



Commodity Levies (Green-lipped Mussels) Order 2001

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 17th day of September 2001

Present:

Her Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990 (as applied by section 305 of the Fisheries Act 1996), Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Fisheries, makes the following order.

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Order

1 Title

This order is the Commodity Levies (Green-lipped Mussels) Order 2001.

2 Commencement

This order comes into force on the day after the date of its notification in the *Gazette*.

3 Interpretation

In this order, unless the context otherwise requires,—

company means the company known, on the commencement of this order, as the New Zealand Mussel Industry Council Limited

greenweight means the weight of a mussel before any processing commences and before any part of the mussel is removed

levy means the levy imposed by clause 4

levy year means—

- (a) a period of 12 months beginning on 1 September and ending on 31 August; and
- (b) includes the period beginning on the commencement of this order and ending on 31 August 2002

marine farm means an area covered by—

- (a) a marine farming lease or licence granted under the Marine Farming Act 1971; or
- (b) a coastal permit granted under the Resource Management Act 1991 for a marine farming activity; or
- (c) a marine farming permit issued under the Fisheries Act 1983

mediator means a person appointed under clause 21; and, in relation to a dispute, means a mediator appointed to resolve the dispute

mussel means a shellfish of the species *Perna canaliculus*, commonly known as a green-lipped mussel, but excludes mussel spat (mussels less than 40 mm in length)

mussel grower means a person who—

- (a) has leased water space from a marine farm owner; and
- (b) controls or owns the mussels on at least part of that water space

packing house licensee means the holder of a fish packing house licence granted under section 26 of the Meat Act 1981.

4 Levy imposed

- (1) A levy is imposed on all mussels harvested for sale from a marine farm.
- (2) The levy is payable to the company.

5 Primary responsibility for paying levy

The persons who are primarily responsible for paying the levy are either—

- (a) marine farm owners; or
- (b) if the company is satisfied that mussel growers have harvested the mussels on which the levy is payable, those mussel growers.

6 Fish packing house licensees must pay levy

- (1) This section applies if a marine farm owner or mussel grower harvests and sells mussels to a packing house licensee.
- (2) The packing house licensee—
 - (a) must pay the levy; and
 - (b) may recover the amount of the levy (and any goods and services tax paid in respect of it) from the seller by reducing the amount otherwise payable to the seller for the mussels.
- (3) The packing house licensee is not entitled to receive a collection fee for paying the levy.

7 Levy paid at single rate

The levy must be paid at a single rate.

8 Basis of calculation of levy

The levy payable in a levy year must be calculated on the basis of,—

- (a) if mussels are sold to a packing house licensee, the greenweight tonnage of the mussels sold; and
- (b) in any other case, the greenweight tonnage of the mussels harvested for sale.

9 Company must fix actual rate of levy

- (1) The company must fix the actual rate of the levy for a levy year at a general meeting held not more than 6 months before the beginning of the levy year.
- (2) To avoid doubt, the rate of levy for the levy year beginning on the commencement of this order is the rate set by the company at a general meeting held on 22 June 2001.

10 Rate if no rate fixed before beginning of levy year

If the company does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed by or under clause 9.

11 Maximum rate of levy

The maximum rate of levy is \$9.78 per greenweight tonne.

12 Notification of rate of levy

- (1) The company must notify the following persons in writing of the rate of levy for a levy year within 2 weeks after it is fixed:
 - (a) marine farm owners:
 - (b) mussel growers:
 - (c) packing house licensees.
- (2) As soon as is practicable after fixing a rate of levy for a levy year, the company must also notify the rate in *Perna Press*.
- (3) If *Perna Press* ceases to be published, the rate of the levy must be notified in—
 - (a) any publication that replaces it; or
 - (b) if no publication replaces it, a publication specified for the purposes of this order by the Minister by notice in the *Gazette*.

13 When levy must be paid

The due date for payment of the levy is,—

- (a) unless paragraph (b) applies, the 20th day of the month following harvesting of the mussels; or
- (b) if the levy is payable by a packing house licensee, the 20th day of the month following supply of the mussels to the packing house licensee.

14 Levies must be spent by company

The company must spend or (pending expenditure) invest all levies paid to it.

15 Purposes for which levies must be spent

- (1) The company must spend levies for the purposes of developing and managing the mussel industry.
- (2) These purposes include, but are not limited to, the following matters:
 - (a) promoting the mussel industry and market development plans;
 - (b) research, including biological, environmental, and market research;
 - (c) public relations and advocacy activities;
 - (d) trademark and patent search applications and protection;
 - (e) developing and updating codes of practice;
 - (f) protecting property rights, including making submissions on coastal plans, seabed claims, coastal tendering, and legislation that may impact on the mussel industry;
 - (g) administering—
 - (i) activities proposed in an annual workplan and approved by the shareholders at an annual general meeting; and
 - (ii) legal responsibilities of the company, including the collection of industry levies and the management of the levy processes;
 - (h) shellfish quality assurance, including sanitation and biotoxin programme management.

16 Conscientious objectors

A marine farm owner or mussel grower who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the chief executive of the Ministry of Fisheries, and, in that case, the chief executive must ensure that it is paid to the company.

17 Non-disclosure of information

- (1) An officer or employee of the company must not disclose (except to another officer or employee of the company) information obtained—
 - (a) under or because of this order; or
 - (b) under the Commodity Levies Act 1990 (as applied by section 305 of the Fisheries Act 1996) in relation to this order.
- (2) Subclause (1) does not affect or prevent—
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990 (as so applied); or
 - (b) the production of any statement under section 25 of the Commodity Levies Act 1990 (as so applied); or
 - (c) the giving of evidence in any legal proceedings taken—
 - (i) under, or in relation to, this order; or
 - (ii) under the Commodity Levies Act 1990 (as so applied) in relation to this order.
- (3) Subclause (1) does not prevent the company from—
 - (a) disclosing or using information (not being information relating to an identifiable person) that is obtained from a ballot held before the commencement of this order; or
 - (b) disclosing or using information (not being information relating to an identifiable person) for statistical and research purposes; or
 - (c) disclosing or using information with the consent of every identifiable person to whom it relates.

18 Payers of levies must keep records and make returns

- (1) A packing house licensee must, when paying the levy, supply in writing to the company the following information:

- (a) the greenweight tonnage of mussels received by the packing house in respect of which the levy is required to be paid:
 - (b) the amount of levy paid to the company by the packing house licensee:
 - (c) the name of the person on whose behalf the levy is paid.
- (2) The packing house licensee must,—
- (a) in every levy year, keep records of the information in subclause (1); and
 - (b) retain the records for at least 2 years after the levy year to which they relate.
- (3) If mussels harvested are not supplied to a packing house licensee, the marine farm owner or mussel grower must, when paying the levy, supply in writing to the company the following information:
- (a) the greenweight tonnage of mussels harvested:
 - (b) the amount of levy paid to the company:
 - (c) the name of the person on whose behalf the levy is paid.
- (4) The marine farm owner or mussel grower must,—
- (a) in every levy year, keep records of the information in subclause (3); and
 - (b) retain the records for at least 2 years after the levy year to which they relate.
- (5) This clause does not require a person to keep a nil record.

19 Company must keep records

- (1) The company must, in every levy year, keep records of the following matters:
- (a) the amount of each levy paid to it in that year and, in relation to each amount,—
 - (i) the day on which it was received; and
 - (ii) the name of the person who paid it:
 - (b) how (if at all) levies paid to it in that year were invested:
 - (c) how and when all levies spent by it in that year were spent.
- (2) The company must retain the records for at least 7 years after the end of the levy year to which the records relate.
- (3) This clause does not require the company to keep a nil record.

20 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the company at a rate determined by the Minister of Fisheries after consultation with the company.

*Mediation in case of dispute***21 Appointment of mediators**

- (1) This clause applies to a dispute about—
 - (a) whether a person is required to pay a levy; or
 - (b) the amount of levy payable.
- (2) A party to the dispute may ask the President of the Institute of Chartered Accountants of New Zealand to appoint a person to organise and preside at a conference of the parties to the dispute and attempt to resolve the dispute by mediation, and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it themselves; or
 - (b) the mediator resolves the dispute under clause 28.

22 Remuneration of mediators

- (1) A mediator is paid remuneration (by way of fees and allowances) as agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Institute of Chartered Accountants of New Zealand (or a person authorised by the President to do so) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

23 Time and place of conference

Every conference that is organised by a mediator of the parties to a dispute must be held on a day and at a time and place fixed by the mediator and notified in writing to the parties.

24 Conference must be held in private

Except as provided in clause 25, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

25 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to a dispute to attend a conference of the parties organised by the mediator.

26 Right to be heard

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, may be heard at the conference.

27 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

28 Mediator may resolve dispute in certain cases

- (1) A mediator must resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.

- (2) If subclause (1) applies, the mediator must give each of the parties a written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the decision of the mediator.

29 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with a decision made by a mediator under clause 28 may appeal to a District Court against the decision.
- (2) An appeal is to be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time a District Court Judge allows.
- (3) The Registrar of the Court must—
 - (a) fix the time and place for the hearing of the appeal, and notify the appellant and the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Martin Bell,
Acting for Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the day after the date of its notification in the *Gazette*, imposes a levy on green-lipped mussels that are harvested for sale from a marine farm.

The levy is payable to the New Zealand Mussel Industry Council Limited and is calculated on the greenweight tonnage of mussels that are harvested in any levy year.

Unless earlier revoked, the order expires 6 years after it is made, as provided by section 13 of the Commodity Levies Act 1990.

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

Date of notification in *Gazette*: 20 September 2001.

This order is administered in the Ministry of Fisheries.
