



Commodity Levies (Foveaux Strait Dredge Oysters) Order 2018

Hon Sir William Young, Administrator of the Government

Order in Council

At Wellington this 9th day of July 2018

Present:

His Excellency the Administrator of the Government in Council

This order is made under section 4 of the Commodity Levies Act 1990 (as applied by section 305 of the Fisheries Act 1996)—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Fisheries given in accordance with sections 5 and 6 of the Commodity Levies Act 1990 (as modified by section 305 of the Fisheries Act 1996).

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Order

1 Title

This order is the Commodity Levies (Foveaux Strait Dredge Oysters) Order 2018.

2 Commencement

This order comes into force on 1 October 2018.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

BOMC means the Bluff Oyster Management Company Limited

Foveaux Strait dredge oyster has the same meaning as in section 2(1) of the Fisheries Act 1996

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 5

levy money means the money paid or payable under this order as a levy

levy year means a 1-year period starting on 1 October and ending on 30 September

quota owner means a person registered on a Quota Register under the Fisheries Act 1996 as the owner of quota shares in Foveaux Strait dredge oysters

Quota Register has the same meaning as in section 2(1) of the Fisheries Act 1996

quota share has the same meaning as in section 42 of the Fisheries Act 1996.

4 GST

A reference in this order to the payment of the levy must be read as including the payment of any GST payable on the levy.

Levy payable by quota owners

5 Levy imposed

- (1) A levy is imposed on Foveaux Strait dredge oysters.
- (2) The levy is payable to BOMC.

6 Quota owners primarily responsible for paying levy

The person who is the quota owner of quota shares in Foveaux Strait dredge oysters at the close of the first day of a month—

- (a) is primarily responsible for paying the levy; and
- (b) must pay the levy for that month.

Rate of levy

7 Levy to be set at single rate

BOMC must set the levy at a single rate for all Foveaux Strait dredge oysters.

8 Basis of calculation of levy rate

The levy rate for a levy year must be calculated on the basis of dollars per quota share owned by quota owners.

9 Setting of levy rates

- (1) The levy rate for each levy year must be—
 - (a) set and calculated by BOMC on or before 31 August in the preceding levy year; and
 - (b) approved by a special resolution passed by BOMC's shareholders in accordance with BOMC's constitution.
- (2) If BOMC does not set the levy rate for a levy year, the levy rate for that year is the rate most recently set under this clause.

10 Maximum levy rate

BOMC must set the levy at a rate that does not exceed \$0.005 per quota share (excluding GST).

11 Notification of levy rates

- (1) BOMC must notify the levy rates—
 - (a) in the *Gazette*; and
 - (b) in 1 or more metropolitan newspapers; and
 - (c) in BOMC's newsletter; and
 - (d) by email or post to each quota owner.
- (2) BOMC must notify the levy rates as soon as practicable after setting them.

Paying levy

12 When levy payable

- (1) Quota owners must pay the levy monthly.
- (2) At the beginning of every month, BOMC must send to each quota owner an invoice for the levy payable for that month.

13 Due and latest dates for payments

- (1) The due date for payment of the levy for each month is the 20th day of the month following the month in which the invoice is sent.
- (2) The latest date for payment of the levy is 90 days after the due date.

14 Additional levy for late payment

- (1) If a quota owner does not pay an amount of levy money by the close of the latest date for payment, the quota owner must pay to BOMC—
 - (a) for the first month, an additional levy of 5% of the unpaid amount; and

- (b) for each subsequent month, an additional levy of 2% of the amount of the unpaid levy.
- (2) Any additional levy imposed by subclause (1) that remains unpaid is not itself subject to subclause (1).

15 Conscientious objectors

- (1) A quota owner who objects on conscientious or religious grounds to the manner of recovery of the levy by BOMC may pay the levy to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay any levy received to BOMC.
- (3) Quota owners must—
 - (a) keep records of each levy payment made to the Director-General; and
 - (b) retain those records for 2 years after the levy year to which the records relate.

Spending levy money

16 BOMC must spend levy money

BOMC must—

- (a) spend all levy money paid to it; and
- (b) invest all levy money until it is spent.

17 Purposes for which levy money may be spent

- (1) BOMC may spend levy money for all or any of the following purposes:
 - (a) research (including market research), science, and technical services relating to Foveaux Strait dredge oysters;
 - (b) promotion (including generic advertising) of Foveaux Strait dredge oysters;
 - (c) matters relating to BOMC or quota owners on which expert advice is sought;
 - (d) policy issues affecting the Foveaux Strait dredge oyster industry;
 - (e) purchase of services from national seafood industry organisations;
 - (f) day-to-day administration of BOMC (excluding the administration, direct or indirect, of any commercial or trading activity undertaken by BOMC or on its behalf).
- (2) BOMC must not spend levy money on commercial or trading activities.

18 Consulting on spending levy money

- (1) BOMC must, by 31 August of each year, circulate to all quota owners an annual budget and a project plan that include details of how BOMC intends to spend levy money in the next levy year.

- (2) The annual budget and project plan must be approved by shareholders in accordance with BOMC's constitution.

Information and record-keeping requirements

19 BOMC to keep records

- (1) BOMC must keep records of the following for each levy year:
- (a) each amount of levy money paid to it;
 - (b) the date on which each amount of levy money was received;
 - (c) the person who paid each amount of levy money;
 - (d) how (if at all) BOMC invested levy money;
 - (e) how and when levy money was spent.
- (2) BOMC must retain the records for at least 2 years after the levy year to which the records relate.

20 Confidentiality of information

- (1) No officer, employee, or agent of BOMC may disclose any information obtained—
- (a) under or because of this order; or
 - (b) under the Act in relation to this order.
- (2) Subclause (1) does not prevent the disclosure of information—
- (a) to another officer, employee, or agent of BOMC;
 - (b) with the consent of the person who provided the information and every identifiable person to whom it relates;
 - (c) for statistical or research purposes that do not involve the disclosure of personal information;
 - (d) that is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—
- (a) complying with section 17(1) or 25 of the Act;
 - (b) giving evidence in legal proceedings taken under or in relation to this order;
 - (c) determining the voting entitlements of quota owners;
 - (d) counting the votes of quota owners;
 - (e) invoicing and collecting the levy.

*Audits***21 Remuneration of auditors**

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

*Mediation of disputes***22 Appointment of mediators**

- (1) This clause applies to a dispute concerning—
 - (a) whether or not any person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) A party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked, the President, or a person authorised by the President, may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 29.

23 Remuneration of mediators

- (1) A mediator is to be 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 Arbitrators and Mediators Institute of New Zealand Incorporated, or a person authorised by the President, 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 or amounts fixed and specified under subclause (2).

24 Conferences under control of mediator

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties of the matters specified in paragraph (a) by post or email; and

- (c) preside at the conference.

25 Conference to be held in private

Unless clause 26 applies, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

26 Representatives

A mediator may allow a representative of a party to a dispute to attend a conference with the mediator if the mediator is satisfied that it is appropriate to do so in all the circumstances.

27 Right to be heard

The following persons may be heard at a conference with a mediator:

- (a) each party to the dispute; and
- (b) each representative of a party allowed by the mediator to attend the conference.

28 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative,—
 - (a) seek and receive any evidence that the mediator thinks desirable to resolve the dispute; and
 - (b) make any investigations and inquiries that the mediator thinks desirable to resolve the 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.

29 Mediator may resolve dispute in certain cases

- (1) A mediator may 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) A mediator who resolves a dispute under subclause (1) must give each of the parties written notice of the mediator's decision and the reasons for that decision.
- (3) The parties must comply with the mediator's decision.

30 Cost of mediation

Each party must pay its own costs in relation to the mediation.

31 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision under clause 29 may appeal to the District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal—
 - (a) within 28 days of the making of the decision concerned; or
 - (b) 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
 - (b) notify the appellant and the other parties to the dispute; and
 - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the mediator's decision.

*Revocation***32 Revocation of Commodity Levies (Foveaux Strait Dredge Oysters) Order 2013**

The Commodity Levies (Foveaux Strait Dredge Oysters) Order 2013 (SR 2013/25) is revoked.

Michael Webster,
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 1 October 2018, imposes a levy on Foveaux Strait dredge oysters. The levy must be paid by any person who owns quota shares in Foveaux Strait dredge oysters in accordance with the Fisheries Act 1996. The levy is payable to the Bluff Oyster Management Company Limited. This order revokes and replaces the Commodity Levies (Foveaux Strait Dredge Oysters) Order 2013. This revocation does not affect amounts of levy money that became payable under that order before the revocation.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2019, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that

Act. If this order is confirmed, it will be revoked at the close of 30 September 2024 under section 13(1) of the Commodity Levies Act 1990 (the day before the sixth anniversary of the date on which it came into force), unless it is revoked earlier or extended under section 13(2) of that Act.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 12 July 2018.

This order is administered by the Ministry for Primary Industries.