

**Reprint
as at 10 September 2012**



**Commodity Levies
(Nelson–Marlborough Dredge
Oysters) Order 2001**

(SR 2001/235)

Commodity Levies (Nelson–Marlborough Dredge Oysters) Order 2001:
expired, on 10 September 2012, by clause 2A.

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 10th day of September 2001

Present:

Her Excellency the Governor-General 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 Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Fisheries, makes the following order.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Ministry of Fisheries.

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Order

- 1 Title**
This order is the Commodity Levies (Nelson–Marlborough Dredge Oysters) Order 2001.

2 Commencement

- (1) Clause 8 comes into force on the day after the date of this order's notification in the *Gazette*.
- (2) The rest of this order comes into force on the 28th day after the date of its notification in the *Gazette*.

Commodity Levies (Nelson–Marlborough Dredge Oysters) Order 2001: confirmed, on 15 December 2001, by section 6(g) of the Subordinate Legislation (Confirmation and Validation) Act 2001 (2001 No 99).

2A Extension and expiry

This order is extended until the close of 9 September 2012 and then expires.

Clause 2A: inserted, on 9 September 2006, by clause 4 of the Commodity Levies (Nelson–Marlborough Dredge Oysters) Amendment Order 2006 (SR 2006/234).

3 Interpretation

In this order, unless the context otherwise requires,—

company means the company known, on the commencement of the Commodity Levies (Nelson–Marlborough Dredge Oysters) Amendment Order 2006, as the Challenger Oyster Management Company Limited

levy means the levy imposed by clause 4

levy year—

- (a) means a period of 12 months beginning on 1 October and ending on 30 September; and
- (b) includes the period beginning on the 28th day after the date of this order's notification in the *Gazette* and ending on 30 September 2002

mediator means a person appointed under clause 22; and, in relation to a dispute, means a mediator appointed to resolve the dispute

Nelson–Marlborough dredge oyster has the meaning set out in section 2(1) of the Fisheries Act 1996

Nelson–Marlborough dredge oyster fishery has the meaning set out in section 2(1) of the Fisheries Act 1996

quota means individual transferable quota under the Fisheries Act 1996

quota owner—

- (a) means a person shown on the appropriate register kept under Part 8 of the Fisheries Act 1996 as the owner of quota in the Nelson–Marlborough dredge oyster fishery; but
- (b) does not include Crown.

Clause 3 **company**: amended, on 9 September 2006, by clause 5 of the Commodity Levies (Nelson–Marlborough Dredge Oysters) Amendment Order 2006 (SR 2006/234).

4 Levy imposed

- (1) A levy is imposed on all Nelson–Marlborough dredge oysters for which quota is owned by quota owners at the beginning of any levy year.
- (2) The levy is payable to the company.

5 Quota owners primarily responsible for paying levy

Quota owners are primarily responsible for paying the levy.

6 Levy paid at single rate

The levy must be paid at a single rate.

7 Basis of calculation of levy

- (1) The levy payable by a quota owner in a levy year must be calculated at a flat rate (expressed in cents) per 100 quota shares in the Nelson–Marlborough dredge oyster fishery that are owned by the quota owner.
- (2) The levy is calculated on the basis of quota shares owned,—
 - (a) for the levy year that commences in 2001, on 1 October 2001;
 - (b) for each subsequent levy year, at the beginning of the levy year.

8 Company must fix actual rate of levy

The company must fix the actual rate of the levy for a levy year at a general meeting held,—

- (a) for the levy year that commences in 2001, as soon as practicable after this clause comes into force and not later than the first day of the levy year:

- (b) for each subsequent levy year, not more than 6 months before the beginning of the levy year.

9 Rate if no rate fixed before beginning of levy year

If the company does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed by or under clause 8.

10 Maximum rate of levy

The maximum rate of levy is 30 cents per 100 quota shares.

11 Minimum rate of levy

The minimum rate of levy is 2.5 cents per 100 quota shares.

12 Notification of rate of levy

The company must notify a quota owner in writing of the rate of levy within 2 weeks after it is fixed.

13 Invoicing of levy

The company must invoice a quota owner for the levy as soon as practicable after the beginning of the levy year to which the levy relates.

14 When levy must be paid

The quota owner must have paid in total—

- (a) at least one-third of the levy by the close of the 20th day of the first month after the date of the invoice; and
- (b) at least two-thirds of the levy by the close of the 20th day of the second month after the date of the invoice; and
- (c) the whole levy by the close of the 20th day of the third month after the date of the invoice.

15 Additional levy payable if levy not paid on time

If an amount of levy has not been paid on or before the last day for payment under clause 14, the quota owner must pay to the company the amount of the levy that is outstanding as at the last day for payment plus 10% of that amount.

16 Levies must be spent by company

The company must spend or (pending expenditure) invest all levies paid to it.

17 Purposes for which levies must be spent

- (1) The company must spend levies for the purposes of enhancing and managing dredge oysters and dredge oyster harvesting rights in the Nelson–Marlborough dredge oyster fishery.
- (2) These purposes include, but are not limited to, the following matters:
 - (a) shellfish quality assurance, including sanitation and biotoxin programme management:
 - (b) research, including biological, environmental, and market research:
 - (c) enhancing and protecting dredge oyster stocks and dredge oyster fishing rights:
 - (d) developing fishery management rules:
 - (e) developing and providing fishery management advice:
 - (f) administering harvesting rights and organisational activities, and administering legal obligations.

18 Conscientious objectors

A 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 must ensure that it is paid to the company.

19 Non-disclosure of information

- (1) An officer or employee of the company must not disclose (except to another officer or employee of the company) information obtained—
 - (a) under or because of 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 affect or prevent—

- (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) under the Commodity Levies Act 1990 (as so applied) in relation to this order.
- (3) Subclause (1) does not prevent the company from—
- (a) disclosing or using information (not being information relating to an identifiable person) obtained from a ballot held before the commencement of this order; or
 - (b) disclosing or using information (not being information relating to an identifiable person) for statistical and research purposes; or
 - (c) disclosing or using information with the consent of every identifiable person to whom it relates.

20 Company must keep records

- (1) The company must, in every levy year, keep records of the following matters:
- (a) the amount of Nelson–Marlborough dredge oyster fishery quota owned by each owner on 1 October in that year; and
 - (b) the amount of each levy paid to it in that year and, in relation to each amount,—
 - (i) the day on which it was received; and
 - (ii) the name of the person who paid it; and
 - (c) how (if at all) levies paid to it in that year were invested; and
 - (d) how and when all levies spent by it in that year were spent.
- (2) The company must retain the records for at least 7 years after the end of the levy year to which the records relate.
- (3) This clause does not require a person to keep a nil record.

21 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the company at a rate determined by the Minister of Fisheries after consultation with the company.

*Mediation in case of dispute***22 Appointment of mediators**

- (1) This clause applies to a dispute about—
 - (a) whether a person is required to pay a levy; or
 - (b) the amount of levy payable.
- (2) A party to the dispute may ask the President of the New Zealand Institute of Chartered Accountants to appoint a person to organise and preside at a conference of the parties to the dispute and attempt to 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 resolve the dispute by mediation.
- (3) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it themselves; or
 - (b) the mediator resolves the dispute under clause 29.

Clause 22(2): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

23 Remuneration of mediators

- (1) A mediator is paid remuneration (by way of fees and allowances) as agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the New Zealand Institute of Chartered Accountants (or a person authorised by the President to do so) 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.

Clause 23(2): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

24 Time and place of conference

Every conference that is organised by a mediator of the parties to a dispute must be held on a day and at a time and place fixed by the mediator and notified in writing to the parties.

25 Conference held in private

Except as provided in clause 26, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

26 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 that is organised by the mediator.

27 Right to be heard

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, may be heard at the conference.

28 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 who gives evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

29 Mediator may resolve dispute in certain cases

- (1) A mediator must resolve a dispute for the parties if—

- (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, the mediator must give each of the parties a written notice of the mediator’s decision and the reasons for the decision.
 - (3) The parties must comply with the decision of the mediator.

30 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with a decision made by a mediator under clause 29 may appeal to a District Court against the decision.
- (2) An appeal is brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or 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 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 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 does 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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Notes

1 *General*

This is a reprint of the Commodity Levies (Nelson–Marlborough Dredge Oysters) Order 2001. The reprint incorporates all the amendments to the order as at 10 September 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Commodity Levies (Nelson–Marlborough Dredge Oysters) Order 2001 (SR 2001/235): clause 2A

New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74): section 11

Commodity Levies (Nelson–Marlborough Dredge Oysters) Amendment Order 2006 (SR 2006/234)

Subordinate Legislation (Confirmation and Validation) Act 2001 (2001 No 99): section 6(g)