

Reprint
as at 14 June 2019



Commodity Levies (Mussels, Oysters, and Salmon) Order 2013

(SR 2013/274)

Commodity Levies (Mussels, Oysters, and Salmon) Order 2013: revoked, on 14 June 2019, by clause 35 of the Commodity Levies (Mussels, Oysters, and Salmon) Order 2019 (LI 2019/100).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 17th day of June 2013

Present:

His 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), His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries 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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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Mussels, Oysters, and Salmon) Order 2013.

2 Commencement

This order comes into force on 30 July 2013.

Order: confirmed, on 18 December 2013, by section 9(j) of the Subordinate Legislation (Confirmation and Validation) Act 2013 (2013 No 142).

3 Interpretation

(1) In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

Aquaculture New Zealand means New Zealand Aquaculture Limited, trading as Aquaculture New Zealand

conversion factor means the relevant conversion factor in the Fisheries (Conversion Factors) Notice 2011

declared port price means the price determined by Aquaculture New Zealand for mussels, oysters, or salmon (as the case may be) using the average port price for those species in each 12-month period of the 3 years before the levy year to which the levy relates

fish farmer—

- (a) has the meaning given to it in section 2(1) of the Fisheries Act 1996; but
- (b) includes only farmers whose business is, or includes, farming mussels, oysters, or salmon

greenweight tonne means a tonne of mussels, oysters, or salmon (as the case may be) before any processing commences and before any part is removed

harvested means harvested for sale

levy—

- (a) means the levy imposed by clause 4 on mussels, oysters, and salmon; and
- (b) includes any goods and services tax payable in respect of the levy

levy collector means a person whose business is, or includes being, a licensed fish receiver

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

levy year means,—

- (a) for the first levy year, the period starting on 30 July 2013 and ending on 31 August 2013; and
- (b) for the last levy year, the period starting on 1 September 2018 and ending on 16 June 2019; and
- (c) for every other year, a period of 12 months starting on 1 September and ending on 31 August

licensed fish receiver—

- (a) has the meaning given to it in section 2(1) of the Fisheries Act 1996; but
- (b) includes only receivers whose business is, or includes, dealing with mussels, oysters, or salmon

mediator means a person appointed under clause 25

mussel—

- (a) means a Greenshell™ mussel, being a shellfish of the species *Perna canaliculus* (green-lipped mussel); but
- (b) does not include mussel spat (mussels less than 40 mm long)

oyster—

- (a) means a Pacific oyster of the species *Crassostrea gigas*; but
- (b) does not include oyster spat (oysters less than 37 mm long)

relative dollar value means the total greenweight tonnage of mussels, oysters, or salmon (as the case may be) produced by fish farmers multiplied by the declared port price

salmon—

- (a) means fish of the species *Oncorhynchus tshawytscha* (chinook or quin-nat salmon); but
 - (b) does not include salmon fingerlings that are harvested, whether or not on-sold, for the purpose of transferring them in their live state from one fish farm to another fish farm or other location.
- (2) Any term or expression that is defined in the Act and used, but not defined, in this order has the same meaning as in the Act.

Levies imposed

4 Levies imposed

- (1) A levy is imposed on all mussels, oysters, and salmon harvested by a fish farmer.
- (2) The levy is payable to Aquaculture New Zealand.

Responsibility for payment of levy

5 Fish farmers primarily responsible for paying levy

- (1) The persons primarily responsible for paying the levy are fish farmers.
- (2) No fish farmer is exempt from paying the levy.

6 Responsibility of levy collectors for payment of levy

- (1) A levy collector must pay the levy to Aquaculture New Zealand if the levy collector receives mussels, oysters, or salmon from a fish farmer.
- (2) A levy collector may recover the levy from a fish farmer—
 - (a) by deducting the amount of the levy from the payment to be made to the fish farmer; or
 - (b) as a debt due from the fish farmer.

7 No collection fee

A levy collector who pays a levy to Aquaculture New Zealand must not charge a collection fee.

Determination of levy

8 Levy may be set at different rates

The levy may be set at different rates for mussels, oysters, and salmon.

9 Basis of calculation of levy

- (1) The levy payable in a levy year must be calculated on the basis of,—
 - (a) for mussels, the greenweight tonnage of all mussels harvested by fish farmers in that year; and
 - (b) for oysters, the greenweight tonnage of all oysters harvested by fish farmers in that year; and
 - (c) for salmon, the greenweight tonnage of all salmon harvested by fish farmers in that year, calculated by multiplying the gilled and gutted weight of the salmon by the conversion factor.
- (2) If a levy year is shorter than a 12-month period, the levy payable in the levy year is to be pro rated in proportion to the length of the levy year.

10 Levy rates for first levy year

The rates of levy payable for the levy year starting on 30 July 2013 and ending on 31 August 2013 are as follows:

- (a) for mussels, \$11.99 per greenweight tonne:
- (b) for oysters, \$29.50 per greenweight tonne:
- (c) for salmon, \$16.33 per greenweight tonne.

11 Maximum levy rates for subsequent levy years

The maximum rate of levy payable for the levy year starting on 1 September 2013 and for each subsequent levy year must not exceed 2% of the relative dollar value of each greenweight tonne of mussels, oysters, or salmon (as the case may be) harvested.

12 Aquaculture New Zealand must set levy rates

Aquaculture New Zealand must set the rates of levy payable for the levy year starting on 1 September 2013 and for each subsequent levy year—

- (a) in accordance with its rules; and
- (b) following consultation with fish farmers; and
- (c) at a rate that does not exceed the maximum rate of levy specified in clause 11; and
- (d) by ratification at the annual general meeting of Aquaculture New Zealand immediately preceding the levy year to which the rate applies; and
- (e) before the start of that levy year.

13 Previous levy rates to apply

If Aquaculture New Zealand does not set the rates of levy before the start of a levy year, the rates of levy for that year are payable at the rates last fixed under clause 12.

14 Notification of levy rates

- (1) As soon as practicable after setting the levy rates for a levy year, Aquaculture New Zealand must notify the levy rates to—
 - (a) all fish farmers known to Aquaculture New Zealand; and
 - (b) all licensed fish receivers known to Aquaculture New Zealand.
- (2) The notification must be given—
 - (a) in writing; and
 - (b) within 14 days of Aquaculture New Zealand setting the rates of levy.
- (3) As soon as is reasonably practicable after setting the levy rates for a levy year, Aquaculture New Zealand must also notify the levy rates in the *Gazette*.
- (4) However, notification under this clause is not required if Aquaculture New Zealand—
 - (a) sets a levy rate at the same rate as the rate applying in the previous levy year; or
 - (b) fails to set a levy rate in accordance with clause 12 (in which case clause 13 applies).

Payment of levy

15 When levy payable

- (1) The due date for payment of a levy is the date on which the mussels, oysters, or salmon (as the case may be) are harvested.
- (2) The latest date for payment of the levy is the 20th day of the month after the month in which the mussels, oysters, or salmon (as the case may be) are harvested.

16 Penalty for late payment

Aquaculture New Zealand may—

- (a) recover from a fish farmer or levy collector, as a debt due, the amount of any levy payable that has not been paid by the latest date for payment; and
- (b) impose and recover a penalty charge of 10% of the debt due.

Expenditure of levy money

17 Aquaculture New Zealand must spend levy money

- (1) Aquaculture New Zealand—
 - (a) must spend all levy money; and
 - (b) pending its expenditure, may invest levy money.
- (2) Aquaculture New Zealand must not spend levy money on commercial or trading activities.

18 Purposes for which levy money may be spent

Aquaculture New Zealand may spend levy money on the development and management of the aquaculture industry, as determined by Aquaculture New Zealand in its annual budget and business plan, including on any or all of the following:

- (a) promotion of aquaculture industry activities and market development plans:
- (b) research, including biological, environmental, and market research:
- (c) public relations and representation activities associated with the aquaculture industry:
- (d) trade mark and patent searches, applications, and protection:
- (e) iwi consultation and the promotion of iwi participation in aquaculture:
- (f) developing and updating codes of practice:
- (g) protection of property rights, including making submissions on coastal plans, seabed claims, and coastal tendering:

- (h) administration of approved annual activities and legal responsibilities of Aquaculture New Zealand, including the collection of the levy and Aquaculture New Zealand's management costs:
- (i) development, and implementation, of quality assurance programmes, including food safety, water quality, and ecological performance programmes:
- (j) protection, and improvement, of the health of mussels, oysters, and salmon.

19 Consultation on how levy money to be spent

Aquaculture New Zealand must, prior to each of its annual general meetings, consult fish farmers on its budget and proposed levy expenditure for the levy year immediately following that annual general meeting.

Returns, record-keeping requirements, and confidentiality of information

20 Returns

- (1) Aquaculture New Zealand may request, in writing, from each fish farmer or levy collector any information that Aquaculture New Zealand reasonably requires for the purpose of determining the amount of levy payable by the fish farmer or levy collector.
- (2) Each fish farmer or levy collector must, as soon as is reasonably practicable after receiving a request from Aquaculture New Zealand, supply Aquaculture New Zealand with a written return of the information requested.
- (3) The return must be supplied in the manner (if any) specified by Aquaculture New Zealand.

21 Records

- (1) Aquaculture New Zealand must keep records of the following matters for each levy year:
 - (a) the amount of levy paid to it; and
 - (b) the name of the fish farmer or levy collector who paid the levy; and
 - (c) the date on which the levy is received.
- (2) Every fish farmer who pays a levy directly to Aquaculture New Zealand must keep the following records:
 - (a) the greenweight tonnage of mussels, oysters, or salmon harvested; and
 - (b) in the case of salmon, the conversion factor; and
 - (c) the amount of levy paid to Aquaculture New Zealand; and
 - (d) the date of payment of the levy.
- (3) Every levy collector must retain the following records:

- (a) the name of the fish farmer from whose farm mussels, oysters, or salmon are received; and
 - (b) the farm number of the relevant farm; and
 - (c) the greenweight tonnage of mussels, oysters, or salmon received; and
 - (d) in the case of salmon, the conversion factor; and
 - (e) the amount of levy collected from the fish farmer; and
 - (f) the date on which the mussels, oysters, or salmon are received by the levy collector.
- (4) Aquaculture New Zealand may require fish farmers and levy collectors to keep the records referred to in subclauses (2) and (3) in a form approved by Aquaculture New Zealand.
- (5) The records referred to in this clause must be kept for at least 7 years after the end of the levy year to which the records relate.

22 Confidentiality of information

- (1) No officer or employee of Aquaculture New Zealand may disclose (except to another officer or employee of Aquaculture New Zealand) 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 affect or prevent information being disclosed for any of the following reasons:
- (a) the disclosure is required by law;
 - (b) the person or organisation from whom the information was obtained consents to the information being disclosed;
 - (c) the disclosure is for the purpose of section 17(1) of the Act (power of auditors to require production of records);
 - (d) the disclosure is for the purpose of section 25 of the Act (annual report and statements);
 - (e) the disclosure is in the form of evidence presented in proceedings relating to this order, or to the Act in connection with this order;
 - (f) the disclosure is for statistical or research purposes;
 - (g) the disclosure is for the purposes of collecting the levy.
- (3) Disclosure under subclause (2)(f) must be in a form that does not identify individual persons.

*Miscellaneous***23 Conscientious objectors**

- (1) Any fish farmer who objects on conscientious or religious grounds to the manner of recovery by Aquaculture New Zealand of an amount of levy money may pay the amount concerned to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to Aquaculture New Zealand.

24 Remuneration of persons conducting compliance audits

A person appointed as auditor under section 15 of the Act must be remunerated by Aquaculture New Zealand at a rate determined by the Minister for Primary Industries after consultation with Aquaculture New Zealand.

*Mediation of disputes***25 Appointment of mediators**

- (1) This clause applies if a dispute arises about—
 - (a) whether a person is required to pay a levy; or
 - (b) the amount of levy money payable.
- (2) A party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (the **President**) to appoint a person to—
 - (a) organise and preside at a conference of the parties; and
 - (b) attempt to resolve the dispute by mediation.
- (3) On receiving a request under subclause (2), the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends when—
 - (a) the parties resolve the dispute themselves; or
 - (b) the mediator resolves the dispute under clause 32.

26 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) agreed to by the parties.
- (2) However, if the parties cannot agree on a mediator's remuneration, the President (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.

27 Time and place of conference

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

28 Conference to be held in private

Except as provided in clause 29, only the parties and the mediator may attend a conference organised by the mediator.

29 Representatives

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

30 Right to be heard

Every party, 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.

31 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 verify the evidence by statutory declaration.

32 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if the mediator—
- (a) has organised and presided at a conference of the parties but the dispute has not been resolved; or
 - (b) believes that the parties are unlikely to resolve the dispute, whether or not the parties confer directly.
- (2) If the mediator resolves a dispute, the mediator must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with a decision of the mediator.

33 Costs of mediation

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

34 Appeal to District Court

- (1) A party who is dissatisfied with a decision made by a mediator under clause 32 may appeal against the decision to a District Court.
- (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 District Court must—
 - (a) serve a copy of the notice of appeal on every other party to the dispute; and
 - (b) fix the time and place for the hearing of the appeal; and
 - (c) notify the appellant and the other parties of the time and place for the hearing of the appeal.
- (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.

Rebecca Kitteridge,
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 30 July 2013, replaces the Commodity Levies (Mussel, Oyster, and Salmon) Order 2007. That order is revoked at the close of 29 July 2013.

This order imposes a levy on farmed mussels, oysters, and salmon. The levy must be paid by the fish farmer or the levy collector (both of which are defined in *clause 3*). The levy is payable to Aquaculture New Zealand.

Under section 12 of the Commodity Levies Act 1990, this order will be deemed to be revoked at the close of 30 June 2014 unless it is confirmed by an Act of Parliament passed on or before that date. The order will then be deemed to be revoked 6 years after it is made, by virtue of section 13(1) of the Commodity Levies Act 1990, unless the order is earlier revoked or extended.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 20 June 2013.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Mussels, Oysters, and Salmon) Order 2013 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Commodity Levies (Mussels, Oysters, and Salmon) Order 2019 (LI 2019/100): clause 35
Subordinate Legislation (Confirmation and Validation) Act 2013 (2013 No 142): section 9(j)