



Fisheries (Deemed Value and Notification of Balances) Regulations 2001

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 17th day of September 2001

Present:

Her Excellency the Governor-General in Council

Pursuant to section 297 of the Fisheries Act 1996, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

1	Title	7	Annual balancing of catch against annual catch entitlement
2	Commencement	8	Calculation of annual deemed value liability
3	Interpretation	9	Adjustment where reported catch or annual catch entitlement amended or corrected
4	Chief executive to give commercial fishers monthly notice of their reported catch	10	Revocations
5	Monthly balancing of catch against annual catch entitlement		
6	Monthly calculation of interim deemed value liability		

Regulations

1 Title

These regulations are the Fisheries (Deemed Value and Notification of Balances) Regulations 2001.

2 Commencement

These regulations come into force on 1 October 2001.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Fisheries Act 1996

commercial fisher has the same meaning as in section 76(1) of the Act

liability, in relation to a person's liability to pay a deemed value amount, includes the situation where the fisher is in credit in relation to deemed value amounts, or is in balance (with no liability and no credit)

reported catch, in relation to a commercial fisher, means—

- (a) the catch reported on a monthly harvest return or monthly harvest return amendment (within the meaning of the Fisheries (Reporting) Regulations 2001); or
- (b) in any case where there is a conviction under section 230 or section 231 of the Act, or any regulations made under the Act, relating to a failure to furnish returns or the furnishing of false or misleading returns, the catch as assessed by the chief executive for the relevant period.

4 Chief executive to give commercial fishers monthly notice of their reported catch

- (1) As soon as practicable after the 15th day of each month, the chief executive must, for each stock for which a commercial fisher owns an annual catch entitlement or has reported catch during the current fishing year, notify the commercial fisher in writing of the following matters:
 - (a) the reported catch recorded by the chief executive against the commercial fisher for the stock for the previous month;
 - (b) any amended reported catch recorded by the chief executive for any earlier month in the same fishing year (if applicable);
 - (c) the total reported catch recorded by the chief executive against the commercial fisher for the stock for the current fishing year to the end of the previous month.

- (2) References in subclause (1) to the **current fishing year** and the **same fishing year** are to the fishing year in which the month specified in subclause (1)(a) falls.

5 Monthly balancing of catch against annual catch entitlement

- (1) For the purpose of determining a commercial fisher's liability or otherwise for interim deemed value amounts for any fishing year, the chief executive must calculate on a monthly basis whether the commercial fisher's annual catch entitlement for a stock exceeds the commercial fisher's reported catch for that stock in accordance with the following formula:

$$a - b = c$$

where—

- a is the annual catch entitlement owned by the commercial fisher at the close of the 15th day of the month following the month in respect of which the calculation is made
 - b is the commercial fisher's reported catch for the stock for the fishing year up to the end of the month in respect of which the calculation is made
 - c is the difference between the commercial fisher's annual catch entitlement for the stock and the commercial fisher's reported catch for the stock.
- (2) This regulation does not require a calculation for the last month of a fishing year, when an annual balancing and calculation of annual deemed value liability is required under regulations 7 and 8.

6 Monthly calculation of interim deemed value liability

- (1) If, under the calculation under regulation 5(1), the commercial fisher's annual catch entitlement for the stock exceeds or is equal to the commercial fisher's reported catch for the fishing year to the end of the month,—
- (a) the commercial fisher is not liable for any interim deemed value amount; and
 - (b) any interim deemed value liability previously demanded from the commercial fisher for the stock for the fishing year must be remitted to the commercial fisher (if not earlier remitted).

- (2) If, under the calculation under regulation 5(1), the commercial fisher's reported catch for the stock for the fishing year to the end of the month exceeds the commercial fisher's annual catch entitlement for the stock, the chief executive must calculate the amount of interim deemed value to be demanded from or remitted to the commercial fisher to obtain the result given by the following formula:

$$(c \times d) - e = f$$

where—

- c is the amount by which the commercial fisher's reported catch exceeds the commercial fisher's annual catch entitlement (as determined under regulation 5(1))
- d is the interim deemed value rate set for the stock by notice in the *Gazette* made under section 75 of the Act
- e is the amount of interim deemed value already demanded from the commercial fisher for the stock for the fishing year, and not earlier remitted
- f is the amount of interim deemed value that is to be demanded from (if f is positive) or remitted to (if f is negative) the commercial fisher in respect of the stock.

7 Annual balancing of catch against annual catch entitlement

For the purposes of determining a commercial fisher's liability or otherwise for an annual deemed value amount for any fishing year, the chief executive must calculate whether the commercial fisher's annual catch entitlement for a stock exceeds the commercial fisher's reported catch for that stock in accordance with the following formula:

$$g - h = i$$

where—

- g is the annual catch entitlement owned by the commercial fisher for that stock and that fishing year as at the close of the 15th day following the end of the fishing year
- h is the commercial fisher's reported catch for the stock for the fishing year
- i is the difference between the commercial fisher's annual catch entitlement for the stock and the commercial fisher's reported catch for the stock.

8 Calculation of annual deemed value liability

- (1) If under the calculation under regulation 7 the commercial fisher's annual catch entitlement for the stock exceeds or is equal to the commercial fisher's reported catch for the fishing year,—
- (a) the commercial fisher is not liable for any annual deemed value amount; and
 - (b) any interim deemed value liability previously demanded from the commercial fisher for the stock for the fishing year must be remitted to the commercial fisher (if not earlier remitted).
- (2) If under the calculation under regulation 7 the commercial fisher's reported catch for the stock for the fishing year exceeds the commercial fisher's annual catch entitlement for the stock, the chief executive must calculate the amount of annual deemed value to be demanded from or remitted to the commercial fisher to obtain the result given by the following formula:

$$(i \times j) - k = m$$

where, subject to subclause (4),—

- i** is the amount by which the commercial fisher's reported catch for the fishing year exceeds the commercial fisher's annual catch entitlement (as determined under regulation 7)
- j** is the annual deemed value rate set for the stock by notice in the *Gazette* made under section 75 of the Act
- k** is the amount of interim deemed value already demanded from the commercial fisher for the stock for the fishing year, and not earlier remitted
- m** is the amount of annual deemed value—
- (a) to be demanded from the commercial fisher in respect of the stock, if **m** is positive; or
 - (b) to be remitted to the commercial fisher in respect of previous interim deemed value amounts demanded, if **m** is negative.
- (4) If the stock concerned is one for which the Minister, under section 75(4) of the Act, has set different deemed value rates for different levels of catch in excess of annual catch entitlement, the amount represented by the expression (**i x j**) is to be determined by—

- (a) multiplying the amount of catch in excess in each relevant band by the appropriate deemed value rate; and
- (b) adding the results together.

9 Adjustment where reported catch or annual catch entitlement amended or corrected

- (1) Subclause (2) of this regulation applies where—
 - (a) the chief executive determines that a commercial fisher's reported catch or annual catch entitlement for any stock for a previous fishing year has changed; and
 - (b) the commercial fisher's liability (if any) for any annual deemed value amount for that fishing year has already been determined under regulation 8.
- (2) In such a case, the chief executive may recalculate the commercial fisher's liability or otherwise for an annual deemed value amount under regulation 8, and—
 - (a) if the recalculated liability exceeds that previously calculated, the chief executive must demand the difference from the commercial fisher;
 - (b) if the recalculated liability is less than that previously calculated, the difference must be remitted to the commercial fisher.
- (3) If the chief executive determines that a commercial fisher's reported catch for any stock has changed for a previous fishing year, the chief executive may issue a revised notification under section 80 of the Act. The notification must include—
 - (a) the amended reported catch for any month affected by the change; and
 - (b) the amended total reported catch for the fishing year.

10 Revocations

- (1) The following regulations are revoked:
 - (a) the Fisheries (Catch Against Quota) Regulations 1993 (SR 1993/28);
 - (b) the Fisheries (Form of Transfer or Lease of Quota) Regulations 1997 (SR 1997/173).
- (2) The regulations revoked by subclause (1)(a) continue to have effect on and after 1 October 2001 to the extent specified in sections 344(2) and 351 of the Act.

- (3) The regulations revoked by subclause (1)(b) continue to have effect in respect of leases of quota for the purposes of any of sections 28ZF, 28ZG, and 105A(2) of the Fisheries Act 1983, to the extent that they are expressed to take effect in the fishing year ending 30 September 2001.

Martin Bell,
Acting for 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 October 2001, provide for—

- monthly notification to commercial fishers of their reported catch;
 - a monthly balancing of reported catch against annual catch entitlement, with calculation of a fisher's interim deemed value liability where catch exceeds entitlement;
 - an annual balancing of catch against quota at the end of each fishing year, with calculation of a fisher's final liability to pay deemed value amounts where reported catch exceeds annual catch entitlement.
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Date of notification in *Gazette*: 20 September 2001.

These regulations are administered in the Ministry of Fisheries.
