

Fisheries (Remedial Issues) Amendment Act 1998

067

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An Act to amend the Fisheries Act 1996 and related legislation

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement---(1) This Act may be cited as the Fisheries (Remedial Issues) Amendment Act 1998, and is part of the Fisheries Act 1996 ("the principal Act").

(2) Sections 5 to 8, 14, 15, 20, 21, 25, 26, 28, and 30 each come into force on the day on which the provision of the principal Act that they amend or insert is brought into force by Order in Council made under section 1 (2) of that Act.

(3) The other provisions of this Act come into force on the day on which this Act receives the Royal assent.

2. Interpretation---(1) Section 2 (1) of the principal Act is amended by inserting in paragraph (a) of the definition of "fishing year", after the words "Northland scallops,", the words "southern blue whiting,".

(2) Section 2 (1) of the principal Act is amended by inserting in the definition of "total allowable commercial catch", after the words "section 20 of this Act", the words ", and includes any total allowable commercial catch set by or under the Fisheries Act 1983".

3. Sustainability measures---Section 11 (5) of the principal Act is amended by omitting the words "of this Act", and substituting the words "or both those sections".

4. Total allowable catch---(1) Section 13 (1) of the principal Act is amended by adding the words ", or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26".

(2) Section 13 (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) Enables the level of any stock whose current level is below that which can produce the maximum sustainable yield to be altered--- "(i) In a way and at a rate that will result in the stock being restored to or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; and "(ii) Within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock; or".

(3) Section 13 (4) of the principal Act is amended by adding the words "When considering any variation, the Minister is to have regard to the matters specified in subsections (2) and (3)."

(4) Section 13 (7) of the principal Act is amended by inserting, after the words "Second Schedule to this Act,", the words "and after having regard to the matters specified in subsections (2) and (3),".

(5) Section 13 (8) of the principal Act is amended by omitting the expression "subsection (6)", and substituting the expression "subsection (7)".

(6) Section 13 of the principal Act is amended by adding the following subsection:

"(10) Subsection (1) does not require the Minister to set an initial total allowable catch for any quota management area and stock unless the Minister also proposes to set or vary a total allowable commercial catch for that area and stock under section 20."

5. Setting and variation of total allowable commercial catch---Section 20 (1) of the principal Act is amended by adding the words ", or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26".

6. Matters to be taken into account in setting or varying any total allowable commercial catch---Section 21 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) When allowing for Maori customary non-commercial interests under subsection (1), the Minister must take into account---

"(a) Any mataitai reserve in the relevant quota management area that is declared by the Minister by notice in the Gazette under regulations made for the purpose under section 186:

"(b) Any area closure or any fishing method restriction or prohibition in the relevant quota management area that is imposed by the Minister by notice in the Gazette made under section 186A."

7. Alteration of quota management areas---Section 25 (3) of the principal Act is amended by adding the expression "; and" to paragraph (d), and further adding the following paragraph:

"(e) The quota owners have also notified their intention to seek an alteration to all persons who are noted on the Quota Register as having an interest in the quota to which the proposed alteration relates."

8. Effect on quota if quota management area altered---(1) Section 26 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) Subject to sections 43 and 52, the chief executive must allocate quota in accordance with the proportion of shares provided for in the agreement referred to in section 25 (4), and the allocation---

"(a) Is to be in the form in which the quota was held immediately before the alteration in the quota management area takes effect; and

"(b) Takes effect at the same time as that alteration."

(2) Section 26 (3) (b) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) To be given a schedule that sets out the allocation of quota shares to all other quota owners for each new stock by reference to the proportion of shares provided for in the quota owner agreement referred to in section 25 (4),---".

9. Qualifying years---Section 33 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

"(a) In the case of a person eligible under section 32 (1) (a) (ii) to receive provisional catch history by virtue of a fishing permit issued under section 2 (2) of the Fisheries Amendment Act 1994, the first consecutive 12 months following the date of issue of the permit:"

10. Notification of eligibility to receive provisional catch history---(1) Section 35 (2) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraphs:

"(e) The date on which the notice under this section is issued:

"(ea) The date by which objections must be lodged (which date must be at least 60 working days after the date specified under paragraph (e)):"

(2) Section 35 (3) of the principal Act is amended by omitting all the words occurring after the end of paragraph (c), and substituting the words "and the notice under this subsection must be published a second time at least 10 working days but not more than 20 working days after the date of its first public notification."

(3) Section 35 (6) of the principal Act is amended by inserting, after the words "provisional catch history for that stock", the words "(excluding provisional catch history held or likely to be held by the Crown)".

11. Notification of allocation of provisional catch history---Section 36 (1) (a) of the principal Act is amended by omitting the words "and notify the person concerned of his or her determination".

12. Transfer of provisional catch history---Section 37 (1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) The transferee is a current fishing permit holder or is the Crown; and".

13. Unallocated total allowable commercial catch to be held by Crown---Section 49 (3) of the principal Act is amended by inserting, after the words "unencumbered provisional individual transferable quota until", the words "all disputes of a kind referred to in subsection (1) (b) and".

14. Rights of Crown in relation to quota---Section 50 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) Without limiting any other provision of this Act, the chief executive may, on behalf of the Crown,---

"(a) Purchase any individual transferable quota or provisional catch history:

"(b) Hold any quota allocated or acquired, or any provisional catch history, without being obliged to offer it to any person:

"(c) Transfer any individual transferable quota or provisional catch history held by or on behalf of the Crown:

"(d) Cancel any provisional catch history held by the Crown (and notify the Registrar accordingly)."

15. Licensing offences---Section 84 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) No person may take any fish, aquatic life, or seaweed within the exclusive economic zone using a foreign fishing vessel except---

"(a) Under the authority of--- "(i) A licence issued under section 83; or "(ii) If the vessel is used for the purposes of fisheries research or experimentation (including gear and equipment trials) or recreation, the prior written consent of the Minister; and

"(b) In accordance with any conditions of that licence or consent."

16. Regulations relating to customary fishing---Section 186 (2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

"(a) Declare the relationship between such regulations and general fishing regulations and regulations relating to taiapure-local fisheries; and declare that the first-mentioned regulations are to prevail over the other regulations:".

17. Temporary closure of fishing area or restriction on fishing methods---The principal Act is amended by inserting, after section 186, the following section:

"186A. (1) The Minister may from time to time, by notice in the Gazette,---

"(a) Temporarily close any area of New Zealand fisheries waters in respect of any species of fish, aquatic life, or seaweed; or

"(b) Temporarily restrict or prohibit the use of any fishing method in respect of any area of New Zealand fisheries waters and any species of fish, aquatic life, or seaweed.

"(2) The Minister may impose such a closure, restriction, or prohibition only if he or she is satisfied that it will recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights by---

"(a) Improving the availability or size (or both) of a species of fish, aquatic life, or seaweed in the area subject to the closure, restriction, or prohibition; or

"(b) Recognising a customary fishing practice in that area.

"(3) Before imposing a fishing method restriction or prohibition under subsection (1) (b), the Minister must be satisfied that the method is having an adverse effect on the use and management practices of tangata whenua in the exercise of non-commercial fishing rights.

"(4) A notice given under subsection (1) must be publicly notified.

"(5) A notice given under subsection (1)---

"(a) May not be in force beyond 2 years after the date of its notification in the Gazette:

"(b) Subject to paragraph (a), may be expressed to be in force for any particular year or period, or for any particular date or dates, or for any particular month or months of the year, week or weeks of the month, or day or days of the week.

"(6) Nothing in subsection (5) (a) prevents a further notice being given under subsection (1) in respect of any species and area before or on or about the expiry of an existing notice that relates to that species and area.

"(7) Before giving a notice under subsection (1), the Minister must---

"(a) Consult such persons as the Minister considers are representative of persons having an interest in the species concerned or in the effects of fishing in the area concerned, including tangata whenua, environmental, commercial, recreational, and local community interests; and

"(b) Provide for the input and participation in the decision-making process of tangata whenua with a non-commercial interest in the species or the effects of fishing in the area concerned, having particular regard to kaitiakitanga.

"(8) A person commits an offence who, in contravention of a notice given under subsection (1),---

"(a) Takes any fish, aquatic life, or seaweed from a closed area: or

"(b) Takes any fish, aquatic life, or seaweed using a prohibited fishing method.

"(9) A person who commits an offence against subsection (8)---

"(a) Is liable to the penalty specified in section 252 (6) if--- "(i) The person is an individual other than a commercial fisher; and "(ii) The person satisfies the court that the fish, aquatic life, or seaweed was taken otherwise than for the purpose of sale:

"(b) Is liable to the penalty specified in section 252 (5) in every other case."

18. Conversion factors---Section 188 (1) of the principal Act is amended by inserting, after the words "notice in the Gazette," the words "after consultation with such bodies or persons as the chief executive considers appropriate in the circumstances, including Maori, environmental, commercial, and recreational interests,".

19. Accounts, records, returns, and other information---Section 190 of the principal Act is amended by adding the following subsection:

"(2) Every person who fails to comply with a specification of the chief executive under subsection (1) (b) commits an offence and is liable to the penalty specified in section 252 (3)."

20. General powers---Section 215 (2) (c) of the principal Act is amended by omitting the words "to the extent specified in subsection (3) of this section".

21. Penalties---(1) Section 252 (3) of the principal Act is amended by inserting, after paragraph (h), the following paragraph:

"(ha) Section 190 (2) (failure to comply with specification of chief executive in relation to records, returns, etc):".

(2) Section 252 (5) of the principal Act is amended by inserting, after paragraph (h), the following paragraph:

"(ha) Section 186A (8) (contravention, other than by individual for purposes other than sale, of notice closing area or prohibiting or restricting fishing methods):".

(3) Section 252 (5) of the principal Act is amended by inserting, after paragraph (l), the following paragraph:

"(la) Sections 312 and 313 (taking scallops outside of season or fishery, or when fishery closed):".

(4) Section 252 (5) of the principal Act is amended by adding the following paragraph:

"(o) Section 369 (taking Northland scallops outside fishery season)."

(5) Section 252 (6) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

"(aa) Section 186A (8) (contravention by individual for purposes other than sale of notice closing area or prohibiting or restricting fishing methods):".

22. Consultation on fisheries services required before levy order (other than amending order) made---Section 266 of the principal Act is amended---

(a) By omitting from subsection (2) the words "in the financial year preceding that year":

(b) By omitting from subsection (3) the words "financial year in which consultation takes place", and substituting the words "end of the financial year in which consultation commenced":

(c) By inserting in subsection (4), after the word "consultation", the word "commenced".

23. Consultation on services to be performed by outside agencies---The principal Act is amended by repealing section 269, and substituting the following section:

"269. (1) If the Minister or chief executive, or the Minister of Conservation or Director-General of the Department of Conservation, proposes to enter into any arrangement or contract for the provision of any fisheries services or conservation services, nothing in section 266 or section 267 of this Act requires consultation on the costs of particular projects and activities which are to be the subject of that arrangement or contract, and it is sufficient compliance with section 266 (4) or section 267 (2) if the relevant Minister consults on groups of projects and activities, whether by fishstock, fishstocks, or otherwise, and the estimated maximum total cost of those groups of projects and activities.

"(2) If the Minister or chief executive, or the Minister of Conservation or Director-General of the Department of Conservation, has entered into any arrangement or contract for the provision of any fisheries services or conservation services, except where that arrangement or contract is to be materially varied, the Minister or chief executive or Director-General, as the case may be, is not required during the term of that arrangement or contract to consult on the fisheries services or conservation services which are the subject of that arrangement or contract."

24. General regulations---Section 297 (1) (p) of the principal Act is amended by omitting the expression "section 56 (3)", and substituting the expression "section 56 (4)".

25. Prohibition on taking southern scallops for sale outside scallop season---Section 312 of the principal Act is amended by adding the following subsection:

"(4) Every person commits an offence and is liable to the penalty set out in section 252 (5) who contravenes subsection (1) or subsection (2) of this section."

26. Closure of southern scallop fishery---Section 313 of the principal Act is amended by adding the following subsection:

"(3) Every commercial fisher commits an offence and is liable to the penalty set out in section 252 (5) who takes any scallop in contravention of a prohibition made under subsection (1) of this section."

27. Transitional provisions relating to registration of vessels where consent required under section 57 (8) of Fisheries Act 1983---Section 332 (6) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

"(ba) For the purpose of determining whether the payment to any person engaged or employed to do work on any such vessel meets the requirements of the Minimum Wage Act 1983, the hours of work of, the payments received by, and the entitlements to payment of that person are to be assessed in relation to the whole of each period of such engagement or employment in New Zealand fisheries waters:".

28. Provisions relating to registration of leases---Section 347 (3) of the principal Act is amended by omitting the expression "subsection (3)", and substituting the expression "subsection (2)".

29. Transitional offences and penalties---Section 361 (1) of the principal Act is amended by omitting the expression "section 15 (3) or section 16 (5)" where it twice occurs, and substituting in each case the expression "section 15 (6) or section 16 (6)".

30. Allocation of quota for bait---Section 362 (6) of the principal Act is amended by omitting the expression "section 339", and substituting the expression "section 343".

31. Southern scallop enhancement programme---Section 366 (1) of the principal Act is amended by omitting the expression "section 28ZZG", and substituting the expression "section 28ZZE".

32. Allocation of Northland scallop quota---Section 369 of the principal Act is amended by adding the following subsection:

"(7) Every person commits an offence and is liable to the penalty specified in section 252 (5) who contravenes subsection (5) of this section."

33. First Schedule amended---(1) The First Schedule of the principal Act is amended by inserting, immediately before the heading "PART I", the following heading and notes:

"Notes

"1. The mean high-water coastline used in this Schedule is based on the 1:50,000 topographic map series maintained by Land Information New Zealand.

"2. The boundary of the exclusive economic zone is based on that described in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 and maintained by Land Information New Zealand.

"3. For the purposes of this Act, all waters inland from the defined coastline will be considered as part of the quota management area or fishery management area with which they are contiguous and into which they flow directly.

"4. All positions and directions described in this Schedule are based on a geographic latitude/longitude co-ordinate system, using a Mercator projection and the World Geodetic Standard 1984 spheroid."

(2) The First Schedule of the principal Act is amended---

(a) By omitting from paragraph (d) of the item Fishery Management Area 9---Auckland (West) in Part I the expression "43deg. 24.8'S", and substituting the expression "34deg. 24.8'S":

(b) By omitting from paragraph (d) of the item Fishery Management Area 2B---Central (Wairarapa) in Part II the expression "175deg. 17.0'E", and substituting the expression "175deg. 16.4'E":

(c) By omitting from paragraph (d) of the item Quota Management Area CRA 1---Northland in Part III the words "north-easterly then south-westerly", and substituting the words "north-westerly then south-easterly":

(d) In the item Quota Management Area CRA 3---Gisborne in Part III,--- (i) By omitting from paragraph (d) the word "north-westerly", and substituting the word "north-easterly": (ii) By omitting from paragraph (e) the expression "35deg. 00.0'E", and substituting the expression "35deg. 00.0'S": (iii) By omitting from paragraph (e) the expression "178deg. 58.2'S", and substituting the expression "178deg. 58.2'W".

(e) By omitting from paragraph (b) of the item Quota Management Area SCA 1---Northland Scallop Fishery in Part III the word "south-easterly", and substituting the word "north-easterly".

34. Ninth Schedule amended---Part II of the Ninth Schedule of the principal Act is amended by omitting the item relating to the Southland Fishermen Co-operative Society Limited, and substituting the following item: "Southfish Limited..... 8492272..... 150.00".

Amendments to Other Acts, Etc

35. Fisheries Act 1983 amended---(1) Section 2 (1) of the Fisheries Act 1983 is amended by inserting in paragraph (a) of the definition of the term "fishing year", after the words "rock lobster", the words "and southern blue whiting,".

(2) Section 2 (1) of the Fisheries Act 1983 is amended by repealing the definition of the term "PAU 5A" and the other definitions referred to in that definition (as inserted by section 2 of the Fisheries Amendment Act 1995), and substituting the following definition and related definitions: " 'PAU 5A' or 'Quota management area PAU 5A---Fiordland', 'PAU 5B' or 'Quota management area PAU 5B---Stewart Island', or 'PAU 5D' or 'Quota management area PAU 5D---Southland and Otago' means the area having that name and reference number and described in Part III of the First Schedule of the Fisheries Act 1996:".

(3) Section 2 (1) of the Fisheries Act 1983 is amended by repealing the definition of the term "quota management area", and substituting the following definition: " 'Quota management area' means any fishery management area or quota management area described in the First Schedule of the Fisheries Act 1996:".

(4) The Fisheries Act 1983 is amended---

(a) By omitting from both section 28BA (1) and section 28CA (1) the words "in the Third Schedule to the Maori Fisheries Act 1989", and substituting in each case the words "as spiny rock lobster (CRA) or packhorse rock lobster (PHC) management areas in Part III of the First Schedule of the Fisheries Act 1996":

(b) By omitting from section 28BB (1) (as inserted by section 3 of the Fisheries Amendment Act 1995) the words ", as defined in Part I of Schedule 1DA to this Act,":

(c) By omitting from section 28CA the words "to that Act", and substituting the words "of the Maori Fisheries Act 1989".

(5) Section 28W of the Fisheries Act 1983 is amended by adding the following subsection:

"(10) Notwithstanding anything in this section, for the purposes of this section---

"(a) The Commission is not to be treated as being associated with any other person; and

"(b) No person is to be treated as being associated with another person merely because either or both of those persons are associated with the Commission."

(6) Section 2 (3) of the Fisheries Amendment Act (No. 2) 1992 is consequentially repealed.

36. Marine Mammals Protection Act 1978 amended---Section 3H (1) of the Marine Mammals Protection Act 1978 (as inserted by section 316 of the Fisheries Act 1996) is amended by inserting, after paragraph (n), the following paragraph:

"(o) The Minister, with the concurrence of the Minister of Fisheries, may approve the plan:".

37. Resource Management Act 1991 amended---Section 30 (2) of the Resource Management Act 1991 (as amended by section 316 of the Fisheries Act 1996) is amended by omitting the word "conserve," where it second appears.

38. Fisheries regulations amended---(1) Rule 1 of the Second Schedule of the Fisheries (Catch Against Quota) Regulations 1993 (S.R. 1993/28) is amended by omitting from paragraph (b) (as substituted by section 317 of the Fisheries Act 1996) the words "of this Act", and substituting the words "of the Fisheries Act 1983".

(2) Notwithstanding section 272 of the principal Act or regulation 14 (2) of the Fisheries (Cost Recovery Levies) Order 1996 (S.R. 1996/267), no person who before 1 October 1997 was liable to pay any levy pursuant to regulation 7 of the Fisheries (Cost Recovery Levies) Order 1996 is obliged to pay that levy unless demand was made for its payment before that date.

(3) The regulations amended by this section may be amended as if the amendments made by this section had been effected by regulation and not by this section.