



Commodity Levies (Fish) Order 2002

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 11th day of March 2002

Present:

Her Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990 (as applied by section 305 of the Fisheries Act 1996), Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Fisheries, makes the following order.

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Order

1 Title

This order is the Commodity Levies (Fish) Order 2002.

2 Commencement

This order comes into force on the day after the date of its notification in the *Gazette*.

3 Interpretation

In this order, unless the context otherwise requires,—

company means the New Zealand Seafood Industry Council Limited

declared port price means the price determined for each fish stock or species under clause 8(3)

levy means the levy imposed by clause 4

levy year—

- (a) means a period of 12 months beginning on 1 October and ending on 30 September; and
- (b) includes the period beginning on 1 April 2002 and ending on 30 September 2002

licensed fish receiver means a person who is, or is required to be, licensed as a fish receiver under the Fisheries Act 1996

mediator means a person appointed under clause 21; and, in relation to a dispute, means a mediator appointed to resolve the dispute

non-quota management system fish species means a fish species that is neither—

- (a) subject to the quota management system; nor
- (b) harvested from fish farming

packing house licensee means—

- (a) the holder of a fish packing house licence granted under section 26 of the Meat Act 1981 or a person who is required to hold a licence; or
- (b) a person who is registered, or required to be registered, under the Animal Products Act 1999 for the processing of fish

quota owner means a person shown on the appropriate register kept under Part VIII of the Fisheries Act 1996 as the owner of quota

relative dollar value means the relative dollar value for each fish stock or species calculated under clause 8(2).

4 Levy imposed

- (1) A levy is imposed on fish, based on—
 - (a) quota owned by a quota owner; and
 - (b) non-quota management system fish species fish, and fish harvested from fish farming, that are landed or delivered to a licensed fish receiver or packing house licensee; and
 - (c) fish otherwise sold by a fish farmer.
- (2) The levy is payable to the company.
- (3) No levy is payable by the Crown.

5 Primary responsibility for paying levy

The persons who are primarily responsible for paying the levy are,—

- (a) for a fish stock that is subject to the quota management system, each quota owner in respect of the quota in that fish stock that is shown on the quota register as owned by the quota owner on the first day of each relevant month; or
- (b) for non-quota management system fish species fish and fish harvested from fish farming, the person who lands the fish to a licensed fish receiver or who causes the fish to be delivered to a licensed fish receiver or packing house licensee; or
- (c) for fish harvested from fish farming that are not landed or delivered to a licensed fish receiver or packing house licensee, the fish farmer who sells the fish.

6 Packing house licensees and licensed fish receivers must pay levy in some cases

- (1) This clause applies if non-quota management system fish species fish, or fish harvested from fish farming, are landed or delivered to a licensed fish receiver or packing house licensee.
- (2) The licensed fish receiver or packing house licensee—

- (a) must pay the levy; and
 - (b) may recover the amount of the levy (and any goods and services tax paid in respect of it) by reducing the amount otherwise payable to the person who landed the fish or caused the fish to be delivered.
- (3) The licensed fish receiver or packing house licensee is not entitled to receive a collection fee for paying the levy.

7 Levy may be fixed at different rates

- (1) A different rate of levy may be fixed for each—
- (a) fish stock that is subject to the quota management system; or
 - (b) non-quota management system fish species; or
 - (c) for each species of fish harvested from fish farming.
- (2) In subclause (1)(a), a **fish stock** means a stock that has a quota management area determined in accordance with section 24(2) of the Fisheries Act 1996.

8 Basis of calculation of levy

- (1) The levy payable in a levy year must be calculated on the basis of the relative dollar value of fish.
- (2) The relative dollar value is,—
- (a) for fish stock that is subject to the quota management system, the quota weight equivalent of the quota shares owned on the first day of the levy year (as shown on the quota register) multiplied by the declared port price for that fish stock; or
 - (b) for non-quota management system fish species, the greenweight tonnage of fish reported, or required to be reported, by a licensed fish receiver as landed multiplied by the declared port price for that species; or
 - (c) for fish harvested from fish farming, the greenweight tonnage of fish reported, or required to be reported, by a licensed fish receiver or packing house licensee as landed or delivered, or otherwise declared by a fish farmer as sold, multiplied by the declared port price for that species.
- (3) The declared port price for each stock or species must be determined by the company for each levy year using the average port price (excluding goods and services tax) paid or

likely to be paid during each of the 3 12-month periods before the levy year to which the levy relates, based on—

- (a) an independent survey that establishes the price that would be paid during each 12-month period for the fish (excluding goods and services tax) by an independent processor buying from an independent fisher or fish farmer, based on the best available information known to the company; or
- (b) if independent survey data is unavailable, an estimate by the company of the price that would be paid during each 12-month period for the fish (excluding goods and services tax) by an independent processor buying from an independent fisher or fish farmer, based on the best available information known to the company.

9 Company must fix rates of levy

The company must fix the rates of the levy for a levy year, in accordance with the procedures set out in the company's constitution.

10 Maximum rate of levy

The maximum rate of levy is 5% of the relative dollar value (plus goods and services tax).

11 Notification of rates of levy

- (1) The company must notify—
 - (a) in the *Gazette* the rates of levy and the date on and from which the levy takes effect; and
 - (b) in a newsletter or at least 1 industry publication chosen by the company, the rates of the levy, the relevant declared port prices, and the date on and from which the levy takes effect.
- (2) Notification must be made,—
 - (a) under subclause (1)(a), within 14 days after fixing the rates of levy and not less than 14 days before the commencement of the levy year to which the levy relates; and
 - (b) under subclause (1)(b), as soon as practicable after fixing the rates of levy.

12 When levy must be paid

- (1) The due dates for payment of the levy are as follows:
 - (a) for a fish stock that is subject to the quota management system, one-twelfth of the levy must be paid by the close of the first day of each month;
 - (b) for non-quota management system fish species fish and fish harvested from fish farming, the levy must be paid by the 20th day of the month after the month that the fish are landed or delivered to the licensed fish receiver or packing house licensee.
- (2) However, if the total amount of levy payable by a person under clause (1)(a) is less than \$50, payment is not required until the earlier of—
 - (a) the month when the person's total outstanding levies are \$50 or more; or
 - (b) the final month of the levy year.

13 Additional levy payable if levy not paid on time

- (1) This section applies if an amount of levy (or goods and services tax payable on the levy) is not paid on or before—
 - (a) in the case of an amount of levy due under clause 12(1)(a), the 20th day of the month after the due date for payment; or
 - (b) in the case of an amount of levy due under clause 12(1)(b), the due date for payment.
- (2) The company may require the quota owner, licensed fish receiver, or packing house licensee to pay an additional levy that does not exceed 10% of the amount unpaid at the close of the relevant date set out in subclause (1).
- (3) However, if a licensed fish receiver or packing house licensee has recovered the amount of a levy under clause 6(2)(b),—
 - (a) only the licensed fish receiver or packing house licensee may be required to pay the additional levy; and
 - (b) the additional levy may not be recovered under clause 6(2)(b).

14 Levies must be spent by company

The company must spend or (pending expenditure) invest all levies paid to it.

15 Purposes for which levies may be spent

- (1) The company may spend levies only for the following purposes:
 - (a) research (including market research), science, and technical services relating to the New Zealand seafood industry:
 - (b) promoting (including through generic advertising) the New Zealand seafood industry, fish, and fish products:
 - (c) day-to-day administration costs of the company (excluding the direct or indirect administration of a commercial or trading activity):
 - (d) matters relating to the New Zealand seafood industry on which advice is sought from the company's Policy Council by the company:
 - (e) policy issues affecting the New Zealand seafood industry.
- (2) The company must not use levies to meet expenditure incurred by, or liabilities owed to, Commercial Fisheries Services Limited (trading as FishServe).

16 Conscientious objectors

A person who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the chief executive of the Ministry of Fisheries, who must ensure that it is paid to the company.

17 Non-disclosure of information

- (1) An officer or employee of the company, or any other person involved in collecting the levy, must not disclose (except to another officer or employee of the company or another person involved in collecting the levy) information obtained—
 - (a) under or because of this order; or
 - (b) under the Commodity Levies Act 1990 (as applied by section 305 of the Fisheries Act 1996) in relation to this order.
- (2) Subclause (1) does not affect or prevent—
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
 - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or

- (c) the giving of evidence in any legal proceedings taken—
 - (i) under, or in relation to, this order; or
 - (ii) under the Commodity Levies Act 1990 in relation to this order; or
 - (iii) under the Fisheries Act 1996.
- (3) Subclause (1) does not prevent the company from—
 - (a) disclosing or using information (not being information relating to an identifiable person) obtained from a ballot held before the commencement of this order; or
 - (b) disclosing or using information (not being information relating to an identifiable person) for statistical and research purposes; or
 - (c) disclosing or using information for the purposes of invoicing and collecting the levy; or
 - (d) disclosing or using information with the consent of every identifiable person to whom it relates.

18 Payers of levies must keep records and make returns

- (1) A packing house licensee and licensed fish receiver must keep records of the following information:
 - (a) the greenweight tonnage of non-quota management system fish species fish landed or delivered to a licensed fish receiver or packing house licensee and the date of landing or delivery; and
 - (b) the name of each person who lands or delivers the fish; and
 - (c) the amount paid by the licensed fish receiver or packing house licensee for the fish; and
 - (d) the amount of levy paid by the licensed fish receiver or packing house licensee; and
 - (e) the name of the person and fish in respect of which the levy is paid.
- (2) A fish farmer must keep records of the following information:
 - (a) the greenweight tonnage of fish landed or delivered to a licensed fish receiver or packing house licensee; and
 - (b) the name of the licensed fish receiver or packing house licensee; and
 - (c) the amount paid by the licensed fish receiver or packing house licensee for the fish; and

- (d) if fish is not landed or delivered to a licensed fish receiver or packing house licensee, the amount of any levy paid by the farmer directly to the company.
- (3) The records must be retained for at least 7 years after the date on which the levy in respect of which the records are held is paid.
- (4) A person required to keep records under this clause must supply to the company, in writing and as soon as reasonably practicable after receiving the company's written request to do so, records and information reasonably required by the company to calculate the amount of levy that is payable.

19 Company must keep records

- (1) The company must, in every levy year, keep records of the following information:
 - (a) the amount of levy paid to it in that year and, for each payment,—
 - (i) the amount; and
 - (ii) the date on which it is received; and
 - (iii) the name of the person who paid it; and
 - (b) how, if at all, levies paid to it in that year were invested; and
 - (c) how, and when, all levies spent by it were spent.
- (2) The company must retain the records for at least 7 years after the end of the levy year to which the records relate.
- (3) This clause does not require the company to keep a nil record.

20 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the company at a rate determined by the Minister of Fisheries after consultation with the company.

Mediation in case of dispute

21 Appointment of mediators

- (1) This clause applies to a dispute about—
 - (a) whether a person is required to pay a levy; or
 - (b) the amount of levy that is payable.
- (2) A party to the dispute may ask the President of the Institute of Chartered Accountants of New Zealand to appoint a person to

attempt to resolve the dispute by mediation, and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.

- (3) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it themselves; or
 - (b) the mediator resolves the dispute under clause 28.

22 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Institute of Chartered Accountants of New Zealand (or a person authorised by the President to do so) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

23 Time and place of conference

Every conference that is organised by a mediator of the parties to a dispute must be held on a day and at a time and place fixed by the mediator and notified in writing to the parties.

24 Conference held in private

Except as provided in clause 25, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

25 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of a party to a dispute to attend a conference of the parties that is organised by the mediator.

26 Right to be heard

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, may be heard at the conference.

27 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person who gives evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

28 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, the mediator must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the decision of the mediator.

29 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with a decision made by a mediator under clause 28 may appeal to a District Court against the decision.
- (2) An appeal is brought by filing a notice of appeal within 28 days after the making of the decision concerned or within a longer time that a District Court Judge allows.
- (3) The Registrar of the Court must—
 - (a) fix the time and place for the hearing of the appeal and notify the appellant and the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on every other party to the dispute.

- (4) Every party may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order comes into force on the day after the date of its notification in the *Gazette*.

The order imposes a levy on fish.

The levy is payable to the New Zealand Seafood Industry Council Limited and is calculated on quota owned by quota owners at the beginning of each levy year, non-quota management system fish and fish harvested from fish farming landed or delivered to a licensed fish receiver or packing house licensee, and fish otherwise sold by fish farmers.

Unless earlier revoked, the order expires 6 years after it is made, as provided by section 13 of the Commodity Levies Act 1990.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 12 March 2002.

This order is administered in the Ministry of Fisheries.
