

FISHERIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Fisheries Act 1908.

Clause 1 relates to the Short Title.

Clause 2 adds to section 2 a new subsection (3) which makes it clear that where in Part I of the principal Act or in any regulations made under that Part there is a reference to a fish, oyster, or marine mammal, that reference includes any part of any such fish, oyster, or marine mammal.

Clause 3 replaces section 4 of the principal Act, which provides for the appointment of fishery officers. The new section 4 brings the appointment of such officers into line with the State Services Act 1962. The new section also empowers the Secretary for Marine to issue warrants of authority to any officers appointed under the section.

The clause also replaces section 9 (2) of the principal Act, which deals with the production of warrants by fishery officers when exercising their powers under section 9 (1). The amendment is consequential on the amendment to section 4.

Clause 4 re-enacts in an amended form section 49 of the principal Act, which makes it an offence to buy, sell, or be in possession of fish, oysters, or seals taken in breach of the Act. Additional defences are being provided for any person charged with offending against the section. The offence relating to buying, selling, or possessing oysters during a close season is not being retained since it is provided for in regulations made under section 5 of the principal Act.

The maximum fine for an offence against the section is being increased to \$500. The present maximum fine is \$40.

Clause 5 re-enacts in an amended form section 58 (1) of the principal Act, which empowers the officer commanding a vessel of the New Zealand Naval Forces and certain other responsible persons to seize and search ships and boats liable to forfeiture under Part I of that Act. Since there is a possibility that the subsection could be interpreted as applying only to ships and boats engaged in illegally taking seals (see section 57 of the principal Act), the opportunity is being taken to remove the ambiguity by redrafting the subsection and applying it to all cases where there is reasonable cause for believing that an offence against Part I, or any regulations under that Part, has been committed on or from any ship or boat.

Clause 6 inserts in the principal Act a new section 58A which will facilitate the apprehension by an officer commanding a New Zealand naval vessel, an Inspector of Sea Fishing, a constable, and the master of a New Zealand Government ship of any person (being the owner, charterer, or master or a crew member of a vessel other than a New Zealand ship within the meaning of the Shipping and Seamen Act 1952) who the officer, Inspector, constable, or master finds committing an offence against Part I of the principal Act or against any regulations made under that Part, or whom he has reasonable cause to believe has committed any such offence. Any person apprehended under the section must be brought before a Magistrate within 48 hours of his being apprehended, or otherwise he must be released.

Clause 7 repeals section 63 of the principal Act, which makes it an offence to remove boundary marks of oyster beds. Since the boundaries of oyster beds are never defined, the section is obsolete. Boundaries of rock oyster farms are all dealt with in the Rock Oyster Farming Act 1964.

Clause 8 repeals section 69 of the principal Act, which provides that, where any person has been convicted for any offence under Part I of the principal Act, he shall be released from all further proceedings, whether civil or criminal. As further criminal proceedings are barred by sections 357 to 360 of the Crimes Act 1961 the section is not required in respect of further criminal proceedings. The repeal will, however, enable civil proceedings to be brought against a person even though he has been convicted for an offence under the said Part I.

Clause 9 repeals section 76 of the principal Act, which provides that no proceedings under Part I of that Act are to be taken against a Maori unless the authority of the Minister of Maori Affairs has first been obtained.

Clause 10 amends section 77 of the principal Act, and provides that Part I of the Act is not to apply to persons who have been granted permission by the Secretary for Marine to carry out trials and experiments prohibited or restricted.

Clause 11: The effect of sections 5 (1) and 12 (1) of the Fisheries Amendment Act 1963 is that a fishing boat may not be used in fishing for the purposes of sale unless it is registered as a fishing boat under Part I of that Act and holds the appropriate fishing permit under that Part. Registration under that Part is restricted to fishing boats owned by New Zealand residents or by companies controlled by New Zealand residents.

By section 2 of the Fisheries Act 1908, a "fishing boat" is defined as a vessel that is used in fishing for the purposes of sale, but in the case of vessels that are not New Zealand ships and do not land their catch in New Zealand it may be difficult in proceedings for an offence against Part I of the Fisheries Amendment Act 1963 to prove that they are fishing for the purposes of sale.

This clause inserts a new section 12A in the Fisheries Amendment Act 1963 making special provision in the case of vessels that are not New Zealand ships as defined in the Shipping and Seamen Act 1952. The section provides that such vessels may not be used in fishing, except for fisheries experimental or research purposes or for the purposes of sports fishing, and in each such case only with the consent of the Minister of Marine. "New Zealand ship" is defined in section 2 of the Shipping and Seamen Act 1952 as one that is registered in New Zealand under that Act (which requires all ships over 15 register tons to be registered), or is not more than 15 register tons and is employed solely on the coasts or inland waters of New Zealand, or is registered as a fishing boat under Part I of the Fisheries Amendment Act 1963.

This new section will accordingly apply to all other vessels, and it will not be necessary to prove that such vessels are fishing for the purposes of sale. The section extends to small boats and dories operating with a mother ship, and provides that in such cases the mother ship is fishing also.

The new section provides that if a vessel is used in fishing in breach of the section the owner, the charterer (if any), and the master and every member of the crew each commits an offence. The owner, charterer, or master will be liable to a maximum fine of \$5,000 and a member of the crew to a maximum fine of \$500. The forfeiture provisions in Part I of the Fisheries Act 1908 will apply also.

The clause also inserts a new section 12B which provides that no offence of being in possession of fish or oysters in contravention of Part I of the principal Act or of any regulations under that Part is committed by the owner, charterer (if any), or master or any crew member of any vessel (not being a New Zealand ship within the meaning of the Shipping and Seamen Act 1952) if the fish or oysters were taken beyond New Zealand fisheries waters and either remain on board the vessel or are transferred to another vessel that is not a New Zealand ship or, with the consent of the Minister, is landed in New Zealand.

Clause 12 enables formal evidence to be given in proceedings for an offence against Part I of the Fisheries Amendment Act 1963 by means of a certificate by the Secretary for Marine or an Assistant Secretary for Marine. Such a certificate may be produced as prima facie proof that the vessel concerned was not registered under that Part or was not a New Zealand ship within the meaning of the Shipping and Seamen Act 1952, or that a boat-fishing permit was not in force in respect of the vessel concerned, or that any person did not hold a shore-fishing permit.

Clause 13 amends section 21 of the Fisheries Amendment Act 1963 (which enables regulations to be made for the administration of the Act) by inserting in subsection (1) a new paragraph (hh) which authorises the making of regulations regulating the landing of crayfish.

Clause 14 re-enacts in an amended form section 79 of the principal Act, which relates to the appointment of officers for the purposes of Part II of the principal Act (which Part relates to freshwater fisheries). The new section brings the appointment of officers into line with the State Services Act 1962, and also empowers the Secretary for Marine to issue warrants of authority to any such officers. Section 4 of the Fisheries Amendment Act 1923 is being consequentially repealed.

The clause also re-enacts in an amended form section 80 (2) of the principal Act, which provides for the production of warrants by officers when exercising their powers. The amendment is consequential on the amendment to section 79.

Hon. Mr Scott

FISHERIES AMENDMENT

ANALYSIS

Title	9. Repeal of section relating to proceedings against Maoris
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4. Buying, selling, or possessing fish contrary to the Act	12B. Possession of fish, etc., by vessels that are not New Zealand ships
5. Seizure and search of ships and boats	12. Evidence in proceedings
6. Apprehension of persons on vessels other than New Zealand ships	13. Regulating the landing of crayfish
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A BILL INTITULED

An Act to amend the Fisheries Act 1908

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Fisheries Amendment Act 1967, and shall be read together with and deemed part of the Fisheries Act 1908* (hereinafter referred to as the principal Act).

10 **2. Interpretation**—Section 2 of the principal Act (as amended by section 2 (5) of the Fisheries Amendment Act 1959) is hereby further amended by adding the following subsection:

*Reprinted, 1966, Vol. 3, p. 2321

“(3) Every reference in this Part of this Act or in any regulations made under this Part to any fish, oyster, or marine mammal (including a seal) shall, unless the context otherwise requires, be deemed to include any part of any such fish, oyster, or marine mammal.”

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3. Appointment and powers of fishery officers in respect of sea fisheries—(1) The principal Act is hereby further amended by repealing section 4, and substituting the following section:

“4. (1) There may from time to time be appointed under the State Services Act 1962 suitable persons to be Inspectors of Sea Fishing and such other officers and assistants as are required for the purpose of the effective administration of this Part of this Act and regulations made under this Part; and every person so appointed shall have the powers and shall perform the duties laid down in this Part and such further duties as may from time to time be prescribed.

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“(2) Every Collector and every person appointed in accordance with subsection (1) of this section shall be deemed to be a fishery officer for the purposes of this Part of this Act.

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“(3) Every naval officer for the time being in command of a ship of the New Zealand Naval Forces shall have and may exercise, without further authority than this subsection, all the powers of a fishery officer under this Part of this Act as if he had been duly appointed an Inspector of Sea Fishing in accordance with subsection (1) of this section.

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“(4) The Secretary for Marine may from time to time issue to any fishery officer appointed in accordance with this section a warrant showing the officer’s authority to exercise the powers conferred on fishery officers by this Part of this Act.

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“(5) Every warrant issued under subsection (4) of this section purporting to bear the signature of the Secretary for Marine shall be deemed, until the contrary is proved, to have been duly issued by him. In this subsection the term ‘signature’ includes a facsimile of a signature, by whatever process it is reproduced.

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“(6) On the termination of his appointment, a fishery officer shall surrender to the Secretary for Marine any warrant issued to him under this section.”

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(2) Section 9 of the principal Act is hereby amended by omitting from paragraph (e) of subsection (1) the words “by regulations under this Act”, and substituting the words “by this Part of this Act or by regulations made under this Part.”

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(3) The said section 9 is hereby further amended by repealing subsection (2), and substituting the following subsection:

5 “(2) The production by any fishery officer appointed in accordance with section 4 of this Act of any instrument of appointment issued to him under the State Services Act 1962 or of any warrant of authority issued to him under the said section 4, or, in the case of an honorary fishery officer, the production by him of his warrant of appoint-
10 ment, shall, until the contrary is proved, be sufficient authority for any such officer to do anything authorised by subsection (1) of this section.”

(4) Section 18 of the Statutes Amendment Act 1948 is hereby consequentially repealed.

15 (5) Section 20 of the Fisheries Amendment Act 1963 is hereby consequentially amended by repealing subsection (3).

4. Buying, selling, or possessing fish contrary to the Act—

(1) The principal Act is hereby further amended by repealing section 49, and substituting the following section:

20 “49. (1) Every person commits an offence who buys, sells, or has in his possession any fish, oysters, or seals taken in contravention of this Part of this Act or any regulations made under this Part:

25 “Provided that in any proceedings for an offence against this subsection, it shall be a defence if the defendant satisfies the Court that he did not know, and could not with the exercise of reasonable care have known, that the fish, oysters, or seals to which the alleged offence relates were taken as aforesaid.

30 “(2) Every person commits an offence who in New Zealand or within New Zealand fisheries waters buys, sells, or has in his possession any fish or oysters taken (whether by a New Zealand ship within the meaning of the Shipping and Seamen Act 1952 or not) beyond New Zealand fisheries waters, if the
35 taking of the fish or oysters within New Zealand fisheries waters from a fishing boat registered under the Fisheries Amendment Act 1963 would be a contravention of this Part of this Act or of any regulations made under this Part:

40 “Provided that, in any proceedings for an offence against this subsection, it shall be a defence if the defendant satisfies the Court that—

“(a) The fish or oysters to which the offence relates were preserved in containers or cured in some country other than New Zealand; or

“(b) He did not know, and could not with the exercise of reasonable care have known, that the fish or oysters to which the alleged offence relates were taken as aforesaid.

“(3) Every person who commits an offence against this section is liable to a fine not exceeding five hundred dollars. 5

“(4) Nothing in this section shall be construed to affect the provisions of the proviso to subsection (2) of section 2 of this Act.

“(5) For the purposes of this section ‘sell’, in relation to any fish, oyster, or seal, includes barter, and also includes offering or attempting to sell, or receiving for sale, or exposing for sale, or sending or delivering for sale.” 10

(2) The Territorial Sea and Fishing Zone Act 1965 is hereby consequentially amended by repealing so much of the Schedule to that Act as relates to section 49 of the Fisheries Act 1908. 15

5. Seizure and search of ships and boats—(1) Section 58 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: 20

“(1) The officer in command of any vessel of the New Zealand Naval Forces or any Inspector of Sea Fishing or any constable or the master of any New Zealand Government ship within the meaning of the Shipping and Seamen Act 1952 may, without limiting the powers conferred by sections 52 and 56 of this Act,— 25

“(a) Enter upon, seize, and take possession of any ship or boat within New Zealand or New Zealand fisheries waters on or from which he has reasonable cause to believe that an offence against this Part of this Act, or against any regulations made under this Part, is being or has been committed; and 30

“(b) At any time enter upon any ship or boat within New Zealand or New Zealand fisheries waters, and there search for, seize, and take possession of any fish, oysters, or seals, in respect of which he has reasonable cause to believe that an offence against this Part, or against any regulations made under this Part, has been committed. 35

“(1A) Any officer, Inspector, constable, or master exercising any power conferred on him by subsection (1) of this section may do so with the aid of such assistants as he considers necessary for the purpose.” 40

(2) The Territorial Sea and Fishing Zone Act 1965 is hereby consequentially amended by repealing so much of the Schedule as relates to section 58 of the Fisheries Act 1908.

5 **6. Apprehension of persons on vessels other than New Zealand ships**—The principal Act is hereby further amended by inserting, after section 58, the following section:

10 “58A. (1) Where the officer in command of any vessel of the New Zealand Naval Forces or any Inspector of Sea Fishing or any constable or the master of any New Zealand Government ship within the meaning of the Shipping and Seamen Act 1952—

15 “(a) Finds any person (being the owner, the charterer, or the master, or a crew member of a vessel other than a New Zealand ship within the meaning of the Shipping and Seamen Act 1952) committing an offence against this Part of this Act or against any regulations made under this Part; or

20 “(b) Has reasonable cause to believe that any such person has committed an offence as aforesaid,—
the officer, Inspector, constable, or master, as the case may be, may, without first requiring the person to disclose his true name and address, apprehend him and cause him to be taken as soon as practicable before a Magistrate to be dealt with according to law.

25 “(2) No person apprehended pursuant to subsection (1) of this section shall for any reason be detained for a longer period than forty-eight hours from the time of his apprehension before being brought before a Magistrate; and if he cannot for any reason be brought before a Magistrate within forty-eight hours
30 as aforesaid, then he shall be released.

“(3) Any officer, Inspector, constable, or master exercising the powers conferred on him by subsection (1) of this section may do so with the aid of such assistants as he considers necessary for the purpose.

35 “(4) Nothing in section 52 of this Act shall apply to any person liable to be apprehended under this section.”

7. Repeal of section relating to removal of boundary marks of oyster beds—Section 63 of the principal Act is hereby repealed.

8. Repeal of section relating to further proceedings—
Section 69 of the principal Act is hereby repealed.

9. Repeal of section relating to proceedings against Maoris—Section 76 of the principal Act is hereby repealed.

10. Limitation of Act—Section 77 of the principal Act is hereby amended by adding to paragraph (c) of subsection (1) the words “or to”, and by adding to that subsection the following paragraph: 5

“(d) Any person taking fish, with the written permission of the Secretary for Marine, from any waters where fishing is for the time being lawfully prohibited or restricted, or, pursuant to that permission, using fishing gear in those waters for the purpose of carrying out trials and experiments with fishing boats or fishing gear or any other apparatus whatsoever which is capable of being used in connection with the catching of fish: 10

“Provided that, if it is practicable to do so, the person taking any fish in the course of the trials or experiments shall return it to the water alive with as little injury as possible, but, if it is not practicable to return the fish to the water as aforesaid, he shall dispose of it in such manner as the Secretary for Marine may direct.” 15 20

11. New sections inserted relating to vessels other than New Zealand ships—The Fisheries Amendment Act 1963 is hereby further amended by inserting, after section 12, the following sections: 25

“**12A. Taking of fish by vessels that are not New Zealand ships—**(1) No vessel that is not a New Zealand ship within the meaning of the Shipping and Seamen Act 1952 shall be used in fishing in New Zealand fisheries waters, except for fisheries research or experimental or sports fishing purposes and then, in each such case, only with the consent of the Minister and subject to compliance with any conditions imposed by him in giving that consent. 30 35

“(2) In proceedings for an offence against this section, proof that any vessel was used for fisheries research or experimental or sports fishing purposes with the consent of the Minister shall lie on the defendant. 40

“(3) Where any small vessel that is carried by or attached to or operated in conjunction with any other vessel is used in fishing (whether that other vessel is within New Zealand fisheries waters or not), then, for the purposes of this section, 5 that other vessel shall also be deemed to be used in fishing at the time and place where that small vessel is so used.

“(4) If any vessel is used in fishing in breach of the provisions of this section, the owner, the charterer (if any), and the master of the vessel and every member of its crew 10 each commits an offence, and is liable—

“(a) In the case of an offence committed by the owner, charterer, or master, to a fine not exceeding five thousand dollars:

“(b) In the case of an offence committed by any member 15 of the crew, to a fine not exceeding five hundred dollars.

“12B. **Possession of fish, etc., by vessels that are not New Zealand ships**—Notwithstanding anything to the contrary in this Part of this Act or in any regulations made under this 20 Part, no offence of being in possession of fish or oysters in contravention of this Part or of any regulations under this Part shall be deemed to be committed by the owner, the charterer (if any), or the master or any crew member of any vessel (not being a New Zealand ship within 25 the meaning of the Shipping and Seamen Act 1952) if the fish or oysters were taken beyond New Zealand fisheries waters and either remain on board the vessel or, with the consent of the Minister, are landed in New Zealand.”

12. Evidence in proceedings—The Fisheries Amendment 30 Act 1963 is hereby further amended by inserting, after section 18A (as inserted by section 15 of the Fisheries Amendment Act 1965), the following section:

“18B. In proceedings for an offence against this Part of this Act, a certificate purporting to be signed by the Secretary for 35 Marine or an Assistant Secretary for Marine that on a date specified in the certificate—

“(a) A vessel specified in the certificate was not registered under this Part of this Act; or

“(b) A vessel specified in the certificate was not a New 40 Zealand ship within the meaning of the Shipping and Seamen Act 1952; or

“(c) No boat-fishing permit was in force authorising the taking of fish from a boat specified in the certificate; or

“(d) A person specified in the certificate was not the holder of a shore-fishing permit,— shall, in the absence of proof to the contrary, be sufficient evidence of the matters stated in the certificate.”

13. Regulating the landing of crayfish—Section 21 of the Fisheries Amendment Act 1963 is hereby amended by inserting in subsection (1), after paragraph (h), the following paragraph: 5

“(hh) Regulating the landing of crayfish at ports or places within the area of the registry at which the holder of a boat-fishing permit permitting the taking of crayfish has registered his fishing boat:” 10

14. Appointment and powers of officers in respect of freshwater fisheries—(1) The principal Act is hereby further amended by repealing section 79, and substituting the following section: 15

“79. (1) There may from time to time be appointed under the State Services Act 1962 such officers as are required for the effective administration of this Part of this Act and regulations made under this Part; and every person so appointed shall have the powers and shall perform the duties laid down in this Part and such further duties as may from time to time be prescribed. 20

“(2) Any person appointed as an officer as aforesaid may be appointed for a particular acclimatisation district within the meaning of the Wildlife Act 1953, or for any other particular area, or to carry out his duties generally throughout New Zealand. 25

“(3) The Secretary for Marine may from time to time issue to any such officer appointed in accordance with this section a warrant showing the officer’s authority to exercise the powers conferred on officers by this Part of this Act. 30

“(4) Every warrant issued under subsection (2) of this section purporting to bear the signature of the Secretary for Marine shall be deemed, until the contrary is proved, to have been duly issued by him. In this subsection the term ‘signature’ includes a facsimile of a signature, by whatever process it is reproduced. 35

“(5) On the termination of his appointment, an officer shall surrender to the Secretary for Marine any warrant issued to him under this section.” 40

(2) Section 80 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

5 “(2) The production by any officer appointed in accordance with section 79 of this Act of any instrument of appointment issued to him under the State Services Act 1962 or of any warrant of authority issued to him under the said section 79, or, in the case of an honorary officer, the production by him of his warrant of appointment, shall, until
10 the contrary is proved, be sufficient authority for any such officer to do anything authorised by this Part of this Act or by any regulations made under this Part or by section 6 of the Fisheries Amendment Act 1923.”

15 (3) Section 4 of the Fisheries Amendment Act 1923 is hereby consequentially repealed.