



# Commodity Levies (Mussel, Oyster, and Salmon) Order 2007

Dame Sian Elias, Administrator of the Government

## Order in Council

At Wellington this 30th day of July 2007

Present:

Her Excellency the Administrator of the Government 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 Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following order.

### Contents

	Page
1 Title	2
2 Commencement	3
3 Interpretation	3
<i>Levy imposed</i>	
4 Levy imposed	4
<i>Payment of levy</i>	
5 Primary responsibility for paying levy	4
6 Licensed fish receiver to pay levy	4
<i>Rate of levy</i>	
7 Levy to be paid at single rate	5
8 Maximum rate of levy	5

	<i>Calculation of levy</i>	
9	Basis for calculation of levy	5
10	Calculation of generic levy	5
11	Calculation of species-specific levy	6
12	Company must fix actual rate of levy	6
	<i>Notification</i>	
13	Notification of levy rate	7
	<i>Time for payment of levy and returns</i>	
14	Time when levy must be paid	7
	<i>Expenditure of levy money by company</i>	
15	Company to spend levy money	7
16	Purposes for which levy money to be spent	7
	<i>Record-keeping and information requirements</i>	
17	Responsibilities of levy collectors	8
18	Company to keep records	8
19	Confidentiality of information	9
	<i>Conscientious objectors</i>	
20	Conscientious objectors	10
	<i>Mediation of disputes</i>	
21	Appointment of mediator	10
22	Remuneration of mediator	10
23	Conference to resolve dispute	11
24	Conference to be held in private	11
25	Representatives	11
26	Right to be heard	11
27	Evidence	11
28	Settlement agreement	11
29	Determination of dispute in certain cases	12
30	Costs of mediation	12
31	Appeal to District Court	12
	<i>Revocation</i>	
32	Revocation	13

---

## Order

### 1 Title

This order is the Commodity Levies (Mussel, Oyster, and Salmon) Order 2007.

## 2 Commencement

This order comes into force on 1 September 2007.

## 3 Interpretation

In this order, unless the context otherwise requires,—

**aquaculture activities** means the breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest

**aquaculture industry** means aquaculture activities concerned with the farming of mussels, oysters, or salmon

**company** means the industry organisation that, on the commencement of this order, is registered as New Zealand Aquaculture Limited and trades as Aquaculture New Zealand

**declared port price** means the price determined for each species under clause 8(2)

**fish farmer** has the meaning it is given in section 2(1) of the Fisheries Act 1996

**greenweight** has the meaning it is given in section 2(1) of the Fisheries Act 1996

**GST** means goods and services tax payable under the Goods and Services Tax Act 1985

**levy** means the levy imposed by clause 4

**levy collector** means, as the case may be,—

- (a) a licensed fish receiver referred to in clause 6(1); or
- (b) a fish farmer referred to in clause 6(3)

**levy money** means the money paid under this order as a levy

**levy year** means a period of 12 months starting on 1 September of each year and ending on 31 August of the following year

**licensed fish receiver** means a holder of a fish receiver licence granted under the Fisheries (Licensed Fish Receivers) Regulations 1997

**mediator** means a person appointed under clause 21 to assist with the resolution of any dispute between parties

**mussel**—

- (a) means Greenshell™ mussel, a shellfish of the species *Perna canaliculus* (green-lipped mussel); but
- (b) excludes mussel spat (mussels less than 40 mm long)

**ordinary resolution** means a resolution that is approved by a simple majority of the votes of the shareholders entitled to vote and voting on the question

**oyster**—

- (a) means the mollusc *Crassostrea gigas* (Pacific oyster); but
- (b) does not include oyster spat (oysters less than 37 mm long)

**relative dollar value** means the greenweight tonnage of mussels, oysters, or salmon harvested for sale by fish farmers, multiplied by the declared port price for the relevant species

**sale** has the same meaning as in section 2(1) of the Fisheries Act 1996, and **selling** has a corresponding meaning

**salmon**—

- (a) means fish of the species *Oncorhynchus tshawytscha* (chinook or quinnat salmon); but
- (b) does not include salmon fingerlings that are harvested, whether or not on-sold, for the purpose of transferring them in their live state to another fish farm or location.

### *Levy imposed*

#### **4 Levy imposed**

- (1) A levy is imposed on all mussels, oysters, and salmon harvested for sale by a fish farmer.
- (2) The levy is payable to the company.

### *Payment of levy*

#### **5 Primary responsibility for paying levy**

The person who is primarily responsible for paying the levy is the person who harvests and sells mussels, oysters, or salmon, as the case may be.

#### **6 Licensed fish receiver to pay levy**

- (1) In the case of a fish farmer who harvests and sells mussels, oysters, or salmon to a licensed fish receiver, the licensed fish receiver—
  - (a) must pay the levy, and any GST payable on the levy, to the company; and

- (b) may recover from the seller the amount of the levy, and any GST payable on the levy, by reducing the amount otherwise payable to the seller for the mussels, oysters, or salmon.
- (2) A licensed fish receiver is not entitled to receive a collection fee for paying the levy.
- (3) In the case of a fish farmer who harvests mussels, oysters, or salmon but sells the product other than to a licensed fish receiver, the fish farmer must pay the levy and any GST payable on the levy directly to the company.

### *Rate of levy*

#### **7 Levy to be paid at single rate**

- (1) The levy is to be paid at a single rate.
- (2) However, a different rate may be set for each of the 3 species covered by this order.

#### **8 Maximum rate of levy**

- (1) The maximum rate of the levy for mussels, oysters, and salmon is 2% of the relative dollar value of the mussels, oysters, or salmon (plus GST).
- (2) The company must determine the declared port price for mussels, oysters, and salmon using the average port price (excluding GST) paid or likely to be paid for mussels, oysters, and salmon in each 12-month period of the 3 years before the levy year to which the levy relates.

### *Calculation of levy*

#### **9 Basis for calculation of levy**

- (1) The levy payable in a levy year must be calculated on the basis of the greenweight of mussels, oysters, or salmon harvested for sale by a fish farmer.
- (2) The levy must be calculated on the basis of—
  - (a) a generic levy; and
  - (b) a species-specific levy.

#### **10 Calculation of generic levy**

The generic levy referred to in clause 9(2)(a) must be calculated for each species covered by this order as follows:

$$\frac{a \times b}{c}$$

where—

- a is the total generic levy for a year; and
- b is the share of the total generic levy apportioned to that species; and
- c is the total tonnage for that species in the relevant year.

**11 Calculation of species-specific levy**

- (1) The species-specific levy referred to in clause 9(2)(b) must be calculated as follows:

$$\frac{x}{y}$$

where—

- x is the total amount of expenditure proposed by the company for each species covered by this order; and
- y is the annual tonnage estimated by the company for each species.

**12 Company must fix actual rate of levy**

- (1) The company must fix the actual rate of the levy for a levy year at a general meeting held before the beginning of the levy year, in accordance with the procedures set out in the company’s constitution.
- (2) If the company does not fix the actual rate of the levy in accordance with subclause (1), the levy for that year is payable at the rate last fixed under subclause (1).
- (3) To avoid doubt, the actual levy rate for the levy year beginning on the commencement of this order is as follows:

Levy rate (\$ per green-weight tonne)	Mussels (\$)	Oysters (\$)	Salmon (\$)
Generic levy rate	3.74	18.13	13.54
Species-specific levy rate	5.05	5.40	0.00
Total levy rate	8.79	23.54	13.54

*Notification***13 Notification of levy rate**

Not later than 14 days after the rate of the levy for a levy year is fixed under clause 12(1), the company must give written notice of that rate and the date on which it takes effect to—

- (a) all fish farmers; and
- (b) all relevant licensed fish receivers.

*Time for payment of levy and returns***14 Time when levy must be paid**

The due date for the payment of levies is,—

- (a) if the levy is payable by a licensed fish receiver, the 20th day of the month following supply of mussels, oysters, or salmon to the licensed fish receiver; or
- (b) if the levy is payable by a fish farmer, the 20th day of the month after the mussels, oysters, or salmon are sold.

*Expenditure of levy money by company***15 Company to spend levy money**

The company must spend or (pending its expenditure) invest all levy money paid to it, in accordance with its annual budget and business plan approved by shareholders at a general meeting of the company.

**16 Purposes for which levy money to be spent**

The company must spend the levy money for the purposes of developing and managing the aquaculture industry, including, but not limited to,—

- (a) promoting aquaculture industry activities and market development plans; and
- (b) research, including biological, environmental, and market research; and
- (c) public relations and advocacy activities associated with the aquaculture industry; and
- (d) trade mark and patent searches, applications, and protection; and
- (e) iwi consultation and promotion of iwi participation in the aquaculture industry; and
- (f) developing and maintaining 1 or more codes of practice; and

- (g) protection of property rights, including by making submissions in relation to—
  - (i) regional coastal plans and coastal tendering processes under the Resource Management Act 1991; and
  - (ii) foreshore and seabed claims under the Foreshore and Seabed Act 2004; and
  - (iii) applications or claims under the Crown Minerals Act 1991 relating to a part of the seabed that is the subject of an application for a coastal permit for aquaculture activities or to exploration or mining of the seabed in an area where aquaculture activities are permitted; and
- (h) administering the company's approved annual activities and legal responsibilities, including the collection and management of levies; and
- (i) quality assurance and water quality; and
- (j) environmental risk management and biosecurity.

### *Record-keeping and information requirements*

#### **17 Responsibilities of levy collectors**

- (1) Every levy collector must keep records, in the form approved by the company, that must include—
  - (a) the greenweight of the mussels, oysters, or salmon on which the levy is imposed; and
  - (b) the levies paid to the company; and
  - (c) the name of the fish farmer from whose fish farm the mussels, oysters, or salmon are harvested; and
  - (d) the unique identifier of that fish farm; and
  - (e) the date of the harvest.
- (2) A levy collector must—
  - (a) send a copy of the required records to the company, together with the levy payment, in accordance with clause 14; and
  - (b) retain a copy of the records for 7 years after the end of the levy year to which they relate.

#### **18 Company to keep records**

- (1) The company must, for each levy year, keep the following records in respect of each species:



- (a) each amount of levy money paid to it and, in relation to each amount,—
    - (i) the day on which it was received; and
    - (ii) the person who paid it; and
  - (b) how, if at all, and when it invested any levy money paid to it; and
  - (c) how and when it spent all levy money.
- (2) The company must retain its records for at least 7 years after the end of the levy year to which they relate.

### **19 Confidentiality of information**

- (1) No officer, employee, or agent of the company may disclose any commercially sensitive information obtained, or obtained as a result of actions taken,—
- (a) under 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 prevent the disclosure of information—
- (a) to another officer, employee, or agent of the company; or
  - (b) with the consent of every fish farmer and licensed fish receiver to whom the information relates; or
  - (c) for statistical or research purposes, if the information is in a form that does not identify any person; or
  - (d) obtained from a ballot held before the commencement of this order, if the information is in a form that does not identify any fish farmer or licensed fish receiver to whom the information relates; or
  - (e) that is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—
- (a) enforcing this order, including collection of the levy; or
  - (b) complying with section 17(1) or 25 of the Commodity Levies Act 1990 (as applied by section 305 of the Fisheries Act 1996); or
  - (c) giving evidence in any legal proceedings taken under or in relation to this order.

*Conscientious objectors***20 Conscientious objectors**

- (1) A fish farmer or a licensed fish receiver who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the chief executive of the department of State responsible for the administration of this order.
- (2) The chief executive must ensure that the amount of the levy is paid to the company.

*Mediation of disputes***21 Appointment of mediator**

- (1) This clause applies if there is a dispute about—
  - (a) whether a person is required to pay the levy; or
  - (b) the amount of levy a person is required to pay.
- (2) Any party to a dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to organise and preside at a conference of the parties for the purpose of resolving the dispute by mediation.
- (3) If an appointment of a mediator is made under subclause (2), the appointment ends if—
  - (a) the parties to the dispute resolve it by agreement; or
  - (b) the dispute is resolved under clause 29.

**22 Remuneration of mediator**

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed to by the parties to the dispute.
- (2) If the parties to the dispute cannot agree on the mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (or a person authorised by the President) 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 Conference to resolve dispute**

- (1) A mediator may organise and preside at 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference is to be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

**24 Conference to be held in private**

Only the mediator and the parties to a dispute may attend a conference, unless clause 25 applies.

**25 Representatives**

A mediator may allow a representative of any party to a dispute to attend a conference, if the mediator is satisfied that it is appropriate to do so in all the circumstances.

**26 Right to be heard**

The following persons may be heard at a conference:

- (a) every party to the dispute; and
- (b) every representative of a party allowed by the mediator to attend 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 giving evidence at a conference to verify the evidence by statutory declaration.

**28 Settlement agreement**

- (1) If a resolution is reached on the whole or part of a dispute in the course of, or as a result of, a conference convened under clause 21, the terms of the agreement must be recorded in a settlement agreement.
- (2) A settlement agreement is binding on the parties and may be enforced in a court of competent jurisdiction.

**29 Determination of dispute in certain cases**

- (1) Subsection (2) applies if—
  - (a) a dispute is not resolved in the course of mediation under clause 23, whether or not the parties to the dispute have conferred directly; and
  - (b) the mediator believes that the parties to the dispute are unlikely to resolve the dispute.
- (2) The mediator may, with or without the consent of the parties to the dispute,—
  - (a) terminate the mediation process; and
  - (b) determine the dispute.
- (3) If the mediator determines a dispute under subclause (2), the mediator must give each party written notice of that determination and the reasons for it.

**30 Costs of mediation**

Each party to a dispute must pay its own costs in relation to a mediation entered into under clause 23 or a determination made under clause 29.

**31 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with a determination made under clause 29 may appeal to a District Court against the determination.
- (2) The appeal must be brought by the filing of a notice of appeal—
  - (a) within 28 days after the determination is made; or
  - (b) within any 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
  - (b) notify the time and place to the appellant and the other parties to the dispute; and
  - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the determination made under clause 29.

- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of that determination.

### *Revocation*

#### **32 Revocation**

- (1) The Commodity Levies (Green-lipped Mussel) Order 2001 (SR 2001/280) is revoked.
- (2) However, levies imposed under that order up to and including 31 August 2007 continue to be due and payable as if that order had not been revoked.

Diane Morcom,  
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 1 September 2007. It replaces the Commodity Levies (Green-lipped Mussels) Order 2001, which, but for the revocation, would have expired at the close of 16 September 2007. However, levies imposed under that order up to and including 31 August 2007 continue to be payable.

This order imposes a levy on certain farmed species, namely the specified species of mussels, oysters, and salmon that are farmed, harvested, and sold in the course of an aquaculture activity, whether sold to a licensed fish receiver or otherwise sold by the fish farmer. The levy is payable to New Zealand Aquaculture Limited.

By virtue of section 13(1) of the Commodity Levies Act 1990, the order expires 6 years after it is made, unless it is revoked or extended before then.

---

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

Date of notification in *Gazette*: 2 August 2007.

This order is administered by the Ministry of Fisheries.

---

