



**THE COMMODITY LEVIES (SOUTHERN SCALLOPS)  
ORDER 1996**

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MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 15th day of July 1996

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 4 of the Commodity Levies Act 1990 (as applied by section 107<sup>EH</sup> of the Fisheries Act 1983), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

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ANALYSIS

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**ORDER**

**1. Title and commencement**—(1) This order may be cited as the Commodity Levies (Southern Scallops) Order 1996.

(2) Subject to clause 8 (a) of this order, this order shall come into force on the 15th day of August 1996.

**2. Interpretation**—In this order, unless the context otherwise requires,—

“Company” means the body that was, on the commencement of this order, known as Challenger Scallop Enhancement Company Limited, a company duly incorporated under the Companies Act 1955 and having its registered office in Nelson:

“Levy” means the levy imposed by clause 3 of this order:

“Levy year” means a period of 12 months commencing on the first day of the southern scallop season in any year:

“Licensed fish receiver” means a person holding a fish receiver’s licence or certificate of recognition issued under the Fisheries (Licensed Fish Receivers) Regulations 1986:

“Meatweight” means the weight of scallops remaining when the shell, skirt, and gut have been removed and discarded:

“Mediator” means a person appointed under clause 16 of this order; and, in relation to a dispute, means the mediator appointed to resolve that dispute:

“Quota” means individual transferable quota held under the Fisheries Act 1983 for scallops in the Southern Scallop Fishery:

“Sale” has the same meaning as in the Fisheries Act 1983; and “selling” has a corresponding meaning:

“Scallop” means the mollusc *Pecten novaezelandiae*; but does not include scallop spat:

“Southern scallops” means any scallop found in the Southern Scallop Fishery:

“Southern Scallop Fishery” means the fishery described in Part I of Schedule 1D to the Fisheries Act 1983:

“Southern scallop season” means the season for the time being determined by the Minister of Fisheries under section 28ZM (3) of the Fisheries Act 1983; and includes any extension of the season under that section.

**3. Levy imposed**—(1) There is hereby imposed on the commodity specified in subclause (2) of this clause a levy payable to the industry organisation specified in subclause (3) of this clause.

(2) The commodity on which the levy is imposed is all southern scallops landed to licensed fish receivers.

(3) The industry organisation to which the levy is payable is the body known on the commencement of this order as Challenger Scallop Enhancement Company Limited.

**4. Levy imposed on basis of landed value of scallops**—(1) The levy on southern scallops landed during any levy year is to be calculated on the basis of the value of the scallops when landed to a licensed fish receiver.

(2) For the purposes of subclause (1) of this clause, the value of southern scallops landed to a licensed fish receiver is the price payable by the licensed fish receiver to the person selling the scallops, including any incidental payments in respect of those scallops made by the licensed fish receiver to that person but excluding goods and services tax.

**5. Scallop quota owners primarily responsible for paying levy—**The owners of scallop quota for the Southern Scallop Fishery are primarily responsible for paying the levy on southern scallops taken under that quota.

**6. Licensed fish receivers to pay levy—**(1) Licensed fish receivers shall pay the levy on southern scallops that are landed to them.

(2) A licensed fish receiver who pays any levy in respect of any scallops—

- (a) May recover the amount of levy paid, and any goods and services tax payable on the levy, by reducing the amount otherwise payable for the scallops:
- (b) Is not entitled to receive a collection fee for paying the levy.

**7. Levy to be paid at single rate not exceeding 25 percent of landed value—**(1) The levy is to be paid at a single rate based on the value of southern scallops landed to a licensed fish receiver.

(2) The maximum rate of levy to be fixed under clause 8 of this order is 25 percent.

(3) The rate of levy is exclusive of any goods and services tax payable on the levy.

**8. Company to fix actual rate of levy—**The rate of the levy shall be fixed annually by ordinary resolution of members of the Company in general meeting held,—

- (a) In the case of the levy year that commences in 1996, as soon as practicable after the making of this order (whether or not it has yet come into force) and not later than the first day of that levy year:
- (b) In the case of each subsequent levy year, within the period of 2 months that precedes the date of commencement of that levy year.

**9. Notification of rates of levy—**The Company shall notify in writing all owners and holders of quota for southern scallops, and all licensed fish receivers known by the Company to have purchased southern scallops in the previous levy year, of the levy rate within 2 weeks after it is fixed in accordance with clause 8 of this order.

**10. Levy to be paid within 10 days after landing of scallops—**

(1) The due date for payment by a licensed fish receiver of the levy on any southern scallops landed to that receiver is the day on which those scallops are received by the receiver.

(2) The latest date for payment of the levy is the 10th day following that on which the scallops were received by the receiver.

**11. Returns by licensed fish receivers—**(1) Licensed fish receivers shall, when making payment of the levy in accordance with clause 10 of this order, give the Company notice in writing of—

- (a) The greenweight tonnage of scallops landed by scallop quota owners in respect of which the levy under this order is deducted; and
  - (b) The meatweight of those scallops; and
  - (c) The amount paid for those scallops; and
  - (d) The amount of levy paid to the Company.
- (2) Licensed fish receivers shall keep all records in respect of the matters referred to in subclause (1) of this clause for a period of not less than 2 years following the end of the levy year in which the scallops were landed.

**12. Company to spend levy money**—The Company shall spend or (pending its expenditure) invest all levy money paid to it under this order.

**13. Purposes for which levy money to be spent**—(1) The purposes for which the Company is to spend the levy money are the enhancement and management of scallops and scallop harvesting rights in the Southern Scallop Fishery.

- (2) These purposes include, but are not limited to, the following matters:
- (a) Research, including biological, environmental, and market research;
  - (b) Enhancing and protecting scallop stocks and scallop fishing rights;
  - (c) Promoting scallop industry activities;
  - (d) Shellfish quality assurance;
  - (e) Developing fishery management rules;
  - (f) Developing and providing fishery management advice;
  - (g) Administering harvesting rights and organisational activities, and administering legal obligations.

**14. Company to keep records of payments, etc.**—The Company shall keep, and shall ensure that there are retained for at least 7 years after they are kept,—

- (a) Records of 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) Records of—
  - (i) How (if at all) levy money paid to it was invested; and
  - (ii) How and when all levy money spent by it was spent.

**15. Confidentiality of information**—(1) Subject to subclause (2) of this clause, no officer or employee of the Company shall disclose (otherwise than to some other person who is an officer or employee of the Company) any commercially sensitive information obtained, or obtained as a result of actions taken,—

- (a) Under this order; or
  - (b) In relation to this order, under the Commodity Levies Act 1990 (as applied by section 107EH of the Fisheries Act 1983).
- (2) Nothing in subclause (1) of this clause affects or prevents—
- (a) The production of records or accounts under section 17 (1) of the Commodity Levies Act 1990 (as so applied); or
  - (b) The production of any statement under section 25 of the Commodity Levies Act 1990 (as so applied); or
  - (c) The giving of evidence in any legal proceedings taken—
    - (i) Under or in relation to this order; or

(ii) In relation to this order, under or in relation to the Commodity Levies Act 1990 (as so applied).

(3) Nothing in subclause (1) of this clause prevents the Company from disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes.

(4) Nothing in subclause (1) of this clause prevents the Company from disclosing or using any information (other than information relating to an identifiable southern scallop quota owner) obtained from a ballot held before the commencement of this order.

(5) Nothing in subclause (1) of this clause prevents the Company from disclosing or using any information with the consent of every southern scallop quota owner to whom or which it relates.

**16. Conscientious objectors**—Any quota owner 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; and, in that case, the chief executive shall cause it to be paid to the Company.

#### *Mediation in Case of Dispute*

**17. Appointment of mediator**—(1) If a dispute arises as to—

(a) Whether or not any person is required to pay the levy; or

(b) The amount of levy money any person is required to pay,—  
any party to the dispute may ask the President of the New Zealand Society of Chartered Accountants to appoint a person to organise and preside at a conference of the parties to the dispute, and 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 do so.

(2) The mediator's appointment shall be determined if—

(a) The parties to the dispute have resolved the dispute by agreement; or

(b) The parties have not resolved the dispute by agreement, and the mediator has resolved it by coming to one or more findings in relation to it.

**18. Remuneration of mediator**—(1) Subject to subclause (2) of this clause, a mediator shall be paid remuneration by way of fees and allowances agreed by the parties to the dispute concerned.

(2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the New Zealand Society of Accountants, or a person authorised by the President to do so, shall—

(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 is to pay.

(3) Each party shall pay to the mediator the amount fixed by the President or authorised person and specified as an amount to be paid by that party.

**19. Time and place of conference**—Every conference of the parties to a dispute organised by a mediator shall be held on a day and at a time and place fixed by the mediator and notified in writing to the parties.

**20. Conference to be held in private**—Except as provided in clause 21 of this order, only the parties to a dispute and the mediator may attend a conference of those parties organised by the mediator.

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

**22. Right to be heard**—Every party to a dispute, and every representative of such a party allowed by the mediator to attend a conference organised by a mediator, may be heard at the conference.

**23. Evidence**—(1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally 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 enable a dispute to be settled or resolved.

(3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

**24. Mediator may determine dispute in certain cases**—If—

(a) The mediator has organised and presided at a conference of the parties but the dispute has not been settled; or

(b) The mediator believes that the parties are unlikely to settle the dispute, whether or not they confer directly,—

the mediator may resolve the dispute for them, and give each of them a written notice of the mediator's decision and the reasons for that decision.

**25. Appeal to District Court**—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 24 of this order may appeal to a District Court against the decision.

(2) The appeal shall be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time a District Court Judge allows.

(3) The Registrar of the Court shall—

(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 may 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 shall not operate as a stay of any process for the enforcement of the decision appealed against.

MARIE SHROFF,  
Clerk of the Executive Council.

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## EXPLANATORY NOTE

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

This order, which comes into force on 15 August 1996, imposes a levy on southern scallops landed to licensed fish receivers. The levy is payable to Challenger Scallop Enhancement Company Limited.

The scallop on which the levy is payable is the mollusc *Pecten novaezelandiae* (other than scallop spat) taken from the Southern Scallop Fishery, as that fishery is described in Part I of Schedule 1b to the Fisheries Act 1983.

Unless earlier revoked or extended, the order will expire 6 years after the date of its making by virtue of section 13 of the Commodity Levies Act 1990.

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

Date of notification in *Gazette*: 18 July 1996.

This order is administered in the Ministry of Fisheries.