

# **FISHERIES AMENDMENT ACT 2001**

2001 No 65

[26 September 2001]

## **ANALYSIS** **(List of Sections)**

1. Title
2. Commencement
3. Interpretation
4. Meaning of term associated person
5. Notification of eligibility to receive provisional catch history
6. Notification of allocation of provisional catch history
7. Transfer of provisional catch history
8. Administration of sections 56 and 57
9. Aggregation limits
10. Minister may consent to persons holding quota in excess of aggregation limits
11. Quota held in excess of aggregation limits to be forfeit
12. Provisions relating to forfeit property
13. Minimum holdings of annual catch entitlement
14. New sections 78 to 79B substituted
15. Issue of licences
16. All fishing to be authorised by fishing permit unless specific exemption held
17. Issue of fishing permit
18. Notification and certification by Secretary of Foreign Affairs and Trade
19. Taking and transportation of fish, etc, on high seas using New Zealand ships

20. Powers for purpose of ascertaining financial status or interest in forfeit property of certain persons
21. Crown caveats preventing registration of transactions
22. New section 240 substituted
23. Penalties
24. New section 255 substituted
25. Forfeiture for section 252(2), (3), and (5) offences, offences carrying fine of \$100,000, repeat offences, and serious non-commercial offence
26. Forfeiture for section 252(1) or (4) offence
27. General provisions relating to forfeiture
28. Provisions relating to forfeit property
29. Decision of Committee
30. General regulations
31. Provision relating to minimum quota holdings
32. Conversion of holdings from old register to new register

#### Legislative history

The Parliament of New Zealand enacts as follows:

#### 1. Title—

(1) This Act is the Fisheries Amendment Act 2001.

(2) In this Act, the Fisheries Act 1996 is called "the principal Act".

#### 2. Commencement—

#### 3. Interpretation—

Section 2(1) of the principal Act is amended by inserting, after the definition of "observer", the following definition:

"ordinarily resident in New Zealand", for an individual, has the same meaning as in sections 2(2) and 2(2A) of the Overseas Investment Act 1973".

4. Meaning of term associated person—

Sections 3 and 3A of the principal Act are repealed 5. Notification of eligibility to receive provisional catch history—

Section 35(3)(c) of the principal Act is amended by omitting the expression "subsection (2)(e)", and substituting the expression "subsection (2)(ea)". 6. Notification of allocation of provisional catch history—

Section 36(1) of the principal Act is amended by omitting the expression "section 35(2)(e)", and substituting the expression "section 35(2)(ea)".

7. Transfer of provisional catch history—

(1) Section 37(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) the transferee complies with section 45(a) and (b) or is the Crown; and."

(2) Section 12 of the Fisheries (Remedial Issues) Amendment Act 1998 is consequentially repealed.

8. Administration of sections 56 and 57—

(1) Section 57A of the principal Act is amended by adding, as subsection (2), the following subsection:

"(2) For the purposes of this section and sections 56 and 57, the provisions of the Overseas Investment Act 1973 (other than section 14A) and any regulations made under that Act apply in respect of applications to which sections 56 and 57 apply—

"(a) as if this section and sections 56 and 57 were part of that Act and references to regulations made under that Act included this section and sections 56 and 57; and

“(b)as if references in that Act to the Minister of Lands were references to the Minister as defined in section 2(1) of this Act; and

“(c)with all other necessary modifications.”

(2)Section 19(2) of the Fisheries Act 1996 Amendment Act 1999 is consequentially repealed.

#### 9. Aggregation limits—

(1)Section 59 of the principal Act is amended by repealing subsections (6) and (9).

(2)Section 59 of the principal Act is amended by adding the following subsections:

“(10)For the purposes of this section and sections 60(4) and 61, the term ‘person’, in relation to a particular person, includes—

“(a)any person who is in partnership with the person:

“(b)any person who is a director or employee of any company of which the person is a director or employee:

“(c)any person who is a relative of the person as defined in paragraph (a) of the definition of that term in section OB 1 of the Income Tax Act 1994:

“(d)any person who would be an associated person under the test provided in section OD 7 of the Income Tax Act 1994, except that subparagraph (a)(v) of the definition of in section OB 1 of that Act does not apply:

“(e)any beneficiary or trustee of any trust of which the person is a trustee or beneficiary.

“(11)Despite subsection (10),—

“(a)the Commission is not to be regarded as being included with any other person; and

“(b)No person is to be regarded as being included with any other person merely because either or both of those persons would be included with the Commission but for paragraph (a); and

“(c)No bank registered under the Reserve Bank of New Zealand Act 1989 is to be regarded as being included with any other person merely because the bank has, in the ordinary course of its business as a financier, been granted any interest in quota owned by the person; and

“(d)No person is to be regarded as included with any other person solely because they are both beneficiaries of the same trust.”

10.Minister may consent to persons holding quota in excess of aggregation limits—

Section 60(4) of the principal Act is amended by inserting, after the words “any person”, the words “(within the meaning of section 59(10) and (11)).”

11.Quota held in excess of aggregation limits to be forfeit—

Section 61 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

“(5)In this section, ‘person’ has the same meaning as in section 59(10) and (11).”

12.Provisions relating to forfeit property—

(1)Section 62(4)(c) of the principal Act is amended by omitting the words “associated (as defined in section 3 of this Act) with”, and substituting the words “an associated person of”.

(2)Section 62 of the principal Act is amended by adding the following subsection:

“(15)In this section, ‘associated person’, in relation to a particular person, means a person who is included with the person by virtue of any paragraph of section 59(10) (as subject to section 59(11)).”

### 13. Minimum holdings of annual catch entitlement—

(1) Section 74(2)(b) of the principal Act is amended by omitting the words ``(or as at the beginning of the Foveaux Strait dredge oyster season, where a reduction in the total allowable commercial catch for those oysters occurs after the beginning of the fishing year but before the commencement of that season in that year)''.

(2) Section 74(2) of the principal Act is amended by omitting the words ``(or, if appropriate, at the beginning of the Foveaux Strait dredge oyster season)''.

### 14. New sections 78 to 79B substituted—

(1) The principal Act is amended by repealing sections 78 and 79, and substituting the following sections:

``78. Catch in excess of over-fishing thresholds—

``(1) This section applies where, following the calculation referred to in section 76(1A),—

``(a) a commercial fisher's reported catch for a stock exceeds the commercial fisher's annual catch entitlement for the stock; and

``(b) that excess is equal to or greater than the over-fishing threshold for the stock, and, where a tolerance level applies to the stock, is greater than that tolerance level.

``(2) In such a case the current fishing permit of the commercial fisher and of any person included with the commercial fisher under subsection (10), and also any permit subsequently issued to the commercial fisher or included person, are each to be treated as containing a condition prohibiting the taking of any fish, aquatic life, or seaweed in the geographic area that is the quota management area for the stock concerned.

``(3) The condition takes effect as from the close of the month in which the calculation referred to in section 76(1A) is done.

``(4) The chief executive must—

“(a) notify the imposition of the condition under subsection (2) to the commercial fisher concerned and any included person of whom the chief executive is aware; and

“(b) record on the Permit Register details of the imposition of the condition,—but any delay or failure to give that notification or make that record does not affect the imposition of the condition.

“(5) A commercial fisher who has requested a review under section 80(2) or lodged an appeal under section 80(6) may, pending determination of the review or appeal, apply to a District Court for an order removing or amending a condition imposed under this section, and the Court may make such an order subject to such sureties and conditions as the Court may specify.

“(6) Despite subsection (2), the chief executive may—

“(a) approve the taking of fish, aquatic life, or seaweed in an area by a person who would otherwise be subject to the condition imposed by subsection (2); and

“(b) impose as part of the approval any conditions that he or she considers necessary to reduce the risk of the person taking the stock for which the over-fishing threshold was exceeded.

“(7) Conditions imposed under subsection (6) may relate to stocks, area, quantities, methods, the use or non-use of vessels, the specific vessel or types of vessels that may be used, and types and amounts of fishing gear, or otherwise.

“(8) No person may take any fish, aquatic life, or seaweed in contravention of a condition imposed by subsection (2) unless—

“(a) the person has obtained the prior approval of the chief executive to take fish, aquatic life, or seaweed in that area; and

“(b) the taking is in accordance with any conditions imposed by the chief executive.

“(9) Conditions imposed by subsection (2) or under subsection (6) cease to apply—

“(a)when the commercial fisher referred to in subsection (1) owns an amount of annual catch entitlement for the stock equal to or greater than the commercial fisher's total reported catch of that stock in the fishing year; or

“(b)at the close of the relevant fishing year,—whichever happens first.

“(10)If a person takes any fish, aquatic life, or seaweed in contravention of any conditions imposed by subsection (2) or under subsection (6), the person commits an offence and is liable to the penalty set out in section 252(3).

“(11)For the purposes of subsection (2), a person or entity is to be treated as a person included with the commercial fisher if the person or entity is—

“(a)a subsidiary of the commercial fisher within the meaning of section 5 of the Companies Act 1993; or

“(b)a company of which the commercial fisher is a subsidiary within the meaning of section 5 of the Companies Act 1993; or

“(c)a partnership or unincorporated joint venture that would be a subsidiary of the commercial fisher, or of which the commercial fisher would be a subsidiary, if the partnership or joint venture were incorporated as a company with shareholdings corresponding to the interests, including returns, of the partners in the partnership or participants in the joint venture.

“(12)Despite subsection (11)—

“(a)the Commission is not to be regarded as being included with any other person; and

“(b)No person is regarded as being included with another person merely because either or both of those persons would be included with the Commission but for paragraph (a); and



“(c)No bank registered under the Reserve Bank of New Zealand Act 1989 is to be regarded as being included with any other person merely because the bank has, in the ordinary course of its business as a financier, been granted any interest in quota owned by that person.

“78A.Other persons may be subjected to same conditions as commercial fisher with catch in excess—

“(1)Where a fishing permit of a person (‘person A’) is treated as being subject to a condition under section 78(2), the chief executive may impose the same condition on any fishing permit held by or subsequently issued to another person (‘person B’) if the chief executive believes, on reasonable grounds specified on oath in writing, that—

“(a)person B is, in respect of commercial fishing, in substance person A; or

“(b)person B has, in substance, control of the commercial fishing of person A that led to the condition being imposed under section 78(2); or

“(c)person B is allowing person A to conduct commercial fishing under person B’s permit for the purpose of assisting person A to fish despite the condition treated as being contained in person A’s permit.

“(2)Without limiting subsection (1), in forming the belief referred to in that subsection, the chief executive may have regard to the following matters:

“(a)shareholdings in, debentures over, or directorships of, any company that has an interest (whether direct or indirect) in person B or person A:

“(b)any trust that has a relationship to person B or person A:

“(c)family, domestic, and business relationships between—

“(i)person B and person A; and

“(ii) persons having an interest in person B or person A or in companies or trusts of the kind referred to in paragraph (a) or paragraph (b):

“(d) whether person B is accustomed to following the instructions of person A:

“(e) whether person B is accustomed to acting in a manner consistent with advancing the interests of person A.

“(3) Whether any of paragraphs (a), (b), and (c) of subsection (1) apply may be determined without regard to the form of the persons or entities comprising persons A and B.

“(4) The chief executive must—

“(a) give notice to person B of the condition imposed under subsection (1) and a copy of the grounds for imposing the condition as given on oath; and

“(b) record on the Permit Register details of the imposition of the condition.

“(5) Any condition imposed under subsection (1) takes effect from the date of notification.

“(6) Subsections (6), (7), (8), and (10) of section 78 apply to person B and person B's fishing permit as if the condition had been imposed on person B under subsection (2) of that section (and conditions imposed on person B under this section or section 78(6)(b) are not affected by decisions under section 78(6) in relation to person A).

“(7) Any conditions imposed on person B under this section or section 78(6) cease to apply—

“(a) when the commercial fisher referred to in section 78(1) complies with section 78(9)(a); or

“(b) at the close of the relevant fishing year,—whichever happens first.

“(8)If—

“(a)a person (‘person B’) is, in respect of commercial fishing, in substance the same person as a person (‘person A’) who has had a condition imposed on their fishing permit by section 78(2); and

“(b)person B, knowing that the condition exists, conducts commercial fishing that would be a breach of the condition imposed on person A’s fishing permit,—then each of person A and person B commits an offence and is liable to the penalty set out in section 252(3).

“(9)If a person (‘person B’) knowingly allows another person (‘person A’) to conduct commercial fishing under person B’s permit for the purpose of assisting person A to fish despite the condition treated by section 78(2) as being contained in person A’s permit, and person A does so, then each of person A and person B commits an offence and is liable to the penalty set out in section 252(3).

“78B.Removal of conditions on other persons—

“(1)A person who has had a condition imposed on his or her fishing permit under section 78(2) in their capacity as a person included with a commercial fisher under section 78(11), or a person who has had a condition imposed under section 78A(1), may apply to a District Court to have the condition removed either permanently or pending final determination of the application on the grounds that the situation relied upon under section 78(2) and (11) or section 78A(1) never existed or no longer exists.

“(2)In determining an application under subsection (1) totally or partially in favour of the applicant, the District Court may remove or amend the condition either totally or partially and on such sureties or conditions as the Court considers appropriate.

“79.Suspension of permit for non-payment of deemed value—

“(1)If the total amount of deemed values owed by any commercial fisher exceeds \$1,000 and has not been satisfied within the time limit specified in section 76(5), the current fishing permit of the commercial fisher and any person included with the commercial fisher under subsection (5), and any permit subsequently issued to the commercial fisher or included person, are, on the expiration of that time limit, to be treated as being suspended until the total amount of all outstanding deemed values owed by the commercial fisher is \$1,000 or less.

“(2)The chief executive must—

“(a) notify every suspension or cessation of suspension of a fishing permit under subsection (1) to the commercial fisher concerned and any included person of whom the chief executive is aware; and

“(b) record on the Permit Register details of any suspension or cessation of suspension of a fishing permit under subsection (1);—but any delay or failure to give that notification or make that record does not affect the suspension or cessation.

“(3) A fishing permit suspended under this section does not authorise any person to take any fish, aquatic life, or seaweed under the authority of that permit, but all other provisions of this Act continue to apply as if the fishing permit had not been suspended.

“(4) A commercial fisher who has requested a review under section 80(2) or lodged an appeal under section 80(6) may, pending determination of the review or appeal, apply to a District Court for an order lifting any suspension imposed under this section, and the Court may make such an order subject to such sureties and conditions as the Court may specify.

“(5) For the purposes of subsections (1) and (2), a person or entity is to be treated as a person included with the commercial fisher if the person or entity is—

“(a) a subsidiary of the commercial fisher within the meaning of section 5 of the Companies Act 1993; or

“(b) a company of which the commercial fisher is a subsidiary within the meaning of section 5 of the Companies Act 1993; or

“(c) a partnership or unincorporated joint venture that would be a subsidiary of the commercial fisher, or of which the commercial fisher would be a subsidiary, if the partnership or joint venture were incorporated as a company with shareholdings corresponding to the interests, including returns, of the partners in the partnership or participants in the joint venture.

“(6) Despite subsection (5)—

“(a) the Commission is not to be regarded as being included with any other person; and

“(b)No person is regarded as being included with another person merely because either or both of those persons would be included with the Commission but for paragraph (a); and

“(c)No bank registered under the Reserve Bank of New Zealand Act 1989 is to be regarded as being included with any other person merely because the bank has, in the ordinary course of its business as a financier, been granted any interest in quota owned by that person.

“79A.Suspension of fishing permit of other persons—

“(1)Where a fishing permit of a person (‘person A’) is suspended under section 79(1), the chief executive may suspend the fishing permit of another person (‘person B’) if the chief executive believes, on reasonable grounds specified on oath in writing, that—

“(a)person B is, in respect of commercial fishing, in substance person A; or

“(b)person B has, in substance, control of person A in respect of person A's obligations under any of subsections (3), (3A), and (5) of section 76; or

“(c)person B is allowing person A to conduct commercial fishing under person B's permit, for the purpose of assisting person A to fish despite the suspension of person A's fishing permit.

“(2)Without limiting subsection (1), in forming the belief referred to in that subsection, the chief executive may have regard to the following matters:

“(a)shareholdings in, debentures over, or directorships of, any company that has an interest (whether direct or indirect) in person B or person A:

“(b)any trust that has a relationship to person B or person A:

“(c)family, domestic, and business relationships between—

“(i)person B and person A; and

“(ii) persons having an interest in person B or person A or in companies or trusts of the kind referred to in paragraph (a) or paragraph (b):

“(d) whether person B is accustomed to following the instructions of person A:

“(e) whether person B is accustomed to acting in a manner consistent with advancing the interests of person A.

“(3) Whether any of paragraphs (a), (b), and (c) of subsection (1) apply may be determined without regard to the form of the persons or entities comprising persons A and B.

“(4) The chief executive must—

“(a) give notice to person B of the suspension of a fishing permit under subsection (1), and a copy of the grounds of suspension as given on oath; and

“(b) record on the Permit Register details of the suspension under subsection (1).

“(5) The suspension imposed under subsection (1) takes effect from the date of notification.

“(6) A fishing permit suspended under this section does not authorise any person to take any fish, aquatic life, or seaweed under the authority of that permit, but all other provisions of this Act continue to apply as if the fishing permit had not been suspended.

“(7) A suspension of a fishing permit under subsection (1) ceases to be of effect once the total amount of all outstanding deemed values owed by the person who incurred the deemed value liability referred to in section 79(1) is \$1,000 or less.

“(8) If—

“(a) a person (‘person B’) is, in respect of commercial fishing, in substance the same person as a person (‘person A’) whose fishing permit is suspended under section 79(1); and

“(b) person B, knowing of the suspension, is conducting commercial fishing,—then each of person A and person B commits an offence and is liable to the penalty set out in section 252(3).

“(9) If a person (‘person B’) knowingly allows another person (‘person A’) to conduct commercial fishing under person B’s permit for the purpose of assisting person A to fish despite the suspension of person A’s permit under section 79(1), and person A does so, then each of person A and person B commits an offence and is liable to the penalty set out in section 252(3).

“79B. Removal of suspension, or direction to issue permit—

“(1) This section applies to any person—

“(a) whose permit has been suspended under section 79(1) in their capacity as a person included with a commercial fisher under section 79(5); or

“(b) whose permit has been suspended under section 79A(1); or

“(c) who has been refused a permit under section 91(6)(c).

“(2) Such a person may apply to a District Court to—

“(a) direct that the suspension be removed, either permanently or pending the final determination of the application; or

“(b) direct that the permit be issued,—on the grounds that the situation relied upon under section 79(1) and (5) or section 79A(1) never existed or no longer exists.

“(3) In determining an application under subsection (1) totally or partially in favour of the applicant, the District Court may—

“(a)remove the suspension either totally or partially:

“(b)direct the removal of the suspension, or the issue of the permit, on such sureties or conditions as the Court considers appropriate.”

(2)Regulation 6(i) of the Fisheries (Registers) Regulations 2001 is amended by omitting the expression “section 78(1)”, and substituting the expression “section 78(2)”.

(3)Regulation 6 of the Fisheries (Registers) Regulations 2001 is amended by adding the following paragraph:

“(j)the name of each person whose permit is subject to a condition under section 78(2) or section 78A(1).”

(4)Part 3 of the Schedule of the Fisheries (Transfer of Functions, Duties, and Powers to The New Zealand Seafood Industry Council Limited) Order 2001 is amended by revoking paragraphs (w), (x), and (y), and substituting the following paragraphs:

“(w)to record on the Permit Register conditions imposed under any of sections 78(2), 78(6), and 78A(1) of the Act:

“(x)to record on the Permit Register when conditions imposed under any of sections 78(2), 78(6), and 78A(1) of the Act cease to apply under section 78(9) or are removed under section 78B of the Act:”.  
15.Issue of licences—

Section 83(1)(a) of the principal Act is amended by omitting the words “an office of the Ministry”, and substituting the words “a place”.

16.All fishing to be authorised by fishing permit unless specific exemption held—

Section 89 of the principal Act is amended by inserting, after subsection (2), the following subsections:

“(2A)Despite subsection (1), a person may take fish, aquatic life, or seaweed not subject to the quota management system if the fish, aquatic life, or seaweed is taken as the inevitable consequence of the



taking of other fish, aquatic life, or seaweed under the authority of and in accordance with a current fishing permit.

“(2B) Subsection (2A) expires with the close of 30 September 2004.”

17. Issue of fishing permit—

Section 91 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:

“(6) No fishing permit may be issued to any person who—

“(a) is a person who has unpaid deemed value amounts in excess of \$1,000 that are overdue, or is a person who is treated by section 79(5) as included with that person; or

“(b) is a person whose fishing permit is suspended under section 79A; or

“(c) the chief executive believes, on reasonable grounds, is a person whose fishing permit, if they had one, would be suspended under section 79A(1).” 18. Notification and certification by Secretary of Foreign Affairs and Trade—

Section 113C(3)(d) of the principal Act is amended—

(a) by omitting the words “or to the FAO Compliance Agreement”; and

(b) by omitting the words “those agreements”, and substituting the words “that agreement”.

19. Taking and transportation of fish, etc, on high seas using New Zealand ships—

(1) Section 113D(2)(b)(i) of the principal Act is amended by inserting, after the word “permit”, the words “or an authorisation issued by a state to which section 113E(2) applies”.

(2) Section 113D of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) Subsection (2) does not apply if the fish, aquatic life, or seaweed—

“(a) has previously been landed in New Zealand or in any other country; or

“(b) has not previously been landed in New Zealand or in any other country but was taken in New Zealand fisheries waters and—

“(i) approval under section 110(1) is obtained before transportation on the high seas commences; and

“(ii) the transportation is in accordance with any conditions of that approval.”

20. Powers for purpose of ascertaining financial status or interest in forfeit property of certain persons—

Section 202 of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) whether any quota is associated quota as defined in section 255; or”.

21. Crown caveats preventing registration of transactions—

(1) Section 214(1) of the principal Act is amended by omitting the words “held by that person or by any associated person”, and substituting the words “owned by that person or associated quota (as defined in section 255) owned by any other person”.

(2) Section 214(2) of the principal Act is amended by inserting, after the words “owner of any quota”, the words “or the owner of any quota alleged to be associated quota”.

(3) Section 214 of the principal Act is amended by adding the following subsection:

“(9)In this section, except for subsection (1), the terms ‘quota’ and ‘quota shares’ include associated quota as defined in section 255.”

22.New section 240 substituted—

The principal Act is amended by repealing section 240, and substituting the following section:

“240.Strict liability—

“In any proceedings for an offence against this Act it is not necessary for the prosecution to prove that the defendant intended to commit the offence, except in the case of an offence against any of sections 78A(8) and (9), 79A(8) and (9), 231, 233, 235, 257(2), 296B(5), and 296ZC(3)(b) and (c).”

23.Penalties—

(1)Section 252(3) of the principal Act is amended by repealing paragraphs (c) and (ca), and substituting the following paragraphs:

“(c)section 78(10) (fishing in breach of condition of permit or condition imposed by chief executive):

“(ca)section 78A(8) (fishing in breach of condition imposed on person who is in substance the same person):

“(cb)section 78A(9) (fishing under permit of different person in order to avoid conditions imposed on own permit):

“(cc)section 79A(8) (fishing under permit of person who is in substance the same person):

“(cd)section 79A(9) (fishing under permit of different person where own permit suspended):.”.

(2)Section 252(3) of the principal Act is amended by renumbering paragraph (ha) (as inserted by section 21(1) of the Fisheries (Remedial Issues) Amendment Act 1998) as paragraph (he).

(3)Section 252 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:

“(6) Every person convicted of an offence against any of the following provisions is liable to a fine not exceeding \$5,000:

“(a) section 113M(2) (failure by holder of high seas fishing permit to notify chief executive of change of vessel's ownership or operator):

“(b) section 121(3) (unlawfully releasing sensitive information):

“(c) section 186A(8) (contravention by individual, for purposes other than sale, of notice closing area, or prohibiting or restricting fishing methods):

“(d) section 288(5) (contravening provisions relating to public meetings).”

(4) The following enactments are consequentially repealed:

(a) section 21(5) of the Fisheries (Remedial Issues) Amendment Act 1998:

(b) section 25(3) of the Fisheries Act 1996 Amendment Act (No 2) 1999.

24. New section 255 substituted—

The principal Act is amended by repealing section 255, and substituting the following section:

“255. Interpretation—forfeiture provisions—

“(1) In sections 255A to 256, unless the context otherwise requires,—

“‘associated quota’, in relation to a person convicted of an offence (the ‘offender’), means—

“(a)all quota owned by any person that is a subsidiary of the offender within the meaning of section 5 of the Companies Act 1993:

“(b)if the offender has, in the fishing year in which the offence was committed or the immediately preceding fishing year,—

“(i)gained any benefit from any quota of a stock (‘stock A’), including annual catch entitlement generated from that quota; and

“(ii)that quota is owned by any company of which the offender is a subsidiary (the ‘holding company’) or any other subsidiary of the holding company,—

all quota of every stock of the species or group of species comprised in stock A owned by the holding company or any subsidiary of the holding company at the date the offence was committed:

“(c)any other quota not owned by the holding company or any subsidiary of the offender or any subsidiary of the holding company, but over which the offender had effective control at the date the offence was committed

“‘fish and any proceeds from the sale of such fish’ means any fish, aquatic life, or seaweed in respect of which the offence was committed (whether or not seized under section 207) and any proceeds from the sale of such fish, aquatic life, or seaweed under section 212

“‘property used in the commission of the offence’—

“(a)means any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, or thing used in respect of the commission of the offence (whether or not seized under section 207); but

“(b)does not include any quota, associated quota, or annual catch entitlement

“‘quota’—

“(a)in relation to a person convicted of an offence (the ‘offender’), means the number of quota shares or amount of provisional catch history for each stock that is equivalent to the number or amount owned by the offender for the stock at the date of the commission of the offence; and

“(b)in relation to any other person, means the number of quota shares for each stock that is equivalent to the number owned by the person for the stock at the date the offender committed the offence

“‘serious non-commercial offence’ means any offence specified as such in regulations made under section 297.

“(2)For the purposes of paragraph (c) of the definition of ‘associated quota’, a person may have had effective control of quota whether or not the person had—

“(a)any legal or equitable interest in the quota; or

“(b)any right, power, or privilege in connection with the quota,—and those interests, rights, powers, or privileges may be determined without regard to the form of any entities in which they are owned or held.

“(3)Without limiting the generality of paragraph (c) of the definition of ‘associated quota’, in determining whether an offender had effective control over quota, regard may be had to the following matters:

“(a)shareholdings in, debentures over, or directorships of, any company that had an interest (whether direct or indirect) in the quota:

“(b)any trust that had a relationship to the quota:

“(c)family, domestic, and business relationships between persons who had an interest in quota, or in companies of the kind referred to in paragraphs (a) and (b) of the definition of ‘associated quota’, and any other persons:

“(d)whether one person was accustomed to following the instructions of the other person in respect of the quota they own:

“(e) whether one person was accustomed to acting in a manner consistent with advancing the interests of the other person in respect of the quota they own.

“(4) No quota owned by the Commission is associated quota for the purposes of this Act.

“(5) No quota owned by any person is associated quota merely because of any relationship between that person and the Commission or any other person and the Commission.

“(6) No quota owned by any bank registered under the Reserve Bank of New Zealand Act 1989 is to be regarded as associated quota merely because the bank has in the ordinary course of its business as a financier become the owner of that quota.”

25. Forfeiture for section 252(2), (3), and (5) offences, offences carrying fine of \$100,000, repeat offences, and serious non-commercial offence—

Section 255C of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) On conviction of a person for an offence referred to in section 252(2) or (3), the Court may order that—

“(a) any quota is forfeit to the Crown; and

“(b) any associated quota is forfeit to the Crown, unless the Court is satisfied that section 255E(3B) applies to preclude forfeiture.”

26. Forfeiture for section 252(1) or (4) offence—

Section 255D(2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraphs:

“(d) any quota; and

“(e)any associated quota, unless the Court is satisfied that section 255E(3B) applies to preclude forfeiture.”

## 27. General provisions relating to forfeiture—

(1)Section 255E(3) of the principal Act is amended by adding the following paragraph:

“(e)associated quota, unless the Court is satisfied that subsection (3B) applies to preclude forfeiture.”

(2)Section 255E of the principal Act is amended by inserting, after subsection (3), the following subsections:

“(3A)Where the Court is considering the forfeiture of any quota alleged to be associated quota, the Court must give any person who owns that quota a reasonable opportunity to make submissions and be heard on the questions of whether—

“(a)the quota is associated quota; and

“(b)if so, whether or not the Court should find in favour of the owner under subsection (3B).

“(3B)Where the Court is satisfied that associated quota exists, forfeiture must be considered in accordance with sections 255C(3) and 255D(2) unless the Court is satisfied that the associated quota is associated quota, rather than quota owned by the offender, for reasons principally other than avoiding the consequences of the application of this Act in respect of that forfeiture.”

## 28. Provisions relating to forfeit property—

Section 256 of the principal Act is amended—

(a)by repealing subsections (4)(c) and (6)(c):

(b)by omitting the expression “; and” after subsection (8)(a):



(c)by repealing subsection (8)(b).

#### 29.Decision of Committee—

Section 293(5) of the principal Act is amended by omitting the expression ``3 months", and substituting the expression ``90 days".

#### 30.General regulations—

Section 297(1)(o) of the principal Act is amended by omitting the words ``and any understanding", and substituting the words ``or any understanding". 31.Provision relating to minimum quota holdings—

Section 357 of the principal Act is amended by adding the following subsections:

``(2)Every person who—

``(a)immediately before the repeal of section 28S of the Fisheries Act 1983 by section 314 of this Act owned or held quota in excess of any minimum holding specified in section 28S(1)(a) or section 28S(1)(b) of the Fisheries Act 1983; and

``(b)at the beginning of the fishing year in which this section comes into force is allocated, or has transferred to them under section 347 or section 347A, less annual catch entitlement for a stock listed in the Eighth Schedule of this Act than is specified in section 74(1) of this Act,—is subject to section 74 of this Act as if the amount of quota owned or held by that person immediately prior to the repeal of section 28S of the Fisheries Act 1983 had been allocated to that person under this Act.

``(3)Where a lease was the basis for a person's allocation of annual catch entitlement for any stock referred to in subsection (2)(b), whether in whole or in part, subsection (2) ceases to apply in respect of that person and that stock when the lease expires or otherwise ends.

``(4)This section is subject to section 340AA."

#### 32.Conversion of holdings from old register to new register—

(1)Section 32(3) of the Fisheries (Remedial Issues) Amendment Act 2001 is amended by inserting, after the words ``principal Act", the words ``(as substituted by section 74 of the Fisheries Act 1996 Amendment Act 1999)".

(2)Section 74 of the Fisheries Act 1996 Amendment Act 1999 is repealed as from its commencement.

(3)Clause 3(2) of the Fisheries Act Commencement Order 2001 is consequentially revoked.

Legislative history

20 September 2001

Divided from Statutes Amendment Bill (Bill 97-2), third reading

This Act is administered in the Ministry of Fisheries.