



## ANALYSIS

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## 1989, No. 159

**An Act—**

- (a) To make better provision for the recognition of Maori fishing rights secured by the Treaty of Waitangi; and**
- (b) To facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing; and**
- (c) To make better provision for the conservation and management of the rock lobster fishery**

[20 December 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 Maori Fisheries Act 1989.

(2) This Act shall come into force on the 20th day of December 1989.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Commission” means the Maori Fisheries Commission established by section 4 of this Act:

“Company” means the company incorporated pursuant to section 12 of this Act:

“Transition period” means the period—

(a) Beginning on the date of commencement of this Act; and

(b) Ending with the close of the 31st day of October 1992 or the date appointed under section 37 (5) of this Act, whichever is the later.

**3. Act to bind the Crown**—This Act shall bind the Crown.

## PART I

### MAORI FISHERIES COMMISSION

**4. Establishment of Maori Fisheries Commission**—

(1) There is hereby established a Commission to be known as the Maori Fisheries Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of entering into contracts, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

**5. Principal functions**—The principal functions of the Commission shall be—

(a) To facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing:

(b) To grant assistance to any Maori or group of Maori for the purpose of enabling that Maori or group of Maori to enter into or to continue in or to develop the business and activity of fishing:

(c) To form, pursuant to section 12 of this Act, a public company to be called Aotearoa Fisheries Limited:

(d) To hold all the shares in Aotearoa Fisheries Limited:

(e) Subject to section 43 (3) of this Act, to transfer to Aotearoa Fisheries Limited at least 50 percent of all quota and all money transferred or paid to the Commission by the Crown under any of the provisions of sections 40 to 42 of this Act (which quota and money shall be applied in paying up in full shares of Aotearoa Fisheries Limited to be issued and allotted and distributed to the Commission).

**6. Additional functions**—Without limiting the generality of section 5 of this Act, the Commission shall have the following particular functions:

- (a) To lend money, with or without security and on such terms and conditions as the Commission thinks fit;
- (b) To provide such advisory and technical services as the Commission considers desirable or expedient in the interests of Maori fishing;
- (c) To conduct and encourage research into matters affecting Maori fishing;
- (d) To participate and assist in the promotion, reorganisation, or rationalisation of Maori fishing with a view to increasing efficiency and productivity.

**7. Special provisions relating to transition period**—

(1) During the transition period, the Commission may lease, but shall not otherwise dispose of,—

- (a) Any quota which is transferred to the Commission by the Crown under any of the provisions of sections 40 to 42 of this Act and which is not transferred to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act; and
- (b) Any quota which is purchased by the Commission with money paid to the Commission by the Crown under any of the provisions of sections 40 to 42 of this Act and not paid by the Commission to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act.

(2) During the transition period the Commission may not use as security for a loan any quota to which subsection (1) of this section applies.

(3) During the transition period the Commission may not sell or otherwise dispose of all or any of its shares in Aotearoa Fisheries Limited.

(4) Any lease granted pursuant to subsection (1) of this section shall be for a term that expires not later than the end of the transition period.

(5) Notwithstanding anything in subsection (1) of this section, the Commission may during the transition period exchange for other quota any quota to which subsection (1) of this section relates.

(6) Where, during the transition period, quota is exchanged under subsection (5) of this section, the quota received in exchange shall be deemed to be quota to which subsection (1) of this section relates.

(7) During the transition period, all money which is paid to the Commission under any of the provisions of sections 40 to 42 of this Act and which is not paid to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act shall either—

- (a) Be used by the Commission for the purchase of quota to be leased under subsection (1) of this section; or
- (b) Be invested by the Commission in accordance with clause 11 of the First Schedule to this Act.

(8) This section shall have effect notwithstanding anything in any other provision of this Act.

**8. Criteria**—The Commission shall,—

- (a) In considering, whether to grant assistance to any Maori or group of Maori, have regard to—
  - (i) Maori custom:
  - (ii) Economic considerations:
  - (iii) Social considerations:
- (b) Evaluate each proposal after having regard to the economic worth of the proposal, its usefulness to any Maori or group of Maori, and the prospects of its becoming profitable within a reasonable time; and shall not necessarily have regard to the value of the security available in respect of any proposal:
- (c) Encourage the establishment or expansion of fishing by any Maori or group of Maori in areas where the establishment or expansion will assist the development of those areas:
- (d) Endeavour to conduct its activities so as to operate on a profitable basis.

**9. Powers**—(1) The Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

(2) Without limiting the generality of subsection (1) of this section, the Commission shall have the power—

- (a) To purchase any individual transferable quota or transferable term quota or take a lease of any such quota for a specified period:
- (b) To retain any individual transferable quota or transferable term quota so acquired:
- (c) To transfer any individual transferable quota or transferable term quota held by it, or lease for a specified period some or all of the rights of the Commission in relation to any such quota:

- (d) To purchase or subscribe for shares, debentures, bonds, or other securities or make loans, with or without security, or acquire any other interest in property:
  - (e) To finance the purchase, sale, or hire of vessels, machinery, plant, equipment, materials, goods, and articles of every description by any means, including, but without limiting the generality of the foregoing, the purchase and resale and hire thereof on such terms as the Commission thinks fit; and to discount hire-purchase or conditional sale agreements or hire agreements, and to lend money on the security of a mortgage or an assignment of any such agreement:
  - (f) To execute, make, draw, accept, endorse, discount, issue, and negotiate cheques, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons, and other negotiable or transferable instruments, and to buy, sell, or otherwise deal in the same, and accept deposits of money:
  - (g) To underwrite or sub-underwrite issues of securities, to give and receive guarantees, or to participate with others in any such activities:
  - (h) To participate, in the discretion of the Commission, in the management of enterprises to whose finance it has contributed:
  - (i) To organise, participate in, or act as agent for consortium arrangements for the assistance of Maori fishing:
  - (j) To take such steps as may be necessary to protect or recover its financial interest in any business:
  - (k) To make such charges for the provision of its services as the Commission thinks fit.
- (3) Without limiting the generality of subsection (1) of this section, the Commission may from time to time—
- (a) Purchase, take on lease, hire, or otherwise acquire such land or buildings or parts of buildings, whether or not subject to any mortgage, charge, lease, easement, or restrictive covenant or other encumbrance, as in its opinion are necessary or expedient for the performance of any of its functions or powers:
  - (b) Erect, alter, rebuild, or add to any building on any land so acquired:
  - (c) Grant leases or tenancies of any land or buildings so acquired, or of any part or parts thereof, and create easements and restrictive covenants thereover, and accept surrenders or partial surrenders of any such

leases, tenancies, easements, and restrictive covenants.

**10. Restriction on borrowing powers**—Notwithstanding anything in any other provision of this Act, the Commission may—

- (a) Borrow money; or
- (b) Issue bonds, debentures, coupons, and other negotiable or transferable instruments; or
- (c) Mortgage or charge any of its real or personal property; or
- (d) Underwrite or subunderwrite issues of securities or give guarantees or participate with others in any such activities,—

only with the consent of the Minister of Finance and subject to such terms and conditions as that Minister thinks fit.

**11. Prohibition on guarantees, etc.**—The Commission shall not give any guarantee, indemnity, or security in respect of the performance of any obligation by the company.

*Aotearoa Fisheries Limited*

**12. Incorporation of company**—(1) Notwithstanding anything in the Companies Act 1955 or in any other enactment or rule of law, the Commission shall, not later than 3 months after the date of commencement of this Act, form and register under the Companies Act 1955, a public company limited by shares—

- (a) That has the name Aotearoa Fisheries Limited; and
- (b) That has a memorandum of association and articles of association approved by the Minister of Maori Affairs; and
- (c) That has an authorised capital and an issued capital of such amounts, and in shares of such classes, as shall be approved by the Minister of Maori Affairs; and
- (d) That has, as the only subscriber to its memorandum of association, the Commission.

(2) Nothing in section 13 (1) of the Companies Act 1955 relating to the minimum number of persons who may form a company shall apply to the formation of the company.

(3) In any case where a company has not been formed and registered by the Commission in accordance with this section within the period referred to in subsection (1) of this section, the Minister of Maori Affairs may form and register the company and shall have all such powers as are necessary or desirable for that purpose including, without limitation, the

power to issue and allot shares in the capital of the company to the Commission.

**13. Shares subscribed for on incorporation of company deemed to be fully paid up—**(1) On the date on which a transfer is effected under section 43 (1) of this Act, the shares subscribed for in the capital of the company on its incorporation shall be deemed to have been allotted as fully paid up to the Commission.

(2) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall apply to shares that are deemed to have been allotted pursuant to subsection (1) of this section.

**14. Alterations to memorandum and articles—**(1) Notwithstanding section 18 of the Companies Act 1955, the memorandum of association of the company shall not be altered by the company.

(2) The articles of association of the company shall not be altered by the company at any time before the end of the transition period without the consent of the Minister of Maori Affairs and any alteration made without the consent of the Minister of Maori Affairs shall be void and of no effect.

(3) Nothing in this section prevents the name of the company being changed in accordance with the provisions of the Companies Act 1955.

**15. Issue and allotment of shares—**(1) The company shall not issue or allot any shares in the share capital of the company to any person other than the Commission.

(2) Except as provided in sections 12, 13, and 44 of this Act, the company shall not issue or allot any shares in the share capital of the company during the transition period without the prior written consent of the Minister of Maori Affairs.

**16. Application of Companies Act 1955—**Except as provided in this Act, the provisions of the Companies Act 1955 other than—

- (a) Section 41, as to carrying on business when the number of members is reduced below the legal minimum:
- (b) Section 217 (d), as to winding up by the Court when the number of members is reduced below the legal minimum:

(c) Section 219 (a) (i), as to the presentation of a winding up petition by a contributory when the number of members is reduced below the legal minimum,— shall apply to the company.

**17. Directors**—The company shall have not more than 7 directors.

**18. Appointment of directors during transition period**—(1) The directors of the company shall, during the transition period, be appointed by the Commission, with the prior written agreement of the Minister of Maori Affairs.

(2) The Commission—

- (a) Shall appoint as directors persons of proven commercial ability and business acumen; and
- (b) Shall ensure that some of the directors have knowledge of fishing and the business of fishing; and
- (c) Shall not appoint as directors persons who have interests in fisheries or in the business of fishing that would or might conflict with their duties as directors; and
- (d) Shall have regard to the desirability of appointing as directors suitably qualified persons who are Maori.

**19. Disqualification of directors**—No person shall be appointed, or reappointed, to the office of director of the company, or hold that office, if that person—

- (a) Is a member of Parliament; or
- (b) Is an officer or employee of the Commission; or
- (c) Is a bankrupt who has not obtained a final order or discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or
- (d) Is a person who has been convicted of any offence punishable by imprisonment for a term of 2 years or more; or
- (e) Is a person who has been convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
- (f) Is a person who is prohibited under section 188A of the Companies Act 1955 from being a director or promoter of, or in any way whether directly or indirectly being concerned or taking part in the management of, a company; or
- (g) Is a person to whom an order made under section 189 of the Companies Act 1955 applies; or

- (h) Is a person who is prohibited under section 189A of the Companies Act 1955 from being an officer or promoter of, or being concerned in or taking part (whether directly or indirectly) in the management of, any company; or
- (i) Is a mentally disordered person within the meaning of the Mental Health Act 1969.

**20. Removal of directors**—(1) The Minister of Maori Affairs may, at any time during the transition period, by notice in writing to the director of the company, remove that director from office if the Minister of Maori Affairs is satisfied that the director—

- (a) Is unable, or has failed, to perform the duties of a director of the company; or
  - (b) Has been guilty of misconduct.
- (2) No person, other than the Minister of Maori Affairs acting pursuant to subsection (1) of this section, may remove any director of the company from office during the transition period.
- (3) Subject to subsections (1) and (2) of this section, nothing in this section limits or affects the Companies Act 1955 or the articles of association of the company.

**21. Restriction on dividends**—(1) No dividend declared during the transition period by the company shall exceed the amount recommended by the directors with the approval of the Minister of Maori Affairs.

(2) Before deciding whether to give his or her approval under subsection (1) of this section, the Minister of Maori Affairs shall first consult the Commission and the Minister of Fisheries.

*Statement of Corporate Intent*

**22. Statement of corporate intent**—The directorate of the company shall deliver to the Commission and the Minister of Maori Affairs a draft statement of corporate intent not later than 1 month after the commencement of each financial year of the company.

**23. Contents of statement of corporate intent**—Each statement of corporate intent shall specify for the group comprising the company and its subsidiaries (if any), and in respect of the financial year in which it is delivered and each of the immediately following 2 financial years, the following information:

- (a) The objectives of the group:

- (b) The nature and scope of the activities to be undertaken:
- (c) The ratio of consolidated shareholders' funds to total assets, and definitions of those terms:
- (d) The accounting policies:
- (e) The performance targets and other measures by which the performance of the group may be judged in relation to its objectives:
- (f) An estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholder:
- (g) The kind of information to be provided to the Commission and the Minister of Maori Affairs and the Minister of Fisheries by the company during the course of those financial years, including the information to be included in each half-yearly report:
- (h) The procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organisation:
- (i) The directorate's estimate of the commercial value of the shareholders' investment in the group and the manner in which, and the times at which, the value is to be reassessed:
- (j) Such other matters as are agreed by the Commission and the directorate.

**24. Completion of statement of corporate intent—The directorate—**

- (a) Shall consider any comments on the draft statement of corporate intent that are made to it within 2 months of the commencement of the financial year by the Commission or the Minister of Maori Affairs; and
- (b) Shall deliver the completed statement of corporate intent to the Commission and the Minister of Maori Affairs within 3 months of the commencement of the financial year.

**25. Modifications of statement of corporate intent—A statement of corporate intent for the company may be modified at any time by written notice from the directorate, so long as the directorate has first—**

- (a) Given written notice to the Commission and the Minister of Maori Affairs of the proposed modification; and
- (b) Considered any comments made on the proposed modification by the Commission or the Minister of Maori Affairs within—

- (i) One month after the date on which the notice under paragraph (a) of this section was given; or
- (ii) Such shorter period as the Commission and the Minister of Maori Affairs may agree.

**26. Obligation to make statement of corporate intent available**—Every completed statement of corporate intent and every modification that is adopted to a statement of corporate intent shall be made available to the public by the directorate within 1 month after the date on which it is delivered to the Commission or adopted, as the case may be.

**27. Savings of certain transactions**—A failure by the company to comply with—

- (a) Any provision of sections 22 to 26 of this Act; or
- (b) Any provision contained in any statement of corporate intent,—

shall not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by the company.

**28. Annual report and statement of accounts**—(1) As soon as reasonably practicable after the end of each financial year, the company shall deliver to the Commission and the Minister of Maori Affairs a general report of its operations during the year together with a copy of its duly audited accounts for that year and the report of the auditors on those accounts.

(2) A copy of the general report and of the accounts of the company, together with a copy of the report of the auditors on the accounts, shall be laid before the House of Representatives as soon as practicable after its receipt by the Minister of Maori Affairs.

(3) This section shall expire on the last day of the transition period.

*Provisions Relating to Maori Fisheries Commission*

**29. Membership of Commission**—The Commission shall consist of seven members to be appointed by the Governor-General on the advice of the Minister of Maori Affairs.

**30. Members of Commission not to be employed by Aotearoa Fisheries Limited**—No member of the Commission shall be employed in the service of, or hold any office in, the company.

**31. Term of office**—(1) Except as otherwise provided in section 32 of this Act, every member of the Commission shall hold office for such term not exceeding 4 years as the Governor-General shall specify in the instrument appointing that member.

(2) Every member of the Commission shall be eligible for reappointment from time to time.

(3) Where the term for which a member of the Commission has been appointed expires, that member of the Commission, unless sooner vacating or removed from office under section 32 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

- (a) That member is reappointed; or
- (b) A successor to that member is appointed.

**32. Vacation of office**—(1) Subject to subsection (2) of this section, any member of the Commission may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(2) Any member of the Commission may at any time resign the office by notice in writing addressed to the Minister on whose advice the member was appointed.

(3) The powers of the Commission shall not be affected by any vacancy in its membership.

**33. Chairperson**—(1) At its first meeting, and thereafter at its first meeting in every financial year, the Commission shall elect one of its members to be its chairperson.

(2) The chairperson, unless he or she sooner vacates the office of chairperson or ceases to be a member of the Commission, shall hold office until his or her successor is elected and comes into office.

(3) Where the chairperson vacates his or her office or ceases to be a member of the Commission before the expiry of the term for which he or she was elected, the Commission shall elect another of its members to his or her office until the expiry of that term.

**34. Commission to hold public meeting**—(1) The Commission shall, not later than the 31st day of July in each year, hold a public meeting in Auckland or Wellington and shall at that meeting report on the operation of the Commission during the preceding financial year and on the accounts of the Commission for that year.

(2) The Commission shall give not less than 14 days' notice of the holding of a public meeting under subsection (1) of this section in the metropolitan newspapers.

**35. Contracts of Commission**—(1) Any contract which, if made by private persons, must be by deed shall, if made by the Commission, be in writing under the common seal of the Commission.

(2) Any contract which, if made by private persons, must be signed by the parties to be charged therewith shall, if made by the Commission, be either under the common seal of the Commission or signed by a member or officer of the Commission on behalf of and by authority of the Commission.

(3) Any contract which, if made by private persons, may be made orally may be made in the manner specified in subsection (1) of this section as in the case of a deed, or in the manner specified in subsection (2) of this section as in the case of a contract required to be in writing, or may be made orally by or on behalf of the Commission by any member or officer of the Commission acting by authority of the Commission, but no oral contract shall be made for any sum exceeding \$2,000.

(4) The Commission may by writing under its common seal empower any person, either generally or in respect of any specified matters, to execute instruments on its behalf in any place in or beyond New Zealand. Any instrument executed by such an attorney on behalf of the Commission shall bind the Commission, and if executed as a deed shall have the same effect as if it were under the common seal of the Commission.

(5) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of the Commission shall be invalid by reason only that it was not made in manner provided by this section, if it was made pursuant to a resolution of the Commission or to give effect to a resolution of the Commission in relation to contracts generally or in relation to that particular contract.

**36. Disclosure of interests**—(1) Any member of the Commission who, otherwise than as such member is directly or indirectly interested in any arrangement or agreement made or entered into, or proposed to be made or entered into, by the Commission shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Commission.

(2) A disclosure under this section shall be recorded in the minutes of the Commission, and, except as otherwise provided

by resolution of the Commission or in subsection (3) of this section, the member—

- (a) Shall not take part after the disclosure in any deliberation or decision of the Commission relating to the arrangement or agreement; and
- (b) Shall be disregarded for the purpose of forming a quorum of the Commission for any deliberation or decision.

(3) Where a member of the Commission who is a member of a tribe makes a disclosure under subsection (1) of this section in relation to any arrangement or agreement, nothing in subsection (2) of this section shall prohibit the member from voting on or taking part in the deliberation or decision relating to that arrangement or agreement where the interest disclosed is not different in kind from the interests of other members of that tribe.

**37. Management audits**—(1) The directors of the company shall arrange for a management audit of the company to be conducted during the period beginning on the 1st day of January 1992 and ending with the close of the 30th day of June 1992.

(2) The Commission shall arrange for a management audit of the Commission to be conducted during the period beginning on the 1st day of January 1992 and ending with the close of the 30th day of June 1992.

(3) Each management audit conducted under this section shall be conducted, in each case, by persons approved by, and in a manner approved by, the Minister of Finance.

(4) As soon as reasonably practicable after the completion of each management audit (but not later than the 30th day of September 1992) a copy of the report of the persons who conducted the audit shall be delivered to the Minister of Finance.

(5) Where—

- (a) Either of the management audits required by this section is not conducted or is not conducted in accordance with this section; or
- (b) The copy required by subsection (4) of this section is not delivered to the Minister of Finance in accordance with that subsection; or
- (c) Any management audit conducted in accordance with this section establishes to the satisfaction of the Minister of Finance that either the company or the Commission is not being conducted in a manner that

will tend to ensure its success or its ability to meet its objects or to fulfil its purposes,—  
the Governor-General may by Order in Council declare that the transition period shall expire on such date (being later than the 31st day of October 1992) as shall be specified in the order.

**38. Protection of name**—No company or other body shall be incorporated or registered under any Act or otherwise under a name that is identical with that of the Commission or under any other name that in the opinion of the Registrar of Companies so resembles the name of the Commission as to be likely to deceive.

**39. Proceedings of Commission**—The provisions of the First Schedule to this Act shall have effect in relation to the Commission and its proceedings.

*Obligations of the Crown*

**40. Transfer of quota to Commission**—Subject to sections 41 and 42 of this Act, the Crown—

- (a) Shall, before the 31st day of March 1990, transfer to the Commission 2.5 percent of the then existing total allowable catches specified under sections 28c and 28CA of the Fisheries Act 1983; and
- (b) Shall, in the period beginning on the 1st day of April 1990 and ending with the 31st day of October 1990, transfer to the Commission 2.5 percent of the then existing total allowable catches specified under sections 28c and 28CA of the Fisheries Act 1983; and
- (c) Shall, in the year ending on the 31st day of October 1991, transfer to the Commission 2.5 percent of the then existing total allowable catches specified under sections 28c and 28CA of the Fisheries Act 1983; and
- (d) Shall, in the year ending on the 31st day of October 1992, transfer to the Commission 2.5 percent of the then existing total allowable catches specified under sections 28c and 28CA of the Fisheries Act 1983.

**41. Power, at request of Commission, to postpone transfer of quota or to transfer money instead**—(1) The Crown shall, before making a transfer under section 40 of this Act, give to the Commission a written notice setting out full particulars of the proposed transfer (including the date on which it is to be made).

(2) Each notice given under subsection (1) of this section shall be given to the Commission not less than 1 month before the date of the proposed transfer by the Crown.

(3) The Commission may, within 21 days after being served with a notice under subsection (1) of this section,—

(a) Request the Crown to postpone the transfer of all or any part of the quota until a later date (which later date shall be not later than 3 months after the date proposed by the Crown and not later than the last day of that year); or

(b) Request the Crown to transfer to the Commission, instead of the whole or any part of the total allowable catch, an equivalent amount of money (which equivalent amount shall be agreed between the Commission and the Crown or, failing agreement, determined by arbitration in accordance with the Arbitration Act 1908); or

(c) Make both a request under paragraph (a) of this subsection and a request under paragraph (b) of this subsection.

(4) The Crown shall comply with any request made by the Commission in accordance with subsection (3) of this section.

(5) Subject both to any request made under subsection (3) of this section and to subsection (4) of this section, quota specified in any notice given under subsection (1) of this section shall, on the proposed date, be transferred by the Crown to the Commission.

**42. Transfer of quota equivalent where quota not available—**(1) Where—

(a) The Crown—

(i) Does not hold the full amount of the total allowable catch required for the purpose of any transfer required by section 40 of this Act; or

(ii) Is, because of its obligations under the Territorial Sea and Exclusive Economic Zone Act 1977, not able to make available the full amount of the total allowable catch required for the purpose of any transfer required by section 40 of this Act; and

(b) The Minister of Fisheries considers that the amount required to make up the deficiency can be purchased only at prices that are excessive, the Crown shall make up the deficiency by transferring to the Commission an equivalent amount of money.

(2) The equivalent amount of money to be transferred under subsection (1) of this section shall be fixed by agreement between the Commission and the Crown or, failing agreement, determined by arbitration in accordance with the Arbitration Act 1908.

**43. Transfer of quota from Commission to company—**

(1) The Commission shall, within 14 days after the date on which the first or only transfer is effected under section 40 (a) of this Act, transfer to the company, without deduction, at least 50 percent of everything transferred to the Commission by that transfer (including any amount of money transferred by the Crown, pursuant to section 41 or section 42 of this Act, instead of the whole or any part of the total allowable catch).

(2) The Commission shall, within 14 days after each subsequent occasion on which a transfer is effected under section 40 of this Act, transfer to the company without deduction, at least 50 percent of everything transferred to the Commission by that transfer (including any amount of money transferred by the Crown, pursuant to section 41 or section 42 of this Act, instead of the whole or any part of the total allowable catch).

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the Commission may, with the agreement of Aotearoa Fisheries Limited, transfer to Aotearoa Fisheries Limited in discharge of the obligation imposed on the Commission, in relation to any quota, by any of those provisions—

- (a) Other quota of substantially equivalent value; or
- (b) A parcel, made up of quota and money, of substantially equivalent value.

**44. Allotment of shares by company to Commission—**

(1) On each occasion on which a transfer is effected under section 43 (2) of this Act, the company shall forthwith issue and allot to the Commission fully paid shares in the company.

(2) The fully paid shares to be issued and allotted to the Commission under subsection (1) of this section shall be specified by the Minister of Maori Affairs by notice in writing to the Commission and the company.

(3) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall apply to shares allotted pursuant to subsection (1) of this section.

**45. Payment of \$10,000,000 to Commission**—The Crown shall, without further appropriation than this Act, pay out of public money to the Commission, not later than the 31st day of March 1990, the sum of \$10,000,000.

**46. Stamp duty exemption**—No stamp duty shall be payable under the Stamp and Cheque Duties Act 1971 in respect of any instrument of conveyance of property from the Commission to the company pursuant to section 43 of this Act.

## PART II

### AMENDMENTS TO FISHERIES ACT 1983

**47. This Part to be read with Fisheries Act 1983**—This Part of this Act shall be read together with and deemed part of the Fisheries Act 1983 (in this Part referred to as the principal Act).

**48. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “fishing year” (as inserted by section 2 (2) of the Fisheries Amendment Act 1986), and substituting the following definition:

“‘Fishing year’ means,—

“(a) In relation to rock lobster, a period of 12 months commencing on each 1st day of April; and

“(b) In relation to any other species of fish, a period of 12 months commencing on each 1st day of October.”

(2) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “quota management area” (as inserted by section 2 (6) of the Fisheries Amendment Act 1986), and substituting the following definition:

“‘Quota management area’ means—

“(a) A quota management area declared under section 28B of this Act; or

“(b) A quota management area described in the Third Schedule to the Maori Fisheries Act 1989.”

(3) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “quota management system” (as inserted by section 2 (6) of the Fisheries Amendment Act 1986), the following definition:

“‘Rock lobster’ means—

“(a) The spiny rock lobster (*Jasus edwardsii*); and

“(b) The packhorse rock lobster (*Jasus verreauxi*).”

(4) Section 2 (1) of the principal Act is hereby further amended by adding, after the definition of the term "total allowable catch", the following definition:

"'Transferable term quota' means quota that confers on the holder the right to take rock lobster at any time in the period of 25 years beginning on the 1st day of April 1990 (being quota that may be transferred as if it were individual transferable quota allocated under Part IIA of this Act)."

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

**49. Declaration that rock lobster subject to quota fishing**—The principal Act is hereby amended by inserting, after section 28B (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

"28BA. (1) The taking of rock lobster in the quota management areas described in the Third Schedule to the Maori Fisheries Act 1989 is hereby declared to be subject, for the period of 25 years beginning on the 1st day of April 1990, to the quota management system established under this Part of this Act.

"(2) The quota management areas referred to by name and reference number in the Second Schedule to the Maori Fisheries Act 1989 are the quota management areas described in the Third Schedule to that Act."

**50. Total allowable catch in respect of rock lobster**—The principal Act is hereby amended by inserting, after section 28c (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

"28CA. (1) Nothing in section 28c or section 28D of this Act authorises the making of a declaration, or the giving of a notice, in respect of rock lobster.

"(2) The total allowable catch in respect of rock lobster or any species of rock lobster for each quota management area described in the Third Schedule to the Maori Fisheries Act 1989 is that specified, in relation to rock lobster or that species of rock lobster, in the final column of the Second Schedule to that Act against that quota management area.

"(3) Subject to subsections (4) and (5) of this section, the Governor-General may from time to time, by Order in Council, amend the Second Schedule to the Maori Fisheries Act 1989 by omitting the total allowable catch specified, in relation to rock lobster or any species of rock lobster, in the final column of that

Schedule against any quota management area, and substituting a new total allowable catch, in relation to rock lobster or any species of rock lobster, in respect of that area.

“(4) An Order in Council shall not be made under subsection (3) of this section unless the Governor-General in Council is satisfied that—

“(a) The making of the order is consistent with the long term conservation and management of rock lobster or any species of rock lobster in the quota management area to which the order relates; or

“(b) The total allowable catch in respect of rock lobster or the species of rock lobster for the quota management area is deemed to have been increased by section 28JA (2) of this Act.

“(5) An Order in Council made under subsection (3) of this section shall not reduce the total allowable catch for any quota management area in respect of rock lobster or any species of rock lobster unless the Governor-General in Council is satisfied that—

“(a) The stock for that quota management area for rock lobster or the species of rock lobster has fallen significantly below the level that can sustain the total allowable catch; and

“(b) The imposition of controls on fishing under this Act would not be sufficient to maintain the fishery at a level at or about the current total allowable catch.

“(6) The period for which fishing returns are to be used under section 28EA (1) of this Act in determining provisional maximum transferable term quotas for rock lobster or any species of rock lobster is the period of 6 years beginning on the 1st day of June 1982 and ending with the close of the 31st day of May 1988.

“(7) Where an Order in Council made under subsection (3) of this section reduces the total allowable catch in respect of rock lobster or any species of rock lobster for any quota management area, the quantity of rock lobster or of the species of rock lobster that may be taken under transferable term quotas relating to that total allowable catch shall be reduced to the quantity provided for in the reduced total allowable catch.

“(8) The reduction of the total allowable catch shall be achieved—

“(a) By the reduction of all transferable term quota on a proportionate basis (in which case compensation shall be payable by the Crown for the fair market value of the transferable term quota); or

“(b) By operation of section 28U (4) of this Act.

“(9) The compensation payable in respect of transferable term quotas that are reduced by an Order in Council made under subsection (3) of this section shall be payable by the Crown to the holders of the transferable term quotas and to persons holding any interest in those quotas at such amount as may be agreed between the Crown and the holders and other persons.

“(10) In the absence of agreement as to the amount of compensation payable to any holder or any other person, the compensation payable by the Crown to the holder or other person shall be determined by arbitration in accordance with the Arbitration Act 1908.

“(11) Where the total allowable catch in respect of rock lobster or any species of rock lobster for any quota management area specified in the Second Schedule to the Maori Fisheries Act 1989 is increased after transferable term quota have been allocated, the right to take the increased catch shall be determined under section 28TA of this Act.”

**51. Special provisions in relation to provisional maximum transferable term quotas in respect of rock lobster**—The principal Act is hereby amended by inserting, after section 28E (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28EA. (1) As soon as practicable after the commencement of section 49 of the Maori Fisheries Act 1989, the Director-General shall make an allocation of provisional maximum transferable term quotas in accordance with this section, using as a basis the proportion that the commercial catch of the person in that quota management area of rock lobster or any species of rock lobster as shown in the fishing returns of that person for the period or periods specified in section 28CA (6) of this Act bears to the total commercial catch in that quota management area of rock lobster or that species of rock lobster in previous years.

“(2) Allocations may be made under subsection (1) of this section in respect of rock lobster or any species of rock lobster only to persons who, immediately before the 1st day of April 1990, are the holders of controlled fishery licences authorising the taking of rock lobster or that species of rock lobster.

“(3) Where a person to whom subsection (2) of this section applies—

“(a) Has not fished for rock lobster or the species of rock lobster in the quota management area at any time

during the period specified in section 28CA of this Act; or

“(b) Has, in accordance with section 39 of this Act, allowed a master, other than that specified in the licence pursuant to section 36 (1) (h) of this Act, to have command or charge of a boat within the controlled fishery during the period specified in section 28CA of this Act; or

“(c) Has, in accordance with section 42 of this Act, suspended or reduced fishing for rock lobster or the species of rock lobster in the quota management area during the period specified in section 28CA of this Act,—

the Director-General may, notwithstanding anything in subsection (1) of this section, but subject to subsections (4) and (5) of this section, make to that person under subsection (1) of this section an allocation of provisional maximum transferable term quota in respect of rock lobster or the species of rock lobster subject to the quota management system.

“(4) An allocation under subsection (1) of this section may be made to a person pursuant to subsection (3) of this section only where the Director-General is satisfied that failure to make such an allocation would be unfair having regard to the commitment of that person to, and the dependence of that person on, the taking of rock lobster or that species of rock lobster in the quota management area (being a commitment and dependence existing immediately before the 1st day of April 1990).

“(5) Where the Director-General, acting pursuant to subsection (3) of this section, makes an allocation to a person under subsection (1) of this section, the Director-General shall have regard to the fishing returns made by the other persons who have fished for rock lobster or the species of rock lobster in the quota management area at any time during the period specified in section 28CA of this Act.”

## **52. Guaranteed minimum transferable term quota—**

The principal Act is hereby amended by inserting, after section 28F (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28FA. (1) The Director-General shall determine guaranteed minimum transferable term quotas by, if necessary, reducing on a pro rata basis all the provisional maximum transferable term quotas determined under section 28EA of this Act so that the total of the guaranteed minimum transferable term quotas does not exceed the total allowable catch for the quota

management area in respect of rock lobster or the species of rock lobster concerned.

“(2) Each provisional maximum transferable term quota shall, after being reduced if necessary under subsection (1) of this section, become a guaranteed minimum transferable term quota.”

**53. Notice of quota allocations for rock lobster**—The principal Act is hereby amended by inserting, after section 28G (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28GA. (1) The Director-General shall advise each person concerned of the provisional maximum transferable term quota and the guaranteed minimum transferable term quota allocated to the person under sections 28EA and 28FA of this Act.

“(2) The Director-General shall give public notice, at least twice with an interval of not less than 7 days between each notification in a newspaper or newspapers circulating in the area or areas where the Director-General considers persons who take rock lobster or are likely to want to take rock lobster from the quota management area are likely to be based,—

“(a) Specifying that provisional maximum transferable term quotas and guaranteed minimum transferable term quotas have been allocated for the quota management area under sections 28EA and 28FA of this Act:

“(b) Specifying a date, being not earlier than the 28th day after the date of the first publication of the notice in that newspaper, by which any person who has not been allocated such quotas may appeal to the Quota Appeal Authority for the allocation of a provisional maximum transferable term quota.

“(3) A notice under subsection (2) of this section may be combined with a notice under section 28G (2) of this Act.”

**54. Appeal against allocation or failure to allocate provisional maximum transferable term quota**—The principal Act is hereby amended by inserting, after section 28H (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28HA. (1) Where any person is advised under section 28GA (1) of this Act of the provisional maximum transferable term quota and the guaranteed minimum transferable term quotas allocated to that person, that person may, within 28

days after being so notified or within such longer period as the Quota Appeal Authority may allow, appeal to that Authority against the amount of the provisional maximum transferable term quota allocated to that person.

“(2) A person to whom no provisional maximum transferable term quota has been allocated for rock lobster or a species of rock lobster in respect of a quota management area may, before the date specified in accordance with section 28GA (2) (b) of this Act or such later date as the Quota Appeal Authority may allow, appeal to that Authority against the failure or refusal of the Director-General to allocate any such provisional maximum transferable term quota to that person.

“(3) Where the Director-General advises any person, under section 28GA (1) of this Act of the provisional maximum transferable term quota and the guaranteed minimum transferable term quota allocated to that person, the Director-General may, within 28 days after so notifying that person or within such longer period as the Quota Appeal Authority may allow, appeal to the Quota Appeal Authority against the amount of the provisional maximum transferable term quota allocated to that person.

“(4) The Director-General may, before the date specified in accordance with section 28GA (2) (b) of this Act or such later date as the Quota Appeal Authority may allow, appeal to the Quota Appeal Authority against the failure or refusal to allocate any provisional maximum transferable term quota to a person.”

**55. Decisions of Quota Appeal Authority**—Section 28i of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) The Quota Appeal Authority shall, as soon as practicable after hearing each appeal, determine whether or not the appellant or, in the case of an appeal under subsection (3) or subsection (4) of section 28H of this Act or subsection (3) or subsection (4) of section 28HA of this Act, the person to whom the appeal relates, should be allocated a provisional maximum individual transferable quota or a provisional maximum transferable term quota or an increase or decrease in provisional maximum individual transferable quota or provisional maximum transferable term quota, as the case may require, and the amount, if any, of such quota or increased or decreased quota to be allocated.”

**56. Effect of increase in provisional maximum transferable term quota by Quota Appeal Authority**—The principal Act is hereby amended by inserting, after section 28j (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28jA. (1) Where the Quota Appeal Authority allocates or increases any provisional maximum transferable term quota under section 28i of this Act, the guaranteed minimum transferable term quota of the person concerned shall be a proportionate amount or increased by a proportionate amount, as the case may require, notwithstanding that the effect of that allocation or increase may be that the total of the guaranteed minimum transferable term quota exceeds the total allowable catch for the quota management area in respect of rock lobster or the species of rock lobster concerned.

“(2) The total allowable catch declared under section 28cA of this Act for any quota management area in respect of rock lobster or any species of rock lobster shall, by virtue of this subsection, be deemed to be increased by any guaranteed minimum transferable term quota allocated under subsection (1) of this section.

“(3) Where any total allowable catch is increased by virtue of subsection (2) of this section, the Director-General shall, once all the directions of the Quota Appeal Authority in relation to that total allowable catch are known, give notice to the Minister of the new total allowable catch so that the Minister may recommend the making of an Order in Council under section 28cA (3) of this Act.”

**57. Effect of allocation of guaranteed minimum transferable term quota**—The principal Act is hereby amended by inserting, after section 28k (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28kA. (1) Subject to subsection (2) of this section, every person to whom a guaranteed minimum transferable term quota is allocated shall, on and from the date of that allocation, be entitled to take rock lobster, or rock lobster of the species referred to in the quota, within the quota management area in accordance with the fishing permit held by the person.

“(2) No person shall be entitled to take rock lobster pursuant to a guaranteed minimum transferable term quota, unless the person also holds a fishing permit issued under section 63 of this Act, and the rock lobster are taken in accordance with the permit.”

**58. Reduction of provisional maximum transferable term quotas**—The principal Act is hereby amended by inserting, after section 28N (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28NA. (1) Where the total provisional maximum transferable term quotas exceed the total allowable catch in respect of rock lobster or any species of rock lobster for a quota management area, the Director-General shall reduce each provisional maximum transferable term quota on a proportionate basis so that the total allowable catch, as increased by any additional guaranteed minimum transferable term quota allocated under section 28I of this Act, is not exceeded.

“(2) No compensation or other payment shall be payable by the Crown to any person in respect of the reduction under this section of the provisional maximum transferable term quota of that person.

“(3) No provisional maximum transferable term quota shall be reduced under this section below the guaranteed minimum transferable term quota.”

**59. Allocation of transferable term quota**—The principal Act is hereby amended by inserting, after section 28O (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28OA. (1) When the necessary reductions (if any) have been made under section 28NA of this Act, the Director-General shall notify every person concerned of the transferable term quota allocated to that person.

“(2) The transferable term quotas created under subsection (1) of this section shall be expressed in tonnes or parts of a tonne.

“(3) Subject to subsection (4) of this section, each transferable term 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 rock lobster under the quota, to take in total within the quota management area concerned in any year rock lobster, or rock lobster of the species shown in the quota, up to the tonnage shown in the quota.

“(4) No person shall be entitled to take rock lobster pursuant to a transferable term quota unless the person also holds a fishing permit issued under section 63 of this Act, and the rock lobster are taken in accordance with that permit.

“(5) All rock lobster taken under a guaranteed minimum transferable term quota that is replaced by a transferable term

quota shall, for the purposes of this section, be deemed to have been taken under the transferable term quota.”

**60. Registers to be maintained**—Section 28P(1) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by repealing paragraphs (b) and (c), and substituting the following paragraphs:

“(b) The individual transferable quota and the transferable term quota allocated to each person:

“(c) Every transfer of an individual transferable quota or of transferable term quota, whether by operation of law or agreement of the parties that has been notified to the Director-General.”.

**61. Transfers and leases of individual transferable quota or transferable term quota**—Section 28Q of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended—

(a) By inserting in subsection (1), after the words “individual transferable quota”, the words “or of transferable term quota”; and

(b) By inserting in subsection (6), after the words “individual transferable quota”, the words “or transferable term quota”; and

(c) By inserting in subsection (7) (as added by section 1B(3) of the Fisheries Amendment Act 1989), after the words “individual transferable quota”, the words “or transferable term quota”.

**62. Form of leases of individual transferable quota or transferable term quota**—Section 28R of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the words “individual transferable quota” in both places where they appear, the words “or of transferable term quota”.

**63. Minimum holdings of quota and interests in quota**—The principal Act is hereby amended by repealing section 28s (as inserted by section 10 of the Fisheries Amendment Act 1986 and amended by section 1D of the Fisheries Amendment Act 1989), and substituting the following section:

“28s. (1) Except as provided in subsections (3) to (7) of this section, no person may purchase or take on lease—

- “(a) Less than 5 tonne of individual transferable quota for any quota management area for any species or class of finfish unless the total individual transferable quota held or held on lease by that person for all species or classes of finfish (including that quota) in one or more quota management areas is or exceeds 5 tonne:
- “(b) Less than 1 tonne of individual transferable quota for any quota management area for any species or class of shellfish unless the total individual transferable quota held or held on lease by that person for all species or classes of shellfish (including that quota) in one or more quota management areas is or exceeds 1 tonne:
- “(c) Less than 3 tonne of transferable term quota for rock lobster for any quota management area unless the total transferable term quota held or held on lease by that person for rock lobster (including that quota) in that quota management area is or exceeds 3 tonne.
- “(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 fish pursuant to any such quota at any time when the person has disposed in whole or in part of the right to take fish under the quota (whether by way of lease or otherwise), unless the person has the current right to take fish 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 allocation under section 28F of this Act of guaranteed minimum individual transferable quota or the allocation under section 28O of this Act of individual transferable quota in amounts less than those specified in subsection (1) of this section; or
- “(b) The taking of fish pursuant to any such quota by the person to whom it was allocated at any time when the person has the current right to take fish to an amount not less than the amount so allocated.
- “(4) Nothing in subsection (1) of this section shall prevent the allocation under section 28FA of this Act of guaranteed minimum transferable term quota or the allocation under section 28OA of this Act of transferable term quota in amounts less than those specified in that subsection, the transfer of such quotas, or the taking of rock lobster pursuant to such quotas.

“(5) Nothing in subsection (1) of this section shall prevent the purchase or taking on lease of individual transferable quotas or transferable term quotas by any person who intends to acquire over a period at least the minimum individual transferable quota or at least the minimum transferable term quota, and who does not take any fish or rock lobster, as the case may be, pursuant to that quota until the person holds at least the minimum amount of quota specified in this subsection.

“(6) Nothing in subsection (1) of this section shall apply to the holder of any controlled fishery licence issued under Part III of this Act.

“(7) Where any person holds at least the minimum holding of individual transferable quota specified in subsection (1) (b) of this section, that person may purchase or take on lease less than the minimum of any individual transferable quota specified in subsection (1) (a) of this section, and may take fish pursuant to any such quota at any time during which the person has the current right to take shellfish to an amount not less than that specified in subsection (1) (b) of this section.

“(8) Where any person holds at least the minimum holding of transferable term quota specified in subsection (1) (c) of this section, that person may purchase or take on lease less than the minimum of any individual transferable quota specified in subsection (1) (a) of this section, and may take fish pursuant to any such quota at any time during which the person has the current right to take rock lobster to an amount not less than that specified in subsection (1) (c) of this section.

“(9) No person may sell or otherwise dispose of (other than by lease) individual transferable quota or transferable term quota that reduce the total individual transferable quota or transferable term quota held by that person to less than—

“(a) Five tonne of finfish; or

“(b) One tonne of shellfish; or

“(c) Three tonne of rock lobster,—

unless all the individual transferable quota for finfish or shellfish or all the transferable term quota for rock lobster, as the case may be, held or leased by the person are disposed of.

“(10) 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 or transferable term quota, unless, in the case of disposal or granting of a lease, the person disposes of or grants a lease of all the individual transferable quota or transferable term quota held by that person for that species or class of finfish or shellfish or rock lobster, as the case may be, for a quota management area.

“(11) No agreement shall be entered into, whether under section 99 (1) of this Act or otherwise, or if entered into shall not be effective, to the extent that it authorises any person to take any fish subject to a quota management system on behalf of any other person unless the first-mentioned person has the current right to take fish subject to a quota management system to an amount not less than that specified in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section.”

**64. Distribution of total allowable catch for rock lobster where increased or not initially allocated as quota**—The principal Act is hereby amended by inserting, after section 28T (as inserted by section 10 of the Fisheries Amendment Act 1986), the following section:

“28TA. (1) Where the total allowable catch for any quota management area in respect of rock lobster or any species of rock lobster is increased at any time after the allocation of transferable term quota under section 28OA of this Act, the Minister shall offer the increased quotas on a proportionate basis free of charge to those persons who had provisional maximum transferable term quota for rock lobster or that species of rock lobster in that quota management area reduced under section 28NA of this Act and who continue to hold transferable term quota for rock lobster or that species of rock lobster in that quota management area on a date nominated by the Minister in amounts such that each person receives the amount of provisional maximum transferable quota that was reduced under section 28NA of this Act, or lesser amounts if sufficient quota is not available.

“(2) No offer of quota under subsection (1) of this section shall be made in respect of any quota reduced under section 28D of this Act.

“(3) Where the total allowable catch for any quota management area in respect of rock lobster or any species of rock lobster is increased at any time after the allocation of transferable term quota under section 28OA of this Act or where the transferable term quotas allocated under that section for any quota management area in respect of rock lobster or any species of rock lobster are less than the appropriate total allowable catch, and the Minister has taken the action required by subsection (1) of this section, the Minister may do any one or more of the following things:

“(a) Offer the increased or unallocated portion of the total allowable catch as transferable term quotas on a

proportionate basis to holders of quotas for rock lobster or that species of rock lobster in the quota management area on a date nominated by the Minister at a price nominated by the Minister; or

“(b) Invite by public notice, either generally or from a specified class of persons, tenders or offers for transferable term quotas or leases of transferable term quotas for the whole or any part of the increased or unallocated portion of the total allowable catch; or

“(c) Allocate the increased or unallocated portion of the total allowable catch to the Crown as transferable term quotas; and in any such case the Crown shall be entitled to hold or deal with them under section 28U of this Act as if they had been purchased on behalf of the Crown; or

“(d) By public notice declare that the increased or unallocated portion of the total allowable catch may be taken by any commercial fisherman, or by any commercial fisherman who holds transferable term quota in respect of rock lobster or that species of rock lobster for that quota management area or any other quota management area.

“(4) The public notice required to be given under paragraph (b) or paragraph (d) of subsection (3) of this section shall be given at least twice with an interval of not less than 7 days between each notification in a newspaper or newspapers circulating in the area or areas where the Director-General considers persons who take rock lobster or are likely to want to take rock lobster from the quota management area are likely to be based.

“(5) The Minister shall not be obliged to accept the highest or any tender for any quota for which tenders are invited under this section; and in considering whether or not to accept any tender may consider such matters as the Minister considers relevant.

“(6) Where a declaration is made under paragraph (d) of subsection (3) of this section, the Minister may specify a maximum amount of rock lobster or of a species of rock lobster that may be taken by any person, and may require any person taking rock lobster or a species of rock lobster to comply with all or any of the conditions that would apply if the rock lobster or species of rock lobster had been taken pursuant to transferable term quota.

“(7) Where any person takes any rock lobster under the authority of a declaration made under paragraph (d) of subsection (3) of this section, that person shall be liable to pay to the Crown on the 20th day of the month after the month in which the rock lobster was taken a resource rental equivalent to the total annual resource rental (if any) that would be payable under section 28zc of this Act if the person had been the holder of a quota to take rock lobster during the whole of the year in which the rock lobster was taken.

“(8) No person shall engage in any competitive taking of rock lobster or a species of rock lobster permitted under subsection (3) (d) of this section while that person has the right to take rock lobster or that species of rock lobster under transferable term quota for that quota management area.

“(9) The Minister may at any time by public notice cancel any declaration made under paragraph (d) of subsection (3) of this section, or give notice that the amount of rock lobster, or of the species of rock lobster, to which the declaration relates has been taken or is likely to have been taken by a specified date and that the taking of rock lobster or of that species of rock lobster under the authority of the declaration is prohibited on and from a date specified in the notice.”

**65. Power of Crown to acquire, hold, transfer, lease, or cancel quotas**—The principal Act is hereby amended by repealing section 28U (as inserted by section 10 of the Fisheries Amendment Act 1986), and substituting the following section:

“28U. (1) The Director-General may, on behalf of the Crown,—

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

“(b) Subject to subsection (2) of this section, retain any quota so acquired, without being obliged to offer them to any commercial fisherman:

“(c) Transfer any individual transferable quota or transferable term 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 any individual transferable quota or transferable term 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 any individual transferable quota held by the Crown relates to fish to which the Territorial Sea and Exclusive Economic Zone Act 1977 applies and the Minister has determined under section 12 of the Territorial Sea and Exclusive Economic Zone Act 1977 that the fish cannot be taken by New Zealand fishing craft within the meaning of that Act, the quota shall be made available to foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977 to take those fish.

“(3) 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.

“(4) The Minister may, unless the right to take the fish is or is required to be made available to foreign fishing craft under the Territorial Sea and Exclusive Economic Zone Act 1977, cancel any individual transferable quota held on behalf of the Crown, and where the Minister does so, the total allowable catch specified under section 28c of this Act shall be reduced accordingly.

“(5) The Minister may cancel any transferable term quota held on behalf of the Crown, and where the Minister does so, the total allowable catch shall be reduced accordingly.

“(6) The Minister shall give notice in the *Gazette* of any cancellation of individual transferable quota or transferable term quota and the consequent reduction of the total allowable catch.”

**66. Taking of fish in excess of quota, and carrying forward of unused quota**—Section 28v of the principal Act (as substituted by section 1E of the Fisheries Amendment Act 1989) is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Nothing in subsection (1) or subsection (2) or subsection (3) of this section applies in respect of the taking of rock lobster.”

**67. Restriction on amount of quota that may be held by any one person**—(1) Section 28w of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) Notwithstanding the provisions in this Part of this Act relating to the transfer and lease of individual transferable quotas or transferable term quotas, no person shall be entitled

to hold (whether by allocation or by taking on transfer or lease or by any combination of those means)—

- “(a) More than 35 percent of the total of individual transferable quotas for New Zealand fisheries waters in respect of any species or class of fish named in Schedule 1A to this Act:
- “(b) More than 10 percent of the transferable term quotas for any quota management area in respect of spiny rock lobster:
- “(c) More than 35 percent of transferable term quotas for any quota management area in respect of packhorse rock lobster:
- “(d) In any other case, more than 20 percent of the total of individual transferable quotas for any quota management area in respect of any species or class of fish.

“(2) Nothing in subsection (1) of this section shall apply to any person who is allocated more than the permitted percentage of the total of any transferable quotas for any species or class of fish or for rock lobster or any species of rock lobster for any quota management area under section 280 or section 280A or section 28T(1) or section 28TA(1) of this Act; but, except as may be permitted by any consent granted under subsection (3) of this section, no such person may acquire or take on lease any more such quota.

“(2A) Where any individual transferable quotas for any species or class of fish for any quota management area or any transferable term quotas for rock lobster or any species of rock lobster for any quota management area—

- “(a) Have been transferred to a person under section 28U(1)(d) of this Act; or
- “(b) Have been acquired by a person, with the consent of the Minister, in exchange for individual transferable quotas or transferable term quotas transferred to that person under section 28U(1)(d) of this Act,—

nothing in subsection (1) of this section prevents that person from holding those individual transferable quotas or transferable term quotas; but nothing in this subsection applies to any other quota or interest in quota acquired by any such person.”

(2) Section 28w of the principal Act (as so inserted) is hereby further amended by repealing subsection (4), and substituting the following subsection:

“(4) In any case to which subsection (1)(b) or (c) of this section applies, the Minister may from time to time, after

consultation with the Fishing Industry Board, by notice in the *Gazette*, consent, subject to such conditions as the Minister may impose, 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 individual transferable quotas or transferable term quotas for any quota management area in respect of any species or class of fish for any specified year or years or generally.”

**68. Quota not to be allocated to owners of licensed foreign fishing craft**—The principal Act is hereby amended by repealing section 28x (as inserted by section 10 of the Fisheries Amendment Act 1986), and substituting the following section:

“28x. (1) Nothing in sections 28E to 28OA or section 28T or section 28TA of this Act shall apply in respect of any person who is the owner of a foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977.

“(2) Where any person to whom subsection (1) of this section applies would be entitled to be allocated an individual transferable quota or a transferable term quota if it were not for that subsection, that quota shall be allocated to the Crown.”

**69. Quota not to be sold to or held in respect of licensed foreign fishing craft or leased to them other than by Crown**—Section 28y (1) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the words “individual transferable quota”, the words “or transferable term quota”.

**70. Quota not to be allocated to overseas individuals or companies with overseas control**—Section 28z of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsections (5) to (11), and substituting the following subsections:

“(5) Except as provided in subsection (7) of this section, nothing in sections 28E to 28OA or in section 28T or in section 28TA of this Act shall apply in respect of any person to whom this section applies.

“(6) Where any person to whom this section applies would be entitled to be allocated an individual transferable quota or a transferable term quota if it were not for subsection (5) of this section, that quota shall be allocated to the Crown.

“(7) Where any person who is allocated a provisional maximum individual transferable quota or guaranteed minimum individual transferable quota or provisional maximum transferable term quota or guaranteed minimum transferable term quota becomes a person to whom this section applies, the person may continue to hold the provisional maximum individual transferable quota or guaranteed minimum individual transferable quota or provisional maximum transferable term quota or guaranteed minimum transferable term quota until the person is allocated, as the case may require, an individual transferable quota under section 280 of this Act or a transferable term quota under section 280A of this Act, and subsection (8) of this section shall then apply.

“(8) Where any person who is the holder of an individual transferable quota or transferable term quota or the lessee of any individual transferable quota or transferable term 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 (9) 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.

“(9) 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 transferable term quota or interests in individual transferable quota or transferable term quota by any person to whom this section applies.

“(10) No person may sell or lease any individual transferable quota or transferable term quota to any person to whom this section applies other than in accordance with any permission granted under subsection (9) of this section.

“(11) Where any person to whom this section applies holds any individual transferable quota or transferable term quota or any interest in any individual transferable quota or transferable term quota that is not permitted under subsection (8) or subsection (9) of this section, the individual transferable quota or transferable term quota or interest in the individual transferable quota or transferable term quota shall be forfeited to the Crown without compensation.”

**71. Rock lobster subject to quota fishing cannot be taken for sale other than under quota**—The principal Act is hereby amended by inserting, after section 28ZA (as inserted

by section 10 of the Fisheries Amendment Act 1986), the following section:

“28ZAA. (1) Except, in the case of rock lobster taken—

“(a) In accordance with a public notice given under section 28TA (3) (d) of this Act; or

“(b) Pursuant to an arrangement or agreement entered into under section 87 of this Act,—

no person may take for sale any rock lobster for which guaranteed minimum transferable term quota or transferable term quota have been allocated other than under the authority of a guaranteed minimum transferable term quota or a transferable term quota.

“(2) No person shall take any rock lobster under the authority of a guaranteed minimum transferable term quota or a transferable term quota, other than in accordance with the conditions of an appropriate fishing permit, the conditions and limitations imposed by or under this Act, any regulations or notice made under this Act, and any applicable fishery management plan.

“(3) Where—

“(a) A commercial fisherman takes rock lobster subject to a quota management system without the authority of, or in excess of any amount authorised to be taken under, any quota held under this Act; and

“(b) The commercial fisherman has not notified the taking of the rock lobster to a Registrar and surrendered and disposed of the rock lobster in the manner specified in section 105AA (2) of this Act; and

“(c) The commercial fisherman subsequently buys or leases quota that would have authorised the taking of the rock lobster by that fisherman if the quota had been held by that fisherman at the date the rock lobster were taken, or enters into an arrangement with another commercial fisherman for the rock lobster to be counted against the quota of that other fisherman,—

any such rock lobster shall, whether or not any offence has been committed in relation to the rock lobster, be attributed to and counted against the relevant quota so bought, leased, or arranged.”

## **72. Dumping of quota management fish prohibited—**

Section 28zb of the principal Act (as substituted by section 3 of the Fisheries Amendment Act 1989) is hereby amended by adding the following subsection:

“(5) Nothing in subsections (2) (e), (3), and (4) of this section apply in respect of rock lobster.”

**73. Resource rental payable in respect of quota—**Section 28zc of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) There shall be payable to the Crown in respect of—

“(a) Every guaranteed minimum transferable quota; and

“(b) Every individual transferable quota; and

“(c) Every guaranteed minimum transferable term quota;  
and

“(d) Every transferable term quota,—

an annual resource rental for each tonne or part of a tonne of quota at the appropriate rate according to the species or class of fish and the vessel that may be used to take the fish as specified in Schedule 1B to this Act.”

**74. New Part IIIA inserted—**The principal Act is hereby amended by inserting, after section 54, the following Part:

### “PART IIIA

#### “TAIAPURE-LOCAL FISHERIES

“54A. **Object—**The object of this Part of this Act is to make, in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either—

“(a) As a source of food; or

“(b) For spiritual or cultural reasons,—

better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi.

“54B. **Declaration of taiapure-local fisheries—**(1) Subject to subsections (2) and (3) of this section, the Governor-General may, from time to time, by Order in Council published in the *Gazette*, declare any area of New Zealand fisheries waters (being estuarine waters or littoral coastal waters) to be a taiapure-local fishery.

“(2) An order under subsection (1) of this section may be made only on a recommendation made by the Minister in accordance with this Part of this Act.

“(3) The Minister shall not recommend the making of an order under subsection (1) of this section unless the Minister is satisfied both—

“(a) That the order will further the object set out in section 54A of this Act; and

“(b) That the making of the order is appropriate having regard to—

“(i) The size of the area of New Zealand fisheries waters that would be declared by the order to be a taiapure-local fishery; and

“(ii) The impact of the order on the general welfare of the community in the vicinity of the area that would be declared by the order to be a taiapure-local fishery; and

“(iii) The impact of the order on those persons having a special interest in the area that would be declared by the order to be a taiapure-local fishery; and

“(iv) The impact of the order on fisheries management.

“54c. **Proposal for establishment of taiapure-local fishery**—(1) Any person may submit to the Director-General a proposal for the establishment of a taiapure-local fishery.

“(2) The proposal—

“(a) Shall contain a description of the proposed taiapure-local fishery, which description shall include particulars of the location, area, and boundaries of the proposed taiapure-local fishery; and

“(b) Shall describe—

“(i) Maori, traditional, recreational, commercial, and other interests in the proposed taiapure-local fishery;

“(ii) The species of aquatic life in the proposed taiapure-local fishery that are of particular importance or interest.

“(3) The proposal shall—

“(a) State why the area to which the proposal relates has customarily been of special significance to an iwi or hapu either—

“(i) As a source of food; or

“(ii) For spiritual or cultural reasons:

“(b) Set out the policies and objectives of the proposal:

“(c) Contain such other particulars as the Director-General considers appropriate.

**“54D. Initial consideration of proposal—**(1) The Director-General shall refer to the Minister every proposal submitted to the Director-General in accordance with section 54c of this Act.

“(2) If the Minister, after consultation with the Minister of Maori Affairs and after having regard to the provisions of section 54B (3) of this Act, agrees in principle with the proposal, the Minister shall authorise the Director-General to publish notice of the proposal in the *Gazette*.

“(3) The proposal shall be available for public inspection for a period of not less than 2 months after the date of the publication in the *Gazette* of the notice of the proposal.

“(4) The notice shall specify the office of the Maori Land Court in which objections to the proposal may be lodged.

“(5) If the Minister, after consultation with the Minister of Maori Affairs and after having regard to the provisions of section 54B (3) of this Act, does not agree in principle with the proposal, the Director-General shall inform the person who made the proposal that the proposal will not be proceeding further as the Minister does not agree with it in principle.

**“54E. Notice of proposal—**(1) The notice authorised under section 54D (2) of this Act shall be published at least twice, with an interval of not less than 7 days between each notification of the proposal, in the metropolitan newspapers and in a newspaper circulating in the locality of the area to which the proposal relates.

“(2) A copy of the proposal shall be deposited in—

“(a) The office of the Maori Land Court nearest to the locality of the area to which the proposal relates; and

“(b) The Ministry’s Head Office; and

“(c) The office of the territorial authority for the area to which the proposal relates; and

“(d) The office of the regional council for the area to which the proposal relates.

**“54F. Objections to, and submissions on, proposal—**(1) Any person or public authority, local authority, or any body specifically constituted by or under any Act, and any Minister of the Crown, which or who has any function, power, or duty which relates to, or which or who is or could be affected by, any aspect of the proposed taiapure-local fishery may, within 2 months of the publication in the *Gazette* of the proposal, lodge at the office of the Maori Land Court specified pursuant to section 54D (4) of this Act—

- “(a) An objection to the proposal; or
- “(b) Submissions in relation to the proposal; or
- “(c) Both.
- “(2) Any such objection and any such submissions—
- “(a) Shall identify the grounds on which the objections or submissions are made; and
- “(b) Shall be supplemented by such particulars and information as the Registrar of the Maori Land Court notifies the applicant the Registrar of the Maori Land Court considers necessary to sufficiently identify the grounds of the objection or the submissions.

“54C. **Inquiry by tribunal**—(1) A public inquiry shall be conducted into all objections and submissions received under section 54F of this Act.

“(2) The inquiry shall be conducted by a tribunal consisting of a Judge of the Maori Land Court appointed by the Chief Judge of the Maori Land Court.

“(3) The Chief Judge of the Maori Land Court may direct that the tribunal conducting the inquiry conduct it with assistance of one or more assessors to be appointed by the Chief Judge for the purpose of the inquiry.

“(4) In considering the suitability of any person for appointment as an assessor, the Chief Judge of the Maori Land Court shall have regard not only to that person's personal attributes but also to that person's knowledge of and experience in the different aspects of matters likely to be the subject-matter of the inquiry.

“(5) The tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908 and, subject to the provisions of this Act, all the provisions of that Act, except sections 10 to 12, shall apply accordingly.

“(6) The person who submitted the proposal to the Director-General, the Minister, or any regional council or local authority whose region or district is affected by the proposal and every body and person which or who made submissions on or objected to the proposal under section 54F of this Act, shall have the right to be present and be heard at every inquiry conducted by the tribunal under this section, and may be represented by counsel or duly authorised representative.

“(7) A tribunal appointed under this section may, if the Chief Judge of the Maori Land Court so directs, conduct any 2 or more inquiries together notwithstanding that they relate to different areas or different parts of any area.

“(8) On completion of the inquiry, the tribunal shall, having regard to the provisions of section 54B (3) of this Act,—

“(a) Make a report and recommendations to the Minister on the objections and submissions made to it, which report and recommendations may include recommended amendments to the proposal; or

“(b) Recommend to the Minister that no action be taken as a result of the objections and submissions made to it.

“(9) The Minister, after taking into account the report and recommendations of the tribunal and after having regard to the provisions of section 54B (3) of this Act, and after consultation with the Minister of Maori Affairs,—

“(a) May—

“(i) Accept those recommendations; or

“(ii) Decline to accept all or any of those recommendations; and

“(b) Shall publish in the *Gazette*—

“(i) The report and recommendations of the tribunal; and

“(ii) The decision of the Minister on the report and recommendations of the tribunal.

“(10) Subject to section 54H of this Act, no appeal shall lie from any report or recommendation or decision made under this section.

“54H. **Appeal on question of law**—Where any party to any proceedings under section 54G of this Act before a tribunal appointed under section 54G of this Act is dissatisfied with the report or any recommendation of the tribunal as being erroneous in point of law, that party may appeal to the High Court by way of case stated for the opinion of the Court on a question of law only, and the provisions of subsections (2) to (11) of section 162 and of section 162A of the Town and Country Planning Act 1977 shall, with any necessary modifications, apply in respect of the report or recommendation in the same manner as they apply in respect of a determination of the Planning Tribunal under the Town and Country Planning Act 1977.

“54I. **Power of Minister to recommend declaration of taiapure-local fishery**—Where a proposal for the establishment of a taiapure-local fishery has been made under section 54C of this Act and either any proceedings in relation to that proposal (including any proceedings taken under sections 54F to 54H of this Act in relation to that proposal) have been disposed of or the time for taking any such proceedings has

expired, the Minister shall, if satisfied that a recommendation should be made under section 54B (2) of this Act, make that recommendation accordingly.

**“54j. Management of taiapure-local fishery—**(1) The Minister, after consultation with the Minister of Maori Affairs, shall appoint a committee of management for each taiapure-local fishery.

“(2) The committee of management may be any existing body corporate.

“(3) The committee of management shall be appointed on the nomination of persons who appear to the Minister to be representative of the local Maori community.

“(4) The committee of management shall hold office at the pleasure of the Minister.

**“54k. Power to recommend making of regulations—**(1) A committee of management appointed for a taiapure-local fishery may recommend to the Minister the making of regulations under section 89 of this Act for the conservation and management of the fish, aquatic life, and seaweed in the taiapure-local fishery.

“(2) Regulations made under section 89 of this Act pursuant to subsection (1) of this section may override the provisions of any other regulations made under that section or the provisions of any fishery management plan.

“(3) Except to the extent that any regulations made under section 89 of this Act pursuant to subsection (1) of this section override or are otherwise inconsistent with the provisions of any other regulations made under that section or of any fishery management plan, those provisions shall apply in relation to every taiapure-local fishery.

“(4) Any provision of regulations made under section 89 of this Act that relates only to a taiapure-local fishery may be made only in accordance with subsection (1) of this section.

“(5) Any provision of a fishery management plan that relates only to a taiapure-local fishery may be included in that plan only on the recommendation of the committee of management of that taiapure-local fishery.

“(6) No regulations made under section 89 of this Act shall provide for any person—

“(a) To be refused access to, or the use of, any taiapure-local fishery; or

“(b) To be required to leave or cease to use any taiapure-local fishery,—

by reason of the colour, race, or ethnic or national origins of that person or of any relative or associate of that person.

**75. Defence available to commercial fisherman taking unauthorised quota management system fish**—Section 105AB of the principal Act (as inserted by section 12 of the Fisheries Amendment Act 1989) is hereby amended by inserting, after the expression “section 28ZA (1)”, the expression “or section 28ZAA (1)”.

**76. Forfeiture of property and quota on conviction**—Section 107B (1) of the principal Act (as substituted by section 13A of the Fisheries Amendment Act 1989) is hereby amended by revoking the definition of the term “quota”, and substituting the following definition:

“‘Quota’, in relation to a person convicted of an offence, means any guaranteed minimum individual transferable quota or guaranteed minimum transferable term quota (including any right to receive individual transferable quota or transferable term quota attached to the quota) and any individual transferable quota or transferable term quota held or leased by that person, and—

“(a) Includes any interest held by that person in any quota:

“(b) Does not include—

“(i) Any quota or interest in quota acquired by the person after the date of the offence; or

“(ii) Any quota or interest in quota that, before the date of the conviction, has been transferred or leased otherwise than in circumstances in which the transfer or lease would be ineffective under section 28Q(7) of this Act; or

“(iii) Any leasehold or other interest in quota that was for a specified period only, where that interest has lapsed by effluxion of time.”.

**77. Provisions relating to forfeited property and quota**—Section 107C of the principal Act (as substituted by section 13A of the Fisheries Amendment Act 1989) is hereby amended by repealing subsection (6), and substituting the following subsection:

“(6) Nothing in this section or in section 107B of this Act shall prevent the acquisition of any individual transferable quota or

transferable term quota or any interest in any individual transferable quota or transferable term quota (including any quota or interest in quota forfeited under section 107B of this Act) from the Crown or any other person.”

**78. Schedule 1B amended**—Schedule 1B to the principal Act (as substituted by clause 2 of the Fisheries (Resource Rentals Variation) Order 1988 (S.R. 1988/221)) is hereby amended by inserting, after the item relating to rig, the following items:

“Rock lobster, packhorse ( <i>Jasus verreauxi</i> )	346.50	346.50
“Rock lobster, spiny ( <i>Jasus edwardsii</i> )	..	346.50 346.50”.

**79. Schedule 1c amended**—Schedule 1c to the principal Act (as substituted by clause 2 of the Fisheries (Resource Rentals Variation) Order 1988 (S.R. 1988/221)) is hereby amended by omitting the items relating to rock lobsters.

**80. Rock lobster excluded from controlled fisheries**—  
 (1) As from the commencement of the 1st day of April 1990, no rock lobster fishery within New Zealand fisheries waters shall be a controlled fishery and every controlled fisheries fishing licence then in force shall be deemed to be cancelled to the extent that it relates to rock lobster.

(2) Subsection (1) of this section shall have effect notwithstanding anything in the principal Act (including anything in section 30 (5) of that Act).

**81. Revocations**—The orders specified in the Fourth Schedule to this Act are hereby revoked.

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## SCHEDULES

### Section 39

### FIRST SCHEDULE

#### PROVISIONS RELATING TO MAORI FISHERIES COMMISSION

**1. Meetings**—(1) Meetings of the Commission shall be held at such times and places as the Commission or its Chairperson from time to time appoints.

(2) The Chairperson, or any 3 members, may at any time call a special meeting.

(3) During the transition period, the quorum necessary for the transaction of business at any meeting of the Commission shall be 3 members appointed under section 29 of this Act and 1 other member appointed under section 29 of this Act.

(4) After the transition period, the quorum necessary for the transaction of business at any meeting of the Commission shall be 4 members.

(5) At all meetings of the Commission its Chairperson shall preside if he or she is present. If the Chairperson is absent, the members present shall appoint one of their number to be Chairperson of that meeting.

(6) All questions arising at any meeting of the Commission shall be decided by a majority of the valid votes recorded thereon.

(7) At any meeting of the Commission the Chairperson or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(8) A resolution in writing signed, or assented to by letter, facsimile transmission, telegram, or telex, by all the members of the Commission shall be as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

(9) Subject to the provisions of this Act, the Commission may regulate its procedure in such manner as it thinks fit.

**2. Remuneration and travelling allowances**—The Commission shall pay to its members, and to the members of any committee appointed by the Commission, such remuneration by way of fees, salary, or allowances, and such travelling allowances and expenses, as may be determined by the Commission by resolution from time to time with the approval of the Minister of Finance.

**3. Employees of Commission**—(1) Subject to the provisions of this clause, the Commission may from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as the Commission thinks necessary for the efficient carrying out of the Commission's functions, powers, and duties under this Act or any other enactment.

(2) Subject to the Commission's terms and conditions of employment, the Commission may, on behalf of the Commission, at any time terminate or suspend the employment of any of the Commission's officers or employees.

(3) The number of officers and employees who may be appointed under subclause (1) of this clause, whether generally or in respect of any specified duties, shall from time to time be determined by the Minister of Maori Affairs.

(4) Officers and employees appointed under subclause (1) of this clause shall be employed on such terms and conditions of employment and shall

FIRST SCHEDULE—*continued*PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*

be paid such salaries and allowances as the Commission from time to time determines.

(5) Any determination under subclause (4) of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is so specified, the determination shall take effect on the date thereof.

**4. Committees and consultants**—(1) To assist the Commission in the exercise of its functions, the Commission may from time to time,—

- (a) Establish committees and appoint members thereof; and
- (b) Engage such consultants as the Commission thinks fit.

(2) The Commission shall pay persons appointed or engaged under subclause (1) of this clause, for services rendered by them, fees and commission or either, at such rates as the Commission thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commission.

**5. Application of certain Acts to members and staff of Commission**—No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as a member of the Commission, or an officer or employee of the Commission, or a person appointed under clause 4 of this Schedule.

**6. Superannuation or retiring allowances**—(1) For the purpose of providing a superannuation fund or retiring allowance for any of the officers or employees of the Commission or for any full-time members of the Commission, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

(2) If the question whether or not any member of the Commission is a full-time member for the purposes of subclause (1) of this clause arises, that question shall be determined by the Minister of Maori Affairs whose decision shall be final.

(3) Notwithstanding anything in this Act, any person who immediately before becoming an officer or employee of the Commission or member of the Commission is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to be an officer or employee of the Commission or to hold office as a member of the Commission; and that Act shall apply to that person in all respects as if that person's service as such an officer or employee or as such a member were Government service.

(4) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (3) of this clause shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

FIRST SCHEDULE—*continued*PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*

(5) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subclause (3) of this clause, to a person who is in the service of the Commission, whether as an officer or employee or as a member, and is a contributor to the Government Superannuation Fund, the term “controlling authority”, in relation to any such person who is in the service of the Commission means the Commission.

**7. Crown may provide services for Commission**—The Crown, acting through any Government department, may from time to time, at the request of the Commission, execute any work or enter into arrangements for the execution or provision by the Government department for the Commission of any work or service, or for the supply to the Commission of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

**8. Fees, etc., payable out of funds of Commission**—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of the funds of the Commission.

**9. Funds of Commission**—The funds of the Commission shall consist of—

- (a) Any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission:
- (b) All other money lawfully received by the Commission for the purposes of the Commission:
- (c) All accumulations of income derived from any such money.

**10. Bank accounts**—(1) The Commission shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

(2) All money received by the Commission, or by any employee of the Commission shall, as soon as practicable after it has been received, be paid into such bank accounts of the Commission as the Commission from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised in such manner as the Commission thinks fit.

(4) The withdrawal or payment of money from any such accounts shall be by cheque signed by such person or persons as the Commission may from time to time authorise.

**11. Investment of money**—Any money which belongs to the Commission and which is not immediately required for expenditure by the Commission may be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.

**12. Financial year**—The financial year of the Commission shall end on the 31st day of March or on such other date in any year as the Commission may from time to time determine.

FIRST SCHEDULE—*continued*PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*

**13. Unauthorised expenditure**—The Commission may in any financial year, expend out of the funds of the Commission for purposes not authorised by this Act or any other enactment any sum or sums not amounting in the whole to more than \$5,000.

**14. Audit of accounts**—(1) Within 6 months after the end of each financial year or within such further period as the Minister of Maori Affairs may allow, the Commission shall prepare a balance sheet and such other statements of accounts as are necessary to show fully the financial position of the Commission, and the financial results of its operations during the year.

(2) The balance sheet and other accounts shall be audited by the Audit Office which shall, for that purpose, have the same powers as it has under the Public Finance Act 1977 in respect of public money and stores and the audit of local authorities' accounts.

**15. Annual report and statement of accounts**—(1) As soon as reasonably practicable after the end of each financial year, the Commission shall deliver to the Minister of Maori Affairs a general report of its operations during the year together with a copy of its duly audited accounts for that year and the report of the Audit Office on those accounts.

(2) A copy of the general report and of the accounts of the Commission, together with a copy of the report of the Audit Office on the accounts, shall be laid before the House of Representatives as soon as practicable after their receipt by the Minister of Maori Affairs.

**16. Protection in respect of acts of Commission and members**—No member of the Commission or any of its committees, and no officer or employee of the Commission or person appointed under clause 4 of this Schedule, shall be personally liable for any liability of the Commission or for any act done or omitted by the Commission or any of its committees, or by any member, officer, or employee of the Commission or person so appointed, in good faith in pursuance or intended pursuance of the functions or powers of the Commission.

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## Section 49

## SECOND SCHEDULE

## QUOTA MANAGEMENT AREAS IN RESPECT OF ROCK LOBSTERS

Species		Names	Reference Numbers	Total Allowable Catches (Greenweight Tonnes)
Spiny Rock Lobster	..	Northland ..	1	153
		Bay of Plenty	2	230
		Gisborne ..	3	427
		Wellington/Hawkes Bay ..	4	573
		Canterbury/Marlborough	5	460
		Chatham Islands	6	447
		Otago ..	7	175
		Southern ..	8	1128
		Westland/Taranaki	9	54
		Kermadec ..	10	0.1
Packhorse Lobster	Rock ..	All New Zealand Fisheries waters ..	22	

## THIRD SCHEDULE

Section 49

## QUOTA MANAGEMENT AREAS DEFINED

*Quota Management Area 1—Northland*

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a northerly direction) from Te Arai Point ( $36^{\circ}09.8'S$  and  $174^{\circ}39'E$ ) around North Cape and Cape Reinga to the North Head of Kaipara Harbour ( $36^{\circ}24'S$  and  $174^{\circ}03.5'E$ ); and
- (b) By a straight line from Te Arai Point on a true compass bearing of  $045^{\circ}$ ; and
- (c) By a straight line from the North Head of Kaipara Harbour on a true compass bearing of  $270^{\circ}$ .

*Quota Management Area 2—Bay of Plenty*

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a northerly direction) from East Cape to Te Arai Point ( $36^{\circ}09.8'S$  and  $174^{\circ}39'E$ ); and
- (b) By a straight line from East Cape on a true compass bearing of  $045^{\circ}$ ; and
- (c) By a straight line from Te Arai Point on a true compass bearing of  $045^{\circ}$ .

*Quota Management Area 3—Gisborne*

The area of New Zealand fisheries waters defined on the Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline between East Cape and the Wairoa River entrance; and
- (b) By a straight line from East Cape on a true compass bearing of  $045^{\circ}$ ; and
- (c) By a straight line from the Wairoa River entrance on a true compass bearing of  $160^{\circ}$ .

For the purposes of the definition of quota management area 3, "Wairoa River entrance" means that point in the mouth of the Wairoa River at  $39^{\circ}04'S$  and  $177^{\circ}25'E$ .

*Quota Management Area 4—Wellington/Hawkes Bay*

The area of New Zealand fisheries waters defined on the Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a southerly direction) from the Wairoa River entrance to the Manawatu River entrance; and
- (b) By a straight line drawn due west of the Manawatu River entrance to a point at  $40^{\circ}28'4''S$  and  $174^{\circ}30'E$ , and thence on a true compass bearing of  $135^{\circ}$ ; and
- (c) By a straight line from the Wairoa River entrance on a true compass bearing of  $160^{\circ}$ .

For the purposes of the definition of quota management area 4,—

THIRD SCHEDULE—*continued*QUOTA MANAGEMENT AREAS DEFINED—*continued*

“Manawatu River entrance” means that point on the southern bank of the mouth of the Manawatu River at  $40^{\circ}28'4''S$  and  $175^{\circ}12'5''E$ :

“Wairoa River entrance” means that point in the mouth of the Wairoa River at  $39^{\circ}04'S$  and  $177^{\circ}25'E$ .

*Quota Management Area 5—Canterbury/Marlborough*

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a northerly direction) from the Waitaki River South Head Aero Beacon ( $44^{\circ}57'S$  and  $170^{\circ}08'E$ ) to Bush End Point ( $40^{\circ}33'S$  and  $173^{\circ}02'E$ ) at Farewell Spit; and
- (b) By a straight line drawn due east of Bush End Point to a point at  $40^{\circ}28'4''S$  and  $174^{\circ}30'E$ , thence due south to a point in Cook Strait at  $41^{\circ}30'S$  and  $174^{\circ}30'E$ , and thence on a true compass bearing of  $135^{\circ}$ ; and
- (c) By a straight line from the Waitaki River South Head Aero Beacon on a true compass bearing of  $135^{\circ}$ .

*Quota Management Area 6—Chatham Islands*

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded by a line commencing at a point  $40^{\circ}25'S$  and  $178^{\circ}W$  on the outer limits of the exclusive economic zone; then proceeding along the outer limits of the zone to a position  $51^{\circ}50'S$  and  $174^{\circ}35'E$ ; then proceeding in a straight line to a position  $50^{\circ}55'S$  and  $173^{\circ}50'E$ ; then proceeding along the outer limits of the zone to a position  $48^{\circ}15'S$  and  $174^{\circ}E$ ; then proceeding in a straight line to the point of commencement.

*Quota Management Area 7—Otago*

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline from the Waitaki River South Head Aero Beacon (at  $44^{\circ}56'7''S$  and  $171^{\circ}80'E$ ) to Long Point (at  $46^{\circ}34'8''S$  and  $169^{\circ}35'E$ ); and
- (b) By a straight line from the said Waitaki River South Head Aero Beacon on a true compass bearing of  $135^{\circ}$ ; and
- (c) By a straight line on a true compass bearing from the said Long Point at  $135^{\circ}$ .

*Quota Management Area 8—Southern*

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a southerly direction) from Long Point ( $46^{\circ}34'S$  and  $169^{\circ}35'E$ ) to Abut Head ( $43^{\circ}05'9''S$  and  $170^{\circ}16'2''E$ ); and

THIRD SCHEDULE—*continued*

QUOTA MANAGEMENT AREAS DEFINED—*continued*

- (b) By a straight line from Long Point on a true compass bearing of 135°; and
- (c) By a straight line from Abut Head on a true compass bearing of 317°.

*Quota Management Area 9—Westland/Taranaki*

The area of New Zealand fisheries waters bounded—

- (a) By the shoreline (commencing in a southerly direction) from the North Head of Kaipara Harbour (36°24'S and 174°03.5'E) to the Manawatu River entrance (40°28'4"S and 175°12'5"E); and
- (b) By a straight line from the Manawatu River entrance to Bush End Point light; and
- (c) By the shoreline (commencing in a westerly then proceeding in a southerly direction) from the Bush End Point light to Abut Head (43°06'S and 170°16'E); and
- (d) By a straight line from Abut Head on a true compass bearing of 317°; and
- (e) By a straight line from North Head Kaipara Harbour on a true compass bearing of 270°.

*Quota Management Area 10—Kermadec*

The area of New Zealand fisheries waters around the Kermadec Islands, being the area enclosed by a line commencing at a point 34°34.3'S and 179°51.0'W on the outer limits of the exclusive economic zone and then proceeding generally in an easterly, northerly, westerly, and southerly direction along the outer limits of the exclusive economic zone to a point 34°22.1'S and 179°29.6'E on the outer limits of the exclusive economic zone; and then proceeding in a straight line to the first-mentioned point. (See *Gazette*, 1986, page 412.)

FOURTH SCHEDULE  
ORDERS REVOKED

Section 81

Title	Statutory Regulations Serial Number
The Controlled Fisheries (Bay of Plenty Rock Lobster Fishery) Order 1985 .. .. .	1985/52
The Controlled Fisheries (Gisborne Rock Lobster Fishery) Order 1985 .. .. .	1985/53

This Act is administered in the Ministry of Agriculture and Fisheries.