



Fisheries (Aquaculture Compensation Methodology) Regulations 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 5th day of November 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 186ZR of the Fisheries Act 1996, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries.

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Regulations

- 1 **Title**
These regulations are the Fisheries (Aquaculture Compensation Methodology) Regulations 2012.
- 2 **Commencement**
These regulations come into force on 7 December 2012.
- 3 **Interpretation**
In these regulations, unless the context otherwise requires,—
Act means the Fisheries Act 1996
conversion factor means a conversion factor set under section 188 of the Act
fishing means commercial fishing in relation to which the chief executive has made a reservation under section 186E of the Act
party means—
 - (a) the holder of a coastal permit in relation to which the chief executive has made a reservation; or
 - (b) an affected quota owner**proposed aquaculture activities** means aquaculture activities authorised by a coastal permit in relation to which the chief executive has made a reservation.
- 4 **Methodology for determining whether proposed aquaculture activities or fishing of materially greater economic value to New Zealand**
Schedule 1 sets out the methodology to be followed by an arbitrator in determining, under section 186ZP(2) of the Act, the

question of which of the following is of materially greater economic value to New Zealand:

- (a) the proposed aquaculture activities; or
- (b) the fishing in relation to which the chief executive has made a reservation.

5 Methodology for determining compensation payable to quota owners

Schedule 2 sets out the methodology to be followed by an arbitrator in determining, under section 186ZQ of the Act, the compensation payable to quota owners.

Schedule 1

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**Methodology for determining whether
proposed aquaculture activities or fishing
of materially greater economic value to
New Zealand**

1 Comparison of economic value

- (1) An arbitrator must determine the economic value of proposed aquaculture activities in accordance with clause 2.
- (2) The arbitrator must determine the economic value of fishing in accordance with clause 3.
- (3) The arbitrator must determine the relevant time period over which the economic value of the proposed aquaculture activities and fishing are to be compared.
- (4) If the economic value of the proposed aquaculture activities is greater than the economic value of fishing, the arbitrator must determine whether the difference means the proposed aquaculture activities are of materially greater economic value.
- (5) If the economic value of the proposed aquaculture activities is not less than 5 times greater than the economic value of fishing, the arbitrator must (in the absence of overriding data or analysis to the contrary) determine that the economic value of the proposed aquaculture activities is of materially greater economic value.

Economic value of proposed aquaculture
activities**2 Determination of economic value of proposed aquaculture activities**

- (1) The economic value of the proposed aquaculture activities in the area subject to a reservation must be determined in accordance with the following formula:

$$\text{economic value} = \text{ep} \times \text{gp} \times \text{a}$$

where—

- a is the area of the aquaculture activity, in hectares, to be productively farmed, excluding any area occupied by support structures
- ep is the greenweight export price, in dollars per kilogram, of the relevant aquaculture species
- gp is the greenweight production per hectare per annum, in kilograms, of the relevant aquaculture species.
- (2) The arbitrator must determine the relevant aquaculture species for the purposes of subclause (1) based on data provided by the parties or by reference to the coastal permit application.

Economic value of fishing

3 Determination of economic value of fishing

- (1) The economic value of fishing must be determined by aggregating the value of each commercial fish stock in relation to which the chief executive has made a reservation in accordance with the following formula:

$$\text{economic value} = \text{ep} \times \text{cl}$$

where—

- cl is the average annual catch loss for the fish stock, in kilograms, as specified in the aquaculture decision made by the chief executive under section 186E of the Act
- ep is the greenweight export price, in dollars per kilogram, of the fish stock.
- (2) To avoid doubt, all commercial fish stocks in the area subject to the reservation must be included in the formula in subclause (1), whether or not the fish stock is subject to the quota management system.

- (3) A fish stock may be excluded from the calculation under sub-clause (1) only if—
 - (a) export price data for the fish stock is unavailable; and
 - (b) excluding the fish stock would make no significant difference to the economic value.

General provisions

4 Determination of greenweight export price

- (1) The greenweight export price is determined by dividing the export price per kilogram of the most valuable export product state of a fish stock (being the state to which a fish is processed that accounts for the highest overall value of exported product for that species) by the conversion factor for that product state.
- (2) If no conversion factor has been prescribed for a fish stock, the arbitrator may use the conversion factor for a similar fish stock or an appropriate conversion factor provided by either party.
- (3) If the parties provide more than 1 conversion factor, the arbitrator must decide which conversion factor to use to determine the greenweight export price.

5 Data and analysis requirements

- (1) The data and analysis provided by the parties under section 186ZP(3) of the Act must be in the form determined by the arbitrator, unless the parties have agreed on the form of the data and analysis prior to arbitration.
- (2) If the arbitrator is not satisfied with the quality of the data and analysis provided by the parties, the arbitrator may require further data and analysis from the parties.
- (3) If it is not possible to obtain the data and analysis required by the arbitrator for the methodology in clauses 2 and 3, or if the arbitrator is not satisfied that the data and analysis available are of sufficient quality, the arbitrator may use other data and analysis provided by the parties to determine the economic value of the proposed aquaculture activities and fishing.

Schedule 2

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**Methodology for determining
compensation for loss of value of
quota affected by aquaculture activities****1 Determination of compensation**

- (1) The amount of compensation payable to a quota owner must be determined in accordance with the following formula:

$$\text{compensation payable} = (\text{cl} \times \text{qv} \times \text{qs}) \times \text{dc}$$

where—

cl is the percentage of the estimated average annual catch loss for the fish stock (as specified in the reservation made under section 186E of the Act) above the threshold at which the chief executive considers the potential catch loss for that stock is undue (taking into account any increased fishing costs)

dc is 1.2 (the multiple by which the arbitrator must increase the compensation payable to account for any consequential disruption costs that the quota owners may incur as a result of the proposed aquaculture activities, which includes a sum by way of solatium)

qs is the number of quota shares for that fish stock held by the quota owner

qv is the value, in dollars, of 1 quota share.

- (2) The arbitrator may adjust the compensation payable to take account of any proposed complementary uses of the site submitted by the parties under section 186ZQ(2) of the Act.

2 Determination of quota value

- (1) To determine the quota value for a fish stock for the purposes of clause 1(1), the arbitrator must consider—

(a) the ACE trade price (divided by an appropriate discount factor to derive the net present value) or the quota trade price, or both; and

(b) any recent transfers of the quota or associated ACE.

- (2) If, in the arbitrator's opinion, the ACE trade price and the quota trade price do not provide a reliable indication of the

quota value for a fish stock, the arbitrator may consider other data provided by the parties to determine the quota value.

- (3) The arbitrator may adjust the quota value for inflation, using data and analysis provided by the parties to determine the appropriate adjustment.
- (4) In this clause,—

ACE means annual catch entitlement

ACE trade price means the ACE transfer price as published from time to time by Commercial Fisheries Services Limited, or a person specified by the chief executive by notice in the *Gazette*

appropriate discount factor means the appropriate discount factor, as determined by the arbitrator

quota trade price means the transfer price of quota as published from time to time by Commercial Fisheries Services Limited, or a person specified by the chief executive by notice in the *Gazette*.

Michael Webster,
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 7 December 2012, prescribe the methodology that an arbitrator appointed under section 186ZO(2) of the Fisheries Act 1996 (the **Act**) must follow to determine—

- whether the aquaculture activities proposed by the holder of a coastal permit, or fishing in relation to which the chief executive of the Ministry for Primary Industries (the **chief executive**) has made a reservation, is of materially greater value to New Zealand; and

- the compensation payable to affected quota owners for the loss in value of affected fishing quota caused by the aquaculture activities authorised by a coastal permit.

Coastal permits granted under Part 6 of the Resource Management Act 1991 authorising aquaculture activities to be undertaken in the coastal marine area are granted subject to an aquaculture decision by the chief executive. An aquaculture decision may include a reservation to the effect that the chief executive is not satisfied that the aquaculture activities authorised by the coastal permit will not have an undue effect on fishing.

If the chief executive makes a reservation, the holder of the coastal permit may seek an aquaculture agreement with the quota owners of commercial fish stocks subject to the reservation. If no agreement is reached, and the coastal permit holder wishes to proceed with the proposed aquaculture activities, the coastal permit holder is required, under section 186ZN of the Act, to pay compensation to affected quota owners.

Under section 186ZO(1) of the Act, the coastal permit holder may request that an arbitrator determine the amount of compensation payable to quota owners. Before determining the compensation payable, the arbitrator must determine, under section 186ZP(2) of the Act, whether the proposed aquaculture activities, or the fishing in relation to which the chief executive has made a reservation, is of materially greater economic value to New Zealand.

Under section 186ZP(6) of the Act, if the arbitrator determines that the fishing is of materially greater economic value, or if the question cannot be decided either way, the arbitrator must not determine the compensation payable to quota owners. If the arbitrator determines that the proposed aquaculture activities are of materially greater economic value, the arbitrator must, under section 186ZQ of the Act, follow the methodology specified in the regulations to determine the compensation payable to quota owners.

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Methodology) Regulations 2012**

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

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These regulations are administered by the Ministry for Primary Industries.
