

May 2006 (Based on paper provided in March 2006)

A BRIEF HISTORY OF “28N RIGHTS”

Origin and Law in respect of 28N Rights

These rights originate under section 28N and 28OE of the Fisheries Act 1983. These sections were part of the major amendment to the Act that introduced the quota management system (QMS) in 1986.

Although referred to as 28N rights, the rights arise under other sections (s.28T and s.28OE). However, it is in respect of the uncompensated reductions to provisional maximum individual transferable quota (PMITQ) under s.28N that the rights were granted – hence the tag. The short version goes like this:

In preparation for commencement of the quota management system in 1986, commercial fishers’ reported catch history was assessed. Fishers could choose the best 2 of 3 qualifying years to ensure that individuals were not penalised for one bad year, and the average of these two years was used. However, this meant that the total of those assessed catch histories, recorded as PMITQ, was generally greater than the highest total catch for any of the qualifying years for the stock in question. So, aside from any reductions to total catch required for sustainability reasons, in most stocks reductions to PMITQs were also required just to get the total of catch rights back to the old TACs.

For some inshore species, the Government offered to receive tenders to buy packages of PMITQ from fishers. Many of the tenders were for amounts greater than the government valuations indicated the rights were worth and were refused. About a third of the required reductions for those species were bought. In a second round, the Government offered fishers 80% of what they had paid in the first round as a last chance to sell rights back, under condition that if insufficient rights were offered the next move would be uncompensated pro rata reductions. About another third was bought. A total of \$42 million was spent on the buy-back.

Those that chose not to sell, and to have their rights reduced without compensation, became entitled (originally through section 28T, later replaced by 28OE) to have those reduced PMITQ rights restored in the future as quota, should the TACC for the relevant stock be increased. The procedure followed is that the 28N rights are recorded for each fisher as a tonnage, and so when a TACC for a stock is increased, any outstanding 28N rights are honoured first before other quota holders receive an increased catch allocation.

28N rights are not transferable. They can only be redeemed to the original quota holder that had their PMITQ reduced, and that quota holder must have continuously owned ITQ in the relevant stock.

Under the Fisheries Act 1996, these rights are carried forward and clarified under section 23. Implementation of the adjustments to holdings under the Fisheries Act 1996 is a bit complicated but boils down to the same thing – 28N right holders get first dibs when a TACC increase happens until all those rights are discharged.

Rebuilding Stocks

28N rights only work within the TACC. That is, they are not additional to a TACC and don't force any action like reductions or increases in TACCs. They only become operative—causing a redistribution of quota shares among quota owners—when a TACC is increased.

What Stocks have 28N Rights?

The numbers in the tables below were sourced from the databases last year and are subject to change over time. Although no more rights have been discharged since then, if a client sells all of their quota in a stock the 28N rights disappear (since they are not transferable) So, treat these numbers as a guide. If you require further information on these rights, including names of who holds them, you will need to apply to FishServe – the quota registry.

The total 28N rights derived from the pro rata reductions in the buyback stocks was around 5,000 tonnes. There is a total of about 3,000 tonnes of 28N rights still on the books. Significant rights are still outstanding in HPB2, HPB3, PAU4, RCO3, SNA1, SNA8, TRE1, and TRE7 (see table).

Table 1: Discharged 28N rights

Stock Code	Date	Old TACC Amount (kg)	New TACC Amount (kg)	Before Increase s28n rights	Number of clients with s28n rights before increase	After Increase s28n rights	Number of clients with s28n rights after increase
BAR1	1/10/1996	9969500	11000000	778300	39	0	0
BNS3	1/10/1992	175000	350000	34600	13	0	0
BYX2	1/10/1991	1274300	1480000	157000	14	0	0
ELE3	1/10/1995	423600	500000	25300	24	0	0
GUR3	1/10/1991	524000	600000	33800	46	0	0
GUR7	1/10/1991	678200	815000	20300	36	0	0
LIN3	1/10/1994	2166600	2800000	4200	10	0	0
MOK1	1/10/1993	157400	200000	46800	50	4381	50
MOK1	1/10/1995	200000	400000	4072	45	0	0
MOK3	1/10/1992	71400	120000	11500	25	0	0
SNA2	1/10/1992	157400	250000	26000	17	0	0
SNA7	1/10/1997	160300	200000	58100	15	19334	15
SPO1	1/10/1991	688100	825000	13000	41	0	0
SPO2	1/10/1991	70900	85000	19500	23	5400	23
SPO3	1/10/1991	363900	430000	172300	71	106200	71
SPO3	1/10/2000	453900	600000	106864	28	0	0
SPO7	1/10/1991	294100	350000	48200	50	0	0
STA2	1/10/1991	37400	100000	6600	6	0	0
STA3	1/10/1991	733900	900000	14700	27	0	0
STA7	1/10/1991	527700	700000	500	3	0	0
ELE3	1/10/2002	825000	950000	300	1	0	0
SNA2	1/10/2002	252300	315000	1400	1	0	0
BNS2	1/10/2004	873400	1048000	104652	11	0	0
SCH3	1/10/2004	321905	387000	44900	19	0	0
SCH7	1/10/2004	533700	641000	71900	23	0	0
SCH8	1/10/2004	440600	529000	5500	7	0	0

SPO2	1/10/2004	72014	86000	3187	8	0	0
TAR2	1/10/2004	1632800	1796000	19300	5	0	0
TAR3	1/10/2004	1169470	1403000	49500	17	0	0

Total rights redeemed 1746,960

Table 2. Quantity of 28N rights not redeemed: Oct 2004

Stock Code	Total 28N rights as at Oct 04 (kgs)
BAR1	78900
BCO4	700
BCO7	3700
BYX2	16470
BYX3	300
GMU1	29500
GUR1	85150
GUR3	6000
HPB1	1200
HPB2	32500
HPB3	51900
HPB7	3600
JDO1	6300
LIN2	7600
LIN7	111000
MOK1	2075
MOK3	1000
PAU2	419
PAU3	80
PAU4	26303
PAU5A	440
PAU5B	513
PAU5D	210
PAU7	8830
RCO3	189600
SCH1	38100
SCH2	2700
SKI2	43200
SKI7	152500
SNA1	533735
SNA7	17405
SNA8	933500
SPO1	500
SPO3	1000
SPO7	300
STA2	500
STA3	2900
TRE1	332000
TRE7	224500
WAR2	4000
WAR3	88900
Total	3040,030

