

**Fisheries Amendment Act (No. 2) 1992 090**  
**Commenced: 1 Oct 1992; 1 Apr 1993, s. 8; 1 Oct 1990, s. 9(2), (3), 12**

**ANALYSIS**

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1 SCHEDULE: New Schedule 1D Inserted into Principal Act

An Act---

- (a) To make better provision for the enhancement and management of the Southern Scallop Fishery; and
- (b) To make better provision for the recognition of Maori fishing rights; and
- (c) To facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing; and
- (d) To amend the Fisheries Act 1983 and the Maori Fisheries Act 1989

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 Amendment Act (No. 2) 1992, and shall be read together with and deemed part of the Fisheries Act 1983 (hereinafter referred to as the principal Act).

(2) Except as provided in sections 5 (4), 8 (4), 9 (4), and 12 (2) of this Act, this Act shall come into force on the 1st day of October 1992.

## PART I AMENDMENTS TO PRINCIPAL ACT

2. Interpretation---(1) Section 2 (1) of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

"Annual allowable catch', in relation to scallops in the Southern Scallop Fishery, means the annual allowable catch specified in Part III of Schedule 1D to this Act:

"Meatweight', in relation to scallops, means the weight of scallops remaining when the shell, skirt, and gut have been removed and discarded:

"Scallop' means the mollusc *Pecten novaezelandiae*; but does not include scallop spat:

"Scallop spat'--- (a) Means the pelagic larval stage of the mollusc *Pecten novaezelandiae*; and (b) Includes any shelled animal of that species that has been retained by fishing gear on which it settled while in the larval stage:

"Southern Scallop Fishery' means the fishery described in Part I of Schedule 1D to this Act:

"Southern Scallop Fishery Advisory Committee' means the advisory committee established under section 28ZZD of this Act:

"Southern scallop season' means the season for the time being determined by the Minister under section 28ZM (3) of this Act; and includes any extension of the season under that provision:".

(2) Section 2 (1) of the principal Act is hereby amended by inserting in paragraph (a) of the definition of the term "fishing year" (as substituted by section 48 (1) of the Maori Fisheries Act 1989), after the words "rock lobster", the words "and in relation to scallops in the Southern Scallop Fishery".

(3) Section 2 (1) of the principal Act is hereby amended by inserting, after paragraph (a) of the definition of the term "quota management area" (as substituted by section 48 (2) of the Maori Fisheries Act 1989), the following paragraph:

"(aa) The Southern Scallop Fishery; or".

(4) Section 2 (1) of the principal Act is hereby amended by inserting in the definition of the term "quota management system" (as inserted by section 2 (6) of the Fisheries Amendment Act 1986), after the expression "Part IIA", the expression "or Part IIB".

3. Part IIA not to apply to Southern Scallop Fishery---The principal Act is hereby amended by inserting in Part IIA, before section 28B (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

"28AB. Subject to section 28ZQ (2) of this Act, nothing in this Part of this Act applies to the taking of scallops in the Southern Scallop Fishery."

4. Reduction of total allowable commercial catch---Section 28OD (8) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by omitting the expression "subsection (3) or subsection (4) or subsection (5) of".

5. Transfers and leases of individual transferable quotas---(1) Section 28Q of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986 and amended by section 17 of the Fisheries Amendment Act 1990) is hereby amended by repealing subsections (2) and (4), and substituting the following subsection:

"(2) For the purposes of this Act, any transfer or lease referred to in subsection (1) of this section shall have effect according to its tenor on and from the date it is entered into so long as it is received by the Ministry within 10 days after that date, is in an approved form, and is accompanied by the prescribed fee (if any); but, if the foregoing provisions of this subsection are not complied with, the transfer or lease shall be deemed not to have and never to have had any effect for the purposes of this Act."

(2) Section 28Q of the principal Act (as so inserted and as so amended) is hereby amended by adding the following subsections:

"(9) Where any lease of quota ends through the effluxion of time on the last day of the fishing year,---

"(a) No unused rights that are available under that lease shall revert to the lessor:

"(b) Such unused rights shall not be taken into account in determining the rights available in respect of that quota under section 28V (6) of this Act.

"(10) No person shall---

"(a) Lease quota to any other person without owning, at the commencement of the term of the lease, an amount of uncaught quota that is sufficient to authorise the lessee to take the tonnage specified in the lease; or

"(b) Sublease quota to any other person unless, at the commencement of the term of the sublease, the lease has sufficient uncaught quota to authorise the sublessee to take the tonnage specified in the sublease.

"(11) Notwithstanding anything in subsection (10) of this section, but subject to the other provisions of this Act relating to the leasing of quota,---

"(a) Any lessee of quota shall receive the rights to take fish specified in the lease:

"(b) Any sublessee of quota shall receive the rights to take fish specified in the sublease."

(3) Except as provided in subsection (4) of this section, this section shall come into force on the 1st day of October 1992.

(4) Section 28Q (11) of the principal Act (as added by subsection (2) of this section) shall be deemed to have come into force on the 1st day of October 1990.

6. Minimum holdings of quota and interest in quota---Section 28S of the principal Act (as substituted by section 15 of the Fisheries Amendment Act 1991) is hereby amended---

(a) By repealing subsection (8):

(b) By omitting from subsection (9) the words "take or lease", and substituting the words "take on lease".

7. Power of Crown to acquire, hold, transfer, lease, or cancel quotas---Section 28U of the principal Act (as substituted by section 65 of the Maori Fisheries Act 1989) is hereby amended by omitting from subsection (5) and also from subsection (6) the word "Minister" wherever it occurs, and substituting in each case the words "Director-General".

8. Taking of fish in excess of quota, and carrying forward of unused quota---(1) Section 28V of the principal Act (as substituted by section 22 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (3).

(2) Section 28V of the principal Act (as so substituted) is hereby amended by adding the following subsection:

"(11) Nothing in this section applies in respect of rock lobster."

(3) Nothing in this section affects any rights under section 28V of the principal Act (as so substituted) that have accrued before the commencement of this section.

(4) This section shall come into force on the 1st day of April 1993.

9. Fish subject to quota fishing cannot be taken for sale other than under quota---(1) Section 28ZA (2B) (c) of the principal Act (as substituted by section 18 of the Fisheries Amendment Act 1991) is hereby amended by omitting the words "persons acting under the authority of that quota", and substituting the words "any person acting within the terms of a written authority of the kind described in subsection (2) (c) of this section".

(2) Section 28ZA (4) of the principal Act (as substituted by section 26 (1) of the Fisheries Amendment Act 1990) is hereby amended by omitting from paragraph (c) the expression "fisherman,---", and substituting the expression "fisherman; or" and adding the following paragraph:

"(d) The commercial fisherman subsequently obtains, as a result of a Quota Appeal Authority decision under section 28I of this Act, guaranteed minimum individual transferable quota, individual transferable quota, guaranteed minimum transferable term quota, or transferable term quota,---".

(3) Section 28ZA (4) (as so substituted) is hereby amended by omitting the words "or arranged", and substituting the words "arranged, or obtained".

(4) Subsections (2) and (3) of this section shall be deemed to have come into force on the 1st day of October 1990.

10. Special provision in relation to quota balances---The principal Act is hereby amended by inserting, after section 28ZC (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

"28ZCA. (1) In this section,---

"'Monthly balance' means the actual rights to take fish under the authority of quota that are available to any quota holder at the end of any month, after any adjustment has been made for catch taken and quota transferred or leased during that month:

"'Opening balance' means--- "(a) In relation to individual transferable quota, the actual rights to take fish under the authority of quota that are available to any quota holder on the 1st day of October 1992, after any adjustment has been made for carrying forward any rights or reducing any rights, pursuant to section 28V of this Act, in respect of the 2 previous fishing years: "(b) In relation to transferable term quota, the actual rights to take fish under the authority of quota that are available to any quota holder on the 1st day of October 1992, after any adjustment has been made for carrying forward any rights, pursuant to section 28V of this Act, in respect of the period commencing on the 1st day of October 1990 and ending with the close of the 30th day of September 1992:

"'Quota holder' means any holder or lessee of individual transferable quota or transferable term quota:

"'Regulations' means any regulations made on or after the commencement of this section, being regulations made pursuant to paragraphs (kb) and (kc) of subsection (1), and to subsection (1B), of section 89 of this Act.

"(2) As soon as practicable after the regulations come into force, the Director-General shall---

"(a) Give every quota holder notice in writing stating---

"(i) The Director-General's assessment of the quota holder's balance as at the end of each month during the period to which the regulations apply and the basis on which it was made; and

"(ii) The Director-General's assessment of the quota holder's opening balance and the basis on which it was made; and

"(b) Notify the quota holder that the holder may, within 6 weeks after receipt of that notice, object to the Director-General's assessment of any monthly balance or opening balance.

"(3) Every objection under subsection (2) of this section shall be lodged in an approved form.

"(4) Subject to subsection (7) of this section, where the quota holder does not object in accordance with subsections (2) (b) and (3) of this section, then---

"(a) The Director-General's assessment of the quota holder's monthly and opening balances shall be confirmed; and

"(b) The Director-General's assessment of the opening balance shall be deemed for all purposes to have been the holder's opening balance as at the 1st day of October 1992; and

"(c) The monthly balances assessed by the Director-General shall be deemed for all purposes to have been the monthly balances for the period to which the regulations apply; and

"(d) The Director-General shall notify the quota holder accordingly.

"(5) Where any quota holder lodges an objection in accordance with subsections (2) (b) and (3) of this section, the objection shall be considered and determined by the Director-General in accordance with this section.

"(6) Where the Director-General has considered the quota holder's objection to any of the matters specified in subsection (2) (b) of this section, then, subject to subsection (7) of this section,---

"(a) The opening balance determined by the Director-General under subsection (9) of this section shall be deemed for all purposes to have been the holder's opening balance as at the 1st day of October 1992; and

"(b) The monthly balances determined by the Director-General under subsection (9) of this section shall be deemed for all purposes to have been the monthly balances for the period to which the regulations apply; and

"(c) The Director-General shall notify the quota holder accordingly.

"(7) After a quota holder's opening balance has been assessed or determined in accordance with this section (whether under subsection (4) or subsection (6) or subsection (9) of this section), the Director-General may, after---

"(a) Having regard to the matters specified in subsections (8) to (10) of this section; and

"(b) Giving the quota holder 14 days to make submissions on the proposal,---

consequentially adjust that opening balance to reflect the effect of determinations of the opening balances for other quota holders; and the Director-General shall notify the quota holder of the adjustment accordingly.

"(8) When considering any objection under this section, the Director-General shall have regard to the following:

"(a) The fact that no regulations made under paragraphs (kb) and (kc) of section 89 (1) of this Act were in force during the period commencing on the 1st day of October 1990 and ending with the close of the 30th day of September 1992:

"(b) The practices adopted by the quota holder, in the period concerned, for recording catch and crediting underfishing against quota held by that person:

"(c) Whether the quota holder---

"(i) Kept records in respect of the matters referred to in paragraph (b) of this subsection:

"(ii) Applied those practices consistently during the period concerned:

"(d) Whether the practices of the quota holder, if universally applied, could have resulted in the maximum catching rights for the quota species being exceeded:

"(e) Whether, in the opinion of the Director-General, the quota holder genuinely believed that the holder's practices were lawful.

"(9) Notwithstanding anything in this Act or the regulations, but subject to subsection (10) of this section, the Director-General, in determining any objection under this section, may---

"(a) If the Director-General considers it fair to do so, alter the manner and order in which fish catch has been counted (or any underfishing credited) against the quota of that holder or a lessee of the quota during that period; and

"(b) If necessary, amend the quota holder's monthly balances and opening balance, for the purposes of this section; and

"(c) If necessary, amend any other quota holder's monthly balances and opening balance, for the purposes of this section.

"(10) When amending a quota holder's quota balance under subsection (7) or subsection (9) of this section, the Director-General shall not set a balance that has the effect of permitting the holder to take, under the holder's quota in any one fishing year, a greater amount of fish than is permitted by section 28V (8) of this Act to be taken under that quota in that year."

11. Commercial fishermen may be required to pay deemed value of excess or unauthorised quota fish---(1) Section 28ZD of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after subsection (2), the following subsections:

"(2A) Any holder or lessee of quota who leases or subleases quota to any person contrary to section 28Q (10) of this Act,---

"(a) Shall be deemed, at the time the lease or sublease commences, to have taken in excess of the amount authorised to be taken under the holder's or lessee's quota the amount of fish that is equivalent to the difference between the amount of un-caught quota and the amount of fish specified in the lease or sublease; and

"(b) Shall pay to the Crown, within 20 days of demand being made by notice in writing given by an employee of the Ministry, the deemed value of the fish assessed by the Director-General in accordance with section 28ZE of this Act.

"(2B) Any amount required to be paid under subsection (2A) of this section shall be payable whether or not the lessor committed any offence against section 28Q (10) of this Act.

"(2C) Section 28ZF of this Act shall apply, with the necessary modifications, to any person who has paid or is required to pay the deemed value of the fish pursuant to subsection (2A) of this section."

(2) Section 28ZD of the principal Act (as so inserted) is hereby amended by repealing subsection (3) (as added by section 19 (1) of the Fisheries Amendment Act 1991 and amended by section 2 of the Fisheries Amendment Act 1992), and substituting the following subsection:

"(3) A demand under subsection (1) or subsection (2A) of this section may be made at any time (whether during or after the end of the fishing year in which the fish are taken)."

(3) Notwithstanding anything in the principal Act, subsections (2A) to (3) of section 28ZD of that Act (as inserted by subsections (1) and (2) of this section) shall be deemed to apply on and from the 1st day of October 1990, except that, in respect of the period commencing on the 1st day of October 1990 and ending with the close of the 30th day of September 1992, the lessor shall not be liable for the deemed value payment in respect of that fish if, during the term of the lease, the lessee did not exercise rights in respect of that lease that were greater than the rights which, but for the operation of section 28Q (11) of this Act (as inserted by section 5 (2) of this Act), would have been exercisable by the lessee after the previous catch taken by the lessor had been taken into account.

(4) The Fisheries Amendment Act 1992 is hereby consequentially repealed.

12. Amount of deemed value to be returned to fisherman where quota subsequently obtained---(1) Section 28ZF of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2), and substituting the following subsection:

"(2) Subject to the provisions of this section, a commercial fisherman shall be entitled to a refund or remission of the amount of any deemed value paid or payable by the fisherman under section 28ZD of this Act in respect of any fish caught in any fishing year if,---

"(a) During that fishing year the fisherman has obtained sufficient guaranteed minimum individual transferable quota, individual transferable quota, guaranteed minimum transferable term quota, or transferable term quota as a result of a Quota Appeal Authority decision under section 28I of this Act but has

not used such quota, being quota that would have authorised the taking of the fish if it had been held by the fisherman at the time the fish were taken; or

"(b) During that fishing year or not later than 15 days after the end of that fishing year, the fisherman has---

"(i) Bought or leased quota, and supplied the transfer or lease document to the Director-General, being quota that would have authorised the taking of the fish if it had been held by the commercial fisherman at the time the fish were taken, and being quota that applied to and was not otherwise fished in that fishing year; or

"(ii) Entered into an arrangement with another commercial fisherman for the fish to be counted against unused quota for that fishing year of that other fisherman, and notified the Director-General accordingly."

(2) This section shall be deemed to have come into force on the 1st day of October 1990.

13. New Part IIB inserted---The principal Act is hereby amended by inserting, after Part IIA (as inserted by section 10 of the Fisheries Amendment Act 1986 and as amended by section 29 (1) of the Fisheries Amendment Act 1990), the following Part:

#### "PART IIB

#### "QUOTA MANAGEMENT SYSTEM FOR SCALLOPS IN SOUTHERN SCALLOP FISHERY

##### "Establishment of System

"28ZH. Application of this Part---Except as provided in section 28ZM (2) of this Act, this Part of this Act shall apply only to the taking of scallops in the Southern Scallop Fishery.

"28ZI. Scallops subject to quota fishing---The taking of scallops in the Southern Scallop Fishery shall be subject to the quota management system established under this Part of this Act.

"28ZJ. Annual allowable catch for scallops---The annual allowable catch in respect of scallops for the Southern Scallop Fishery is that specified in Part III of Schedule 1D to this Act.

"28ZK. Allocation of annual allowable catch---(1) The initial annual allowable catch is hereby allocated as individual transferable quota to the persons and in the amounts specified in Part IV of Schedule 1D to this Act.

"(2) Each individual transferable quota shall enable the holder or, if there is more than one holder, the combined holders, and any lessee or lessees of the rights to take scallops under the quota, to take in total within the quota management area concerned in any year scallops up to the tonnage shown in the quota.

"(3) No person shall be entitled to take scallops pursuant to an individual transferable quota unless the person also holds a fishing permit issued under section 63 of this Act, and the scallops are taken in accordance with that permit.

"28ZL. Variation of annual allowable catch---(1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, amend Part III of Schedule 1D to this Act by omitting the annual allowable catch specified in that Part, and substituting a new annual allowable catch.

"(2) When determining to recommend any amendment to the annual allowable catch under this section, the Minister shall consult the Southern Scallop Fishery Advisory Committee and such other persons or organisations as the Minister considers are representative of persons having an interest in the Southern Scallop Fishery and shall have regard to the following matters:

"(a) Enhancement measures carried out in the Fishery:

"(b) Assessments made of the size and state of the scallop resource in the Fishery:

"(c) Information available to the Minister as to the harvesting of scallops from the Fishery for purposes other than sale:

"(d) Such other matters as the Minister considers relevant.

"(3) Any Order in Council made under this section may---

"(a) Increase or decrease the annual allowable catch in respect of any southern scallop season that has not commenced:

"(b) Increase the annual allowable catch in respect of any southern scallop season while it is current.

"28ZM. Prohibition on taking scallops for sale outside scallop season---(1) No person shall take any scallops from the Southern Scallop Fishery, for the purpose of sale, except during the southern scallop season.

"(2) No person shall take any scallops, for the purpose of sale, from any part of quota management area 7 that is outside the Southern Scallop Fishery.

"(3) For the purposes of this Part of this Act, the Minister may, after consultation with the Southern Scallop Fishery Advisory Committee, by notice in the Gazette,---

"(a) Determine any southern scallop season before the season commences:

"(b) Extend any southern scallop season while it is current.

"(4) Notwithstanding subsection (3) of this section, the period commencing on the 18th day of August 1992 and ending with the close of the 19th day of December 1992 is hereby deemed to be a southern scallop season.

"28ZN. Effect of increase or reduction in annual allowable catch until 31 March 1997---(1) Until the close of the 31st day of March 1997, the following provisions shall apply in relation to the annual allowable catch for scallops in the Southern Scallop Fishery:

"(a) Where the annual allowable catch is increased to an amount exceeding 640 tonnes (meatweight), the excess shall be vested in the Crown as individual transferable quota and---

"(i) The Director-General shall as soon as practicable, pursuant to section 28ZV of this Act, lease 10 percent of the excess without charge to the quota holders specified in Part V of Schedule 1D to this Act; and the amount leased shall be in proportion to the amount so allocated:

"(ii) The Director-General may, pursuant to section 28ZV of this Act but subject to subsection (2) of this section, lease the balance of the excess:

"(iii) Any such lease may be granted only in respect of the balance of the fishing year in which it is granted:

"(iv) The Director-General shall not transfer any individual transferable quota vested in the Crown by this paragraph:

"(b) Where the annual allowable catch is decreased to an amount not less than 640 tonnes (meatweight), the Director-General shall cancel such amount of the individual transferable quota for scallops held by the Crown as is equivalent to the amount of the decrease in the annual allowable catch:

"(c) Where the annual allowable catch is decreased to less than 640 tonnes (meatweight), then---

"(i) If the previous annual allowable catch exceeded 640 tonnes (meatweight), the Director-General shall cancel such amount of the Crown's own individual transferable quota as is equivalent to the amount by which the previous annual allowable catch exceeded 640 tonnes (meatweight); and

"(ii) The Director-General shall reduce every individual transferable quota for scallops in the Southern Scallop Fishery on a proportionate basis to total the amount of the decreased annual allowable catch:

"(d) Where the annual allowable catch is increased from an amount less than 640 tonnes (meatweight), then---

"(i) The Director-General shall increase every individual transferable quota for scallops in the Southern Scallop Fishery on a proportionate basis to total the amount of the increased annual allowable catch where that catch does not exceed 640 tonnes (meatweight); and

"(ii) Any amount by which the increase exceeds 640 tonnes (meatweight) shall be subject to the provisions of paragraph (a) of this section.

"(2) Where, pursuant to section 28ZV of this Act, the Director-General intends to lease the balance of any excess to which subsection (1) (a) (ii) of this section applies, the Director-General shall, after



consultation with the Southern Scallop Fishery Advisory Committee, establish a procedure for allocating those leasehold rights at a market price with preference being given to existing quota holders.

"(3) Where the holder of any quota that is reduced under subsection (1) of this section has leased that quota to any person,---

"(a) The right to take scallops thereby conferred on that person shall be reduced proportionately to the reduction in the quota of the holder of the quota; and

"(b) Any right to take scallops conferred on any person pursuant to any sublease of the quota shall be reduced proportionately to the reduction in the quota of the person granting the sublease.

"(4) Where the holder of any quota that is reduced under subsection (1) of this section has entered into any lease or any other arrangement in relation to quota whereby any other person is or may become entitled to acquire any amount of quota outright, the amount of quota to which that entitlement relates shall be reduced proportionately to the reduction in the quota of the holder of the quota.

"(5) As soon as practicable after any quota is increased or reduced pursuant to subsection (1) of this section, the Director-General shall---

"(a) Notify each affected quota holder of the increase or reduction made to that person's quota; and

"(b) Give notice of the effect of the increase or the reduction to any lessee or sublessee of the quota.

"(6) No reduction of quota pursuant to this section---

"(a) Shall be regarded as placing the Crown or any other person in breach of, or default under, any contract or other arrangement relating to quota, or as otherwise making them guilty of a civil wrong:

"(b) Shall invalidate any contract or other arrangement in relation to quota, or be regarded as giving rise to a right for any person to terminate or cancel any such contract or other arrangement, except to the extent that specific provision to the contrary is made in relation to any such reduction in the relevant contract or other arrangement.

"(7) Any quota vested in the Crown under subsection (1) (a) of this section and held by the Crown as at the close of the 31st day of March 1997 shall thereafter continue to be vested in the Crown until transferred or cancelled or otherwise disposed of by or under this Act or any other Act.

"28ZO. Crown to transfer quota to iwi after 31 March 1997---As soon as practicable after the 31st day of March 1997, the Crown shall transfer 10 percent of any quota vested in the Crown under section 28ZN (1) (a) of this Act and held as at the 1st day of April 1997 in equal amounts to those iwi to whom the Maori Fisheries Commission has, pursuant to section 44A of the Maori Fisheries Act 1989, transferred quota.

"28ZP. Effect of increase or reduction in annual allowable catch after 31 March 1997---(1) The provisions of this section shall apply in relation to any variation of the annual allowable catch for scallops in the Southern Scallop Fishery that takes effect after the 31st day of March 1997.

"(2) Where the annual allowable catch for scallops is decreased under section 28ZL of this Act, the quantity of scallops that may be taken under the individual transferable quotas to which that annual allowable catch applies shall be reduced on a proportionate basis to total the amount of the decreased annual allowable catch.

"(3) Where the holder of any quota that is reduced under this section has leased that quota to any person,---

"(a) The right to take scallops thereby conferred on that person shall be reduced proportionately to the reduction in the quota of the holder of the quota; and

"(b) Any right to take scallops conferred on any person pursuant to any sublease of the quota shall be reduced proportionately to the reduction in the quota of the person granting the sublease.

"(4) Where the holder of any quota that is reduced under this section has entered into any lease or any other arrangement in relation to quota whereby any other person is or may become entitled to acquire any amount of quota outright, the amount of quota to which that entitlement relates shall be reduced proportionately to the reduction in the quota of the holder of the quota.

"(5) No reduction of quota pursuant to this section---

"(a) Shall be regarded as placing the Crown or any other person in breach of, or default under, any contract or other arrangement relating to quota, or as otherwise making them guilty of a civil wrong:

"(b) Shall invalidate any contract or other arrangement in relation to quota, or be regarded as giving rise to a right for any person to terminate or cancel any such contract or other arrangement, except to the extent that specific provision to the contrary is made in relation to any such reduction in the relevant contract or other arrangement.

"(6) Where any annual allowable catch for scallops is increased under section 28ZL of this Act, all individual transferable quota for scallops shall be increased on a proportionate basis to total the amount of the increased annual allowable catch.

"(7) As soon as practicable after any quota is increased or reduced pursuant to this section, the Director-General shall---

"(a) Notify each affected quota holder of the increase or reduction made to that person's quota; and

"(b) Give notice of the effect of the reduction to any lessee or sublessee of the quota.

"28ZQ. No compensation for effect of reduction in annual allowable catch---(1) If, pursuant to section 28ZN or section 28ZP of this Act, any individual transferable quota for scallops is reduced, the Crown shall not be liable to pay compensation to any person in respect of that reduction.

"(2) Notwithstanding subsection (1) of this section, all resource rentals collected in respect of scallops in any quota management area shall continue to be taken into account for the purposes of section 28OJ of this Act.

#### "Dealings in Quota

"28ZR. Register to be maintained---(1) The Director-General shall ensure that there is maintained in respect of the Southern Scallop Fishery a register showing---

"(a) The annual allowable catch:

"(b) The individual transferable quota allocated to each person:

"(c) In respect of every transfer of individual transferable quota, whether by operation of law or agreement of the parties, that has been notified to the Director-General, the following details:

"(i) The name and address of the transferor and transferee:

"(ii) The tonnage of quota transferred:

"(iii) The date on which the transfer occurred or is to occur:

"(d) In respect of every lease under section 28ZS of this Act that has been notified to the Director-General, the following details:

"(i) The name and address of the lessor and lessee:

"(ii) The tonnage of quota leased:

"(iii) The date on which the lease is to commence and the date on which the lease is to terminate.

"(2) The register shall be kept at such office of the Ministry as the Director-General shall determine; and copies shall be kept at such offices of the Ministry as the Director-General considers are ordinarily used by persons who fish in the Southern Scallop Fishery.

"(3) The register shall be a public document open for inspection on payment of the prescribed fee (if any) during ordinary office hours; and the Director-General shall supply to any person copies of all or part of the register on request and payment of a reasonable charge for the production of the copy.

"(4) In any proceedings in any Court, a certificate purporting to be signed by an officer of the Ministry to the effect that the officer has checked the register and stating any matters that are or are not included in the register at a specified date shall, in the absence of evidence to the contrary, be sufficient evidence of the matters contained in the certificate.

"(5) The register required to be maintained under this section may be kept in conjunction with any other register maintained by the Director-General under this Act.

"28ZS. Transfers and leases of individual transferable quotas---(1) Except as provided in sections 28ZU and 28ZW of this Act, any person who is the holder of an individual transferable quota for scallops in the Southern Scallop Fishery may permanently transfer that quota to any other person or lease the rights of the holder to any other person for a specified period or a specified tonnage of scallops.

"(2) For the purposes of this Act, any transfer or lease referred to in subsection (1) of this section shall have effect according to its tenor on and from the date it is entered into so long as it is received by the Ministry within 10 days after that date, is in an approved form, and is accompanied by the prescribed fee (if any); but, if the foregoing provisions of this subsection are not complied with, the transfer or lease shall be deemed not to have and never to have had any effect for the purposes of this Act.

"(3) No transfer or other transaction by way of security involving individual transferable quota for scallops shall be capable of registration; but nothing in this subsection shall prohibit any such transfer or other transaction.

"(4) Where any person who holds individual transferable quota or any interest as lessee in such quota has been charged with the commission of a quota management offence or an offence relating to returns and records (as those terms are defined in section 107B (1) of this Act),---

"(a) No transfer or lease of that quota or interest in quota shall be registered under section 28ZR or section 28ZS of this Act before the proceedings for the offence are finally determined; and

"(b) No transfer or lease of that quota or interest in quota shall confer any right to take fish on the transferee or lessee under that quota or interest; and

"(c) No transfer or lease of that quota or interest in quota shall be effective against the Crown in the event of forfeiture of the quota or interest pursuant to section 107B of this Act,---

except to the extent that the Court orders otherwise under subsection (5) of this section.

"(5) The Court may at any time, on application by---

"(a) The holder of quota to which subsection (4) of this section applies; or

"(b) By any person having an interest in such quota,---

order that any or all of the provisions of that subsection shall not apply in respect of the quota, whether generally or in respect of any specified dealing in the quota. Any such order may be subject to such sureties and conditions as the Court may specify.

"(6) No person shall---

"(a) Lease quota to any other person without owning, at the commencement of the term of the lease, an amount of uncaught quota that is sufficient to authorise the lessee to take the tonnage specified in the lease; or

"(b) Sublease quota to any other person unless, at the commencement of the term of the sublease, the lease has sufficient uncaught quota to authorise the sublessee to take the tonnage specified in the sublease.

"(7) Notwithstanding anything in subsection (6) of this section, but subject to the other provisions of this Act relating to the leasing of quota,---

"(a) Any lessee of quota shall receive the rights to take scallops specified in the lease:

"(b) Any sublessee of quota shall receive the rights to take scallops specified in the sublease.

"(8) Any form approved for the purposes of section 28Q of this Act shall be deemed to be approved for the purposes of this section and may be used with any necessary modifications.

"28ZT. Form of leases of individual transferable quota---(1) Every transfer of an individual transferable quota shall be on an approved form and shall clearly show---

"(a) The name and address of the transferor and the transferee:

"(b) The price of or consideration for the transfer:

"(c) Such other matters as may be required or authorised by regulations made under this Act to be shown.

"(2) Every lease of an individual transferable quota shall be in an approved form and shall clearly show---

"(a) The name and address of the holder of the quota and the lessee of the quota:

"(b) The maximum tonnage of scallops that may be taken under the lease:

"(c) The duration of the lease:

"(d) The rental charged under the lease:

"(e) Such other matters as may be required or authorised by regulations made under this Act to be shown.

"(3) Any form approved for the purposes of section 28R of this Act shall be deemed to be approved for the purposes of this section and may be used with any necessary modifications.

"28ZU. Minimum holdings of quota and interest in quota---(1) Except as otherwise provided in this section, no person may purchase or take on lease less than 5 tonnes of individual transferable quota for scallops.

"(2) Notwithstanding that a person may have purchased or taken on lease not less than the minimum amount of quota specified in subsection (1) of this section, that person shall not take scallops pursuant to any such quota at any time when the person has disposed of, in whole or in part, the right to take scallops under the quota (whether by way of lease or otherwise), unless the person has the current right to take scallops to an amount not less than that specified in that subsection.

"(3) Nothing in subsection (1) or subsection (2) of this section shall prevent---

"(a) The reduction, pursuant to section 28ZN or section 28ZP of this Act, of quota to amounts less than those specified in subsection (1) of this section; or

"(b) The taking of scallops pursuant to any such reduced quota by the person whose quota was so reduced at any time when the person has the current right to take scallops to an amount not less than---

"(i) The amount of the reduced quota; or

"(ii) If the reduced quota is subsequently increased pursuant to section 28ZN or section 28ZP of this Act, the amount of that quota as so increased.

"(4) Nothing in subsection (1) of this section shall prevent the purchase or taking on lease of individual transferable quota by any person who intends to acquire over a period at least the minimum individual transferable quota, and who does not take any scallops pursuant to that quota until the person holds at least the minimum amount of quota specified in that subsection.

"(5) No person may sell or otherwise dispose of (other than by lease) individual transferable quota where that sale or disposal would reduce the total individual transferable quota held by that person to less than 5 tonnes of scallops unless all the individual transferable quota for scallops held or leased by the person is disposed of.

"(6) No person may dispose of or grant a lease of, and no person may acquire or take on lease less than 100 kilograms of, any individual transferable quota, unless, in the case of the disposal or granting of a lease, the person disposes of or grants a lease of all the individual transferable quota for scallops held by that person.

"(7) No agreement shall be entered into, whether notified under this Act or otherwise, or if entered into shall not be effective, to the extent that it authorises any person to take any scallops subject to a quota management system under the authority of quota held by any other person, unless the first-mentioned person holds or leases the required minimum amount of individual transferable quota specified in subsection (1) of this section.

"(8) Notwithstanding any other provision of this section, where any person is the holder or lessee of less than the minimum amount of individual transferable quota specified in subsection (1) of this section and has the right to take scallops under that quota by virtue of subsection (3) (b) of this section,---

"(a) That person may not sell or otherwise dispose of that quota (other than by lease) unless all the individual transferable quota held by that person and to which subsection (3) (b) of this section relates is sold or otherwise disposed of:

"(b) That person may acquire or take on lease additional quota if the effect is that the total held is less than the minimum quota, and that person may take scallops under all of that quota; but none of the quota initially held or later acquired may be sold or otherwise disposed of (other than by lease) unless all such quota is sold or otherwise disposed of:

"(c) If that person becomes the holder of more than the minimum amount of quota specified in subsection (1) of this section, all rights conferred upon that person by this section in respect of that quota shall be extinguished; but nothing in this paragraph shall prevent the person acquiring further rights under subsection (3) of this section in respect of that quota.

"28ZV. Power of Crown to acquire, hold, transfer, lease, or cancel quotas---(1) Subject to section 28ZN of this Act, the Director-General may, on behalf of the Crown,---

"(a) Purchase any individual transferable quota or take a lease of any such quota for a specified period:

"(b) Retain any quota so acquired, without being obliged to offer it to any commercial fisherman:

"(c) Transfer any individual transferable quota held by or on behalf of the Crown, or lease for a specified period some or all of the rights of the Crown in relation to any such quota:

"(d) Transfer or lease any individual transferable quota held by or on behalf of the Crown to such persons as the Minister directs for the purpose of enabling members of Maori tribes to engage in the business and activity of fishing.

"(2) Where quota or rights under quota are held on behalf of the Crown, the Crown shall have all the rights that would be enjoyed by any such holder who is not the Crown.

"(3) In order to give effect to reductions made under section 28ZL of this Act, the Director-General may cancel any individual transferable quota held on behalf of the Crown.

"(4) The Director-General shall give notice in the Gazette of any cancellation of individual transferable quota.

"28ZW. Restriction on amount of quota that may be held by any one person---(1) Notwithstanding the provisions in this Part of this Act relating to the transfer and lease of individual transferable quotas, no person (other than the Crown) shall be entitled to hold (whether by allocation or by taking on transfer or lease or by any combination of those means) more than 20 percent of the total of the individual transferable quotas for the Southern Scallop Fishery.

"(2) Where the maximum permitted percentage of individual transferable quota specified in subsection (1) of this section is less than the minimum permitted quota holding specified in section 28ZU of this Act, nothing in subsection (1) of this section shall prevent any person from holding up to the minimum permitted quota holding specified in section 28ZU of this Act.

"(3) Notwithstanding subsection (1) of this section, the Minister may from time to time, after consultation with the Fishing Industry Board and the Southern Scallop Fishery Advisory Committee, by notice in the Gazette, consent to any named person holding (whether by allocation or by taking on transfer or lease or by any combination of those means), not more than a specified percentage which is greater than 20 percent of the total of individual transferable quotas for scallops in the Southern Scallop Fishery.

"(4) Any consent under subsection (3) of this section may be given subject to such conditions as the Minister may impose, and may be given for any specified year or years or generally.

"(5) The Minister shall, in considering whether or not to grant any consent under subsection (3) of this section, consider---

"(a) The willingness and ability of other members of the New Zealand fishing industry to acquire or hold the appropriate quota and take the scallops concerned:

"(b) The likely effect of the granting or withholding of the consent on---

"(i) The development of any new or existing fishery:

"(ii) Other commercial fishermen:

"(iii) The processing and marketing of scallops:

"(iv) The ability of the applicant to take any other species or class of fish:

"(c) Such other matters as the Minister considers relevant.

"(6) The Minister shall not grant any consent under subsection (3) of this section in any case where quotas have been acquired by any person in excess of the then permitted percentage of quotas before the consent is sought.

"(7) Where any person acquires any quota or any interest in any quota in breach of this section or any consent given by the Minister under this section, the quota or the interest in the quota so acquired shall, to the extent that the holding of it is in breach of this section, be forfeited to the Crown without compensation.

"(8) For the purposes of this section, the term '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 that person, as defined in section 2 of the Income Tax Act 1976:

"(d) Any person who, for the purposes of the Income Tax Act 1976, would be a person associated with that person as provided in section 8 of that Act:

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

"28ZX. Quota not to be sold to or held in respect of licensed foreign fishing craft or leased to them other than by Crown---No person may sell or lease any individual transferable quota for scallops in the Southern Scallop Fishery to the owner of any foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977.

"28ZY. Quota not to be allocated to overseas individuals or companies with overseas control---(1)  
This section applies to any person who,---

"(a) Being an individual, is a person who is not ordinarily resident in New Zealand:

"(b) Being a body corporate, is wholly or significantly controlled from outside New Zealand.

"(2) For the purposes of subsection (1) (a) of this section, any person who is not otherwise ordinarily resident in New Zealand shall be deemed to be ordinarily resident in New Zealand if---

"(a) The person has resided in New Zealand for not less than two and a half years during the period of 3 years immediately preceding the date on which the matter is to be determined; and

"(b) The Director-General is satisfied that the person is likely to continue to reside permanently in New Zealand.

"(3) For the purposes of subsection (1) (b) of this section, a body corporate shall be deemed to be wholly or significantly controlled from outside New Zealand if 25 percent or more of the voting power in relation to the body corporate is---

"(a) Held or may be exercised by or on behalf of one or more individuals who are not ordinarily resident in New Zealand; or

"(b) Held by a body or bodies corporate of which 25 percent or more of the voting power is held or may be exercised by or on behalf of an individual or individuals who is or are not ordinarily resident in New Zealand or a body or bodies corporate that, by virtue of this provision, is or are wholly or significantly controlled from outside New Zealand, or a combination of such individuals and bodies corporate.

"(4) The Director-General may, by notice in the Gazette, declare that for the purposes of this section, any company whose shares are listed on the New Zealand Stock Exchange is not wholly or significantly controlled from outside New Zealand.

"(5) Where any person who is the holder of an individual transferable quota or the lessee of any individual transferable quota becomes a person to whom this section applies, that person shall, unless an appropriate declaration is made under subsection (4) of this section, or permission is granted under subsection (6) of this section, dispose of the quota or interest in the quota within 3 months or such greater period as the Director-General may permit.

"(6) The Director-General may, subject to such conditions as the Director-General considers appropriate, permit the acquisition or continued holding of individual transferable quota or interests in individual transferable quota by any person to whom this section applies.

"(7) No person may sell or lease any individual transferable quota to any person to whom this section applies other than in accordance with any permission granted under subsection (6) of this section.

"(8) Where any person to whom this section applies holds any individual transferable quota or any interest in any individual transferable quota that is not permitted under subsection (6) of this section, the individual transferable quota or interest in the individual transferable quota shall be forfeited to the Crown without compensation.

#### "General

"28ZZ. Scallops subject to quota fishing cannot be taken for sale other than under quota---(1) Except in the case of scallops taken pursuant to an arrangement or agreement entered into under section 87 of this Act, no person may take for sale any scallops for which individual transferable quota have been allocated other than under the authority of individual transferable quota.

"(2) For the purposes of this section, a person shall be deemed not to take scallops under the authority of any quota, unless---

"(a) That person is the holder of the quota; or

"(b) That person is a lessee of the quota; or

"(c) That person is named in a written authority that---

"(i) Is in the prescribed form or a form approved by the Director-General; and

"(ii) Is signed by the holder or lessee, as the case may be, of the quota and the person being authorised to take scallops under the authority of the holder's or lessee's quota; and

"(iii) Has, before the scallops are taken, been furnished to a Registrar; and no notice rescinding the authority has been served as required by subsection (3) of this section on the person named in the written authority.

"(3) Where any quota holder or lessee of quota authorises any person to take scallops under the authority of quota in accordance with subsection (2) (c) of this section, that written authority shall remain in effect according to its tenor until the quota holder or lessee of quota, as the case may be,---

"(a) Serves notice of rescission of the authority in accordance with section 88A of this Act on the person authorised to take the scallops; and

"(b) Gives written notice to a Registrar of service of the notice of rescission and the date from which the rescission is effective.

"(4) Where---

"(a) One or more current written authorities have been given by a holder or lessee of quota pursuant to subsection (2) (c) of this section; and

"(b) The written authority or authorities have not been rescinded and notice of any such rescission given to a Registrar, as required by subsection (3) of this section; and

"(c) At any time the total amount of scallops taken, by the holder or lessee and by any person acting within the terms of a written authority of the kind described in subsection (2) (c) of this section, exceeds the total amount of quota held by the holder or lessee,---

the holder or lessee shall for the purposes of this Act be deemed to have taken such excess for sale; but nothing in this subsection shall exonerate the person who took the scallops from liability for any offence against this Act.

"(5) No person shall take any scallops under the authority of any quota other than in accordance with the conditions of an appropriate fishing permit, the conditions and limitations imposed by or under this Act or any regulations or notice made under this Act, and any applicable fishery management plan.

"(6) Where---

"(a) A commercial fisherman takes scallops from the Southern Scallop Fishery without the authority of an appropriate quota, or takes scallops in excess of any amount authorised to be taken under any quota; and

"(b) The commercial fisherman has not notified the taking of the scallops to a Registrar and surrendered and disposed of the scallops in the manner specified in section 105A (1) (c) (ii) of this Act,---

any such scallops shall, whether or not any offence has been committed in relation to the scallops, and whether or not any defence is available under this Act in respect of any such offence, be attributed to and counted against the relevant quota so bought, leased, or arranged.

"(7) Nothing in subsection (6) of this section authorises the taking of scallops without the authority of, or in excess of any amount authorised to be taken under, any quota allocated under this Part of this Act.

"28ZZA. Prohibitions and requirements relating to dumping or retention of scallops---(1) No commercial fisherman shall return to the sea or abandon in the sea any scallop that is of legal size and either is dead or unlikely to survive if returned to the sea.

"(2) Any commercial fisherman who takes any scallop that is not of legal size shall immediately return that scallop to the sea, whether alive or dead.

"(3) It shall be a defence to any proceedings for an offence against subsection (1) of this section if the defendant proves that---

"(a) The return was a return of parts of scallops lawfully processed at sea; or

"(b) The scallops were diseased; or

"(c) The scallops were returned or abandoned to ensure the safety of the vessel.

"28ZZB. Resource rental payable in respect of quota---(1) On and from the 1st day of April 1993, there shall be payable to the Crown in respect of every individual transferable quota an annual resource rental for each tonne or part of a tonne of quota at the appropriate rate specified in Part II of Schedule 1D to this Act.

"(2) Subject to subsections (4) and (5) of this section, the annual resource rental shall be payable irrespective of whether or not the scallops to which the quota relates are taken.

"(3) The annual resource rental shall be payable in equal instalments on the last days of March, June, September, and December in each year, and shall be payable by the person who is the holder of the quota on the date concerned.

"(4) For the purposes of this section, the term 'holder' in relation to a quota means the person to whom a quota is issued or transferred and who for the time being would be entitled to take scallops under the quota if the rights under the quota had not been leased to any other person, and includes any lessee from the Crown of the right to take scallops under a quota; but does not include any other lessee of the right to take scallops under a quota, the Crown, or the Director-General acting on behalf of the Crown.

"(5) Where the Southern Scallop Fishery has been closed for a whole season under section 28ZZF of this Act, the Minister may authorise the remission or waiver of all or any resource rentals paid or payable in respect of the year in which the closure occurred.

"28ZZC. Scallop spat---No person shall take any scallop spat, except pursuant to a permit granted by the Director-General and in accordance with such conditions (if any) as the Director-General may specify in the permit.



## "Enhancement

"28ZZD. Southern Scallop Fishery Advisory Committee---(1) For the purposes of the enhancement of stocks of scallops in the Southern Scallop Fishery, the Minister shall establish an advisory committee consisting of---

"(a) Such persons as the Minister may appoint to represent scallop quota holder, processing, and Maori interests; and

"(b) The Director-General or his or her nominee.

"(2) The functions of the advisory committee shall be to advise the Minister on the following matters:

"(a) The amendment of the annual allowable catch under section 28ZL of this Act:

"(b) The determination under section 28ZM of this Act of the southern scallop season for any fishing year:

"(c) The granting of consents under section 28ZW (3) of this Act to enable persons to hold more than the amount of quota specified in subsection (1) of that section:

"(d) The enhancement programme to be determined under section 28ZZE of this Act:

"(e) The amount of any levy required to fund the enhancement programme:

"(f) The areas within the Southern Scallop Fishery that ought to be closed to commercial fishing:

"(g) The need for, and the duration of, a closure notice under section 28ZZF of this Act:

"(h) The minimum size of scallops that may be commercially harvested in the Southern Scallop Fishery:

"(i) The making of any regulations under this Act, or the giving of any notice under section 28ZZF (2) of this Act, that apply or applies in respect of the Southern Scallop Fishery.

"28ZZE. Minister to determine enhancement programme---The Minister shall, after consultation with the Southern Scallop Fishery Advisory Committee and such other persons or organisations as the Minister considers are representative of persons having an interest in the Southern Scallop Fishery, determine an enhancement programme which shall---

"(a) Aim to enhance the Fishery so as to achieve the maximum economic yield from the Fishery within 5 years and to maintain that yield thereafter; and

"(b) Provide for the enhancement of areas within the Fishery where commercial fishing is prohibited; and

"(c) Take account of the impact of such enhancement on other fisheries (if any); and

"(d) Be reviewed annually and have effect for a period of 5 years.

"28ZZF. Closure of Southern Scallop Fishery---(1) Without limiting the generality of section 89 of this Act, on the recommendation of the Minister made after consultation with those persons the Minister considers are representative of persons or organisations having non-commercial interests in the Southern Scallop Fishery, regulations may be made under that section prohibiting any fishing in the Fishery or any part or parts of the Fishery for all or any of the following purposes:

"(a) Protecting public health:

"(b) Providing areas for non-commercial fishing only:

"(c) Minimising conflict between different kinds of fishing or the needs of different fisheries.

"(2) Where the Director-General is satisfied that, for the purpose of enhancing the Southern Scallop Fishery or ensuring that scallop stocks are harvested efficiently, any part or parts of the Fishery ought to be closed to commercial fishing, he or she may, by notice in the Gazette, prohibit commercial fishermen from taking scallops from such part or parts of the Fishery as may be specified in the notice.

"(3) Every prohibition under subsection (1) or subsection (2) of this section shall have effect for the remainder of the southern scallop season to which it relates.

"(4) The Minister may, by notice in the Gazette, upon being satisfied that the Southern Scallop Fishery should immediately be closed in whole or in part for environmental or disease control reasons, and after consultation with the Southern Scallop Fishery Advisory Committee, close the Fishery or any part or parts of the Fishery to all fishing.

"(5) Any such notice shall shortly state the reasons for the restrictions.

"(6) Any closure imposed pursuant to subsection (4) of this section shall take effect from a date to be specified in the notice, and may remain in effect for not more than 90 days from the date so specified.

"(7) Any period specified under subsection (6) of this section may be extended for one further period not exceeding 90 days by a subsequent notice given before the expiry of the original notice.

"(8) Any restrictions imposed pursuant to subsection (4) of this section shall be deemed to be revoked with effect from the expiry of the period specified in the notice issued pursuant to subsection (4) of this section or any subsequent notice issued pursuant to subsection (7) of this section, or it may be revoked by the Minister at any time within the period specified in the notice.

"28ZZG. Levies---(1) The enhancement programme shall be funded by levies imposed by regulations made under section 89 of this Act.

"(2) The Ministry shall collect such levies and the money so collected shall be deemed to be trust money for the purposes of Part VII of the Public Finance Act 1989, and, subject to subsection (3) of this section, the provisions of that Part of that Act shall apply accordingly.

"(3) Money may be paid out of the account or accounts established pursuant to section 67 of the Public Finance Act 1989 and applied for all or any of the following purposes:

"(a) To meet the expenses of the Southern Scallop Fishery Advisory Committee:

"(b) The implementation of the enhancement programme:

"(c) To meet the reasonable expenses incurred by the Ministry in collecting levies and administering the enhancement programme:

"(d) Subject to subsection (4) of this section, to meet the costs of conducting research, development, and testing of enhancement technology for such fisheries within quota management area 7 (other than the Southern Scallop Fishery) as the Minister may direct.

"(4) The following provisions shall apply in relation to the application of levies under subsection (3) (d) of this section:

"(a) Only levies recovered in respect of catch against quota leased by the Crown shall be applied for the purposes referred to in that provision:

"(b) The Minister shall, after consultation with the Southern Scallop Fishery Advisory Committee, determine the amount of money to be applied under that provision."

#### Miscellaneous Provisions

14. Declaration of controlled fisheries---(1) Section 30 of the principal Act is hereby amended by repealing subsection (6) (as added by section 11 of the Fisheries Amendment Act 1986), and substituting the following subsections:

"(6) Notwithstanding sections 108 and 109 of this Act, the Governor-General may, by Order in Council,---

"(a) Revoke any order made under subsection (1) of this section:

"(b) Declare that any fishery to which subsection (5) of this section applies shall cease to be a controlled fishery under this Act.

"(7) Where an Order in Council is made under subsection (6) (a) of this section in respect of a controlled fishery, the fishery shall cease to be a controlled fishery under this Act on and from the date specified in that behalf in the order."

(2) Section 11 of the Fisheries Amendment Act 1986 is hereby consequentially repealed.

(3) Every Order in Council made under section 30 (6) of the principal Act (as it read immediately before the commencement of this Act) shall have effect as if it were an order made under section 30 (6) (b) of the principal Act (as substituted by subsection (1) of this section).

15. Records and returns---Section 66 (1) (b) of the principal Act (as substituted by section 33 of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the expression "Part 11A", the expression "or Part IIB".

16. Regulations---(1) Section 89 (1) of the principal Act is hereby amended by inserting, after paragraph (ia) (as substituted by section 23 (2) of the Fisheries Amendment Act 1986), the following paragraph:

"(ib) Prescribing the amount of the levy referred to in section 28ZZG of this Act or the method by which the levy is to be assessed; prescribing the persons liable to pay the levy; and authorising the Director-General to remit or waive payment of the whole or any part of the levy in such circumstances as may be prescribed:".

(2) Section 89 (1) (kb) of the principal Act (as inserted by section 42 (3) of the Fisheries Amendment Act 1990) is hereby amended by omitting the expression "of Part IIA".

(3) Section 89 (1) (kc) of the principal Act (as so inserted) is hereby amended by inserting in subparagraph (iii), after the expression "section 280E", the expression "or section 28ZN or section 28ZP".

(4) Section 89 (1) (kc) of the principal Act (as so inserted) is hereby amended by adding the following lines:

"; and authorising the Director-General to make any necessary amendments to correct errors or rectify omissions in quota balances determined in accordance with regulations made under paragraph (kb) of this subsection; and providing for the formal notification to quota holders and lessees of quota of such amendments".

(5) Section 89 of the principal Act is hereby amended by inserting, after subsection (1A) (as inserted by section 23 (5) of the Fisheries Amendment Act 1986), the following subsection:

"(1B) For the purposes of sections 28ZC to 28ZG of this Act, any regulations made pursuant to paragraph (kb) or paragraph (kc) of subsection (1) of this section may be deemed to come into force on a date earlier than the date on which the regulations are made, but not earlier than the 1st day of October 1990; and different provisions of such regulations may be deemed to come into force on different dates not earlier than that 1st day of October."

(6) Section 89 of the principal Act is hereby amended by adding the following subsections:

"(7) Every regulation made under subsection (1) (kb) of this section shall be laid before the House of Representatives not later than the sixteenth sitting day of the House of Representatives after the day on which it is made.

"(8) Every regulation made under the said subsection (1) (kb) shall,---

"(a) Where the regulation is made on or before the 30th day of June in any year, expire on the close of the 31st day of December of that year except so far as it is expressly validated or confirmed by Act of Parliament passed during that year; and

"(b) Where the regulation is made on or after the 1st day of July in any year, expire on the close of the 31st day of December in the following year except so far as it is expressly validated or confirmed by Act of Parliament passed before the end of that following year."

17. Informations relating to certain offences may be heard together---The principal Act is hereby amended by inserting, after section 104 (as substituted by section 27 (1) of the Fisheries Amendment Act 1986), the following section:

"104A. (1) Notwithstanding any other enactment or rule of law, where 2 or more informations charge the defendant with quota management offences or offences relating to returns and records (as defined in section 107B (1) of this Act), the Court may order that any specified informations be heard together if satisfied that---

"(a) Either---

"(i) The offences are founded on the same set of facts; or

"(ii) The offences form, or are part of, a series of offences of the same character or of a similar character; and

"(b) It is in the interests of justice that the informations be heard together.

"(2) Where the Court has made an order under subsection (1) of this section, the Court, at any subsequent time, may direct that any information subject to that order be heard separately if satisfied that it is in the interests of justice that the information be heard separately.

"(3) For the purposes of this section, in considering whether it is in the interests of justice to hear any informations together or separately, the Court shall have regard to the likelihood of prejudice to the defendant if any particular information or combination of informations is heard together with any other information or combination of informations."

18. Defences available to commercial fishermen taking unauthorised fish---(1) Section 105A (2) of the principal Act (as inserted by section 50 (1) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the expression "1990", the words "but not being scallops taken from the Southern Scallop Fishery".

(2) Section 105A (2) (e) (i) of the principal Act (as so inserted) is hereby amended by omitting the words "notified a Registrar accordingly", and substituting the words "supplied the transfer or lease document to a Registrar".

19. Certificates and official documents---Section 106 (1) (a) (vi) of the principal Act (as substituted by section 51 of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the expression "Part IIA", the expression "or Part IIB".

20. Forfeiture of property and quota on conviction---Section 107B of the principal Act (as substituted by section 52 (1) of the Fisheries Amendment Act 1990) is hereby amended---

(a) By inserting in subparagraph (ii) of paragraph (b) of the definition of the term "quota", after the expression "section 28Q (7)", the expression "or section 28ZR":

(b) By inserting in paragraph (a) of the definition of the term "quota management offence", after the expression "Part IIA", the expression "or Part IIB".

21. Variation of resource rentals by Order in Council---Section 107G (1) (a) of the principal Act (as inserted by section 28 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the expression "Schedule 1B", the expression "or Schedule 1D".

22. Amounts payable under Act recoverable as statutory debts---The principal Act is hereby amended by inserting, after section 107H (as inserted by section 28 (1) of the Fisheries Amendment Act 1986), the following section:

"107I. Every amount (other than a fine or a penalty ordered by a Court to be paid in respect of an offence against this Act or any amount fixed under section 107C (2) of this Act) that is payable under this Act to the Crown or the Ministry or the Director-General shall be deemed to be a statutory debt within the meaning of section 13A of the Ministry of Agriculture and Fisheries Act 1953 and may be recovered in any Court of competent jurisdiction."

23. New Schedule 1D inserted---The principal Act is hereby amended by inserting, after Schedule 1C (as substituted by section 56 (1) of the Fisheries Amendment Act 1990), the Schedule 1D set out in the Schedule to this Act.

24. Revocations---(1) The Fisheries (Southern Scallop Fishery Quota) Regulations 1992 are hereby revoked.

(2) The Fisheries (Southern Scallop Fishery Quota Allocation) Notice 1992 is hereby revoked.

(3) Notwithstanding subsections (1) and (2) of this section or anything in section 28ZZ of the principal Act, the holders of individual quotas denoted by the quota registration numbers 9160054, 9060081, 9160099, and 9060079 may continue to take scallops under the authority of such quota until the allocations referred to in Part V of Schedule 1D to this Act have been made by the Maori Fisheries Commission; but, when such an allocation to a holder has been made, that holder shall not take scallops except under the authority of that allocation.

#### Transitional Provisions

25. Catches taken under individual quota deemed taken under individual transferable quota---  
Notwithstanding anything in the principal Act, or any regulations made under that Act,---

(a) For the purposes of calculating the amount of scallops that may be taken under the authority of quota in the fishing year ending with the close of the 31st day of March 1993, all scallops taken from the Southern Scallop Fishery in the period beginning on the 18th day of August 1992 under the authority of an individual quota, shall be deemed to have been taken under the authority of an individual transferable quota granted under Part IIB of the principal Act:

(b) Resource rentals payable under the principal Act in respect of scallops shall, until the close of the 31st day of March 1993, continue to be paid on the basis of catch.

26. Scallop Enhancement Project Trust Account---(1) Subject to subsections (2) and (3) of this section, the Director-General shall, as soon as practicable, close the Scallop Enhancement Project Trust Account established by the Ministry.

(2) The Director-General shall pay into the Ministry's departmental account the sum of \$60,000.

(3) The Director-General shall pay the balance remaining in the Trust Account to the trust account established under section 28ZZG of the principal Act (as inserted by section 13 of this Act).

27. Validation of levy---All money collected by the Ministry by way of a levy of \$5.50 per tonne of scallops taken from the Southern Scallop Fishery, being a levy imposed in respect of an additional amount of 96 tonnes of scallops made available by the Crown in October 1991, is hereby deemed to be and always to have been lawfully collected.

28. Savings---(1) Nothing in this Act limits or affects any regulations made under the principal Act and in force immediately before the commencement of this Act.

(2) Nothing in this Act affects any conviction entered before the commencement of this Act in respect of an offence against the principal Act or regulations made under that Act.

(3) In the case of any charge laid against any person for an alleged offence against the principal Act or regulations made under that Act, being a charge---

(a) Laid on or after the 1st day of April 1990 and before the date of the making of regulations made under paragraphs (ka) and (kb) of section 89 (1) of that Act; and

(b) Laid in respect of fish taken before the date of the making of the regulations referred to in paragraph (a) of this subsection,---

the following provisions shall apply:

(c) The fact that the regulations referred to in paragraph (a) of this subsection had not been made before the fish were taken shall not in itself be a ground for dismissing the charge:

(d) Any balance used by the Ministry to establish the amount of fish taken by the defendant or the catching rights available at the end of any month, and the basis on which that balance was calculated or assessed, shall not be invalid by reason only that the regulations referred to in paragraph (a) of this subsection had not been made before the fish were taken.

(4) Nothing in this Act shall render any person liable to conviction of any offence against the principal Act, or any regulations made under that Act, on account of any act or omission which did not constitute an offence at the time it occurred.

PART II  
AMENDMENTS TO MAORI FISHERIES ACT 1989

29. Part to be read with Maori Fisheries Act 1989---This Part of this Act shall be read together with and deemed part of the Maori Fisheries Act 1989 (hereafter in this Part of this Act referred to as the principal Act).

30. Allocation of quota for Southern Scallop Fishery---The principal Act is hereby amended by inserting, after section 44, the following section:

"44A. (1) Notwithstanding anything in this Act,---

"(a) Except as provided in subsection (2) of this section, the Commission shall, within 14 days after receiving the quota allocated to it by section 28ZK of the Fisheries Act 1983, transfer that quota to the persons and in the amounts specified in Part V of Schedule 1D to the Fisheries Act 1983:

"(b) Nothing in sections 40 to 44 of this Act shall apply to any quota allocated under Part IIB of the Fisheries Act 1983 or held in accordance with subsection (2) of this section.

"(2) The Commission shall hold the quota to be allocated to Ngati Toa Rangatira for its use and benefit; and, for that purpose, the Commission may lease any part of that quota to any other quota holder specified in Part V of Schedule 1D to the Fisheries Act 1983."

31. Stamp duty exemption---Section 46 of the principal Act is hereby amended by adding the words "or in respect of any transfer made under section 44A of this Act".

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SCHEDULE  
Section 23  
NEW SCHEDULE 1D INSERTED INTO PRINCIPAL ACT

"SCHEDULE 1D

Sections 2 (1), 28ZJ, 28ZK, 28ZL, AND 107G

SOUTHERN SCALLOP FISHERY

Part I

Description of Fishery

Scallop 7

All those waters bounded by straight lines commencing at Cape Farewell (at 40deg. 30.0'S and 172deg. 41.0'E), being the northern most point of the South Island, and proceeding easterly along the 40deg. 30.0' south parallel of latitude to its intersection with the 174deg. 30.0' east meridian of longitude; then southerly along that meridian of longitude to its intersection with the 41deg. 12.9' south parallel of latitude; then westerly along that parallel of latitude to West Head (at 41deg. 12.9'S and 174deg. 18.7'E) on the east coast of the South Island; then generally northwesterly along the mean high water mark of the sea to the point of commencement.

## Part II

## Rate of Resource Rental

\$313.20 per tonne (meatweight).

## Part III

## Annual Allowable Catch

640 tonnes (meatweight).

## Part IV

## Quota to be Allocated by Crown

Holder	Quota Registration Number	Allocation (Meatweight Tonnes)
Maori Fisheries Commission	8600300	64.00
Atkinson, Ronald George	8460091	12.000
Aurora Fishing Partnership being Hosie, Brian Ernest & Hosie, Teresa Joan	8760284	12.000
Bloomfield, Alexander Thomas	8460218	12.000
Cameron Partnership being Cameron, Barrie & Cameron, Beryl	8462939	12.000
Campey, Michael Frederick	8460379	12.000
Clifton Fishing Company being, O'Connor, Michael Paul & O'Connor, Angela Joan	8463303	12.000
Climo, Lawrence Wilfred	8460458	12.000
Dawber, Robert McCallum	8460560	12.000
Douglas, Edward Bruce	8460625	12.000
Eric Johnson & Sons Ltd	8460683	12.000
Fishburn, James William	8460741	12.000
Golden Bay Fisheries Ltd	8460705	12.000
Guard, Stephen Godfrey	8460940	12.000
Guards Fisheries Nelson Ltd	8460941	36.000
Harold Jordan Fishing Ltd	8760286	12.000
Harris, Michael Headley	8461002	12.000
Harvey, Neil Wilfred	8461022	12.000
Holmwood, Peter Ashley	8461129	12.000
Hunt, Phillip Francis & Hunt, Murray Cecil	8463443	12.000
Lingham Holdings Ltd	8490245	12.000
McBride, Kenneth Craig & McBride, Sharleen Margaret	9160078	12.000
McCauley, Colin Patrick	8461564	12.000
McLaren, Michael John	8463389	12.000
North, Peter John & North, Margaret Claire	8463449	12.000
O'Connor, Patrick John	8461813	12.000
Rhodes, David Leonard	8462028	12.000
Roach, Graham Philip	8462045	12.000
Roach, Raymond Peter & Roach, Donald Peter	8760004	12.000
Ron Bennett Fishing Ltd	8760285	12.000
Rongo Marie Ltd	8462080	24.000

Russ, Selwyn Rex & Russ, Katrine Glenda	8473460	12.000
Scott, Hughie	8462153	12.000
Sellers, Rex Samuel	8462172	12.000
Taylor, Quinton George	8462377	12.000
Thompson, Frank Christopher	8462410	12.000
Thompson, Ivan Oliver	8462411	12.000
Thompson, William Allan	8462421	12.000
Turner, John Charles	8462473	12.000
Waitapu Fishing Co Ltd	8462523	12.000
Wells, Bernard William & Wells, Barry Alexander	8462589	12.000
Wells, Gavin Robert	8462591	12.000
Wells, Lex Ernest	8462593	12.000
Whalan, Patrick Albert	8462608	12.000
Whiting, George Albert	8462625	12.000
Wratt, Margaret as executrix of the Estate of G. B. Wratt	9160096	12.000

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## Part V

## Quota to be Allocated by Maori Fisheries Commission

Holder	Allocation (Meatweight Tonnes)
Te Runanga A Rangitane O Wairau Incorporated	8.00
Te Runanga O Ngati Kuia Incorporated	8.00
Te Runanga A Tarakaipa O Ngati Apa Incorporated	8.00
Te Atiawa Manawhenua Ki Te Tau Ihu Trust	8.00
Ngati Rarua Charitable Trust	8.00
Ngati Toa Rangatira	8.00
Ngati Tama Manawhenua Ki Te Tau Ihu Trust	8.00
Ngati Koata No Rangitoto Ki Te Tonga Trust Incorporated	8.00"