

LIVING MARINE RESOURCES MANAGEMENT ACT 1995
SECTION 75 - MINISTERIAL GUIDELINE

**SUBJECT: TRANSFER A LICENCE WHERE AN APPLICATION HAS BEEN
MADE UNDER SECTION 90 OF THE ACT TO SUSPEND OR CANCEL THE
LICENCE.**

This guideline is to replace a guideline dated 18 October 2004.

OBJECTIVES:

To provide for procedures in the event of an application being made before a magistrate to suspend or cancel a licence.

POLICY STATEMENT:

A licence is not to be transferred to another person as provided by Section 82 of the *Living Marine Resources Management Act 1995* whilst an application is before a magistrate to suspend or cancel a licence pursuant to Section 90 of the Act.

BACKGROUND:

Fishing licences particularly licences that have a limited number have become a tradeable commodity. Some of these licences are sold for many thousands of dollars.

Under Section 90 of the Act the Secretary may apply to a magistrate to suspend or cancel a licence for any period on the grounds that:-

(a) the holder of the licence has been convicted of an offence against the Act or the Fisheries Act 1959 subsequent to the grant of that licence; or

(b) the holder of the licence has been convicted under a corresponding law or under legislation of New Zealand of an offence substantially the same as an offence against this Act; or

(c) the licensee has contravened or failed to comply with any condition of the licence;
or

(d) the holder of the licence has failed to submit any records under this Act; or

(e) any fee or charge or other money payable in respect of the licence has not been paid by the due date.

The authority conferred by a licence is of no effect during any period the licence is suspended

Section 82 of the Act states that the Minister may grant an application for the transfer of a licence if satisfied that:-

- (a) the other person has complied with this Act; and
- (b) the other person, within 5 years before the date of the application, has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of the licence; and
- (c) the other person is not disqualified from holding the licence; and
- (d) granting the application is not likely to contravene a management plan; and
- (e) there are no environmental or resource constraints in granting the application; and
- (f) the other person is a fit and proper person to hold the licence; and
- (fa) granting the application is consistent with guidelines issued under section 75; and
- (fb) in respect of a relevant licence within the meaning of the *Fishing (Licence Ownership and Interest) Registration Act 2001*, an application has been made under that Act by the owner of that licence to cancel all entries in the register under that Act relating to that licence; and
- (g) the applicant has paid the appropriate fees and charges.

The Minister may refuse to grant an application if not satisfied as required.

There are provisions in the Act that provide for the Minister to defer the transfer of a licence pending the outcome of proceedings where a charge is to be determined.

Those provisions are designed to protect persons from becoming the holder of a licence that may cease to be in force due to the subsequent accumulation of demerit points and also prevents a licensee from profiting from the transfer of a licence which subsequently is affected by the accumulation of demerit points.

The Minister therefore issues this guideline to be consistent with the Act and directs that no transfer of a licence is to be effected under Section 82 of the Act whilst proceedings are being taken to suspend or cancel a licence under Section 90 of the Act.

Approved by:



Date: 24 07 /2006

David Llewellyn MHA
Minister for Primary Industries and Water