



**THE FISHERIES (CATCH AGAINST QUOTA)  
REGULATIONS 1993**

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CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 8th day of March 1993

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

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ANALYSIS

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REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Fisheries (Catch Against Quota) Regulations 1993.

(2) These regulations shall be deemed to have come into force on the 1st day of October 1990.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“The Act” means the Fisheries Act 1983:

“Allocated catch” means landed catch allocated to catch rights held by a person (including catch rights represented by quota parcels):

“Allocation of catch” means the procedure whereby the available catch rights of a person (including catch rights represented by quota parcels) are reduced by a given quantity of landed catch; and “allocated” and “to allocate” have corresponding meanings:

“AAC” means the annual allowable catch for scallops specified under section 28zj of the Act:

“Annual balance” means the statement of the total available catch rights held by any holder of quota immediately before the commencement of a fishing year:

“Available catch rights” means the catch rights against which landed catch has not been allocated:

“Basic catch rights” means the rights to take fish, expressed in tonnes, arising from holding quota; but does not include those rights to take more fish than the tonnage specified in the quota, arising through the operation of section 28v of the Act:

“By-catch trade-off” means the use, pursuant to section 28zG of the Act, of a lease to the Crown of a given quantity of quota of one species, in lieu of paying a deemed value demand for the taking of a given quantity of another quota species:

“CAAQ” or “counting against another’s quota” means the use of another person’s quota, in the circumstances specified in section 105A (2)(e)(ii) or section 28zF of the Act, as part of a possible defence to the unauthorised taking of quota species or to redeem or remit a deemed value payment or demand:

“Catch allocation priority” means the order of priority in which unallocated catch is to be allocated against catch rights, as set out in the Third Schedule to these regulations:

“Catch right” means the right to catch a certain amount of quota species fish, being a right derived from holding quota (being an established underfishing entitlement, a core catch right, an underfishing right, or an overfishing right); and “catching right” and “catch rights” have corresponding meanings:

“Catch specification”, in relation to the transfer of quota, means a statement in the approved transfer form completed by the parties to the transfer of the amount of catch to be transferred with quota:

“Closing balance” means a statement of available catch rights held by a holder of quota at the end of a month, after the allocation of landed catch to that quota in accordance with these regulations; but does not include any overfishing rights available to the holder:

“Core catch rights” means that portion of the basic catch rights available in any fishing year after taking account of any previous year’s lawful overcatch; but does not include any underfishing rights:

- “Deemed value” means liability to pay the deemed value of any fish for any detected catch in excess of quota, in accordance with section 28ZD of the Act:
- “Detected catch in excess of quota” means a quantity of unallocated catch remaining after all available catch rights have been exhausted in any month by the allocation of landed catch for that month:
- “Established underfishing entitlement” means the right of a holder of quota to take fish subject to a quota management system in a particular fishing year, by virtue of section 28v (6) of the Act or section 22 (2) of the Fisheries Amendment Act 1990, through the failure to exercise the underfishing right relating to that quota in the previous fishing year:
- “FAAQ” means the use of a written authority, of the type specified in section 28ZA (2) (c) of the Act, to take fish under the authority of quota held by another person:
- “GMITQ” means guaranteed minimum individual transferable quota determined and allocated under section 28F of the Act:
- “GMTTQ” means guaranteed minimum transferable term quota determined and allocated under section 28FA of the Act:
- “Holder” means a person who—
- (a) Is the owner or lessee of quota, as noted on the quota register; or
  - (b) Has been allocated IQ; or
  - (c) Is entitled to take quota species fish under a special permit;—
- and ‘holds’ and ‘held’ have corresponding meanings.
- “IQ” or “individual quota” means the right to take a specified quantity of a specified species of fish by virtue of an allocation made by the Minister by notice in the *Gazette* under regulations made under section 89 (1) (g) of the Act:
- “ITQ” means individual transferable quota allocated under section 28o or section 28zk of the Act:
- “Landed catch” means a quantity of quota species fish reported to the Director-General by a quota holder, on a quota management report under section 66 of the Act and the Fisheries (Reporting) Regulations 1990, as having been landed during a particular period of time:
- “Landed catch date”, in relation to landed catch, means the last day of the period to which the quota management report relates:
- “Lawful overcatch” means catch taken as a result of exercising an overfishing right:
- “Non-transferable right” means a right to take fish pursuant to GMITQ, GMTTQ, special permit, or IQ:
- “Notional catch allocation” means, in relation to the transfer of quota, the process of temporarily allocating landed catch (for the relevant month) against available catch rights held by the transferor at the time of transfer, in order to determine the quantity, if any, of landed catch to be actually allocated against the catch rights being transferred to the transferee:
- “Opening balance” means total available catch rights less any overfishing right:
- “Overfishing right” means the right under subsection (1) or subsection (2) of section 28v of the Act or section 22 (2) of the Fisheries

Amendment Act 1990 to take a specified amount of quota species fish in excess of the tonnage of quota held:

“Quota” means any GMITQ, ITQ, GMTTQ, TTQ, or IQ, or any right to take, under a special permit, any quota species fish:

“Quota species fish” means,—

(a) In the case of GMITQ, ITQ, GMTTQ, or TTQ, any species or class of fish, aquatic life, or seaweed declared, under Part IIa or Part IIb of the Act, to be subject to a quota management system:

(b) In the case of IQ, the relevant species specified in the regulation establishing the quota:

(c) In the case of a special permit, the species (being a species specified in either paragraph (a) or paragraph (b) of this definition) authorised to be taken under the permit:

“Quota event” means—

(a) Any transaction recorded on the quota register; or

(b) Any allocation of GMITQ or GMTTQ; or

(c) Any issue of a special permit, IQ, or lawful use of a CAAQ;  
or

(d) Any increase or decrease of the catch rights available to a quota holder, through a TACC or AAC increase or decrease, or through forfeiture or assignment of quota:

“Quota Register” means the register maintained by the Director-General under section 28F or section 28ZR of the Act:

“QMR” or “quota management report” means the report required to be completed and furnished by quota holders under regulation 6 of the Fisheries (Reporting) Regulations 1990 or section 66 of the Act:

“Special permit” means a permit, authorising any person to take a quota species fish, issued under section 64 of the Act:

“TACC” means the total allowable commercial catch specified under section 28c or section 28CA of the Act:

“Total available catch rights” means,—

(a) As at the beginning of a fishing year, the total of available catch rights for a holder of quota, after taking into account—

(i) The catch allocated to that quota in the previous year;  
and

(ii) Other changes to catch rights arising from the operation of the Act:

(b) As at the beginning of any month other than the beginning of a fishing year, the total of available catch rights for a holder of quota after taking into account the catch allocated against those catch rights since the beginning of that fishing year:

“TTQ” means transferable term quota allocated under section 28OA of the Act:

“Unallocated catch” means landed catch not yet allocated to catch rights:

“Underfishing right” means that portion of the basic catch rights which, if not exercised in any fishing year, may be carried forward to the subsequent fishing year under section 28v (6) of the Act.

**3. Catch against quota rules in respect of period 1 October 1990 to 31 March 1993**—In respect of the period commencing on the 1st day of October 1990 and ending with the close of the 31st day of March 1993,—

- (a) Landed catch shall be counted against or allocated to catch rights held by any quota holder; and
- (b) Underfishing rights and overfishing rights shall be calculated; and
- (c) Catch rights and allocated catch shall be transferred or re-allocated on the occurrence of a quota event; and
- (d) Changes in catch rights, consequent on quota events, shall be calculated,—

as the case may be, in the manner specified in the First Schedule to these regulations.

**4. Catch against quota rules applying after 31 March 1993**—After the 31st day of March 1993,—

- (a) Landed catch shall be counted against or allocated to catch rights held by any quota holder; and
- (b) Underfishing rights and overfishing rights shall be calculated; and
- (c) Catch rights and allocated catch shall be transferred or re-allocated on the occurrence of a quota event; and
- (d) Changes in catch rights, consequent on quota events, shall be calculated,—

as the case may be, in the manner specified in the Second Schedule to these regulations.

**5. Cases where rules do not provide for particular quota event**—

(1) Subject to subclause (2) of this regulation, where—

(a) Either—

(i) A quota event has occurred (being an event occurring through the action of a person acting in accordance with the Act and any regulations made under the Act); or

(ii) A person has notified the Director-General or the Ministry of landed catch; and

(b) The specific rules in the applicable Schedule to these regulations do not specify the manner in which the catch rights should be calculated, or the manner and order in which landed catch is to be allocated to available catch rights,—

the Director-General may calculate catch rights and allocate landed catch in a manner consistent with the general rules of that Schedule and the Act.

(2) Before calculating catch rights or allocating catch under subclause (1) of this regulation, the Director-General shall—

(a) Afford affected persons an opportunity to be heard on the proposal; and

(b) Have regard to any submissions made by or on behalf of affected persons.

**6. Notification of quota balances**—The Director-General may, after calculating the catch rights of any holder in accordance with the rules specified in these regulations, notify that holder of any of the following matters in relation to the holder's quota:

(a) The holder's opening balance:

- (b) Any amendments to the holder's opening balance as a consequence of any decision made by the Director-General made under regulation 8 of these regulations:
- (c) The amount of landed catch allocated to the holder's quota during any month, year, or other period:
- (d) The amount of established underfishing rights held by the holder at the end of any month or year:
- (e) The amount of lawful overcatch that has occurred during any month or year:
- (f) The amount of overfishing rights remaining at the end of any month or year:
- (g) Any increases or decreases of quota or catch rights occurring as a result of any quota event:
- (h) Any other matters the Director-General considers could assist the holder to meet the holder's obligations under the Act or regulations made under the Act.

**7. Right of review**—(1) Any holder who receives a notification under regulation 6 of these regulations relating to landed catch notified, or a quota event occurring after the 31st day of March 1993, or any calculation made in accordance with these regulations in respect of such catch or event, may, subject to this regulation, within 21 days after receipt of the notification, seek a review of any matter stated in the notification.

(2) Every request for a review under this regulation shall be lodged at the office of the Registrar of Fisheries at which the holder's QMR was furnished.

(3) A request for a review under this regulation shall be made on a form approved by the Director-General and shall specify the nature and category of the request, being one or more of the following:

- (a) *Category 1: Data Entry Error:*

A belief that the matters in the notification are incorrect because of an alleged Ministry error in transposing or transferring information contained in any quota management report:

- (b) *Category 2: Incorrect Catch Data:*

A belief that the matters in the notification are incorrect because of an alleged error made by a person in completing a quota management report, being an error occurring through the inaccurate transposition or calculation from or reliance on other records required to be completed under the Act or regulations made under the Act:

- (c) *Category 3: Catch Attributed To Wrong Entity:*

A belief that the matters in the notification are incorrect because of an alleged error in completing a quota management report being an error concerning—

- (i) Fish taken under the authority of a FAAQ agreement; or
- (ii) Fish counted against another person's quota as part of a possible defence under section 105A (2) of the Act or as required by section 28ZA (4) or section 28ZF (2) (b) (ii) of the Act; or
- (iii) Fish surrendered to the Crown pursuant to section 105A (1) of the Act:

- (d) *Category 4: Incorrectly Processed Quota Transaction:*

A belief that the matters contained in the notification are incorrect because of an alleged Ministry error in implementing a quota event:

(e) *Category 5A: Other Errors:*

A belief that the matters contained in the notification are incorrect because of an alleged error made by the Director-General or the Ministry, not being an error of the type described in any of paragraphs (a) to (d) of this subclause:

(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, in circumstances where it was the clear intention of the parties that such allocation should not apply.

(4) Before assessing any request for a review under this regulation, the Director-General may require the holder to supply such further information as the Director-General considers necessary to enable him or her to properly assess the request.

**8. Power to correct errors or rectify omissions—**(1) Where the Director-General is satisfied, either as a result of investigating a request to review correctly lodged by a quota holder, or as a result of enquiries generated by Ministry officers, that,—

(a) In the case of categories 1 to 5A, any of the matters in the notification are incorrect as a result of a genuine error or omission; or

(b) In the case of category 5B,—

(i) The amount of catch allocated to the transferee's catch rights was clearly contrary to the intentions of the parties to the transfer, as notified to the Director-General in writing on the transfer document; and

(ii) The landed catch which is the subject of the request to review and was allocated to the transferee's quota, was taken by the transferor after the effective date of the transfer; and

(iii) The transferor acknowledges the landed catch was not taken under the authority of the transferred quota; and

(iv) The transferor had sufficient other catch rights available against which that landed catch could be allocated,—

the Director-General may amend any of the matters contained in the notification so as to correct the error or omission.

(2) Where the Director-General acts under subclause (1) of this regulation to correct any of the matters contained in a notification, he or she may, subject to subclause (3) of this regulation, also consequentially amend any matter notified to another person, where that matter is required to be amended as a result of the application of the rules in these regulations and the alteration of the first matter.

(3) Notwithstanding subclause (2) of this regulation, the Director-General shall not consequentially amend the matters applicable to any other party where the change would occur more than 2 months after the receipt of the request for a review giving rise to the change or (in the case of an enquiry generated by the Ministry) more than 2 months after the original error or omission occurred.

(4) Every amendment under subclause (2) of this regulation shall be notified as soon as practicable in writing to the quota holder concerned and to any other person whom the Director-General considers should be notified.

(5) Where the Director-General has considered and determined a request for a review, or a matter raised on his or her own volition, the Director-

General's decision shall be conclusive as to the matters the subject of the objection or enquiry.

(6) Notwithstanding subclauses (2), (3), and (5) of this regulation, no calculation or statement of the catch rights of any person whether notified or not shall be conclusive where the calculation or statement was based on false or misleading information supplied by a quota holder.

**9. Catch allocation priorities**—For the purposes of these regulations, landed catch shall be allocated according to the priorities set out in the Third Schedule to these regulations.

**10. Resource rentals not affected**—Nothing in these regulations, and no calculation of catch rights achieved through their application, shall apply to or be used for the purposes of calculating any resource rental refund or remission under section 28zc (4A) of the Act.

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## SCHEDULES

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Reg. 3

### FIRST SCHEDULE

CATCH AGAINST QUOTA RULES IN RESPECT OF PERIOD 1 OCTOBER 1990 TO 31 MARCH 1993

The following rules shall be applied, for the purposes of regulation 3 of these regulations, for each month or part of a month to which the relevant QMR relates.

Rules 8 to 18 of this Schedule shall be applied sequentially for each day of the month concerned.

Rules 19 to 23 of this Schedule shall be applied sequentially in respect of the end of the month concerned.

#### *General Rules*

1. For the purposes of allocating landed catch to catch rights and calculating the transfer of catch rights consequent on any quota event, the catch rights of a holder may be represented by quota parcels.

A quota parcel is a representation of the types of catch right held by a holder and is designed to ensure that, on the transfer of quota, the catch rights being transferred are representative of the catch rights held by the transferor.

Where quota is being transferred the tonnage of catch rights and the categories to be transferred shall be transferred proportionately to the tonnages applicable to the quota from which the transfer occurs.

Thus if a holder of 10 tonnes of quota transfers 5 tonnes, the quota parcel which represents the categories of catch rights associated with the 5-tonne parcel has the same categories of catch rights as the 10-tonne quota parcel. The catch rights shall be transferred proportionately, but available catch rights shall be transferred as specified.

A given quota holding may be represented by one or more quota parcels.

2. Because the catch right categories of given quota parcels may be the same, but the available catch rights may be different, no amalgamation of



FIRST SCHEDULE—*continued*CATCH AGAINST QUOTA RULES IN RESPECT OF PERIOD 1 OCTOBER 1990 TO  
31 MARCH 1993—*continued*

quota parcels shall occur unless the categories of catch rights are the same and the available catch right categories are the same.

3. In all cases where landed catch has been allocated to specific quota parcels it will remain allocated to those quota parcels for the remainder of the fishing year, unless re-allocated to another quota parcel in accordance with the rules set out in this Schedule. Any re-allocation of landed catch as a result of a transfer of quota can only be to quota held by the transferor at the time at which the transfer occurs.

4. Except as otherwise provided in this Schedule, all landed catch shall be treated as being available for allocation on the last day of the month or part of a month to which the QMR relates.

5. Lessees or sub-lessees of quota leased or sub-leased after the 1st day of October 1990 shall receive catch rights equal to the tonnage of fish specified in the lease or sub-lease, provided that any overfishing or established underfishing entitlement rights available to lessees or sub-lessees as a result of leases or sub-leases registered prior to the 1st day of April 1990 shall be preserved.

6. Any owner of quota may lease only those catch rights forming the basic catch rights of the owner's quota holding.

*Specific Rules*

7. The following rules shall be applied in respect of landed catch for each month or part of a month to which the relevant QMR relates. Rules 8 to 18 shall be applied sequentially for each day of the period concerned.

8. (1) Establish the total available catch rights.

(2) In the case of the first month of the fishing year, the total available catch rights shall be calculated using the previous year's annual balance and this exercise shall include—

(a) Setting the core catch rights for the coming year in the light of the lawful overcatch in the previous year; and

(b) Setting the established underfishing entitlement for the coming year; and

(c) Where applicable, setting the overfishing right for the coming year.

(3) In the case of any other period, the total available catch rights shall be the total available catch rights as at the end of the last period for which catch has been allocated.

9. Implement any amendments necessary to carry out the Director-General's decisions under regulation 8 of these regulations.

*Calculate and implement changes in catch rights occurring through transactions other than transfers or leases*

10. Decrease catch rights where necessary as a result of TACC or AAC decreases.

11. Increase catch rights where necessary as a result of increases in non-transferable quota holdings.

FIRST SCHEDULE—*continued*CATCH AGAINST QUOTA RULES IN RESPECT OF PERIOD 1 OCTOBER 1990 TO 31 MARCH 1993—*continued*

12. Decrease non-transferable catch rights where necessary as a result of decreases in non-transferable rights and allocate catch against them as follows:

- (a) Calculate the notional catch allocation for each quota parcel by allocating the unallocated catch against available catch rights held at the time of the decrease in non-transferable rights in accordance with the catch allocation priority:
- (b) Allocate the unallocated catch against the non-transferable right that is being decreased.

13. If GMITQ or IQ is being replaced by ITQ, the catch rights for the ITQ shall be set as from the date on which the ITQ was issued and the catch previously allocated against the GMITQ or IQ shall be re-allocated against the ITQ catch rights.

14. If GMTTQ is being replaced by TTQ, the catch rights for the TTQ shall be set as from the TTQ commencement date and catch previously allocated against the GMTTQ shall be allocated to the TTQ catch rights.

15. Increase quota rights and catch rights where necessary as a result of TACC or AAC increases.

*Calculate and implement changes in catch rights through transfer or leases*

16. If quota has been transferred or leased out during the month, allocate unallocated catch against that quota or re-allocate allocated catch in accordance with the following provisions:

- (a) All leases shall pass to the lessee free of catch, that is to say, the catch rights shall be equal to the tonnage specified in the lease. Where a parcel to be leased has already had catch allocated to it, that catch shall be re-allocated, if possible, to any other available catch rights held by the lessor at the time the lease took effect. Such re-allocation shall be made in accordance with the catch allocation priority. If the catch to be re-allocated is more than the available catch rights held by the lessor at that time, the difference shall be deemed to be detected catch in excess of quota:

- (b) Where the transfer has a catch specification, the quota shall be transferred with the catch rights specified, subject to the following provisions:

- (i) In the case of transfers with a catch specification of less than the landed catch already allocated to the quota parcels being transferred and caught against them at the time of transfer, the catch already allocated to the quota parcels being transferred (except catch allocated to extinguish an established underfishing entitlement) shall be re-allocated, as necessary, to available catch rights in quota parcels owned by the transferor but not leased out at the time of transfer. If there are insufficient such catch rights against which to re-allocate the catch from the quota parcel being transferred, the excess shall be allocated to the catch right being transferred, that is to say the transferee will receive less available catch rights than specified in the transfer:

FIRST SCHEDULE—*continued*CATCH AGAINST QUOTA RULES IN RESPECT OF PERIOD 1 OCTOBER 1990 TO 31 MARCH 1993—*continued*

(ii) In the case of transfer with a catch specification that would give the transferee more catch than already allocated or caught against the quota parcels being transferred, sufficient and if necessary all, catch shall be re-allocated from quota parcels owned but not leased at the time of transfer (except catch allocated to extinguish an established underfishing entitlement) or from landed catch not yet allocated for the month to the quota parcel being transferred:

- (c) Where the transfer does not contain a catch specification, the transfer shall be treated as a transfer, with no catch, to the transferee. The process of re-allocation of catch shall be the same as for an actual catch specification but, where there are 2 or more transfers on the same day, the transfers with an actual catch specification shall be actioned first.

17. In the case of CAAQ agreements, allocate the detected catch in excess of quota against the catch rights acquired under the CAAQ agreement, in accordance with the catch allocation priority, to the extent, if necessary, of the available catch rights on the date on which the CAAQ agreement was effected.

18. Process leases or sub-leases that are ending as follows:

- (a) If there are any available catch rights, allocate unallocated catch against those rights until they are exhausted:  
 (b) Transfer remaining catch rights (if any) to the lessor.

*End of Month Processing*

19. Calculate remaining unallocated catch, that is to say, all landed catch that has not been allocated to quota transferred or non-transferable rights ending during the month.

20. Allocate remaining unallocated catch to available catch rights existing at the end of the month in accordance with the catch allocation priority.

21. If any unallocated catch remains after all available catch rights are exhausted, such excess catch shall be deemed to be detected catch in excess of quota.

22. Process by-catch trade-off leases as follows:

- (a) Calculate the amount of detected catch in excess of quota, that is to say, use the quota holder's statement (in the offer to lease made pursuant to section 28ZC (1) of the Act) of the amount of catch in excess of quota:  
 (b) Multiply the quantity of detected catch in excess of quota by the relevant rates applicable to the by-catch trade off as specified in the relevant notice in the *Gazette*:  
 (c) Allocate the resultant amount against the available catch rights under the by-catch trade-off lease:  
 (d) Reduce or nullify the detected catch in excess of quota.

23. Determine the closing balance, available overfishing right, and detected catch in excess of quota remaining after all processes above have been completed.

Reg. 4

## SECOND SCHEDULE

CATCH AGAINST QUOTA RULES APPLYING AFTER  
31 MARCH 1993

The following rules shall be applied, for the purposes of regulation 4 of these regulations, for each month or part of a month to which the relevant QMR relates.

Rules 8 to 18 of this Schedule shall be applied sequentially for each day of the month concerned.

Rules 19 to 23 of this Schedule shall be applied sequentially in respect of the end of the month concerned.

*General Rules*

1. For the purposes of allocating landed catch to catch rights and calculating the transfer of catch rights consequent on any quota event, the catch rights of a holder may be represented by quota parcels.

A quota parcel is a representation of the types of catch right held by a holder and is designed to ensure that, on the transfer of quota, the catch rights being transferred are representative of the catch rights held by the transferor.

Where quota is being transferred the tonnage of catch rights and the categories to be transferred shall be transferred proportionately to the tonnages applicable to the quota from which the transfer occurs.

Thus if a holder of 10 tonnes of quota transfers 5 tonnes, the quota parcel which represents the categories of catch rights associated with the 5-tonne parcel has the same categories of catch rights as the 10-tonne quota parcel. The catch rights shall be transferred proportionately, but available catch rights shall be transferred as specified.

A given quota holding may be represented by one or more quota parcels.

2. Because the catch right categories of given quota parcels may be the same, but the available catch rights may be different no amalgamation of quota parcels shall occur unless the categories of catch rights are the same and the available catch right categories are the same.

3. In all cases where landed catch has been allocated to specific quota parcels it will remain allocated to those quota parcels for the remainder of the fishing year, unless re-allocated to another quota parcel in accordance with the rules set out in this Schedule. Any re-allocation of landed catch as a result of a transfer of quota can only be to quota held by the transferor at the time at which the transfer occurs.

4. Except as otherwise provided in this Schedule, all landed catch shall be treated as being available for allocation on the last day of the month or part of a month to which the QMR relates.

5. Lessees or sub-lessees of quota leased or sub-leased after the 1st day of October 1990 shall receive catch rights equal to the tonnage of fish specified in the lease or sub-lease, provided that any overfishing or established underfishing entitlement rights available to lessees or sub-lessees as a result of leases or sub-leases registered prior to the 1st day of April 1990 shall be preserved.

SECOND SCHEDULE—*continued*CATCH AGAINST QUOTA RULES APPLYING AFTER  
31 MARCH 1993—*continued*

6. Any owner of quota may lease only those catch rights forming the basic catch rights of the owner's quota holding.

*Specific Rules*

7. The following rules shall be applied in respect of landed catch for each month or part of a month to which the relevant QMR relates. Rules 8 to 18 shall be applied sequentially for each day of the period concerned.

8. (1) Establish the total available catch rights.

(2) In the case of the first month of the fishing year, the total available catch rights shall be calculated using the previous year's annual balance and this exercise shall include—

(a) Setting the core catch rights for the coming year in the light of the lawful overcatch in the previous year; and

(b) Setting the established underfishing entitlement for the coming year; and

(c) Where applicable, setting the overfishing right for the coming year.

(3) In the case of any other period, the total available catch rights shall be the total available catch rights as at the end of the last period for which catch has been allocated.

9. Implement any amendments necessary to carry out the Director-General's decisions under regulation 8 of these regulations.

*Calculate and implement changes in catch rights occurring through transactions other than transfers or leases*

10. Decrease catch rights where necessary as a result of TACC or AAC decreases.

11. Increase catch rights where necessary as a result of increases in non-transferable quota holdings.

12. Decrease non-transferable catch rights where necessary as a result of decreases in non-transferable rights and allocate catch against them as follows:

(a) Calculate the notional catch allocation for each quota parcel by allocating the unallocated catch against available catch rights held at the time of the decrease in non-transferable rights in accordance with the catch allocation priority;

(b) Allocate the unallocated catch against the non-transferable right that is being decreased.

13. If GMITQ or IQ is being replaced by ITQ, the catch rights for the ITQ shall be set as from the date on which the ITQ was issued and the catch previously allocated against the GMITQ or IQ shall be re-allocated against the ITQ catch rights.

14. If GMTTQ is being replaced by TTQ, the catch rights for the TTQ shall be set as from the TTQ commencement date and catch previously allocated against the GMTTQ shall be allocated to the TTQ catch rights.

15. Increase quota rights and catch rights where necessary as a result of TACC or AAC increases.

SECOND SCHEDULE—*continued*CATCH AGAINST QUOTA RULES APPLYING AFTER  
31 MARCH 1993—*continued**Calculate and implement changes in catch rights through transfer or leases*

16. If quota has been transferred or leased out during the month, allocate unallocated catch against that quota or re-allocate allocated catch in accordance with the following provisions:

- (a) All leases shall pass to the lessee free of catch, that is to say, the catch rights shall be equal to the tonnage specified in the lease. Where a parcel to be leased has already had catch allocated to it, that catch shall be re-allocated, if possible, to any other available catch rights held by the lessor at the time the lease took effect. Such re-allocation shall be made in accordance with the catch allocation priority. If the catch to be re-allocated is more than the available catch rights held by the lessor at that time, the difference shall be deemed to be detected catch in excess of quota:
- (b) Where the transfer has a catch specification, the quota shall be transferred with the catch rights specified, subject to the following provisions:
  - (i) In the case of transfers with a catch specification of less than the landed catch already allocated to the quota parcels being transferred and caught against them at the time of transfer, the catch already allocated to the quota parcels being transferred (except catch allocated to extinguish an established underfishing entitlement) shall be re-allocated, as necessary, to available catch rights in quota parcels owned by the transferor but not leased out at the time of transfer. If there are insufficient such catch rights against which to re-allocate the catch from the quota parcel being transferred, the excess shall be allocated to the catch right being transferred, that is to say the transferee will receive less available catch rights than specified in the transfer:
  - (ii) In the case of transfer with a catch specification that would give the transferee more catch than already allocated or caught against the quota parcels being transferred, sufficient and if necessary all, catch shall be re-allocated from quota parcels owned but not leased at the time of transfer (except catch allocated to extinguish an established underfishing entitlement) or from landed catch not yet allocated for the month to the quota parcel being transferred:
- (c) Where the transfer does not contain a catch specification, the transfer shall be treated as a transfer, with no catch, to the transferee. The process of re-allocation of catch shall be the same as for an actual catch specification but, where there are 2 or more transfers on the same day, the transfers with an actual catch specification shall be actioned first.

17. In the case of CAAQ agreements, allocate the detected catch in excess of quota against the catch rights acquired under the CAAQ agreement, in accordance with the catch allocation priority, to the extent, if necessary, of the available catch rights on the date on which the CAAQ agreement was effected.

SECOND SCHEDULE—*continued*CATCH AGAINST QUOTA RULES APPLYING AFTER  
31 MARCH 1993—*continued*

18. Process leases or sub-leases that are ending as follows:

- (a) In the case of leases that expire on any date other than the last day of the fishing year,—
- (i) If there are any available catch rights from that lease, allocate unallocated catch against those rights until they are exhausted:
  - (ii) Transfer remaining catch rights (if any) to the lessor.
- (b) In the case of leases that expire on the last day of any fishing year, allocate unallocated catch against available catch rights until they are exhausted and then extinguish any remaining catch rights.

*End of Month Processing*

19. Calculate remaining unallocated catch, that is to say, all landed catch that has not been allocated to quota transferred or non-transferable rights ending during the month.

20. Allocate remaining unallocated catch to available catch rights existing at the end of the month in accordance with the catch allocation priority.

21. If any unallocated catch remains after all available catch rights are exhausted, such excess catch shall be deemed to be detected catch in excess of quota.

22. Process by-catch trade-off leases as follows:

- (a) Calculate the amount of detected catch in excess of quota, that is to say, use the quota holder's statement (in the offer to lease made pursuant to section 28zc (1) of the Act) of the amount of catch in excess of quota:
- (b) Multiply the quantity of detected catch in excess of quota by the relevant rates applicable to the by-catch trade off as specified in the relevant notice in the *Gazette*:
- (c) Allocate the resultant amount against the available catch rights under the by-catch trade-off lease:
- (d) Reduce or nullify the detected catch in excess of quota.

23. Determine the closing balance, available overfishing right, and detected catch in excess of quota remaining after all processes above have been completed.

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**THIRD SCHEDULE**  
**CATCH ALLOCATION PRIORITY**

In each case, catch shall be allocated to the relevant category of available catch rights until that category is exhausted, before the next category is used. Accordingly, for example, all available catch rights under leases shall be exhausted before catch is allocated to special permit catch rights. Similarly, the core catch rights shall not be used until the established underfishing entitlement is exhausted.

The priority order in which unallocated catch (or catch to be re-allocated) is to be allocated to available catch rights shall be determined according to the following rules and in the following order:

First, catch is to be allocated to leases as follows:

- (a) As between 2 leases, catch will be allocated first to the lease that ends soonest:
- (b) If lease expiry dates are the same, catch will first be allocated to the lease that started earliest:
- (c) If leases have the same commencement date and end date, catch will be allocated in such a way that the catch rights of each lease are exercised to the same extent.

Secondly, to special permits.

Thirdly, to IQ's.

Fourthly, to GMITQ and then to GMTTQ.

Fifthly, to owned quota.

Catch will be allocated, within catch right categories, in the following order:

First, to established underfishing entitlement:

Secondly, to core catch rights:

Thirdly, to underfishing rights:

Fourthly, to overfishing rights.

Where more than one quota parcel has available catch rights of the relevant category, the catch shall be allocated proportionately.

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 are deemed to have come into force on 1 October 1990, provide for the manner and order of allocating catch against quota.

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

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These regulations are administered in the Ministry of Agriculture and Fisheries.