



**FISHERIES (CATCH AGAINST QUOTA) AMENDMENT
REGULATIONS 1997**

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 25th day of August 1997

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 89 of the Fisheries Act 1983, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations:

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Fisheries (Catch Against Quota) Amendment Regulations 1997, and are part of the Fisheries (Catch Against Quota) Regulations 1993* (“the principal regulations”).

(2) These regulations come into force on 1 September 1997.

2. Interpretation—Regulation 2 of the principal regulations is amended by adding as subclause (2) the following subclause:

“(2) For the purposes of this order,—

“(a) Where the end-date of a lease of quota (whether a head lease or a sublease) is the same as that of a subsequent sublease of the same or part of the same quota then, for all purposes except those of paragraphs (a) to (c) in the Third Schedule, the

*S.R. 1993/28

Amendment No. 1: S.R. 1994/43

subsequent sublease is to be treated as having expired first immediately before the other lease or sublease:

“(b) Where the end-date of a lease or sublease of quota is affected by another quota transaction (whether by the specific alteration of the term of the lease or by operation of law),—

“(i) The catch allocation priorities in relation to the quota and the period up until the coming into effect of the quota transaction are to be determined having regard to the end-date in existence before the coming into effect of the quota transaction; and

“(ii) In the case of a transaction that specifically alters the term of the lease or sublease, that transaction is to be treated for the purposes of determining allocation of catch as having come into effect immediately before any other transaction taking effect on the same day that transfers or leases or subleases that quota.”

3. Right of review—Regulation 7 (3) of the principal regulations is amended by revoking paragraph (f), and substituting the following paragraph:

“(f) *Category 5B: Error in Transfer of Catch:*

A belief that the matters in the notification are incorrect because of the application of the notional catch allocation process, or the application of the sequential prescription in regulation 2 (2) (b) (ii) in relation to transactions specifically altering the term of a lease or sublease, in circumstances where it was the clear intention of the parties that such allocation or sequencing should not apply.”

4. Second Schedule amended—Rule 2A of the Second Schedule of the principal regulations (as substituted by section 317 (1) of the Fisheries Act 1996) is amended by revoking paragraph (a), and substituting the following paragraph:

“(a) All quota parcels, and the catch rights of those parcels, that are owned and held by a quota owner unencumbered by a lease interest held by any other person; and”.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 September 1997, amend the Fisheries (Catch Against Quota) Regulations 1993 to clarify certain matters in relation to catch allocation priorities.

Firstly, quota that is both owned and held by a fisher outright is not to be amalgamated in the same parcel as quota that is also owned and held by the fisher but is held only by virtue of a lease back from another person.

Secondly, where 2 leases of quota have the same end-date, the subsequent lease is to be treated as having expired first, even if for only a moment. This presumption does not however apply for the purpose of determining catch allocation priorities between leases as set out in paragraphs (a) to (c) in the Third Schedule of the principal regulations.

Thirdly, where the end-date of a lease is changed by virtue of another quota transaction (which could be a specific amendment to the term of the lease, or the extinction of the lease by operation of law), that original end-date is to be used for the purpose of determining catch allocation priorities up until the time the transaction takes effect.

Fourthly, where a specific amendment is made to the term of a lease or sublease of quota, that amendment is to be treated as having come into effect immediately before any other transaction taking effect on the same day that transfers or leases or subleases that quota. This presumption can however be overridden where it is the clear intention of the parties that it should not apply (see *regulation 3*).

The date of commencement of the regulations is the day after the "appointed date" that determines the period of application of sections 5 and 6 of the Fisheries (Quota Operations Validation) Act 1997.

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

Date of notification in *Gazette*: 28 August 1997.

These regulations are administered in the Ministry of Fisheries.