

Reprint
as at 1 October 2018



Commodity Levies (Foveaux Strait Dredge Oysters) Order 2013 (SR 2013/25)

Commodity Levies (Foveaux Strait Dredge Oysters) Order 2013: revoked, on 1 October 2018, by clause 32 of the Commodity Levies (Foveaux Strait Dredge Oysters) Order 2018 (LI 2018/117).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 25th day of February 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).

Contents

	Page
1 Title	3

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.

2	Commencement	3
3	Interpretation	3
4	GST	4
	<i>Levy payable by quota owners</i>	
5	Levy imposed	4
6	Quota owners primarily responsible for paying levy	4
	<i>Rate of levy</i>	
7	Levy to be set at single rate	4
8	Basis of calculation of levy rate	4
9	Setting of levy rates	5
10	Maximum levy rate	5
11	Notification of levy rates	5
	<i>Payment of levy</i>	
12	When levy payable	5
13	Due and latest dates for payments	5
14	Penalty for late payment	5
	<i>Spending of levy money</i>	
15	Levy must be spent by BOMC	6
16	Purposes for which levy may be spent	6
17	Consultation on how levy is to be spent	6
	<i>Information and record-keeping requirements</i>	
18	Records to be kept by BOMC	6
19	Confidentiality of information	7
	<i>Miscellaneous</i>	
20	Conscientious objectors	7
21	Remuneration of auditors	7
	<i>Mediation of disputes</i>	
22	Appointment of mediators	8
23	Remuneration of mediators	8
24	Conferences under control of mediator	8
25	Conference to be held in private	8
26	Representatives	9
27	Right to be heard	9
28	Evidence	9
29	Mediator may resolve dispute in certain cases	9
30	Cost of mediation	9
31	Appeal to District Court	9

Order

1 Title

This order is the Commodity Levies (Foveaux Strait Dredge Oysters) Order 2013.

2 Commencement

This order comes into force on 1 April 2013.

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

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

declared port price means the price determined for Foveaux Strait dredge oysters under clause 8(3)

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 year means,—

(a) for the first levy year, the period starting on 1 April 2013 and ending on 30 September 2013:

(b) for the last levy year, the period starting on 1 October 2018 and ending on 24 February 2019:

(c) in every other case, 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

quota weight equivalent has the same meaning as in section 2(1) of the Fisheries Act 1996 (as it applies to Foveaux Strait dredge oysters)

relative dollar value means the relative dollar value for Foveaux Strait dredge oysters calculated under clause 8(2).

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

- (1) The levy rate for a levy year must be calculated on the basis of the relative dollar value of quota shares owned by quota owners.
- (2) The relative dollar value is the quota weight equivalent of all quota shares in Foveaux Strait dredge oysters owned on the first day of the levy year (as shown on a Quota Register) multiplied by the declared port price of Foveaux Strait dredge oysters.
- (3) BOMC must determine the declared port price of Foveaux Strait dredge oysters for the levy year using the average port price for the 1-year period immediately before the start of the levy year.
- (4) To determine the average port price, BOMC must use—
 - (a) an independent survey, based on the best available information known to BOMC, that estimates the average price paid for Foveaux Strait dredge oysters by an independent processor buying from an independent fisher during the 1-year period immediately before the start of the levy year; or
 - (b) if independent survey data is unavailable, an estimate by BOMC, based on the best available information known to BOMC, of the average price paid for Foveaux Strait dredge oysters by an independent processor buying from an independent fisher during the 1-year period immediately before the start of the levy year.
- (5) In this clause, **price** means the price excluding GST.

9 Setting of levy rates

- (1) The levy rate for the first levy year (1 April 2013 to 30 September 2013) is \$163.87692 per 9 800 oysters.
- (2) The levy rate for each subsequent levy year must be—
 - (a) calculated by BOMC in accordance with clause 8; and
 - (b) approved by a special resolution passed by BOMC's shareholders in accordance with BOMC's constitution.
- (3) If BOMC does not set the levy rate for a levy year, the levy rate for the previous year continues to apply.

10 Maximum levy rate

BOMC must calculate the levy rate so that the total amount of levy collected does not exceed 5% of the relative dollar value (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.

Payment of levy

12 When levy payable

- (1) The levy must be paid monthly.
- (2) At the beginning of every month, BOMC must send an invoice to each quota owner 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 Penalty for late payment

If any amount of the levy has not been paid by the close of the latest date for payment, the following is payable to BOMC in addition to the unpaid amount:

- (a) 5% of the unpaid amount; and
- (b) for each subsequent month, an additional 2% of any part of the unpaid amount that remains unpaid.

*Spending of levy money***15 Levy must be spent by BOMC**

BOMC must—

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

16 Purposes for which levy may be spent

- (1) BOMC may spend the levy paid to it 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 the levy on commercial or trading activities.

17 Consultation on how levy is to be spent

- (1) BOMC must, by 31 August of each year, circulate an annual budget and a project plan to all quota owners that include details of how BOMC intends to spend the levy 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***18 Records to be kept by BOMC**

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

19 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.

Miscellaneous

20 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.

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 for Primary Industries 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

Subject to clause 26, 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 a 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.

Michael Webster,
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 1 April 2013, 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. Prior to this order, a levy was imposed in respect of quota shares in Foveaux Strait dredge oysters by the Commodity Levies (Fish) Order 2002. That order expires at the close of 10 March 2013 and, in respect of Foveaux Strait dredge oysters, is replaced by this order.

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. If the order is confirmed, it will 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*: 28 February 2013.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Foveaux Strait Dredge Oysters) 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 (Foveaux Strait Dredge Oysters) Order 2018 (LI 2018/117): clause 32
Subordinate Legislation (Confirmation and Validation) Act 2013 (2013 No 142): section 9(c)