

HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Thursday, 19 November 1992

FINANCE BILL (NO. 6)

*Proposed Amendments*

Hon. MAURICE MCTIGUE, in Committee, to move the following amendments:

*New clauses 41 to 44:* To insert, after clause 40, the following heading and clauses:

*Fisheries*

**41. Sections to be read with Fisheries Act 1983**—This section and the next 3 succeeding sections shall be read together with and deemed part of the Fisheries Act 1983\* (in those sections referred to as the principal Act).

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

Amendments: 1991, No. 149; 1992, No. 31; 1992, No. 90

**42. Decisions of Quota Appeal Authority**—(1) Section 281 of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by adding the following subsection:

“(4) Notwithstanding anything in the Judicature Amendment Act 1972 or any other enactment or rule of law, no application for review under Part I of that Act challenging a decision of the Quota Appeal Authority and no other civil proceedings in respect of a decision of the Authority shall be made or commenced by any person, or heard or determined by any court, unless the application is or the proceedings are made or commenced within 3 months after the date on which the person is notified of the decision.”

(2) Nothing in subsection (1) of this section affects any application for review or other civil proceedings made or commenced before the 10th day of November 1992.

(3) This section shall be deemed to have come into force on the 10th day of November 1992.

**43. Limitations on powers of Quota Appeal Authority and courts in certain cases**—(1) The principal Act is hereby amended by inserting, after section 282C (as inserted by section

29 (1) of the Fisheries Amendment Act 1990), the following section:

“28ZGA. Notwithstanding anything in this Act or any other enactment or rule of law,—

“(a) Neither the Quota Appeal Authority nor any court shall, in respect of any proceedings whatever filed on or after the 16th day of September 1992, have power—

“(i) To allocate to any person any provisional maximum individual transferable quota, guaranteed minimum individual transferable quota, or individual transferable quota for any species of fish in any quota management area; or

“(ii) To make a declaration to the effect that a person is entitled to such an allocation,— unless that person held, immediately before the 30th day of September 1986, a permit authorising that person to take fish of that species in that area and (if applicable) held an allocation of individual quota:

“(b) No court shall, in respect of any proceedings filed on or after the 16th day of September 1992, review, quash, or call into question any decision of the Director-General made before or on or after that date under section 28E (3) of this Act:

“(c) No court shall allow any proceedings filed before the 16th day of September 1992 to be amended to bring within the scope of the proceedings any decision of the Director-General made under section 28E (3) of this Act:

“(d) No court shall, in respect of any proceedings filed on or after the 5th day of October 1992, review, quash, or call into question, or award any damages in respect of, any decision made before the 1st day of October 1986 by or on behalf of the Director-General under section 63 or section 64 of the principal Act.”

(2) Nothing in paragraph (a) or paragraph (b) of section 28ZGA of the principal Act (as inserted by subsection (1) of this section) affects any application for review or other civil proceedings made or commenced before the 16th day of September 1992.

(3) Nothing in section 28ZGA (c) of the principal Act (as so inserted) affects any civil proceedings filed before the 5th day of October 1992.

(4) Nothing in section 28ZGA of the principal Act (as so inserted) affects any decision made before the commencement of this Act by the Quota Appeal Authority or any court.

**44. Fishing permits**—Section 63 of the principal Act (as substituted by section 13 of the Fisheries Amendment Act 1986) is hereby amended by adding the following subsection:

“(13) Notwithstanding any other provision of this section, in respect of the period beginning on the commencement of this subsection and ending with the close of the 30th day of September 1994, the following provisions shall apply:

“(a) No fishing permit shall be issued in respect of any species of fish (other than any species of tuna), aquatic life, or seaweed, that is not for the time being subject to a quota management system (being established by

or under Part IIA or Part IIB of this Act), except to a person who held a fishing permit and caught fish, aquatic life, or seaweed under the permit at any time during the fishing years in the period commencing on the 1st day of October 1990 and ending with the close of the 30th day of September 1992:

- “(b) Where a fishing permit may be issued to such a person, the permit shall only authorise the taking of those species caught as a target species (not being bycatch) under the authority of the permit during the fishing years mentioned in paragraph (a) of this subsection:
- “(c) For the purposes of establishing whether or not a person caught fish, aquatic life, or seaweed in the fishing years mentioned in paragraph (a) of this subsection, the Director-General shall only accept information from fishing records or returns duly completed and furnished before the close of the 15th day of October 1992 in the prescribed manner or in accordance with requirements made under section 66 (3) of this Act:
- “(d) In the case of any current fishing permit issued before the commencement of this subsection in respect of any species not subject to a quota management system (as so established), the Director-General may revoke the permit if satisfied that the holder did not lawfully take that species as a target species (not being bycatch) at any time during the fishing years mentioned in paragraph (a) of this subsection:
- “(e) For the purposes of establishing whether or not a permit holder lawfully took any species during the fishing years mentioned in paragraph (a) of this subsection, the Director-General is entitled to use and rely on fishing records or returns duly completed and furnished before the 15th day of October 1992 in the prescribed manner or in accordance with requirements made under section 66 (3) of this Act.”

#### EXPLANATORY NOTE

This Supplementary Order Paper amends the Fisheries Act 1983.

*Clause 42* amends section 28i of the principal Act to prevent any application for review of any decision of the Quota Appeal Authority or other civil proceedings in respect of such a decision being heard if it is made 3 months or more after the date of the decision concerned. The clause comes into force on 10 November 1992 but does not affect proceedings filed before that date.

*Clause 43* inserts into the principal Act new section 28zGA, which limits the powers of the Quota Appeal Authority and courts in relation to certain decisions made under the Act.

First, no provisional maximum individual transferable quota, guaranteed minimum individual transferable quota, or individual transferable quota may be allocated to any person by the Authority or any court unless the person had, as at 30 September 1986, the lawful right to take fish under such quota in the area concerned.

Secondly, decisions of the Director-General under section 28E(3) of the principal Act are not to be impugned by a court under any proceedings filed on or after 16 September 1992. Section 28E(3) requires the Director-General to have regard to a person's "commitment to, and dependence on, the taking of fish" in determining a provisional maximum individual transferable quota.

Thirdly, proceedings filed before 16 September 1992 are not to be allowed to be amended to circumvent the last-mentioned provision.

Fourthly, decisions on applications for fishing permits under section 63 or section 64 of the principal Act (as it read before 1 August 1986) are not to be impugned by any court under proceedings filed on or after 5 October 1992.

Proceedings filed before the respective dates mentioned above are not affected.

Similarly, decisions of the Quota Appeal Authority or any court that were made before the commencement of the clause are not affected.

*Clause 44* amends section 63 of the principal Act, which relates to the issue of fishing permits.

The clause places a moratorium (ending on 30 September 1994) on the issue of permits for any species of fish (other than tuna), aquatic life, or seaweed that is not for the time being under a quota management system, except for persons who held a permit and actually caught fish under the permit in the fishing years commencing in 1990 and 1991.