

Fisheries Management and Law Advisory Programme

**Regional Compendium of Fisheries Legislation
(Western Pacific Region)**

edited by

Bill Campell
FAO Consultant, Fisheries Legislation

and

Michael Lodge
Legal Counsel, FFA

*Report to the Governments of
the South Pacific Forum Fisheries Agency*

VOLUME II



South Pacific Forum Fisheries
Agency



Food and Agriculture Organization
of the United Nations
Rome, June 1993

REGIONAL COMPENDIUM OF FISHERIES LEGISLATION (WESTERN PACIFIC REGION)

TABLE OF CONTENTS

VOLUME I

Page

PART ONE - TABLES

A	Limits of national jurisdictions	3
B	Status of 200 mile zones	7
C	Nationality criteria for fishing vessels	11
D	Penalties for illegal national fishing	21
E	Penalties for illegal foreign fishing	37
F	Penalties for breach of conservation measures	57
G	Status of regional instruments	75

PART TWO - TEXTS OF NATIONAL FISHERIES LEGISLATION

AUSTRALIA	81
COOK ISLANDS	359
FEDERATED STATES OF MICRONESIA	459
FIJI	541

VOLUME II

KIRIBATI	615
MARSHALL ISLANDS	643
NAURU	687
NEW ZEALAND	701
NIUE	1071
PALAU	1095

VOLUME III

	<u>Page</u>
PAPUA NEW GUINEA	1149
PITCAIRN ISLAND	1319
SOLOMON ISLANDS	1365
TOKELAU	1405
TONGA	1429
TUVALU	1479
VANUATU	1533
WESTERN SAMOA	1585
 PART THREE - REGIONAL FISHERIES TREATIES, AGREEMENTS AND ARRANGEMENTS	
A Convention establishing the South Pacific Forum Fisheries Agency	1617
B Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America	1625
C Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Region	1667
D Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region	1677
E Nauru Agreement concerning Cooperation in the Management of Fisheries of Common Interest	1685
F Arrangement for the Management of the Western Pacific Purse Seine Fishery	1697

KIR (i)

KIRIBATI

Kiribati consists of 32 coral atolls in three main groups and one isolated phosphate island (Banaba), spread over more than 5,000,000 sq km of the Central Pacific Ocean and straddling both the Equator and the international date line. The island groups are the sixteen Gilbert Islands, from Makin to Arorae, eight Phoenix Islands and eight of the eleven Line Islands. The total land area of Kiribati is 600 sq km. Banaba, the Gilbert Islands and three of the Line Islands - Kiritimati (Christmas Island), Teraina (Washington) and Tabueran (Fanning Island) are populated. The remainder of the islands have no permanent population. The estimated total population in 1992 was 69,000.

The Gilbert and Ellice Islands were proclaimed a British Protectorate in 1892 and annexed as the Gilbert and Ellice Islands Colony with effect from 12 January 1916. In 1975 the Ellice Islands severed its constitutional links with the Gilbert Islands, first as the Colony of Tuvalu and later as Tuvalu. The Gilbert Islands Colony achieved internal self-government in 1976 and full independence as the Republic of Kiribati on 12 July 1979.

Under the Constitution of 1979 the Beretitenti (President) is both Head of State and head of the executive. He is elected for a four year term by popular vote from among the members of the Parliament. The Parliament of Kiribati is a unicameral legislature of 35 members elected from 20 constituencies and the Attorney-General, who is appointed by the Beretitenti. The Beretitenti selects the members of Cabinet.

The legal system of Kiribati derives from the Constitution of 1979 and Acts of Parliament, the ordinances of the Gilbert and Ellice Islands Colony and the ordinances of the Gilbert Islands Colony made prior to 1979, the statutes of general application in force in England on 1 January 1961 and the substance of the English common law and doctrines of equity subject to the circumstances of Kiribati and its people and Kiribati custom as applied in the courts.

Limits of National Jurisdiction

The Marine Zones (Declaration) Act 1983 defines and establishes a twelve mile territorial sea and a 200 nautical mile exclusive economic zone. The total area of the exclusive economic zone is 3.6 million sq km. Within the exclusive economic zone the Republic of Kiribati has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and the subsoil under the seabed, and the waters over the seabed. The Act also empowers the responsible Minister, in accordance with international law, to declare archipelagic baselines. To date, no declaration of archipelagic baselines has been made.

Kiribati has maritime boundaries with Nauru, Marshall Islands, the USA in respect of Jarvis Island, Kingman Reef, Palmyra Atoll and Howland and Baker Islands, New Zealand in respect of Tokelau, Tuvalu, France in respect of French Polynesia and Cook Islands. No maritime boundary agreements have been negotiated.

Fisheries Legislation

The basic fisheries law is the Fisheries Act (Cap.33). Under the Act, the Minister may take such measures as he may see fit to promote the development of fisheries and fishing in Kiribati to ensure that the fisheries resources of Kiribati are exploited to the full for the benefit of Kiribati. The Minister is empowered to appoint a Chief Fisheries Officer and licensing officers for the purposes of carrying out the provisions of the Act. The Act confers upon the Beretitenti, acting in accordance with the advice of the Cabinet, wide powers to make regulations relating, *inter alia*, to the licensing of foreign fishing vessels, the conditions to be observed by foreign fishing vessels, the conservation

and protection of all species of fish, prohibited fishing gear and methods and the organisation and regulation of marketing, distribution and export from Kiribati of fish and fish products.

The Fisheries Act creates a regulatory framework for the operation of fish processing establishments and the Fisheries (Processing and Export) Regulations 1981 prohibit the export of fish or fish products without a certificate of quality issued by a licensing officer.

Fisheries of all kinds are of vital significance to Kiribati and traditional fishing rights play an important role in Kiribati society. The Fisheries Act contains a provision to protect such rights by prohibiting the taking of fish in any sea or lagoon area or on any reef forming part of the ancient customary fishing ground of any *kainga* or *utu* or other division or subdivision of the people except by members of the *kainga* or *utu* or under a licence granted by the Minister in his discretion. The Native Lands Code also recognises various forms of customary tenure over fish traps, reefs and fish ponds and there are less formal controls exerted on many of the outer islands by island councils. These controls may include, for example, restrictions on gear types (banning of monofilament gill nets on one island), and prohibitions of fishing for certain species.

Licensing Requirements

A licence is required for all local fishing vessels. Local fishing vessels are defined in the Fisheries Act as vessels wholly owned by persons resident and domiciled in Kiribati or owned by a company or fisheries cooperative registered or incorporated in Kiribati, provided that sailing boats, paddling canoes and boats, punts and barges under seven metres in length are not regarded as fishing vessels for the purposes of the Fisheries Act and are thereby excluded from regulation.

Permits authorising fishing by foreign fishing vessels may be granted by the Chief Fisheries Officer with the approval of the Minister. Foreign fishing permits are subject to such conditions as may be prescribed and to such conditions as may be endorsed on the permit by the Chief Fisheries Officer.

To date, no regulations have been made prescribing the general conditions applicable to foreign fishing permits. Fees and royalties for foreign fishing are fixed by the Chief Fisheries Officer with the approval of the Minister.

The penalties for illegal foreign fishing are a fine of A\$250,000 for fishing in the exclusive economic zone without a valid permit and, for contravention of a permit, a fine of A\$50,000.

The Fisheries (Pacific Island Parties' Treaty with United States of America) Act 1988 implements, on the part of Kiribati, the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America. Under the Act, the treaty is accorded the status of law in Kiribati. A consequence of this is that, in respect of fishing vessels to which the treaty applies (i.e. all fishing vessels of the United States) the penalty in Kiribati for contravention of the treaty or the breach of an applicable national law is a fine of A\$250,000.

Conservation and Management

The Fisheries Act prohibits the use of explosives, poisons and noxious substances for the purpose of catching fish and it is an offence to possess explosives, poisons or other noxious substances in circumstances giving rise to a reasonable suspicion that the substance is intended to be used for fishing. The penalty for breach of this prohibition is a fine of \$1,000 or imprisonment for five years. There is little formal regulation of inshore fisheries in Kiribati though, as noted above, traditional fishing rights, which often include traditionally enforced conservation measures, play an important role in Kiribati. Fishing is prohibited in certain areas of Kiritimati and the Fisheries Conservation and Protection (Rock Lobsters - *Panulirus* Species) Regulations 1979 introduced minimum size limits throughout Kiribati in respect of rock lobsters (*Panulirus* spp.).

KIR (iii)

Under the Wildlife Protection Act (Cap.100) (not reproduced in this compendium) it is an offence to hunt, kill or capture wild turtles on land and the green turtle (*Chelonia mydas*) is fully protected throughout the Line and Phoenix Islands.

Regional and International Agreements relating to Fisheries

Kiribati is a member of the South Pacific Forum and is an ACP state of the European Community. Kiribati is also a member of the Forum Fisheries Agency and the South Pacific Commission. Kiribati has not signed or acceded to the United Nations Convention on the Law of the Sea. It is a party to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America and the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest. Kiribati signed the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific on 13 February 1990, subsequently ratifying the Convention on 10 January 1992.

Acts and Subsidiary Legislation of Kiribati
Reproduced in this Compendium

	Page
Marine Zones (Declaration) Act 1983 (No. 7 of 1983)	KIR 1
Fisheries Act (No. 22 of 1977) (Cap.33)	<i>Unofficial consolidation 1992</i> KIR 6
Am. Act 9 of 1978	
Am. Act 8 of 1983	
Am. Act 9 of 1984	
s. 2 Proclamation	LN 31/79
s.22 Prohibited Fishing Areas (Designation) Regulations	LN 61/78, LN 71/78
Fisheries Conservation and Protection (Rock Lobster - <i>Panulirus</i> species) Regulations	LN 3/79
Fisheries (Processing and Export) Regulations 1981	LN 41/81
Fisheries (Vessel Licences) Regulations 1981	LN 40/81
Fisheries (Vessel Licences) Regulation (No. 1) 1982	LN 13/82
Fisheries (Pacific Island States' Treaty with the USA) Act 1988	KIR 22

THE REPUBLIC OF KIRIBATI

MARINE ZONES (DECLARATION) ACT 1983

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Reference to rules of international law

PART II

THE MARINE ZONES

4. Internal waters
5. Archipelagic waters
6. Territorial seas
7. The exclusive economic zone
8. Legal character of marine zones, etc.
9. Rights of other states in marine zones
10. General regulations as to exclusive economic zone
11. Charts, publicity, etc.
12. Evidentiary provision

An Act to make provision in respect of the internal waters, the archipelagic waters, the territorial sea and the exclusive economic zone of Kiribati

Commencement: 16th May 1983

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

PART I

PRELIMINARY

Short title	1. This Act may be cited as the Marine Zones (Declaration) Act 1983.
Interpretation	2. (1) In this Act, unless the context otherwise requires - "the baseline of Kiribati" means the low-water line of the seaward side of the reef fronting the coast of any part of Kiribati or bounding any lagoon waters adjacent to any part of that coast, or where a reef is not present the low-water line of the coast itself; "Conservation and management" includes all rules, regulations, methods and measures that - (a) are required to build, restore or maintain, or are useful in rebuilding, restoring or maintaining, any fishery resource or the marine environment; or (b) are designed to ensure that - (i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis; and (ii) irreversible or long-term ill-effects on fishery resource or the environment are avoided; and (iii) there will be a multiplicity of options available with respect to future uses of these resources; "fishery resource" means any fishery, stock of fish, species of fish or habitat of fish; "low-tide elevation" means a naturally-formed area of land that is surrounded by and is above water at mean low-water spring tides but is submerged at mean high-water spring tides; "the low-water line", in relation to any area, means the line of low water at mean low-water spring tides as depicted on the largest scale nautical chart of the area held by the Minister responsible for marine affairs; "the median line" means a line every point of which is equidistant from the nearest point of - (a) the inner limits of the territorial sea of Kiribati; and (b) the corresponding baseline of any other country; "nautical mile" means an international nautical mile of 1,852 metres. (2) For the purposes of this Act, permanent harbour works that form an integral part of a harbour system shall be treated as forming part of the coast.
Reference to rules of international law	3. Where in this Act it is provided that anything shall be done by the Republic of Kiribati or by the Cabinet or a Minister, or any law or order shall be made, in accordance with the rules of international law, the question, whether it was so

done or made, is non-justiciable.

PART II

THE MARINE ZONES

**Internal
waters**

4. (1) For the purposes of any law of Kiribati, the internal waters of Kiribati are all waters inland of the base-line of Kiribati, and where closing lines are drawn in accordance with subsection (2) the waters inland of those lines to the extent that they are outside the base-line of Kiribati.

(2) The Minister may, in accordance with the rules of international law, declare, by reference to physical features marked on official charts or to lists of geographical co-ordinates specifying the geodetic datums, the points between which closing lines are to be drawn for the purpose of determining the outer limits of the internal waters of Kiribati, in the case of the mouths of or entrances to lagoons.

**Archipelagic
waters**

5. (1) For the purposes of any law of Kiribati, the archipelagic waters of Kiribati comprise all areas of sea contained within the baselines established under subsection (2).

(2) The Minister may, in accordance with the rules of international law, declare, by reference to physical features marked on official charts or to lists of geographical co-ordinates specifying the geodetic datums, the points between which straight base-lines are to be drawn for the purpose of determining the outer limits of the archipelagic waters of Kiribati and the inner limits of the territorial sea.

**Territorial
seas**

6. (1) Subject to subsection (2), for the purposes of any law of Kiribati the territorial seas of Kiribati are those parts of the sea within 12 nautical miles from the outer limits of the internal waters of Kiribati.

(2) Where archipelagic baselines are drawn under Section 5(2), the breadth of the territorial sea shall be measured from those baselines to the extent to which they are outside the outer limits of the internal waters of Kiribati.

**The exclusive
economic zone**

7. (1) Subject to the succeeding provisions of this section, for the purposes of any law of Kiribati the exclusive economic zone of Kiribati comprises those parts of the sea having as their inner limits the outer limits of the territorial sea and as their outer limits a line drawn 200 nautical miles seaward from the outer limits of the inland waters of Kiribati.

(2) The Minister may, in accordance with the rules of international law declare, by reference to physical features marked on official charts or to lists of geographical co-ordinates specifying the geodetic datums, points between which straight baselines are to be drawn for determining the outer limits of the exclusive economic zone.

(3) Where baselines are drawn in accordance with subsection (2) the breadth of the exclusive economic zone shall be measured from those baselines.

(4) The Minister may, by order, for the purpose of implementing any international agreement or the award of any international body, or otherwise declare that the outer limits of the exclusive economic zone of Kiribati extend to such line, being a line to the landward of the outer limits of the exclusive economic zone as defined in accordance with subsection (1) or subsection (3), as the case requires as is specified in the order.

(5) Where the median line is less than 200 nautical miles from the line from which the breadth of the territorial sea is to be measured, the outer limits of the exclusive economic zone extend to the median line.

(6) All areas of seabed, and the subsoil under the seabed, of the exclusive economic zone shall be treated, for the purposes of any law of Kiribati, as part of the continental shelf of Kiribati.

Legal character
of marine zones
etc.

8. (1) The sovereignty of the Republic of Kiribati extends beyond its land territory and internal waters over the territorial sea, and to the airspace over them and the seabed and subsoil under them.

(2) Within the exclusive economic zone the Republic of Kiribati has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and the subsoil under the seabed, and the waters over the seabed.

(3) The sovereignty and sovereign rights of the Republic of Kiribati under this section shall be exercised in accordance with the rules of international law.

Rights of other
States in
marine zones

9. (1) Subject to the succeeding provisions of this section, ships and aircraft of all States have, in accordance with the rules of international law, the right of free passage through and over the territorial seas and archipelagic waters of Kiribati.

(2) The Minister may, in accordance with the rules of international law, by order designate sealanes and air routes suitable for the continuous and expeditious passage of foreign ships and aircraft, through and over the archipelagic waters and the adjacent territorial seas, and may also prescribe traffic separation schemes for the purpose of ensuring the safe passage of ships through narrow channels in such sealanes.

(3) In sealanes and air routes designated under subsection (2) all ships and aircraft may, in accordance with the rules of international law, enjoy the right of navigation and overflight, in their normal modes, for the purpose of continuous, expeditious and unobstructed transit through and over the archipelagic waters and the adjacent territorial seas, from one part of the exclusive economic zone to another part of it.

(4) Until sealanes and air routes are prescribed under section (2) the rights of navigation and overflight referred to in subsection (3) may be exercised through and over all routes normally used for international navigation and overflight.

(5) The rights of navigation and overflight referred to in subsections (3) and (4)

Marine Zones (Declaration) Act

5

are subject to all laws of Kiribati made in accordance with the rules of international law.

(6) Subject to this and any other Act and to the rules of international law, all States and their nationals shall enjoy in the exclusive economic zone the high seas freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and all other internationally lawful uses of the sea related to those freedoms, compatible with the rules of international law.

General
regulations
as to the
exclusive
economic zone

10. Where no other provision is made in or under any other Act for the purpose, the Minister may make regulations, in accordance with the rules of international law, for all or any of the following purposes:-

- (a) regulating the conduct of scientific research within the exclusive economic zone; and
- (b) regulating the exploration and exploitation of the exclusive economic zone for the production of energy from waters, currents and winds, and for other economic purposes; and
- (c) regulating the construction, operation and use of artificial islands, installations and structures within the exclusive economic zone, including requirements of the establishment of safety zones around islands, installations and structures; and
- (d) prescribing measures for the protection and preservation of the marine environment of the exclusive economic zone; and
- (e) providing for such other matters as are necessary or expedient to give effect to the rights and obligations of the Republic of Kiribati in relation to the exclusive economic zone, or are necessary to give full effect to the provisions of this Act.

Charts publicity,
etc.

11. (1) The Minister shall cause all closing lines, baselines and other lines drawn for the purposes of this Act for determining the limits of the internal waters, the archipelagic waters, the territorial seas and the exclusive economic zone of Kiribati to be clearly indicated on charts of a scale or scales adequate for them to be readily determined, and shall give adequate publicity by notice in the Gazette and otherwise.

(2) A question, whether publicity given to any matter under subsection (2) is adequate, is non-justiciable.

(3) A copy of each chart referred to in subsection (1) shall be deposited with the Secretary-General of the United Nations and the Secretary-General of the South Pacific Commission.

Evidentiary
provision

12. In any proceedings before a court or a person acting judicially, a certificate purporting to be signed by the Marine Superintendent stating that any specific nautical chart of any area is a chart to which Section 11 applies that is held by the Minister is evidence of the matters stated in the certificate, and the chart is evidence of the matters set out in it.

CHAPTER 33

FISHERIES

ARRANGEMENT OF SECTIONS

PART I

GENERAL

1. Short title
2. Interpretation
3. Promotion of fisheries

PART II

LICENSING

4. Licensing of local fishing vessels
5. Entry and fishing by foreign fishing vessels within the fishery limits
6. Fish processing establishment
7. Cancellation and suspension of licences and permits

PART III

POWERS OF AUTHORISED OFFICERS

8. Power to stop, board, search vessels, etc.
9. Powers of an authorised officer where he reasonably believes an offence committed
10. Obstruction etc. of authorised officers
11. Authorised officers to declare office etc.
12. Non-liability of authorised officers

PART IV

ADDITIONAL OFFENCES AND LEGAL PROCEEDINGS

13. Throwing overboard or destroying incriminating evidence
14. Fishing with explosives, poison and other noxious substances
15. Forfeiture of gear, fish and vessels
16. Presumption

- 17. Jurisdiction of the courts
- 18. Disposal of seized goods

PART V

MISCELLANEOUS

- 19. Fishing for scientific purposes
- 20. Power of the Minister to enter into agreements
- 21. Protection of native customary rights
- 22. Regulations

22 of 1977 **An Act to make provision for the promotion and regulation of fishing and fishing**
9 of 1978 **industries in Kiribati and its fishery limits**
8 of 1983
9 of 1984

L.N. 27/78

Commencement: 3rd March 1978

PART I

GENERAL

- Short title 1. This Act may be cited as the Fisheries Act.
- Interpretation 2. In this Act, unless the context otherwise requires -
- "authorised officer" means any fisheries officer, licensing officer, police officer or officer as defined in the Customs Act, the master of any Government vessel or vessel owned by the Kiribati Shipping Corporation and any other person appointed by the Minister to be an authorised officer for the purposes of this Act;
- "explosive" means any powder, gelignite, plastic or other substance used or manufactured with a view to producing a practical effect by explosion;
- Am. 9 of 1984* "fish" means any aquatic animal, whether piscine or not, and includes any mollusc, crustacean, coral, sponge, seaweed, holothurian (beche de mer), sea urchins, and turtles and their young and eggs;
- Am. 9 of 1984* "fishing" means the actual or attempted fishing, catching, taking, killing, or harvesting of fish and includes any activity which may reasonably be expected to result in the fishing or attempted fishing or catching, taking, killing or harvesting of fish, or any operations in support of or in preparation for any of the foregoing activity;
- Am. 9 of 1984* "fish processing establishment" means any land, vessel, or other place on or in which

fish are processed for sale within or outside Kiribati;

"fish product" means any product of fish processing;

Am. 8 of 1983 "fishery limits" means the exclusive economic zone of Kiribati or such part of that zone as is defined by the Minister for the purpose by Notice published in the Gazette;

Am. 9 of 1984 "fishing vessel" means any vessel used or adapted for use for fishing commercially, and includes support vessels and craft, and helicopters and light aircraft used in fishing operations, but does not include a sailing boat or paddling canoe of native design or a boat, punt or barge having an overall length of less than 7 metres, whether powered by an engine or not;

"foreign fishing vessel" means any fishing vessel that is not a local fishing vessel;

"licensing officer" means a licensing officer appointed under section 3(2) and includes the Chief Fisheries Officer;

"local fishing vessel" means any fishing vessel -

- (a) owned by one or more persons resident and domiciled in Kiribati; or
- (b) owned by any company or fisheries cooperative society registered or incorporated under the laws of Kiribati, and having its principal place of business in Kiribati;

"low-tide" elevation" means a naturally formed area of land that is surrounded by and above water at mean low-water spring tides but is submerged at mean high-water spring tides;

"nautical mile" means the international nautical mile of 1,852 metres;

"operate" in relation to a vessel means to be the master or the owner or charterer of the vessel and in relation to a fish processing establishment means to own or be in charge of the fish processing establishment and, where the fish processing establishment is a vessel, means to be the master or owner or charterer thereof;

"processing" in relation to fish, includes preserving or preparing fish or producing any substance or article from fish by any method;

Am. 9 of 1984 "territorial sea" means that part of the sea adjacent to the coast of any island of Kiribati which is within 12 nautical miles measured from the low water mark of the seaward side of the reef fronting such coast, or, when a reef is not present, from the low water mark of the coast itself:

Provided that a low-tide elevation that lies wholly or partly within that part of the sea that would be territorial sea if all low-tide elevations were disregarded for the purpose of the measurement of the breadth of the territorial sea shall be treated as an island.

Promotion of
fisheries

3. (1) The Minister may take such measures as he shall see fit to promote the development of fishing and fisheries in Kiribati to ensure that the fisheries resources of Kiribati are exploited to the full for the benefit of Kiribati.

(2) The Minister may appoint a Chief Fisheries Officer and such other fisheries officers and licensing officers as he may consider necessary for carrying out the purposes and provisions of this Act.

PART II

LICENSING

Licensing of
local fishing
vessels

4. (1) Subject to any discretion given by the Minister a licensing officer may, upon written application in the prescribed form and upon payment of the prescribed fee grant a licence in the prescribed form in respect of any local fishing vessel;

Provided that no licence shall be granted to any local fishing vessel which is a vessel to which section 15(1) of the Shipping Act applies unless there is subsisting a valid and unexpired certificate of seaworthiness issued in respect of the fishing vessel under section 13 of that Act.

(2) Every licence granted under subsection (1) -

- (a) shall not, except with the prior written approval of the Minister endorsed on the licence, extend beyond 1 year from the date of issue thereof;
- (b) shall be personal to the holder;
- (c) shall not be transferable;
- (d) shall be subject to such conditions as may be prescribed and to such further conditions as the licensing officer shall think fit to endorse thereon; and
- (e) shall not, without the prior written approval of the Minister endorsed on the licence, confer on the licensee any exclusive right to fish.

(3) It shall be a condition of every licence granted under subsection (1) that there shall be marked and kept marked on the vessel in respect of which the licence is granted such letters and numbers of identification as may be assigned to that vessel by the licensing officer, in such manner as he may specify or as may be prescribed.

Am. 9 of 1978

(4) Any person who operates or causes or allows to be operated any local fishing vessel within the fishery limits or in the lagoon or inland waters of Kiribati except under a valid licence granted under this section in respect of that vessel and in accordance with the conditions of such licence shall be liable on conviction to a fine of \$1,000 and to imprisonment for 3 years.

Entry and
fishing by
foreign vessels
within the
fishery limits

5. (1) No foreign fishing vessel shall -

- (a) enter within the fishery limits except for a purpose recognised by international law;
 - (b) fish or attempt to fish within the fishery limits;
 - (c) load, unload or tranship any fish within the fishery limits;
 - (d) load or unload any fuel or supplies within the fishery limits;
- unless authorised to do so under a permit granted under this Act.

(2) A foreign fishing vessel entering the fishery limits for a purpose recognised by international law without a permit granted under this Act shall return outside those limits as soon as that purpose for which it entered them has been fulfilled.

(3) The Chief Fisheries Officer may, with the approval of the Minister, grant a permit in the prescribed form in respect of any foreign fishing vessel, authorising such vessel to do such of the things described in subsection (1) as may be provided for in the permit.

ss. 3A - 3D inserted Am. 9 of 1978. Deleted Am. 9 of 1984

(4) A permit granted by the Chief Fisheries Officer under this section shall be subject to -

- (a) such conditions as may be prescribed, and to such further conditions as may be endorsed upon the permit by the Chief Fisheries Officer, and
- (b) to the payment of such fees and royalties as may be determined by the Chief Fisheries Officer with the approval of the Minister.

(5) A permit granted by the Chief Fisheries Officer under this section shall not confer any exclusive right to fish unless the permit expressly so provides.

Am. 9 of 1984 (6) The fishing gear of any foreign fishing vessel which is prohibited by this section from fishing within the fishery limits shall, while the vessel is within those limits, be stowed in such a manner as not to be readily accessible for fishing.

Am. 9 of 1984 (7) Where any foreign fishing vessel is used in contravention of any of the provisions of this section, the master, owner and charterer, if any, of such vessel shall each be liable on conviction -

- (a) in the case of a contravention of subsection (1), to a fine of \$250,000; and
- (b) in the case of a contravention of subsection (2) or subsection (6), to a fine of \$50,000.

Am. 9 of 1984 (8) Where any foreign fishing vessel is used in contravention of any of the conditions of a permit granted under this section, the master, owner and charterer, if any, of such vessel shall each be liable on conviction to a fine of \$50,000.

Fish processing establishment 6. (1) The Chief Fisheries Officer may with the approval of the Minister and on payment of the prescribed fee grant to any person a licence in the prescribed form to operate a fish processing establishment subject to such conditions as may from time to time be prescribed and to such further conditions as may be endorsed upon the licence by the Chief Fisheries Officer.

(2) Any person who operates or causes or allows to be operated any fish processing establishment except under a valid licence granted under this section in respect of that fish processing establishment and in accordance with the conditions of such licence shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months.

Cancellation and suspension of 7. (1) Where any of the conditions of any licence or permit is contravened the Chief Fisheries Officer may cancel the licence or permit, or suspend such licence or

licences and
permits

permit for such period as he may think fit.

(2) Any person aggrieved by the refusal of any licensing officer to issue any licence granted under this Act, or by the cancellation or suspension of any licence or permit granted under this Act may appeal against such refusal, cancellation or suspension to the Minister, whose decision shall be final.

PART III

POWERS OF AUTHORISED OFFICERS

Power to stop,
board, search
vessels, etc.

8. For purposes of ascertaining whether there is, or has been, any contravention of the provisions of this Act any authorised officer may -

- (a) at all reasonable hours enter any fish processing establishment and any premises other than premises used exclusively as a dwelling house;
- (b) stop, board and search -
 - (i) any foreign or local fishing vessel within the fishery limits; or
 - (ii) any local fishing vessel, outside the fishery limits;
- (c) stop and search any vessel transporting, or reasonably suspected of transporting, fish or fish products;
- (d) make such examination and inquiry as may appear necessary to him concerning any premises, fish processing establishment, vessel or vehicle in relation to which any of the powers conferred by this section have been, or may be, exercised and take samples of any fish, or fish products, found therein;
- (e) require any person to produce his licence or his authority if it appears to the authorised officer that such person is doing any act for which a licence or authority is required under this Act.

Powers of an
authorised officer
where he reason-
ably believes an
offence committed

9. (1) Where he has reasonable grounds for believing that an offence against the provisions of this Act has been committed, any authorised officer, without a warrant, may -

- (a) following hot pursuit as recognised by international law and commenced within the fishery limits, stop, board and search outside the fishery limits any foreign fishing vessel which he believes has been used in the commission of an offence within the fishery limits, or in relation to which he believes such offence has been committed, and bring such vessel and all persons and things on board it within the fishery limits;
- (b) within the fishery limits -
 - (i) arrest any person whom he believes has committed such offence and, if the authorised officer making such arrest is not a police officer, he shall without necessary delay make over such person to a police officer, or in the absence of a police officer, shall take such person to the nearest police station;
 - (ii) in the case of an offence against sections 5(1), 13 or 14(1), seize any vessel (together with its equipment, stores and cargo bunker) which he believes has been used in the commission of such offence or in respect of which he believes such offence has been committed;
 - (iii) seize any fishing gear, instruments or appliances which he believes

Am. 9 of 1984

- have been used in the commission of such offence;
- (iv) seize any fish which he believes have been taken or fish products produced in the commission of such offence; or
- (v) seize any explosive, poison or other noxious substance which he believes has been used, carried, possessed or controlled in contravention of section 14.

(2) After any vessel has been stopped under the provision of this section any authorised officer may exercise concerning it, or in relation to any fish or fish products therein, any of the powers conferred by paragraph (d) of section 8.

(3) A written receipt shall be given for any thing seized under subsection (1) by the authorised officer concerned to the person from whom the seizure is made.

Obstruction etc.
of authorised
officers **10.** Any person who -
 (a) wilfully obstructs any authorised officer in the exercise of any of his powers under this Act; or
 (b) fails to comply with any lawful requirements imposed or to answer any lawful enquiry made by any authorised officer under this Act, including enquiries as to the source of supply of fish;
shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months, and if the obstruction or non-compliance takes place on board or alongside a vessel, the master of the vessel shall be liable on conviction to a like penalty.

Authorised officers
to declare office **11.** Any authorised officer acting in the exercise of his powers under this Act shall, on demand, produce such documents of identification or other evidence as may be reasonably sufficient to show that is an authorised officer for the purpose of this Act.

Non-liability of
authorised officers **12.** No authorised officer shall be personally liable in respect of any act done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Act.

PART IV

ADDITIONAL OFFENCES AND LEGAL PROCEEDINGS

Throwing overboard
or destroying
incriminating
evidence **13.** Any person who, being on board any vessel being pursued or about to be boarded by any authorised officer, throws overboard or destroys any fish, fishing gear, explosive, poison, noxious substance or any other thing whatsoever, with intent to avoid the seizure of such fish, fishing gear, explosive, poison, noxious substance or thing, or the detection of any offence against this Act, shall be liable on conviction to a fine of \$1,000 and to imprisonment for 5 years.

Am. 9 of 1984

Fishing with
explosives,
poison and other
noxious substances **14.(1)** Any person who -
 (a) permits to be used, uses or attempts to use any explosive, or any poison or other noxious substance, for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or
 (b) carries or has in his possession or control any explosive, poison or other

noxious substance in circumstances which raise a reasonable presumption that such an explosive, poison or other noxious substance is intended to be used for any of the aforesaid purposes shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months.

(2) Any person who, knowing or having reasonable cause to believe that any fish has been taken in contravention of the provisions of this section, without lawful excuse, receives or is found in possession of such fish shall be liable on conviction

- (a) where the circumstances of such receipt or possession raise a reasonable presumption that the fish is intended to be sold in the course of business to a fine of \$200 and to imprisonment for 6 months; or
- (b) where no such presumption arises, to a fine of \$50 and to imprisonment for 2 months.

Forfeiture of
gear, fish and
vessel

15. Where any person is convicted of an offence against this Act, the court, may in addition to any other penalty it may impose, order that any fish caught or fish product produced in the commission of such offence or the proceeds of sale of such fish product, and any fishing gear, instruments or appliances and, in the case of an offence under section 5(1), section 13 or section 14(1) any vessel (together with its equipment, stores and cargo) used in the commission of such offence or in respect of which such offence has been committed, shall be forfeited to the Government, and if so forfeited such property shall be disposed of in such manner as the Minister of Finance may direct.

Presumption

16. All fish found on board any vessel used in the commission of an offence against the provisions of this Act or in respect of which any such offence has been committed, shall, unless the contrary is proved, be presumed to have been caught in the commission of such offence.

Jurisdiction of
the courts

17. Any offence against any of the provisions of this Act committed within the fishery limits may be dealt with, and judicial proceedings taken, as if the offence had been committed in any place in Kiribati.

Disposal of
seized goods

18.(1) Any fish, fish product or other article of a perishable nature seized or taken under the provisions of this Act may on the direction of the Chief Fisheries Officer be sold and the net proceeds of sale held pending the outcome of any prosecution brought under this Act, and if no such prosecution is brought such proceeds shall be paid to the owner of the fish, fish product or other article sold.

(2) Any vessel, fishing gear, instrument or appliance seized under section 9 which is not ordered to be forfeited under section 15 shall be returned to its owner.

(3) Where any vessel, fishing gear, instrument or appliance, fish or fish product has been seized under section 9 the court may order its release, on receipt of a satisfactory bond or other security from any person claiming such property, conditioned on such person -

- (a) delivering such property to the court upon the order of the court, without any impairment of its value, and paying in full any fine imposed by the court in pursuance of this Act; or
- (b) paying the monetary value of such property in accordance with an order or

judgment of the court together with any fine imposed.

PART V

MISCELLANEOUS

Fishing for scientific purposes 19. The Minister may, in writing, authorise any fishing vessel to fish within the fishery limits for the purpose of scientific investigations, and may for this purpose exempt such fishing vessel from all or any of the provisions of this Act and, in making such exemption, may impose such conditions as he may think fit.

Power of the Minister to enter into agreements 20.(1) The Minister may enter into an agreement with any person or any government or international agency for the purpose of enabling the Minister to perform any of the functions conferred by or under this Act, or for the purposes of facilitating the performance of those functions, or generally to advance the purposes for which this Act was enacted.

Am. 9 of 1984 (1A) For the purposes of giving effect to any agreement or arrangement under subsection (1) the Minister may by order authorise:

- (a) any
 - (i) person; or
 - (ii) government; or
 - (iii) agency of government; or
 - (iv) international agency,to issue fishing permits under section 5 subject to such conditions as he may specify in the order;
- (b) the doing of any other matter which may be required to be done under such agreement or arrangement.

Am. 9 of 1978 (2) The Minister may from time to time by order limit any provision of this Act relating to the fishery limits so far as is necessary to do so to give full effect to any convention including any convention that is adopted by the Third United Nations Convention on the Law of the Sea and to any international agreement or arrangement by which the Government may become bound concerning fishing off the coast of Kiribati.

Protection of native customary rights 21.(1) No person shall take fish in any sea or lagoon area or on any reef forming part of the ancient customary fishing ground of any kainga, utu or other division or subdivision of the people unless he shall be a member thereof or shall first have obtained a licence to do so at the hand of the Minister who may grant or refuse any such licence at his discretion.

(2) A person who contravenes subsection (1) shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months.

Regulations 22. The Beretitenti may make such regulations as may seem to him expedient for the carrying into effect of any of the purposes or provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may prescribe or provide for all or any of the following purposes -

- (a) the training of fishermen;
- (b) regulating the procedure relating to the issue of licences and permits and prescribing the forms thereof and forms of application therefor;
- (c) conditions and procedure to be observed by foreign fishing vessels while within the fishery limits;
- (d) conservation and protection of all species of fish;
- (e) the establishment of closed seasons for any area of Kiribati or any species of fish therein specified;
- (f) the placing of a limit on the amount, size or weight of fish or any species of fish, which may be caught or traded;
- (g) the designation of prohibited fishing areas for all fish or certain species of fish or certain methods of fishing;
- (h) the prohibition of certain types of fishing gear or methods of fishing;
- (i) in relation to fish nets, minimum mesh sizes;
- (j) the organisation of sport fishing;
- (k) the licensing of fish farms and the regulation or importation of live fish;
- Am. 9 of 1978 (ka) regulating the importation of fish or fish products;
- (l) the organisation and regulation of marketing, distribution and export from Kiribati of fish or fish products;
- (m) controlling the handling, landing and transportation of fish or fish products;
- (n) methods and procedures to be adopted in relation to fish storage and processing;
- (o) substances and materials to be used in fish processing;
- (p) the inspection of fish processing establishments and fish products;
- (q) minimum standards in relation to the quality of fish or fish products;
- (r) methods of analysis of fish or fish products;
- (s) the grant of exemption to any vessel or class of vessel or fish processing establishment from all or any of the provisions of this Act;
- (t) the prohibition of any practices or methods, or employment of equipment or apparatus or materials, which are likely to be injurious to the maintenance and development of a stock of fish;
- Am. 9 of 1978 (ta) the implementation of any agreement or arrangement entered into under section 20;
- (tb) regulating the taking of coral and seaweed;
- (u) anything required to be prescribed by this Act;
- (v) the provision of penalties for contraventions thereof of terms of imprisonment for 6 months and fines of \$1,000.

SUBSIDIARY LEGISLATION

Proclamation of fishery limits under section 2

L.N. 31/79 The following limits have been defined and declared by a proclamation dated 18 April 1979.

1. As from the 19th April 1979 the fishery limits of Kiribati shall extend 200 nautical miles from the baseline of Kiribati.

2. Notwithstanding paragraph 1, where any part of the median line is less than 200 miles from the nearest part of the baseline referred to in paragraph 1, that part of the median line shall be the fisheries limit of Kiribati.

3. The Republic will exercise the same exclusive rights in respect of fishery within the said fishery limits outside the territorial waters of Kiribati as it has in respect of fishery in the territorial waters of Kiribati subject to such provisions as may be made by law for the control and regulation of fishing within the said limits.

4. In this Proclamation -

"baseline of Kiribati" means the low water mark of the seaward side of the reef fronting the coast of any part of Kiribati or bounding any lagoon waters adjacent to such coasts or, where a reef is not present the low water mark of the coast itself of any part of Kiribati;

"median line" means a line every point of which is equidistant from the nearest points of, on the one hand, the baseline of Kiribati and, on the other hand, the corresponding baseline of any other country;

"mile" means the international nautical mile.

Regulations under section 22

L.N. 61/78 **PROHIBITED FISHING AREAS (DESIGNATION) REGULATIONS**
L.N. 77/78

Commencement: 31st July 1978

Citation 1. These regulations may be cited as the Prohibited Fishing Areas (Designation) Regulations.

Prohibition of fishing 2. Fishing is prohibited in the areas specified in the Schedule to these Regulations (referred to as "prohibited fishing areas").

Penalty 3. Any person who fishes in a prohibited fishing area commits an offence and shall be liable to imprisonment for 6 months and to a fine of \$1,000.

SCHEDULE

Azur Lagoon
Pelican Lagoon
Isles Lagoon
The Tonga Channel and the adjoining Artemia Ponds.

L.N. 3/79

**FISHERIES CONSERVATION AND PROTECTION
(ROCK LOBSTERS - PANULIRUS SPECIES) REGULATIONS**

Commencement: 11th June 1979

- Citation 1. These Regulations may be cited as the Fisheries Conservation and Protection (Rock Lobsters - Panulirus Species) Regulations.
- Interpretation 2. In these Regulations -
 (a) "rock lobster" (sometimes known as crayfish) means the species of crustacean known by the scientific name of *Panulirus*; and
 (b) a rock lobster shall be deemed to be immature if the length of its carapace is less than 85 millimetres measured from its eyes; and
 (c) "carapace" means the inflexible shell covering the forepart of a rock lobster.
- Protection of 3. Any person who catches, takes, kills, has in his possession, sells, exposes for sale, buys certain rock lobsters for sale or consigns to any person for the purpose of sale -
 (a) any immature rock lobster;
 (b) any female rock lobster bearing its eggs,
shall be guilty of an offence and liable to a fine of \$100 or imprisonment for 3 months.

L.N. 41/81

FISHERIES (PROCESSING AND EXPORT) REGULATIONS

In exercise of the powers conferred by section 22 of the Fisheries Ordinance, the Beretitenti acting in accordance with the advice of the Cabinet hereby makes the following Regulations:-

PART I

PRELIMINARY

- Short title 1. These Regulations may be cited as the Fisheries (Processing and Export) Regulations, 1981.
- Interpretation 2. In these Regulations -
 "the Act" means the Fisheries Act;
 "class" means any one of the classes of fish-processing establishment set out in Schedule 2 to these Regulations.

PART II

FORMS AND FEES

- Forms and fees 3. The licence set out in Schedule 1 to these Regulations shall be the licence prescribed for the purposes of section 6 of the Act and the fees set out in Schedule 2 to these Regulations shall be the fees prescribed for the purposes of section 6 of the Act.

PART III

FISH-PROCESSING ESTABLISHMENTS

Application for licence 4. An application for a licence under section 6(1) of the Act shall be in writing and shall specify the class and the premises in respect of which a licence is required and shall contain such further particulars as the Chief Fisheries Officer may require.

Conditions of licence 5. Every licence granted under section 6(1) of the Ordinance:-
(1) shall not extend beyond 1 year from the date of issue thereof; and
(2) shall be personal to the holder; and
(3) shall not be transferable; and
(4) shall be subject to such conditions as may be prescribed and to such other conditions as the Chief Fisheries Officer may in his absolute discretion endorse thereon; and
(5) shall be conspicuously displayed on the premises in respect of which it was granted; and
(6) shall extend only to those operations or activities set out in Schedule 2 to these Regulations in relation to the class in respect of which the licence was granted; and
(7) shall be conditional upon compliance with the Pure Foods Act, the Public Health Act and any other applicable statutory provision.

Cancellation or suspension 6. In the event of cancellation or suspension of a licence under section 7 of the Act a licensing officer may seize any such licence or endorse any such licence to that effect.

Endorsements 7. A licensing officer who has entered a fish processing establishment in pursuance of section 8 of the Act or of any condition endorsed upon a licence granted under section 6(1) of the Act may if he is satisfied that there has been no contravention of any provision of the Act or of any such condition endorse such licence to that effect.

Water source 8. All water used in a fish processing establishment whether used for ice-making, fish-cleaning or otherwise shall be of potable quality and shall contain no more than 3000 coliforms in each 100 millilitres and shall be treated in such manner as a licensing officer may from time to time direct.

Operating requirements 9. (1) Fish processing establishments shall conform to the requirements set out in Schedule 4 to these Regulations.

(2) Sub-paragraph (1) shall not apply to a fish processing establishment in respect of which the Chief Fisheries Officer has granted an exemption in writing.

PART IV

EXPORT

Certificates of quality 10. No fish or fish product processed at a fish-processing establishment may be exported for sale outside Kiribati unless it is accompanied by a duly completed certificate of quality in the appropriate form set out in Schedule 3 to these Regulations.

Prohibited fish 11. No fish or fish product in respect of which a licensing officer has issued a notice of prohibition in the form set out in Schedule 3 to these Regulations may be processed in a fish-processing establishment for sale in or outside Kiribati as the notice may specify.

Samples 12. On payment or tender to any person operating a fish processing establishment or his

servant or agent of the current market price or at a rate of payment which may be prescribed a licensing officer may select and take or obtain samples of a fish or fish product for the purposes of the Act or these Regulations.

Destruction of
unfit fish 13. A licensing officer may seize and destroy any fish or fish product intended for sale for human or other consumption if he is satisfied on reasonable grounds that such fish or fish product is unfit for its intended purpose and an owner of such seized and destroyed fish or fish product shall be entitled to compensation at the current market price of such fish or fish product (only if he can show that there were no such reasonable grounds).

PART V

SAMPLES AND OFFENCES

Offences 14. Any person who contravenes or operates or causes or allows to be operated a fish-processing establishment in contravention of Regulation 8 or Regulation 9 or who contravenes Regulation 10 or Regulation 11 shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months.

SCHEDULE 1

Fish Processing Establishment Licence (Omitted)

SCHEDULE 2

<u>Class</u>	<u>Operation or Activities which may be carried on by the establishment</u>	<u>Fee payable for licence</u>
A	Processing by canning, pickling, marinating, fermenting, cooking, or smoking if it is intended that the smoked fish product should be eaten uncooked.	\$ 50
B	Chilling, freezing or other storage of raw fish which is intended for human consumption.	\$ 40
C	Salting, drying, smoking if it is intended that the smoked fish product should be cooked before human consumption.	\$ 25
D	Processing if the resulting fish products are not intended for human consumption.	\$ 10
E	Processing for the manufacture of animal foodstuffs	\$ 10
F	The operations and activities listed in relation to Class C if all the resulting fish products intended for sale outside Kiribati are delivered to a fish processing establishment in respect of which a Class C licence has been granted.	\$ 1

In the event that the operations and activities carried on by a fish processing establishment are listed in more than one class the Chief Fisheries Officer shall decide which class shall apply to the licence granted and the conditions attached to the licence shall apply to the whole of the premises of the fish processing establishment.

SCHEDULE 3

Forms

SCHEDULE 4

Regulation 9

Requirements for Fish Processing Establishment

In all Class A and Class B Fish Processing Establishments

1. In any part of the premises where fish is gutted, filleted or otherwise handled all surfaces and walls shall be constructed of materials which may be cleaned easily and effectively.
2. Adequate fly-screening and/or closing doors shall be provided in any processing area.
3. All internal walls and floors and any surface which fish is processed shall be kept clean with a disinfectant of not less than 50 ppm chlorine or with or by any other material or method which may be approved by a licensing officer.
4. Cold stores in which fish are kept shall be maintained at temperatures approved by a licensing officer and -
 - (a) chill rooms shall be at an operating temperature of not more than 3° centigrade; and
 - (b) freezer stores shall be at an operating temperature of not more than minus 18° centigrade.
5. All fish products shall satisfy a licensing officer on visual bacteriological or chemical examination of their fitness for human consumption.
6. Any person handling fish or fish product shall wear protective clothing of a type approved by a licensing officer.
7. Wash basins and any other sanitary equipment which a licensing officer may consider necessary shall be provided.

In all Class C fish processing establishments.

Fish and fish products shall be protected from attack by flies, rats and other vermin and shall be stored in such manner as a licensing officer may from time to time prescribe.

L.N. 40/81

FISHERIES (VESSEL LICENCES) REGULATIONS 1981

Commencement: 11th December 1981

PART I

PRELIMINARY

- Short Title
1. These Regulations may be cited as the Fisheries (Vessel Licences) Regulations 1981.
 2. In these Regulations "the Act" means the Fisheries Act.

PART II

FORMS AND FEES

Prescribed forms and fees

The form and licence set out in schedule 1 to these Regulations shall be the form and licence for the purposes of section 4 of the Act and the fees set out in Schedule 2 to these Regulations shall be the fees prescribed for the purposes of section 4 of the Act, provided that the Chief Fisheries Officer may exempt any class of local fishing vessel from the payment of all or any part of such fees in accordance with any directions which may be given by the Minister under section 4(1) of the Act.

SCHEDULE 1

Am. L.N. 13/82

Application for a Local Fishing Vessel licence [omitted]

Local Fishing Vessel Licence [omitted]

SCHEDULE 2

Vessels of 40 metres and over L.O.A. at the rate of	\$1 per ton of displacement weight to the nearest ton per annum
Vessels of 20 metres and over and under 40 metres L.O.A.	\$100 per annum
Vessel of under 20 metres L.O.A.	\$ 50 per annum

*Fisheries (Pacific Island States' Treaty
with the United States) Act 1988*

1

THE REPUBLIC OF KIRIBATI

FISHERIES (PACIFIC ISLAND STATES' TREATY WITH THE
UNITED STATES OF AMERICA) ACT 1988

ARRANGEMENT OF SECTIONS

1. Short title
 2. Interpretation
 3. Treaty to have the force of law
 4. Savings
 5. Power of Minister to make orders
 6. Offences and penalties, etc.
-

An Act to give effect to the Treaty on Fisheries Between the Governments
of Certain Pacific Island States and the Government of the United States of
America and for connected purposes

Commencement:

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

Short title	1. This Act may be cited as the Fisheries (Pacific Island States' Treaty with the United States of America) Act 1988 and shall come into force on such date as the Minister may appoint by notice.
Interpretation	2. (1) In this Act, unless the context otherwise requires - "applicable national law" has the meaning assigned to it in the Treaty; "Pacific Island State" has the meaning assigned to it in the Treaty; "Treaty" means the treaty between the Governments of Certain Pacific Island States and the Government of the United States of America, to which Kiribati is a party, a copy of which is set out in the Schedule to this Act.

*Fisheries (Pacific Islands States' Treaty
with the United States) Act 1988*

Treaty to have the force of law	3. (1) Subject to the Constitution and the provisions of this Act the Treaty shall have the force of law in Kiribati. (2) If there is any inconsistency between the provisions of any applicable national law in force in Kiribati and the provisions of the Treaty, the provisions of the Treaty shall, to the extent of such inconsistency, prevail.
Savings	4. This Act shall not affect any legal proceedings begun or any rights or liabilities accruing or arising out of an occurrence before the date of commencement of this Act.
Power of Minister to make orders	5. Without prejudice to the powers of the Minister under any other law the Minister may, by order, make such provisions not inconsistent with the Constitution or this Act or the Treaty as he may consider necessary or expedient for giving full effect to the provisions of the Treaty.
Offences and penalties	6. (1) Where a fishing vessel to which the Treaty applies is used in contravention of the Treaty or any applicable national law the master, owner and charterer, if any, of such vessel shall (without prejudice to any other penalty prescribed by or contained in such applicable national law) each be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000. (2) The master, owner, charterer or any member of the crew of a fishing vessel to which the Treaty applies shall not be liable to imprisonment or corporal punishment on conviction for an offence under the Treaty or any applicable national law. (3) Where the master, owner, charterer or any member of the crew of a fishing vessel to which the Treaty applies is in pre-trial custody in respect of an offence which amounts to a breach of the Treaty or any applicable national law, he shall be promptly released if he enters into a bond for a reasonable amount or furnishes a reasonable security to appear before the appropriate court for trial.

SCHEDULE

[omitted]

REPUBLIC OF THE MARSHALL ISLANDS

The Republic of the Marshall Islands is an island nation in the Western Pacific with a total land area of 181.3 sq km. It is made up of a double chain of coral atolls comprising 34 islands and 870 reefs lying between 5° North and 15° North and 162° East and 173° East. 24 of the atolls are inhabited and the total population is 45,000 (1992). Until 1986 the Marshall Islands was a United Nations Trust Territory administered by the United States. On 21 October of that year the two countries entered into a Compact of Free Association under which the Marshall Islands formally took over responsibility for its affairs, including external relations. The US retains control over defence policy and provides financial support. On 3 November 1986 the US with the approval of the Marshall Islands declared the UN Trusteeship terminated.

The head of state and the head of the executive is the President who is elected by the *Nitijela*, which is the legislature. The *Nitijela* consists of 33 elected members from 24 electoral districts. Under the Constitution it has a general law making power. The Council of 12 *Iroij* (traditional chiefs) is selected according to custom and may request reconsideration of any laws affecting customary law or land tenure. The people of each populated atoll, or of an island that does not form part of an atoll, are entitled to their own system of local government. The authority of these local governments extends to the area within the atoll and to the area of sea to a distance of five miles measured from the territorial sea baseline.

Limits of National Jurisdiction

The marine zones of the Marshall Islands had a number of legislative bases prior to the Marine Zones (Declaration) Act 1984. Principal among these was the Marshall Islands Marine Resources Jurisdiction Act 1978. This Act was repealed in 1988. The Marine Zones (Declaration) Act provides that all waters landward of "the baseline" form internal waters and it defines "the baseline". It also authorises the Cabinet, with the approval of the *Nitijela*, to declare archipelagic baselines, though no such declaration has been made. It establishes a 12 nautical mile territorial sea, a 24 nautical mile contiguous zone for enforcement purposes and an exclusive economic zone, the outer limits of which are all measured from the defined baselines. The total area of the exclusive economic zone is 2.13 million sq km. The Act also defines the legal character of these zones. The principal Act regulating fisheries, the Marshall Islands Marine Resources Authority Act 1988, applies to 'fishery waters' which are defined to include internal waters, the territorial sea, the EEZ and any other waters over which the government has jurisdiction.

The Marshall Islands shares boundaries with Federated States of Micronesia, Kiribati, Nauru and the USA in respect of Wake Island. As yet no maritime boundary agreements have been concluded.

Fisheries Legislation

The national legislation controlling fishing by both domestic and foreign vessels is the Marshall Islands Marine Resources Authority Act 1988. This Act establishes the Marshall Islands Marine Resource Authority. The powers and duties of the Authority are comprehensive in relation to management of fisheries and other marine resource matters (for example, under the Act it controls the exploration and exploitation of the non-living resources of the seabed as well as fisheries). They include the implementation of an exclusive economic zone management programme, the negotiation and conclusion of foreign fishing agreements (subject to the approval of Cabinet) and the rebate of fees for the purpose of promoting fisheries development and the power to make regulations. Regulations may be made with respect to the conservation, management and protection of fish and other aquatic organisms, the pollution of fishery waters and generally for carrying out the principles enshrined in the Act.

Any agreement relating to the allocation of fishing rights to foreign vessels must include a provision under which the foreign state or the relevant organisation takes responsibility for compliance by its vessels with the terms and conditions of the agreement. Regulations made under the Act set out the terms and conditions of foreign fishing agreements to which substantial agreement must be sought. These include a recognition of the Marshall Islands' rights over its marine zones and the maintenance of a bond or letter of credit of US\$500,000 per vessel licence application in a bank in the capital of Majuro.

Licensing Requirements

There are two forms of licences under which a foreign vessel may undertake commercial fishing in the fishery waters of the Marshall Islands. The first is a regional licence issued by a competent regional organisation or agency of which the Marshall Islands is a member. These include regional licences issued to U.S. vessels by the Administrator under the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America. The second is a foreign fishing licence issued by the Authority. This form of licence is issued for commercial fishing, test fishing and fishing by locally-based foreign fishing vessels. A licence may be denied on a number of grounds including a lack of good standing on the Regional Register maintained by the Forum Fisheries Agency. A licence will cease to be valid on any change of flag or ownership of the vessel described in the licence. No fishing vessel is permitted to fish within the jurisdiction of a Local Government area without a licence issued by the Local Government Council. That jurisdiction is described above and it extends to five nautical miles from the territorial sea baseline. The Regulations set out the minimum requirements for a foreign fishing agreement required of any person that desires to enter into a Licence Agreement with a Local Government Authority.

The Authority may also issue licences to foreign vessels for research, survey and recreational purposes. It also licenses local fishing vessels and fish processing establishments.

Conservation

The Marshall Islands Marine Resources Authority Act 1988 prohibits the use of explosives, poison or other noxious substances for the purpose of catching fish. (A similar prohibition is to be found in the Marine Resources Act, which forms Chapter 1 of Title 33 of the Marshall Islands Revised Code). The possession of prohibited fishing gear is also an offence. The Act was amended in 1989 to include driftnets within the fishing gear which is prohibited. This is in accordance with the provisions of the Wellington Convention which the Marshall Islands has signed, but not ratified. As noted earlier Regulations may be made by the Authority with respect to the conservation and protection of fish. The Marine Mammals Protection Act 1990 establishes measures for the protection of marine mammals including the placing of safety panels in tuna purse seine nets. Under the National Environmental Protection Act 1984, the Environmental Protection Authority may recommend a system of rational utilisation including regulation of the harvesting and marketing of threatened species.

Regional and International Agreements relating to fisheries

The Marshall Islands is a member of the Forum Fisheries Agency and the South Pacific Commission. It has signed the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region and the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Region. It acceded to the 1982 Convention on the Law of the Sea on 9 August 1991. Marshall Islands is a party to the Nauru Agreement concerning Cooperation in the Management of Fisheries of Common Interest and the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America. It is also a signatory to the Arrangement for the Management of the Western Pacific Purse Seine Fishery.

**Acts and Subsidiary Legislation of the Marshall Islands
Reproduced in this Compendium**

Note: The following laws, other than regulations, form part of the 1988 loose leaf edition of *The Marshall Islands Revised Code* which is the subject of regular updates.

PUBLIC LAWS

Page

Marshall Islands Revised Code

Title 33 - Marine Resources

MAR 1

Chapter 1 Marine Resources Act

Chapter 2 Marine Zones (Declaration) Act 1984

Chapter 3 Marine Resources (Trochus) Act 1983

Chapter 4 Marshall Islands Marine Resources Authority Act 1988

Chapter 5 Marine Mammal Protection Act 1990

Rules and Regulations on Foreign Fishing Agreements and Fish Processing Establishments

Title 35 - Environment

MAR 39

Chapter 1 National Environmental Protection Act 1984, s.30

MAR 1

TITLE 33.
MARINE RESOURCES
CHAPTER 1.

MARINE RESOURCES ACT

ARRANGEMENT OF SECTIONS

Section	Section
1. Short title.	5. Control of pinetada margaritifera (black-lip mother-of-pearl oyster shell).
2. Fishing with explosives, poisons, chemicals, etc.	6. Penalties for violation of Chapter.
3. Limitations on taking of turtles.	
4. Control of sponges.	

An Act to regulate fishing and protect endangered species in the Republic and for matters connected therewith.

Source: TTC 1966
45 TTC 1970
COM P.L. 4C-35 (1972)
COM P.L. 4C-57 (1972)
45 TTC 1980

§ 1. Short title.

This Chapter may be cited as the "Marine Resources Act."

§ 2. Fishing with explosives, poisons, chemicals, etc.

(1) Except as provided in Subsection (3) of this Section, no person shall knowingly catch any fish or other marine life by means of explosives, poisons, chemicals or other substances which kill fish or marine life, nor shall any person knowingly possess or sell any fish or any other marine life caught by means of explosives, poisons, chemicals, or other substances which kill fish or marine life. The terms "poisons", "chemicals", or "substances" include but are not limited to hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders, preparations containing rotenone, tephrosin or plant material from *Barrington asiatica*, *coculus ferrandianus*, *hura crepitans*, *piscidia erythrina*, *tephrosia purpurea*, and *wikstremia*.

(2) Except as provided in Subsection (3) of this Section, no person shall knowingly place or cause to be placed, in any waters of the Republic, explosives, poisons, chemicals, or other substances with the intent to kill fish or other marine life.

(3) The provisions of Subsections (1) and (2) of this Section shall not apply where the Minister in charge of marine resources:

- (a) has granted written permission to use the means prohibited in Subsections (1) and (2) of this Section, or
- (b) has determined that the

MAR 2

TITLE 33. MARINE RESOURCES

- (i) purpose of obtaining the fish or other marine life is to avoid the waste or loss of such fish or marine life; and
- ii) consumption or sale of fish or other marine life caught by any means the use of which is prohibited in Subsections (1) and (2) of this Section is not harmful or hazardous to health and human life.

(4) Nothing in this Section shall be construed to prevent any person from catching any fish or other marine life by the use of local roots, nuts, or plants which have the effect of stupefying but which do not kill fish or other marine life.

(5) Any person who violates any of the provisions of this Section shall, upon conviction thereof, be fined not less than \$100 or more than \$2,000, or imprisoned for not less than six (6) months or more than two (2) years, or both. [*TTC 1966, § 780; 45 TTC 1970, § 1; COM P.L. 4C-35, §§ 1-5 (1972); 45 TTC 1980, § 1, modified. See also, Marshall Islands Marine Resources Authority Act 1988, P.L. 1988-12, § 38.*]

§ 3. Limitations on taking of turtles.

(1) No hawksbill turtles or sea turtles shall be taken or intentionally killed while on shore, nor shall their eggs be taken.

(2) No hawksbill turtle shall be taken or killed except whose shell is at least twenty-seven (27) inches when measured over the top of the carapace shell lengthwise; no green turtle shall be taken or killed except whose shell is at least thirty-four (34) inches when measured over the top of the carapace shell lengthwise.

(3) No sea turtle of any size shall be taken or killed from the first day of June to the thirty-first day of August inclusive, nor from the first day of December to the thirty-first day of January inclusive.

(4) Notwithstanding any provisions of this Section to the contrary, taking of sea turtles and their eggs shall be allowed for scientific purposes when specifically authorized by the Cabinet. [*TTC 1966, § 781; 45 TTC 1970, § 2; COM P.L. 4C-57, §§ 1-3 (1972); 45 TTC 1980, § 2, modified.*]

§ 4. Control of sponges.

No sponges artificially planted or cultivated shall be taken or molested, except by permission of the Cabinet. [*TTC 1966, § 782; 45 TTC 1970, § 3; 45 TTC 1980, § 3, modified.*]

§ 5. Control of *pinctada margaritifera* (black-lip mother-of-pearl oyster shell).

No *pinctada margaritifera*, commonly known as black-lip mother-of-pearl oyster shell, shall be taken from the first day of August to the thirty-first day of December inclusive; provided, that at no time may any such shell be taken which is less than four (4) inches in minimum diameter as measured across the nacre; and provided further, that such shells, of any size, may be taken at any time for scientific purposes when specifically authorized by the Cabinet. [*TTC 1966, § 783; 45 TTC 1970, § 4; COM P.L. 4C-57, § 4 (1972); 45 TTC 1980, § 4, modified.*]

§ 6. Penalties for violation of Chapter.

A person violating any of the provisions of this Chapter for which a different penalty is not otherwise provided shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [*TTC 1966, §§ 774 and 784; 45 TTC 1970, § 5; COM P.L. 4C-35, § 6 (1972); 45 TTC 1980, § 5, modified.*]

Note: Section 1 was added to conform this Act to the format of this Revised Code.

MAR 3

CHAPTER 2.

MARINE ZONES

ARRANGEMENT OF SECTIONS

Section	Section
PART I - PRELIMINARY	7. The territorial sea.
1. Short title.	8. The exclusive economic zone.
2. Interpretation.	9. The contiguous zone.
3. References to rules of international law.	10. Legal character of marine zones, etc.
4. Application of this Act.	11. Rights of other states in marine zones.
	12. General regulations as to the exclusive economic zone.
PART II - THE MARINE ZONES	13. Charts, publicity, etc.
5. Internal waters.	14. Evidentiary provisions.
6. Archipelagic waters.	

An Act to make provisions with respect to the internal waters, the archipelagic waters, the territorial sea, the exclusive economic zone, and the contiguous zone of the Republic.

Commencement: September 13, 1984

Source: P.L. 1984-25

PART I - PRELIMINARY

§ 1. Short title.

This Act may be cited as the "Marine Zones (Declaration) Act 1984". [*P.L. 1984-25, § 1.*]

§ 2. Interpretation.

(1) In this Act:

- (a) "the baseline of the Marshall Islands" means the low water line of the seaward side of the reef fringing the coast of any part of the Marshall Islands or bounding any lagoon waters adjacent to any part of that coast, or, where a reef is not present, the low water line of the coast itself;
- (b) "conservation and management" includes all rules, regulations, methods and measures that:
 - (i) are required to build, restore or maintain, or are useful in building, restoring or maintaining, any fishery resources or the marine environment;
 - (ii) are designed to ensure that:
 - (A) a supply of food and other products may be taken, and recreational benefits obtained, on a continuing basis;
 - (B) irreversible or long-term ill effects on fishery resources or the marine environment are avoided; and
 - (C) there will be a multiplicity of options available with respect to uses of those resources;
- (c) "fishery resource" means any fishery, stock of fish, species of fish or habitat of fish;

MAR 4

TITLE 33. MARINE RESOURCES

- (d) "low tide elevation" means a naturally formed area of land that is surrounded by and is above water at mean low water spring tides, but is submerged at mean high water spring tides;
- (e) "the low water line", in relation to any area, means the line of low water at mean low water spring tides as depicted on the largest scale nautical chart of the area held by the Minister;
- (f) "the median line" means a line every point of which is equidistant from the nearest point on:
 - (i) the baseline from which the territorial sea of the Republic is measured; and
 - (ii) the corresponding baseline of any other country;
- (g) "the Minister" means the Minister in charge of the subject matter of this Act;
- (h) "nautical mile" means an international nautical mile of 1,852 meters.

(2) For the purposes of this Act, permanent harbor works that form an integral part of a harbor system shall be regarded as forming part of the coast, but this Subsection does not apply to offshore installations or artificial islands. [*P.L. 1984-25, § 2.*]

§ 3. References to rules of international law.

Where in this Act it is provided that anything shall be done by the Government of the Marshall Islands or by the Cabinet, or any law or order shall be made, or any other thing shall be done, in accordance with the rules of international law, the question, whether it was so done or made, is non-justiciable. [*P.L. 1984-25, § 3.*]

§ 4. Application of this Act.

The provisions of this Act shall be read subject to the provisions of any treaty or other international obligation which is finally accepted by or on behalf of the Republic and approved by the Nitijela by resolution, for the purposes of this Act. [*P.L. 1984-25, § 4.*]

PART II - THE MARINE ZONES

§ 5. Internal waters.

(1) For the purposes of any law of the Republic, the internal waters of the Republic are all waters on the landward side of the baseline from which the breadth of the territorial sea is measured, and where closing lines are drawn in accordance with Subsection (2) of this Section, the waters inland of those lines to the extent that they are outside that baseline.

(2) The Cabinet may, in accordance with the rules of international law, declare, by reference to physical features marked on official charts or to lists of geographical coordinates specifying the geodetic data, the points between which closing lines are to be drawn for the purposes of determining the outer limits of the internal waters of the Republic, in the case of the mouths of or entrances to lagoons. [*P.L. 1984-25, § 5.*]

§ 6. Archipelagic waters.

(1) For the purposes of any law of the Republic, the archipelagic waters of the Republic comprise all areas of sea contained within the baselines established under Subsection (2) of this Section.

MAR 5

CHAPTER 2. MARINE ZONES

(2) The Cabinet may, in accordance with the rules of international law, and with the approval of the Nitijela signified by resolution, declare, by reference to physical features marked on official charts or to lists of geographical coordinates specifying the geodetic data, the points between which straight baselines are to be drawn for the purpose of determining the outer limits of the archipelagic waters of the Republic and the inner limits of the territorial sea. [*P.L. 1984-25, § 6.*]

§ 7. The territorial sea.

(1) Subject to Subsection (2) of this Section, for the purpose of any law of the Republic the territorial sea of the Republic is that part of the sea within twelve (12) nautical miles from the baseline of the Marshall Islands.

(2) Where archipelagic baselines are drawn under Section 6(2) of this Act the breadth of the territorial sea shall be measured from those baselines, to the extent to which they are outside the outer limits of the internal waters of the Republic. [*P.L. 1984-25, § 7.*]

§ 8. The exclusive economic zone.

(1) Subject to the succeeding provisions of this Section, for the purposes of any law of the Republic the exclusive economic zone of the Republic comprises those parts of the sea having as their inner limits the outer limits of the territorial sea, and as their outer limits a line drawn 200 nautical miles seaward from the baselines from which the breadth of the territorial sea is measured.

(2) The Cabinet may, in accordance with the rules of international law, declare, by reference to physical features marked on official charts or to lists of geographical coordinates specifying the geodetic data, points between which straight baselines are to be drawn for determining the outer limits of the exclusive economic zone.

(3) Where baselines are drawn in accordance with Subsection (2) of this Section, the breadth of the exclusive economic zone shall be measured from those baselines.

(4) Where the median line is less than 200 nautical miles from the line from which the breadth of the territorial sea is to be measured, the outer limits of the exclusive economic zone extend only to the median line.

(5) The Cabinet may, by order, for the purpose of implementing any international agreement or the award of any international body, or otherwise, declare that the outer limits of the exclusive economic zone of the Republic are such as are specified in the order. [*P.L. 1984-25, § 8.*]

§ 9. The contiguous zone.

For the purposes of any law of the Republic the contiguous zone of the Republic comprises that part of the sea within twenty-four (24) nautical miles seaward from the baseline from which the breadth of the territorial sea is measured. [*P.L. 1984-25, § 9.*]

§ 10. Legal character of marine zones, etc.

(1) The sovereignty of the Republic extends beyond its land territory and internal waters, and its archipelagic waters over its territorial sea, and to the airspace over them and the seabed and subsoil under them, and the resources contained therein.

(2) Within the exclusive economic zone the Republic has sovereign rights:

MAR 6

TITLE 33. MARINE RESOURCES

- (a) for the purpose of exploring and exploiting, conserving and managing the natural resources whether living or nonliving, of the seabed and the subsoil under the seabed, and the waters over the seabed; and
- (b) with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.
- (3) Within the exclusive economic zone the Republic has such other rights as are conferred or recognized by international law.
- (4) Within the contiguous zone, the Republic has all rights necessary to prevent infringement of its customs, fiscal, immigration and health laws and regulations within the territory or the territorial sea of the Republic, and to punish any such infringement; and all relevant laws of the Republic extend to the contiguous zone accordingly.
- (5) The sovereignty and rights of the Republic under this Section shall be exercised in accordance with the rules of international law. [*P.L. 1984-25, § 10.*]

§ 11. Rights of other states in marine zones.

- (1) Subject to the succeeding provisions of this Section, ships and aircraft of all states have, in accordance with the rules of international law, the right of free passage through and over the territorial sea and the archipelagic waters of the Republic.
- (2) The Cabinet may, in accordance with the rules of international law, by order:
 - (a) designate sea-lanes and air routes, suitable for the continuous and expeditious passage of foreign ships and aircraft, through and over the archipelagic waters and the adjacent territorial sea; and
 - (b) prescribe traffic separation schemes for the purpose of ensuring the safe passage of ships through narrow channels in such sea-lanes.
- (3) In sea-lanes and air routes designated under Subsection (2) of this Section all ships and aircraft may, in accordance with the rules of international law, enjoy the rights of navigation and overflight, in their normal modes, for the purpose of continuous, expeditious and unobstructed transit through and over the archipelagic waters and the adjacent territorial sea, from one part of the exclusive economic zone to another part of it.
- (4) Until sea-lanes and air routes are prescribed under Subsection (2) of this Section, the rights of navigation and overflight referred to in Subsection (3) of this Section may be exercised through and over all routes normally used for international navigation and overflight.
- (5) The rights of navigation and overflight referred to in Subsections (3) and (4) of this Section are subject to all laws of the Republic made in accordance with the rules of international law.
- (6) Subject to this and any other Act and to the rules of international law, all states and their nationals shall enjoy in the exclusive economic zone the high seas freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and all other internationally lawful uses of the sea related to those freedoms, compatible with the rules of international law.

§ 12. General regulations as to the exclusive economic zone.

Where no other provision is made by or under any other Act for the purpose, the Cabinet may make regulations, which shall be in accordance with the rules of international law, for all or any of the following purposes:

- (a) regulating the conduct of scientific research within the exclusive economic zone;

MAR 7

CHAPTER 2. MARINE ZONES

- (b) regulating the exploration and exploitation of the exclusive economic zone for the production of energy from waters, currents and winds, and for other economic purposes;
- (c) regulating the construction, operation and use of artificial islands, installations and structures within the exclusive economic zone, including requirements for the establishment of safety zones around such islands, installations and structures;
- (d) prescribing measures for the protection and preservation of the marine environment of the exclusive economic zone; and
- (e) providing for such other matters as are necessary or expedient to give effect to the rights and obligations of the Republic in relation to the exclusive economic zone, or as are necessary to give full effect to the provisions of this Act. [*P.L. 1984-25, § 12.*]

§ 13. Charts, publicity, etc.

(1) The Minister shall cause all closing lines, baselines and other lines drawn for the purposes of this Act, for determining the limits of the internal waters, the archipelagic waters, the territorial sea, the exclusive economic zone and the contiguous zone of the Republic to be clearly indicated on charts of a scale or scales adequate for them to be readily determined, and shall give adequate publicity to them.

(2) A question, whether adequate publicity has been given to any matter under Subsection (1) of this Section, is non-justiciable.

(3) A copy of each chart referred to in Subsection (1) of this Section shall be deposited with the Secretary General of the United Nations and the Secretary-General of the South Pacific Commission. [*P.L. 1984-25, § 13.*]

§ 14. Evidentiary provisions.

In any proceeding before a court or person acting judicially, a certificate (purporting to be signed by the Minister stating that any specific nautical chart of any area is a chart to which Section 13 of this Act applies) that is held by the Minister, is evidence of the matters stated in the certificate, and the chart is evidence of the matters set out in it. [*P.L. 1984-25, § 14.*]

Note:

MAR 8

CHAPTER 3.

HARVESTING OF TROCHUS

ARRANGEMENT OF SECTIONS

Section	5. Open season.
1. Short title.	6. Permitted taking of trochus in open season.
2. Interpretation.	7. Removal for replanting, etc.
3. Application of this Act.	8. Enforcement.
4. Regulation of harvesting of trochus.	

An Act to regulate the harvesting of trochus, and for related purposes.

Commencement: February 11, 1983
Source: P.L. 1983-15

§ 1. **Short title.**

This Act may be cited as the "Marine Resources (Trochus) Act 1983". [P.L. 1983-15, § 1.]

§ 2. **Interpretation.**

In this Act:

- (a) "open season", in relation to any part of the waters to which this Act applies by virtue of Section 3 of this Act, means an open season declared under Section 5 of this Act in relation to that area;
- (b) "Minister" means the Minister of Resources and Development;
- (c) "trochus" means *trochus niloticus*, *trochus maximus*, *tectus niloticus* or *tectus maximus*. [P.L. 1983-15, § 2.]

§ 3. **Application of this Act.**

This Act applies to the internal waters and the territorial waters of the Republic. [P.L. 1983-15, § 3.]

§ 4. **Regulation of harvesting of trochus.**

Except as permitted by or under this Act, the taking or harvesting of trochus, or any intentional or reckless interference with the growth of trochus, in the waters to which this Act applies is prohibited. [P.L. 1983-15, § 4.]

§ 5. **Open season.**

(1) The Cabinet may from time to time declare, in relation to any part of the waters to which this Act applies, an open season of trochus.

(2) A declaration under Subsection (1) of this Section shall be published in the *Government Gazette* and in such other ways as the Cabinet or the Minister directs.

MAR 9

TITLE 33. MARINE RESOURCES

(3) An open season with respect to any part of the waters to which this Act applies shall not exceed three (3) months in any period of twelve (12) months. [*P.L. 1983-15, § 5.*]

§ 6. Permitted taking of trochus in open season.

- (1) The taking or harvesting of trochus is permitted in an open season only:
 - (a) by a citizen of the Republic living in an area in which he has, in accordance with customary law, a right to fish; or
 - (b) under a fishing license issued under the Marshall Islands Marine Resources Authority Act 1988 that specifically authorizes the taking of trochus.
- (2) Subsection (1) of this Section does not extend to the taking or harvesting of trochus whose shell is less than three (3) inches in diameter at the base. [*P.L. 1983-15, § 6, modified.*]

§ 7. Removal for replanting, etc.

- (1) The Minister may, at any time, grant to any person a permit to remove and transport trochus from an area for the purpose of its introduction or propagation in any other area.
- (2) If the Cabinet determines that any underwater operations, or proposed underwater operations, that will or may interfere with a trochus bed are in the public interest, it may grant a permit for the removal and transplanting of the bed at the expense of the person conducting or desiring to conduct the underwater operations.
- (3) A permit under this Section shall be in writing, and may be made subject to such conditions as the Minister or the Cabinet, as the case may be, thinks proper.
- (4) A permit under this Section takes effect notwithstanding anything in the Marshall Islands Marine Resources Authority Act 1988. [*P.L. 1983-15, § 7, modified.*]

§ 8. Enforcement.

Any contravention of or failure to comply with the provisions of this Act or of a permit under Section 7 of this Act may be dealt with, and the same consequences ensue, as if it were a contravention of or failure to comply with the provisions of the Marshall Islands Marine Resources Authority Act 1988. [*P.L. 1983-15, § 8.*]

Note: The Marine Resources Jurisdiction Act 1978 [*P.L. 25-1 (1978); P.L. 1979-4; P.L. 1987-17*] was repealed by the Marshall Islands Marine Resources Authority Act 1988 (*P.L. 1988-12*). Accordingly, references to that Act were substituted by reference to the Marshall Islands Marine Resources Authority Act 1988 by the Commissioner.

MAR 10

CHAPTER 4.

MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

ARRANGEMENT OF SECTIONS

Section

PART I - PRELIMINARY

1. Short title.
2. Interpretation.

PART II - MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

3. Marshall Islands Marine Resources Authority.
4. Management of the Authority.
5. Board of Directors.
6. Cabinet's directions to the Board.
7. Meetings of the Board.
8. Director and staff.
9. Employment of public servants.
10. Annual report.
11. Powers and duties of the Authority.
12. Power to make regulations.
13. Compensation of members.

PART III - FOREIGN FISHING

14. Foreign fishing.
15. Foreign fishing licenses.
16. Application for licenses.
17. Revocation, suspension and variation of licenses.
18. Period of validity.
19. Foreign fishing agreements.
20. Regional foreign fishing agreements.
21. Compliance with foreign fishing agreement.
22. Stowage of gear.

PART IV - ACTIVITIES OTHER THAN FOREIGN FISHING

23. Development of local fisheries.
24. Issue of licenses for local fishing vessels.
25. Issue of licenses for non-commercial fishing.
26. Issue of licenses for fish processing.
27. Agreement relating to fish processing.
28. Issue of licenses for non-living resources.
29. Licenses fees.

Section

PART V - FINANCE

30. Marshall Islands Marine Resources Authority Fund.
31. Payments into the Fund.
32. Payments out of the Fund.
33. Exemption from tax.
34. Restrictions on borrowing.
35. Accounts.

PART VI - VIOLATIONS AND PENALTIES

36. Violations and penalties.
37. Operating without a license.
38. Use of explosives.
39. Possession of prohibited fishing gear.
40. Civil penalties.
41. Criminal penalties.
42. Forfeitures and seizures.
43. Sale of fish.
44. Proceeds of sale.
45. Presumptions.
46. Jurisdiction of courts.
47. Compounding of offenses.
48. Disposal of seized goods.

PART VII - OBSERVERS AND ENFORCEMENT OFFICERS

49. Authorized observers.
50. Authorized officers.
51. Powers of authorized officers.

PART VIII - GENERAL

52. Immunities.
53. Application of other laws.
54. Exclusion of Administrative Procedure Act.
55. Transitional.

An Act to establish a Marshall Islands Marine Resources Authority and to provide for exploration, exploitation, regulation, corporation and management of marine resources and for matters connected therewith or incidental thereto.

Commencement: March 28, 1988
Source: P.L. 1988-12
P.L. 1988-14
P.L. 1989-56

MAR 11

TITLE 33. MARINE RESOURCES

PART I - PRELIMINARY

§ 1. Short title.

This Act may be cited as the "Marshall Islands Marine Resources Authority Act 1988".
[P.L. 1988-12, § 1.]

§ 2. Interpretation.

In this Act:

- (a) "atoll" means a circular or oval coral reef forming a geographic and ecologic unit crowned by at least one island;
- (b) "authorized observer" means any person approved by the Authority to act as an observer on foreign fishing vessels, including any regional observer, as may be authorized by the Authority in accordance with this Act;
- (c) "authorized officer" means any officer authorized to enforce the provisions of this Act, including Exclusive Economic Zone management authorities, nationals of other Pacific Island States and regional Pacific surveillance and enforcement officers as may be authorized in accordance with this Act;
- (d) "Director" means the Director of the Marshall Islands Marine Resources Authority;
- (e) "fish" includes shellfish, crustaceans, marine animals and the eggs, span, spat, and juvenile stages of fish, shellfish, crustaceans, and marine animals;
- (f) "fish aggregating device" means any man-made or partly man-made floating device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;
- (g) "fishery waters" means the waters of the territorial sea of the Republic and of the Exclusive Economic Zone and internal waters, including lagoons, as defined in the Marine Zones (Declaration) Act 1984, and any other waters, over which the Government of the Republic has jurisdiction;
- (h) "fishing" means:
 - (i) the searching for, catching, taking or harvesting of fish or other aquatic organism;
 - (ii) the attempted searching for, catching, taking, or harvesting of fish or other aquatic organism;
 - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish or other aquatic organism;
 - (iv) placing, searching for or recovering fish aggregating devices or associated equipment such as radio beacons;
 - (v) any operations at sea in support of, or in preparation for, any activity described in this Paragraph;
 - (vi) aircraft use relating to any activity described in this Paragraph;
- (i) "fishing gear" means any equipment, implement or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat or helicopter;
- (j) "fishing vessel" or "vessel" means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type that is normally used for the purpose of fishing or related activities;

MAR. 12

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

- (k) "foreign fishing agreement" means a bilateral or multilateral agreement providing for fishing rights to foreign fishing vessels in accordance with the requirements of this Act;
- (l) "foreign fishing vessel" means any fishing vessel other than a local fishing vessel;
- (m) "Fund" means the Marshall Islands Marine Resources Authority Fund established in accordance with this Act;
- (n) "license" means a license issued in accordance with this Act;
- (o) "living resource" includes any finfish, mollusk, crustacean, coral, holothurian (beche-de-mer) or other echinoder, and turtle and their young and eggs and all other forms of marine animal and plant life other than marine birds;
- (p) "local fishing vessel" means a fishing vessel:
 - (i) registered in the Republic of the Marshall Islands; and
 - (ii) wholly owned and controlled, or chartered by:
 - (A) the Government of the Republic of the Marshall Islands;
 - (B) a public corporation established under the laws of the Republic of the Marshall Islands; or
 - (C) any citizen of or person permanently domiciled in the Republic of the Marshall Islands;
- (q) "locally based foreign fishing vessel" means any foreign fishing vessel based in the Republic and certified as a locally based foreign fishing vessel by the Authority;
- (r) "Minister" means the Minister of Resources and Development;
- (s) "operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer or master;
- (t) "region" means an area of the Pacific that is approved in writing by the Minister of Foreign Affairs as a Region for the purposes of this Act, and "regional" has a corresponding meaning;
- (u) "regional organization" and "competent regional agency" mean an organization or agency to which the Republic is a party;
- (v) "related activities" in relation to fishing means:
 - (i) transshipping fish or other aquatic organisms to or from any vessel;
 - (ii) storing, processing or transporting fish or other aquatic organisms taken from fishery waters;
 - (iii) refueling or supplying fishing vessels or performing other activities in support of fishing operations; or
 - (iv) attempting or preparing to do any of the above;
- (w) "test fishing operations" means any fishing operations undertaken over a limited period of time as may be authorized by the Director for the purpose of testing the feasibility of commercial fishing operations with a view to the establishment of fishery operations based in the Republic or in the region;
- (x) "the Authority" means the Marshall Islands Marine Resources Authority established in accordance with this Act. [P.L. 1988-12, § 2.]

**PART II - MARSHALL ISLANDS
MARINE RESOURCES AUTHORITY**

§ 3. Marshall Islands Marine Resources Authority.

(1) There is hereby established a Marshall Islands Marine Resources Authority, hereinafter the "Authority".

MAR 13

TITLE 33. MARINE RESOURCES

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its own name.

(3) Article VII of the Constitution shall not apply to or in relation to the Authority. [P.L. 1988-12, § 3.]

§ 4. Management of the Authority.

The powers and functions of the Authority shall be vested in and exercised by a Board of Directors, hereinafter the "Board", which shall consist of five members. [P.L. 1988-12, § 4.]

§ 5. Board of Directors.

(1) The Board shall consist of the following members:

(a) three (3) members *ex officio* consisting of the Minister of Resources and Development, the Minister of Foreign Affairs and the Minister of the Interior and Outer Islands Affairs; and

(b) two (2) other members appointed by the President.

(2) The Minister of Resources and Development shall function as Chairman of the Board. The Authority may delegate any or all of its powers and duties to the Chairman.

(3) The term of office of the members appointed under Subsection 1(b) of this Section shall be two (2) years.

(4) The Board may act notwithstanding any vacancy in membership, provided that there is a quorum in accordance with this Act.

(5) Notwithstanding the provisions of Subsection (3) of this Section, the President may, with the concurrence of the Cabinet, remove any member appointed under Subsection 1(b) of this Section. [P.L. 1988-12, § 5.]

§ 6. Cabinet's directions to the Board.

The Cabinet may give to the Board in writing general or special directions with respect to policy matters, and the Board shall give effect to such directions. [P.L. 1988-12, § 6.]

§ 7. Meetings of the Board.

(1) The Board shall meet at such times and places as may be designated by the Chairman, provided that the Board shall meet at least once every quarter.

(2) The Board shall adopt its own rules of procedure for transaction of business and for carrying out the purposes of this Act.

(3) The quorum for a meeting of the Board shall be three (3) members. [P.L. 1988-12, § 7.]

§ 8. Director and staff.

(1) Subject to any direction by the Cabinet, the Authority shall employ a Director of Marine Resources, hereinafter the "Director", who shall be in charge of and responsible for the management and administration of the Authority.

(2) The Director may act for and on behalf of the Authority subject to any direction the Board may give.

(3) The Authority may delegate to the Chairman the power to employ such other employees, consultants and advisers as he may deem necessary. The employees, consultants

MAR 14

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

and advisers employed under this Section shall be exempt from Article VII of the Constitution. [P.L. 1988-12, § 8.]

§ 9. Employment of public servants.

At the request of the Minister, the Public Service Commission may make the services of members of the Public Service available to the Authority on such terms and conditions as the Commission may determine. [P.L. 1988-12, § 9.]

§ 10. Annual report.

The Authority shall report through the Minister to the Nitijela on its activities and planned programs on an annual basis and shall provide such additional reports and information from time to time as may be necessary. [P.L. 1988-12, § 10.]

§ 11. Powers and duties of the Authority.

- (1) The Authority shall have the following powers and duties:
 - (a) to conserve, manage and control the exploration and exploitation of all living and nonliving resources in the Fishery Waters, seabed, and subsoil thereunder, in accordance with the principles and provisions of this Act;
 - (b) to establish and implement an Exclusive Economic Zone Management program in accordance with this Act;
 - (c) to issue fishing licenses in accordance with the provisions of this Act and any regulations made under this Act;
 - (d) to issue licenses for the exploration and exploitation of the seabed and subsoil of the Fishery Waters;
 - (e) to negotiate and conclude foreign fishing agreements provided that no agreement shall be finally accepted without the approval of the Cabinet;
 - (f) to rebate, in accordance with regulations established by the Authority, all or a portion of a fee collected pursuant to this Act from any joint fishing venture established in accordance with law, if in the opinion of the Authority the rebate will promote fishery development;
 - (g) to participate in the planning and execution of programs related to fisheries or fishing, or the exploration or exploitation of the nonliving resources of the Fishery Waters, seabed, or subsoil thereunder, in which the Government of the Marshall Islands or any agency or instrumentality thereof has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise;
 - (h) to seek technical assistance for the determination of the Fishery Waters boundaries;
 - (i) to submit the budget and a report regarding the expenditure of its funds to the Nitijela on an annual basis;
 - (j) to appoint authorized enforcement officers and observers in accordance with this Act; and
 - (k) to do such other things so as to give effect to the principles and provisions of this Act, and to carry out its powers and duties.
- (2) The Authority may delegate any of its powers and duties to the Director in writing. [P.L. 1988-12, § 11.]

MAR 15

TITLE 33. MARINE RESOURCES

§ 12. Power to make regulations.

(1) Subject to the provisions of this Act, the Authority may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act, and in particular, but without restricting the generality of the foregoing, may make regulations:

- (a) respecting the conservation, management and protection of fish and other aquatic organisms in the Fishery Waters;
- (b) respecting the catching, loading, landing, handling, transporting, possession and disposal of fish;
- (c) respecting the operation of fishing vessels or any other vessel which may enter the Fishery Waters for any purpose which falls within the jurisdiction of this Act;
- (d) respecting the use of fishing gear and equipment;
- (e) respecting the issue, suspension and cancellation of licenses;
- (f) respecting the terms and conditions under which a license may be issued;
- (g) respecting the pollution of the Fishery Waters;
- (h) respecting the appointment of authorized officers and observers;
- (i) respecting the export of fish or any part thereof from the Republic;
- (j) respecting the conditions and procedures to be observed by foreign fishing vessels while within the Fishery Waters;
- (k) respecting the transitting of foreign fishing vessels through the Fishery Waters, and the manner in which fishing gear is to be stowed, by both licensed and unlicensed fishing vessels;
- (l) prescribing procedures to be followed by the operators of foreign and local fishing vessels to facilitate boarding and inspection by authorized officers;
- (m) respecting rewards to be paid to any person providing information on the operations of foreign fishing vessels leading to a conviction or compounding or other similar determination of an offense under this Act;
- (n) respecting the licensing and control of fish aggregating devices; and
- (o) prescribing the powers and duties of persons engaged in the administration or enforcement of this Act and providing for the carrying out of those powers and duties.

(2) The regulations made under Subsection (1) of this Section, shall become effective only upon approval of the same by the Cabinet. [*P.L. 1988-12, § 12.*]

§ 13. Compensation of members.

(1) Members of the Board appointed under Section 5(1)(b) of this Act shall be compensated at the rate of \$35 per day for attending meetings of the Board, provided that a member of the Authority who is a member of the Public Service shall not be entitled to receive any compensation.

(2) Notwithstanding Subsection (1) of this Section, all members of the Authority shall receive per diem and travel expenses while on the business of the Authority. [*P.L. 1988-12, § 13.*]

PART III - FOREIGN FISHING

§ 14. Foreign fishing.

(1) The provisions of this Act relating to foreign fishing shall not apply to or in relation to any fishing referred to in Section 24 of this Act.

MAR 16

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

(2) The Authority may enter into bilateral or multilateral foreign fishing agreements with other States and associations or organizations representing foreign fishing vessel owners or charterers, providing for the allocation of fishing rights to vessels from those States, associations or organizations.

(3) Any agreement entered into under this Section shall include a provision establishing the responsibility of the foreign State, association or organization to take all measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in the Fishery Waters. [*P.L. 1988-12, § 14.*]

§ 15. Foreign fishing licenses.

(1) The Authority may, on receipt of an application for a foreign fishing license, issue a license authorizing a foreign fishing vessel to enter the Fishery Waters for the purposes of:

- (a) fishing or related activities;
- (b) to provision, service, repair or maintain any other foreign fishing vessel while at sea;
- (c) fishing for purposes of marine scientific research; and
- (d) effecting repairs at a port within the jurisdiction of the Republic.

(2) No foreign fishing vessel shall fish in the Fishery Waters unless a valid foreign fishing license or regional license has been issued in accordance with this Act and any regulations made under this Act.

(3) No foreign fishing vessel shall fish within the jurisdiction of any Local Government Area without a license issued by the appropriate Local Government Council. Such jurisdiction extends with respect to each Council, to the sea and seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of five nautical miles from the baselines from which the territorial sea of that atoll or island is measured.

(4) Subject to Subsection (3) of this Section and except for locally based foreign fishing vessels as may be authorized by the Authority, it shall be a condition of licensing that no foreign fishing vessel shall fish in the territorial sea or within a radius of two nautical miles of any FAD which that vessel has not set.

(5) The Authority may attach to any foreign fishing vessel license such special conditions as it may require by in writing, including:

- (a) the type and method of fishing or related activity authorized;
- (b) the areas within which such fishing or related activities are authorized; and
- (c) the target, species and amount of fish authorized to be taken, including any restriction or by-catch.

(6) The Authority may, from time to time, where it is satisfied that it is expedient for the proper management of fisheries, vary special conditions attached to any foreign fishing license.

(7) Foreign fishing licenses shall only be issued in accordance with a foreign fishing agreement concluded in accordance with this Act.

(8) The provisions of Subsection (4) of this Section shall not apply to a license with respect to:

- (a) test fishing; and
- (b) a locally based foreign fishing vessel.

(9) The Director may exercise any of the powers and duties given to the Authority on behalf of the Authority under this Section, subject to any direction the Board may give. [*P.L. 1988-12, § 15.*]

MAR 17

TITLE 33. MARINE RESOURCES

§ 16. Application for licenses.

(1) Application shall be made, in the prescribed form, to the Director or a competent regional agency or other body, person or State authorized to issue a regional license.

(2) The application shall contain such information as may be required by regulations promulgated by the Authority, except with respect to a regional license, and such other information the Director considers necessary to clarify or complete the details furnished by the applicant.

(3) The Authority may determine by regulation a registration fee which shall be paid with respect to every application.

(4) The Director may approve an application made in accordance with the requirements of this Act and any applicable foreign fishing agreement, on such terms and conditions as he deems appropriate.

(5) A license may be denied:

- (a) where the vessel with respect to which an application is made does not have good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
- (b) where the application is not in accordance with the requirements of this Act;
- (c) where the owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction and reasonable financial assurances have not been provided;
- (d) where there has been a failure to satisfy a judgment or other determination for a breach of this Act or a foreign fishing agreement by the operator of the vessel with respect to which application for a license has been made, until such time as the judgment or other determination is satisfied;
- (e) where an operator of the vessel has contravened, or the vessel has been used for contravention of a foreign fishing agreement, or has committed an offense against the laws of the Republic; or
- (f) where the Authority determines that the issuance of a license would not be in the best interests of the Republic.

(6) Every license shall:

- (a) apply only to the foreign fishing vessel described therein and where applicable to the crew of the vessel, unless the Authority, by written permission, otherwise authorizes or unless a foreign fishing agreement otherwise provides;
- (b) be valid only for the period specified therein; and
- (c) cease to be valid on any change in the flag State registry or ownership of the vessel described in the license.

(7) Every license shall be kept on board the foreign fishing vessel described in the license while that vessel is in the Fishery Waters and shall be produced at the request of an authorized officer at his request. Prior to the receipt of the license, the correct citation of the license number shall satisfy this requirement. [*P.L. 1988-12, § 16.*]

§ 17. Revocation, suspension and variation of licenses.

If any foreign vessel for which a license has been issued or the operator or any crew member thereof has contravened this Act or if any penalty has not been paid or is overdue, the Authority may:

- (a) revoke or suspend such license at its discretion; or
- (b) impose additional conditions and restrictions on the license holder. [*P.L. 1988-12, § 17.*]

MAR 18

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

§ 18. Period of validity.

Every foreign fishing license shall be valid for a period of twelve (12) months from the date of issue, unless previously terminated, revoked or suspended, except that the term of validity of a foreign fishing license shall not extend beyond the term of validity of the applicable foreign fishing agreement. [*P.L. 1988-12, § 18.*]

§ 19. Foreign fishing agreements.

The Authority may, by regulation, determine terms and conditions of foreign fishing agreements to which substantial agreement should be sought. [*P.L. 1988-12, § 19.*]

§ 20. Regional foreign fishing agreements.

(1) The Authority may enter into arrangements or agreements with other States in the region, or any competent regional organization or agency, providing for:

- (a) the harmonization of licensing procedures and conditions with respect to foreign fishing vessels and the maintenance of a regional register of foreign fishing vessels;
- (b) the issuance of fishing licenses with respect to foreign fishing vessels by any State, competent regional organization or agency, body, or person;
- (c) the recognition of regional licenses, certificates of access, or other such documents which may be issued in accordance with Paragraph (b) of this Subsection, subject to such conditions as may be specified in the agreement, arrangement or authorization and to such additional conditions as the Authority may specify from time to time;
- (d) a regional or sub-regional observer program; or
- (e) taking joint or harmonized enforcement measures with respect to foreign fishing vessels.

(2) The Authority may authorize by regulation such measures as may be necessary for the implementation of such arrangements or agreements, including:

- (a) exemption from certain requirements of this Act and any or all of the requirements of any regulation made under this Act, any foreign fishing vessel or class of foreign fishing vessel holding a valid regional fishing license, certificate of access or other such document issued by a competent regional agency or regional organization;
- (b) prescription of the conditions to be observed by foreign fishing vessels exempted under Paragraph (a) of this Subsection, while fishing or navigating in the Fishery Waters;
- (c) provision that where any foreign fishing vessel contravenes any of the conditions prescribed under Paragraph (b) of this Subsection, the operator and the holder of the regional fishing license issued with respect to the vessel shall each be guilty of an offense and provide for a penalty or a fine for each offense; and
- (d) provision that on conviction of the operator or the holder of the regional fishing license for an offense, the court may also order the forfeiture of the fishing vessel, including its equipment, fishing gear, appurtenances, stores, furniture and fish. [*P.L. 1988-12, § 20.*]

§ 21. Compliance with foreign fishing agreement

The foreign party or parties and the operators of any foreign fishing vessel fishing

MAR 19

TITLE 33. MARINE RESOURCES

pursuant to a foreign fishing agreement shall comply with all requirements of such agreement and terms and conditions of licenses issued thereunder. [*P.L. 1988-12, § 21.*]

§ 22. Stowage of gear.

(1) Subject to Subsection (2) of this Section, all fishing gear aboard a foreign fishing vessel in the Fishery Waters shall be stowed in such a manner that it is not readily available for use for fishing.

(2) Subsection (1) of this Section shall not apply to a foreign fishing vessel in an area of the Fishery Waters in which it is authorized to fish in accordance with this Act. [*P.L. 1988-12, § 22.*]

PART IV - ACTIVITIES OTHER THAN FOREIGN FISHING.

§ 23. Development of local fisheries.

(1) The Authority may take such measures it considers necessary for the development of local fisheries in the Fishery Waters, taking into account principles of conservation, management and optimum utilization. Including holding consultations, where appropriate, with Local Government Councils.

(2) Each Local Government Council shall, as much as possible, cooperate in such development for the proper management and development of the fisheries resource for the benefit of the people of the Republic.

(3) Subject to Subsection 2 of this Section, each Local Government Council shall be responsible for the proper management and development of the reef and inshore fisheries within its waters. [*P.L. 1988-12, § 23.*]

§ 24. Issue of licenses for local fishing vessels.

The Authority, or the Director on its behalf, may issue licenses to local fishing vessels, taking into consideration principles of conservation and management in any relevant fisheries management program, subject to such terms and conditions as it may prescribe from time to time by regulation. [*P.L. 1988-12, § 24.*]

§ 25. Issue of licenses for noncommercial fishing.

The Authority, or the Director on its behalf, may issue licenses to foreign vessels or parties for research, survey, recreation or other noncommercial fishing within the Fishery Waters on such terms and conditions as it may prescribe from time to time by regulation. [*P.L. 1988-12, § 25.*]

§ 26. Issue of licenses for fish processing.

(1) The Authority, or the Director on its behalf, may grant to any person a license to operate a fish processing establishment on payment of such fees and subject to such terms and conditions as it may prescribe from time to time by regulation.

(2) No person shall operate or allow to be operated any fish processing establishment except under a license granted under this Section and in accordance with the conditions of such a license.

MAR 20

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

(3) In this Section "fish processing establishment" means any land, premises or other place on or in which fish are canned, packed, dried, gutted, salted, iced, chilled, frozen, or otherwise processed for sale by wholesale in or outside the Republic. [*P.L. 1988-12, § 26.*]

§ 27. Agreement relating to fish processing.

(1) Any person not a citizen or permanently domiciled or resident in the Republic who intends to invest or be involved in fisheries, including fishing, fish processing and related activities, shall agree with the Authority on the terms and conditions of such investment.

(2) Where agreement is not reached in accordance with Subsection (1) of this Section, the Authority may refuse to issue any fishing or fish processing license with respect to any vessel or fish processing establishment operated by or on behalf of that person or any company through which an investment is made.

(3) The requirements of this Section shall be in addition to the requirements of the Foreign Investments Advisory Board Act 1987. [*P.L. 1988-12, § 27.*]

§ 28. Issue of licenses for nonliving resources.

The Authority, or the Director on its behalf, may issue licenses for the exploration and exploitation of the nonliving resources of the Fishery Waters, seabed, and subsoil thereunder, subject to such terms and conditions as it may prescribe from time to time by regulation. [*P.L. 1988-12, § 28.*]

§ 29. License fees.

There shall be payable with respect to each license issued by the Authority such fees, royalties or other charges as may be prescribed by the Authority. [*P.L. 1988-12, § 29.*]

PART V — FINANCE

§ 30. Marshall Islands Marine Resources Authority Fund.

(1) There shall be established a Marshall Islands Marine Resources Authority Fund, hereinafter referred to as the "Fund".

(2) The Fund shall be a fund other than the General Fund within the meaning and for the purposes of Article VIII, Section 3 of the Constitution. [*P.L. 1988-12, § 30.*]

§ 31. Payments into the fund.

(1) There shall be paid into the Fund:

- (a) all monies appropriated by the Nitijela for the purposes of the Authority;
- (b) all monies designated by the Compact for fisheries or related activities, including surveillance;
- (c) any monies received by the Authority by way of loans, grants, aid, advances, contributions, gifts or other assistance;
- (d) in the case of goods and services, all monies realized on such goods and services; and
- (e) such other monies as may be received by the Authority pursuant to this Act.

MAR 21

TITLE 33. MARINE RESOURCES

(2) The Secretary of Finance shall keep within a separate account all monies referred to in Subsection (1)(b) of this Section. [*P.L. 1988-12, § 31; amended by P.L. 1988-14, § 19, deleting original Paragraph (c) of Subsection (1) and renumbering the remaining Paragraphs as new Paragraphs (c), (d), and (e).*]

§ 32. Payments out of the fund.

- (1) Payment may be made out of the Fund only for:
- (a) carrying out the powers and duties of the Authority;
 - (b) the costs and expenses of the Authority, including administration;
 - (c) the purposes of working capital and petty cash, and similar purposes;
 - (d) giving effect to the provisions of this Act and any regulations made under this Act.

(2) No money may be withdrawn from the Fund except with the Authority of the Secretary of Finance and such member of the Board as the Board may designate, who shall be satisfied that the withdrawal is made in accordance with this Act and regulations made under this Act, and any other applicable law.

(3) The Secretary of Finance, with the concurrence of the Board, may transfer any excess monies, which in his opinion may not be required for the Authority, to the General Fund. [*P.L. 1988-12, § 32; amended by P.L. 1988-14, § 19, deleting original Paragraph (d) of Subsection (1) and renumbering Paragraph (e) as new Paragraph (d).*]

§ 33. Exemption from tax.

The income, property and transactions of the Authority shall not be subject to any tax, rates, or charges imposed under any other law. [*P.L. 1988-12, § 33.*]

§ 34. Restrictions on borrowing.

Where any money is borrowed or any advance, grant, aid or other assistance is received for a specific purpose or subject to any condition; it shall be expended or used only for that purpose or subject to those conditions. [*P.L. 1988-12, § 34.*]

§ 35. Accounts.

- (1) The Secretary of Finance shall maintain proper accounts and records of:
- (a) the Fund; and
 - (b) the disposition of monies paid into or out of the Fund.
- (2) The accounts and records of the Fund shall be audited by the Auditor-General as provided in Article VIII, Section 15 of the Constitution of the Marshall Islands.
- (3) At the end of each financial year all monies remaining in the Fund, which is in excess of the Authority's budget estimate for the next financial year, shall be transferred to the General Fund. [*P.L. 1988-12, § 35.*]

PART VI — VIOLATIONS AND PENALTIES

§ 36. Violations and penalties.

- (1) Every person who:

MAR 22

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

- (a) contravenes any provision of this Act or any regulations made under this Act;
- (b) uses any fishing vessel to engage in fishing in the Fishery Waters after revocation, or during the period of suspension of a license issued with respect to that vessel pursuant to this Act;
- (c) contravenes any provision of a foreign fishing agreement or any term or condition of any license issued in accordance with this Act and any regulations made under this Act, including a regional fishing license issued in accordance with this Act;
- (d) refuses to permit any authorized officer to board a fishing vessel for the purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulations made under this Act or any foreign fishing agreement;
- (e) assaults, obstructs, resists, delays, refuses boarding to, intimidates or interferes with any authorized officer in the performance of his duties; and for the purposes of this Paragraph, any person who refuses to allow any authorized officer, or any person acting under his order or in his aid, to exercise any of the powers conferred on an authorized officer by this Act or any regulations made under this Act shall be deemed to be obstructing that officer or person;
- (f) fails to comply with the lawful requirements of any authorized officer or observer;
- (g) furnishes to any authorized officer any particulars which to his knowledge are false or misleading in any respect;
- (h) being on board any vessel being pursued or about to be boarded by any authorized officer, throws overboard or destroys any fish, fishing gear, explosive, poison or other noxious substance to avoid seizure of such fish, fishing gear, explosive, poison or other noxious substance or thing or the detection of any offense under this Act or the regulations made under this Act;
- (i) resists a lawful arrest for any prohibited act;
- (j) provides false, incomplete or misleading information required to be recorded, notified or communicated pursuant to any requirement of the provisions of this Act or the regulations;
- (k) ships, transports, offers for sale, sells, purchases, imports, exports or has custody, control or possession of any fish taken or retained in contravention of this Act;
- (l) interferes with, delays or prevents by any means, the apprehension or arrest of another person knowing that such person has committed any act prohibited by this Section,

shall be guilty of an offense. [*P.L. 1988-12, § 36. See Section 41(2) and (3) for penalties.*]

§ 37. Operating without a license.

(1) It shall be unlawful for any foreign fishing vessel, and for the operator or crew of such vessel to engage in fishing in the Fishery Waters of the Republic unless such fishing is authorized by, and conducted in accordance with, a valid license issued pursuant to this Act and the regulations made under this Act.

(2) It shall be unlawful for any foreign fishing vessel, and for the operator or crew of any foreign fishing vessel, to engage in fishing in waters under the jurisdiction of any Local Government unless such fishing is authorized by, and conducted in accordance with, a valid fishing license issued by the respective Local Government. [*P.L. 1988-12, § 37. See Section 41(4) for penalties.*]

MAR 23

TITLE 33. MARINE RESOURCES

§ 38. Use of explosives.

- (1) Every person who:
- (a) uses, permits to be used or attempts to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or
 - (b) carries or has in his possession or control any explosive, poison, or other noxious substance in circumstances indicating an intention of using such substance for any of the purposes referred to in Paragraph (a) of this Subsection,

shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding fifty thousand dollars (US \$50,000).

(2) For the purposes of Subsection (1) of this Section, any explosive, poison or other noxious substance found on board any fishing vessel shall be presumed to be intended for the purpose referred to in Subsection (a) of this Section, unless the contrary is proved.

(3) Every person who lands, sells, receives or is found in possession of any fish taken in contravention of Subsection (1) of this Section, knowing or having reasonable cause to believe them to have been so taken, commits an offense and shall upon conviction be liable to a fine not exceeding fifty thousand dollars (US \$50,000).

(4) In proceedings for an offense under this Section, a certificate stating the cause and manner of death or injury of any fish, signed by the Director, or by any person authorized by him in writing, shall be sufficient evidence as to the matters stated therein, without proof of the signature of the person appearing to have signed the certificate or his official designation, unless the contrary is proved. [*P.L. 1988-12, § 38. See also Marine Resources Act, § 2.*]

§ 39. Possession of prohibited fishing gear.

(1) Every person who, while within the Fishery Waters, uses for fishing or has on board any fishing vessel in circumstances which indicate an intention to use for fishing in those waters:

- (a) any net, the mesh size of which does not conform to the prescribed minimum mesh size for that type of net;
- (b) any fishing gear which does not conform to any standards prescribed for that type of fishing gear; or
- (c) any fishing gear which is prohibited by this Act or any regulations made under this Act, including without limitation, a drift net;

shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding one hundred thousand dollars (US \$100,000).

(2) For purposes of this Section "drift net" means a gill net or other net:

- (a) which is more than 2.5 kilometers in length;
- (b) which acts by enmeshing, entrapping, or entangling any fish or other marine life;
- (c) which is used or intended to be used by being left to drift in, or on the surface of, the water; and
- (d) which is not used or intended to be used while attached to any point of land or the sea bed irrespective of whether the net is used or intended to be used while attached to any vessel.

[*P.L. 1988-12, § 39; amended by P.L. 1989-56, repealing and enacting new Paragraph (1)(c) and enacting new Subsection (2).*]

§ 40. Civil penalties.

(1) Any person who is found to have contravened this Act or any regulation made under this Act shall be liable for a civil penalty.

MAR 24

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

(2) The amount of the civil penalty shall not exceed one million dollars (US \$1,000,000) for each violation. Each day of a continuing violation shall constitute a separate offense.

(3) In determining the amount of such penalty, the court shall take into account the nature, circumstance, extent and gravity of the prohibited act or acts committed and, with respect to the violators, the degree of culpability, any history of previous offenses, and such other matters which may be relevant.

(4) It shall be the duty of the Attorney General to initiate all proceedings under this Section and to recover the amount imposed as a civil penalty.

(5) The proceeds of civil penalties shall be credited to the Fund. [*P.L. 1988-12, § 40.*]

§ 41. Criminal penalties.

(1) Every person who contravenes any of the provisions of this Act or any regulation made under this Act shall be guilty of an offense, and if no penalty is prescribed he shall upon conviction be liable to a fine not exceeding one hundred thousand dollars (US \$100,000) for each offense.

(2) Unless otherwise provided, any offense described by Section 36, Subsection (1), Paragraphs (a), (b), (c) or (k) of this Act shall be punishable by a fine not exceeding two hundred fifty thousand dollars (US \$250,000).

(3) Unless otherwise provided, any offense described as a prohibited act by Section 36, Subsection (1), Paragraphs (d), (e), (f), (g), (h), (i), (j), or (l) of this Act shall be punishable by a fine not exceeding five hundred thousand dollars (US \$500,000), except that if in the commission of any such offense any person uses a dangerous weapon, engages in conduct that causes bodily injury to any authorized officer, or threatens any authorized officer with bodily injury, the offense shall be punishable by a fine not exceeding one million dollars (US \$1,000,000).

(4) Any offense described by Section 37 of this Act shall be punishable by a fine not exceeding seven hundred fifty thousand dollars (US \$750,000) and each day of continuing violation shall be considered a separate offense.

(5) Where an offense against this Act has been committed by any person on board or employed on a fishing vessel, the master of the vessel shall also be guilty of the same offense and shall be punished in the like manner. [*P.L. 1988-12 § 41.*]

§ 42. Forfeitures and seizures.

(1) Fishing vessels, including fishing gear, equipment, appurtenances, stores, furniture, and any fish taken or retained in any manner, in connection with or as a result of the contravention of this Act, shall also be subject to forfeiture to the Government of the Republic pursuant to a civil proceeding.

(2) If a judgment is entered for the Government in a civil forfeiture proceeding under this Section, the court may designate an officer of the Authority as enforcement officer and it shall be his duty to seize any property or other interest declared forfeited.

(3) Subject to the order of court, the forfeited vessel, gear, equipment, appurtenances, stores, furniture and any fish, may be retained for use by, or at the direction of, the Authority.

(4) Pending completion of the civil forfeiture proceedings, the seized vessel, gear, equipment, appurtenances, stores, furniture and fish, or any part thereof, may be discharged at the direction of the court upon deposit with the court of a satisfactory bond or other security as may be determined by the court.

(5) The bond or other security referred to in Subsection (4) of this Section shall be conditioned upon such person delivering such property to the court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of the court.

(6) Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. [*P.L. 1988-12, § 42.*]

MAR 25

TITLE 33. MARINE RESOURCES

§ 43. Sale of fish.

Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the court. The proceeds of any such sale shall be deposited with the court pending the disposition of the civil forfeiture proceeding. [*P.L. 1988-12, § 43.*]

§ 44. Proceeds of sale.

All fines and the proceeds of the sale of all forfeitures collected pursuant to this Act shall be credited to the Fund. [*P.L. 1988-12, § 44.*]

§ 45. Presumptions.

(1) Unless the contrary is proved, all fish found on board any fishing vessel which has been used in the commission of any offense under this Act or any regulations made under this Act shall be presumed to have been caught in the commission of that offense.

(2) Where, in any legal proceedings instituted under this Act or any regulations made under this Act, the place in which an event is alleged to have taken place is in issue, the place stated in a certified copy of the relevant entry in the logbook or other official record of an enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place, unless the contrary is proved.

(3) In any legal proceedings under this Act where the defendant is charged with having committed an offense under which a license is required for the doing of any act, the onus shall be on the defendant to prove that at the time the offense was committed he was in possession of a valid license duly issued under this Act.

(4) All fish found on board a transmitting fishing vessel which has not reported to the Authority on entry and exit from the Fishery Waters, or which has been used in the commission of an offense in the Fishery Waters, shall be deemed to have been caught in the Fishery Waters, unless the contrary is proved. [*P.L. 1988-12, § 45.*]

§ 46. Jurisdiction of courts.

The High Court of the Republic shall have jurisdiction over any legal proceeding arising under this Act. The Court may at any time:

- (a) enter restraining orders or prohibitions;
- (b) issue warrants, process *in rem* or other processes;
- (c) prescribe and accept satisfactory bonds or other security; and
- (d) take such other actions as are necessary in the interest of justice. [*P.L. 1988-12, § 46.*]

§ 47. Compounding of offenses.

(1) Subject to Subsection (3) of this Section, the Director may, where he is satisfied that any person has committed an offense against this Act or any regulations made under this Act, compound such offense by accepting on behalf of the Government of the Marshall Islands from such person a sum of money not exceeding the maximum fine specified for that offense.

(2) On compounding an offense under this Section, the Director may order the release of any vessel or other article seized under this Act, or the proceeds of sale of any article under Section 44 of this Act on such conditions including the payment of such additional sums of money not exceeding the value of the vessel or other article seized, as he may think fit.

(3) Where the person who has committed the offense is no longer within the Republic, the Director may send written notice of his intention to compound the offense to the legal address of the person outside the Republic.

MAR 26

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

(4) No offense shall be compounded under this Section unless the person who has committed the offense has expressed his willingness in the prescribed form that the offense be so dealt with, or in the case of notification under Subsection (3) of this Section, if the person concerned notifies the Director in writing that he does not wish the offense to be compounded, admits to the jurisdiction of the courts of the Republic and, where so required by the court, files a satisfactory bond or other form of security in accordance with the procedures required by this Act.

(5) The compounding of an offense under this Section shall be notified in writing to the appropriate court under the signature of both parties, except that in the case of compounding following notification under Subsection (3) of this Section, the signature of the Director alone will suffice.

(6) In any proceedings brought against any person for an offense against this Act or any regulation made under this Act, it shall be a defense if such person proves that the offense with which he is charged has been compounded under this Act. [*P.L. 1988-12, § 47.*]

§ 48. Disposal of seized goods.

(1) Any fish, fish produce or other article of a perishable nature seized or taken in accordance with this Act may, on the direction of the Director, be sold and the net proceeds of the sale held pending the outcome of any prosecution brought under this Act, and if no such prosecution is brought such proceeds shall be paid to the owner of the fish, fish produce or other article sold.

(2) Any fishing vessel, fishing gear, fish or fish product seized in accordance with this Act, which is not ordered to be forfeited, shall be returned to its owner. [*P.L. 1988-12, § 48.*]

PART VII — OBSERVERS AND ENFORCEMENT OFFICERS

§ 49. Authorized observers.

(1) The Authority may declare, by regulation, any person to be an authorized observer for the purposes of this Act.

(2) Any observer authorized by any regional organization, regional agency or other body or person in accordance with a regional observer program to which the Republic is a party, who is not a citizen of the Republic shall have such rights and privileges of a citizen of the Republic as may be required in the performance of his duties. [*P.L. 1988-12, § 49.*]

§ 50. Authorized officers.

(1) The Authority may, in consultation with the Attorney General, declare, in writing, any public officer, by name or office, to be an authorized officer for the purpose of enforcing the provisions of this Act and regulations made hereunder.

(2) The Authority may declare, by regulation, any person to be an authorized officer for the purpose of enforcing the provisions of this Act and any regulations made under this Act.

(3) The Director may at any time request the assistance of public safety and law enforcement authorities for the proper implementation of this Act. It shall be the duty of all such authorities to give assistance as requested by the Director. [*P.L. 1988-12, § 50.*]

§ 51. Powers of Authorized officers.

(1) For the purposes of ascertaining whether there is or has been any contravention of the provisions of this Act or any regulations made thereunder, any authorized officer may:

- (a) upon the issue of a warrant, at all reasonable hours enter any fish processing establishment and any premises other than premises used exclusively as a dwelling-house;

MAR 27

TITLE 33. MARINE RESOURCES

- (b) where he has reasonable grounds for believing that an offense against the provisions of this Act or regulations made thereunder has been committed, stop, board, and search:
 - (i) any foreign fishing vessel, within the Fishery Waters; or
 - (ii) any local fishing vessel, inside or outside the Fishery Waters;
 - (c) stop and search any vehicle transporting, or reasonably suspected of transporting, fish or fish products;
 - (d) make such examination and inquiry as may appear necessary to him concerning any premises, fish processing establishment, vessel or vehicle in relation to which any of the powers conferred by this Section have been, or may be, exercised and take samples of any fish, or fish products, found therein;
 - (e) require any person to produce his license or his authority if it appears to the authorized officer that such person is doing any act for which a license or other authority is required under this Act and take copies of any such license or other authority; and
 - (f) require any person to produce any logbook, record or other document to be held by him under this Act or any regulations made under this Act, and take copies of such log book, record or other document.
- (2) Where he has reasonable grounds for believing that an offense against the provisions of this Act or any regulations made under this Act has been committed, any authorized officer may, with or without a warrant or other process:
- (a) following hot pursuit in accordance with international law and commenced within the fishery limits, stop, board, and search outside the Fishery Waters any foreign fishing vessel which he believes has been used in the commission of that offense within the Fishery Waters or in relation to which he believes such offense has been committed and bring such vessel and all persons and things on board within the Fishery Waters;
 - (b) within the Fishery Waters:
 - (i) arrest any person if he has reasonable cause to believe that such person has committed an offense prohibited by this Act;
 - (ii) seize any fishing vessel used or employed in, or when it reasonably appears to have been used or employed in, the violation of any provision of this Act;
 - (iii) seize any fishing gear, furniture, appurtenances, stores, cargo, and fish in or on a fishing vessel seized pursuant to this Section;
 - (iv) seize any fish which he reasonably believes have been taken or fish products produced in the commission of such offense; and
 - (v) seize any explosive, poison or other noxious substance which he reasonably believes has been used, carried, possessed or controlled in contravention of this Act.
- (3) Any authorized officer may execute any warrant or other process issued by any court of competent jurisdiction.
- (4) Where, following the commission of an offense under this Act by a foreign fishing vessel, that vessel is pursued beyond the limits of the Fishery Waters, the powers conferred on authorized officers under this Section shall be exercisable beyond the limits of the Fishery Waters in accordance with international law.
- (5) Any authorized officer may exercise any other lawful authority for the enforcement of this Act and any regulations made under this Act. [*P.L. 1988-12, § 51.*]

MAR 28

CHAPTER 4. MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

PART VIII — GENERAL

§ 52. Immunities.

No action shall lie against any member of the Board, the Director, any employee of the Authority, any authorized officer or observer or any other person appointed pursuant to this Act with respect to anything done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Act. [*P.L. 1988-12, § 52.*]

§ 53. Application of other laws.

No license issued under this Act shall relieve any foreign fishing or other vessel or its operator or crew of any obligation or requirements imposed by law concerning navigation, customs, immigration, health or other matters. [*P.L. 1988-12, § 53.*]

§ 54. Exclusion of Administrative Procedure Act.

The provisions of the Marshall Islands Administrative Procedure Act 1979 shall not apply to this Act or to any actions taken or required to be taken under this Act. [*P.L. 1988-12, § 54.*]

§ 55. Transitional.

(1) All assets, liabilities, rights and obligations of the Marshall Islands Maritime Authority established under the Marine Resources Jurisdiction Act 1978 in existence immediately before the effective date of this Act shall stand transferred and vest in the Authority created under this Act.

(2) All regulations, orders and notices made or given under the Marine Resources Jurisdiction Act 1978 as amended, and all licenses, permits, other authorizations, and agreements issued or made thereunder shall, except so far as they are inconsistent with the Act, continue to have effect as though made, given or issued under this Act. [*P.L. 1988-12, § 55.*]

Note: This Act repealed the Marine Resources Jurisdiction Act 1978.

MAR 29

CHAPTER 5.

MARINE MAMMAL PROTECTION

ARRANGEMENT OF SECTIONS

Section	Section
1. Short title.	8. Permittee requirements.
2. Legislative findings.	9. Prohibition.
3. Scope and application.	10. Peer review panel.
4. Vessel operating permits required.	11. Regulations.
5. International program.	12. Violations and penalties.
6. Records.	13. Jurisdiction of courts.
7. Safety panel.	

An Act to provide for the protection of dolphins and other marine mammals captured in the course of commercial fishing operations in the eastern tropical Pacific Ocean by flag vessels of the Republic of the Marshall Islands.

Commencement: February 19, 1990
Source: P.L. 1990-84

§ 1. Short title.

This Act may be cited as the "Marine Mammal Protection Act 1990." [P.L. 1990-84, § 1.]

§ 2. Legislative findings.

The Government of the Republic of the Marshall Islands recognizes that marine mammals are resources of international significance and that they should be protected to the extent feasible with sound policies of resource management. The primary objective of their management should be to maintain their health and stability within the marine ecosystem. [P.L. 1990-84, § 2.]

§ 3. Scope and application.

The species of marine mammals which are the subject of this Act are the following:

- (a) the offshore spotted dolphin;
- (b) the coastal spotted dolphin;
- (c) the eastern spinner dolphin;
- (d) the whitebelly spinner dolphin;
- (e) the Costa Rican spinner dolphin;
- (f) the common dolphin;
- (g) the striped dolphin; and
- (h) any other species of small toothed cetaceans, captured in the course of commercial fishing operations in the eastern tropical Pacific Ocean. [P.L. 1990-84, § 3.]

MAR 30

TITLE 33. MARINE RESOURCES

§ 4. Vessel operating permits required.

Vessels of the Republic of the Marshall Islands flagged pursuant to the Maritime Act 1990 (34 MIRC, Chapter 3A), fishing for tuna in the eastern tropical Pacific Ocean bounded by forty (40) degrees south latitude by forty (40) degrees north latitude by one hundred sixty (160) degrees west longitude and whose carrying capacity is four hundred (400) tons or greater, shall obtain a vessel operating permit to fish tuna associated with marine mammals. [*P.L. 1990-84, § 4. Reference to the Maritime Act 1987 was substituted with the Maritime Act 1990, as the 1990 Act repealed the Maritime Act of 1987.*]

§ 5. International program.

Persons who have obtained vessel operating permits pursuant to Section 4 of this Act (hereinafter, "the permittees") shall participate in an international program designated by the Government of the Marshall Islands for protecting marine mammals, providing facilities so that observers and scientific researchers can carry out data collection, monitoring, and research responsibilities on board the tuna vessels. Such participation in the international program is necessary to monitor the effectiveness of marine mammal rescue gear and procedures and to record the incidental mortality of marine mammals associated with fishing. [*P.L. 1990-84, § 5.*]

§ 6. Records.

The permittees shall maintain and submit records of their fishing activities involving tuna and marine mammals according to the requirements of the international program designated by the Government of the Republic of the Marshall Islands. Records and information required by the international program shall be made available to the Government of the Republic of the Marshall Islands upon request, and may be released directly to the international program with prior written authorization of the Government of the Republic of the Marshall Islands. [*P.L. 1990-84, § 6.*]

§ 7. Safety panel.

The permittees shall install and maintain a safety panel in their tuna purse seine net to avoid the entanglement of marine mammals captured during tuna fishing operations. The safety panel must be constructed of one and one-half inch mesh in order to cover the perimeter of the back-down area. The safety panel must have a minimum length of three hundred twenty-nine (329) meters (180 fathoms). If the purse seine net has more than eighteen (18) strips, the safety panel must have a minimum length of ten (10) fathoms for each strip. The safety panel must be clearly marked so as to be visible during fishing operations, and three (3) towing points must be located in the net at one-quarter, one-half, and three-quarters of the net. [*P.L. 1990-84, § 7.*]

§ 8. Permittee requirements.

The permittees shall be required to:

- (a) do a back-down maneuver when marine mammals are captured in a tuna set, which consists of moving the vessel in reverse in order to form a channel and cause the sinking of the cork line of the net to allow the release of trapped marine mammals;

MAR 31

CHAPTER 5. MARINE MAMMAL PROTECTION

- (b) undertake maneuvers necessary to avoid the collapse of the net in order to prevent marine mammals from being trapped or from coming in contact with the net. A minimum of two speedboats, equipped with towing bridles, should be immediately available to hold the net open in order to prevent the net from collapsing and to assist in the hand rescue of trapped marine mammals;
- (c) undertake maneuvers for the release and rescue of marine mammals that are not released during the backdown maneuver. This procedure requires the use of speedboats to force the marine mammals toward the backdown channel and the use of persons in a rubber raft to release marine mammals trapped in a net;
- (d) remove all live marine mammals from the net before sack up and brailing the tuna on board the vessel. Brailing and sacking up of live mammals in the net is prohibited;
- (e) use lights capable of producing a minimum of one hundred forty thousand (140,000) lumens of output for use in darkness to carry out marine mammal rescue procedures. Vessels must complete the backdown maneuver and begin rolling the net to sack-up no later than thirty (30) minutes after sundown, unless the operator qualifies for a waiver because of the operator's proven ability to complete sets in darkness with a mortality rate less than or equal to the fleet's average during daylight; and
- (f) restrict the use of explosive devices to influence the movements of dolphin to those devices that contain less than forty (40) grains (2.592 grams) of explosive material and insure that the devices are discharged in a manner that precludes any harm to the dolphin. [*P.L. 1990-84, § 8. Paragraphs were renumbered to conform to the format and style of the Code.*]

§ 9. Prohibition.

The permittees are prohibited from making tuna sets associated with marine mammals involving pure schools of eastern spinner dolphin, coastal spotted dolphin, and on any other pure schools of marine mammals except offshore spotted dolphin, striped dolphin, and common dolphin. [*P.L. 1990-84, § 9.*]

§ 10. Peer review panel.

The permittees shall participate in or appear before a peer review panel of expert skippers designated by the Government of the Republic of the Marshall Islands for the purpose of reviewing and recommending improvements in the performance of the individual tuna permittee in releasing and rescuing marine mammals during tuna fishing operations. Vessel owners and operators shall provide data for each trip to the Government of the Republic of the Marshall Islands, or its designee, that shall become part of a skipper performance system that identifies the operators with consistently higher dolphin mortality rates than the majority of the nation's fleet, for the purpose of providing remedial training to the operator, and, if the performance of such operator does not improve, removing the operator from the fishery. [*P.L. 1990-84, § 10.*]

§ 11. Regulations.

The Minister of Resources and Development may, in accordance with this Act, adopt such regulations as are necessary to carry out this Act. [*P.L. 1990-84, § 11.*]

MAR 32

TITLE 33. MARINE RESOURCES

§ 12. Violations and penalties.

(1) Any person who is found to have contravened this Act or any regulation made under this Act shall be liable for a civil penalty.

(2) The amount of the civil penalty shall not exceed one million dollars (US \$1,000,000) for each violation. Each day of a continuing violation shall constitute a separate offense.

(3) In determining the amount of such penalty, the court shall take into account the nature, circumstance, extent and gravity of the prohibited act or acts committed and, with respect to the violators, the degree of culpability, any history of previous offenses, and such other matters which may be relevant.

(4) In addition to any other civil penalty which may be imposed, the failure by a permittee to comply with the provisions of this Act shall result in the forfeiture of the fishing permit to fish for tuna in the eastern tropical Pacific Ocean.

(5) It shall be the duty of the Attorney General to initiate all proceedings under this Section and to recover the amount imposed as a civil penalty. [*P.L. 1990-84, § 12.*]

§ 13. Jurisdiction of courts.

The High Court of the Republic of the Marshall Islands shall have jurisdiction over any legal proceeding arising under this Act. The Court may at any time:

- (a) enter restraining orders or prohibitions;
- (b) issue warrants, process *in rem* or other process;
- (c) prescribe and accept satisfactory bonds or other security; and
- (d) take such other actions as are necessary in the interests of justice. [*P.L. 1990-84, § 13.*]

Note:

MAR 33

MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

RULES AND REGULATIONS ON
FOREIGN FISHING AGREEMENTS AND
FISH PROCESSING ESTABLISHMENTS

The following regulations are promulgated under the authority of the Marshall Islands Marine Resources Authority Act 1988, Title 33 Marshall Islands Revised Code, Chapter 4.

SECTION 1	General Provisions; Definitions
SECTION 2	Requirements of Foreign Fishing Agreements
SECTION 3	Requirements Prior to Entry of Vessels for Local Government Area Activities
SECTION 4	Fish Processing Establishments

SECTION 1 **GENERAL PROVISIONS; DEFINITIONS**

A GENERAL PROVISIONS

These rules and regulations are intended to provide further detail to the provisions of the Marshall Islands Marine Resources Authority Act. These rules and regulations apply to all aspects of MIMRA jurisdiction unless otherwise provided.

B DEFINITIONS

Terms used in these regulations shall have the meanings assigned them in the Marshall Islands Marine Resources Authority Act 1988. In addition, the following terms are defined:

- (1) "Act" means the Marshall Islands Marine Resources Authority Act 1988.
- (2) "Baseline of the Marshall Islands" shall have the meaning assigned it in the Marine Zones (Declaration) Act 1984: the low water line of the seaward side of the reef fringing the coast of any part of the Marshall Islands or bounding any lagoon waters adjacent to any part of that coast, or, where a reef is not present, the low water line of the coast itself.
- (3) "Exclusive Economic Zone" shall have the meaning assigned it in the Marine Zones (Declaration) Act 1984: those parts of the sea having as their inner limits the outer limits of the territorial sea, and as their outer limits a line drawn 200 nautical miles seaward from the baselines from which the breadth of the territorial sea is measured.
- (4) "Fish processing establishment" means any land, premises or other place on or in which fish are canned, packed, dried, gutted, salted, iced, chilled, frozen, or otherwise processed for sale by wholesale in or outside the Republic.
- (5) "Foreign fishing agreement" means a bilateral or multilateral agreement providing for

MAR 34

fishing rights to foreign fishing vessels in accordance with the requirements of the Act.

- (6) "Foreign fishing vessel" means any fishing vessel other than a local fishing vessel.
- (7) "Jurisdiction of a Local Government Area" means the sea and seabed of the internal waters of an atoll or island and the surrounding sea and seabed to a distance of five nautical miles from the baselines from which the territorial sea of that atoll or island is measured.
- (8) "Local fishing vessel" means a fishing vessel -
 - (i) registered in the Republic of the Marshall Islands; and
 - (ii) wholly owned and controlled, or chartered by -
 - (A) the Government of the Republic of the Marshall Islands;
 - (B) a public corporation established under the laws of the Republic of the Marshall Islands; or
 - (C) any citizen of or person permanently domiciled in the Republic of the Marshall Islands.
- (9) "Nautical mile" means an international nautical mile of 1,852 meters.
- (10) "Person" means any individual, corporation, company, association, partnership, authority, commission, foundation, the Republic of the Marshall Islands government or its political subdivisions, or any local, state, or foreign government or municipality, or other institution or entity, whether public or private.
- (11) "Territorial sea" shall have the meaning assigned it in the Marine Zones (Declaration) Act 1984: that part of the sea within twelve (12) nautical miles from the baseline of the Marshall Islands.

C ADDITIONAL REQUIREMENTS; WAIVER OR VARIANCE

MIMRA may, if it deems appropriate, vary or waive any of the items herein, or impose additional requirements.

SECTION 2 REQUIREMENTS OF FOREIGN FISHING AGREEMENTS

A SCOPE

These regulation set out terms and conditions of foreign fishing agreements to which substantial agreement will be sought.

B ESSENTIAL ITEMS

The following items shall be considered basic and essential terms for any foreign fishing agreement:

- (1) That the party seeking an agreement present a business plan that outlines at least the following:

MAR 35

- (i) experience in the fishing industry and references;
 - (ii) vessels to be used;
 - (iii) intended catch species and quantity;
 - (iv) intended marketing plans for catch;
 - (v) plans and measures designed to assure compliance by all vessels with the laws of the Republic.
- (2) recognition of RMI sovereignty over it's exclusive economic zone of 200 nautical miles, it's territorial sea, as well as local government authority over their specific areas of jurisdiction.
- (3) recognition of all RMI Laws, rules and regulations, local government ordinances, and where appropriate, local custom and specific consent to the jurisdiction of the RMI courts.
- (4) appointment of local agent for service of process. Designation of local address for mailings.
- (5) maintain at all times a bond or letter of credit, in the amount of \$500,000 per vessel license application, in the Majuro Branch of the Bank of Hawaii. The bond or letter of credit is intended to ensure payment of judgements, fees, fines, or penalties that may be imposed against any vessel charterer, captain, crew, or owner.
- (6) recognition of importance of, and agreement to comply with, all catch and position reporting requirements.
- (7) agreement to comply with all reasonable requirements for and by observers and authorized personnel.
- (8) as appropriate to the particular agreement any or all of the following:
- (i) local-based off-loading only;
 - (ii) prohibition of any off-loading or trans-shipment other than at Ebeye or Majuro;
 - (iii) exclusion from certain areas of the RMI fishery waters;
 - (iv) the type or method of fishing or related activity;
 - (v) the target species and amount of fish authorized to be taken, including any restriction on by-catch.

C ADDITIONAL REQUIREMENTS

MIMRA may, if it deems appropriate, impose additional requirements. Examples of additional requirements may include, but are not limited to, maintaining a bond or letter of credit in an amount greater than required in B(5); specifications regarding fishing gear; items respecting the terms and conditions of licenses and items respecting the export of fish.

MAR 36

SECTION 3

REQUIREMENTS PRIOR TO ENTRY OF VESSELS FOR LOCAL
GOVERNMENT AREA ACTIVITIES

A SCOPE

These regulations set out the minimum requirements for a foreign fishing agreement required of any person that desires to enter into a license agreement with a Local Government Authority for fishing or other exploitation of marine resources within the jurisdiction of the Local Government Authority. These regulations are in addition to the requirements of Section 2 of these regulations regarding the basic elements of a foreign fishing agreement.

B REQUIREMENTS

- (1) any person or corporation, prior to entering into a license agreement with a Local Government Council regarding exploitation of marine resources shall comply with MIMRA requirements regarding foreign fishing agreements.
- (2) any proposal to enter into a license agreement with a Local Government Council shall include at least the following elements:
 - (i) name of the Local Government Council;
 - (ii) the substantive terms of the proposal to be made to the Local Government Council, including target species or marine resource, projected catch, gathering or harvest rates, marketing plans, price, length of license requested, and elements of local control that will be included to assure local government involvement;
 - (iii) a copy of the foreign investment business license;
 - (iv) a copy of the articles of incorporation and by-laws;
 - (v) evidence of liability insurance for all boats and any shore-based facility. Such insurance must include coverage of all personnel;
 - (vi) specific acknowledgement of the need to comply with all laws, rules, and regulations of the Marshall Islands, as well as all local ordinances, and customs.
- (3) the following items must be filed with MIMRA prior to any MIMRA clearances coming into effect:
 - (i) all agreements or contracts for local fishing licenses or any other activity related to the exploitation of fish or any marine resources must be filed in final and executed form with the Director of MIMRA;
 - (ii) all agreements, contracts, or licenses filed as required herein must be accompanied by a certified copy of the Local Government Council resolution approving the matter. Such resolution must recite the key terms of the agreement (as set out in item (iv) below) and show the name and signature of all council members voting to approve or accept the agreement;

MAR 37

- (iii) all resolutions shall be submitted in Marshallese and English and must include an affidavit of translation; and
 - (iv) all agreements with Local Government Councils must state:
 - (A) the types of fish to be caught or other marine resource to be exploited;
 - (B) the areas within the jurisdiction of the Local Government that will be exploited and those which are to be protected;
 - (C) the amount of the catch or other gathering allowed, or restrictions that will be imposed; and
 - (D) the amount and method of payment that will be made to the Local Government Council.
 - (v) no agreement may state a duration of greater than one year unless, upon written submission, a request for longer duration is made. A request for a longer term will be considered if it involves local construction and related investment in facilities or equipment needed in connection with the proposed agreement. Requests for agreements of longer terms must be accompanied by a business plan and any resulting agreement must include appropriate performance standards.
 - (vi) all local government agreements that involve export must provide that the catch or harvest will be exported from Majuro or Ebeye.
- (4) on at least a semi-monthly basis, any person with a local fishing agreement shall report to MIMRA complete and detailed information on the catch made, in a form required by MIMRA.

SECTION 4

FISH PROCESSING ESTABLISHMENTS

A SCOPE

These Regulations cover the licensing, operation, and inspection of fish processing centers.

B APPLICATION

Any person who desires to operate a fish processing establishment must submit an application to MIMRA and include a non-refundable fee as prescribed by MIMRA. Each application shall include the following information:

- (1) name of applicant, address, telephone number;
- (2) if a corporation - name, address, telephone number, and place of incorporation, a copy of the articles of incorporation and by-laws;
- (3) foreign investment license number, if applicable;
- (4) proposed site (describe or attach diagrams and information regarding land lease, utility connections);

MAR 38

- (5) information on the proposed facility, including, but not limited to, a description or diagram of the facility, as well as dates for construction, modification etc of physical plant, and plans for financing;
- (6) information on proposed capacity and fish handling capabilities, including but not limited to: ice-making capacity and arrangements for sufficient water;
- (7) information on plans to comply with relevant laws and regulations on environmental protection and employment;
- (8) information on shipping arrangements for the processed material;
- (9) general information on the planned source of the fish.

C REVIEW OF APPLICATION

MIMRA shall review each complete application within 45 business days after it is submitted. If further information is required, or the application is not complete, MIMRA shall inform the applicant what further information is required.

D APPROVED APPLICATION

If an application is approved, the applicant will receive from MIMRA an indication of permission to proceed with construction or modification of the physical plant, as the case may be.

E ISSUANCE OF LICENSE

No license will be issued until the fish processing establishment has been completed in accordance with the submitted application and plans or any approved modifications, and is ready for operation. No operations are allowed to proceed until a license has been issued.

F TEMPORARY LICENSE

In the event that a processing establishment, although not completed in accordance with the application, is capable of appropriate handling of fish, MIMRA may issue a temporary license. No temporary license may be issued for a period exceeding 6 months, and may be issued for a shorter period.

MAR 39

TITLE 35.
ENVIRONMENT
CHAPTER 1.

ENVIRONMENTAL PROTECTION

ARRANGEMENT OF SECTIONS

Section

PART I - PRELIMINARY

1. Short title.
2. Application.
3. Interpretation.

**PART II - NATIONAL ENVIRONMENTAL
PROTECTION AUTHORITY**

4. Establishment of the Authority.
5. Inapplicability of the Corporations, Partnership and Associations Act.
6. Members and their appointment.
7. Compensation.
8. Vacation of office.
9. Delegation by the Authority.
10. Procedure.
11. Disclosure of, and disqualifications for, interest.
12. Misconduct in public office.
13. By-laws.
14. Staff of the Authority.
15. Application of bribery laws.
16. Protection for action taken under this Act, or on the direction of the Authority.
17. Immunity.
18. Attorney-General.

**PART III - OBJECTS, POLICIES, POWERS,
FUNCTIONS AND DUTIES**

Division 1 - Objects, Policies and Powers

19. Objects.
20. Policies of the Authority.
21. Powers of the Authority.
22. Primary drinking water regulations.
23. Pollutants.
24. Pesticides, etc.
25. Nuclear and radioactive waste, etc.

Division 2 - Functions and Duties

26. Functions and duties of the Authority.
27. Environmental management.
28. Land Use Scheme.
29. Natural resources.
30. Fisheries.
31. Soil conservation.
32. Studies, research, etc.

Section

**PART IV - GENERAL RULES AS
TO GOVERNMENTAL ACTION**

33. Environmental impact.
34. Environmental impact statements.

PART V - FINANCE

35. National Environmental Protection Authority Fund.
36. Bank accounts.
37. Accounts and records.
38. Minister may require report.
39. Exemption from tax, etc.

**PART VI - ENVIRONMENTAL
ADVISORY COUNCIL**

40. Constitution.
41. Compensation.
42. Applicability of certain Sections.
43. Meetings.
44. Functions.

PART VII - ENFORCEMENT

Division 1 - General

45. Enforcement action generally.
46. Discharges of waste.
47. Pollutants.

Division 2 - Cease and Desist Orders

48. Application of administrative procedure laws.
49. Issuing, etc., of cease and desist order.
50. Public hearings.

Division 3 - Judicial Proceedings, etc.

51. Declaratory and equitable relief.
52. Defenses.
53. Relief.
54. Remission for administrative proceeding, etc.
55. Administrative proceeding, etc., subject to judicial review.

Division 4 - Fines, Penalties, etc.

56. Violation.
57. Civil penalties.

MAR 40

TITLE 35. ENVIRONMENT

§ 28. Land Use Scheme.

The Land Use Scheme formulated under Section 27 of this Act may include:

- (a) a scientifically adequate land inventory and classification system;
- (b) a determination of present land uses, the extent to which land is utilized, under-utilized or rendered idle or abandoned;
- (c) a comprehensive and accurate determination of the adaptability of land for community development, agriculture, industry or commerce;
- (d) identification of areas having important historic, cultural or aesthetic value where uncontrolled development or exploitation could result in irreparable damage;
- (e) a method for exercising control by the Government of the Marshall Islands over the use of land in areas where environmental control is deemed necessary; and
- (f) a policy for influencing the location of new areas for the resettlement of persons and the methods for assuring appropriate controls over the use of land in and around such areas. [*P.L. 1984-31, § 28.*]

§ 29. Natural resources.

The Authority shall, in consultation with the Council and with the assistance of the Ministry of Resources and Development, recommend to the Minister the basic policy on the management and conservation of the country's natural resources in order to obtain the optimum benefits therefrom and to preserve the same for future generations, and the general measure through which such policy may be carried out effectively. [*P.L. 1984-31, § 29.*]

§ 30. Fisheries.

(1) The Authority shall, in consultation with the Council and with the assistance of the Ministry in charge of the subject of fisheries, recommend to the Minister a system of rational exploitation of fisheries and of the aquatic resources within the territorial waters of the Republic including its exclusive economic zone, and shall encourage citizen participation therein to maintain and enhance the optimum and continuous productivity of such waters.

(2) Measures for the rational exploitation of fisheries and other aquatic resources may include the regulation of the harvesting and marketing of threatened species of fish or other aquatic life. [*P.L. 1984-31, § 30.*]

§ 31. Soil conservation.

The Authority shall, in consultation with the Council and with the assistance of the Ministry of Interior and Outer Islands Affairs, recommend soil conservation programs, including therein encouragement of scientific farming techniques, physical and biological means of soil conservation, and short-term and long-term research and technology for effective soil conservation. [*P.L. 1984-31, § 31.*]

§ 32. Studies, research, etc.

The Authority may undertake and promote continuing studies and research programs on environmental management and shall from time to time determine priority areas of environmental research. [*P.L. 1984-31, § 32.*]

NAU (i)

REPUBLIC OF NAURU

Nauru became an independent Republic in 1968. Prior to that the island had been annexed by Germany in 1888 and surrendered to Australian forces in 1914. It was administered under a mandate conferred on the British Empire and approved by the League of Nations from 1920 to 1947 when the United Nations General Assembly approved a trusteeship agreement with the governments of the United Kingdom, Australia and New Zealand as joint administering authority. The island is situated at 0° 30' South and 166° 56' East. It has a land area of approximately 21.2 sq km and is some 19 kilometres in circumference. Nauru has a population of around 8,400 (1992), of which a large proportion is made up of workers from overseas (principally Kiribati and Tuvalu).

Under the Constitution of 1968, laws are made by the Parliament of 18 elected members. Parliament elects the President, who is both Head of State and head of the executive.

Limits of National Jurisdiction

Legislative provisions relating to Nauru's maritime boundaries are found in the Marine Resources Act and the Interpretation Act 1971. In the Interpretation Act there is a general definition of Nauru which includes "the island of Nauru, the territorial waters thereof and the air space above the island and the territorial waters". The Interpretation Act also states that the territorial waters of Nauru extend to twelve miles. The Marine Resources Act 1978 establishes an exclusive fisheries zone extending 200 nautical miles seaward from the baselines of the territorial waters of Nauru. The baselines from which the territorial waters and EFZ are measured are to be established with reference to the seaward low water line of the reef. The total area of the EFZ is 436,490 sq km. (FFA Boundary Delimitation Programme, 1992).

Nauru shares maritime boundaries with Kiribati and the Marshall Islands. No maritime boundary agreements have been negotiated.

Fisheries Legislation

The Marine Resources Act 1978 establishes an exclusive fisheries zone and provides a basic legal framework for the regulation of fisheries within the zone. The Act requires the responsible Minister to determine the total allowable catch in respect of the territorial waters and the EFZ. The surplus catch may then be apportioned among fishing countries. Responsibility for the enforcement of the Marine Resources Act lies with the police force.

Licensing Requirements

Licences may be issued, at the discretion of the Minister, to specified fishing craft. No distinction is made between local and foreign fishing vessels in this regard. The Minister is required to ensure that, in issuing licences, the TAC or, where applicable, the allocation of a share of the TAC, is not exceeded. The Minister may attach conditions to a licence, including conditions as to the quantity, size and species of fish which may be taken, the type of gear that may be used, transshipment, the marking and identification of fishing craft, and statistical and other information required to be given by the fishing craft. Cabinet may make regulations consistent with the Act in order to give full effect to the provisions of the Act. No such regulations have been made.

Conservation

The Marine Resources Act contains none of the usual provisions relating to conservation, such as prohibitions of certain fishing methods and measures to restrict the exploitation of certain species.

NAU (ii)

Cabinet is empowered to make regulations for the conservation and management of resources of fish within the territorial waters of Nauru or the EFZ but, to date, no such regulations have been made.

Regional and International Agreements relating to Fisheries

Nauru is a member of the South Pacific Forum, the Forum Fisheries Agency and the South Pacific Commission. Nauru is a signatory to the United Nations Convention on the Law of the Sea. It is a party to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America and the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific. Nauru is also a party to the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest, 1982 and is a signatory to the Arrangement for the Management of the Western Pacific Purse Seine Fishery. Nauru signed the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region on 9 July 1992 and became the first signatory to ratify the Treaty on 30 September 1992.

**Acts and Subsidiary Legislation of Nauru
Reproduced in this Compendium**

	Page
Interpretation Act 1971 (No. 12 of 1971) (s.2)	NAU 1
Marine Resources Act 1978 (No. 8 of 1978)	NAU 2



AN ACT

To make better provision in the law relating to the construction, interpretation and publication of the law and for matters incidental thereto.

(Certified: 5th January, 1972)

Enacted by the Parliament of Nauru as follows:

PART I – PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Interpretation Act 1971 and shall come into force on a date to be notified by the Cabinet in the Gazette.

PART II – GENERAL PROVISIONS FOR INTERPRETATION

INTERPRETATION OF TERMS AND APPLICATION

2. (1) In this Act and in every other written law and in all public documents enacted, made or issued before or after the commencement of this Act the following words and expressions shall have the meanings hereby assigned to them respectively unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided:—

...

"Nauru" means the Island of Nauru, the territorial waters thereof and the air space above the island and the territorial waters;

...

"territorial waters" means that area of water, and the waters and subsoil beneath it, enclosed by a line every part of which is at a distance of twelve miles from the nearest point of the outer edge of the reef surrounding the Island of Nauru which is exposed at low tide and, where there is an opening in the reef, from a straight line across the outer edges of that opening;



REPUBLIC OF NAURU

MARINE RESOURCES ACT 1978

(No. 8 of 1978)

ARRANGEMENT OF SECTIONS

Sections

- 1 Short title and commencement
- 2 Interpretation
- 3 The Exclusive fisheries zone
- 4 Prohibition of fishing by unlicensed craft
- 5 Calculation of total allowable catch
- 6 Apportionment of allowable catch
- 7 Grant of licences
- 8 Renewal of licences
- 9 Variation of licences
- 10 Licensing fees
- 11 Offences
- 12 Suspension and cancellation of licences
- 13 Fishing for research, experimental and sporting purposes
- 14 Apprehension of offenders and their craft
- 15 Security for release of fishing craft
- 16 Offences to be deemed to be committed in Nauru
- 17 Offences to be tried by the District Court
- 18 Proof of offences
- 19 Fisheries regulations
- 20 General regulations



AN ACT

To establish an exclusive fisheries zone of Nauru and in exercise of the sovereign rights of the Republic of Nauru to make provision for the exploitation, conservation and management of the resources of fish and aquatic mammals in the territorial waters of Nauru and the zone, and for matters connected with those purposes.

(Certified: 15th September, 1978)

Enacted by the Parliament of Nauru as follows:

SHORT TITLE AND COMMENCEMENT

1 This Act may be cited as the Marine Resources Act 1978 and shall come into force on a date to be fixed by the Minister by notice in the Gazette.

INTERPRETATION

2 In this Act, unless the context otherwise requires,—

“fish” includes—

- (a) every description of fish and shellfish and their young, fry and spawn; and
- (b) every description of aquatic mammal and their young;

“fishing” means

- (a) taking any fish;
- (b) engaging in any activity relating to the taking of any fish, including inter alia any activity involving the preparation, supply, storage, refrigeration, transportation or processing of any fish, or
- (c) engaging in any activity relating to the provision of any services to any fishing craft to enable or assist that craft to engage in fishing;

“fishing craft” means any vessel, aircraft, hovercraft, submersible craft or other craft, of whatever size and however propelled, which is capable of being used for fishing;

“licence” means a licence issued under section 7 in respect of a fishing craft; and “licensed” has a corresponding meaning;

“licensee” means the person to whom a licence is issued;

“master”, in relation to a fishing craft, means the person for the time being having command or charge of the craft;

“median line”, as between Nauru and any other country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial waters of Nauru and the corresponding baseline of that other country;

“nautical mile” means the international nautical mile of 1852 metres;

“owner”, in relation to a fishing craft, includes any body of persons, whether incorporated or not, by whom the craft is owned, any charterer, sub-charterer, lessee or sub-lessee of the craft;

“shellfish” includes every description of molluscs, crustaceans and echinoderms, and their young and spawn;

"small fishing craft" means a vessel having an overall length of not more than seven metres from stem to stern;
"take" includes to take, catch, kill, attract or pursue by any means or device and to attempt to do any such act;
"the exclusive fisheries zone" and "the zone" mean the exclusive fisheries zone of Nauru described in section 3;
"total allowable catch", with respect to the yield from the territorial waters of Nauru and the exclusive fisheries zone or from any area thereof specified by the Minister under the provisions of subsection (2) of section 5, means the amount of fish that will produce from the territorial waters and the zone or from that specified area, as the case may be, the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish and any generally recommended sub-regional, regional or global standards.

THE EXCLUSIVE FISHERIES ZONE

3. (1) Subject to the next following subsection and subsection (3), the exclusive fisheries zone of Nauru comprises those areas of the sea which are beyond and adjacent to the territorial waters of Nauru, having as their outer limits a line measured seaward from the baseline of the territorial waters of Nauru, every point of which is distant 200 nautical miles from the nearest point of that baseline.

(2) Where—

(a) any part of the median line between Nauru and any other country is less than 200 nautical miles from the nearest point of the baseline of the territorial waters of Nauru; and
(b) no other outer limit of the exclusive fisheries zone is for the time being determined by any proclamation made by the President under the next following subsection,
that part of the median line shall be an outer limit of the exclusive fisheries zone.

(3) For the purposes of implementing any international agreement, or the arbitral award of any international court, or for any other purpose in accordance with international law, the President may from time to time, by proclamation published in the Gazette, declare that the exclusive fisheries zone shall not extend to any specified area of the sea that would otherwise be included within the exclusive fisheries zone by virtue of this section; if he does so, that specified area of the sea shall not be part of the exclusive fisheries zone.

PROHIBITION OF FISHING BY UNLICENCED CRAFT

4. (1) Subject to the next following subsection and section 13, no fishing craft shall be used for fishing within the territorial waters of Nauru and the exclusive fisheries zone except in accordance with a licence issued by the Minister under section 7.

(2) The provisions of this Act shall not apply to the use of small fishing craft by natural persons ordinarily resident in Nauru.

CALCULATION OF TOTAL ALLOWABLE CATCH

5. (1) The Minister shall from time to time determine the total allowable catch in respect of the territorial waters of Nauru and the exclusive fisheries zone.

(2) The Minister may, if he thinks fit, at any time determine the total allowable catch in respect of any such area of the territorial waters of Nauru and the exclusive fisheries zone as he shall specify.

APPORTIONMENT OF ALLOWABLE CATCH

6. (1) Subject to the next following subsection, the Minister may from time to time apportion among countries the total allowable catch or a portion thereof in respect of the territorial waters of Nauru and the exclusive fisheries zone or any area thereof specified by him under the provisions of subsection (2) of section 5.

(2) The Minister may reserve for Nauru the whole or any portion of the total

allowable catch in respect of the territorial waters of Nauru and the exclusive fisheries zone or any area thereof specified by him under the provisions of subsection (2) of section 5. If he does so, he shall apportion among other countries only the balance of the total allowable catch or a portion thereof in respect of the territorial waters of Nauru and the exclusive fisheries zone or of that area thereof, as the case may be:

Provided that the Minister shall not reserve for Nauru any greater portion of the allowable catch of the exclusive fisheries zone than he reasonably expects to be taken by fishing craft of Nauru.

(3) In making an apportionment under subsection (1) the Minister shall be entitled to favour any country for any reason in his discretion, if he thinks fit to do so.

GRANT OF LICENCES

7. (1) Subject to the next following subsection, the Minister may grant and issue to the owner of any named fishing craft a licence to fish within the territorial waters of Nauru and the exclusive fisheries zone or within a specified area thereof.

(2) The Minister shall exercise the powers conferred on him by this section in such a manner as to ensure that—

(a) the catch that all fishing craft licensed under this section are for the time being authorised to harvest from the territorial waters of Nauru and the exclusive fisheries zone or from any area of those waters and that zone specified by the Minister under the provisions of subsection (2) of section 5 does not exceed the allowable catch for fishing craft for those waters and that zone or for that area thereof, as the case may be, calculated in pursuance of section 5; and

(b) the catch that all fishing craft of a particular country licensed under this section are for the time being authorised to harvest from the territorial waters of Nauru and the exclusive fisheries zone or from any area of those waters and that zone specified by the Minister under the provisions of subsection (2) of section 5 does not exceed the apportionment made under section 6 for those waters and that zone or for that area thereof, as the case may be, in respect of that country.

(3) In granting a licence under this section, the Minister may attach to the licence conditions relating inter alia to all or any of the following matters—

(a) the areas within the territorial waters of Nauru and the exclusive fisheries zone in which fishing is authorised;

(b) the seasons, times and particular voyages during which fishing is authorised;

(c) the species and subspecies of fish and the aggregate quantity of fish which may be taken;

(d) the quantity of fish of any species or subspecies which may be taken;

(e) the size of fish of any species or subspecies which may be taken;

(f) the age of fish of any species or subspecies which may be taken;

(g) the period or periods of the year during which any fish or fish of any species or subspecies may be taken;

(h) the method by which any fish or fish of any species or subspecies may be taken;

(i) the types, sizes and amount of fishing gear that may be used or carried by a fishing craft, and the modes of storage of that gear when not in use;

(j) the use, transfer, transshipment, landing and processing of fish taken;

(k) entry by the fishing craft to port in Nauru, whether for the inspection of its catch or for other purposes;

(l) the compensation payable to the Republic or the citizens or residents of Nauru in the event of any loss or damage caused by the fishing craft to other fishing craft, or their gear or catch, or to fish stocks, or to other interests of Nauru;

(m) statistical and other information required to be given by the fishing craft to the Minister, including statistics relating to catch and effort and reports as to the position of the craft;

(n) the conduct by the fishing craft of specified programmes of fisheries research;

(o) the training of Nauru personnel in the methods of fishing employed by the fishing craft and the transfer to Nauru of technology relating to fisheries;

(p) the display on board the fishing craft of the licence issued in respect of it;

(q) the marking of the fishing craft and other means for its identification;

- (r) directions, instructions and other requirements given or made by ships or aircraft of the Republic to the fishing craft which shall be complied with by the craft;
- (s) the placing and maintaining of observers on the fishing craft and the reimbursement to the Republic by the licensee of the costs of doing so;
- (t) the installation on the fishing craft and maintenance in working order of a transponder or other equipment for the fixing of its positions or its identification, and of adequate navigational equipment to enable it to fix its position itself;
- (u) the carriage on board the fishing craft of specified nautical charts;
- (v) such other matters as the Minister considers necessary or expedient for the conservation or management of resources of fish within the territorial waters of Nauru and the exclusive fisheries zone.

RENEWAL OF LICENCES

8. Subject to subsection (2) of section 7, the Minister may from time to time renew any licence granted under section 7.

VARIATION OF LICENCES

9. (1) The Minister may from time to time, where he is satisfied that it is necessary or expedient for the proper regulation of fishing within the territorial waters of Nauru and the exclusive fisheries zone to do so, vary the terms and conditions of any licence or licences, or class or classes of licences, granted under section 7 or renewed under section 8.
- (2) Notice of every variation of any licence made under this section shall be given as soon as practicable to the licensee by such means as the Minister shall think most expedient in all the circumstances of the case.

LICENSING FEES

10. (1) There shall be payable by every licensee to the Minister in respect of the granting of a licence under section 7 or the renewal of a licence under section 8 such fee as may from time to time be prescribed.
- (2) The Minister shall pay into the Treasury Fund as revenue all moneys received as fees payable under the preceding subsection.

OFFENCES

11. (1) Where any fishing craft that is not licensed under section 7 is used for fishing in contravention of section 4, the owner, the master and every crew member of the craft is each guilty of an offence.
- (2) Where any fishing craft is used for fishing within the territorial waters of Nauru or the exclusive fisheries zone in contravention of any condition of a licence granted in respect of it under section 7, the licensee, the owner, the master and every crew member of the craft is each guilty of an offence.
- (3) Every owner or master of a fishing craft who is guilty of an offence specified in subsection (1) shall on conviction be fined not less than \$10,000 nor more than \$100,000 and is liable in addition to imprisonment for one year:
- Provided that, where one owner of a fishing craft is fined \$10,000 for such an offence, it shall not be obligatory on the Court to impose a fine on any other owner of that fishing craft in respect of that offence.
- (4) Every crew member of a fishing craft who commits an offence specified in subsection (1) is liable on conviction to a fine of \$5,000 and imprisonment for six months.
- (5) Every licensee, owner or master of a fishing craft who commits an offence specified in subsection (2) is liable on conviction to a fine of \$25,000 and imprisonment for six months.
- (6) Every crew member of a fishing craft who commits an offence specified in subsection (2) is liable on conviction to a fine of \$1,500 and imprisonment for three months.

(7) In this section, "crew member" does not include a licensee, owner or master of a fishing craft.

SUSPENSION AND CANCELLATION OF LICENCE

12. (1) Where the Minister is satisfied that—

(a) any fishing craft in respect of which a licence has been granted under section 7 is being or has been used for fishing within the territorial waters of Nauru or the exclusive fisheries zone in contravention of any condition of the licence or of any law of Nauru that applies to fishing within the zone; or

(b) any licensee, owner, master or crew member of a fishing craft has been convicted of an offence against this Act, or against any regulations made under section 19, or against any other law of Nauru relating to fishing within the territorial waters of Nauru or the exclusive fisheries zone,

he may suspend the licence for such period as he shall specify or may cancel the licence.

(2) Where the Minister determines that it is necessary or expedient for the proper regulation of fishing within the territorial waters of Nauru or the exclusive fisheries zone to do so, he may suspend any licence or licences for such period as he shall specify or he may cancel any licence or licences.

(3) No determination, variation, suspension, cancellation or other action of the Minister under the last preceding subsection shall be reviewable by any Court.

(4) While a licence is suspended under this section, it shall have no effect.

FISHING FOR RESEARCH, EXPERIMENTAL AND SPORTING PURPOSES

13. A fishing craft may be used for fishing within the territorial waters of Nauru or the exclusive fisheries zone for the purpose of fisheries research, experimentation or sport, subject always to the prior consent in writing of the Minister to that activity and in accordance with such conditions, if any, as the Minister may impose in giving his consent.

APPREHENSION OF OFFENDERS AND THEIR CRAFT

14. (1) Where any person specified in subsection (10) has reasonable cause to believe that an offence against this Act, or against regulations made under section 19, or against any other law of Nauru relating to fishing within the territorial waters of Nauru or the exclusive fisheries zone, has been committed in respect of any fishing craft, he may—

(a) stop, board and search the craft;

(b) inspect, seize and detain all fish on board the craft;

(c) apprehend any person who he has reason to believe has committed any offence specified in this subsection; and

(d) seize and detain the craft.

(2) Any person specified in subsection (10) may exercise the powers conferred on him by the preceding subsection with the aid of such assistants as he considers to be necessary for the purpose.

(3) Where any fishing craft is detained under subsection (1), it shall be held in custody by or on behalf of the Republic until—

(a) a decision is made not to lay any charge in respect of the alleged offence for which the craft was detained; or

(b) where such a charge is laid, until it has been heard and determined by the District Court and, if no licensee, owner or master of the craft has been convicted of the offence but a member of the crew has been convicted of it and a fine has been imposed, until the fine is paid in full.

(4) The decision whether or not to lay a charge in respect of an alleged offence for which a fishing craft is detained under subsection (1) shall be made as soon as reasonably practicable after the craft is detained.

(5) On the conviction of any licensee, owner or master of a fishing craft for any offence specified in subsection (1), the craft shall be forfeited to the Republic and shall be

disposed of in such manner as the Minister shall order; such forfeiture shall be in addition to any sentence that is imposed by the Court on the convicted person.

(6) Where any person specified in subsection (10) detains any fish under subsection (1), the fish shall be held in custody by or on behalf of the Republic until a decision is made not to lay a charge in respect of the alleged offence for which it was detained or, where such a charge is laid, until the charge is determined.

(7) On the conviction of any person for any offence specified in subsection (1) in respect of any fish detained under that subsection, the fish shall be forfeited to the Republic and shall be disposed of in such manner as the Minister shall order; such forfeiture shall be in addition to any sentence that is imposed by the Court on the convicted person.

(8) Where any person specified in subsection (10) apprehends any person under subsection (1), he shall cause that person to be taken as soon as reasonably practicable before the District Court to be dealt with in accordance with law.

(9) Any person who in any way prevents or hinders any person specified in subsection (10), or any assistant of such a person, in exercising the powers conferred by this section is guilty of an offence and is liable on conviction to a fine of \$10,000.

(10) The persons who may exercise the powers referred to in subsection (1) are—

- (a) any police officer;
- (b) any other person, any body of persons, whether incorporated or not, or any international or regional organisation designated by the Minister by notice in the Gazette;
- (c) any person who is an officer or member of, or is employed by, any such body or organisation as is referred to in the last preceding paragraph.

(11) In this section "fishing craft" includes all equipment on board the craft.

SECURITY FOR RELEASE OF FISHING CRAFT

15 (1) Notwithstanding the provisions of section 14, the District Court may order the release of a fishing craft or its catch, or of both the craft and its catch, upon the execution by a suitable person or suitable persons of a bond in favour of the Republic in the prescribed form and conditioned in accordance with subsection (3), in an amount not less than the amount determined by adding to the value of the craft or the catch, or of the craft and the catch, as the case may be, the aggregate of the maximum fines to which, in the case of an unlicensed fishing craft, all owners of the craft, the master and all the crew members may be liable if they are convicted of an offence specified in subsection (1) of section 11 or to which, in the case of a licensed fishing craft, the licensee, all the owners of the craft, the master and all the crew members may be liable if they are convicted of an offence specified in subsection (2) of section 11.

(2) The condition of a bond executed as required by the preceding subsection shall be that if—

- (a) no person is convicted of any offence against this Act in connection with the use of the fishing craft to which the bond relates; or
- (b) if any person is convicted of any such offence, the amount of the fine imposed by the Court is paid in full within fourteen days after the date of conviction and the fishing craft, if subject to forfeiture by reason of the conviction, is within that time surrendered to the Republic for forfeiture—

then the bond shall be of no effect, but that otherwise the bond shall remain in full force and effect.

(3) The amount specified in the bond shall be recoverable in full as a debt due to the Republic jointly and severally by the person or persons by whom the bond is given unless the person or persons prove the due performance of the condition on which the bond is defeasible.

(4) In this section "fishing craft" includes all equipment on board the craft.

OFFENCES TO BE DEEMED TO BE COMMITTED IN NAURU

16. Any offence against this Act or against regulations made under section 19 which is committed within the territorial waters of Nauru or the exclusive fisheries zone shall be deemed to have been committed in Nauru.

OFFENCES TO BE TRIED BY THE DISTRICT COURT

17. Notwithstanding the provisions of any other law relating to the jurisdiction and powers of the District Court, any person charged with an offence against this Act or against regulations made under section 19 shall be tried by the District Court and, if he is convicted, that Court shall have power to impose any sentence which the offender is required, or made liable, by this Act to suffer on that conviction.

PROOF OF OFFENCES

18 (1) In any proceedings in any Court in respect of an alleged offence against this Act or against regulations made under this Act, a certificate purporting to be signed by the person holding or acting in the office of public service head of the Department of Island Development and Industry—

- (a) that at a time specified in the certificate the craft alleged to have been used for the commission of the alleged offence was within the territorial waters of Nauru or the exclusive fisheries zone, or any area of the territorial waters or of the zone;
- (b) that at a time specified in the certificate a person named or described in the certificate was the person in charge of the navigation of the craft alleged to have been so used;
- (c) that at a time specified in the certificate a person named in the certificate was the owner of the craft alleged to be so used;
- (d) that at a time specified in the certificate the craft alleged to have been so used was a fishing craft; or
- (e) that at a time specified in the certificate articles which constituted fishing equipment were carried on the craft alleged to have been so used,

shall be conclusive proof of that fact, unless the accused person proves the contrary beyond all reasonable doubt.

(2) Where in any proceedings in any Court in respect of an alleged offence against this Act or against regulations made under section 19 any person is charged with doing an act which it would have been lawful for him to do if the doing of that act by him were authorised or permitted by a licence or permit or were consented to by any person, the onus of proving that the doing of that act by him was so permitted or consented to shall be on the person so charged.

FISHERIES REGULATIONS

19. (1) The Cabinet may make regulations for all or any of the following purposes—

- (a) providing for the production of licences by licensees to specified persons or authorities when required to do so, and the inspection of licences by those persons or authorities;
- (b) providing for such other measures as are necessary or expedient to ensure that fishing craft are used for fishing within the territorial waters of Nauru or the exclusive fisheries zone only in accordance with the terms and conditions of their licences;
- (c) prescribing conditions, not inconsistent with this Act, under which fishing may be undertaken within the territorial waters of Nauru or the exclusive fisheries zone by fishing craft.
- (d) prescribing measures, not inconsistent with this Act, for the conservation and management of resources of fish within the territorial waters of Nauru or the exclusive fisheries zone.
- (e) specifying particular types of highly migratory species of fish and regulating, in a manner not inconsistent with this Act, fishing for those species within the territorial waters of Nauru or the exclusive fisheries zone, and also, in the case of fishing craft of Nauru, beyond that zone;
- (f) providing that a breach of any such regulation shall be a criminal offence and imposing penalties by way of a fine not exceeding, in the case of a licensee, owner or master of a fishing craft, \$10,000 for any such offence and, in the case of any other crew member, \$1,000 for any such offence;
- (g) prescribing the form of bonds for the purposes of section 15.

(2) Regulations made under this section may make different provisions for different areas of the territorial waters of Nauru or of the exclusive fisheries zone and for different species of fish.

GENERAL REGULATIONS

20. (1) The Cabinet may make such regulations as it considers necessary or desirable to enable full effect to be given to the provisions of this Act and in particular by such regulations may—

- (a) prescribe the manner of applying for licences under section 7 and for the renewal of licences under section 8, and forms of application;
- (b) prescribe the terms or duration of licences
- (c) prescribe the forms of licences to be issued by the Minister;
- (d) prescribe the fees payable to the Minister for the issue of licences and for their renewal.

- (2) In prescribing fees in regulations made under this section, the Cabinet may—
- (a) take into account, inter alia, the cost of implementing the provisions of this Act with respect to fishing by fishing craft within the territorial waters of Nauru and the exclusive fisheries zone, including the cost of the conservation and management of resources of fish, of fisheries research, and of the administration and enforcement of this Act; and
 - (b) prescribe different fees for different classes of fishing craft, whether by reference to size, catch, method of fishing, function or otherwise.

NEW (i)

NEW ZEALAND

New Zealand lies between latitude 34°30' South and longitude 166°30' and 178°30" East. There are two principal islands, the North and the South Islands, and two territories, Tokelau, which lies approximately 680 nautical miles north-east of New Zealand at about 9°30' South and 172° West, and the Kermadec Islands. The total land area excluding its external territories is 270,534 sq km (source: New Zealand Yearbook 1992) and it has a population of approximately 3,343,000 (1992). The New Zealand Parliament is a unicameral legislature with plenary powers over offshore matters including fisheries.

Limits of National Jurisdiction

The Territorial Sea and Exclusive Economic Zone Act 1977 established a twelve nautical mile territorial sea and a 200 nautical mile exclusive economic zone. The size of the exclusive economic zone is approximately 2.22 million sq km. The outer limit of each zone is measured from the territorial sea baseline established under the same Act. The Continental Shelf Act 1964 was also amended in 1977 to base the definition of the New Zealand's continental shelf on what subsequently became Article 76.1 of the Law of the Sea Convention. New Zealand shares a maritime boundary with Australia. However, no maritime boundary agreement has been negotiated.

Fisheries Legislation

Fishing in the New Zealand exclusive economic zone is controlled under two Acts. The Fisheries Act 1983 covers fishing by New Zealand vessels. Fishing by foreign vessels is controlled under the Territorial Sea and Exclusive Economic Zone Act 1977. Fishing within the outer limits of the territorial sea is also regulated under the Fisheries Act by the Fisheries Authority.

There are a variety of controls under the Fisheries Act. First, an area may be declared a fishery management area for the management of certain species within that area. Regulations are made to bring a plan of management into force for that area and to give full effect to the plan. Secondly, a fishery in a particular area may be the subject of a quota management system. A total allowable catch (TAC) is set and individual transferable quotas (ITQs) are also set so as not to exceed the TAC. Once allocated ITQs and TTQs (transferable term quota) may be leased and transferred. The amount of fish taken must not exceed the quota by more than 10%. The allocation of quota to foreign vessels and to overseas individuals and companies is not permitted save for one exception - the Government may lease quota held by it to permit fishing by a foreign vessel licensed under the Territorial Sea and Exclusive Economic Zone Act 1977. The Maori Fisheries Act 1989 provides for the allocation of a percentage of the TAC in each ITQ fishery to the Maori Fisheries Commission. This is to facilitate the entry of Maoris into the business of fishing. The third means of control is the declaration of a controlled fishery. Fishing within a controlled fishery requires a licence.

Fishing, other than by New Zealand vessels, is not permitted within the outer limit of the territorial sea except for limited purposes (including scientific research) with the consent of the Minister of Fisheries. The Minister may also prohibit fishing within a specified fishery by notice and then grant exclusions to that prohibition.

Foreign fishing within the EEZ is controlled under the Territorial Sea and Exclusive Economic Zone Act 1977. The Minister from time to time determines the proportion of the TAC of each fishery within the EEZ which New Zealand vessels have the capacity to harvest. The remaining portion is able to be apportioned among other countries. In making that apportionment the Minister may take into account a number factors including past fishing and cooperation with New Zealand in fisheries research, conservation and management within the zone.

Licensing Requirements

Each foreign vessel fishing within the EEZ requires a licence under the Territorial Sea and Exclusive Economic Zone Act 1977. That licence cannot be granted unless an allocation of allowable catch has been made to the country of nationality of the vessel. A foreign vessel which has been issued with a regional fishery licence by the Administrator under the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America may be issued by the Minister with a highly migratory species licence under the Exclusive Economic Zone (Foreign Fishing Craft) Regulations 1978. This licence enables the vessel to fish by the purse seining method within that part of the EEZ which forms part of the Treaty licensing area.

In addition to the required ITQ or licence, commercial fishing vessels operating under the Fisheries Act 1983 must be registered. Also persons who use a New Zealand vessel for commercial fishing must hold a fishing permit. Commercial fishermen must dispose of their catch only to persons who hold a licence under regulations made pursuant to the Act. Similarly a person who holds such a licence may only purchase or otherwise receive fish from commercial fishermen.

Conservation

Pollution of the territorial sea which detrimentally affects New Zealand fisheries is prohibited under the Fisheries Act. The operative provisions of that Act described earlier, such as those relating to notices, may also be used for conservation purposes. The Marine Mammals Protection Act 1978 prohibits the taking of marine mammals without a permit and driftnet fishing is prohibited under the Driftnet Prohibition Act 1991. Under the latter Act a vessel can be prevented from entering internal waters or, alternatively, be ordered to leave those waters if it is equipped for driftnet fishing or has engaged in driftnetting in the previous three months. Other legislation, such as the Marine Reserves Act 1971, provides more localised protection for particular marine areas.

Regional and International Agreements relating to Fisheries

New Zealand is a member of the Forum Fisheries Agency, the South Pacific Commission and the FAO. It has signed the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region and the 1982 Convention on the Law of the Sea. It is a party to both the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Region and the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America.

New Zealand Acts and Subsidiary Legislation
Reproduced in this Compendium

	Page
Continental Shelf Act 1964	<i>Reprinted as on 1 October 1984</i> NEW 1
Driftnet Prohibition Act 1991 (No. 18 of 1991)	NEW 9
Fisheries Act 1983	<i>Reprinted as on 1 May 1991</i> NEW 26
Am. Act No.149 of 1991	
Am. Act No. 31 of 1992	
Fish Royalties Act 1985	<i>Reprinted as on 1 March 1991</i> NEW 261
Maori Fisheries Act 1989	<i>Reprinted as on 1 September 1991</i> NEW 266
Marine Mammals Protection Act 1978 (No. 80 of 1978)	NEW 290
Am. Act No. 98 of 1979	
Am. Act No. 31 of 1990	
Territorial Sea and Exclusive Economic Zone Act 1977 (No. 28 of 1977)	NEW 315
Am. Act No.146 of 1980	
Am. Act No.192 of 1985	
Exclusive Economic Zone (Foreign Fishing Craft) Regulations 1978, Amendment No. 4 (263 of 1988)	NEW 342
Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (No.121 of 1992)	NEW 347

REPRINTED ACT
[WITH AMENDMENTS INCORPORATED]
CONTINENTAL SHELF

REPRINTED AS ON 1 OCTOBER 1984

NOTE: Except where otherwise indicated, all references to money in decimal currency in square brackets were substituted for references to money in the former currency by s. 7 of the Decimal Currency Act 1964.

INDEX

	Page
Continental Shelf Act 1964	1
Decimal Currency Act 1964: s. 7	1 (n)
Cook Islands Amendment Act 1964: s. 57 (8)	8 (n)
Territorial Sea and Fishing Zone Act 1965: s. 11	4 (n), 5 (n)
Ministry of Transport Amendment Act 1972: s. 6 (1)	3 (n)
Niue Amendment Act 1974:	
S. 2 (2) (c)	8 (n)
S. 2 (2) (d)	8 (n)
Petroleum Amendment Act 1975: s. 9	8 (n)
Territorial Sea and Exclusive Economic Zone Act 1977: s. 33 (1)	2 (n)
Ministry of Energy Act 1977: s. 25	4 (n), 8 (n)
Foreign Affairs and Overseas Service Act 1983: s. 5 (b)	1 (n)

In this index "(n)" after a page number indicates that the enactment is referred to in a note on that page.

ANALYSIS

Title	
1. Short Title	5. Mining for minerals on continental shelf
2. Interpretation	6. Oysters, other shellfish, and sponges on continental shelf
3. Exploration and exploitation of continental shelf	7. Application of criminal and civil law
4. Mining for petroleum on continental shelf	8. Regulations
	9. Act in force in Cook Islands

THE CONTINENTAL SHELF ACT 1964

1964, No. 28

An Act to make provision as to the exploration and exploitation of the continental shelf of New Zealand and for matters connected with that purpose

[3 November 1964]

I. Short Title—This Act may be cited as the Continental Shelf Act 1964.

This Act is administered in the Ministry of Foreign Affairs; see s. 5 (b) of the Foreign Affairs and Overseas Service Act 1983.

As to the Submarine Cables and Pipelines Protection Act 1966, see s. 10 of that Act.

As to the application of this Act to the Cook Islands and Niue, see s. 9.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

["Continental shelf" means the seabed and subsoil of those submarine areas that extend beyond the territorial limits of New Zealand, throughout the natural prolongation of the land territory of New Zealand, to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (as described in sections 5 and 6 of the Territorial Sea and Exclusive Economic Zone Act 1977) where the outer edge of the continental margin does not extend to that distance:]

["Mineral" includes coal:]

"Natural resources" means—

(a) The mineral and other natural non-living resources of the seabed and subsoil; and

(b) Living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil:

[(2) For the purposes of implementing any international agreement, or for any other purpose in accordance with international law, the Governor-General may from time to time, by Order in Council, delineate the actual boundaries of the continental shelf.]

In subs. (1):

"Continental shelf": The definition of this term was substituted for the original definition by s. 33 (1) of the Territorial Sea and Exclusive Economic Zone Act 1977, which came into force on 1 October 1977, see S.R. 1977/245.

"Mineral": The definition of this term was inserted by s. 33 (1) of the Territorial Sea and Exclusive Economic Zone Act 1977. See S.R. 1977/245.

Subs. (2) was added by s. 33 (1) of the Territorial Sea and Exclusive Economic Zone Act 1977. See S.R. 1977/245.

As to the term "continental shelf", see s. 8 (2).

As to the term "device", see s. 7 (5).

As to the Cook Islands, see s. 9 (2) (a).

3. Exploration and exploitation of continental shelf—

All rights that are exercisable by New Zealand with respect to the continental shelf and its natural resources for the purpose of exploring the shelf and exploiting those resources are hereby vested in the Crown.

4. Mining for petroleum on continental shelf—(1) Subject to the provisions of subsection (2) of this section, the provisions of the Petroleum Act 1937 (except section 3) and of any regulations made under that Act, as far as they are applicable and

with any necessary modifications, shall apply with respect to petroleum (as defined in that Act) in the seabed and subsoil of the continental shelf, as if—

- (a) Every reference in that Act or those regulations to land included a reference to the seabed (including, where necessary, the subsoil) of the continental shelf; and
- (b) Every reference in that Act or in those regulations to New Zealand included a reference to the continental shelf; and
- (c) [The Minister of Transport] were the appropriate Minister for the purposes of section 20.
- (d) *Repealed by s. 9 of the Petroleum Amendment Act 1975.*

(2) The Governor-General may from time to time, by Order in Council, modify or exclude any of the provisions of the Petroleum Act 1937 to such extent as may be necessary for the purpose of giving full effect to the provisions of this section.

In subs. (1) (c) the reference to the Minister of Transport was substituted for a reference to the Minister of Marine by s. 6 (1) of the Ministry of Transport Amendment Act 1972.

5. Mining for minerals on continental shelf—(1) No person shall prospect or mine for, or carry on any operations for the recovery of, minerals in the seabed or subsoil of the continental shelf except in pursuance of a licence issued under this section.

(2) The [Minister of Energy] may from time to time, on application in that behalf, grant to any person a licence authorising the licensee to prospect and mine for, and carry on operations for the recovery of, minerals or of minerals of any specified kinds in any specified area of the continental shelf.

(3) Every licence granted under this section shall be subject to such conditions as the Minister, when granting the licence, thinks fit to impose in the circumstances of each particular case, including, but without limiting the generality of the foregoing provisions of this section, conditions requiring the licensee—

- (a) To comply with such conditions as to safety as are specified in the licence, and for this purpose the Minister may require the licensee to comply with all or any of the provisions as to safety of [the Mining Act 1971] or [the Coal Mines Act 1979] or of any regulations under either of those Acts, with such modifications as the Minister considers necessary;
- (b) To pay to the Crown in respect of minerals recovered by the licensee from the continental shelf such royalties as are specified in the licence.

(4) The grant of a licence under this section shall in every case be in the absolute discretion of the [Minister of Energy].

(5) Any number of licences under this section may be granted to the same person.

(6) Subject to the provisions of subsection (3) of this section, nothing in [the Mining Act 1971] or in [the Coal Mines Act 1979] shall apply with respect to minerals in the seabed or subsoil of the continental shelf.

(7) Every person commits an offence, and is liable on summary conviction to a fine not exceeding [\$200], who prospects or mines for, or carries on operations for the recovery of, minerals in the seabed or subsoil of the continental shelf otherwise than pursuant to a licence under this section and in accordance with the conditions of the licence (not being a condition relating to the payment of royalties to the Crown).

In subss. (2) and (4) the reference to the Minister of Energy was substituted for a reference to the Minister of Mines by s. 25 of the Ministry of Energy Act 1977. See S.R. 1978/66.

In subss. (3) (a) and (6) the Mining Act 1971 and the Coal Mines Act 1979, being the corresponding enactments in force at the date of this reprint, have been substituted for the repealed Mining Act 1926 and the repealed Coal Mines Act 1925.

A licence under this section is included in para. (f) of the definition of the term "mining interest" in s. 2 of the Marine Reserves Act 1971.

6. Oysters, other shellfish, and sponges on continental shelf—(1) Subject to the provisions of subsection (2) of this section, the provisions of Part I of the Fisheries Act 1908 and of Part I of the Fisheries Amendment Act 1963 and of any regulations made pursuant to section 5 of the first-mentioned Act, as far as they are applicable and with any necessary modifications, shall, to the extent that they apply with respect to oysters (as defined in section 2 of the first-mentioned Act) and to oyster beds within [New Zealand or New Zealand fisheries waters], apply with respect to oysters and oyster beds on the continental shelf and to persons taking oysters from the continental shelf and to ships used for that purpose, as if—

(a) Every reference in those provisions to New Zealand or to [New Zealand fisheries waters] included a reference to the continental shelf and to the waters of the sea above that shelf;

(b) For the words "tidal waters in New Zealand" in subsection (1) of section 15 there were substituted the words "any part of the continental shelf (as defined in the Continental Shelf Act 1964)".

(c) *Repealed by s. 11 of the Territorial Sea and Fishing Zone Act 1965.*

(2) The Governor-General may from time to time, by Order in Council—

- (a) Modify or exclude any of the provisions of the enactments referred to in subsection (1) of this section to such extent as may be necessary for the purposes of giving full effect to the provisions of that subsection;
- (b) Declare that the provisions of subsection (1) of this section shall apply with respect to any other sedentary species of shellfish or to sedentary sponges.

In subs. (1) the Fisheries Act 1908 and the Fisheries Amendment Act 1963 were repealed and replaced by the Fisheries Act 1983.

In subs. (1) the words in square brackets were substituted for the words "the territorial waters of New Zealand", and in subs. (1) (a) the words in square brackets were substituted for the words "New Zealand waters", by s. 11 of the Territorial Sea and Fishing Zone Act 1965 (repealed by s. 33 (3) of the Territorial Sea and Exclusive Economic Zone Act 1977).

7. Application of criminal and civil law—(1) Subject to the provisions of this Act, for the purposes of this Act and of every other enactment (whether passed before or after the passing of this Act) and of every rule of law for the time being in force in New Zealand,—

- (a) Every act or omission which takes place on or under or above or about any installation or device (whether permanent or temporary) constructed, erected, placed, or used in, on, or above the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources shall be deemed to take place in New Zealand; and
- (b) Every such installation or device shall be deemed to be situated in New Zealand, and for the purposes of jurisdiction shall be deemed to be situated in that part of New Zealand above highwater mark at ordinary spring tides which is nearest to that installation or device; and
- (c) Every Court in New Zealand which would have jurisdiction (whether civil or criminal) in respect of that act or omission if it had taken place in New Zealand shall have jurisdiction accordingly; and
- (d) Every power of arrest or of entry or search or seizure or other power that could be exercised under any enactment (whether passed before or after the passing of this Act) or under any rule of law in respect of any such act or omission or suspected act or omission if it had taken place or was suspected to have taken place in New Zealand may be exercised on or in respect of any such installation or device as if the installation or device were in New Zealand; and
- (e) Without limiting the provisions of the Customs Acts (as defined in [the Customs Act 1966]), every installa-

tion or device, and any materials or parts used in the construction of an installation or device, which are brought into the waters above the continental shelf from parts beyond the seas shall be deemed to have been imported into New Zealand when the installation or device is constructed, erected, or placed in, on, or above the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources.

(2) The Governor-General may from time to time, by Order in Council,—

(a) Modify or exclude any of the provisions of any enactment (whether passed before or after the passing of this Act) to such extent as may be necessary for the purpose of giving full effect to the provisions of subsection (1) of this section:

(b) Declare that the provisions of any enactment (whether passed before or after the passing of this Act), with such modifications or exceptions as he thinks fit, shall apply with respect to the continental shelf or any specified part thereof, or to acts or omissions taking place in, on, or above the continental shelf or any specified part thereof, in connection with the exploration of the continental shelf or of that part or the exploitation of its natural resources, and thereupon the provisions of that enactment, with any such modifications or exceptions, shall apply as if the continental shelf or that part thereof were within New Zealand.

(3) Nothing in this section shall limit the provisions of any enactment or rule of law relating to the liability of persons in respect of acts done or omitted beyond New Zealand or the jurisdiction of any New Zealand Court under any such enactment or rule of law.

(4) Notwithstanding anything in any other enactment, proceedings for the trial and punishment of any person charged with having committed an offence in respect of which the Courts of New Zealand have jurisdiction by virtue only of this section shall not be instituted in any Court except with the consent of the Attorney-General and on his certificate that it is expedient that the proceedings should be instituted:

Provided that a person so charged may be arrested or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of pro-

ceedings for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

(5) In this section the term "device" includes any ship or floating platform or aircraft that is used in connection with any installation or device.

In subs. (1)(c) the Customs Act 1966, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Customs Act 1913.

8. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Regulating the construction, erection, or use of installations or devices in, on, or above the continental shelf, or any specified part thereof, in connection with the exploration of the shelf or that part thereof or the exploitation of its natural resources:
- (b) Prohibiting the construction, erection, placing, or use of installations or devices in, on, or above the continental shelf in places where they could cause interference with the use of recognised sea lanes essential to coastwise or international navigation:
- (c) Establishing safety zones, extending to a distance not exceeding 500 metres measured from each point of the outer edge of the installation or device, around any such installations or devices in, on, or above the continental shelf:
- (d) Prescribing such measures as the Governor-General considers necessary in any such safety zone for the protection of the installation or device with respect to which the safety zone is established:
- (e) Regulating or prohibiting the entry of ships into any such safety zone:
- (f) Prescribing measures to be taken in any such safety zone for the protection of the living resources of the sea and the natural resources of the continental shelf from harmful agents:
- (g) Prescribing the notice to be given of the construction, erection, or placing of installations or devices in, on, or above the continental shelf:
- (h) Prescribing the permanent means to be installed for the purpose of giving warning to shipping and aircraft of the presence of installations or devices in, on, or above the continental shelf:
- (i) Providing for the removal of installations or devices constructed, erected, or placed in, on, or above the continental shelf which have been abandoned or become disused:

- (j) Prohibiting or restricting any exploration of the continental shelf or any specified part thereof or any exploitation of its natural resources which in the opinion of the Governor-General could result in an unjustifiable interference with navigation, fishing, or the conservation of the living resources of the sea, or could interfere with national defence or with oceanographic or other scientific research or with submarine cables or pipelines:
- (k) Providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof:
- (l) Prescribing penalties for breaches of the regulations, not exceeding a fine of [£1,000].
- (2) In this section the term "continental shelf" includes the seabed and subsoil of the submarine areas within the territorial limits of New Zealand.

For regs. under subs. (1) (c), see the Continental Shelf (Maui A Safety Zone) Regulations 1975 (S.R. 1975/300).

9. Act in force in Cook Islands—(1) This Act, except sections 4 and 6, shall be in force in the Cook Islands.

(2) In the application of this Act to the Cook Islands—

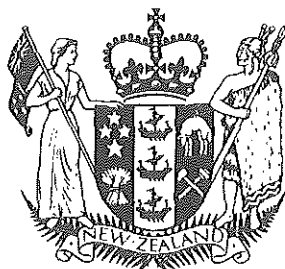
- (a) Every reference to New Zealand shall be read as a reference to the Cook Islands;
- (b) Every reference in section 5 to [the Minister of Energy] shall be read as a reference to [the High Commissioner of the Cook Islands] or [the Cabinet of Ministers of Niue], as the case may require;
- (c) The powers conferred on the Governor-General in Council may be exercised by the Legislative Assembly of the Cook Islands or [the Niue Assembly], as the case may require, by Ordinance.

In subs. (2) (b) the reference to the Minister of Energy was substituted for a reference to the Minister of Mines by s. 25 of the Ministry of Energy Act 1977 (which was brought into force by S.R. 1978/66); the reference to the High Commissioner of the Cook Islands was substituted for a reference to the Resident Commissioner of the Cook Islands by s. 57 (3) of the Cook Islands Amendment Act 1964 (which was brought into force by S.R. 1965/128/2); and the reference to the Cabinet of Ministers of Niue was substituted for a reference to the Resident Commissioner of Niue by s. 2 (2) (c) of the Niue Amendment Act 1974 (which was brought into force by S.R. 1974/286).

In subs. (2) (c) the reference to the Niue Assembly was substituted for a reference to the Niue Island Assembly by s. 2 (2) (d) of the Niue Amendment Act 1974 (which was brought into force by S.R. 1974/286).

For a definition of the term "Cook Islands", see s. 2 of the Acts Interpretation Act 1924 (R.S. 1979, Vol. 1, p. 10).

The Continental Shelf Act 1964 is administered in the Ministry of Foreign Affairs.



ANALYSIS

Title	14. Powers of arrest
1. Short Title and commencement	15. Powers of seizure
2. Interpretation	16. Custody of property seized
3. Definition of driftnet fishing	17. Release of property by Director-General
<i>Prohibitions on Driftnet Fishing and Related Activities</i>	18. Spoilage or deterioration of fish, etc., seized
4. Prohibition on driftnet fishing in New Zealand fisheries waters	19. Disposal of property where ownership cannot be ascertained
5. Prohibition on driftnet fishing in Convention Area	20. Release of property by Court
6. Prohibition of driftnets on vessels	21. Final release of seized property
7. Prohibition on transportation and transhipment	22. Persons assisting enforcement officer
8. Prohibition on landing	23. Protection of enforcement officers and assistants from liability
9. Prohibition on processing	24. Enforcement officer to produce evidence of authority to act
10. Prohibition on visits by driftnet fishing vessels	<i>Proceedings for Offences, Etc.</i>
11. Prohibition on supplying and provisioning driftnet fishing vessels	25. Offences
12. Power to deny entry to driftnet fishing vessels and supply vessels	26. Proceedings for offences
<i>Powers of Enforcement Officers, Etc.</i>	27. Strict liability
13. Powers of search	28. Defences
	29. Evidence in proceedings
	30. Forfeiture of property on conviction
	31. Revocations

1991, No. 18

An Act to prohibit driftnet fishing activities and to implement the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific

[14 April 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Driftnet Prohibition Act 1991.

(2) This Act shall come into force on the 15th day of April 1991.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Convention” means the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, done at Wellington on the 24th day of November 1989; and includes any amendments to the Convention in force in respect of New Zealand:

“Convention Area” means—

(a) The high seas (not being waters under the fisheries jurisdiction of any state or territory) within the area lying between the latitudes 10 degrees North latitude and 50 degrees South latitude that is eastward of 130 degrees East longitude and westward of 120 degrees West longitude; and

(b) All waters under the fisheries jurisdiction of any Party to the Convention that—

(i) Lie within the area specified in paragraph (a) of this definition; or

(ii) Are adjacent to any territory of the Party that is situated wholly or partly within that area:

“Director-General” means the Director-General of Agriculture and Fisheries:

“Driftnet” means a gillnet or other net that—

(a) Either singly or tied or connected together in combination with other nets is more than 1 kilometre in length; and

(b) Acts by enmeshing, entrapping, or entangling any fish or marine life; and

(c) Acts by drifting in the water, or on the surface of the water; and

(d) Does not have attached to it sufficient means of anchoring it to any point of land or the sea bed (irrespective of whether the net has attached to it any means of being attached to any vessel):

“Enforcement officer” means—

(a) Any officer of the New Zealand Naval Forces of the rank of Midshipman or above:

(b) Any other member of the New Zealand Armed Forces authorised in writing for the time being by the Chief of Defence Force to be an enforcement officer for the purposes of this Act:

(c) Any Fishery Officer appointed or deemed to have been appointed as such under subsection (1) or subsection (4) of section 76 of the Fisheries Act 1983:

“Foreign vessel” means any vessel that is not a New Zealand vessel:

“Internal waters of New Zealand” means the internal waters of New Zealand as defined by section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977:

“Master”, in relation to any vessel, means any person for the time being having command or charge of the vessel:

“Minister” means the Minister of Fisheries:

“New Zealand fisheries waters” has the same meaning as in section 2 (1) of the Fisheries Act 1983:

“New Zealand vessel” means a vessel that is a New Zealand ship within the meaning of section 2 of the Shipping and Seamen Act 1952, and includes a vessel that is a New Zealand aircraft within the meaning of the Civil Aviation Regulations 1953:

“Owner”, in relation to a vessel, includes any body of persons, whether incorporated or not, by whom the vessel is owned, and any charterer, sub-charterer, lessee, or sub-lessee of the vessel:

“Take” includes catch or harvest:

“Vessel” means any description of ship, boat, hovercraft, or other craft used in navigation, of whatever size and whether or not it has any means of propulsion; and includes any aircraft.

3. Definition of driftnet fishing—For the purposes of this Act, the term “driftnet fishing” means—

- (a) Taking fish or marine life with the use of a driftnet:
- (b) Attempting to take fish or marine life with the use of a driftnet:
- (c) Engaging in any other activity which could reasonably be expected to result in the taking of fish or marine life with the use of a driftnet, including searching for and locating fish to be taken by that method:
- (d) Any operations at sea in support of, or in preparation for, any activity described in this definition, including—
 - (i) Operations of placing, searching for, or recovering fish-aggregating devices or associated electronic equipment such as radio beacons; and
 - (ii) Operations involving the preparation, supply, storage, refrigeration, transshipment, transportation, or processing of any fish or marine life taken with the use of a driftnet:
- (e) The use of aircraft in support of the activities described in this definition, except for flights in emergencies

involving the health or safety of crew members or the safety of a vessel.

Prohibitions on Driftnet Fishing and Related Activities

4. Prohibition on driftnet fishing in New Zealand fisheries waters—(1) No vessel shall be used for driftnet fishing in New Zealand fisheries waters.

(2) No person shall engage in driftnet fishing in New Zealand fisheries waters.

5. Prohibition on driftnet fishing in Convention Area—(1) No New Zealand vessel shall be used for driftnet fishing in the Convention Area.

(2) No New Zealand citizen shall engage in driftnet fishing in the Convention Area.

6. Prohibition of driftnets on vessels—No vessel in New Zealand fisheries waters shall have on board any driftnet.

7. Prohibition on transportation and transshipment—(1) No vessel in New Zealand fisheries waters shall be used to transport or tranship, or in an attempt to transport or tranship, any fish or marine life taken using a driftnet.

(2) No person in New Zealand fisheries waters shall transport or tranship, or attempt to transport or tranship, any fish or marine life taken using a driftnet.

(3) No New Zealand vessel in the Convention Area shall be used to transport or tranship, or in an attempt to transport or tranship, any fish or marine life taken using a driftnet.

(4) No New Zealand citizen in the Convention Area shall transport or tranship, or attempt to transport or tranship, any fish or marine life taken using a driftnet.

8. Prohibition on landing—(1) No vessel shall be used to land, or in an attempt to land, in New Zealand any fish or marine life taken using a driftnet.

(2) No person shall land or attempt to land in New Zealand any fish or marine life taken using a driftnet.

9. Prohibition on processing—No person shall process or attempt to process in New Zealand any fish or marine life taken using a driftnet.

10. Prohibition on visits by driftnet fishing vessels—No foreign vessel that—

- (a) Has on board any driftnet, or is otherwise equipped for driftnet fishing; or
 - (b) Has within the preceding 3 months been engaged in driftnet fishing (whether within or outside New Zealand fisheries waters or the Convention Area),—
- shall enter the internal waters of New Zealand.

11. Prohibition on supplying and provisioning driftnet fishing vessels—(1) No vessel shall be used in New Zealand fisheries waters to supply food, fuel, or other goods and services to any vessel engaged or that is to engage in driftnet fishing in New Zealand fisheries waters or the Convention Area.

(2) No person shall acquire food, fuel, or other goods and services in New Zealand for the purpose of supply to any vessel engaged or that is to engage in driftnet fishing in New Zealand fisheries waters or the Convention Area.

(3) No New Zealand vessel shall be used to supply any fuel, food, or other goods and services to any vessel engaged or that is to engage in driftnet fishing in the Convention Area.

(4) No New Zealand citizen shall supply any fuel, food, or other goods and services to any vessel engaged or that is to engage in driftnet fishing in the Convention Area.

(5) Nothing in this section shall prevent the supply of such food, fuel, and other goods and services as is necessary to enable a vessel to proceed safely and directly to a port outside New Zealand.

12. Power to deny entry to driftnet fishing vessels and supply vessels—(1) Where the Director-General has reasonable grounds to believe that—

(a) Any foreign vessel—

(i) Has on board any driftnet, or is otherwise equipped for driftnet fishing; or

(ii) Has within the preceding 3 months been engaged in driftnet fishing (whether within or outside New Zealand fisheries waters or the Convention Area); or

(b) Any foreign vessel is to be used to supply any food, fuel, or other goods and services acquired or to be acquired in New Zealand to any vessel engaged or to be engaged in driftnet fishing in New Zealand fisheries waters or the Convention Area,—

the Director-General may direct the vessel not to enter the internal waters of New Zealand or, if it has entered the internal waters of New Zealand, to leave those waters.

- (2) No vessel shall—
 - (a) Enter the internal waters of New Zealand in contravention of any direction given under subsection (1) of this section; or
 - (b) Having entered the internal waters of New Zealand, fail in contravention of any direction given under subsection (1) of this section to leave those waters as soon as is reasonably practicable,—unless the direction is withdrawn by the Director-General under subsection (3) (c) of this section.
- (3) A direction under subsection (1) of this section—
 - (a) Shall be notified to the master or owner of the vessel in such manner as may be practicable in the circumstances;
 - (b) Shall, if given otherwise than in writing, be recorded in writing and forwarded to the owner or master of the vessel as soon as is reasonably practicable; and
 - (c) May at any time be withdrawn by the Director-General, upon being satisfied that the vessel is not engaged or to engage in driftnet fishing, or is not to supply vessels engaged or to engage in driftnet fishing in New Zealand fisheries waters or the Convention Area.
- (4) Nothing in this section shall prevent a vessel from entering or remaining in the internal waters of New Zealand for such period as is necessary for the purposes of obtaining such food, fuel, and other goods and services necessary to enable it to proceed safely and directly to a port outside New Zealand.

Powers of Enforcement Officers, Etc.

- 13. Powers of search**—(1) An enforcement officer may, for the purpose of enforcing the provisions of this Act,—
- (a) Stop and go on board any—
 - (i) Vessel that is in New Zealand fisheries waters; or
 - (ii) New Zealand vessel that is in the Convention Area,—and inspect and examine the vessel, including any machinery, equipment, or other property or articles on board the vessel; and
 - (b) Where there is reasonable cause to believe that any offence is being or has been committed against this Act by or from or in relation to that vessel,—
 - (i) Require the owner or the master or any member of the crew of the vessel to produce any certificate, official logbook, or other document in the possession

or under the control of the owner, master, or crew member that relates to the vessel:

(ii) Require the master to produce any certificate of registration, charter, or other document, or to provide other information relating to the owner of the vessel:

(iii) Take copies of any record or document referred to in subparagraph (i) or subparagraph (ii) of this paragraph, where the record or document is relevant to a suspected offence against this Act:

(iv) Require the master of the vessel, or any other person, to give any explanation or information concerning that vessel, or any fish, marine life, fishing method, machinery, equipment, records or documents, or other article or thing on board or connected with the vessel.

(2) An enforcement officer may, where the officer has reasonable cause to believe that any offence is being or has been committed against this Act, and that any fish, marine life, net, equipment, or other thing to which any suspected offence against this Act relates is being concealed or is located in any premises (including any vessel or vehicle, but not including any private dwellinghouse),—

(a) Stop (where appropriate), enter, and inspect the premises, and examine (by opening where necessary) any property, record, document, or other article therein:

(b) Require any person to give any explanation or information concerning the premises, or any fish, marine life, property, record, document, or other article therein:

(c) Take copies of any record or document referred to in paragraph (a) of this subsection, where the record or document is relevant to a suspected offence against this Act.

(3) Nothing in subsection (1) (b) (iv) or subsection (2) (b) of this section requires a person to answer any question where to do so would tend to incriminate that person.

(4) An enforcement officer may, for the purpose of exercising any power under this section to take copies of any record or document, take possession of and remove from the place where it is kept, for such period of time as is reasonable in the circumstances, any such record or document.

14. Powers of arrest—(1) Where an enforcement officer—

- (a) Has reasonable cause to believe that any person is committing or has committed an offence against this Act; and
- (b) Considers that there is a real risk that the person may not be able to be served with proceedings under this Act, or may not appear to answer any such proceedings,—

the enforcement officer may arrest that person.

(2) Where an enforcement officer arrests a person pursuant to subsection (1) of this section,—

- (a) The officer shall cause the person to be delivered into the custody of a constable as soon as practicable; and
- (b) If the person so delivered into custody is released by a constable without bail pursuant to section 19A of the Summary Proceedings Act 1957, the duties under subsections (3) to (5) of that section relating to the laying and filing of an information shall be the duties of an enforcement officer and not of a constable.

15. Powers of seizure—An enforcement officer may seize—

- (a) Any fish or marine life that the officer believes on reasonable grounds is being taken or has been taken, transported, transhipped, landed, or processed in contravention of this Act;
- (b) Any vessel, vehicle, fishing gear, implement, appliance, material, container, goods, or equipment that the officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against any of sections 4 to 10 of this Act;
- (c) Any goods that the officer believes on reasonable grounds have been acquired or are to be supplied in contravention of section 11 of this Act.

16. Custody of property seized—(1) All property seized pursuant to section 15 of this Act, including the proceeds from the sale of any such property pursuant to section 18 of this Act, shall be held in the custody of the Crown until—

- (a) A decision is made not to lay any information or charge in respect of the alleged offence for which the property was seized; or
- (b) Where such a charge or information is laid, upon the completion of proceedings in respect of the alleged offence for which the property was seized, or such sooner time as the Court may determine.

(2) The decision whether or not to lay any information or charge in respect of an alleged offence for which any property is seized pursuant to section 15 of this Act shall be made as soon as reasonably practicable after the property is seized.

17. Release of property by Director-General—(1) The Director-General may, at any time until the completion of proceedings in respect of the alleged offence for which the property was seized pursuant to section 15 of this Act, on application by—

- (a) The person from whom the property was seized; or
- (b) The owner or person entitled to the possession of the property seized,—

release the property to any such person under bond in such sum and under such sureties and conditions (if any) as the Director-General may specify.

(2) Where any person to whom property is released under subsection (1) of this section fails to comply with the conditions of any bond or with any condition specified by the Director-General,—

- (a) The property may be resealed at any time at the direction of the Director-General; and
- (b) The provisions of sections 16 to 21 of this Act shall thereupon apply to the property as if it had been seized pursuant to section 15 of this Act; and
- (c) The Director-General may, in the case of failure to comply with the conditions of any bond, apply to a Court presided over by a District Court Judge for an order for estreat of the bond.

(3) Where the Director-General applies for an order for estreat of bond the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed.

(4) If on the hearing of any such application it is proved to the satisfaction of the Court that any condition of the bond has not been kept, the Court may make an order to estreat the bond to such an amount as it thinks fit to any person bound thereby on whom notice is proved to have been served in accordance with this subsection.

(5) Any penalty payable under subsection (4) of this section shall be recoverable as if it were a fine.

18. Spoilage or deterioration of fish, etc., seized—

(1) Where, in the opinion of the Director-General, any fish,

marine life, or other article seized pursuant to section 15 of this Act may rot, spoil, or otherwise perish, the Director-General may arrange for its sale or disposal in such manner as the Director-General may determine.

(2) The Crown shall not be liable to any person for any spoilage or deterioration in the quality of any fish or marine life seized under section 15 of this Act.

19. Disposal of property where ownership cannot be ascertained—Where the ownership of any property cannot at the time of seizure be ascertained, the property seized shall be forfeit to the Crown and shall be disposed of as directed by the Director-General after 90 days from the date of seizure if, within that time, it has not been possible to establish the ownership of the property.

20. Release of property by Court—Where any information or charge has been laid in respect of the alleged offence for which property was seized pursuant to section 15 of this Act, and that property remains in the custody of the Crown, the Court may at any time, on application by—

(a) The person from whom the property was seized; or

(b) The owner or person entitled to the possession of the property seized,—

release the property to any such person, and any such release may be subject to such sureties and conditions as the Court may specify.

21. Final release of seized property—Any property that has been seized under section 15 of this Act (including the proceeds from the sale of any property pursuant to section 18 of this Act) shall,—

(a) On a decision being made not to lay an information or charge; or

(b) On the acquittal of the person charged with the offence for which the property is subject to forfeiture,—
forthwith be released from the custody of the Crown.

22. Persons assisting enforcement officer—An enforcement officer exercising any of the powers conferred on the officer by this Act may call upon any constable or upon any person in the vicinity for assistance, and every person so called upon is authorised to render such assistance.

23. Protection of enforcement officers and assistants from liability—(1) Any enforcement officer who does, or omits to do, any act in pursuance or intended pursuance of this Act, and any person giving assistance to an enforcement officer when called upon to do so under section 22 of this Act, shall not be under any civil or criminal liability as a result of that act or omission or assistance on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless the officer or person giving assistance has acted or omitted to act in bad faith, or without reasonable cause.

(2) The Crown shall not be held directly or indirectly liable for any such act or omission or assistance, unless the enforcement officer or person concerned would himself or herself incur liability for the act or omission or assistance.

24. Enforcement officer to produce evidence of authority to act—Every enforcement officer exercising any power conferred by section 13 or section 14 or section 15 of this Act shall, at the time of exercising that power, and thereafter on reasonable request, produce—

- (a) Evidence that that person is an enforcement officer; and
- (b) Evidence of that person's identity.

Proceedings for Offences, Etc.

25. Offences—(1) Every person commits an offence against this Act, and is liable on conviction to a fine not exceeding \$250,000, who—

- (a) Is the owner or master of any vessel—

- (i) That is used in contravention of any of sections 4 (1), 5 (1), 7 (1), 7 (3), or 8 (1) of this Act; or

- (ii) That has a driftnet on board in contravention of section 6 of this Act; or

- (iii) That enters the internal waters of New Zealand in contravention of section 10 of this Act, or enters or fails to leave the internal waters of New Zealand in contravention of section 12 (2) of this Act; or

- (b) Contravenes section 9 of this Act.

(2) Every person commits an offence against this Act, and is liable on conviction to a fine not exceeding \$100,000, who—

- (a) Contravenes any of sections 4 (2), 5 (2), 7 (2), 7 (4), or 8 (2) of this Act; or

- (b) Is the owner or master of any vessel that is used in contravention of section 11 (1) or section 11 (3) of this Act.

(3) Every person commits an offence against this Act, and is liable on conviction to a fine not exceeding \$50,000, who contravenes section 11 (2) or section 11 (4) of this Act.

(4) Every person commits an offence against this Act, and is liable on conviction to a fine not exceeding \$20,000, who—

- (a) Resists or obstructs, or incites or encourages any other person to resist or obstruct, any enforcement officer while in the execution of the enforcement officer's powers or duties, or any person lawfully assisting the enforcement officer; or
- (b) Fails without reasonable cause to comply with the requirements of any enforcement officer; or
- (c) Furnishes to any enforcement officer any particulars knowing that those particulars are false or misleading in any material respect, or being reckless as to whether those particulars are so false or misleading.

26. Proceedings for offences—(1) Any offence against this Act that is committed within New Zealand fisheries waters, or within the Convention Area by a New Zealand citizen or by use of a New Zealand vessel, shall be deemed to have been committed in New Zealand.

(2) Every offence against this Act shall be punishable on summary conviction.

(3) Notwithstanding section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act may be laid at any time within 2 years after the time when the matter of the information arose.

27. Strict liability—In any prosecution for an offence against any of sections 4 to 12 of this Act it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

28. Defences—(1) In any proceedings for an offence against this Act it shall, subject to subsection (2) of this section, be a defence if—

- (a) In the case of an offence against section 4 or section 5 of this Act, the defendant satisfies the Court that—
 - (i) The defendant was engaged, or the vessel was used, only in any activity or operation referred to in paragraphs (c) to (e) of the definition of the term "driftnet fishing" in section 3 of this Act; and
 - (ii) The defendant did not know, and could not with the exercise of reasonable diligence have ascertained,

- that the activity or operation was in support of or preparation for or otherwise related to the taking of fish or marine life by use of a driftnet:
- (b) In the case of an offence against section 6 of this Act, the defendant satisfies the Court that the vessel was not otherwise equipped to take fish or marine life with the use of a driftnet:
 - (c) In the case of an offence against section 7 or section 8 or section 9 of this Act,—
 - (i) The defendant satisfies the Court that the defendant did not know, and could not with the exercise of reasonable diligence have ascertained, that the fish or marine life to which the offence relates was taken using a driftnet; or
 - (ii) The fish or marine life to which the offence relates was preserved in containers in a country other than New Zealand; or
 - (iii) The transportation, transhipment, landing, or processing of the fish or marine life to which the offence relates was conducted at the direction or request of an enforcement officer, or was conducted in respect of fish or marine life disposed of by the Director-General or Minister pursuant to section 18 or section 19 or section 30 of this Act:
 - (d) In the case of an offence against section 10 of this Act, the defendant satisfies the Court that the vessel was not to be used for driftnet fishing in New Zealand fisheries waters or the Convention Area:
 - (e) In the case of an offence against section 11 of this Act, the defendant satisfies the Court that the defendant did not know, and could not with the exercise of reasonable diligence have ascertained, that the vessel to which the food, fuel, or other goods and services were, or were to be, supplied was engaged or was to engage in driftnet fishing in the relevant area.
- (2) Where the owner or master of a vessel is charged with an offence specified in subsection (1) (a) or subsection (2) (b) of section 25 of this Act, the defences referred to in paragraphs (a) and (c) (i) of subsection (1) of this section shall not be available to the defendant owner or master unless the defendant satisfies the Court that the defendant took all reasonable steps to ensure that the offence would not occur.
- (3) In any proceedings for an offence against this Act, it shall be a defence if the defendant proves that the act or omission constituting the offence took place in circumstances of stress or

emergency and was necessary for the preservation, protection, or maintenance of human life.

29. Evidence in proceedings—(1) In any proceedings for an offence against this Act, the following certificates or documents shall be admissible in evidence and shall, in the absence of proof to the contrary, be sufficient evidence of the matters stated in the certificate or of the contents of the document, as the case may require:

- (a) A certificate purporting to be signed by the Minister of Foreign Affairs and stating—
 - (i) That any State, country, or territory specified in the certificate is a Party to the Convention; or
 - (ii) That an area specified in the certificate is within the Convention Area:
- (b) A certificate purporting to be signed by the Director-General or any officer authorised by the Director-General for that purpose to the effect that, on a date specified in the certificate,—
 - (i) A vessel specified in the certificate was or was not registered under section 57 of the Fisheries Act 1983; or
 - (ii) A person specified in the certificate was or was not the owner of a registered fishing vessel specified in the certificate; or
 - (iii) A direction was given under section 12 (1) of this Act, to the person or the vessel, and in the manner, specified in the certificate:
- (c) Any—
 - (i) Certificate purporting to be signed by the Registrar of Ships appointed under the Shipping and Seamen Act 1952 that, on a date specified in the certificate, a vessel specified in the certificate was not a New Zealand ship within the meaning of that Act; or
 - (ii) Copy of a certificate of registry issued under the Shipping and Seamen Act 1952 that purports to be certified correct by the Registrar of Ships or by any officer duly authorised by the Registrar of Ships in that behalf:
- (d) Any—
 - (i) Certificate purporting to be signed by a Chief Surveyor appointed under the Survey Act 1986, or by the Royal New Zealand Naval Hydrographer, and stating the status of any area; or

- (ii) Map, plan, or other such document purporting to be certified as true by a Chief Surveyor or by the Royal New Zealand Naval Hydrographer:
- (e) Any certificate purporting to be signed by a member of the Armed Forces within the meaning of the Defence Act 1990 and stating—
 - (i) The position of any vessel at a date and time specified in the certificate; or
 - (ii) That the member of the Armed Forces is satisfied that the equipment used to determine the position of any vessel was in proper working order and that the equipment was accurate within specifications detailed in the certificate.
- (2) A certificate purporting to be signed by a person referred to in subsection (1) of this section may relate to any 1 or more of the matters with respect to which that person has authority to certify.
- (3) The production of any certificate or copy of any document for the purposes of this section purporting to be signed by any person authorised under this section to sign it shall be prima facie evidence of the certificate or copy without proof of the signature of the person purporting to have signed it.
- (4) Any certificate (not being a certified copy of a document) referred to in subsection (1) of this section shall be admissible in evidence only if—
 - (a) At least 14 days before the hearing at which the certificate is to be tendered, a copy of that certificate is served, by or on behalf of the prosecutor, on the defendant or the defendant's agent or counsel, and that person is at the same time informed in writing that the prosecutor does not propose to call the person who signed the certificate as a witness at the hearing; and
 - (b) The Court has not, on the application of the defendant made not less than 7 days before the hearing, ordered, not less than 4 days before the hearing (or such lesser period as the Court in the special circumstances of the case thinks fit), that the certificate should not be admissible as evidence in the proceedings.
- (5) Any copy of a record or other document taken by an enforcement officer under section 13 of this Act, or any copy of such a copy, shall, subject to subsection (6) of this section, be admissible, to the same extent as the original record or document would itself be admissible, as evidence of the record

or document and of any transactions, dealings, amounts, or other matters contained in the record or document.

(6) A copy of a record or document referred to in subsection (5) of this section (including a copy of such a copy) shall be admissible in evidence only if—

(a) The prosecutor or an agent of the prosecutor serves on the defendant, or the defendant's agent or counsel, not less than 14 days before the hearing at which it is proposed to tender the copy in evidence,—

(i) Notice of the prosecutor's intention to tender the copy in evidence; and

(ii) A copy of the copy to be so tendered; and

(b) The Court has not, on the application of the defendant made not less than 4 days before the hearing (or such lesser period as the Court in the special circumstances of the case thinks fit), ordered that the copy should not be admissible as evidence in the proceedings.

(7) The Court shall not make an order under subsection (4) or subsection (6) of this section unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of the relevant certificate or copy.

30. Forfeiture of property on conviction—(1) On the conviction of any person for an offence against any of sections 4 to 9 of this Act,—

(a) Any vessel used in respect of the commission of the offence; and

(b) Any vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, or equipment used in respect of the commission of the offence; and

(c) Any fish or marine life in respect of which the offence was committed—

shall be forfeit to the Crown, and shall be disposed of in such manner as the Minister thinks fit.

(2) On the conviction of any person for an offence against section 11 of this Act, any goods used in respect of the commission of the offence shall, unless the Court for special reasons relating to the offence thinks fit to order otherwise, be forfeit to the Crown and shall be sold or disposed of in such manner as the Minister thinks fit.

(3) Nothing in section 9 of this Act shall apply to prohibit the processing of any fish or marine life that has been disposed of pursuant to this section or to section 18 or section 19 of this Act.

31. Revocations—The following regulations are hereby revoked:

- (a) The Exclusive Economic Zone (Driftnet) Regulations 1989 (S.R. 1989/197);
- (b) The Fisheries (Driftnet) Regulations 1989 (S.R. 1989/198).

This Act is administered in the Ministry of Agriculture and Fisheries.

REPRINTED ACT
[WITH AMENDMENTS INCORPORATED]

FISHERIES

REPRINTED AS ON 1 MAY 1991

INDEX

	Page
Fisheries Act 1983	5
Fisheries Amendment Act 1986	172
Official Information Amendment Act 1987: s. 25 (1)	138 (n)
Marine Farming Amendment Act 1987: s. 8 (2)	172 (n)
Public Finance Amendment Act 1987: s. 2 (2)	174 (n)
Conservation Act 1987: s. 65 (1)	14 (n), 15 (n), 18 (n), 20 (n), 81 (n), 117 (n), 118 (n)
State-Owned Enterprises Amendment Act 1987: s. 11 (1) ...	10 (n), 128 (n), 141 (n)
Protection of Personal and Property Rights Act 1988: s. 117 (3)	88 (n)
State Sector Act 1988: s. 90 (a)	113 (n), 117 (n)
Public Finance Act 1989:	
S. 83 (7)	24 (n)
S. 86	159 (n)
Maori Fisheries Act 1989: Part II	175
Fisheries Amendment Act 1990	182
Conservation Law Reform Act 1990:	
S. 3 (8)	126 (n), 142 (n)
Part VII	190
S. 37	172 (n)
Fisheries Amendment Act (No. 2) 1990	193
Fisheries Amendment Act Commencement Order 1990 (S.R. 1990/308)	60 (n), 125 (n), 155 (n), 184 (n), 187 (n), 188 (n)

In this index "(n)" after a page number indicates that the enactment is referred to in a note on that page.

ANALYSIS

Title	
1. Short Title and commencement	10. Inquiry by Planning Tribunal
2. Interpretation	10A. Regulations to bring plan into effect
2A. Act to bind Crown	11. Emergency amendments to plan
3. Application of Act to exclusive economic zone.	12. Minister may impose emergency restrictions before introduction of plan
3A. References to weight of fish to be references to greenweight	
	PART II
PART I	FISHERIES AUTHORITY
FISHERY MANAGEMENT PLANS	13. Establishment of Fisheries Authority
4. Purposes of fishery management plans	14. Chairman not to be financially interested in fishing industry
5. Declaration of fishery management area	15. Deputies of members
6. Fishery management plan	16. Co-opted members
7. Fishery management advisory committees	17. Meetings of Authority
8. Procedure in relation to plans	18. Meetings to be held in public except in certain circumstances
9. Objections to, and submissions on, proposed plan	19. Fees and travelling allowances
	20. Administration of Authority
	21. Money received by Authority and refunds
	22. Representation of parties

- 23. Evidence before Authority
- 24. Reasons for decision of Authority may be obtained
- 25. Functions and powers of Authority
- 26. Authority to implement policy of Government
- 27. Financial year
- 28. Annual report
- 28A. Quota Appeal Authority established

PART IIA

COMMERCIAL FISHING ON QUOTA
MANAGEMENT SYSTEM

- 28B. Declaration that species or class of fish subject to quota fishing
- 28BA. Declaration that rock lobster subject to quota fishing
- 28C. Total allowable commercial catch for species other than rock lobster
- 28CA. Total allowable commercial catch for rock lobster
- 28D. Matters to be taken into account in determining or varying any total allowable commercial catch
- 28E. Criteria for granting provisional maximum individual transferable quotas
- 28EA. Special provisions in relation to provisional maximum transferable term quotas in respect of rock lobster
- 28F. Guaranteed minimum individual transferable quotas
- 28FA. Guaranteed minimum transferable term quota
- 28G. Notice of quota allocations to be given
- 28GA. Notice of quota allocations for rock lobster
- 28H. Appeal against allocation or failure to allocate provisional maximum individual transferable quota
- 28HA. Appeal against allocation or failure to allocate provisional maximum transferable term quota
- 28I. Decisions of Quota Appeal Authority
- 28J. Effect of increase in provisional maximum individual transferable quota by Quota Appeal Authority
- 28JA. Effect of increase in provisional maximum transferable term quota by Quota Appeal Authority
- 28K. Effect of allocation of guaranteed minimum individual transferable quota
- 28KA. Effect of allocation of guaranteed minimum transferable term quota
- 28L. Agreements to surrender provisional maximum individual transferable quota
- 28M. Minister may abandon quota management scheme
- 28N. Reduction of provisional maximum individual transferable quotas
- 28NA. Reduction of provisional maximum transferable term quotas
- 28O. Allocation of individual transferable quota
- 28OA. Allocation of transferable term quota

Variation in Total Allowable Commercial Catch and Consequent Reduction or Increase in Quota

- 28OB. Variation in total allowable commercial catch for species other than rock lobster
- 28OC. Variation of total allowable commercial catch for rock lobster
- 28OD. Reduction of total allowable commercial catch
- 28OE. Increase in total allowable commercial catch

Compensation for Reductions in Quota over Transitional Period

- 28OF. Interpretation
- 28OG. Compensation for reductions in individual transferable quota for species other than rock lobster during transitional compensation period
- 28OH. Compensation in respect of initial allocation of transferable term quota for rock lobster
- 28OI. Compensation for reduction in transferable term quota for rock lobster
- 28OJ. Limit on total compensation payable
- 28OK. Determination of preliminary percentage of compensation payable before end of transitional compensation period
- 28OL. Manner and timing of payment of compensation
- 28OM. Power to withhold compensation where amounts owing to Crown
- 28ON. Additional amounts payable by Crown in respect of goods and services tax
- 28OO. Compensation payable without further appropriation than this Act

Dealings in Quota

- 28P. Registers to be maintained
- 28Q. Transfers and leases of individual transferable quotas
- 28R. Form of leases of individual transferable quota
- 28S. Minimum holdings of quota and interests in quota
- 28T. *Repealed*
- 28TA. *Repealed*
- 28U. Power of Crown to acquire, hold, transfer, lease, or cancel quotas
- 28V. Taking of fish in excess of quota, and carrying forward of unused quota
- 28W. Restriction on amount of quota that may be held by any one person
- 28X. Quota not to be allocated to owners of licensed foreign fishing craft
- 28Y. Quota not to be sold to or held in respect of licensed foreign fishing craft or leased to them other than by Crown

28z Quota not to be allocated to overseas individuals or companies with overseas control

General

28za. Fish subject to quota fishing cannot be taken for sale other than under quota

28zaa. *Repealed*

28zb. Prohibitions and requirements relating to dumping or retention of quota management system fish

28zc. Resource rental payable in respect of quota

28zd. Commercial fishermen may be required to pay deemed value of excess or unauthorised quota fish

28ze. Assessment of deemed value of fish

28zf. Amount of deemed value to be returned to fisherman where quota subsequently obtained

28zg. Fisherman may offer lease of quota in lieu of paying deemed value

PART III

CONTROLLED FISHERIES

Register of Controlled Fishery Licences

29. Register of Controlled Fishery Licences

Controlled Fisheries Licensing

30. Declaration of controlled fisheries

31. Offence to fish controlled fishery without licence

32. Application for licence

33. Authority may grant licence

34. Matters to be considered in determining application for licence

35. Classification and duration of licences

36. Terms and conditions of licence

37. Renewal of licence

38. Temporary licence

39. Temporary master may be appointed

40. Boat authorities

41. Licence not transferable

42. Fishing not to be suspended

43. Voluntary surrender of licence

44. Lost licences, boat authorities, and temporary licences

45. Revocation and suspension of licence

46. Review of licences

47. Restrictions on licences in certain cases

48. Keeping of accounts and records

Appeals

49. Appeal against decision of Authority

50. Persons entitled to appeal

51. Rights of licensee pending disposal of appeal in certain cases

52. Hearing and determination of appeal

53. Court may refer appeals back to Authority

54. Appeals to Court of Appeal on questions of law

PART IIIA

TAIAPURE-LOCAL FISHERIES

54a. Object

54b. Declaration of taiapure-local fisheries

54c. Proposal for establishment of taiapure-local fishery

54d. Initial consideration of proposal

54e. Notice of proposal

54f. Objections to, and submissions on, proposal

54g. Inquiry by tribunal

54h. Appeal on question of law

54i. Power of Minister to recommend declaration of taiapure-local fishery

54j. Management of taiapure-local fishery

54k. Power to recommend making of regulations

PART IV

FISHING VESSELS AND METHODS OF FISHING

55. Provisions of this Part to apply

56. Registration offices and Registrars

57. Fishing vessels to be registered

58. Application of this Part to tenders

59. Cancellation of registration of fishing vessel

60. Taking of fish, etc., by other than New Zealand ships

61. Possession of fish, etc., by vessels that are not New Zealand ships

62. Taking fish, etc., commercially without permit prohibited

63. Fishing permits

64. Special permits

65. Minister may restrict fishing

Records, Returns, and Restrictions on Disposal of Fish, etc., by Commercial Fishermen and Others

66. Records and returns

67. Disposal of fish by commercial fishermen

67a. Restrictions on purchase or acquisition of fish by certain persons

67b. Examiners

Scientific Observer Scheme

67c. Scientific observer scheme established

67d. Appointment of scientific observers

67e. Director-General to give notice of intention to place scientific observer on vessel

67f. Powers of scientific observers

67g. Food and accommodation to be provided for scientific observers

67h. Supervision by scientific observers of transshipments, dumping of fish, and operation of greenweight conversion factors

PART V

FRESHWATER FISHERIES

68, 68a. *Repealed*

69, 69a. *Repealed*

70-75. *Repealed*

75a. *Repealed*

PART VI

APPOINTMENT AND POWERS OF FISHERY OFFICERS

- 76. Appointment of Fishery Officers
- 77. Appointment of Honorary Fishery Officers
- 78. Issue of warrants
- 79. Powers of Fishery Officer
- 80. Powers of seizure
- 80A. Director-General may direct that transfer or lease of quota not to be registered pending laying of information for quota management offence
- 81. Persons to assist Fishery Officer
- 82. Fish unfit for human consumption to be condemned and vessel prohibited
- 83. Protection of Fishery Officer from liability

PART VII

MISCELLANEOUS PROVISIONS

Miscellaneous Provisions

- 84. Pollution of marine waters
- 85. Determination of closed seasons for fishing
- 86. Closed season in exclusive economic zone
- 87. Research and development of fisheries
- 88. Limitation of Act
- 88A. Giving of notices, etc.

Regulations

- 89. Regulations
- 90. *Repealed*
- 91. Special regulations relating to fresh-water fish farming
- 92. Regulations may provide for the issuing of circulars
- 92A. Certain notices to have status of regulations

Offences and Penalties

- 93. General offences
- 94. *Repealed*
- 95. Obstructing Fishery Officers
- 96. Neglect or refusal to supply particulars, and improper divulging of information
- 97. Buying, selling, or possessing fish, etc., contrary to Act
- 98. Using explosives, etc., to catch or destroy fish
- 98A. Knowingly permitting premises to be used for offence against Act
- 99. Ownership and possession of fish
- 100. Fish on registered vessel deemed to have been caught in New Zealand

- 101. Fish taken in New Zealand fisheries waters must be landed in New Zealand
- 102. Fish on registered vessel deemed to have been taken for the purposes of sale
- 102A. Controlled fish and gear deemed to be taken or used in controlled fishery
- 103. Fish on licensed premises or premises where food sold deemed to have been taken for purposes of sale
- 103A. Fish in excess of certain quantities deemed to have been acquired or possessed for purposes of sale
- 104. Proceedings for offences
- 105. Strict liability
- 105A. Defences available to commercial fisherman taking unauthorised fish
- 105B. Liability of principal for actions of agent in relation to records and returns
- 105C. Liability of companies and persons for actions of officers and employees
- 105D. Liability of directors and managers
- 105E. Presumption as to authority

Evidence in Proceedings

- 106. Certificates and official documents
- 106A. Copies of accounts, records, returns, and other documents
- 106B. Presumption as to master of fishing vessel
- 106C. Presumptions to apply whether or not separate or further evidence adduced in support

Penalties

- 107. Penalties
- 107A. Provision for payment of fees
- 107B. Forfeiture of property and quota on conviction
- 107C. Provisions relating to forfeited property and quota
- 107D. Forfeiture of licence, approval, permission, or permit, and banning from industry on second conviction
- 107E. Rewards to informers

Resource Rentals

- 107F. Resource rentals payable in respect of certain fish
- 107G. Variation of resource rentals by Order in Council
- 107H. Resource rentals to be paid to Crown Bank Account

Repeals, Revocations, and Amendments

- 108. Repeals, revocations, and amendments
- 109. Saving Schedules

THE FISHERIES ACT 1983
1983, No. 14

An Act to consolidate and reform the law relating to the management and conservation of fisheries and fishery resources within New Zealand and New Zealand fisheries waters
[23 September 1983]

1. Short Title and commencement—(1) This Act may be cited as the Fisheries Act 1983.

(2) Subject to section 108 (6) of this Act, this Act shall come into force on the 1st day of October 1983.

As to freshwater fisheries, see Part Va of the Conservation Act 1987 (as inserted by s. 18 of the Conservation Law Reform Act 1990);

See also Part I of the Maori Purposes Act 1959 (reprinted 1976, Vol. 5, p. 3799).

As to Maori, see the Maori Fisheries Act 1989.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Acclimatisation district” means the district administered by an acclimatisation society or, where there is no acclimatisation society, a district administered by the Department of [Conservation]:

“Approved”,—

(a) In relation to Part III of this Act, means approved by the Authority; and

(b) In all other cases, means approved by the Director-General:

“Aquatic life”, in relation to New Zealand fisheries waters, means any species of plant or animal life (except birds) which, at any time of the life history of the species, must inhabit water; and includes any part of such plant or animal:

“Authority” means the Fisheries Authority established under section 13 (1) of this Act:

“Boat authority” means a licence, approved by the Authority, which sets out those particulars of a controlled fishery licence that apply to a particular fishing vessel used by the person holding the licence:

[“Commercial fisherman” means any person who has a fishing permit issued under section 63 of this Act entitling the person to take any species or class of fish, aquatic life, or seaweed:]

"Commercial fishing" means taking fish for sale within New Zealand or New Zealand fisheries waters:

"Controlled fish" means any fish in respect of which a fishery has been declared to be a controlled fishery under this Act:

"Controlled fishery" means a fishery which the Governor-General, by Order in Council, has declared to be a controlled fishery; and includes all persons and vessels engaged in fishing a controlled fishery:

"Director-General" means the Director-General of Agriculture and Fisheries:

"Exclusive Economic Zone" means the exclusive economic zone of New Zealand as defined by section 9 of the Territorial Sea and Exclusive Economic Zone Act 1977:

"Fish" includes all species of finfish of the Classes Agnatha, Chondrichthyes, and Osteichthyes, and all shellfish, at all stages of the life history of such finfish and shellfish; and includes any part thereof:

["Fish and Game Council" means a Fish and Game Council established under section 26P of the Conservation Act 1987:]

"Fishery" means one or more stocks or parts of stocks or one or more species of fish, aquatic life, or seaweed that can be treated as a unit for the purposes of conservation or management:

"Fishery management area" means any area so declared pursuant to section 5 of this Act:

"Fishery Officer" means any officer specified as such in section 76 of this Act:

"Fishery resource" means any fishery, or any stock, species, habitat, or location of fish, aquatic life, or seaweed:

"Fishing" means the catching, taking, or harvesting of fish, aquatic life, or seaweed; and includes any other activity which may reasonably be expected to result in the catching, taking, or harvesting of fish, aquatic life, or seaweed; and also includes any operation in support of or in preparation for any activities described in this definition:

"Fishing Industry Board" means the New Zealand Fishing Industry Board established under the Fishing Industry Board Act 1963:

“Fishing permit” means a permit issued pursuant to section [63] of this Act:

“Fishing unit”, in relation to a controlled fishery licence, means the vessel or vessels used by the licence holder in carrying out the business of fishing together with all gear and equipment used in association with that business; and includes any employee of the licence holder engaged in that business:

“Fishing vessel” includes every description of vessel, aircraft, hovercraft, or other thing, of whatever size, that is capable of being used in fishing:

[“Fishing year” means,—

(a) In relation to rock lobster, a period of 12 months commencing on each 1st day of April; and

(b) In relation to any other species of fish, a period of 12 months commencing on each 1st day of October:]

“Foreign fishing craft” means any fishing vessel that is not a New Zealand fishing vessel:

[“Foreign owned New Zealand fishing vessel” means a New Zealand fishing vessel that cannot be registered without the consent of the Director-General under section 57 (8) of this Act:]

“Internal waters” means all internal waters of New Zealand as defined by section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977:

[“Lease”, in relation to any individual transferable quota or transferable term quota, includes a sublease:]

“Licence”, in relation to Part III of this Act, means a controlled fishery licence issued under that Part:

“Management plan” means a fishery management plan prepared under section 6 of this Act:

“Master”, in relation to any vessel (whether a fishing vessel or not), means any person for the time being having command or charge of the vessel:

“Minister” means the Minister of Fisheries:

“Ministry” means the Ministry of Agriculture and Fisheries:

“New Zealand fisheries waters” means—

(a) All waters in the exclusive economic zone of New Zealand:

(b) All waters of the territorial sea of New Zealand:

(c) All internal waters of New Zealand:

(d) All other fresh or estuarine waters where fish indigenous to or acclimatised in New Zealand are found:

“New Zealand fishing vessel” means any fishing vessel registered under section 57 of this Act:

“Optimum”, in relation to the maximum sustainable yield from a fishery, means the maximum sustainable yield from that fishery modified, for the purposes of a management plan, by any relevant economic, social, recreational, or ecological factor:

“Owner”, in relation to any fishing vessel, includes any body of persons, whether incorporated or not, by which the vessel is owned and [except as provided in section 57 (9) (c) of] this Act, includes any charterer, sub-charterer, lessee, or sub-lessee of the vessel:

“Plan” means a fishery management plan made pursuant to Part I of this Act:

“Planning Tribunal” means the Planning Tribunal established under section 128 of the Town and Country Planning Act 1977:

“Possession” means possession of or control over any fish, or possession of or control over any vessel, vehicle, container, package, thing, or place in or on which the fish are found, either jointly or on one’s own account:

“Port” has the same meaning as in section 2 (1) of the Harbours Act 1950:

“Premises” means any land or building; and includes any vessel, aircraft, or hovercraft, or any vehicle or conveyance of any kind whatever:

“Processing” includes cutting, shelling, and the use of all methods of manufacture and preservation:

“Public authority” includes every local authority and every department or instrument of the executive Government of New Zealand or local authority; and includes the New Zealand Maori Council and the National Parks and Reserves Authority established under section 17 of the National Parks Act 1980:

[“Quota Appeal Authority” means the Quota Appeal Authority established under section 28A of this Act:

[“Quota management area” means—

(a) A quota management area declared under section 28B of this Act; or

(b) A quota management area described in the Third Schedule to the Maori Fisheries Act 1989:]]

“Quota management system” means a quota management system established under Part IIA of this Act:]

“Registrar” means a Registrar of the Ministry appointed under section [56] of this Act:

[“Rock lobster” means—

(a) The spiny rock lobster (*Jasus edwardsii*); and

(b) The packhorse rock lobster (*Jasus verreauxi*):]

“Sale” includes every method of disposition for valuable consideration, including barter; and includes the disposition to an agent for sale on consignment; and also includes offering or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or exposed for sale; and also includes disposal by way of raffle, lottery, or other game of chance; and “sell” and “sold” have corresponding meanings:

“Seaweed” includes all kinds of algae and sea-grasses that grow in New Zealand fisheries waters below low water, or on tidal lands:

“Shellfish” includes all species of the phylum Echinodermata and phylum Mollusca and all species of the Class Crustacea at all stages of the life history of all such fish:

[“Sports fish” has the same meaning as in the Conservation Act 1987:]

“Taking” means fishing; and “to take” has a corresponding meaning:

“Territorial sea” means all waters of the territorial sea of New Zealand as defined by section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977:

“Tidal lands” means such areas of land as are covered and uncovered by the effect of ordinary spring tides:

“Tidal water” means such part of the sea or of a river or creek as is within the effect of ordinary spring tides:

“Total allowable catch”, with respect to the yield from a fishery, means the amount of fish, aquatic life, or seaweed that will produce from that fishery the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any generally recommended sub-regional or regional or global standards:

["Total allowable commercial catch" means, in relation to a fishery subject to a quota management system under Part IIA of this Act, the total allowable commercial catch for that fishery specified pursuant to section 28c (1) or section 28CA or section 28OB or section 28OC of this Act:]

["Transferable term quota" means quota that confers on the holder the right to take rock lobster at any time in the period of 25 years beginning on the 1st day of April 1990 (being quota that may be transferred as if it were individual transferable quota allocated under Part IIA of this Act).]

(2) For the purposes of this Act and any regulations made under it, unless the context otherwise requires, the term "sale" does not include the disposal by public auction of fish taken by amateur fishermen during the course of a fishing competition, if the competition and the auction are carried out in accordance with any conditions imposed by the Director-General, either generally or specifically, and the proceeds from the auction, less only the auctioneer's commission (if any) and similar related expenses, are applied to purposes which are cultural, benevolent, philanthropic, or charitable.

"Acclimatised fish": A definition of this term was repealed by s. 129 (1) of the Conservation Law Reform Act 1990.

"Acclimatisation district": In the definition of this term the word "Conservation" was substituted for the words "Internal Affairs" by s. 11 (1) of the State-Owned Enterprises Amendment Act 1987. The definition of this term would appear now to be defunct, see ss. 3 (4), 39 (1) (c) and 129 (1) of the Conservation Law Reform Act 1990.

"Acclimatisation society": A definition of this term was repealed by s. 129 (1) of the Conservation Law Reform Act 1990.

"Commercial fisherman": The definition of this term was substituted for the original definition by s. 2 (1) of the Fisheries Amendment Act 1986.

"District Anglers Notice": A definition of this term was repealed by s. 129 (1) of the Conservation Law Reform Act 1990.

"Fish and Game Council": The definition of this term was inserted by s. 129 (2) of the Conservation Law Reform Act 1990.

"Fishing permit": The expression "63" was substituted for the expression "64" by s. 13 (2) (a) of the Fisheries Amendment Act 1986.

"Fishing year": The definition of this term was substituted by s. 48 (1) of the Maori Fisheries Act 1989 for the former definition (as inserted by s. 2 (2) of the Fisheries Amendment Act 1986).

"Foreign owned New Zealand fishing vessel": The definition of this term was inserted by s. 2 (3) of the Fisheries Amendment Act 1986.

"Lease": The definition of this term was substituted for the former definition (as inserted by s. 2 (4) of the Fisheries Amendment Act 1986) by s. 2 (1) of the Fisheries Amendment Act 1990.

"Owner": The words in square brackets were substituted for the former words by s. 2 (5) of the Fisheries Amendment Act 1986.

"Public authority": The National Parks and Reserves Authority was abolished by s. 112 (1) of the Conservation Law Reform Act 1990, and s. 17 of the National Parks Act 1980 was repealed by s. 112 (2) of the Conservation Law Reform Act 1990.

"Quota Appeal Authority", "Quota management area", and "Quota management system": The definitions of these terms were inserted by s. 2 (6) of the Fisheries

Amendment Act 1986. A new definition of the term "quota management area" was substituted for the former definition by s. 48 (2) of the Maori Fisheries Act 1989.

"Registrar": The expression "56" was substituted for the expression "60" by s. 13 (2) (b) of the Fisheries Amendment Act 1986.

"Rock lobster": The definition of this term was inserted by s. 48 (3) of the Maori Fisheries Act 1989.

"Sports fish": The definition of this term was inserted by s. 129 (3) of the Conservation Law Reform Act 1990.

"Total allowable commercial catch": The definition of this term was added by s. 2 (2) of the Fisheries Amendment Act 1990.

"Transferable term quota": The definition of this term was added by s. 48 (4) of the Maori Fisheries Act 1989.

[2A. Act to bind Crown—This Act shall bind the Crown.]

This section was inserted by s. 3 of the Fisheries Amendment Act 1986.

3. Application of Act to exclusive economic zone—

(1) Nothing in this Act shall be construed—

- (a) To require the licensing or registration or obtaining of a permit or of any consent by a foreign fishing craft for the purpose of fishing within the exclusive economic zone of New Zealand; or
- (b) To authorise the making of any regulations in derogation of the provisions of the Territorial Sea and Exclusive Economic Zone Act 1977, or of any regulations made under that Act, relating to fishing within the exclusive economic zone; or
- (c) To authorise the boarding, search, seizure, taking of possession, detention, or forfeiture under this Act of any such foreign fishing craft, or of any equipment or fish on board the craft, or the arrest of any crew member of such craft, in respect of any offence relating to fishing within the exclusive economic zone; or
- (d) To authorise the imposition of a term of imprisonment on any crew member of any such foreign fishing craft in respect of any such offence.

(2) Nothing in Part III or section [60] of this Act shall apply to fishing by foreign fishing craft within the exclusive economic zone.

(3) Where, but for the provisions of subsection (1) of this section, a person would be liable to suffer imprisonment for the commission of any offence, he shall instead of such imprisonment be liable on summary conviction to a fine not exceeding in the case of any licensee, owner, or master of the foreign fishing craft \$10,000, and not exceeding in the case of any other crew member of the foreign fishing craft \$1,000.

(4) Any offence against this Act that is committed within the exclusive economic zone of New Zealand shall be deemed to have been committed in New Zealand.

In subs. (2) the expression "60" was substituted for the expression "62" by s. 13 (3) of the Fisheries Amendment Act 1986.

[3A. References to weight of fish to be references to greenweight—(1) Except where otherwise expressly provided, every reference in this Act or any regulations or notice made under this Act to the weight of fish shall be construed as a reference to the greenweight of the fish, which shall be the weight of the fish before any processing (other than freezing) commences and before any part of the fish is removed.

[(2) The Minister may from time to time, by notice in the *Gazette*, given after consultation with the Fishing Industry Board, specify conversion factors which shall, except in the case of fish that are subject to a certificate given under subsection (3) of this section, for all purposes and in any proceedings for an offence against this Act or any regulation made or notice given under this Act be used to determine the greenweight of any fish.

(3) The Director-General may, in respect of any vessel on which fish are processed and frozen, having regard to the method of processing or the processing history of the vessel and after consultation with the owner or master of the vessel, certify in writing conversion factors which shall, in relation to fish taken, processed, or landed by that vessel, for all purposes and in any proceedings for an offence against this Act or any regulation made or notice given under this Act be used to determine the greenweight of any fish taken, processed, or landed by that vessel within the terms of the certificate.

(4) A certificate given under subsection (3) of this section—

(a) Shall be notified to the owner or master of the vessel concerned as soon as practicable after it is made:

(b) Subject to subsection (5) of this section, shall apply in respect of fish taken, processed, or landed after such date or occasion as may be specified in the certificate, and may be expressed to apply for such period or until such date or occasion as may be specified in the certificate:

(c) May be subject to such terms and conditions, whether as to methods of taking, processing, or packing fish, the presence of scientific observers or Fishery Officers, the recording of catches, or otherwise, as the Director-General thinks fit to impose:

(d) Subject to subsection (5) of this section, may at any time be revoked by the Director-General by notice in writing, or may be amended by a further certificate given by the Director-General under subsection (3) of this section, with effect from such date or occasion as may be specified in the notice or certificate.

(5) Any certificate given under subsection (3) of this section, and any revocation made under subsection (4) of this section, shall take effect not earlier than the earliest of the following dates or occasions:

- (a) The commencement of the fishing year following that in which the owner or master of the vessel is notified of the certificate or revocation;
- (b) The next departure of the vessel from any New Zealand port following the notification of the certificate or revocation;
- (c) The day on which any scientific observer who is present on the vessel concerned after the owner or master is notified of the certificate or revocation certifies that the current catch of the vessel has been recorded by that observer;
- (d) Such earlier date as may be agreed between the Director-General and the owner or master of the vessel.]]]

This section was inserted by s. 4 of the Fisheries Amendment Act 1986.

Subss. (2) to (5) were substituted for the former subs. (2) by s. 3 of the Fisheries Amendment Act 1990.

PART I

FISHERY MANAGEMENT PLANS

4. Purposes of fishery management plans—The purpose of any fishery management plan under this Part of this Act is to conserve, enhance, protect, allocate, and manage the fishery resources within New Zealand fisheries waters having regard to the need for—

- (a) Planning, managing, controlling, and implementing such measures as may be necessary to achieve those purposes;
- (b) Promoting and developing commercial and recreational fishing;
- (c) Providing for optimum yields from any fishery and maintaining the quality of the yield without detrimentally affecting the fishery habitat and environment.

5. Declaration of fishery management area—The Minister, for the purposes specified in section 4 of this Act, may from time to time by notice in the *Gazette*, declare any area of New Zealand fisheries waters to be a fishery management area for the management of such species of aquatic life as are specified in the notice.

6. Fishery management plan—(1) Where any fishery management area has been declared, the Director-General shall, as soon as practicable after the declaration, consult and have regard to the views and responsibilities of appropriate public authorities, . . . the Fishing Industry Board, and such organisations and persons representing commercial, recreational, Maori, traditional, and other interests in fisheries as he considers appropriate, and prepare a proposed plan for the whole or any part of that fishery management area for the purposes specified in section 4 of this Act, and the need for the co-ordination of interrelated fisheries.

[(2) Where any fishery management area includes any fresh or estuarine waters where fish indigenous to or acclimatised in New Zealand are found, the Director-General—

- (a) Shall not prepare a proposed plan for the area without first having consulted the Director-General of Conservation; and
- (b) Shall, in preparing the proposed plan, have regard to the advice (if any) of the Director-General of Conservation relating to the responsibilities, conferred on the Department of Conservation by [[Part VB of the Conservation Act 1987]].]

In subs. (1) the words "acclimatisation societies" were omitted by s. 130 (1) of the Conservation Law Reform Act 1990.

Subs. (2) was added by s. 65 (1) of the Conservation Act 1987.

In subs. (2) (b) the words in double square brackets were substituted for the words "section 75A of this Act" (as substituted by s. 11 (1) of the State-Owned Enterprises Amendment Act 1987) by s. 130 (2) of the Conservation Law Reform Act 1990.

7. Fishery management advisory committees—(1) For the purposes of preparing proposed plans and giving advice in relation to operative plans, the Minister may, as he thinks fit, from time to time appoint advisory committees for each management area or part thereof.

(2) Each such committee shall have as chairman an officer of the Ministry nominated by the Director-General, and may include members representing commercial, processing, wholesaling, retailing, recreational, Maori, [conservation] and consumer interests in the area relating to fish and fishing.

(3) If the Minister so directs, there may be paid out of money appropriated by Parliament for the purpose to the members of any such committee remuneration by way of expenses and travelling allowances in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the committee were a statutory Board within the meaning of that Act.

In subs. (2) the word "conservation" was inserted by s. 65 (1) of the Conservation Act 1987.

8. Procedure in relation to plans—(1) The proposed plan shall contain a description of the management area and such of the particulars for management specified in the First Schedule to this Act as the Director-General considers applicable to the management area concerned.

(2) Every proposed plan prepared in accordance with the provisions of this section shall be submitted to the Minister, and if he agrees in principle with the proposed plan he shall authorise the Director-General to advise all those consulted pursuant to section 6 of this Act of the availability of the proposed plan and to publish notice of the proposed plan in the *Gazette*, and the proposed plan shall then be available for public inspection for a period of not less than 2 months from the date of notification in the *Gazette*.

(3) Notice of every such proposed plan shall also be published at least twice, with an interval of not less than 7 days between each notification of the plan, in the metropolitan newspapers and in a newspaper circulating in the locality of the fishery management area concerned; and a copy of the plan shall be deposited in the office of the Ministry nearest to the locality of the fishery management area and in the Ministry's Head Office.

(4) After consideration and amendment (if any) pursuant to section 9 of this Act, the proposed plan together with any changes shall be referred back to the Minister for approval.

[(5) Before approving any plan that affects the statutory responsibilities of the Department of Conservation, the Minister shall consult the Minister of Conservation.]

[(6) The Minister shall give notice in the *Gazette* of the fact that the Minister has approved any plan and the place or some or all of the places from which copies of the plan may be obtained, and shall give that notice to each objector and body or person that made submissions under section 9 of this Act.

(7) Any approved plan may be amended, suspended, or revoked, either in whole or in part; and any amendment,

suspension, or revocation shall be made and notified in the same manner as proposed management plans and management plans are made under this Part of this Act.]

Subs. (5) was substituted for the original subs. (5) by s. 131 of the Conservation Law Reform Act 1990.

Subss. (6) and (7) were substituted for the original subss. (6) and (7) by s. 5 (1) of the Fisheries Amendment Act 1986.

9. Objections to, and submissions on, proposed plan—

(1) Any person or public authority, local authority, or any body specifically constituted by or under any Act, and any Minister of the Crown, which or who has any function, power, or duty which relates to, or which or who is or could be affected by, any aspect of the proposed fishery management plan may lodge an objection, or submissions in respect of the plan, to the Director-General within 2 months of notification in the *Gazette* of the proposed plan.

(2) Every objection shall identify the provisions of the plan objected to, the grounds and the relief sought, and shall be supplemented by such particulars and information as the Director-General notifies the applicant he considers necessary to sufficiently identify the grounds of objection.

(3) The Director-General shall consider the objections and all submissions received by him, or, if he thinks fit, refer it to the Authority, which shall have power to consider and hear the objections and submissions thereon and to make recommendations to the Minister in respect of them.

(4) If the Authority holds a hearing, it shall give not less than 28 days' written notice of the time and place of the hearing to the objector, any local authority whose region or district is affected by the objection, and every body or person which or who has made submissions in respect of the plan shall have the right to be present and be heard by the Authority, may be represented by counsel or duly authorised representative, and may call evidence in support of its or his contentions, before the Authority makes a decision on a recommendation in respect of the objections or submissions:

Provided that where the Authority holds a hearing, the Director-General shall have the right to be heard.

(5) Where the Authority holds a hearing, it may request the Director-General to supply it with such information relating to the proposed plan or any objections or submissions made in respect of it as the Authority considers necessary to assist it; and the Director-General shall, as far as may be practicable, provide such information.

(6) The reasonable expenses and costs of the hearing of the objection and any parties to the proceedings shall be borne as the Authority may direct, or may be left where they fall.

(7) Upon considering any recommendation of the Director-General or the Authority under this section, the Minister shall advise each objector or person who made submissions of that recommendation, and of his decision on all or any part of the recommendation, and shall also give public notice of those matters.

10. Inquiry by Planning Tribunal—(1) Within 28 days after the date of notification of the approved plan pursuant to section 8 (6) of this Act, the appellant and every body and person which or who made submissions on or objected to the proposed plan under section 9 of this Act, or the Director-General, may make submissions on or object to the [approved] plan or any part of it to the Planning Tribunal, or object to the Tribunal against the recommendation, as the case may be.

(2) The Planning Tribunal shall consider all submissions and objections received by it under subsection (1) of this section, and for that purpose shall conduct a public inquiry at such times and places as it may appoint.

(3) For the purposes of conducting a public inquiry under this section, the Tribunal shall have all the powers, privileges, and immunities conferred on it by Part VIII of the Town and Country Planning Act 1977.

(4) The appellant, the Minister, or any regional or united council or local authority whose region or district is affected by the [approved] plan, and every body and person which or who made submissions on or objected to the proposed plan under section 9 of this Act, shall have the right to be present and be heard at every inquiry conducted by the Planning Tribunal under this section, and may be represented by counsel or duly authorised representative.

(5) The Planning Tribunal may, if it considers it to be expedient, conduct any 2 or more inquiries together notwithstanding that they relate to different areas or different parts of any area.

(6) On completion of the inquiry, the Planning Tribunal shall, having regard to the purposes of fishery management plans as set out in section 4 of this Act,—

- (a) Make a report and recommendation to the Minister on the appeal and any necessary amendments to the [approved] plan; or
- (b) Recommend to the Minister that the appeal be declined.

(7) The Minister may, after taking into account the report and recommendations of the Planning Tribunal,—

(a) Amend the [approved] plan; or

(b) Decline the appeal—

and shall give public notice of the report and recommendations and of his decision.

(8) Subject to subsection (9) of this section, no appeal shall lie from any report or recommendation of the Planning Tribunal under this section.

(9) Where any party to any proceedings under this section before the Planning Tribunal is dissatisfied with the report or any recommendation of the Planning Tribunal as being erroneous in point of law, he may appeal to the High Court by way of case stated for the opinion of the Court on a question of law only, and the provisions of subsections (2) and (11) of section 162 and of section 162A of the Town and Country Planning Act 1977 shall, with any necessary modifications, apply in respect of the report or recommendation in the same manner as they apply in respect of a determination of the Planning Tribunal under the Town and Country Planning Act 1977.

In subs. (1), (4), (6) (a), and (7) (a) the word "approved" was substituted for the word "operative" by s. 5 (2) of the Fisheries Amendment Act 1986.

[10A. Regulations to bring plan into effect—(1) Where—

(a) There are no submissions or objections made under section 10 of this Act within the time prescribed in that section; or

(b) There are such submissions or objections and all the procedures and appeals provided for in section 10 of this Act have been completed,—

the Minister shall [[after consultation with the Minister of Conservation]] recommend to the Governor-General the making by Order in Council of regulations bringing the plan into force and giving effect to the controls specified in the plan and any other matters necessary for giving full effect to the plan, and the Governor-General may make such regulations.

(2) In the event of any inconsistency between any regulations made under this section or section 11 of this Act and any regulations made under any other section of this Act, the regulations made under this section or section 11 of this Act shall prevail over the inconsistent regulations made under any other section of this Act.

In subs. (1) the words in double square brackets were inserted by s. 65 (1) of the Conservation Act 1987.

[11. Emergency amendments to plan—[(1) If at any time an emergency occurs that endangers or may endanger stocks of fish, or aquatic life, or any species or class of fish or aquatic life in any fishery in respect of which a fishery management plan has been approved, the Governor-General may, by Order in Council, made on the recommendation of the Minister given after consultation with the Fishing Industry Board and the Minister of Conservation, make regulations amending any regulations made under section 10A of this Act.]]

(2) Any amendment made pursuant to subsection (1) of this section shall take effect from a date to be specified in the regulations and, except as provided in subsection (3) of this section, may remain in effect for not more than 90 days from the date so specified.

(3) Any period specified under subsection (2) of this section may be extended for one further period not exceeding 90 days by subsequent regulations before the expiry of the original regulations.

(4) Any amendment made pursuant to subsection (1) of this section shall, unless sooner revoked, be deemed to be revoked with effect from the expiry of the period specified in the regulations made pursuant to subsection (1) of this section or any subsequent regulations made pursuant to subsection (3) of this section.

(5) Upon the revocation of any amendment made under this section the regulations amended shall revive from the date of that revocation unless otherwise provided in any regulations made pursuant to section 10A of this Act.]

In s. 11, subs. (1) was substituted for the former subs. (1) by s. 132 of the Conservation Law Reform Act 1990.

Ss. 10A and 11 were substituted for the original s. 11 by s. 6 of the Fisheries Amendment Act 1986.

12. Minister may impose emergency restrictions before introduction of plan—(1) If at any time an emergency occurs [within a fishery management area] that, in the opinion of the Minister, endangers or may endanger stocks of fish, or aquatic life, or any species or class of fish or aquatic life in any fishery or part of a fishery where there is no fishery management plan or any proposed plan has not yet been approved by the Minister, the Minister may, by notice in the *Gazette* after consultation with the Fishing Industry Board or [the Minister of Conservation . . .] . . . ,—

(a) Halt all or any fishing in that fishery or any specified part of the fishery:

- (b) Restrict the number of fishing vessels fishing in the fishery:
- (c) Restrict the amount of fish or aquatic life which may be taken from that fishery.
- (2) Any such notice shall shortly state the reasons for the restrictions, and shall be given for a period of not more than 28 days but may from time to time be amended, revoked, or renewed by the Minister by a subsequent notice.
- (3) The particulars of any notice given under this section shall be advertised twice in at least one newspaper generally circulated in the area concerned.
- (4) Every notice given under this section shall come into force on a day to be specified, being a day no sooner than the date on which the notice is advertised under subsection (3) of this section for the second time.
- (5) *Repealed by s. 133 (2) of the Conservation Law Reform Act 1990.*

In subs. (1) the words in the first set of square brackets were inserted by s. 7 of the Fisheries Amendment Act 1986, the words in the second set of square brackets were inserted by s. 65 (1) of the Conservation Act 1987, and words were omitted by s. 133 (1) of the Conservation Law Reform Act 1990.

PART II

FISHERIES AUTHORITY

13. Establishment of Fisheries Authority—(1) There is hereby established the Fisheries Authority.

(2) The Authority shall consist of 5 members appointed by the Minister, being—

- (a) Three members, one of whom shall be appointed as Chairman and one as deputy to the Chairman:
- (b) One member, after consultation with the Fishing Industry Board:
- (c) One member, after consultation with the New Zealand Maori Council.

(3) Subject to this section and to section 14 of this Act, each member of the Authority shall hold office for a term of 3 years, and may from time to time be reappointed:

Provided that—

- (a) Of the first members appointed under subsection (2) (a) of this section, the person appointed as Chairman shall retire 3 years after the commencement of this Act, the person appointed as deputy to the Chairman after 2 years, and the other after one year:

- (b) The first person appointed under subsection (2) (b) of this section shall retire 3 years after the commencement of this Act:
- (c) The first person appointed under subsection (2) (c) of this section shall retire 2 years after the commencement of this Act.
- (4) Any member of the Authority may resign his office at any time by written notice given to the Minister.
- (5) Any member of the Authority may be removed from office at any time by the Minister for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (6) If any member of the Authority dies, resigns, or his office becomes vacant, or he is removed from office, the vacancy shall be filled in the same manner as the appointment of the vacating member. Every person so appointed shall hold office for the residue of the term for which his predecessor was appointed.
- (7) Notwithstanding subsection (3) of this section, every member, unless he sooner vacates his office or is removed from office under this section, shall continue in office until his successor is appointed.
- (8) Those members of the Fisheries Licensing Authority appointed pursuant to section 101 of the Fisheries Act 1908 in office as at the commencement of this Act, shall go out of office on such commencement, but shall be eligible for appointment to the Authority.

14. Chairman not to be financially interested in fishing industry—(1) No person shall be qualified for appointment as Chairman of the Authority if he is financially interested in the fishing industry.

(2) If any person appointed Chairman of the Authority becomes financially interested in the fishing industry his office shall thereupon become vacant.

(3) For the purposes of this section, a person shall be deemed to be financially interested in the fishing industry if that person—

- (a) Is the owner of a fishing vessel or of any share in a fishing vessel for the time being registered under this Act; or
- (b) Is engaged in fishing for the purposes of catching fish for sale; or
- (c) Is engaged in the business of selling fish, whether by wholesale or retail; or

- (d) Is in partnership with any person specified in paragraph (a) or paragraph (b) of this subsection; or
- (e) Is a member or director or employee of any company carrying on the business of fishing or of selling fish, whether by wholesale or retail; or
- (f) Is the wife or husband or employee of any person disqualified under the foregoing provisions of this subsection.

15. Deputies of members—(1) The Minister may, either concurrently with the appointment of a member to the Authority, or at any time thereafter, appoint a deputy for the member; and such deputy may act in place of the member to whom he is appointed deputy while that member is prevented by illness, absence, or other sufficient cause from performing the duties of his office; but any such appointment as deputy may at any time be revoked by the Minister.

(2) Every deputy appointed under this section to act for the member whose appointment was made in accordance with section 13 (2) (h) or (c) of this Act shall be appointed by the Minister after consultation with the Fishing Industry Board or, as the case may require, the New Zealand Maori Council.

(3) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Authority.

(4) No appointment of a deputy and no acts done by him as such, and no act done by the Authority while any deputy is acting as such, shall in any proceedings be questioned on the grounds that the occasion for his appointment or for his or its acting had not arisen or had ceased.

16. Co-opted members—(1) The Authority may co-opt any person or persons, by reason of any particular expert knowledge or skill, to be a member or members to assist it for a specified time or purpose.

(2) A person co-opted under this section shall be deemed to be a member of the Authority during the period for which he is co-opted, but shall not be entitled to vote on any question before the Authority.

17. Meetings of Authority—(1) Meetings of the Authority shall be held at such times and places as the Chairman may from time to time appoint.

(2) The Chairman shall preside at all meetings he attends, and in his absence the deputy Chairman shall preside and shall have all the powers of the Chairman.

(3) At any meeting the quorum necessary for the transaction of business shall be the Chairman or, in his absence, the deputy Chairman, and 2 other members or their deputies.

(4) Subject to this Act, the Authority may regulate its own procedure.

18. Meetings to be held in public except in certain circumstances—(1) Except as provided by subsections (2) to (4) of this section, every hearing of the Authority shall be in public.

(2) The Authority may deliberate in private as to its decision in any matter or as to any question arising in the course of any proceedings before it.

(3) Where the Authority is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter (including details of the private financial circumstances of any person), or that the interests of any party to the hearing in having the whole or any part of the proceedings conducted in private outweigh the public interest in having the hearing conducted in public, the Authority may, on the application of any party to the proceedings, order that the whole or any part of the hearing shall be in private.

(4) Subject to section 22 of this Act, every application for a licence under this section shall be heard in private, but the parties to the application and the Director-General shall be entitled to be present and to make submissions [and to examine and cross-examine witnesses].

(5) In any case where a hearing of the Authority is held in private, the Authority may allow any particular person to attend the private hearing if it is satisfied that the person has a proper interest in the matter to be heard.

In subs. (4) the words in square brackets were added by s. 8(1) of the Fisheries Amendment Act 1986.

19. Fees and travelling allowances—(1) The Authority is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to the members of the Authority, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

20. Administration of Authority—(1) The Director-General shall designate an officer of his Ministry to be Secretary to the Authority, and shall also provide from his Ministry such secretarial, recording, accounting, and clerical services as may be necessary to enable the Authority to discharge its functions.

(2) All expenses incurred in respect of the administration of the Authority shall be paid out of money from time to time appropriated by Parliament for the purpose.

21. Money received by Authority and refunds—(1) All fees and other money received by the Authority shall be dealt with as if they were a receipt of the Ministry of Agriculture and Fisheries, and shall be paid into [the Crown Bank Account].

(2) If the Authority is satisfied that any fee or other money received by it has been paid in error or in excess of the amount properly payable it may on its own volition or on application made to it any time within 3 years after the payment of that fee or other money direct the Director-General to refund the fee or other money or the amount of the excess, as the case may require, to the person by whom it was paid.

(3) All money payable by way of refund under subsection (2) of this section shall be paid out of [the Crown Bank Account] without further appropriation than this section.

In subss. (1) and (3) the references to the Crown Bank Account were substituted for references to the Consolidated Account by s. 83 (7) of the Public Finance Act 1989.

22. Representation of parties—Subject to any provision to the contrary in this Act, every person making an application to the Authority, or who is the subject of an inquiry under section 45 of this Act, shall be entitled to appear and be heard by the Authority in respect of the application or inquiry either in person or by his counsel or agent, and shall have the right to produce evidence [and to examine and cross-examine witnesses].

The words in square brackets were added by s. 8 (2) of the Fisheries Amendment Act 1986.

23. Evidence before Authority—(1) The Authority may receive in evidence any statement, document, information, or matter that may, in its opinion, assist it to deal effectively with the matter before it, whether or not the same would otherwise be admissible in a Court of law.

(2) The Authority may, if it thinks fit in respect of any application before it, examine, on oath or otherwise, the

applicant or any other party to the application or any person whose evidence has been received by the Authority under subsection (1) of this section, or require any person to verify by statutory declaration any statement made by him with respect to the application.

24. Reasons for decision of Authority may be obtained—(1) The Authority shall, if requested to do so by any person who under section 50 of this Act may exercise a right of appeal against a decision of the Authority, supply to that person a statement of its reasons for that decision.

(2) Every request under subsection (1) of this section shall be made within the period specified in section 49 (1) of this Act.

25. Functions and powers of Authority—(1) The functions of the Authority shall be to sit as a body to consider—

(a) Applications for licences to fish in a controlled fishery, and to grant, renew, revoke, or amend such licences;

(b) Objections to and submissions in respect of fishery management plans under section 9 of this Act.

(2) The Authority shall also have such other functions as are conferred on it by or under this Act or any other enactment.

(3) The Authority shall have all the powers necessary to carry out its functions.

26. Authority to implement policy of Government—

(1) In the exercise of its functions and powers under this Act, the Authority shall give effect to the policy of the Government in relation to those functions and powers, as communicated to it from time to time in writing by the Minister.

(2) A copy of every communication under subsection (1) of this section to the Authority in any financial year of the Authority shall—

(a) Be notified in the *Gazette* as soon as practicable after its receipt by the Authority; and

(b) Be included in the annual report laid before Parliament under section 28 of this Act.

27. Financial year—The financial year of the Authority shall end with the 31st day of March or with such other date as the Authority, with the approval of the Minister, may determine.

28. Annual report—(1) As soon as reasonably practical after the end of each financial year, the Authority shall deliver

a general report of its operations during the year to the Minister.

(2) A copy of the general report shall be laid before Parliament as soon as practicable after its receipt by the Minister.

[28A. Quota Appeal Authority established—(1) There is hereby established a Quota Appeal Authority.

[[(2) The Quota Appeal Authority shall have the sole function of hearing appeals and making decisions under sections 28H, 28HA, and 28I of this Act in respect of quota management systems that are declared under sections 28B (1) and 28BA (1) of this Act.**]]**

(3) The Quota Appeal Authority shall consist of—

- (a) One member who shall be the Chairman, being a person who has held a practising certificate as a barrister or solicitor for at least 7 years;
- (b) One member appointed after consultation with the Fishing Industry Board;
- (c) One member who shall not be an officer or employee of the Ministry.

(4) The members of the Quota Appeal Authority shall be appointed by the Minister by notice that shall be published in the *Gazette* and shall be appointed for a term of 3 years or such lesser term as shall be specified in that notice.

(5) Subsections (4), (5), and (6) of section 13, and sections 14, 15 (except subsection (2)), and 16 to 23 of this Act shall apply in respect of the Quota Appeal Authority as if it were the Fisheries Authority.

(6) Every deputy appointed under section 15 (1) of this Act (as applied by subsection (5) of this section) to act for the member referred to in subsection (3) (b) of this section shall be appointed by the Minister after consultation with the Fishing Industry Board.

(7) Sections 18, 22, and 23 of this Act (as applied by subsection (5) of this section) shall apply in respect of any appeal lodged under section 28H **[[**or section 28HA**]]** of this Act as if the appeal were an application for a licence.

(8) The Director-General shall be a party to any appeal lodged under subsection (1) or subsection (2) of section 28H **[[**or subsection (1) or subsection (2) of section 28HA**]]** of this Act, and shall be entitled to appear and be heard either in person or by counsel or agent, and shall have the right to produce evidence and to examine and cross-examine witnesses.

(9) Every person in respect of whom the Director-General lodges an appeal under subsection (3) or subsection (4) of section 28H **[[or subsection (3) or subsection (4) of section 28HA]]** of this Act shall be a party to the appeal, shall be entitled to appear and be heard either in person or by counsel or agent, and shall have the right to produce evidence and to examine and cross-examine witnesses.]

This section was inserted by s. 9 of the Fisheries Amendment Act 1986.

Subs. (2) was substituted for the former subs. (2) by s. 4 (1) of the Fisheries Amendment Act 1990.

In subs. (7) the words in double square brackets were inserted by s. 4 (2) (a) of the Fisheries Amendment Act 1990.

In subs. (8) the words in double square brackets were inserted by s. 4 (2) (b) of the Fisheries Amendment Act 1990.

In subs. (9) the words in double square brackets were inserted by s. 4 (2) (c) of the Fisheries Amendment Act 1990.

[PART IIA

[COMMERCIAL FISHING ON QUOTA MANAGEMENT SYSTEM

[28B. Declaration that species or class of fish subject to quota fishing—(1) The Minister may, after consultation with the Fishing Industry Board, by notice in the *Gazette*, declare that the taking of any species or class of fish in any specified quota management area shall be subject to the quota management system established under this Part of this Act on and from a date specified in the notice.

(2) The Minister shall not make any declaration under subsection (1) of this section in respect of any species or class of fish for any quota management area within which there is a controlled fishery for that species or class of fish.

(3) Every notice under this section shall clearly define the quota management area to which it relates, and may do so by reference to fishery management areas and combinations of all or part of such areas.

(4) So far as is practicable, the Minister shall maintain the same quota management areas for different species or classes of fish.

(5) Except as provided in section 28M of this Act, no declaration under subsection (1) of this section may be revoked and no area may be excluded from any quota management area except by Act of Parliament.

(6) Nothing in subsection (5) of this section shall prevent the Minister making a notice varying the date on and from which any quota management system is to come into force.

[[28BA. Declaration that rock lobster subject to quota fishing—(1) The taking of rock lobster in the quota

management areas described in the Third Schedule to the Maori Fisheries Act 1989 is hereby declared to be subject, for the period of 25 years beginning on the 1st day of April 1990, to the quota management system established under this Part of this Act.

(2) The quota management areas referred to by name and reference number in the Second Schedule to the Maori Fisheries Act 1989 are the quota management areas described in the Third Schedule to that Act.]]

This section was inserted by s. 49 of the Maori Fisheries Act 1989.

[[28c. Total allowable commercial catch for species other than rock lobster—(1) The Minister may, by notice in the *Gazette*, specify the total allowable commercial catch to be available for commercial fishing for each quota management area in respect of each species or class of fish, other than rock lobster, that is subject to the quota management system.

(2) The Minister shall, in the notice given under subsection (1) of this section or a subsequent notice in the *Gazette*, specify the period or periods for which fishing returns are to be used under section 28E (1) of this Act in determining provisional maximum individual transferable quotas.

(3) The Minister may, in any notice given under subsection (1) of this section,—

(a) Specify separate total allowable commercial catches for separately defined parts of any quota management area;

(b) Define total allowable commercial catches by reference to methods of taking fish or the periods within which fish may be taken.

(4) The Minister may, in the notice given under subsection (1) of this section or a subsequent notice in the *Gazette*, specify an appropriate total allowable commercial catch for the remaining part of the fishing year in which any quota management system is to come into force, having regard to the traditional fishing patterns for the species or class of fish in the quota management area.

[[28CA. Total allowable commercial catch for rock lobster—The total allowable commercial catch in respect of rock lobster or any species of rock lobster for each quota management area described in the Third Schedule to the Maori Fisheries Act 1989 is that specified, in relation to rock lobster or that species of rock lobster, in the final column of the Second

Schedule to that Act as the total allowable commercial catch for that quota management area.

[[28D. Matters to be taken into account in determining or varying any total allowable commercial catch—

(1) When setting or recommending any total allowable commercial catch under section 28c of this Act, or varying or recommending any variation in a total allowable commercial catch under section 28ob or section 28oc of this Act (other than a variation made or recommended pursuant to section 28j or section 28ja of this Act), the Minister shall—

- (a) After having regard to the total allowable catch for the fishery, including any total allowable catch determined under section 11 of the Territorial Sea and Exclusive Economic Zone Act 1977, allow for—
 - (i) Maori, traditional, recreational, and other non-commercial interests in the fishery; and
 - (ii) Any amount determined under section 12 of the Territorial Sea and Exclusive Economic Zone Act 1977 as the allowable catch for foreign fishing craft:
- (b) Where considering any reduction in a total allowable commercial catch, have regard to—
 - (i) Whether or not the imposition of other controls under this Act on the taking of fish would be sufficient to maintain the fish stock at a level where the current total allowable commercial catch could be sustained; and
 - (ii) Whether or not a reduction in the level of fishing could be achieved by the Crown's retaining or obtaining the right to take fish under any appropriate quota and not making those rights available for commercial fishing:
- (c) Where considering any reduction in a total allowable commercial catch as a result of any determination of the allowable catch for foreign fishing craft under section 12 of the Territorial Sea and Exclusive Economic Zone Act 1977, have regard to whether or not the Crown's obligations under that Act could instead be achieved by—
 - (i) The Crown's obtaining amounts of the relevant quota on lease, for a consideration not exceeding the amounts of resource rentals payable in respect of such quota; and
 - (ii) Not making the rights to take fish under any such leased quota available to commercial fishermen

within the domestic fishery, thereby leaving available for foreign fishing craft an increased amount of the total allowable catch for the fishery as a whole.

(2) Before setting or varying, or recommending the setting or variation of, a total allowable commercial catch for any fishery, the Minister shall consult with the Fishing Industry Board and such other persons or organisations as the Minister considers are representative of persons having an interest in the fishery, and have regard to any views expressed by such persons or organisations.]]

Ss. 28c, 28ca, and 28d were substituted for the former ss. 28c and 28d (as inserted by s. 10 of the Fisheries Amendment Act 1986 and the former s. 28ca, as inserted by s. 50 of the Maori Fisheries Act 1989) by s. 5 (1) of the Fisheries Amendment Act 1990.

[28E. Criteria for granting provisional maximum individual transferable quotas—(1) Where any declaration is made under section 28B of this Act, the Director-General shall make an allocation of provisional maximum individual transferable quotas in accordance with this section, using as a basis the proportion that the commercial catch of the person in that quota management area of that species or class of fish as shown in the fishing returns of that person bears to the total commercial catch in that quota management area of that species or class of fish in previous years.

(2) Allocations may be made under subsection (1) of this section only to—

- (a) Persons who are holders of fishing permits issued under this Act at the date of the declaration under section 28B of this Act; and
- (b) Persons who have held such permits within the previous 12 months or such longer period as the Director-General considers appropriate for special reasons relating to any particular case.

(3) In determining any provisional maximum individual transferable quota the Director-General may, where the Director-General is satisfied in a particular case that the provisional maximum individual transferable quota determined under subsection (1) of this section would be unfair having regard to—

- (a) The commitment to, and dependence on, the taking of fish of that species or class in that quota management area by the person at that date of the declaration under section 28B of this Act; and
- (b) The other provisional maximum individual transferable quota (if any) allocated to that person,—

allocate a different provisional maximum individual transferable quota to the person.

(4) In determining the commitment to, and dependence on, the taking of any fish by any person for the purposes of subsection (3) of this section, the Director-General may disregard any information relating to the taking of fish that is not supported by fishing returns made in accordance with the requirements of this Act or any regulations made under this Act.

(5) The Minister may, on behalf of the Crown, whether before or after the commencement of this Act, and prior to the allocation of the provisional maximum individual transferable quota, enter into an agreement with any person to whom the Minister believes a provisional maximum individual transferable quota will be allocated to surrender to the Crown the anticipated entitlement to all or part of any provisional maximum individual transferable quota that may be allocated to that person.

(6) Where the Minister has entered into an agreement under subsection (5) of this section, the Director-General shall reduce or cancel the provisional maximum individual transferable quota allocated under this section accordingly.

[[28EA. Special provisions in relation to provisional maximum transferable term quotas in respect of rock lobster—(1) As soon as practicable after the commencement of section 49 of the Maori Fisheries Act 1989, the Director-General shall make an allocation of provisional maximum transferable term quotas in accordance with this section, using as a basis the proportion that the commercial catch of the person in that quota management area of rock lobster or any species of rock lobster as shown in the fishing returns of that person for the [period of 6 years beginning on the 1st day of June 1982 and ending with the close of the 31st day of May 1988] bears to the total commercial catch in that quota management area of rock lobster or that species of rock lobster in previous years.

[(2) Allocations may be made under subsection (1) of this section in respect of rock lobster or any species of rock lobster only to the following persons:

- (a) Persons who, immediately before the 1st day of April 1990, are the holders of controlled fishery licences authorising the taking of rock lobster or that species of rock lobster:

(b) Persons who, immediately before the 1st day of April 1990, are authorised under section 65 (2) of this Act to take rock lobster, or that species of rock lobster, in the Bay of Plenty rock lobster fishery or the Gisborne rock lobster fishery (as those terms were defined in, respectively, the Controlled Fisheries (Bay of Plenty Rock Lobster Fishery) Order 1985 and the Controlled Fisheries (Gisborne Rock Lobster Fishery) Order 1985).]

(3) Where a person to whom subsection (2) of this section applies—

(a) Has not fished for rock lobster or the species of rock lobster in the quota management area at any time during the [6-year period specified in subsection (1) of this section]; or

(b) Has, in accordance with section 39 of this Act, allowed a master, other than that specified in the licence pursuant to section 36 (1) (h) of this Act, to have command or charge of a boat within the controlled fishery during the [6-year period specified in subsection (1) of this section]; or

(c) Has, in accordance with section 42 of this Act, suspended or reduced fishing for rock lobster or the species of rock lobster in the quota management area during the [6-year period specified in subsection (1) of this section],—

the Director-General may, notwithstanding anything in subsection (1) of this section, but subject to subsections (4) and (5) of this section, make to that person under subsection (1) of this section an allocation of provisional maximum transferable term quota in respect of rock lobster or the species of rock lobster subject to the quota management system.

(4) An allocation under subsection (1) of this section may be made to a person pursuant to section (3) of this section only where the Director-General is satisfied that failure to make such an allocation would be unfair having regard to the commitment of that person to, and the dependence of that person on, the taking of rock lobster or that species of rock lobster in the quota management area (being a commitment and dependence existing immediately before the 1st day of April 1990).

(5) Where the Director-General, acting, pursuant to subsection (3) of this section, makes an allocation to a person under subsection (1) of this section, the Director-General shall have regard to the fishing returns made by the other persons

who have fished for rock lobster or the species of rock lobster in the quota management area at any time during the [6-year period specified in subsection (1) of this section].]]

This section was inserted by s. 51 of the Maori Fisheries Act 1989.

In subs. (1) the words in single square brackets were substituted for the former words by s. 6 (1) of the Fisheries Amendment Act 1990.

Subs. (2) was substituted for the former subs. (2) by s. 6 (2) of the Fisheries Amendment Act 1990.

In subs. (3) (a), (b), and (c), and subs. (5) the words in single square brackets were substituted for the former words by s. 6 (3) of the Fisheries Amendment Act 1990.

[28F. Guaranteed minimum individual transferable quotas—(1) The Director-General shall determine guaranteed minimum individual transferable quotas by, if necessary, reducing on a pro rata basis all the provisional maximum individual transferable quotas determined under section 28E of this Act so that the total of the guaranteed minimum individual transferable quotas does not exceed the [[total allowable commercial catch]] for the quota management area in respect of the species or class of fish concerned.

(2) The guaranteed minimum individual transferable quota allocated to any person whose provisional maximum individual transferable quota has been reduced under section 28E (6) of this Act shall be determined under this section as if the provisional maximum individual transferable quota had not been reduced; except that, where the reduced provisional maximum individual transferable quota is less than the guaranteed minimum individual transferable quota, the guaranteed minimum individual transferable quota for that person shall be the reduced provisional maximum individual transferable quota.

(3) In determining the guaranteed minimum individual transferable quota in any case where section 28E (6) of this Act does not apply, no account shall be taken of any reduction or cancellation of provisional maximum individual transferable quota under that provision.

(4) Each provisional maximum individual transferable quota shall, after being reduced if necessary under subsection (1) of this section, become a guaranteed minimum individual transferable quota.

In subs. (1) the words in double square brackets were substituted for the former words by s. 7 of the Fisheries Amendment Act 1990.

[[28FA. Guaranteed minimum transferable term quota—(1) The Director-General shall determine guaranteed minimum transferable term quotas by, if necessary, reducing on a pro rata basis all the provisional maximum transferable term quotas determined under section 28EA of this Act so that

the total of the guaranteed minimum transferable term quotas does not exceed the [total allowable commercial catch] for the quota management area in respect of rock lobster or the species of rock lobster concerned.

(2) Each provisional maximum transferable term quota shall, after being reduced if necessary under subsection (1) of this section, become a guaranteed minimum transferable term quota.]]

This section was inserted by s. 52 of the Maori Fisheries Act 1989.

In subs. (1) the words in single square brackets were substituted for the former words by s. 8 of the Fisheries Amendment Act 1990.

[28C. Notice of quota allocations to be given—(1) The Director-General shall advise each person concerned of the provisional maximum individual transferable quota and the guaranteed minimum individual transferable quota allocated to the person under sections 28E and 28F of this Act.

(2) The Director-General shall give public notice, at least twice with an interval of not less than 7 days between each notification in a newspaper or newspapers circulating in the area or areas where the Director-General considers persons who take fish or are likely to want to take fish from the quota management area are likely to be based,—

(a) Specifying that provisional maximum individual transferable quotas and guaranteed minimum individual transferable quotas have been allocated for the quota management area under sections 28E and 28F of this Act:

(b) Specifying a date, being not earlier than the 28th day after the date of the first publication of the notice in that newspaper, by which any person who has not been allocated such quotas may appeal to the Quota Appeal Authority for the allocation of a provisional maximum individual transferable quota.

[[28CA. Notice of quota allocations for rock lobster—(1) The Director-General shall advise each person concerned of the provisional maximum transferable term quota and the guaranteed minimum transferable term quota allocated to the person under sections 28EA and 28FA of this Act.

(2) The Director-General shall give public notice, at least twice with an interval of not less than 7 days between each notification in a newspaper or newspapers circulating in the area or areas where the Director-General considers persons who take rock lobster or are likely to want to take rock lobster from the quota management area are likely to be based,—

- (a) Specifying that provisional maximum transferable term quotas and guaranteed minimum transferable term quotas have been allocated for the quota management area under sections 28EA and 28FA of this Act:
- (b) Specifying a date, being not earlier than the 28th day after the date of the first publication of the notice in that newspaper, by which any person who has not been allocated such quotas may appeal to the Quota Appeal Authority for the allocation of a provisional maximum transferable term quota.
- (3) A notice under subsection (2) of this section may be combined with a notice under section 28G (2) of this Act.]]

This section was inserted by s. 53 of the Maori Fisheries Act 1989.

[28H. Appeal against allocation or failure to allocate provisional maximum individual transferable quota—

(1) Any person may, within 28 days after being notified under section 28G of this Act of the provisional maximum individual transferable quota and the guaranteed minimum individual transferable quota allocated to that person, or such longer period as the Quota Appeal Authority may allow, appeal to that Authority against the amount of the provisional maximum individual transferable quota allocated to that person.

(2) A person to whom no provisional maximum individual transferable quota has been allocated for a species or class of fish in respect of a quota management area may, before the date specified in accordance with section 28G (2) (b) of this Act or such later date as the Quota Appeal Authority may allow, appeal to that Authority against the failure or refusal of the Director-General to allocate any such provisional maximum individual transferable quota to that person.

(3) The Director-General may, within 28 days after notifying a person of the provisional maximum individual transferable quota and guaranteed minimum individual transferable quota or such longer period as the Quota Appeal Authority may allow, appeal against the amount of the provisional maximum individual transferable quota allocated to that person.

(4) The Director-General may, before the date specified in accordance with section 28G (2) (b) of this Act or such later date as the Quota Appeal Authority may allow, appeal against the failure or refusal to allocate any provisional maximum individual transferable quota to any person.

[[28HA. Appeal against allocation or failure to allocate provisional maximum transferable term quota—

(1) Where any person is advised under section 28GA (1) of this Act of the provisional maximum transferable term quota and the guaranteed minimum transferable term quotas allocated to that person, that person may, within 28 days after being so notified or within such longer period as the Quota Appeal Authority may allow, appeal to that Authority against the amount of the provisional maximum transferable term quota allocated to that person.

(2) A person to whom no provisional maximum transferable term quota has been allocated for rock lobster or a species of rock lobster in respect of a quota management area may, before the date specified in accordance with section 28GA (2) (b) of this Act or such later date as the Quota Appeal Authority may allow, appeal to that Authority against the failure or refusal of the Director-General to allocate any such provisional maximum transferable term quota to that person.

(3) Where the Director-General advises any person, under section 28GA (1) of this Act of the provisional maximum transferable term quota and the guaranteed minimum transferable term quota allocated to that person, the Director-General may, within 28 days after so notifying that person or within such longer period as the Quota Appeal Authority may allow, appeal to the Quota Appeal Authority against the amount of the provisional maximum transferable term quota allocated to that person.

(4) The Director-General may, before the date specified in accordance with section 28GA (2) (b) of this Act or such later date as the Quota Appeal Authority may allow, appeal to the Quota Appeal Authority against the failure or refusal to allocate any provisional maximum transferable term quota to a person.]]

This section was inserted by s. 54 of the Maori Fisheries Act 1989.

[28I. Decisions of Quota Appeal Authority—[[(1) The Quota Appeal Authority shall, as soon as practicable after hearing each appeal, determine whether or not the appellant or, in the case of an appeal under subsection (3) or subsection (4) of section 28H of this Act or subsection (3) or subsection (4) of section 28HA of this Act, the person to whom the appeal relates, should be allocated a provisional maximum individual transferable quota or a provisional maximum transferable term quota or an increase or decrease in provisional maximum individual transferable quota or provisional maximum

[[28HA. Appeal against allocation or failure to allocate provisional maximum transferable term quota—

(1) Where any person is advised under section 28GA (1) of this Act of the provisional maximum transferable term quota and the guaranteed minimum transferable term quotas allocated to that person, that person may, within 28 days after being so notified or within such longer period as the Quota Appeal Authority may allow, appeal to that Authority against the amount of the provisional maximum transferable term quota allocated to that person.

(2) A person to whom no provisional maximum transferable term quota has been allocated for rock lobster or a species of rock lobster in respect of a quota management area may, before the date specified in accordance with section 28GA (2) (b) of this Act or such later date as the Quota Appeal Authority may allow, appeal to that Authority against the failure or refusal of the Director-General to allocate any such provisional maximum transferable term quota to that person.

(3) Where the Director-General advises any person, under section 28GA (1) of this Act of the provisional maximum transferable term quota and the guaranteed minimum transferable term quota allocated to that person, the Director-General may, within 28 days after so notifying that person or within such longer period as the Quota Appeal Authority may allow, appeal to the Quota Appeal Authority against the amount of the provisional maximum transferable term quota allocated to that person.

(4) The Director-General may, before the date specified in accordance with section 28GA (2) (b) of this Act or such later date as the Quota Appeal Authority may allow, appeal to the Quota Appeal Authority against the failure or refusal to allocate any provisional maximum transferable term quota to a person.]]

This section was inserted by s. 54 of the Maori Fisheries Act 1989.

[28I. Decisions of Quota Appeal Authority—[[(1) The Quota Appeal Authority shall, as soon as practicable after hearing each appeal, determine whether or not the appellant or, in the case of an appeal under subsection (3) or subsection (4) of section 28H of this Act or subsection (3) or subsection (4) of section 28HA of this Act, the person to whom the appeal relates, should be allocated a provisional maximum individual transferable quota or a provisional maximum transferable term quota or an increase or decrease in provisional maximum individual transferable quota or provisional maximum

transferable term quota, as the case may require, and the amount, if any, of such quota or increased or decreased quota to be allocated.]]

(2) The Quota Appeal Authority shall inform the parties to each appeal of its decision and the reasons for the decision.

(3) Every decision of the Quota Appeal Authority under subsection (1) of this section shall be final unless challenged by an application for review under Part I of the Judicature Amendment Act 1972, and the Authority shall so inform the parties when it informs the parties of its decision.

Subs. (1) was substituted for the former subs. (1) by s. 55 of the Maori Fisheries Act 1989.

[28J. Effect of increase in provisional maximum individual transferable quota by Quota Appeal Authority—(1) Where the Quota Appeal Authority allocates or increases any provisional maximum individual transferable quota under section 28I of this Act, the guaranteed minimum individual transferable quota of the person concerned shall be a proportionate amount or increased by a proportionate amount, as the case may require, notwithstanding that the effect of that allocation or increase may be that the total of the guaranteed minimum individual transferable quota exceeds the [[total allowable commercial catch]] for the quota management area in respect of the species or class of fish concerned.

(2) The [[total allowable commercial catch]] declared under . . . this Act for any quota management area in respect of any species or class of fish shall, by virtue of this subsection, be deemed to be increased by any guaranteed minimum individual transferable quota allocated under subsection (1) of this section.

(3) Where the Quota Appeal Authority allocates or increases any provisional maximum individual transferable quota under section 28I of this Act, and the provisional maximum individual transferable quota is not surrendered under section 28L of this Act, the provisional maximum individual transferable quota shall be reduced by the same proportion (if any) as other provisional maximum individual transferable quota in respect of the same species or class of fish in the same quota management area have been or are to be reduced under section 28N(1) of this Act.

(4) Where any [[total allowable commercial catch]] is increased by virtue of subsection (2) of this section, the Director-General shall, once all the decisions of the Quota Appeal Authority in relation to that [[total allowable

commercial catch]] are known, give notice in the *Gazette* [[under section 28OB of this Act]] of the new [[total allowable commercial catch]].

In subs. (1), (2) and (4) the words "total allowable commercial catch" in double square brackets were in each case substituted for the words "total allowable catch" by s. 9 (a) of the Fisheries Amendment Act 1990.

In subs. (2) the words "section 28c of" were omitted by s. 9 (b) of the Fisheries Amendment Act 1990.

In subs. (4) the words "under section 28OB of this Act" were inserted by s. 9 (c) of the Fisheries Amendment Act 1990.

[[28JA. Effect of increase in provisional maximum transferable term quota by Quota Appeal Authority—

(1) Where the Quota Appeal Authority allocates or increases any provisional maximum transferable term quota under section 28i of this Act, the guaranteed minimum transferable term quota of the person concerned shall be a proportionate amount or increased by a proportionate amount, as the case may require, notwithstanding that the effect of that allocation or increase may be that the total of the guaranteed minimum transferable term quota exceeds the [total allowable commercial catch] for the quota management area in respect of rock lobster or the species of rock lobster concerned.

(2) The [total allowable commercial catch] declared under . . . this Act for any quota management area in respect of rock lobster or any species of rock lobster shall, by virtue of this subsection, be deemed to be increased by any guaranteed minimum transferable term quota allocated under subsection (1) of this section.

(3) Where any [total allowable commercial catch] is increased by virtue of subsection (2) of this section, the Director-General shall, once all the directions of the Quota Appeal Authority in relation to that [total allowable commercial catch] are known, give notice to the Minister of the new [total allowable commercial catch] so that the Minister may recommend the making of an Order in Council under [section 28OC] of this Act.]]

This section was inserted by s. 56 of the Maori Fisheries Act 1989.

In subss. (1), (2), and (3) the words "total allowable commercial catch" were in each case substituted for the words "total allowable catch" by s. 10 (a) of the Fisheries Amendment Act 1990.

In subs. (2) the words "section 28CA of" were omitted by s. 10 (b) of the Fisheries Amendment Act 1990.

In subs. (3) the expression "section 28oc" was substituted for the expression "section 28CA (3)" by s. 10 (c) of the Fisheries Amendment Act 1990.

[28K. Effect of allocation of guaranteed minimum individual transferable quota—(1) Subject to subsections (2)

and (3) of this section, every person to whom a guaranteed minimum individual transferable quota is allocated shall, on and from the date specified in the notice given under section 28B (1) of this Act, be entitled to take fish of the species or class referred to in the quota within the quota management area in accordance with the fishing permit held by the person.

(2) No person shall be entitled to take fish pursuant to a guaranteed minimum individual transferable quota unless the person also holds a fishing permit issued under section 63 of this Act, and the fish are taken in accordance with the permit.

(3) Where any quota management system comes into force on any date other than the 1st day of October in any year the person to whom any guaranteed minimum individual transferable quota is allocated may take under that quota only an amount of fish to which the quota relates, reduced—

[[(a) By the same proportion that the total allowable commercial catch determined under subsection (4) of section 28c of this Act (if any) bears to the total allowable commercial catch determined under subsection (1) of that section; or]]

(b) By the amount of fish of that species or class taken by that person in the current fishing year in that area pursuant to any quota imposed by regulations made under section 89 (1) (g) of this Act or allocated by any notice made under any such regulation,—

whichever is the greater reduction.

(4) It is hereby declared for the avoidance of doubt that, where any person has lawfully taken a greater amount of fish under any quota imposed by regulations made under section 89 (1) (g) of this Act or any notice made under any such regulation, the taking of that fish shall not constitute a breach of a guaranteed minimum individual transferable quota and shall not be counted as fish taken in excess of quota for the purposes of section 28v of this Act.

In subs. (3), para. (a) was substituted for the former para. (a) by s. 11 of the Fisheries Amendment Act 1990.

[[28KA. Effect of allocation of guaranteed minimum transferable term quota—(1) Subject to subsection (2) of this section, every person to whom a guaranteed minimum transferable term quota is allocated shall, on and from the date of that allocation, be entitled to take rock lobster, or rock lobster of the species referred to in the quota, within the quota management area in accordance with the fishing permit held by the person.

(2) No person shall be entitled to take rock lobster pursuant to a guaranteed minimum transferable term quota, unless the person also holds a fishing permit issued under section 63 of this Act, and the rock lobster are taken in accordance with the permit.]]

This section was inserted by s. 57 of the Maori Fisheries Act 1989.

[28L. Agreements to surrender provisional maximum individual transferable quota—The Minister may invite all persons to whom provisional maximum individual transferable quotas are allocated, or any such person, to enter into agreements, within a reasonable period or periods specified by the Minister (but in any case not less than 28 days after notice of the allocation of the provisional maximum individual transferable quota is given under section 28C of this Act), to surrender to the Crown some or all of the quota (including the guaranteed minimum individual transferable quota);

[28M. Minister may abandon quota management scheme—Where the Minister is satisfied, having regard to any agreements entered into under section 28L of this Act and the effect of reductions of provisional maximum individual transferable quotas under section 28N of this Act on the persons concerned, that it would not be appropriate to proceed with the quota management system for the species or class of fish in the quota management area the Minister may, after consultation with the Fishing Industry Board, by notice in the *Gazette*, declare that the taking of the species or class of fish in the quota management area is not to be subject to a quota management system under this Part of this Act, and may revoke the appropriate notices made under sections 28B and 28C of this Act.

[28N. Reduction of provisional maximum individual transferable quotas—(1) Where the Minister does not enter into agreements under section 28L of this Act sufficient to reduce the total provisional maximum individual quotas to the [[total allowable commercial catch]], the Director-General shall, unless the Minister abandons the scheme, reduce each provisional maximum individual transferable quota on a proportionate basis so that the [[total allowable commercial catch]], as increased by any additional guaranteed minimum individual transferable quota allocated under section [[28J]] of this Act, is not exceeded.

(2) For the purposes of any reduction under subsection (1) of this section, the provisional maximum individual transferable quota for any person who has entered into an agreement under section 28L of this Act shall be the provisional maximum individual transferable quota less the amount of that quota that has been surrendered under the agreement.

(3) No compensation or other payment shall be payable by the Crown to any person in respect of the reduction under this section of the provisional maximum individual transferable quota of that person.

(4) No provisional maximum individual transferable quota shall be reduced under this section below the guaranteed minimum individual transferable quota.

In subs. (1) the words "total allowable commercial catch" were substituted in 2 places for the words "total allowable catch" by s. 12 (a) of the Fisheries Amendment Act 1990, and the expression "28j" was substituted for the expression "28i" by s. 12 (b) of that Act.

[[28NA. Reduction of provisional maximum transferable term quotas—(1) Where the total provisional maximum transferable term quotas exceed the [total allowable commercial catch] in respect of rock lobster or any species of rock lobster for a quota management area, the Director-General shall reduce each provisional maximum transferable term quota on a proportionate basis so that the [total allowable commercial catch], as increased by any additional guaranteed minimum transferable term quota allocated under section [28JA] of this Act, is not exceeded.

(2) [Except as provided in section 28OH of this Act,] no compensation or other payment shall be payable by the Crown to any person in respect of the reduction under this section of the provisional maximum transferable term quota of that person.

(3) No provisional maximum transferable term quota shall be reduced under this section below the guaranteed minimum transferable term quota.]]

This section was inserted by s. 58 of the Maori Fisheries Act 1989.

In subs. (1) the words "total allowable commercial catch" were substituted in 2 places for the words "total allowable catch" by s. 13 (1) (a) of the Fisheries Amendment Act 1990, and the expression "28JA" was substituted for the expression "28i" by s. 13 (1) (b) of that Act.

In subs. (2) the words in single square brackets were inserted by s. 13 (2) of the Fisheries Amendment Act 1990.

[28O. Allocation of individual transferable quota—(1) When the agreements (if any) entered into under section 28L of this Act have been effected and the necessary reductions (if any) have been made under sections 28J (3) and 28N of this Act,

the Director-General shall notify every person concerned of the individual transferable quota allocated to that person.

[[(1A) To the extent that the total allowable commercial catch first specified under section 28c (1) of this Act for any species or class of fish for any area exceeds the total of all provisional maximum individual transferable quota allocated under section 28E of this Act in respect of that species or class of fish in that area, individual transferable quota to the amount of that excess shall be deemed to be allocated to the Crown; and in any such case the Crown shall be entitled to hold or deal with such quota under section 28U of this Act as if it had been purchased on behalf of the Crown.]]

(2) The individual transferable quotas created under subsection (1) [[or subsection (1A)]] of this section shall be expressed in tonnes or parts of a tonne.

(3) No individual transferable quota shall apply in respect of more than one species or class of fish, but quota for more than one species or class of fish may be contained in the same document.

(4) Subject to subsections (5) and (6) of this section, each individual transferable quota shall enable the holder or, if there is more than one holder, the combined holders, and any lessee or lessees of the rights to take fish under the quota, to take in total within the quota management area concerned in any year fish of the species or class shown in the quota up to the tonnage shown in the quota.

(5) No person shall be entitled to take fish pursuant to an individual transferable quota unless the person also holds a fishing permit issued under section 63 of this Act, and the fish are taken in accordance with that permit.

(6) Where any quota management system comes into force on any date other than the 1st day of October in any year, the individual transferable quota allocated under subsection (1) of this section shall authorise the taking of only an amount of fish to which the quota relates, reduced—

[[(a) By the same proportion that the total allowable commercial catch determined under subsection (4) of section 28c of this Act (if any) bears to the total allowable commercial catch determined under subsection (1) of that section; or]]

(b) By the amount of fish of that species or class taken by that person during the current fishing year in that area pursuant to any quota imposed by regulations made

under section 89 (1) (g) of this Act or allocated by any notice made under any such regulation,—
whichever is the greater reduction.

(7) It is hereby declared for the avoidance of doubt that, where any person has lawfully taken a greater amount of fish under any quota imposed by regulations made under section 89 (1) (g) of this Act or any notice made under any such regulation, the taking of that fish shall not constitute a breach of an individual transferable quota and shall not be counted as fish taken in excess of quota for the purposes of section 28v of this Act.

(8) All fish taken under a guaranteed minimum individual transferable quota that is replaced by an individual transferable quota shall, for the purposes of this section, be deemed to have been taken under the individual transferable quota.

Subs. (1A) was inserted by s. 14 (1) of the Fisheries Amendment Act 1990.

In subs. (2) the words in double square brackets were inserted by s. 14 (2) of the Fisheries Amendment Act 1990.

In subs. (6), para. (a) was substituted for the former para. (a) by s. 14 (3) of the Fisheries Amendment Act 1990.

[[280A. Allocation of transferable term quota—

(1) When the necessary reductions (if any) have been made under section 28NA of this Act, the Director-General shall notify every person concerned of the transferable term quota allocated to that person.

(2) The transferable term quotas created under subsection (1) of this section shall be expressed in tonnes or parts of a tonne.

(3) Subject to subsection (4) of this section, each transferable term quota shall enable the holder or, if there is more than one holder, the combined holders, and any lessee or lessees of the rights to take rock lobster under the quota, to take in total within the quota management area concerned in any year rock lobster, or rock lobster of the species shown in the quota, up to the tonnage shown in the quota.

(4) No person shall be entitled to take rock lobster pursuant to a transferable term quota unless the person also holds a fishing permit issued under section 63 of this Act, and the rock lobster are taken in accordance with that permit.

(5) All rock lobster taken under a guaranteed minimum transferable term quota that is replaced by a transferable term quota shall, for the purposes of this section, be deemed to have been taken under the transferable term quota.]]

This section was inserted by s. 59 of the Maori Fisheries Act 1989.

*Variation in Total Allowable Commercial Catch and Consequent
Reduction or Increase in Quota*

[[28ob. Variation in total allowable commercial catch for species other than rock lobster—(1) The Minister may at any time, by notice in the *Gazette*, vary any total allowable commercial catch declared under section 28c (1) of this Act, or any total allowable commercial catch varied by notice in the *Gazette* under this subsection.

(2) When determining to vary any total allowable commercial catch under this section the Minister shall (except in the case of a variation made pursuant to section 28j (4) of this Act) have regard to the matters specified in section 28d of this Act.

(3) Subject to subsection (4) of this section, every notice made pursuant to subsection (1) of this section shall be made before the commencement of the first fishing year to which it relates and shall come into force on the first day of that fishing year.

(4) Nothing in subsection (3) of this section shall apply—

(a) In relation to the fishing year commencing on the 1st day of October 1989; or

(b) In relation to a notice made pursuant to section 28j (4) of this Act in respect of any allocation or increase of guaranteed minimum individual quota pursuant to subsection (1) of that section.

(5) Notwithstanding anything in this Act, the Minister shall not, after the commencement of the Fisheries Amendment Act 1990, make any reduction under this section in the total allowable commercial catch for orange roughy in the combined quota management area consisting of quota management areas 3B, 4, 5A and 6 (as defined in the Fisheries (Quota Management Areas, Total Allowable Catches, and Catch Histories) Notice 1986) that exceeds 4,000 tonnes in respect of the fishing year that commenced on the 1st day of October 1989.

[[28oc. Variation of total allowable commercial catch for rock lobster—(1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, amend the Second Schedule to the Maori Fisheries Act 1989 by omitting the total allowable commercial catch specified, in relation to rock lobster or any species of rock lobster, in the final column of that Schedule against any quota management area, and substituting a new total allowable commercial catch, in relation to rock lobster or any species of rock lobster, in respect of that area.

(2) Any such Order in Council may give effect to any such amendment by repealing the said Second Schedule and substituting a new schedule in its place.

(3) When determining to recommend any amendment to a total allowable commercial catch under this section the Minister shall (except in the case of an amendment recommended pursuant to section 28JA (3) of this Act) have regard to the matters specified in section 28D of this Act.

(4) Subject to subsection (5) of this section, every Order in Council made pursuant to this section shall be made before the commencement of the first fishing year to which it relates and shall come into force on the first day of that fishing year.

(5) Subsection (4) of this section shall not apply to any Order in Council made pursuant to a recommendation under section 28JA (3) of this Act in respect of any allocation or increase of guaranteed minimum transferable term quota pursuant to subsection (1) of that section.

[[28OB. Reduction of total allowable commercial catch—(1) Where the total allowable commercial catch for any class or species of fish for any area is decreased under section 28OB or section 28OC of this Act, the Director-General shall, subject to subsection (2) of this section, cancel any quota held by the Crown that—

- (a) Relates to that species or class of fish and that area; and
- (b) Has not been leased to any commercial fisherman.

(2) The Director-General shall not cancel any such Crown quota to the extent that—

- (a) Retention of the quota may be necessary to enable the Crown to give effect to its obligations under the Maori Fisheries Act 1989; or
- (b) Cancellation would reduce the total of individual transferable quotas, or of transferable term quotas, to an amount less than the total allowable commercial catch.

(3) Where the Crown does not hold any relevant quota, or the cancellation of quota by the Crown is not sufficient to reduce the sum of all quota to the level of the decreased total allowable commercial catch, the quantity of fish that may be taken under the individual transferable quotas or the transferable term quotas to which that total allowable commercial catch applies shall be reduced on a proportionate basis to total the amount of the decreased total allowable commercial catch.

(4) Where the holder of any quota that is reduced under subsection (3) of this section has leased that quota to any person,—

- (a) The right to take fish thereby conferred on that person shall be reduced proportionately to the reduction in the quota of the holder of the quota; and
- (b) Any right to take fish conferred on any person pursuant to any sublease of the quota shall be reduced proportionately to the reduction in the quota of the person granting the sublease.

(5) Where the holder of any quota that is reduced under subsection (3) of this section has entered into any lease or any other arrangement in relation to quota whereby any other person is or may become entitled to acquire any amount of quota outright, the amount of quota to which that entitlement relates shall be reduced proportionately to the reduction in the quota of the holder of the quota.

(6) As soon as practicable after any quota is reduced pursuant to subsection (3) of this section, the Director-General shall—

- (a) Notify all affected quota holders of the reductions made to that person's quota; and
- (b) Give notice of the effect of the reduction to any lessee or sublessee of the quota.

(7) Except as provided in section 280C of this Act, no compensation shall be payable for any reduction of quota pursuant to this section.

(8) No reduction of quota pursuant to subsection (3) or subsection (4) or subsection (5) of this section—

- (a) Shall be regarded as placing the Crown or any other person in breach of, or default under, any contract or other arrangement relating to quota, or as otherwise making them guilty of a civil wrong;
- (b) Shall invalidate any contract or other arrangement in relation to quota, or be regarded as giving rise to a right for any person to terminate or cancel any such contract or other arrangement, except to the extent that specific provision to the contrary is made in relation to any such reduction in the relevant contract or other arrangement.

[[280E. Increase in total allowable commercial catch—

(1) Where any total allowable commercial catch for any species or class of fish other than rock lobster is increased under section 280B of this Act (not being an increase made pursuant to section 28J of this Act),—

(a) Subject to subsections (3) and (4) of this section, the Minister shall first offer the additional quota available thereby on a proportionate basis free of charge to those persons who—

(i) Had provisional maximum individual transferable quota for that species or class of fish for the relevant area reduced under section 28N of this Act; and

(ii) Continue to hold any quota for that species or class of fish for that area on the date on which the increase takes effect; and

(b) Where any amount of quota remains unallocated after compliance with paragraph (a) of this subsection, all individual transferable quota for the species or class of fish for the relevant area shall be increased on a proportionate basis to total the amount of the increased total allowable commercial catch.

(2) Where any total allowable commercial catch for rock lobster or any species of rock lobster is increased under section 28oc of this Act (not being an increase recommended pursuant to section 28JA of this Act), all transferable term quota for rock lobster or that species of rock lobster for the relevant area shall be increased on a proportionate basis to total the amount of the increased total allowable commercial catch.

(3) Any quota offered under subsection (1) (a) of this section shall be offered in amounts such that each person receives not more than the amount of provisional maximum individual transferable quota that was reduced under section 28N of this Act; or lesser proportionate amounts, if sufficient quota is not available.

(4) No offer of quota shall be made under subsection (1) (a) of this section in respect of any quota reduced under section 28on of this Act.

(5) The Director-General shall as soon as practicable notify each affected quota holder of the increase made to that person's quota pursuant to this section.

Compensation for Reductions in Quota over Transitional Period

[[28of. Interpretation—(1) In this section and in sections 28og to 28oo of this Act, unless the context otherwise requires,—

“Agreed preliminary percentage” means the percentage determined under section 28ok of this Act in respect

of compensation to be payable before the end of the transitional compensation period:

“Association” means the New Zealand Fishing Industry Association Incorporated:

“Commission” means the Maori Fisheries Commission established under the Maori Fisheries Act 1989:

“Compensation balance” means—

(a) In relation to any particular day falling within the transitional compensation period, the amount by which the total of—

(i) All amounts referred to in section 280J (1) (a) of this Act that are paid on or before that day (less the amount of any resource rentals refunded on or before that day); and

(ii) All amounts referred to in section 280J (1) (c) of this Act that are certified on or before that day; and

(iii) In respect only of the compensation balance on the last day of the transitional compensation period, the amount certified in respect of the final quarter of that period in accordance with section 280J (3) of this Act,—

exceeds the total amount of compensation paid on or before that day pursuant to sections 280G to 280L of this Act:

(b) In relation to any particular day falling within the extended compensation period, the amount by which the total of—

(i) All amounts referred to in section 280J (1) (a) of this Act that are paid on or before that day (less the amount of any resource rentals refunded during the transitional compensation period on or before that day); and

(ii) All amounts referred to in section 280J (1) (b) of this Act that are paid on or before that day (less the amount of any resource rentals refunded during the extended compensation period on or before that day), to the extent allowed by that provision; and

(iii) All amounts referred to in section 28oj (1) (c) of this Act that are certified on or before that day; and

(iv) In respect only of the compensation balance on the last day of the extended compensation period, the amount certified in respect of the final quarter of that period in accordance with section 28oj (3) of this Act,—

exceeds the total amount of compensation paid on or before that day pursuant to sections 28og to 28ol of this Act:

“Extended compensation period” means the period commencing on the 1st day of October 1994 and ending with the close of—

(a) The 30th day of September 1995, if the total allowable commercial catch applying to hoki on the 30th day of September 1994 is more than 20 percent but not more than 40 percent lower than that applying on the 1st day of October 1989; or

(b) The 30th day of September 1996, if the total allowable commercial catch applying to hoki on the 30th day of September 1994 is more than 40 percent but not more than 60 percent lower than that applying on the 1st day of October 1989; or

(c) The 30th day of September 1997, if the total allowable commercial catch applying to hoki on the 30th day of September 1994 is more than 60 percent lower than that applying on the 1st day of October 1989;—

and where none of paragraphs (a) to (c) of this definition apply there shall be no extended compensation period:

“Federation” means the New Zealand Federation of Commercial Fishermen (Incorporated):

“Quarter” means any period of 3 months ending on the last days of March, June, September, and December in any year:

“Transitional compensation period” means the period commencing on the 1st day of October 1989 and ending with the close of the 30th day of September 1994.

(2) For the purposes of this section and sections 28og to 28oo of this Act, the amount of any resource rental does not include

any amount required by section 13A of the Ministry of Agriculture and Fisheries Act 1953 to be paid in respect of the late payment of a resource rental.

[[28oc. Compensation for reductions in individual transferable quota for species other than rock lobster during transitional compensation period—(1) Subject to subsection (5) of this section and to section 28oj of this Act, where at any time during the transitional compensation period any reduction in any individual transferable quota for any species or class of fish in any area (other than rock lobster) takes effect pursuant to section 28od(3) of this Act, compensation shall be payable in respect of any such reduction in accordance with this section.

(2) The amount of any compensation payable under this section shall be such amount as is agreed between the Minister, the Association, the Federation, and the Commission as the agreed price, per tonne, on the 1st day of October 1989, for individual transferable quota for the relevant species or class of fish in the relevant area, having regard to—

- (a) The value of quota for each fishery relative to the values of quota for all other fisheries, in the light of the relationship between the prices at which quota for each fishery were traded before the 1st day of October 1989; and
- (b) The likely reduction in the aggregate value of the businesses of quota holders and lessees within any fishery for each tonne by which quota for the fishery is reduced, whether determined by reference to—
 - (i) The likely tonnage of reductions in quota (if any) for that fishery during the transitional compensation period; or
 - (ii) The likely tonnage of reductions in quota for any other fishery during that period, with an appropriate allowance then being made for the relativities referred to in paragraph (a) of this subsection.

(3) Any amount payable as compensation under this section in respect of any reduction in individual transferable quota shall be payable by the Crown to persons who, on the date of the relevant reduction, were holders of the relevant quota or persons holding any interest in such quota (being an interest held by any such person on the date of commencement of the Fisheries Amendment Act 1990) in such amount or such

proportion as may be agreed between the Minister, the Association, the Federation, and the Commission.

(4) If the Minister, the Association, the Federation, and the Commission are unable to agree on any matter referred to in subsections (2) and (3) of this section by the 30th day of September 1990, or such later date as may be agreed between them, that matter shall be determined by arbitration in accordance with the Arbitration Act 1908.

(5) Subject to subsections (6) and (7) of this section, any person who would be entitled to compensation under subsection (1) of this section in respect of any reduction in quota for orange roughy may instead elect to receive from the Crown, in respect of all or any part of the tonnage by which the person's quota is reduced, quota for squid in the proportion of 5 tonnes of squid quota to 1 tonne of orange roughy quota.

(6) Nothing in subsection (5) of this section shall apply at any time when the interim order made by the High Court on the 2nd day of November 1987 in certain proceedings commenced by the filing of applications in the Wellington Registry under numbers CP 559/87, 610/87, and 614/87, as subsequently varied by that Court, is in force, except to the extent that any further variation to the order so allows.

(7) The Crown shall not be obliged to grant any quota for squid pursuant to an election made under subsection (5) of this section to the extent that the total of all such grants of quota would exceed the lesser of—

- (a) Fifty percent of the amount of squid quota held by the Crown at such time as the order referred to in subsection (6) of this section is discharged, or is varied to allow elections to be made under subsection (5) of this section; or
- (b) Such amount of quota so held by the Crown at that time as may be required—
 - (i) To enable the Crown to give effect to its obligations under the Maori Fisheries Act 1989; and
 - (ii) To be made available for foreign fishing craft pursuant to the Territorial Sea and Exclusive Economic Zone Act 1977.

[[280H. Compensation in respect of initial allocation of transferable term quota for rock lobster—(1) Where the amount of transferable term quota allocated to any person under section 280A of this Act in respect of rock lobster is less than the amount of provisional maximum transferable term quota allocated to that person under section 280E of this Act,

the Crown shall, subject to subsection (2) of this section and to section 280j of this Act, pay compensation to that person in respect of the difference between those allocations at the rate of \$3,000 per tonne.

(2) The total amount of compensation payable by the Crown under subsection (1) of this section in respect of all persons entitled to compensation under that subsection shall not exceed \$3,000,000, and, to the extent that the liability of the Crown does exceed that amount, the entitlement of each person to compensation shall be reduced proportionately so that the total liability of the Crown does not exceed \$3,000,000.

[[280i. Compensation for reduction in transferable term quota for rock lobster—(1) Subject to subsection (2) of this section and to section 280j of this Act, where at any time before the 30th day of September 1994 any reduction in any transferable term quota for rock lobster takes effect pursuant to section 280d (3) of this Act, compensation shall be payable by the Crown in respect of any such reduction at the rate of \$12,000 per tonne.

(2) No compensation shall be payable under subsection (1) of this section to the extent that the reduction (if any) in the total allowable commercial catch for rock lobster during the period commencing on the 1st day of April 1989 and ending with the 30th day of September 1994 exceeds in total 500 tonnes.

(3) If any single reduction in the total allowable commercial catch for rock lobster has the effect of causing the 500-tonne limit referred to in subsection (2) of this section to be exceeded, any compensation payable in respect of that reduction shall be decreased on a proportionate basis as if the reduction were only of such amount as would bring the total reduction in the total allowable commercial catch over the period to the level of 500 tonnes.

[[280j. Limit on total compensation payable—(1) Subject to the provisions of this section, the total amount of compensation payable by the Crown pursuant to sections 280g to 280i of this Act shall not exceed an amount equal to the total of—

- (a) All resource rentals paid to the Crown pursuant to sections 28zc and 107f of this Act during the transitional compensation period (less the amount of any resource rentals refunded during that period pursuant to section 28zc of this Act); and

- (b) Where the total allowable commercial catch applying to hoki on the 30th day of September 1994 is more than 20 percent lower than that applying on the 1st day of October 1989, all resource rentals paid to the Crown pursuant to sections 28zc and 107F of this Act during the extended compensation period (less the amount of any resource rentals refunded during that period pursuant to section 28zc of this Act), to the extent that the total amount so paid does not exceed the lesser of—
- (i) Such amount of compensation payable under section 28og of this Act in respect of reductions in quota for hoki as remains unpaid on the 31st day of December 1994; or
 - (ii) The total amount of resource rentals that would have been payable during the extended compensation period, if the resource rentals for each year within that period had been increased over the resource rentals for the preceding year by the percentage increase in the Index number of the Consumers Price Index All Groups referred to in section 107c (4A) of this Act; and
- (c) Amounts certified from time to time by the Secretary to the Treasury in respect of each quarter within the transitional compensation period, and (if appropriate) the extended payment period, in accordance with subsection (3) of this section.
- (2) For the purposes of this section, where, in respect of any lease of quota granted to any person by the Crown,—
- (a) The lease requires the payment of a fixed rental to the Crown; and
 - (b) The Crown has undertaken that the lessee will not be otherwise required to meet the cost of any resource rental payable in respect of the quota; and
 - (c) The lease grants the lessee the right to acquire the quota outright at the expiry of the lease,—
- the resource rental in respect of that quota, during the period the lease is in force, shall be deemed to be the amount of any fixed rental referred to in paragraph (a) of this subsection that is paid during the transitional compensation period or (if appropriate) the extended payment period, and not the amount of any resource rental actually paid in respect of the quota.

NEW 80

190
54

Fisheries

R.S. Vol. 27

(3) For the purposes of paragraph (c) of subsection (1) of this section,—

- (a) The Secretary to the Treasury shall determine the amounts to be certified under that paragraph in respect of each quarter as if determining an appropriate amount of interest on the average daily compensation balance during the relevant quarter, at the then prevailing interest rate for 5-year Government stock; and
- (b) The Secretary shall determine and certify any such amount as soon as practicable after the end of the quarter to which it relates.

[[280K. Determination of preliminary percentage of compensation payable before end of transitional compensation period—(1) The Association, the Federation, and the Commission shall, not later than 30 days after—

- (a) Agreement being reached under section 280G (2) of this Act on the agreed price for all species and classes of fish (other than rock lobster); or
- (b) Where such agreement is not reached, the completion of arbitration in respect thereof under section 280G (4) of this Act,—

jointly notify the Minister of the preliminary percentage of compensation to be payable by instalments under section 280L (1) (a) of this Act.

(2) Where the Association, the Federation, and the Commission fail to notify a preliminary percentage to the Minister under subsection (1) of this section, the Minister may fix the level of the preliminary percentage.

(3) The preliminary percentage notified or fixed under this section may at any time during the transitional compensation period be reduced by agreement between the Minister, the Association, the Federation, and the Commission.

(4) Where the preliminary percentage is reduced under subsection (3) of this section,—

- (a) The new preliminary percentage shall not come into effect on any day other than the 1st day of October in any year;
- (b) Any amounts of compensation paid or payable to a person on or after the date on which the reduction comes into effect shall be reduced only in proportion to the amount of the reduction, and shall not take account of any amount of compensation already paid

to that person on the basis of the previous preliminary percentage.

[[280L. Manner and timing of payment of compensation—(1) Subject to the provisions of this section, compensation payable to any person pursuant to sections 280c to 280i of this Act shall be paid by the Crown from any available compensation balance as follows:

(a) In the case of compensation payable pursuant to section 280H of this Act in respect of the initial allocation of transferable term quota for rock lobster, the Crown shall pay the full amount of compensation as soon as practicable after the end of the quarter in which the allocation occurred:

(b) In any other case,—

(i) The Crown shall pay the agreed preliminary percentage of the compensation in 4 equal quarterly instalments, the first instalment to be paid as soon as practicable after the end of the quarter in which the quota reduction giving rise to the compensation first took effect, and the other 3 instalments to be paid as soon as practicable after the last days of the succeeding 3 quarters; and

(ii) The balance of the compensation shall be paid as soon as practicable after the 30th day of September 1994.

(2) Subject to subsections (3) and (4) of this section, where at the end of any quarter within the transitional compensation period the available compensation balance is insufficient to pay all amounts of compensation then due to be paid, that balance shall be paid to the persons to whom compensation is then due in accordance with the following priorities:

(a) First there shall be paid in full (if the compensation balance is sufficient) any amount of compensation that is payable pursuant to section 280H of this Act in respect of initial allocations of transferable term quota for rock lobster:

(b) Thereafter there shall be paid in full (if the compensation balance is sufficient) any amount of compensation then due to be paid that is payable pursuant to section 280i of this Act in respect of reductions in transferable term quota for rock lobster:

(c) Thereafter there shall be paid in full (if the compensation balance is sufficient) any amount of compensation then due to be paid that is payable pursuant to

section 280c of this Act in respect of any reduction in quota for species other than rock lobster where—

(i) The reduction first took effect in a previous fishing year; and

(ii) The full amount of compensation then due to be paid has not yet been paid;

(d) To the extent of any remaining compensation balance, there shall be paid proportionately reduced amounts in respect of compensation then due to be paid that is payable pursuant to section 280c of this Act in respect of reductions in quota first taking effect in the fishing year in which the quarter occurs.

(3) Subject to subsection (4) of this section, where the compensation balance available at the close of the 30th day of September 1994 is insufficient to pay all amounts of compensation payable under sections 280c to 280i of this Act that remain unpaid at that date, that balance, and the compensation balance available at the end of any subsequent quarter occurring within the extended payment period (if any), shall be paid to the persons to whom compensation is due in accordance with the following priorities:

(a) First there shall be paid in full (if the compensation balance is sufficient), to each person who has not yet received the agreed preliminary percentage of the amount of compensation payable to that person, such amount as may be necessary to bring the level of compensation paid to that person up to that percentage;

(b) To the extent of any remaining compensation balance, the amount to be paid to each person to whom any amount of compensation is still due shall be reduced on a proportionate basis to total the amount of that remaining balance.

(4) Where it is not possible to pay in full any of the amounts referred to in paragraph (a) or paragraph (b) or paragraph (c) of subsection (2) or paragraph (a) of subsection (3) of this section,—

(a) The amount to be paid to each person under the relevant one of those paragraphs shall be reduced on a proportionate basis to total such amount of the compensation balance as is available to all persons to whom the relevant paragraph applies; and

(b) The amount of any such reduction shall be payable out of the compensation balance available at the end of the

following quarter (if possible) in accordance with the priorities set out in subsection (2) or subsection (3) of this section.

[[28OM. Power to withhold compensation where amounts owing to Crown—Notwithstanding anything in section 28OL of this Act, where any person has failed to pay any fee or other amount (not being a fine) due by that person to the Crown under or in respect of any matter under this Act, the Crown may defer payment of any compensation payable to that person under this Part of this Act, to an amount not exceeding the amount so due, until the amount so due is paid.

[[28ON. Additional amounts payable by Crown in respect of goods and services tax—(1) The amounts of any compensation payable under sections 28OF to 28OM of this Act are exclusive of any amount of goods and services tax payable under the Goods and Services Tax Act 1985.

(2) Where the Crown is required to pay any amount of compensation pursuant to sections 28OF to 28OM of this Act, the amount so required to be paid shall be increased by an additional amount equal to 12.5 percent of that amount in respect of goods and services tax.

(3) No additional amount referred to in subsection (2) of this section shall be treated as compensation paid or payable for any of the purposes of sections 28OF to 28OM of this Act, and in particular no such amount shall be taken into account for the purpose of determining—

- (a) Whether or not any maximum amount or limit on compensation referred to in these sections has been reached or exceeded; or
- (b) The amount of any compensation balance.

[[28OO. Compensation payable without further appropriation than this Act—All amounts of compensation payable pursuant to sections 28OF to 28OM of this Act, and all amounts payable pursuant to section 28ON of this Act, shall be payable by the Crown without further appropriation than this section.]]

Ss. 28ON to 28OO, and the heading thereto, were inserted by s. 15 of the Fisheries Amendment Act 1990.

[[Dealings in Quota]]

[28P. Registers to be maintained—[[(1) The Director-General shall ensure that there is maintained in respect of each

quota management area for each species or class of fish a register showing—

- (a) The total allowable commercial catch;
- (b) The individual transferable quota and the transferable term quota allocated to each person;
- (c) Every transfer of an individual transferable quota or of transferable term quota, whether by operation of law or agreement of the parties, that has been notified to the Director-General;
- (d) Every lease under section 28Q of this Act that has been notified to the Director-General.]]

(2) The registers for each quota management area shall be kept at such office of the Ministry as the Director-General shall determine; and copies shall be kept at such offices of the Ministry as the Director-General considers are ordinarily used by persons who fish in that quota management area.

(3) Each register shall be a public document open for inspection on payment of the prescribed fee (if any) during ordinary office hours; and the Director-General shall supply to any person copies of all or part of the register on request and payment of a reasonable charge for the production of the copy.

(4) In any proceedings in any Court, a certificate purporting to be signed by an officer of the Ministry to the effect that the officer has checked the appropriate register and stating any matters that are or are not included in the register at a specified date shall, in the absence of evidence to the contrary, be sufficient evidence of the matters contained in the certificate.

The heading above this section was inserted by s. 15 of the Fisheries Amendment Act 1990.

Subs. (1) was substituted for the former subs. (1) (as amended by s. 60 of the Maori Fisheries Act 1989) by s. 16 (1) of the Fisheries Amendment Act 1990.

[28Q. Transfers and leases of individual transferable quotas—[(1) Except as provided in sections 28s and 28w of this Act, any person who is the holder of an individual transferable quota or of transferable term quota may permanently transfer that quota to any other person or lease the rights of the holder to any other person for a specified period or a specified tonnage of fish.]]

(2) Every such transfer or lease shall be notified to the Ministry by the transferee or lessee by the most appropriate means in the circumstances and confirmed by notice on an approved form accompanied by the prescribed fee within [[10 days]] after the transfer or lease is entered into.

(3) The Director-General shall enter the name of the transferee or the name of the lessee and the period of the lease or the amount of fish involved in the lease in the appropriate register.

[(4) No transfer or lease referred to in subsection (1) of this section shall have effect for any of the purposes of this Act to transfer any right (including the right to take fish), obligation, or liability from the transferor or lessor to the transferee or lessee until notification in the approved form of the transfer or lease has been received by the Ministry.]]

(5) Where a transfer or lease is made under this section to any person, that person shall not be entitled to take any fish under the quota unless that person holds an appropriate fishing permit.

(6) No transfer or other transaction by way of security involving an individual transferable quota [[or transferable term quota]] shall be capable of registration; but nothing in this subsection shall prohibit any such transfer or other transaction.

[(7) Where any person who holds individual transferable quota or transferable term quota or any interest as lessee in such quota has been charged with the commission of a quota management offence or an offence relating to returns and records (as those terms are defined in section 107B(1) of this Act),—

(a) No transfer or lease of that quota or interest in quota shall be registered under section 28P or section 28Q of this Act before the proceedings for the offence are finally determined; and

(b) No transfer or lease of that quota or interest in quota shall confer any right to take fish on the transferee or lessee under that quota or interest; and

(c) No transfer or lease of that quota or interest in quota shall be effective against the Crown in the event of forfeiture of the quota or interest pursuant to section 107B of this Act,—

except to the extent that the Court orders otherwise under subsection (8) of this section.

(8) The Court may at any time, on application by—

(a) The holder of quota to which subsection (7) of this section applies; or

(b) By any person having an interest in such quota,—
order that any or all of the provisions of that subsection shall not apply in respect of the quota, whether generally or in

respect of any specified dealing in the quota. Any such order may be subject to such sureties and conditions as the Court may specify.]]

Subs. (1) was substituted for the former subs. (1) (as amended by s. 61 (a) of the Maori Fisheries Act 1989) by s. 17 (1) of the Fisheries Amendment Act 1990.

In subs. (2) the expression "10 days" was substituted for the expression "5 days" by s. 17 (2) of the Fisheries Amendment Act 1990.

Subs. (4) was substituted for the former subs. (4) by s. 17 (3) of the Fisheries Amendment Act 1990.

In subs. (6) the words in double square brackets were inserted by s. 61 (b) of the Maori Fisheries Act 1989 and s. 17 (4) of the Fisheries Amendment Act 1990; s. 17 (6) of the latter Act repealed s. 61 of the Maori Fisheries Act 1989.

Subss. (7) and (8) were added, as from 1 November 1990, by s. 17 (5) of the Fisheries Amendment Act 1990. See s. 17 (7) of that Act and S.R. 1990/308.

[28R. Form of leases of individual transferable quota—

(1) Every transfer of an individual transferable quota [[or of transferable term quota]] shall be on an approved form and shall clearly show—

(a) The name and address of the transferor and the transferee:

(b) The price of or consideration for the transfer:

[[(c) Such other matters as may be required or authorised by regulations made under this Act to be shown.]]

(2) Every lease of an individual transferable quota [[or of transferable term quota]] shall be in an approved form and shall clearly show—

(a) The name and address of the holder of the quota and the lessee of the quota:

(b) The maximum tonnage of fish that may be taken under the lease:

(c) The duration of the lease:

(d) Whether or not the holder transfers to the lessee all or any of the holder's rights under section 28v of this Act, and the extent (if any) of the rights so transferred:

(e) The rental charged under the lease:

[[(f) Such other matters as may be required or authorised by regulations made under this Act to be shown.]]

(3) The Director-General shall enter in the appropriate register the details referred to in subsections (1) and (2) of this section.

In subss. (1) and (2) the words "or of transferable term quota" were inserted by s. 62 of the Maori Fisheries Act 1989.

In subs. (1), para. (c) was added by s. 18 (1) of the Fisheries Amendment Act 1990.

In subs. (2) para. (f) was added by s. 18 (2) of the Fisheries Amendment Act 1990.

[[28s. Minimum holdings of quota and interests in quota—(1) Except as provided in subsections (3) to (7) of this section, no person may purchase or take on lease—

- (a) Less than 5 tonne of individual transferable quota for any quota management area for any species or class of finfish unless the total individual transferable quota held or held on lease by that person for all species or classes of finfish (including that quota) in one or more quota management areas is or exceeds 5 tonne;
- (b) Less than 1 tonne of individual transferable quota for any quota management area for any species or class of shellfish unless the total individual transferable quota held or held on lease by that person for all species or classes of shellfish (including that quota) in one or more quota management areas is or exceeds 1 tonne;
- (c) Less than 3 tonne of transferable term quota for rock lobster for any quota management area unless the total transferable term quota held or held on lease by that person for rock lobster (including that quota) in that quota management area is or exceeds 3 tonne.

(2) Notwithstanding that a person may have purchased or taken on lease not less than the minimum amount of quota specified in subsection (1) of this section, that person shall not take fish pursuant to any such quota at any time when the person has disposed in whole or in part of the right to take fish under the quota (whether by way of lease or otherwise), unless the person has the current right to take fish to an amount not less than that specified in that subsection.

(3) Nothing in subsection (1) or subsection (2) of this section shall prevent—

- (a) The allocation under section 28F or section 28FA of this Act of guaranteed minimum individual transferable quota or guaranteed minimum transferable term quota or the allocation under section 28O or section 28OA of this Act of individual transferable quota or transferable term quota in amounts less than those specified in subsection (1) of this section; or
- (b) The taking of fish pursuant to any such quota by the person to whom it was allocated at any time when the person has the current right to take fish to an amount not less than—
 - (i) The amount so allocated; or

(ii) If the amount so allocated is subsequently increased pursuant to section 280E of this Act, the amount of that quota as so increased.

(4) Nothing in subsection (1) or subsection (2) of this section shall prevent—

(a) The reduction pursuant to section 280D of quota to amounts less than those specified in subsection (1) of this section; or

(b) The taking of fish pursuant to any such reduced quota by the person whose quota was so reduced at any time when the person has the current right to take fish to an amount not less than—

(i) The amount of the reduced quota; or

(ii) If the reduced quota is subsequently increased pursuant to section 280E of this Act, the amount of that quota as so increased.

(5) Nothing in subsection (1) of this section shall prevent the purchase or taking on lease of individual transferable quotas or transferable term quotas by any person who intends to acquire over a period at least the minimum individual transferable quota or at least the minimum transferable term quota, and who does not take any fish or rock lobster, as the case may be, pursuant to that quota until the person holds at least the minimum amount of quota specified in that subsection.

(6) Nothing in subsection (1) of this section shall apply to the holder of any controlled fishery licence issued under Part III of this Act.

(7) Where any person holds at least the minimum holding of individual transferable quota specified in subsection (1)(b) of this section, that person may purchase or take on lease less than the minimum of any individual transferable quota specified in subsection (1)(a) of this section, and may take fish pursuant to any such quota at any time during which the person has the current right to take shellfish to an amount not less than that specified in subsection (1)(b) of this section.

(8) Where any person holds at least the minimum holding of transferable term quota specified in subsection (1)(c) of this section, that person may purchase or take on lease less than the minimum of any individual transferable quota specified in subsection (1)(a) of this section, and may take fish pursuant to any such quota at any time during which the person has the current right to take rock lobster to an amount not less than that specified in subsection (1)(c) of this section.

(9) No person may sell or otherwise dispose of (other than by lease) individual transferable quota or transferable term quota where that sale or disposal would reduce the total individual transferable quota or transferable term quota held by that person to less than—

(a) Five tonne of finfish; or

(b) One tonne of shellfish; or

(c) Three tonne of rock lobster,—

unless all the individual transferable quota for finfish or shellfish or all the transferable term quota for rock lobster, as the case may be, held or leased by the person are disposed of.

(10) No person may dispose of or grant a lease of, and no person may acquire or take on lease less than 100 kilograms of, any individual transferable quota or transferable term quota, unless, in the case of disposal or granting of a lease, the person disposes of or grants a lease of all the individual transferable quota or transferable term quota held by that person for that species or class of finfish or shellfish or rock lobster, as the case may be, for a quota management area.

(11) No agreement shall be entered into, whether notified under this Act or otherwise, or if entered into shall not be effective, to the extent that it authorises any person to take any fish subject to a quota management system on behalf of any other person unless the first-mentioned person has the current right to take fish subject to a quota management system to an amount not less than that specified in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section.]]

This section was substituted for the former s. 28s (as substituted by s. 63 of the Maori Fisheries Act 1989) by s. 19(1) of the Fisheries Amendment Act 1990.

28T. Inserted by s. 10 of the Fisheries Amendment Act 1986, and repealed by s. 20 of the Fisheries Amendment Act 1990.

28TA. Inserted by s. 64 of the Maori Fisheries Act 1989, and repealed by s. 20 of the Fisheries Amendment Act 1990.

[[28U. Power of Crown to acquire, hold, transfer, lease, or cancel quotas—(1) The Director-General may, on behalf of the Crown,—

(a) Purchase any individual transferable quota or transferable term quota or take a lease of any such quota for a specified period:

- (b) Subject to subsection (2) of this section, retain any quota so acquired, without being obliged to offer them to any commercial fisherman:
- (c) Transfer any individual transferable quota or transferable term quota held by or on behalf of the Crown, or lease for a specified period some or all of the rights of the Crown in relation to any such quota:
- (d) Transfer any individual transferable quota or transferable term quota held by or on behalf of the Crown to such persons as the Minister directs for the purpose of enabling members of Maori tribes to engage in the business and activity of fishing.

(2) Where any individual transferable quota held by the Crown relates to fish to which the Territorial Sea and Exclusive Economic Zone Act 1977 applies and the Minister has determined under section 12 of the Territorial Sea and Exclusive Economic Zone Act 1977 that the fish cannot be taken by New Zealand fishing craft within the meaning of that Act, the quota shall be made available to foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977 to take those fish.

(3) Where quota or rights under quota are held on behalf of the Crown, the Crown shall have all the rights that would be enjoyed by any such holder who is not the Crown.

(4) The Minister may, unless the right to take the fish is or is required to be made available to foreign fishing craft under the Territorial Sea and Exclusive Economic Zone Act 1977, cancel any individual transferable quota held on behalf of the Crown, and where the Minister does so, the [relevant total allowable commercial catch] shall be reduced accordingly.

(5) The Minister may cancel any transferable term quota held on behalf of the Crown, and where the Minister does so, the [relevant total allowable commercial catch] shall be reduced accordingly.

(6) The Minister shall give notice in the *Gazette* of any cancellation of individual transferable quota or transferable term quota and the consequent reduction of the [relevant total allowable commercial catch].]]

This section was substituted for the former s. 28u by s. 65 of the Maori Fisheries Act 1989.

In subs. (4) the words in single square brackets were substituted for the former words by s. 21 (a) of the Fisheries Amendment Act 1990.

In subss. (5) and (6) the words in single square brackets were substituted in each case for the words "total allowable catch" by s. 21 (b) of the Fisheries Amendment Act 1990.

[[28v. Taking of fish in excess of quota, and carrying forward of unused quota—(1) Subject to the provisions of this section and the requirements of this Act relating to fishing permits, any holder of an individual transferable quota may in any fishing year take in total not more than 10 percent more fish than is specified in that quota, or such greater amount as may be permitted under subsection (2) of this section.

(2) The Director-General may, by notice in writing to the person concerned, permit the taking in any fishing year of a specified percentage or amount of fish that is greater than 10 percent more fish than is specified in the quota.

(3) Nothing in subsection (1) or subsection (2) of this section applies in respect of rock lobster.

(4) Nothing in subsection (1) or subsection (2) or subsection (6) of this section shall apply to permit the taking in any fishing year of more fish than is specified in the quota—

(a) By any lessee of the quota, or by any person having the right to take fish under the authority of the quota otherwise than as holder of the quota; or

(b) By any holder of the quota if, at any time during the fishing year, the quota is leased.

(5) Where fish are taken in excess of the amount specified in a quota by any person acting under the authority of subsection (1) or subsection (2) of this section, the amount of fish that may be taken under that quota in the next fishing year, whether by that person or by any other person, shall be reduced by the amount of that excess.

(6) Subject to subsection (4) of this section, where in any fishing year the total tonnage of fish specified in any quota is not taken, the holder of that quota in the next fishing year may, in addition to any amount authorised by the quota, take whichever is the lesser of the following:

(a) The tonnage that was not taken; or

(b) Ten percent of the total tonnage specified in the quota in the year in which the total tonnage of fish was not taken.

(7) Where the right to take any fish is carried forward to the next year under subsection (6) of this section, the tonnage of fish concerned shall not form part of the quota for the purposes of subsection (1) or subsection (2) of this section, and, if the tonnage of fish is not taken in that next year, the right to take the tonnage of fish carried forward shall lapse.

(8) Where more than one person holds any quota during any fishing year, nothing in subsection (1) or subsection (2) or

subsection (6) of this section shall allow the taking in total of more than the amount of fish authorised under the relevant one of those subsections.

(9) Where—

(a) Any reduction in any individual transferable quota for any species or class of fish in any area takes effect pursuant to section 280D of this Act on any day during the fishing year commencing on the 1st day of October 1989; and

(b) The amount of fish already taken in that year by any person under the quota before that day exceeds the reduced amount of the quota,—

the amount of fish that may be taken under that quota in the next fishing year shall be reduced under subsection (5) of this section only to the extent that the amount of fish taken before that day exceeds the amount specified in the quota before it was reduced.

(10) Where any reduction in any individual transferable quota for any species or class of fish in any area takes effect pursuant to section 280D of this Act during the fishing year commencing on the 1st day of October 1989, subsection (6) of this section shall apply only to the extent that the total tonnage specified in any quota as at the end of that fishing year has not been taken.]]

This section was substituted for the former s. 28v (as inserted by s. 10 of the Fisheries Amendment Act 1986 and amended by s. 66 of the Maori Fisheries Act 1989) by s. 22 (1) of the Fisheries Amendment Act 1990.

[28w. Restriction on amount of quota that may be held by any one person—[(1) Notwithstanding the provisions in this Part of this Act relating to the transfer and lease of individual transferable quotas or transferable term quotas, no person shall be entitled to hold (whether by allocation or by taking on transfer or lease or by any combination of those means)—

(a) More than 35 percent of the total of individual transferable quotas for New Zealand fisheries waters in respect of any species or class of fish named in Schedule 1A to this Act:

(b) More than 10 percent of [the total of] the transferable term quotas for any quota management area in respect of spiny rock lobster:

(c) More than 35 percent of [the total of] transferable term quotas for any quota management area in respect of packhorse rock lobster:

- (d) In any other case, more than 20 percent of the total of individual transferable quotas for any quota management area in respect of any species or class of fish.

(2) Nothing in subsection (1) of this section shall apply to any person who is allocated more than the permitted percentage of the total of any transferable quotas for any species or class of fish or for rock lobster or any species of rock lobster for any quota management area under section 280 or section 280A or [section 280E (1)] of this Act; but, except as may be permitted by any consent granted under subsection (3) of this section, no such person may acquire or take on lease any more such quota.

(2A) Where any individual transferable quotas for any species or class of fish for any quota management area or any transferable term quotas for rock lobster or any species of rock lobster for any quota management area—

- (a) Have been transferred to a person under section 280 (1) (d) of this Act; or

- (b) Have been acquired by a person, with the consent of the Minister, in exchange for individual transferable quotas or transferable term quotas transferred to that person under section 280 (1) (d) of this Act,—

nothing in subsection (1) of this section prevents that person from holding those individual transferable quotas or transferable term quotas; but nothing in this subsection applies to any other quota or interest in quota acquired by any such person.]]

[[(3) Notwithstanding subsection (1) of this section, the Minister may from time to time, after consultation with the Fishing Industry Board, by notice in the *Gazette*, consent to any named person holding (whether by allocation or by taking on transfer or lease or by any combination of those means),—

- (a) In any case to which paragraph (a) of subsection (1) of this section applies, not more than a specified percentage which is greater than 35 percent of the total of individual transferable quotas for New Zealand fisheries waters in respect of any species or class of fish:
- (b) In any case to which paragraph (b) of that subsection applies, not more than a specified percentage which is greater than 10 percent of the total transferable term quotas for any quota management area in respect of spiny rock lobster:

- (c) In any case to which paragraph (d) of that subsection applies, not more than a specified percentage which is greater than 20 percent of the total of individual transferable quotas for any quota management area in respect of any species or class of fish.
- (4) Any consent under subsection (3) of this section may be given subject to such conditions as the Minister may impose, and may be given for any specified year or years or generally.]]
- (5) The Minister shall, in considering whether or not to grant any consent under subsection (3) . . . of this section, consider—
 - (a) The willingness and ability of other members of the New Zealand fishing industry to acquire or hold the appropriate . . . quota and take the fish concerned;
 - (b) The likely effect of the granting or withholding of the consent on—
 - (i) The development of any new or existing fishery;
 - (ii) Other commercial fishermen;
 - (iii) The processing and marketing of that species or class of fish;
 - (iv) The ability of the applicant to take any other species or class of fish;
 - (c) Such other matters as the Minister considers relevant.
- (6) The Minister shall not grant any consent under subsection (3) . . . of this section in any case where quotas have been acquired by any person in excess of the then permitted percentage of quotas before the consent is sought.
- (7) Where any person acquires any quota or any interest in any quota in breach of this section or any consent given by the Minister under this section, the quota or the interest in the quota so acquired shall, to the extent that the holding of it is in breach of this section, be forfeited to the Crown without compensation.
- (8) For the purposes of this section, the term “person” includes—
 - (a) Any person who is in partnership with the person;
 - (b) Any person who is a director or employee of any company of which the person is a director or employee;
 - (c) Any person who is a relative of that person, as defined in section 2 of the Income Tax Act 1976;
 - (d) Any person who, for the purposes of the Income Tax Act 1976, would be a person associated with that person as provided in section 8 of that Act;

(e) Any beneficiary or trustee of any trust of which the person is a trustee or beneficiary.

(9) The Governor-General may, by Order in Council, amend Schedule 1A of this Act by adding the name of any species or class of fish to that Schedule.

Subss. (1), (2), and (2A) were substituted for the former subss. (1) and (2) by s. 67 (1) of the Maori Fisheries Act 1989.

In subss. (1) (b) and (c) the words in single square brackets were inserted by s. 23 (1) (a) and (b) respectively of the Fisheries Amendment Act 1990.

In subss. (2) the expression in single square brackets was substituted for the expression "section 28T (1) or section 28TA (1)" by s. 23 (2) of the Fisheries Amendment Act 1990.

Subss. (3) and (4) were substituted for the former subss. (3) and (4) (as amended by s. 67 (2) of the Maori Fisheries Act 1989) by s. 23 (3) of the Fisheries Amendment Act 1990.

In subss. (5) (as indicated by the first set of points of omission) and (6) the expression "or subsection (4)" was omitted by s. 23 (4) (b) of the Fisheries Amendment Act 1990.

In subss. (5) (a) the words "individual transferable" were omitted by s. 23 (4) (a) of the Fisheries Amendment Act 1990.

[[28x. Quota not to be allocated to owners of licensed foreign fishing craft—(1) Nothing in sections 28E to [28OE] of this Act shall apply in respect of any person who is the owner of a foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977.

(2) Where any person to whom subsection (1) of this section applies would be entitled to be allocated an individual transferable quota or a transferable term quota if it were not for that subsection, that quota shall be allocated to the Crown.]]

This section was substituted for the former s. 28x (as inserted by s. 10 of the Fisheries Amendment Act 1986) by s. 68 of the Maori Fisheries Act 1989.

In subss. (1) the expression "28OE" was substituted for the former expression "28oA or section 28T or section 28TA" by s. 24 of the Fisheries Amendment Act 1990.

[28y. Quota not to be sold to or held in respect of licensed foreign fishing craft or leased to them other than by Crown—(1) No person may sell or lease any individual transferable quota [[or transferable term quota]] to the owner of any foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977.

(2) Notwithstanding subsection (1) of this section, the Crown may lease any quota held by it to permit the taking of fish by any foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977.

In subss. (1) the words in double square brackets were inserted by s. 69 of the Maori Fisheries Act 1989.

[28z. Quota not to be allocated to overseas individuals or companies with overseas control—(1) This section applies to any person who,—

(a) Being an individual, is a person who is not ordinarily resident in New Zealand;

(b) Being a body corporate, is wholly or significantly controlled from outside New Zealand.

(2) For the purposes of subsection (1) (a) of this section any person who is not otherwise ordinarily resident in New Zealand shall be deemed to be ordinarily resident in New Zealand if—

(a) The person has resided in New Zealand for not less than two and a half years during the period of 3 years immediately preceding the date on which the matter is to be determined; and

(b) The Director-General is satisfied that the person is likely to continue to reside permanently in New Zealand.

(3) For the purposes of subsection (1) (b) of this section, a body corporate shall be deemed to be wholly or significantly controlled from outside New Zealand if 25 percent or more of the voting power in relation to the body corporate is—

(a) Held or may be exercised by or on behalf of one or more individuals who are not ordinarily resident in New Zealand; or

(b) Held by a body or bodies corporate of which 25 percent or more of the voting power is held or may be exercised by or on behalf of an individual or individuals who is or are not ordinarily resident in New Zealand or a body or bodies corporate that, by virtue of this provision, is or are wholly or significantly controlled from outside New Zealand, or a combination of such individuals and bodies corporate.

(4) The Director-General may, by notice in the *Gazette*, declare that for the purposes of this section, any company whose shares are listed on the New Zealand Stock Exchange is not wholly or significantly controlled from outside New Zealand.

[(5) Except as provided in subsection (7) of this section, nothing in sections 28E to [28OE] of this Act shall apply in respect of any person to whom this section applies.

(6) Where any person to whom this section applies would be entitled to be allocated an individual transferable quota or a transferable term quota if it were not for subsection (5) of this section, that quota shall be allocated to the Crown.

(7) Where any person who is allocated a provisional maximum individual transferable quota or guaranteed minimum individual transferable quota or provisional maximum transferable term quota or guaranteed minimum transferable term quota becomes a person to whom this section applies, the person may continue to hold the provisional maximum individual transferable quota or guaranteed minimum individual transferable quota or provisional maximum transferable term quota or guaranteed minimum transferable term quota until the person is allocated, as the case may require, an individual transferable quota under section 280 of this Act or a transferable term quota under section 280A of this Act, and subsection (8) of this section shall then apply.

(8) Where any person who is the holder of an individual transferable quota or transferable term quota or the lessee of any individual transferable quota or transferable term quota becomes a person to whom this section applies, that person shall, unless an appropriate declaration is made under subsection (4) of this section, or permission is granted under subsection (9) of this section, dispose of the quota or interest in the quota within 3 months or such greater period as the Director-General may permit.

(9) The Director-General may, subject to such conditions as the Director-General considers appropriate, permit the acquisition or continued holding of individual transferable quota or transferable term quota or interests in individual transferable quota or transferable term quota by any person to whom this section applies.

(10) No person may sell or lease any individual transferable quota or transferable term quota to any person to whom this section applies other than in accordance with any permission granted under subsection (9) of this section.

(11) Where any person to whom this section applies holds any individual transferable quota or transferable term quota or any interest in any individual transferable quota or transferable term quota that is not permitted under subsection (8) or subsection (9) of this section, the individual transferable quota or transferable term quota or interest in the individual transferable quota or transferable term quota shall be forfeited to the Crown without compensation.]]

Subss. (5) to (11) were substituted for the former subss. (5) to (11) by s. 70 of the Maori Fisheries Act 1989.

In subs. (5) the expression "280c" was substituted for the former expression "280a or in section 287 or in section 287A" by s. 25 of the Fisheries Amendment Act 1990.

General

[[28ZA. Fish subject to quota fishing cannot be taken for sale other than under quota—(1) Except in the case of fish taken pursuant to an arrangement or agreement entered into under section 87 of this Act, no person may take for sale—

- (a) Any fish for which guaranteed minimum individual transferable quota or individual transferable quota have been allocated other than under the authority of a guaranteed minimum individual transferable quota or an individual transferable quota;
 - (b) Any fish for which guaranteed transferable term quota or transferable term quota have been allocated other than under the authority of a guaranteed minimum transferable term quota or a transferable term quota.
- (2) For the purposes of this section, a person shall be deemed not to take fish under the authority of any quota unless—
- (a) That person is the holder of the quota; or
 - (b) That person is a lessee of the quota; or
 - (c) That person is named in a written authority that—
 - (i) Is in the prescribed form or a form approved by the Director-General; and
 - (ii) Is signed by the holder or lessee (as the case may be) of the quota and the person being authorised to take fish under the authority of the quota; and
 - (iii) Has, prior to the fish being taken, been furnished to the Registrar at the port where the vessel to be used to take the fish is registered, or, where fishing is to be carried out otherwise than from a vessel, to the Registrar of the port that is nearest to the area in which the fish are to be taken.
- (3) No person shall take any fish under the authority of any quota other than in accordance with the conditions of an appropriate fishing permit, the conditions and limitations imposed by or under this Act or any regulations or notice made under this Act, and any applicable fishery management plan.
- (4) Where—
- (a) A commercial fisherman takes fish subject to a quota management system without the authority of an appropriate quota, or takes fish in excess of any amount authorised to be taken under any quota; and
 - (b) The commercial fisherman has not notified the taking of the fish to a Registrar and surrendered and disposed of the fish in the manner specified in section 105A (1) (c) (ii) of this Act; and

(c) The commercial fisherman subsequently buys or leases quota that would have authorised the taking of the fish by that fisherman at the date the fish were taken, or enters into an arrangement with another commercial fisherman for the fish to be counted against appropriate quota of that other fisherman,—
any such fish shall, whether or not any offence has been committed in relation to the fish, and whether or not any defence is available under this Act in respect of any such offence, be attributed to and counted against the relevant quota so bought, leased, or arranged.

(5) Nothing in subsection (4) of this section authorises the taking of fish without the authority of, or in excess of any amount authorised to be taken under, any quota allocated under this Act.]]

This section was substituted for the former s. 28ZA (as inserted by s. 10 of the Fisheries Amendment Act 1986) and the former s. 28ZAA (as inserted by s. 71 of the Maori Fisheries Act 1989) by s. 26 (1) of the Fisheries Amendment Act 1990.

28ZAA. Inserted by s. 71 of the Maori Fisheries Act 1989, and repealed by s. 26 (1) of the Fisheries Amendment Act 1990.

[[28ZB. Prohibitions and requirements relating to dumping or retention of quota management system fish—(1) No commercial fisherman shall return to the sea or abandon in the sea—

(a) Any rock lobster of legal size that is dead or unlikely to survive if returned to the sea:

(b) Any other fish of legal size, or for which no legal size is prescribed, that is subject to a quota management system.

(2) Any commercial fisherman who takes any fish (including rock lobster) subject to a quota management system that is not of legal size shall immediately return that fish to the sea, whether alive or dead.

(3) Any commercial fisherman who, otherwise than under the authority of any guaranteed minimum transferable term quota or any transferable term quota, takes any rock lobster of legal size shall, unless the rock lobster is dead or unlikely to survive if returned to the sea, immediately return that rock lobster to the sea with as little injury as possible as soon as practicable after it was taken.

(4) It shall be a defence to any proceedings for an offence against subsection (1) of this section if the defendant proves that—

- (a) The return was a return of parts of fish or rock lobster lawfully processed at sea; or
 - (b) The fish or rock lobster were diseased; or
 - (c) The fish or rock lobster were returned or abandoned to ensure the safety of the vessel; or
 - (d) The fish or rock lobster were returned or abandoned in accordance with subsection (5) of this section.
- (5) A commercial fisherman may return to or abandon in the sea any fish subject to a quota management system where—
- (a) The fisherman holds the current right under any quota to take those fish from the area in which they were taken; and
 - (b) A Fishery Officer or scientific observer was present when the fish were taken; and
 - (c) The Fishery Officer or scientific observer authorises the return or abandonment of the fish; and
 - (d) The commercial fisherman returns or abandons the fish under the supervision of the Fishery Officer or scientific observer, and complies with such directions of the officer or observer as may be necessary to enable the officer or observer to record the fish being so returned or abandoned.
- (6) Where fish are returned to or abandoned in the sea pursuant to subsection (5) of this section, the amount of the fish, as recorded by a Fishery Officer or scientific observer, shall be included in the returns for the appropriate period required to be made by the fisherman under this Act, and shall be counted against the quota under which the fish were taken.]]

This section was substituted for the former s. 28za (as inserted by s. 10 of the Fisheries Amendment Act 1989) by s. 27 (1) of the Fisheries Amendment Act 1990.

[28zc. Resource rental payable in respect of quota—

- [[(1) There shall be payable to the Crown in respect of—
- (a) Every guaranteed minimum transferable quota; and
 - (b) Every individual transferable quota; and
 - (c) Every guaranteed minimum transferable term quota; and
 - (d) Every transferable term quota,—
- an annual resource rental for each tonne or part of a tonne of quota at the appropriate rate according to the species or class of fish and the vessel that may be used to take the fish as specified in Schedule 1B to this Act.
- (2) Subject to subsection (4A) of this section, the annual resource rental shall be payable at the higher of the 2 rates specified in Schedule 1B to this Act where the holder or any lessee or other person who is authorised to take fish under the

quota has the use of a foreign owned New Zealand fishing vessel at any time during the fishing year.

(3) Subject to subsections (4A) and (4B) of this section, the annual resource rental shall be payable irrespective of whether or not the fish to which the quota relates is taken.

(4) The annual resource rental shall be payable in equal instalments on the last days of March, June, September, and December in each year, and shall be payable by the person who is the holder of the quota on the date concerned.

(4A) Where in respect of any fishing year any person has paid or is liable to pay resource rentals in respect of any quota at the higher of the 2 rates specified for any species or class of fish in Schedule 1B to this Act, the Minister shall waive or remit the difference between the resource rental at that higher rate and the resource rental at the lower rate—

(a) In respect of so much of the quota as authorises the taking of any fish that the Minister is satisfied were taken using a vessel that was not at the time the fish were taken a foreign owned New Zealand fishing vessel:

(b) In respect of so much of the quota as remains unused at the end of the fishing year.

(4B) Where pursuant to section 280D of this Act any reduction in quota takes effect during the fishing year commencing on the 1st day of October 1989, the Minister shall waive or remit so much of the annual resource rental paid or payable before the reduction by any person in respect of the quota so reduced as is equal to the difference between that annual resource rental and the annual resource rental that would be payable in respect of the amount of the reduced quota.]]

(5) For the purposes of this section, the term "holder" in relation to a quota means the person to whom a quota is issued or transferred and who for the time being would be entitled to take fish under the quota if the rights under the quota had not been leased to any other person, and includes any lessee from the Crown of the right to take fish under a quota other than a lessee of quota who uses a foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977 to take the fish; but does not include any other lessee of the right to take fish under a quota, the Crown, or the Director-General acting on behalf of the Crown.

In s. 282C, subss. (1) to (4) were substituted for the former subss. (1) to (4) (as amended by s. 73 of the Maori Fisheries Act 1989) by s. 28 (1) of the Fisheries Amendment Act 1990.

[[28zd. Commercial fishermen may be required to pay deemed value of excess or unauthorised quota fish—

(1) Subject to section 28zg of this Act, a commercial fisherman who, on or after the 1st day of October 1990, at a time when the fisherman has a current right to take any species or class of fish subject to a quota management system, takes any fish subject to a quota management system without the authority of or in excess of any amount authorised to be taken under the appropriate quota,—

(a) Shall, unless the fisherman has returned the fish to the sea where such a return is required by subsection (2) or subsection (3) of section 28zb of this Act, include any fish so taken in the returns for the appropriate period required to be made by the fisherman under this Act; and

(b) Shall, unless the fisherman—

(i) Has returned the fish to the sea in circumstances in which such a return is required by subsection (2) or subsection (3) of section 28zb of this Act; or

(ii) Has notified the taking of the fish to a Registrar and surrendered and disposed of the fish in the manner specified in section 105A (1) (c) (ii) of this Act; or

(iii) Has, not later than 15 days after the end of the calendar month in which the fish were taken, bought, leased, or arranged quota in the manner specified in subparagraph (i) or subparagraph (ii) of section 105A (2) (e) of this Act,—

pay to the Crown, within 20 days of demand being made by notice in writing given by an employee of the Ministry, the deemed value of the fish assessed by the Director-General in accordance with section 28ze of this Act.

(2) Any amount required to be paid under subsection (1) of this section in respect of the deemed value of any fish shall be payable whether or not the commercial fisherman committed an offence in respect of the fish.

[[28ze. Assessment of deemed value of fish—(1) For the purposes of section 28zd of this Act the Director-General may assess the deemed value of any fish taken without authority, and may assess different deemed values in relation to different classes or species of fish, different classes of fishermen, and different areas or circumstances in which fish are taken.

(2) In assessing the deemed value of any fish the Director-General shall have regard to—

- (a) The market value of the fish to commercial fishermen, to licensed fish receivers, and to consumers;
- (b) Any proceeds or benefit received or likely to be received by the commercial fisherman or any other person in respect of the fish;
- (c) The removal from the commercial fisherman or any licensed fish receiver or person with whom the commercial fisherman is associated of any economic incentive for the taking, processing, or sale of the fish, or from the taking, processing, or sale of fish taken without authority generally;
- (d) The need to provide an incentive for commercial fishermen to land fish taken without authority, particularly where such fish are dead or unlikely to survive if returned to the water.

(3) For the purposes of making any assessment of deemed value under this section, the Director-General shall where practicable consult with the Fishing Industry Board on—

- (a) The appropriate deemed value, or guidelines for determining the appropriate deemed value, payable for any class or species of fish or class of fisherman;
- (b) The circumstances in which it may be appropriate for a different deemed value to be assessed in relation to any particular area or circumstances in which fish are taken.

(4) Where any assessment of the deemed value of any fish is made under this section by any officer acting under the delegated authority of the Director-General, the fisherman is entitled to have the decision reviewed by the Director-General, or by an officer designated by the Director-General who was not involved in the making of the original assessment.

[[28zf. Amount of deemed value to be returned to fisherman where quota subsequently obtained—(1) The amount of any deemed value paid to the Crown by a commercial fisherman pursuant to section 28zd of this Act shall be held by the Crown on trust for the fisherman until the trust ends in accordance with this section or the fisherman is sooner refunded the amount of the deemed value.

(2) Subject to the provisions of this section, a commercial fisherman shall be entitled to a refund or remission of the amount of any deemed value paid or payable by the fisherman under section 28zd of this Act in respect of any fish caught in

any fishing year if, during that fishing year, or not later than 15 days after the end of that fishing year,—

(a) The fisherman has—

(i) Bought or leased quota that would have authorised the taking of the fish if it had been held by the commercial fisherman at the time the fish were taken, being quota that applied to and was not otherwise fished in that fishing year; or

(ii) Entered into an arrangement with another commercial fisherman for the fish to be counted against unused quota for that fishing year of that other fisherman; and

(b) The fisherman notifies the Director-General accordingly and requests that the deemed value of the fish be refunded or remitted.

(3) No obtaining or arrangement of quota shall qualify a commercial fisherman to obtain a refund or remission under this section of the amount of the deemed value paid or payable in respect of any fish to the extent that the quota is used to obtain a refund or remission under this section of the amount of deemed value paid or payable in respect of any other fish.

(4) The amount of any deemed value paid under section 28zd of this Act in respect of fish taken in any fishing year shall cease to be held on trust on the later of—

(a) The 20th day of December following the end of that fishing year, where no claim for a refund of that amount has been made under this section; or

(b) Such date as the Director-General determines that a claim to a refund is not justified, where such a claim has been made under this section.

(5) Notwithstanding section 69 of the Public Finance Act 1989, no interest shall be payable in respect of any amount that is refundable under this section to the person entitled to the refund.

[[28zc. Fisherman may offer lease of quota in lieu of paying deemed value—(1) Any commercial fisherman who, but for this section, could be required under section 28zd of this Act to pay the deemed value of any fish that is specified as a bycatch species in a notice given under subsection (2) of this section may, not later than 20 days after the end of the month in which the fish were taken, by notice in writing offer the Director-General a lease or sublease of the right to take fish under any quota held or leased by the fisherman, being fish

that are specified in the notice as a target species in relation to that bycatch species.

(2) The Director-General may, by notice in the *Gazette*, specify in relation to any quota management area—

- (a) Any bycatch species of fish in respect of which a lease of quota for a target species may be accepted in lieu of the payment under section 28zd of this Act of the deemed value of the fish;
- (b) In relation to any such bycatch species, any target species for which a lease of quota may be so accepted;
- (c) The ratio at which, or other basis on which, a lease of quota of the target species may be accepted in relation to the amount of the bycatch species for which the offer of quota is made.

(3) In making any notice under subsection (2) of this section, the Director-General shall have regard to—

- (a) The closeness of the association between the bycatch species and the target species in the quota management area; and
- (b) The degree to which there is a disparity between the total allowable commercial catches for the 2 species in the quota management area.

(4) In considering whether or not to accept any offer made under subsection (1) of this section the Director-General shall have regard to the following matters:

- (a) Whether or not the fish in respect of which the liability to pay the deemed value arose were likely to have been taken as bycatch in the course of taking fish of the target species offered by the commercial fisherman;
- (b) Whether or not the total allowable commercial catch for the species or class of fish in the area taken by the commercial fisherman has been or is likely to be exceeded in the relevant fishing year;
- (c) The market value of the quota offered.

(5) If the Director-General accepts an offer made under subsection (1) of this section, the commercial fisherman shall not be liable to pay the deemed value of the fish under section 28zd of this Act.

(6) If the Director-General does not accept the offer, the Director-General shall notify the fisherman accordingly, and the fisherman shall be liable to pay the deemed value of the fish in accordance with section 28zd of this Act upon demand being made under that section.]]]

Ss. 28zd to 28zg were inserted by s. 29 (1) of the Fisheries Amendment Act 1990. See s. 29 (2) of that Act.

Part IIA (originally comprising ss. 28a to 28zc) was inserted by s. 10 of the Fisheries Amendment Act 1986.

PART III

CONTROLLED FISHERIES

Register of Controlled Fishery Licences

29. Register of Controlled Fishery Licences—(1) For the purposes of this Part of this Act, the Secretary to the Authority shall set up and maintain a Register of Controlled Fishery Licences.

(2) The Register shall be open to inspection by the public during ordinary office hours on payment of the prescribed fee (if any).

(3) On payment to him of the prescribed fee (if any), the Secretary shall send to any person requesting the same in writing a copy of any specified entry in the Register.

(4) Whenever a licence is granted, renewed, amended, or revoked by the Authority under this Act, the Secretary shall make an appropriate entry in the Register, showing—

(a) In the case of the issue of a licence, the name and address of the licensee, any conditions which the Authority may attach to a licence or directions given in respect of it, and the date on which the application was granted:

(b) In the case of the renewal of a licence, the date on which the application was granted:

(c) In the case of the revocation of a licence, the date and the grounds on which the revocation was made.

(5) The Secretary shall also, in respect of any entry, record such other particulars as may from time to time be prescribed, and such further conditions, amendments, or directions as the Authority may from time to time attach, make, or give in respect of any licence.

(6) Notwithstanding the provisions of this section, no details of the private financial circumstances of any licensee or applicant for a licence shall be entered in the Register.

Controlled Fisheries Licensing

30. Declaration of controlled fisheries—(1) On the recommendation of the Minister, after consultation with the New Zealand Fishing Industry Board, [or, as the case requires, the Minister of Conservation], the Governor-General may from time to time, by Order in Council, constitute and declare any part of New Zealand fisheries waters (including any fishery

management area or part thereof) to be a controlled fishery under this Act for the purposes of the management or conservation of the fishery in that part or the economic stability of the fishing industry.

(2) The Minister may, following the declaration of a controlled fishery, by notice in the *Gazette*,—

- (a) Define the controlled fishery by reference to such matters as he thinks fit, including the species or class of fish, aquatic life, or seaweed that may be taken from the fishery, the areas that may be fished, and the persons who may be engaged in the fishery; and
- (b) After having regard to the provisions of any plan in respect of a fishery and to the recommendations of the Fishing Industry Board, fix the maximum number of licences and boat authorities that may be granted in respect of the controlled fishery.

(3) Any notice under this section may at any time in like manner be varied, amended, or revoked.

(4) Notwithstanding the provisions of this section, no fishery shall be declared to be a controlled fishery in any leased or licensed area as defined in the Marine Farming Act 1971.

(5) Every fishery which, as at the commencement of this Act, is a controlled fishery pursuant to section 118 of the Fisheries Act 1908 shall be deemed to be a controlled fishery under this Act; and every controlled fishery licence granted by the Fisheries Licensing Authority under that Act and in force as at the commencement of this Act shall be deemed to be a controlled fishery licence granted by the Fisheries Authority under this Act.

[(6) Notwithstanding sections 108 and 109 of this Act, the Governor-General may, by Order in Council, revoke any order made under subsection (1) of this section, or any other order constituting or declaring a controlled fishery.]

In subs. (1) the words in square brackets were inserted by s. 65 (1) of the Conservation Act 1987.

Subs. (6) was added by s. 11 of the Fisheries Amendment Act 1986.

31. Offence to fish controlled fishery without licence—

(1) Where a controlled fishery is constituted and declared pursuant to section 30 of this Act, every person—

- (a) Who is not a licence holder in respect of that controlled fishery, fishes for, or has in possession, or has on board any vessel, any controlled fish, aquatic life, or seaweed in a controlled fishery; or

(b) Who is engaged in any aspect of the fishing industry and who has control or possession of any controlled fish, aquatic life, or seaweed not taken under a licence— commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000.

(2) It shall be a defence to an action under this section if the defendant can satisfy the Court—

(a) That within prescribed limits—

(i) The taking of controlled fish, aquatic life, or seaweed from a controlled fishery was for a purpose other than sale; or

(ii) He had possession of controlled fish, aquatic life, or seaweed in a controlled fishery for a purpose other than sale; or

(iii) The fishing for or possession of the controlled fish, aquatic life, or seaweed was due to an incidental bycatch; or

(b) That he was on innocent passage through the area of the controlled fishery, having taken the fish, aquatic life, or seaweed elsewhere.

(3) Every person who fails to cease fishing in a controlled fishery forthwith upon being lawfully ordered by a Fishery Officer to do so commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

32. Application for licence—(1) Every commercial fisherman who desires to obtain a controlled fisheries fishing licence shall make application to the Authority on a form provided by the Authority for the purpose, accompanied by the prescribed fee (if any).

(2) Where the Minister has, under section 30 of this Act, fixed the maximum number of licences that may be granted in respect of a controlled fishery the Authority may specify a closing date for the receipt by it of applications for a licence in respect of that controlled fishery and, unless in the special circumstances of the case it considers it equitable to do so, shall not consider any application received by it after that date.

(3) Every closing date specified under subsection (2) of this section shall be publicised by publishing a notice in the *Gazette* and in at least one newspaper generally circulated in the area concerned.

(4) Every application—

(a) Shall specify the class of licence applied for, being of a class described in section 35 of this Act:

- (b) Shall state the place or intended place of business of the applicant:
 - (c) Shall specify the nature and size of any vessel intended to be used, and give details of all gear and equipment intended to be used in fishing from that vessel or otherwise:
 - (d) Shall, if the applicant will not be personally fishing within the controlled fishery or is a company, give the names and qualifications of the master or masters who will have command or charge of the vessel or vessels intended to be used:
 - (e) Shall specify whether or not the applicant has, within the preceding 5 years, been convicted for any offence punishable by imprisonment or for any offence against this Act or any other enactment relating to fishing.
- (5) Every application shall be accompanied by a statement in writing setting forth the grounds on which the application is made and supported by such documents relating to the character of the applicant, his qualifications, and his financial standing, as the applicant considers will assist the Authority in its consideration of the application, and shall also produce evidence that any levies owing to the Fishing Industry Board have been paid.
- (6) The Authority shall refer every application under this section to the Director-General who may investigate the application and may request the applicant to provide such further information as the Director-General thinks necessary to assist the Authority. On completing any such investigation the Director-General shall furnish the Authority and the applicant with a report on the nature and extent of his investigations and any conclusions he may have drawn as a result of the investigation, and shall return the application and supporting documents to the Authority.

33. Authority may grant licence—(1) As soon as practicable after receiving any application for a licence and any report from the Director-General pursuant to section 32 (6) of this Act, the Authority shall consider the application and, if it is fully satisfied that having regard to the applicant's character, financial position, and qualifications, and to the matters specified in section 34 of this Act, the applicant is a fit and proper person to hold a licence, the Authority shall grant the licence which shall be issued to the applicant on an approved form on payment of the prescribed fee (if any). If the Authority

is not so satisfied, it shall appoint a convenient time and place for hearing the application, and shall give at least 14 days' notice thereof to the applicant and to the Director-General who shall both be entitled to be present and to be heard.

(2) If, after hearing any application under subsection (1) of this section, the Authority is satisfied that, having regard to the matters specified in that subsection, the applicant is a fit and proper person to hold a licence, it shall grant the licence which shall be issued to the applicant on an approved form on payment of the prescribed fee (if any). If the Authority is not so satisfied, it shall not grant a licence to the applicant unless ordered to do so by the Court.

(3) Subject to this Act and to any terms and conditions imposed by the Authority, a licence shall authorise the licensee to carry on the business of fishing for controlled fish, aquatic life, or seaweed and shall specify the controlled fishery to which the licence relates during the period for which it was granted, and may from time to time be renewed.

34. Matters to be considered in determining application for licence—(1) In considering any application for a licence, the Authority shall generally have regard to—

- (a) The extent to which the grant of a licence is necessary or desirable in the controlled fishery, and in the areas of that fishery in which it is proposed to operate the licence;
- (b) Any policy approved by the Minister for the conservation of any species of fish, aquatic life, or seaweed or controlled fish, aquatic life, or seaweed, the proper management of any controlled fishery, or for any other matter relevant to fishing or the fishing industry within the controlled fishery;
- (c) The desirability of providing and maintaining a reasonable standard of living for commercial fishermen within the controlled fishery;
- (d) The desirability of giving preference to commercial fishermen—
 - (i) Already engaged in the fishing industry;
 - (ii) From a community within the area of the controlled fishery.

(2) After having regard to the matters mentioned in subsection (1) of this section, the Authority, in respect of any particular application, shall take into account—

- (a) The financial ability of the applicant to fish in the manner proposed in the application;

- (b) The vessels and fishing devices proposed to be used;
 - (c) The likelihood of the applicant carrying on the proposed fishing satisfactorily and, in the case of a current licensee or a person who has previously held a licence of the kind to which the application relates, the manner in which the licensee has previously operated under a licence;
 - (d) Whether a licensee who is now deceased or who has surrendered his licence pursuant to section 43 of this Act had expressed a wish for the applicant to take over his licence in any case where the applicant is connected by blood relationship, marriage, or adoption;
 - (e) Such other matters as may be prescribed by regulations made under this Act;
 - (f) Any other matters that the Authority considers relevant to the application.
- (3) For the purposes of subsection (2) (d) of this section—
- (a) Persons are connected by blood relationship if within the fourth degree of relationship;
 - (b) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other;
 - (c) Persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.

35. Classification and duration of licences—(1) Every controlled fishery licence shall be—

- (a) A continuous licence, being a licence which authorises fishing in a controlled fishery throughout the year; or
 - (b) A seasonal licence, being a licence which authorises fishing in a controlled fishery during the regular periods specified in the licence.
- (2) A continuous licence and every renewal of such licence shall be for such period of years as may be specified on the licence by the Authority:

Provided that all continuous licences granted in respect of a particular controlled fishery shall expire with the same day.

(3) A seasonal licence and every renewal of such licence shall be for such period as may be specified on the licence by the Authority, being a period expiring not later than one year from the date of granting.

36. Terms and conditions of licence—(1) Subject to such terms and conditions as may be prescribed, the Authority may, when granting any licence, specify—

- (a) The class of licence and the period for which it is granted:
- (b) A date by which the licensee shall commence fishing:

Provided that the date may be extended by the Authority upon application to it in that behalf:

- (c) The controlled fishery or any particular waters within the controlled fishery to which the licence applies:
- (d) The vessel or vessels to be used:
- (e) The port or ports at which any vessel or vessels are to be based:
- (f) The quantity, quality, or size of controlled fish, aquatic life, or seaweed that may be taken from the controlled fishery:
- (g) The records that are to be kept in relation to the controlled fishery, and any information which is to be supplied by the licence holder to either the Authority or the Director-General:
- (h) The names of the master or masters who may have command or charge of the vessel or vessels within the controlled fishery:
- (i) Such other terms or conditions as the Authority thinks necessary in a particular case.

(2) Where the Authority thinks it desirable for the effective management of a controlled fishery, it may attach conditions to a licence requiring the licensee—

- (a) To land controlled fish, aquatic life, or seaweed taken from a controlled fishery only at such port or ports as the Authority may specify:
- (b) To provide facilities approved by the Director-General for keeping or preserving controlled fish, aquatic life, or seaweed taken from a controlled fishery on board a fishing vessel.

(3) The Authority shall attempt to ensure that, as far as practicable, all licences granted in respect of fishing units of similar size and capacity are granted subject to similar terms and conditions.

37. Renewal of licence—(1) An application for the renewal of a licence shall be made to the Authority on a form provided by the Authority for the purpose accompanied by the prescribed fee (if any) not earlier than 2 months and not later than one month preceding the date of the expiry of the licence.

(2) An application for the renewal of a licence may be heard and determined by the Authority, notwithstanding that the application is not made by the date specified in subsection (1) of this section, if the application is made before the date of the expiry of the licence.

[(3) The Authority may, on receipt of an application for the renewal of a continuous licence, propose that the licence be changed to a seasonal licence, and if it does so shall advise the applicant and the Director-General of the proposal.

(4) The Authority may, on receipt of an application for the renewal of a seasonal licence, propose that the licence be changed to a continuous licence and if it does so, shall advise the applicant and the Director-General of the proposal.

(4A) If the Authority is satisfied, upon consideration of an application for the renewal of a seasonal or continuous licence, that—

- (a) The applicant has complied with the terms and conditions of the licence; and
- (b) The maximum number of licences fixed in respect of the controlled fishery has not been reduced under section 30 of this Act; and
- (c) The licence should not be changed from a continuous licence to a seasonal licence, or from a seasonal licence to a continuous licence—

the Authority may renew the licence upon payment of the prescribed fee (if any) without holding a hearing.

(4B) In any case to which subsection (4A) of this section does not apply, the Authority may, and shall if the applicant or the Director-General so requests within 14 days of being advised by the Authority of its proposed decision, appoint a convenient time and place to hear the matter and shall give at least 14 days' notice thereof to the applicant and the Director-General who shall both be entitled to be present and to be heard.]

(5) Where an application for the renewal of a licence has been made to the Authority but not determined before the date on which the licence would otherwise expire, the licence shall continue in force until the application is determined.

Subss. (3) to (4B) were substituted for the original subss. (3) and (4) by s. 12 of the Fisheries Amendment Act 1986.

38. Temporary licence—(1) Any person who,—

- (a) In the case of a licensee who is a protected patient within the meaning of the Mental Health Act 1969, is the manager of his estate; or

- (b) In the case of a licensee in respect of whom a protection order is in force under the Aged and Infirm Persons Protection Act 1912, is the manager of his estate; or
- (c) In the case of a licensee who has been adjudicated bankrupt, is his assignee in bankruptcy; or
- (d) In the case of a licensee company that is in liquidation or receivership, is the liquidator or receiver of that company, as the case may be; or
- (e) In the case of a licensee who is sick, indisposed, or absent, or is otherwise temporarily prevented from fishing, is his agent—

may, not later than 14 days after so becoming the manager, personal representative, assignee in bankruptcy, liquidator or receiver, or agent, as the case may be, apply to the Registrar nearest to a port authorised under the licence for use by the vessel or vessels of the licensee for a temporary licence to carry on the licensee's business as a fisherman in a controlled fishery.

(2) The Registrar shall grant a temporary licence for such period not exceeding one month as he thinks appropriate.

(3) While any person so authorised carries on any such business he shall, for the purposes of this Part of this Act, be deemed to be the holder of the licence, and the licence, any boat authority, and the Register of Controlled Fishery Licences shall be endorsed accordingly.

(4) An application for the renewal of a temporary licence may be made, before the date of the temporary licence's expiry, to the Authority which may renew the temporary licence for such period as it thinks appropriate in the circumstances of the case; but any such renewal shall expire with the date on which the licence would otherwise expire.

In subs. (1)(a) and (b) the references to a protected person under the Mental Health Act 1969 and the Aged and Infirm Persons Protection Act 1912 should now be read as references to a person subject to a property order under the Protection of Personal and Property Rights Act 1988. See s. 117(3) of that Act.

39. Temporary master may be appointed—(1) A licensee may apply to the Registrar nearest to a port authorised under the licence for use by the vessel or vessels of the licensee for a temporary variation in the conditions applying to his licence to allow a master, other than that specified in the licence pursuant to section 36 (1) (h) of this Act, to have command or charge of a boat within the controlled fishery.

(2) The making of such an application shall of itself authorise the licensee to act as if the application had been granted until such time as the Registrar specifies, or until the Registrar advises the licensee that the application has not been granted.

40. Boat authorities—(1) Every licence holder shall keep on board every vessel approved by the Authority and specified in the licence a boat authority issued by the Authority in an approved form.

(2) Each boat authority shall take effect according to its tenor to authorise the licence holder, but no other person, to use the vessel in fishing a controlled fishery, and shall specify the master or masters of the vessel.

(3) Every boat authority shall be available for inspection by a fishery officer when so requested.

(4) It shall be a condition of every boat authority—

(a) That all fishing gear and equipment on the vessel shall be maintained in a fit and proper condition:

(b) That all authorities and certificates required in respect of the vessel pursuant to the Shipping and Seamen Act 1952 will be maintained.

41. Licence not transferable—(1) No licence granted or boat authority issued under this Part of this Act shall be transferable to any other person or vessel.

(2) No goodwill shall attach to any licence or boat authority or, in respect of such licence or authority, form part of the purchase price—

(a) Of any vessel which is or has been issued with a boat authority; or

(b) Of any shares or stock in a licensee company (other than shares or stock officially listed on stock exchanges affiliated to the Stock Exchange Association of New Zealand).

(3) No applicant for a licence and no licence holder who, in each case, is purchasing or intending to purchase a vessel in respect of which a boat authority is in force or has been in force within the previous 12-month period shall have issued any boat authority in respect of that vessel unless the purchase price of that vessel is approved by the Authority as not contravening subsection (2) of this section.

(4) In considering any such purchase price, the Authority may obtain the opinion of 2 assessors, of whom one shall be nominated and paid by the seller and the other nominated and paid by the purchaser and, in the event of a dispute, may also obtain the opinion of the Director-General.

(5) No person shall enter into any transaction or make any contract or arrangement, whether orally or in writing, for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, avoiding, or preventing the

operation of subsection (2) of this section, and any such transaction, contract, or arrangement shall be void and shall not be subject to the provisions of the Illegal Contracts Act 1970:

Provided that all money paid and the value of any other consideration provided by the purchaser in respect of any such transaction, contract, or arrangement shall be recoverable as a debt to him from the vendor or, as the case may be, bailor.

(6) Notwithstanding section 49 of this Act, the decision of the Authority as to whether the purchase price for a vessel or for any shares or stock contravenes subsection (2) of this section shall be final.

42. Fishing not to be suspended—(1) Except pursuant to the approval of the Authority under subsection (2) of this section or the voluntary surrender of a licence under section 43 of this Act, no holder of a continuous licence shall voluntarily cease or significantly reduce the fishing effort authorised by the licence.

(2) The Authority may, on application by the licensee, authorise the licensee to suspend or reduce the fishing effort authorised by the licence for such period and subject to such conditions as the Authority may specify.

(3) If the licensee is authorised to suspend or reduce fishing, he shall not be entitled to recommence fishing at the rate authorised by the licence until—

- (a) The period specified by the Authority has expired; or
- (b) The Authority has authorised him to do so on application made in that behalf by the licensee or the Director-General.

43. Voluntary surrender of licence—(1) A licensee may at any time surrender his licence by forwarding a written notice to that effect, together with the licence, to the Secretary to the Authority.

(2) The Secretary shall endorse on the notice and the Register the date on which he receives the notice, and the licence shall, as from that date, cease to have effect.

(3) The surrender of a licence under this section shall not affect the licensee's liability—

- (a) To pay any fees or other money payable or to be payable in accordance with this Act on or before the date on which the licence would, but for its surrender, expire;
- (b) To perform any obligation required to be performed by him by or under this Act on or before that date:

- (c) For any act done or default made before the date on which the licence ceased to have effect.

44. Lost licences, boat authorities, and temporary licences—Where the Secretary to the Authority is satisfied that any licence, boat authority, or temporary licence has been lost he may, on payment of the prescribed fee (if any), issue to the holder of the licence, boat authority, or temporary licence a substitute licence, boat authority, or temporary licence.

45. Revocation and suspension of licence—(1) The Authority may at any time, or if so directed by the Minister shall, hold an inquiry as to whether or not any fishing authorised by a licence under this Part of this Act is being carried out in conformity with the licence and of this Part of this Act.

(2) Not less than 28 clear days' notice of the time, day, and place fixed for any such inquiry shall be given in writing to the licensee together with particulars of the matters proposed to be inquired into:

Provided that the Authority may on application by the licensee fix another time, day, or place for the inquiry.

(3) The Authority shall give notice in writing to all persons whom it thinks may be affected by the inquiry or have a special interest in the inquiry.

(4) The Authority shall for the purposes of an inquiry under this section be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908 and, subject to this Act, the provisions of that Act shall apply accordingly.

(5) If as a result of any such inquiry the Authority is satisfied that the licensee is not fishing in conformity with the licence or of this Act it may revoke the licence.

(6) Instead of revoking the licence the Authority may suspend the licence either completely or in respect of any specified place or waters of the controlled fishery, for such period as it thinks fit, and it may amend the terms and conditions of the licence or add new terms or conditions.

46. Review of licences—(1) If the Authority thinks at any time that the conditions in a controlled fishery have materially changed since any licence in respect of that fishery was granted, or if the Minister so requests, the Authority shall give notice in writing to every licensee of that controlled fishery that it intends to review the licences.

(2) Not less than 28 clear days after the notice has been given to each licensee, the Authority shall review the licences by taking into account the conditions in the controlled fishery at the time of the review and by applying section 34 of this Act, with any necessary modifications, as if each licensee were an applicant for a new licence.

(3) If as a result of any such review the Authority considers it necessary to protect the controlled fishery it may revoke all the licences, or suspend all the licences for such period as it thinks fit, or amend the terms or conditions of the licences, or add new terms or conditions.

47. Restrictions on licences in certain cases—(1) The Minister may by notice in the *Gazette*, upon being satisfied that fishing in a particular controlled fishery should immediately be restricted and after informing the Authority, impose such restrictions on all licences granted in respect of that controlled fishery as may be recommended by the Director-General (after consultation with the Fishing Industry Board if practicable), being restrictions relating to the suspension or reduction of fishing in the places or waters described in the notice, or to the quantity, quality, or size of controlled fish, aquatic life, or seaweed that may be taken.

(2) Any such notice shall shortly state the reasons for the restrictions.

(3) Any restrictions imposed pursuant to subsection (1) of this section shall take effect from a date to be specified in the notice, and may remain in effect for not more than 90 days from the date so specified.

(4) Any period specified under subsection (3) of this section may be extended for one further period not exceeding 90 days by a subsequent notice given before the expiry of the original notice.

(5) Any restrictions imposed pursuant to subsection (1) of this section shall be deemed to be revoked with effect from the expiry of the period specified in the notice issued pursuant to subsection (1) of this section or any subsequent notice issued pursuant to subsection (4) of this section, or it may be revoked by the Minister at any time within the period specified in the notice.

48. Keeping of accounts and records—Every licence holder shall keep such accounts and records and make such returns as may be prescribed.

Appeals

49. Appeal against decision of Authority—(1) Subject to section 50 of this Act and subsection (2) of this section there shall be a right of appeal, within 28 days after the date on which written notification of the decision appealed against has been given to the applicant or to the subject of an inquiry, to the High Court against the whole or any part of any decision of the Authority where the Authority—

- (a) Refuses to grant an application for a licence; or
- (b) Refuses to grant an application for the renewal of a licence; or
- (c) Revokes any licence; or
- (d) Grants a licence; or
- (e) Suspends any licence under section 45 or section 46 of this Act; or
- (f) Amends the terms or conditions of a licence or adds new terms or conditions to a licence which, in either case, appear to unduly restrict the business of the licence holder.

(2) No appeal shall lie against a decision of the Authority to refuse to issue or renew a licence in respect of a controlled fishery where the Authority states that its grounds for doing so are that the licences already issued and currently being operated are the number which the Minister has fixed pursuant to section 30 of this Act as being the maximum number of licences that may be granted in respect of that fishery.

(3) Every appeal under this section shall be heard and determined by the Administrative Division of the High Court (hereinafter referred to as the Court).

(4) Subject to this Act, the procedure in respect of any appeal to the Court shall be in accordance with the rules of the Court.

50. Persons entitled to appeal—The following persons and no others may exercise the aforesaid right of appeal:

- (a) The person in respect of whose application the decision of the Authority was given:
- (b) The holder of a licence in respect of which the decision of the Authority was given:
- (c) The Director-General:
- (d) Any other licensee or applicant affected by the decision:
- (e) Any incorporated body which has its principal object the protection of the interests of licensees.

51. Rights of licensee pending disposal of appeal in certain cases—(1) Where a decision of the Authority is to

revoke any licence or refuse an application for the renewal of any licence, that decision shall be of no effect until—

- (a) Where notice of an appeal against that decision has been given within the period specified in section 49 (1) of this Act, the appeal is determined:
- (b) Where no notice of an appeal against that decision has been given within that period, that period expires.
- (2) Nothing in subsection (1) of this section shall apply in respect of any licence suspended under section [107D (3)] of this Act.

In subs. (2) the expression "107D (3)" was substituted for the expression "105 (3)" by s. 27 (2) of the Fisheries Amendment Act 1986.

52. Hearing and determination of appeal—(1) The Court may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not that evidence would be otherwise admissible in a Court of law.

(2) The Court may, if it considers it is in the public interest, order that the hearing or any part of it shall be held in private.

(3) The Court may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it (whether heard in public or in private); but no order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal, or particulars of any licence affected by the appeal, or of any decision of the Court.

(4) In its determination of any appeal the Court may confirm, modify, or reverse the decision appealed against, or any part of that decision, and, subject to section 53 of this Act, the decision of the Court shall be final and conclusive.

53. Court may refer appeals back to Authority—

(1) Notwithstanding section 52 of this Act the Court may, in any case, instead of determining any appeal under that section, direct the Authority to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(2) In giving any direction under this section the Court shall—

- (a) Advise the Authority of its reasons for doing so;
- (b) Give to the Authority such directions as it thinks fit as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(3) The Authority shall, in reconsidering any matter so referred back to it, have regard to the Court's reasons for giving a direction under subsection (1) of this section and to the Court's directions under subsection (2) of this section.

54. Appeals to Court of Appeal on questions of law—
The provisions of section 144 of the Summary Proceedings Act 1957 shall apply in respect of any determination of the High Court under section 52 of this Act as if the determination were made under section 107 of the Summary Proceedings Act 1957.

[PART IIIA

[TAIAPURE-LOCAL FISHERIES

[54A. Object—The object of this Part of this Act is to make, in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either—

- (a) As a source of food; or
 - (b) For spiritual or cultural reasons,—
- better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi.

[54B. Declaration of taiapure-local fisheries—(1) Subject to subsections (2) and (3) of this section, the Governor-General may, from time to time, by Order in Council published in the *Gazette*, declare any area of New Zealand fisheries waters (being estuarine waters or littoral coastal waters) to be a taiapure-local fishery.

(2) An order under subsection (1) of this section may be made only on a recommendation made by the Minister in accordance with this Part of this Act.

(3) The Minister shall not recommend the making of an order under subsection (1) of this section unless the Minister is satisfied both—

- (a) That the order will further the object set out in section 54A of this Act; and
- (b) That the making of the order is appropriate having regard to—
 - (i) The size of the area of New Zealand fisheries waters that would be declared by the order to be a taiapure-local fishery; and
 - (ii) The impact of the order on the general welfare of the community in the vicinity of the area that

would be declared by the order to be a taiapure-local fishery; and

(iii) The impact of the order on those persons having a special interest in the area that would be declared by the order to be a taiapure-local fishery; and

(iv) The impact of the order on fisheries management.

[54c. Proposal for establishment of taiapure-local fishery—(1) Any person may submit to the Director-General a proposal for the establishment of a taiapure-local fishery.

(2) The proposal—

(a) Shall contain a description of the proposed taiapure-local fishery, which description shall include particulars of the location, area, and boundaries of the proposed taiapure-local fishery; and

(b) Shall describe—

(i) Maori, traditional, recreational, commercial, and other interests in the proposed taiapure-local fishery;

(ii) The species of aquatic life in the proposed taiapure-local fishery that are of particular importance or interest.

(3) The proposal shall—

(a) State why the area to which the proposal relates has customarily been of special significance to an iwi or hapu either—

(i) As a source of food; or

(ii) For spiritual or cultural reasons;

(b) Set out the policies and objectives of the proposal;

(c) Contain such other particulars as the Director-General considers appropriate.

[54d. Initial consideration of proposal—(1) The Director-General shall refer to the Minister every proposal submitted to the Director-General in accordance with section 54c of this Act.

(2) If the Minister, after consultation with the Minister of Maori Affairs and after having regard to the provisions of section 54b (3) of this Act, agrees in principle with the proposal, the Minister shall authorise the Director-General to publish notice of the proposal in the *Gazette*.

(3) The proposal shall be available for public inspection for a period of not less than 2 months after the date of the publication in the *Gazette* of the notice of the proposal.

(4) The notice shall specify the office of the Maori Land Court in which objections to the proposal may be lodged.

(5) If the Minister, after consultation with the Minister of Maori Affairs and after having regard to the provisions of section 54B (3) of this Act, does not agree in principle with the proposal, the Director-General shall inform the person who made the proposal that the proposal will not be proceeding further as the Minister does not agree with it in principle.

[54E. Notice of proposal—(1) The notice authorised under section 54D (2) of this Act shall be published at least twice, with an interval of not less than 7 days between each notification of the proposal, in the metropolitan newspapers and in a newspaper circulating in the locality of the area to which the proposal relates.

(2) A copy of the proposal shall be deposited in—

- (a) The office of the Maori Land Court nearest to the locality of the area to which the proposal relates; and
- (b) The Ministry's Head Office; and
- (c) The office of the territorial authority for the area to which the proposal relates; and
- (d) The office of the regional council for the area to which the proposal relates.

[54F. Objections to, and submissions on, proposal—(1) Any person or public authority, local authority, or any body specifically constituted by or under any Act, and any Minister of the Crown, which or who has any function, power, or duty which relates to, or which or who is or could be affected by, any aspect of the proposed taiapure-local fishery may, within 2 months of the publication in the *Gazette* of the proposal, lodge at the office of the Maori Land Court specified pursuant to section 54D (4) of this Act—

- (a) An objection to the proposal; or
 - (b) Submissions in relation to the proposal; or
 - (c) Both.
- (2) Any such objection and any such submissions—
- (a) Shall identify the grounds on which the objections or submissions are made; and
 - (b) Shall be supplemented by such particulars and information as the Registrar of the Maori Land Court notifies the applicant the Registrar of the Maori Land Court considers necessary to sufficiently identify the grounds of the objection or the submissions.

[54c. Inquiry by tribunal—(1) A public inquiry shall be conducted into all objections and submissions received under section 54F of this Act.

(2) The inquiry shall be conducted by a tribunal consisting of a Judge of the Maori Land Court appointed by the Chief Judge of the Maori Land Court.

(3) The Chief Judge of the Maori Land Court may direct that the tribunal conducting the inquiry conduct it with assistance of one or more assessors to be appointed by the Chief Judge for the purpose of the inquiry.

(4) In considering the suitability of any person for appointment as an assessor, the Chief Judge of the Maori Land Court shall have regard not only to that person's personal attributes but also to that person's knowledge of and experience in the different aspects of matters likely to be the subject-matter of the inquiry.

(5) The tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908 and, subject to the provisions of this Act, all the provisions of that Act, except sections 10 to 12, shall apply accordingly.

(6) The person who submitted the proposal to the Director-General, the Minister, or any regional council or local authority whose region or district is affected by the proposal and every body and person which or who made submissions on or objected to the proposal under section 54F of this Act, shall have the right to be present and be heard at every inquiry conducted by the tribunal under this section, and may be represented by counsel or duly authorised representative.

(7) A tribunal appointed under this section may, if the Chief Judge of the Maori Land Court so directs, conduct any 2 or more inquiries together notwithstanding that they relate to different areas or different parts of any area.

(8) On completion of the inquiry, the tribunal shall, having regard to the provisions of section 54B (3) of this Act,—

- (a) Make a report and recommendations to the Minister on the objections and submissions made to it, which report and recommendations may include recommended amendments to the proposal; or
- (b) Recommend to the Minister that no action be taken as a result of the objections and submissions made to it.

(9) The Minister, after taking into account the report and recommendations of the tribunal and after having regard to the provisions of section 54B (3) of this Act, and after consultation with the Minister of Maori Affairs,—

(a) May—

(i) Accept those recommendations; or

(ii) Decline to accept all or any of those recommendations; and

(b) Shall publish in the *Gazette*—

(i) The report and recommendations of the tribunal; and

(ii) The decision of the Minister on the report and recommendations of the tribunal.

(10) Subject to section 54H of this Act, no appeal shall lie from any report or recommendation or decision made under this section.

[54H. Appeal on question of law—Where any party to any proceedings under section 54G of this Act before a tribunal appointed under section 54G of this Act is dissatisfied with the report or any recommendation of the tribunal as being erroneous in point of law, that party may appeal to the High Court by way of case stated for the opinion of the Court on a question of law only, and the provisions of subsections (2) to (11) of section 162 and of section 162A of the Town and Country Planning Act 1977 shall, with any necessary modifications, apply in respect of the report or recommendation in the same manner as they apply in respect of a determination of the Planning Tribunal under the Town and Country Planning Act 1977.

[54I. Power of Minister to recommend declaration of taiapure-local fishery—Where a proposal for the establishment of a taiapure-local fishery has been made under section 54C of this Act and either any proceedings in relation to that proposal (including any proceedings taken under sections 54F to 54H of this Act in relation to that proposal) have been disposed of or the time for taking any such proceedings has expired, the Minister shall, if satisfied that a recommendation should be made under section 54B (2) of this Act, make that recommendation accordingly.

[54J. Management of taiapure-local fishery—(1) The Minister, after consultation with the Minister of Maori Affairs, shall appoint a committee of management for each taiapure-local fishery.

(2) The committee of management may be any existing body corporate.

(3) The committee of management shall be appointed on the nomination of persons who appear to the Minister to be representative of the local Maori community.

(4) The committee of management shall hold office at the pleasure of the Minister.

[54k. Power to recommend making of regulations—

(1) A committee of management appointed for a taiapure-local fishery may recommend to the Minister the making of regulations under section 89 of this Act for the conservation and management of the fish, aquatic life, and seaweed in the taiapure-local fishery.

(2) Regulations made under section 89 of this Act pursuant to subsection (1) of this section may override the provisions of any other regulations made under that section or the provisions of any fishery management plan.

(3) Except to the extent that any regulations made under section 89 of this Act pursuant to subsection (1) of this section override or are otherwise inconsistent with the provisions of any other regulations made under that section or of any fishery management plan, those provisions shall apply in relation to every taiapure-local fishery.

(4) Any provision of regulations made under section 89 of this Act that relates only to a taiapure-local fishery may be made only in accordance with subsection (1) of this section.

(5) Any provision of a fishery management plan that relates only to a taiapure-local fishery may be included in that plan only on the recommendation of the committee of management of that taiapure-local fishery.

(6) No regulations made under section 89 of this Act shall provide for any person—

(a) To be refused access to, or the use of, any taiapure-local fishery; or

(b) To be required to leave or cease to use any taiapure-local fishery,—

by reason of the colour, race, or ethnic or national origins of that person or of any relative or associate of that person.]

Part IIIA (comprising ss. 54A to 54J) was inserted by s. 74 of the Maori Fisheries Act 1989.

[PART IV

[FISHING VESSELS AND METHODS OF FISHING

[55. Provisions of this Part to apply—The provisions of this Part of this Act shall continue to apply, notwithstanding anything in Part I of this Act or any operative plan made

pursuant to that Part, and notwithstanding anything in Part IIa of this Act.

Cf. 1983, No. 14, s. 55

[56. Registration offices and Registrars]—The Director-General may from time to time, by notice published in the *Gazette*, establish and declare registration offices at which fishing vessels may be registered under the provisions of this Act, and designate officers of the Ministry to be Registrars for each registration office so established.

Cf. 1983, No. 14, s. 60

[57. Fishing vessels to be registered]—(1) No person may use any vessel for commercial fishing unless—

- (a) The vessel is registered under this Act; and
- (b) The owner of the vessel holds a fishing permit issued under section 63 of this Act.

(2) Where an owner intends to use a vessel for commercial fishing, the owner shall apply on an approved form to the Registrar at the nearest registration office appointed under section 56 of this Act for registration of the vessel.

(3) Where any vessel is eligible to be registered, the Registrar shall enter in a register of fishing vessels the name of the vessel and such other particulars as may be specified by the Director-General, and shall issue to the owner a certificate of registry on an approved form.

(4) Every certificate of registry shall be valid for the period specified in it, being a period of not more than 5 years and shall only be issued on payment of the prescribed fee (if any) for each year or part of a year for which it is issued.

(5) No vessel may be registered under this Act unless the vessel is so constructed and equipped as to comply with the relevant requirements in respect of the harvesting, handling, processing, and storage of fish, aquatic life, or seaweed as may be prescribed by regulations made pursuant to this Act.

(6) The Director-General may cancel the registration of any vessel upon being satisfied that any of the requirements of subsection (5) of this section are not complied with.

(7) The Director-General shall again register any vessel for which the registration was cancelled under subsection (6) of this section upon being satisfied that the grounds for the cancellation no longer exist.

(8) Except with the prior consent of the Director-General, who may refuse consent, or grant it unconditionally, or on such

conditions as the Director-General thinks fit to impose, whether related to the purposes of this Act or otherwise, no vessel shall be registered under this Act unless the owner is a commercial fisherman—

- (a) Who, being an individual, is a person who is ordinarily resident in New Zealand; or
- (b) Which, being an incorporated company, is a company registered in New Zealand and is controlled by one or more persons who or all of whom are ordinarily resident in New Zealand.

(9) For the purposes of subsection (8) of this section—

- (a) A person shall be deemed to be ordinarily resident in New Zealand on any date if the person is a New Zealand citizen who does not hold any legal or equitable interest in a foreign fishing craft or in any business outside New Zealand fisheries waters that relates to the taking, processing, or dealing in fish, aquatic life, or seaweed, or, if not,—

- (i) The person has resided in New Zealand for not less than two and a half years during the period of 3 years immediately preceding that date; and

- (ii) The Director-General is satisfied that the person is likely to continue to reside permanently in New Zealand;

- (b) A company shall be deemed to be controlled by one or more persons if in the opinion of the Director-General, who may, if the Director-General considers it appropriate, disregard a small amount of paid up capital or a small number of allotted shares held by a person in any company, all the voting power at meetings of the company may be exercised by that person or, as the case may be, by those persons:

- (c) The term “owner” does not include any charterer, sub-charterer, lessee, or sub-lessee of the vessel.

(10) Nothing in this section shall apply to any foreign fishing craft licensed under the Territorial Sea and Exclusive Economic Zone Act 1977 to engage in fishing within the exclusive economic zone.

(11) Nothing in this section or any entry in any register of fishing vessels shall confer, take away, or in any way affect any title to or interest in any fishing vessel.

Cf. 1983, No. 14, s. 57

[58. Application of this Part to tenders]—Every vessel or tender that is carried by or attached to a fishing vessel and is used or intended to be used for the purposes of commercial fishing, either separately or in conjunction with the fishing vessel, shall be deemed to be a separate fishing vessel for the purposes of this Part of this Act.

Cf. 1983, No. 14, s. 58

[59. Cancellation of registration of fishing vessel]—

(1) The registration of a fishing vessel under this Act shall be deemed to be cancelled where—

- (a) The Registrar at the port at which the vessel is registered receives a request in writing from the owner that the registration be cancelled; or
- (b) Any owner, being an individual, dies, or, being an incorporated company, is dissolved; or
- (c) The vessel is transferred to or becomes vested in some person other than the sole owner at the time of registration; or
- (d) Any share in the vessel is transferred to or becomes vested in any person who did not own a share at the time of registration; or
- (e) Any condition imposed under section 57 (8) of this Act is not complied with; or
- (f) The vessel is lost or destroyed.

(2) Notwithstanding subsection (1) (b) of this section, where an owner of a fishing vessel has died, the Registrar may from time to time extend the registration of the fishing vessel for such period as the Registrar thinks fit.

Cf. 1983, No. 14, s. 59

[60. Taking of fish, etc., by other than New Zealand ships]—(1) No person shall use any vessel that is not a New Zealand ship within the meaning of the Shipping and Seamen Act 1952 in fishing in the territorial sea or internal waters of New Zealand except for fisheries research, experimental, sports, or recreational fishing purposes, [[or for the purpose of receiving fish directly from New Zealand fishing vessels,]] and then in each case only with the consent of the Minister and subject to such terms and conditions as the Minister may impose.

(2) Any Fishery Officer may, for the enforcement of this Act, at any time stop, board, and search any vessel (other than a New Zealand ship in New Zealand fisheries waters) and inspect

any fish, aquatic life, or seaweed on board the craft; and where the Fishery Officer has reasonable cause to believe that any offence against this Act relating to fishing within the territorial sea has been committed the Fishery Officer may—

- (a) Seize and detain all fish, aquatic life, or seaweed on board the vessel:
- (b) Arrest any person whom the Fishery Officer has reasonable cause to believe has committed an offence specified in this section:
- (c) If the Fishery Officer has reasonable cause to believe that any such offence has been committed by the master, charterer, or owner of the craft, seize and detain the vessel.

(3) Nothing in this section shall be construed to empower any Fishery Officer to board or search any foreign fishing craft, or to seize, take possession of, or detain any such craft or any fish, aquatic life, seaweed, or equipment found on board the craft in respect of any offence which the Fishery Officer believes is being or has been committed relating to fishing within the exclusive economic zone.

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

(5) Where any tender or similar 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 the territorial sea or internal waters of New Zealand or not, then, for the purposes of this section, that other vessel shall also be deemed to be used in fishing at the time and place where that tender or similar vessel is so used.

(6) 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 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 \$100,000;
- (b) In the case of an offence committed by any member of the crew, to a fine not exceeding \$5,000.

(7) Any vessel or fish, aquatic life, or seaweed seized or detained pursuant to this section may be dealt with in accordance with section 80 of this Act.

Cf. 1983, No. 14, s. 62

In subs. (1) the words in double square brackets were inserted by s. 30 of the Fisheries Amendment Act 1990.

[61. Possession of fish, etc., by vessels that are not New Zealand ships—(1) Notwithstanding anything to the contrary in this Act, no offence of being in possession of fish, aquatic life, or seaweed in contravention of this Act shall be deemed to be committed by the master or any crew member of any ship that is not a New Zealand ship within the meaning of the Shipping and Seamen Act 1952 if the fish, aquatic life, or seaweed were taken beyond the territorial sea or internal waters of New Zealand and either remain on board the vessel, or with the prior consent of the Minister, are landed in New Zealand.

(2) Any fish, aquatic life, or seaweed landed in New Zealand with the prior consent of the Minister may, with the prior consent of the Minister, be sold; and, notwithstanding anything in this Act, no offence of buying or selling or being in possession of any fish, aquatic life, or seaweed shall be deemed to have been committed in respect of any fish, aquatic life, or seaweed sold in accordance with that consent and in compliance with any conditions imposed by the Minister in granting that consent.

Cf. 1983, No. 14, s. 63

[62. Taking fish, etc., commercially without permit prohibited—(1) No person shall take any fish, aquatic life, or seaweed by any method unless the person does so under the authority of and in accordance with a current fishing permit that authorises the taking of fish, aquatic life, or seaweed by that method.

[(1A) No person shall take any fish, aquatic life, or seaweed under the authority of a permit for the taking of fish, aquatic life, or seaweed otherwise than from a vessel if that person is not named in that permit, unless a written agreement in a prescribed form or a form approved for the purpose by the Director-General authorising the person to take any fish, aquatic life, or seaweed under the authority of the permit—

(a) Has been signed by the person and the commercial fisherman named in the permit; and

(b) Has been furnished to the Director-General.

(1B) Every person commits an offence who—

(a) Takes any fish, aquatic life, or seaweed in contravention of subsection (1A) of this section; or

(b) Being the holder of a permit for the taking of fish, aquatic life, or seaweed otherwise than from a vessel, permits

any other person to take under the authority of that permit any fish, aquatic life, or seaweed in contravention of subsection (1A) of this section.]]

(2) Nothing in this section shall apply to—

- (a) The taking of fish, aquatic life, or seaweed by any person for subsistence or personal use only (and not for the purposes of sale), or the taking of whitebait for any purpose, within such limits (if any) relating to numbers, quantity, size, weight, methods, types and amounts of fishing gear, and periods of time as may be prescribed for any such fish, aquatic life, seaweed, or whitebait;
- (b) The taking of any seaweed while it is floating free and unattached or after it has been cast ashore that belongs to the Class Rhodophyceae (being of a class of seaweed used in making agar);
- (c) Any person fishing pursuant to a notice made under the Marine Reserves Act 1971.

Subss. (1A) and (1b) were inserted by s. 31 of the Fisheries Amendment Act 1990.

[63. Fishing permits—(1) Every person who proposes to take fish, aquatic life, or seaweed for purposes of sale using a New Zealand fishing vessel or otherwise than from a vessel shall apply for a fishing permit to the Registrar at the registration office nearest to the area where the applicant wishes to take the fish, aquatic life, or seaweed.

(2) The Director-General shall grant an appropriate fishing permit to any person who makes an application under subsection (1) of this section and who has the right to take fish under a guaranteed minimum individual transferable quota or an individual transferable quota [[or a guaranteed minimum transferable term quota or a transferable term quota]].

(3) Every application for a permit under this section shall be made on an approved form and shall be accompanied by the prescribed fee (if any).

(4) Each fishing permit may be issued for a period of not more than 5 years on payment of the prescribed fee (if any) for each year or part of a year for which it is issued and shall be subject to such conditions relating to areas, species, quantities, methods, the use or non-use of vessels and the specific vessel or types of vessels (if any) that may be used, types and amounts of fishing gear, harvesting, handling, places where fish may be landed, and periods of time as the Director-General considers appropriate.

(5) Before issuing any permit, other than a permit to which subsection (2) of this section applies, the Director-General may require an evaluation to be undertaken to determine appropriate fishing methods.

(6) The Director-General may from time to time, by written notice to a permit holder, amend or revoke the conditions of the permit or add new conditions.

(7) No conditions may be imposed under this section on any permit that conflict with or are inconsistent with the conditions of any relevant fishery management plan.

(8) The conditions that may be imposed on permits under this section may be more restrictive or more onerous than the conditions imposed on fishing by any regulations or notice.

(9) The conditions referred to in this section shall be substantially the same for all permits for any fishery management area or quota management area in respect of the same class or species of fish unless the Director-General is satisfied, on stated grounds, that different conditions are reasonable.

(10) The Director-General may, if the Director-General considers it expedient to do so, require the holder of a permit to surrender the permit and issue a substitute permit containing the new conditions in its place.

(11) Where any decision is made under this section by any officer acting under the delegated authority of the Director-General, the applicant for the permit or permit holder, as the case may be, shall be entitled to have the decision reviewed by the Director-General or by an officer designated by the Director-General who was not involved in the making of the original decision.

(12) Where the registration of a fishing vessel is cancelled by the Director-General acting under section 57 (6) of this Act, any fishing permit issued in respect of that vessel shall also be cancelled but the Director-General shall issue a further permit in respect of the vessel if it is again registered under section 57 (7) of this Act.

Cf. 1983, No. 14, s. 64

In subs. (2) the words in double square brackets were added by s. 32 of the Fisheries Amendment Act 1990.

[64. Special permits—(1) Notwithstanding anything to the contrary in this Act, the Director-General may, on application made to the Director-General in writing, grant to any person named in the application a special permit, subject to such

conditions as the Director-General may from time to time impose, to take fish, aquatic life, or seaweed from any waters (including waters where fishing may for the time being be lawfully prohibited or restricted) using such fishing gear as may be specified in the permit (whether or not the use of the fishing gear is otherwise lawfully prohibited or restricted)—

- (a) For the purposes of education, investigative research, or the carrying out of trials and experiments with fishing vessels or fishing gear or any other apparatus or technique which is capable of being used in connection with the taking of fish, aquatic life, or seaweed:
- (b) For the purposes of sport or recreation in the case of any disabled person within the meaning of the Disabled Persons Employment Promotion Act 1960 who, in the opinion of the Director-General, would otherwise be unable, by reason of the person's disability, to fish by the methods permitted by this Act:
- (c) For any purpose approved by the Minister.

(2) All fish, aquatic life, or seaweed taken pursuant to this section shall be disposed of as the Director-General directs, or as may be specified in the permit.

(3) The Director-General may at any time revoke any permit given under subsection (1) of this section by notice in writing to the holder of the permit.

Cf. 1983, No. 14, s. 66

[65. Minister may restrict fishing—(1) The Minister may, if the Minister considers it necessary or desirable for the conservation or management of a fishery, as a preliminary to the declaration of a controlled fishery, or for other purposes, from time to time, by notice in the *Gazette*, declare that, as from a day to be specified in the notice and during such period as may be specified, it shall be a condition of every fishing permit, or fishing licence issued by [[a Fish and Game Council]], issued or renewed during that period, that the holder of the permit or licence shall be prohibited from fishing in any fishery specified in the notice.

(2) Notwithstanding subsection (1) of this section, the Minister may, after a notice has been given under that subsection, authorise the holder or holders of any fishing permit or licence excluded by the notice from fishing in the fishery specified in the notice, to fish in that fishery if the Minister considers it fair and reasonable to do so in the

circumstances of any particular case, and any such authorisation shall be endorsed on the permit or licence.

(3) Any notice under this section may, in like manner, be amended or revoked.

(4) The Minister may, either generally or specifically in relation to any case or class of cases, delegate to the Authority any of the Minister's powers under subsection (2) of this section.

(5) Nothing in this section shall apply in respect of any quota management area for any species or class of fish that is subject to the quota management system in that area.

Cf. 1983, No. 14, s. 65

In subs. (1) the words in double square brackets were substituted for the words "an acclimatisation society" by s. 134 of the Conservation Law Reform Act 1990.

*[[Records, Returns, and Restrictions on Disposal of Fish, etc., by
Commercial Fishermen and Others*

[[66. Records and returns—(1) The following persons shall keep such accounts and records and furnish to the Ministry such returns and information as may be required by or under regulations made under this Act to assist the management and conservation of any fishery resource:

- (a) Holders of permits, licences, authorities, or approvals issued under this Act to take fish, aquatic life, or seaweed by any method for any purpose:
- (b) Persons who have the right to take fish under any quota issued under Part IIA of this Act and persons who hold an interest in any such quota:
- (c) Masters and owners of vessels registered under this Act:
- (d) Owners and persons in charge of any premises, vessel (whether or not registered under this Act), or vehicle where fish, aquatic life, or seaweed are received, purchased, stored, transported, processed, sold, or otherwise disposed of:
- (e) Persons engaged in the receiving, purchasing, transporting, processing, storage, sale, or disposal of fish, aquatic life, or seaweed, including persons who are—
 - (i) Licensed to receive fish under regulations made pursuant to this Act:
 - (ii) Licensed to export fish under the Fishing Industry Board Act 1963:
 - (iii) Licensed to process fish under the Meat Act 1981.

(2) Every holder of a licence issued by the Authority shall, in addition to complying with subsection (1) of this section, keep such accounts and records, and furnish to the Authority such returns and information, as may be required by or under regulations made under this Act to assist the management and conservation of any fishery resource.

(3) The Director-General or the Authority may, in any particular case or class of cases, require accounts, records, returns, and information additional to those specified in regulations referred to in subsections (1) and (2) of this section to be kept and furnished by any person specified in those subsections to assist the management and conservation of any fishery resource.

(4) Any return or information that is required pursuant to this Act to be furnished to any particular office of the Ministry shall be deemed not to have been properly furnished until it has been received at that office.

(5) Any return or information or agreement that is required pursuant to this Act or any regulations made under this Act to be furnished in a prescribed or approved manner or form shall be deemed not to have been properly furnished until it has been completed and furnished in the prescribed or approved manner or form.

(6) Except in respect of a prosecution under this Act or any proceedings for the recovery by the Crown of the amount of the deemed value of any fish payable under section 28ZD of this Act, or where a Court so directs, no return or information furnished pursuant to this Act shall be disclosed or used in any proceedings whatever.

(7) Nothing in subsection (6) of this section shall prohibit the Director-General or any officer authorised by the Director-General in that behalf from communicating to—

(a) Any officer of the Department of Statistics any information which that officer is authorised by that Department to receive and which the Director-General considers is not undesirable to disclose and is reasonably necessary to enable that officer to carry out any official duty lawfully imposed by the Statistics Act 1975;

(b) The Commissioner of Inland Revenue any information which the Director-General is lawfully bound to disclose.]]

This section and heading were substituted for the former s. 66 (as substituted by s. 13 of the Fisheries Amendment Act 1986) by s. 33 of the Fisheries Amendment Act 1990.

[67. Disposal of fish by commercial fishermen—

(1) Except as provided in subsection (2) of this section, every commercial fisherman may on or after the 1st day of October 1986 sell or otherwise dispose of fish taken by the commercial fisherman in that capacity or in the commercial fisherman's possession in that capacity only to a person who is licensed or deemed to be licensed under regulations made pursuant to section 89 (1) (h) of this Act, or to the Crown.

(2) Any commercial fisherman may sell or otherwise dispose in any one transaction of not more than—

- (a) Ten kilograms of finfish; or
- (b) Six kilograms of shellfish other than shellfish of Class Crustacea; or
- (c) Three kilograms of shellfish of Class Crustacea; or
- (d) Any combination of such fish within those limits—

taken by the commercial fisherman to any person who is not licensed or deemed to be licensed under the regulations referred to in subsection (1) of this section where the transaction takes place on or in the vicinity of the vessel used by the commercial fisherman to take the fish or at some other place approved by the Director-General.

[[(2A) A commercial fisherman shall not enter into more than one such transaction with the same person within any 24-hour period.]]

(3) Every commercial fisherman who sells or otherwise disposes of any fish under the authority of subsection (2) of this section shall, at the time of the transaction, make such records of the transaction as the commercial fisherman is required to make under section 66 of this Act.

Subs. (2A) was inserted by s. 34 of the Fisheries Amendment Act 1990.

[67A. Restrictions on purchase or acquisition of fish by certain persons—(1) No person licensed or deemed to be licensed under regulations made under section 89 (1) (h) of this Act may purchase or otherwise acquire or be in possession of any fish that were not taken by that person, unless the fish were purchased, acquired, or obtained from a commercial fisherman or from another person licensed or deemed to be licensed under those regulations or the Crown.

[[(2) No person who is not a commercial fisherman or a person deemed to be licensed under regulations made under section 89 (1) (h) of this Act may purchase or otherwise acquire or be in possession of any fish for the purposes of sale, in any form, unless the person purchased or acquired the fish from—

- (a) A commercial fisherman in a transaction referred to in section 67 (2) of this Act; or
- (b) A person licensed or deemed to be licensed under regulations made under section 89 (1) (h) of this Act; or
- (c) The Crown.]]

(3) Nothing in subsection (2) of this section shall apply in respect of any fish purchased or acquired before the 1st day of October 1986 or any fish that came into the possession of the person before that date.

[[(4) Nothing in this section shall apply in respect of any sports fish taken legally pursuant to a current licence issued by a Fish and Game Council and served to the angler who took the fish and the angler's immediate guests.]]

[[(5) Nothing in this section shall apply in respect of any fish taken legally and served to the person who took the fish and the person's immediate guests.]]

Subs. (2) was substituted for the former subs. (2) by s. 35 of the Fisheries Amendment Act 1990.

Subs. (4) was substituted for the former subs. (4) by s. 135 of the Conservation Law Reform Act 1990.

Subs. (5) was added by s. 35 (2) of the Fisheries Amendment Act 1990.

[67b. Examiners—(1) The Director-General may, from time to time, designate any officer to be an examiner to assist in the enforcement of sections 66, 67, and 67A of this Act [[, and of regulations referred to in section 66 of this Act,]] by examining and verifying the keeping and contents of accounts, records, returns, and information required to be kept or made under those sections [[or regulations]].

(2) Where the Director-General does not consider it practical or appropriate to designate an officer or officers under subsection (1) of this section by reason of—

- (a) The nature of the duties to be undertaken; or
 - (b) The duration or extent of the duties to be undertaken—
- the Director-General may engage any person to be an examiner to perform the duties specified in subsection (1) of this section.

(3) Each examiner appointed under this section shall be issued with a warrant of appointment by the Director-General and shall have such of the powers of a Fishery Officer as are specified in that warrant.

(4) No person engaged under subsection (2) of this section shall be deemed to be employed in the service of Her Majesty for the purposes of [the State Sector Act 1988] or the

Government Superannuation Fund Act 1956 by reason of the person holding the office of examiner.

In subs. (1) the words in the first set of double square brackets were inserted by s. 33 (2) (a) of the Fisheries Amendment Act 1990, and those in the second set of double square brackets were added by s. 33 (2) (b) of that Act.

In subs. (4) the reference to the State Sector Act 1988 was substituted for a reference to the State Services Act 1962 by s. 90 (a) of the State Sector Act 1988.

[Scientific Observer Scheme]

[67c. Scientific observer scheme established—(1) For the purpose of ensuring the collection of reliable catch and effort information for management purposes and increasing the accuracy of information concerning fish and fisheries for research purposes there is hereby established a scientific observer scheme for fishing vessels under which scientific observers with specified powers may be placed on specified fishing vessels to observe the fishing activities conducted on and from those vessels.

(2) The scientific observers may report to the Director-General on—

- (a) The species, numbers, size, age, and condition of fish taken;
- (b) The methods by which, the areas in which, and the depths at which fish are taken;
- (c) The effects on fish of the methods used to take them;
- (d) The operations of the vessel;
- (e) Any other matter that may assist the Director-General to obtain, analyse, or verify information for research purposes.

[67d. Appointment of scientific observers—(1) The Director-General may from time to time engage any person to be a scientific observer for the purposes of the scientific observer scheme established under section 67c (1) of this Act.

(2) No person who is a Fishery Officer or who has any of the powers of a Fishery Officer shall be engaged under subsection (1) of this section.

(3) No person shall be deemed to be employed in the service of Her Majesty for the purposes of *[[the State Sector Act 1988]]* or the Government Superannuation Fund Act 1956 by reason of that person holding the office of scientific observer.

In subs. (3) the reference to the State Sector Act 1988 was substituted for a reference to the State Services Act 1962 by s. 90 (a) of the State Sector Act 1988.

[67e. Director-General to give notice of intention to place scientific observer on vessel—(1) The Director-General shall give reasonable notice of the Director-General's

intention to place a scientific observer or more than one scientific observer on any specified fishing vessel to the owner or master of the fishing vessel.

(2) The owner and the master of any fishing vessel in respect of which a notice under subsection (1) of this section has been given each commit an offence where the vessel puts to sea when a scientific observer is to be placed on the vessel—

- (a) Without a scientific observer on the vessel; or
- (b) Other than with the permission of the Director-General and subject to and in accordance with any conditions imposed by the Director-General in giving that permission.

(3) For the purposes of this section, the term “reasonable notice” means notice in writing that specifies a date, being not earlier than 14 days after the date of the notice, on or after which the vessel is not to put to sea without a scientific observer on board; or such other period or type of notice as is agreed to by the owner or master of the vessel.

[67F. Powers of scientific observers—(1) The master of any vessel on which a scientific observer is placed under section 67E of this Act shall allow the scientific observer, at all reasonable times, having regard to the fishing operations of the vessel,—

- (a) To have access to the fishing gear and the storage and processing facilities on the vessel;
- (b) To have access to the catch on the vessel;
- (c) To have access to the bridge and the navigation and communications equipment of the vessel;
- (d) To have access to the logs and records of the vessel, whether required to be carried and maintained by or under this Act or otherwise;
- (e) To receive and transmit messages and to communicate with the shore and other vessels.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who, being the master of a vessel on which a scientific observer is placed under section 67E of this Act, fails to comply with subsection (1) of this section or fails to provide a scientific observer with reasonable assistance when requested to do so.

[67C. Food and accommodation to be provided for scientific observers—(1) The owner of any fishing vessel on which a scientific observer is placed shall be responsible for providing food and accommodation for the scientific observer at a standard specified by the Director-General.

(2) The Director-General shall pay to the owner of any fishing vessel that is required to carry any scientific observer such amount for the provision of food and accommodation as may be agreed between the Director-General and the owner or master of the vessel or, in the absence of such agreement, such amount as may be prescribed.

[[67H. Supervision by scientific observers of transshipments, dumping of fish, and operation of greenweight conversion factors—(1) Where—

(a) A scientific observer is on board a vessel—

(i) From which any fish are transhipped to another vessel; or

(ii) From which any fish subject to a quota management system are returned to or abandoned in the sea; or

(iii) In respect of which any greenweight conversion factor certificate has been given pursuant to section 3A (3) of this Act; and

(b) But for the presence and supervision of a scientific observer (whether required by any provision of this Act or regulation made or notice given under this Act, or by any term or condition imposed by the Director-General in relation to any consent, approval, or certificate), the transshipment or dumping would be in contravention of section 101 or section 28ZB or any other provision of this Act or any regulation made under it, or the conversion factor could not be applied within the terms and conditions of the certificate,—

the master of the vessel shall supply such information, and shall allow the scientific observer to carry out such inspections of the vessel, fish taken or processed, and documents, as the scientific observer may require for the purpose of supervising the transshipment, dumping, or processes relevant to determining any greenweight conversion factor.

(2) Where a scientific observer is supervising any transshipment of fish from one vessel to another, the master of each vessel involved in the transshipment shall allow the observer on board the vessel, and shall supply such information, and allow the observer to carry out such inspections, as the observer may require for the purpose of supervising the transshipment.

(3) Any regulations made under this Act may prescribe fees in respect of the provision of supervision by a scientific observer in circumstances referred to in subsection (1) of this section,

and, notwithstanding section 67G (2) of this Act, may provide for the cost of food and accommodation of the observer, while on the vessel for any period, to be met by the owner of the vessel.]]]

S. 67H was inserted by s. 36 of the Fisheries Amendment Act 1990.

Part IV (originally comprising ss. 55 to 67C) was substituted for the original Part IV (comprising ss. 55 to 67) by s. 13 of the Fisheries Amendment Act 1986.

PART V

FRESHWATER FISHERIES

68. *Repealed by s. 136 of the Conservation Law Reform Act 1990.*

68A. *Inserted by s. 15 of the Fisheries Amendment Act 1986, and repealed by s. 136 of the Conservation Law Reform Act 1990.*

69. *Repealed by s. 136 of the Conservation Law Reform Act 1990.*

69A. *Inserted by s. 17 of the Fisheries Amendment Act 1986, and repealed by s. 136 of the Conservation Law Reform Act 1990.*

70-75. *Repealed by s. 136 of the Conservation Law Reform Act 1990.*

75A. *Inserted by s. 65 (1) of the Conservation Act 1987 and substituted by s. 11 (1) of the State-owned Enterprises Amendment Act 1987. Repealed by s. 136 of the Conservation Law Reform Act 1990.*

PART VI

APPOINTMENT AND POWERS OF FISHERY OFFICERS

76. Appointment of Fishery Officers—(1) There may from time to time be appointed under [the State Sector Act 1988] such Fishery Officers and other officers as may be required for the purposes of this Act.

(2) Every officer in command of any vessel or aircraft of the New Zealand Armed Forces, and every constable, shall be deemed to be a Fishery Officer for the purposes of this Act.

(3) Where any officer or constable described in subsection (2) of this section has, from time to time, ordered any person under his command to carry out, for such period as he thinks necessary, such of the duties of a Fishery Officer as he may specify, the person so ordered shall, for the purpose of carrying out those duties, have all the powers of a Fishery Officer.

(4) Every Inspector of Sea Fishing under the Fisheries Act 1908 shall be deemed to have been appointed a Fishery Officer under this Act.

In subs. (1) the reference to the State Sector Act 1988 was substituted for a reference to the State Services Act 1962 by s. 90 (a) of the State Sector Act 1988.

77. Appointment of Honorary Fishery Officers—(1) The Director-General may, from time to time, appoint suitable persons as Honorary Fishery Officers for a specified area, or areas, and every person so appointed shall be deemed to be a Fishery Officer for the purposes of this Act having the powers of such as specified in the warrant issued to him under section 78 of this Act.

(2) Every person appointed as an Honorary Fishery Officer under this section—

(a) Shall be appointed for such term, not exceeding 3 years, as the Director-General thinks fit, and may be reappointed:

(b) May, at any time, be removed from office by the Director-General for incapacity, neglect of office, or misconduct, or may at any time resign his office by writing addressed to the Director-General.

(3) There may be paid to any Honorary Fishery Officer out of money appropriated by Parliament for the purpose an honorarium not exceeding \$1,000 in any one year.

(4) No person appointed as an Honorary Fishery Officer under this section shall, by virtue of any honorarium paid to him under subsection (3) of this section, be deemed to be employed by the Crown for the purposes of [the State Sector Act 1988] or the Government Superannuation Fund Act 1956.

(5) Every person who, at the commencement of this Act, holds an appointment as an Honorary Fishery Officer under section 9 of the Fisheries Amendment Act 1959 shall continue to hold office as if he had been appointed under this section, and the provisions of this section shall apply as if he had been so appointed.

(6) There may be paid to any Honorary Fishery Officer out of money appropriated by Parliament for the purpose, reimbursement of actual and reasonable expenses incurred in the course of carrying out his powers and duties, where [the Director-General or the Director-General of Conservation has given prior authorisation and has subsequently approved the expenses].

In subs. (4) the reference to the State Sector Act 1988 was substituted for a reference to the State Services Act 1962 by s. 90 (a) of the State Sector Act 1988.

In subs. (6) the words in square brackets were substituted for the former words by s. 65 (1) of the Conservation Act 1987.

78. Issue of warrants—(1) The Director-General may, from time to time, issue—

- (a) To any Fishery Officer appointed or deemed to be appointed under this Act, a warrant authorising him to exercise the powers conferred on Fishery Officers under this Act;
- (b) To any Honorary Fishery Officer appointed under this Act, a warrant specifying such of the powers conferred on Fishery Officers under this Act as he may exercise.

(2) Any warrant issued to any person appointed as an Honorary Fishery Officer may relate to all or any particular species or type of fish, aquatic life, or seaweed in any particular area or waters or generally throughout New Zealand or New Zealand fisheries waters, and may limit the powers which the Honorary Fishery Officer may exercise; and, if the appointment is in respect of a particular species or type of fish, aquatic life, or seaweed or any particular area or waters, or limits the powers that the officer may exercise, the warrant shall so specify.

(3) The Director-General may, from time to time, issue a warrant to such officers of the Ministry [or the Department of Conservation] . . . as may be required to carry out any research or investigatory work for the purposes of this Act; and any such officer is accordingly empowered, at any time, to enter upon and pass along the banks and borders of any river, stream, lake, or other waters, whether natural or artificial, and enter upon and pass along, with boats or otherwise, such river, stream, lake, or other waters; and any such warrant shall be deemed to be and have the effect of a special permit granted under section 66 of this Act.

(4) On the termination of any appointment made under section 76 or section 77 of this Act, the person whose appointment has been terminated shall surrender to the Director-General any warrant issued to him.

(5) Any person to whom a warrant is issued under subsection (3) of this section shall surrender that warrant to the Director-General when the reasons for it being issued no longer apply.

In subs. (3) the words in square brackets were inserted by s. 65 (1) of the Conservation Act 1987, and the words "or acclimatisation societies" were omitted by s. 137 of the Conservation Law Reform Act 1990.

79. Powers of Fishery Officer—(1) Every person holding a warrant designating that person as a Fishery Officer, and every other person who by this Act is deemed to be a Fishery Officer,

may, for the purpose of the enforcement of the provisions of this Act and any regulations made under it, at all reasonable times,—

- [(a) Enter, or pass across any land and enter, examine, and search (by stopping or by opening where necessary), any vessel, conveyance of any kind, premises, place, parcel, package, record, or thing, where that Fishery Officer believes, on reasonable grounds,—
 - (i) That any offence is being or has been committed against this Act or any regulations made under this Act; and
 - (ii) That any fish, aquatic life, or seaweed taken or thing used or intended to be used in contravention of this Act or those regulations, or any record or information required by or under this Act to be furnished, or any article, record, document or thing which there is reasonable ground to believe will be evidence as to the commission of an offence against this Act or those regulations, may be concealed or located or held in that vessel, conveyance, premises, place, parcel, package, record, or thing:]]
 - (b) Stop, enter, or pass across any land and enter, and examine any vessel or vehicle, or enter and examine any place . . ., or examine any record, document, article, and any gear, apparatus, device, or contents of any kind therein in the course of the enforcement and administration of this Act and any regulations made under it:
 - (c) Question any person and require the master of any vessel, or any other person, to give any explanation or information concerning that vessel, or any place or thing, or any fish, aquatic life, seaweed, fishing method, gear, apparatus, record, document, article, device, or thing, and require such persons to produce any permit, authority, licence, or certificate issued in respect of that vessel, person, or thing where that Fishery Officer [(believes on reasonable grounds that such person has been engaged in taking or selling fish, aquatic life, or seaweed, or, where the Fishery Officer believes on reasonable grounds that an offence against this Act or any regulations made under this Act is being or has been committed, has purchased or is or has been in possession of fish, aquatic life, or seaweed)]:

- (d) Where he finds any person offending against this Act or any regulation made under it or where he believes on reasonable grounds that any person may have committed an offence against this Act or that regulation, order that person forthwith to desist from that offence, and, if that person after being so required, refuses upon request by the officer to provide his real first name or given name, surname, date of birth, actual place of residence and occupation [and, where the Fishery Officer believes on reasonable grounds that any of those details are false, such verification of those details as it is reasonable in the circumstances to require the person to provide,] or continues the offence, arrest the offender . . . :
- (e) Where he believes that a vessel is being or has been used in fishing in contravention of the provisions of this Act or the conditions of any certificate or registration, permit, approval, or licence issued in respect of the vessel, require the master forthwith to discontinue fishing and to take the vessel back to the port or place to which it belongs, or to such nearer port or place nominated by the master and agreed to by the Fishery Officer:
- (f) Do all such acts and things and give such directives as are necessary for the purpose of this Act.
- (2) Nothing in subsection (1) of this section shall be construed to empower any Fishery Officer to enter a private dwelling place, or the enclosed garden or curtilage of any private dwelling place, or upon any Maori reservation constituted under or pursuant to the Maori Affairs Act 1953, unless he is authorised in writing by a District Court Judge or Justice, who shall not grant such authority unless he is satisfied that the Fishery Officer has reasonable grounds for requiring entry into the private dwelling place or the enclosed garden or curtilage of such private dwelling place, or the Maori reservation.
- (3) Nothing in subsection (1) of this section shall be construed so as to require any person to answer any question tending to incriminate himself.
- (4) Any Fishery Officer lawfully exercising his powers under this section may make or take copies of any record or document, and for this purpose may take possession of and remove from the place where they are kept, for such period of

time as is reasonable in the circumstances, any such record or document.

(5) Every Fishery Officer exercising any power conferred by this section shall identify himself and produce evidence that he is a Fishery Officer to any person on or in the land, vehicle, vessel, premises, or place or claiming an interest in the things on or in or in respect of which the power is exercised, who questions the right of the Fishery Officer to exercise that power.

[(5A) Where a Fishery Officer arrests a person pursuant to subsection (1) (d) of this section,—

- (a) The officer shall cause the person to be delivered into the custody of a constable as soon as practicable; and
- (b) If the person so delivered into custody is released by a constable without bail pursuant to section 19A of the Summary Proceedings Act 1957, the duties under subsections (3) to (5) of that section relating to the laying and filing of an information shall be the duties of a Fishery Officer and not of a constable.]

(6) The production by any Fishery Officer of any warrant issued to him under section 78 of this Act shall, until the contrary is proved, be sufficient authority for any such officer to do any thing which he is authorised by this Act, or any regulations made under it, to do.

[(7) For the purposes of this section, the term “record” includes—

- (a) Any information however recorded or stored, whether manually or by mechanical, electronic, or other means; and
- (b) Any form or other document whether or not it has been completed.]

In subs. (1), para. (a) was substituted for the original para. (a) by s. 37 (1) of the Fisheries Amendment Act 1990.

In subs. (1) (b) words were omitted by s. 37 (2) of the Fisheries Amendment Act 1990.

In subs. (1) (c) the words in square brackets were substituted for the former words by s. 20 (1) of the Fisheries Amendment Act 1986.

In subs. (1) (d) the words in square brackets were inserted by s. 20 (2) of the Fisheries Amendment Act 1986, and words were omitted by s. 37 (3) of the Fisheries Amendment Act 1990.

Subs. (5A) was inserted by s. 37 (4) of the Fisheries Amendment Act 1990.

Subs. (7) was added by s. 37 (5) of the Fisheries Amendment Act 1990.

80. Powers of seizure—(1) A Fishery Officer may seize—

- (a) Any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, or equipment which he believes on reasonable grounds is being or has been used or is intended to be used in

the commission of an offence against this Act or any regulations made under it:

- (b) Any fish, aquatic life, or seaweed which he believes on reasonable grounds are being or have been taken, killed, transported, bought, sold, or found in the possession of any person, in contravention of this Act or any regulations made under it; or any fish with which such fish, aquatic life, or seaweed have been intermixed:

- [(c) Any article, record, document, or thing that the officer believes on reasonable grounds is evidence of the commission of an offence against this Act or any regulations made under this Act].

[(2) Any property seized pursuant to subsection (1) of this section shall be delivered into the custody of the Director-General.

(3) The Director-General may, at any time until an information or charge is laid in respect of the alleged offence for which the property was seized, on application by—

- (a) The person from whom the property was seized; or
- (b) The owner or person entitled to the possession of the property seized,—

release the property to any such person under bond in such sum and under such sureties and conditions (if any) as the Director-General may specify.

(3A) Where any person to whom property is released under subsection (3) of this section fails to comply with the conditions of any bond or with any condition specified by the Director-General,—

- (a) The property may be resealed at any time at the direction of the Director-General; and
- (b) The provisions of this section shall thereupon apply to the property as if it had been seized pursuant to subsection (1) of this section; and
- (c) The Director-General may, in the case of failure to comply with the conditions of any bond, apply to a Court presided over by a District Court Judge for an order for estreat of the bond; and
- (d) Where the Director-General so applies the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed; and

(e) If on the hearing of any such application it is proved to the satisfaction of the Court that any condition of the bond has not been kept, the Court may make an order to estreat the bond to such an amount as it thinks fit to any person bound thereby on whom notice is proved to have been served in accordance with this subsection; and

(f) Any penalty payable in accordance with this subsection shall be recoverable as if it were a fine.

(4) Where, in the opinion of the Director-General, any fish, aquatic life, or seaweed or other article seized pursuant to subsection (1) of this section may rot, spoil, or otherwise perish, the Director-General may arrange for its sale in such manner and for such price as the Director-General may determine.

(5) Where the ownership of any property cannot at the time of seizure be ascertained, the property seized shall be forfeit to the Crown and shall be disposed of as directed by the Director-General after 90 days from the date of seizure if, within that time, it has not been possible to establish the ownership of the property.

(6) Subject to subsection (3) of this section, all property seized pursuant to subsection (1) of this section and the proceeds from the sale of any such property pursuant to subsection (4) of this section, except where such property or proceeds have been forfeited to the Crown pursuant to subsection (5) of this section, shall be held in the custody of the Crown until—

(a) A decision is made not to lay any information or charge in respect of the alleged offence for which the property was seized; or

(b) Where such a charge or information is laid, upon the completion of proceedings in respect of the alleged offence for which the property was seized, or such sooner time as the Court may determine.

(6A) Where any information or charge has been laid in respect of the alleged offence for which the property was seized pursuant to subsection (1) of this section, and that property remains in the custody of the Crown, the Court may at any time, on application by—

(a) The person from whom the property was seized; or

(b) The owner or person entitled to the possession of the property seized,—

release the property to any such person, and any such release may be subject to such sureties and conditions as the Court may specify.]

(7) The decision whether or not to lay any information or charge in respect of an alleged offence for which any property is seized under subsection (1) of this section shall be made as soon as reasonably practicable after the property is seized, taken possession of, or detained.

(8) The Crown shall not be liable to any person for any spoilage or deterioration in the quality of any fish, aquatic life, or seaweed seized under subsection (1) of this section.

(9) Subject to subsection (8) of this section, but notwithstanding any other provisions of this section, where any property has been seized under subsection (1) of this section, then—

(a) On a decision being made not to lay an information or charge; or

(b) On the acquittal of any person charged with an offence for which the property is subject to forfeiture—
such property, or the proceeds from the sale of such property, shall forthwith be released from the custody of the Crown.

(10) Notwithstanding any other provisions in this section, a Fishery Officer who at the time of seizure returns to the water any fish or aquatic life seized pursuant to subsection (1) of this section that he believes to be alive, shall not be under any civil or criminal liability to the person from whom the fish or aquatic life was seized in the event of a decision being made not to lay an information or charge in respect of the fish or aquatic life, or of the person being acquitted of the charge.

(11) *Repealed by s. 138 of the Conservation Law Reform Act 1990.*

In subs. (1), para. (c) was added by s. 38 (1) of the Fisheries Amendment Act 1990.

Subss. (2) to (6A) were substituted for the original subss. (2) to (6) by s. 38 (2) of the Fisheries Amendment Act 1990.

[80A. Director-General may direct that transfer or lease of quota not to be registered pending laying of information for quota management offence—(1) Where the Director-General—

(a) Believes, on reasonable grounds that any person has committed a quota management offence or an offence relating to returns and records (as those terms are defined in section 107B (1) of this Act); and

(b) Is satisfied that an information or charge will be laid against that person in respect of the commission of that offence,—

the Director-General may, at any time before an information or charge is laid in respect of the offence, in writing direct any Registrar that no transfer or lease of any quota or interest in

quota held by that person may be registered under section 28P or section 28Q of this Act, and the provisions of section 28Q (7) and (8) of this Act shall thereafter apply in respect of any such quota or interest in quota while the direction is in force.

(2) A direction given under subsection (1) of this section shall not have effect until it is received by the Registrar, and shall lapse on the expiry of the 30th day after the date on which the direction was given by the Director-General, or at such earlier date as may be specified in the direction.

(3) On any decision being made not to lay an information or charge against the person, the Director-General shall forthwith notify the Registrar to whom the direction was given that the direction is withdrawn, and the direction shall thereupon cease to have effect.

(4) The Director-General shall, as soon as practicable after a direction is given or withdrawn under this section, notify the person who is the subject of the direction of that fact.]

This section was inserted by s. 39 (1) of the Fisheries Amendment Act 1990, as from 1 November 1990. See s. 39 (2) of that Act and S.R. 1990/308.

81. Persons to assist Fishery Officer—(1) Any Fishery Officer exercising any of the powers conferred on him by this Act may do so with the aid of such assistants as he considers necessary for the purpose.

(2) All persons if called upon to assist any Fishery Officer in the exercise of any of the powers conferred on him by this Act, are hereby authorised and required to render such assistance.

82. Fish unfit for human consumption to be condemned and vessel prohibited—(1) If a Fishery Officer is of the opinion on reasonable grounds that any fishing vessel, or any equipment on that vessel, used for the taking, storing, or processing of fish, is by reason of its insanitary, defective, or other condition unsuitable for the taking, storing, or processing of fish for human consumption he may, by writing addressed to the master of the vessel, prohibit the use of the vessel or equipment for the aforesaid purposes either absolutely, or until the insanitary, defective, or other condition has been remedied to his satisfaction. Any prohibition under this subsection may be expressed to take effect as from a date to be stated by the Fishery Officer.

(2) A Fishery Officer shall, by writing addressed to the master of the vessel, condemn any fish intended for human consumption found on that vessel where he is satisfied that the fish, by reason of any defect in the taking, handling, or

processing, or any insanitary condition of the vessel or equipment, is unfit for human consumption, and the fish so condemned shall be disposed of in such manner as the Fishery Officer may direct.

83. Protection of Fishery Officer from liability—(1) Any Fishery Officer who—

- (a) Examines or renders ineffective any net, line, pot, gear, tackle, or device which the officer has reasonable cause to believe has been set for the purpose of taking fish, aquatic life, or seaweed in contravention of this Act or any regulations made under it, or of any conditions of any permit, authority, or licence issued in respect of the fishing; or
- (b) Does any act in pursuance of this Act, or any regulations made under it, or omits to do any act required by this Act or by any regulations made under it—

shall not be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless he has acted or omitted to act in bad faith, or without reasonable cause.

(2) Neither the Crown nor any [Fish and Game Council] shall be held directly or indirectly liable for any such act or omission of any such officer, unless the officer himself would incur liability for the act or omission.

In subs. (2) the reference to any Fish and Game Council was substituted for a reference to any acclimatisation society by s. 3 (3) of the Conservation Law Reform Act 1990.

PART VII

MISCELLANEOUS PROVISIONS

Miscellaneous Provisions

84. Pollution of marine waters—(1) In this section, the term “New Zealand fisheries waters” does not include the fresh and estuarine waters to which [section 39 (4) of the Conservation Act 1987] applies, nor the waters in the exclusive economic zone of New Zealand.

(2) It shall be unlawful to injure, poison, kill, or detrimentally affect any fish, aquatic life, or seaweed in New Zealand fisheries waters by casting, discharging, or allowing to fall, flow, or percolate into such waters any chlorinated hydrocarbons, biocides, pesticides, or toxic or other substances.

(3) For the purposes of this section, a person shall be deemed to discharge water into natural water if he places or discharges or causes or permits to be placed or discharged, any waste or natural water containing waste in a position where that waste

or any other waste emanating as a result of a natural process from that waste, is liable to fall or descend into, or to be washed or percolate into, or to be carried by wind, tide, or current into, any natural water.

(4) Every person who commits a breach of subsection (2) of this section or who is deemed to discharge water into natural water under subsection (3) of this section, commits an offence.

(5) Where any person is convicted of an offence under this section he shall be liable to a fine not exceeding \$10,000, and to a further fine of \$500 per day if the offence is a continuing one; but it shall be a defence to the charge if the defendant can show that the effluent discharged was in terms of the conditions of a current water right granted or otherwise authorised pursuant to the Water and Soil Conservation Act 1967 or any other Act, and for this purpose it shall be a sufficient defence to produce a certificate to that effect from the Regional Water Board in the area of which the right was purported to be granted or otherwise authorised.

In subs. (1) the words in square brackets were substituted for the words "section 75 of this Act" by s. 139 of the Conservation Law Reform Act 1990.

85. Determination of closed seasons for fishing—(1) In respect of any species of fish (other than [sports fish]), aquatic life, or seaweed the Director-General [, after consulting the Director-General of Conservation,] may, from time to time by notice in the *Gazette*, determine a closed season for the whole or any part of New Zealand fisheries waters—

- (a) Over any term not exceeding 3 years; or
- (b) In any year, month, week, or day.

(2) *Repealed by s. 140 (2) of the Conservation Law Reform Act 1990.*

(3) The particulars of any notice given under this section shall be advertised in at least one newspaper generally circulated in the area affected by the notice or, in the case of a notice affecting the whole or a substantial part of New Zealand fisheries waters, in the metropolitan newspapers.

(4) The Director-General may, in like manner, extend or vary any closed season so determined or vary any closed season so extended.

(5) During the period of any closed season determined, varied, or extended pursuant to this section for any species of fish, aquatic life, or seaweed it shall be unlawful for any person to knowingly take or have in possession any such fish, aquatic life, or seaweed, or in any way injure or disturb any such fish,

aquatic life, or seaweed, and every person so doing commits an offence against this Act.

(6) Every person who commits an offence under this section is liable to a fine not exceeding \$5,000, and to a further fine not exceeding \$20 in respect of every fish in relation to which the offence was committed, and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day after the first day on which the offence has continued.

(7) Any person who, during any closed season, is found in possession of any fresh fish shall be deemed to have taken or obtained that fish during such closed season until the contrary is proved.

In subs. (1) the words "sports fish" were substituted for the words "acclimatised fish" by s. 140 (1) of the Conservation Law Reform Act 1990, and the words in the second set of square brackets were inserted by s. 11 (1) of the State-Owned Enterprises Amendment Act 1987.

86. Closed season in exclusive economic zone—The Director-General shall not determine any closed season which relates to the taking of fish (other than [sports fish]), aquatic life, or seaweed from any waters in the exclusive economic zone, or the territorial waters or internal waters of New Zealand, without prior consultation with the Fishing Industry Board.

The words "sports fish" were substituted for the words "acclimatised fish" by s. 141 of the Conservation Law Reform Act 1990.

87. Research and development of fisheries—(1) The Minister may from time to time enter into agreements or arrangements with any person for the purposes of joint research and development work on fishery resources; and any such agreement or arrangement may include the use of facilities owned by that person.

[(2) Any agreement or arrangement entered into under this section may permit any person to take fish that the person would not otherwise be entitled to take and may permit the person to retain those fish or any other fish taken by the person under the agreement or arrangement.]

Subs. (2) was added by s. 21 of the Fisheries Amendment Act 1986.

88. Limitation of Act—[(1) Nothing in this Act shall apply to any person using a landing net to secure fish lawfully taken with a rod and line.

(1A) Nothing in this Act shall apply to any person (not being a commercial fisherman) who, having unintentionally taken any

fish or aquatic life contrary to the provisions of this Act or any regulation made under this Act,—

- (a) Immediately returns the fish or aquatic life with as little injury as possible to the water, where the fish or aquatic life is still alive; or
- (b) If the fish or aquatic life is dead or unlikely to survive a return to the water, either—
 - (i) Immediately returns the fish or aquatic life to the water; or
 - (ii) Notifies a Fishery Officer or a Registrar of the taking of the fish or aquatic life as soon as practicable after it was taken, and disposes of the fish or aquatic life or surrenders the fish or aquatic life to the Crown in a manner directed by a Fishery Officer or Registrar.]
- (2) Nothing in this Act shall affect any Maori fishing rights.
- (3) This Act is subject to section 49 of the Marine Farming Act 1971.

Subss. (1) and (1A) were substituted for the original subs. (1) by s. 40 (1) of the Fisheries Amendment Act 1990.

[88A Giving of notices, etc.—(1) Except as otherwise specified in this Act or in regulations made under this Act, where pursuant to this Act any notice or other document is to be given, served on, or furnished to any person, that notice or other document may be—

- (a) Given to the person personally; or
 - (b) Sent by registered post to the person at the person's usual or last known place of business or abode; or
 - (c) Given personally to any other person authorised to act on behalf of the person; or
 - (d) Sent by registered post to that other person at that other person's usual or last known place of business or abode; or
 - (e) Except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence against this Act or any regulations made under this Act, sent by post to the person, or any other person authorised to act on the person's behalf, at that person's or other person's usual or last known place of business or abode.
- (2) Any notice or other document so sent by post or registered post shall be deemed to have been given, served, or received 7 days after the date on which it was posted, unless the person to whom it was posted proves that, otherwise than

through that person's fault, the notice or document was not received.】

This section was inserted by s. 41 of the Fisheries Amendment Act 1990.

Regulations

89. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Generally regulating fishing in New Zealand and New Zealand fisheries waters;
- (b) *Repealed by s. 23 (1) of the Fisheries Amendment Act 1986.*
- (c) Providing for the protection of shellfish and shellfish beds, including the regulation of places where shellfish may be opened, and for the marking out of boundaries of shellfish beds;
- (d) Prohibiting or regulating the taking, buying, selling, exposing for sale, consigning for sale, transporting, processing, preparing or offering for consumption in any public eating house, acquiring, receiving, or having in possession any fish or any part or particular state or condition of any fish;
- (e) Regulating the construction or provision and maintenance of facilities on vessels, vehicles or other conveyances, or in premises, for the handling, transportation, preservation, or storage of fish, or for the preservation alive of Mollusca, Crustacea, and Echinodermata in storage or in transit to any establishment where such fish are processed; and prescribing measures to protect from sun, weather, or contamination any fish being handled or transported;
- (f) Regulating the quantity of fish that may at any one time be on board any vehicle or vessel or be kept or conveyed on any vehicle or vessel or animal, or kept in any container, package, or place, or in the possession of any person or of any prescribed number of persons;
- (g) Prescribing a quota . . . for any fish, or in respect of any fishery or method of fishing, in any part of New Zealand fisheries waters; and authorising the Minister to allocate any such quota . . . to such commercial fisherman or fishermen as he may specify by notice in the *Gazette*;
- [(h) Providing for the issue, refusal, renewal, suspension, revocation, modification, and imposition by the

regulations or the Director-General of conditions on licences for persons who wish to acquire or be in possession in prescribed circumstances of fish taken for the purpose of sale; providing for the recognition of licences granted under the Fishing Industry Board Act 1963 or the Meat Act 1981 as licences for the purposes of such regulations upon application by the holder of the licence and provision of such further information as the Director-General may require; and providing for the payment of fees for the issue and renewal of licences and the recognition of other licences:

- (i) Prescribing the matters in respect of which fees are payable under this Act; the amounts of those fees or the method by which they are to be assessed; the persons liable for payment of the fees; and circumstances in which the Minister, the Authority, or the Director-General may remit or waive payment of the whole or any part of the fees:
- (ia) Prescribing fees payable for annual registration as a holder of individual transferable quota [[or transferable term quota]] issued under Part IIA of this Act and for the registration of transfers and leases of such individual transferable quotas [[or transferable term quotas]]:
- (j) Defining the vessels or classes or types of vessels to which any regulations are to apply, and providing for the exemption of any vessels or classes or types of vessels from any such regulations:
- (k) Prescribing [[details relating to registration of fishing vessels and related matters,]] the method or methods of identifying fishing vessels, specifying identification marks or symbols or distinguishing flags to be carried by such vessels and by tenders and similar vessels carried by or attached to or used in conjunction with registered fishing vessels, and the identification marks on sails, nets or seines, and other gear used in fishing for sale, by vessels or otherwise:
- [[(ka) Prescribing the accounts, records, returns, and information that any person or class of person may be required to keep or furnish pursuant to section 66 or any other provision of this Act, and providing for—

- (i) The manner and form in which such accounts, records, returns, and information are to be kept or furnished:
 - (ii) The time for or within which such accounts, records, returns and information are to be kept or furnished:
 - (iii) The person to whom or office of the Ministry to which such accounts, records, returns, and information are to be furnished:
- (kb) Specifying for the purposes of Part IIA of this Act rules as to the manner and order in which fish catch is to be counted (or any underfishing is to be credited) against any quota, having regard to the basis on which the quota or any right to take fish under or count fish against the quota is held, the period for which any such quota or right is held, whether or not the quota or right is held by more than one person during any fishing year, the effects of overfishing and the carrying forward of quota pursuant to section 28v of this Act, and other relevant matters; and prescribing circumstances in which or conditions on which any such rules will not apply:
- (kc) Providing for the formal notification to quota holders and lessees of quota of—
- (i) The manner and order in which fish catch has been counted against their quota in respect of any fishing year; and
 - (ii) The amount of any underfishing or overfishing to be credited or counted against their quota in the following fishing year pursuant to section 28v of this Act; and
 - (iii) The amount of any reduction or increase in quota pursuant to section 28OD or section 28OE of this Act; and
 - (iv) Other relevant matters;—
- and providing for the making of objections in respect of matters specified in any such notification:]
- (l) Prescribing offences in respect of contravention of or non-compliance with any regulations made under this Act or any notice, requirement, or direction, given pursuant to any such regulations; and prescribing penalties not exceeding [\$10,000] in respect of any offence and, in the case of continuing offences,

prescribing further penalties not exceeding [\$500] for each day during which the offence has continued:

- (m) Specifying any offences or class of offences as infringement offences, prescribing the scale of infringement fees payable in respect of such offences, and prescribing the form of and the procedure for serving infringement notices in respect of such offences:

[(ma) Prescribing forms for the purposes of this Act:]

- (n) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

[(1A) No regulations shall be made under subsection (1) (g) of this section in respect of any quota management area for any species or class of fish for which guaranteed minimum individual transferable quota or individual transferable quota [[or guaranteed minimum transferable term quota or transferable term quota]] have been created under Part IIA of this Act in respect of that area.]

(2) Regulations under subsection (1) of this section may be made with respect to aquatic life and seaweed as regulations may be made under that subsection with respect to fish.

- (3) Regulations made pursuant to this section—

- (a) May apply generally throughout New Zealand or New Zealand fisheries waters or be made to apply only within such area or areas as may be defined in that behalf; but no regulation shall be made under this Act in derogation of any provisions of the Territorial Sea and Exclusive Economic Zone Act 1977 or of any regulations made under that Act relating to fishing by a foreign fishing craft within the exclusive economic zone:

- (b) May apply special conditions or confer special rights in relation to fishing by specified communities.

(4) Any regulation under this section conferring on the Minister or the Director-General power to issue, in such manner as may be prescribed, instructions, orders, requirements, permits, authorities, notices, or circulars, shall have effect according to its tenor, and shall be complied with by all persons affected thereby.

(5) For the purpose of giving effect to any international agreement, the Governor-General may make regulations under this section, and may declare any such regulation to apply

beyond the outer limits of New Zealand fisheries waters in respect of any New Zealand citizen or any New Zealand vessel.

(6) In subsection (5) of this section, the term "international agreement" means any bilateral or multilateral treaty, convention, or agreement, to which New Zealand is a party, and any understanding concluded by the Government of New Zealand and the government of any other country.

In subs. (1) (g) words were omitted in 2 places by s. 42 (1) of the Fisheries Amendment Act 1990.

In subs. (1), paras. (h) to (ia) were substituted for the original paras (h) and (i) by s. 23 (2) of the Fisheries Amendment Act 1986.

In subs. (1) (ia) the words in the first set of double square brackets were inserted by s. 42 (2) (a) of the Fisheries Amendment Act 1990, and the words in the second set of double square brackets were added by s. 42 (2) (b) of that Act.

In subs. (1) (k) the words in square brackets were inserted by s. 23 (3) of the Fisheries Amendment Act 1986.

In subs. (1), paras. (ka) to (kc) were inserted by s. 42 (3) of the Fisheries Amendment Act 1990.

In subs. (1) (l) the expression "\$10,000" was substituted for the expression "\$5,000" by s. 23 (4) (a) of the Fisheries Amendment Act 1986, and the expression "\$500" was substituted for the expression "\$50" by s. 23 (4) (b) of that Act.

In subs. (1), para. (ma) was inserted by s. 42 (4) of the Fisheries Amendment Act 1990.

Subs. (1A) was inserted by s. 23 (5) of the Fisheries Amendment Act 1986.

In subs. (1A) the words in double square brackets were inserted by s. 42 (5) of the Fisheries Amendment Act 1990.

90. *Repealed by s. 142 of the Conservation Law Reform Act 1990.*

91. Special regulations relating to freshwater fish farming—Regulations may be made under section 89 of this Act—

- (a) Authorising persons, to be registered for the purpose, to construct and maintain ponds as fish farms for breeding and rearing fish (except trout) for sale subject to such conditions as are specified in the regulations:
- (b) Regulating the operation of fish farms subject to such conditions as may be specified in the regulations, and prohibiting the operation of any such fish farm, and the sale, disposal, transport, or export of any fish from such a fish farm without a licence:
- (c) Providing for the registration of persons who may hold licences to operate fish farms and for the qualifications those persons shall be required to hold and the conditions with which they shall be required to comply before being granted registration and in order to remain registered:
- (d) Providing for the appointment of officers, including any class of officers with specialist qualifications, to inspect such fish farms and ensure that any

- regulations made under this section are enforced and for the inspection of any such fish farm for facilities for processing or storing any fish reared on the farm:
- (e) Providing for the issue, [revocation,] renewal, and transfer of licences in respect of any such operation and the form and contents of any such licence, and prescribing the fee . . . payable in advance in respect of any such licence:
 - (f) Specifying the species, sub-species, varieties, or hybrids of fish that may be bred or reared in any such farm, and regulating the types and quantities of food that may be fed to any such fish, and the methods of feeding:
 - (g) Regulating or prohibiting the canning of any such fish, their sale or other disposal, or possession:
 - (h) Providing for the keeping by the licensee of any fish farm of records of fish acquired, kept, and disposed of, and for the keeping of records relating to those fish by any other licensee or other person:
 - (i) Prescribing the measures to be taken to avoid the outbreak or on an outbreak of any disease among the fish, and authorising or requiring the taking of any specimen, the testing of any thing, or the sampling of any substance present on any fish farm and authorising or requiring the removal of any specimen or sample, or the destruction of diseased fish, whether with or without payment of compensation.

In para. (e) the word "revocation," was inserted by s. 25 of the Fisheries Amendment Act 1986, and the words, "not exceeding \$300 per annum," were omitted by s. 2 (1) of the Fisheries Amendment Act (No. 2) 1990. As to fees, see s. 2 (2) of the latter Act.

92. Regulations may provide for the issuing of circulars—(1) Regulations under this Act may provide for the promulgation from time to time by the Director-General of circulars setting out general criteria for the drawing up, accomplishment, demonstration, carrying on, or provision for any act, plan, proposal, matter, system, process, or thing.

(2) Where, pursuant to regulations made under this Act, any act, plan, proposal, matter, system, process, or thing must be—

- (a) Approved by the Director-General or a Fishery Officer, it shall be deemed so to have been approved if it is in conformity with general criteria relating to it set out in a circular or circulars promulgated pursuant to subsection (1) of this section and for the time being in force:

- (b) Accomplished, demonstrated, carried on, or provided for to the satisfaction of the Director-General or a Fishery Officer, it shall be deemed so to have been accomplished, demonstrated, carried on or provided for if it has been accomplished, demonstrated, carried on, or provided for in conformity with general criteria relating to it set out in a circular or circulars promulgated pursuant to the said subsection and for the time being in force:
- (c) Accomplished, demonstrated, carried on, or provided for to an extent that, in the opinion of the Director-General or a Fishery Officer, meets or tends to meet some particular standard, or achieves or tends to achieve some particular result, it shall be deemed so to have been accomplished, demonstrated, carried on, or provided for if it has been accomplished, demonstrated, carried on, or provided for in conformity with general criteria relating to it set out in a circular or circulars promulgated pursuant to the said subsection and for the time being in force.
- (3) The powers of the Director-General or a Fishery Officer to approve or be satisfied of, or to take any action (a prerequisite to the taking of which is that he have a particular opinion about), any act, plan, proposal, matter, system, processing, or thing shall not be limited or affected by any matter contained in a circular promulgated pursuant to subsection (1) of this section.

[92A. Certain notices to have status of regulations—

(1) Except as provided in subsection (2) of this section, every notice given under this Act and required to be published in the *Gazette* is hereby deemed for the purposes of the Acts Interpretation Act 1924 and [the Acts and Regulations Publication Act 1989] to be a regulation.

(2) Nothing in this section shall apply to any notice given under any of sections 8, 12, 26, 28A, 28C, [[28J, 28OB, 28U, 28W, 28z, 28zG]], 32, 47, 56, 65, 70, 71, and 85 of this Act, or any District Anglers Notice.]

This section was inserted by s. 26 of the Fisheries Amendment Act 1986.

In subs. (1) the Acts and Regulations Publication Act 1989, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Regulations Act 1936.

In subs. (2) the expression in double square brackets was substituted for the former expression of "28D, 28J, 28U, 28W, 28Z" by s. 43 of the Fisheries Amendment Act 1990.

Offences and Penalties

[93. General offences]—Every person commits an offence who acts in contravention of or fails to comply with any provision of this Act, or any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act.

Cf. 1983, No. 14, s. 93

94. Repealed by s. 44 of the Fisheries Amendment Act 1990.

[95. Obstructing Fishery Officers]—(1) Every person commits an offence who—

- (a) Resists or obstructs, or incites or encourages any other person to restrict or obstruct, any Fishery Officer while in the execution of the Fishery Officer's powers or duties, or any person lawfully assisting the Fishery Officer; or
- (b) Uses threatening language or behaves in a threatening manner towards any Fishery Officer, while in the execution of the Fishery Officer's powers or duties, or any person lawfully assisting the Fishery Officer; or
- (c) Fails to comply with the lawful requirements of any Fishery Officer; or
- (d) Furnishes to any Fishery Officer any particulars which are false or misleading in any material respect; or
- (e) Personates or falsely claims to be a Fishery Officer or who falsely claims to be a person lawfully assisting the Fishery Officer.

(2) For the purpose of subsection (1) of this section, any person who refuses to allow any Fishery Officer, or any person lawfully assisting the Fishery Officer, to exercise any of the powers conferred on the Fishery Officer by this Act, any regulations or notice made under this Act, or any notice given under this Act or those regulations, shall be deemed to be obstructing that Fishery Officer or person.

Cf. 1983, No. 14, s. 94

[96. Neglect or refusal to supply particulars, and improper divulging of information]—Every person commits an offence who—

- (a) Fails to provide any accounts or records or who neglects or refuses to furnish any records, return, or information when lawfully requested to do so pursuant to this Act:

(b) Makes any false or misleading statement or any material omission in any communication or application or return for the purposes of this Act.

(c) *Repealed by s. 25 (1) of the Official Information Amendment Act 1987.*

Cf. 1983, No. 14, s. 95

[97. Buying, selling, or possessing fish, etc., contrary to Act—(1) Every person commits an offence who buys, sells, or has in possession any fish, aquatic life, or seaweed taken in New Zealand fisheries waters in contravention of this Act, or any regulation made or notice given under this Act.

(2) For the purpose of this section, fish, aquatic life, or seaweed shall be deemed to be sold if it forms part of a meal for which payment for that meal or any part of the meal is made or which is supplied to any person (whether in accordance with the terms of a contract of service or otherwise) who is employed by the person by whom the meal is supplied.

Cf. 1983, No. 14, s. 96

[98. Using explosives, etc., to catch or destroy fish—

(1) Every person commits an offence who for the purpose of taking or destroying any fish uses in any water any explosive or toxic gas, or toxic, poisonous, or narcotic substance or any electric fishing device.

(2) Subsection (1) of this section shall not apply to actions taken by a Fishery Officer, or any person authorised in writing by the Director-General.

(3) In this section, the term "explosive" has the same meaning as in the Explosives Act 1957.

Cf. 1983, No. 14, s. 99

[[98A. Knowingly permitting premises to be used for offence against Act—(1) Every person commits an offence who knowingly permits any premises, vessel, or vehicle to be used for the purpose of the commission of an offence against this Act or any regulation made or notice given under this Act.

(2) Section 105 (1) of this Act shall not apply in respect of any proceedings for an offence against subsection (1) of this section.]]

This section was inserted by s. 45 of the Fisheries Amendment Act 1990.

[99. Ownership and possession of fish—[(1) Subject to the provisions of any agreement to the contrary that is—

- (a) In the prescribed form or a form approved by the Director-General; and
 - (b) Signed by the owner of the vessel and the other party or parties to the agreement; and
 - (c) Furnished, before the fish, aquatic life, or seaweed in question are taken, to the Registrar at the port where the vessel is registered,—
- all fish (except [sports fish]), aquatic life, or seaweed taken by any means from a vessel shall, for the purposes of this Act and any regulations made or notice given under this Act, be deemed to be owned by the owner of the vessel.]]
- (2) For the purpose of this section, fish shall be deemed to be taken from a vessel when taken with any line, or in any net, pot, trap, or other contrivance used or set from the vessel or from any tender or similar vessel carried by or attached to the vessel.

Cf. 1983, No. 14, s. 100

Subs. (1) was substituted for the former subs. (1) by s. 46 of the Fisheries Amendment Act 1990.

In subs. (1) the words "sports fish" were substituted for the words "acclimatised fish" by s. 143 of the Conservation Law Reform Act 1990.

[100. Fish on registered vessel deemed to have been caught in New Zealand—(1) For the purposes of this Act and any regulation made or notice given under this Act, all fish on board, landed from, or transferred to or from a fishing vessel registered under this Act or any New Zealand ship within the meaning of the Shipping and Seamen Act 1952, whether found on board, landed, or transferred within New Zealand or elsewhere, shall be deemed to have been taken within New Zealand fisheries waters.

(2) Nothing in subsection (1) of this section shall apply in respect of fish taken by any vessel with the prior approval of the Director-General and in accordance with any conditions imposed by the Director-General.

[101. Fish taken in New Zealand fisheries waters must be landed in New Zealand—(1) Every person commits an offence who lands any fish taken in New Zealand fisheries waters at any place outside New Zealand unless the landing of the fish outside New Zealand has the prior approval of the Director-General and is in accordance with any conditions imposed by the Director-General.

[[1A) For the purposes of subsection (1) of this section, fish shall be deemed to have been landed at a place outside New Zealand if those fish are landed in New Zealand but—

(a) Are not delivered to a person who is licensed or deemed to be licensed under regulations made pursuant to section 89 (1) (h) of this Act; and

(b) Are loaded aboard a vessel or aircraft for export from New Zealand.]]

(2) Nothing in subsection (1) of this section shall apply where the fish were lawfully taken by the person using a foreign fishing vessel.

Subs. (1A) was inserted by s. 47 of the Fisheries Amendment Act 1990.

[102. Fish on registered vessel deemed to have been taken for the purposes of sale—(1) For the purposes of this Act and any regulation made or notice given under this Act, all fish on board or unloaded from any fishing vessel registered under this Act shall, in the absence of proof to the contrary, be deemed to have been taken for the purposes of sale.

(2) Nothing in this section shall apply in respect of fish that are intended to be used as bait and are not intended for sale.

[[102A. Controlled fish and gear deemed to be taken or used in controlled fishery—For the purposes of this Act and any regulation made or notice given under this Act, if, in the opinion of a Fishery Officer, any controlled fish was taken from a controlled fishery or any gear or equipment was used in a controlled fishery, being controlled fish, gear, or equipment found on board a fishing vessel by the Fishery Officer, then, in the absence of proof to the contrary, that controlled fish, gear, or equipment, as the case may be, shall be deemed to have been so taken or used.]]

This section was inserted by s. 48 of the Fisheries Amendment Act 1990.

[103. Fish on licensed premises or premises where food sold deemed to have been taken for purposes of sale—(1) For the purposes of this Act and any regulation made or notice given under this Act, all fish in any premises owned or operated by any person who holds a licence issued or recognised under regulations made under section 89 (1) (h) of this Act shall, in the absence of proof to the contrary, be deemed to have been taken for the purposes of sale.

(2) For the purposes of this Act and any regulation made or notice given under this Act, all fish in any premises where food is sold, prepared for sale, stored, or processed, shall, in the

absence of proof to the contrary, be deemed to have been taken for the purposes of sale.

[[103A. Fish in excess of certain quantities deemed to have been acquired or possessed for purposes of sale—For the purposes of this Act and any regulation made or notice given under this Act, any person who is found in possession of any species or class of fish of an amount or quantity exceeding 7 times the amateur individual daily limit (if any) prescribed in respect of that class or species of fish shall, in the absence of proof to the contrary, be deemed to have acquired or to possess the fish for the purposes of sale.]]

This section was inserted by s. 49 of the Fisheries Amendment Act 1990.

[104. Proceedings for offences—(1) Any offence against this Act or any regulation made under this Act that is committed within New Zealand fisheries waters shall be deemed to have been committed in New Zealand.

(2) Notwithstanding section 14 of the Summary Proceedings Act 1957, an information in respect of any offence against this Act or any regulation made under this Act may be laid at any time within 2 years after the time when the matter of the information arose.

(3) All proceedings in respect of offences against this Act or any regulation made under this Act shall be under the Summary Proceedings Act 1957.

(4) In any proceedings for an offence against section 97 (1) of this Act, it shall also be a defence if the defendant satisfies the Court that the fish to which the offence relates were preserved in containers in New Zealand or elsewhere or were cured in some country other than New Zealand.

(5) The defence specified in subsection (4) of this section shall not be available in the case of—

- (a) Trout; or
- (b) Cured salmon.

(6) All prosecutions and proceedings in respect of offences against this Act or any regulation made under this Act may be commenced and taken in the name of the Minister or the Director-General [[or of the Minister of Conservation or the Director-General of Conservation]], or of any Fishery Officer or [[Fish and Game Council]] in any district in which an offence has been committed or an offender is found.

Cf. 1983, No. 14, s. 101

In subs. (6) the words in the first set of double square brackets were inserted by s. 11 (1) of the State-Owned Enterprises Amendment Act 1987; and the reference to a

278
142

Fisheries

R.S. Vol. 27

Fish and Game Council was substituted for a reference to an acclimatisation society by s. 3 (3) of the Conservation Law Reform Act 1990.

[105. Strict liability—(1) In any prosecution for any offence against this Act or any regulation made under this Act it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

(2) It shall be a defence in any such prosecution if the defendant proves—

(a) That the defendant did not intend to commit the offence; and

(b) That—

(i) In any case where it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or

(ii) In any case where it is alleged that anything prohibited was done, that the defendant took all reasonable steps to ensure that it was not done.

[[105A. Defences available to commercial fisherman taking unauthorised fish—(1) It shall be a defence in any proceedings against a commercial fisherman for an offence concerning the taking or possession of any fish or aquatic life in contravention of this Act or any regulation made under this Act, if the defendant proves that—

(a) The defendant did not intend to take the fish or aquatic life; and

(b) The fish or aquatic life was taken as an inevitable consequence of the lawful taking of other fish or aquatic life; and

(c) Either—

(i) Except in the case of any fish or rock lobster whose return to the sea is prohibited by section 28zB (1) of this Act, the commercial fisherman immediately returned the fish to the sea; or

(ii) Except in the case of any fish that is not of legal size, the defendant notified a Registrar as soon as practicable of the taking of the fish or aquatic life, and surrendered ownership of the fish or aquatic life to the Crown and disposed of the fish or aquatic life in accordance with the directions of a Registrar.

(2) It shall be a defence in any proceedings against a commercial fisherman for an offence concerning the taking or possession of any fish (being fish taken on or after the 1st day of October 1990) subject to a quota management system in

contravention of this Act or any regulations made under this Act if the defendant proves that—

- (a) At the time the fish were taken by the commercial fisherman, the fisherman had a current right to take any species or class of fish subject to a quota management system; and
- (b) The commercial fisherman did not intend to take the fish; and
- (c) The fish were taken as an inevitable consequence of the lawful taking of other fish; and
- (d) The commercial fisherman has notified the Ministry of the taking of the fish in any return for the appropriate period required to be made under this Act; and
- (e) The commercial fisherman has either—
 - (i) Not later than 15 days after the end of the calendar month in which the fish were taken, bought or leased quota that would have authorised the taking of the fish if it had been held by the commercial fisherman at the time the fish were taken, and notified a Registrar accordingly; or
 - (ii) Not later than 15 days after the end of the calendar month in which the fish were taken, entered into an arrangement with another commercial fisherman (being a fisherman who has the current right to take fish under any quota) for the fish to be counted against unused quota of that other fisherman, and has notified a Registrar accordingly; or
 - (iii) Where neither subparagraph (i) nor subparagraph (ii) of this paragraph applies, paid to the Crown the deemed value of the fish in accordance with section 28ZD of this Act, or has not been subject to any requirement under that section to pay the deemed value of the fish.]]

This section was inserted by s. 50 (1) of the Fisheries Amendment Act 1990.

[[105B. Liability of principal for actions of agent in relation to records and returns—(1) Where a person (in this section referred to as the principal) is required by or under this Act to—

- (a) Keep any account or record; or
- (b) Furnish any return or information; or
- (c) Complete any form; or

(d) Take any action in relation to the keeping of any account or record or the furnishing of any return or information or the completing of any form,—

every act or omission of any person acting or purporting to act as agent for the principal in respect of any such requirement shall be deemed for the purposes of this Act to be the act or omission of the principal, unless the principal proves that the person purporting to act as agent had no authority, either express or implied, to act as the principal's agent for the purpose of keeping any account or record, or furnishing any return or information, or completing any form, or taking any action in respect of such matters, as the case may be.

(2) Subject to subsection (3) of this section, any defence specified in section 105 (2) of this Act is available to the principal only to the extent that it can be proved in respect of the person in relation to whose act or omission the prosecution is brought.

(3) A defence specified in section 105 (2) of this Act is available to a principal prosecuted in respect of the act or omission of an agent if the principal satisfies the Court that, having regard to—

- (a) Any likely or possible benefit or detriment arising to the principal from the act or omission in respect of which the prosecution is brought if the alleged offence had remained undetected; and
- (b) The purpose or motive of the agent whose act or omission it was; and
- (c) The relationship between the principal and the agent whose act or omission it was, or between the principal and any person appearing or likely to benefit from the alleged offence; and
- (d) Where the principal is a body corporate, whether or not any person responsible for or closely associated with the management of the body corporate appears to have benefited from the act or omission, or would have been likely to so benefit if the alleged offence had remained undetected; and
- (e) Any action taken by the principal, once aware of the act or omission, in respect of the agent whose act or omission it was or any person appearing likely to benefit from the alleged offence,—

it would be repugnant to justice to apply to the principal the limitation imposed by subsection (2) of this section in relation to any defence provided for in section 105 (2) of this Act.

- (4) For the purposes of this section,—
- (a) A person may act as an agent for a principal whether or not that person is employed by the principal and whether or not acting for reward:
 - (b) Any agent of a person acting as agent shall be deemed to be acting as an agent of the principal.

[[105c. Liability of companies and persons for actions of officers and employees—(1) Every act or omission of any officer or employee of a person, or of the master or any member of the crew of a vessel that is chartered or leased by the person for the purpose of engaging in fishing, shall be deemed for the purposes of this Act to be the act or omission of the person.

(2) Subject to subsection (3) of this section, any defence specified in section 105 (2) of this Act in relation to a prosecution under this Act or any regulation made under this Act is available to a person only to the extent that it can be proved in respect of the officer, employee, master, or crew member in relation to whose act or omission the prosecution is brought.

(3) A defence specified in section 105 (2) of this Act is available to a person prosecuted in respect of the act or omission of a person referred to in subsection (1) of this section if the person satisfies the Court that, having regard to—

- (a) Any likely or possible benefit or detriment arising to the person from the act or omission in respect of which the prosecution is brought if the alleged offence had remained undetected; and
- (b) The purpose or motive of the person whose act or omission it was; and
- (c) The relationship between the person and the person whose act or omission it was, or between the person and any person appearing or likely to benefit from the alleged offence; and
- (d) Where the person is a body corporate, whether or not any person responsible for or closely associated with the management of the body corporate appears to have benefited from the act or omission, or would have been likely to so benefit if the alleged offence had remained undetected; and
- (e) Any action taken by the person, or, where the person is a body corporate, by any person responsible for its management, once aware of the act or omission, in respect of the person whose act or omission it was or

any person appearing or likely to benefit from the alleged offence,—
it would be repugnant to justice to apply to the person the limitation imposed by subsection (2) of this section in relation to any defence provided for in section 105 (2) of this Act.

[[105d. Liability of directors and managers—Where any body corporate is convicted of an offence against this Act or any offence against any regulation made under this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act that constituted the offence took place with the person's authority, permission, or consent, or that the person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

[[105e. Presumption as to authority—A return or other information purporting to be furnished by or on behalf of any person shall, for all purposes of this Act, be deemed to have been furnished by that person or by that person's authority unless the contrary is proved.

Evidence in Proceedings

[[106. Certificates and official documents—(1) Subject to subsection (4) of this section, in any proceedings for an offence against this Act or against any regulation made under this Act, the following certificates or documents shall be admissible in evidence and shall, in the absence of proof to the contrary, be sufficient evidence of the matter stated in the certificate or of the contents of the document, as the case may require:

- (a) A certificate purporting to be signed by the Director-General or any Registrar to the effect that, on a date specified in the certificate,—
 - (i) A vessel specified in the certificate was or was not registered under this Act; or
 - (ii) A person specified in the certificate was or was not the owner of a registered fishing vessel specified in the certificate; or
 - (iii) A fishing permit, authority, or approval authorising a person named in the certificate to take fish, aquatic life, or seaweed was or was not in force; or

- (iv) A fishing permit, authority, or approval authorising the taking of fish, aquatic life, or seaweed from a vessel named in the certificate was or was not in force; or
- (v) Any fishing permit, authority, or approval referred to in subparagraph (iii) or subparagraph (iv) of this paragraph was or was not subject to any specified condition attached or relating to the permit, authority, or approval; or
- (vi) Any specified interest in any specified quota allocated under Part IIA of this Act was or was not held by a person named in the certificate; or
- (vii) Any licence relating to the acquisition, storage, processing, or disposal of fish, aquatic life, or seaweed was or was not held by a person named in the certificate; or
- (viii) Any licence referred to in subparagraph (vii) of this paragraph was or was not subject to any specified condition attached or relating to the licence; or
- (ix) Any specified return or information required to be furnished under this Act was or was not furnished;
- (x) Any vessel was or was not subject to a conversion factor certificate given under section 3A (3) of this Act; or
- (xi) Any conversion factor certificate referred to in subparagraph (x) of this paragraph was or was not subject to any specified term or condition:
- (b) A certificate purporting to be signed by the Secretary to the Authority to the effect that, on a date specified in the certificate,—
 - (i) A vessel specified in the certificate was not the subject of a boat authority; or
 - (ii) The defendant or any other named person was not the holder of a licence or a temporary licence:
- (c) A copy of any licence, boat authority, or other document granted or issued under this Act purporting to be certified as correct by the Secretary to the Authority or the Director-General or any Registrar:
- (d) Any—
 - (i) Certificate purporting to be signed by a Chief Surveyor appointed under the Survey Act 1986, or by the Royal New Zealand Naval Hydrographer, and stating the status of any area; or

(ii) Map, plan, or other such document purporting to be certified as true by a Chief Surveyor or by the Royal New Zealand Naval Hydrographer:

(e) Any—

(i) Certificate purporting to be signed by the Registrar of Ships appointed under the Shipping and Seamen Act 1952 that, on a date specified in the certificate, a vessel specified in the certificate was not a New Zealand ship within the meaning of that Act; or

(ii) Copy of a certificate of registry issued under the Shipping and Seamen Act 1952 which purports to be certified correct by the Registrar of Ships or by any officer duly authorised by the Registrar of Ships in that behalf:

(f) Any certificate purporting to be signed by a serviceman within the meaning of the Defence Act 1971 and stating—

(i) The position of any fishing vessel at a date and time specified in the certificate; or

(ii) That the serviceman is satisfied that the equipment used to determine the position of any fishing vessel was in proper working order and that the equipment was accurate within specifications detailed in the certificate.

(2) A certificate purporting to be signed by a person referred to in subsection (1) of this section may relate to any one or more of the matters with respect to which that person has authority to certify.

(3) The production of any certificate or copy of any document for the purposes of this section purporting to be signed by any person authorised under this section to sign it shall be prima facie evidence of the certificate or copy without proof of the signature of the person purporting to have signed it.

(4) Any certificate (not being a certified copy of a document) referred to in subsection (1) of this section shall be admissible in evidence only if—

(a) At least 14 days before the hearing at which the certificate is to be tendered, a copy of that certificate is served, by or on behalf of the prosecutor, on the defendant or the defendant's agent or counsel, and that person is at the same time informed in writing that the

- prosecutor does not propose to call the person who signed the certificate as a witness at the hearing; and
- (b) The Court has not, on the application of the defendant made not less than 7 days before the hearing, ordered, not less than 4 days before the hearing (or such lesser period as the Court in the special circumstances of the case thinks fit), that the certificate should not be admissible as evidence in the proceedings.
- (5) The Court shall not make an order under subsection (4) of this section unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of a certificate.

In subs. (1) (f), as to a serviceman within the meaning of the Defence Act 1971, see now a member of the Defence Force within the meaning of the Defence Act 1990.

[[106A. Copies of accounts, records, returns, and other documents—(1) A copy of any account, record, return, or information required to be kept or furnished pursuant to this Act that purports to be certified by the Director-General or a Registrar as having been kept or furnished (as the case may require), at or within or in relation to any specified time or date or period, shall be sufficient evidence, in the absence of proof to the contrary, of the fact that the account, record, return, or information was so kept or furnished.

(2) Any copy of a record or other document taken by a Fishery Officer or an examiner under section 79 (4) of this Act, or any copy of such a copy, shall, subject to subsection (3) of this section, be admissible, to the same extent as the original record or document would itself be admissible, as evidence of the record or document and of any transactions, dealings, amounts, or other matters contained in the record or document.

(3) A copy of a record or document referred to in subsection (2) of this section (including a copy of such a copy) shall be admissible in evidence only if—

- (a) The prosecutor or an agent of the prosecutor serves on the defendant, or the defendant's agent or counsel, not less than 14 days before the hearing at which it is proposed to tender the copy in evidence,—
- (i) Notice of the prosecutor's intention to tender the copy in evidence; and
- (ii) A copy of the copy to be so tendered; and
- (b) The Court has not, on the application of the defendant made not less than 4 days before the hearing (or such lesser period as the Court in the special circumstances

of the case thinks fit), ordered that the copy should not be admissible in the proceedings.

(4) The Court shall not make an order under subsection (3) of this section unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of the copy.

[[106b. Presumption as to master of fishing vessel—In any proceedings for an offence against this Act or any regulations made under this Act, an allegation made by the informant in any information relating to whether or not any person was the master of any registered fishing vessel at any specified time shall be presumed to be true in the absence of proof to the contrary.

[[106c. Presumptions to apply whether or not separate or further evidence adduced in support—Where it is provided in this Act that any presumption is to apply in respect of any matter, the presumption shall apply whether or not separate or further evidence is adduced by or on behalf of the informant in support of the relevant allegation or presumption.

Penalties

[[107. Penalties—(1) Every person who commits an offence against this Act or any regulation made under this Act for which no other penalty is prescribed shall on conviction be liable to a fine not exceeding \$250,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day after the first day on which the offence has continued.

(2) *Repealed by s. 144 of the Conservation Law Reform Act 1990.*]]

Ss. 105B to 107 were substituted for the former ss. 106 and 107 (as substituted by s. 27 (1) of the Fisheries Amendment Act 1986) by s. 51 of the Fisheries Amendment Act 1990.

[107A. Provision for payment of fees—(1) Where any person is convicted of an offence against section 57 (1) (a) of this Act, then, whether or not the Court imposes any penalty in respect of the offence, there shall be payable to the Crown by the owner of the fishing vessel an amount equal to the amount of the prescribed registration fee payable in respect of the vessel.

(2) Where any person is convicted of an offence against section 68 (1) of this Act, then, whether or not the Court imposes any penalty in respect of the offence, there shall be payable to the Crown by the defendant an amount equivalent

to the amount prescribed as being payable for a whole season licence.

(3) Any amount payable to the Crown under subsection (1) or subsection (2) of this section shall be assessed by the Court, and shall be recoverable as if it were a fine.

Cf. 1983, No. 14, s. 104

[[107B. Forfeiture of property and quota on conviction—(1) In this section, unless the context otherwise requires,—

“Fish” includes any aquatic life or seaweed:

“Offence relating to returns and records” means an offence against section 66 of this Act or any regulations made under section 89 (1) (ka) of this Act; but does not include an offence for which the maximum penalty does not exceed \$5,000:

“Property” means any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, or equipment; but does not include quota:

“Quota”, in relation to a person convicted of an offence, means any guaranteed minimum individual transferable quota or guaranteed minimum transferable term quota (including any right to receive individual transferable quota or transferable term quota attached to the quota) and any individual transferable quota or transferable term quota held or leased by that person, and—

(a) Includes any interest held by that person in any quota;

(b) Does not include—

(i) Any quota or interest in quota acquired by the person after the date of the offence; or

(ii) Any quota or interest in quota that, before the date of the conviction, has been transferred or leased otherwise than in circumstances in which the transfer or lease would be ineffective under section 28Q(7) of this Act; or

(iii) Any leasehold or other interest in quota that was for a limited period only, where that interest has lapsed by effluxion of time:

“Quota management offence” means—

- (a) An offence against any of the provisions of Part IIA of this Act; and
 - (b) An offence against—
 - (i) Section 67 (1) of this Act (which relates to the selling of fish by commercial fishermen otherwise than to certain authorised persons); or
 - (ii) Section 67A of this Act (which relates to the purchase or acquisition of fish otherwise than from certain authorised persons); or
 - (iii) Section 101 of this Act (which relates to the landing of fish outside New Zealand),—where the fish to which the offence relates are subject to a quota management system; and
 - (c) An offence against any regulation made under this Act that is specified by this Act or by regulations made under this Act to be a quota management offence;—
but does not include an offence for which the maximum penalty does not exceed \$5,000.
- (2) On the conviction of any person for a quota management offence or an offence relating to returns and records,—
- (a) Any property used in respect of the commission of the offence (whether or not seized pursuant to section 80 of this Act); and
 - (b) Any fish in respect of which the offence was committed (whether or not seized pursuant to section 80 of this Act); and
 - (c) Any proceeds from the sale of such fish pursuant to section 80 (4) of this Act; and
 - (d) Any quota held by the person at the time the offence was committed—
- shall be forfeit to the Crown unless the Court for special reasons relating to the offence thinks fit to order otherwise.
- (3) On the conviction of any person for an offence against this Act or regulations made under this Act (not being a quota management offence or an offence relating to records and returns or an offence for which the maximum penalty is a fine not exceeding \$5,000),—
- (a) There shall be forfeit to the Crown, unless the Court for special reasons relating to the offence thinks fit to order otherwise,—

- (i) Any property used in respect of the commission of the offence (whether or not seized pursuant to section 80 of this Act); and
- (ii) Any fish in respect of which the offence was committed (whether or not seized pursuant to section 80 of this Act); and
- (iii) Any proceeds from the sale of such fish pursuant to section 80 (4) of this Act;
- (b) The Court may order that any quota held by the person at the time the offence was committed shall be forfeit to the Crown.
- (4) On the conviction of any person for an offence against this Act or any regulations made under this Act for which the maximum penalty is a fine not exceeding \$5,000, or on the discharge of any person without conviction pursuant to section 19 of the Criminal Justice Act 1985 in respect of any offence against this Act or any regulations made under this Act,—
 - (a) Any fish in respect of which the offence was committed (whether or not seized pursuant to section 80 of this Act); and
 - (b) Any proceeds from the sale of such fish pursuant to section 80 (4) of this Act; and
 - (c) Any illegal fishing gear in respect of which the offence was committed (whether or not seized pursuant to section 80 of this Act),—shall be forfeit to the Crown, unless the Court for special reasons relating to the offence thinks fit to order otherwise.
- (5) For the purposes of section 19 of the Criminal Justice Act 1985, any forfeiture referred to in subsection (2) or subsection (3) (a) of this section shall be deemed to be a minimum penalty in respect of the commission of an offence referred to in those subsections, except to the extent that the Court for special reasons relating to the offence thinks fit to order that the property, fish, proceeds, or quota not be forfeit.

[[107c. Provisions relating to forfeited property and quota—(1) Where any property, fish, proceeds, quota, or interest in quota (hereafter in this section all referred to as property) is forfeit or ordered to be forfeit to the Crown under section 107B of this Act, the Minister may, subject to the provisions of this section, dispose of that property as the Minister thinks fit.

(2) Any person whose property has been forfeit to the Crown under section 107B of this Act or any person having a legal or equitable interest in such property may apply to the Minister

within 30 days of the conviction for the release of the property so forfeited; and the Minister may order the release of such property on payment to the Crown of such amount (if any) as the Minister thinks appropriate, being an amount not exceeding the amount the items otherwise forfeited are estimated by the Director-General to realise if sold by public auction in New Zealand.

(3) In considering whether or not to release any forfeited property that is quota or an interest in quota, or in determining the amount of any payment upon which such property may be released, the Minister shall have regard to, and may give such weight in respect of each such matter as the Minister thinks fit in the circumstances of the case to, the following matters:

- (a) The management and conservation of fisheries and fishery resources within New Zealand and New Zealand fisheries waters;
- (b) The need for adequate deterrents against the commission of offences against this Act and regulations made under this Act;
- (c) The effect of the offence from which the forfeiture arose on the fishery from which the fish were taken or in which the vessel was, and on other fishermen (whether commercial or amateur) in that fishery;
- (d) The effect of offending of the type from which the forfeiture arose on the relevant fishery, and on fishermen (whether commercial or amateur) in that fishery;
- (e) The social and economic effects on the person who held the quota or interest in quota, and persons employed by that person, of non-release of the forfeited quota or interest;
- (f) The previous offending history (if any) of the person who held the quota or interest in quota;
- (g) The economic benefits that accrued or might have accrued to the person who held the quota or interest in quota through the commission of the offence;
- (h) The interest of any other person in the quota concerned;
- (i) Such other matters as the Minister considers relevant.

(4) Any forfeiture directed or redemption payment imposed pursuant to this section shall be in addition to, and not in substitution for, any other penalty that may be imposed by the Court or by this Act.

(5) *Repealed by s. 145 of the Conservation Law Reform Act 1990.*

(6) Nothing in this section or in section 107B of this Act shall prevent the acquisition of any individual transferable quota or transferable term quota or any interest in any individual transferable quota or transferable term quota (including any quota or interest in quota forfeited under section 107B of this Act) from the Crown or any other person.]]

Ss. 107B and 107C were substituted for the former ss. 107B and 107C (as substituted by s. 27 (1) of the Fisheries Amendment Act 1986 and amended by s. 86 (1) of the Public Finance Act 1989) by s. 52 (1) of the Fisheries Amendment Act 1990, as from 1 November 1990. See s. 52 (4) of the latter Act and S.R. 1990/308.

[107D. Forfeiture of licence, approval, permission, or permit, and banning from industry on second conviction—(1) Every person who is convicted of an offence against this Act or any regulation made under this Act [[(not being an offence referred to in subsection (6) of this section)]] and within 7 years from the date of that conviction is convicted on another occasion of the same or any other offence against this Act or any regulation made [[under this Act (not being an offence referred to in subsection (6) of this section)]] shall, in addition to any other penalty, forfeit any licence, approval, permission, or fishing permit obtained pursuant to this Act and shall be incapable, for a period of 3 years from the date of conviction, of holding any such licence, approval, permission, or fishing permit or engaging in any activity associated with the taking of fish, aquatic life, or seaweed, or deriving any beneficial income from activities associated with the taking of fish, aquatic life, or seaweed.

(2) Notwithstanding subsection (1) of this section, the Court may, in the circumstances of any particular case and upon application being made to it by the person concerned within 30 days from the date of conviction or such extended period as the Court may allow, direct that the provisions of that subsection are not to apply to any particular licence, approval, permission, or fishing permit otherwise forfeit, or that the provision prohibiting the person from engaging in any activity associated with the taking of fish, aquatic life, or seaweed shall not apply.

(3) Every holder of a licence issued by the Authority under this Act who is convicted of an offence under this Act or any regulation made under this Act [[(not being an offence referred to in subsection (6) of this section)]], and whose licence is not forfeited pursuant to subsection (1) of this section shall be the subject of an inquiry by the Authority under section 45 of this Act unless the Court exercises its discretion under

subsection (2) of this section, and the licence of every such holder shall be suspended until the inquiry has been held and any appeal arising from the decision of the Authority in relation to the inquiry has been determined.

(4) For the purpose of this section, every conviction in respect of an offence against the Fisheries Act 1908 or any regulation made under that Act shall be deemed to be a conviction in respect of an offence against this Act or any regulation made under this Act.

[[(5) For the purposes of this section, where—

(a) A person is convicted of assault, or of any other offence of which an assault constitutes an element (being an offence committed on or after the 1st day of April 1990); and

(b) The assault was on a person who was at the time carrying out the duties of a Fishery Officer or examiner under this Act,—

that conviction shall be deemed to be a conviction in respect of an offence against this Act.

(6) Nothing in subsection (1) of this section shall apply to any offence committed by a person in respect of which—

(a) A conviction is entered on or after the date on which section 52 of the Fisheries Amendment Act 1990 comes into force; and

(b) The maximum penalty is a fine not exceeding \$5,000.]]

Cf. 1983, No. 14, s. 105

In subs. (1) the words in the first set of double square brackets were inserted by s. 53 (1) (a) of the Fisheries Amendment Act 1990, and the words in the second set of double square brackets were substituted for the words "or notice given under this Act" by s. 53 (1) (b) of that Act.

In subs. (3) the words in double square brackets were inserted by s. 53 (1) (c) of the Fisheries Amendment Act 1990.

Subss. (5) and (6) were added by s. 53 (2) of the Fisheries Amendment Act 1990.

[107E. Rewards to informers—(1) The Director-General may make such payments as the Director-General thinks fit to any person or persons who have supplied information that has led to the conviction for an offence against this Act or any regulation made under this Act or who procured or assisted in procuring such conviction.

(2) All payments under subsection (1) of this section shall be made from money from time to time appropriated by Parliament for the purpose.]

Ss. 93 to 107E were substituted for the original ss. 93 to 107 by s. 27 (1) of the Fisheries Amendment Act 1986.

[Resource Rentals]

[107F. Resource rentals payable in respect of certain fish—(1) There shall be payable to the Crown by any commercial fisherman who takes any fish of a species or class specified in Schedule 1c to this Act on or after the appropriate date specified in that Schedule in relation to that fish a resource rental at the appropriate rate specified in that Schedule.

(2) The resource rentals referred to in subsection (1) of this section shall be payable on the 20th day of the month after the month in which the fish was taken.

(3) Nothing in this section shall apply in respect of fish taken under a guaranteed minimum individual transferable quota or individual transferable quota, **[or guaranteed minimum transferable term quota or transferable term quota]**.

In subs. (3) the words in double square brackets were substituted for the former words by s. 54 of the Fisheries Amendment Act 1990.

[107G. Variation of resource rentals by Order in Council—(1) Subject to this section, the Governor-General may, by Order in Council made on the recommendation of the Minister,—

- (a) Vary the resource rentals specified in Schedule 1b or Schedule 1c of this Act;
- (b) Specify resource rentals to be payable in respect of any species or class of fish not previously described by name in Schedule 1b of this Act;
- (c) Omit any reference to any species or class of fish and resource rental from Schedule 1c to this Act and insert in Schedule 1b to this Act a reference to that species or class of fish and a resource rental that is no more than 20 percent greater than the resource rental that was payable under Schedule 1c to this Act in respect of that species or class of fish,—

and for those purposes the Governor-General may in that manner amend those Schedules or revoke any such Schedule and substitute a new Schedule.

(2) Not more than one Order in Council shall be made pursuant to this section in respect of any fishing year for any species or class of fish.

(3) Every Order in Council made pursuant to this section shall be made before the commencement of the first fishing year to which it relates and shall come into force on the first day of that fishing year.

(4) Except as provided in subsection (5) of this section, the resource rental in respect of any species or class of fish shall not

be increased in respect of any fishing year by more than 20 percent of the resource rental for that species or class of fish in respect of the previous fishing year.

[[(4A) The resource rental in respect of any species or class of fish for any fishing year beginning on or after the 1st day of October 1989 and ending before the 1st day of October 1994 shall not be increased from the resource rental for that species or class of fish for the preceding year by more than the percentage by which the Index number of the quarterly Consumers Price Index All Groups issued by the Government Statistician for the quarter ending with the 30th day of June immediately preceding the beginning of the fishing year exceeds the Index number so issued for the quarter ending on the preceding 30th day of June.]]

(5) Nothing in subsection (4) of this section shall apply in respect of—

- (a) Any species or class of fish that is described by name in Schedule 1B of this Act for the first time (notwithstanding that resource rentals may have been payable under that Schedule in respect of that species or class of fish under the category of any other species or class of fish in respect of which resource rentals are not payable under Schedule 1c to this Act);
- (b) The resource rentals payable in respect of any fishing year before the fishing year that commences with the 1st day of October 1991 in respect of any species or class of fish not described by name in Schedule 1B to this Act and not being fish in respect of which resource rentals are payable under Schedule 1c to this Act;
- (c) The resource rentals payable in respect of any fish that are to be taken using a foreign owned New Zealand fishing vessel.

(6) Before making any recommendation under subsection (1) of this section, the Minister shall advise the Fishing Industry Board and such other persons or organisations as the Minister considers appropriate, of the proposed recommendation and the reasons for it, and shall invite the Board and the persons and organisations (if any) to make submissions to the Minister in respect of the recommendation before such date, being not less than 28 days after the date of the Minister's advice as to the proposed recommendation, as the Minister may specify.

(7) In making any recommendation under subsection (1) of this section the Minister shall have regard to—

- (a) The value of individual transferable quotas **[[or transferable term quotas]]** for the species or class of fish:
- (b) The net returns and likely net returns to commercial fishermen for fish caught; including any difference in operating costs of foreign owned New Zealand fishing vessels and other New Zealand fishing vessels:
- (c) Any relevant changes in total allowable **[[commercial]]** catches:
- (d) Any submissions made to the Minister under subsection (6) of this section:
- (e) Such other matters as the Minister considers relevant.

Subs (4A) was inserted by s. 55 (1) of the Fisheries Amendment Act 1990.

In subs. (7) (a) the words in double square brackets were inserted by s. 55 (2) (a) of the Fisheries Amendment Act 1990.

In subs. (7) (c) the word "commercial" was inserted by s. 55 (2) (b) of the Fisheries Amendment Act 1990.

[107H. Resource rentals to be paid to Crown Bank Account]—The resource rentals payable under sections 28T (7), 28zc, and 107F of this Act shall be collected by the Ministry and paid into the **[[Crown Bank Account]]**.

In s. 107H the words "Crown Bank Account" were substituted for the former words by s. 86 of the Public Finance Act 1989.

Ss. 107F to 107H, and the heading thereto, were inserted by s. 28 (1) of the Fisheries Amendment Act 1986.

Repeals, Revocations, and Amendments

108. Repeals, revocations, and amendments—(1) The enactments specified in Part I of the Second Schedule to this Act are hereby repealed.

(2) The regulations specified in Part II of the said Second Schedule are hereby revoked.

(3) The Orders in Council specified in Part III of the said Second Schedule are hereby revoked.

(4) The notices specified in Part IV of the said Second Schedule are hereby revoked.

(5) The enactments specified in the Third Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(6) Subsections (2), (3), and (4) of this section shall come into force on the 1st day of January 1984.

[109. Saving]—Notwithstanding the revocations specified in subsections (2), (3), and (4) of section 108 of this Act, section 30 (5) of this Act shall continue to apply in respect of the controlled fisheries and controlled fisheries licences in force as at the 1st day of October 1983.]

This section was added by s. 29 of the Fisheries Amendment Act 1986.

SCHEDULES

Section 8 (1)

[FIRST SCHEDULE

FISHERY MANAGEMENT PLANS

1. Every fishery management plan shall contain a description of the fishery, including but not limited to—
 - (a) Maori, traditional, recreational, commercial, and non-commercial interests in the fishery:
 - (b) The number and type of fishing vessels engaged:
 - (c) The methods employed and fishing gear used:
 - (d) The species of aquatic life and their distribution:
 - (e) An assessment of the present yield and possible optimum yield from the fishery:
 - (f) Any other factor which could affect the fishery resource.
2. Every fishery management plan shall consist of the following parts:
 - (a) Background papers outlining the history and current status of the fishery:
 - (b) The policies and objectives of the plan:
 - (c) The controls that are to be imposed under the plan.
3. Any fishery management plan may, subject to the provisions of this Act, any regulations or notice declaring a controlled fishery, and any quota management system established under Part IIA of this Act,—
 - (a) Designate areas, within the fishery management area where, and the periods when, fishing for certain species of fish shall be prohibited or restricted, or permitted only by specified types of vessels or by specified methods, or with specified types or quantities of fishing gear, or subject to such other conditions as may be specified:
 - (b) Determine a total allowable catch for the fishery or for any designated areas within the fishery for all fish, aquatic life, or seaweed within the fishery or such areas, or for any designated species or type of fish, aquatic life, or seaweed:
 - (c) Establish specified limits as to the size, number, weight, sex, or any other factors, on the catch of any fish, aquatic life, or seaweed or any species or class of fish, aquatic life, or seaweed from any specified area which are considered necessary or desirable for the conservation and the management of the fishery:
 - (d) Establish a system for limiting access to the fishery to persons who can satisfy the Director-General of their eligibility having regard to the following criteria or such of these as may be specified in the plan:
 - (i) Present participation in the fishery:
 - (ii) Historical fishing patterns and dependence on the fishery:
 - (iii) The economics of the fishery:
 - (iv) The capability of fishing vessels being used, or intended to be used in the fishery, to operate in other fisheries:
 - (v) Any other relevant considerations:
 - (e) Contain any other measures considered necessary or desirable for the conservation or management of the fishery.]

This Schedule was substituted for the original First Schedule by s. 5 (3) of the Fisheries Amendment Act 1986.

[SCHEDULE 1A

Section 28w (1) (a), (9)

SPECIES OR CLASSES OF FISH IN RESPECT OF WHICH ANY PERSON MAY
HOLD OR TAKE ON LEASE 35 PERCENT OF TOTAL INDIVIDUAL
TRANSFERABLE QUOTAS FOR NEW ZEALAND FISHERIES WATERS

Hake.
Hoki.
Ling.
Orange Roughy.
Oreo Dory.
Silver Warehou.
Squid.

[SCHEDULE 1B

Sections 28zc and 107c

RESOURCE RENTALS UNDER QUOTA MANAGEMENT SYSTEM

Species or Class of Fish	Rate of resource rental per tonne of quota held where person does not have use of any foreign owned New Zealand fishing vessel at any time during the fishing year	Rate of resource rental per tonne of quota held where person has use of any foreign owned New Zealand fishing vessel at any time during the fishing year
	\$	\$
<i>Part I—Species or Classes of Fish with Fishing Year Beginning 1 October</i>		
Alfonsino ..	8.04	16.08
Barracouta ..	6.32	12.64
Blue cod ..	16.29	32.58
Blue moki ..	9.40	18.80
Bluenose ..	16.29	32.58
Blue warehou ..	8.77	17.54
Elephant fish ..	23.80	47.60
Flatfish ..	16.44	32.88
Gemfish ..	17.54	35.08
Grey mullet ..	10.02	20.04
Gurnard ..	15.03	30.06
Hake ..	33.83	67.66
Hapuku and bass combined ..	22.55	45.10
Hoki ..	11.37	22.74
Jack mackerel ..	6.02	12.04
John dory ..	21.30	42.60
Ling taken in Sub- Antarctic area ..	28.71	57.42
Ling taken in any other area ..	41.34	82.68
Orange roughy ..	131.54	263.08
Oreo dories ..	14.79	29.58
Paua ..	131.54	263.08

[[SCHEDULE 1b—continued

RESOURCE RENTALS UNDER QUOTA MANAGEMENT SYSTEM—continued

Species or Class of Fish	Rate of resource rental per tonne of quota held where person does not have use of any foreign owned New Zealand fishing vessel at any time during the fishing year	Rate of resource rental per tonne of quota held where person has use of any foreign owned New Zealand fishing vessel at any time during the fishing year
	\$	\$
Red cod taken in South-East (Coast) area	3.13	6.26
Red cod taken in any other area ..	9.40	18.80
Rig	18.64	37.27
School shark ..	15.89	31.78
Silver warehou ..	31.32	62.64
Snapper ..	51.36	102.72
Squid taken in Southern Islands area	18.74	62.48
Squid taken in any other area ..	37.49	124.98
Stargazer taken in South-East (Chat- ham Rise) area	3.13	6.26
Stargazer taken in any other area ..	18.57	27.14
Tarakihi ..	12.63	25.26
Trevally ..	12.63	25.26
Any other species or class of fish (being fish in respect of which resource rentals are not pay- able under Part II of this Schedule or Schedule 1c to this Act)	3.76	7.52
<i>Part II—Species or Classes of Fish with Fishing Year Beginning 1 April</i>		
Rock lobster, packhorse ..	346.50	346.50
Rock lobster, spiny	346.50	346.50

NEW 189

R.S. Vol. 27

Fisheries Act 1983

299

163

[[SCHEDULE 1c Sections 107F and 107G

RESOURCE RENTALS WHERE NO QUOTA MANAGEMENT SYSTEM

Species or Class of Fish	Rate of Resource Rental
Oysters taken by dredging on or after 1 October 1989	.. \$27.77 per tonne
Scallops taken on or after 1 October 1989	\$313.20 per tonne (meat weight).

111

Schedules 1A and the original 1b and 1c were inserted by s. 13 (4) of the Fisheries Amendment Act 1986.

Schedules 1b and 1c were substituted for the former Schedules 1b and 1c (as substituted by reg. 2 of S.R. 1989/278) by s. 56 (1) of the Fisheries Amendment Act 1990.

Section 108 (1) to (4)

SECOND SCHEDULE

Part I

ENACTMENTS REPEALED

- 1908, No. 65—The Fisheries Act 1908 (Reprinted 1976, Vol. 5, p. 3705).
- 1908, No. 254—The Fisheries Amendment Act 1908 (Reprinted 1976, Vol. 5, p. 3791)
- 1923, No. 10—The Fisheries Amendment Act 1923 (Reprinted 1976, Vol. 5, p. 3791).
- 1948, No. 11—The Fisheries Amendment Act 1948 (Reprinted 1976, Vol. 5, p. 3793).
- 1953, No. 38—The Fisheries Amendment Act 1953 (Reprinted 1976, Vol. 5, p. 3795).
- 1959, No. 8—The Fisheries Amendment Act 1959 (Reprinted 1976, Vol. 5, p. 3796)
- 1962, No. 68—The Fisheries Amendment Act 1962 (Reprinted 1976, Vol. 5, p. 3806).
- 1963, No. 69—The Fisheries Amendment Act 1963 (Reprinted 1976, Vol. 5, p. 3806).
- 1964, No. 35—The Fisheries Amendment Act 1964 (Reprinted 1976, Vol. 5, p. 3829).
- 1965, No. 132—The Fisheries Amendment Act 1965 (Reprinted 1976, Vol. 5, p. 3829).
- 1967, No. 49—The Fisheries Amendment Act 1967 (Reprinted 1976, Vol. 5, p. 3836).
- 1968, No. 27—The Fisheries Amendment Act 1968 (Reprinted 1976, Vol. 5, p. 3837).
- 1969, No. 6—The Fisheries Amendment Act 1969 (Reprinted 1976, Vol. 5, p. 3839).
- 1969, No. 57—The Fisheries Amendment Act (No. 2) 1969 (Reprinted 1976, Vol. 5, p. 3840).
- 1970, No. 42—The Fisheries Amendment Act 1970 (Reprinted 1976, Vol. 5, p. 3841).
- 1971, No. 72—The Fisheries Amendment Act 1971 (Reprinted 1976, Vol. 5, p. 3842).
- 1971, No. 148—The Fisheries Amendment Act (No. 2) 1971 (Reprinted 1976, Vol. 5, p. 3843).

300
164

Fisheries

R.S. Vol. 27

SECOND SCHEDULE—*continued*

ENACTMENTS REPEALED—*continued*

- 1972, No. 59—The Fisheries Amendment Act 1972 (Reprinted 1976, Vol. 5, p. 3843).
1974, No. 86—The Fisheries Amendment Act 1974 (Reprinted 1976, Vol. 5, p. 3844).
1977, No. 7—The Fisheries Amendment Act 1977 (Reprinted 1976, Vol. 5, p. 3844).
1977, No. 131—The Fisheries Amendment Act (No. 2) 1977.
1979, No. 35—The Fisheries Amendment Act 1979.
1980, No. 111—The Fisheries Amendment Act 1980.
1981, No. 67—The Fisheries Amendment Act 1981.
1982, No. 72—The Fisheries Amendment Act 1982.
-

SECOND SCHEDULE—continued

Part II

REGULATIONS REVOKED

Title	Statutory Regulations Reference
The Oyster Fishing Regulations 1946 ..	1946/108 (Reprinted with Amendments Nos. 1 to 8) 1976/142
The Oyster Fishing Regulations 1946, Amend- ment No. 2 ..	1969/12
The Oyster Fishing Regulations 1946, Amend- ment No. 6 ..	1971/8
The Oyster Fishing Regulations 1946, Amend- ment No. 8 ..	1975/191
The Oyster Fishing Regulations 1946, Amend- ment No. 9 ..	1982/154
The Fish Pass Regulations 1947 ..	1947/52
The Fish Pass Regulations 1947, Amendment No. 1 ..	1975/121
The Fisheries (General) Regulations 1950 ..	1950/147 (Reprinted with Amendments Nos. 1 to 35) 1981/241
The Fisheries (General) Regulations 1950, Amendment No. 1 ..	1952/210
The Fisheries (General) Regulations 1950, Amendment No. 2 ..	1954/75
The Fisheries (General) Regulations 1950, Amendment No. 4 ..	1955/205
The Fisheries (General) Regulations 1950, Amendment No. 5 ..	1959/186
The Fisheries (General) Regulations 1950, Amendment No. 7 ..	1963/198
The Fisheries (General) Regulations 1950, Amendment No. 9 ..	1967/112
The Fisheries (General) Regulations 1950, Amendment No. 10 ..	1968/104
The Fisheries (General) Regulations 1950, Amendment No. 12 ..	1969/98
The Fisheries (General) Regulations 1950, Amendment No. 13 ..	1970/62
The Fisheries (General) Regulations 1950, Amendment No. 14 ..	1970/160
The Fisheries (General) Regulations 1950, Amendment No. 15 ..	1971/71
The Fisheries (General) Regulations 1950, Amendment No. 16 ..	1971/156

302
166

Fisheries

R.S. Vol. 27

SECOND SCHEDULE—*continued*
REGULATIONS REVOKED—*continued*

Title	Statutory Regulations Reference
The Fisheries (General) Regulations 1950, Amendment No. 17	1971/282
The Fisheries (General) Regulations 1950, Amendment No. 18	1972/104
The Fisheries (General) Regulations 1950, Amendment No. 19	1972/198
The Fisheries (General) Regulations 1950, Amendment No. 20	1973/11
The Fisheries (General) Regulations 1950, Amendment No. 21	1973/252
The Fisheries (General) Regulations 1950, Amendment No. 22	1975/181
The Fisheries (General) Regulations 1950, Amendment No. 23	1975/259
The Fisheries (General) Regulations 1950, Amendment No. 26	1977/226
The Fisheries (General) Regulations 1950, Amendment No. 28	1977/292
The Fisheries (General) Regulations 1950, Amendment No. 29	1978/75
The Fisheries (General) Regulations 1950, Amendment No. 31	1979/131
The Fisheries (General) Regulations 1950, Amendment No. 33	1980/133
The Fisheries (General) Regulations 1950, Amendment No. 34	1980/245
The Fisheries (General) Regulations 1950, Amendment No. 35	1981/184
The Fisheries (General) Regulations 1950, Amendment No. 36	1981/299
The Fisheries (General) Regulations 1950, Amendment No. 37	1982/178
The Fisheries (General) Regulations 1950, Amendment No. 38	1983/71
The Fisheries (General) Regulations 1950, Amendment No. 39	1983/138
The Freshwater Fisheries Regulations 1951	1951/15 (Reprinted with Amendments Nos. 1 to 13) 1976/191
The Freshwater Fisheries Regulations 1951, Amendment No. 1	1951/200
The Freshwater Fisheries Regulations 1951, Amendment No. 2	1952/185
The Freshwater Fisheries Regulations 1951, Amendment No. 3	1955/177

SECOND SCHEDULE—continued

REGULATIONS REVOKED—continued

Title	Statutory Regulations Reference
The Freshwater Fisheries Regulations 1951, Amendment No. 4	1957/178
The Freshwater Fisheries Regulations 1951, Amendment No. 5	1960/142
The Freshwater Fisheries Regulations 1951, Amendment No. 6	1962/152
The Freshwater Fisheries Regulations 1951, Amendment No. 7	1963/179
The Freshwater Fisheries Regulations 1951, Amendment No. 8	1964/136
The Freshwater Fisheries Regulations 1951, Amendment No. 9	1965/170
The Freshwater Fisheries Regulations 1951, Amendment No. 10	1966/208
The Freshwater Fisheries Regulations 1951, Amendment No. 11	1970/101
The Freshwater Fisheries Regulations 1951, Amendment No. 13	1975/152
The Freshwater Fisheries Regulations 1951, Amendment No. 15	1977/268
The Freshwater Fisheries Regulations 1951, Amendment No. 16	1980/110
The Freshwater Fisheries Regulations 1951, Amendment No. 17	1980/197
The Freshwater Fisheries Regulations 1951, Amendment No. 18	1981/244
The Freshwater Fisheries Regulations 1951, Amendment No. 19	1982/197
The Toheroa Regulations 1955	1955/206 (Reprinted with Amendments Nos. 1 to 13) 1974/259
The Toheroa Regulations 1955, Amendment No. 1	1962/131
The Toheroa Regulations 1955, Amendment No. 2	1965/111
The Toheroa Regulations 1955, Amendment No. 9	1971/168
The Toheroa Regulations 1955, Amendment No. 10	1972/135
The Toheroa Regulations 1955, Amendment No. 13	1974/236
The Toheroa Regulations 1955, Amendment No. 14	1975/223
The Toheroa Regulations 1955, Amendment No. 16	1977/234

304
168

Fisheries

R.S. Vol. 27

SECOND SCHEDULE—*continued*

REGULATIONS REVOKED—*continued*

Title	Statutory Regulations Reference
The Toheroa Regulations 1955, Amendment No. 18	1979/174
The Toheroa Regulations 1955, Amendment No. 19	1980/184
The Toheroa Regulations 1955, Amendment No. 20	1981/230
The Quinnot Salmon Regulations 1963	1963/143
The Quinnot Salmon Regulations 1963, Amendment No. 1	1975/123
The Commercial Fishing Regulations 1963	1963/196 (Reprinted with Amendments Nos. 1 and 2) 1968/66
The Commercial Fishing Regulations 1963, Amendment No. 1	1967/6
The Commercial Fishing Regulations 1963, Amendment No. 2	1967/119
The Commercial Fishing Regulations 1963, Amendment No. 3	1969/83
The Commercial Fishing Regulations 1963, Amendment No. 4	1975/216
The Commercial Fishing Regulations 1963, Amendment No. 5	1977/71
The Rock Lobster Regulations 1969	1969/250 (Reprinted with Amendments Nos. 1 to 5) 1974/195
The Rock Lobster Regulations 1969, Amendment No. 1	1971/86
The Rock Lobster Regulations 1969, Amendment No. 3	1972/125
The Rock Lobster Regulations 1969, Amendment No. 5	1974/150
The Rock Lobster Regulations 1969, Amendment No. 7	1976/149
The Rock Lobster Regulations 1969, Amendment No. 8	1976/293
The Rock Lobster Regulations 1969, Amendment No. 9	1977/150
The Rock Lobster Regulations 1969, Amendment No. 10	1977/270
The Rock Lobster Regulations 1969, Amendment No. 11	1981/26
The Electric Fishing Machine Regulations 1971	1971/31
The Southern Lakes Fishing Regulations 1971	1971/65
The Southern Lakes Fishing Regulations 1971, Amendment No. 1	1973/20

SECOND SCHEDULE—continued

REGULATIONS REVOKED—continued

Title	Statutory Regulations Reference
The Southern Lakes Fishing Regulations 1971, Amendment No. 2	1974/5
The Southern Lakes Fishing Regulations 1971, Amendment No. 3	1976/220
The Southern Lakes Fishing Regulations 1971, Amendment No. 4	1979/232
The Southern Lakes Fishing Regulations 1971, Amendment No. 5	1980/198
The Freshwater Fish Farming Regulations 1972	1972/229
The Freshwater Fish Farming Regulations 1972, Amendment No. 1	1973/147
The Freshwater Fish Farming Regulations 1972, Amendment No. 2	1982/256
The Fisheries Experimental Waters (Grey, Buller, Karamea, and Mokihinui Rivers) Regulations 1975	1975/151
The Controlled Fisheries Fees Regulations 1978	1978/145
The Controlled Fisheries Fees Regulations 1978, Amendment No. 1	1978/240
The Controlled Fisheries Fees Regulations 1978, Amendment No. 2	1981/1
The Controlled Fisheries Fees Regulations 1978, Amendment No. 3	1982/153
The Rotorua and Taupo Trout Fishing Regula- tions 1980	1980/149
The Rotorua and Taupo Trout Fishing Regula- tions 1980; Amendment No. 1	1981/149
The Whitebait Fishing Regulations 1981	1981/102
The Whitebait Fishing Regulations 1981, Amend- ment No. 1	1981/221
The Fisheries Experimental Waters (Waitaki River Demonstration Channels) Regulations 1982	1982/219

306
170

Fisheries

R.S. Vol. 27

SECOND SCHEDULE—*continued*

Part III

ORDERS IN COUNCIL REVOKED

Title	Statutory Regulations Reference
The Fisheries Amendment Act Commencement Order 1969	1969/246
The Fisheries Amendment Act Commencement Order 1979	1979/245
The Controlled Fisheries Extension Order 1978	1978/154
The Controlled Fisheries Extension Order 1980	1980/193
The Controlled Fisheries Extension Order 1981	1981/250
The Controlled Fisheries Extension Order 1982	1982/45

Part IV

NOTICES REVOKED

Title	Statutory Regulations Reference
Freshwater Fisheries Regulations Modification Notices	
District:	
Ashburton	1978/131
Amendment No. 1	1979/136
Amendment No. 2	1981/251
Auckland	1976/246
Bay of Islands, Hobson, Mangonui-Whangaroa, and Whangarei	1979/137
Hawera, Stratford, and Taranaki	1975/156
Amendment No. 1	1982/224
Hawke's Bay	1982/223
Marlborough and Nelson	1981/253
North Canterbury	1978/133
Amendment No. 1	1979/238
Amendment No. 2	1981/252
Otago	1981/254
South Canterbury and Waitaki Valley	1982/225
Southland	1981/255
Tauranga	1979/142
Wanganui	1979/155
Wellington	1982/226
West Coast and Westland	1982/109
Lake Rotopounamu Faunistic Reserve Notice 1966	1966/43
Controlled Fisheries Notices	
Fishery:	
Lake Ellesmere Eel Fishery	1978/289
Foveaux Strait Dredge Oyster Fishery	1979/249
Bay of Plenty Rock Lobster Fishery	1980/183

SECOND SCHEDULE—*continued*NOTICES REVOKED—*continued*

Title	Statutory Regulations Reference
Amendment No. 1	1981/135
Canterbury and Marlborough Rock Lobster Fishery	1980/152
Amendment No. 2	1982/204
Chatham Islands Rock Lobster Fishery	1981/112
Amendment No. 1	1983/108
Gisborne Rock Lobster Fishery	1980/23
Amendment No. 3	1983/109
Northland Rock Lobster Fishery	1980/213
Amendment No. 1	1981/128
Otago Rock Lobster Fishery	1980/59
Amendment No. 1	1981/137
Amendment No. 2	1982/183
Southern Rock Lobster Fishery	1980/103
Amendment No. 1	1981/138
Amendment No. 2	1982/210
Taranaki Rock Lobster Fishery	1981/23
Amendment No. 2	1983/110
Wellington and Hawke's Bay Rock Lobster Fishery	1980/129
Amendment No. 1	1981/140
Westland Rock Lobster Fishery	1981/88
Amendment No. 1	1983/111
Coromandel Scallop Fishery	1978/227
Southern Scallop Fishery	1978/136
Whangarei Scallop Fishery	1981/249
Hauraki Gulf Wetfish Fishery	1982/201
Amendment No. 1	1982/251
The Fisheries (Hauraki Gulf Wetfish Fishery) Moratorium Notice 1980	1980/201
The Fisheries (Wetfish, Shellfish, and Eel Fisher- ies) Moratorium Notice 1982	1982/59
The Fisheries (Scallop Season Variation) Notice 1982	1982/171
The Fisheries (Scallop Season Variation) Notice 1983	1983/124

308
172

Fisheries

R.S. Vol. 27

Section 108

THIRD SCHEDULE
ENACTMENTS AMENDED

Enactment Amended	Amendment
1959, No. 90—The Maori Purposes Act 1959	<i>Impliedly repealed by s. 37 of the Conservation Law Reform Act 1990.</i>
1971, No. 29—The Marine Farming Act 1971	<i>These amendments have been incorporated in the reprinted Marine Farming Act 1971 (1988, R.S. Vol. 22, p. 695).</i>
1975, No. 51—The Marine Farming Amendment Act 1975	By repealing section 5.
1977, No. 103—The Maori Purposes Act 1977	By omitting from the Schedule so much as relates to section 14 of the Maori Purposes Act 1959.

Parts of this Schedule were repealed by:
S. 3 (2) of the Marine Farming Amendment Act 1987.
S. 37 of the Conservation Law Reform Act 1990 (impliedly).

THE FISHERIES AMENDMENT ACT 1986

1986, No. 34

An Act to amend the Fisheries Act 1983

[25 July 1986]

1. Short Title and commencement—(1) This Act may be cited as the Fisheries Amendment Act 1986, and shall be read together with and deemed part of the Fisheries Act 1983 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of August 1986.

2. (1) *This subsection substituted the definition of the term "commercial fisherman" for the original definition of that term in s. 2 (1) of the principal Act.*

(2) *Repealed by s. 48 (5) of the Maori Fisheries Act 1989.*

(3) *This subsection inserted the definition of the term "foreign owned New Zealand fishing vessel" in s. 2 (1) of the principal Act.*

(4) *Repealed by s. 2 (3) of the Fisheries Amendment Act 1990.*

(5) *This subsection amended the definition of the term "owner" in s. 2 (1) of the principal Act.*

(6) *This subsection inserted the definitions of the terms "Quota Appeal Authority" and "quota management system" in s. 2 (1) of the principal Act.*

3. *This section inserted s. 2A in the principal Act.*
4. *This section inserted s. 3A in the principal Act.*
5. (1) *This subsection substituted new subsections for subss. (6) and (7) of s. 8 of the principal Act.*
(2) *This subsection amended s. 10 (1), (4), (6) (a), and (7) (a) of the principal Act.*
(3) *This subsection substituted a new First Schedule to the principal Act.*
6. *This section substituted new ss. 10A and 11 for the original s. 11 of the principal Act.*
7. *This section amended s. 12 (1) of the principal Act.*
8. (1) *This subsection amended s. 18 (4) of the principal Act.*
(2) *This subsection amended s. 22 of the principal Act.*
9. *This section inserted s. 28A in the principal Act.*
10. *This section inserted Part IIA (originally comprising ss. 28B to 28zc but now extended to 28zg) in the principal Act.*
11. *This section added subss. (6) to s. 30 of the principal Act.*
12. *This section substituted new subss. (3), (4), (4A), and (4B) for the original subss. (3) and (4) of s. 37 of the principal Act.*
13. (1) *This subsection substituted a new Part IV (originally comprising ss. 55 to 67G but now extended to 67H) for the original Part IV (comprising ss. 55 to 67) of the principal Act.*
(2) (a) *This paragraph amended the definition of the term "fishing permit" in s. 2 (1) of the principal Act.*
(b) *This paragraph amended the definition of the term "Registrar" in s. 2 (1) of the principal Act.*
(3) *This subsection amended s. 3 (2) of the principal Act.*
(4) *This subsection inserted Schedules 1A and 1B in the principal Act. New Schedules 1B and 1c have since been substituted by s. 56 (1) of the Fisheries Amendment Act 1990.*
- 14-19. *Repealed by s. 146 of the Conservation Law Reform Act 1990.*
20. (1) *This subsection amended s. 79 (1) (c) of the principal Act.*
(2) *This subsection amended s. 79 (1) (d) of the principal Act.*

21. *This section added subs. (2) to s. 87 of the principal Act.*

22. *Repealed by s. 40 (2) of the Fisheries Amendment Act 1990.*

23. Regulations—(1) Section 89 (1) (b) of the principal Act is hereby repealed.

(2) *This subsection substituted new paras. (h), (i), and (ia) for the original paras. (h) and (i) of s. 89 (1) of the principal Act.*

(3) *This subsection amended s. 89 (1) (k) of the principal Act.*

(4) (a) and (b) *These paragraphs amended s. 89 (1) (l) of the principal Act.*

(5) *This subsection inserted subs. (1A) in s. 89 of the principal Act.*

24. *Repealed by s. 146 of the Conservation Law Reform Act 1990.*

25. *This section amended s. 91 (e) of the principal Act.*

26. *This section inserted s. 92A in the principal Act.*

27. (1) *This subsection substituted new ss. 93 to 107E for the original ss. 93 to 107 of the principal Act.*

(2) *This subsection amended s. 51 (2) of the principal Act.*

28. (1) *This subsection inserted ss. 107F to 107H, together with the heading thereto, in the principal Act.*

(2) *The principal Act is hereby amended by inserting, after Schedule 1B (as inserted by section 13 (4) of this Act) the Schedule 1C set out in the Third Schedule to this Act.*

In subs. (2), Schedule 1C has been replaced from time to time by S.R. 1987/281, S.R. 1988/221, S.R. 1989/278, and s. 56 (1) of the Fisheries Amendment Act 1990.

29. *This section added s. 109 to the principal Act.*

30. (1), (2) *These amendments have been incorporated in the reprinted Fishing Industry Board Act 1963 (1990, R.S. Vol. 26, p. 378).*

31. *Repealed by s. 2 (2) of the Public Finance Amendment Act 1987.*

32. Revocations—The following regulations are hereby revoked:

(a) *The Rotorua and Taupo Trout Fishing Regulations 1980, Amendment No. 2 (S.R. 1982/137);*

(b) *The Rotorua and Taupo Trout Fishing Regulations 1980, Amendment No. 3 (S.R. 1983/105);*

- (c) The Fisheries (General) Regulations 1950, Amendment No. 40 (S.R. 1983/192);
- (d) The Fisheries (Chatham Islands Amateur Fishing) Notice 1983 (S.R. 1983/306);
- (e) The Fisheries (Chatham Islands Rock Lobster Closed Season) Notice 1985 (S.R. 1985/27).

SCHEDULES

FIRST SCHEDULE

Section 5 (3)

NEW FIRST SCHEDULE SUBSTITUTED IN PRINCIPAL ACT

Reprinted as the First Schedule to the principal Act, where it appears in this reprint.

SECOND SCHEDULE

Section 13 (4)

NEW SCHEDULES 1A AND 1B TO PRINCIPAL ACT

Schedule 1A has been incorporated in the principal Act, where it appears in this reprint.

Schedule 1B has been replaced from time to time by S.R. 1987/281, S.R. 1989/278, and s. 56 (1) of the Fisheries Amendment Act 1990; the latest version has been incorporated in the principal Act, where it appears in this reprint.

THIRD SCHEDULE

Section 28 (2)

NEW SCHEDULE 1C TO PRINCIPAL ACT

Schedule 1C has been replaced from time to time by S.R. 1987/281, S.R. 1989/278, and s. 56 (1) of the Fisheries Amendment Act 1990; the latest version has been incorporated in the principal Act, where it appears in this reprint.

THE MAORI FISHERIES ACT 1989

1989, No. 159

An Act—

- (a) To make better provision for the recognition of Maori fishing rights secured by the Treaty of Waitangi; and
- (b) To facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing; and

(c) To make better provision for the conservation and management of the rock lobster fishery

[20 December 1989]

1. Short Title and commencement—(1) This Act may be cited as the Maori Fisheries Act 1989.

(2) This Act shall come into force on the 20th day of December 1989.

PART II

AMENDMENTS TO FISHERIES ACT 1983

47. This Part to be read with Fisheries Act 1983—This Part of this Act shall be read together with and deemed part of the Fisheries Act 1983 (in this Part referred to as the principal Act).

48. (1) *This subsection substituted a new definition for the definition of the term "fishing year" in s. 2 (1) of the principal Act.*

(2) *This subsection substituted a new definition for the definition of the term "quota management area" in s. 2 (1) of the principal Act.*

(3) *This subsection inserted the definition of the term "rock lobster" in s. 2 (1) of the principal Act.*

(4) *This subsection inserted the definition of the term "transferable term quota" in s. 2 (1) of the principal Act.*

(5) Section 2 (2) of the Fisheries Amendment Act 1986 is hereby consequentially repealed.

49. *This section inserted s. 28BA in the principal Act.*

50. *Repealed by s. 5 (2) of the Fisheries Amendment Act 1990.*

51. *This section inserted s. 28EA in the principal Act.*

52. *This section inserted s. 28FA in the principal Act.*

53. *This section inserted s. 28GA in the principal Act.*

54. *This section inserted s. 28HA in the principal Act.*

55. *This section substituted a new subsection for subs. (1) of s. 28I of the principal Act.*

56. *This section inserted s. 28JA in the principal Act.*

57. *This section inserted s. 28KA in the principal Act.*

- 58.** *This section inserted s. 28NA in the principal Act.*
- 59.** *This section inserted s. 28OA in the principal Act.*
- 60.** *Repealed by s. 16 (2) of the Fisheries Amendment Act 1990.*
- 61.** *Repealed by s. 17 (6) of the Fisheries Amendment Act 1990.*
- 62.** *This section amended s. 28R of the principal Act.*
- 63.** *Repealed by s. 19 (2) of the Fisheries Amendment Act 1990.*
- 64.** *Impliedly repealed by s. 20 of the Fisheries Amendment Act 1990.*
- 65.** *This section substituted a new section for s. 28U in the principal Act.*
- 66.** *Repealed by s. 22 (3) of the Fisheries Amendment Act 1990.*
- 67.** (1) *This subsection substituted new subss. (1), (2) and (2A) for subss. (1) and (2) of s. 28W of the principal Act.*
(2) *Repealed by s. 23 (5) of the Fisheries Amendment Act 1990.*
- 68.** *This section substituted a new section for s. 28X of the principal Act.*
- 69.** *This section amended s. 28Y (1) of the principal Act.*
- 70.** *This section substituted new subsections for subss. (5) to (11) of s. 28Z of the principal Act.*
- 71.** *Repealed by s. 26 (2) of the Fisheries Amendment Act 1990.*
- 72.** *Repealed by s. 27 (2) of the Fisheries Amendment Act 1990.*
- 73.** *Repealed by s. 28 (2) of the Fisheries Amendment Act 1990.*
- 74.** *This section inserted Part IIIA (comprising ss. 54A to 54K) in the principal Act.*
- 75.** *Repealed by s. 50 (2) of the Fisheries Amendment Act 1990.*
- 76, 77.** *Repealed by s. 52 (3) of the Fisheries Amendment Act 1990, as from their commencement.*
- 78, 79.** *Repealed by s. 56 (2) of the Fisheries Amendment Act 1990.*

80. Rock lobster excluded from controlled fisheries—

(1) As from the commencement of the 1st day of April 1990, no rock lobster fishery within New Zealand fisheries waters shall be a controlled fishery and every controlled fisheries fishing licence then in force shall be deemed to be cancelled to the extent that it relates to rock lobster.

(2) Subsection (1) of this section shall have effect notwithstanding anything in the principal Act (including anything in section 30 (5) of that Act).

81. Revocations—The orders specified in the Fourth Schedule to this Act are hereby revoked.

SCHEDULES

Section 49

SECOND SCHEDULE

QUOTA MANAGEMENT AREAS IN RESPECT OF ROCK LOBSTERS

Species	Names	Reference Numbers	Total Allowable [Commercial] Catches (Greenweight Tonnes)
Spiny Rock Lobster	Northland ..	1	153
	Bay of Plenty ..	2	230
	Gisborne ..	3	427
	Wellington/Hawkes Bay ..	4	573
	Canterbury/Marlborough	5	460
	Chatham Islands	6	[503]
	Otago ..	7	175
	Southern ..	8	1128
	Westland/Taranaki	9	54
	Kermadec ..	10	0.1
Packhorse Rock Lobster	All New Zealand fisheries waters	...	[27]

In the headings the word "Commercial" was inserted by s. 57 (7) (a) of the Fisheries Amendment Act 1990.

In the fourth column the figures "503" were substituted for the figures "447" by s. 57 (7) (b) of the Fisheries Amendment Act 1990.

In the third column of the Packhorse Rock Lobster the figures "22" were omitted by s. 57 (7) (c) of the Fisheries Amendment Act 1990.

In the fourth column of the Packhorse Rock Lobster the figures "27" were inserted by s. 57 (7) (d) of the Fisheries Amendment Act 1990.

THIRD SCHEDULE

Section 49

QUOTA MANAGEMENT AREAS DEFINED

Quota Management Area 1—Northland

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a northerly direction) from Te Arai Point ($36^{\circ}09.8'S$ and $174^{\circ}39'E$) around North Cape and Cape Reinga to the North Head of Kaipara Harbour ($36^{\circ}24'S$ and $174^{\circ}03.5'E$); and
- (b) By a straight line from Te Arai Point on a true compass bearing of 045° ; and
- (c) By a straight line from the North Head of Kaipara Harbour on a true compass bearing of 270° .

[Quota Management Area 2—Bay of Plenty]

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the mean high-water mark of that part of shore of the North Island from East Cape Lighthouse (at $37^{\circ}41.4'S$ and $178^{\circ}32.8'E$) to Te Arai Point (at $36^{\circ}09.8'S$ and $174^{\circ}39'E$); and
- (b) By a straight line from East Cape Lighthouse (at $37^{\circ}41.4'S$ and $178^{\circ}32.8'E$) on a true compass bearing of 45° ; and
- (c) By a straight line from Te Arai Point (at $36^{\circ}09.8'S$ and $174^{\circ}39'E$) on a true compass bearing of 45° .]

[Quota Management Area 3—Gisborne]

The area of New Zealand fisheries waters defined on the Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the mean high-water mark of that part of the shore of the North Island from East Cape Lighthouse (at $37^{\circ}41.4'S$ and $178^{\circ}32.8'E$) to the Wairoa River entrance (at $39^{\circ}04'S$ and $177^{\circ}25'E$); and
- (b) By a straight line from East Cape Lighthouse (at $37^{\circ}41.4'S$ and $178^{\circ}32.8'E$) on a true compass bearing of 45° ; and
- (c) By a straight line from the Wairoa River entrance (at $39^{\circ}04'S$ and $177^{\circ}25'E$) on a true compass bearing of 160° .]

Quota Management Area 4—Wellington/Hawkes Bay

The area of New Zealand fisheries waters defined on the Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a southerly direction) from the Wairoa River entrance to the Manawatu River entrance; and
- (b) By a straight line drawn due west of the Manawatu River entrance to a point at $40^{\circ}28'4''S$ and $174^{\circ}30'E$, and thence on a true compass bearing of 135° ; and
- (c) By a straight line from the Wairoa River entrance on a true compass bearing of 160° .

For the purposes of the definition of quota management area 4,—

“Manawatu River entrance” means that point on the southern bank of the mouth of the Manawatu River at $40^{\circ}28'4''S$ and $175^{\circ}12'5''E$;

THIRD SCHEDULE—*continued*

QUOTA MANAGEMENT AREAS DEFINED—*continued*

"Wairoa River entrance" means that point in the mouth of the Wairoa River at 39°04'S and 177°25'E.

Quota Management Area 5—Canterbury/Marlborough

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a northerly direction) from the Waitaki River South Head Aero Beacon (44°57'S and 170°08'E) to Bush End Point (40°33'S and 173°02'E) at Farewell Spit; and
- (b) By a straight line drawn due east of Bush End Point to a point at 40°28'4"S and 174°30'E, thence due south to a point in Cook Strait at 41°30'S and 174°30'E, and thence on a true compass bearing of 135°; and
- (c) By a straight line from the Waitaki River South Head Aero Beacon on a true compass bearing of 135°.

Quota Management Area 6—Chatham Islands

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded by a line commencing at a point 40°25'S and 178°W on the outer limits of the exclusive economic zone; then proceeding along the outer limits of the zone to a position 51°50'S and 174°35'E; then proceeding in a straight line to a position 50°55'S and 173°50'E; then proceeding along the outer limits of the zone to a position 48°15'S and 174°E; then proceeding in a straight line to the point of commencement.

Quota Management Area 7—Otago

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline from the Waitaki River South Head Aero Beacon (at 44°56'7"S and 171°80'E) to Long Point (at 46°34'8"S and 169°35'E); and
- (b) By a straight line from the said Waitaki River South Head Aero Beacon on a true compass bearing of 135°; and
- (c) By a straight line on a true compass bearing from the said Long Point at 135°.

Quota Management Area 8—Southern

The area of New Zealand fisheries waters defined on Ministry of Agriculture and Fisheries Map No. 151 (File Reference 20/1/5) held in the Head Office of the said Ministry, and bounded—

- (a) By the shoreline (commencing in a southerly direction) from Long Point (46°34'S and 169°35'E) to Abut Head (43°05'9"S and 170°16'2"E); and
- (b) By a straight line from Long Point on a true compass bearing of 135°; and
- (c) By a straight line from Abut Head on a true compass bearing of 317°.

THIRD SCHEDULE—*continued*

QUOTA MANAGEMENT AREAS DEFINED—*continued*

Quota Management Area 9—Westland/Taranaki

The area of New Zealand fisheries waters bounded—

- (a) By the shoreline (commencing in a southerly direction) from the North Head of Kaipara Harbour ($36^{\circ}24'S$ and $174^{\circ}03.5'E$) to the Manawatu River entrance ($40^{\circ}28'4''S$ and $175^{\circ}12'5''E$); and
- (b) By a straight line from the Manawatu River entrance to Bush End Point light; and
- (c) By the shoreline (commencing in a westerly then proceeding in a southerly direction) from the Bush End Point light to Abut Head ($43^{\circ}06'S$ and $170^{\circ}16'E$); and
- (d) By a straight line from Abut Head on a true compass bearing of 317° ; and
- (e) By a straight line from North Head Kaipara Harbour on a true compass bearing of 270° .

Quota Management Area 10—Kermadec

The area of New Zealand fisheries waters around the Kermadec Islands, being the area enclosed by a line commencing at a point $34^{\circ}34.3'S$ and $179^{\circ}51.0'W$ on the outer limits of the exclusive economic zone and then proceeding generally in an easterly, northerly, westerly, and southerly direction along the outer limits of the exclusive economic zone to a point $34^{\circ}22.1'S$ and $179^{\circ}29.6'E$ on the outer limits of the exclusive economic zone; and then proceeding in a straight line to the first-mentioned point. (See *Gazette*, 1986, page 412.)

Quota management area 2-Bay of Plenty was substituted by s. 57 (8) of the Fisheries Amendment Act 1990.

Quota management area 3-Gisborne was substituted by s. 57 (9) of the Fisheries Amendment Act 1990.

FOURTH SCHEDULE

Section 81

ORDERS REVOKED

Title	Statutory Regulations Serial Number
The Controlled Fisheries (Bay of Plenty Rock Lobster Fishery) Order 1985	1985/52
The Controlled Fisheries (Gisborne Rock Lobster Fishery) Order 1985	1985/53

THE FISHERIES AMENDMENT ACT 1990
1990, No. 29

An Act to amend the Fisheries Act 1983

[1 April 1990]

1. Short Title and commencement—(1) This Act may be cited as the Fisheries Amendment Act 1990, and shall be read together with and deemed part of the Fisheries Act 1983.

(2) Except as otherwise provided in this Act, this Act shall come into force on the day on which it receives the Royal assent.

As to subs. (2), see ss. 17 (5), 39, and 52 (1) and (2) of the principal Act, and the notes thereto.

2. (1) This subsection substituted a new definition for the definition of the term "lease" in s. 2 (1) of the principal Act.

(2) This subsection inserted the definition of the term "total allowable commercial catch" in s. 2 (1) of the principal Act.

(3) Section 2 (4) of the Fisheries Amendment Act 1986 is hereby consequentially repealed.

(4) Unless the context otherwise requires, every reference in every other enactment or in any regulation or notice made under the principal Act to the term "total allowable catch" shall, where that reference is in respect of any species or class of fish that is subject to a quota management system under Part IIA of the principal Act, be read as a reference to the term "total allowable commercial catch"; and the total allowable catch applying to any species or class of fish in any area immediately before the commencement of this Act shall, until a new total allowable commercial catch is specified therefor, be the total allowable commercial catch for that species or class of fish in that area.

3. This section substituted new subs. (2) to (5) for the original subs. (2) of s. 3A of the principal Act.

4. (1) This subsection substituted a new subsection for subs. (2) of s. 28A of the principal Act.

(2) (a) This paragraph amended s. 28A (7) of the principal Act.

(b) This paragraph amended s. 28A (8) of the principal Act.

(c) This paragraph amended s. 28A (9) of the principal Act.

5. (1) This subsection substituted new ss. 28C, 28CA, and 28D for the former ss. 28C and 28D (as inserted by s. 10 of the Fisheries Amendment Act 1986) of the principal Act.

(2) Section 50 of the Maori Fisheries Act 1989 is hereby consequentially repealed.

(3) For the avoidance of doubt, it is hereby declared that the words appearing in section 28D (1) (a) (i) of the principal Act (as enacted by subsection (1) of this section) shall bear the same meaning as the same words bore in section 28c (1) of the principal Act immediately before its repeal by subsection (1) of this section, and that the use of the term "total allowable commercial catch" in the said section 28D (1) shall not, by reason of the word "commercial" appearing in that term, be construed as altering that meaning.

6. (1) *This subsection amended s. 28EA (1) of the principal Act.*

(2) *This subsection substituted a new subsection for subs. (2) of s. 28EA of the principal Act.*

(3) *This subsection amended s. 28EA (3) (a), (b), and (c), and (5) of the principal Act.*

7. *This section amended s. 28F (1) of the principal Act.*

8. *This section amended s. 28FA (1) of the principal Act.*

9. (a) *This paragraph amended s. 28J (1), (2), and (4) of the principal Act.*

(b) *This paragraph amended s. 28J (2) of the principal Act.*

(c) *This paragraph amended s. 28J (4) of the principal Act.*

10. (a) *This paragraph amended s. 28JA (1), (2), and (3) of the principal Act.*

(b) *This paragraph amended s. 28JA (2) of the principal Act.*

(c) *This paragraph amended s. 28JA (3) of the principal Act.*

11. *This section substituted a new paragraph for para. (a) of s. 28K (3) of the principal Act.*

12. (a) and (b) *These paragraphs amended s. 28N (1) of the principal Act.*

13. (1) (a) and (b) *These paragraphs amended s. 28NA (1) of the principal Act.*

(2) *This subsection amended s. 28NA (2) of the principal Act.*

14. (1) *This subsection inserted subs. (1A) in s. 28O of the principal Act.*

(2) *This subsection amended s. 28O (2) of the principal Act.*

(3) *This subsection substituted a new paragraph for para. (a) of s. 28o (6) of the principal Act.*

(4) Notwithstanding anything in section 28o (1A) of the principal Act (as inserted by subsection (1) of this section), no quota for squid shall be deemed to be allocated to the Crown at any time when the interim order made by the High Court on the 2nd day of November 1987 in certain proceedings commenced by the filing of applications in the Wellington Registry under numbers CP 559/87, 610/87, and 614/87, as subsequently varied by that Court, is in force, except to the extent that any variation to the order so allows; and, until that order is discharged or any variation so allows,—

- (a) The Crown may, to the extent that it is not inconsistent with the interim order or any variation to that order, deal with quota for squid in accordance with section 28r of the principal Act as if that section had not been repealed by section 20 of this Act; and
- (b) The provisions of the said section 28r, as in force before its repeal, shall apply accordingly in relation to any such dealings.

15. *This section inserted ss. 28oB to 28oO, together with the headings thereto, in the principal Act.*

16. (1) *This subsection substituted a new subsection for subs. (1) of s. 28P of the principal Act.*

(2) Section 60 of the Maori Fisheries Act 1989 is hereby consequentially repealed.

17. (1) *This subsection substituted a new subsection for subs. (1) of s. 28Q of the principal Act.*

(2) *This subsection amended s. 28Q (2) of the principal Act.*

(3) *This subsection substituted a new subsection for subs. (4) of s. 28Q of the principal Act.*

(4) *This subsection amended s. 28Q (6) of the principal Act.*

(5) *This subsection added subss. (7) and (8) to s. 28Q of the principal Act.*

(6) Section 61 of the Maori Fisheries Act 1989 is hereby consequentially repealed.

(7) Subsection (5) of this section shall come into force on a date to be fixed by the Governor-General by Order in Council.

Subs. (5) came into force on 1 November 1990, see S.R. 1990/308.

18. (1) *This subsection added para. (c) to s. 28r (1) of the principal Act.*

(2) *This subsection added para. (f) to s. 28R (2) of the principal Act.*

19. (1) *This subsection substituted a new section for s. 28s of the principal Act.*

(2) Section 63 of the Maori Fisheries Act 1989 is hereby repealed.

20. Sections repealed—The principal Act is hereby amended by repealing section 28T (as inserted by section 10 of the Fisheries Amendment Act 1986) and section 28TA (as inserted by section 64 of the Maori Fisheries Act 1989).

21. (a) *This paragraph amended s. 28U (4) of the principal Act.*

(b) *This paragraph amended s. 28U (5) and (6) of the principal Act.*

22. (1) *This subsection substituted a new section for s. 28v of the principal Act.*

(2) Nothing in subsection (1) of this section shall apply to restrict the right of any holder or lessee or lessor of quota to take additional fish under the quota to the extent that any lease of the quota was registered under sections 28P and 28Q of the principal Act before the 1st day of April 1990, and section 28v of the principal Act, as in force before its repeal by subsection (1) of this section, shall apply to any such holder, lessee, or lessor in respect of any such registered lease.

(3) Section 66 of the Maori Fisheries Act 1989 is hereby consequentially repealed.

23. (1) (a) *This paragraph amended s. 28w (1) (b) of the principal Act.*

(b) *This paragraph amended s. 28w (1) (c) of the principal Act.*

(2) *This subsection amended s. 28w (2) of the principal Act.*

(3) *This subsection substituted new subsections for subss. (3) and (4) of s. 28w of the principal Act.*

(4) (a) *This paragraph amended s. 28w (5) (a) of the principal Act.*

(b) *This paragraph amended s. 28w (5) and (6) of the principal Act.*

(5) Section 67 (2) of the Maori Fisheries Act 1989 is hereby repealed.

24. *This section amended s. 28x of the principal Act.*

25. *This section amended s. 28z (5) of the principal Act.*

26. (1) *This subsection substituted a new s. 28ZA, and the heading thereto, for the former s. 28ZA (as inserted by s. 10 of the Fisheries*

322
186

Fisheries

R.S. Vol. 27

Amendment Act 1986) and s. 28ZAA (as inserted by s. 71 of the Maori Fisheries Act 1989).

(2) Section 71 of the Maori Fisheries Act 1989 is hereby consequentially repealed.

27. (1) *This subsection substituted a new section for s. 28ZB of the principal Act.*

(2) Section 72 of the Maori Fisheries Act 1989 is hereby repealed.

28. (1) *This subsection substituted new subss. (1), (2), (3), (4), (4A), and (4B) for the former subss. (1) to (4) of s. 28ZC of the principal Act.*

(2) Section 73 of the Maori Fisheries Act 1989 is hereby consequentially repealed.

29. (1) *This subsection inserted ss. 28ZD to 28ZG in the principal Act.*

(2) This section shall come into force on the 1st day of October 1990.

30. *This section amended s. 60 (1) of the principal Act.*

31. *This section inserted subss. (1A) and (1B) in s. 62 of the principal Act.*

32. *This section amended s. 63 (2) of the principal Act.*

33. (1) *This subsection substituted a new section, and the heading thereto, for s. 66 of the principal Act.*

(2) (a) and (b) *These paragraphs amended s. 67B (1) of the principal Act.*

(3) *The Third Schedule to the Official Information Amendment Act 1987 is hereby amended by repealing so much of the item relating to the Fisheries Act 1983 as refers to section 66 (3).*

(4) This section shall come into force on the 1st day of October 1990.

34. *This section inserted subs. (2A) in s. 87 of the principal Act.*

35. (1) *This subsection substituted a new subsection for subs. (2) of s. 67A of the principal Act.*

(2) *This subsection added subs. (5) to s. 67A of the principal Act.*

36. *This section inserted s. 67H in the principal Act.*

37. (1) *This subsection substituted a new paragraph for para. (a) of s. 79 (1) of the principal Act.*

(2) *This subsection amended s. 79 (1) (b) of the principal Act.*

(3) *This subsection amended s. 79 (1) (d) of the principal Act.*

(4) *This subsection inserted subs. (5A) in s. 79 of the principal Act.*

(5) *This subsection added subs. (7) to s. 79 of the principal Act.*

38. (1) *This subsection added para. (c) to s. 80 (1) of the principal Act.*

(2) *This subsection substituted new subss. (2) to (6A) for subss. (2) to (6) of s. 80 of the principal Act.*

39. (1) *This subsection inserted s. 80A in the principal Act.*

(2) *This section shall come into force on a date to be fixed by the Governor-General by Order in Council.*

This section came into force on 1 November 1990, see S.R. 1990/308.

40. (1) *This subsection substituted new subss. (1) and (1A) for subs. (1) of s. 88 of the principal Act.*

(2) *Section 22 of the Fisheries Amendment Act 1986 is hereby consequentially repealed.*

41. *This section inserted s. 88A in the principal Act.*

42. (1) *This subsection amended s. 89 (1) (g) of the principal Act.*

(2) (a) and (b) *These paragraphs amended s. 89 (1) (ia) of the principal Act.*

(3) *This subsection inserted paras. (ka) to (kc) in s. 89 (1) of the principal Act.*

(4) *This subsection inserted para. (ma) in s. 89 (1) of the principal Act.*

(5) *This subsection amended s. 89 (1A) of the principal Act.*

43. *This section amended s. 92A (2) of the principal Act.*

44. Liability of directors and managers—The principal Act is hereby amended by repealing section 94 (as substituted by section 27 (1) of the Fisheries Amendment Act 1986).

45. *This section inserted s. 98A in the principal Act.*

46. *This section substituted a new subsection for subs. (1) of s. 99 of the principal Act.*

47. *This section inserted subs. (1A) in s. 101 of the principal Act.*

48. *This section inserted s. 102A in the principal Act.*

49. *This section inserted s. 103A in the principal Act.*

50. (1) *This subsection inserted s. 105A in the principal Act.*

(2) Section 75 of the Maori Fisheries Act 1989 is hereby deemed to be repealed as from its commencement.

51. *This section substituted new ss. 105B to 107 for ss. 106 and 107 of the principal Act.*

52. (1) *This subsection substituted new sections for the former ss. 107B and 107C (as inserted by s. 27 (1) of the Fisheries Amendment Act 1986 and amended by s. 86 (1) of the Public Finance Act 1989) of the principal Act.*

(2) The Public Finance Act 1989 is hereby consequentially amended by repealing so much of the Schedule as relates to section 107B (5) of the Fisheries Act 1983.

(3) Sections 76 and 77 of the Maori Fisheries Act 1989 are hereby deemed to be repealed as from their commencement.

(4) Subsections (1) and (2) of this section shall come into force on a date to be fixed by the Governor-General by Order in Council.

As to subs. (4), subss. (1) and (2) came into force on 1 November 1990, see S.R. 1990/808.

53. (1) (a) and (b) *These paragraphs amended s. 107D (1) of the principal Act.*

(c) *This paragraph amended s. 107D (3) of the principal Act.*

(2) *This subsection added subss. (5) and (6) to s. 107D of the principal Act.*

54. *This section amended s. 107F (3) of the principal Act.*

55. (1) *This subsection inserted subs. (4A) in s. 107G of the principal Act.*

(2) (a) *This paragraph amended s. 107G (7) (a) of the principal Act.*

(b) *This paragraph amended s. 107G (7) (c) of the principal Act.*

56. **Schedules substituted**—(1) The principal Act is hereby amended by repealing Schedules 1B and 1C (as substituted by the Fisheries (Resource Rentals Variation) Order 1989 and amended by sections 78 and 79 of the Maori Fisheries Act 1989), and substituting the Schedules set out in the Schedule to this Act.

(2) Sections 78 and 79 of the Maori Fisheries Act 1989 are hereby consequentially repealed.

(3) The Fisheries (Resource Rentals Variation) Order 1989 (S.R. 1989/278) is hereby consequentially revoked.

(4) Resource rentals for packhorse and spiny rock lobster taken in the months of December 1989 and of January, February, and March 1990 shall be payable, on or before the 20th day of April 1990, at the rate specified in Part II of Schedule 1B to the principal Act as if that rate of resource rental were still specified as the resource rental for rock lobster in Schedule 1C to the principal Act.

57. (1) to (6) *These amendments have been incorporated in the reprinted Maori Fisheries Act 1989 (1991, R.S. Vol. 27).*

(7) (a), (b), (c), (d) *These amendments have been incorporated in the Second Schedule to the Maori Fisheries Act 1989 (reprinted with the principal Act p. 178).*

(8) *This amendment has been incorporated in the Third Schedule to the Maori Fisheries Act 1989 (reprinted with the principal Act p. 181).*

(9) *This amendment has been incorporated in the Third Schedule to the Maori Fisheries Act 1989 (reprinted with the principal Act p. 181).*

58. *This amendment has been incorporated in the reprinted Fishing Industry Board Act 1963 (1990, R.S. Vol. 26, p. 371).*

SCHEDULE

Section 56

NEW SCHEDULES 1B AND 1C TO PRINCIPAL ACT

These Schedules have been incorporated in the principal Act, where they appear in this reprint.

THE CONSERVATION LAW REFORM ACT 1990
1990, No. 31

An Act to amend the law relating to conservation organisations, freshwater fish and game, conservation management planning, and marginal strips

[10 April 1990]

1. Short Title and commencement—(1) This Act may be cited as the Conservation Law Reform Act 1990.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day on which it receives the Royal assent.

(3) Sections 6A and 6L of the Conservation Act 1987 (as inserted by section 5 of this Act), sections 26B and 26P of that Act (as inserted by section 17 of this Act), and sections 36, 38, 41, 42, 74, 112, and 114 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

In subs. (3):

S.6A of the Conservation Act 1987 came into force on 25 May 1990, see S.R. 1990/115.

Ss. 6L, 26B and 26P of the Conservation Act 1987 came into force on 19 July 1990, see S.R. 1990/169.

Ss. 36, 38, 41, 42, and 114 of the Conservation Law Reform Act 1990 came into force on 19 July 1990, see S.R. 1990/170.

S. 74 of the Conservation Law Reform Act 1990 came into force on 31 May 1990, see S.R. 1990/125.

S. 112 of the Conservation Law Reform Act 1990 came into force on 25 May 1990, see S.R. 1990/116.

PART VII

AMENDMENTS TO FISHERIES ACT 1983

128. Part to be read with Fisheries Act 1983—This Part of this Act shall be read together with and deemed part of the Fisheries Act 1983 (in this Part of this Act referred to as the principal Act).

129. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definitions of the terms “acclimatised fish”, “acclimatisation society”, and “District Anglers Notice”.

(2) *This subsection inserted the definition of the term “Fish and Game Council” in s. 2 (1) of the principal Act.*

(3) *This subsection inserted the definition of the term “sports fish” in s. 2 (1) of the principal Act.*

130. (1) *This subsection amended s. 6 (1) of the principal Act.*
(2) *This subsection amended s. 6 (2) of the principal Act.*

131. *This section substituted a new subsection for subs. (5) of s. 8 of the principal Act.*

132. *This section substituted a new subsection for subs. (1) of s. 11 of the principal Act.*

133. (1) *This subsection amended s. 12 (1) of the principal Act.*
(2) *Section 12 (5) of the principal Act is hereby repealed.*

134. *This section amended s. 65 (1) of the principal Act.*

135. *This section substituted a new subsection for subs. (4) of s. 67A of the principal Act.*

136. **Repeal**—Part V of the principal Act (comprising sections 68 to 75A) is hereby repealed.

137. *This section amended s. 78 (3) of the principal Act.*

138. **Powers of seizure**—Section 80 (11) of the principal Act is hereby repealed.

139. *This section amended s. 84 (1) of the principal Act.*

140. (1) *This subsection amended s. 85 (1) of the principal Act.*
(2) *Section 85 of the principal Act is hereby further amended by repealing subsection (2).*

141. *This section amended s. 86 of the principal Act.*

142. **Repeal**—Section 90 of the principal Act is hereby repealed.

143. *This section amended s. 99 (1) of the principal Act.*

144. **Penalties**—Section 107 of the principal Act (as substituted by section 51 of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2).

145. **Provisions relating to forfeited property and quota**—Section 107c of the principal Act (as substituted by section 52 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (5).

NEW 218

328
192

Fisheries

R.S. Vol. 27

146. Repeals—Sections 14 to 19, and section 24 of the Fisheries Amendment Act 1986 are hereby repealed.

147. Amendment to Conservation Act 1987—The Conservation Act 1987 is hereby consequentially amended by repealing so much of the Second Schedule as relates to section 2 of the Fisheries Act 1983.

Section 37

SCHEDULE

THE FISHERIES AMENDMENT ACT (No. 2) 1990
1990, No. 85

An Act to amend the Fisheries Act 1983

[1 August 1990]

1. Short Title—This Act may be cited as the Fisheries Amendment Act (No. 2) 1990, and shall be read together with and deemed part of the Fisheries Act 1983 (hereinafter referred to as the principal Act).

2. (1) *This subsection amended s. 91 (e) of the principal Act.*

(2) Until fees for the issue, revocation, renewal, and transfer of licences in respect of the operation of fish farms are in fact prescribed under section 91 of the principal Act, there shall be deemed to be prescribed—

(a) For the issue, revocation, renewal, or transfer of a licence to process or deal in the produce of a fish farm, a fee of \$112.50; and

(b) For the issue, revocation, renewal, or transfer of any other licence in respect of the operation of a fish farm, a fee of \$225;—

inclusive, in each case, of goods and services tax under the Goods and Services Tax Act 1985.

(3) The notice fixing fish farm licence fees (Notice No. 3171; Ag. 9/2/0/2) made on the 21st day of December 1983, and published in the *Gazette* on the 19th day of January 1984 at page 105, is hereby consequentially revoked.

The Fisheries Act 1983 is administered in the Ministry of Agriculture and Fisheries.



ANALYSIS

Title	6Q. Co-opted members
1. Short Title and commencement	6R. Term of office of members of Boards
PART I	6S. Chairpersons of Boards
AMENDMENTS TO CONSERVATION ACT 1987	6T. Meetings of Board
2. Part to be read with Conservation Act 1987	6U. Director-General entitled to attend meetings of Boards
3. Interpretation	6V. Servicing of Boards
4. Functions of Departments	6W. Fees and travelling expenses of members of Boards
5. New Parts IIA and IIB inserted into principal Act	PART IIB
PART IIA	GUARDIANS OF LAKES MANAPOURI, MONOWAI, AND TE ANAU
NEW ZEALAND CONSERVATION AUTHORITY AND CONSERVATION BOARDS	6X. Guardians of Lakes Manapouri, Monowai, and Te Anau
<i>New Zealand Conservation Authority</i>	6. Conservation area may become reserve, national park, etc.
6A. New Zealand Conservation Authority established	7. Conservation areas may be closed
6B. Functions of Authority	8. Conditions on issuing of leases and licences, and disposal of conservation areas
6C. Powers of Authority	9. Creation of easements
6D. Membership	10. Disposal of conservation areas
6E. Annual report	11. Exchanges of stewardship areas
6F. Term of office of members of Authority	12. Access and use of conservation areas
6G. Chairperson of Authority	13. New Part IIIA inserted into principal Act
6H. Meetings of Authority	PART IIIA
6I. Director-General entitled to attend meetings of Authority	MANAGEMENT PLANNING
6J. Servicing of Authority	17A. Conservation areas to be managed by Department
6K. Fees and travelling expenses of members of Authority	17B. General policy
<i>Conservation Boards</i>	17C. General policy under more than one Act
6L. Conservation Boards established	17D. Conservation management strategies
6M. Functions of Boards	17E. Conservation management plans
6N. Powers of Boards	17F. Procedure for preparation and approval of conservation management strategies
6O. Annual report	
6P. Membership of Conservation Boards	

Conservation Law Reform

1990, No. 31

- 17c. Procedure for preparation and approval of conservation management plans
- 17h. Reviews of conservation management strategies and conservation management plans
- 17i. Amendments to conservation management strategies and conservation management plans
- 17j. Freshwater fisheries management plans
- 17k. Procedure for preparation, approval, review, and amendment of freshwater fisheries management plans
- 17l. Sports fish and game management plans
- 17m. Procedure for preparation, approval, review, and amendment of sports fish and game management plans
- 17n. Effect of general policies, conservation management strategies, and management plans
- 14. Wilderness areas
- 15. New Part IVA inserted into principal Act

PART IVA

MARGINAL STRIPS

- 24. Marginal strips reserved
- 24a. Power to reduce width of marginal strip
- 24b. Power to declare certain dispositions to be exempt from section 24
- 24c. Purposes of marginal strips
- 24d. Reservation of marginal strips to be recorded
- 24e. Exchange of marginal strips
- 24f. Right of Crown to half of bed of river adjoining former land of the Crown
- 24g. Effect of change to boundary of marginal strips
- 24h. Management of marginal strips
- 24i. Easements
- 24j. Resumption of marginal strips by Crown
- 16. Disposal of stewardship areas
- 17. New Parts Va and Vb inserted into principal Act

PART VA

SPORTS FISH AND GAME COUNCILS

Functions of Minister

- 26A. Functions of Minister

New Zealand Fish and Game Council

- 26B. New Zealand Fish and Game Council established

- 26c. Functions of New Zealand Fish and Game Council
- 26d. Membership
- 26e. Co-opted members
- 26f. Powers of New Zealand Fish and Game Council
- 26g. Employment principles
- 26h. Annual report and financial statement
- 26i. Financial statements to be audited by Audit Office
- 26j. Chairperson of New Zealand Fish and Game Council
- 26k. Meetings of New Zealand Fish and Game Council
- 26L. Director-General entitled to attend meetings of New Zealand Fish and Game Council
- 26M. No remuneration payable to members

Transitional Councils

- 26N. Transitional Councils
- 26o. Functions and powers of Transitional Councils

Fish and Game Councils

- 26P. Fish and Game Councils established
- 26Q. Functions of Fish and Game Councils
- 26R. Fish and Game Council responsibilities
- 26s. Powers of Fish and Game Councils
- 26t. Appointment of staff
- 26u. Membership
- 26v. Co-opted members
- 26w. Annual report and financial statement
- 26x. Financial statements to be audited by Audit Office
- 26y. Eligibility to vote
- 26z. Conduct of elections
- 26ZA. Term of office of members of Fish and Game Councils
- 26ZB. Members not personally liable
- 26ZC. Chairpersons of Fish and Game Councils
- 26ZD. Meetings of Fish and Game Councils
- 26ZE. Director-General entitled to attend meetings of Fish and Game Councils
- 26ZF. No remuneration payable to members

PART VB

FRESHWATER FISHERIES

- 26ZG. Application of Part

Maori Fishing Rights

- 26ZH. Maori fishing rights unaffected by this Part

Sports Fisheries

- 26zi. Taking sports fish without licence prohibited
- 26zj. Offences relating to spawning fish
- 26zk. Fishing competitions relating to sports fish
- 26zl. Restrictions on fishing
- 26zm. Transfer or release of live aquatic life
- 26zn. Fishing rights not to be sold or let
- 26zo. Occupier may fish without licence

Miscellaneous Provisions

- 26zp. Determination of closed seasons for fishing
- 26zq. Buying, selling, or possessing fish, contrary to Act
- 26za. Using explosives, etc., to catch or destroy fish

- 18. Covenants
- 19. Taking of plants
- 20. Removal of shingle, etc.
- 21. Trespassing livestock
- 22. Other offences
- 23. Powers of warranted officers
- 24. Proceedings for offences
- 25. New sections relating to offences inserted into principal Act
 - 43a. Evidence in proceedings
 - 43b. Strict liability
- 26. Forfeiture of property
- 27. New sections substituted in principal Act
 - 48. Regulations
 - 48a. Special regulations relating to freshwater fisheries
- 28. Errors of description in notices may be corrected
- 29. Powers of Director-General
- 30. Delegation of powers by Minister
- 31. Warranted officers
- 32. Director-General may recover certain costs
- 33. Existing leases, licences, etc.
- 34. Powers under forestry and Crown leases, etc., exercisable by Minister or Director-General
- 35. Amendments and savings

Transitional, Consequential Amendments, and Savings

- 36. Bodies abolished
- 37. Amendments
- 38. First Schedule amended
- 39. Freshwater Fisheries Regulations 1983
- 40. Regulations relating to whitebait
- 41. Repeals
- 42. Revocations
- 43. Transitional provisions in respect of Queen Elizabeth Park Domain Board
- 44. Transitional provisions in respect of Nature Conservation Council
- 45. Transitional provisions in respect of Hauraki Gulf Maritime Park Board

- 46. Certain public notices to have legal effect
- 47. Transitional

PART II

AMENDMENTS TO MARINE RESERVES ACT 1971

- 48. Part to be read with Marine Reserves Act 1971
- 49. Interpretation
- 50. Marine reserves to be maintained in natural state and public to have right of entry
- 51. Governor-General may declare an area to be a marine reserve
- 52. Procedure for declaring a marine reserve
- 53. New sections relating to management substituted in principal Act
 - 6. General policy
 - 7. Conservation management strategies
 - 8. Conservation management plans
 - 9. Control and management of reserves
 - 10. Particular functions of Director-General in relation to marine reserves
 - 11. Particular powers of Director-General in relation to marine reserves
 - 12. Conservation objectives to be considered by Director-General
 - 13. Conservation function of New Zealand Conservation Authority
- 54. Rangers
- 55. Powers of rangers
- 56. Offences within a reserve
- 57. Time within which information may be laid
- 58. Boundaries of marine reserves to be marked
- 59. Rights of access and navigation
- 60. Regulations
- 61. Management committees abolished
- 62. Cape Rodney-Okakari Point Marine Reserve Bylaws 1989
- 63. Poor Knights Islands Marine Reserve Bylaws 1989

PART III

AMENDMENTS TO WILDLIFE ACT 1953

- 64. Part to be read with Wildlife Act 1953
- 65. Interpretation
- 66. Alteration of Schedules
- 67. Wildlife management reserves
- 68. New sections relating to planning substituted in principal Act

Management Planning

- 14b. Wildlife areas to be managed by Department
- 14c. General policy

14D. Conservation management strategies	103. Commissioner may authorise person to carry on trade, business, or occupation within reserve
14E. Conservation management plans	104. Bylaws
69. Notification as to conditions on which open season declared	
70. Hunting or killing in game areas	
71. Licence to hunt or kill game	
72. Holder of licence not to enter on land without consent	
73. Acclimatisation districts abolished	
74. Acclimatisation societies abolished	
75. Wildlife districts	
76. Rangers	
77. Minister's general powers	
78. Tenancies	
79. Delegation of Minister's powers	
80. Director-General may authorise taking or killing of wildlife for certain purposes	
81. Director-General may authorise hunting or killing of wildlife causing damage	
82. Ownership of animals	
83. Person in pursuit of wildlife to comply with demand by authorised officer	
84. Evidence of boundaries, etc.	
85. Forfeitures	
86. Regulations	
87. Repeals, savings, and consequential amendments	
88. Repeals	
89. Assets and liabilities of acclimatisation societies	
PART IV	
AMENDMENTS TO RESERVES ACT 1977	
90. Part to be read with Reserves Act 1977	
91. Interpretation	
92. Rangers	
93. Committees	
94. New Part IIA inserted into principal Act	
PART IIA	
POLICY	
15A. General policy	
95. Functions of administering body	
96. New sections relating to management planning inserted into principal Act	
40A. Conservation management strategies	
40B. Conservation management plans in respect of reserves administered by Department	
97. Use of reserve for communications station	
98. Leasing powers in respect of recreation reserves (except farming, grazing, or afforestation leases)	
99. Leasing powers in respect of scenic reserves	
100. Powers in respect of nature reserves	
101. Leasing powers in respect of historic reserves	
102. Powers in respect of scenic reserves	
	PART V
	AMENDMENTS TO MARINE MAMMALS PROTECTION ACT 1978
	105. Part to be read with Marine Mammals Protection Act 1978
	106. Interpretation
	107. New sections relating to management planning inserted into principal Act
	3A. Department of Conservation to administer marine mammals and sanctuaries
	3B. General policy
	3C. Conservation management strategies
	3D. Conservation management plans
	PART VI
	AMENDMENTS TO NATIONAL PARKS ACT 1980
	108. Part to be read with National Parks Act 1980
	109. Interpretation
	110. Wilderness areas
	111. Functions of Authority
	112. National Parks and Reserves Authority abolished
	113. Functions of Boards
	114. National Parks and Reserves Boards abolished
	115. Rangers
	116. Parks to be administered by Department
	117. New heading and section relating to regional management strategies inserted into principal Act
	<i>Conservation Management Strategies</i>
	44A. Conservation management strategies
	118. Amendment and review of management plans
	119. Procedure for preparing and reviewing management plans
	120. Particular powers of Minister
	121. Accommodation within parks
	122. Application of Part XX of Local Government Act 1974 to sale of certain hotels
	123. Application of section 14 (3) of Conservation Act 1987 to certain leases and licences
	124. Bylaws
	125. Ranger may stop and search boats, vehicles, premises, and possessions in park
	126. Stopping and searching boats outside parks
	127. First Schedule amended

PART VII	
AMENDMENTS TO FISHERIES ACT 1983	
128. Part to be read with Fisheries Act 1983	138. Powers of seizure
129. Interpretation	139. Pollution of marine waters
130. Fishery management plan	140. Determination of closed seasons for fishing
131. Procedure in relation to plans	141. Closed season in exclusive economic zone
132. Emergency amendments to plan	142. Repeal
133. Minister may impose emergency restrictions before introduction of plan	143. Ownership and possession of fish
134. Minister may restrict fishing	144. Penalties
135. Restrictions on purchase or acquisition of fish by certain persons	145. Provisions relating to forfeited property and quota
136. Repeal	146. Repeals
137. Issue of warrants	147. Amendment to Conservation Act 1987 Schedule

1990, No. 31

An Act to amend the law relating to conservation organisations, freshwater fish and game, conservation management planning, and marginal strips

[10 April 1990]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Conservation Law Reform Act 1990.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day on which it receives the Royal assent.

(3) Sections 6A and 6L of the Conservation Act 1987 (as inserted by section 5 of this Act), sections 26B and 26P of that Act (as inserted by section 17 of this Act), and sections 36, 38, 41, 42, 74, 112, and 114 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

PART I

AMENDMENTS TO CONSERVATION ACT 1987

2. Part to be read with Conservation Act 1987—This Part of this Act shall be read together with and deemed part of the Conservation Act 1987 (in this Part of this Act referred to as the principal Act).

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definitions of the terms “foreshore”, “marginal strip”, and “taking”, and inserting, in their appropriate alphabetical order, the following definitions:

“‘Amend’, in relation to any conservation management strategy, conservation management plan, freshwater fisheries management plan, or sports fish and game management plan, means any change that does not affect the objectives of the strategy or plan:

- “ ‘Aquatic life’ means any species of plant or animal life (except birds) that must, at any time of the life history of the species, inhabit freshwater; and includes any part of any such plant or animal:
- “ ‘Bed’ means—
- “(a) In relation to any river, the space of land which the waters of the river cover at its fullest flow without overtopping the banks; and
- “(b) In relation to a lake, the space of land which the waters of the lake cover at its highest level without exceeding its physical margin:
- “ ‘Conservation Board’ or ‘Board’ means a Conservation Board established under section 6L of this Act:
- “ ‘Conservation management plan’ means a conservation management plan approved under section 14E of the Wildlife Act 1953, section 8 of the Marine Reserves Act 1971, section 40B of the Reserves Act 1977, section 3D of the Marine Mammals Protection Act 1978, section 48 of the National Parks Act 1980, or section 17G of this Act:
- “ ‘Conservation management strategy’ means a conservation management strategy approved under section 17F of this Act:
- “ ‘District Anglers Notice’ means a notice published in the *Gazette* by a Fish and Game Council under section 26R of this Act:
- “ ‘Fish and Game Council’ means a Fish and Game Council established under section 26P of this Act:
- “ ‘Fishery’ means one or more stocks or parts of stocks or one or more species of freshwater fish or aquatic life that can be treated as a unit for the purposes of conservation or management:
- “ ‘Fishery Officer’ means any officer specified as such in section 76 of the Fisheries Act 1983:
- “ ‘Fishing’—
- “(a) Means the catching, taking, or harvesting of freshwater fish; and
- “(b) Includes—
- “(i) Any other activity that may reasonably be expected to result in the catching, taking, or harvesting of freshwater fish:
- “(ii) Any attempt to catch, take, or harvest freshwater fish:

inserting, after the word “approved”, the words “conservation management strategy, conservation management plan, or”.

99. Leasing powers in respect of scenic reserves—Section 56 (3) (a) of the principal Act (as added by section 18 (2) of the Reserves Amendment Act 1979) is hereby amended by inserting, after the word “approved”, the words “conservation management strategy, conservation management plan, or”.

100. Powers in respect of nature reserves—Section 57 (8) of the principal Act (as substituted by section 6 of the Reserves Amendment Act 1983) is hereby amended by inserting, after the word “approved”, the words “conservation management strategy, conservation management plan, or”.

101. Leasing powers in respect of historic reserves—Section 58A (3) (a) of the principal Act (as inserted by section 19 of the Reserves Amendment Act 1979) is hereby amended by inserting, after the word “approved”, the words “conservation management strategy, conservation management plan, or”.

102. Powers in respect of scenic reserves—Section 59 (8) of the principal Act (as added by section 8 of the Reserves Amendment Act 1983) is hereby amended by inserting, after the word “approved”, the words “conservation management strategy, conservation management plan, or”.

103. Commissioner may authorise person to carry on trade, business, or occupation within reserve—Section 59A of the principal Act (as inserted by section 2 of the Reserves Amendment Act 1988) is hereby amended—

- (a) By omitting from subsection (2) the words “the management plan of the reserve concerned”, and substituting the words “a conservation management strategy, conservation management plan, or management plan applicable to the reserve concerned”;
- (b) By omitting from subsection (7) the words “the reserve’s management plan”, and substituting the words “any conservation management strategy, conservation management plan, and management plan applicable to the reserve,”.

104. Bylaws—Section 106 (1) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Prescribing the conditions on which persons shall have access to or be excluded from any reserve or any part of a reserve, or on which persons may use any facility (including any building) in a reserve, and fixing charges for the admission of persons to any part of a reserve and for the use of any such facility:”.

PART V

AMENDMENTS TO MARINE MAMMALS PROTECTION ACT 1978

105. Part to be read with Marine Mammals Protection Act 1978—This Part of this Act shall be read together with and deemed part of the Marine Mammals Protection Act 1978 (in this Part of this Act referred to as the principal Act).

106. Interpretation—Section 2 (1) of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Board’ means a Conservation Board established under section 6L of the Conservation Act 1987:

“‘Conservation Authority’ means the New Zealand Conservation Authority established under section 6A of the Conservation Act 1987:

“‘Conservation management plan’ means a conservation management plan approved under section 3D of this Act:

“‘Conservation management strategy’ means a conservation management strategy approved under section 17F of the Conservation Act 1987:”.

107. New sections relating to management planning inserted into principal Act—The principal Act is hereby amended by inserting, after section 3, the following sections:

“3A. Department of Conservation to administer marine mammals and sanctuaries—The Department of Conservation shall administer and manage marine mammals and marine mammal sanctuaries in accordance with—

“(a) Any statements of general policy approved under section 3B of this Act; and

“(b) Any conservation management strategy and any conservation management plan for the time being in force for the area concerned.

“3B. General policy—(1) The Minister may approve statements of general policy for the implementation of this Act

in any area or areas; and may from time to time amend any such statement in the light of changing circumstances or increased knowledge.

“(2) Nothing in any such general policy shall derogate from any provision in this Act or any other Act.

“(3) For the purposes of this section, sections 17B (except subsections (1) and (2)) and 17N of the Conservation Act 1987 shall, with any necessary modifications, apply with respect to such general policies, subject to the following provisions:

“(a) In addition to the consultation required by section 17B (3) (a) of that Act, the Director-General shall also consult the Director-General of Agriculture and Fisheries, the Secretary for Transport, and the Secretary for the Environment before preparing any such policy:

“(b) As soon as practicable after a draft policy is prepared under section 17B (3) of that Act, the Director-General shall send a copy of it to each of the persons referred to in paragraph (a) of this subsection:

“(c) Before sending a draft policy to the Conservation Authority, the Director-General shall consider any comments made by the persons referred to in paragraph (a) of this subsection.

“3c. **Conservation management strategies**—(1) Every conservation management strategy shall establish objectives for the integrated management of marine mammals under this Act.

“(2) For the purposes of this section, the following provisions shall apply in addition to those in section 17F of the Conservation Act 1987:

“(a) In addition to the consultation required by section 17F (a) of that Act, the Director-General shall consult the Director-General of Agriculture and Fisheries, the Secretary for Transport, and all affected regional councils constituted under the Local Government Act 1974:

“(b) In addition to the notification required by section 17F (a) of that Act, the Director-General shall also send a copy of the draft strategy to the Director-General of Agriculture and Fisheries and the Secretary for Transport:

“(c) Before sending the strategy to the Boards affected, the Director-General shall consider any comments made by the Director-General of Agriculture and Fisheries,

the Secretary for Transport, and all such affected regional councils.

“3d. Conservation management plans—(1) The purpose of a conservation management plan under this section is to establish objectives for the management of a marine mammal sanctuary or sanctuaries.

“(2) For the purposes of this section, sections 17E (except subsections (1), (4), (6), and (7)), 17G, and 17N of the Conservation Act 1987 shall, with any necessary modifications, apply with respect to conservation management plans under this section, subject to the following provisions:

“(a) In addition to the consultation required by section 17F (a) of that Act (as applied by section 17G (1) of that Act), the Director-General shall also consult the Director-General of Agriculture and Fisheries, the Secretary for Transport, and all affected regional councils constituted under the Local Government Act 1974:

“(b) In addition to the notification required by section 17F (a) of that Act (as so applied), the Director-General shall also send a copy of the draft plan to the Director-General of Agriculture and Fisheries, the Secretary for Transport, and all such affected regional councils:

“(c) Before sending the plans to the Boards affected, the Director-General shall consider any comments made by the Director-General of Agriculture and Fisheries, the Secretary for Transport, and all such affected regional councils.”

PART VI

AMENDMENTS TO NATIONAL PARKS ACT 1980

108. Part to be read with National Parks Act 1980—This Part of this Act shall be read together with and deemed part of the National Parks Act 1980 (in this Part of this Act referred to as the principal Act).

109. Interpretation—(1) Section 2 of the principal Act is hereby amended—

- (a) By repealing the definition of the terms “National Parks and Reserves Authority” and “Authority”;
- (b) By repealing the definition of the terms “National Parks and Reserves Board” and “Board”.

(2) Section 66 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsection:

“(3) When exercising any power conferred by subsection (1) of this section, an authorised officer shall produce evidence of his or her identity and authority whenever reasonably requested to do so.”

127. First Schedule amended—The First Schedule to the principal Act is hereby amended—

- (a) By repealing so much of that Schedule as relates to the Petroleum Act 1937;
- (b) By repealing so much of that Schedule as relates to the Nature Conservation Council Act 1962;
- (c) By repealing so much of that Schedule as relates to section 26 (8) (a) of the Mining Act 1971;
- (d) By repealing so much of that Schedule as relates to the Ombudsmen Act 1975;
- (e) By repealing so much of that Schedule as relates to the Reserves Act 1977.

PART VII

AMENDMENTS TO FISHERIES ACT 1983

128. Part to be read with Fisheries Act 1983—This Part of this Act shall be read together with and deemed part of the Fisheries Act 1983 (in this Part of this Act referred to as the principal Act).

129. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definitions of the terms “acclimatised fish”, “acclimatisation society”, and “District Anglers Notice”.

(2) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “fish”, the following definition:

“‘Fish and Game Council’ means a Fish and Game Council established under section 26P of the Conservation Act 1987.”.

(3) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “shellfish”, the following definition:

“‘Sports fish’ has the same meaning as in the Conservation Act 1987.”.

130. Fishery management plan—(1) Section 6 (1) of the principal Act is hereby amended by omitting the words “acclimatisation societies,”.

(2) Section 6 (2) of the principal Act (as added by section 65 (1) of the Conservation Act 1987 and amended by section 11 (1) of the State-Owned Enterprises Amendment Act 1987) is hereby amended by omitting the words “section 75A of this Act”, and substituting the words “Part VB of the Conservation Act 1987”.

131. Procedure in relation to plans—Section 8 of the principal Act is hereby amended by repealing subsection (5) (as amended by section 65 (1) of the Conservation Act 1987), and substituting the following subsection:

“(5) Before approving any plan that affects the statutory responsibilities of the Department of Conservation, the Minister shall consult the Minister of Conservation.”

132. Emergency amendments to plan—Section 11 of the principal Act (as substituted by section 6 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (1) (as amended by section 65 (1) of the Conservation Act 1987), and substituting the following subsection:

“(1) If at any time an emergency occurs that endangers or may endanger stocks of fish, or aquatic life, or any species or class of fish or aquatic life in any fishery in respect of which a fishery management plan has been approved, the Governor-General may, by Order in Council, made on the recommendation of the Minister given after consultation with the Fishing Industry Board and the Minister of Conservation, make regulations amending any regulations made under section 10A of this Act.”

133. Minister may impose emergency restrictions before introduction of plan—(1) Section 12 (1) of the principal Act (as amended by section 65 (1) of the Conservation Act 1987) is hereby amended by omitting the words “and any appropriate acclimatisation society”.

(2) Section 12 (5) of the principal Act is hereby repealed.

134. Minister may restrict fishing—Section 65 (1) of the principal Act (as substituted by section 13 of the Fisheries Amendment Act 1986) is hereby amended by omitting the words “an acclimatisation society”, and substituting the words “a Fish and Game Council”.

135. Restrictions on purchase or acquisition of fish by certain persons—Section 67A of the principal Act (as substituted by section 13 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Nothing in this section shall apply in respect of any sports fish taken legally pursuant to a current licence issued by a Fish and Game Council and served to the angler who took the fish and the angler’s immediate guests.”

136. Repeal—Part V of the principal Act (comprising sections 68 to 75A) is hereby repealed.

137. Issue of warrants—Section 78 (3) of the principal Act is hereby amended by omitting the words “or acclimatisation societies”.

138. Powers of seizure—Section 80 (11) of the principal Act is hereby repealed.

139. Pollution of marine waters—Section 84 (1) of the principal Act is hereby amended by omitting the words “section 75 of this Act”, and substituting the words “section 39 (4) of the Conservation Act 1987”.

140. Determination of closed seasons for fishing—

(1) Section 85 (1) of the principal Act is hereby amended by omitting the words “acclimatised fish”, and substituting the words “sports fish”.

(2) Section 85 of the principal Act is hereby further amended by repealing subsection (2).

141. Closed season in exclusive economic zone—

Section 86 of the principal Act is hereby amended by omitting the words “acclimatised fish”, and substituting the words “sports fish”.

142. Repeal—Section 90 of the principal Act is hereby repealed.

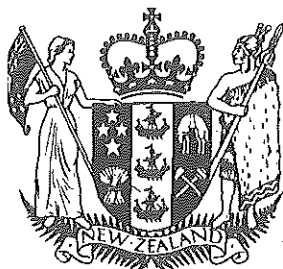
143. Ownership and possession of fish—Section 99 (1) of the principal Act (as substituted by section 46 of the Fisheries Amendment Act 1990) is hereby amended by omitting the words “acclimatised fish”, and substituting the words “sports fish”.

144. Penalties—Section 107 of the principal Act (as substituted by section 51 of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2).

145. Provisions relating to forfeited property and quota—Section 107c of the principal Act (as substituted by section 52 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (5).

146. Repeals—Sections 14 to 19, and section 24 of the Fisheries Amendment Act 1986 are hereby repealed.

147. Amendment to Conservation Act 1987—The Conservation Act 1987 is hereby consequentially amended by repealing so much of the Second Schedule as relates to section 2 of the Fisheries Act 1983.



ANALYSIS

Title 1. Short Title and commencement 2. Notice of quota allocations to be given 3. Notice of quota allocations for rock lobster 4. Appeal against allocation or failure to allocate provisional maximum individual transferable quota 5. Appeal against allocation or failure to allocate provisional maximum transferable term quota 6. Interpretation of provisions relating to compensation 7. Compensation for reductions in individual transferable quota for species other than rock lobster during transitional compensation period 8. Compensation in respect of initial allocation of transferable term quota for rock lobster 9. Compensation for reduction in transferable term quota for rock lobster 10. Limit on total compensation payable 11. Determination of preliminary percentage of compensation payable before end of transitional compensation period 12. Manner and timing of payment of compensation 13. Additional amounts payable by Crown in respect of goods and services tax 14. Registers and forms of leases 15. Minimum holdings of quota and interests in quota 16. Taking fish in excess of quota, and carrying forward unused quota	17. Restriction on amount of quota that may be held by any one person 18. Fish subject to quota fishing cannot be taken for sale other than under quota 19. Commercial fishermen may be required to pay deemed value of excess or unauthorised quota fish 20. Fisherman may offer lease of quota in lieu of paying deemed value 21. Taking fish, etc., commercially without permit prohibited 22. Restrictions on purchase or acquisition of fish by certain persons 23. Powers of Fishery Officers 24. Director-General may direct that transfer or lease of quota not be registered pending laying of information for quota management offence 25. Regulations 26. Special regulations relating to freshwater fish farming 27. Ownership and possession of fish 28. Certificates and official documents 29. Variation of resource rentals by Order in Council 30. Payments to Crown in lieu of disposal or surrender of fish taken contrary to Act 31. Amendment to Maori Fisheries Act 1989 9A. Power to reimburse fees and expenses incurred in relation to Maori fisheries claim

1991, No. 149

An Act to amend the Fisheries Act 1983 and the Maori Fisheries Act 1989 [23 December 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Fisheries Amendment Act 1991, and shall be read

together with and deemed part of the Fisheries Act 1983 (hereinafter referred to as the principal Act).

(2) Except as provided in section 7 (4) of this Act, this Act shall come into force on the day on which it receives the Royal assent.

2. Notice of quota allocations to be given—Section 28G (2) (b) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by omitting the words “not earlier than the 28th day”, and substituting the expression “3 months”.

3. Notice of quota allocations for rock lobster—Section 28GA (2) (b) of the principal Act (as inserted by section 53 of the Maori Fisheries Act 1989) is hereby amended by omitting the words “not earlier than the 28th day”, and substituting the expression “3 months”.

4. Appeal against allocation or failure to allocate provisional maximum individual transferable quota—

(1) Section 28H (1) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended—

(a) By omitting the expression “28 days”, and substituting the expression “3 months”;

(b) By omitting the words “or such longer period as the Quota Appeal Authority may allow, appeal to that Authority”, and substituting the words “appeal to the Quota Appeal Authority”.

(2) Section 28H (2) of the principal Act (as so inserted) is hereby amended by omitting the words “or such later date as the Quota Appeal Authority may allow, appeal to that Authority”, and substituting the words “, appeal to the Quota Appeal Authority”.

(3) Section 28H (3) of the principal Act (as so inserted) is hereby amended—

(a) By omitting the expression “28 days”, and substituting the expression “3 months”;

(b) By omitting the words “or such later date as the Quota Appeal Authority may allow, appeal”, and substituting the words “, appeal to the Quota Appeal Authority”.

(4) Section 28H (4) of the principal Act (as so inserted) is hereby amended by omitting the words “or such later date as the Quota Appeal Authority may allow, appeal”, and

substituting the words “, appeal to the Quota Appeal Authority”.

(5) Nothing in this section affects the validity, or prevents the continuation, of any appeal lodged before the date of the commencement of this section.

5. Appeal against allocation or failure to allocate provisional maximum transferable term quota—

(1) Section 28HA (1) of the principal Act (as inserted by section 54 of the Maori Fisheries Act 1989) is hereby amended—

(a) By omitting the expression “28 days”, and substituting the expression “3 months”;

(b) By omitting the words “or within such longer period as the Quota Appeal Authority may allow, appeal to that Authority”, and substituting the words “, appeal to the Quota Appeal Authority”.

(2) Section 28HA (2) of the principal Act (as so inserted) is hereby amended by omitting the words “or such later date as the Quota Appeal Authority may allow, appeal to that Authority”, and substituting the words “, appeal to the Quota Appeal Authority”.

(3) Section 28HA (3) of the principal Act (as so inserted) is hereby amended—

(a) By omitting the expression “28 days”, and substituting the expression “3 months”;

(b) By omitting the words “or within such longer period as the Quota Appeal Authority may allow”.

(4) Section 28HA (4) of the principal Act (as so inserted) is hereby amended by omitting the words “or such later date as the Quota Appeal Authority may allow”.

(5) Nothing in this section affects the validity, or prevents the continuation, of any appeal lodged before the date of the commencement of this section.

6. Interpretation of provisions relating to compensation—(1) Section 28OF (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by inserting in paragraph (a) of the definition of the term “compensation balance”, after subparagraph (i), the following subparagraph:

“(ia) The amount referred to in section 28OJ (1) (aa) of this Act; and”.

(2) Section 28OF (1) of the principal Act (as so inserted) is hereby further amended by inserting in paragraph (b) of the

definition of the term "compensation balance", after subparagraph (i), the following subparagraph:

"(ia) The amount referred to in section 28oj (1) (aa) of this Act; and".

(3) Section 28OF (1) of the principal Act (as so inserted) is hereby further amended by repealing the definition of the term "extended compensation period", and substituting the following definition:

" 'Extended compensation period' means,—

"(a) In any case where the total allowable commercial catch applying to orange roughy in quota management areas 3B, 4, 5A, and 6 combined is, on the 1st day of October 1992, less than 18,787 tonnes plus any increase in the total allowable commercial catch (if any) for orange roughy in quota management areas 3B, 4, 5A, and 6 combined, during the period commencing on the 1st day of October 1990 and ending with the close of the 30th day of September 1992, by virtue of section 28J (2) of this Act, the period commencing on the 1st day of October 1994 and ending with the close of—

"(i) The 30th day of September 1995; or

"(ii) The 30th day of September 1996, if the total allowable commercial catch applying to hoki in quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 19 percent but not more than 40 percent lower than that applying on the 1st day of October 1989; or

"(iii) The 30th day of September 1997, if the total allowable commercial catch applying to hoki in quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 40 percent lower than that applying on the 1st day of October 1989; or

"(b) In any case to which paragraph (a) of this definition does not apply, the period commencing on the 1st day of October 1994 and ending with the close of—

"(i) The 30th day of September 1995, if the total allowable commercial catch applying to hoki in quota management areas 1 to 9 combined on the 30th day of September

1994 is more than 19 percent but not more than 40 percent lower than that applying on the 1st day of October 1989; or

“(ii) The 30th day of September 1996, if the total allowable commercial catch applying to hoki in quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 40 percent but not more than 60 percent lower than that applying on the 1st day of October 1989; or

“(iii) The 30th day of September 1997, if the total allowable commercial catch applying to hoki in the quota management areas 1 to 9 combined on the 30th day of September 1994 is more than 60 percent lower than that applying on the 1st day of October 1989;—

and where neither paragraph (a) nor any of subparagraphs (i), (ii), and (iii) of paragraph (b) of this definition apply, there shall be no extended compensation period.”.

(4) Section 280f of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

“(3) For the purposes of subparagraphs (ii) and (iii) of paragraph (a), and paragraph (b), of the definition of the term ‘extended compensation period’ in subsection (1) of this section, the total allowable commercial catch for hoki shall not include any increase in the total allowable commercial catch for hoki (if any), during the period commencing on the 1st day of October 1990 and ending with the close of the 30th day of September 1994, by virtue of section 28j (2) of this Act.”

7. Compensation for reductions in individual transferable quota for species other than rock lobster during transitional compensation period—(1) Section 280g (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by omitting the words “subsection (5) of this section and to”.

(2) Section 280g of the principal Act (as so inserted) is hereby further amended by repealing subsection (3), and substituting the following subsections:

“(3) Any amount payable as compensation under this section in respect of any reduction in individual transferable quota shall be payable by the Crown to every person who, on the date of

the relevant reduction, was a specified person, in such amount or such proportion as may be agreed between the Minister, the Association, the Federation, and the Commission.

“(3A) For the purposes of subsection (3) of this section, ‘specified person’ means—

“(a) The holder (but not any lessee or sublessee) of the relevant quota; or

“(b) The lessee of the relevant quota, where the lease was granted to that person by the Crown and—

“(i) The lease requires the payment of a fixed rental to the Crown; and

“(ii) The Crown has undertaken that that lessee will not be otherwise required to meet the cost of any resource rental payable in respect of the quota; and

“(iii) The lease grants that lessee the right to acquire the quota outright at the expiry of the lease;—

but does not include the Crown.

“(3B) No person shall have any claim against the Crown, the Minister, the Association, the Federation, or the Commission by reason of that person being entitled to compensation under section 28OG (3) of this Act (as enacted by section 15 of the Fisheries Amendment Act 1990) but not being entitled to compensation under section 28OG (3) of this Act (as enacted by section 7 (2) of the Fisheries Amendment Act 1991).”

(3) Section 28OG of the principal Act (as so inserted) is hereby further amended by repealing subsections (5), (6), and (7).

(4) Subsection (2) of this section shall be deemed to have come into force on the 1st day of April 1990.

8. Compensation in respect of initial allocation of transferable term quota for rock lobster—The principal Act is hereby amended by repealing section 28OH (as inserted by section 15 of the Fisheries Amendment Act 1990), and substituting the following section:

“28OH. (1) Where the amount of transferable term quota allocated to any person under section 28OA of this Act in respect of rock lobster on or before the specified date is less than the amount of provisional maximum transferable term quota allocated to that person under section 28EA of this Act, the Crown shall, subject to section 28OJ of this Act, pay compensation to that person in respect of the difference between those allocations at the rate of \$1,871 per tonne.

“(2) Where any person appeals to the Quota Appeal Authority under section 28HA of this Act in respect of the allocation or non-allocation of provisional maximum transferable term quota in respect of rock lobster and the provisional maximum transferable term quota allocated to that person is increased by the Quota Appeal Authority acting under section 28I of this Act, the Crown shall, subject to subsection (3) of this section and to section 28OJ of this Act, pay compensation to the person concerned at the rate of \$1,871 per tonne in respect of the difference (if any) between the additional amount of provisional maximum transferable term quota allocated by the Quota Appeal Authority under section 28I of the Act and the additional amount of transferable term quota allocated under section 28OA as a consequence of that decision of the Quota Appeal Authority.

“(3) No payment shall be made under subsection (2) of this section if the effect of that payment would be to increase the total amount of payments made under that subsection to a sum exceeding \$400,000.

“(4) No compensation shall be payable under subsection (2) of this section in any case where the decision of the Quota Appeal Authority under section 28I of this Act on the appeal is given after the end of the transitional compensation period or (if appropriate) the extended compensation period.

“(5) Where on any appeal to the Quota Appeal Authority any provisional maximum transferable term quota is decreased under section 28I of this Act, and compensation has previously been paid under this section, the compensation paid in respect of that part of the provisional maximum transferable term quota that is decreased shall be repayable to the Crown, and may be recovered as a debt due to the Crown.

“(6) For the purposes of subsection (1) of this section, the expression ‘specified date’ means—

“(a) The 3rd day of April 1990; or

“(b) In the case of quota management areas 2 and 3 (as defined in the Third Schedule to the Maori Fisheries Act 1989), the 6th day of May 1990; or

“(c) In any case where the Director-General had lodged an appeal against the allocation of provisional maximum transferable term quota with the Quota Appeal Authority and that appeal was subsequently withdrawn, the date notified by the Director-General by notice in the *Gazette* as the specified date for the purposes of this section.”

9. Compensation for reduction in transferable term quota for rock lobster—(1) Section 280I of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) No compensation shall be payable under subsection (1) of this section to the extent that the reduction (if any) of the combined total allowable commercial catch for all quota management areas for rock lobster within New Zealand fisheries waters during the period commencing on the 1st day of April 1989 and ending with the close of the 30th day of September 1994 exceeds in total 500 tonnes (excluding any reductions that are made to quota held by the Crown and any reductions made as a result of the cancellation of quota held by the Crown).”

(2) Section 280I(3) of the principal Act (as so inserted) is hereby amended by omitting the word “single”.

(3) Section 280I of the principal Act (as so inserted) is hereby further amended by adding the following subsections:

“(4) The compensation payable under this section shall be payable to the person who is the holder (not being a lessee or sublessee) of the quota on the date of the relevant reduction.

“(5) No compensation shall be payable under this section to the Crown.”

10. Limit on total compensation payable—(1) Section 280J(1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) A payment by the Crown of \$5,000,000 to be paid forthwith from public money without further appropriation than this section; and”.

(2) Section 280J(1)(b) of the principal Act (as so inserted) is hereby amended by omitting the expression “20 percent lower than that applying on the 1st day of October 1989”, and substituting the expression “19 percent lower than that applying on the 1st day of October 1989, or where paragraph (a) of the definition of the term extended compensation period applies”.

(3) Section 280J(1)(c) of the principal Act (as so inserted) is hereby amended by omitting the expression “extended payment period”, and substituting the expression “extended compensation period”.

(4) Section 28OJ (1) of the principal Act (as so inserted) is hereby further amended by adding to subsection (1) the expression “; and”, and the following paragraph:

“(d) Any amounts paid to or recovered by the Crown under section 28OH (5) of this Act.”

(5) Section 28OJ of the principal Act (as so inserted) is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding section 28OL of this Act, there shall be set aside, out of the amount described in subsection (1) of this section, the sum of \$400,000 which shall be applied towards making payments under section 28OH (2) of this Act in priority to any payments under section 28OG or section 28OI of this Act.”

(6) Section 28OJ (2) of the principal Act (as so inserted) is hereby amended by omitting the words “extended payment period”, and substituting the words “extended compensation period”.

11. Determination of preliminary percentage of compensation payable before end of transitional compensation period—(1) Section 28OK (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by omitting the expression “section 28OL (1) (a)”, and substituting the expression “section 28OL (1) (b)”.

(2) Section 28OK of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

“(5) No preliminary percentage of compensation shall be payable in respect of rock lobster.”

12. Manner and timing of payment of compensation—(1) Section 28OL (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) In the case of compensation payable pursuant to section 28OH or section 28OI of this Act in respect of rock lobster, the Crown shall pay the amount of compensation that is then due as soon as practicable after the end of the quarter in which the allocation or reduction occurred.”

(2) Section 28OL (3) of the principal Act (as so inserted) is hereby amended by omitting the words “extended payment

period", and substituting the words "extended compensation period".

(3) Section 28OL(3) of the principal Act (as so inserted) is hereby further amended by repealing paragraph (a), and substituting the following paragraphs:

"(a) First, there shall be paid (if the compensation balance is sufficient), to each person who has not yet received the amount of compensation that is then due to that person under section 28OH of this Act, such amount as may be necessary to bring the level of compensation paid to that person up to that amount:

"(aa) Secondly, there shall be paid (if the compensation balance is sufficient), to each person who has not yet received the amount of compensation that is then due to that person under section 28OI of this Act, such amount as may be necessary to bring the level of compensation paid to that person up to that amount:

"(ab) Thirdly, there shall be paid in full (if the compensation balance is sufficient), to each person who has not yet received the agreed preliminary percentage of the amount of compensation payable to that person, such amount as may be necessary to bring the level of compensation paid to that person up to that percentage:".

(4) No person shall have any claim against the Crown, the Minister, the Association, the Federation, or the Commission by reason of any delay in the payment of compensation that became payable under the principal Act before the commencement of this Act.

(5) Notwithstanding anything in the principal Act, where compensation is payable under any of sections 28OG to 28OI of that Act in respect of any allocation or reduction that occurred before the commencement of this Act, the following provisions shall apply:

(a) In the case of rock lobster (if the compensation balance is sufficient), the payment due shall be paid out of the compensation balance as at the date of the commencement of this Act and be paid before the close of the next quarter after that date of commencement:

(b) In the case of any other species of fish (if the compensation balance is sufficient), the full amount of the agreed preliminary percentage of compensation

shall be paid out of the compensation balance as at that date of commencement and be paid before the close of the next quarter after that date of commencement:

- (c) If the compensation balance is insufficient to enable the payments referred to in paragraphs (a) and (b) of this subsection to be paid, the payments due shall be paid in accordance with the priorities set out in section 28OL (2) of the principal Act.

13. Additional amounts payable by Crown in respect of goods and services tax—(1) Section 28ON of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Where the Crown is required to pay any amount of compensation pursuant to any of sections 28OF to 28OM of this Act to any person who is registered under the Goods and Services Tax Act 1985, the amount so required to be paid shall be increased by an additional amount equal to the amount of goods and services tax payable in respect of that compensation under the Goods and Services Tax Act 1985.”

(2) Section 28ON of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

“(4) Nothing in subsection (2) of this section applies in respect of any amount of compensation if—

“(a) The Director-General requests the person to whom that amount is payable to provide that person’s registration number under the Goods and Services Tax Act 1985; and

“(b) That person fails to provide that information to the Director-General within 6 months after the date on which the demand is made.”

14. Registers and forms of leases—(1) Section 28P (1) of the principal Act (as substituted by section 16 (1) of the Fisheries Amendment Act 1990), is hereby amended by repealing paragraphs (c) and (d), and substituting the following paragraphs:

“(c) In respect of every transfer of individual transferable quota or of transferable term quota, whether by operation of law or agreement of the parties, that has been notified to the Director-General, the following details:

“(i) The name and address of the transferor and transferee:

“(ii) The tonnage of quota transferred:

“(iii) The date on which the transfer occurred or is to occur:

“(d) In respect of every lease under section 28Q of this Act that has been notified to the Director-General, the following details:

“(i) The name and address of the lessor and lessee:

“(ii) The tonnage of quota leased:

“(iii) The date on which the lease is to commence and the date on which the lease is to terminate.”

(2) Section 28Q(3) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby consequentially repealed.

(3) Section 28R(2)(d) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby repealed.

(4) Section 28R(3) of the principal Act (as so inserted) is hereby consequentially repealed.

15. Minimum holdings of quota and interests in quota—The principal Act is hereby amended by repealing section 28s (as inserted by section 19(1) of the Fisheries Amendment Act 1990), and substituting the following section:

“28s. (1) Except as otherwise provided in this section, no person may purchase or take on lease—

“(a) Less than 5 tonnes of individual transferable quota for any quota management area for any species or class of finfish unless the total individual transferable quota held or held on lease by that person for all species or classes of finfish (including that quota) in one or more quota management areas is or exceeds 5 tonnes:

“(b) Less than 3 tonnes of individual transferable quota for any quota management area for any species or class of shellfish unless the total individual transferable quota held or held on lease by that person for all species or classes of shellfish (including that quota) in one or more quota management areas is or exceeds 3 tonnes:

“(c) Less than 3 tonnes of transferable term quota for rock lobster for any quota management area unless the

total transferable term quota held or held on lease by that person for rock lobster (including that quota) in that quota management area is or exceeds 3 tonnes.

“(2) Notwithstanding that a person may have purchased or taken on lease not less than the minimum amount of quota specified in subsection (1) of this section, that person shall not take fish pursuant to any such quota at any time when the person has disposed of, in whole or in part, the right to take fish under the quota (whether by way of lease or otherwise), unless the person has the current right to take fish to an amount not less than that specified in that subsection.

“(3) Nothing in subsection (1) (b) or subsection (2) of this section shall prevent—

“(a) The Commission (as defined in section 280F of this Act) leasing an amount of shellfish quota that is not less than 1 tonne but is less than the amount specified in subsection (1) (b) of this section, if the lease is registered before the 31st day of October 1992; or

“(b) The holder of any such quota taking shellfish pursuant to that quota at any time while that person has the current right to take not less than 1 tonne of shellfish.

“(4) Nothing in subsection (1) or subsection (2) of this section shall prevent—

“(a) The allocation under section 280F or section 280FA of this Act of guaranteed minimum individual transferable quota or guaranteed minimum transferable term quota or the allocation under section 280 or section 280A of this Act of individual transferable quota or transferable term quota in amounts less than those specified in subsection (1) of this section; or

“(b) The taking of fish pursuant to any such quota by the person to whom it was allocated at any time when the person has the current right to take fish to an amount not less than—

“(i) The amount so allocated; or

“(ii) If the amount so allocated is subsequently increased pursuant to section 280E of this Act, the amount of that quota as so increased.

“(5) Nothing in subsection (1) or subsection (2) of this section shall prevent—

“(a) The reduction, pursuant to section 280D of this Act, of quota to amounts less than those specified in subsection (1) of this section; or

- “(b) The taking of fish pursuant to any such reduced quota by the person whose quota was so reduced at any time when the person has the current right to take fish to an amount not less than—
- “(i) The amount of the reduced quota; or
 - “(ii) If the reduced quota is subsequently increased pursuant to section 28OE of this Act, the amount of that quota as so increased.
- “(6) Nothing in subsection (1) or subsection (2) of this section shall prevent—
- “(a) The holding or holding on lease of quota of an amount less than that specified in subsection (1) (b) of this section by any person who held or held on lease at least one tonne of shellfish quota immediately before the amount specified in subsection (1) (b) of this section was increased to 3 tonnes by virtue of the substitution of this section by section 15 of the Fisheries Amendment Act 1991; or
 - “(b) The taking of shellfish pursuant to any such quota so held by the holder of the quota at any time when that person has the current right to take shellfish to an amount not less than—
- “(i) The amount of quota so held immediately before the amount specified in subsection (1) (b) of this section was increased to 3 tonnes; or
 - “(ii) If the amount so held is subsequently increased pursuant to section 28OE of this Act, the amount of that quota as so increased.
- “(7) Nothing in subsection (1) of this section shall prevent the purchase or taking on lease of individual transferable quota or transferable term quota by any person who intends to acquire over a period at least the minimum individual transferable quota or at least the minimum transferable term quota, and who does not take any fish or rock lobster, as the case may be, pursuant to that quota until the person holds at least the minimum amount of quota specified in that subsection.
- “(8) Nothing in subsection (1) of this section shall apply to the holder of any controlled fishery licence issued under Part III of this Act.
- “(9) Where any person holds at least the minimum holding of individual transferable quota specified in subsection (1) (b) of this section, that person may purchase or take or lease less than the minimum of any individual transferable quota specified in subsection (1) (a) of this section, and may take fish pursuant to any such quota at any time during which the person has the

current right to take shellfish to an amount not less than that specified in subsection (1) (b) of this section.

“(10) Where any person holds at least the minimum holding of transferable term quota specified in subsection (1) (c) of this section, that person may purchase or take on lease less than the minimum of any individual transferable quota specified in subsection (1) (a) of this section, and may take fish pursuant to any such quota at any time during which the person has the current right to take rock lobster to an amount not less than that specified in subsection (1) (c) of this section.

“(11) No person may sell or otherwise dispose of (other than by lease) individual transferable quota or transferable term quota where that sale or disposal would reduce the total individual transferable quota or transferable term quota held by that person to less than—

“(a) Five tonnes of finfish in one or more quota management areas; or

“(b) Three tonnes of shellfish in one or more quota management areas; or

“(c) Three tonnes of rock lobster for any quota management area,—

unless all the individual transferable quota for finfish or shellfish or all the transferable term quota for rock lobster, as the case may be, held or leased by the person are disposed of.

“(12) No person may dispose of or grant a lease of, and no person may acquire or take on lease less than 100 kilograms of, any individual transferable quota or transferable term quota, unless, in the case of the disposal or granting of a lease, the person disposes of or grants a lease of all the individual transferable quota or transferable term quota held by that person for that species or class of finfish or shellfish or rock lobster, as the case may be, for a quota management area.

“(13) No agreement shall be entered into, whether notified under this Act or otherwise, or if entered into shall not be effective, to the extent that it authorises any person to take any species or class of fish subject to a quota management system under the authority of quota held by any other person, unless the first-mentioned person holds or leases in respect of such species or class of fish the required minimum amount of individual transferable quota or transferable term quota specified in subsection (1) of this section.

“(14) Notwithstanding any other provision of this section, where any person is the holder or lessee of less than the minimum amount of individual transferable quota or transferable term quota specified in subsection (1) of this

section and has the right to take fish under that quota by virtue of subsection (4) (b) or subsection (5) (b) or subsection (6) (b) of this section,—

“(a) That person may not sell or otherwise dispose of that quota (other than by lease) unless all the individual transferable quota or transferable term quota, as the case may be, held by that person and to which subsection (4) (b) or subsection (5) (b) or subsection (6) (b) of this section relates is sold or otherwise disposed of:

“(b) That person may acquire or take on lease additional quota if the effect is that the total held is less than the minimum quota, and that person may take fish under all of that quota; but none of the quota initially held or later acquired may be sold or otherwise disposed of (other than by lease) unless all such quota is sold or otherwise disposed of:

“(c) If that person becomes the holder of more than the minimum amount of any class of quota specified in subsection (1) of this section, all rights conferred upon that person by this section in respect of that class of quota shall be extinguished; but nothing in this paragraph shall prevent the person acquiring further rights under subsection (5) of this section in respect of that class of quota.

“(15) Any person who holds less than the minimum holding of individual transferable quota or transferable term quota specified in subsection (1) (b) or subsection (1) (c) of this section, and has the right to take fish under that quota by virtue of subsection (4) (b) or subsection (5) (b) or subsection (6) (b) of this section, may acquire or take on lease less than the minimum holding of individual transferable quota specified in subsection (1) (a) of this section for any species or class of finfish, and may take finfish under that quota; but if the person sells or otherwise disposes of (other than by lease) the quota specified in subsection (4) or subsection (5) or subsection (6) of this section or any increase in that quota allowed under subsection (14) (b) of this section, the person may not take finfish unless that person holds at least the minimum quota specified in subsection (1) (a) of this section.”

16. Taking fish in excess of quota, and carrying forward unused quota—(1) Section 28v of the principal Act (as substituted by section 22 (1) of the Fisheries Amendment

Act 1990) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) Subject to the provisions of this section and the requirements of this Act relating to fishing permits, any holder of individual transferable quota may, unless the holder has leased all of that quota at any time during the year in question, in any fishing year take in total not more than 10 percent more fish than is specified in that quota, or such greater amount as may be permitted under subsection (2) of this section.

“(1A) For the purposes of subsection (1) of this section, a person shall continue to be regarded as the holder of quota notwithstanding that the quota may have been leased to another person or persons, but only if not all of that quota has been so leased.

“(2) The Director-General may, by notice in writing to the holder of the quota, and subject to such conditions as he or she thinks fit, permit that person to take in any fishing year a specified percentage or amount of fish that is greater than 10 percent more fish than is specified in the quota.”

(2) Section 28v of the principal Act (as so substituted) is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Nothing in subsection (1) or subsection (2) of this section shall permit the taking in any fishing year by any lessee of any quota of more fish than is specified in the quota.”

(3) Section 28v of the principal Act (as so substituted) is hereby amended by repealing subsection (6), and substituting the following subsection:

“(6) Where in any fishing year the total tonnage of fish specified in any quota is not taken, the holder of the quota (but not any lessee of the quota) may take in the next fishing year, in addition to any amount authorised by the quota, whichever is the lesser of the following:

“(a) The tonnage that was not taken:

“(b) Ten percent of the total tonnage specified in the quota in the year in which the total tonnage of fish was not taken;—

unless the holder has leased all of that quota at any time during that next fishing year.”

17. Restriction on amount of quota that may be held by any one person—Section 28w of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by inserting, after subsection (2A) (as

substituted by section 67 (1) of the Maori Fisheries Act 1989), the following subsection:

“(2B) Where the maximum permitted percentage of individual transferable quota or transferable term quota, as specified in subsection (1) of this section, for any species or class of fish in any quota management area is less than the minimum permitted quota holding specified in section 28s (1) of this Act, nothing in subsection (1) of this section shall prevent any person from holding up to the minimum permitted quota holding specified in section 28s of this Act.”

18. Fish subject to quota fishing cannot be taken for sale other than under quota—Section 28ZA of the principal Act (as inserted by section 26 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) For the purposes of this section, a person shall be deemed not to take fish under the authority of any quota, unless—

“(a) That person is the holder of the quota; or

“(b) That person is a lessee of the quota; or

“(c) That person is named in a written authority that—

“(i) Is in the prescribed form or a form approved by the Director-General; and

“(ii) Is signed by the holder or lessee, as the case may be, of the quota and the person being authorised to take fish under the authority of the holder's or lessee's quota; and

“(iii) Has, before the fish are taken, been furnished to a Registrar; and no notice rescinding the authority has been served as required by subsection (2A) of this section on the person named in the written authority.

“(2A) Where any quota holder or lessee of quota authorises any person to take fish under the authority of quota in accordance with subsection (2) (c) of this section, that written authority shall remain in effect according to its tenor until the quota holder or lessee of quota, as the case may be,—

“(a) Serves notice of rescission of the authority in accordance with section 88A of this Act on the person authorised to take the fish; and

“(b) Gives written notice to a Registrar of service of the notice of rescission and the date from which the rescission is effective,

“(2B) Where—

“(a) One or more current authorities have been given by a holder or lessee of quota pursuant to subsection (2) of this section; and

“(b) The written authority or authorities have not been rescinded and notice of any such rescission given to a Registrar, as required by subsection (2A) of this section; and

“(c) At any time the total amount of fish taken, by the holder or lessee and by persons acting under the authority of that quota, exceeds the total amount of quota held by the holder or lessee,—

the holder or lessee shall for the purposes of this Act be deemed to have taken such excess for sale; but nothing in this subsection shall exonerate the person who took the fish from liability for any offence against this Act.”

19. Commercial fishermen may be required to pay deemed value of excess or unauthorised quota fish—

(1) Section 28zd of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended by adding the following subsection:

“(3) A demand under subsection (1) of this section may be made at any time before the close of the 31st day of March in the year after the fishing year in which the fish are taken.”

(2) Demands may be made under section 28zd of the principal Act (as so added) in respect of fish taken before the commencement of this Act; and subsection (3) of that section (as inserted by subsection (1) of this section) shall apply to such demands as if it were in force when those fish were taken.

20. Fisherman may offer lease of quota in lieu of paying deemed value—(1) Section 28zg (1) of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended—

(a) By omitting the expression “20”, and substituting the expression “15”;

(b) By inserting, after the words “target species”, the words “or associated species”.

(2) Section 28zg of the principal Act (as so inserted) is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) The Director-General may, by notice in the *Gazette*, specify in relation to any quota management area or combination of such areas—

- “(a) Any bycatch species of fish in respect of which a lease or sublease of quota for a target species (or associated species if the Director-General thinks fit) may be accepted in lieu of the payment under section 28ZD of this Act of the deemed value of the fish:
- “(b) In relation to any such bycatch species, any target species (or associated species if the Director-General thinks fit) for which a lease or sublease of quota may be so accepted:
- “(c) The ratio at which, or other basis or conditions on which, a lease or sublease of quota of the target species (or associated species if the Director-General thinks fit) may be accepted in relation to the amount of the bycatch species for which the offer of quota is made:
- “(d) The method or methods by which the bycatch species must have been taken while fishing for the target species (or associated species if the Director-General thinks fit).
- “(3) In making any notice under subsection (2) of this section, the Director-General shall have regard to—
 - “(a) The closeness of the association between the bycatch species and the target species (or associated species if the Director-General thinks fit) in the quota management area or areas concerned; and
 - “(b) The degree to which there is a disparity between—
 - “(i) The ratio at which the bycatch species is caught in relation to the target species (or associated species if the Director-General thinks fit) in the quota management area or areas concerned; and
 - “(ii) The ratio of the maximum extent to which quota for the bycatch species could be fished in relation to the maximum extent to which quota for the target species (or associated species as the Director-General thinks fit) could be fished, in the quota management area or areas concerned.”
- (3) Section 28ZG (4) (a) of the principal Act (as so inserted) is hereby amended by omitting the word “target”.

21. Taking fish, etc., commercially without permit prohibited—(1) Section 62 (1A) (a) of the principal Act (as inserted by section 31 of the Fisheries Amendment Act 1990) is hereby amended by omitting the words “commercial fisherman named in the permit”, and substituting the words “holder of that permit”.

(2) Section 62 (1A) of the principal Act (as so inserted) is hereby further amended by adding the expression “; and”, and the following paragraph:

“(c) In any case where the Director-General so requires, the written agreement has been amended to specify not more than a number of persons specified by the Director-General, being persons who are natural persons named in the agreement; and, in any case where the Director-General considers there is already a sufficient number of persons authorised to take fish, aquatic life, or seaweed under any permit, the Director-General may decline to recognise the agreement and it shall be of no effect for the purposes of this section.”

22. Restrictions on purchase or acquisition of fish by certain persons—Section 67A of the principal Act (as substituted by section 13 (1) of the Fisheries Amendment Act 1986 and amended by section 35 (2) of the Fisheries Amendment Act 1990) is hereby amended by adding the following subsection:

“(6) For the purposes of this section, the expression ‘fish’ does not include whitebait”.

23. Powers of Fishery Officers—Section 79 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) The following provisions shall apply in relation to every authorisation given under subsection (2) of this section:

“(a) The authorisation shall be directed either to any Fishery Officer by name or generally to every Fishery Officer, and in either case may be executed by any Fishery Officer:

“(b) The authorisation may be given on an application in writing made on oath or on an application made on oath orally, if the District Court Judge or Justice considers it appropriate to do so; and, in such a case, that Judge or Justice shall make a written note of the grounds of the application:

“(c) The authorisation may be executed at any time by day or by night:

“(d) It is the duty of every person exercising the power of entry conferred by the authorisation to have the authorisation with him or her and to produce it if required to do so.”

24. Director-General may direct that transfer or lease of quota not be registered pending laying of information for quota management offence—Section 80A of the principal Act (as inserted by section 39 (1) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) Upon application to the Court by the Director-General, or any Fishery Officer, the Court may extend the duration of any direction given under subsection (1) of this section for a further period of 60 days from the date on which the current order would otherwise expire, or such lesser period as the Court sees fit, and upon such conditions as the Court may specify.

“(2B) Any application under subsection (2A) of this section shall be made before the expiry of the current direction and the application shall have the effect of extending the duration of the current direction for a period of 14 days, or until the Court makes an order determining the application, whichever first occurs.

“(2C) No application under subsection (2A) of this section shall be heard by the Court unless it is satisfied that notice of the application has been served on any person who is to be the subject of the direction at least 7 days before the hearing of the application.”

25. Regulations—Section 89 (1) (kc) (i) of the principal Act (as inserted by section 42 (3) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the words “fishing year”, the words “or from time to time during any fishing year”.

26. Special regulations relating to freshwater fish farming—(1) Section 91 of the principal Act is hereby amended by repealing paragraph (e) (as amended by section 25 of the Fisheries Amendment Act 1986 and section 2 (1) of the Fisheries Amendment Act (No. 2) 1990), and substituting the following paragraph:

“(e) Providing for the application for, issue, revocation, renewal, variation, and transfer of licences in respect of any such operation, and the form and contents of any such licence; and prescribing the fees payable in advance in respect of any such matter relating to any such licence and the fees payable annually or six-monthly in advance for the continued validity of any such licence.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 25 of the Fisheries Amendment Act 1986:

(b) Section 2 (1) of the Fisheries Amendment Act (No. 2) 1990.

27. Ownership and possession of fish—Section 99 (1) (c) of the principal Act (as substituted by section 46 of the Fisheries Amendment Act 1990) is hereby amended by omitting the words “the Registrar at the port where the vessel is registered”, and substituting the words “a Registrar”.

28. Certificates and official documents—Section 106 (1) of the principal Act (as substituted by section 51 of the Fisheries Amendment Act 1990) is hereby amended by adding the following paragraph:

“(g) Any certificate purporting to be signed by the Director-General or any Registrar stating the manner or order in which the fish catch of any person was counted against any quota in respect of any fishing year or from time to time during any fishing year, or any other matter provided for in regulations made pursuant to paragraph (kb) or paragraph (kc) of section 89 (1) of this Act.”

29. Variation of resource rentals by Order in Council—Section 107G of the principal Act (as inserted by section 28 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after subsection (4A) (as inserted by section 55 (1) of the Fisheries Amendment Act 1990), the following subsection:

“(4B) Notwithstanding subsections (1) and (4A) of this section, the resource rentals for each species or class of fish for the fishing year commencing on the 1st day of October 1991 shall be the same as the resource rental for that species or class of fish for the fishing year that commenced on the 1st day of October 1990.”

30. Payments to Crown in lieu of disposal or surrender of fish taken contrary to Act—(1) Where, in relation to any fish taken before the commencement of this section,—

(a) Any person either—

(i) Has notified or notifies a Fishery Officer or any employee of the Ministry of the matters notifiable under section 88 (1) (c) (i) of the principal Act (as

added by section 22 of the Fisheries Amendment Act 1986) or section 105A(1) (c) (ii) of that Act or regulation 30A(3) (c) of the Fisheries (Commercial Fishing) Regulations 1986; or

(ii) Has furnished or furnishes the Director-General or the Ministry with a return in a form purporting to be required by the Director-General under section 66 of the principal Act or under the Fisheries (Reporting) Regulations 1990, being a return showing that, when the fish were taken, a quantity of fish was taken in excess of the quota (if any) held by that person for that class or species of fish or, in the case of salmon, showing a quantity of fish taken in contravention of regulation 30A of the Fisheries (Commercial Fishing) Regulations 1986; and

(b) That person or a licensed fish receiver—

(i) Has paid to the Crown a sum (including any interest and any additional amount for late payment) sought by the Crown in respect of the value of the fish referred to in the notice or return; or

(ii) Either—

(A) Has received a request or demand from the Crown to pay a sum in respect of the value of the fish referred to in the notice or return, being a request or demand that was not cancelled or withdrawn by the Crown before the commencement of this Act; or

(B) Receives a request or demand, being a request or demand made for the first time, to pay a sum in respect of the value of the fish referred to in the notice or return or receives a request or demand to pay such a sum that is issued in place of a request or demand that was made and subsequently cancelled or withdrawn by the Crown; or

(iii) Has entered into any agreement or made any arrangement with the Crown in respect of the fish referred to in the notice or return, being an agreement or arrangement in respect of quota held by that person or another person whereby—

(A) The fish taken were regarded for the purposes of the agreement or arrangement as having been taken under the authority of that quota; and

(B) The right to take fish under the authority of that quota was adjusted accordingly,—
then, as the case may be,—

(c) The sum paid shall be deemed to have been validly paid and the Crown shall be entitled to retain that sum; or

(d) The request or demand shall be deemed to have been validly made and shall be treated as a lawful debt due to the Crown by the person or licensed fish receiver, and that debt shall, subject to subsection (3) of this section, be deemed to be a statutory debt within the meaning of section 13A of the Ministry of Agriculture and Fisheries Act 1953 and may be recovered in any Court of competent jurisdiction; or

(e) The agreement or arrangement shall be deemed to have been validly made and all of the parties thereto shall be bound by it.

(2) Every request or demand referred to in subsection (1) (b) (ii) (B) of this section, not being a request or demand made in place of, and for the same amount as, a request or demand cancelled or withdrawn by the Crown, shall be for a sum calculated having regard to the basis on which any like requests or demands were calculated before the commencement of this Act.

(3) Section 13A of the Ministry of Agriculture and Fisheries Act 1953 shall apply to debts due under this section as if such debts are payable within 3 months after the date on which payment is demanded (being a demand made on or after the commencement of this Act).

(4) Nothing in subsection (1) of this section affects any demand made under section 28ZD of the principal Act or any payment made under that section.

31. Amendment to Maori Fisheries Act 1989—The Maori Fisheries Act 1989 is hereby amended by inserting, after section 9, the following section:

“9A. Power to reimburse fees and expenses incurred in relation to Maori fisheries claim—Notwithstanding any other provision in this Act or any other enactment or rule of law, the Commission may reimburse any Maori or group of Maori for any reasonable fee or expense incurred by that person or group, if the Commission is satisfied that the fee or expense was incurred either—

“(a) In connection with the negotiations between the Crown and Maori before the enactment of this Act or any

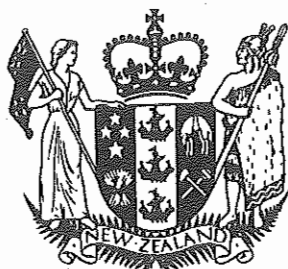
subsequent negotiations between the Crown and
Maori relating to Maori fishing rights; or
“(b) In assisting the Commission in the performance of its
functions under this Act.”

This Act is administered in the Ministry of Agriculture and Fisheries.

1992

Fisheries Amendment

No. 31



ANALYSIS

Title
1. Short Title

2. Commercial fishermen may be required
to pay deemed value of excess or
unauthorised quota fish

1992, No. 31

An Act to amend the Fisheries Act 1983

[10 April 1992]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Fisheries Amendment Act 1992, and shall be read together with and deemed part of the Fisheries Act 1983 (hereinafter referred to as the principal Act).

2. Commercial fishermen may be required to pay deemed value of excess or unauthorised quota fish—Section 28zd (3) of the principal Act (as added by section 19 (1) of the Fisheries Amendment Act 1991) is hereby amended, as from the commencement of the said section 19 (1), by omitting the expression “31st day of March”, and substituting the expression “30th day of June”.

This Act is administered in the Ministry of Agriculture and Fisheries.

WELLINGTON, NEW ZEALAND: Published under the authority of the
New Zealand Government—1992

32968j—92/NS

Public—31

Price Code: 1—A

REPRINTED ACT
[WITH AMENDMENTS INCORPORATED]

FISH ROYALTIES

REPRINTED AS ON 1 MARCH 1991

INDEX

	Page
Fish Royalties Act 1985	1
Fish Royalties Amendment Act 1986	5

ANALYSIS

Title	
1. Short Title	4. Dates for payments of royalties
2. Royalties payable by quota holders	5. Minister may waive or remit royalty in return for research work
3. Royalties payable by other commercial fishermen taking fish under quotas	6. Use of conversion factors
	7. Validation Schedules

THE FISH ROYALTIES ACT 1985
1985, No. 140

An Act to impose royalties in respect of quotas allocated to commercial fishermen and fish taken by commercial fishermen under quotas, and to validate certain notices
[29 October 1985]

1. Short Title—This Act may be cited as the Fish Royalties Act 1985.

2. Royalties payable by quota holders—(1) There shall be payable by every commercial fisherman to whom a quota is allocated from time to time under any notice made pursuant to any regulation made under section 89 (1) (g) of the Fisheries Act 1983 a royalty for each tonne or part of a tonne of quota so allocated at the appropriate rate (if any) according to the species or class of fish and the vessel that may be used to take the fish as specified in Part I of the First Schedule to this Act.

(2) The Minister shall waive or remit half the royalties payable or paid by any commercial fisherman at the higher of the 2 rates specified for quota for any species or class of fish in Part I of the First Schedule to this Act in respect of so much of the quota as authorises the taking of any fish that the Minister is satisfied were taken using a registered fishing vessel that was

not registered or required to be registered under section 57 (8) of the Fisheries Act 1983.

(3) This section shall apply in respect of quotas allocated in respect of the fishing year that commenced with the 1st day of October 1985 and ends with the close of the 30th day of September 1986.

[(4) This section shall also apply in respect of quotas allocated in respect of the fishing year that commences with the 1st day of October 1986 and ends with the close of the 30th day of September 1987.]

Subs. (4) was added by s. 2 of the Fish Royalties Amendment Act 1986.

3. Royalties payable by other commercial fishermen taking fish under quotas—(1) There shall be payable by every commercial fisherman who takes any fish that is subject to a quota prescribed by any regulation made under section 89 (1) (g) of the Fisheries Act 1983 and has not been allocated to that fisherman by any notice made pursuant to any such regulation a royalty for each tonne greenweight or part of a tonne greenweight of such fish taken by the fisherman at the appropriate rate (if any) according to the species or class of fish as specified in Part II of the First Schedule to this Act.

(2) This section shall apply in respect of all fish taken on or after the 1st day of November 1985 and before the 1st day of October 1986.

[(3) This section shall also apply in respect of all fish taken during the fishing year that commences with the 1st day of October 1986 and ends with the close of the 30th day of September 1987.]

Subs. (3) was added by s. 3 of the Fish Royalties Amendment Act 1986.

[4. Dates for payments of royalties—(1) The royalties payable under section 2 of this Act shall be payable to the Crown in 4 equal instalments in respect of each fishing year on the 31st day of December, the 31st day of March, the 30th day of June, and the 30th day of September in that fishing year.

(2) The royalties payable under section 3 of this Act shall be payable to the Crown on the 31st day of December, the 31st day of March, the 30th day of June, and the 30th day of September in any fishing year in each case in respect of fish taken before the specified date, being fish on which royalties are payable under that section and in respect of which royalties have not already been paid.]

This section was substituted for the original s. 4 by s. 4 of the Fish Royalties Amendment Act 1986.

5. Minister may waive or remit royalty in return for research work—The Minister may waive or remit the payment of the whole or any part of any royalty payable under section 2 or section 3 of this Act where, pursuant to an arrangement or agreement between a commercial fisherman and the Minister, the commercial fisherman who holds the quota or takes the fish is required to carry out research and development work on fishery resources, or trials or experiments relating to fishery resources, fishing vessels, fishing gear, apparatus, or techniques.

6. Use of conversion factors—For the purposes of determining the waiver or remission of royalties under sections 2 (2) and 5 of this Act and the royalties payable under section 3 of this Act, the appropriate conversion factors specified in the Second Schedule to this Act shall be used to convert the weight of processed fish to greenweight.

7. Validation—(1) The notices to which this section applies are hereby validated and confirmed, and are hereby declared to be and always to have been validly made.

(2) Nothing in this section shall affect any proceedings taken before or after the commencement of this Act in respect of any offence committed before the commencement of this Act.

(3) This section applies to:

(a) This Fisheries (Sea Fishing) Notice 1983 (S.R. 1983/310);

(b) The Fisheries (Sea Fishing) Notice 1984 (S.R. 1984/328);

(c) The Fisheries (Sea Fishing) Notice 1984, Amendment No. 1 (S.R. 1985/109).

(4) Section 9 of the Finance Act 1984 is hereby repealed.

SCHEDULES

Sections 2 and 3

FIRST SCHEDULE

ROYALTIES

Part I

Royalty Payable by Commercial Fishermen to Whom Quota Allocated

Species or Class of Fish	Rate of royalty per tonne of quota held where commercial fisherman does not have use of any vessel registered or required to be registered under section 57(8) of the Fisheries Act 1983 at any time during the fishing year 1 October 1985-30 September 1986	Rate of royalty per tonne of quota held where commercial fisherman has use of any vessel registered or required to be registered under section 57(8) of the Fisheries Act 1983 at any time during the fishing year 1 October 1985-30 Sep- tember 1986
	\$	\$
Hake	22.50	45
Hoki	8.25	16.25
Ling	27.50	55
Orange Roughy ..	100	200
Oreo Dory	11.25	22.50
Silver Warehou ..	25	50
Squid taken in Southern Islands area ..	23.75	47.50
Squid taken in any other area ..	47.50	95

PART II

*Royalty Payable by Commercial Fishermen Taking Fish Pursuant to
Unallocated Quota*

Species or Class of Fish	Rate of royalty per tonne or part of tonne of fish taken
	\$
Hake	22.50
Hoki	8.25
Ling	27.50
Orange Roughy ..	100
Oreo Dory	11.25
Silver Warehou ..	25
Squid taken in Southern Islands area ..	23.75
Squid taken in any other area ..	47.50

SECOND SCHEDULE

Section 6

CONVERSION FACTORS

The conversion factors specified in the following table shall operate so that one tonne of the species or class of fish processed in the manner indicated shall be equivalent to the appropriate specified greenweight (e.g., 1 tonne of filleted barracouta is equivalent to 2.3 tonnes greenweight).

Species or Class of Fish	Greenweight Equivalent of Headed and Gutted Fish	Greenweight Equivalent of Filleted Fish	Greenweight Equivalent of Dressed Fish
Barracouta	1.50	2.30	1.50
Hake	1.50	2.30	1.70
Hoki	1.50	2.10	2.00
Ling	1.50	2.10	1.70
Oreo Dory	2.15	5.30	2.36
Orange Roughy	1.92	4.00	2.20
Silver Warehou	1.50	3.90	1.70
Squid	—	2.00	—
All other finfish	1.50	2.40	1.70

The conversion factor for any species or class of fish where the fish has been processed to fish meal shall be 5.556 (e.g., 1 tonne of fish meal is equivalent to 5.556 tonnes greenweight).

THE FISH ROYALTIES AMENDMENT ACT 1986

1986, No. 69

An Act to amend the Fish Royalties Act 1985

[29 September 1986]

1. Short Title—This Act may be cited as the Fish Royalties Amendment Act 1986, and shall be read together with and deemed part of the Fish Royalties Act 1985 (hereinafter referred to as the principal Act).

2. This section added subs. (4) to s. 2 of the principal Act.

3. This section added subs. (3) to s. 3 of the principal Act.

4. This section substituted a new section for s. 4 of the principal Act.

The Fish Royalties Act 1985 is administered in the Ministry of Agriculture and Fisheries.

REPRINTED ACT
[WITH AMENDMENTS INCORPORATED]

MAORI FISHERIES

REPRINTED AS ON 1 SEPTEMBER 1991

INDEX

	Page
Maori Fisheries Act 1989.....	2
Fisheries Amendment Act 1990:	
S. 5 (2).....	20 (n)
S. 16 (2).....	20 (n)
S. 17 (6).....	20 (n)
S. 19 (2).....	20 (n)
S. 20.....	20 (n)
S. 22 (3).....	20 (n)
S. 23 (5).....	20 (n)
S. 26 (2).....	20 (n)
S. 27 (2).....	20 (n)
S. 28 (3).....	20 (n)
S. 50 (2).....	20 (n)
S. 52 (3).....	20 (n)
S. 56 (2).....	20 (n)
S. 57 (1).....	5 (n)
S. 57 (2).....	17 (n)
S. 57 (3).....	17 (n)
S. 57 (4) (a), (b), (c).....	18 (n)
S. 57 (5).....	18 (n)
S. 57 (6) (a), (b), (c).....	19 (n)

In this index "(n)" after a page number indicates that the enactment is referred to in a note on that page.

ANALYSIS

Title	14. Alterations to memorandum and articles
1. Short Title and commencement	15. Issue and allotment of shares
2. Interpretation	16. Application of Companies Act 1955
3. Act to bind the Crown	17. Directors
PART I	18. Appointment of directors during transition period
MAORI FISHERIES COMMISSION	19. Disqualification of directors
4. Establishment of Maori Fisheries Commission	20. Removal of directors
5. Principal functions	21. Restriction on dividends
6. Additional functions	Statement of Corporate Intent
7. Special provisions relating to transition period	22. Statement of corporate intent
8. Criteria	23. Contents of statement of corporate intent
9. Powers	24. Completion of statement of corporate intent
10. Restriction on borrowing powers	25. Modifications of statement of corporate intent
11. Prohibition on guarantees, etc.	26. Obligation to make statement of corporate intent available
Aotearoa Fisheries Limited	27. Savings of certain transactions
12. Incorporation of company	
13. Shares subscribed for on incorporation of company deemed to be fully paid up	

678

Maori Fisheries

R.S. Vol. 27

2

28. Annual report and statement of accounts	<i>Obligations of the Crown</i>
<i>Provisions Relating to Maori Fisheries Commission</i>	40. Transfer of quota to Commission
29. Membership of Commission	41. Power, at request of Commission, to postpone transfer of quota or to transfer money instead
30. Members of Commission not to be employed by Aotearoa Fisheries Limited	42. Transfer of quota equivalent where quota not available
31. Term of office	43. Transfer of quota from Commission to company
32. Vacation of office	44. Allotment of shares by company to Commission
33. Chairperson	45. Payment of \$10,000,000 to Commission
34. Commission to hold public meeting	46. Stamp duty exemption
35. Contracts of Commission	
36. Disclosure of interests	
37. Management audits	
38. Protection of name	
39. Proceedings of Commission	

PART II
AMENDMENTS TO FISHERIES ACT 1983

THE MAORI FISHERIES ACT 1989 1989, No. 159

An Act—

- (a) To make better provision for the recognition of Maori fishing rights secured by the Treaty of Waitangi; and
- (b) To facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing; and
- (c) To make better provision for the conservation and management of the rock lobster fishery

[20 December 1989]

1. Short Title and commencement—(1) This Act may be cited as the Maori Fisheries Act 1989.

(2) This Act shall come into force on the 20th day of December 1989.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Commission” means the Maori Fisheries Commission established by section 4 of this Act;

“Company” means the company incorporated pursuant to section 12 of this Act;

“Transition period” means the period—

(a) Beginning on the date of commencement of this Act; and

(b) Ending with the close of the 31st day of October 1992 or the date appointed under section 37 (5) of this Act, whichever is the later.

3. Act to bind the Crown—This Act shall bind the Crown.

PART I

MAORI FISHERIES COMMISSION

4. Establishment of Maori Fisheries Commission—

(1) There is hereby established a Commission to be known as the Maori Fisheries Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of entering into contracts, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

5. Principal functions—The principal functions of the Commission shall be—

- (a) To facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing;
- (b) To grant assistance to any Maori or group of Maori for the purpose of enabling that Maori or group of Maori to enter into or to continue in or to develop the business and activity of fishing;
- (c) To form, pursuant to section 12 of this Act, a public company to be called Aotearoa Fisheries Limited;
- (d) To hold all the shares in Aotearoa Fisheries Limited;
- (e) Subject to section 43 (3) of this Act, to transfer to Aotearoa Fisheries Limited at least 50 percent of all quota and all money transferred or paid to the Commission by the Crown under any of the provisions of sections 40 to 42 of this Act (which quota and money shall be applied in paying up in full shares of Aotearoa Fisheries Limited to be issued and allotted and distributed to the Commission).

6. Additional functions—Without limiting the generality of section 5 of this Act, the Commission shall have the following particular functions:

- (a) To lend money, with or without security and on such terms and conditions as the Commission thinks fit;
- (b) To provide such advisory and technical services as the Commission considers desirable or expedient in the interests of Maori fishing;
- (c) To conduct and encourage research into matters affecting Maori fishing;
- (d) To participate and assist in the promotion, reorganisation, or rationalisation of Maori fishing with a view to increasing efficiency and productivity.

7. Special provisions relating to transition period—

(1) During the transition period, the Commission may lease, but shall not otherwise dispose of,—

(a) Any quota which is transferred to the Commission by the Crown under any of the provisions of sections 40 to 42 of this Act and which is not transferred to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act; and

(b) Any quota which is purchased by the Commission with money paid to the Commission by the Crown under any of the provisions of sections 40 to 42 of this Act and not paid by the Commission to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act.

(2) During the transition period the Commission may not use as security for a loan any quota to which subsection (1) of this section applies.

(3) During the transition period the Commission may not sell or otherwise dispose of all or any of its shares in Aotearoa Fisheries Limited.

(4) Any lease granted pursuant to subsection (1) of this section shall be for a term that expires not later than the end of the transition period.

(5) Notwithstanding anything in subsection (1) of this section, the Commission may during the transition period exchange for other quota any quota to which subsection (1) of this section relates.

(6) Where, during the transition period, quota is exchanged under subsection (5) of this section, the quota received in exchange shall be deemed to be quota to which subsection (1) of this section relates.

(7) During the transition period, all money which is paid to the Commission under any of the provisions of sections 40 to 42 of this Act and which is not paid to Aotearoa Fisheries Limited under sections 5 (e) and 43 of this Act shall either—

(a) Be used by the Commission for the purchase of quota to be leased under subsection (1) of this section; or

(b) Be invested by the Commission in accordance with clause 11 of the First Schedule to this Act.

(8) This section shall have effect notwithstanding anything in any other provision of this Act.

8. Criteria—The Commission shall,—

(a) In considering, whether to grant assistance to any Maori or group of Maori, have regard to—

- (i) Maori custom:
 - (ii) Economic considerations:
 - (iii) Social considerations:
- [(aa) From time to time consult with representatives of tribes who have a history or tradition of engagement in the business and activity of fishing, and in the exercise of its functions under this Act take into account the views expressed in such consultations:]
- (b) Evaluate each proposal after having regard to the economic worth of the proposal, its usefulness to any Maori or group of Maori, and the prospects of its becoming profitable within a reasonable time; and shall not necessarily have regard to the value of the security available in respect of any proposal:
 - (c) Encourage the establishment or expansion of fishing by any Maori or group of Maori in areas where the establishment or expansion will assist the development of those areas:
 - (d) Endeavour to conduct its activities so as to operate on a profitable basis.

Para. (aa) was inserted by s. 57(1) of the Fisheries Amendment Act 1990.

9. Powers—(1) The Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

(2) Without limiting the generality of subsection (1) of this section, the Commission shall have the power—

- (a) To purchase any individual transferable quota or transferable term quota or take a lease of any such quota for a specified period:
- (b) To retain any individual transferable quota or transferable term quota so acquired:
- (c) To transfer any individual transferable quota or transferable term quota held by it, or lease for a specified period some or all of the rights of the Commission in relation to any such quota:
- (d) To purchase or subscribe for shares, debentures, bonds, or other securities or make loans, with or without security, or acquire any other interest in property:
- (e) To finance the purchase, sale, or hire of vessels, machinery, plant, equipment, materials, goods, and articles of every description by any means, including, but without limiting the generality of the foregoing, the purchase and resale and hire thereof on such terms as the Commission thinks fit; and to discount

- hire-purchase or conditional sale agreements or hire agreements, and to lend money on the security of a mortgage or an assignment of any such agreement:
- (f) To execute, make, draw, accept, endorse, discount, issue, and negotiate cheques, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons, and other negotiable or transferable instruments, and to buy, sell, or otherwise deal in the same, and accept deposits of money:
 - (g) To underwrite or sub-underwrite issues of securities, to give and receive guarantees, or to participate with others in any such activities:
 - (h) To participate, in the discretion of the Commission, in the management of enterprises to whose finance it has contributed:
 - (i) To organise, participate in, or act as agent for consortium arrangements for the assistance of Maori fishing:
 - (j) To take such steps as may be necessary to protect or recover its financial interest in any business:
 - (k) To make such charges for the provision of its services as the Commission thinks fit.
- (3) Without limiting the generality of subsection (1) of this section, the Commission may from time to time—
- (a) Purchase, take on lease, hire, or otherwise acquire such land or buildings or parts of buildings, whether or not subject to any mortgage, charge, lease, easement, or restrictive covenant or other encumbrance, as in its opinion are necessary or expedient for the performance of any of its functions or powers:
 - (b) Erect, alter, rebuild, or add to any building on any land so acquired:
 - (c) Grant leases or tenancies of any land or buildings so acquired, or of any part or parts thereof, and create easements and restrictive covenants thereover, and accept surrenders or partial surrenders of any such leases, tenancies, easements, and restrictive covenants.

10. Restriction on borrowing powers—Notwithstanding anything in any other provision of this Act, the Commission may—

- (a) Borrow money; or
- (b) Issue bonds, debentures, coupons, and other negotiable or transferable instruments; or

(c) Mortgage or charge any of its real or personal property;
or

(d) Underwrite or sub-underwrite issues of securities or give
guarantees or participate with others in any such
activities,—

only with the consent of the Minister of Finance and subject to
such terms and conditions as that Minister thinks fit.

11. Prohibition on guarantees, etc.—The Commission
shall not give any guarantee, indemnity, or security in respect
of the performance of any obligation by the company.

Aotearoa Fisheries Limited

12. Incorporation of company—(1) Notwithstanding
anything in the Companies Act 1955 or in any other enactment
or rule of law, the Commission shall, not later than 3 months
after the date of commencement of this Act, form and register
under the Companies Act 1955, a public company limited by
shares—

- (a) That has the name Aotearoa Fisheries Limited; and
- (b) That has a memorandum of association and articles of
association approved by the Minister of Maori Affairs;
and
- (c) That has an authorised capital and an issued capital of
such amounts, and in shares of such classes, as shall
be approved by the Minister of Maori Affairs; and
- (d) That has, as the only subscriber to its memorandum of
association, the Commission.

(2) Nothing in section 13 (1) of the Companies Act 1955
relating to the minimum number of persons who may form a
company shall apply to the formation of the company.

(3) In any case where a company has not been formed and
registered by the Commission in accordance with this section
within the period referred to in subsection (1) of this section,
the Minister of Maori Affairs may form and register the
company and shall have all such powers as are necessary or
desirable for that purpose including, without limitation, the
power to issue and allot shares in the capital of the company to
the Commission.

**13. Shares subscribed for on incorporation of
company deemed to be fully paid up**—(1) On the date on
which a transfer is effected under section 43 (1) of this Act, the
shares subscribed for in the capital of the company on its

incorporation shall be deemed to have been allotted as fully paid up to the Commission.

(2) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall apply to shares that are deemed to have been allotted pursuant to subsection (1) of this section.

14. Alterations to memorandum and articles—

(1) Notwithstanding section 18 of the Companies Act 1955, the memorandum of association of the company shall not be altered by the company.

(2) The articles of association of the company shall not be altered by the company at any time before the end of the transition period without the consent of the Minister of Maori Affairs and any alteration made without the consent of the Minister of Maori Affairs shall be void and of no effect.

(3) Nothing in this section prevents the name of the company being changed in accordance with the provisions of the Companies Act 1955.

15. Issue and allotment of shares—(1) The company shall not issue or allot any shares in the share capital of the company to any person other than the Commission.

(2) Except as provided in sections 12, 13, and 44 of this Act, the company shall not issue or allot any shares in the share capital of the company during the transition period without the prior written consent of the Minister of Maori Affairs.

16. Application of Companies Act 1955—Except as provided in this Act, the provisions of the Companies Act 1955 other than—

- (a) Section 41, as to carrying on business when the number of members is reduced below the legal minimum:
 - (b) Section 217 (d), as to winding up by the Court when the number of members is reduced below the legal minimum:
 - (c) Section 219 (a) (i), as to the presentation of a winding up petition by a contributory when the number of members is reduced below the legal minimum,—
- shall apply to the company.

17. Directors—The company shall have not more than 7 directors.

18. Appointment of directors during transition period—(1) The directors of the company shall, during the transition period, be appointed by the Commission, with the prior written agreement of the Minister of Maori Affairs.

(2) The Commission—

- (a) Shall appoint as directors persons of proven commercial ability and business acumen; and
- (b) Shall ensure that some of the directors have knowledge of fishing and the business of fishing; and
- (c) Shall not appoint as directors persons who have interests in fisheries or in the business of fishing that would or might conflict with their duties as directors; and
- (d) Shall have regard to the desirability of appointing as directors suitably qualified persons who are Maori.

19. Disqualification of directors—No person shall be appointed, or reappointed, to the office of director of the company, or hold that office, if that person—

- (a) Is a member of Parliament; or
- (b) Is an officer or employee of the Commission; or
- (c) Is a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or
- (d) Is a person who has been convicted of any offence punishable by imprisonment for a term of 2 years or more; or
- (e) Is a person who has been convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
- (f) Is a person who is prohibited under section 188A of the Companies Act 1955 from being a director or promoter of, or in any way whether directly or indirectly being concerned or taking part in the management of, a company; or
- (g) Is a person to whom an order made under section 189 of the Companies Act 1955 applies; or
- (h) Is a person who is prohibited under section 189A of the Companies Act 1955 from being an officer or promoter of, or being concerned in or taking part (whether directly or indirectly) in the management of, any company; or
- (i) Is a mentally disordered person within the meaning of the Mental Health Act 1969.

20. Removal of directors—(1) The Minister of Maori Affairs may, at any time during the transition period, by notice in writing to the director of the company, remove that director from office if the Minister of Maori Affairs is satisfied that the director—

- (a) Is unable, or has failed, to perform the duties of a director of the company; or
- (b) Has been guilty of misconduct.

(2) No person, other than the Minister of Maori Affairs acting pursuant to subsection (1) of this section, may remove any director of the company from office during the transition period.

(3) Subject to subsections (1) and (2) of this section, nothing in this section limits or affects the Companies Act 1955 or the articles of association of the company.

21. Restriction on dividends—(1) No dividend declared during the transition period by the company shall exceed the amount recommended by the directors with the approval of the Minister of Maori Affairs.

(2) Before deciding whether to give his or her approval under subsection (1) of this section, the Minister of Maori Affairs shall first consult the Commission and the Minister of Fisheries.

Statement of Corporate Intent

22. Statement of corporate intent—The directorate of the company shall deliver to the Commission and the Minister of Maori Affairs a draft statement of corporate intent not later than one month after the commencement of each financial year of the company.

23. Contents of statement of corporate intent—Each statement of corporate intent shall specify for the group comprising the company and its subsidiaries (if any), and in respect of the financial year in which it is delivered and each of the immediately following 2 financial years, the following information:

- (a) The objectives of the group;
- (b) The nature and scope of the activities to be undertaken;
- (c) The ratio of consolidated shareholders' funds to total assets, and definitions of those terms;
- (d) The accounting policies;
- (e) The performance targets and other measures by which the performance of the group may be judged in relation to its objectives:

- (f) An estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholder:
- (g) The kind of information to be provided to the Commission and the Minister of Maori Affairs and the Minister of Fisheries by the company during the course of those financial years, including the information to be included in each half-yearly report:
- (h) The procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organisation:
- (i) The directorate's estimate of the commercial value of the shareholders' investment in the group and the manner in which, and the times at which, the value is to be reassessed:
- (j) Such other matters as are agreed by the Commission and the directorate.

24. Completion of statement of corporate intent—The directorate—

- (a) Shall consider any comments on the draft statement of corporate intent that are made to it within 2 months of the commencement of the financial year by the Commission or the Minister of Maori Affairs; and
- (b) Shall deliver the completed statement of corporate intent to the Commission and the Minister of Maori Affairs within 3 months of the commencement of the financial year.

25. Modifications of statement of corporate intent—A statement of corporate intent for the company may be modified at any time by written notice from the directorate, so long as the directorate has first—

- (a) Given written notice to the Commission and the Minister of Maori Affairs of the proposed modification; and
- (b) Considered any comments made on the proposed modification by the Commission or the Minister of Maori Affairs within—
 - (i) One month after the date on which the notice under paragraph (a) of this section was given; or
 - (ii) Such shorter period as the Commission and the Minister of Maori Affairs may agree.

26. Obligation to make statement of corporate intent available—Every completed statement of corporate intent and

every modification that is adopted to a statement of corporate intent shall be made available to the public by the directorate within one month after the date on which it is delivered to the Commission or adopted, as the case may be.

27. Savings of certain transactions—A failure by the company to comply with—

(a) Any provision of sections 22 to 26 of this Act; or

(b) Any provision contained in any statement of corporate intent,—

shall not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by the company.

28. Annual report and statement of accounts—(1) As soon as reasonably practicable after the end of each financial year, the company shall deliver to the Commission and the Minister of Maori Affairs a general report of its operations during the year together with a copy of its duly audited accounts for that year and the report of the auditors on those accounts.

(2) A copy of the general report and of the accounts of the company, together with a copy of the report of the auditors on the accounts, shall be laid before the House of Representatives as soon as practicable after its receipt by the Minister of Maori Affairs.

(3) This section shall expire on the last day of the transition period.

Provisions Relating to Maori Fisheries Commission

29. Membership of Commission—The Commission shall consist of 7 members to be appointed by the Governor-General on the advice of the Minister of Maori Affairs.

30. Members of Commission not to be employed by Aotearoa Fisheries Limited—No member of the Commission shall be employed in the service of, or hold any office in, the company.

31. Term of office—(1) Except as otherwise provided in section 32 of this Act, every member of the Commission shall hold office for such term not exceeding 4 years as the Governor-General shall specify in the instrument appointing that member.

(2) Every member of the Commission shall be eligible for reappointment from time to time.

(3) Where the term for which a member of the Commission has been appointed expires, that member of the Commission, unless sooner vacating or removed from office under section 32 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

(a) That member is reappointed; or

(b) A successor to that member is appointed.

32. Vacation of office—(1) Subject to subsection (2) of this section, any member of the Commission may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(2) Any member of the Commission may at any time resign the office by notice in writing addressed to the Minister on whose advice the member was appointed.

(3) The powers of the Commission shall not be affected by any vacancy in its membership.

33. Chairperson—(1) At its first meeting, and thereafter at its first meeting in every financial year, the Commission shall elect one of its members to be its chairperson.

(2) The chairperson, unless he or she sooner vacates the office of chairperson or ceases to be a member of the Commission, shall hold office until his or her successor is elected and comes into office.

(3) Where the chairperson vacates his or her office or ceases to be a member of the Commission before the expiry of the term for which he or she was elected, the Commission shall elect another of its members to his or her office until the expiry of that term.

34. Commission to hold public meeting—(1) The Commission shall, not later than the 31st day of July in each year, hold a public meeting in Auckland or Wellington and shall at that meeting report on the operation of the Commission during the preceding financial year and on the accounts of the Commission for that year.

(2) The Commission shall give not less than 14 days' notice of the holding of a public meeting under subsection (1) of this section in the metropolitan newspapers.

35. Contracts of Commission—(1) Any contract which, if made by private persons, must be by deed shall, if made by the Commission, be in writing under the common seal of the Commission.

(2) Any contract which, if made by private persons, must be signed by the parties to be charged therewith shall, if made by the Commission, be either under the common seal of the Commission or signed by a member or officer of the Commission on behalf of and by authority of the Commission.

(3) Any contract which, if made by private persons, may be made orally may be made in the manner specified in subsection (1) of this section as in the case of a deed, or in the manner specified in subsection (2) of this section as in the case of a contract required to be in writing, or may be made orally by or on behalf of the Commission by any member or officer of the Commission acting by authority of the Commission, but no oral contract shall be made for any sum exceeding \$2,000.

(4) The Commission may by writing under its common seal empower any person, either generally or in respect of any specified matters, to execute instruments on its behalf in any place in or beyond New Zealand. Any instrument executed by such an attorney on behalf of the Commission shall bind the Commission, and if executed as a deed shall have the same effect as if it were under the common seal of the Commission.

(5) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of the Commission shall be invalid by reason only that it was not made in manner provided by this section, if it was made pursuant to a resolution of the Commission or to give effect to a resolution of the Commission in relation to contracts generally or in relation to that particular contract.

36. Disclosure of interests—(1) Any member of the Commission who, otherwise than as such member is directly or indirectly interested in any arrangement or agreement made or entered into, or proposed to be made or entered into, by the Commission shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Commission.

(2) A disclosure under this section shall be recorded in the minutes of the Commission, and, except as otherwise provided by resolution of the Commission or in subsection (3) of this section, the member—

- (a) Shall not take part after the disclosure in any deliberation or decision of the Commission relating to the arrangement or agreement; and
- (b) Shall be disregarded for the purpose of forming a quorum of the Commission for any deliberation or decision.
- (3) Where a member of the Commission who is a member of a tribe makes a disclosure under subsection (1) of this section in relation to any arrangement or agreement, nothing in subsection (2) of this section shall prohibit the member from voting on or taking part in the deliberation or decision relating to that arrangement or agreement where the interest disclosed is not different in kind from the interests of other members of that tribe.

37. Management audits—(1) The directors of the company shall arrange for a management audit of the company to be conducted during the period beginning on the 1st day of January 1992 and ending with the close of the 30th day of June 1992.

(2) The Commission shall arrange for a management audit of the Commission to be conducted during the period beginning on the 1st day of January 1992 and ending with the close of the 30th day of June 1992.

(3) Each management audit conducted under this section shall be conducted, in each case, by persons approved by, and in a manner approved by, the Minister of Finance.

(4) As soon as reasonably practicable after the completion of each management audit (but not later than the 30th day of September 1992) a copy of the report of the persons who conducted the audit shall be delivered to the Minister of Finance.

(5) Where—

- (a) Either of the management audits required by this section is not conducted or is not conducted in accordance with this section; or
- (b) The copy required by subsection (4) of this section is not delivered to the Minister of Finance in accordance with that subsection; or
- (c) Any management audit conducted in accordance with this section establishes to the satisfaction of the Minister of Finance that either the company or the Commission is not being conducted in a manner that will tend to ensure its success or its ability to meet its objects or to fulfil its purposes,—

the Governor-General may by Order in Council declare that the transition period shall expire on such date (being later than the 31st day of October 1992) as shall be specified in the order.

38. Protection of name—No company or other body shall be incorporated or registered under any Act or otherwise under a name that is identical with that of the Commission or under any other name that in the opinion of the Registrar of Companies so resembles the name of the Commission as to be likely to deceive.

39. Proceedings of Commission—(1) The provisions of the First Schedule to this Act shall have effect in relation to the Commission and its proceedings.

Obligations of the Crown

40. Transfer of quota to Commission—Subject to sections 41 and 42 of this Act, the Crown—

- [(a) Shall, before the 31st day of March 1990 or such later date as may be agreed between the Crown and the Commission, transfer to the Commission 2.5 percent of the then existing total allowable catches specified under Part IIA of the Fisheries Act 1983; and
- (b) Shall, in the year ending on the 31st day of October 1990, transfer to the Commission—
 - (i) In relation to rock lobster, 5 percent of the then existing total allowable commercial catches for rock lobster specified under Part IIA of the Fisheries Act 1983; and
 - (ii) In relation to all other species and classes of fish, 2.5 percent of the then existing total allowable commercial catches specified under Part IIA of the Fisheries Act 1983; and
- (c) Shall, in the year ending on the 31st day of October 1991, transfer to the Commission 2.5 percent of the then existing total allowable commercial catches specified under Part IIA of the Fisheries Act 1983; and
- (d) Shall, in the year ending on the 31st day of October 1992, transfer to the Commission 2.5 percent of the then existing total allowable commercial catches specified under Part IIA of the Fisheries Act 1983.]

[(2) In this section and in sections 41 to 43 of this Act, the term “total allowable commercial catch”, in relation to any total allowable commercial catch specified in respect of any fishery after the commencement of the Fisheries Amendment

Act 1990, includes, in addition to the amount of the catch so specified, any amount determined under section 12 of the Territorial Sea and Exclusive Economic Zone Act 1977 as the allowable catch for foreign fishing craft in the fishery, to the extent that any such amount has been allowed for under section 28D (1) (a) (ii) of the Fisheries Act 1983 before specifying the total allowable commercial catch.】

In subs. (1), paras. (a) to (d) were substituted for the original paras. (a) to (d) by s. 57 (2) of the Fisheries Amendment Act 1990.

Subs. (2) was added by s. 57 (3) of the Fisheries Amendment Act 1990.

41. Power, at request of Commission, to postpone transfer of quota or to transfer money instead—(1) The Crown shall, before making a transfer under section 40 of this Act, give to the Commission a written notice setting out full particulars of the proposed transfer (including the date on which it is to be made).

(2) Each notice given under subsection (1) of this section shall be given to the Commission not less than one month [, or, in the case of a transfer referred to in section 40 (1) (a) of this Act, such shorter period as may be agreed between the Crown and the Commission,] before the date of the proposed transfer by the Crown.

(3) The Commission may, within 21 days after being served with a notice under subsection (1) of this section [, or, in the case of a transfer referred to in section 40 (1) (a) of this Act, within such later period as may be agreed between the Crown and the Commission,]—

(a) Request the Crown to postpone the transfer of all or any part of the quota until a later date (which later date shall be not later than 3 months after the date proposed by the Crown and not later than the last day of that year); or

(b) Request the Crown to transfer to the Commission, instead of the whole or any part of the [total allowable commercial catch], an equivalent amount of money (which equivalent amount shall be agreed between the Commission and the Crown or, failing agreement, determined by arbitration in accordance with the Arbitration Act 1908); or

(c) Make both a request under paragraph (a) of this subsection and a request under paragraph (b) of this subsection.

(4) The Crown shall comply with any request made by the Commission in accordance with subsection (3) of this section.

(5) Subject both to any request made under subsection (3) of this section and to subsection (4) of this section, quota specified in any notice given under subsection (1) of this section shall, on the proposed date, be transferred by the Crown to the Commission.

In subs. (2) the words in square brackets were inserted by s. 57 (4) (a) of the Fisheries Amendment Act 1990.

In subs. (3) the words in square brackets were inserted by s. 57 (4) (b) of the Fisheries Amendment Act 1990.

In subs. (3) (b) the words in square brackets were substituted for the original words by s. 57 (4) (c) of the Fisheries Amendment Act 1990.

42. Transfer of quota equivalent where quota not available—(1) Where—

(a) The Crown—

(i) Does not hold the full amount of the [total allowable commercial catch] required for the purpose of any transfer required by section 40 of this Act; or

(ii) Is, because of its obligations under the Territorial Sea and Exclusive Economic Zone Act 1977, not able to make available the full amount of the [total allowable commercial catch] required for the purpose of any transfer required by section 40 of this Act; and

(b) The Minister of Fisheries considers that the amount required to make up the deficiency can be purchased only at prices that are excessive, the Crown shall make up the deficiency by transferring to the Commission an equivalent amount of money.

(2) The equivalent amount of money to be transferred under subsection (1) of this section shall be fixed by agreement between the Commission and the Crown or, failing agreement, determined by arbitration in accordance with the Arbitration Act 1908.

In subs. (1) (a) (i) and (ii) the words in square brackets were substituted for the words "total allowable catch" by s. 57 (5) of the Fisheries Amendment Act 1990.

43. Transfer of quota from Commission to company—

(1) The Commission shall, within 14 days after the date on which the first or only transfer is effected under section 40 (1) (a) of this Act [or within such longer period not exceeding 2 months as may be agreed between the Commission and the company,] transfer to the company, without deduction, at least 50 percent of everything transferred to the Commission by that transfer (including any amount of money transferred by the Crown, pursuant to section 41 or

section 42 of this Act, instead of the whole or any part of the [total allowable commercial catch]).

(2) The Commission shall, within 14 days after each subsequent occasion on which a transfer is effected under section 40 of this Act, [or within such longer period not exceeding 2 months as may be agreed between the Commission and the company,] transfer to the company without deduction, at least 50 percent of everything transferred to the Commission by that transfer (including any amount of money transferred by the Crown, pursuant to section 41 or section 42 of this Act, instead of the whole or any part of the [total allowable commercial catch]).

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the Commission may, with the agreement of Aotearoa Fisheries Limited, transfer to Aotearoa Fisheries Limited in discharge of the obligation imposed on the Commission, in relation to any quota, by any of those provisions—

- (a) Other quota of substantially equivalent value; or
- (b) A parcel, made up of quota and money, of substantially equivalent value.

In subs. (1) the words in the first set of square brackets were inserted by s. 57 (6) (b) of the Fisheries Amendment Act 1990.

In subss. (1) and (2) the words "total allowable commercial catch" were substituted for the words "total allowable catch" by s. 57 (6) (a) of the Fisheries Amendment Act 1990.

In subs. (2) the words in the first set of square brackets were inserted by s. 57 (6) (c) of the Fisheries Amendment Act 1990.

44. Allotment of shares by company to Commission—

(1) On each occasion on which a transfer is effected under section 43 (2) of this Act, the company shall forthwith issue and allot to the Commission fully paid shares in the company.

(2) The fully paid shares to be issued and allotted to the Commission under subsection (1) of this section shall be specified by the Minister of Maori Affairs by notice in writing to the Commission and the company.

(3) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall apply to shares allotted pursuant to subsection (1) of this section.

45. Payment of \$10,000,000 to Commission—The Crown shall, without further appropriation than this Act, pay out of

696
20

Maori Fisheries

R.S. Vol. 27

public money to the Commission, not later than the 31st day of March 1990, the sum of \$10,000,000.

46. Stamp duty exemption—No stamp duty shall be payable under the Stamp and Cheque Duties Act 1971 in respect of any instrument of conveyance of property from the Commission to the company pursuant to section 43 of this Act.

PART II

AMENDMENTS TO FISHERIES ACT 1983

47–81. *These sections have been incorporated in the reprinted Fisheries Act 1983 (1991, R.S. Vol. 27, p. 137).*

Ss. 50, 60, 61, 63, 64, 66, 67 (2), 71, 72, 73, 75, 76 and 77, and 78 and 79 were respectively repealed by ss. 5 (2), 16 (2), 17 (6), 19 (2), 20, 22 (3), 23 (5), 26 (2), 27 (2), 28 (3), 50 (2), 52 (3), and 56 (2) of the Fisheries Amendment Act 1990.

SCHEDULES

Section 39

FIRST SCHEDULE

PROVISIONS RELATING TO MAORI FISHERIES COMMISSION

1. Meetings—(1) Meetings of the Commission shall be held at such times and places as the Commission or its Chairperson from time to time appoints.

(2) The Chairperson, or any 3 members, may at any time call a special meeting.

(3) During the transition period, the quorum necessary for the transaction of business at any meeting of the Commission shall be 3 members appointed under section 29 of this Act and 1 other member appointed under section 29 of this Act.

(4) After the transition period, the quorum necessary for the transaction of business at any meeting of the Commission shall be 4 members.

(5) At all meetings of the Commission its Chairperson shall preside if he or she is present. If the Chairperson is absent, the members present shall appoint one of their number to be Chairperson of that meeting.

(6) All questions arising at any meeting of the Commission shall be decided by a majority of the valid votes recorded thereon.

(7) At any meeting of the Commission the Chairperson or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(8) A resolution in writing signed, or assented to by letter, facsimile transmission, telegram, or telex, by all the members of the Commission shall be as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

(9) Subject to the provisions of this Act, the Commission may regulate its procedure in such manner as it thinks fit.

2. Remuneration and travelling allowances—The Commission shall pay to its members, and to the members of any committee appointed by the Commission, such remuneration by way of fees, salary, or allowances, and such travelling allowances and expenses, as may be determined by the

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*

Commission by resolution from time to time with the approval of the Minister of Finance.

3. Employees of Commission—(1) Subject to the provisions of this clause, the Commission may from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as the Commission thinks necessary for the efficient carrying out of the Commission's functions, powers, and duties under this Act or any other enactment.

(2) Subject to the Commission's terms and conditions of employment, the Commission may, on behalf of the Commission, at any time terminate or suspend the employment of any of the Commission's officers or employees.

(3) The number of officers and employees who may be appointed under subclause (1) of this clause, whether generally or in respect of any specified duties, shall from time to time be determined by the Minister of Maori Affairs.

(4) Officers and employees appointed under subclause (1) of this clause shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Commission from time to time determines.

(5) Any determination under subclause (4) of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is so specified, the determination shall take effect on the date thereof.

4. Committees and consultants—(1) To assist the Commission in the exercise of its functions, the Commission may from time to time,—

- (a) Establish committees and appoint members thereof; and
- (b) Engage such consultants as the Commission thinks fit.

(2) The Commission shall pay persons appointed or engaged under subclause (1) of this clause, for services rendered by them, fees and commission or either, at such rates as the Commission thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commission.

5. Application of certain Acts to members and staff of Commission—No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as a member of the Commission, or an officer or employee of the Commission, or a person appointed under clause 4 of this Schedule.

6. Superannuation or retiring allowances—(1) For the purpose of providing a superannuation fund or retiring allowance for any of the officers or employees of the Commission or for any full-time members of the Commission, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*

(2) If the question whether or not any member of the Commission is a full-time member for the purposes of subclause (1) of this clause arises, that question shall be determined by the Minister of Maori Affairs whose decision shall be final.

(3) Notwithstanding anything in this Act, any person who immediately before becoming an officer or employee of the Commission or member of the Commission is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government Service so long as that person continues to be an officer or employee of the Commission or to hold office as a member of the Commission; and that Act shall apply to that person in all respects as if that person's service as such an officer or employee or as such a member were Government service.

(4) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (3) of this clause shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(5) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subclause (3) of this clause, to a person who is in the service of the Commission, whether as an officer or employee or as a member, and is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person who is in the service of the Commission means the Commission.

7. Crown may provide services for Commission—The Crown, acting through any Government department, may from time to time, at the request of the Commission, execute any work or enter into arrangements for the execution or provision by the Government department for the commission of any work or service, or for the supply to the Commission of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

8. Fees, etc., payable out of funds of Commission—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of the funds of the Commission.

9. Funds of Commission—The funds of the Commission shall consist of—

- (a) Any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission;
- (b) All other money lawfully received by the Commission for the purposes of the Commission;
- (c) All accumulations of income derived from any such money.

10. Bank accounts—(1) The Commission shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*

(2) All money received by the Commission, or by any employee of the Commission shall, as soon as practicable after it has been received, be paid into such bank accounts of the Commission as the Commission from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised in such manner as the Commission thinks fit.

(4) The withdrawal or payment of money from any such accounts shall be by cheque signed by such person or persons as the Commission may from time to time authorise.

11. Investment of money—Any money which belongs to the Commission and which is not immediately required for expenditure by the Commission may be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.

12. Financial year—The financial year of the Commission shall end on the 31st day of March or on such other date in any year as the Commission may from time to time determine.

13. Unauthorised expenditure—The Commission may in any financial year, expend out of the funds of the Commission for purposes not authorised by this Act or any other enactment any sum or sums not amounting in the whole to more than \$5,000.

14. Audit of accounts—(1) Within 6 months after the end of each financial year or within such further period as the Minister of Maori Affairs may allow, the Commission shall prepare a balance sheet and such other statements of accounts as are necessary to show fully the financial position of the Commission, and the financial results of its operations during the year.

(2) The balance sheet and other accounts shall be audited by the Audit Office which shall, for that purpose, have the same powers as it has under the Public Finance Act 1977 in respect of public money and stores and the audit of local authorities' accounts.

15. Annual report and statement of accounts—(1) As soon as reasonably practicable after the end of each financial year, the Commission shall deliver to the Minister of Maori Affairs a general report of its operations during the year together with a copy of its duly audited accounts for that year and the report of the Audit Office on those accounts.

(2) A copy of the general report and of the accounts of the Commission, together with a copy of the report of the Audit Office on the accounts, shall be laid before the House of Representatives as soon as practicable after their receipt by the Minister of Maori Affairs.

16. Protection in respect of acts of Commission and members—No member of the Commission or any of its committees, and no officer or employee of the Commission or person appointed under clause 4 of this Schedule, shall be personally liable for any liability of the Commission or for any act done or omitted by the Commission or any of its committees, or by any member, officer, or employee of the Commission or person so

700
24

Maori Fisheries

R.S. Vol. 27

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO MAORI FISHERIES COMMISSION—*continued*
appointed, in good faith in pursuance or intended pursuance of the
functions or powers of the Commission.

Section 49

SECOND SCHEDULE

QUOTA MANAGEMENT AREAS IN RESPECT OF ROCK LOBSTERS

*This Schedule has been reprinted with the Fisheries Act 1983
(1991, R.S. Vol. 27, p. 137).*

Section 49

THIRD SCHEDULE

QUOTA MANAGEMENT AREAS DEFINED

*This Schedule has been reprinted with the Fisheries Act 1983
(1991, R.S. Vol. 27, p. 137).*

Section 81

FOURTH SCHEDULE

ORDERS REVOKED

*This Schedule has been reprinted with the Fisheries Act 1983
(1991, R.S. Vol. 27, p. 137).*

The Maori Fisheries Act 1989 is administered in the Ministry of Agriculture and
Fisheries.



ANALYSIS

Title	
1. Short Title and application	17. Purse seining
2. Interpretation	18. Treatment or disposal of sick or dead marine mammals
3. Act to bind the Crown	19. Destruction of diseased captive marine mammals
4. Restrictions on taking marine mammals	20. No derogation from certain enactments
5. Application for permit	21. Advisory, research, and technical committees
6. Grant of permit	22. Marine mammal sanctuaries
7. Conditions of permit	23. Offences and penalties
8. Register of marine mammal permits	24. Onus of proof in respect of certain offences
9. Offence to take marine mammal without permit	25. Proceedings in respect of offences
10. Director-General to be notified of actions taken in respect of marine mammals	26. Defences in respect of certain offences
11. Marine Mammals Officers	27. Liability for causing Officer to incur expense
12. Officers to be provided with subsistence and accommodation	28. Regulations
13. Powers of search	29. Costs of administering Act, receipts
14. Officer may obtain search warrant	30. Amendments, repeals, and revocations
15. Officers, etc., protected from proceedings	Schedule
16. Reporting of accidental death or injury	

1978, No. 80

An Act to make provision for the protection, conservation, and management of marine mammals within New Zealand and within New Zealand fisheries waters

[20 October 1978]

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

1. Short Title and application—(1) This Act may be cited as the Marine Mammals Protection Act 1978.

Public—80

Price 65

(2) Nothing in this Act shall apply before the 1st day of January 1979 with respect to any permit, licence, or permission issued or given pursuant to section 45 of the Fisheries Act 1908 or any other Act.

(3) The provisions of this Act shall apply in respect of—

(a) Any matter or thing done, to be done, or omitted to be done within New Zealand or New Zealand fisheries waters:

(b) Any act or omission occurring on any New Zealand ship or aircraft, wherever that ship or aircraft may be:

(c) Subject to section 26 (2) of this Act, any act or omission by any person who is a New Zealand citizen, wherever that person may be.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Aircraft” has the same meaning as in the Civil Aviation Act 1964:

“Approved” means approved by the Minister:

“Crown-owned land” means unoccupied land vested in Her Majesty and administered by a Minister of the Crown for the time being charged with the administration of the Department of State that has control of the land:

“Director-General” means the Director-General of Agriculture and Fisheries:

“Hovercraft” has the same meaning as in the Hovercraft Act 1971:

“Inspector of Sea Fishing” means any person appointed or declared to have been appointed as such under section 4 of the Fisheries Act 1908:

“International agreement” means any bilateral or multilateral treaty, convention, or agreement, to which New Zealand is a party, and any understanding concluded by the Government of New Zealand and the government of any other country:

“Marine mammal” includes—

(a) Any mammal which is morphologically adapted to, or which primarily inhabits, any marine environment; and

(b) All species of seal (*Pinnipedia*), whale, dolphin, and porpoise (*Cetacea*), and dugong and manatee (*Sirenia*); and

(c) The progeny of any marine mammal; and

(d) Any part of any marine mammal:

"Minister" means the Minister of Fisheries:

"New Zealand fisheries waters" has the same meaning as in section 2 (1) of the Fisheries Act 1908:

"New Zealand ship" has the same meaning as in the Shipping and Seamen Act 1952:

"Officer" means a Marine Mammals Officer declared or appointed as such under section 11 of this Act:

"Permit" means a permit issued under this Act:

"Place" includes any building (not being a dwelling-house), any land, and any waters:

"Registrar" means an officer of the Ministry of Agriculture and Fisheries authorised by the Director-General to issue licences, permits, and permissions under Part I of the Fisheries Act 1908:

"Take" includes—

(a) To take, catch, kill, injure, attract, poison, tranquillise, herd, harass, disturb, or possess:

(b) To brand, tag, mark, or do any similar thing:

(c) To flense, render down, or separate any part from a carcass:

(d) To attempt to do any act specified in paragraph (a) or paragraph (b) or paragraph (c) of this definition:

"Vessel" means any ship, boat, steamer, lighter, launch, raft, barge, punt, or ferry boat; and includes every description of vessel, whether used in navigation or in any way kept or used as a hulk or storeship or for any other purpose.

(2) For the purposes of this Act, a marine mammal shall be in the possession of any person when that person has, alone or jointly with any other person, possession of or control over the marine mammal, or possession of or control over any vessel, vehicle, aircraft, hovercraft, container, package, receptacle, or place in or on which the marine mammal is kept.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Restrictions on taking marine mammals—(1) Subject to this Act, no person shall take any marine mammal, whether alive or dead, in or from its natural habitat or in or from any other place without first obtaining a permit to do so from the Minister or from any person or persons authorised in that behalf by the Minister.

(2) Subject to section 5 (3) of this Act and to any regulations made under section 28 of this Act, no person shall import into New Zealand or export from New Zealand any marine mammal or marine mammal product except pursuant to a permit issued under this Act.

(3) Nothing in subsection (2) of this section shall apply with respect to any whale product the subject of an order made under section 48 or section 70 of the Customs Act 1966.

(4) No permit shall be issued for the taking of any marine mammal in or from a reserve within the meaning of the Reserves Act 1977 or in or from a National Park within the meaning of the National Parks Act 1952 without the concurrence of the Minister of Lands.

(5) A permit shall not be required—

- (a) By any person who finds or collects bones, teeth, ivory, or ambergris that have already separated naturally from a marine mammal if that person, as soon as practicable, notifies a Registrar or Inspector of Sea Fishing of the find, and gives details of the time, place, and circumstances under which the find was made:
- (b) By any person who finds any dead marine mammal or part of one and, if authorised to do so by an Inspector of Sea Fishing and acting pursuant to his directions, sends the mammal or part to the Ministry of Agriculture and Fisheries or to any approved research establishment, laboratory, or public museum:
- (c) By any person taking from or bringing into New Zealand any marine mammal product, being an ornament or an item for personal use or adornment made wholly or principally from any part or parts of a marine mammal, if the marine mammal product accompanies that person from or into New Zealand or comprises part of that person's belongings and was in existence in a similar form as at the commencement of this Act.

5. Application for permit—(1) Every person who desires to obtain a permit to take any marine mammal or to import or export any marine mammal or marine mammal product shall make application in writing to the Director-General accompanied by the prescribed fee (if any).

- (2) Every application shall specify—
- (a) The full name and address of the applicant, whether or not the applicant is a New Zealand citizen, and details of such qualifications and experience as the applicant considers will assist the Minister in his consideration of the application:
 - (b) In the case of an intended research project, a full description of the project or programme in which the marine mammal to be taken will be used, a complete list of the sponsors or co-operating institutions concerned with the project, and the names and qualifications of any scientists involved:
 - (c) Where the marine mammal is for display or zoological purposes, details relating to the facilities where the mammal taken will be held or displayed or, if a certificate has been issued in respect of any zoological garden pursuant to regulations made under section 25 of the Animals Act 1967, details of the certificate:
 - (d) Where a marine mammal is to be captured, the number of persons to be involved, the population or area from which it is proposed to take the mammal, and details of the proposed methods of capture and transportation.
- (3) No person shall make an application under this section to import any marine mammal or marine mammal product unless a permit issued under the Animals Act 1967 in respect of such import has first been obtained.
- (4) The Director-General may investigate any application, and may request the applicant to provide such further information as the Director-General thinks will assist the Minister. On completing any such investigation the Director-General shall forward the application and all supporting documents to the Minister, together with a report on the nature and extent of the investigation and any conclusions that the Director-General may have drawn as a result.
- (5) The Minister shall, before he grants a permit under section 6 of this Act, publish, by notice in the *Gazette*, details of the application for that permit and shall, in the same notice, call for submissions in respect of that application to be made to him in writing by any person within 28 days after the date of publication of the notice.
- (6) Notwithstanding subsection (5) of this section, the Minister shall not, except in the case of an application for a

permit to hunt and kill any marine mammal or capture any marine mammal for display purposes, be required to publish the notice referred to in that subsection if he is satisfied that it is expedient for the notice not to be published in any case where the application relates to an emergency situation or to the taking of any marine mammal solely for the purposes of research.

(7) In considering any application for a permit, the Minister shall have regard to—

- (a) The need to conserve, protect, or manage any marine mammal:
- (b) Any international agreement to which New Zealand is a party:
- (c) Any submissions received pursuant to subsection (5) of this section.

6. Grant of permit—The Minister, in his discretion, may grant a permit under this Act or refuse to grant a permit, and his decision shall be final.

7. Conditions of permit—(1) Subject to such conditions as may be prescribed by regulations made under this Act, the Minister may attach to any permit such conditions as he thinks fit, including conditions relating to—

- (a) The taking of marine mammals solely for the purpose of research:
- (b) The taking of marine mammals to be held in zoological gardens or aquaria or other places of a similar nature for observation by the public under such conditions as may also be specified in the permit:
- (c) The methods by which any species of marine mammals may be managed:
- (d) The boats, gear, equipment, and methods to be used in taking any marine mammal:
- (e) The payment of a deposit or fee not exceeding such amount as may be prescribed by regulations made under this Act in respect of any marine mammal:
- (f) The entering into of a bond in favour of the Crown, either with or without sureties, for such amount as the Minister thinks will give security for the performance by the permit holder of any obligation incurred under this Act or the permit:

- (g) The records that are to be kept by the permit holder in relation to any marine mammal, and any information which is to be supplied to either the Minister or the Director-General.
- (2) Any permit may be revoked and the conditions attached to it amended at any time by the Minister or by any person authorised by him.
- (3) No permit shall be transferred to any other person except with the consent in writing of the Minister.

8. Register of marine mammal permits—(1) For the purposes of this Act, the Director-General shall set up and maintain a Register of permits granted by the Minister.

(2) The Register shall be open to inspection by the public during ordinary office hours on payment of a fee of \$2.

(3) On payment to him of a fee of \$5, the Director-General shall send to any person requesting the same in writing a copy of any specified entry in the Register.

(4) Wherever a permit is granted, renewed, amended, or revoked by the Minister under this Act, the Director-General shall make an appropriate entry in the Register, showing—

- (a) In the case of the issue of a permit, the name and address of the holder, the actions authorised by the permit, any conditions which the Minister may attach or any directions he may have given in respect of it, and the date on which the application was granted;
 - (b) In the case of the revocation of a permit, the date and the grounds on which the revocation was made.
- (5) The Director-General shall also, in respect of any entry, record such other particulars as may from time to time be prescribed by regulations made under this Act, and such further conditions, amendments, or directions as the Minister may from time to time attach, make, or give in respect of any permit.

9. Offence to take marine mammal without permit—

(1) Every person commits an offence and is liable on summary conviction before a Magistrate to a fine not exceeding \$10,000 who takes, has in possession, exports, imports, has on board any vessel, vehicle, aircraft, or hovercraft, or has control of any marine mammal otherwise than under or pursuant to this Act or a permit.

(2) Upon the conviction of any person for an offence against subsection (1) of this section, any marine mammal unlawfully taken, in possession, under the control of any person, or on board any vessel, vehicle, aircraft, or hovercraft, and all vessels, vehicles, aircraft, hovercraft, gear, nets, tackle, equipment, and apparatus used in respect of the commission of the offence shall be forfeit to the Crown, and shall be disposed of as the Minister thinks fit.

10. Director-General to be notified of actions taken in respect of marine mammals—(1) Where any person completes any action in relation to a marine mammal, being an action that he is authorised to take under or pursuant to this Act or to a permit, he shall forthwith give to the Director-General full details of the results of that action, including—

- (a) The number of injuries caused or deaths among any taken marine mammals, together with the date on and the location at which those injuries or deaths occurred, and the species injured or killed;
- (b) The cause, as far as may be determined, of any such injury or death;
- (c) The measures taken to avoid further such injuries or deaths;
- (d) Whether any species of marine mammal other than that authorised was taken, the location and date of such a taking, the method by which it was taken, and whether or not it appeared to be unharmed when it was released.

(2) Every person commits an offence against this Act who contravenes subsection (1) of this section.

11. Marine Mammals Officers—(1) Every Inspector of Sea Fishing, and every constable, shall be a Marine Mammals Officer for the purposes of this Act.

(2) For the purposes of this Act, the Director-General may from time to time appoint any person to be a Marine Mammals Officer on such terms and conditions as may be approved. If any person appointed as an Officer is a full-time officer or employee of the State services he shall not be entitled to any additional remuneration in respect of his appointment under this subsection.

(3) Every person appointed under subsection (2) of this section shall be appointed for such term, not exceeding 3 years, as the Director-General thinks fit, and may be reappointed.

(4) Any person appointed under subsection (2) of this section may at any time be removed from office by the Director-General for incapacity, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Director-General.

(5) Any person appointed under subsection (2) of this section shall, on the expiration of the term of his appointment, or on the sooner expiry of his appointment by removal from office or resignation, surrender to the Director-General his warrant of appointment.

(6) No person appointed under subsection (2) of this section shall, by virtue of that appointment, be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956.

(7) Every person declared to be an Officer under subsection (1) of this section shall have and may exercise, in respect of supervising, administering, and enforcing the provisions of this Act, all the powers that an Inspector of Sea Fishing has in relation to supervising, administering, and enforcing the provisions of Part I and Part III of the Fisheries Act 1908.

(8) Every Officer appointed under subsection (2) of this section shall have such duties and may exercise such powers in relation to marine mammals as the Director-General may direct, being powers of no greater extent than those exercised by a fishery officer pursuant to the Fisheries Act 1908.

(9) The Director-General shall issue to every Officer (except a constable) a warrant showing the Officer's authority to exercise any powers conferred on him pursuant to this section.

(10) The production by any Officer of any warrant issued under this section or section 4 of the Fisheries Act 1908 or of any evidence that the Officer is a constable shall, until the contrary is proved, be sufficient authority for any such Officer to do anything authorised by subsection (7) or subsection (8) of this section.

12. Officers to be provided with subsistence and accommodation—(1) Any Officer authorised in that behalf by the Director-General may go on board any vessel, aircraft, or hovercraft used for taking any marine mammal and shall, during such period as may be specified in his authority, be entitled to remain on board, to be provided with subsistence and, where appropriate, accommodation, and to be present at all operations relating to the taking of marine mammals.

(2) The master or person in command of any vessel or aircraft or hovercraft shall be paid such amount as may be approved for supplying any subsistence or accommodation to an Officer under subsection (1) of this section.

(3) Every person commits an offence against this Act who refuses to supply subsistence or accommodation to any Officer under this section, or to allow him to be present at all operations relating to the taking of marine mammals.

13. Powers of search—(1) Subject to this Act and notwithstanding anything to the contrary in the Fisheries Act 1908, every Officer who has reason to believe or suspect that a breach of this Act or of any regulation made under it has been or is being committed, may enter, inspect, and examine any vehicle, vessel, aircraft, or hovercraft.

(2) An Officer shall, before entering on any vehicle, vessel, aircraft, or hovercraft, produce his warrant of appointment or other evidence that he is an Officer if asked to do so by the person in actual charge of the vehicle, vessel, aircraft, or hovercraft.

(3) An Officer shall not enter, inspect, or examine any aircraft or hovercraft unless he is accompanied by the pilot in command, or the owner, or a representative or agent of the owner, of the aircraft or hovercraft.

(4) An Officer shall not enter any dwellinghouse or place except pursuant to a warrant issued under section 14 of this Act.

(5) Every Officer may, in the course of any search under this section or section 14 of this Act, open (by force if necessary) any container, package, or receptacle, and seize and take away any marine mammal supposedly illegally taken together with any such container, package, or receptacle, or seize and take away any thing which he has reason to believe will be evidence of a breach of the provisions of this Act or of any regulation made under it.

(6) Every person in or about any dwellinghouse, place, vehicle, or vessel inspected under the provisions of this Act, and the pilot in command and the owner and every agent or representative of the owner of any aircraft or hovercraft so inspected, shall—

(a) Facilitate the entry, inspection, and examination by an Officer:

(b) Facilitate the removal of any container, package, receptacle, or thing.

14. Officer may obtain search warrant—(1) Where any Justice of the Peace or Magistrate is satisfied on oath that there is probable cause to suspect—

(a) That any breach of this Act or of any regulations made under it has been or is being committed; or

(b) That preparation has been made to commit such a breach,—

the Justice or Magistrate may, by warrant under his hand, authorise an Officer named in the warrant together with such assistants as may be necessary to enter and search the dwellinghouse, place, vehicle, vessel, aircraft, or hovercraft that is mentioned in the warrant, by force if necessary, at the time or times that are so mentioned. Every warrant shall continue in force until the purpose for which it was issued has been satisfied.

(2) It is the duty of every one executing a warrant under this section to have it with him and to produce it if required to do so.

15. Officers, etc., protected from proceedings—No action or proceedings shall be brought against the Crown, or any Officer, or any person acting under the instructions of an Officer, in respect of any thing done or undertaken for the purpose of carrying out the provisions of this Act or any regulations made under it where the Crown or those persons have acted in good faith and with reasonable care.

16. Reporting of accidental death or injury—(1) Where any person, in the course of fishing pursuant to any licence, permit, or permission granted or given under the Fisheries Act 1908, accidentally kills or injures a marine mammal he shall—

(a) If fishing from a vessel, record the accident in the vessel's log and report the accident in writing to a Registrar or Inspector of Sea Fishing not later than 48 hours after the arrival of the vessel in port; and

(b) In any other case, report the accident in writing to a Registrar or Inspector of Sea Fishing as soon as practicable.

(2) Any person (not being a person to whom subsection (1) of this section applies) who, by any means whatsoever, accidentally kills or injures any marine mammal shall report the accident to a Registrar or Inspector of Sea Fishing as soon as practicable.

(3) Every report under subsection (1) or subsection (2) of this section shall include—

- (a) The location of the area where the accident took place; and
- (b) The species (if known) of the marine mammal killed or injured, or a general description of the mammal; and
- (c) A description of conditions and the circumstances of the accident.

(4) Every person commits an offence against this Act who contravenes subsection (1) or subsection (2) of this section.

17. Purse seining—(1) No person shall use any purse seine net for the purposes of fishing unless—

- (a) That person has in the net an escape panel or aperture from which any dolphin or porpoise can readily escape; and
- (b) That person follows a fishing practice acceptable to the Director-General.

(2) Subject to subsection (3) of this section, the Director-General may, from time to time by notice in the *Gazette*, grant, in respect of any person or class of persons, or any vessel, vehicle, aircraft, or hovercraft, or any fish, or any waters, exemption from the requirements of subsection (1) of this section, either wholly or partially and either with or without conditions; and may in like manner amend or revoke any such notice.

(3) No exemption from the requirements of subsection (1) of this section shall be given in respect of a purse seine net used in fishing for yellowfin tuna.

(4) Every person commits an offence against this Act who contravenes subsection (1) of this section or, where any exemption has been granted by notice under subsection (2) of this section, contravenes or fails to comply with any conditions imposed by such notice.

18. Treatment or disposal of sick or dead marine mammals—(1) Nothing in this Act shall affect—

- (a) Any person who gives any humane assistance, care, or medication to any stranded, sick, or injured marine mammal if (where known) details of the mammal's species, length, sex, and condition, or a general

(3) Every report under subsection (1) or subsection (2) of this section shall include—

- (a) The location of the area where the accident took place; and
- (b) The species (if known) of the marine mammal killed or injured, or a general description of the mammal; and
- (c) A description of conditions and the circumstances of the accident.

(4) Every person commits an offence against this Act who contravenes subsection (1) or subsection (2) of this section.

17. Purse seining—(1) No person shall use any purse seine net for the purposes of fishing unless—

- (a) That person has in the net an escape panel or aperture from which any dolphin or porpoise can readily escape; and
- (b) That person follows a fishing practice acceptable to the Director-General.

(2) Subject to subsection (3) of this section, the Director-General may, from time to time by notice in the *Gazette*, grant, in respect of any person or class of persons, or any vessel, vehicle, aircraft, or hovercraft, or any fish, or any waters, exemption from the requirements of subsection (1) of this section, either wholly or partially and either with or without conditions; and may in like manner amend or revoke any such notice.

(3) No exemption from the requirements of subsection (1) of this section shall be given in respect of a purse seine net used in fishing for yellowfin tuna.

(4) Every person commits an offence against this Act who contravenes subsection (1) of this section or, where any exemption has been granted by notice under subsection (2) of this section, contravenes or fails to comply with any conditions imposed by such notice.

18. Treatment or disposal of sick or dead marine mammals—(1) Nothing in this Act shall affect—

- (a) Any person who gives any humane assistance, care, or medication to any stranded, sick, or injured marine mammal if (where known) details of the mammal's species, length, sex, and condition, or a general

he thinks fit, and he may delegate to any such committee such of the powers conferred on him under this Act as he thinks fit or require the committee to investigate and report to him on such matters relating to marine mammals as he may direct or of which the committee, or any member or members of it, may have special knowledge or experience.

(2) Every committee purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) Every delegation under this section shall be revocable at will.

(4) No delegation under this section shall prevent the exercise of any power by the Minister.

(5) Every committee appointed under this section is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951, and there shall be paid to the members of the committee, from money appropriated by Parliament for the purpose, remuneration by way of salary, fees, allowances, travelling allowances, or expenses in accordance with that Act and its provisions shall apply accordingly.

(6) The Minister may direct the Director-General to provide from his Ministry such services as may be necessary to enable any committee to discharge its functions more properly.

22. Marine mammal sanctuaries—(1) Subject to this section, the Minister may, by notice in the *Gazette*, define any place and declare it to be a marine mammal sanctuary, and may in like manner, after considering any submissions in writing he may have received within 28 days after the date of publication of a notice in the *Gazette* indicating his intention, vary, redefine, or abolish the sanctuary.

(2) Where any other Minister of the Crown has the control of any Crown-owned land, foreshore, seabed, or waters of the sea which is declared to be a marine mammal sanctuary or which forms part of one, the consent of that Minister to the declaration shall be notified concurrently with the notice given under subsection (1) of this section.

(3) When defining and declaring a sanctuary under this section, the Minister may specify the activities that may or may not be engaged in within the sanctuary, and may impose restrictions in respect of the sanctuary.

(4) No marine mammal sanctuary shall be declared in any Maritime or National Park, in any reserve within the meaning of the Reserves Act 1977, or in any marine reserve declared under the Marine Reserves Act 1971.

(5) Every constable, and every ranger appointed under section 38 of the Wildlife Act 1953, section 27 of the National Parks Act 1952, or under section 8 of the Reserves Act 1977 shall have the authority to exercise any of the powers conferred on a ranger under section 39 of the Wildlife Act 1953 in any marine mammal sanctuary.

23. Offences and penalties—(1) Every person commits an offence against this Act who—

- (a) Acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act or any regulations made under it; or
- (b) Makes any false or misleading statement or any material omission in any communication with or application or return to the Minister, to the Director-General, or to the Ministry of Agriculture and Fisheries or any duly authorised officer or employee of the Ministry of Agriculture and Fisheries, or any Officer (whether in writing or otherwise), for the purposes of this Act or of any regulations made under it; or
- (c) Refuses or fails to furnish any return or information or particulars required by the Minister, the Director-General, or any duly authorised officer or employee of the Ministry of Agriculture and Fisheries, or any Officer, for the purposes of this Act or of any regulations under it.

(2) Every person commits an offence against this Act who—

- (a) Except under the authority of any enactment, places or leaves any structure or trap or chemical or other substance in any place where a marine mammal is or is likely to be and which injures or harms, or is likely to injure or harm, any marine mammal;
- (b) Uses any vehicle, vessel, aircraft, or hovercraft to herd or harass any marine mammal.

(3) Every person who commits an offence against this Act for which no penalty is provided otherwise than in this section is liable, on summary conviction before a Magistrate, to a fine not exceeding—

(4) No marine mammal sanctuary shall be declared in any Maritime or National Park, in any reserve within the meaning of the Reserves Act 1977, or in any marine reserve declared under the Marine Reserves Act 1971.

(5) Every constable, and every ranger appointed under section 38 of the Wildlife Act 1953, section 27 of the National Parks Act 1952, or under section 8 of the Reserves Act 1977 shall have the authority to exercise any of the powers conferred on a ranger under section 39 of the Wildlife Act 1953 in any marine mammal sanctuary.

23. Offences and penalties—(1) Every person commits an offence against this Act who—

- (a) Acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act or any regulations made under it; or
- (b) Makes any false or misleading statement or any material omission in any communication with or application or return to the Minister, to the Director-General, or to the Ministry of Agriculture and Fisheries or any duly authorised officer or employee of the Ministry of Agriculture and Fisheries, or any Officer (whether in writing or otherwise), for the purposes of this Act or of any regulations made under it; or
- (c) Refuses or fails to furnish any return or information or particulars required by the Minister, the Director-General, or any duly authorised officer or employee of the Ministry of Agriculture and Fisheries, or any Officer, for the purposes of this Act or of any regulations under it.

(2) Every person commits an offence against this Act who—

- (a) Except under the authority of any enactment, places or leaves any structure or trap or chemical or other substance in any place where a marine mammal is or is likely to be and which injures or harms, or is likely to injure or harm, any marine mammal;
- (b) Uses any vehicle, vessel, aircraft, or hovercraft to herd or harass any marine mammal.

(3) Every person who commits an offence against this Act for which no penalty is provided otherwise than in this section is liable, on summary conviction before a Magistrate, to a fine not exceeding—

- (a) In the case of an offence against section 17 of this Act or subsection (2) of this section, \$5,000; and
- (b) In any other case, \$1,000.

24. Onus of proof in respect of certain offences—Where any person is charged with an offence under this Act arising out of his taking or doing, without a permit or authority, any action for the taking or doing of which a permit or authority is required, the onus shall be on that person to prove that at the relevant time he held the required permit or authority.

25. Proceedings in respect of offences—Notwithstanding anything to the contrary in section 14 of the Summary Proceedings Act 1957, proceedings may be taken under this Act against any person for an offence committed at sea or beyond the outer limits of New Zealand fisheries waters at any time within 12 months from the date on which that person first lands in New Zealand after the commission of the offence or, for an offence committed in New Zealand, within 12 months after the date of the commission of the offence.

26. Defences in respect of certain offences—(1) Where any person (not being a New Zealand citizen) is charged with any offence under this Act, it shall be a defence to the charge if the defendant proves that the act or omission constituting the offence took place beyond the outer limits of New Zealand fisheries waters or, not being an offence concerning the importing of any marine mammal or marine mammal product, relates only to marine mammals taken beyond those outer limits.

(2) Where any New Zealand citizen is charged with any offence under this Act, it shall be a defence to the charge if the defendant proves that the act or omission constituting the offence took place beyond the outer limits of New Zealand fisheries waters and did not contravene any international agreement to which effect had been given by regulations made under section 28 of this Act or by any other enactment.

(3) Where any person is charged with any offence under this Act, it shall be a defence to the charge if the defendant proves that the act or omission constituting the offence took place in circumstances of stress or emergency and was necessary for the preservation, protection, or maintenance of human life.

(4) Where any person is charged with killing or injuring any marine mammal contrary to the provisions of this Act or any regulations made under it and the provisions of subsection (1) or subsection (2) or subsection (3) of this section do not apply in the circumstances of the case, it shall be a defence to the charge if the defendant proves that the death of or injury to the marine mammal was accidental and that the requirements of section 16 of this Act were complied with.

27. Liability for causing Officer to incur expense—Where any person causes an Officer to incur any expense that he would not otherwise have incurred, by failing to comply with or acting in contravention of any provision of this Act or any regulations made under it, or by failing to comply with or acting in contravention of any order or direction or requirement or conditions reasonably and properly given or imposed in accordance with this Act or any such regulations, that person shall reimburse the Crown for the amount of any such expense that is reasonably and properly incurred, and that amount shall be recoverable from that person as a debt due to the Crown.

28. Regulations—(1) The Governor-General may, from time to time by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the manner in which any marine mammal may be measured;
- (b) Prescribing forms of applications and of permits required for the purposes of this Act;
- (c) Prescribing the amount of any deposit or fees to be paid in respect of any application made under this Act, and in respect of the granting of any permit;
- (d) Prescribing conditions pursuant to which permits may be issued, and conditions which may be attached to permits already issued;
- (e) Prescribing and limiting the number of permits of any class or classes that may be issued in any year;
- (f) Prescribing the amount of any deposit, bond, or security, which may be required under this Act;
- (g) Giving effect to the terms of any international agreement to which New Zealand is a party;

- (h) Regulating, prohibiting, or restricting the sale, distribution, custody, carriage, packaging, handling, or use of any marine mammal, marine mammal product, or any product containing anything derived from a marine mammal:
- (i) Regulating, prohibiting, or restricting the keeping of any marine mammal, marine mammal product, or any product containing anything derived from a marine mammal:
- (j) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) The Governor-General may, from time to time by Order in Council, make such regulations as the Governor-General in Council thinks necessary or expedient for the protection, conservation, or management of any marine mammal.

(3) Any regulations under this section may apply generally throughout New Zealand or New Zealand fisheries waters or may be made to apply only within such area or areas as may be specified in the regulations.

(4) Any regulations under this section may confer on the Minister or on the Director-General power to issue, in such manner as may be prescribed, instructions, orders, requirements, permits, authorities, or notices for the purpose of ensuring the protection, management, or conservation of any marine mammal and, where the regulations so provide, any such instruction, order, requirement, permit, authority, or notice shall have effect according to its tenor and shall be complied with by all persons affected by it.

29. Costs of administering Act, receipts—(1) All costs and expenses properly incurred by any person for the purposes of this Act shall be met from money appropriated by Parliament for the purpose.

(2) All fees or other money (except fines) received pursuant to this Act shall be deemed to be a receipt of the Ministry of Agriculture and Fisheries and shall be accounted for accordingly.

30. Amendments, repeals, and revocations—(1) The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

- (2) The following enactments are hereby repealed:
 - (a) The Whaling Industry Act 1935:

- (b) The Whaling Industry Amendment Act 1974:
 - (c) The Fisheries Amendment Act 1956.
 - (3) The following regulations are hereby revoked:
 - (a) The Whaling Industry Regulations 1961:
 - (b) The Whaling Industry Regulations 1961, Amendment No. 1:
 - (c) The Whaling Industry Regulations 1961, Amendment No. 2:
 - (d) The Seal Fishery Regulations 1946:
 - (e) The Seal Fishery Regulations 1946, Amendment No. 7:
 - (f) The Seal Fishery Regulations 1946, Amendment No. 11.
 - (4) As from the commencement of this Act, the enactments of the Parliament of the United Kingdom intituled—
 - (a) The Seal Fisheries (North Pacific) Act, 1895, 58 and 59 Vict., c. 21; and
 - (b) The Seal Fisheries (North Pacific) Act, 1912, 2 and 3 Geo. 5, c. 10—
- shall cease to have effect as part of the law of New Zealand.
- (5) The following Orders in Council are hereby consequentially revoked:
 - (a) The Order in Council dated the 4th day of March 1913, and published in the *Gazette* on the 13th day of March 1913 at page 815, whereby consent was given to sections 3 and 4 of the enactment mentioned in subsection (4) (b) of this section being extended to New Zealand;
 - (b) The Order in Council dated the 18th day of August 1913, and published in the *Gazette* on the 21st day of August 1913 at pages 2633 and 2634, whereby a date was declared for the sections mentioned in paragraph (a) of this subsection to come into operation in New Zealand.
-

Section 30 (1)

SCHEDULE

ENACTMENTS AMENDED

Enactment Amended	Amendment
1908, No. 65—The Fisheries Act 1908 (Reprinted 1976, Vol. 5, p. 3705)	By omitting from the definition of the term "fishing" in section 2 (1) the words "; oysters, or seals", and substituting the words "or oysters". By repealing from section 2 (1) the definition of the term "seals". By repealing section 2 (2) (as added by section 2 (5) of the Fisheries Amendment Act 1959, and amended by section 2 of the Fisheries Amendment Act (No. 2) 1969 and section 2 of the Fisheries Amendment Act (No. 2) 1977), and substituting the following subsection: "(2) For the purposes of this Part and Part III of this Act and of any regulations under this Part and Part III of this Act, fish or oysters, or any parts thereof, shall be deemed to be in the possession of any person when that person has, alone or jointly with any other person, possession of or control over the fish or oysters, or the parts thereof, or possession of or control over any vessel, vehicle, container, package, thing, or place in or on which are the fish or oysters, or the parts thereof: "Provided that, in any proceedings for an offence against this Part or Part III of this Act or any regulations under this Part or Part III of this Act, being an offence relating to the possession of any fish or oysters, or any parts thereof, found in or on any vessel, vehicle, container, package, thing, or place in the possession or under the control of the defendant, alone or jointly with any other person, it shall be a good defence if the defendant satisfies the Court that he had no knowledge that they were in or on that vessel, vehicle, container, package, thing, or place or that, although he did know that they were in or on the vessel, vehicle, container, package, thing, or place, he did not know and could not with reasonable diligence have ascertained that the possession of the fish or oysters, or the parts thereof, would constitute the offence charged against him."

1978, No. 80

Marine Mammals Protection

21

SCHEDULE—continued

ENACTMENTS AMENDED—continued

Enactment Amended	Amendment
1908, No. 65—The Fisheries Act, 1908 (Reprinted 1976, Vol. 5, p. 3705)— <i>continued</i>	By repealing section 2 (3) (as added by section 2 of the Fisheries Amendment Act 1967, and amended by section 2 of the Fisheries Amendment Act (No. 2) 1977), and substituting the following subsection: “(3) Every reference in this Part and Part III of this Act or in any regulations made under this Part or Part III to any fish or oyster shall, unless the context otherwise requires, be deemed to include any part of any such fish or oyster.” By omitting from section 5 (1) (d) the words “, oysters, or seals”, and substituting the words “or oysters”. By omitting from section 5 (1) (h) (as amended by section 2 (a) of the Fisheries Amendment Act 1956) the words “, oysters, or marine mammals (including seals)”, and substituting the words “or oysters”. By omitting from section 5 (1) (j) (as substituted by section 3 (2) of the Fisheries Amendment Act 1959) the words “, oyster, or marine mammal (including any seal), or any part of any fish or oyster or of any such marine mammal, or any oil or blubber from any such marine mammal”, and substituting the words “or oyster, or any part of any fish or oyster”. By omitting from section 5 (1) (k) the words “, oyster, or seal”, and substituting the words “or oyster”. By omitting from section 5 (1) (m) the words “, oysters, or seals”, and substituting the words “or oysters”. By omitting from section 5 (1) (o) (as amended by section 2 (a) of the Fisheries Amendment Act 1956) the words “, oysters, or marine mammals (including seals)”, and substituting the words “or oysters”. By omitting from section 5 (1) (p) the words “, oysters, or seals”, and substituting the words “or oysters”.

SCHEDULE—continued

ENACTMENTS AMENDED—continued

Enactment Amended	Amendment
1908, No. 65—The Fisheries Act 1908 (Reprinted 1976, Vol. 5, p. 3705)— <i>continued</i>	By omitting from section 5 (1) (pp) (as inserted by section 2 (1) of the Fisheries Amendment Act 1964) the words “, oysters, and marine mammals (including seals)”, and substituting the words “or oysters”. By omitting from section 10 (1) the words “, oysters, or seals”, and substituting the words “or oysters”. By repealing sections 42, 43, 44, 45, 45A (as inserted by section 5 of the Fisheries Amendment Act 1959), and 48. By omitting from section 49 (1) (as substituted by section 4 (1) of the Fisheries Amendment Act 1967) the words “, oysters, or seals” wherever they occur, and substituting in each case the words “or oysters”. By omitting from section 49 (6) (as so substituted) the words “, oyster, or seal”, and substituting the words “or oyster”. By omitting from section 53 (as amended by section 6 (1) of the Fisheries Amendment Act 1948) the words “, oysters, or seals”, and substituting the words “or oysters”, and by omitting the words “and any skins, oil, or blubber from seals unlawfully taken,”. By repealing section 57 (as amended by section 6 (2) of the Fisheries Amendment Act 1948). By omitting from section 58 (1) (b) (as substituted by section 5 (1) of the Fisheries Amendment Act 1967, and amended by section 7 of the Fisheries Amendment Act (No. 2) 1977) the words “, oysters, or seals”, and substituting the words “or oysters”. By omitting from section 68 the words “or of any seal, or of any skin, oil, blubber, or other unmanufactured product of any seal,”.
1948, No. 11—The Fisheries Amendment Act 1948 (Reprinted 1976, Vol. 5, p. 3793)	By repealing section 6 (2).

1978, No. 80

Marine Mammals Protection

23

SCHEDULE—continued

ENACTMENTS AMENDED—continued

Enactment Amended	Amendment
1953, No. 7—The Ministry of Agriculture and Fisheries Act 1953 (Reprinted 1972, Vol. 3, p. 2575)	By inserting in the Schedule (as substituted by section 4 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972), after the reference to the Marine Farming Act 1971, the words "The Marine Mammals Protection Act 1978". By omitting from the Schedule the reference to the Whaling Industry Act 1935.
1959, No. 8—The Fisheries Amendment Act 1959 (Reprinted 1976, Vol. 5, p. 3796)	By repealing sections 2 (5) and 5.
1960, No. 30—The Animals Protection Act 1960	By repealing subsection (5) of section 12, and substituting the following subsection: "(5) Where any Inspector finds any marine mammal which appears to the Inspector to be stranded, aged, sick, distressed, or troublesome, he shall forthwith report the matter to an Inspector of Sea Fishing as defined in the Marine Mammals Protection Act 1978 to be dealt with pursuant to that Act."
1967, No. 49—The Fisheries Amendment Act 1967 (Reprinted 1976, Vol. 5, p. 3836)	By repealing section 2.
1969, No. 57—The Fisheries Amendment Act (No. 2) 1969 (Reprinted 1976, Vol. 5, p. 3840)	By repealing section 2.
1977, No. 28—The Territorial Sea and Exclusive Economic Zone Act 1977	By repealing paragraph (b) of section 10 (2), and substituting the following paragraph: "(b) The Marine Mammals Protection Act 1978."
1977, No. 131—The Fisheries Amendment Act (No. 2) 1977	By repealing section 2 (3), (5).

This Act is administered in the Ministry of Agriculture and Fisheries.

WELLINGTON, NEW ZEALAND: Printed under the authority of the New Zealand Government by E. C. KEATING, Government Printer—1978

20932B—78 G

1979

Marine Mammals Protection Amendment

No. 98



ANALYSIS

Title

- 1. Short Title
- 2. Powers of search

1979, No. 98

An Act to amend the Marine Mammals Protection Act 1978
[13 December 1979]

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

1. Short Title—This Act may be cited as the Marine Mammals Protection Amendment Act 1979, and shall be read together with and deemed part of the Marine Mammals Protection Act 1978 (hereinafter referred to as the principal Act).

2. Powers of search—Section 13 (4) of the principal Act is hereby amended by omitting the words “or place”.

This Act is administered in the Ministry of Agriculture and Fisheries.

WELLINGTON, NEW ZEALAND: Printed under the authority of the New Zealand Government by P. D. HASSELBERG, Government Printer—1980

Public—98

Price ~~45c~~ 4
41154E—79G

R.S. Vol. 27

877

1

REPRINTED ACT

[WITH AMENDMENTS INCORPORATED]

TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE

REPRINTED AS ON 1 OCTOBER 1991

INDEX

	Page
Territorial Sea and Exclusive Economic Zone Act 1977.....	2
Territorial Sea and Exclusive Economic Zone Act Commencement Order 1977 (S.R. 1977/246).....	2 (n)
Marine Mammals Protection Act 1978: s. 50 (1).....	6 (n)
Territorial Sea and Exclusive Economic Zone Act Commencement Order 1978 (S.R. 1978/62).....	2 (n)
Territorial Sea and Exclusive Economic Zone Amendment Act 1980.....	26
Fisheries Act 1983: s. 76.....	18 (n)
Foreign Affairs Act 1983: s. 82 (2).....	26 (n)
Territorial Sea and Exclusive Economic Zone Amendment Act 1985.....	26

In this index "(n)" after a page number indicates that the enactment is referred to in a note on that page

ANALYSIS

Title	15 Grant of licences
1. Short Title and commencement	16. Renewal of licences
2. Interpretation	17. Variation of licences
PART I	18. Fees and royalties
THE TERRITORIAL SEA OF NEW ZEALAND	19. Licensing offences
3. The territorial sea	20. Suspension and cancellation of licences
4. Internal waters	21. Review by Courts
5. Baseline of territorial sea	22. Fisheries regulations
6. Baseline of territorial sea adjacent to bay	23. Fishing for research, experimental, and sporting purposes
7. Bed of territorial sea and internal waters vested in Crown	24. Apprehension of offenders
8. Regulations in territorial sea	25. Security for release of foreign fishing craft
PART II	26. Administrative penalties for minor fish- eries offences
THE EXCLUSIVE ECONOMIC ZONE OF NEW ZEALAND	27. General regulations in zone
9. The exclusive economic zone	28. General provisions as to offences in zone
10. Seas in zone to be New Zealand fisheries waters	PART III
11. Calculation of total allowable catch	MISCELLANEOUS PROVISIONS
12. Calculation of allowable catch by for- eign fishing craft	29. Interim and transitional measures
13. Apportionment of allowable catch for foreign fishing craft	30. Modifications to give effect to interna- tional agreement
14. Prohibition of operation of unauthorised foreign fishing craft in zone	31. Official charts
	32. Oath of proof in respect of offences
	32a. Certificates as evidence
	33. Amendments, repeal, and savings
	Schedule

**THE TERRITORIAL SEA AND EXCLUSIVE
ECONOMIC ZONE ACT 1977**

1977, No. 28

An Act to make provision with respect to the territorial sea of New Zealand; and to establish an exclusive economic zone of New Zealand adjacent to the territorial sea, and in the exercise of the sovereign rights of New Zealand to make provision for the exploration and exploitation, and conservation and management, of the resources of the zone; and for matters connected with those purposes

[26 September 1977]

1. Short Title and commencement—(1) This Act may be cited as the Territorial Sea and Exclusive Economic Zone Act 1977.

(2) Section 29 of this Act shall come into force on the passing of this Act.

(3) Except as provided in subsection (2) of this section, the provisions of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

(4) For the purposes of subsection (3) of this section, one or more Orders in Council may be made—

(a) Bringing different provisions of this Act into force on different dates; and

(b) Bringing provisions of this Act into force on different dates in respect of specified parts of New Zealand.

S.R. 1977/245 brought into force in those parts of New Zealand specified, on 1 October 1977, the following provisions: ss. 1 and 2, Part 1, ss. 31, 32, and 33 (2), (3), and (4), and s. 33 (1) with specified exceptions (see notes to the Schedule to this Act).

S.R. 1978/62 brought into force in the parts of New Zealand specified, on 1 April 1978, all the remaining provisions.

The areas specified in both the above Orders are: North, South, and Stewart Islands, and the Chatham, Kermadec, Three Kings, Bounty, Snares, Antipodes, Auckland, and Campbell Islands and other islands adjacent to those previously mentioned and forming part of New Zealand.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Bay” means an indentation of the coast such that its area is not less than that of the semi-circle whose diameter is a line drawn across the mouth of the indentation (for the purposes of which definition—

(a) The area of an indentation shall be taken to be the area bounded by low-water mark around the shore of the indentation and the straight line joining

the low-watermarks of its natural entrance points; and

(b) Where, because of the presence of islands, an indentation has more than one mouth, the length of the diameter of the semi-circle referred to shall be the sum of the lengths of the straight lines drawn across each of the mouths; and

(c) In calculating the area of an indentation, the area of any islands lying within it shall be treated as part of the area of the indentation);

“Exclusive economic zone” and “zone” mean the exclusive economic zone of New Zealand described in section 9 of this Act:

“Fish” means every description of fish and shellfish and their young or fry or spawn, except sedentary species as described in paragraph (b) of the definition of the term “natural resources” in section 2 of the Continental Shelf Act 1964:

“Fishery” means one or more stocks of fish that can be treated as a unit for the purposes of conservation and management:

“Fishing” means—

(a) Taking any fish; or

(b) Engaging in any activity relating to the taking of any fish, including (inter alia) any activity involving the preparation, supply, storage, refrigeration, transportation, or processing of any fish; or

(c) Engaging in any activity relating to the provision of any services to any fishing craft to enable or assist that craft to engage in fishing:

“Fishing craft” means any vessel, aircraft, hovercraft, submersible craft, or other craft, of whatever size, that is capable of being used for fishing:

“Foreign fishing craft” means any fishing craft that is not a New Zealand fishing craft:

“Highly migratory species” means species that, in the course of their life cycle, migrate over great distances of ocean:

“International agreement” means any bilateral or multilateral treaty, convention, or agreement, to which New Zealand is a party, and any understanding concluded by the Government of New Zealand and the government of any other country:

"Island" means a naturally formed area of land that is surrounded by and above water at mean high-water spring tides:

"Licence" means a licence issued under section 15 of this Act in respect of a foreign fishing craft; and "licensed" has a corresponding meaning:

"Licensee" means the person to whom a licence is issued:

"Low-tide elevation" means a naturally formed area of land that is surrounded by and above water at mean low-water spring tides but is submerged at mean high-water spring tides:

"Master", in relation to a fishing craft, means the person for the time being having command or charge of the craft:

"Median line" as between New Zealand and any other country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial sea of New Zealand and the corresponding baseline of that other country:

"Minister" means the Minister of Fisheries:

"Nautical mile" means the international nautical mile of 1852 metres:

"New Zealand" (except for the purposes of Part II of this Act and section 29 of this Act) includes the Ross Dependency:

"New Zealand fisheries waters" has the same meaning as it has in section 2 (1) of [the Fisheries Act 1983]:

"New Zealand fishing craft" means a fishing craft—

(a) That is a New Zealand ship within the meaning of section 2 (1) of the Shipping and Seamen Act 1952; or

(b) That is an aircraft registered in New Zealand under [the Civil Aviation Act 1990]; or

(c) In which no person who is not a New Zealand citizen has any legal or equitable interest (except by way of security only for any advance made by him to the owner):

"New Zealand Government ship" has the same meaning as it has in section 2 (1) of the Shipping and Seamen Act 1952:

"Owner", in relation to a fishing craft, includes any body of persons, whether incorporated or not, by whom the craft is owned, and any charterer, sub-charterer, lessee, or sub-lessee of the craft:

R.S. Vol. 27 *Territorial Sea and Exclusive Economic Zone Act 1977*

881

5

“Prescribed” means prescribed by regulations made under this Act:

“Shellfish” includes every description of molluscs, crustaceans, and echinoderms found in New Zealand fisheries waters, and their young or spawn, but does not include oysters:

“Take” includes—

(a) To take, catch, kill, attract, or pursue by any means or device; and

(b) To attempt to do any act specified in paragraph (a) of this definition:

“Total allowable catch”, with respect to the yield from any fishery, means, the amount of fish that will produce from that fishery the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any generally recommended subregional, regional, or global standards.

(2) For the purposes of this Act, permanent harbour works that form an integral part of a harbour system shall be treated as forming part of the coast.

In subs. (1):

“New Zealand fisheries waters”: The Fisheries Act 1983, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Fisheries Act 1908.

“New Zealand fishing craft”: The Civil Aviation Act 1990, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Civil Aviation Act 1964.

PART I

THE TERRITORIAL SEA OF NEW ZEALAND

3. The territorial sea—The territorial sea of New Zealand comprises those areas of the sea having, as their inner limits, the baseline described in sections 5 and 6 of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which line is distant 12 nautical miles from the nearest point of the baseline.

4. Internal waters—The internal waters of New Zealand include any areas of the sea that are on the landward side of the baseline of the territorial sea of New Zealand.

5. Baseline of territorial sea—(1) Except as otherwise provided in section 6 of this Act, the baseline from which the breadth of the territorial sea of New Zealand is measured shall

be the low-water mark along the coast of New Zealand, including the coast of all islands.

(2) For the purposes of this section, a low-tide elevation that lies wholly or partly within the breadth of sea that would be territorial sea if all low-tide elevations were disregarded for the purpose of the measurement of the breadth of the territorial sea shall be treated as an island.

6. Baseline of territorial sea adjacent to bay—In the case of the sea adjacent to a bay, the baseline from which the breadth of the territorial sea is measured—

- (a) Where the bay has only one mouth and the distance between the low-water marks of the natural entrance points of the bay does not exceed 24 nautical miles, shall be a straight line joining those low-water marks; and
- (b) Where, because of the presence of islands, the bay has more than one mouth and the distances between the low-water marks of the natural entrance points of each mouth added together do not exceed 24 nautical miles, shall be a series of straight lines across each of the mouths so as to join those low-water marks; and
- (c) Where neither paragraph (a) nor paragraph (b) of this section applies, shall be a straight line 24 nautical miles in length drawn from low-water mark to low-water mark within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

7. Bed of territorial sea and internal waters vested in Crown—Subject to the grant of any estate or interest therein (whether by or pursuant to the provisions of any enactment or otherwise, and whether made before or after the commencement of this Act), the seabed and subsoil of submarine areas bounded on the landward side by the low-water mark along the coast of New Zealand (including the coast of all islands) and on the seaward side by the outer limits of the territorial sea of New Zealand shall be deemed to be and always to have been vested in the Crown.

8. Regulations in territorial sea—Where no other provision is for the time being made by any other enactment for any such purposes, the Governor-General may from time to

R.S. Vol. 27 *Territorial Sea and Exclusive Economic Zone Act 1977*

883

7

time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Regulating the conduct of scientific research within the territorial sea;
- (b) Prescribing measures for the protection and preservation of the marine environment of the territorial sea;
- (c) Regulating the construction, operation, and use of artificial islands (whether permanent or temporary), and other installations and structures in the territorial sea, including the establishment of safety zones around such islands, installations, and structures;
- (d) Regulating the exploration and exploitation of the territorial sea for the production of energy from the water, currents, and winds, and for any other economic purposes;
- (e) Providing for such other matters as are necessary or expedient for giving full effect to the sovereignty of New Zealand in relation to the territorial sea;
- (f) Providing that a breach of any such regulations shall be a criminal offence, and imposing penalties by way of fine not exceeding \$10,000 for any such offences;
- (g) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act and for its due administration.

PART II

THE EXCLUSIVE ECONOMIC ZONE OF NEW ZEALAND

9. The exclusive economic zone—(1) The exclusive economic zone of New Zealand comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea of New Zealand, having as their outer limits a line measured seaward from the baseline described in sections 5 and 6 of this Act, every point of which line is distant 200 nautical miles from the nearest point of the baseline.

(2) Notwithstanding subsection (1) of this section, where—

- (a) Any part of the median line between New Zealand and any other country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of New Zealand; and
- (b) No other outer limit of the exclusive economic zone is for the time being determined by an Order in Council made under subsection (3) or subsection (4) of this section—

that part of the median line shall be an outer limit of the zone.

(3) The Governor-General may from time to time, by Order in Council, declare that any specified provisions of this Part of this Act, and any other specified provisions in this Act relating to the exclusive economic zone, shall apply to the Ross Dependency, with such modifications and exceptions (if any) as he may specify in the Order.

(4) For the purposes of implementing any international agreement, or the arbitral award of any international body, or the judgment of any international Court, or for any other purpose in accordance with international law, the Governor-General may from time to time, by Order in Council, declare that the exclusive economic zone shall not extend to any specified area of the sea, seabed, or subsoil, that would otherwise be included within the exclusive economic zone by virtue of this section.

10. Seas in zone to be New Zealand fisheries waters—

(1) The seas comprised in the exclusive economic zone shall be part of New Zealand fisheries waters.

(2) The following enactments shall apply accordingly (subject to any provisions to the contrary in those enactments) within the exclusive economic zone:

(a) [The Fisheries Act 1983] (except Part [V] of that Act):

[(b) The Marine Mammals Protection Act 1978.]

In subs. (2) (a) the Fisheries Act 1983 and Part V of that Act, being the corresponding enactments in force at the date of this reprint, have been substituted for the repealed Fisheries Act 1908 and Part II of that Act. All of Part V of the 1983 Act has been repealed at the date of this reprint.

In subs. (2), para. (b) was substituted for the original para. (b) by s. 90 (1) of the Marine Mammals Protection Act 1978.

11. Calculation of total allowable catch—The Minister shall from time to time determine, in respect of every fishery within the exclusive economic zone, the total allowable catch.

12. Calculation of allowable catch by foreign fishing craft—(1) The Minister shall from time to time determine, in respect of the total allowable catch for every fishery within the exclusive economic zone, the portion that New Zealand fishing craft have the capacity to harvest.

(2) Where the Minister has determined, in respect of the total allowable catch for a fishery within the exclusive economic zone, the portion that New Zealand fishing craft have the capacity to harvest, the remaining portion shall constitute the allowable catch for that fishery for foreign fishing craft.

13. Apportionment of allowable catch for foreign fishing craft—(1) The Minister may from time to time apportion, among countries other than New Zealand, the allowable catch for foreign fishing craft in respect of any fishery within the exclusive economic zone, as determined under section 12 of this Act.

(2) In making an apportionment under subsection (1) of this section, the Minister may take into account (inter alia) the following considerations:

- (a) Whether the fishing craft of countries to which the apportionment applies have engaged habitually in fishing within the exclusive economic zone;
- (b) Whether such countries have co-operated with New Zealand in fisheries research and in the identification of fish stocks within the zone;
- (c) Whether such countries have co-operated with New Zealand in the conservation and management of fisheries resources within the zone, and in the enforcement of New Zealand law relating to such resources;
- (d) The terms of any relevant international agreement;
- (e) Such other matters as the Minister, after consultation with the Minister of Foreign Affairs, determines to be relevant.

14. Prohibition of operation of unauthorised foreign fishing craft in zone—No foreign fishing craft shall be used for fishing within the exclusive economic zone except in accordance with a licence issued by the Minister under section 15 of this Act in respect of that fishing craft.

15. Grant of licences—(1) Subject to subsection (2) of this section, the Minister may grant and issue to the owner of any named foreign fishing craft a licence to fish within the exclusive economic zone.

(2) The Minister shall exercise the powers conferred on him by this section in such a manner as to ensure that—

- (a) The catch that all foreign fishing craft licensed under this section are for the time being authorised to harvest from any fishery within the exclusive economic zone does not exceed the allowable catch for foreign fishing craft for that fishery as determined under section 12 of this Act; and
- (b) The catch that all foreign fishing craft of a particular country licensed under this section are for the time

being authorised to harvest from any fishery within the zone does not exceed the apportionment made under section 13 of this Act for that fishery in respect of that country.

(3) In granting a licence under this section, the Minister may attach to the licence conditions relating (inter alia) to all or any of the following matters:

- (a) The areas within the exclusive economic zone in which fishing is authorised; and
- (b) The seasons, times, and particular voyages during which fishing is authorised;
- (c) The species, size, age, and quantities of fish that may be taken;
- (d) The methods by which fish may be taken;
- (e) The types, size, and amount of fishing gear that may be used or carried by a foreign fishing craft, and the modes of storage of that gear when not in use;
- (f) The use, transfer, transshipment, landing, and processing of fish taken;
- (g) Entry by the foreign fishing craft to New Zealand ports, whether for the inspection of its catch or for other purposes;
- (h) The compensation payable to New Zealand citizens or to the Crown in the event of any loss or damage caused by the foreign fishing craft to other fishing craft, or their gear or catch, or to fish stocks, or to pipeline, or cables, or to other New Zealand interests;
- (i) Statistical and other information required to be given by the foreign fishing craft to the Ministry of Agriculture and Fisheries, including statistics relating to catch and effort and reports as to the positions of the craft;
- (j) The conduct by the foreign fishing craft of specified programmes of fisheries research;
- (k) The training of New Zealand personnel in the methods of fishing employed by the foreign fishing craft and the transfer to New Zealand of technology relating to fisheries;
- (l) The display on board the foreign fishing craft of the licence issued in respect of it;
- (m) The marking of the foreign fishing craft, and other means for its identification;
- (n) Directions, instructions, and other requirements given or made by vessels or aircraft of the New Zealand Armed Forces or other New Zealand Government

ships or aircraft to the foreign fishing craft that shall be complied with by the craft:

- (o) The placing of New Zealand observers on the foreign fishing craft and the reimbursement to the Ministry of Agriculture and Fisheries by the licensee of the costs of doing so;
- (p) The installation on the foreign fishing craft and maintenance in working order of a transponder or other equipment for the identification and location of the craft, and of adequate navigational equipment to enable its position to be fixed from the craft;
- (q) The carriage on board the foreign fishing craft of specified nautical charts, nautical publications, and nautical instruments;
- (r) Such other matters as the Minister considers necessary or expedient for the conservation or management of fisheries resources within the zone.

16. Renewal of licences—Subject to section 15 (2) of this Act, the Minister may from time to time renew any licence granted under section 15 of this Act.

17. Variation of licences—(1) Subject to section 15 (2) of this Act, the Minister may from time to time, where he is satisfied that it is necessary or expedient for the proper regulation of fishing within the exclusive economic zone to do so, vary the terms and conditions of any licence or licences, or class or classes of licence, granted under section 15 of this Act.

(2) Notice of every variation of any licence under this section shall be given as soon as practicable to the licensee.

[18. Fees and royalties—There shall, in respect of the granting or renewal of any licence, the use of any fishing craft, or the taking of any fish, be payable to the Crown in such manner as may from time to time be prescribed such fee or royalty as may be so prescribed.]

This section was substituted for the original s. 18 by s. 2 (1) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1980.

19. Licensing offences—(1) Where any foreign fishing craft that is not licensed under section 15 of this Act is used for fishing in the exclusive economic zone, each of them the owner, the master, and every crew member of the craft commits an offence against this Act.

(2) Where any foreign fishing craft that is not licensed under section 15 of this Act displays within New Zealand fisheries waters any marking or other means of identification that indicates that it is licensed under that section, each of them, the owner, the master, and every crew member of the craft commits an offence against this Act.

(3) Where any foreign fishing craft is used for fishing within the exclusive economic zone in contravention of any condition of a licence issued in respect of it under section 15 of this Act, each of them the licensee, the master, and every crew member of the craft commits an offence against this Act.

(4) Every owner or master of a foreign fishing craft who commits an offence specified in subsection (1) or subsection (2) of this section is liable on summary conviction to a fine not exceeding \$100,000.

(5) Every crew member of a foreign fishing craft who commits an offence specified in subsection (1) or subsection (2) of this section is liable on summary conviction to a fine not exceeding \$5,000.

(6) Every licensee or master of a foreign fishing craft who commits an offence specified in subsection (3) of this section is liable on summary conviction to a fine not exceeding \$25,000.

(7) Every crew member of a foreign fishing craft who commits an offence specified in subsection (3) of this section is liable on summary conviction to a fine not exceeding \$1,500.

(8) In this section, "crew member" does not include a licensee, owner, or master of a foreign fishing craft, or any New Zealand personnel or New Zealand observer on the craft pursuant to a condition attached to a licence under section 15 (3) of this Act.

20. Suspension and cancellation of licences—(1) Where the Minister is satisfied that—

- (a) Any foreign fishing craft in respect of which a licence has been granted under section 15 of this Act is being or has been used for fishing within the exclusive economic zone in contravention of any condition of the licence or of any New Zealand law that applies to fishing within the zone; or
- (b) Any licensee, master, or crew member of a foreign fishing craft has been convicted of an offence against this Act, or against any regulations made under section 22 of this Act, or against any other New Zealand law relating to fishing within the zone; or

- (c) Any licensee, master, or crew member of a foreign fishing craft has failed to pay to the Crown, within the time limit specified in section 26 (8) of this Act, the amount of any penalty imposed on him under that section by the Minister—

he may suspend the licence of the craft for such period as he shall specify, or cancel the licence.

(2) Where the Minister, after consultation with the Minister of Foreign Affairs, determines that it is necessary or expedient for the proper regulation of fishing within the exclusive economic zone to do so, he may suspend any licence or licences or class or classes of licence for such period as he shall specify, or cancel any licence or licences or class or classes of licence.

(3) While a licence is suspended under this section, it shall have no effect.

21. Review by Courts—No exercise by the Minister of any power conferred on him by section 17 or section 20 (2) of this Act shall be liable to be challenged, reviewed, quashed, or called in question in any Court on the ground that the conditions for the exercise of the power by him had not arisen or had ceased.

22. Fisheries regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the manner of applying for licences under section 15 of this Act, and for the renewal of such licences under section 16 of this Act, and forms of applications:
- (b) Prescribing the terms of duration of licences:
- (c) Prescribing the forms of licences to be issued by the Minister:
- [(d) Prescribing the fees and royalties payable to the Crown and their method of payment; and prescribing the circumstances in which such fee or royalty or any part thereof may be refunded:]
- (e) Providing for the production of licences by licensees to specified New Zealand authorities when required to do so, and the inspection of licences by such authorities:
- (f) Requiring applicants for licences, and licensees, to designate authorised agents in New Zealand in respect of foreign fishing craft:

- (g) Providing for such other measures as are necessary or expedient to ensure that foreign fishing craft are used for fishing within the exclusive economic zone only in accordance with the terms and conditions of their licences:
 - (h) Prescribing conditions, not inconsistent with this Act, under which fishing may be undertaken within the zone by foreign fishing craft:
 - (i) Prescribing measures, not inconsistent with this Act, for the conservation and management of fisheries resources within the zone:
 - (j) Specifying particular types of high migratory species of fish, and regulating, in a manner not inconsistent with this Act, fishing for those species within the zone, and also, in the case of New Zealand fishing craft, beyond the zone:
 - (k) Providing that a breach of any such regulation shall be a criminal offence, and imposing penalties by way of fine not exceeding, in the case of a licensee, owner, or master of a fishing craft, \$10,000 for any such offences and, in the case of any other crew member, \$1,000 for any such offences:
 - (l) Prescribing the form of bonds for the purposes of section 25 of this Act:
 - (m) Prescribing forms of notices and procedures to be followed for the purposes of section 26 of this Act:
 - (n) Providing, in respect of notices, summonses, and other documents to be served under this Act or in any civil or criminal proceedings under this Act, that specified methods of service (including service on the authorised agent of a foreign fishing craft or on the diplomatic or consular representative in respect of New Zealand of the country in which the craft is registered) shall be deemed to be service on any licensee, owner, master, or crew member of the craft, and providing that specified methods of proof of service shall be deemed to be sufficient proof of service.
- (2) Regulations made under this section may make different provisions for different parts of the exclusive economic zone and for different species of fish.
- (3) In prescribing fees in regulations made under this section, the Governor-General in Council may—

- (a) Take into account (inter alia) the cost of implementing the provisions of this Act and of [the Fisheries Act 1983] with respect to fishing by foreign fishing craft within the exclusive economic zone, including the cost of the conservation and management of fisheries resources, and of fisheries research, and of the administration and enforcement of such enactments; and
- (b) Prescribe different fees for different classes of foreign fishing craft (whether by reference to size, catch, method of fishing, function, or otherwise).

In subs. (1), para. (d) was substituted for the original para. (d) by s. 2(2) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1980.

In subs. (3)(a) the Fisheries Act 1983, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Fisheries Act 1908.

23. Fishing for research, experimental, and sporting purposes—Notwithstanding section 14 or section 19 of this Act, a foreign fishing craft may be used for fishing within the exclusive economic zone for the purpose of fisheries research or of experimentation or sport, subject always to the prior consent in writing of the Minister to such activity and in accordance with such conditions (if any) as the Minister may impose in giving his consent

24. Apprehension of offenders—(1) Any officer specified in subsection (16) of this section may at any time stop, board, inspect, and search any foreign fishing craft in New Zealand fisheries waters, and inspect any fish on board the craft; and where he has reasonable cause to believe that an offence against this Act, or against regulations made under section 22 of this Act, or against any other New Zealand law, relating to fishing within the exclusive economic zone, has been committed in respect of any foreign fishing craft he may—

- (a) Seize and detain all fish on board the craft; and
- (b) Apprehend any person whom he has reasonable cause to believe has committed any offence specified in this subsection; and
- (c) If he has reasonable cause to believe that any such offence has been committed by the licensee, owner, or master of the craft, seize and detain the craft.

(2) Any officer specified in subsection (16) of this section may exercise the powers conferred on him by subsection (1) of this section with the aid of such assistants as he considers to be necessary for the purpose.

(3) Where any foreign fishing craft is detained under subsection (1) of this section, it shall be held in the custody of the Crown until—

- (a) A decision is made not to lay any information or charge in respect of the alleged offence for which the craft was detained; or
- (b) Where such an information or charge is laid, the security required by section 25 of this Act is given in respect of the craft.

(4) The decision whether or not to lay an information or charge in respect of an alleged offence for which a foreign fishing craft is detained under subsection (1) of this section shall be made as soon as reasonably practicable after the craft is detained.

(5) The release of a foreign fishing craft from detention shall not affect any subsequent forfeiture of the craft in respect of the conviction of any person for an offence.

(6) On the conviction of any licensee, owner, or master of a foreign fishing craft for any offence specified in subsection (1) of this section, the craft shall be forfeited to the Crown, and shall be disposed of in such manner as the Minister shall order, in addition to any fine that may be imposed by any Court on the convicted person.

(7) Where any fish is detained under subsection (1) of this section, it shall be held in the custody of the Crown (either on board the foreign fishing craft from which it was seized or in such other place as the Minister may direct) until—

- (a) A decision is made not to lay any information or charge in respect of the alleged offence for which the fish was detained; or
- (b) Where such an information or charge is laid, any security required by section 25 of this Act is given in respect of the fish.

(8) The release of any fish from detention shall not affect any subsequent forfeiture of the fish on the conviction of any person for an offence.

(9) The Crown shall not be liable to any person for any deterioration in the quality of any fish detained under subsection (1) of this section, whether such deterioration is caused by the negligence of the Crown or otherwise.

(10) On the conviction of any person for any offence specified in subsection (1) of this section in respect of any fish detained under that subsection, the fish shall be forfeited to the Crown and shall be disposed of in such manner as the Minister shall

order, in addition to any fine that may be imposed by any Court on the convicted person.

(11) Where any officer specified in subsection (16) of this section apprehends any person under subsection (1) of this section, the officer shall cause the person to be taken as soon as reasonably practicable before a Court to be dealt with in accordance with law.

(12) Where any foreign fishing craft or fish is held in the custody of the Crown under this section, then on the conviction of any person for any offence specified in subsection (1) of this section in respect of the craft or fish, as the case may be, the costs of the Crown in holding it in custody under this section shall be a debt due to the Crown jointly and severally by each of them the licensee, the owner, and the master of the craft, and shall be recoverable accordingly by the Crown in any Court of competent jurisdiction.

(13) Without limiting any other manner of recovering any debt due to the Crown under subsection (12) of this section, on the conviction of the licensee, owner, or master of any foreign fishing craft for any offence referred to in that subsection, the Court by which he is convicted may make an order that he shall pay to the Crown any costs for which he is liable under that subsection.

(14) Subject to subsection (9) of this section, but notwithstanding any other provision in this section, where any foreign fishing craft or fish has been detained under subsection (1) of this section, then on the acquittal of every person who is charged with any offence for which the craft or fish, as the case may be, is subject to forfeiture under this section, the craft or fish, as the case may require, shall forthwith be released from the custody of the Crown.

(15) Any person who in any way prevents or hinders any officer specified in subsection (16) of this section, or any assistant of the officer, in exercising the powers conferred by this section commits an offence against this Act, and is liable on summary conviction to a fine not exceeding \$10,000.

(16) Subsection (1) of this section refers to any of the following officers:

- (a) The officer in command of any vessel or aircraft of the New Zealand Armed Forces;
- (b) Any [Fishery Officer] appointed in accordance with [section 76 of the Fisheries Act 1983];
- (c) Any constable;
- (d) The master of any New Zealand Government ship.

(17) In this section, "foreign fishing craft" includes all equipment on board or used by the craft.

In subs. (16) (b) the reference to a Fisheries Officer has been substituted for a reference to an Inspector of Sea Fishing pursuant to s. 76 of the Fisheries Act 1983; and s. 76 of the Fisheries Act 1983, being the corresponding enactment in force at the date of this reprint, has been substituted for s. 4 of the repealed Fisheries Act 1908.

25. Security for release of foreign fishing craft—

(1) Where any foreign fishing craft is detained under section 24 of this Act, and an information or charge is laid against the licensee, owner, or master of the craft in respect of the offence for which the craft has been detained, the licensee, owner, or master of the craft may at any time before the determination of the information or charge apply to the Court by which the information or charge will be determined for the release of the craft on the provision of security in accordance with this section.

(2) On hearing the application, the Court shall order the release of the foreign fishing craft on the execution by any suitable person or persons approved by the Court for the purpose, of a bond in favour of Her Majesty the Queen, in the prescribed form and conditioned in accordance with subsection (4) of this section, in an amount not less than the aggregate of the value of the craft, the costs that the Crown may recover under section 24 (12) of this Act if the defendant is convicted of the offence, and the maximum fine to which the defendant will be liable if he is convicted of the offence.

(3) Notwithstanding subsection (2) of this section, the Court may, where it is satisfied that there are special circumstances to justify it in doing so, order that the bond shall be in a specified amount that is less than the amount required by that subsection.

(4) The condition of the bond shall be that if—

(a) The defendant is found not guilty of the information or charge; or

(b) The defendant on being convicted of the information or charge pays in full within 14 days after he is convicted the amount of the fine imposed by the Court, and the amount of all costs due by him to the Crown under section 24 (12) of this Act, and the foreign fishing craft is within that time surrendered to the Crown for forfeiture—

then the bond shall be of no effect, but that otherwise the bond shall remain in full force and effect.

(5) The amount specified in the bond shall be recoverable in full, in any Court of competent jurisdiction, as a debt due to Her Majesty the Queen jointly and severally by the person or persons by whom the bond is given, unless the person or persons prove the due performance of the condition on which the bond is defeasible.

(6) In this section, "foreign fishing craft" includes all equipment on board or used by the craft, and also includes all fish that has been seized from the craft under section 24 (1) of this Act and is detained on board the craft in the custody of the Crown under that section.

26. Administrative penalties for minor fisheries offences—(1) Where the Minister has reasonable cause to believe that—

- (a) An offence against this Act, or against regulations made under section 22 of this Act, or against any other New Zealand law, relating to fishing within the exclusive economic zone, may have been committed by any person in respect of any foreign fishing craft; and
- (b) Having regard to all the circumstances relating to the alleged offence it is of a minor nature, and having regard to the previous conduct of the craft and of the person concerned in New Zealand fisheries waters, it would be appropriate to impose a penalty under this section—

he may cause a notice in writing in accordance with subsection (2) of this section, and otherwise in the prescribed form, to be served on that person.

(2) A notice under subsection (1) of this section shall specify—

- (a) The date and nature of the offence;
- (b) A summary of the facts on which the allegation that an offence has been committed is based (being a sufficient summary to fully and fairly inform the person of the allegation against him); and
- (c) Any other matters (not being previous convictions) that the Minister considers relevant to the imposition of a penalty—

and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) of this section is served may, within 28 days after the notice is served on him, by a notice in writing in the prescribed form served on the Director-General of Agriculture and Fisheries require that

any proceedings in respect of the alleged offence shall be dealt with before a Court, in which case the following provisions shall apply:

- (a) No further proceedings shall be taken under this section by the Minister:
 - (b) Nothing in this section shall be construed to prevent the subsequent laying of any information or charge in respect of the alleged offence, or the conviction of the person of the offence by a Court, or the imposition of any penalty under any enactment or forfeiture under this Act on such a conviction.
- (4) Any person on whom a notice under subsection (1) of this section is served, who does not require that any proceedings in respect of the alleged offence shall be dealt with before a Court, may by notice in writing served on the Director-General of Agriculture and Fisheries—
- (a) Admit the offence; and
 - (b) In any case make submissions to the Minister as to the matters he wishes the Minister to take into account in imposing any penalty under this section.
- (5) Where a person on whom a notice under subsection (1) of this section is served does not, within 28 days after the notice is served on him,—
- (a) Require that any proceedings in respect of the alleged offence shall be dealt with before a Court; or
 - (b) Admit the offence—
- he shall on the expiration of that period be deemed to have admitted the offence.
- (6) Where under this section a person admits or is deemed to have admitted an offence, the Ministry may, after taking into account any submissions made by that person under subsection (4) of this section, impose a monetary penalty on the person in respect of the offence, not exceeding one-third of the maximum monetary penalty to which the person would be liable if he were convicted of the offence by a Court.
- (7) Where the Minister imposes a penalty on a person under this section in respect of an offence, the Minister shall cause a notice in writing in the prescribed form of the particulars of the penalty to be served on the person.
- (8) A person on whom a penalty is imposed under this section shall pay the amount of the penalty to the Crown within 28 days after the notice of the penalty is served on him in accordance with subsection (7) of this section.

(9) Without prejudice to the requirements of subsection (8) of this section, or to section 20 (1) of this Act, a penalty that has been imposed under this section shall be recoverable by the Crown, from the person on whom it has been imposed, in the same manner as a fine is recoverable on summary conviction for any offence.

(10) Notwithstanding the provisions of sections 19, 22, 24, and 25 of this Act, or of any other enactment, where any offence has been admitted under this section, no information or charge may be laid in respect of the offence against the person by whom it is admitted.

(11) Nothing in this section shall apply—

- (a) In respect of any offence or alleged offence under subsection (1) or subsection (2) of section 19 of this Act; or
- (b) In respect of any offence or alleged offence in respect of which any information or charge has been laid.

27. General regulations in zone—Where no other provision is for the time being made by any other enactment or any such purposes, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Regulating the conduct of scientific research within the exclusive economic zone;
- (b) Prescribing measures for the protection and preservation of the marine environment of the zone;
- (c) Regulating the construction, operation, and use of artificial islands (whether permanent or temporary), and other installations and structures within the zone, including the establishment of safety zones around such islands, installations, and structures;
- (d) Regulating the exploration and exploitation of the zone for the production of energy from the water, currents, and winds, and for any other economic purposes;
- (e) Providing for such other matters as are necessary or expedient for giving full effect to the sovereign rights of New Zealand in relation to the zone;
- (f) Providing that a breach of any such regulations shall be a criminal offence, and imposing penalties by way of fine not exceeding \$10,000 for any such offences;
- (g) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act (other than matters for which

regulations may be made under section 22 of this Act) and for its due administration.

28. General provisions as to offences in zone—(1) Any offence against this Act, or against any regulations made under this Act, that is committed within the exclusive economic zone shall be deemed to have been committed in New Zealand.

(2) Where any licensee, owner, master, or crew member of a foreign fishing craft is charged with any offence specified in section 19 of this Act or in any regulations made under section 22 of this Act, in respect of any activity described in paragraph (b) or paragraph (c) of the definition of the term "fishing" in section 2 (1) of this Act, it shall be a defence to the charge if the defendant proves that such activity related only to fish taken beyond the outer limits of the exclusive economic zone.

(3) Where any power of apprehension of any person, or of stopping, boarding, or searching any fishing craft, or of inspecting, seizing, or detaining any fishing craft or fish, is conferred on any person under this Part of this Act, that power may be exercised with or without a warrant.

PART III

MISCELLANEOUS PROVISIONS

29. Interim and transitional measures—(1) Pending the coming into force of Part II of this Act, the Governor-General may from time to time, by Order in Council, make regulations prescribing interim or transitional measures for the preservation and management of fisheries resources beyond the territorial sea of New Zealand but within 200 nautical miles of the baseline described in sections 5 and 6 of this Act, and for the limitation of fishing by foreign fishing craft in any areas to which those measures relate.

(2) Regulations made under this section may provide that a breach of any such regulations shall be a criminal offence, and may impose penalties by way of fine not exceeding \$100,000 for any such offences, and may declare that any such offences shall be deemed to have been committed within New Zealand.

(3) Regulations made under this section may provide that the provisions of sections 24, 25, and 26 of this Act shall apply in respect of offences committed against such regulations.

30. Modifications to give effect to international agreement—The Governor-General may, from time to time, by Order in Council, limit any provision of this Act relating to

the exclusive economic zone so far as it is necessary to do so to give full effect to any convention that is adopted by the Third United Nations Conference on the Law of the Sea.

31. Official charts—(1) For the purposes of this Act, in any proceedings in any Court the line of low water for any area depicted on the charts held in the Territorial Limits Chart Folio held by the Royal New Zealand Navy Hydrographic Office shall be sufficient evidence of the line of the low-water mark for that area.

(2) For the purposes of this Act, in any proceedings in any Court, a certificate purporting to be signed by an officer of the New Zealand Naval Forces authorised by the Secretary of Defence or the Deputy Secretary of Defence that any specified chart is a chart referred to in subsection (1) of this section shall be admissible as evidence of the matters stated in the certificate.

(3) Every person signing any such certificate shall, in the absence of proof to the contrary, be presumed to be duly authorised to sign it.

32. Onus of proof in respect of offences—In any criminal proceedings under this Act where a defendant is charged with having committed an offence specified in section 19 of this Act, or with having contravened any other provision in any regulations made under this Act under which a licence or permit, or the consent of any person is required for the doing of any act, the onus shall be on the defendant to prove that at the time to which the charge relates, the requisite licence, permit, or consent was duly held.

[32A. Certificates as evidence]—(1) Subject to subsection (2) of this section, in any proceedings for an offence against this Act or any regulations made under this Act, any certificate purporting to be signed by any serviceman within the meaning of the Defence Act 1971 and—

- (a) Stating the position of any foreign fishing craft at any date and time specified in the certificate; or
- (b) Stating that the serviceman is satisfied that the equipment used to determine the position of any foreign fishing craft was in proper working order and that the equipment was accurate within specifications detailed in the certificate; or

900
24

Territorial Sea and Exclusive Economic Zone

R.S. Vol. 27

- (c) Stating both the matters referred to in paragraph (a) and the matters referred to in paragraph (b) of this subsection—
shall be sufficient evidence of the facts stated until the contrary is proved.
- (2) A certificate referred to in subsection (1) of this section shall be admissible in evidence only if—
- (a) At least 28 days before the hearing at which the certificate is tendered, a copy of that certificate is served, by or on behalf of the prosecutor, on the defendant or his agent or counsel, and that person is, at the same time, informed in writing that the prosecutor does not propose to call the person who signed the certificate as a witness at the hearing; and
- (b) The Court has not, on the application of the defendant made not less than 14 days before the hearing, ordered, not less than 7 days before the hearing or such lesser period as the Court in the special circumstances of the case thinks fit, that the certificate should not be admissible as evidence in the proceedings.
- (3) The Court shall not make an order under subsection (2) of this section unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of a certificate.]

This section was inserted by s. 2 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1985.

In subs. (1), as to a serviceman within the meaning of the Defence Act 1971, see now a member of the Defence Force as defined in s. 2(1) of the Defence Act 1990.

38. Amendments, repeal, and savings—(1) The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) Unless in any case the context otherwise requires, every reference in any other enactment or in any regulation, rule, order, agreement, deed, instrument, application, notice, licence, or other document whatsoever, in force at the commencement of this section,—

- (a) To the territorial sea of New Zealand as defined by section 3 of the Territorial Sea and Fishing Zone Act 1965, or to the fishing zone of New Zealand established by section 8 of that Act, shall hereafter be read as a reference to the territorial sea of New Zealand as defined by section 3 of this Act;
- (b) To the internal waters of New Zealand as defined by section 4 of that Act, shall hereafter be read as a

R.S. Vol. 27 *Territorial Sea and Exclusive Economic Zone Act 1977*

901

25

reference to the internal waters of New Zealand as defined by section 4 of this Act.

(3) The Territorial Sea and Fishing Zone Act 1965 is hereby repealed.

(4) Except as expressly provided by this Act, the provisions of this Act are in addition to and not in substitution for the provisions of every other enactment, and accordingly nothing in this Act shall limit or derogate from the provisions of any other enactment.

SCHEDULE
ENACTMENTS AMENDED

Section 33

Enactment Amended	Amendment
1908, No. 65—The Fisheries Act 1908 (Reprinted 1966, Vol. 3, p. 2321)	<i>Repealed by s. 3 (a) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1985.</i>
1924, No. 11—The Acts Interpretation Act 1924 (Reprinted 1966, Vol. 3, p. 1973)	<i>This amendment has been incorporated in the reprinted Acts Interpretation Act 1924 (1979, R.S. Vol. 1, p. 15).</i>
1937, No. 27—The Petroleum Act 1937	<i>This amendment has been incorporated in the reprinted Petroleum Act 1937 (1981, R.S. Vol. 7, p. 680).</i>
1950, No. 34—The Harbours Act 1950 (Reprinted 1966, Vol. 3, p. 2395)	<i>This amendment has been incorporated in the reprinted Harbours Act 1950 (1979, R.S. Vol. 2, p. 562).</i>
1961, No. 43—The Crimes Act 1961	<i>This amendment has been incorporated in the reprinted Crimes Act 1961 (1979, R.S. Vol. 1, p. 645).</i>
1963, No. 69—The Fisheries Amendment Act 1963	<i>Repealed by s. 3 (b) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1985.</i>
1964, No. 28—The Continental Shelf Act 1964	<i>These amendments have been incorporated in the reprinted Continental Shelf Act 1964 (1984, R.S. Vol. 16, p. 84).</i>
1966, No. 5—The Submarine Cables and Pipelines Protection Act 1966	<i>These amendments have been incorporated in the reprinted Submarine Cables and Pipelines Protection Act 1966 (1983, R.S. Vol. 13, p. 629).</i>
1967, No. 49—The Fisheries Amendment Act 1967	<i>Repealed by s. 3 (c) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1985.</i>
1968, No. 27—The Fisheries Amendment Act 1968	<i>Repealed by s. 3 (d) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1985.</i>
1971, No. 15—The Marine Reserves Act 1971	<i>These amendments have been incorporated in the reprinted Marine Reserves Act 1971 (1988, R.S. Vol. 22, p. 754).</i>
1971, No. 29—The Marine Farming Act 1971	<i>These amendments have been incorporated in the reprinted Marine Farming Act 1971 (1988, R.S. Vol. 22, p. 700).</i>

902
26

Territorial Sea and Exclusive Economic Zone

R.S. Vol. 27

This Schedule came into force with s. 33 (1) on 1 October 1977 (see S.R. 1977/245) except the items relating to s. 14 of the Fisheries Act 1908, to para. (a) of the new definition of "New Zealand fisheries waters" and to s. 7 (2) of the Submarine Cables and Pipelines Protection Act 1966.

These latter items came into force on 1 April 1978 (S.R. 1978/62).

THE TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE AMENDMENT ACT 1980

1980, No. 146

**An Act to amend the Territorial Sea and Exclusive
Economic Zone Act 1977**

[13 January 1981]

1. Short Title—This Act may be cited as the Territorial Sea and Exclusive Economic Zone Amendment Act 1980, and shall be read together with and deemed part of the Territorial Sea and Exclusive Economic Zone Act 1977 (hereinafter referred to as the principal Act).

2. (1) *This subsection substituted a new section for s. 18 of the principal Act.*

(2) *This subsection substituted a new paragraph for para (d) of s. 22 (1) of the principal Act.*

3. Repeal of spent enactments—(1) The Fisheries (Agreement with Japan) Act 1967 is hereby repealed.

(2) *Impliedly repealed by s. 32 (2) of the Foreign Affairs Act 1983.*

(3) The Fisheries (Agreement with Japan) Act Commencement Order 1967 is hereby consequentially revoked.

THE TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE AMENDMENT ACT 1985

1985, No. 192

**An Act to amend the Territorial Sea and Exclusive
Economic Zone Act 1977**

[17 December 1985]

1. Short Title—This Act may be cited as the Territorial Sea and Exclusive Economic Zone Amendment Act 1985, and shall be read together with and deemed part of the Territorial Sea and Exclusive Economic Zone Act 1977 (hereinafter referred to as the principal Act).

2. This section inserted s. 32A in the principal Act.

- (a) The Fisheries Act 1908;
- (b) The Fisheries Amendment Act 1963;
- (c) The Fisheries Amendment Act 1967;
- (d) The Fisheries Amendment Act 1968.

The Territorial Sea and Exclusive Economic Zone Act 1977 is administered in the Ministry of External Relations and Trade.

1988/263



**THE EXCLUSIVE ECONOMIC ZONE (FOREIGN FISHING CRAFT)
REGULATIONS 1978, AMENDMENT NO. 4**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 31st day of October 1988

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 22 of the Territorial Sea and Exclusive Economic Zone Act 1977, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

1. Title and commencement	36B. Grant of licences authorising fishing for highly migratory species of tuna
2. New heading and regulations relating to licences to fish for certain highly migratory species inserted in principal regulations	36C. Conditions of highly migratory species licences
<i>Special Provisions Relating to Licences to Fish for Certain Highly Migratory Species</i>	36D. Limitation of application of certain regulations to highly migratory species licences
36A. Interpretation	3. First Schedule amended
	4. New Fourth Schedule added
	Schedules

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Exclusive Economic Zone (Foreign Fishing Craft) Regulations 1978,

Price Code: 5—B

Amendment No. 4, and shall be read together with and deemed part of the Exclusive Economic Zone (Foreign Fishing Craft) Regulations 1978^a (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 28th day after the date of their publication in the *Gazette*.

2. New heading and regulations relating to licences to fish for certain highly migratory species inserted in principal regulations—The principal regulations are hereby amended by inserting, after regulation 36, the following heading and regulations:

*“Special Provisions Relating to Licences to Fish for Certain
Highly Migratory Species*

“36A. **Interpretation**—In this regulation and in regulations 36B to 36D of these regulations, unless the context otherwise requires,—

“ ‘Agency’ means the body or person authorised pursuant to the Treaty to grant regional fishery licences:

“ ‘Highly migratory species licence’ means a licence granted under section 15 of the Act in accordance with regulation 36B of these regulations:

“ ‘Purse seining’ means using any net which is operated from a vessel to encircle fish and drawn together at the bottom to enclose the fish:

“ ‘Regional fishery licence’ means a licence issued by the Agency pursuant to the Treaty:

“ ‘Treaty’ means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, done at Port Moresby on the 2nd day of April 1987; and includes—

“(a) All Annexes and Schedules to the Treaty; and

“(b) Any amendments to the Treaty in force in respect of New Zealand.

“36B. **Grant of licences authorising fishing for highly migratory species of tuna**—(1) Where the Minister is notified by the Agency that any foreign fishing craft that has been issued with a regional fishery licence is to be used for fishing for highly migratory species of tuna (other than southern bluefin tuna) in the exclusive economic zone, the Minister may, under section 15 of the Act, grant a highly migratory species licence in respect of that foreign fishing craft.

“(2) Any such licence may be granted for any period not exceeding 1 year, and shall be in the form specified in Form 2A of the First Schedule to these regulations.

“36C. **Conditions of highly migratory species licences**—(1) It shall be a condition of every highly migratory species licence that the foreign fishing craft in respect of which the licence is issued shall not be used in the exclusive economic zone for fishing—

^aS.R. 1978/63
Amendment No. 1: S.R. 1979/212
Amendment No. 2: S.R. 1980/221
Amendment No. 3: S.R. 1985/248

1988/263

*Exclusive Economic Zone (Foreign Fishing Craft)
Regulations 1978, Amendment No. 4*

3

- “(a) For any species of fish other than highly migratory species of tuna (excluding southern bluefin tuna); or
 - “(b) By any fishing method other than purse seining; or
 - “(c) In any area specified in the Fourth Schedule to these regulations; or
 - “(d) At any time when the craft’s regional fishery licence is not in force; or
 - “(e) In contravention of any term, condition, or requirement of the craft’s regional fishery licence, or of any requirement of these regulations or of any other relevant New Zealand law.
- “(2) A highly migratory species licence shall be subject to such further conditions not inconsistent with the provisions of the Treaty as the Minister thinks fit to impose, and any such further conditions shall be specified in the licence.

“36D. Limitation of application of certain regulations to highly migratory species licences—(1) Nothing in regulations 6 to 22 and regulations 26 to 30 of these regulations shall apply in relation to any highly migratory species licence, or any foreign fishing craft in respect of which such a licence is in force, except to such extent as may be specified by the Minister in the licence.

“(2) Nothing in regulations 37 and 38 of this Act shall apply in relation to any foreign fishing craft in respect of which a highly migratory species licence is in force, except to the extent that the exercise of the powers or the carrying out of the duties referred to in those regulations is reasonably necessary to ensure compliance with the terms of the licence.

“(3) Nothing in the Exclusive Economic Zone (Licence Fees and Royalties) Regulations 1987^a shall apply in respect of highly migratory species licences.”

3. First Schedule amended—The First Schedule to the principal regulations is hereby amended by inserting, after form 2, the form set out in the First Schedule to these regulations.

4. New Fourth Schedule added—The principal regulations are hereby amended by adding, after the Third Schedule (as added by regulation 2 (2) of the Exclusive Economic Zone (Foreign Fishing Craft) Regulations 1978, Amendment No. 2), the Fourth Schedule set out in the Second Schedule to these regulations.

SCHEDULES

Reg. 3

Reg. 36B (2)

“FORM 2A

Licence to Fish for Certain Highly Migratory Species of Tuna in the Exclusive Economic Zone of New Zealand

1. This licence is issued pursuant to section 15 of the Territorial Sea and Exclusive Economic Zone Act 1977 and in accordance with regulation 36B of the Exclusive Economic Zone (Foreign Fishing Craft) Regulations 1978.

The foreign fishing craft described below, being the holder of a regional fishery licence, is hereby licensed to be used for fishing in the exclusive economic zone of New Zealand in accordance with the terms and conditions of this licence.

2. Description of Craft

Name of craft:

Radio call sign:

Regional fishery licence number:

Date of issue of regional fishery licence:

Registration number and make of helicopter and other aircraft:

Name of owner:

Name of master:

3. *Species to which licence applies:* All species of tuna other than southern bluefin tuna.

4. *Method of fishing authorised:* Purse seining.

5. *Period for which fishing authorised:* This licence is valid from
19..... until 19..... (inclusive). Fishing may be carried out
at any time within those dates when the craft's regional fishery licence is
also in force.

6. This licence is not transferable.

SCHEDULE

FURTHER CONDITIONS OF LICENCE

[Insert further conditions, if appropriate]

Dated this day of 19

Minister of Fisheries.

1988/263 *Exclusive Economic Zone (Foreign Fishing Craft)* 5
 Regulations 1978, Amendment No. 4

SECOND SCHEDULE

Reg. 4

NEW FOURTH SCHEDULE ADDED TO PRINCIPAL REGULATIONS

"FOURTH SCHEDULE

Reg. 36c (1) (c)

AREAS CLOSED TO FISHING UNDER HIGHLY MIGRATORY SPECIES LICENCE

1. The territorial sea of New Zealand.
2. All waters that are beyond and adjacent to the territorial sea of New Zealand, having as their outer limits a line measured seaward from the base line described in sections 5 and 6 of the Territorial Sea and Exclusive Economic Zone Act 1977, every point of which line is distant 18 nautical miles from the nearest point of the baseline.
3. All waters of the exclusive economic zone west of New Zealand that are south of 39 degrees south latitude.
4. All waters of the exclusive economic zone east of New Zealand that are south of 40 degrees south latitude.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations make provision for the granting of highly migratory species licences under the Exclusive Economic Zone (Foreign Fishing Craft) Regulations 1978. The new provisions basically regulate the position of United States tuna boats pursuing tuna (other than southern bluefin tuna) into New Zealand's exclusive economic zone. The new licences may be granted to vessels that have previously obtained a regional fishery licence in accordance with the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America concluded at Port Moresby in 1987.

Many of the detailed provisions of the principal regulations will not apply to the highly migratory species licences, given the nature of the fishing involved, but all such licences will be subject to the conditions set out in new regulation 36c (including any conditions of the regional fishery licence) and such other conditions as the Minister thinks fit to impose.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 3 November 1988.
These regulations are administered in the Ministry of Energy.

© Government of New Zealand 1988.

Applications for permission to reproduce or publish this legislation should be made to the Government Printer, P.O. Box 12411, Wellington, New Zealand.

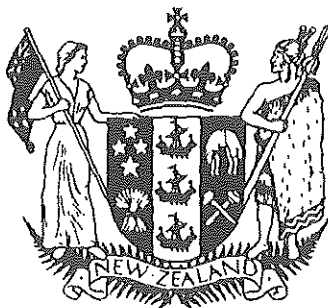
WELLINGTON, NEW ZEALAND: Printed under the authority of the
New Zealand Government by V. R. WARD, Government Printer—1988

86487J—88N

1992

*Treaty of Waitangi (Fisheries Claims)
Settlement*

No. 121



ANALYSIS

Title	22. Interpretation
Preamble	23. Declaration that species or class of fish subject to quota fishing
1. Short Title and commencement	24. Matters to be taken into account in determining or varying any total allowable commercial catch
PART I	25. Interpretation
PROVISIONS RELATING TO SETTLEMENT OF MAORI FISHERIES CLAIMS AGAINST THE CROWN	26. Minimum holdings of quota and interests in quota
2. Interpretation	27. Power of Crown to acquire, hold, transfer, lease, or cancel quotas
3. Interpretation of Act generally	28. Restriction on amount of quota that may be held by any one person
4. Act to bind the Crown	29. Assessment of deemed value of fish
5. Purchase of Sealords by Maori BIL Joint Venture	30. Declaration of controlled fisheries
6. Crown to indemnify Treaty of Waitangi Fisheries Commission against certain liability for goods and services tax	31. Restrictions on licences in certain cases
7. Payment of \$150,000,000 to Maori	32. Closed season in exclusive economic zone
8. Payment of special dividend by Aotearoa Fisheries Limited	33. Limitation of Act
9. Effect of Settlement on commercial Maori fishing rights and interests	34. Regulations
10. Effect of Settlement on non-commercial Maori fishing rights and interests	35. Fish in excess of certain quantities deemed to have been acquired or possessed for purposes of sale
11. Provisions relating to certain civil proceedings	36. Variation of resource rentals by Order in Council
PART II	37. Fisheries (Amateur Fishing) Regulations 1986
AMENDMENTS TO OTHER ENACTMENTS	27. Fish taken for hui, tangi, or other approved purpose
Maori Fisheries	38. First Schedule amended
12. Sections to be read with Maori Fisheries Act 1989	Treaty of Waitangi
13. Interpretation	39. Sections to be read with Treaty of Waitangi Act 1975
14. Change of name of Commission	40. Jurisdiction of Tribunal to consider claims
15. Additional functions	Fishing Industry Board
16. Membership of Commission	41. Sections to be read with Fishing Industry Board Act 1963
17. Powers	42. Establishment of New Zealand Fishing Industry Board
18. New Schedule 1A inserted	43. Committees
19. Repeals	
20. Provisions relating to settlement of Maori claims relating to commercial fisheries	
Fisheries	
21. Sections to be read with Fisheries Act 1983	

Conservation 44. Sections to be read with Conservation Act 1987	45. Guardians of Lakes Manapouri, Monowai, and Te Anau Schedule

1992, No. 121

An Act—

- (a) To give effect to the settlement of claims relating to Maori fishing rights; and**
- (b) To make better provision for Maori non-commercial traditional and customary fishing rights and interests; and**
- (c) To make better provision for Maori participation in the management and conservation of New Zealand's fisheries**

[14 December 1992]

WHEREAS—

- (a) By the Treaty of Waitangi the Crown confirms and guarantees to the Chiefs, tribes, and individual Maori full exclusive and undisturbed possession and te tino rangatiratanga of their fisheries; and
- (b) Section 88 (2) of the Fisheries Act 1983 provides that nothing in that Act shall affect any Maori fishing rights; and
- (c) There has been uncertainty and dispute between the Crown and Maori as to the nature and extent of Maori fishing rights in the modern context and as to whether they derive from the Treaty or common law or both (such as by customary law or aboriginal title or otherwise) and as to the import of section 88 (2) of the Fisheries Act 1983 and its predecessors; and
- (d) Maori have claimed in proceedings in the High Court and in various claims to the Waitangi Tribunal that the quota management system introduced by the Fisheries Amendment Act 1986 is unlawful and in breach of the principles of the Treaty of Waitangi, or has no application to Maori fisheries (including commercial fisheries), and have obtained from the High Court and Court of Appeal, by way of interim relief, a declaration declaring that the Crown ought not take further steps to bring the fisheries within the quota management system; and
- (e) At a national hui held at Wellington in June 1988 the Maori principals were given a mandate by Maori claiming rights and interests in the fisheries of New Zealand to secure a just and honourable settlement of their claims with the Crown; and

- (f) The Maori Fisheries Act 1989, an Act “to make better provision for the recognition of Maori fishing rights secured by the Treaty of Waitangi” (which came into force on the 20th day of December 1989) provides for the transfer from the Crown to the Maori Fisheries Commission of quota totalling 10 percent of the total allowable commercial catches for all species then subject to the quota management system (which transfer was required to be effected in instalments over the period ending with the close of the 31st day of October 1992); and
- (g) On the 27th day of February 1990, the Crown and Maori agreed that there should be discussions between them to ensure that the evolution of the quota management system, including the term of quota, met both conservation requirements and the principles of the Treaty of Waitangi and further agreed that all substantive court proceedings should stand adjourned *sine die* to allow discussions to continue, and the Crown agreed that no further species would be brought within the quota management system pending agreement or court resolution; and
- (h) There remain disputes between the Crown and Maori as to the nature and extent of Maori fishing rights and interests and their status, and the litigation between the plaintiffs and the Crown is still outstanding with interim declarations in relation to squid and paua and the Crown undertaking not to bring further species within the quota management system still in force; and
- (i) On the 26th and 27th days of August 1992, representatives of the Crown and Maori met to discuss their differences with a view to settling outstanding claims and Treaty grievances of Maori in relation to fisheries, and, therefore, the outstanding litigation; and, on the 27th day of August 1992, agreement was reached on a proposal for settlement; and
- (j) The Crown and Maori wish to resolve their disputes in relation to the fishing rights and interests and the quota management system and seek a just and honourable solution in conformity with the principles of the Treaty of Waitangi; and

- (k) The Crown recognises that traditional fisheries are of importance to Maori and that the Crown's Treaty duty is to develop policies to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries; and
- (l) A deed dated the 23rd day of September 1992 was entered into between the Crown and Sir Graham Latimer, the Honourable Matiu Rata, Richard Dargaville, Tipene O'Regan, Cletus Maanu Paul, and Whatarangi Winiata, together with other persons who have negotiated with the Crown on behalf of iwi, the New Zealand Maori Council, the National Maori Congress, and other representatives of iwi, whereby it was agreed between the parties that—
- (i) Maori would enter into a joint venture with Brierley Investments Limited to acquire Sealord Products Limited, a major fishing company; and
 - (ii) The Crown would pay to Maori a sum of \$150 million to be used for the development and involvement of Maori in the New Zealand fishing industry, including participation in the acquisition of Sealord Products Limited; and
 - (iii) The Crown would introduce legislation to ensure that Maori were allocated 20 percent of all quota for species henceforth brought within the quota management system; and
 - (iv) The Crown would introduce legislation empowering the making of regulations recognising and providing for customary food gathering and the special relationship between the tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai), to the extent that such food gathering is not commercial in any way nor involves commercial gain or trade; and
 - (v) The Crown would introduce legislation to reconstitute the Maori Fisheries Commission as the Treaty of Waitangi Fisheries Commission; and
 - (vi) The Treaty of Waitangi Fisheries Commission would consider the resolutions in respect of the assets held by the Commission at the settlement date specified in the deed, as adopted by the Annual General Meeting of the Commission on the 25th day of July 1992, and consider how best to give effect to

the resolutions, and would be empowered to allocate those assets; and

(vii) Following consultation with Maori, the Treaty of Waitangi Fisheries Commission would devise and report to the Crown on a scheme for the distribution of the Commission's assets other than those referred to in subparagraph (vi) of this paragraph; and

(viii) The implementation of the deed through legislation and the continuing relationship between the Crown and Maori would constitute a full and final settlement of all Maori claims to commercial fishing rights and would change the status of non-commercial fishing rights so that they no longer give rise to rights in Maori or obligations on the Crown having legal effect but would continue to be subject to the principles of the Treaty of Waitangi and give rise to Treaty obligations on the Crown:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and one or more Orders in Council may be made bringing different sections into force on different dates.

(3) Section 8 of this Act shall come into force on the day on which this Act receives the Royal assent.

PART I

PROVISIONS RELATING TO SETTLEMENT OF MAORI FISHERIES CLAIMS AGAINST THE CROWN

2. Interpretation—In this Act, unless the context otherwise requires,—

“BIL” means Brierley Investments Limited, a duly incorporated company having its registered office at Wellington; and includes any wholly-owned subsidiaries for the time being of that company;

“Director-General” means the Director-General of

“Maori BIL Joint Venture” means the joint venture (including any company formed to act as the joint venture entity) established by and between the Treaty of Waitangi Fisheries Commission (through Te Waka Unua Limited) and BIL to purchase Sealords:

“Maori Fisheries Negotiators” means Sir Graham Latimer, Robert Mahuta, the Honourable Matiu Rata, Richard Dargaville, Tipene O’Regan, Cletus Maanu Paul, David Higgins, and Whatarangi Winiata:

“Minister” means the Minister of Fisheries:

“Sealords” means Sealord Products Limited, a duly incorporated company having its registered office at Manukau City; and includes the entirety of the business and undertaking of that company; and also includes any wholly-owned subsidiaries for the time being of that company.

3. Interpretation of Act generally—It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the agreements expressed in the Deed of Settlement referred to in the Preamble to this Act.

4. Act to bind the Crown—This Act binds the Crown.

5. Purchase of Sealords by Maori BIL Joint Venture—Notwithstanding any other enactment or rule of law,—

(a) The Director-General may issue to Sealords a permit under section 63 of the Fisheries Act 1983 authorising it to continue to undertake the fishing activities previously conducted by Sealord Suisan Limited and Fish Packers Limited, so long as those 2 last-mentioned companies surrender to the Director-General their existing permits under that section and undertake not to seek further permits under that section:

(b) The Minister or the Director-General, as the case may be, may exercise the powers conferred by section 28w (3) or section 28z (9) of the Fisheries Act 1983 (or both) for the purpose of giving effect to the acquisition of Sealords by the Maori BIL Joint Venture.

6. Crown to indemnify Treaty of Waitangi Fisheries Commission against certain liability for goods and services tax—The Crown shall indemnify the Treaty of

Waitangi Fisheries Commission against any liability to pay goods and services tax under the Goods and Services Tax Act 1985 in respect of payments referred to in clause 3.1 of the Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992.

7. Payment of \$150,000,000 to Maori—The Crown shall pay out of money appropriated by Parliament, in accordance with clause 3.1 of the Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992, the sum of \$150,000,000.

8. Payment of special dividend by Aotearoa Fisheries Limited—(1) The board of directors of Aotearoa Fisheries Limited is hereby deemed to have declared a special dividend of \$17,500,000 in favour of the Maori Fisheries Commission, which special dividend shall be payable to the Commission not later than 5 days after receipt by Aotearoa Fisheries Limited of a notice from the Commission requesting payment of that amount.

(2) For the avoidance of doubt, it is hereby declared that no person shall be liable either civilly or criminally by reason only of the company's payment to the Commission of the amount specified in subsection (1) of this section.

9. Effect of Settlement on commercial Maori fishing rights and interests—It is hereby declared that—

(a) All claims (current and future) by Maori in respect of commercial fishing—

(i) Whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi, statute, or otherwise; and

(ii) Whether in respect of sea, coastal, or inland fisheries, including any commercial aspect of traditional fishing; and

(iii) Whether or not such claims have been the subject of adjudication by the courts or any recommendation from the Waitangi Tribunal,—
having been acknowledged, and having been satisfied by the benefits provided to Maori by the Crown under the Maori Fisheries Act 1989, this Act, and the Deed of Settlement referred to in the Preamble to this Act, are hereby finally settled; and accordingly

- (b) The obligations of the Crown to Maori in respect of commercial fishing are hereby fulfilled, satisfied, and discharged; and no court or tribunal shall have jurisdiction to inquire into the validity of such claims, the existence of rights and interests of Maori in commercial fishing, or the quantification thereof, the validity of the Deed of Settlement referred to in the Preamble to this Act, or the adequacy of the benefits to Maori referred to in paragraph (a) of this section; and
- (c) All claims (current and future) in respect of, or directly or indirectly based on, rights and interest of Maori in commercial fishing are hereby fully and finally settled, satisfied, and discharged.

10. Effect of Settlement on non-commercial Maori fishing rights and interests—It is hereby declared that claims by Maori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983—

- (a) Shall, in accordance with the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations on the Crown; and in pursuance thereto
- (b) The Minister, acting in accordance with the principles of the Treaty of Waitangi, shall—
 - (i) Consult with tangata whenua about; and
 - (ii) Develop policies to help recognise—
use and management practices of Maori in the exercise of non-commercial fishing rights; and
- (c) The Minister shall recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade; but
- (d) The rights or interests of Maori in non-commercial fishing giving rise to such claims, whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the

Treaty of Waitangi, statute, or otherwise, shall henceforth have no legal effect, and accordingly—

- (i) Are not enforceable in civil proceedings; and
 - (ii) Shall not provide a defence to any criminal, regulatory, or other proceeding,—
- except to the extent that such rights or interests are provided for in regulations made under section 89 of the Fisheries Act 1983.

11. Provisions relating to certain civil proceedings—

(1) The proceedings referred to in subsection (2) of this section that have not been discontinued before the commencement of this Act are hereby discontinued.

(2) The proceedings to which subsection (1) of this section applies are the following:

- (a) *Te Runanga o Muriwhenua Inc v Attorney-General and others* (C.P. No. 553/87);
- (b) *H.R. Tau, the Ngai Tahu Maori Trust Board v Attorney-General and others* (C.P. No. 559/87);
- (c) *The New Zealand Maori Council and others v Attorney-General and others* (C.P. No. 610/87);
- (d) *Robert Te Kotahi Mahuta and others v Attorney-General and others* (C.P. No. 614/87);
- (e) *The Hon. Matiu Rata and others v Attorney-General and others* (C.P. No. 743/88);
- (f) *Robert Te Kotahi Mahuta and another v Attorney-General and others* (C.P. No. 744/88);
- (g) *J. Henare and others v Attorney-General and others* (C.P. No. 746/88);
- (h) *T. or S. G. O'Regan and another v Attorney-General and others* (C.P. No. 747/88);
- (i) *J. Henare and others v Attorney-General and others* (C.P. No. 762/88);
- (j) *C.J. Pile v Attorney-General* (C.P. No. 110/88).

(3) All interim orders made and all undertakings given by the parties, in respect of any proceedings referred to in subsection (2) of this section, being orders and undertakings in force immediately before the commencement of this Act, are hereby cancelled.

(4) Every declaration made before the commencement of this Act under section 28B of the Fisheries Act 1983, being a declaration that any species or class of fish in any quota management area shall be subject to the quota management

system established under Part IIA of that Act, is hereby declared to be and always to have been valid.

PART II
AMENDMENTS TO OTHER ENACTMENTS
Maori Fisheries

12. Sections to be read with Maori Fisheries Act 1989— This section and the next 8 succeeding sections shall be read together with and deemed part of the Maori Fisheries Act 1989 (in those sections referred to as the principal Act).

13. Interpretation—Section 2 of the principal Act is hereby amended by omitting from the definition of the term “Commission” the word “Maori”, and substituting the words “Treaty of Waitangi”.

14. Change of name of Commission—(1) Section 4 (1) of the principal Act is hereby amended by omitting the word “Maori”, and substituting the words “Treaty of Waitangi”.

(2) Unless the context otherwise requires, every reference in any other enactment or document to the Maori Fisheries Commission shall hereafter be read as a reference to the Treaty of Waitangi Fisheries Commission.

15. Additional functions—Section 6 of the principal Act is hereby amended by adding the following paragraph:

“(e) In relation to the Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992,—

“(i) To consider how best to give effect to the resolutions in respect of the Commission’s assets, as set out in Schedule 1A to this Act;

“(ii) To develop, after full consultation with Maori, proposals for a new Maori Fisheries Act that is consistent with the Deed of Settlement and makes provision for—

“(A) The appointment, composition, and powers of any body succeeding the Commission; and

“(B) The development of a procedure for identifying the beneficiaries and their interests under the Deed of Settlement, in accordance with the Treaty of Waitangi, and a procedure for allocating to them, in accordance with the principles of the

Treaty, the benefits from the Deed of Settlement:

“(iii) Within 90 days after the commencement of this paragraph, to propose for consideration by Maori provisions and a process for the Commission’s accountability to Maori:

“(iv) To report to the Minister on the matters referred to in this paragraph.”

16. Membership of Commission—(1) The principal Act is hereby amended by repealing section 29, and substituting the following section:

“29. (1) The Commission shall consist of not more than 13 members to be appointed by the Governor-General on the advice of the Minister of Maori Affairs given after consulting the persons and Maori specified in subsection (2) of this section.

“(2) Before advising the Governor-General to make any appointment under subsection (1) of this section, the Minister shall—

“(a) Unless it is impracticable to do so by reason of absence, illness, or otherwise, consult the Maori Fisheries Negotiators jointly; and

“(b) Consult such persons who are, in the Minister’s opinion, representatives of Maori who are or may be beneficiaries of the Commission’s assets.”

(2) Every member of the Commission in office immediately before the commencement of this Act shall be deemed to have vacated his or her office on the commencement of this Act.

(3) The principal Act is hereby amended by repealing sections 19 (b) and 30.

17. Powers—(1) Section 9 (2) of the principal Act is hereby amended by adding the following paragraph:

“(l) After giving consideration to the matters referred to in section 6 (e) (i) of this Act and reporting to the Minister on those matters under section 6 (e) (iv) of this Act, and subject to subsection (4) of this section, to give effect to the scheme (if any) included in the report furnished to the Minister under the said section 6 (e) (iv) (being the scheme providing for the distribution of the assets held by the Commission before the Settlement Date defined in the Deed of Settlement and being the assets referred to in clause 4.5.2 of that deed).”

(2) Section 9 of the principal Act is hereby amended by adding the following subsection:

“(4) The Minister may, at any time and from time to time, but not later than 30 days after the date of the receipt of the Commission’s report under subsection (2) (1) of this section, request the Commission to reconsider all or any part of the proposed distribution under that subsection; and the Commission shall reconsider its proposed distribution of assets, amend the proposal, and report further to the Minister accordingly.”

18. New Schedule 1A inserted—The principal Act is hereby amended by inserting, after the First Schedule, the Schedule 1A set out in the Schedule to this Act.

19. Repeals—(1) Sections 7 (4), 7 (7), 18, 20, and 21 of the principal Act are hereby repealed.

(2) Notwithstanding the expiry of the transition period specified in the principal Act, subsections (1), (2), (3), (5), and (6) of section 7 of the principal Act shall be deemed to continue to have effect until the Commission effects the distribution of assets under section 9 (2) (1) of the principal Act (as added by section 17 (1) of this Act).

20. Provisions relating to settlement of Maori claims relating to commercial fisheries—(1) Notwithstanding anything in the principal Act or any other enactment, the following provisions shall apply in relation to the Maori BIL Joint Venture:

- (a) During the settlement period, the Treaty of Waitangi Fisheries Commission shall not, without the prior written consent of the Minister of Fisheries, sell or transfer or otherwise dispose of the 50 percent interest or any part thereof held in Sealords by the Commission or any subsidiary of the Commission on behalf of Maori through the Maori BIL Joint Venture:
- (b) During the said settlement period, the Maori BIL Joint Venture shall not, and shall take such steps as are practicable to procure that Sealords shall not, without the prior written consent of the Minister of Fisheries, voluntarily sell, transfer, or otherwise dispose of any quota under the quota management system established under Part II of the Fisheries Act 1983, being quota held by Sealords or on behalf of the

Maori BIL Joint Venture (including any part of such quota that may be transferred to or vested in the Commission or any subsidiary of the Commission on behalf of Maori under the Joint Venture arrangement).

(2) The Commission's acquisition, by purchase, subscription, or otherwise, of equity securities in Te Kupenga Limited, Te Waka Unua Limited, and Te Waka Unua Finance Limited is hereby declared to be and always to have been lawful.

(3) For the purposes of this section, "settlement period" means the period commencing on the 23rd day of September 1992 and ending with the earlier of the following:

- (a) The expiry of the Payment Period as defined in the Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992 (being the period commencing on the Settlement Date and ending with the close of the Third Instalment Payment Date as defined in the said Deed of Settlement);
- (b) The date on which the scheme for the distribution of the benefits of the settlement provided for in the said Deed of Settlement (as referred to in clause 4.5.4.2 of that deed) takes effect.

Fisheries

21. Sections to be read with Fisheries Act 1983—This section and the next 17 succeeding sections shall be read together with and deemed part of the Fisheries Act 1983 (in those sections referred to as the principal Act).

22. Interpretation—Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term "commercial fishing", the following definition:

"'Commission' means the Treaty of Waitangi Fisheries Commission established by section 4 of the Maori Fisheries Act 1989:".

23. Declaration that species or class of fish subject to quota fishing—Section 23B(1) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the words "after consultation with", the words "the Commission and".

24. Matters to be taken into account in determining or varying any total allowable commercial catch—(1) Section 28D (1) (a) of the principal Act (as substituted by section 5 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

“(i) Non-commercial interests in the fishery; and”.

(2) Section 28D (2) of the principal Act (as so substituted) is hereby amended by inserting, after the words “shall consult with”, the words “the Commission and”.

25. Interpretation—Section 28OF (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing the definition of the term “Commission”.

26. Minimum holdings of quota and interests in quota—Section 28s (3) (a) of the principal Act (as substituted by section 15 of the Fisheries Amendment Act 1991) is hereby amended by omitting the words “(as defined in section 28OF of this Act)”.

27. Power of Crown to acquire, hold, transfer, lease, or cancel quotas—Section 28U (1) of the principal Act (as substituted by section 65 of the Maori Fisheries Act 1989) is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Transfer to the Commission any individual transferable quota or transferable term quota held by or on behalf of the Crown.”

28. Restriction on amount of quota that may be held by any one person—Section 28W (3) of the principal Act (as substituted by section 23 (3) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the words “after consultation with”, the words “the Commission and”.

29. Assessment of deemed value of fish—Section 28ZE (3) of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the words “consult with”, the words “the Commission and”.

30. Declaration of controlled fisheries—Section 30 (1) of the principal Act is hereby amended by omitting the words

“New Zealand”, and substituting the words “Commission and the”.

31. Restrictions on licences in certain cases—Section 47 (1) of the principal Act is hereby amended by inserting, after the words “after consultation with”, the words “the Commission and”.

32. Closed season in exclusive economic zone—Section 86 of the principal Act is hereby amended by inserting, after the words “prior consultation with”, the words “the Commission and”.

33. Limitation of Act—Section 88 of the principal Act is hereby amended by repealing subsection (2).

34. Regulations—(1) Section 89 (1) of the principal Act is hereby amended by inserting, after paragraph (ma) (as inserted by section 42 (4) of the Fisheries Amendment Act 1990), the following paragraph:

“(mb) Recognising and providing for customary food gathering by Maori and the special relationship between tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade:”.

(2) Section 89 of the principal Act is hereby amended by inserting, after subsection (1b) (as inserted by section 16 (5) of the Fisheries Amendment Act (No. 2) 1992), the following subsection:

“(1c) Without limiting the generality of subsection (1) (mb) of this section, regulations made under that provision may—

“(a) Declare the relationship between such regulations and general fishing regulations made under this Act and regulations relating to taiapure-local fisheries; and declare that the first-mentioned regulations shall prevail over such other regulations:

“(b) Empower the Minister to declare any part of New Zealand fisheries waters to be a mataitai reserve, by notice in the *Gazette* given after consultation by the Minister and the tangata whenua with the local community and having regard to the sustainable

management of the fish, aquatic life, and seaweed in the reserve:

“(c) Provide for such matters as may be necessary or desirable for the sustainable management of the fish, aquatic life, and seaweed in mataitai reserves, including general restrictions and prohibitions in respect of the taking of fish, aquatic life, or seaweed:

“(d) Empower any Maori Committee constituted by or under the Maori Community Development Act 1962, any marae committee, or any kaitiaki of the tangata whenua to make bylaws restricting or prohibiting the taking of fish, aquatic life, or seaweed:

“(e) Empower any such Maori Committee, marae committee, or kaitiaki to allow the taking of fish, aquatic life, or seaweed to continue for purposes which sustain the functions of the marae concerned, notwithstanding any such bylaws.”

(3) Section 89 (3) (b) of the principal Act is hereby amended by inserting, before the word “fishing”, the word “non-commercial”.

(4) Section 89 of the principal Act is hereby amended by inserting, after subsection (3), the following subsections:

“(3A) No regulation made under subsection (1) (mb) or subsection (3) (b) of this section shall be invalid by reason only that it conflicts with section 28B (5) of this Act.

“(3B) The following provisions shall apply in respect of bylaws made under regulations made under subsection (1c) (d) of this section:

“(a) Every restriction and every prohibition imposed on individuals by such bylaws shall apply generally to all individuals:

“(b) Bylaws shall not come into force until they have been approved by the Minister and have been gazetted:

“(c) The publication in the *Gazette* of bylaws purporting to have been approved by the Minister under this subsection shall be conclusive evidence that the bylaws have been duly made and approved under this section.”

35. Fish in excess of certain quantities deemed to have been acquired or possessed for purposes of sale—

(1) Section 103A of the principal Act (as inserted by section 49 of the Fisheries Amendment Act 1990) is hereby amended by

omitting the word "For", and substituting the words "Except as provided in subsection (2) of this section, for".

(2) Section 103A of the principal Act (as so inserted) is hereby amended by adding, as subsection (2), the following subsection:

"(2) Nothing in subsection (1) of this section applies to any person who is in possession of fish taken under the authority of regulations made under subsection (1) (mb) or subsection (3) (b) of section 89 of this Act."

36. Variation of resource rentals by Order in Council—Section 107C (6) of the principal Act (as inserted by section 28 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the words "the Minister shall advise", the words "the Commission and".

37. Fisheries (Amateur Fishing) Regulations 1986—(1) The Fisheries (Amateur Fishing) Regulations 1986 (S.R. 1986/221) are hereby amended by revoking regulation 27, and substituting the following regulation:

"27. Fish taken for hui, tangi, or other approved purpose—(1) Nothing in these regulations or in any other regulations made pursuant to the Act relating to amateur fishing and imposing any restriction on the taking of fish, aquatic life, or seaweed shall apply where—

"(a) The fish, aquatic life, or seaweed is or are taken for the purposes of a hui, tangi, or traditional non-commercial fishing use approved by the Director-General; and

"(b) The fish are taken in accordance with any conditions considered by the Director-General to be necessary for the overall conservation and management of the fishery.

"(2) The Director-General may, in writing, delegate to one or more of the following, namely,—

"(a) Any Maori Committee constituted by or under the Maori Community Development Act 1962; or

"(b) Any marae committee that is an incorporated society under the Incorporated Societies Act 1908; or

"(c) Any kaitiaki of the tangata whenua,—
the power to approve a hui, tangi, or traditional non-commercial fishing use under subclause (1)(a) of this regulation."

(2) The regulation substituted by subsection (1) of this section may be amended or revoked as if it had been made by regulations and not by this Act.

38. First Schedule amended—Clause 1 of the First Schedule to the principal Act (as substituted by section 5 (3) of the Fisheries Amendment Act 1986) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Commercial and non-commercial interests in the fishery:”.

Treaty of Waitangi

39. Sections to be read with Treaty of Waitangi Act 1975—This section and the next succeeding section shall be read together with and deemed part of the Treaty of Waitangi Act 1975 (in that section referred to as the principal Act).

40. Jurisdiction of Tribunal to consider claims—Section 6 of the principal Act is hereby amended by adding the following subsection:

“(7) Notwithstanding anything in this Act or any other Act or rule of law, on and from the commencement of this subsection the Tribunal shall not have jurisdiction to inquire or further inquire into, or to make any finding or recommendation in respect of,—

“(a) Commercial fishing or commercial fisheries (within the meaning of the Fisheries Act 1983); or

“(b) The Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992; or

“(c) Any enactment, to the extent that it relates to such commercial fishing or commercial fisheries.”

Fishing Industry Board

41. Sections to be read with Fishing Industry Board Act 1963—This section and the next 2 succeeding sections shall be read together with and deemed part of the Fishing Industry Board Act 1963 (in those sections referred to as the principal Act).

42. Establishment of New Zealand Fishing Industry Board—(1) Section 3 (3) of the principal Act (as substituted by section 3 (1) of the Fishing Industry Board Amendment Act

1978) is hereby amended by omitting the expression "7", and substituting the expression "9".

(2) Section 3 (3) of the principal Act (as so substituted) is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) Two members nominated by the Treaty of Waitangi Fisheries Commission:".

43. Committees—Section 9 of the principal Act is hereby amended by adding the following subsection:

"(4) Every committee appointed under this section shall include a person nominated by the Treaty of Waitangi Fisheries Commission, unless the Commission has declined to appoint a person to be a member of that committee."

Conservation

44. Sections to be read with Conservation Act 1987—This section and the next succeeding section shall be read together with and deemed part of the Conservation Act 1987 (in that section referred to as the principal Act).

45. Guardians of Lakes Manapouri, Monowai, and Te Anau—Section 6x (1) of the principal Act (as inserted by section 5 of the Conservation Law Reform Act 1990) is hereby amended by inserting, after the words "appoint suitable persons", the words "(who shall include representatives of Maori)".

Treaty of Waitangi (Fisheries Claims)
Settlement

Section 18

SCHEDULE

NEW SCHEDULE 1A INSERTED INTO MAORI FISHERIES ACT 1989

"SCHEDULE 1A

RESOLUTIONS ADOPTED AT HUI-A-TAU ON 25 JULY 1992

ALLOCATION

AUTHORITY

1. That the hui endorse the decision made by the Commission to seek legislative authority to further secure the Commission's intention to allocate its assets to iwi.

METHOD

2. That MFC examine the alternative methods to allocate, consult with iwi, and have prepared discussion material to enable agreement to be reached on the optimum method for allocation.

LEGAL RIGHTS: 50%

3. That MFC ensure that no allocation of the 10% be made before the position of the pursuit of the legal rights of iwi to secure the complete 50% is secure.

EVENT OF DELAY

4. That the hui agree that, in the event of significant delay to the implementation of the allocation strategy, the MFC hold a further tender of MFC/AFL quota for the 1992/93 fishing year only.

AOTEAROA FISHERIES LIMITED (AFL)

5. That MFC allocate the assets of AFL as part of the allocation strategy.

AFL CASH & OTHER ASSETS

6. That MFC allocate the assets of AFL, cash, and other assets on the same basis as the quota is allocated.

MAORI FISHERY NEGOTIATORS (MFN)

BUDGET (6)

7. That this hui supports the continued funding of the MFN up to \$350,000 for the next year on terms to be agreed by the MFC/MFN.

MANDATE

8. That this hui affirms the fact that the negotiators represent all the interests of all iwi in the negotiations with and litigation against the Crown.

MAORI FISHERIES COMMISSION

FUTURE

9. That the future of the MFC be subject to further consideration by MFC/iwi and a position paper be circulated to iwi by October 1992.

1992, No. 121 *Treaty of Waitangi (Fisheries Claims)
Settlement* 21

SCHEDULE—continued

NEW SCHEDULE 1A INSERTED INTO MAORI FISHERIES ACT 1989—*continued*

“SCHEDULE 1A—continued

RESOLUTIONS ADOPTED AT HUI-A-TAU ON 25 JULY 1992—*continued*

MAORI CONGRESS

BUDGET

10. That the Congress and the negotiators meet with the Commission to discuss the servicing and financial requirements of the negotiating process.

(Signed)
Tipene O'Regan CHAIRMAN".

This Act is administered in the Ministry of Agriculture and Fisheries.

NIUE

Niue, an isolated island, is located at 19° South, 169° West. It has a total land area of 258 sq km and a population estimated in 1992 to be 2244. Niue became fully self-governing in free association with New Zealand on 19 October 1974. Prior to that date, Niue had been a British Protectorate from 1900 before being annexed by New Zealand in 1901. Subject to the provisions of the Constitution of 1974, the Government of New Zealand is responsible for the external affairs and defence of Niue and to provide economic and administrative assistance. Queen Elizabeth II is the Head of State and the Governor-General of New Zealand is her representative in relation to Niue. The Premier is elected by the members of the Niue Assembly and appoints three members as Ministers. The legal system of Niue derives from, since 1974, the Constitution, statutes of the Niue Legislative Assembly and such New Zealand statutes as are made applicable to Niue at the request and with the consent of the Niue Assembly, New Zealand statutes applied expressly to Niue and Niue ordinances made prior to 1974, the law of England existing on January 14, 1840 and the rules of English common law and equity save in so far as inconsistent with the Niue Act 1966 (N.Z.) or inapplicable to the circumstances of Niue, and, in relation to fishing rights, the customs and usages of Niue.

Limits of National Jurisdiction

The Territorial Sea and Exclusive Economic Zone 1978 established a territorial sea of twelve nautical miles and a 200 nautical mile exclusive economic zone of approximately 390,000 sq km in size. The Act entered into force on 1st April 1978. Niue shares maritime boundaries with Cook Islands, Tonga and the USA in respect of American Samoa. To date, no maritime boundary agreements have been negotiated.

Fisheries Legislation

The Territorial Sea and Exclusive Economic Zone Act requires the Cabinet to determine, in respect of such fisheries as it considers necessary within the EEZ or the territorial sea, the total allowable catch and apportion it between Niue fishing vessels and foreign fishing vessels. The Act sets out a basic framework for the licensing of foreign fishing vessels. Foreign fishing vessels are defined as any vessel which is used in fishing and which is owned or controlled by a person not ordinarily resident in Niue. Licences may be issued to the owners of individual foreign fishing vessels by Cabinet subject to such conditions as Cabinet sees fit to impose. Cabinet may also enter into agreements with the governments of Pacific Island states authorising the Director of a regional fisheries agency or any other person designated by such agreement to issue fishing licences.

Cabinet is empowered to make regulations for the purpose of giving full effect to the provisions of the Act but, to date, no such regulations have been made. To a great extent, fishing is controlled by each village for their own territories and there are traditional conservation and management measures in effect for different species at different times and places.

There is no legislation specifically governing the licensing and regulation of local fishing vessels. The Sunday Fishing Prohibition Act 1980 prohibits all forms of fishing on a Sunday between the hours of four o'clock in the morning and nine o'clock at night, and the Safety at Sea Act 1980 requires all vessels, including fishing vessels, propelled by oars or otherwise, but excluding canoes, to be licenced by the Fisheries Officer and to carry certain minimum safety equipment.

Conservation and Management

The Fish Protection Act 1965, as amended, prohibits the use of explosives, poisons and noxious substances for the purpose of catching fish. The Act also prohibits the use of underwater breathing

apparatus for the purpose of taking fish. Bait fishing is restricted in accordance with local custom and there is power to declare a *fono* for fish over any part of the reef or Niue waters, during which time it is an offence to enter the area, take any inorganic substance from it or take or kill any fish. As noted above, traditional conservation and management measures are very important.

Regional and International Agreements relating to Fisheries

Niue is a member of the South Pacific Forum, the Forum Fisheries Agency and the South Pacific Commission. Niue signed the United Nations Convention on the Law of the Sea on 5 December 1984. It is a party to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America and signed the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific on 29 November 1989. Niue is a signatory to and depositary of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region.

**Acts and Subsidiary Legislation of Niue
Reproduced in this Compendium**

Note: The first ever full consolidation of the Laws of Niue was published in 1990 and this has been used as the main source for the purposes of this compendium.

Niue Fish Protection Ordinance 1965 (No. 32 of 1965)	<i>1990 consolidation</i>	Page NIU 1
Am. Act 160 of 1992		
Territorial Sea and Exclusive Economic Zone Act 1978 (No. 38 of 1978)	<i>Reprinted 1987</i>	NIU 7
Sunday Fishing Prohibition Act 1980 (No. 54 of 1980)		NIU 18
Safety at Sea Act 1980 (No. 66 of 1980)		NIU 19

Niue Fish Protection Ordinance 1965
Ordinance 32 of 1965 - 1 February 1966

ANALYSIS

Title

PART I - PRELIMINARY

1. Short Title and Commencement
2. Arrangement of Ordinance
3. Interpretation
4. Chief Agricultural Officer to administer Ordinance

PART II - PROTECTION OF FISH

5. Use of explosives, firearms, or poison prohibited
6. Fono for Fish
7. Effect of Fono for Fish
8. Bait Fishing

PART III - MISCELLANEOUS PROVISIONS

9. Power to destroy Lakau NiuKini
10. Seizure and forfeiture
11. Provisions of Niue Arms Regulations not affected
12. Personal liability of Officers
13. Offence of obstructing, etc.
14. Repeals and Savings
15. Application of fines
16. Regulations

An Ordinance to consolidate and amend the law relating to Fish Protection (3 December 1965).

PART I - PRELIMINARY

1. Short Title and Commencement - (1) This Ordinance may be cited as the Niue Island Fish Protection Ordinance 1965.
(2) This Ordinance shall come into force on the first day of February 1966.

2. Arrangement of Ordinance - This Ordinance is arranged as follows:

Part I - Preliminary. (Sections 1 to 4.)
Part II - Protection of Fish. (Sections 5 to 8.)
Part III - Miscellaneous Provisions. (Sections 9 to 12.)

(This section has been revised. References to introductory notes have now been included in the Analysis.)

3. Interpretation - (1) In this Ordinance, unless the context otherwise requires -

"Ammunition" includes any cartridges, cartridge cases, gunpowder, bullets, and shots:

"Chief Agricultural Officer" means the officer in charge of the Department of Agriculture in Niue:

"Chief Officer of Police" means the officer in charge of the police in Niue:

"Executive Committee" means the Executive Committee of Niue established by [section 9 of the Niue Act 1966].

"Explosive" includes any article of which an explosive forms part and which is capable of destructive effect by way of explosion:

"Firearm" includes any weapon from which a missile is discharged by the force of any explosive substance or by compressed air:

"Fish" means every description of fish or shellfish and their young or fry or spawn and includes every other marine animal, whether mammal, reptile, or crustacean, and any other organic marine product whatsoever:

"High Court" means the High Court [of Niue]:

"Niue waters" means the sea adjacent to the coast of Niue within one mile of the external reef line and includes all water between that line and the coast:

"Public notice" in relation to any act, matter, or thing required to be publicly notified, means the making of the act, matter or thing generally known in Niue by any practicable or customary means, whether in addition to publication in the [Niue Island Gazette] or not:

"Resident Commissioner" means the Resident Commissioner of Niue:

"To take" and "Taking" (fish) includes pursuing, catching, removing, or extracting from the water or laying hold of by any means or device.

(2) Subject to the provisions of subsection (1) of this section, expressions defined in the [Niue Act 1966] have the meanings so defined.

[The Niue Act 1966, being the corresponding enactment in force at the date of this reprint, has been substituted for the Cook Islands Act 1915 and amending Acts. The other words in square brackets have been amended to correspond with the terms used in that Act.]

4. Chief Agricultural Officer to administer Ordinance -
The Chief Agricultural Officer shall be charged with the administration of this Ordinance under the general direction and control of the Resident Commissioner.

5. Use of explosives, firearms, poison, or
underwater breathing apparatus prohibited

(1) No person shall use -

(a) dynamite, gelignite, or any
other explosive;

(b) firearms;

(c) the New Guinea creeper, commonly
known as "akau Niukini", or any
other poison or stupefying agent;

or

(d) underwater breathing apparatus for
the purpose of taking or killing
fish within Niue waters.

(2) For the purposes of this section, the
expression "underwater breathing apparatus"
does not include a snorkel.

(3) Every person commits an offence against
this Ordinance and shall be liable on
conviction to a fine not exceeding \$1,000.00
or to imprisonment for a term not exceeding
six months who -

(a) Acts or attempts to act in
contravention of any of the
provisions of subsection (1) of
this section;

(b) Grows or takes no steps to control
or eradicate akau Niukini
commonly known to be grown on his
property, or has in his possession
any plant or seed of akau Niukini.

(4) In proceedings for an offence under this
section the burden of proving shall lie on the

accused that any explosive, firearm, ammunition, poison, stupefying agent (other than akau Niukini) or underwater breathing apparatus found in his possession, was not in his possession for any purpose contrary to the provisions of this section. [Amended 2/105/1975]

6. Fono for Fish - (1) On the recommendation of the Chief Agricultural Officer, the Executive Committee may from time to time by public notice declare a fono for fish over any part of the reef or Niue waters specified in such public notice.

(2) Every fono so declared shall come into force on a day specified in the public notice.

(3) Every public notice issued under this section may in like manner be revoked at any time.

7. Effect of Fono for Fish - (1) Except as otherwise provided in this section or permitted under any particular fono, no person shall, so long as any fono for fish is in force -

- (a) Enter the area over which the fono has been declared;
- (b) Take any inorganic substance, material, or matter from or in any such area;
- (c) Take or kill fish from or in any such area.

(2) Every person commits an offence against this Ordinance and shall be liable on conviction -

- (a) To a fine not exceeding ten pounds (£10), who acts or attempts to act in contravention of any of the provisions of paragraphs (a) and (b) of subsection (1) of this section;
- (b) To a fine not exceeding twenty pounds (£20) or to imprisonment for a term not exceeding three months, who acts or attempts to act in contravention of the provisions of paragraph (c) of subsection (1) of this section:

Provided that it shall be a defence to a charge under paragraphs (a) and (b) of subsection (1) of this section if the person charged proves that he entered the prohibited area due to stress of weather conditions or for the sole purpose of saving human life or regaining the possession of property.

(3) Nothing in this section shall be construed to affect the right of the Resident Commissioner, the Chief Agricultural Officer, and the Chief Officer of Police or any person authorised to act on behalf of any of those three persons to enter the area over which the fono has been declared for the purpose of enforcing the provisions of this Ordinance or of taking samples of any kind or conducting any other test or examination on which the question of the continuation or revocation of the fono may depend.

8. Bait Fishing - (1) No person shall take the bait fish known as "Ullhega" except from a bait fishing area recognised for that purpose according to local custom and during the periods decided and promulgated by local custom for that particular area, or as may be prescribed by bylaw.

(2) The periods decided by local custom or prescribed by bylaw shall be deemed to include a provision that all bait fishing groups proceeding to the same general area shall depart from the shore for the bait fishing grounds simultaneously.

(3) No ground or line bait other than coconut may be used to lure or catch such bait fish.

PART III - MISCELLANEOUS PROVISIONS

9. Power to destroy Lakau Niukini - Every officer of the Department of Agriculture and every officer of Police acting under the authority and on behalf of the Chief Agricultural Officer shall forthwith destroy any plant or seed of lakau Niukini which he finds possessed or grown by any person.

10. Seizure and forfeiture - (1) Any officer of Police or any officer of the Department of Agriculture acting under the authority and on behalf of the Chief Agricultural Officer may enter and search any place or boat and may seize and remove any explosive or other thing or substance

which on reasonable grounds he suspects has been used or is intended to be used in breach or attempted breach of section 5 of this Ordinance.

(2) On the conviction for an offence against section 5 of this Ordinance the High Court may make an order declaring the explosive or other thing or substance so seized to be forfeited, and thereupon the same shall be deemed to be forfeited to the Crown and may be disposed of as the High Court directs.

11. Provisions of Niue Arms Regulations 1955 not affected - Nothing in this Ordinance shall be construed to limit the provisions of the Niue Arms Regulations 1955.

12. Personal liability of Officers - No person shall be personally liable for any act done by him in good faith in the exercise of any duties, powers, or authorities imposed or conferred on him by the provisions of this Ordinance.

13. Offence of obstructing, etc. - Every person who wilfully obstructs, hinders, or resists any person in the execution of any duty, power, or authority imposed or conferred on that person by the provisions of this Ordinance, commits an offence against this Ordinance and, except where the [Niue Act 1966] provides a more severe penalty for the same offence, shall be liable on conviction to a fine not exceeding ten pounds (£10).

[The Niue Act 1966, being the corresponding enactment in force at the date of this reprint, has been substituted for the Cook Islands Act 1915.]

14. Repeals and Savings - (1) The following Ordinances are hereby repealed, namely:

The Niue Fish-Protection Ordinance 1916, No.3
The Niue Fish-Protection Amendment Ordinance 1943,
No.34
The Niue Fish-Protection Amendment Ordinance 1943
(No.2), No.35

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that all matters, things and proceedings which have been commenced under the Ordinances hereby repealed and which are pending or in progress on the coming into force of this Ordinance, may be continued and completed under this Ordinance.

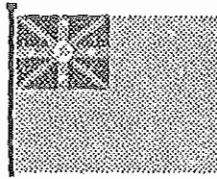
15. Application of fines - All fines paid or collected pursuant to the provisions of this Ordinance shall form part of the public revenues of Niue and shall be paid into the appropriate account thereof.

16. Regulations - Cabinet may from time to time make regulations for any purpose for which regulations are required or contemplated by this Ordinance or are necessary for giving full effect to the provisions of this Ordinance .

[Added 3/105/1985]

NIUE FISH PROTECTION AMENDMENT ACT 1992

No. 160



ANALYSIS

1.	Title Short Title and commencement	2.	Use of explosives, firearms, poison or underwater breathing apparatus prohibited
-

An Act to amend the Niue Fish Protection Act 1965

1. Short Title and commencement - (1) This Act may be cited as the Niue Fish Protection Amendment Act 1992, and shall be read together with and deemed part of the Niue Fish Protection Act 1965 (hereinafter referred to as "the principal Act").
(2) This Act shall be deemed to have come into force on the 15th day of October 1991.

2. Use of explosives, firearms, poison or underwater breathing apparatus prohibited - (1) Section 5 of the principal Act is amended, by adding to paragraph (d) of subsection (1), the following proviso -

"Provided that Cabinet may permit the use of underwater breathing apparatus, subject to such terms conditions and restrictions as Cabinet may impose, for the purpose of conducting scientific research for the purpose of gathering data to assist in the conservation or management of Niue's fishery resource."

This Act is administered by the Department of Agriculture, Forestry and Fisheries.

I, SAM PATA EMANI TAGELAGI, Speaker of the Niue Assembly, hereby certify that the requirements of Article 34 of the Niue Constitution have been duly complied with.

SIGNED AND SEALED at the Assembly Chambers this day of
1991.

Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker

Clerk of the Niue Assembly

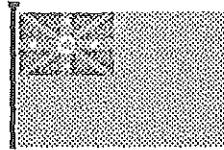
THIS ACT was passed by the Niue Assembly on the 2nd day of
March 1992.

The Territorial Sea and Exclusive Economic Zone Act 1978

No. 38

REPRINTED ACT
[WITH AMENDMENTS INCORPORATED]

NIUE ASSEMBLY



THE TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE
ACT 1978

Reprinted as on 31 December 1987

ANALYSIS

Title

1. Short title and commencement
2. Interpretation
3. Administration

PART I - TERRITORIAL SEA

4. Territorial Sea
5. Internal Waters
6. Baseline of territorial sea
7. Foreshore, bed of internal waters, and territorial sea vested in Crown
8. Official Chart
9. Permanent harbour works

PART II - EXCLUSIVE ECONOMIC ZONE OF NIUE

10. Exclusive economic zone
11. Total Allowable Catch

PART III - FISHING BY FOREIGN FISHING VESSELS

12. No fishing by foreign fishing vessels
13. Grant of licences
14. Renewal of licences
15. Variation of Licences
16. Licensing Fees
- 16A. Agreements for fishing by foreign fishing vessels
- 16B. Observers
17. Offences

PART IV - MISCELLANEOUS PROVISIONS

18. Powers to apprehend offenders
19. Obstruction of Fisheries Officers and Police Officers
20. Sale of seized fish
21. Discharge of seized fish on security

- 22. Reward to informers and others
 - 23. Boarding of foreign fishing vessels prohibited
 - 23A. Onus of proof in respect of offences
 - 24. Fishing for research, experimental and sporting purposes
 - 25. Regulations
 - 26. Repeal
-

AN ACT to make provision with respect to the territorial sea of Niue and to establish an exclusive economic zone of Niue adjacent to the territorial sea, and in the exercise of the sovereign rights of Niue to make provision for the exploration and exploitation, and conservation and management, of the resources of the zone; and for matters connected with those purposes.

Title

1. Short title and commencement

- (1) This Act may be cited as the Territorial Sea and Exclusive Economic Zone Act 1978.
- (2) This Act shall be deemed to have come into force on the 1st day of April 1978.

2. Interpretation -

- (1) In this Act unless the context otherwise requires -

* ["Administrator" means the Director of a regional fisheries agency or any other body or person authorised in accordance with Section 16A of this Act to administer a regional fisheries treaty;]

"Cabinet" means the Cabinet of Ministers of Niue established by article 2 of the Niue Constitution Act 1974;

"Chief Officer of Police" means the officer in charge of the police in Niue;

"Court" means any Court of competent jurisdiction;

"Director of Agriculture" means the officer in charge of the Department of Agriculture;

"Exclusive Economic Zone" and "Zone" means the exclusive economic zone of Niue described in Section 10 of this Act;

"Fish" means any marine animal; and includes molluscs crustaceans, polyps and all other forms of marine animal life;

"Fishery" means one or more stocks of fish that can be treated as a unit for the purposes of conservation and management;

** ["Fishing" means -

- (a) Taking any fish; or
- (b) Engaging in any activity relating to the taking of any fish including (inter alia) any activity involving the preparation supply storage refrigeration transporation or processing of any fish; or

-3-

- (c) Engaging in any activity relating to the provision of any services to any fishing craft to enable or assist that craft to engage in fishing].

"Fisheries Officer" means any fisheries officer employed in the Fisheries Division of the Department of Agriculture and includes the Director of Agriculture;

"Foreign fishing vessel" means any vessel of whatever size and however propelled which is used in fishing or for the processing or storage of fish for the purpose of sale and which is owned or controlled by a person or persons not ordinarily resident in Niue; but does not include any canoe or other vessel of any kind whatsoever used for the transport of fish or fish products as part of its general cargo;

"Foreshore" means all land lying between the high-water line at mean -highwater spring tides and the low-water line at mean -low-water spring tides;

"High Court" means the High Court of Niue;

"Highly migratory species" means species that, in the course of their life cycle, migrate over great distances of ocean;

"Licence" means a licence issued under Section 13 of this Act in respect of a foreign fishing vessel;

"Licensee" means the person to whom a licence is issued;

"Low-water mark" has the meaning assigned thereto by section 8 of this Act

"Master" in relation to a fishing vessel, means the person for the time being having command or charge of the vessel;

"Median line" as between Niue and any other country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial sea of Niue and the corresponding baseline of that other country;

"Nautical mile" means the international nautical mile;

"Owner" in relation to a fishing vessel, includes any body of persons, whether incorporated or not, by whom the vessel is owned, and any charterer, sub-charterer, lessee or sub-lessee of the vessel;

[Pacific Island State" means a party to the South Pacific Forum Fisheries Agency Convention 1979 or a state designated as observer in accordance with agreed procedures].

"Police Officer" means the Chief Officer of Police and includes any sergeant, corporal and constable acting with the authority of the Chief Officer of Police;

"Prescribed" means prescribed by regulations made under this Act;

- * ["Regional Fisheries Treaty" means a Treaty between the governments of certain Pacific Island States and governments, bodies or organisations of States other than Pacific Island States relating to fishing in the waters of the Pacific Island States;]
- * ["Regional Fishing Licence" means a valid regional fishing licence issued in respect of a foreign fishing vessel by an Administrator pursuant to a regional fisheries treaty;]
- ** ["Take" includes -
 - (a) To take, catch, kill, attract or pursue by any means or device; and
 - (b) To attempt to do any act specified in paragraph (a) of this definition.]

"Territorial Sea" means that area of the sea defined in section 4 of this Act;

"Total allowable catch" with respect to the yield from any fishery, means the amount of fish that will produce from that fishery the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any generally recommended subregional, regional, or global standards.

- (2) Subject to the provisions of subsection (1) of this section, expressions defined in the Niue Act 1966 and the Niue Constitution Act 1974 have the meanings so defined.

[Note: (i) Definitions in square brackets marked by * were inserted by section 2 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987, No. 123.

(ii) Definitions in square brackets marked by ** were inserted by section 2 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984, No. 90; repealing and substituting the definition of "Fishing"]

3. Administration

The Administration of this Act shall be under the control and direction of Cabinet, which may delegate, either generally or particularly all or any of the powers conferred on it under this Act.

PART I - TERRITORIAL SEA

4. Territorial Sea

The territorial sea of Niue comprises those areas of sea having, as their inner limits, the baseline described in section 6 of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which is distant 12 nautical miles from the nearest point of the baseline.

5. Internal Waters

The internal waters of Niue include any area of the sea that are on the landward side of the baseline of the territorial sea of Niue.

6. Baseline of territorial sea

The baseline from which the breadth of the territorial sea of Niue is measured shall be the low-water mark along the coast of Niue or where there is a coral reef along any part of the coast of Niue, the low-water mark along the outer edge of the coral reef.

7. Foreshore, bed of internal waters, and territorial sea vested in Crown

- (1) The seabed and subsoil of the submarine areas of the internal waters of Niue shall be deemed to be and always to have been vested in the Crown.
- (2) The foreshore of Niue and the seabed and subsoil of the territorial sea shall be deemed to be and always to have been vested in the Crown.

8. Official Chart

- (1) For the purposes of this Act, the low-water mark in any specified area shall be the line of low water at mean low-water spring tides as depicted on the largest scale British Admiralty chart for the time being of that area.
- (2) In any proceedings in any court, a certificate purporting to be signed by an officer of the New Zealand Naval Forces authorised by the Secretary of Defence or a Deputy Secretary of Defence, that any specified British Admiralty chart for the time being of that area shall be admissible as evidence of the matters stated in the certificate.

9. Permanent Harbour works

For the purposes of this Act, permanent harbour works which form an integral part of a harbour system shall be treated as forming part of the coast.

PART II - EXCLUSIVE ECONOMIC ZONE OF NIUE

10. Exclusive economic zone

- (1) The exclusive economic zone of Niue comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea of Niue, having as their outer limits a line measured seaward from the baseline described in Section 6 of this Act, every point of which line is distant 200 nautical miles from the nearest point of the baseline.
- (2) Notwithstanding subsection (1) of this section where any part of the median line between Niue and any other country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of Niue that part of the median line shall be an outer limit of the zone.

11. Total allowable catch

[The Cabinet shall from time to time determine, in respect of such fisheries as it considers necessary within the exclusive economic zone or the territorial sea or both] the total allowable catch as follows:

- (a) The portion that Niue fishing vessels have the capacity to harvest; and
- (b) The remaining portion shall constitute the allowable catch for that fishery for foreign fishing vessels.

[Note: Words in square brackets were substituted by section 3 of the Territorial

Sea and Exclusive Economic Zone Amendment Act 1984]

[PART III] - [FISHING BY FOREIGN FISHING VESSELS]

12. No Fishing by Foreign Fishing Vessels

No foreign fishing vessel shall be used for fishing within the territorial sea or the exclusive economic zone except in accordance with -

- (a) a licence issued by the Cabinet under section 13 of this Act in respect of that fishing vessel; or
- (b) the requirements of an agreement to which section 16A applies.

13. Grant of Licences

- (1) Cabinet may grant a licence to the owner of any named foreign fishing vessel to fish within the territorial sea or the exclusive economic zone, or both, as may be specified in the licence.
- (2) A licence granted under this section in respect of any foreign fishing vessel shall be subject to -
 - (a) Such conditions as Cabinet may attach to the specific licence when granting the licence; and
 - (b) Such conditions, if any, as may from time to time be prescribed as attaching to licences generally.
- (3) The Cabinet shall exercise the powers conferred on it by this section in such manner as to ensure that the fishery resources of Niue are properly maintained and controlled and that the catch that all foreign fishing vessels licensed under this section are for the time being authorised to harvest from any fishery does not exceed the total allowable catch for foreign fishing vessels for that fishery as determined under section 11 of this Act.

14. Renewal of Licences

The Cabinet may from time to time renew any licence granted under section 13 of this Act.

15. Variation of Licences

- (1) Subject to section 15(2) of this Act Cabinet may from time to time where it is satisfied that it is necessary or expedient for the proper regulation of fishing within the territorial sea or the exclusive economic zone, vary the terms and conditions of any licence or licences, or class or classes of licence, granted under section 13 of this Act.
- (2) Notice of every variation of any licence under this section shall be given as soon as practicable to the licensee.

16. Licensing Fees

There shall be payable by every licensee to the Crown in respect of the granting of a licence under section 13 of this Act, or the renewal of a licence under section 14 of this Act, such fee

or fees as may from time to time be prescribed and such royalties and other charges as Cabinet may from time to time determine.

[Note: Sections 12 to 16 inclusive were repealed and substituted by section 4 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984, which also inserted a new "Part III" and heading after section 11]

16A. Agreements for fishing by foreign fishing vessels

[(1) Cabinet may enter into agreements with the governments of Pacific Islands States authorising the Director of a regional fisheries agency or any other body or person designated by such agreement to issue regional fishing licences pursuant to a regional fisheries treaty.]

[(1A) For the purpose of giving effect to any agreement that Cabinet may enter pursuant to subsection (1) of this section Cabinet may make regulations to exempt any foreign fishing vessel holding a valid regional fishing licence issued pursuant to a regional fisheries treaty from the requirements of any of sections 12 to 16 inclusive, or from any other provisions of this Act as may be necessary in order to facilitate the operation of a regional fisheries treaty or to avoid repugnancy with any such treaty.]

(2) Any regulation made under sub-section [(1A)] of this section shall set out the general terms of the Agreement to which it relates.

(3) *Repealed.*

[(3)] Notwithstanding the provisions of any agreement to which this section applies Cabinet may from time to time prescribe conditions applicable to foreign fishing vessels fishing under that agreement.

[Note: (1) Section 16A was inserted by section 4 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.
(2) Section 3 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987 instituted the following amendments -
(i) Repealed and substituted subsection (1)
(ii) Inserted a new subsection (1A)
(iii) Amended the part in square brackets in subsection (2)
(iv) Repelaed subsection (3) and changed the reference to subsection "(4)" to read as subsection "(3)"]

[16B. Observers

(1) Cabinet may enter into agreements providing for an observer programme pursuant to a regional fisheries treaty

(2) For the purpose of giving effect to any agreement described in subsection (1) of this section, any duly authorised observer not national of Niue, shall be accorded national treatment for the purpose of performing his or her duties and responsibilities pursuant to such agreement and enforcing his or her rights pursuant to a regional fisheries treaty.

- (3) For the purposes of this section, "duly authorised observer" means any observer authorised by the Administrator or Cabinet to perform duties pursuant to an observer programme.]

[Note: Section 16B was inserted by section 4 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987]

17. Offences

- (1) Where any foreign fishing vessel that is not licensed under section 13 of this Act, or that is not authorised under an Agreement to which section 16A applies, is fishing or used in fishing in the territorial sea or in the exclusive economic zone -
- (a) That vessel together with its tackle, engines, nets, gear, apparatus, cargo and stores and all fish taken or possessed shall be seized and forfeited to the Government of Niue and all things so forfeited shall be disposed of as Cabinet thinks fit; and
 - (b) The owner [charterer] and the master of the vessel and every member of the crew each commits an offence, and is liable -
 - (i) In the case of an offence committed by the owner [charterer] or master to a fine not exceeding [US\$450,000]; or
 - (ii) In the case of an offence committed by any member of the crew to a fine not exceeding [US\$50,000].
- (2) Where any foreign fishing vessel is fishing or used in fishing within the territorial sea or the exclusive economic zone in contravention of any condition of a licence issued in respect of it under section 13 of this Act or in contravention of any conditions applying to that vessel prescribed by regulations; or in contravention of the terms of an Agreement to which section 16A applies, or in contravention of any conditions prescribed under section [16A (3)] of this Act:
- (a) Every licensee [owner, charterer,] or master of that foreign fishing vessel commits an offence and is liable to a fine not exceeding [US\$250,000]; and
 - (b) Every crew member of that foreign fishing vessel commits an offence and is liable to a fine not exceeding [US\$25,000].
- [(3) On conviction of the licensee, owner, charterer or master of a vessel for a breach pursuant to subsection (2) of this section, the court may also order the forfeiture to the Government of Niue of the fishing vessel and any fish, fishing gear, apparatus, cargo and stores found therein or thereon.]

- [Note:
- (1) Section 17 was repealed and substituted by section 4 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.
 - (2) All references in square brackets were inserted and/or amended by section 5 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987.]

[PART IV] - [MISCELLANEOUS PROVISIONS]

[Note: New part and heading inserted by section 5 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.]

18. *Powers to apprehend offenders*

(1) Any Fisheries Officer or Police Officer shall have the power under this Part of this Act -

- (a) To pursue, board, seize and take possession of any foreign fishing vessel (together with its tackle, engines, nets, gear, apparatus, cargo and stores) [within the territorial sea or the exclusive economic zone] of Niue or from which he has reasonable cause to believe that an offence against this Part of this Act is being or has been committed; and
- (b) At any time board any foreign fishing vessel [within the territorial sea or the exclusive economic zone] of Niue and there search, seize and take possession of any fish in respect of which he has reasonable cause to believe that an offence against this Part of this Act has been committed; and

[Note: Phrase in square brackets amended by section 6 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.]

- (c) To arrest with or without a warrant, any person (being the owner, or the master, or a crew member of a foreign fishing vessel) committing an offence or whom he has reasonable cause to believe has committed an offence against this Part of this Act.
- (2) All persons if called upon to assist any Police Officer or Fisheries Officer in the execution of any power vested in him under this Part of this Act, are hereby authorised and required to render such assistance.
- [(3) Without limiting the powers of officers empowered under this section to apprehend offenders, where a regional fisheries treaty so requires, fishing vessels and crews arrested for breach of the treaty shall be promptly released in accordance with the terms of the treaty.]

[Note: subsection (3) inserted by section 6 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987.]

19. *Obstruction of Fisheries Officer and Police Officer*

Any person who

- (a) Wilfully obstructs any Fisheries Officer or Police Officer in the exercise of any of his powers under this Part of this Act; or
- (b) Fails to comply with any lawful requirement imposed or to answer any lawful enquiry made by any Fisheries Officer or Police Officer under this Part of this Act; or

- (c) Being on board any vessel being pursued or about to be boarded by any Fisheries Officer or Police Officer throws over board or destroys any fish, fishing gear or any other thing whatsoever -

shall be guilty of an offence against this Part of this Act, and shall be liable to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 2 years and if the said offence takes place on board or alongside a fishing vessel, the master of the fishing vessel shall be guilty of a like offence and liable to a like penalty.

20. Sale of seized fish

Where no adequate facilities are available to preserve the fish taken or possessed in contravention of this Part of this Act, Cabinet shall take all necessary steps for the sale of such fish, at its reasonable market value, pending the determination of the Court proceedings in respect of the taking or possession of such fish, and the net proceeds of such sale shall be paid to the Registrar of the High Court pending the making of a final order by the Court in respect of the forfeiture or otherwise of those proceeds.

21. Discharge of seized fish on security

Any fish taken under this Part of this Act may be discharged by Cabinet upon receiving suitable and adequate security for the equivalent value of fish by way of bond, guarantee or other stipulations, conditional for payment of such equivalent value in the event that such amount shall be judged by the Court to be forfeited to the Government of Niue.

22. Reward to informers and others

Cabinet may direct the payment, and the Treasurer is hereby empowered to pay, -

- (a) To any person, other than an officer mentioned in section 18 of this Act, who submits to any such officer original information concerning the commission of any offence against this Part of this Act, leading to any penalty or forfeiture incurred in respect of such offence; and
- (b) To any person or the dependents of any person who renders assistance to any officer pursuant to subsection (2) of section 18 of this Act, and who in so doing suffers personal injury or death;

a reward of not more than \$5,000 and in no case exceeding one half of the amount of such penalty or forfeiture.

23. Boarding of foreign fishing vessels prohibited

Any person not being a Fisheries Officer or Police Officer who boards or attempts to board any foreign fishing vessel or who accepts fish from such foreign fishing vessel without any authority to do so shall be guilty of an offence and liable to a fine not exceeding \$100.

[23A. Onus of proof in respect of offences

In any proceedings under this Act where a defendant is charged with having committed an offence specified in section 17 of this Act, or with having contravened any other provision in any regulations made under this Act, or in any Agreement to which section 16A of this Act applies, the onus shall be on the defendant to prove that at the time to which the charge relates, the requisite licence or consent was held, or that the defendant was not acting in contravention of this Act or of any licence conditions, regulations or agreement.]

[Note: This section was inserted by section 7 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.]

24. Fishing for research, experimental and sporting purposes

Notwithstanding section 12 or section 17 of this Act, a foreign fishing vessel may be used for fishing within the exclusive economic zone for the purpose of fisheries research or of experimentation or sport, subject always to the prior consent in writing of Cabinet to such activity and in accordance with such conditions (if any) as Cabinet may impose in giving its consent.

25. Regulations

Cabinet may from time to time make regulations for any purpose for which regulations are required or contemplated by this Act or are necessary for giving full effect to the provisions of this Act.

26. Repeal

The Territorial Sea and Fishing Zone Act 1977 is hereby repealed.

SUNDAY FISHING PROHIBITION ACT 1980

Act 54 of 1980 - 25 June 1980

ANALYSIS

Title

1. Short Title
2. Interpretation
3. Sunday fishing prohibited
4. Sunday boating prohibited
5. Powers to apprehend offenders
6. Penalty

AN ACT to make provision for the prohibition of fishing on Sundays.

BE IT ENACTED by the Niue Assembly in Session assembled and by authority of the same as follows:

1. Short Title - This Act shall be cited as the Sunday Fishing Prohibition Act 1980.
2. Interpretation - In this Act, unless the context otherwise requires -

"To fish" or "fishing" means taking, hunting, pursuing, catching or killing any fish by any means whatsoever."

"Sea-craft" means any vessel used at sea of whatever size and however propelled.
3. Sunday fishing prohibited - (1) No person shall be allowed to fish on a Sunday during the interval of four o'clock in the morning till nine o'clock at night.

(2) Any person contravening subsection (1) of this section shall be guilty of committing an offence against the provisions of this Act.
4. Sunday boating prohibited - (1) No person shall be allowed to use a sea-craft on a Sunday during the interval of four o'clock in the morning till nine o'clock at night.

(2) Any person contravening subsection (1) on this section shall be guilty of committing an offence against the provisions of this Act.
5. Powers to apprehend offenders - Any Police Officer shall have the power under this Act to arrest with or without warrant any person committing an offence or whom he has reasonable cause to believe has committed an offence against the provisions of this Act.
6. Penalty - Any person offending against the provisions of this Act shall be liable -
 - (a) to a fine not exceeding \$200, or
 - (b) to imprisonment for a term not exceeding 3 months, or
 - (c) to forfeiture to the Government of Niue of the sea-craft together with its fishing gear and all fish taken.

SAFETY AT SEA ACT 1980

Act 66 of 1980

ANALYSIS

1. Short title and Commencement
2. Interpretation
3. Fisheries Officer
4. Powers and Duties of Fisheries Officer
5. Boats must be licenced
6. Application for a licence
7. Grounds for refusal of licence
8. Duration of licence
9. Fee
10. Equipment required
11. Offences
12. Exemptions

AN ACT to provide safety precautions for boats going out to sea.

BE IT ENACTED by the Niue Assembly in Session assembled and by the authority of the same as follows:

1. Short title and Commencement - This Act may be cited as the Safety act Sea Act 1980 and shall come into operation on the first day of February 1981.
2. Interpretation - In this Act unless the context otherwise requires -

"annual licence fee" means the fee payable under this Act for a licence to operate a boat for the period determined in the licence

"boat" means any vessel whatsoever whether propelled by oars or otherwise but does not include a canoe.

"Cabinet" means the Cabinet of Ministers as established by Article 2 of the Niue Constitution.

"licence" means a licence issued under section 6 of this Act.
3. Fisheries Officer - (1) There shall be appointed under Part XXXI of the Niue Act 1966 a Fisheries Officer.

(2) The office of the Fisheries Officer may be held in conjunction with any other office which the Public Service Commission shall consider to be not incompatible therewith.
4. Powers and Duties of Fisheries Officer - The general powers and duties of the Fisheries Officer shall include -

(1) the issuing of licences pursuant to this Act.

(2) the commencing of proceedings pursuant to this Act to ensure compliance with this Act.
5. Licensing of boats - No person shall at any time after the commencement of this Act put to sea in any boat unless that boat is licensed under the provisions of this Act.

6. Application for a licence - An application for a licence shall be made in such manner as the Fisheries Officer may by notice prescribe and the Fisheries Officer may grant or refuse any such licence.
7. Grounds for Refusal of Licence - A licence shall not be refused except on one or more of the following grounds -
 - (a) that the boat does not meet the minimum requirements for safety as prescribed by this Act
 - (b) that the person applying for the licence is by order of the High Court of Niue disqualified from holding a licence
 - (c) that the fee payable annually for a licence issued under this Act has not been paid
 - (d) that the applicant has not yet attained 18 years of age
 - (e) that the applicant is not the owner of the boat.
8. Duration of licence - Every licence shall come into force on the date specified therein and shall expire on the next following thirty-first day of March.
9. Fee - (1) No licence shall be issued under this Act until the annual licence fee has been paid.
 - (2) The annual licence fee shall be as determined from time to time by Cabinet.
 - (3) The annual licence fee determined by Cabinet shall be payable for each year or part thereof during which the boat is used at sea.
10. Equipment required - (1) No person shall put to sea in a boat unless that boat has
 - (a) a pair of oars
 - (b) a bailer
 - (c) three hand operated safety flares as by notice prescribed by the Fisheries Officer on the recommendation of Cabinet.
 - (d) one life preservation jacket for every passenger on board that boat
 - (e) in the case of a boat powered by a combustion engine, spare spark plugs together with a minimum "tool kit" as by notice prescribed by the Fisheries Officer on the recommendation of Cabinet.
11. Offences - Every person who operates a boat in contravention of the provisions of section 5 or section 10 of this Act and on conviction shall be liable to a suspension of the licence issued for that boat under section 6 of this Act for a term not exceeding six months or to a fine not exceeding \$50.00 or both such suspensions and fine.
12. Exemptions - Cabinet may from time to time authorize specific exemptions from this Act.

This Act was passed by the Niue Assembly on the 18th day of December 1980.

PALAU

The Republic of Palau is situated west of the Federated States of Micronesia between 6° 51' North and 8° 15' North and 135° 50' East and 134° 45' East. There are some 340 islands with a total land area of about 500 sq km., but the largest island is Babelthuap, with an area of 370 sq. km. The capital of Palau is Koror. After the Treaty of Versailles in 1919, Japan was appointed by the League of Nations as mandatory to all former German possessions north of the Equator, including Palau. On 18 July 1947 the United States agreed to administer the former Japanese-mandated Caroline, Marshall and Mariana islands under a trusteeship agreement with the United Nations. The Trust Territory so formed was administered by the U.S. Navy until 1951, when responsibility for all the islands comprising the Trust Territory except Tinian and Saipan in the Northern Marianas was transferred to the Department of the Interior. By 1976 the administration of the Northern Marianas was separated from that of the rest of the Trust Territory. The Trust Territory was organised in three separate entities, each with its own Constitution; the Marshall Islands, the Federated States of Micronesia and Palau. Both the Marshall Islands and the Federated States of Micronesia have entered into compacts of free association with the United States, while the Northern Marianas became a Commonwealth in political union with the United States.

Palau is the last remaining Trust Territory. However, Palau has established its own institutions of self-government and is implementing its Constitution of 1979, which became effective on 1 January 1981. The Republic of Palau is essentially a Federal Republic. There are sixteen state governments, each with limited legislative and executive powers. The Head of State is the President, elected nationally every four years, and he is also head of the executive of the national government. The President appoints a Cabinet of Ministers of Departments. The Ministers do not serve as members of the legislature. A Council of Chiefs, comprising traditional chiefs from each state appointed in the traditional manner, advises the President on matters concerning traditional laws, customs, and their relationship to the Constitution and the laws of Palau.

The legislature is the *Olbiil Era Kelulau*. The *Olbiil Era Kelulau* has two houses, the House of Delegates comprising a delegate elected from each state, and a Senate of 14 members elected from senatorial districts. Bills passed by both houses of the *Olbiil Era Kelulau* require the signature of the President before becoming law.

The legal system of Palau derives from the Constitution, the national laws of Palau as codified in the Palau National Code of 1 January 1986, Palau national statutes and ordinances of the sixteen state legislatures and the traditional law of Palau.

Limits of National Jurisdiction

Under the Constitution Palau claims jurisdiction and sovereignty over internal waters and territorial waters extending to 200 nautical miles from straight archipelagic baselines drawn around the entire group of islands making up the Republic. Each state is granted exclusive ownership of the living and non-living resources, except highly migratory species, within 12 twelve nautical miles of traditional baselines.

The fishery zones of Palau are defined and established by Title 27 of the Palau National Code. The Code establishes a territorial sea of three nautical miles breadth measured from island baselines. The exclusive fishery zone, contiguous to the territorial sea, extends twelve nautical miles from the baselines and there is a 200 nautical mile extended fishery zone. The extended fishery zone covers some 600,900 sq km. Within the exclusive fishery zone the national government possesses the same sovereign rights to living resources as it does in the territorial sea. In the extended fishery zone the national government has exclusive management, conservation and regulatory authority over all living

resources to the extent recognised by international law.

Under Article XII, Section 6 of the Constitution, each state is entitled to the revenue derived from the exploration and exploitation of all living and non-living resources, except highly migratory fish, and fines collected for violation of any law, within twelve miles of the traditional baselines. The national government is entitled to all revenue derived from the exploration and exploitation of all living and non-living resources, except highly migratory fish, and fines collected for violation of any law, beyond the area claimed by the states, and revenue derived from the licensing of foreign fishing vessels to fish for highly migratory fish are to be divided equally between the national government and all the state governments as determined by the *Olbiil Era Kelulau*.

Palau has maritime boundaries with the Philippines, Indonesia and Federated States of Micronesia. No maritime boundary agreements have been negotiated.

Fisheries Legislation

The basic fisheries law is Title 27 of the Palau National Code. The law creates two distinct authorities, the Palau Maritime Authority, which is basically responsible for the control and regulation of foreign fishing in the fisheries zones of Palau, and the Palau Fishing Authority. The Palau Fishing Authority is required to advise and make recommendations to the national government in establishing marine resources development policy in the internal waters of Palau. In addition, the Authority is mandated to establish programmes for the development of fisheries in the internal waters and act as a conduit for public funds for commercial fisheries development. No foreign fishing for reef fish is permitted anywhere in the territorial sea or internal waters.

The *Olbiil Era Kelulau*, after reviewing recommendations from the Palau Maritime Authority, is required to determine the allocation among foreign fishing nations of the total allowable level of fishing which is permitted with respect to any fishery. The total allowable level of fishing is that portion of the optimum yield of the fishery which will not be harvested by vessels of the Republic.

International fishery agreements may be negotiated and entered into in cooperation with the United States Government and the Palau Maritime Authority, subject to the approval of the *Olbiil Era Kelulau* to the extent the terms and provisions of the international fisheries agreement affect living resources within the fishery zones of Palau.

Licensing Requirements

Palau Maritime Authority is a statutory authority comprising seven members appointed by the President. The functions of the Authority include the negotiation of foreign fishing agreements, the issue of foreign fishing permits and participation in the delimitation of the extended fishing zone. Foreign fishing is defined as fishing by any vessels not duly registered in the Republic of Palau. Permits for foreign fishing may only be issued in accordance with a foreign fishing agreement approved by both houses of the *Olbiil Era Kelulau*. In negotiating foreign fishing agreements, the Authority is required to seek substantial agreement by the foreign party to certain minimum terms and conditions including provisions as to enforcement, reporting, identification and observers.

Conservation and Management

Most fishing activity in the internal waters of Palau takes place within the context of highly effective traditional resource management. The basic fisheries law contains no reference to conservation and management measures such as prohibited fishing methods, size limitations and so forth. Both Palau Maritime Authority and Palau Fishing Authority are empowered to make regulations for the conservation and management of living resources in the fishery zones but, to date, no such regulations

have been made. As noted above, within twelve nautical miles of the traditional baselines (which are not defined) the various state governments have legislative competence to make such regulations. Such regulations are outside the scope of this compendium.

Regional and International Agreements relating to Fisheries

Palau is the only member of the Forum Fisheries Agency which is not also a member of the South Pacific Forum. It is a member of the South Pacific Commission. As part of the Trust Territory of the Pacific Islands, Palau was a signatory to the Final Act of the Third United Nations Convention on the Law of the Sea but not to the Convention itself. It is a party to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America and signed the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific on 29 November 1989. Palau is also a party to the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Concern and is a signatory to the Arrangement for the Management of the Western Pacific Purse Seine Fishery. Palau signed the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region when it was opened for signature on 9 July 1992.

Laws and Subsidiary Legislation of Palau
Reproduced in this Compendium

Note: Unless otherwise stated, copies of the following laws are located in the 1986 Edition of the *Palau National Code*.

Page

CONSTITUTION

Constitution of the Republic of Palau (Preamble; Articles I and II) PAL 1

PUBLIC LAWS

Palau National Code

Title 27 - Fishing PAL 4

Division 1: Foreign Fishing

Chapter 1 Fishery Zones and Regulation of Foreign Fishing

Subchapter I	General Provisions
Subchapter II	Palau Maritime Authority
Subchapter III	Fishery Zones
Subchapter IV	Regulation of Foreign Fishing
Subchapter V	Enforcement and Penalties

Division 2: Domestic Fishing

Chapter 10 District Entities for Development of Marine Resources

Chapter 11 Palau Fishing Authority

Subchapter I	General Provisions
Subchapter II	The Authority
Subchapter III	Administration of Authority

Am. Public Law 3-42 (Excerpt)

Am. Public Law 3-55

Title 24 - Environmental Protection PAL 40

Division 2: Wildlife Protection

Chapter 12 Protected Sea Life

Chapter 13 Illegal Methods of Capture

THE CONSTITUTION
OF THE REPUBLIC OF PALAU

Preamble

In exercising our inherent sovereignty,
We, the people of Palau
proclaim and reaffirm our immemorial right
to be supreme in these islands of Palau, our homeland.
We renew our dedication
to preserve and enhance our traditional heritage,
our national identity and
our respect for peace, freedom and justice for all mankind.
In establishing this Constitution
of the sovereign Republic of Palau,
We venture into the future
with full reliance on our own efforts
and the divine guidance of Almighty God.

REPUBLIC OF PALAU CONSTITUTION

ARTICLE I

TERRITORY

Section 1. Palau shall have jurisdiction and sovereignty over its territory which shall consist of all of the islands of the Palauan archipelago, the internal waters, the territorial waters, extending to two hundred (200) nautical miles from a straight archipelagic baseline, the seabed, subsoil, water column, insular shelves, and airspace over land and water, unless otherwise limited by international treaty obligations assumed by Palau. The straight archipelagic baseline shall be drawn from the northernmost point of Ngeruangel Reef, thence east to the northernmost point of Kayangel Island and around the island to its easternmost point, south to the easternmost point of the Babeldaob barrier reef, south to the easternmost point of Helen's Reef, west from the southernmost point of Helen's Reef to the easternmost point of Tobi Island and then around the island to its westernmost point, north to the westernmost point of Fana Island, and north to the westernmost point of Ngeruangel Reef and then around the reef to the point of origin.

Section 2. Each state shall have exclusive ownership of all living and non-living resources, except highly migratory fish, from the land to twelve (12) nautical miles seaward from the traditional baselines; provided, however, that traditional fishing rights and practices shall not be impaired.

Section 3. The national government shall have the power to add territory and to extend jurisdiction.

Section 4. Nothing in this Article shall be interpreted to violate the right of innocent passage and the internationally recognized freedom of the high seas.

ARTICLE II

SOVEREIGNTY AND SUPREMACY

Section 1. This Constitution is the supreme law of the land.

Section 2. Any law, act of government, or agreement to which a government of Palau is a party, shall not conflict with this Constitution and shall be invalid to the extent of such conflict.

REPUBLIC OF PALAU CONSTITUTION

Section 3. Major governmental powers including but not limited to defense, security, or foreign affairs may be delegated by treaty, compact, or other agreement between the sovereign Republic of Palau and another sovereign nation or international organization, provided such treaty, compact or agreement shall be approved by not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose, provided, that any such agreement which authorizes use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require approval of not less than three-fourths (3/4) of the votes cast in such referendum.

27 PNC 101

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 102

TITLE 27

FISHING

DIVISION 1: FOREIGN FISHING

Chapter 1: Fishery Zones
and Regulation of Foreign Fishing

Subchapter I: General Provisions

§101. Purposes.

§102. Definitions.

§101. Purposes.

By this legislation, the Republic enacts its own fishery zone legislation to manage, conserve, and regulate the harvesting of fish throughout their habitat, both within the reef areas of islands and atolls, and in other areas within the jurisdictional competence of the Republic.

Source: PL 6-7-14 §1, modified.

§102. Definitions.

Unless the context otherwise requires, in this chapter:

(a) "Atoll" means a circular or oval coral reef forming a geographic and ecologic unity crowned by at least one island.

(b) "Authority" means the Palau Maritime Authority established by subchapter II of this chapter.

(c) "Director" means the Director of the Palau Maritime Authority.

(d) "Fish" means any living resource.

(e) "Fishery" means:

(1) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical recreational, and economic characteristics; and

(2) Any fishing for such stocks.

27 PNC 102

FISHING

27 PNC 102

(f) "Foreign fishing agreement" means an agreement approved by the national government and one or more foreign commercial fishing interests to permit foreign vessels to harvest fish within the exclusive or extended fishery zones of the Republic. A "foreign party" is a party to such an agreement other than the Authority.

(g) "Foreign Fishing" means fishing by vessels not duly registered in the Republic pursuant to Title 7 of this Code.

(h) "Island" means a naturally formed area of land, surrounded by water, which is above water at high tide.

(i) "Living resource" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine birds.

(j) "Person" means any individual, corporation, partnership, association, or other entity, the national government or any subdivision or entity thereof, and any foreign government or any subdivision or entity thereof.

(k) "Reef fish" means any species of living resource which predominately inhabit reef areas, the territorial sea, or internal waters, excluding bait fish used in the fishery for highly migratory species.

(l) "Stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(m) "Submerged reef" means a coral reef forming a geographic and ecologic unity which is wholly submerged at high tide.

Source: PL 6-7-14 §2, modified. Subsection (g) amended by PL 6-6S-8 §1; subsection (k) amended by PL 6-6S-8 §2.

Subchapter II: Palau
Maritime Authority

- §121. Palau Maritime Authority; created; term; chairman; meetings; compensation.
- §122. Same; rules of procedure and regulations.
- §123. Same; functions and duties.

27 PNC 121

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 121

§124. Same; director; staff.

§125. Chairman's report.

§121. Palau Maritime Authority; created; term;
chairman; meetings; compensation.

(a) The Authority shall meet at such times and places as may be designated by the chairman or by the Authority.

(b) Members of the Authority shall be compensated at the rate of \$20.00 per day when actually on the business of the Authority. If any member of the Authority is employed by the national government he shall receive his regular salary while on the business of the Authority, or \$20.00 per day, whichever is greater. All members of the Authority shall receive per diem and travel expenses at established national government rates while on the business of the Authority.

Source: Subsections (a) through (d) -- PL 6-7-14 §10(1), as amended by PL 7-1-21 §1(1), modified. (The last three sentences of PL 6-7-14 §10(1), as amended, have been moved to §122, below.) Subsection (e) -- PL 6-7-14 §10(4), as amended by PL 7-1-21 §1, modified.

27 PNC 122

FISHING

27 PNC 123

§122. Same; rules of procedure and regulations.

(a) The Authority shall adopt its own rules of procedure and regulations by majority vote.

(b) Regulations adopted by the Authority shall have the full force and effect of law. The process of the adoption of the regulations by the Authority is expressly exempt from the requirements of the Administrative Procedure Act set forth in chapter 1 of Title 6 of this Code, but the Authority nevertheless shall insure wide dissemination of the proposed regulations and afford the public a reasonable opportunity to present its views prior to the adoption of any regulations.

Source: Last three sentences of PL 6-7-14 §10(1), as amended by PL 7-1-21 §1, modified.

§123. Same; functions and duties.

The Authority shall have the following duties, functions, and authority:

(a) To adopt regulations for the conservation, management, and exploitation of all living resources in the extended and exclusive fishery zones of the Republic pursuant to sections 125 and 144 of this title;

(b) To participate in the delimitation of the extended fishery zone in accordance with section 147 of this title;

(c) To negotiate and conclude foreign fishing agreements in accordance with sections 162 through 165 of this title;

(d) To issue foreign fishing permits in accordance with regulations promulgated pursuant to section 122 of this title and subsection (a) of this section;

(e) To submit its budget and a report regarding the expenditure of its funds to the Olbiil Era Kelulau each regular session for approval; and

(f) To perform such other duties and functions as may be necessary to carry out the purposes of this chapter.

Source: PL 6-7-14 §10(2), as amended by PL 7-1-21 §1, modified.

27 PNC 124

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 141

§124. Same; director; staff.

The Authority shall employ a full-time director qualified in fishery management and experienced in international negotiation. The Authority may employ such other staff as it may deem necessary.

Source: PL 6-7-14 §10(3), as amended by PL 7-1-21 §1, modified.

§125. Chairman's report.

The chairman of the Authority shall report on its activities to the presiding officers of the Olbiil Era Kelulau on a quarterly basis, and to the President on an annual basis. The annual report shall contain a detailed accounting of the expenditure of funds by the Authority.

Source: PL 6-7-14 §10(5), as amended by PL 7-1-21 §1, modified.

Subchapter III: Fishery Zones

- §141. Baselines.
- §142. Territorial sea; internal waters.
- §143. Exclusive fishery zone.
- §144. Extended fishery zone.
- §145. Merged zone.
- §146. Submerged reefs.
- §147. Delimitation.

§141. Baselines.

A baseline is a continuous line which encircles an island or atoll. The baseline from which the zones designated in this chapter are to be measured is as follows:

(a) The baseline of an island or portion of an island lacking a barrier reef, fringing reef, or other reef system is the low water line of the island as marked on large scale charts officially recognized by the national government.

(b) The baseline of an atoll or island or portion of an island having a barrier reef, fringing reef, or other reef system is a line following the contour of the seaward edge of the reef system, which line connects those outermost elevations of the reef which are above water at low tide, and which line exists as marked on large scale charts officially recognized by the national government.

27 PNC 142

FISHING

27 PNC 144

Source: PL 6-7-14 §3, modified.

Cross-reference: ROP Const., Art. I, §1.

§142. Territorial sea; internal waters.

(a) There is hereby established a territorial sea of three miles' breadth. The inner boundary of the territorial sea of each island or atoll is the baseline as defined in section 141 of this title. The outer boundary is a line, every point of which is three nautical miles seaward of the nearest point on the baseline.

(b) Waters landward of the baseline, including the lagoons of atolls or islands, are internal waters.

Source: PL 6-7-14 §4, modified

Cross-reference: ROP Const., Art. I, §1.

§143. Exclusive fishery zone.

(a) There is hereby established an exclusive fishery zone contiguous to the territorial sea. The inner boundary of the exclusive fishery zone of each island or atoll is the seaward boundary of the territorial sea, and the outer boundary is a line, every point of which is 12 nautical miles seaward of the nearest point on the baseline as defined in section 141 of this title.

(b) The national government possesses and may exercise the same sovereign rights to living resources in the exclusive fishery zone as it does in the territorial sea.

Source: PL 6-7-14 §5, as amended by PL 6-6S-8 §3, modified.

§144. Extended fishery zone.

(a) There is hereby established an extended fishery zone contiguous to the exclusive fishery zone. The inner boundary of the extended fishery zone of each island or atoll is the seaward boundary of the exclusive fishery zone, and the outer boundary is a line, every point of which is 200 nautical miles seaward of the nearest point on the baseline as defined in section 141 of this title.

27 PNC 145

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 147

(b) The national government shall have exclusive management, conservation, and regulatory authority over all living resources within the extended fishery zone to the full extent recognized by international law.

Source: PL 6-7-14 §6, modified.

§145. Merged zone.

Where the zone of one island overlaps a like zone of another island, they merge and become one zone, the outer boundary of which is the seaward-most boundary of the merged zone.

Source: PL 6-7-14 §7, modified.

§146. Submerged reefs.

Traditionally recognized fishing rights in submerged reef areas wherever located within the fishery zones of the Republic shall be preserved and respected in accordance with the regulations of the Authority.

Source: PL 6-7-14 §8, modified.

§147. Delimitation.

(a) The Authority, the United States Government and the Trust Territory Government shall cooperate in the delimitation of the extended fishery zone when it overlaps a zone of national jurisdiction established by another nation.

(b) In the event a fishery zone of the Republic overlaps with that of another nation of the Trust Territory, the Authority may by agreement with the appropriate agency of that nation resolve the conflict in their respective fishery zones.

Source: PL 6-7-14 §9, modified.

Subchapter IV: Regulation
of Foreign Fishing

§161. Foreign fishing restricted.

§162. Foreign fishing agreements; exclusive authority of national government.

§163. Same; terms and conditions Authority is to seek.

§164. Same; allowable level of foreign fishing.

27 PNC 161

FISHING

27 PNC 163

- §165. Same; allocation among foreign nations of allowable level of fishing.
- §166. International fishery agreements.
- §167. Fishing permits; in general.
- §168. Same; application process.
- §169. Same; fees and compensation.
- §170. Same; consequences of prohibited act.
- §171. Same; noncommercial fishing.
- §172. Same; bait fish.

§161. Foreign fishing restricted.

(a) No foreign fishing vessel may fish in the territorial sea or internal waters of the Republic for reef fish as defined in section 102(k) of this title.

(b) Foreign fishing may be permitted in the territorial sea, the internal waters, the exclusive fishery zone and the extended fishery zone of the Republic as provided in sections 167 through 172 of this title.

Source: PL 6-7-14 §11, as amended by PL 6-6S-8 §4, modified.

§162. Foreign fishing agreements; exclusive authority of national government.

Each foreign fishing agreement shall acknowledge the exclusive fishery management authority of the national government as set forth in this chapter.

Source: PL 6-7-14 §12(1), modified.

§163. Same; terms and conditions Authority is to seek.

In negotiating foreign fishing agreements, the Authority shall seek substantial agreement by the foreign parties to the following terms and conditions:

(a) The foreign party and the owner or operator of any fishing vessel fishing pursuant to such agreement will abide by all regulations issued under authority of section 122 of this title.

(b) The foreign party and the owner or operator of any fishing vessel fishing pursuant to such foreign fishing agreement will abide by the agreement that:

(1) Any officer authorized to enforce the provisions of this chapter shall be permitted to board and search or inspect any vessel at any time

27 PNC 163

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 163

and make arrests and seizures provided for in section 188 of this title whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by this chapter;

(2) Such officer shall also be permitted to examine and make notations on the permit issued pursuant to sections 167 through 172 of this title;

(3) The permit issued for any such vessel pursuant to sections 167 through 172 of this title shall be prominently displayed in the wheelhouse of such vessel;

(4) Appropriate position-fixing and identification equipment shall be installed and maintained in working order on each such vessel;

(5) Duly authorized Palauan observers shall be permitted on board any such vessel and the national government shall be reimbursed for the cost of such observers; and

(6) Agents shall be appointed and maintained within the Republic who are authorized to receive and respond to any legal process issued in the Republic with respect to such owner or operator.

(c) The foreign party and the owners or operators of all of the fishing vessels of such party shall not, in any year, exceed such party's allocation of the total allowance level of foreign fishing.

(d) Foreign parties will:

(1) Apply, pursuant to sections 167 through 172, for any required permits;

(2) Deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under those sections for such vessel; and

(3) Abide by the requirement that no foreign fishing will be permitted in the exclusive or extended fishery zones of the Republic after January 1, 1979, without a valid and applicable permit, and the requirement that all conditions and

27 PNC 164

FISHING

27 PNC 166

restrictions of the permit be complied with.

(e) The foreign party and the owner or operator of any fishing vessel fishing pursuant to such agreement will abide by all other terms and conditions of the agreement.

Source: PL 6-7-14 §12(2), modified.

§164. Same; allowable level of foreign fishing.

The total allowable level of foreign fishing, if any, with respect to any fishery subject to the provisions of this chapter, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the Republic.

Source: PL 6-7-14 §12(3), modified.

§165. Same; allocation among foreign nations of allowable level of fishing.

After reviewing recommendations by the Authority, the Olbiil Era Kelulau by legislation shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the provisions of this chapter. In determining the allocation among nations, the Olbiil Era Kelulau shall take into consideration:

(a) The extent to which vessels of such nations have traditionally fished the particular regulated species;

(b) Whether such nations have cooperated with the national government in, and made substantial contributions to, fishery research and the identification of fishery resources;

(c) Such other matters as it may deem appropriate.

Source: PL 6-7-14 §12(4), modified.

§166. International fishery agreements.

An international fishery agreement is an international agreement primarily affecting living resources within the fishery zones of the Republic. Such agreements shall be negotiated and concluded in cooperation between the United States Government and the Authority. Prior to the conclusion of such an agreement, the United States Government shall obtain the concurrence of the Olbiil Era Kelulau by resolution to its terms and provisions to the

27 PNC 167

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 168

extent such terms and provisions affect living resources within the fishery zones of the Republic.

Source: PL 6-7-14 §13, modified.

§167. Fishing permits; in general.

After January 1, 1979, a foreign fishing vessel may engage in fishing in the exclusive or extended fishery zone of the Republic only if such vessel has on board a valid permit issued under sections 167 through 172 for such vessel.

Source: PL 6-7-14 §14(1) and (2), modified.

§168. Same; application process.

(a) Each foreign party entitled to permits in accordance with its foreign fishing agreement shall make application on forms prescribed by the Authority specifying, among other things:

(1) The name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(2) The tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Authority may require;

(3) Each fishery in which such vessel wishes to fish;

(4) The amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force; and

27 PNC 169

FISHING

27 PNC 170

(5) The ocean area in which, and the season or period during which, such fishing will be conducted.

(b) Upon receipt of an application, the Director shall transmit copies to each member of the Authority and to the chairman of the Senate Committee on Resources and Development.

(c) The Authority shall review the application, solicit views from appropriate persons in the Republic, hold public hearings where necessary, and may approve the application on such terms and conditions and with such restrictions as the Authority deems appropriate.

(d) If the Authority does not approve the application submitted by the foreign party, the chairman shall notify such foreign party of the disapproval and the reasons therefor. After taking into consideration the reason for disapproval, the foreign party may submit a revised application.

(e) Upon notification by the foreign party of acceptance of the terms, conditions, and restrictions on the application and permit, the chairman shall issue the permit.

Source: PL 6-7-14 §14(3) through (6), and (8), modified.

§169. Same; fees and compensation.

Fees and other forms of compensation for the right to exploit living resources within the territorial sea or fishery zones of the Republic shall be established in the foreign fishing agreement.

Source: PL 6-7-14 §14(7), modified.

§170. Same; consequences of prohibited act.

If any foreign fishing vessel for which a permit has been issued pursuant to sections 167 through 172 has been used in the commission of any act prohibited by this chapter, or if any civil penalty or criminal fine imposed by this chapter has not been paid and is overdue, the Authority shall:

(a) Revoke such permit with or without prejudice to the right of the foreign party involved to obtain a permit for such vessel in any subsequent year; or

27 PNC 171

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 181

(b) Suspend such permit for the period of time deemed appropriate; or

(c) Impose additional conditions and restrictions on the approved application of the foreign party involved and on any permit issued under such application.

Source: PL 6-7-14 §14(9), modified.

§171. Same; noncommercial fishing.

Notwithstanding any other provision of this chapter, the Authority may by regulation provide for the issuance of permits, on reasonable conditions, to foreign vessels or parties for research, recreational, or other noncommercial fishing within the fishing zones of the Republic.

Source: PL 6-7-14 §14(10), modified.

§172. Same; bait fish.

Notwithstanding any other provision of this chapter, a foreign fishing vessel is permitted to fish for bait fish used in the fishery for highly migratory species only pursuant to such terms and conditions as may be contained in a special bait fishing permit to be issued in the sole discretion of the Authority.

Source: PL 6-7-14 §14(11), as added by PL 6-6S-8 §6, modified.

Subchapter V: Enforcement
and Penalties

- §181. Prohibited acts.
- §182. Criminal penalties.
- §183. Civil penalties.
- §184. Forfeitures; procedure.
- §185. Revenues.
- §186. Jurisdiction of court.
- §187. Enforcement; primary responsibility.
- §188. Same; powers of officer.
- §189. Same; reward.
- §190. Same; provisions of regulation or permit enforceable.

§181. Prohibited acts.

It is unlawful for any person:

(a) To violate any provision of this chapter or of any regulation or permit issued pursuant to this chapter;

27 PNC 182

FISHING

27 PNC 182

(b) To use any fishing vessel to engage in fishing after revocation, or during the period of suspension, of an applicable permit issued pursuant to this chapter;

(c) To violate any provision of, or regulations under, an applicable foreign fishing agreement entered into pursuant to sections 161, and 167 through 172 of this title;

(d) To refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter or any regulation, permit, or agreement referred to in subsections (a), (b) or (c) of this section;

(e) To forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subsection (d) of this section;

(f) To resist a lawful arrest for any act prohibited by this section;

(g) To knowingly ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of this chapter or any regulation, permit, or agreement referred to in subsections (a), (b) or (c) of this section; or

(h) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this section.

Source: PL 6-7-14 §15(1), modified. PL 6-7-14 §15(2), prohibiting any vessel other than a vessel owned solely by citizens of Palau from fishing in the territorial sea, was repealed by PL 6-6S-8 §5.

§182. Criminal penalties.

(a) A person is guilty of an offense if he commits any act prohibited by section 181 of this title.

(b) Any offense described as a prohibited act by section 181(a), (b), (c), or (g), is punishable by a fine of not more than \$50,000.00.

27 PNC 183

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 183

(c) Any offense described as a prohibited act by section 181(d), (e), (f), or (h), is punishable by a fine of not more than \$100,000.00, or imprisonment for not more than two years, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this chapter, or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$250,000.00. Each day of continuing violation shall be considered a separate offense.

Source: PL 6-7-14 §16, as amended by PL 6-6S-8 §7(a), modified.

§183. Civil penalties.

(a) Any person who is found by the Supreme Court in a civil proceeding to have committed an act prohibited by section 181 of this title shall be liable to the national government for a civil penalty which shall not exceed \$75,000.00 for each violation. Each day of continuing violation shall constitute a separate offense.

(b) In determining the amount of such penalty, the Supreme Court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violators, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(c) The Attorney General or the Director or his designee on behalf of the national government is authorized to initiate all proceedings under this section and to recover the amount assessed as a civil penalty.

(d) The proceeds of civil penalties shall be remitted to the National Treasury in accordance with section 185 of this title.

Source: PL 6-7-14 §16, as amended by PL 6-6S-8 §7(b), modified.

27 PNC 184

FISHING

27 PNC 184

§184. Forfeitures; procedure.

(a) Any fishing vessel, including its fishing gear, furniture, appurtenances, stores, and cargo used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 181 of this title, shall be subject to forfeiture to the national government. All or part of such vessel, and all such fish, shall be forfeited to the national government pursuant to a civil proceeding under this section.

(b) The Supreme Court shall have jurisdiction, upon application by the Attorney General or the Director on behalf of the national government, to order any forfeiture authorized under subsection (a) of this section.

(c) If a judgement is entered for the national government in a civil forfeiture proceeding under this section, the Attorney General shall seize any property or other interest declared forfeited to the national government which has not previously been seized pursuant to this chapter.

(d) The forfeited vessel, gear, furniture, appurtenances, stores, cargo, and fish may be sold and the proceeds deposited with the Authority for use in accordance with section 185 of this title, or may be retained for use by or at the direction of the national government.

(e) Pending completion of the civil forfeiture proceeding, the seized vessel, gear, furniture, appurtenances, stores, cargo, and fish, or any part thereof, may be discharged at the discretion of the court upon deposit with the court of a satisfactory bond or other security at least equal to the fair market value of the seized property. Such bond or other security shall be conditioned upon delivery of such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgement shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

27 PNC 185

FISHERY ZONES AND
REGULATION OF FOREIGN FISHING

27 PNC 188

(f) Any fish seized pursuant to this chapter may be sold, subject to the approval and direction of the court. The proceeds of any such sale shall be deposited with such court pending the disposition of the civil forfeiture proceeding.

(g) For purposes of this chapter, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 181 of this title were taken or retained in violation of this chapter.

Source: PL 6-7-14 §17, modified.

§185. Revenues.

All revenues, including fees collected by the Authority pursuant to section 169 and all fines and proceeds of sale of all forfeitures shall be transmitted immediately upon collection to the National Treasury.

Source: PL 6-7-14 §18, modified.

§186. Jurisdiction of court.

The Supreme Court shall have exclusive jurisdiction over any case or controversy arising under this chapter. The court may at any time enter restraining orders or prohibitions, issue warrants, process in rem, or other processes, prescribe and accept satisfactory bonds or other security, and take such other actions as are in the interests of justice.

Source: PL 6-7-14 §19, modified.

§187. Enforcement; primary responsibility.

Primary responsibility for the enforcement of this chapter shall be assumed by the Office of the Attorney General through the Bureau of Public Safety. The President and the Attorney General may, from time to time, seek enforcement assistance from the United States Government.

Source: PL 6-7-14 §20(1), modified.

§188. Same; powers of officer.

Any officer who is authorized by the Attorney General to enforce the provisions of this chapter may:

(a) With or without a warrant or other process:

27 PNC 189

FISHING

27 PNC 190

(1) Arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 181 of this title;

(2) Board and search or inspect any fishing vessel which is subject to the provisions of this chapter;

(3) Seize any fishing vessel when the vessel has been used or employed in, or when it reasonably appears that such vessel was used or employed in, violation of any provision of this chapter;

(4) Seize any fishing gear, furniture, appurtenances, stores, cargoes, and fish in the possession of a fishing vessel seized pursuant to authority granted by paragraph (3) of this subsection; and

(5) Seize any other evidence related to any violation of any provision of this chapter.

(b) Execute any warrant or other process issued by any court of competent jurisdiction; and

(c) Exercise any other lawful authority.

Source: PL 6-7-14 §20(2), modified.

§189. Same; reward.

Any individual who provides information to the Attorney General concerning any violation of this chapter which results in the imposition of any penalty under section 182 or 183 of this title shall be paid 50 percent of any such penalty imposed and collected.

Source: PL 6-7-14 §20(3), modified.

§190. Same; provisions of regulation or permit enforceable.

For purposes of this chapter, the terms "provisions of this chapter" and "violation of any provisions of this chapter" include the provisions of any regulation or permit issued pursuant to this chapter.

Source: PL 6-7-14 §20(4), modified.

27 PNC 1001

DISTRICT ENTITIES FOR
DEVELOPMENT OF MARINE RESOURCES

27 PNC 1002

DIVISION 2: DOMESTIC FISHING

Chapter 10: District Entities
for Development of Marine Resources

- §1001. Authorized; powers.
- §1002. Succession.
- §1003. Funding.
- §1004. Authorization of appropriations for 1979 and 1980.
- §1005. Annual report.
- §1006. Succession in absence of entity.

§1001. Authorized; powers.

Each district government is authorized to establish by law an entity to promote, develop, and support commercial utilization of living marine resources within its jurisdiction. The entity shall be composed of representatives of district parties with a significant interest in the utilization of living marine resources. The entity shall be provided by law with the power and authority to carry out the purpose stated above, which powers may include but need not be limited to the following:

(a) To provide guidance to the district government in establishing marine resources development policy;

(b) To make regulations concerning the exploitation of living marine resources as permitted by law;

(c) To serve as a conduit for public funds to establish and operate facilities required for commercial fisheries development, to conduct pilot fishing operations and to participate in large scale commercial fishing and related activities which are not suitable for investment by the private sector;

(d) To establish and support programs to promote, support and guide fishing cooperative associations. (P.L. No. 7-111, §1.)

Source: 45 TTC §162.

§1002. Succession.

Upon the establishment of a district entity pursuant to this chapter the provisions of former sections 151 to 161 of Title 45 of the Trust Territory Code shall cease to apply in that district and all assets, liabilities and activities of the district fishing authority created pursuant to those

27 PNC 1003

FISHING

27 PNC 1006

provisions shall be transferred to the new district entity.
(P.L. No. 7-111, §2.)

Source: 45 TTC §163, modified.

§1003. Funding.

Funds for the operation and activities of the district entity created pursuant to this chapter may be provided by the Trust Territory government, the Congress of Micronesia, the district legislature, the net earnings from its activities, and tax revenues generated from the sale of supplies and provisions to foreign fishing vessels entering ports within the district. (P.L. No. 7-111, §3.)

Source: 45 TTC §164.

§1004. Authorization of appropriations for 1979 and 1980.

The sum of \$240,000.00 for each of the fiscal years 1979 and 1980 is authorized to be appropriated from the general fund of the Congress of Micronesia to be made available to the district entity created pursuant to this chapter in the amount of \$40,000.00 per district per year or so much thereof as may be necessary, provided that matching funds are provided by appropriations from the district legislature. (P.L. No. 7-111, §4.)

Source: 45 TTC §165.

§1005. Annual report.

Each district entity created pursuant to this chapter shall prepare an annual report on its finances and activities to be submitted to the district legislature and the Congress of Micronesia within 20 days of the completion of each calendar year. (P.L. No. 7-111, §5.)

Source: 45 TTC §166.

§1006. Succession in absence of entity.

If no district entity is created pursuant to this act prior to May 1, 1979, the district administrator shall be responsible for the promotion, support and guidance of fishing cooperative associations, but he shall terminate the loan fund program established by section 157 of Title 45 of the Trust Territory Code and shall be responsible for the collection of outstanding loans as the payments become due and shall return to the general fund of the Congress of Micronesia such portion of those collections as were provided originally by the Congress of Micronesia, together with the interest collected thereon. (P.L. No. 7-111, §7.)

- 1122 -

PAL 24

27 PNC 1006

DISTRICT ENTITIES FOR
DEVELOPMENT OF MARINE RESOURCES

27 PNC 1006

Source: 45 TTC §167, modified.

T27-24

27 PNC 1101

PALAU FISHING AUTHORITY

27 PNC 1103

Chapter 11: Palau Fishing Authority

Subchapter I: General Provisions

§1101. Short title.

§1102. Purpose.

§1103. Definitions.

§1101. Short title.

This chapter shall be known and may be cited as the "Palau Fishing Authority Act of 1980."

Source: PL 7-7-8 §1, modified.

§1102. Purpose.

The purpose of this chapter is to create a legal entity to promote, develop, and support commercial utilization of living marine resources within the internal waters of the Republic.

Source: PL 7-7-8 §2, modified.

§1103. Definitions.

In this chapter:

(a) "Authority" means the Palau Fishing Authority.

(b) "Board" means the board of directors of the Palau Fishing Authority.

(c) "Internal waters" means the area landward of the inner boundary of the territorial sea, as defined in section 142 of this title.

(d) "Manager" means the chief executive officer of the Palau Fishing Authority.

Source: New section.

Subchapter II: The Authority

§1121. Authority; created.

§1122. Same; duties and powers.

§1123. Board of directors; composition; meetings; quorum; expenses.

§1124. Manager; appointment.

§1125. Same; powers and duties.

§1126. Treasurer and attorney; duties.

27 PNC 1121

FISHING

27 PNC 1122

§1121. Authority; created.

There is hereby created an authority to be called the Palau Fishing Authority. The Authority's functions shall be conducted in public and it shall have the right to sue and be sued in its own name.

Source: PL 7-7-8 §3, modified.

§1122. Same; duties and powers.

The Authority shall have the following duties and powers:

(a) The Authority shall make such recommendations as it deems appropriate to provide guidance to the national government in establishing marine resources development policy in any internal waters.

(b) The Authority shall have the power to adopt rules and regulations concerning its operations, as permitted by this chapter, with respect to living marine resources in any internal waters.

(c) The Authority shall serve as a conduit for public funds to establish and operate facilities required for commercial fisheries development, to conduct pilot fishing operations and to participate in large scale commercial fishing, including joint ventures, and related activities which are not suitable for investment by the private sector and which occur within internal waters.

(d) The Authority shall establish and support such programs as it deems appropriate, to promote, support and guide fishing cooperative associations with respect to activities whose primary objective involves fishing in any internal waters.

(e) The Authority shall help finance and support the development of locally owned private fishing enterprises whose primary objective involves fishing in any internal waters, and may make loans to accomplish the same.

(f) The Authority shall be empowered to act as an agent for the sale of supplies and provisions, including fuel, oil, water and food, to foreign fishing vessels lawfully permitted to enter a port within the Republic, provided that nothing in this chapter shall operate to deprive any existing or future agent for the sale of such supplies and provisions from the right to operate in a lawful fashion.

27 PNC 1122

PALAU FISHING AUTHORITY

27 PNC 1122

(g) The Authority may generally carry on the business of establishing, developing, maintaining, operating and managing facilities for the commercial utilization of marine resources in any internal waters, with all powers incident thereto.

(h) The Authority shall be authorized to purchase, lease, and sell real or personal property, supplies, goods, materials, and commodities and to furnish and supply services incidental to its operations. It may procure insurance against liability or loss in connection with its operations hereunder in such amounts and from such insurers as it deems advisable.

(i) The Authority, in operating facilities and properties owned, leased or controlled by it, may enter into contracts, leases, and other arrangements with any person for terms not exceeding 15 years, granting the privilege of using or improving such facilities and properties or a portion thereof or space therein for any utilization connected with marine resources purposes, and may confer the privilege of supplying goods, commodities, things, or facilities at such facilities or properties or of making available services to be furnished by the Authority or its agent at such facilities or properties. It shall determine the charges or rentals for the use of any facility or property under its management and control, and the terms and conditions under which the facility or property may be used. Charges shall be reasonable and uniform for the same class of service, and established with due regard to the value of the facility or property and improvements used and the expenses of the operation of the Authority. The Authority shall have and may enforce liens to enforce the payment of any such charges through appropriate judicial proceedings. The right to levy charges or rental for the use of the facility or property under its management shall be exclusively that of the Authority and all such charges and rental as well as other revenues of the Authority are to be applied as herein set forth.

(j) The Authority may contract with any person, firm or corporation for the planning, supervision, financing, construction, operation and maintenance of, or may itself construct or otherwise acquire, operate, and maintain all structures or improvements which in its judgement are useful, desirable or convenient in efficiently operating and maintaining facilities and properties. The Authority may also enter into

27 PNC 1122

FISHING

27 PNC 1122

agreements with the Trust Territory Government, the national government, and their departments and agencies, for the rendering of services performed by such departments and agencies to the Authority.

(k) The Authority shall have the free use of the national government pouch mail.

(l) The Authority, including, but not limited to, its franchise, capital, revenues, obligations, including interest thereon, reserves, surplus, loans, income, assets, and property of any kind shall be exempt from all licensing and taxation now or hereafter required or imposed by the national government or any taxing authority in the Republic. However, such exemption shall not apply to persons entering into independent contracts with the Authority.

(m) The Authority is authorized to apply for, accept, expend and repay monies made available by grant, loan, or both by the United States Government, the Trust Territory Government, other foreign governments or the United Nations, as permitted by law, or the national government for planning or accomplishing, in whole or in part, any of the purposes of this chapter. Unless otherwise prescribed by the agency from which such monies are received, the chief financial officer of the Authority shall deposit all monies received pursuant to this subsection in a separately denominated account.

(n) The Authority shall maintain such records, libraries, research materials, administrative or office materials and other property, real or personal, including, but not limited to, detailed records of fishery products harvested, deemed to be necessary to enable the Authority to carry out the purposes of this chapter. Upon the request of the manager, employees of the national government may be assigned by the President of the Republic to assist the Authority to carry out activities of the Authority as set forth herein. Expenses thereof, if any, shall be reimbursed by the Authority as may be required by the President in the assignment.

(o) The Authority may employ agents and employees, and contract for the services of qualified managers, specialists or experts, as individuals or as organizations, to advise and assist the Authority and its employees. The Authority may set its own compensation, wage and salary scales pursuant to chapter

27 PNC 1123

PALAU FISHING AUTHORITY

27 PNC 1123

1 of Title 30 of this Code.

(p) The Authority shall provide training and extension services, as appropriate, to any person, consistent with the provisions of this chapter.

Source: PL 7-7-8 §4, modified. Second clause of PL 7-7-8 §4(11), relating to the Authority's fiscal year, has been moved to §1142(a).

§1123. Board of directors; composition; meetings; quorum; expenses.

(a) All powers vested in the Authority shall be exercised by a board of directors, which shall consist of seven members. Members of the Board shall be appointed pursuant to subsection (b) of this section and shall hold membership on the Board for a period of two years, subject to reappointment, and until their successors have been appointed and qualify.

(b) The President shall appoint the members of the Board, with the advice and consent of the Olbiil Era Kelulau, as follows:

(1) Five members shall be appointed from among the members of all fishing cooperatives chartered throughout the Republic pursuant to provisions of this chapter.

(2) Two members shall be appointed from among the general public.

(c) All vacancies occurring on the Board shall be filled by the President for the unexpired term of the member whose vacancy is being filled.

(d) Within 15 days after the appointment of the initial Board, and annually thereafter, the Board shall hold a meeting for the purpose of electing its officers for the ensuing year. The Board shall meet in public at least every three months and shall hold such other public meetings as it may deem necessary for the transaction of its general business.

(e) The Board shall organize by electing one of its members as chairman and another as vice chairman. The Board shall designate a secretary, who may or may not be a member of the Board itself, to keep the minutes and records of the Board.

27 PNC 1124

FISHING

27 PNC 1125

(f) Any four members of the Board shall constitute a quorum, and a concurrence of four members shall be necessary for any official action taken by the Board unless otherwise provided herein. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board.

(g) Members of the Board shall be entitled to reimbursement for actual expenses incurred in the performance of their official duties, upon approval of such expenses by the Board.

Source: Subsections (a) and (b) -- PL 7-7-8 §5; subsection (c) -- third sentence of PL 7-7-8 §6; subsection (d) -- first two sentences of PL 7-7-8 §6; subsections (e) through (g) -- PL 7-7-8 §7; section modified.

§1124. Manager; appointment.

The Board shall appoint a manager who shall be its chief executive officer and who shall serve at its pleasure. The Board shall fix the manager's compensation pursuant to chapter 1 of Title 30 of this Code. The manager shall have full charge and control of the operations of the Authority.

Source: PL 7-7-8 §8, modified.

§1125. Same; powers and duties.

The manager shall have the following duties and powers:

(a) To ensure that all rules and regulations of the Authority are enforced;

(b) To attend all meetings of the Board and to submit a general report of the affairs of the Authority;

(c) To keep the Board advised on the needs of the Authority;

(d) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;

(e) To prepare or cause to be prepared all plans and specifications for the construction and repair of works and facilities operated by the Authority;

(f) To devote his entire time to the business of the Authority;

27 PNC 1126

PALAU FISHING AUTHORITY

27 PNC 1126

(g) To select and appoint the employees of the Authority except as otherwise provided in this chapter;

(h) To plan, organize, coordinate and control the services of employees of the Authority in the exercise of the powers of the Authority under the general direction of the Board;

(i) To contract with independent contractors, as persons, organizations, or corporations, to perform any of the tasks, work or other services of the Authority in lieu of hiring employees of the Authority to perform such services.

(j) To cause to be published all reports required by this chapter;

(k) To perform such other and additional duties as the Board may require; and

(l) To be an ex officio nonvoting member of the Board.

Source: PL 7-7-8 §9, modified.

§1126. Treasurer and attorney; duties.

The Board may appoint a treasurer and an attorney, both of whom shall serve at the pleasure of the Board and whose duties and compensation shall be fixed by the Board. The Board may appoint one or more assistants to any such office.

Source: PL 7-7-8 §10, modified.

Subchapter III: Administration of Authority

- §1141. Employee rights.
- §1142. Accounting and reporting.
- §1143. Authority account.
- §1144. Designation of depository for Authority.
- §1145. Bids for purchases and construction.
- §1146. Rules and regulations; publication of notice of adoption.
- §1147. Rules and regulations; effective date.
- §1148. Same; right to challenge.
- §1149. Assistance from national government.
- §1150. Insurance policies; liability of national government.
- §1151. Authority exempt from bond requirements.
- §1152. Authority not exempt from laws regulating investment by noncitizens.

27 PNC 1141

FISHING

27 PNC 1143

§1153. Penalties; in general.

§1154. Same; financial interest of members, officers and employees.

§1141. Employee rights.

The Board shall establish rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Authority pursuant to law.

Source: PL 7-7-8 §13.

§1142. Accounting and reporting.

(a) The Board shall adopt and maintain a system of accounting principles. The fiscal year of the Authority shall correspond to that of the national government.

(b) The Board may employ a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Authority. Copies of any such reports shall be furnished to the President and the Olbiil Era Kelulau.

(c) The Board shall present an annual report on the financial affairs of the Authority within 60 days after the end of each fiscal year, and, if requested by the President or the Olbiil Era Kelulau, shall present special reports within 30 days after the end of the each intervening quarter.

(d) The Board shall report to the President and the Olbiil Era Kelulau annually on January 20 on its activities, plans, recommendations, policies, and other relevant information it deems appropriate.

(e) The Board may provide such data and services, in consultation with any agency of the national government, or person, as it deems appropriate.

Source: PL 7-7-8 §12 @1 and subsections (1) through (4), modified. Second sentence of subsection (a) is from PL 7-7-8 §4(11).

§1143. Authority account.

(a) There is hereby established an account in the National Treasury called the "Palau Fishing Authority Account." The Authority shall maintain this account

27 PNC 1144

PALAU FISHING AUTHORITY

27 PNC 1145

separate and apart from other accounts of the national government, and independent records shall be maintained in connection therewith.

(b) All monies received by the Authority pursuant to law shall be deposited in the Palau Fishing Authority account, or in such accounts as may be established pursuant to this chapter.

(c) All expenditures, except as otherwise provided by law, shall be made from the Palau Fishing Authority Account.

Source: PL 7-7-8 §12(5) through (7), modified.

§1144. Designation of depository for Authority.

The Board shall designate one or more banks within the Republic to serve as a depository for the funds of the Authority. All funds of the Authority shall be deposited in such depository bank or banks.

Source: PL 7-7-8 §22, modified.

§1145. Bids for purchases and construction.

(a) The purchase of all supplies and materials, and the construction of all works, when the expenditure exceeds \$5,000.00, will be by contract let to the lowest responsible bidder. Notice requesting the bids shall be published at least 10 days before bids are received. The Board may reject any and all bids and readvertise at its discretion.

(b) If, after rejecting bids for materials and supplies, the Board determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Board may authorize such purchases without further observances of the provisions of subsection (a).

(c) The Authority, as an instrumentality of the national government, shall utilize the services of national purchasing agencies wherever practical.

(d) The provisions of this section shall not apply to the procurement of professional, advisory, or technical services.

Source: PL 7-7-8 §11, modified.

27 PNC 1146

FISHING

27 PNC 1149

§1146. Rules and regulations; publication of notice of adoption.

Whenever the Authority adopts rules or regulations it shall publish a notice of adoption. One notice may embrace any number of rules and regulations, and each notice must advise that breach of the particular rules or regulations is punishable and must state the possible punishment. Said notice must also state that the full text of the rules and regulations is on file at the principal office of the Authority, where the same may be read by any interested person during reasonable business hours. In addition to the notice of adoption of rules and regulations, a substantive statement shall be published, in condensed form, along with said notice, so as to afford a reasonable understanding of any act forbidden by the rules and regulations.

Source: PL 7-7-8 §18, modified.

§1147. Rules and regulations; effective date.

Fifteen days after the publication of the notice hereby required, the advertised rules and regulations shall be in full force and effect, and ignorance thereof shall not constitute a defense to prosecution for the enforcement of a penalty. The rules and regulations authorized hereby, after required publication, shall be judicially recognized by the courts as valid laws of the Republic.

Source: PL 7-7-8 §16, modified.

§1148. Same; right to challenge.

Any person substantially interested or affected in his rights as to property by a rule or regulation adopted by the Authority may petition the Authority for a reconsideration of such rule or regulation, or for an amendment, modification, or waiver thereof. Such petition shall set forth a clear statement of the facts and grounds upon which reconsideration, amendment, modification or waiver is sought. The Authority shall grant the petitioner a public hearing within 30 days after filing of said petition and a decision on said petition shall be publicly released not more than 20 days after the final public hearing held upon the petition.

Source: PL 7-7-8 §17, modified.

§1149. Assistance from national government.

For the purpose of aiding in the planning, undertaking or carrying out of the provisions of this chapter and of the provisions contemplated herein, and the subsequent operation of the Authority, the national government and any national

27 PNC 1150

PALAU FISHING AUTHORITY

27 PNC 1150

agency may, if the President determines that such project will benefit and further the public purposes of the Republic:

(a) Dedicate, sell, convey, or lease any interest it may have in any real or personal properties, rights, or privileges to the Authority;

(b) Incur expenses on behalf of the Authority, subject to reimbursement under such terms and conditions as may be agreed upon with the Authority;

(c) Do any and all things necessary to aid or cooperate in the planning or carrying out of the duties, powers and obligations of the Authority;

(d) Lend, advance, grant or contribute funds to the Authority and provide for or waive the repayment of any such funds loaned or advanced;

(e) Contract with or furnish services of the Authority upon terms and conditions as may be agreed upon; and

(f) Enter into any agreements which may extend over any period of time.

Source: PL 7-7-8 §21, modified.

§1150. Insurance policies; liability of national government.

(a) To the extent that any liability of the national government, with respect to the Authority, or of the Authority is covered by a policy or policies of insurance, the national government waives its limitation of liability.

(b) All claims made against any policy of insurance purchased by the Authority shall be made in accordance with the procedures and time limitations set forth in the policy or policies of insurance, except that:

(1) All claims shall be presented to the manager of the Authority, who shall promptly present the same to the insurance carrier, carriers, or to their designated agents for processing, and

27 PNC 1151

FISHING

27 PNC 1154

(2) No policy shall place a time limit on filing claims of less than six months.

(c) Each policy of insurance written covering the Authority or its interest shall contain a clause waiving any defense of sovereign immunity which may be raised against the payment of the claim by the carrier up to the limits of the policy.

Source: PL 7-7-8 §14, modified.

§1151. Authority exempt from bond requirements.

The Authority shall not be required to give any bond as security for costs, supersedeas, or any security in any suit or action brought by or against it, or in proceedings to which it may be a party in any court in the Republic. It shall have the remedies of appeal and writ of error to all courts without bonds, supersedeas, or security of any kind.

Source: PL 7-7-8 §20, modified.

§1152. Authority not exempt from laws regulating investment by noncitizens.

Nothing in this chapter shall be deemed to exempt any operation, venture, joint venture, contract, lease, arrangement, service, or other activity of any description whatsoever of the Authority, or any person or entity receiving its assistance, from any requirements of any law or regulation with respect to investment by noncitizens in the Republic.

Source: PL 7-7-8 §23, modified.

§1153. Penalties; in general.

Any person who violates any provision of this chapter, or any valid rule or regulation promulgated under this chapter, concerning the operation of the Authority, is, on conviction, punishable by a fine of not to exceed \$1,000.00, or by imprisonment not to exceed three months, or both.

Source: PL 7-7-8 §15, modified.

§1154. Same; financial interest of members, officers and employees.

(a) No Board member, officer, or employee of the Authority, either for himself or as agent for anyone else, shall benefit directly or indirectly by reason of any sale, purchase, contract or transaction entered into

27 PNC 1154

PALAU FISHING AUTHORITY

27 PNC 1154

by the Authority except as otherwise provided by this chapter, and provided that this section shall not apply to a Board member who owns less than five percent of the entire capital stock of a corporation which benefits directly or indirectly from a transaction.

(b) Any person who shall directly or indirectly become interested in any such sale, purchase, contract or transaction while serving as a Board member, officer, or employee of the Authority shall be guilty of a misdemeanor. Upon the filing of complaint of such misdemeanor, the Board, in its discretion, may suspend the services of the charged person pending final determination thereof. Upon conviction thereof, he shall forfeit his position or office and shall be punished by a fine not to exceed \$2,000.00, or by imprisonment not to exceed one year, or both.

Source: PL 7-7-8 §19, modified.

[Republic of Palau, Public Law 3-42 (excerpt)]

...

27 PNC 121 is amended as follows:

§121 Palau Maritime Authority; created; term; chairman; meetings; compensation.

(a) There is hereby established a Palau Maritime Authority composed of seven members to be appointed by the President with the advice and consent of the Senate.

(b) Members shall be appointed for terms of four years; provided, however, that of the initial members appointed subsequent to this amendment, two shall serve terms of two years, two shall serve terms of three years, and three shall serve terms of four years. Members may be removed only for cause. Vacancies shall be filled in the same manner as the original appointments for the remainder of the term of office of the vacancy.

(c) The present Palau Maritime Authority members shall continue to serve until at least four members of the new Board of Directors established by the amendment of subparagraph (d) of this subsection have been appointed and approved by the Senate. The members of the Board of Directors established by this act shall not assume their position and perform their functions and duties until at least four members have been duly appointed and approved. In no event, however, shall the members of the present Palau Maritime Authority serve beyond March 31, 1991.

THIRD OLBIL ERA KELULAU
Eleventh Regular Session, July 1991

RPPL NO. 3-55
(Intro. as SB No. 3-289)

AN ACT

To amend 27 PNC 167 to require approval of the Olbil Era Kelulau for foreign fishing agreements.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS
FOLLOWS:-

Section 1. Amendments 27 PNC 167 is amended to read as follows:

§167. Fishing permits; in general.

.....

(b) Fishing permits will only be issued in accordance with a foreign fishing agreement approval by joint resolution of the Olbil Era Kelulau; provided that permits issued for noncommercial fishing in accordance with Section 1/1 of this title need not be pursuant to a foreign fishing agreement.

Section 2. Effective date This Act shall take effect upon the approval by the President of the Republic of Palau, or upon its becoming law without such approval except as otherwise provided by law.

PASSED: July 30, 1991

Approved this 16th day of August, 1991

The Honorable Ngiratkel Etpison
President, Republic of Palau.

TITLE 24 ENVIRONMENTAL PROTECTION

DIVISION 2: WILDLIFE PROTECTION

24 PNC 1201

PROTECTED SEA LIFE

24 PNC 1211

Chapter 12: Protected Sea Life

Subchapter I: Turtles

§1201. Limitations on taking of turtles.

§1201. Limitations on taking of turtles.

(a) No hawksbill turtles or sea turtles shall be taken or intentionally killed while on shore, nor shall their eggs be taken.

(b) No hawksbill turtle shall be taken or killed except whose shell is at least 27 inches when measured over the top of the carapace shell lengthwise; no green turtle shall be taken or killed except whose shell is at least 34 inches when measured over the top of the carapace shell lengthwise.

(c) No sea turtle of any size shall be taken or killed from the first day of June to the thirty-first day of August inclusive, nor from the first day of December to the thirty-first day of January inclusive.

(d) Notwithstanding any provisions of this section to the contrary, taking of sea turtles and their eggs shall be allowed for scientific purposes when specifically authorized by the President.

(e) A person violating any of the provisions of this section shall, upon conviction, be imprisoned for a period not exceeding six months, or fined not more than \$100.00, or both.

Source: Subsections (a) through (d) -- 45 TTC §2; subsection (e) -- 45 TTC §5; section modified.

Subchapter II: Sponges

§1211. Control of sponge harvesting.

§1211. Control of sponge harvesting.

(a) No sponges artificially planted or cultivated shall be taken or molested, except by permission of the President.

(b) A person violating any of the provisions of this section shall, upon conviction, be imprisoned for a

Chapter 12: Protected Sea Life

Subchapter I: Turtles

§1201. Limitations on taking of turtles.

§1201. Limitations on taking of turtles.

(a) No hawksbill turtles or sea turtles shall be taken or intentionally killed while on shore, nor shall their eggs be taken.

(b) No hawksbill turtle shall be taken or killed except whose shell is at least 27 inches when measured over the top of the carapace shell lengthwise; no green turtle shall be taken or killed except whose shell is at least 34 inches when measured over the top of the carapace shell lengthwise.

(c) No sea turtle of any size shall be taken or killed from the first day of June to the thirty-first day of August inclusive, nor from the first day of December to the thirty-first day of January inclusive.

(d) Notwithstanding any provisions of this section to the contrary, taking of sea turtles and their eggs shall be allowed for scientific purposes when specifically authorized by the President.

(e) A person violating any of the provisions of this section shall, upon conviction, be imprisoned for a period not exceeding six months, or fined not more than \$100.00, or both.

Source: Subsections (a) through (d) -- 45 TTC §2; subsection (e) -- 45 TTC §5; section modified.

Subchapter II: Sponges

§1211. Control of sponge harvesting.

§1211. Control of sponge harvesting.

(a) No sponges artificially planted or cultivated shall be taken or molested, except by permission of the President.

(b) A person violating any of the provisions of this section shall, upon conviction, be imprisoned for a

period not exceeding six months, or fined not more than \$100.00, or both.

Source: Subsection (a) -- 45 TTC §3; subsection (b) -- 45 TTC §5; section modified.

Subchapter III: Mother-of-Pearl

§1221. Control of black-lip mother-of-pearl oyster shell harvesting.

§1221. Control of black-lip mother-of-pearl oyster shell harvesting.

(a) No black-lip mother-of-pearl oyster shell (*Pinctada margaritifera*) shall be taken except whose shell is at least four inches in diameter as measured across the nacre.

(b) No black-lip mother-of-pearl oyster shell of any size shall be taken from the first day of August to the thirty-first day of December inclusive.

(c) Notwithstanding any provisions of this section to the contrary, black-lip mother-of-pearl shells of any size may be taken at any time for scientific purposes when specifically authorized by the President.

(d) A person violating any of the provisions of this section shall, upon conviction, be imprisoned for a period not exceeding six months, or fined not more than \$100.00, or both.

Source: Subsections (a) through (c) -- 45 TTC §4; subsection (d) -- 45 TTC §5; section modified.

Subchapter IV: Dugong

§1231. Conservation of dugongs.

§1231. Conservation of dugongs.

(a) No person shall kill, trap, capture, wound, possess, transport, restrain or otherwise have under his control any dugong or any part or product thereof, except as provided for in subsections (b) and (c).

24 PNC 1241

PROTECTED SEA LIFE

24 PNC 1242

(b) The President may, upon cause shown, grant a permit for the capture, restraint, or transportation of dugong subject to such terms, conditions and restrictions as he may deem fit and proper.

(c) If any dugong is accidentally caught in a fishing net, trap, wire, or by any other fishing method, it must be released immediately if still alive. If found dead in such fishing apparatus, the person who found it must notify the chief executive officer of the state where found. The chief executive officer shall ascertain that the dugong was caught inadvertently and found dead and, after establishing these facts, shall release the dead dugong to the person who found it.

(d) A person found guilty of violating this section shall, upon conviction, be imprisoned for a period of not more than six months, or fined not more than \$50.00, or both for the first offense; for every offense thereafter, the convicted person shall be imprisoned for not more than one year, or fined not more than \$100.00, or both.

Source: PDC §203, modified.

Subchapter V: Trochus

- §1241. Trochus; defined.
- §1242. Same; harvesting restricted.
- §1243. Same; designation of season; rules and regulations for harvesting.
- §1244. Same; authority of state government to permit removal and replanting of beds.
- §1245. Export of clam meat prohibited.

§1241. Trochus; defined.

For the purpose of this subchapter, the term Trochus shall be considered Trochus niloticus. The names of Trochus maximus, Tectus niloticus, and Tectus maximus shall be considered names synonymous with Trochus niloticus.

Source: 45 TTC §51(2), as amended by RPPL 1-30 §1, modified.

§1242. Same; harvesting restricted.

The harvesting of or in any way intentionally interfering with the growth of trochus in the waters of any state of the Republic is prohibited, except as provided in sections 1243 and 1244 of this chapter.

Source: 45 TTC §51(1), as amended by RPPL 1-30 §1, modified.

§1243. Same; designation of season; rules and regulations for harvesting.

(a) Each state government may designate and vary from year to year an open season or seasons for such period of time as deemed advisable for the harvesting of trochus in its territorial waters, and may designate certain reefs or sections thereof that shall be closed for harvesting of trochus, notwithstanding the fact that the season is open. The open season may vary in different areas or islands within each state. Public notice shall be given in each state of the dates designated for the harvesting of trochus and of the reefs that have been declared closed, if any, by posting a writing in the Palauan and English languages in a public and conspicuous place and filing a copy of each designation with the Clerk of Courts.

(b) During an open season, any citizen of Palau may dive for and harvest trochus in the state to which the season applies, within those areas in which he has the right to fish under established local custom and subject to any regulations of the concerned state government governing the taking of trochus; provided that no trochus shall be taken whose shell is less than three inches in diameter at the base.

(c) Each state government may, if it is deemed expedient, prohibit the harvesting of trochus during any calendar year or years. Public notice shall be given of the prohibition in the same manner as the notice designating the dates for the harvesting of trochus in subsection (a) of this section.

Source: 45 TTC §52, as amended by RPPL 1-30 §1, modified.

§1244. Same; authority of state government to permit removal and replanting of beds.

(a) If a state government determines that underwater operations which will interfere with an existing trochus bed are in the public interest, a written permit may be issued by the appropriate state official for the removal and replanting of such bed at the expense of the person or persons desiring to conduct the underwater operations.

24 PNC 1261

PROTECTED SEA LIFE

24 PNC 1261

(b) Each state government may at any time authorize the removal and transportation of trochus for the purpose of introduction to other reefs, islands or atolls.

Source: 45 TTC §53, as amended by RPPL 1-30 §1, modified.

Subchapter VI: Clams

§1261. Export of clam meat prohibited.

§1261. Export of clam meat prohibited.

(a) For purposes of this section, clam shall mean: Tridacna gigas (Otkang); T. squamosa (Ribkungal); T. derosa (Kism); T. maxima (Melibes); T. crocea (Oruer); and Hippopus hippopus (Duadu).

(b) Any person who shall engage in a commercial activity for purposes of exporting clam meat, or part thereof, or engage or take part in such export shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for a period of not more than one year, or fined not less than \$500.00 nor more than \$2000.00, or both.

Source: RPPL 1-9 §1, modified.

Chapter 13: Illegal
Methods of Capture

Subchapter I: Fishing with
Explosives, Poisons or Chemicals

- §1301. Definitions.
§1302. Catching marine life with poisons, etc.; possessing or selling marine life caught with explosives, etc.; placing explosives, etc. in waters with intent to kill marine life.
§1303. Exceptions.
§1304. Use of local roots, nuts, or plants.
§1305. Penalties.

§1301. Definitions.

In this subchapter, the terms "poisons," "chemicals," or "substances" include, but are not limited to, hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders, preparations containing rotenone, tephrosin or plant material from Barrington asiatica, Coculus ferrandianus, Hura crepitans, Piscidia erythrina, Tephrosia purpurea, and wikstremia.

Source: 45 TTC §1(1)(a), second sentence, modified.

§1302. Catching marine life with poisons, etc.; possessing or selling marine life caught with explosives, etc.; placing explosives, etc. in waters with intent to kill marine life.

Except as provided in section 1303 of this subchapter:

(a) No person shall knowingly catch any fish or other marine life by means of explosives, poisons, chemicals or other substances which kill fish or marine life;

(b) No person shall knowingly possess or sell any fish or any other marine life caught by means of explosives, poisons, chemicals, or other substances which kill fish or marine life.

(c) No person shall knowingly place or cause to be placed, in any waters of the Republic, explosives, poisons, chemicals, or other substances with the intent to kill fish or other marine life.

Source: 45 TTC §1(1)(a), first sentence, §1(1)(b), modified.

§1303. Exceptions.

The provisions of section 1302 of this subchapter shall not apply where the President:

(a) Has granted written permission to use the means prohibited in section 1302; or

(b) Has determined that:

(1) The purpose of obtaining the fish or other marine life is to avoid the waste or loss of such fish or marine life; and

(2) The consumption or sale of fish or other marine life caught by any means the use of which is prohibited in section 1302 is not harmful or hazardous to health and human life.

Source: 45 TTC §1(2), modified.

§1304. Use of local roots, nuts, or plants.

Nothing in this subchapter shall be construed to prevent any person from catching any fish or other marine life by the use of local roots, nuts, or plants which have the effect of stupefying but which do not kill fish or other marine life.

Source: 45 TTC §1(3), modified.

§1305. Penalties.

Any person who violates any of the provisions of this subchapter shall, upon conviction, be fined not less than \$100.00 or more than \$2000.00, or imprisoned for not less than six months or more than two years, or both.

Source: 45 TTC §1(4), modified.

Subchapter II: Other Prohibitions

§1321. Definitions.

§1322. Placing of explosives or poisons in waters; taking of marine life affected by explosives or poisons.

§1323. Exception.

§1324. Prima facie evidence.

§1325. Penalties.

§1326. Seizure of gear.

§1321. Definitions.

In this subchapter:

(a) "Marine life" means anything which lives, either wholly or partly, within water. It includes, but is not limited to, fish, mollusks, coral, and all plants.

(b) "Poison" means any substance which is capable of stunning, killing, or otherwise incapacitating any marine life. "Poison" includes, but is not limited to, petroleum, coal or oil tar, lamp-black, aniline, asphalt bitumen, residuary products of petroleum, or carbonaceous materials or substances.

Source: PDC §205(b), modified.

§1322. Placing of explosives or poisons in waters; taking of marine life affected by explosives or poisons.
Except as provided in section 1323 of this subchapter:

(a) The placement of any explosive in any waters of the Republic is prohibited.

(b) The placement of any poison in such a way as to allow it to be discharged, passed, or deposited in the waters of the Republic is prohibited.

(c) The taking of marine life which has been taken, killed, or stunned by use of an explosive or poison is prohibited.

Source: PDC §205(a)(1), modified.

§1323. Exception.

The President, or his representative, may issue a permit to persons involved in scientific research, exploration, construction, or other uses, not including fishing with explosives or poisons as described in subchapter I, which in the opinion of the President is in the best interests of the people of Palau. The permit shall specify the persons who may use a poison or explosive, and the time during which they may use the poison or explosive.

Source: PDC §205(a)(2), modified.

§1324. Prima facie evidence.

The possession of any explosive or poison by fishermen, or persons in the habit of fishing, or persons who are in the water or close by any water where marine life can be taken, and the possession of fish which have been taken by any explosive or poison shall be prima facie evidence of violation of this subchapter.

Source: PDC §205(c), modified.

§1325. Penalties.

Any person who violates any provision of this subchapter shall, upon conviction, be imprisoned not more than six months, or fined not more than \$100.00 dollars, or both.

Source: PDC §205(d), modified.

§1326. Seizure of gear.

(a) Any fishing gear used by a person who is convicted of violating this subchapter shall be subject to forfeiture to the national government.

(b) If the gear is owned by a person other than the person convicted of violating this subchapter, the gear shall not be subject to forfeiture unless it is shown that the owner had knowledge that the gear was being used for an illegal purpose and that the owner then failed to inform the person using the gear that it was not to be used for an illegal purpose.

Source: PDC §205(e), modified.

