—The Fisheries Act 1983 is amended by inserting in each of sections 28P (1) (c) (ii), 28P (1) (d) (ii), 28Q (10) (a), 28Q (10) (b), and 28R (2) (b), in each case after the word “tonnage”, the words “or other amount”.

20 **11. Minimum holdings of quota and interests in quota**—(1) Section 28s (1) (b) of the Fisheries Act 1983 is amended by inserting, in each case after the word “shellfish” where it twice occurs, the words “other than Foveaux Strait dredge oysters”.

25 (2) Section 28s (1) of the Fisheries Act 1983 is amended by inserting, after paragraph (b), the following paragraph:

30 “(ba) Individual transferable quota of less than 29 000 Foveaux Strait dredge oysters, unless the total individual transferable quota held or held on lease by that person for Foveaux Strait dredge oysters (including that quota) is or exceeds 29 000 oysters:”.

(3) Section 28s (9) of the Fisheries Act 1983 is amended by inserting, in each case after the expression “subsection (1) (b)” where it twice occurs, the words “or **subsection (1) (ba)**”.

35 (4) Section 28s (11) of the Fisheries Act 1983 is amended by inserting, after paragraph (b), the following paragraph:

“(ba) 29 000 Foveaux Strait dredge oysters; or”.

(5) Section 28s (11) of the Fisheries Act 1983 is amended by inserting, after the words “finfish or shellfish”, the words “or Foveaux Strait dredge oysters”.

New (Unanimous)

(6) Section 28s (12) of the Fisheries Act 1983 is amended by inserting, after the words “100 kilogrammes”, the words “(or, in the case of the Foveaux Strait dredge oyster fishery, 980 dredge oysters)”. 5

(7) Section 28s (15) of the Fisheries Act 1983 is amended by inserting, after the expression “subsection (1)(b)”, the expression “or **subsection (1)(ba)**”.

12. Foveaux Strait dredge oysters excluded from under and overfishing provisions—Section 28v (11) of the Fisheries Act 1983 is amended by adding the words “or Foveaux Strait dredge oysters”. 10

13. Restriction on amount of quota that may be held by any one person—Section 28w of the Fisheries Act 1983 is amended by adding the following subsection: 15

“(10) For the purposes of this section, in determining the aggregate percentage ownership of any person in relation to Foveaux Strait dredge oysters and any other dredge oyster stock,—

“(a) 980 Foveaux Strait dredge oysters (or such other number as may be fixed by the Minister under **section 3A (6)** of this Act or **section 188 (5)** of the Fisheries Act 1996) are to be treated as equivalent to 100 kilogrammes; and 20

“(b) The total allowable commercial catch for Foveaux Strait dredge oysters and the quota held by any person for Foveaux Strait dredge oysters are to be calculated in kilogrammes accordingly before being aggregated with the relevant weight-related figures in respect of the other dredge oyster stock.” 25

14. Wharf sales, etc—Section 67 (2) of the Fisheries Act 1983 is amended by repealing paragraph (b), and substituting the following paragraphs: 30

“(b) Six kilogrammes of shellfish (other than Foveaux Strait dredge oysters or shellfish of Class Crustacea); or

“(ba) Sixty Foveaux Strait dredge oysters; or” 35

New (Majority)

15. Schedule 1A (35% aggregation limit) amended—
Schedule 1A of the Fisheries Act 1983 is amended by inserting,
before the item “Hake”, the item “Dredge oysters”.

5

New (Unanimous)

**16. Oyster numbers to be entered on returns, etc, as if
kilogrammes—**(1) The purpose of this section is to provide for
the reporting and recording of quantities of Foveaux Strait
dredge oysters to be in oyster numbers and not weights,
notwithstanding that standard reporting and recording forms,
computer programmes, and other documents used across the
fishing industry contain references to weight only and not to
fish numbers, until such time as—

(a) Part IV of the Fisheries Act 1996 is brought into force as a
whole; or

(b) The relevant registers, forms, computer programmes, or
other documents are earlier adapted to specifically
provide for the reporting and recording of oyster
quantities by reference to numbers and not weights,
or the chief executive and the particular person
concerned earlier agree on an alternative method of
reporting or recording oyster quantities.

(2) Where any record, return, or other document prescribed
or required or contemplated by the Fisheries Act 1983 or any
regulations made under that Act or the Fisheries Act 1996—

(a) Contains provision for the reporting or recording of fish
by reference to weight in kilogrammes; and

(b) Does not make specific provision for the reporting or
recording of oysters by reference to the number of
oysters,—

then, in relation to Foveaux Strait dredge oysters, that return,
record, or other document is to be read and completed as if the
reference to weight were a reference to oyster numbers.

(3) Unless in any case the context clearly otherwise requires,
any figure entered on or after 1 April 1998 in relation to a
quantity of Foveaux Strait dredge oysters in—

New (Unanimous)

- | | |
|--|--|
| <p>(a) Any register kept under section 28P of the Fisheries Act 1983; or</p> <p>(b) Any form of transfer or lease of quota required by section 28R of the Fisheries Act 1983—</p> <p>may be entered as, and is to be read as referring to, oyster numbers and not weight, notwithstanding that the relevant part of the register (including any computer printout) or form contains a reference to weight only.</p> <p>(4) The chief executive must, as soon as practicable in the circumstances of each case, give individual notification of the effect of this section to—</p> <p>(a) Every fisher of quota in the Foveaux Strait dredge oyster fishery:</p> <p>(b) Every licensed fish receiver who deals with Foveaux Strait dredge oysters:</p> <p>(c) Any other person required to make records or returns under the Fisheries Act 1983 or under any regulations made under that Act or the Fisheries Act 1996 in relation to Foveaux Strait dredge oysters.</p> <p>(5) This section ceases to apply—</p> <p>(a) On and from the date that Part IV of the Fisheries Act 1996 is brought into force as a whole:</p> <p>(b) In relation to any particular return, record, register, or other document, on and from such earlier date as—</p> <p style="padding-left: 20px;">(i) The return, record, register, or other document is adapted to specifically provide for the reporting and recording of oyster quantities by reference to numbers and not weights; or</p> <p style="padding-left: 20px;">(ii) The chief executive and the person concerned agree on any alternative method of reporting or recording oyster quantities.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
|--|--|

New (Unanimous)

PART 3

AMENDMENTS TO FISHERIES REGULATIONS

17. Fisheries (Reporting) Regulations 1990 amended—

5 (1) Regulation 19 (1) (i) of the Fisheries (Reporting) Regulations 1990* is amended—

(a) By inserting in subparagraph (i), after the words “other than scallops”, the words “and Foveaux Strait dredge oysters”:

10 (b) By adding the following subparagraph:

“(iii) All Foveaux Strait dredge oysters are to be recorded in oyster numbers, and those numbers are, where appropriate, to be recorded in any part of a return that refers to weight as if 1 oyster weighed 1 kilogramme.”

15 (2) Part II of the Second Schedule of the Fisheries (Reporting) Regulations 1990 is amended by omitting the item relating to “Oysters, dredge”, and substituting the following item:

20 “Oysters, dredge—
other than
Foveaux
Strait dredge
oysters OYS *Tiostrea chilensis*
25 Foveaux Strait
dredge oysters OYU *Tiostrea chilensis*”.

*S.R. 1990/214
Amendment 1997: S.R. 1997/289

18. Fisheries (Recordkeeping) Regulations 1990 amended—(1) The Fisheries (Recordkeeping) Regulations 1990* are amended by inserting, after regulation 2, the following regulation:

30 “2A. **Quantities of Foveaux Strait dredge oysters to be recorded in oyster numbers, not weights—**The references in these regulations to weight or greenweight are to be read as references to oyster numbers in the case of Foveaux Strait dredge oysters.”

*S.R. 1990/219

New (Unanimous)

(2) Regulation 19 of the Fisheries (Recordkeeping) Regulations 1990* is amended by adding the following subclause:

“(2) In the case of Foveaux Strait dredge oysters, a licensed fish receiver must ensure that the oysters received from each landing are marked or labelled so as to be able to be identified separately from those received from any other landing, at all times from the receipt of the oysters until such time as the number of oysters received from that landing has been recorded in a source document other than an unloading docket.”

*S.R. 1990/219

19. Fisheries (Cost Recovery Levies) Order 1997 amended—The Fisheries (Cost Recovery Levies) Order 1997* is amended—

- (a) By inserting in clause 3 (1), after the words “part of a tonne”, the words “(or for each oyster, in the case of Foveaux Strait dredge oysters)”:
- (b) By omitting from clause 5 (1) the words “, Coromandel scallops, or Foveaux Strait oysters”, and substituting the words “or Coromandel scallops”:
- (c) By inserting in Part A of the Schedule, immediately after the end of the table relating to Fisheries Management Services, the following item:
 - “The monthly levy on Foveaux Strait dredge oysters (OYU 5) is \$0.00426 per oyster (GST exclusive)”:
- (d) By omitting from Part A of the Schedule the item relating to OYS 5.

*S.R. 1997/189

20. Fisheries (Licensed Fish Receivers) Regulations 1997 amended—Regulation 13 of the Fisheries (Licensed Fish Receivers) Regulations 1997* is amended by adding the following subclause:

“(6) References in subclause (3) (b) and (e) to weight are, in the case of Foveaux Strait dredge oysters, to be read as references to the number of oysters.”

*S.R. 1997/291

New (Unanimous)

5 **21. Amendments made by sections 17 to 20 may be amended by Order in Council**—The regulations and order amended by sections 17 to 20 may be amended as if the amendments effected by those sections had been effected by Order in Council and not by those sections.

SCHEDULES**Section 3****SCHEDULE 1**

NEW ITEM INSERTED IN PART III OF FIRST SCHEDULE OF FISHERIES ACT 1996

“Quota Management Area (OYS 5) OYU 5—Foveaux Strait

All that area of New Zealand fisheries waters that is bounded—

- (a) To the west, by a straight line drawn from Oraki Point in Block 2, Longwood Survey District (approximately $46^{\circ} 23.6' S$ and $167^{\circ} 52.52' E$) to the easternmost point of Centre Island (approximately $46^{\circ} 27.7' S$ and $167^{\circ} 51.3' E$); then by mean high-water mark to Centre Island Lighthouse (approximately $46^{\circ} 27.8' S$ and $167^{\circ} 50.6' E$); then by a straight line to the northernmost point of Codfish Island (approximately $46^{\circ} 45.2' S$ and $167^{\circ} 36.6' E$); then by a straight line to North Red Head on the northwest coast of Stewart Island (approximately $46^{\circ} 44.8' S$ and $167^{\circ} 42.4' E$); and
- (b) To the east, by a straight line drawn from Slope Point in Block 9, Waikawa Survey District (approximately $46^{\circ} 40.5' S$ and $169^{\circ} 0' E$) to the East Cape on Stewart Island (approximately $47^{\circ} 0.9' S$ and $168^{\circ} 13.8' E$).”
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Struck Out (Unanimous)

SCHEDULE 2			
NEW PART V ADDED TO NINTH SCHEDULE OF PRINCIPAL ACT			
"PART V			
FOVEAUX STRAIT DREDGE OYSTER QUOTA ALLOCATIONS			
Legal Name		Client Number	Quota Allocation (Greenweight Tonnes)
Calder, William Ernest	...	8890037	66.348
Cowan, Kay Ravine	...	8890036	66.348
Enterprise Fishing Co. Ltd	...	8490681	66.348
Fisheries South Island Ltd	...	8490755	66.348
Foveaux Strait Oyster and Fish Supply Co. Ltd	...	8490785	66.348
Fowler Oysters Ltd	...	8490786	92.887
Johnson, William Edward Myth	...	8890021	66.348
Mead, Jane Marjorie	...	8890038	66.348
Mountfort Fishing Co. Ltd	...	8491719	66.348
Otakou Fisheries Ltd	...	8481840	132.695
Robert Russell Ltd	...	8492049	66.348
Skeggs Investments Ltd	...	8482214	265.390
Stewart Island Canneries Ltd	...	8492302	66.348
Treaty of Waitangi Fisheries Commission		8600300	305.200
Urwin and Co. Ltd	...	8492485	66.348
		TOTAL	1 526.000"

*Fiseries (Foveaux Strait Dredge Oyster
Fishery) Amendment*

New (Unanimous)

Section 6

SCHEDULE 2

NEW PART V ADDED TO NINTH SCHEDULE OF FISHERIES ACT 1996

"PART V

FOVEAUX STRAIT DREDGE OYSTER QUOTA ALLOCATIONS

Legal Name	Client Number	Quota Allocation (Oyster Numbers)
Calder, William Ernest	8890037	650 000
Cowan, Kay Ravine	8890036	650 000
Enterprise Fishing Co. Ltd	8490681	650 000
Fiseries South Island Ltd	8490755	650 000
Foveaux Strait Oyster and Fish Supply Co. Ltd	8490785	650 000
Fowler Oysters Ltd	8490786	910 000
Johnson, William Edward Myth	8890021	650 000
Mead, Jane Marjorie	8890038	650 000
Mountfort Fishing Co. Ltd	8491719	650 000
Otakou Fiseries Ltd	8481840	1 300 000
Robert Russell Ltd	8492049	650 000
Skeggs Investments Ltd	8482214	2 600 000
Stewart Island Canneries Ltd	8492302	650 000
Treaty of Waitangi Fiseries Commission	8600300	2 990 000
Urwin and Co. Ltd	8492485	650 000
	TOTAL	14 950 000"