



ANALYSIS

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1997, No. 31

An Act to confirm and validate certain matters in relation to the quota management system

[14 July 1997]

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

1. Short Title—This Act may be cited as the Fisheries (Quota Operations Validation) Act 1997, and is part of the Fisheries Act 1983 (“the Act”).

2. Purpose—The purpose of this Act is to confirm and validate—

(a) The manner in which, in relation to the matters referred to in sections 4 to 6 of this Act,—

(i) Matters have been recorded in the quota registers kept under the Fisheries Act 1983; and

(ii) Landed catch has been allocated against quota or established underfishing entitlements or overfishing rights; and

(b) Any advice given on quota balances to fishers and others, and any other advice given and actions taken (including the assessment and collection of deemed value amounts), in reliance on the matters recorded in quota registers and on the manner in which landed

catch has been allocated against quota or established underfishing entitlements or overfishing rights.

3. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Appointed date” means either—

(a) 31 December 1997; or

(b) Such earlier date as may be appointed under subsection (3):

“Regulations” means the Fisheries (Catch Against Quota) Regulations 1993.

(2) The terms “core catch rights”, “deemed value”, “established underfishing entitlement”, “landed catch”, “overfishing right”, “quota”, “quota register”, and “underfishing right” have the same meanings as in the Regulations.

(3) The Governor-General may by Order in Council declare an appointed date earlier than 31 December 1997 for the purposes of sections 5 and 6.

4. Overfishing and underfishing rights and entitlements—(1) For the avoidance of doubt, section 28V of the Fisheries Act 1983 is to be treated for all purposes of that Act, and of the Fisheries Act 1996, as authorising, and having since 1 August 1986 authorised,—

(a) The utilisation by an owner (but not lessee) of quota of an established underfishing entitlement arising from the preceding year’s underfishing of that quota, to the extent permitted by section 28V (6) and (8) or by the Regulations, notwithstanding that the quota may have been owned by another person during that preceding year; and

(b) In relation to any established underfishing entitlement, the allocation during a fishing year of any landed catch against that entitlement before catch is allocated or fully allocated against the core catch rights of the quota to which the entitlement relates; and

(c) The transfer (otherwise than by way of lease or sublease) of an established underfishing entitlement along with the quota to which it relates, to the extent that landed catch has not already been allocated against that entitlement under the Act or the Regulations; and

- (d) The treating of any overfishing right as arising other than at the end of a fishing year; and
- (e) The transfer (otherwise than by way of lease or sublease) of any overfishing right along with the quota to which it relates; and
- (f) The allocation of landed catch against quota and established underfishing entitlements and overfishing rights, and the assessment of deemed values, under the Act and the Regulations accordingly.

(2) In the case of a lease of quota that was registered before 1 April 1990, section 28v of the Fisheries Act 1983 is to be treated for all purposes of that Act, and of the Fisheries Act 1996, as authorising, and having since 1 August 1986 authorised,—

- (a) The utilisation by the lessee of an established underfishing entitlement arising from the preceding year's underfishing of that quota, to the extent permitted by section 22 of the Fisheries Amendment Act 1990 and section 28v of the Act as formerly in force, notwithstanding that the quota may have been owned or leased or subleased by another person during that preceding year; and
- (b) The transfer by the lessee of any overfishing right or established underfishing entitlement (to the extent that landed catch has not already been allocated against that entitlement under the Act or the Regulations) along with the transfer or granting of an interest in the lease; and
- (c) The allocation of landed catch against quota and established underfishing entitlements and overfishing rights, and the assessment of deemed values, under the Act and the Regulations accordingly.

(3) Nothing in subsection (1) of this section or section 28v of the Act authorises, or is deemed ever to have authorised, a quota owner to utilise an established underfishing entitlement or overfishing right in any fishing year in respect of quota acquired by the owner during that year if a prior owner of the quota has leased out all that prior owner's quota at any time during that year.

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

“(12) This section is to be read subject to section 4 of the Fisheries (Quota Operations Validation) Act 1997.”

5. Lessee acquiring ownership of quota, etc—(1) If during the term of a registered lease of quota the lessee acquires ownership of the quota, then, notwithstanding that the rights and obligations under the lease may have ceased to exist by virtue of the subsequent ownership of the quota by the lessee,—

(a) The quota is nevertheless deemed for the purposes of the Act to have always been and to be still subject to that lease until the earlier of—

(i) The expiry of the term of the lease; and

(ii) The close of the appointed date; and

(b) The lease is accordingly deemed to be and to have always been validly recorded against the quota in the quota register until the relevant date determined under paragraph (a); and

(c) The allocation of landed catch against the quota or established underfishing entitlements or overfishing rights, and the assessment of deemed values, are to be determined under the Act and the Regulations accordingly.

(2) Similarly, where the status, rights, or obligations of any party to a registered lease or sublease of quota changes by virtue of a novation or the acquisition of any different interest within the chain of interests in the quota,—

(a) The quota is nevertheless deemed for the purposes of the Act to have always been and to be still subject to the relevant lease or sublease, notwithstanding that the rights or obligations under the lease or sublease may have changed or ceased to exist by virtue of the novation or the acquisition of the different interest, until the earlier of—

(i) The expiry of the term of the relevant lease or sublease; and

(ii) The close of the appointed date; and

(b) The lease or sublease is accordingly deemed to be and to have always been validly recorded against the quota in the quota register until the relevant date determined under paragraph (a); and

(c) The allocation of landed catch against the quota or established underfishing entitlements or overfishing rights, and the assessment of deemed values, are to be determined under the Act and the Regulations accordingly.

(3) This section applies throughout the period from 1 August 1986 to the appointed date (both dates inclusive) to any lease or

sublease registered on the quota register at any time during that period.

(4) Subsections (1) and (2) also apply on and after the appointed date in respect of any quota and any lease or sublease (whenever registered) for so long as the quota or lease or sublease is held by the Crown as forfeit quota under section 107B of the Act, but as if subsections (1) (a) (ii) and (2) (a) (ii) were omitted.

6. Retrospective treatment of variation of leases, etc—

(1) Where a variation to a lease or other transaction recorded in the quota register has been notified to the Ministry and registered, the treatment of the lease or transaction as if the variation had been part of the original lease or transaction is deemed to be and to have always been valid for all purposes of the Act, and—

- (a) The lease or other transaction as varied is deemed to have been always validly recorded in the quota register; and
- (b) The allocation of landed catch against quota or established underfishing entitlements or overfishing rights, and the assessment of deemed values, are to be determined under the Act and the Regulations accordingly.

(2) This section applies to all variations notified at any time during the period from 1 August 1986 to the appointed date (both dates inclusive).

7. Advice given and other actions taken in reliance on matters specified in sections 4 to 6—All advice given on quota balances to fishers and others, and any other advice given and actions taken (including the assessment and collection of deemed value amounts), in reliance on the matters confirmed and validated by sections 4 to 6, are for all purposes deemed to the extent of that reliance to have been validly given and taken.

8. Proceedings commenced on or after 22 April 1997—

This Act has effect for the purpose of determining any proceedings commenced on or after 22 April 1997, whether or not completed before the date on which this Act receives the Royal assent.

9. Regulations may be made in relation to resolution with fishing industry of issues relating to matters dealt with in this Act—(1) The Governor-General may from time to time, on the recommendation of the Minister made after consultation with such persons or organisations as the Minister considers are representative of the commercial fishing industry and after having regard to the interests of affected persons who by reason of having left the industry are no longer represented by such persons or organisations, by Order in Council make regulations setting rules or providing a framework for the manner in which any issues relating to or arising directly or indirectly from the matters dealt with in this Act may be addressed having regard to the interests of persons affected and of the fishing industry generally.

(2) Any such regulations may set rules for the application of any money that may be set aside by the Crown for the purpose of addressing issues relating to or arising directly or indirectly from the matters dealt with in this Act, including—

- (a) Rules that prescribe circumstances in which payments may be made to persons or classes of persons (including persons who have left the commercial fishing industry) in respect of any matter dealt with in this Act, and the amount or maximum amount or method of assessment of any such payments:
- (b) Rules as to the application of the money towards the development or implementation of any measures relating to or arising directly or indirectly from the matters dealt with in this Act that are agreed between the Minister and such persons or organisations as the Minister considers are representative of the commercial fishing industry:
- (c) Rules that specify the proportion or maximum proportion of the money to be allocated in respect of the resolution of issues or of a particular issue relating to any particular type or class of affected person or measure.