

## **Legislative Statement presented in accordance with SO 272 J.17**

### **Fisheries (International Fishing and Other Matters) Amendment Bill 2023 – First Reading**

This legislative statement supports the first reading of the Fisheries (International Fishing and Other Matters) Amendment Bill 2023.

#### **Objective**

The objectives of the Fisheries (International Fishing and Other Matters) Amendment Bill are:

- to enable New Zealand to better meet its international fisheries management and compliance obligations in relation to IUU fishing, including those flowing from the international arrangements that New Zealand is party to; and
- to improve the efficiency and clarity of the statutory provisions and associated decision-making processes related to international fisheries, for government and stakeholders.

The legislative amendments will improve:

- the monitoring and regulation of New Zealand flagged vessels operating outside New Zealand waters;
- New Zealand's capacity to combat illegal, unreported and unregulated (IUU) fishing;
- the high seas fishing permitting regime for fishing operators and decision-makers; and
- the efficiency and effectiveness of actions against international fisheries violations.

#### **Background**

New Zealand's international fisheries management and compliance regime was established in 1999, through Part 6A of the Fisheries Act 1996 (the Act). International obligations have evolved since then, especially in relation to the prevention of IUU fishing, which is a significant threat to the sustainable use of global and regional fisheries.

In recent years, States have collectively and individually adopted a range of instruments to combat IUU fishing. Public scrutiny and international oversight over the management of high seas fishing has increased and key markets (the European Union, the United States and Japan) have adopted sanction regimes and measures to prevent IUU fishing products from entering their markets.

Amending the Act to address these developments strengthens New Zealand's ability to continue accessing high value seafood markets and its reputation as a responsible fishing nation.

Four areas of improvement were identified in a review of the Act in late 2020 against New Zealand's international compliance obligations and related market requirements:

- improving and clarifying authorisations to fish on the high seas and other States' waters;
- enabling more effective action in the event of fisheries violations;
- strengthening measures to prevent IUU fishing; and
- prohibiting the operation and support of IUU-listed vessels.

## **Key features of the Bill**

### *Improving the permitting regime*

The Bill strengthens and clarifies the permitting regime for New Zealand flagged vessels fishing outside New Zealand's waters by amending the provisions related to the high seas fishing permitting scope, as well as the issuing, suspending and revoking of permits. The purpose of these amendments is to reduce the risk of offending by vessels issued a permit; to strengthen New Zealand's capacity to control its vessels operating outside New Zealand waters; and to clarify the decision-making process.

The permitting scope is extended to require permits for all fishing by New Zealand vessels outside New Zealand waters. This closes a gap whereby vessels do not currently require a permit to fish in another States' waters. As a result, part 6A of the Act and the permit name has changed from High Seas Fishing to International Fishing.

The Bill broadens the circumstances in which an application for a permit to fish outside New Zealand waters will, or may, be declined. A permit is currently not able to be issued to an applicant that has both undermined the effectiveness of international conservation and management measures, and has fished without a permit or had its permit suspended or revoked, in the three years prior to the application. The Bill removes the latter requirements and provides that a permit cannot be issued while the "undermining of conservation measures" is the subject of an ongoing prosecution, an unserved sentence or an unpaid fine. This eliminates the risk that a vessel subject to prosecution may be permitted to fish outside New Zealand waters while legal processes are unresolved. These provisions are limited to the vessel to which the application is related. This avoids the potential consequence that operators might automatically be declined permits across their entire fleet for a breach committed by one of its vessels.

The Bill introduces a list of matters that the Chief Executive must have regard to when determining whether an activity undermines the effectiveness of international measures. This will provide more certainty to the Chief Executive and applicants. The grounds on which the Chief Executive makes a determination that an international measure has been undermined are also listed. In addition, the Bill enables the Chief Executive to have regard to broader non-compliance, rather than just 'offending history', before issuing a permit.

The Bill also prevents MPI's Chief Executive from issuing permits where the applicant vessel, a related person or a vessel linked to a relevant person feature on an IUU fishing vessel list of a regional fisheries management organisation. These lists represent the most egregious of unlawful operators on the high seas and represent the highest level of risk for offending on the high seas. A safeguard against undue process is included for IUU lists of organisations that New Zealand is not a member of whereby the Chief Executive may issue a permit if satisfied the IUU listing resulted from an unfair process.

The Bill introduces a timeframe for the completion of a review of permitting decisions made by the Chief Executive. This seeks to minimise delays in the permitting process.

Finally, the Chief Executive will be able to suspend or revoke permits when there is evidence that the permit-holder or a person authorised to fish under the permit has undermined the effectiveness of international conservation and management measures, removing the requirement of a conviction. This reduces the risks of further non-compliance on the high seas while further investigation or legal proceedings are underway.

### *Effective Action against Violations – Adjusting the Administrative Penalties*

The Bill adjusts the administrative penalty regime for breaches of international fishing permit conditions for greater effectiveness and proportionality. It does this by increasing the maximum amounts for administrative penalties and by broadening the scope of the activities to which they apply. This seeks to improve the administrative penalties regime to disincentivise offending, and reserve prosecutions for serious fisheries violations.

Under the current Act, conditions on permits include compliance with relevant international conservation and management measures. It is an offence to breach the conditions of a permit, which carries a fine of up to \$100,000. The Act empowers the Chief Executive to impose an administrative penalty instead of prosecuting an offence, where the offender admits the offending. This however can only be used for minor offending.

To increase the effectiveness of administrative penalties, the Bill lifts the maximum amount imposed on admission of the offence from one third to half of the amount that could be imposed by a court on conviction of an offence, that is, from \$30,000 to \$50,000. To improve the proportionality of administrative penalties to the relevant offending, the Chief Executive will be able to impose these penalties to a broader range of offences that do not necessarily warrant a prosecution (mid-level as well as minor offending). The combined amendments will better incentivise compliance with the rules of regional fisheries management organisations and better align with member States' expectations in those organisations.

The Bill sets out when the Chief Executive may seek to impose an administrative penalty, requiring that in the case of a breach of an international fishing permit, that it is not a serious offence. It also requires administrative decisions to be published, to ensure the transparency of the offending; and preserves the right of the person to require that the offence be dealt with by a court.

### *Strengthening Measures Against IUU Fishing – Detention of foreign and stateless vessels*

The Bill strengthens the powers of high seas fishery inspectors to close current gaps in New Zealand's capacity to investigate offending by foreign flagged and stateless vessels on the high seas.

Currently, a high seas fishery inspector that has inspected a foreign flagged vessel and found evidence of a serious fisheries violation may direct the vessel to port to conduct further investigation on behalf of the State to which it is registered (the flag State). However, the vessel is not compelled to stay in port so that the investigation may be conducted. The Bill provides for powers of detention of vessels and persons in port to this effect.

The powers to detain vessels and persons in port contain safeguards for their exercise in accordance with international law, the Bill of Rights, and the Privacy Act 2020. These include that the vessel must be released on request of the flag State or on payment of a reasonable bond; that persons may only be detained at the request or with the consent of the flag State, only for the purpose of the investigation, and only for as long as reasonably required by the investigation; that the relevant parts of the Search and Surveillance Act 2012 apply, including the requirement to obtain search warrants to enter living quarters or conduct remote access searches; and that persons cease to be detained at the request of the flag State of the vessel.

To incentivise compliance of crew with directions issued by high seas fishery officers, the current offence to obstruct a fishery officer is extended to apply to high seas fishery inspectors. The powers to board, inspect and investigate vessels for serious fisheries violations are also extended to vessels without nationality. Vessels without nationality (known as stateless vessels) are those vessels that do not fly the flag of a State or sail under the flags of two or

more States. This practice is contrary to international law, is defined as ‘unregulated fishing’ and therefore contravenes rules of regional fisheries management organisations.

The amendments provide powers for high seas fishery inspectors to verify the nationality of a vessel and to treat stateless vessels as New Zealand vessels. This approach follows the Maritime Powers Act 2022.

#### *Prohibiting the Operation and Support of IUU-Listed Vessels*

The amendments create an offence to operate, engage with or assist a vessel listed internationally as having engaged in IUU fishing. This will strengthen New Zealand’s capacity to disincentivise its vessels and nationals from engaging in IUU fishing and its capacity to deprive offenders from the economic benefits of illegal fishing.

IUU vessel lists are defined in the Bill as those lists adopted by a global, regional, or subregional fisheries organisation or arrangement to identify vessels that have been used to carry out or assist IUU fishing. A vessel may be listed when the regional fisheries management organisation has determined that IUU fishing activity has occurred and the flag State has failed to take effective action against the vessel. Fewer than 200 vessels are currently listed worldwide, but a listing may result in import bans in the European Union, the United States, or Japan for seafood imports from the flag State.

The new offence sanctions New Zealand nationals operating, engaging with or assisting IUU-listed vessels with a fine of up to \$250,000. The offence applies wherever the activity took place, whether in New Zealand, on the high seas, or in the jurisdiction of another country. To provide transparency and certainty to potential offenders, the range of behaviours that constitute assisting IUU-listed vessels are detailed in the Act. IUU vessel lists are also public and will be further publicised on the website of the Ministry for Primary Industries.

Safeguards for the exercise of these powers include a defence for those cases where a contravention was necessary to avert danger to human life or serious threats to the vessel. They also include the requirement for prior consent of the Attorney-General before initiating any proceedings where offences are extraterritorial, in order to adequately determine the public interest in the prosecution.

The offence will strengthen New Zealand’s ability to control its nationals and flagged vessels by providing a powerful deterrent from engaging in IUU fishing activity. The classification of the offence as a strict liability offence reflects the high level of scrutiny on IUU fishing from the global community, the burden of evidence for prosecuting violations outside New Zealand waters, and the vast repercussions for New Zealand seafood exports if a New Zealand vessel should be placed on an IUU list.