

REPRINTED ACT
[WITH AMENDMENTS INCORPORATION]

MAORI FISHERIES

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PART II

AMENDMENT TO FISHERIES ACT 1983

THE MAORI FISHERIES ACT 1989
1989, No. 159

An Act—

- (a) **To make better provision for the recognition of Maori fishing rights secured by the Treaty of Waitangi; and**
- (b) **To facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing; and**
- (c) **To make better provision for the conservation and management of the rock lobster fishery**

[20 December 1989]

1. Short Title and commencement—

- (1) This Act may be cited as the Moari Fisheries Act 1989.
- (2) This Act shall come into force on the 20th day of December 1989.

2. Interpretation—

In this Act, unless the context otherwise requires,—

“Commission” means the Maori Fisheries Commission established by section 4 of this Act:

“Company” means the company incorporated pursuant to section 12 of this Act:

“Transition period” means the period—

- (a) Beginning on the date of commencement of this Act; and
- (b) Ending with the close of the 31st day of October 1992 or the date appointed under section 37 (5) of this Act, whichever is the later.

3. Act to bind the Crown—This Act shall bind the Crown.

PART 1

MAORI FISHERIES COMMISSION

4. Establishment of Maori Fisheries Commission—

(1) There is hereby established a Commission to be known as the Maori Fisheries Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property. Of entering into contracts, or suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

5. Principal functions—

The principal functions of the Commission shall be—

- (a) To facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing:
- (b) To grant assistance to any Maori or group of Maori for the purpose of enabling that Maori or group of Maori to enter into or to continue in or to develop the business and activity of fishing:
- (c) To form, pursuant to section 12 of this Act, a public company to be called Aotearoa Fisheries Limited:
- (d) To hold all the shares in Aotearoa Fisheries Limited:
- (e) Subject to section 43 (3) of this Act, to transfer to Aotearoa Fisheries Limited at least 50 percent of all quota and all money transferred or paid to the Commission by the Crown under any of the provisions of sections 40 to 42 of this Act (which quota and money shall be applied in paying up in full shares of Aotearoa Fisheries Limited to be issued and allotted and distributed to the Commission).

6. Additional functions—

Without limiting the generality of section 5 of this Act, the Commission shall have the following particular functions:

- (a) To lend money, with or without security and on such terms and conditions as the Commission thinks fit:
- (b) To provide such advisory and technical services as the Commission considers desirable or expedient in the interests of Maori fishing:
- (c) To conduct and encourage research into matters affecting Maori fishing:
- (d) To participate and assist in the promotion, reorganisation, or rationalisation of Maori fishing with a view to increasing efficiency and productivity.

7. Special provision relating to transition period—

(1) During the transition period, the Commission may lease, but shall not otherwise dispose of,—

- (a) Any quota which is transferred to the Commission by the Crown under

any of the provisions of sections 40 to 42 of this Act and which is not transferred to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act; and

- (b) Any quota which is purchased by the Commission with money paid to the Commission by the Crown under any of the provisions of sections 40 to 42 of this Act and not paid by the Commission to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act.

(2) During the transition period the Commission may not use as security for a loan any quota to which subsection (1) of this section applies.

(3) During the transition period the Commission may not sell or otherwise dispose of all or any of its shares in Aotearoa Fisheries Limited.

(4) Any lease granted pursuant to subsection (1) of this section shall be for a term that expires not later than the end of the transition period.

(5) Notwithstanding anything in subsection (1) of this section, the Commission may during the transition period exchange for other quota any quota to which subsection (1) of this section relates.

(6) Where, during the transition period, quota is exchanged under subsection (5) of this section, the quota received in exchange shall be deemed to be quota to which subsection (1) of this section relates

(7) during the transition period, all money which is paid to the Commission under any of the provisions of sections 40 to 42 of this Act and which is not paid to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act shall either—

- (a) Be used by the Commission for the purchase of quota to be leased under subsection (1) of this section; or
- (b) Be invested by the Commission in accordance with clause 11 of the First Schedule to this Act.

(8) This section shall have effect notwithstanding anything in any other provision of this Act.

8. Criteria—

The Commission shall,—

- (a) In considering whether to grant assistance to any Maori or group of Maori, have regard to—
 - (i) Maori custom:
 - (ii) Economic considerations:
 - (iii) Social considerations:
- [(aa) From time to time consult with representatives of tribes who have a history or tradition of engagement in the business and activity of fishing, and in the exercise of its functions under this Act take into account the views expressed in such consultations:]

- (b) Evaluate each proposal after having regard to the economic worth of the proposal, its usefulness to any Maori or group of Maori, and the prospects of its becoming profitable within a reasonable time; and
- (c) Encourage the establishment or expansion of fishing by any Maori or group of Maori in areas where the establishment or expansion will assist the development of those areas:
- (d) Endeavour to conduct its activities so as to operate on a profitable basis.

Para. (aa) was inserted by s. 57 (1) of the Fisheries Amendment Act 1990.

9. Powers—

(1) The Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

(2) Without limiting the generality of subsection (1) of this section, the Commission shall have the power--

- (a) To purchase any individual transferable quota or transferable term quota or take a lease of any such quota for a specified period:
- (b) To retain any individual transferable quota or transferable term quota so acquired:
- (c) To transfer any individual transferable quota or transferable term quota held by it, or lease for a specified period some or all of the rights of the Commission in relation to any such quota:
- (d) To purchase or subscribe for shares, debentures, bonds, or other securities or make loans, with or without security, or acquire any other interest in property:
- (e) To finance the purchase, sale, or hire of vessels, machinery, plant, equipment, materials, goods, and articles or every description by any means, including, but without limiting the generality of the foregoing, the purchase and resale and hire thereof on such terms as the Commission thinks fit; and to discount hire-purchase or conditional sale agreements or hire agreements, and to lend money on the security of a mortgage or an assignment of any such agreement:
- (f) To execute, make, draw, accept, endorse, discount, issue, and negotiate cheques, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons, and other negotiate or transferable instruments, and to buy, sell, or otherwise deal in the same, and accept deposits or money:
- (g) To underwrite or sub-underwrite issues of securities, to give and receive guarantees, or to participate with others in any such activities:
- (h) To participate, in the discretion of the Commission, in the management or enterprises to whose finance it has contributed:
- (i) To organise, participate in, or act as agent for consortium arrangements for the assistance of Maori fishing:
- (j) To take such steps as may be necessary to protect or recover its financial interest in any business:

- (k) To make such charges for the provision of its services as the Commission thinks fit.
- (3) Without limiting the generality of subsection (1) of this section, the Commission may from time to time—
 - (a) Purchase, take on lease, hire, or otherwise acquire such land or buildings or parts of buildings, whether or not subject to any mortgage, charge, lease, easement, or restrictive covenant or other encumbrance, as in its opinion are necessary or expedient for the performance of any of its functions or powers:
 - (b) Erect, alter, rebuild, or add to any building on any land so acquired:
 - (c) Grant leases or tenancies of any land or buildings so acquired, or of any part or parts thereof, and create easements and restrictive covenants thereover, and accept surrenders or partial surrenders of any such leases, tenancies, easements, and restrictive covenants.

10. Restriction on borrowing powers—

Notwithstanding anything in any other provision of this Act, the Commission may—

- (a) Borrow money; or
 - (b) Issue bonds, debentures, coupons, and other negotiable or transferable instruments; or
 - (c) Mortgage or charge any of its real or personal property; or
 - (d) Underwrite or sub-underwrite issues of securities or give guarantees or participate with others in any such activities,—
- only with the consent of the Minister of Finance and subject to such terms and conditions as that Minister thinks fit.

11. Prohibition on guarantees, etc.—

The Commission shall not give any guarantee, indemnity, or security in respect of the performance of any obligation by the company.

Aotearoa Fisheries Limited

12. Incorporation of company—

(1) Notwithstanding anything in the Companies Act 1955 or in any other enactment or rule of law, the Commission shall, not later than 3 months after the date of commencement of this Act, form and register under the Companies Act 1955, a public company limited by shares—

- (a) That has the name Aotearoa Fisheries Limited; and
- (b) That has a memorandum of association and articles of association approved by the Minister of Maori Affairs; and
- (c) That has an authorised capital and an issued capital of such amounts, and in shares of such classes, as shall be approved by the Minister of Maori Affairs; and

- (d) That has, as the only subscriber to its memorandum of association, the Commission.

(2) Nothing in section 13 (1) of the Companies Act 1955 relating to the minimum number of persons who may form a company shall apply to the formation of the company.

(3) In any case where a company has not been formed and registered by the Commission in accordance with this section within the period referred to in subsection (1) of this section, the Minister of Maori Affairs may form and register the company and shall have all such powers as are necessary or desirable for that purpose including, without limitation, the power to issue and allot shares in the capital of the company to the Commission.

13. Shares subscribed for on incorporation of company deemed to be fully paid up—

(1) On the date on which a transfer is effected under section 43 (1) of this Act, the shares subscribed for in the capital of the company on its incorporation shall be deemed to have been allotted as fully paid up to the Commission.

(2) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the registrar of Companies when shares are allotted for a consideration other than cash) shall apply to shares that are deemed to have been allotted pursuant to subsection (1) of this section.

14. Alterations to memorandum and articles—

(1) Notwithstanding section 18 of the Companies Act 1955, the memorandum of association of the company shall not be altered by the company.

(2) The articles of association of the company shall not be altered by the company at any time before the end of the transition period without the consent of the Minister of Maori Affairs and any alteration made without the consent of the Minister of Maori Affairs shall be void and of no effect.

(3) Nothing in this section prevents the name of the company being changed in accordance with the provisions of the Companies Act 1955.

15. Issue and allotment of shares—

(1) The company shall not issue or allot any shares in the share capital of the company to any person other than the Commission.

(2) Except as provided in sections 12, 13, and 44 of this Act, the company shall not issue or allot any shares in the share capital of the company during the transition period without the prior written consent of the Minister of Maori Affairs.

16. Application of Companies Act 1955—

Except as provided in this Act, the provisions of the Companies Act 1955 other than—

- (a) Section 41, as to carrying on business when the number of members is reduced below the legal minimum:
- (b) Section 217 (d), as to winding up by the Court when the number of members is reduced below the legal minimum:
- (c) Section 219 (a) (i), as to the presentation of a winding up petition by a contributory when the number of members is reduced below the legal minimum,—

shall apply to the company.

17. Directors—

The company shall have not more than 7 directors.

18. Appointment of directors during transition period—

(1) The directors of the company shall, during the transition period, the appointed by the Commission, with the prior written agreement of the Minister of Maori Affairs.

- (2) The Commission—
 - (a) Shall appoint as directors persons of proven commercial ability and business acumen; and
 - (b) Shall ensure that some of the directors have knowledge of fishing and the business of fishing; and
 - (c) Shall not appoint as directors persons who have interests in fisheries or in the business of fishing that would or might conflict with their duties as directors; and
 - (d) Shall have regard to the desirability of appointing as directors suitably qualified persons who are Maori.

19. Disqualification of directors—

No person shall be appointed, or reappointed, to the office of director of the company, or hold that office, if that person—

- (a) Is a member of Parliament; or
- (b) Is an officer or employee of the Commission; or
- (c) Is banking who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or
- (d) Is a person who has been convicted of any offence punishable by imprisonment for a term of 2 years or more; or
- (e) Is a person who has been convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
- (f) Is a person who is prohibited under section 188A of the Companies Act 1955 from being a director or promoter of, or in any way whether directly or indirectly being concerned or taking part in the management of, a company; or

- (g) Is a person to whom an order made under section 189 of the Companies Act 1955 applies; or
- (h) Is a person who is prohibited under section 189A of the Companies Act 1955 from being an officer or promoter of, or being concerned in or taking part(whether directly or indirectly) in the management of, any company; or
- (i) Is a mentally disordered person within the meaning of the Mental Health Act 1969.

20. Removal of directors—

(1) The Minister of Maori Affairs may, at any time during the transition period, by notice in writing to the director of the company, remove that director from office if the Minister the Maori Affairs is satisfied that the director.—

- (a) Is unable, or has failed, to perform the duties of a director of the company; or
- (b) Has been guilty of misconduct.

(2) No person, other than the Minister of Maori Affairs Acting pursuant to subsection (1) of this section, may remove any pursuant to subsection (1) of this section, may remove any director of the company from office during the transition period.

(3) No person, other than the Minister of Maori Affairs acting pursuant to subsection (1) of this section, may remove any director of the company from office during the transition period.

21. Restriction of dividends—

(1) No dividend declared during the transition period by the company shall exceed the amount recommended by the directors with the approval of the Minister of Maori Affairs.

(2) Before deciding whether to give his or her approval under subsection (1) of this section, the Minister of Maori Affairs shall first consult the Commission and the Minister of Fisheries.

Statement of Corporate Intent

22. Statement of corporate intent—

The directorate of the company shall deliver to the Commission and the Minister of Maori Affairs a draft statement of corporate intent not later than one month after the commencement of each financial year of the company.

23. Contents of statement of corporate intent—

Each statement of corporate intent shall specify for the group comprising the company and its subsidiaries (if any), and in respect of the financial year in which it is delivered and each of the immediately following 2 financial years, the following information:

- (a) The objectives of the group

- (b) The nature and scope of the activities to be undertaken:
- (c) The ratio of consolidated shareholders' funds to total assets, and definitions of those terms:
- (d) The accounting policies:
- (e) The performance targets and other measures by which the performance of the group may be judged in relation to its objectives:
- (f) An estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholder:
- (g) The kind of information to be provided to the Commission and the Minister of Maori Affairs and the Minister of Fisheries by the company during the course of those financial years, including the information to be included in each half-yearly report:
- (h) The procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organisation:
- (i) The directorate's estimate of the commercial value of the shareholders' investment in the group and the manner in which, and the times at which, the value is to be reassessed:
- (j) Such other matters as are agreed by the Commission and the directorate.

24. Completion of statement of corporate intent—

The directorate—

- (a) Shall consider any comments on the draft statement of corporate intent that are made to it within 2 months of the commencement of the financial year by the Commission or the Minister of Maori Affairs; and
- (b) Shall deliver the completed statement of corporate intent to the Commission and the Minister of Maori Affairs within 3 months of the commencement of the financial year.

25. Modifications of statement of corporate intent—

A statement of corporate intent for the company may be modified at any time by written notice from the directorate, so long as the directorate has first—

- (a) Given written notice to the Commission and the Minister of Maori Affairs of the proposed modification; and
- (b) Considered any comments made on the proposed modification by the Commission or the Minister of Maori Affairs within—
 - (i) One month after the date on which the notice under paragraph (a) of this section was given; or
 - (ii) Such shorter period as the Commission and the Minister of Maori Affairs may agree.

26. Obligation to make statement of corporate intent available—

Every completed statement of corporate intent and every modification that is adopted to a statement of corporate intent shall be made available to the public by the

directorates within one month after the date on which it is delivered to the Commission or adopted, as the case may be.

27. Savings of certain transactions—

A failure by the company to comply with—

(a) Any provision of sections 22 to 26 of this Act; or

(b) Any provision contained in any statement of corporate intent,—

shall not affect the validity or enforceability of any deed, agreements, right, or obligation entered into, obtained, or incurred by the company prior written agreement of the Minister of Maori -Affairs.

28. Annual report and statement of accounts—

(1) As soon as reasonably practicable after the end of each financial year, the company shall deliver to the Commission and the Minister of Maori Affairs a general report of its operations during the year together with a copy of its duly audited accounts for that year and the report of the auditors on those accounts.

(2) A copy of the general report and of the account of the company, together with a copy of the report of the auditors on the accounts, shall be laid before the House of Representatives as soon as practicable after its receipt by the Minister of Maori Affairs.

(3) This section shall expire on the last day of the transition period.

Provisions Relating to Maori Fisheries Commission

29. Membership of Commission—

The Commission shall consist of 7 members to be appointed by the Governor-General on the advice of the Minister of Maori Affairs.

30. Members of Commission not to be employed by Aotearoa Fisheries Limited—

No member of the Commission shall be employed in the service of, or hold any office in, the company.

31. Term of office—

(1) Except as otherwise provided in section 32 of this Act, every member of the Commission shall hold office for such term not exceeding 4 years as the Governor-General shall specify in the instrument appointing that member.

(2) Every member of the Commission shall be eligible for reappointment from time to time.

(3) Where the term for which a member of the Commission has been appointed expires, that member of the Commission, unless sooner vacating or removed from office under section 32 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

(a) That member is reappointed; or

- (b) A successor to that member is appointed.

32. Vacation of office—

(1) Subject to subsection (2) of this section, any member of the Commission may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(2) Any member of the Commission may at any time resign the office by notice in writing addressed to the Minister on whose advice the member was appointed.

(3) The powers of the Commission shall not be affected by any vacancy in its membership.

33. Chairperson—

(1) At its first meeting, and thereafter at its first meeting in every financial year, the Commission shall elect one of its members to be its chairperson.

(2) The chairperson, unless he or she sooner vacates the office of chairperson or ceases to be a member of the Commission, shall hold office until his or her successor is elected and comes into office.

(3) Where the chairperson vacates his or her office or ceases to be a member of the Commission before the expiry of the term for which he or she was elected, the Commission shall elect another to its members to his or her office until the expiry of that term.

34. Commission to hold public meeting—

(1) The Commission shall, not later than the 31st day of July in each year, hold a public meeting in Auckland or Wellington and shall at that meeting report on the operation of the Commission during the preceding financial year and on the accounts of the Commission for that year.

(2) The Commission shall give not less than 14 days' notice of the holding of a public meeting under subsection (1) of this section in the metropolitan newspapers.

35. Contracts of Commission—

(1) Any contract which, if made by private persons, must be by deed shall, if made by the Commission, be in writing under the common seal of the Commission.

(2) Any contract which, if made by private persons, must be signed by the parties to be charged therewith shall, if made by the Commission, be either under the common seal of the Commission or signed by a member or officer of the Commission on behalf of and by authority of the Commission.

(3) Any contract which, if made by private persons, may be made orally made be made in the manner specified in subsection (1) of this section as in the case of a deed, or in the manner specified in subsection (2) of this section as in the case of a contract

required to be in writing, or may be made orally by or on behalf of the Commission by any member or officer of the Commission acting by authority of the Commission, but not oral contract shall be made for any sum exceeding \$2,000.

(4) The Commission may by writing under its common seal empower any person, either generally or in respect of any specified matters, to execute instruments on its behalf in any place in or beyond New Zealand. Any instrument executed by such an attorney on behalf of the Commission shall bind the Commission, and if executed as a deed shall have the same effect as if it were under the common seal of the Commission.

(5) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of the Commission shall be invalid by reason on that it was not made in manner provided by this section, if it was made pursuant to a resolution of the Commission or to give effect to a resolution of the Commission in relation to contracts generally or in relation to that particular contract.

36. Disclosure of interests—

(1) Any member of the Commission who, otherwise than as such member is directly or indirectly interested in any arrangement or agreement made or entered into, or proposed to be made or entered into, by the Commission shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Commission.

(2) A disclosure under this section shall be recorded in the minutes of the Commission, and, except as otherwise provided by resolution of the Commission or in subsection (3) of this section, the member--

- (a) Shall not take part after the disclosure in any deliberation or decision of the Commission relating to the arrangement or agreement; and
- (b) Shall be disregarded for the purpose of forming a quorum of the Commission for any deliberation or decision.

(3) Where a member of the Commission who is a member of a tribe makes a disclosure under subsection (1) of this section in relation to any arrangement or agreement, nothing in subsection (2) of this section shall prohibit the member from voting on or taking part in the deliberation or decision relating to that arrangement or agreement where the interest disclosed is not different in kind from the interests of other members of that tribe.

37. Management audits—

(1) The directors of the company shall arrange for a management of the company to be conducted during the period beginning on the 1st day of January 1992 and ending with the close of the 30th day of June 1992.

(2) The Commission shall arrange for a management audit of the Commission to be conducted during the period beginning on the 1st day of January 1992 and ending with the close of the 30th day of June 1992.

(3) Each management audit conducted under this section shall be conducted, in each case, by persons approved by, and in a manner approved by, the Minister of Finance.

(4) As soon as reasonably practicable after the completion of each management audit (but not later than the 30th day of September 1992) a copy of the report of the persons who conducted the audit shall be delivered to the Minister of Finance.

(5) Where—

- (a) Either of the management audits required by this section is not conducted or is not conducted in accordance with this section; or
- (b) The copy required by subsection (4) of this section is not delivered to the Minister of Finance in accordance with that subsection; or
- (c) Any management audit conducted in accordance with this section establishes to the satisfaction of the Minister of Finance that either the company or the Commission is not being conducted in a manner that will tend to ensure its success or its ability to meet its objects or to fulfill its purposes,—

the Governor-General may by Order in Council declare that the transition period shall expire on such date (being later than the 31st day of October 1992) as shall be specified in the order.

38. Protection of name—

No company or other body shall be incorporated or registered under any Act or otherwise under a name that is identical with that of the Commission or under any other name that in the opinion of the Registrar of Companies so resembles the name of the Commission as to be likely to deceive.

39. Proceedings of Commission—

(1) The provisions of the First Schedule to this Act shall have effect in relation to the Commission and its proceedings.

Obligations of the Crown

40. Transfer of quota to Commission—

Subject to sections 41 and 42 of this Act, the Crown—

- [(a) Shall, before the 31st day of March 1990 or such later date as may be agreed between the Crown and the Commission, transfer to the Commission 2.5 percent of the then existing total allowable catches specified under Part IIA of the Fisheries Act 1983; and
- (b) Shall, in the year ending on the 31st day of October 1990, transfer to the Commission—
 - (i) In relation to rock lobster, 5 percent of the then existing total allowable commercial catches for rock lobster specified under Part IIA of the Fisheries Act 1983; and
 - (ii) In relation to all other specie and classes of fish, 2.5 percent of the

then existing total allowable commercial catches specified under Part IIA of the Fisheries Act 1983; and

- (c) Shall, in the year ending on the 31st day of October 1991, transfer to the Commission 2.5 percent of the then existing total allowable commercial catches specified under Part IIA of the Fisheries Act 1983; and
- (d) shall, in the year ending on the 31st day of October 1992, transfer to the Commission 2.5 percent of the then existing total allowable commercial catches specified under Part IIA of the Fisheries Act 1983.]

[(2) In this section and in sections 41 to 43 of this Act, the term “total allowable commercial catch”, in relation to any total allowable commercial catch specified in respect of any fishery after the commencement of the Fisheries Amendment Act 1990, includes, in addition to the amount of the catch so specified, any amount determined under section 12 of the Territorial Sea and Exclusive Economic Zone Act 1977 as the allowable catch for foreign fishing craft in the fishery, to the extent that any such amount has been allowed for under section 28D (1) (a) (ii) of the Fisheries Act 1983 before specifying the total allowable commercial catch.]

In subs. (1), paras. (a) to (d) were substituted for the original paras. (a) to (d) by s. 57 (2) of the Fisheries Amendment Act 1990.

Subs. (2) was added by s. 57 (3) of the Fisheries Amendment Act 1990.

41. Power, at request of Commission, to postpone transfer of quota or to transfer money instead—

(1) The Crown shall, before making a transfer under section 40 of this Act, give to the Commission a written notice setting out full particulars of the proposed transfer (including the date on which it is to be made).

(2) Each notice given under subsection (1) of this section shall be given to the Commission not less than one month [, or, in the case of a transfer referred to in section 40 (1) (a) of this Act, such shorter period as may be agreed between the Crown and the Commission,] before the date of the proposed transfer by the Crown.

(3) The Commission may, within 21 days after being serviced with a notice under subsection (1) of this section [, or, in the case of a transfer referred to in section 40 (1) (a) of this Act, within such later period as may be agreed between the Crown and the Commission,]—

- (a) Request the Crown to postpone the transfer of all or any part of the quota until a later date (which later date shall be not later than 3 months after the date proposed by the Crown and not later than the last day of that year); or
- (b) Request the Crown to transfer to the Commission, instead of the whole or any part of the [total allowable commercial catch], an equivalent amount of money (which equivalent amount shall be agreed between the Commission and the Crown or, failing agreement, determined by arbitration in accordance with the Arbitration Act 1908); or
- (c) Make both a request under paragraph (a) of this subsection and a request under paragraph (b) of this subsection.

(4) The Crown shall comply with any request made by the Commission in accordance with subsection (3) of this section.

(5) Subject both to any request made under subsection (3) of this section and to subsection (4) of this section, quota specified in any notice given under subsection (1) of this section shall, on the proposed ate, be transferred by the Crown to the Commission.

In subs. (2) the words in square brackets were inserted by s. 57 (4) (a) of the Fisheries Amendment Act 1990.

In subs. (3) the words in square brackets were inserted by s. 57 (4) (b) of the Fisheries Amendment Act 1990.

In subs. (3) (b) the words in square brackets were substituted for the original words by s. 57 (4) (c) of the Fisheries Amendment Act 1990.

42. Transfer of quota equivalent where quota not available—

(1) Where—

(a) The Crown—

(i) Does not hold the full amount of the [total allowable commercial catch] required for the purpose of any transfer required by section 40 of this Act; or

(ii) Is, because of its obligations under the Territorial Sea and Exclusive Economic Zone Act 1977, not able to make available the full amount of the [total allowable commercial catch] required for the purpose of any transfer required by section 40 of this Act; and

(b) The Minister of Fisheries considers that the amount required to make up the deficiency can be purchased only at prices that are excessive, the Crown shall make up the deficiency by transferring to the Commission an equivalent amount of money.

(2) The equivalent amount of money to be transferred under subsection (1) of this section shall be fixed by agreement between the Commission and the Crown or, failing agreement, determined by arbitration in accordance with the Arbitration Act 1908.

In subs. (1) (a) (i) and (ii) the words in square brackets were substituted for the words “total allowable catch” by s. 57 (5) of the Fisheries Amendment Act 1990.

43. Transfer of quota from Commission to company—

(1) The Commission shall, within 14 days after the date on which the first or only transfer is effected under section 40 (1) (a) of this Act [or within such longer period not exceeding 2 months as may be agreed between the Commission and the company,] transfer to the company, without deduction, at least 50 percent of everything transferred to the Commission by that transfer (including any amount of money transferred by the Crown, pursuant to section 41 or section 42 of this Act, instead of the whole or any part of the [total allowable commercial catch]).

(2) The commission shall, within 14 days after each subsequent occasion on which a transfer is effected under section 40 of this Act, [or within such longer period not exceeding 2 months as may be agreed between the Commission and the company,] transfer to the company without deduction, at least 50 percent of everything transferred to

the Commission by that transfer (including any amount of money transferred by the Crown, pursuant to section 41 or section 42 of this Act, instead of the whole or any part of the [total allowable commercial catch]).

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the Commission may, with the agreement of Aotearoa Fisheries Limited, transfer to Aotearoa Fisheries Limited in discharge of the obligation imposed on the Commission, in relation to any quota, by any of those provisions—

- (a) Other quota of substantially equivalent value; or
- (b) A parcel, made up of quota and money, of substantially equivalent value.

In subss. (1) the words in the first set of square brackets were inserted by s. 57 (6) (b) of the Fisheries Amendment Act 1990.

In subss. (1) and (2) the words “total allowable commercial catch” were substituted for the words “total allowable catch” by s. 57 (6) (a) of the Fisheries Amendment Act 1990.

In subs. (2) the words in the first set of square brackets were inserted by s. 57 (6) (c) of the Fisheries Amendment Act 1990.

44. Allotment of shares by company to Commission—

(1) On each occasion on which a transfer is effected under section 43 (2) of this Act, the company shall forthwith issue and allot to the Commission fully paid shares in the company.

(2) The fully paid shares to be issued and allotted to the Commission under subsection (1) of this section shall be specified by the Minister of Maori Affairs by notice in writing to the Commission and the company.

(3) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall apply to shares allotted pursuant to subsection (1) of this section.

45. Payment of \$10,000,000 to Commission—

The Crown shall, without further appropriation than this Act, pay out of public money to the Commission, not later than the 31st day of March 1990, the sum of \$10,000,000.

46. Stamp duty exemption—

No stamp duty shall be payable under the Stamp and Cheque Duties Act 1971 in respect of any instrument of conveyance of property from the Commission to the company pursuant to section 43 of this Act.

PART II

AMENDMENTS TO FISHERIES ACT 1983

47-81. *These sections have been incorporated in the reprinted Fisheries Act 1983 (1991, R.S. Vol. 27, p. 137).*

Ss. 50, 60, 61, 63, 64, 66, 67 (2), 71, 72, 73, 75, 76 and 77, and 78 and 79 were respectively

repealed by ss. 5 (2), 16 (2), 17 (6), 19 (2), 20, 22 (3), 23 (5), 26 (2), 27 (2), 28 (3), 50 (2), 52 (3), and 56 (2) of the Fisheries Amendment Act 1990.

SCHEDULES

Section 39

FIRST SCHEDULE

PROVISIONS RELATING TO MAORI FISHERIES COMMISSION

1 Meetings—

(1) Meetings of the Commission shall be held at such times and places as the Commission or its Chairperson from time to time appoints.

(2) The Chairperson, or any 3 members, may be any time call a special meeting.

(3) During the transition period, the quorum necessary for the transaction of business at any meeting of the Commission shall be 3 members appointed under section 29 of this Act and 1 other member appointed under section 29 of this Act.

(4) After the transition period, the quorum necessary for the transaction of business at any meeting of the Commission shall be 4 members.

(5) At all meetings of the commission its Chairperson shall preside if he or she is present. If the Chairperson is absent, the members present shall appoint one of their number to be Chairperson of that meeting.

(6) All questions arising at any meeting of the Commission shall be decided by a majority of the valid votes recorded thereon.

(7) At any meeting of the Commission the Chairperson or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(8) A resolution in writing signed, or assented to by letter, facsimile transmission, telegram, or telex, by all the members of the Commission shall be as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

(9) Subject to the provisions of this Act, the Commission may regulate its procedure in such manner as it thinks fit.

2. Remuneration and travelling allowances—

The Commission shall pay to its members, and to the members of any committee appointed by the Commission, such remuneration by way of fees, salary, or allowances, and such travelling allowances and expenses, as may be determined by the Commission by resolution from time to time with the approval of the Minister of Finance.

3. Employees of Commission—

(1) Subject to the provisions of this clause, the Commission may from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as the Commission thinks necessary for the efficient carrying out of the Commission's functions, powers, and duties under this Act or any other enactment.

(2) Subject to the Commission's terms and conditions of employment, the Commi-

FIRST SCHEDULE—*continued*PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*

ssion may, on behalf of the Commission, at any time terminate or suspend the employment of any of the Commission's officers or employees.

(3) The number of officers and employees who may be appointed under subclause (1) of this clause, whether generally or in respect of any specified duties, shall from time to time be determined by the Minister of Maori Affairs.

(4) Officers and employees appointed under subclause (1) of this clause shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Commission from time to time determines.

(5) Any determination under subclause (4) of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is so specified, the determination shall take effect on the date thereof.

4. Committees and consultants—

(1) To assist the Commission in the exercise of its functions, the Commission may from time to time,—

- (a) Establish committees and appoint members thereof; and
- (b) Engage such consultants as the Commission thinks fit.

(2) The Commission shall pay persons appointed or engaged under subclause (1) of this clause, for services rendered by them, fees and commission or either, at such rates as the Commission thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commission.

5. Application of certain Acts to members and staff of Commission—

No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as a member of the Commission, or an officer or employee of the Commission, or a person appointed under clause 4 of this Schedule.

6. Superannuation or retiring allowances—

(1) From the purpose of providing a superannuation fund or returning allowance for any of the officers or employees of the Commission or for any full-time members of the Commission, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

(2) If the question whether or not any member of the Commission is a full-time member for the purposes of subclause (1) of the clause arises, that question shall be determined by the Minister of Maori Affairs whose decision shall be final.

(3) Notwithstanding anything in this Act, any person who immediately before becoming an officer or employee of the Commission or member of the Commission is a contributor to the Government Superannuation Fund under Part II or Part IIA of the government Superannuation Fund Act 1956 shall be deemed to be , for the purposes of the Government Superannuation Fund Act 1956, employed in the Government Service so long as that person

FIRST SCHEDULE—*continued*PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*

continues to be an officer or employee of the Commission or to hold office as a member of the Commission; and that Act shall apply to that person in all respects as if that person's service as such an officer or employee or as such a member were Government service.

(4) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (3) of this clause shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(5) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subclause (3) of this clause, to a person who is in the service of the Commission, whether as an officer or employee or as a member, and is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person who is in the service of the Commission means the Commission.

7. Crown may provide services for Commission—

The Crown, acting through any Government department, may from time to time, at the request of the Commission, execute any work or enter into arrangements for the execution or provision by the Government department for the commission of any work or service, or for the supply to the Commission of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

8. Fees, etc., payable out of funds of Commission—

All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of the funds of the Commission.

9. Funds of Commission—

The funds of the Commission shall consist of—

- (a) Any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission:
- (b) All other money lawfully received by the Commission for the purposes of the Commission
- (c) All accumulations of income derived from any such money.

10. Bank accounts—

(1) The Commission shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

(2) All money received by the Commission, or by any employee of the Commission shall, as soon as practicable after it has been received, be paid into such bank accounts of the Commission as the Commission from time to time determines.

(3) The withdrawal of payment of money from any such account shall be authorised in such manner as the Commission thinks fit.

(4) The withdrawal or payment of money from any such accounts shall be by cheque signed by such person or persons as the Commission may from time to time authorise.

FIRST SCHEDULE—*continued*PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued***11. Investment of money—**

Any money which belongs to the Commission and which is not immediately required for expenditure by the Commission may be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.

12. Financial year—

The financial year of the Commission shall end on the 31st day of March or on such other date in any year as the Commission may from time to time determine.

13. Unauthorised expenditure—

The Commission may in any financial year, expend out of the funds of the Commission for purposes not authorised by this Act or any other enactment any sum or sums not amounting in the whole to more than \$5,000.

14. Audit of accounts—

(1) Within 6 months after the end of each financial year or within such further period as the Minister of Maori Affairs may allow, the Commission shall prepare a balance sheet and such other statements of accounts as are necessary to show fully the financial position of the Commission, and the financial results of its operations during the year.

(2) The balance sheet and other accounts shall be audited by the Audit Office which shall, for that purpose, have the same powers as it has under the Public Finance Act 1977 in respect of public money and stores and the audit of local authorities accounts.

15. Annual report and statement of accounts—

(1) As soon as reasonably practicable after the end of each financial year, the Commission shall deliver to the Minister of Maori Affairs a general report of its operations during the year together with a copy of its duly audited accounts for that year and the report of the Audit office on those accounts.

(2) A copy of the general report and of the accounts of the Commission, together with a copy of the report of the Audit Office on the accounts, shall be laid before the House of Representatives as soon as practicable after their receipt by the Minister of Maori Affairs.

16. Protection in respect of acts of Commission and members—

No member of the Commission or any of its committees, and no officers or employee of the Commission or person appointed under clause 4 of this schedule, shall be personally liable for any liability of the Commission or for any act done or omitted by the Commission or any of its committees, or by any member, officer, or employee of the Commission or person so appointed, in good faith in pursuance or intended pursuance of the functions or powers of the Commission.

Maori Fisheries

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Section 49

SECOND SCHEDULE

QUOTA MANAGEMENT AREAS IN RESPECT OF ROCK LOBSTERS

This Schedule has been reprinted with the Fisheries Act 1983 (1991, R.S. Vol. 27, p. 137).

Section 49

THIRD SCHEDULE

QUOTA MANAGEMENT AREAS DEFINED

This Schedule has been reprinted with the Fisheries Act 1983 (1991, R.S. Vol. 27, p. 137).

Section 81

FOURTH SCHEDULE

ORDERS REVOKED

This Schedule has been reprinted with the Fisheries Act 1983 (1991, R.S. Vol. 27, p. 137).

The Maori Fisheries Act 1989 is administered in the Ministry of Agriculture and Fisheries

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