

**Reprint
as at 11 June 2013**



**Commodity Levies (Southern
Scallops) Order 2007**

(SR 2007/153)

Commodity Levies (Southern Scallops) Order 2007: revoked, on 11 June 2013,
by section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

The Rt Hon Justice Peter Blanchard,
Administrator of the Government

Order in Council

At Wellington this 11th day of June 2007

Present:

His Excellency the Administrator of the Government 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 Administrator of the Government, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Fisheries, makes the following order.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Southern Scallops) Order 2007.

2 Commencement

This order comes into force on 15 July 2007.

3 Interpretation

In this order, unless the context otherwise requires,—

commercial fishing means taking scallops in circumstances where a fishing permit is required by section 89 of the Fisheries Act 1996

company means the industry organisation that, on the commencement of this order, was known as Challenger Scallop Enhancement Company Limited

greenweight means the weight of the scallops before any processing commences and before any part is removed

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

landed value, in respect of scallops landed to a licensed fish receiver,—

- (a) means the price payable for the scallops by the receiver to the person selling the scallops; and
- (b) includes any incidental payments by the receiver to that person in respect of the scallops; but
- (c) does not include any GST payable in respect of the scallops

levy means the levy imposed by clause 4

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

levy year means,—

- (a) for the first levy year, the period starting on the commencement of this order and ending on the last day of the southern scallop season in which this order commences; and
- (b) for every other levy year, a period of 12 months starting on the first day of the southern scallop season

licensed fish receiver means a holder of a fish receiver licence granted under the Fisheries (Licensed Fish Receivers) Regulations 1997

meatweight means the weight of the scallops remaining when the shell, skirt, and gut have been removed and discarded

mediator means a person appointed under clause 21 to resolve a dispute

ordinary resolution means a resolution that is approved by a simple majority of the votes of the shareholders entitled to vote and voting on the question

quota means individual transferable quota for southern scallops held under the Fisheries Act 1996

sale has the same meaning as in section 2(1) of the Fisheries Act 1996, and **selling** has a corresponding meaning

scallop means the mollusc *Pecten novaezelandiae*, but does not include scallop spat

scallop spat has the same meaning as in section 2(1) of the Fisheries Act 1996

southern scallop fishery means the New Zealand fisheries waters defined as quota management area SCA7 in Part 3 of Schedule 1 of the Fisheries Act 1996

southern scallop season means the season for the time being specified by the Minister of Fisheries under section 312(3) of the Fisheries Act 1996, and includes any variation of the season under that section

southern scallops means any scallops found in the southern scallop fishery.

4 Levy imposed

- (1) A levy is imposed on all southern scallops taken by commercial fishing and landed to a licensed fish receiver.

- (2) The levy is payable to the company.

Payment of levy

5 Owner of quota for southern scallops primarily responsible for paying levy

The owner of quota for southern scallops is primarily responsible for paying the levy on scallops taken under the quota.

6 Licensed fish receiver to pay levy

- (1) A licensed fish receiver must pay any levy on southern scallops that are landed to the receiver.
- (2) A licensed fish receiver who pays any levy on southern scallops—
- (a) may recover the amount of the levy, and any GST payable on the levy, by reducing the amount otherwise payable for the scallops; and
 - (b) is not entitled to receive a collection fee for paying the levy.

Rate of levy

7 Levy payable on basis of landed value or meatweight

- (1) The levy payable on southern scallops is to be calculated on the basis of either—
- (a) the landed value of the scallops; or
 - (b) the meatweight of the scallops.
- (2) The shareholders of the company must decide which basis for calculation is to apply for each levy year by ordinary resolution at a general meeting of the company held in accordance with clause 11.

8 Levy to be paid at single rate or different rates

- (1) If the levy for a levy year is to be calculated on the basis of meatweight, then the levy is to be paid at a single rate.
- (2) If the levy for a levy year is to be calculated on the basis of landed value, then the levy is to be paid at either—
- (a) a single rate; or

- (b) different rates for scallops of different grades, determined by the number of those scallops in a meatweight kilogram of scallops.
- (3) If subclause (2) applies, the shareholders of the company must decide whether a single rate or different rates are to apply for the levy year by ordinary resolution at a general meeting of the company held in accordance with clause 11.

9 Maximum levy rate

- (1) If the levy for a levy year is to be calculated on the basis of landed value, then any levy rate fixed under clause 10 must be no more than 25% of the landed value.
- (2) If the levy for a levy year is to be calculated on the basis of meatweight, then the levy rate fixed under clause 10 must be an amount per kilogram (exclusive of GST) that is no more than 25% of the estimated amount provided by the company under clause 11(2).

10 Fixing or reduction of levy rate

- (1) The rate or rates at which the levy is to be paid are to be fixed—
 - (a) as a percentage of the landed value, if the levy is to be calculated on the basis of landed value; or
 - (b) as a dollar amount per meatweight kilogram (exclusive of GST), if the levy is to be calculated on the basis of meatweight.
- (2) The shareholders of the company must fix the levy rate or rates for each levy year by ordinary resolution at a general meeting of the company held in accordance with clause 11.
- (3) The company may reduce any levy rate fixed under subclause (2), or applied by clause 12(2), at any time during the levy year to which the levy rate applies.

11 General meeting of shareholders of company

- (1) A general meeting of shareholders to make decisions or fix levy rates relating to a levy year must be held,—
 - (a) in the case of the first levy year, as soon as practicable after this order is made and no later than the date this order commences:

- (b) in the case of every other levy year, within 2 months before the start of the levy year.
- (2) At the start of the general meeting, the company must provide the shareholders with the company's best estimate of the average landed value of a meatweight kilogram of southern scallops.

12 Previous decisions to apply

- (1) If the shareholders do not make a decision under clause 7(2) or 8(3) before the start of a levy year, then the shareholders' last decision on the matter will apply for that levy year.
- (2) If the shareholders do not fix a levy rate under clause 10(2) before the start of a levy year, then the levy rate last fixed by the shareholders will apply for that levy year.

13 Notification of levy rate

- (1) The company must give written notification of a levy rate within 2 weeks after the rate is—
 - (a) fixed or reduced under clause 10(2) or (3); or
 - (b) applied by clause 12(2).
- (2) The notification must be given to the following persons:
 - (a) all owners of quota for southern scallops; and
 - (b) all licensed fish receivers that the company knows to have purchased southern scallops in the previous or current levy year.

Time for payment of levy and returns

14 Levy to be paid within 10 days after landing of scallops

- (1) The due date for payment of any levy on southern scallops landed to a licensed fish receiver is the day the scallops are received by the receiver.
- (2) The latest date for payment of the levy is 10 days after the scallops are received by the receiver.

15 Returns by licensed fish receiver

- (1) A licensed fish receiver must, when paying the levy on scallops, give the company notice in writing of—
 - (a) the greenweight of the scallops; and

- (b) the grade of the scallops, determined by the number of scallops in a meatweight kilogram of scallops; and
 - (c) the meatweight of the scallops; and
 - (d) the amount paid for the scallops; and
 - (e) the amount of levy paid on the scallops to the company.
- (2) A licensed fish receiver must keep full records of the matters referred to in subclause (1) for at least 2 years after the end of the levy year to which they relate.

Expenditure of levy money by company

16 Company to spend levy money

The company must spend or (pending its expenditure) invest all levy money paid to it.

17 Purposes for which levy money to be spent

- (1) The company may spend levy money for the purposes of enhancing and managing scallops and scallop harvesting rights in the southern scallop fishery.
- (2) Those purposes include, but are not limited to, the following matters:
- (a) research, including biological, environmental, and market research:
 - (b) enhancing and protecting scallop stocks and scallop fishing rights:
 - (c) promoting scallop industry activities:
 - (d) shellfish quality assurance:
 - (e) developing fishery management rules:
 - (f) developing and providing fishery management advice:
 - (g) administering harvesting rights and organisational activities, and administering legal obligations.

*Record-keeping and information requirements
of company*

18 Company to keep records

- (1) The company must keep records of—
- (a) each amount of levy money paid to it and, in relation to each amount,—
 - (i) the day on which it was received; and

- (ii) the person who paid it; and
 - (b) how and when it invested any levy money paid to it; and
 - (c) how and when it spent all levy money.
- (2) The company must retain its records for at least 7 years after the end of the levy year to which they relate.

19 Confidentiality of information

- (1) No officer, employee, or agent of the company may disclose any commercially sensitive information obtained, or obtained as a result of actions taken,—
 - (a) under this order; or
 - (b) under the Commodity Levies Act 1990 (as applied by section 305 of the Fisheries Act 1996) in relation to this order.
- (2) Subclause (1) does not prevent the disclosure of information—
 - (a) to another officer, employee, or agent of the company; or
 - (b) with the consent of every owner of quota for southern scallops, and every licensed fish receiver, to whom the information relates; or
 - (c) for statistical or research purposes, if the information is in a form that does not identify any person; or
 - (d) obtained from a ballot held before the commencement of this order, if the information is in a form that does not identify any owner of quota for southern scallops; or
 - (e) that is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—
 - (a) enforcing this order, including collection of the levy; or
 - (b) complying with section 17(1) or 25 of the Commodity Levies Act 1990 (as applied by section 305 of the Fisheries Act 1996); or
 - (c) giving evidence in any legal proceedings taken under or in relation to this order.

*Conscientious objectors***20 Conscientious objectors**

- (1) An owner of quota for southern scallops, or a licensed fish receiver, who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the Chief Executive of the Ministry of Fisheries.
- (2) The Chief Executive must pay the amount to the company.

*Mediation of disputes***21 Appointment of mediator**

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy a person is required to pay.
- (2) Any party to a 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 under subclause (2), 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 28.

22 Remuneration of mediator

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed to by the parties to the dispute.
- (2) If the parties to the 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 fixed by the President (or authorised person) and specified as an amount to be paid by that party.

23 Conference to resolve dispute

- (1) A mediator may organise and preside at 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference is to be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

24 Conference to be held in private

Only the mediator and the parties to a dispute may attend a conference, unless clause 25 applies.

25 Representatives

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

26 Right to be heard

The following persons may be heard at a conference:

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

27 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference to verify the evidence by statutory declaration.

28 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the dispute is not resolved at a conference; 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 the decision.
- (3) The parties must comply with the mediator's decision.

29 Costs of mediation

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

30 Appeal to District Court

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

Revocation

31 Revocation

- (1) The Commodity Levies (Southern Scallops) Order 1996 (SR 1996/197) is revoked.
- (2) Amounts of levy that became payable under the Commodity Levies (Southern Scallops) Order 1996 before 15 July 2007

continue to be due and payable as if that order had not been revoked.

Rebecca Kitteridge,
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 comes into force on 15 July 2007. It replaces the Commodity Levies (Southern Scallops) Order 1996, which expires at the close of 14 July 2007.

This order imposes a levy on all southern scallops taken by commercial fishing and landed to a licensed fish receiver. The levy is payable to Challenger Scallop Enhancement Company Limited.

The scallop on which the levy is payable is the mollusc *Pecten novaezelandiae* (other than scallop spat) found in the southern scallop fishery, which is the New Zealand fisheries waters defined as quota management area SCA7 in Part 3 of Schedule 1 of the Fisheries Act 1996.

The order expires 6 years after it is made, by virtue of section 13(1) of the Commodity Levies Act 1990, unless it is revoked or extended before then.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 14 June 2007.

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Notes**1 General**

This is a reprint of the Commodity Levies (Southern Scallops) Order 2007. The reprint incorporates all the amendments to the order as at 11 June 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Commodity Levies Act 1990 (1990 No 127): section 13(1)
