

[In Confidence]

Office of the Minister of Fisheries
Chair, Cabinet Legislation Committee

COMMODITY LEVIES (MUSSELS, OYSTERS AND SALMON) ORDER 2019

Proposal

1. This paper recommends that the Cabinet Legislation Committee authorise the submission of the Commodity Levies (Mussels, Oysters and Salmon) Order 2019 to the Executive Council.

Executive Summary

2. The Commodity Levies Act 1990 (the Act) allows orders to be made on the recommendation of a Minister to impose a levy on a commodity, payable to a body corporate.
3. The Act sets out requirements about which the Minister must be satisfied in order to recommend making a levy order, including that there must have been a referendum of potential levy payers.
4. Aquaculture New Zealand (AQNZ) is a limited liability company representing mussel, oyster and salmon farmers. It is currently funded via the Commodity Levies (Mussels, Oysters and Salmon) Order 2013, which expires on 16 June 2019.
5. AQNZ has applied for a new levy order to replace the current order from 17 June 2019. It provides that the maximum levy to be collected from mussel, oyster and salmon farmers will be approximately \$6 million per year (based on current landing value estimates). AQNZ plans to collect \$1.3 million in levies in 2019/20, in line with the current levies for 2018/2019.
6. AQNZ consulted with mussel, oyster and salmon farmers and conducted a referendum to assess support for the levy proposal in August 2018. The Act requires support from more than half of the voters, who must collectively hold more than half of the total green-weight tonnage harvested.
7. In the referendum, 86 percent of voters supported the levy proposal. This represents 87 percent of the green-weight tonnage harvested by those who voted.
8. I am satisfied that AQNZ's application meets all the requirements set out in the Act, including the nature and outcome of the support referendum.

Policy

Commodity Levies Act 1990 (the Act) provisions

9. The Act enables industry groups relating to agricultural, farming, forestry, horticulture, mineral or wild product to collectively fund industry-good activities such as research and development through a levy. The Ministry for Primary Industries (MPI) currently administers 30 orders made under the Act that collect over \$126 million in total each year across primary sector industries. Section 305 of the Fisheries Act 1996 applies the Act to seafood industries.
10. Levy payers determine the levy rates and how the levies are spent through annual consultation and by electing the board directors of the levying organisations.
11. A commodity levy order lasts for six years unless it is extended or revoked earlier. Industry groups can choose either to replace the expiring order with a new one or extend the existing order for another five years.
12. It has been common practice for more than a decade for levy orders made under the Act to go to the Cabinet Legislative Committee, without receiving prior Cabinet policy approval. This is because the Act sets out all of the policy requirements that need to be met for the making of an order.
13. To recommend the making of a levy order, the relevant Minister must be satisfied that:
 - a support referendum was held within the previous 12 months;
 - the referendum was adequately publicised and there was meaningful consultation with potential levy payers to ensure they were aware of the referendum's implications and were able to participate;
 - the ballot paper seeking potential levy payer support was competently devised;
 - more than half of the participants, collectively holding more than half of the green-weight tonnage harvested, supported the levy proposal; and
 - the use of the levy relates closely to the interests of potential levy payers.

Comment

Background to the aquaculture industry and the applicant

14. The New Zealand aquaculture industry dates back to the mid-1960s with small scale marine farming of oysters and mussels. The industry began exporting in the 1970s.
15. Key farmed species are Greenshell Mussels, King Salmon and Pacific Oysters. Farming areas include coastal waters of Marlborough Sounds, Coromandel, Northland, Auckland, Golden and Tasman Bays, Canterbury, and Southland.

16. The total production volume is estimated to be around 115,000 tonnes per year (mussels 98,000 tonnes, salmon 15,000 tonnes, and oysters 2,000 tonnes). AQNZ estimated total aquaculture earnings in 2017 to be just over \$600 million, of which exports contributed \$428 million.
17. New Zealand Aquaculture Limited, trading as Aquaculture New Zealand (AQNZ), is the applicant organisation. AQNZ is a limited liability company established in 2007. AQNZ is primarily funded by the Commodity Levies (Mussels, Oysters, and Salmon) Order 2013. Currently, AQNZ raises around \$1.4 million in levies per year.
18. AQNZ's primary role is to represent mussel, oyster and salmon farmers' interests and promote sustainable management of the aquaculture industry in New Zealand. AQNZ plays a key role in driving industry initiatives to achieve the industry's aspirational goal of becoming a billion-dollar industry by 2025.
19. Mussel, oyster and salmon farmers have authorised AQNZ to collect and invest levy income on their behalf. AQNZ's Board represents the New Zealand Mussel Industry Council, the New Zealand Salmon Farmers Association and the New Zealand Oyster Industry Association.

The proposed Commodity Levies (Mussels, Oysters and Salmon) Order 2019

20. AQNZ has applied for a new replacement order to be effective from 17 June 2019, the day after the existing order will expire.
21. The provisions of the new levy order will be consistent with the current order. AQNZ considers that the current levy order is working well for the industry and no changes to the current levy arrangements are required. The following provisions will continue:
 - The maximum allowable levy rate per year will continue to be 2 percent of per tonne landing value (Relative Dollar Value) of mussels, oysters and salmon plus GST. Based on AQNZ's current landing value estimates, the maximum allowable levy rate could be as high as \$26 per tonne for mussels, \$200 per tonne for oysters and \$200 per tonne for salmon.
 - Levy rates for the first year (2019/20) are proposed as: Mussels; \$10.79 per tonne, oysters; \$26.55 per tonne and salmon; \$14.69 per tonne. This will provide \$1.3 million in levy income for AQNZ in 2019/20. The proposed rates are well below the maximum allowable levy rates stated above.
 - The AQNZ Board will set the annual levy rates, within the maximum allowable limit, in consultation with levy payers.

Use of levy funds

22. The levy rates, the total levy income (\$1.3 million) and activities to be funded for the first full year under the proposed levy order will be similar to those under the current levy order.

23. AQNZ proposes to spend the levy on any or all of the following purposes:
- Promoting aquaculture industry activities and market development plans;
 - Research, including biological, environmental and market research;
 - Public relations and representation activities associated with the aquaculture industry;
 - Trademark and patent search, applications and protection;
 - Iwi consultation and promoting iwi participation in aquaculture;
 - Development and updating of code(s) of practice;
 - Protection of property rights, including submissions on coastal plans, seabed claims and coastal tendering;
 - Administration of approved annual activities and legal responsibilities of AQNZ including the collection of industry levies and management;
 - Development and implementation of quality assurance programmes including food safety, water quality and ecological performance; and
 - The protection and improvement of the health of mussels, oysters and salmon.

Compliance with the Commodity Levies Act 1990 and support for the levy proposal

24. I am satisfied that the levy application complies with the Act, with respect to the support referendum and all the other matters that I am required to consider.
25. AQNZ consulted potential levy payers on the new order, by conducting a referendum to assess potential levy payers' support during August 2018.
26. AQNZ sent ballot papers to the 201 potential levy payers on AQNZ's database. The results of the referendum were:
- a. *Participation:* A total of 85 potential levy payers participated in the referendum giving a participation rate of 42 percent. This is nearly a 10 percentage point improvement compared to the 33 percent participation rate of the last referendum conducted by AQNZ in 2013. The Act does not require a specific participation threshold but the responsible Minister needs to be satisfied that the referendum was well publicised; and
 - b. *Support:* out of all 85 participating potential levy payers, 86 percent supported the levy proposal. This represents 87 percent of the tonnage harvested by those who voted. This comprehensively meets the requirements of the Act, which requires over 50 percent support of participants.
27. I am satisfied that the referendum was adequately publicised and that there was meaningful consultation with quota owners to ensure they were aware of the referendum's implications and were able to participate.

Costs and benefits of the levy

28. The activities in which the levy income will be invested include representing industry interests, promotion and market development, research and innovation, improving biosecurity and environmental outcomes, and the day-to-day administration of AQNZ. These activities are consistent with the requirements of the Act.
29. Such activities funded through the levy order will contribute to the sustainable management and growth of the aquaculture industry. The aquaculture industry plays an important role in the social, cultural and economic wellbeing of New Zealanders, particularly in coastal regional communities.
30. The direct cost to the industry from the levy is \$1.3 million for the 2019/20 levy year, which is 0.2 percent of the total annual earnings of the industry.
31. The comprehensive vote in support of a new replacement order demonstrates that levy payers consider that the overall benefits will outweigh the cost of the proposed levy.

Impact Analysis

32. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment, as they have no or minor impacts on businesses, individuals or not for profit entities.

Compliance

Treaty of Waitangi

33. This proposal is consistent with the principles of the Treaty of Waitangi.

Human Rights

34. This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Privacy Act 1993

35. This proposal is consistent with the principles and guidelines set out in the Privacy Act 1993.

International standards and obligations

36. This proposal is consistent with relevant international standards and obligations.

Legislation Guidelines (2018)

37. This proposal does not depart from the default approach in the guidelines.

Consultation

38. The Ministry for Business, Innovation and Employment, the Treasury, and Te Puni Kōkiri were consulted on this paper. A draft of this paper was also forwarded to the Department of the Prime Minister and Cabinet for its information.
39. AQNZ was consulted on the drafting of the levy order.

Legislative Implications

40. The levy order has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Proactive Release

41. Following Cabinet consideration I intend to consider the release of this paper in full.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **Note** that New Zealand Aquaculture Limited, trading as Aquaculture New Zealand has applied for a new levy order under the Commodity Levies Act 1990, imposing a levy on mussel, oyster and salmon farmers;
2. **Note** that the proposed levy order will replace the Commodity Levies (Mussels, Oysters and Salmon) Order 2013;
3. **Note** that the application for the new levy order complies with the requirements of the Commodity Levies Act 1990;
4. **Authorise** the submission of the Commodity Levies (Mussels, Oysters and Salmon) Order 2019 to the Executive Council; and
5. **Note** that the Commodity Levies (Mussels, Oysters and Salmon) Order 2019 would come into effect on 14 June 2019.

Authorised for lodgement

Hon Stuart Nash
Minister of Fisheries