

Fisheries (Remedial Issues) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Fisheries (Remedial Issues) Amendment Bill amends the Fisheries Act 1996.

The Fisheries Act 1996 is only partially in force. The remainder of the Act (relating to quota trading, the operation of quota, permit registers, the issue of fishing permits, vessel registration, offences, and penalties) is to be commenced on **1 October 2001**.

In the detailed analysis and development of computer systems to implement the Act, it became apparent that the application of some technical and transitional provisions presents difficulties, resulting in those provisions being ineffective or, in some cases, unworkable. Additionally, some provisions fail to give adequate effect to policy goals.

Before the remainder of the Act can be commenced, several amendments are needed to address these difficulties. The Bill amends the appropriate sections to ensure that the commencement of the balance of the Fisheries Act 1996 can occur on **1 October 2001**.

All amendments are technical and non-controversial in nature. No changes to the existing policy settings of the Fisheries Act 1996 are envisaged due to the passage of this Bill.

The amendments to the Fisheries Act 1996 can be grouped into 3 categories—

- transitional provisions allowing for the effective translation of property rights from the Fisheries Act 1983 to the Fisheries Act 1996:

- various formulas relating to variations to the Total Allowable Commercial Catch:
- miscellaneous provisions including the new ability under the Fisheries Act 1996 to register mortgages against quota and minor amendments to high seas permitting arrangements (introduced through the Fisheries Amendment Act 1999).

Clause by clause analysis

Clause 1 is the Title clause. The principal Act amended by this Bill is the Fisheries Act 1996.

Part 1

Preliminary provisions and interpretation

Clause 2 is the commencement clause, which provides that provisions come into force at 3 different times—

- a number of provisions come into force on the day after the Bill receives the Royal assent:
- some sections of the principal Act are not yet in force and so certain provisions come into force at the same time as the sections that they are amending come into force:
- 2 new sections are also added to the principal Act and these come into force on **1 October 2001**.

Clause 3 sets out the purpose of the Act.

Clause 4 amends section 2 by including an assignment of mortgage in the definition of the term **transaction**. This amendment is consequential on the *new section 138A*, which allows mortgages to be assigned.

Part 2

Amendments relating to quota management system

Clause 5 amends section 22. This section provides that, when there is a reduction in the total allowable commercial catch and the Crown owns quota shares in the stock concerned, these shares are transferred to affected quota owners according to a formula. The amendment to subsection (1) ensures that the formula is still effective if the total allowable commercial catch is reduced to zero.

Clause 6 amends section 23. This section provides that the benefit of an increase in the total allowable commercial catch is to go first to

those persons with preferential allocation rights, which arose under the Fisheries Act 1983. A *new subclause (4)* is substituted and *new subclauses (4A) and (4B)* are inserted to reduce preferential rights by the same amount as the preferential rights holders receive for the increase in the total allowable commercial catch.

Clause 7 amends section 25A. Subsection (1) is amended so that parties to leases and forward transfers registered on the Transitional Register must be notified of an intended alteration to a quota management area made with the agreement of quota owners.

Subsection (2) is amended to require the interests of any aggrieved parties to leases and forward transfers to be included in the agreement.

Clause 8 amends section 25B so that the parties to leases and forward transfers registered on the Transitional Register must be notified of an intended alteration to a quota management area made without the agreement of quota owners.

Clause 9 amends section 52, which relates to the effect of a decision of the Catch History Review Committee to alter provisional catch history. A *new subsection (7)* is added to clarify the position when a person is registered as the owner of provisional individual transferable quota because of a change of ownership by operation of law under section 162. Such a person is also to be treated as the owner of the provisional catch history to which the quota relates.

Clause 10 amends section 74, which relates to the minimum holdings of annual catch entitlement for commercial fishers. Under subsection (2), some fishers are subject to lower minimum holdings than those set out in the Schedule of the Act. As currently worded, subsection (5) provides that those fishers will be subject to a higher minimum holding immediately if they purchase any quota during a fishing year. However, they will not benefit from the additional annual catch entitlement flowing from the quota until the next fishing year. The effect of the amendment is that the increase in the minimum holding will not apply until the fisher benefits from the additional annual catch entitlement.

Part 3

Amendments relating to fishing vessel registration and high seas fishing

Clause 11 amends section 108 by removing the obligation that tenders be marked in accordance with regulations and replacing it

with an obligation that tenders meet the requirements of regulations. This amendment will make it easier to control the operation of tenders.

Clause 12 amends section 113E by substituting a *new subsection (1)*. The amendment makes it clear that a separate authorisation is not required for a New Zealand national to transport fish in a foreign vessel on the high seas, provided an appropriate authorisation was obtained for the fish to be taken.

Part 4

Amendments relating to registration of transactions, documentation, and recordkeeping

Clause 13 amends section 127(1) to include assignments of mortgages in the particulars to be shown on the quota register.

Clause 14 amends section 132 by adding a *new subsection (4)*. The amendment makes it clear that provisional individual transferable quota are not transferable except by operation of law.

Clause 15 inserts a *new section 138A* to allow the assignment of a mortgage by a memorandum of assignment in the approved form.

Clause 16 amends section 146(1) to enable discharges of mortgage to be executed by electronic means.

Clause 17 substitutes a *new section 158(2)* to allow regulations to prescribe when an instrument is “received” for registration. This amendment is necessary to facilitate a workable registration system for both electronic and paper transactions.

Clause 18 amends section 159 by adding a *new subsection (2)* so that a copy of the registration notice of a transaction must be sent to mortgagors.

Clause 19 adds 2 new subsections to section 162. The amendments make it clear that, after registration of a transfer of ownership that arises by operation of law, the quota or annual catch entitlement remains subject to any mortgage or caveat that existed before the change of ownership.

Clause 20 amends section 189, which lists the persons who are required to keep accounts and records and provide returns and information prescribed under the regulations. Caveators and mortgagees of quota and caveators of annual catch entitlements are added to the list.

Clause 21 amends section 248(1)(a) so that a document prepared by an official or a person exercising a public function is admissible evidence as to any matter contained, or not contained, in a public document.

Clause 22 amends section 297(1) by inserting a *new paragraph (qa)*. The amendment adds a power to make regulations prescribing when different instruments (including applications), and instruments presented by different means, are to be treated as having been received for registration. This amendment will facilitate a workable registration system for both electronic and paper transactions.

Part 5

Amendments to savings and transitional provisions

Clause 23 amends section 337, which sets out transitional provisions relating to decisions of the Catch History Review Committee. The amendment to subsection (2) changes 1 of the components of the formula for translating a person's entitlement to additional individual transferable quota for stock into quota shares. The current wording does not adequately cover the situation where only 1 person is to be allocated quota shares. The amendment ensures that the person's additional individual transferable quota is included in the formula.

Clause 24 amends section 340, which sets out transitional provisions relating to the allocation of annual catch entitlement. The effect of the *new subsection (1)* is to provide that fishers of stocks without overfishing rights are not subject to the 2-stage allocation of annual catch entitlement during the transitional period. This amendment is proposed because there will be no need to adjust the second allocation to take into account any overfishing that occurred in the previous year.

New subsection (2) rectifies problems with the application of the formula for determining the second allocation of annual catch entitlement. The effect of the amendment is to remove the possibility of people being allocated less annual catch entitlement than they should receive under the Act. The new subsection also provides that the second allocation is made "as soon as practicable" rather than "on or before the 15th day of the second month of the fishing year" as the subsection currently provides. This amendment is proposed so that the chief executive will not be required to make the second

allocation until all relevant information has been received. Reference to Foveaux Strait dredge oysters is also omitted since this stock does not have overfishing, or underfishing, rights.

The amendment to subsection (4) reflects the removal of reference to Foveaux Strait dredge oysters in *new subsection (2)*.

New subsection (7) provides that, for the first fishing year, section 67 applies to all stocks that do not have overfishing rights and 1 April stocks both with and without overfishing rights.

Clause 25 inserts a *new section 340AA*, which provides an exception to the minimum holding of annual catch entitlement for certain paua stocks until after any transfer of annual catch entitlement under section 347(1)(b), the second allocation of annual catch entitlement in the first fishing year, or **15 November 2001** at the latest. This exception is necessary because some holders of paua quota may not meet the minimum holding requirements set out in the Schedule during this period. This would prevent them from fishing. The purpose of the 15 November deadline is to prevent fishers sending their returns in late, which would delay the second allocation of annual catch entitlement.

Clause 26 amends section 340A. This section provides for the allocation of annual catch entitlements with respect to established underfishing entitlements for 1 April stocks, as these rights exist at the end of the first fishing year (31 March 2001). *New subsections (1A) and (1B)* are inserted to require the chief executive to take into account any changes in underfishing rights that occur between 1 April 2001 and 30 September 2001.

Clause 27 inserts a *new subsection (5A)* into section 341. The amendment requires the chief executive to refuse to receive for registration transfers, leases, or related documents that are expressed to take effect on or after **1 October 2001**.

Clause 28 amends section 343, which relates to the conversion of holdings from the old register to the new register. A *new subsection (1)* is substituted, which clarifies the obligations of the chief executive on **1 October 2001**.

A *new subsection (2A)* is inserted to solve a problem in applying the formula in subsection (2) if the total allowable commercial catch has a zero value, as any division by zero gives an undefined answer.

New subsections (2B) and (2C) are inserted to comply with the obligation on the Crown under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 to ensure that Maori are allocated 20%

of quota for species subsequently brought into the quota management system.

Clause 29 amends section 345, which relates to the Transitional Register. A *new subsection (4)* is substituted to remove the ability to assign a lease. Consequential amendments are made by substituting *new subsections (5) and (6)*.

A *new subsection (7A)* is inserted so that, if there is an alteration of a quota management area under section 25 or if the total allowable commercial catch for a stock is reduced to zero under section 20, any affected lease or forward transfer will be cancelled.

New subsection (7B) is inserted to provide that the chief executive must notify the parties to a transfer or lease if the lease or transfer is cancelled.

New subsections (8A) and (8B) are inserted in order to reduce leases and other arrangements registered on the Transitional Register if the quota of a quota holder is reduced under section 52.

Clause 30 repeals section 346 so that the Transitional Register will not automatically protect leases through caveats over quota shares.

Clause 31 amends section 347, which relates to the registration of leases. A *new subsection (3)* is substituted in order to provide that, if insufficient annual catch entitlement is available to give effect to a lease, no annual catch entitlement will be transferred, and the lease will be cancelled.

A drafting change is made to subsection (4).

Subsections (5) and (6) are repealed and replaced with a *new subsection (5)*, which refers to the power to make regulations about actioning transfers already included in section 297(1)(sa).

Clause 32 amends section 347A, which relates to the transfer of annual catch entitlement under leases in the first fishing year. The section and its heading are amended by referring to “transfer” instead of “allocation” to more accurately reflect the content of the section.

A *new subsection (1A)* is inserted to apply subsection (1) to sub-leases, and to modify the subsection accordingly.

A *new subsection (3)* is added because the changes to section 340 mean that this section should apply only to 1 October stocks with overfishing rights, instead of applying to all stocks.

Clause 33 amends section 351, which is a transitional provision for stocks with a fishing year beginning on 1 April. It is not appropriate for section 340 to be used as the mechanism for allocating stock under this section because of the changes to section 340. Consequently, subsection (1) is amended to apply the allocation mechanism contained in section 67.

Clause 34 amends section 368A, which relates to the Foveaux Strait dredge oyster fishery. Currently, section 368A allows the total allowable commercial catch to be increased or reduced at the start of the fishing year but before the beginning of the season. Section 67(2B) enables additional allocations of annual catch entitlement to be made if the total allowable commercial catch has been increased, but there is no provision to give effect to a pre-season reduction in the total allowable commercial catch. By replacing the word “alter” in subsection (6) with “increase”, no provision is required.

Clause 35 makes a consequential amendment to section 6 of the Fisheries (Foveaux Strait Dredge Oyster Fishery) Amendment Act 1998.

Hon Pete Hodgson

Fisheries (Remedial Issues) Amendment Bill

Government Bill

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- 35 Consequential amendment to Fisheries (Foveaux Strait Dredge Oyster Fishery) Amendment Act 1998

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Fisheries (Remedial Issues) Amendment Act **2000**.
- (2) In this Act, the Fisheries Act 1996¹ is called the principal Act. 5
- ¹ 1996 No 88

Part 1

Preliminary provisions and interpretation

2 Commencement

- (1) **Clauses 3, 4, 9, 20, 22, 27, 30, 34, and 35** come into force on the day after the date on which this Act receives the Royal assent. 10
- (2) **Clauses 15 and 25** come into force on 1 October 2001.
- (3) **Clauses 5 to 8, 10 to 14, 16 to 19, 21, 23, 24, 26, 28, 29, and 31 to 33** come into force on the day on which the provision of the principal Act that they amend comes into force.

3 Purpose 15

The purpose of this Act is to make various technical changes to the principal Act, including—

- (a) amending certain transitional provisions to help translate property rights from the Fisheries Act 1983 to the principal Act; and 20
- (b) rectifying formulas relating to the effect of variations to the total allowable commercial catch; and
- (c) a number of miscellaneous amendments.

4 Interpretation

Section 2(1) of the principal Act is amended by repealing paragraph (b) of the definition of **transaction**, and substituting the following paragraph: 25

- “(b) in relation to any quota, a mortgage, variation of mortgage, discharge of mortgage, or assignment of mortgage over the quota:” 30

Part 2

Amendments relating to quota management system

- 5 Effect of reduction of total allowable commercial catch**
 Section 22(1) of the principal Act is amended by omitting from paragraph (b) of item c the words “unencumbered” and “owned by the Crown”. 5
- 6 Effect of increase in total allowable commercial catch**
 Section 23 of the principal Act is amended by repealing subsection (4), and substituting the following subsections:
- “(4) The amount of an eligible person’s preferential allocation right must be reduced in accordance with the following formula: 10
- $$\frac{a}{b} \times c = d \quad 15$$
- where—
- a is the eligible person’s current preferential allocation right for the stock (in kilogrammes)
- b is the total of all preferential allocation rights for the stock (in kilogrammes) 20
- c is the lesser of—
- (a) the amount of the increase in the total allowable commercial catch for the stock (in kilogrammes):
- (b) the total of all preferential allocation rights for the stock (in kilogrammes) 25
- d is the amount of the reduction in the eligible person’s preferential allocation right (in kilogrammes).
- “(4A) An eligible person’s preferential allocation right expires if the amount of that right equals zero.
- “(4B) An eligible person is not entitled to receive, in the aggregate under subsection (2), quota shares whose quota weight equivalent (calculated at the time of transfer of the relevant shares to the eligible person) exceeds the amount of preferential allocation right held by that person on the commencement of this section or on the date of allocation of quota to that person under section 337, as the case may be.” 35

- 7 Alteration of quota management areas with agreement of quota owners**
- (1) Section 25A(1) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:
- “(e) the quota owners have also notified their intention to seek an alteration to— 5
- “(i) persons who are noted on the Quota Register as having an interest in the quota to which the proposed alteration relates; and
- “(ii) parties to leases or transfers registered on the Transitional Register in respect of quota to which the proposed alteration relates.” 10
- (2) Section 25A(2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:
- “(d) the interests of aggrieved— 15
- “(i) quota owners who hold quota shares to which the proposed alteration relates; and
- “(ii) parties to leases or transfers registered on the Transitional Register in respect of quota to which the proposed alteration relates.” 20
- 8 Alteration of quota management areas without agreement of quota owners**
- Section 25B of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:
- “(d) has also notified his or her intention to recommend the alteration of the quota management area or areas to— 25
- “(i) persons who are noted on the Quota Register as having an interest in the quota to which the proposed alteration relates; and
- “(ii) parties to leases or transfers registered on the Transitional Register in respect of quota to which the proposed alteration relates.” 30
- 9 Effect of decision to alter provisional catch history**
- Section 52 of the principal Act is amended by adding the following subsection: 35
- “(7) For the purposes of this section, a person registered as the owner of provisional individual transferable quota by virtue of

section 162 is treated as the owner of the provisional catch history to which the quota relates.”

- 10 Minimum holdings of annual catch entitlement**
 Section 74(5) of the principal Act is amended by omitting the words “the requirements of subsection (1) of this section shall thereafter apply”, and substituting the words “the requirements of subsection (1) apply on and from the commencement of the next fishing year”. 5
- Part 3**
- Amendments relating to fishing vessel registration and high seas fishing** 10
- 11 Application of this Part to tenders**
 Section 108 of the principal Act is amended by omitting the words “is marked in accordance with”, and substituting the words “meets the requirements of”. 15
- 12 Use of foreign vessels on high seas by New Zealand nationals**
 Section 113E of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
 “(1) No New Zealand national may use a vessel that is not registered under the Ship Registration Act 1992, or a tender of that vessel,—
 “(a) to take (by any method), on the high seas, any fish, aquatic life, or seaweed for sale, except in accordance with an authorisation issued by a state to which subsection (2) applies; or 25
 “(b) to transport any fish, aquatic life, or seaweed taken on the high seas, unless that fish, aquatic life, or seaweed was taken in accordance with an authorisation issued by a state to which subsection (2) applies.” 30

Part 4

Amendments relating to registration of transactions, documentation, and recordkeeping

- 13 Matters to be shown in Quota Register** 5
 Section 127(1)(k) of the principal Act is amended by repealing subparagraph (v), and substituting the following subparagraphs:
- “(v) every assignment of the mortgage; and
 “(vi) the time and date of discharge of the mortgage.”
- 14 Transfers of individual transferable quota** 10
 Section 132 of the principal Act is amended by adding the following subsection:
- “(4) Provisional individual transferable quota is not transferable except by operation of law.”
- 15 New section 138A inserted** 15
 The principal Act is amended by inserting, after section 138, the following section:
- “138A **Assignment of mortgages**
 A mortgagee may assign to another person the mortgagee’s rights, interests, and obligations under that mortgage by a memorandum of assignment in the approved form.” 20
- 16 Discharge of mortgage** 25
 Section 146(1) of the principal Act is amended by omitting the words “shall endorse on the mortgage”, and substituting the words “must execute”.
- 17 Priority according to time of registration** 30
 Section 158 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
- “(2) Regulations under section 297 may prescribe when an instrument is to be treated as received for registration.”
- 18 Registration procedure**
 Section 159 of the principal Act is amended by adding, as subsection (2), the following subsection:

- “(2) For the purposes of subsection (1)(c), the mortgagor is treated as a party to a transaction that is an assignment.”
- 19 Procedure on application**
Section 162 of the principal Act is amended by adding the following subsections: 5
- “(2) After registration under subsection (1), the quota or annual catch entitlement remains subject to any registered caveat or mortgage.
- “(3) This section overrides sections 132(1)(b), 133(1)(b), 136(2), and 148(1).” 10
- 20 Persons who are required to keep records and returns**
Section 189 of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
“(b) owners, caveators, and mortgagees of quota, and owners and caveators of annual catch entitlements:” 15
- 21 Certificates and official documents**
Section 248(1)(a) of the principal Act is amended by inserting, after the word “contained”, the words “or not contained”.
- 22 General regulations** 20
Section 297(1) of the principal Act is amended by inserting, after paragraph (q), the following paragraph:
“(qa) prescribing, for the purposes of section 158(1), when an instrument (including an application) is to be treated as having been received for registration, and different 25
rules may be prescribed for different types of instruments and for instruments presented by different means:”.
- Part 5**
- Amendments to savings and transitional provisions** 30
- 23 Transitional provisions relating to decisions of Catch History Review Committee**
Section 337(2) of the principal Act is amended by omitting item d, and substituting the following item:

“d is the sum of the amounts under item a for all persons to be allocated quota under this section.”

24 Transitional provisions relating to allocation of annual catch entitlement

- (1) Section 340 of the principal Act (as substituted by section 73 of the Fisheries Act 1996 Amendment Act 1999) is amended by repealing subsections (1) and (2), and substituting the following subsections: 5
- “(1) On the first day of the fishing year in which section 66 comes into force, the chief executive must allocate, to each quota owner, 90% of that person’s annual catch entitlement generated under section 66 for stocks— 10
- “(a) with a fishing year beginning on 1 October; and
- “(b) to which section 28V(1) of the Fisheries Act 1983 applied. 15
- “(2) As soon as practicable after the allocation under **subsection (1)**, the chief executive must allocate to each person who receives an amount of annual catch entitlement under **subsection (1)** for any stock a further amount of annual catch entitlement for the stock calculated according to the following formula: 20
- $$a - b = c$$
- where—
- a is the annual catch entitlement for the stock remaining unallocated in respect of that quota owner (in kilogrammes) 25
- b is the amount that was taken in excess of quota under the quota owner’s quota under an authority given under section 28V(1) or a permission given under section 28V(2) of the Fisheries Act 1983, in the immediately preceding fishing year, calculated using that fishing year’s annual balance (excluding any overfishing right) in accordance with the Fisheries (Catch Against Quota) Regulations 1993 (in kilogrammes) 30
- c is the amount of annual catch entitlement to be allocated to the quota owner and, if c is a negative number, then c must be read as zero kilogrammes.” 35
- (2) Section 340(4) of the principal Act is amended by omitting the words “or, in the case of Foveaux Strait dredge oysters, to the nearest whole number of oysters”.

- (3) Section 340 of the principal Act is amended by repealing subsection (7), and substituting the following subsection:
- “(7) In respect of the allocation of annual catch entitlement in the first fishing year in which section 66 comes into force—
- “(a) section 67 does not apply to stocks to which this section applies; and
- “(b) section 67A does not apply.”
- 25 New section 340AA inserted**
- The principal Act is amended by inserting, after section 340, the following section:
- “**340AA Exceptions to minimum holdings of annual catch entitlement for certain paua stocks**
- “(1) Despite section 74, a person allocated annual catch entitlement for any of PAU 1 to PAU 4, PAU 6, PAU 7, and PAU 10 may fish under the authority of the lesser of either—
- “(a) the amount of annual catch entitlement allocated or transferred; or
- “(b) the minimum holding of annual catch entitlement for that stock specified in the Eighth Schedule.
- “(2) **Subsection (1)** applies during the period beginning on the commencement of section 66 and ending on the earlier of—
- “(a) the allocation of annual catch entitlement under section 340(2);
- “(b) the transfer of annual catch entitlement under section 347(1)(b);
- “(c) 15 November following the commencement of section 66.
- “(3) During the period specified in **subsection (2)**, the requirements of section 74(2) to 74(5) apply, but do not affect the authority to fish under **subsection (1)**.”
- 26 Transitional provisions relating to underfishing**
- Section 340A of the principal Act is amended by inserting, after subsection (1), the following subsections:
- “(1A) The chief executive must increase or decrease the allocation under subsection (1) to reflect any changes to the quota owner’s underfishing entitlements for the period—
- “(a) beginning on the first day of the fishing year in which section 66 commences; and

“(b) ending on the day before the commencement of section 66.

“(1B) **Subsection (1A)** applies to stocks—

“(a) with a fishing year beginning on 1 April; and

“(b) that have underfishing entitlements under section 28V(6) of the Fisheries Act 1983.” 5

27 Confirmation of quota

Section 341 of the principal Act is amended by inserting, after subsection (5), the following subsection:

“(5A) The chief executive must also refuse to receive for registration (whether before or after the date notified under subsection (5)) any notification of the transfer or lease of quota, and any related document, if the transfer, or lease, or related document is expressed to take effect on or after 1 October in the year in which Part VIII comes into force.” 10
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28 Conversion of holdings from old register to new register

(1) Section 343 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) On 1 October in the calendar year in which Part VIII of this Act comes into force, but before actioning any other quota transactions, the chief executive must— 20

“(a) convert the individual transferable quota or provisional catch history owned by each person into quota shares in accordance with subsections (2) and **(2A)**; and

“(b) determine entitlements to quota shares on the part of the chief executive and the Commission under **subsections (2B) and (2C)**; and 25

“(c) record in the relevant Quota Register the number of quota shares owned by each person after applying **paragraphs (a) and (b)**.” 30

(2) Section 343 of the principal Act is amended by inserting, after subsection (2), the following subsections:

“(2A) If a stock has a total allowable commercial catch of zero tonnes, provisional catch history must be converted into shares according to the following formula: 35

$$\frac{a}{b} \times 80,000,000 = c$$

where—

- a is the amount of provisional catch history allocated to the person under Part IV
- b is the total amount of provisional catch history held by all eligible commercial fishers
- c is the number of quota shares to which the quota owner is entitled for the stock concerned. 5
- “(2B) After the conversion in **subsection (2A)**, the Commission is entitled to 20 million quota shares in the stock concerned.
- “(2C) If a stock has a total allowable commercial catch of zero tonnes and no provisional catch history has been allocated under Part IV, the chief executive is entitled to 80 million quota shares in the stock and the Commission is entitled to 20 million quota shares in the stock.” 10
- (3) Section 343 of the principal Act is amended by repealing subsection (3), and substituting the following subsection: 15
- “(3) Despite anything in any other enactment or rule of law,—
- “(a) the registration of quota shares under this section does not constitute an allocation of new quota; and
- “(b) quota shares registered under this section have the same characteristics as quota allocated under section 47.” 20
- 29 Transitional register**
- (1) Section 345 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) A lease recorded in the Transitional Register, or any rights, interests, or obligations in respect of that lease, cannot be assigned.” 25
- (2) Section 345 of the principal Act is amended by repealing subsections (5) and (6), and substituting the following subsections:
- “(5) A reduction of term under subsection (3) has no effect until it is registered by the chief executive on the Transitional Register. 30
- “(6) A reduction of term under subsection (3) must not be registered on the Transitional Register unless a party to the lease applies in the approved form (if any) to the chief executive and the application is accompanied by the prescribed fee (if any).” 35
- (3) Section 345 of the principal Act is amended by inserting, after subsection (7), the following subsections:

- “(7A) A transfer or lease registered on the Transitional Register is cancelled if—
- “(a) the total allowable commercial catch for the stock concerned is reduced to zero under section 20; or
 - “(b) the quota for the stock concerned is cancelled because of an alteration of a quota management area under section 25. 5
- “(7B) The chief executive must notify the parties to a transfer or lease registered on the Transitional Register if the lease or transfer is cancelled under this Part.” 10
- (4) Section 345 of the principal Act is amended by inserting, after subsection (8), the following subsections:
- “(8A) The amount of quota or annual catch entitlement to which a lease or other arrangement relates must be reduced in the same proportion as the reduction in the quota holder’s quota bears to the total quota shares of the holder immediately before the reduction. 15
- “(8B) **Subsection (8A)** applies if—
- “(a) a quota holder’s quota is reduced under section 52; and
 - “(b) that person has entered into a lease or other arrangement recorded on the Transitional Register in relation to that quota; and 20
 - “(c) by virtue of that lease or other arrangement, another person is, or may become, entitled to acquire an amount of quota shares outright under section 348 or annual catch entitlement under section 347.” 25
- 30 Section 346 repealed**
Section 346 of the principal Act is repealed.
- 31 Provisions relating to registration of leases**
- (1) Section 347 of the principal Act is amended by repealing subsection (3), and substituting the following subsection: 30
- “(3) The chief executive must cancel registration of the lease and any sublease and not transfer any annual catch entitlement if—
- “(a) the lessor does not own an amount of annual catch entitlement equal to, or in excess of, the amount of quota that is subject to the lease or sublease (as recorded in the Transitional Register); or 35

- “(b) a caveat is registered over an amount of the lessor’s annual catch entitlement preventing the transfer of an amount of annual catch entitlement equal to, or in excess of, the amount of quota that is subject to the lease or sublease (as recorded in the Transitional Register).” 5
- (2) Section 347(4) of the principal Act is amended by omitting the expression “subsection (2)”, and substituting the words “subsection (1) or subsection (2)”.
- (3) Section 347 of the principal Act is amended by repealing subsections (5) and (6), and substituting the following subsection: 10
- “(5) A transfer of annual catch entitlement under this section must be actioned in the order specified in regulations made under section 297(1)(sa).” 15
- (4) The Fisheries (Remedial Issues) Amendment Act 1998 is consequentially amended by repealing section 28.
- 32 Provisions relating to allocation of annual catch entitlement under leases in first fishing year**
- (1) The heading to section 347A of the principal Act is amended by omitting the word “allocation”, and substituting the word “transfer”. 20
- (2) Section 347A(1) of the principal Act is amended by omitting from item d the word “allocated”, and substituting the word “transferred”. 25
- (3) Section 347A of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) Subsection (1) also applies to subleases, in which case—
- “(a) item a is to be read as if it refers to the further amount of annual catch entitlement that is transferred to the sublessor under subsection (1)(b) or, in the case of subsequent subleases, the further amount of annual catch entitlement that is transferred to a sublessor when this subsection applies; and 30
- “(b) item c is to be read as if it refers to the amount of individual transferable quota that is subject to the lease from which the sublease derives directly.” 35

- (4) Section 347A(2) of the principal Act is amended by omitting the words “an allocation”, and substituting the words “a transfer”.
- (5) Section 347A of the principal Act is amended by adding the following subsection: 5
- “(3) This section applies only to leases in relation to stocks to which section 340 applies.”
- 33 Special provisions relating to stocks with fishing year beginning on 1 April**
- (1) Section 351(1)(a) of the principal Act is amended by inserting, after the words “in accordance with that section of this Act”, the words “and allocated in the manner provided under section 67”. 10
- (2) Section 351(1)(b) of the principal Act is amended by inserting, after the words “in accordance with that section”, the words “and allocated under section 67”. 15
- 34 Foveaux Strait dredge oyster fishery subject to quota system**
- (1) Section 368A(6)(a) of the principal Act is amended by omitting the word “alter”, and substituting the word “increase”. 20
- (2) Section 368A(6)(b) of the principal Act is amended by omitting the word “altered”, and substituting the word “increased”.
- 35 Consequential amendment to Fisheries (Foveaux Strait Dredge Oyster Fishery) Amendment Act 1998** 25
- Section 6(3) of the Fisheries (Foveaux Strait Dredge Oyster Fishery) Amendment Act 1998 is consequentially amended by repealing paragraph (a).