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No 184

House of Representatives

Supplementary Order Paper

Tuesday, 18 September 2001

Statutes Amendment Bill

Proposed amendments to Part 12

UNIVERSITY OF OTAGO
21 SEP 2001
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Hon Paul Swain, in Committee, to move the following amendments:

Clause 50

To omit this clause (lines 6 to 13 on page 18), and substitute the following clause:

50 Commencement

This **Part** comes into force on 1 October 2001.

New clause 51A

To insert, after line 19 on page 18, the following clause:

51A Meaning of term associated person

Sections 3 and 3A of the principal Act are repealed.

Clause 56

To omit this clause on page 20, and substitute the following clause:

56 Aggregation limits

- (1) Section 59 of the principal Act is amended by repealing subsections (6) and (9).
- (2) Section 59 of the principal Act is amended by adding the following subsections:
 - “(10) For the purposes of this section and sections 60(4) and 61, the term **person**, in relation to a particular person, includes—
 - “(a) any person who is in partnership with the person:
 - “(b) any person who is a director or employee of any company of which the person is a director or employee:
 - “(c) any person who is a relative of the person as defined in paragraph (a) of the definition of that term in section OB 1 of the Income Tax Act 1994:

- “(d) any person who would be an associated person under the test provided in section OD 7 of the Income Tax Act 1994, except that subparagraph (a)(v) of the definition of **market value circumstance** in section OB 1 of that Act does not apply:
- “(e) any beneficiary or trustee of any trust of which the person is a trustee or beneficiary.
- “(11) Despite **subsection (10)**,—
- “(a) the Commission is not to be regarded as being included with any other person; and
- “(b) no person is to be regarded as being included with any other person merely because either or both of those persons would be included with the Commission but for **paragraph (a)**; and
- “(c) no bank registered under the Reserve Bank of New Zealand Act 1989 is to be regarded as being included with any other person merely because the bank has, in the ordinary course of its business as a financier, been granted any interest in quota owned by the person; and
- “(d) no person is to be regarded as included with any other person solely because they are both beneficiaries of the same trust.”

New clauses 56A to 56E

To insert after clause 56, on page 20, the following clauses:

- 56A Minister may consent to persons holding quota in excess of aggregation limits**
Section 60(4) of the principal Act is amended by inserting, after the words “any person”, the words “(within the meaning of **section 59(10)**)”.
- 56B Quota held in excess of aggregation limits to be forfeit**
Section 61 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:
- “(5) In this section, **person** has the same meaning as in **section 59(10)**.”
- 56C Provisions relating to forfeit property**
- (1) Section 62(4)(c) of the principal Act is amended by omitting the words “associated (as defined in section 3 of this Act) with”, and substituting the words “an associated person of”.
- (2) Section 62 of the principal Act is amended by adding the following subsection:
- “(15) In this section, **associated person**, in relation to a particular person, means a person who is included with the person by virtue of any paragraph of **section 59(10)**.”

56D Minimum holdings of annual catch entitlement

- (1) Section 74(2)(b) of the principal Act is amended by omitting 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)”.
- (2) Section 74(2) of the principal Act is amended by omitting the words “(or, if appropriate, at the beginning of the Foveaux Strait dredge oysters season)”.

56E New sections 78 to 79B substituted

- (1) The principal Act is amended by repealing sections 78 and 79, and substituting the following sections:

“78 Catch in excess of over-fishing thresholds

- “(1) This section applies where, following the calculation referred to in section 76(1A),—

“(a) a commercial fisher’s reported catch for a stock exceeds the commercial fisher’s annual catch entitlement for the stock; and

“(b) that excess is equal to or greater than the over-fishing threshold for the stock, and, where a tolerance level applies to the stock, is greater than that tolerance level.

- “(2) In such a case the current fishing permit of the commercial fisher and of any person included with the commercial fisher under **subsection (10)**, and also any permit subsequently issued to the commercial fisher or included person, are each to be treated as containing a condition prohibiting the taking of any fish, aquatic life, or seaweed in the geographic area that is the quota management area for the stock concerned.

- “(3) The condition takes effect as from the close of the month in which the calculation referred to in section 76(1A) is done.

- “(4) The chief executive must—

“(a) notify the imposition of the condition under **subsection (2)** to the commercial fisher concerned and any included person of whom the chief executive is aware; and

“(b) record on the Permit Register details of the imposition of the condition,—

but any delay or failure to give that notification or make that record does not affect the imposition of the condition.

- “(5) A commercial fisher who has requested a review under section 80(2) or lodged an appeal under section 80(6) may, pending determination of the review or appeal, apply to a District Court for an order removing or amending a condition imposed under this section, and the Court may make such an order subject to such sureties and conditions as the Court may specify.

- “(6) Despite **subsection (2)**, the chief executive may—
- “(a) approve the taking of fish, aquatic life, or seaweed in an area by a person who would otherwise be subject to the condition imposed by **subsection (2)**; and
 - “(b) impose as part of the approval any conditions that he or she considers necessary to reduce the risk of the person taking the stock for which the over-fishing threshold was exceeded.
- “(7) Conditions imposed under **subsection (6)** may relate to stocks, area, quantities, methods, the use or non-use of vessels, the specific vessel or types of vessels that may be used, and types and amounts of fishing gear, or otherwise.
- “(8) No person may take any fish, aquatic life, or seaweed in contravention of a condition imposed by **subsection (2)** unless—
- “(a) the person has obtained the prior approval of the chief executive to take fish, aquatic life, or seaweed in that area; and
 - “(b) the taking is in accordance with any conditions imposed by the chief executive.
- “(9) Conditions imposed by **subsection (2)** or under **subsection (6)** cease to apply—
- “(a) when the commercial fisher referred to in **subsection (1)** owns an amount of annual catch entitlement for the stock equal to or greater than the commercial fisher’s total reported catch of that stock in the fishing year; or
 - “(b) at the close of the relevant fishing year,—
- whichever happens first.
- “(10) If a person takes any fish, aquatic life, or seaweed in contravention of any conditions imposed by **subsection (2)** or under **subsection (6)**, the person commits an offence and is liable to the penalty set out in section 252(3).
- “(11) For the purposes of **subsection (2)**, a person or entity is to be treated as a person included with the commercial fisher if the person or entity is—
- “(a) a subsidiary of the commercial fisher within the meaning of section 5 of the Companies Act 1993; or
 - “(b) a company of which the commercial fisher is a subsidiary within the meaning of section 5 of the Companies Act 1993; or
 - “(c) a partnership or unincorporated joint venture that would be a subsidiary of the commercial fisher, or of which the commercial fisher would be a subsidiary, if the partnership or joint venture were incorporated as a company with shareholdings corresponding to the interests, including returns, of the partners in the partnership or participants in the joint venture.

“(12) Despite **subsection (11)**—

- “(a) the Commission is not to be regarded as being included with any other person; and
- “(b) no person is regarded as being included with another person merely because either or both of those persons would be included with the Commission but for **paragraph (a)**; and
- “(c) no bank registered under the Reserve Bank of New Zealand Act 1989 is to be regarded as being included with any other person merely because the bank has, in the ordinary course of its business as a financier, been granted any interest in quota owned by that person.

“78A **Other persons may be subjected to same conditions as commercial fisher with catch in excess**

“(1) Where a fishing permit of a person (**person A**) is treated as being subject to a condition under **section 78(2)**, the chief executive may impose the same condition on any fishing permit held by or subsequently issued to another person (**person B**) if the chief executive believes, on reasonable grounds specified on oath in writing, that—

- “(a) person B is, in respect of commercial fishing, in substance person A; or
- “(b) person B has, in substance, control of the commercial fishing of person A that led to the condition being imposed under **section 78(2)**; or
- “(c) person B is allowing person A to conduct commercial fishing under person B’s permit for the purpose of assisting person A to fish despite the condition treated as being contained in person A’s permit.

“(2) Without limiting **subsection (1)**, in forming the belief referred to in that subsection, the chief executive may have regard to the following matters:

- “(a) shareholdings in, debentures over, or directorships of, any company that has an interest (whether direct or indirect) in person B or person A;
- “(b) any trust that has a relationship to person B or person A;
- “(c) family, domestic, and business relationships between—
 - “(i) person B and person A; and
 - “(ii) persons having an interest in person B or person A or in companies or trusts of the kind referred to in **paragraph (a)** or **paragraph (b)**;
- “(d) whether person B is accustomed to following the instructions of person A;
- “(e) whether person B is accustomed to acting in a manner consistent with advancing the interests of person A.

- “(3) Whether any of **paragraphs (a), (b), and (c) of subsection (1)** apply may be determined without regard to the form of the persons or entities comprising persons A and B.
- “(4) The chief executive must—
- “(a) give notice to person B of the condition imposed under **subsection (1)** and a copy of the grounds for imposing the condition as given on oath; and
 - “(b) record on the Permit Register details of the imposition of the condition.
- “(5) Any condition imposed under **subsection (1)** takes effect from the date of notification.
- “(6) **Subsections (6), (7), (8), and (10) of section 78** apply to person B and person B’s fishing permit as if the condition had been imposed on person B under **subsection (2)** of that section (and conditions imposed on person B under this section or **section 78(6)(b)** are not affected by decisions under **section 78(6)** in relation to person A).
- “(7) Any conditions imposed on person B under this section or **section 78(6)** cease to apply—
- “(a) when the commercial fisher referred to in **section 78(1)** complies with **section 78(9)(a)**; or
 - “(b) at the close of the relevant fishing year,—
whichever happens first.
- “(8) If—
- “(a) a person (**person B**) is, in respect of commercial fishing, in substance the same person as a person (**person A**) who has had a condition imposed on their fishing permit by **section 78(2)**; and
 - “(b) person B, knowing that the condition exists, conducts commercial fishing that would be a breach of the condition imposed on person A’s fishing permit—
- then each of person A and person B commits an offence and is liable to the penalty set out in section 252(3).
- “(9) If a person (**person B**) knowingly allows another person (**person A**) to conduct commercial fishing under person B’s permit for the purpose of assisting person A to fish despite the condition treated by **section 78(2)** as being contained in person A’s permit, and person A does so, then each of person A and person B commits an offence and is liable to the penalty set out in section 252(3).

“78B Removal of conditions on other persons

- “(1) A person who has had a condition imposed on his or her fishing permit under **section 78(2)** in their capacity as a person included with a commercial fisher under **section 78(11)**, or a person who has had a condition imposed under **section 78A(1)**, may apply to a District Court to have the condition removed

either permanently or pending final determination of the application on the grounds that the situation relied upon under **section 78(2) and (11)** or **section 78A(1)** never existed or no longer exists.

“(2) In determining an application under **subsection (1)** totally or partially in favour of the applicant, the District Court may remove or amend the condition either totally or partially and on such sureties or conditions as the Court considers appropriate.

“79 **Suspension of permit for non-payment of deemed value**

“(1) If the total amount of deemed values owed by any commercial fisher exceeds \$1,000 and has not been satisfied within the time limit specified in section 76(5), the current fishing permit of the commercial fisher and any person included with the commercial fisher under **subsection (5)**, and any permit subsequently issued to the commercial fisher or included person, are, on the expiration of that time limit, to be treated as being suspended until the total amount of all outstanding deemed values owed by the commercial fisher is \$1,000 or less.

“(2) The chief executive must—

“(a) notify every suspension or cessation of suspension of a fishing permit under **subsection (1)** to the commercial fisher concerned and any included person of whom the chief executive is aware; and

“(b) record on the Permit Register details of any suspension or cessation of suspension of a fishing permit under **subsection (1)**;—

but any delay or failure to give that notification or make that record does not affect the suspension or cessation.

“(3) A fishing permit suspended under this section does not authorise any person to take any fish, aquatic life, or seaweed under the authority of that permit, but all other provisions of this Act continue to apply as if the fishing permit had not been suspended.

“(4) A commercial fisher who has requested a review under section 80(2) or lodged an appeal under section 80(6) may, pending determination of the review or appeal, apply to a District Court for an order lifting any suspension imposed under this section, and the Court may make such an order subject to such sureties and conditions as the Court may specify.

“(5) For the purposes of **subsections (1) and (2)**, a person or entity is to be treated as a person included with the commercial fisher if the person or entity is—

“(a) a subsidiary of the commercial fisher within the meaning of section 5 of the Companies Act 1993; or

- “(b) a company of which the commercial fisher is a subsidiary within the meaning of section 5 of the Companies Act 1993; or
 - “(c) a partnership or unincorporated joint venture that would be a subsidiary of the commercial fisher, or of which the commercial fisher would be a subsidiary, if the partnership or joint venture were incorporated as a company with shareholdings corresponding to the interests, including returns, of the partners in the partnership or participants in the joint venture.
- “(6) Despite **subsection (5)**—
- “(a) the Commission is not to be regarded as being included with any other person; and
 - “(b) no person is regarded as being included with another person merely because either or both of those persons would be included with the Commission but for **paragraph (a)**; and
 - “(c) no bank registered under the Reserve Bank of New Zealand Act 1989 is to be regarded as being included with any other person merely because the bank has, in the ordinary course of its business as a financier, been granted any interest in quota owned by that person.

“79A **Suspension of fishing permit of other persons**

- “(1) Where a fishing permit of a person (**person A**) is suspended under **section 79(1)**, the chief executive may suspend the fishing permit of another person (**person B**) if the chief executive believes, on reasonable grounds specified on oath in writing, that—
- “(a) person B is, in respect of commercial fishing, in substance person A; or
 - “(b) person B has, in substance, control of person A in respect of person A’s obligations under any of subsections (3), (3A), and (5) of section 76; or
 - “(c) person B is allowing person A to conduct commercial fishing under person B’s permit, for the purpose of assisting person A to fish despite the suspension of person A’s fishing permit.
- “(2) Without limiting **subsection (1)**, in forming the belief referred to in that subsection, the chief executive may have regard to the following matters:
- “(a) shareholdings in, debentures over, or directorships of, any company that has an interest (whether direct or indirect) in person B or person A;
 - “(b) any trust that has a relationship to person B or person A;
 - “(c) family, domestic, and business relationships between—
 - “(i) person B and person A; and

- “(ii) persons having an interest in person B or person A or in companies or trusts of the kind referred to in **paragraph (a) or paragraph (b)**:
- “(d) whether person B is accustomed to following the instructions of person A:
- “(e) whether person B is accustomed to acting in a manner consistent with advancing the interests of person A.
- “(3) Whether any of **paragraphs (a), (b), and (c) of subsection (1)** apply may be determined without regard to the form of the persons or entities comprising persons A and B.
- “(4) The chief executive must—
- “(a) give notice to person B of the suspension of a fishing permit under **subsection (1)**, and a copy of the grounds of suspension as given on oath; and
- “(b) record on the Permit Register details of the suspension under **subsection (1)**.
- “(5) The suspension imposed under **subsection (1)** takes effect from the date of notification.
- “(6) A fishing permit suspended under this section does not authorise any person to take any fish, aquatic life, or seaweed under the authority of that permit, but all other provisions of this Act continue to apply as if the fishing permit had not been suspended.
- “(7) A suspension of a fishing permit under **subsection (1)** ceases to be of effect once the total amount of all outstanding deemed values owed by the person who incurred the deemed value liability referred to in **section 79(1)** is \$1,000 or less.
- “(8) If—
- “(a) a person (**person B**) is, in respect of commercial fishing, in substance the same person as a person (**person A**) whose fishing permit is suspended under **section 79(1)**; and
- “(b) person B, knowing of the suspension, is conducting commercial fishing,—
- then each of person A and person B commits an offence and is liable to the penalty set out in section 252(3).
- “(9) If a person (**person B**) knowingly allows another person (**person A**) to conduct commercial fishing under person B’s permit for the purpose of assisting person A to fish despite the suspension of person A’s permit under **section 79(1)**, and person A does so, then each of person A and person B commits an offence and is liable to the penalty set out in section 252(3).

- “79B Removal of suspension, or direction to issue permit**
- “(1) This section applies to any person—
- “(a) whose permit has been suspended under **section 79(1)** in their capacity as a person included with a commercial fisher under **section 79(5)**; or
 - “(b) whose permit has been suspended under **section 79A(1)**; or
 - “(c) who has been refused a permit under **section 91(6)(c)**.
- “(2) Such a person may apply to a District Court to—
- “(a) direct that the suspension be removed, either permanently or pending the final determination of the application; or
 - “(b) direct that the permit be issued,—
on the grounds that the situation relied upon under **section 79(1) and (5) or section 79A(1)** never existed or no longer exists.
- “(3) In determining an application under **subsection (1)** totally or partially in favour of the applicant, the District Court may—
- “(a) remove the suspension either totally or partially;
 - “(b) direct the removal of the suspension, or the issue of the permit, on such sureties or conditions as the Court considers appropriate.”
- (2) Regulation 6(i) of the Fisheries (Registers) Regulations 2001 is amended by omitting the expression “section 78(1)”, and substituting the expression “**section 78(2)**”.
- (3) Regulation 6 of the Fisheries (Registers) Regulations 2001 is amended by adding the following paragraph:
- “(j) the name of each person whose permit is subject to a condition under **section 78(2)** or **section 78A(1)**.”
- (4) Part 3 of the Schedule of the Fisheries (Transfer of Functions, Duties, and Powers to The New Zealand Seafood Industry Council Limited) Order 2001 is amended by revoking paragraphs (w), (x), and (y), and substituting the following paragraphs:
- “(w) to record on the Permit Register conditions imposed under any of **sections 78(2), 78(6), and 78A(1)** of the Act:
 - “(x) to record on the Permit Register when conditions imposed under any of **sections 78(2), 78(6), and 78A(1)** of the Act cease to apply under **section 78(9)** or are removed under **section 78B** of the Act.”.

New clauses 57A and 57B

To insert after line 25 on page 19 the following clauses:

57A All fishing to be authorised by fishing permit unless specific exemption held

Section 89 of the principal Act is amended by inserting, after subsection (2), the following subsections:

“(2A) Despite **subsection (1)**, a person may take fish, aquatic life, or seaweed not subject to the quota management system if the fish, aquatic life, or seaweed is taken as the inevitable consequence of the taking of other fish, aquatic life, or seaweed under the authority of and in accordance with a current fishing permit.

“(2B) **Subsection (2A)** expires with the close of 30 September 2004.”

57B Issue of fishing permit

Section 91 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:

“(6) No fishing permit may be issued to any person who—

“(a) is a person who has unpaid deemed value amounts in excess of \$1,000 that are overdue, or is a person who is treated by **section 79(5)** as included with that person; or

“(b) is a person whose fishing permit is suspended under **section 79A**; or

“(c) the chief executive believes, on reasonable grounds, is a person whose fishing permit, if they had one, would be suspended under **section 79A(1)**.”

New clauses 59A to 59C

To insert, after line 18 on page 20, the following clauses:

59A Powers for purpose of ascertaining financial status or interest in forfeit property of certain persons

Section 202 of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) whether any quota is associated quota as defined in **section 255**; or”.

59B Crown caveats preventing registration of transactions

(1) Section 214(1) of the principal Act is amended by omitting the words “held by that person or by any associated person”, and substituting the words “owned by that person or associated quota (as defined in **section 255**) owned by any other person”.

(2) Section 214(2) of the principal Act is amended by inserting, after the words “owner of any quota”, the words “or the owner of any quota alleged to be associated quota”.

(3) Section 214 of the principal Act is amended by adding the following subsection:

“(9) In this section, except for subsection (1), the terms **quota** and **quota shares** include associated quota as defined in **section 255**.”

59C Section 240 substituted

The principal Act is amended by repealing section 240, and substituting the following section:

“240 Strict liability

In any proceedings for an offence against this Act it is not necessary for the prosecution to prove that the defendant intended to commit the offence, except in the case of an offence against any of **sections 78A(8) and (9), 79A(8) and (9)**, 231, 233, 235, 257(2), 296B(5), and 296ZC(3)(b) and (c).”

Clause 60

To insert, after line 19 on page 20, the following subclause:

(1A) Section 252(3) of the principal Act is amended by repealing paragraphs (c) and (ca), and substituting the following paragraphs:

“(c) **section 78(10)** (fishing in breach of condition of permit or condition imposed by chief executive):

“(ca) **section 78A(8)** (fishing in breach of condition imposed on person who is in substance the same person):

“(cb) **section 78A(9)** (fishing under permit of different person in order to avoid conditions imposed on own permit):

“(cc) **section 79A(8)** (fishing under permit of person who is in substance the same person):

“(cd) **section 79A(9)** (fishing under permit of different person where own permit suspended):”.

New clauses 60A to 60E

To insert after line 2 on page 21 the following clauses:

60A New section 255 substituted

The principal Act is amended by repealing section 255, and substituting the following section:

“255 Interpretation forfeiture provisions

“(1) In sections 255A to 256, unless the context otherwise requires,—

“**associated quota**, in relation to a person convicted of an offence (the **offender**), means—

“(a) all quota owned by any person that is a subsidiary of the offender within the meaning of section 5 of the Companies Act 1993:

“(b) if the offender has, in the fishing year in which the offence was committed or the immediately preceding fishing year,—

“(i) gained any benefit from any quota of a stock (**stock A**), including annual catch entitlement generated from that quota; and

“(ii) that quota is owned by any company of which the offender is a subsidiary (the **holding company**) or any other subsidiary of the holding company,—

all quota of every stock of the species or group of species comprised in stock A owned by the holding

company or any subsidiary of the holding company at the date the offence was committed:

“(c) any other quota not owned by the holding company or any subsidiary of the offender or any subsidiary of the holding company, but over which the offender had effective control at the date the offence was committed

“**fish and any proceeds from the sale of such fish** means any fish, aquatic life, or seaweed in respect of which the offence was committed (whether or not seized under section 207) and any proceeds from the sale of such fish, aquatic life, or seaweed under section 212

“**property used in the commission of the offence—**

“(a) means any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, or thing used in respect of the commission of the offence (whether or not seized under section 207); but

“(b) does not include any quota, associated quota, or annual catch entitlement

“**quota—**

“(a) in relation to a person convicted of an offence (the offender), means the number of quota shares or amount of provisional catch history for each stock that is equivalent to the number or amount owned by the offender for the stock at the date of the commission of the offence; and

“(b) in relation to any other person, means the number of quota shares for each stock that is equivalent to the number owned by the person for the stock at the date the offender committed the offence

“**serious non-commercial offence** means any offence specified as such in regulations made under section 297.

“(2) For the purposes of **paragraph (c)** of the definition of **associated quota**, a person may have had effective control of quota whether or not the person had—

“(a) any legal or equitable interest in the quota; or

“(b) any right, power, or privilege in connection with the quota,—

and those interests, rights, powers, or privileges may be determined without regard to the form of any entities in which they are owned or held.

“(3) Without limiting the generality of **paragraph (c)** of the definition of **associated quota**, in determining whether an offender had effective control over quota, regard may be had to the following matters:

- “(a) shareholdings in, debentures over, or directorships of, any company that had an interest (whether direct or indirect) in the quota:
 - “(b) any trust that had a relationship to the quota:
 - “(c) family, domestic, and business relationships between persons who had an interest in quota, or in companies of the kind referred to in **paragraphs (a) and (b)** of the definition of **associated quota**, and any other persons:
 - “(d) whether one person was accustomed to following the instructions of the other person in respect of the quota they own:
 - “(e) whether one person was accustomed to acting in a manner consistent with advancing the interests of the other person in respect of the quota they own.
- “(4) No quota owned by the Commission is associated quota for the purposes of this Act.
- “(5) No quota owned by any person is associated quota merely because of any relationship between that person and the Commission or any other person and the Commission.
- “(6) No quota owned by any bank registered under the Reserve Bank of New Zealand Act 1989 is to be regarded as associated quota merely because the bank has in the ordinary course of its business as a financier become the owner of that quota.”

60B Forfeiture for section 252(2), (3), and (5) offences, offences carrying fine of \$100,000, repeat offences, and serious non-commercial offence

Section 255C of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(3) On conviction of a person for an offence referred to in section 252(2) or (3), the Court may order that—
- “(a) any quota is forfeit to the Crown; and
 - “(b) any associated quota is forfeit to the Crown, unless the Court is satisfied that **section 255E(3B)** applies to preclude forfeiture.”

60C Forfeiture for section 252(1) or (4) offence

Section 255D(2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraphs:

- “(d) any quota; and
- “(e) any associated quota, unless the Court is satisfied that **section 255E(3B)** applies to preclude forfeiture.”

60D General provisions relating to forfeiture

- (1) Section 255E(3) of the principal Act is amended by adding the following paragraph:

“(e) associated quota, unless the Court is satisfied that **subsection (3B)** applies to preclude forfeiture.”

(2) Section 255E of the principal Act is amended by inserting, after subsection (3), the following subsections:

“(3A) Where the Court is considering the forfeiture of any quota alleged to be associated quota, the Court must give any person who owns that quota a reasonable opportunity to make submissions and be heard on the questions of whether—

“(a) the quota is associated quota; and

“(b) if so, whether or not the Court should find in favour of the owner under **subsection (3B)**.

“(3B) Where the Court is satisfied that associated quota exists, forfeiture must be considered in accordance with **sections 255C(3)** and **255D(2)** unless the Court is satisfied that the associated quota is associated quota, rather than quota owned by the offender, for reasons principally other than avoiding the consequences of the application of this Act in respect of that forfeiture.”

60E Provisions relating to forfeit property

Section 256 of the principal Act is amended—

(a) by repealing subsections (4)(c) and (6)(c):

(b) by omitting the expression “; and” after subsection (8)(a):

(c) by repealing subsection (8)(b).

New clauses 62A and 62B

To insert after line 10 on page 21 the following clause:

62A Provision relating to minimum quota holdings

Section 357 of the principal Act is amended by adding the following subsections:

“(2) Every person who—

“(a) immediately before the repeal of section 28S of the Fisheries Act 1983 by section 314 of this Act owned or held quota in excess of any minimum holding specified in section 28S(1)(a) or section 28S(1)(b) of the Fisheries Act 1983; and

“(b) at the beginning of the fishing year in which this section comes into force is allocated, or has transferred to them under section 347 or section 347A, less annual catch entitlement for a stock listed in the Eighth Schedule to this Act than is specified in section 74(1) of this Act,—
is subject to section 74 of this Act as if the amount of quota owned or held by that person immediately prior to the repeal of section 28S of the Fisheries Act 1983 had been allocated to that person under this Act.

- “(3) Where a lease was the basis for a person’s allocation of annual catch entitlement for any stock referred to in **subsection (2)(b)**, whether in whole or in part, **subsection (2)** ceases to apply in respect of that person and that stock when the lease expires or otherwise ends.
- “(4) This section is subject to section 340AA.”

62B Conversion of holdings from old register to new register

- (1) Section 32(3) of the Fisheries (Remedial Issues) Amendment Act 2001 is amended by inserting, after the words “principal Act”, the words “(as substituted by section 74 of the Fisheries Act 1996 Amendment Act 1999)”.
- (2) Section 74 of the Fisheries Act 1996 Amendment Act 1999 is repealed as from its commencement.
- (3) Clause 3(2) of the Fisheries Act Commencement Order 2001 is consequentially revoked.

Explanatory note

General

The amendments to *Part 12* of the Bill (which amends the Fisheries Act 1996) contained in this Supplementary Order Paper fall into 3 broad categories:

- 2 amendments of a minor technical nature (*new clauses 56D and 62B*):
- 2 provisions of an essentially transitional or grandfathering nature (see *clauses 57A and 62A*):
- a number of amendments in relation to the definition of **associated person** currently contained in the 1996 Act. This category accounts for the bulk of the amendments.

The **associated person** definitions currently found in sections 3 and 3A of the Act have been found to be too wide, or to lead to practical difficulties, in the way they visit penalties on associated persons in the areas of overfishing thresholds, permit suspension where deemed values of more than \$1,000 are owed, aggregation limits, and quota forfeiture.

In particular—

- normal industry dealings in annual catch entitlement or quota may artificially turn the dealing parties into associated persons, even though they are normally independent of each other:
- in certain areas the Act, by operation of law and not by notice to the person concerned, visits serious consequences on persons who—
 - may not be aware of the relevant breach by the commercial fisher with whom they are associated; and

- even if aware of the breach, may not be aware that they are to be treated as associated with the fisher and therefore subject to the relevant penalty.

The amendments proposed by this Supplementary Order Paper attempt to deal with these problems by addressing the issues in each individual area, rather than by an overall amendment to the definition of associated person. In particular—

- in relation to overfishing thresholds and outstanding deemed value liabilities, the automatic consequences of association are visited only on a small and clearly recognisable group of persons associated with a commercial fisher (subsidiary companies, parent companies, and their non-company equivalents). Other penalties arising from the actions of a particular commercial fisher will be visited on persons otherwise associated with that fisher only after specific notification from the chief executive, and with the chief executive's decision able to be reviewed:
- in relation to aggregation limits, the test of “association” in the Fisheries Act 1983 is carried over, with a focus on defined groups of people (partners, company directors, and associated persons under the Income Tax Act 1994):
- quota owned by a third party may be subjected to forfeiture when a person is convicted of an offence only if the offender has gained some benefit from or has control over that quota.

Individual amendments

Clause 50: the substituted *clause 50* provides for the whole Part to come into force on 1 October 2001, the date on which all provisions of the Fisheries Act 1996 not previously in force will be brought into force.

New clause 51A: this clause repeals the existing definitions of **associated person** in the 1996 Act. The circumstances giving rise to any implications of “association” are now dealt with specifically in the relevant substantive provisions of the legislation.

Clause 56: the substituted *clause 56*, which amends section 59 of the Act, sets out in new *subsections (10) and (11)* the persons who will be treated as a single person for the purposes of the quota aggregation limits.

New clauses 56A to 56C amend sections 60(4), 61, and 62 of the Act as a consequence of the amendments made by *clause 56*.

New clause 56D corrects a technical drafting error. Section 41 of the Fisheries (Remedial Issues) Amendment Act 2001 repealed section 6(3)(a) of the Fisheries (Foveaux Strait Dredge Oyster Fishery) Amendment Act 1998, but failed to repeal the amendment made by that section to section 74(2)(b) of the principal Act, or to make a consequential amendment to that section. *Clause 56D* rectifies this.

Clause 56E substitutes new *sections 78 to 79B* for existing sections 78 and 79 in relation to persons associated with commercial fishers who—

- have catch in excess of over-fishing thresholds, and who are consequently prohibited from taking fish, aquatic life, or seaweed in the geographical area concerned by a “deemed condition” attached to their fishing permits; or
- owe more than \$1,000 in overdue deemed values, and consequently have their permits suspended.

As described above, the automatic consequences of association (ie, a similar “deemed condition” or suspension of permit for the associated person) will now apply only to a small and recognisable group of persons. Persons otherwise associated with the fisher will be subject to these penalties only after specific notification from the chief executive, with the chief executive’s decision able to be reviewed.

The sections also include new offence provisions in relation to deliberately assisting a person to avoid the consequences of permit suspension or the imposition of conditions.

New clause 57A provides that a commercial fisher may lawfully take non-QMS fish, aquatic life, and seaweed that is not listed on the fisher’s fishing permit (which would otherwise be an offence), provided that it is taken as an inevitable consequence of the taking of other fish, aquatic life, and seaweed in accordance with a fishing permit. This provision expires on 30 September 2004.

New clause 57B prohibits the issue of a fishing permit to anyone who has outstanding deemed values of more than \$1,000 overdue (as well as any “included person”), or to anyone who has had (or should have had) their fishing permit suspended because of their relationship with a commercial fisher also subject to such a suspension.

New clause 59A provides fishery officers with additional powers to investigate whether quota owned by a person who is not suspected of an offence against the Act should be “associated quota”, and thus susceptible to forfeiture under the Act if the offender is convicted, because of the quota owner’s association with an alleged offender, or the alleged offender’s interest in the quota.

New clause 59B makes consequential amendments to section 214 permitting the caveating by the Crown of any “associated quota”.

New clause 59C inserts the new offences contained in new *sections 78A and 79A* into the exception in section 240 of the Act to the general rule that offences under the Act are strict liability offences.

New clause 60 consequentially inserts references to the new offences into section 252 of the Act, which sets out penalties for offences.

New clauses 60A to 60E provide that quota owned by a person who is not suspected of an offence against the Act but which an alleged offender has an interest in or control over (**associated quota**) may be subject to forfeiture to the Crown on the conviction of the offender. It provides a process for application to the Court for determination of the nature of the quota proposed to be forfeit. Associated quota will not be forfeit if the Court is satisfied that it was associated quota for reasons other than avoiding the consequences of the forfeiture regime.

New clause 62A makes a minor amendment to the Act by allowing people who met the minimum requirements for holding amounts of quota under the Fisheries Act 1983 regime, but who would be caught by a change in minimum requirement under the new regime commencing on 1 October 2001, the right to take fish despite the amount of their annual catch entitlement being less than the new minimum amounts specified in the Act. In effect, this is a grandfathering right in respect of allocations that do not meet the prescribed minimum requirements.

New clause 62B: section 74 of the Fisheries Act 1996 Amendment Act 1999, proposed to substitute a new section 343(3) into the principal Act. That section 74 is not yet in force, and has been overtaken by a later substitution of section 343(3) in section 32(3) of the Fisheries (Remedial Issues) Amendment Act 2001. The clause makes it clear that it is the later amendment that is to prevail. Section 74 of the earlier Act is therefore repealed, and a consequential amendment is made to the Fisheries Act Commencement Order 2001.
