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1977, No. 7

An Act to amend the Fisheries Act 1908

[8 July 1977]

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 Fisheries Amendment Act 1977, and shall be read together with and deemed part of the Fisheries Act 1908 (hereinafter referred to as the principal Act).

2. New Part inserted—The principal Act is hereby amended by inserting, after section 99, the following new Part:

“PART III

“CONTROLLED FISHERIES

“Interpretation

“100. **Interpretation**—(1) In this Part of this Act, unless the context otherwise requires,—

“ ‘Aircraft’ has the same meaning as in the Civil Aviation Act 1964:

“ ‘Approved’ means approved by the Authority:

“ ‘Boat authority’ means an approved form of licence which sets out those particulars of the licence that apply to a particular fishing boat used by the person holding the licence:

“ ‘Continuous licence’ means a licence classified as such under section 124 (1) (a) of this Act:

“ ‘Controlled fish’ means any fish in respect of which a fishery is specified in the Second Schedule to this Act:

“ ‘Controlled fishery’ means a fishery specified in the Second Schedule to this Act which the Minister,

by notice in the *Gazette*, has declared to be a controlled fishery; and includes all persons and boats engaged in fishing a controlled fishery:

“ ‘Fisheries Licensing Authority’ or ‘Authority’ means the Fisheries Licensing Authority established under section 101 of this Act:

“ ‘Fisherman’,—

“(a) In relation to an applicant for a continuous licence, means, in the case of an individual, a person who derives at least 80 percent of his earned income from fishing or activity related to fishing or can satisfy the Authority that he intends to do so, and, in the case of a company or other body of persons, a company or, as the case may be, body of persons which can satisfy the Authority that it has a substantial investment in the fishing industry or, if the application is granted, will make one; and

“(b) In relation to an application for a seasonal licence, means an applicant who or which can satisfy the Authority that he or it intends to actively fish the controlled fishery during the period specified in the licence,—

“and, in both cases, is an individual or company or body of persons who or which could satisfy the criteria set out in section 7 of the Fisheries Amendment Act 1963 in relation to the registration of a fishing boat if the reference therein to an incorporated company was a reference to a company or other body of persons:

“ ‘Fishery officer’ means any officer appointed under section 4 of this Act and any honorary fishery officer appointed under section 9 of the Fisheries Amendment Act 1959:

“ ‘Fishing’ means using any line, net, dredge, trap, pot, spear, engine, or other device to take fish or controlled fish; and includes, when taking fish or controlled fish, using any underwater breathing apparatus (whether self contained or not), or diving:

“ ‘Fishing boat’ or ‘boat’ includes every description of vessel, aircraft, hovercraft, or other craft, of whatever size and however propelled, which is used in fishing or from which fishing is done; and, in relation to vessels in New Zealand fisheries waters,

- includes all such vessels whether or not they are New Zealand ships within the meaning of the Shipping and Seaman Act 1952; and, in relation to a boat in a controlled fishery, also includes any fishing device or any vessel used to hold or transport controlled fish taken pursuant to a licence:
- “‘Fishing Industry Board’ means the Fishing Industry Board established under the Fishing Industry Board Act 1963:
- “‘Fishing unit’ means the boat or boats used by a 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:
- “‘Hovercraft’ has the same meaning as in the Hovercraft Act 1971:
- “‘Licence’ means a controlled fisheries fishing licence granted under this Part of this Act:
- “‘Licence holder’ or ‘licensee’ means the person to whom a licence has been granted:
- “‘Master’, in relation to a fishing boat used in fishing a controlled fishery, means any person (except a pilot of a vessel) approved by the Authority as having command or charge of the boat:
- “‘Port’ has the same meaning as in section 2 (1) of the Harbours Act 1950:
- “‘Prescribed’ means prescribed by regulations made under this Part of this Act.
- “‘Seasonal licence’ means a licence classified as such under section 124 (1) (b) of this Act.
- “(2) Words and expressions used in this Part of this Act and defined in Part I of this Act shall, unless the context otherwise requires, have the meanings as so defined.
- “(3) In this Act, unless the context otherwise requires, every reference to a fisherman which by its context relates to an individual shall, with the necessary modifications, apply with respect to a company or body of persons carrying on the business of fishing.
- “(4) For the purposes of section 123 (2) (d) of this Act—
- “(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 the child of a person who is within the third degree of relationship to the other:
- “(d) Illegitimate relationship shall be equivalent to legitimate relationship.

“Fisheries Licensing Authority

“101. **Establishment of Licensing Authority**—(1) There is hereby established the Fisheries Licensing Authority.

“(2) The Authority shall consist of 3 members appointed by the Governor-General on the recommendation of the Minister, being—

“(a) Two members, one of whom shall be appointed as Chairman:

“(b) One member, recommended by the Minister after consultation with the Fishing Industry Board.

“(3) Subject to this section and to section 102 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.

“(4) In respect of the first appointed members of the Authority—

“(a) The Chairman shall retire at the expiration of 4 years from the date of appointment:

“(b) The member recommended after consultation with the Fishing Industry Board shall retire at the expiration of 3 years from the date of appointment:

“(c) The third member shall retire at the expiration of 2 years from the date of appointment.

“(5) Any member of the Authority may resign his office at any time by written notice given to the Minister.

“(6) 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.

“(7) If any member of the Authority dies, resigns, or 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.

“(8) Notwithstanding subsection (3) of this section, unless he sooner vacates his office or is removed from office under this section, every member shall continue in office until his successor is appointed.

“102. Chairman not to be financially interested in fishing industry—(1) No person shall be appointed 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 and shall be filled in the manner specified in section 101 (7) of this Act.

“(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 boat or of any share in a fishing boat for the time being registered under Part I of 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.

“103. Deputies of members—(1) In any case in which the Minister is satisfied that any member of the Authority is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister shall appoint a deputy to act for the member during his incapacity.

“(2) Every deputy appointed under this section to act for the member whose appointment was made on the recommendation of the Minister after consultation with the Fishing Industry Board shall be appointed by the Minister after consultation with that Board.

“(3) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Authority, and any deputy acting for the Chairman shall have all the powers of the Chairman.

“(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 it so acting had not arisen or had ceased.

“104. Co-opted members—(1) The Authority may from time to time appoint as a co-opted member any person who, by reason of any particular expert local knowledge or skill, the Authority believes could assist it in the exercise of its functions under this Part of this Act.

“(2) A co-opted member may be appointed for a specified time, or for the consideration of particular controlled fisheries or areas of a controlled fishery, or in respect of certain licences or controlled fish, but not more than one co-opted member shall sit with the Authority at any one hearing.

“(3) A co-opted member may at any time resign his office by notice in writing given to the Chairman.

“(4) A co-opted member shall be deemed to be a member of the Authority during the period of his appointment, but shall not be entitled to vote on any question before the Authority.

“105. 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 of the Authority shall preside at all meetings he attends, and in his absence his deputy shall preside.

“(3) The presence of every member of the Authority or his deputy shall be necessary for the transaction of business at any meeting.

“(4) Subject to this Part of this Act and to any regulations made under it, the Authority may regulate its procedure in such manner as it thinks fit.

“106. 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 proceed-

ings conducted in private outweigh the public interest in having the hearing conducted in public, the Authority may, of its own motion or on the application of any party to the proceedings, order that the whole or any part of the hearing shall be in private.

“(4) Every application to the Authority under subsection (3) of this section shall be heard in private, but the other parties to the proceedings shall be entitled to be present and to make submissions with regard to the application.

“(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 that person has a proper interest in the matter to be heard.

“107. **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.

“108. **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.

“109. **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 Public Account to the credit of the Consolidated Revenue 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 application made to it at 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 Consolidated Revenue Account without further appropriation than this section.

“110. **Representation of parties**—Subject to any provision to the contrary in this Part of this Act, every person making an application to the Authority or who is the subject of an inquiry under section 134 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 cross-examine witnesses.

“111. **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.

“(3) The Chairman or his deputy if presiding, or any other member of the Authority not being the deputy of a member may administer an oath to any person for the purposes of this Part of this Act.

“112. **Reasons for decision of Authority may be obtained**—(1) The Authority shall, if requested to do so by any person who under section 139 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 138 (1) of this Act.

“113. **Functions and powers of Authority**—(1) The principal function of the Authority shall be to sit as a licensing authority to consider applications for licences to fish in a controlled fishery, and to grant, renew, revoke, or amend such licences.

“(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.

“114. 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) Wherever 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 by regulations made under this Act, 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.

“115. Authority to implement policy of Government—(1) In the exercise of its functions and powers under this Part of 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 this section to the Authority in any financial year of the Authority shall be included in the annual report laid before Parliament under section 117 of this Act.

“116. **Financial year**—The financial year of the Authority shall end with the 30th day of June or with such other day in any calendar year as the Authority, with the approval of the Minister, may determine.

“117. **Annual report**—(1) As soon as reasonably practicable 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.

“*Controlled Fisheries*

“118. **Declaration of controlled fisheries**—(1) The Minister may from time to time, if he considers it necessary or desirable for the conservation or management of the fishery or economic stability of the fishing industry and after consultation with the Fishing Industry Board, by notice in the *Gazette* declare any fishery specified in the Second Schedule to this Act to be a controlled fishery.

“(2) Every such notice may define the controlled fishery by reference to such matters as the Minister thinks fit, including—

“(a) The species, quantity, quality, or size of fish that may be taken from the fishery:

“(b) The fishing methods that may be used:

“(c) The areas that may be fished:

“(d) The persons who may be engaged in the fishery.

“(3) The Minister may also in any such notice, after having regard to the possible sustainable or economic yield of fish from the fishery, and to any recommendations of the Fishing Industry Board, fix the maximum number of licences that may be granted by the Authority in respect of the controlled fishery and specify the method by which the Authority is to allocate the licences and whether by ballot or otherwise.

“(4) Any notice under this section may at any time in like manner be amended or revoked.

“(5) Notwithstanding the provisions of this section, no fishery shall be declared to be a controlled fishery in any licensed area (as defined in the Marine Farming Act 1971).

“119. Minister may restrict number of licences issued under Part I of Act—The Minister may from time to time by notice in the *Gazette* declare that, as from a day specified in the notice and during such period as may be specified, no further licences, permissions, or fishing permits shall be granted or given under Part I of this Act in respect of any fishery which, if notice was given pursuant to section 118 (1) of this Act, would be a controlled fishery.

“120. Fishing in controlled fishery to be specially licensed—
 (1) Subject to this section, no person shall fish in a controlled fishery unless that person is the holder of a controlled fisheries fishing licence granted in respect of that controlled fishery.

“(2) Subsection (1) of this section shall not apply to the following persons:

“(a) Those taking controlled fish from a controlled fishery within prescribed limits for purposes other than for sale or as an incidental catch or by-catch:

“(b) Those on innocent passage through the area of a controlled fishery:

“(c) Those fishing in a controlled fishery for fish other than controlled fish.

“(3) Every person who fishes for, takes, has in possession, has on board any boat, or, being a person engaged in the fishing industry, has control of, any controlled fish in a controlled fishery otherwise than under or pursuant to this Part of this Act or a licence commits an offence and shall be liable on summary conviction before a Magistrate to a fine not exceeding \$10,000.

“(4) 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 before a Magistrate to a fine not exceeding \$1,000.

“121. Application for licence—(1) Every 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) Every application—

“(a) Shall specify the class of licence applied for, being of a class described in section 124 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 boat intended to be used, and give details of all gear and equipment intended to be used in fishing from that boat 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 boat or boats 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.

“(3) 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.

“(4) 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 investigation and any conclusions he may have drawn as a result of the investigation, and shall return the application and supporting documents to the Authority.

“122. 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 121 (4) of this Act the Authority 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 be heard.

“(2) If, after hearing and considering any application for a licence, the Authority is satisfied that having regard to the applicant’s character, financial position, and qualifications, and to the matters specified in section 123 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 not grant a licence to the applicant unless ordered to do so by the Court.

“(3) Subject to this Act and to any regulations made under it 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 in the controlled fishery to which the licence relates during the period for which it was granted, and may from time to time be renewed.

“123. **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 or controlled fish, 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 fishermen within the controlled fishery:

“(d) The desirability of giving preference to 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 boats 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 132 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 (within the meaning of section 100 (4) of this Act) to that licensee:

“(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.

“124. **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.

“(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.

“125. **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 boat or boats to be used:

“(e) The port or ports at which any boat or boats are to be based:

“(f) The quantity, quality, or size of controlled fish 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 boat or boats 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 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 taken from a controlled fishery on board a fishing boat:

“(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.

“126. **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) If the Authority is satisfied, upon consideration of an application for the renewal of a continuous licence, that the applicant has complied with the terms and conditions of his licence and that the maximum number of licences fixed in respect of the controlled fishery has not been reduced under section 118 of this Act, the Authority may renew the licence upon payment of the prescribed fee (if any) without holding a hearing pursuant to section 122 of this Act.

“(4) Every renewal of a licence shall be granted on the same terms and conditions as apply to the original licence unless such terms and conditions are amended pursuant to section 135 or section 136 of this Act.

“(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.

“127. **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 is deceased, is his personal representative; or

“(d) In the case of a licensee who has been adjudicated bankrupt, is his assignee in bankruptcy; or

“(e) 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

“(f) 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 of the Ministry of Agriculture and Fisheries nearest to a port authorised under the licence for use by the boat or boats 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.

“128. **Temporary master may be appointed**—(1) A licensee may apply to the Registrar of the Ministry of Agriculture and Fisheries nearest to a port authorised under

the licence for use by the boat or boats 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 125 (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.

“129. **Boat authorities**—(1) Every licence holder shall keep on board every boat 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 boat in fishing a controlled fishery, and shall specify the master or masters of the boat.

“(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 boat shall be maintained in a fit and proper condition:

“(b) That all authorities and certificates required in respect of the boat pursuant to the Shipping and Seamen Act 1952 will be maintained.

“130. **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 boat.

“(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 boat which is or has been issued with a boat authority; or

“(b) Of any shares or stock in a licensee company (other than any 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 boat 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 boat unless the purchase price of that boat 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 due to him from the vendor or, as the case may be, bailor.

“(6) Notwithstanding section 138 of this Act, the decision of the Authority as to whether the purchase price for a boat or for any shares or stock contravenes subsection (2) of this section shall be final.

“131. 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 132 of this Act, no holder of a continuous licence shall voluntarily cease or significantly reduce the fishing authorised by the licence.

“(2) The Authority may, on application by the licensee, authorise the licensee to suspend or reduce the fishing 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.

“132. 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.

“133. **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 to him of the prescribed fee (if any), issue to the holder of the licence or temporary licence a substitute licence, boat authority, or temporary licence.

“134. **Revocation and suspension of licences**—(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 may 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.

“135. **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 123 of this Act, with any necessary modification, 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.

“136. **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 that may be taken.

“(2) Any such notice may in like manner be amended or revoked at any time.

“137. **Keeping of accounts and records**—Every licence holder shall keep such accounts and records and make such returns as may be prescribed.

“*Appeals*”

“138. **Appeal against decision of Authority**—(1) Subject to section 139 of this Act, 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 appli-

cant or the subject of an inquiry to the Supreme 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) Suspends any licence under section 134 or section 135 of this Act; or
- “(e) 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) Every such appeal shall be heard and determined by the Administrative Division of the Supreme Court (hereinafter referred to as the Court).

“139. **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 affected by the decision:
- “(e) Any incorporated body which has as its principal object the protection of the interests of licensees.

“140. **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 138 (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 145 (3) of this Act.

“141. **Procedure on appeal**—Subject to this Part of this Act, the procedure in respect of any appeal to the Supreme Court shall be in accordance with the rules of the Court.

“142. 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 effectually 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 144 of this Act, the decision of the Court shall be final and conclusive.

“143. Court may refer appeals back to Authority—

(1) Notwithstanding section 142 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 just 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.

“144. Appeals to Court of Appeal on questions of law—

(1) If any party to an appeal under section 138 of this Act is dissatisfied with the decision of the Supreme Court in respect of the appeal as being erroneous in law, he may, with the leave of the Supreme Court, appeal to the Court

of Appeal by way of case stated for the opinion of that Court on a question of law:

“Provided that if the Supreme Court refuses leave to appeal under this subsection the Court of Appeal may grant special leave to appeal.

“(2) On any appeal under subsection (1) of this section, the Court of Appeal may make such order or determination as it thinks fit.

“(3) The decision of the Court of Appeal on an appeal under this section, or on any application for leave to appeal, shall be final.

“(4) Subject to the foregoing provisions of this section, the procedure in respect of any appeal under this section shall be in accordance with the rules of the Court of Appeal.

“Offences and Penalties

“145. **Offences and penalties**—(1) Every person commits an offence against this Part of this Act who—

“(a) Without reasonable excuse, acts in contravention of or fails to comply in any respect with any provision of this Part of this Act or any notice, direction, restriction, requirement, or condition given, made, or imposed under this Part of this Act or any regulations made under it:

“(b) With intent to deceive, makes any false or misleading statement or any material omission in any communication or application or return for the purposes of this Part of this Act or of any regulations made under it.

“(2) Every person who commits an offence against this Part of this Act for which no other penalty is prescribed in this Part of this Act shall be liable on summary conviction before a Magistrate to a fine not exceeding \$4,000 and, if the offence is a continuing one, to a further fine not exceeding \$200 for every day on which the offence has continued.

“(3) Every licence holder convicted of an offence against this Part of this Act whose licence is not liable to be forfeited pursuant to section 62 (1) of this Act shall be the subject of an inquiry by the Authority under section 134 of this Act, 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.

“146. Evidence and proof—In any proceedings in respect of an offence under this Part of this Act—

“(a) A certificate, signed by the Secretary to the Authority, to the effect that the defendant or any other named person was not at the time of the alleged offence the holder of a licence or a temporary licence, or that any specified boat was not the subject of a boat authority, shall, in the absence of proof to the contrary, be sufficient evidence of those facts:

“(b) A copy of any licence, boat authority, or other document granted or issued under this Part of this Act or any regulations made under it which is certified correct by the Secretary to the Authority, the Chairman or any member of the Authority, or the Director-General or any officer of his Ministry duly authorised by him in that behalf, shall be sufficient, in the absence of proof to the contrary, to prove that licence, boat authority, or other document:

“(c) 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 boat 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:

“(d) 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 appearing to have signed it.

“Regulations

“147. 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 operation of vessels registered under Part I of this Act within a controlled fishery and New Zealand fisheries waters:

“(b) Prescribing procedures to be observed by the Authority:

- “(c) Limiting the maximum number of licences that may be granted in respect of a controlled fishery:
 - “(d) Prescribing conditions subject to which a licence may be granted or renewed:
 - “(e) Regulating generally the granting, renewing, and revoking of licences:
 - “(f) Prescribing the type, size, and number of boats that may be used in a controlled fishery, and type, size, and quantity of gear and equipment that may be used in a controlled fishery or on a boat in a controlled fishery:
 - “(g) Providing for the taking of controlled fish from a controlled fishery other than for sale, and for incidental catches and by-catches:
 - “(h) Prescribing the matters in respect of which fees or levies may be payable under this Part of this Act or under any regulations made under it, prescribing the amount of those fees or levies and the persons liable to pay them, and prescribing the circumstances in which the Authority in its discretion may remit the whole or any part of such fees or levies:
 - “(i) Prescribing the accounts and records that are to be kept by a licence holder and the form of those accounts and records, and prescribing the returns that are to be made by a licence holder to the Director-General and when those returns are to be made:
 - “(j) Providing for such other matters as contemplated by or necessary for giving full effect to the provisions of this Part of this Act and for its due administration.
- “(2) Any regulation made under this section may apply generally throughout New Zealand or all controlled fisheries or may be made to apply only within such area or areas as may be specified in the regulation.
- “(3) The operation of any regulation made under this section may, by notice in the *Gazette*, be suspended by the Minister in whole or in part for such period as may be specified in the notice; and any such notice may in like manner be amended or revoked.
- “(4) Any regulation made under this section shall, to the extent that any provision of Part I or Part II of this Act or any regulation made pursuant to either of those Parts is

inconsistent with such regulation, have precedence, and the operation of any inconsistent provision or regulation shall be suspended accordingly:

Provided that nothing in any regulation made under this section shall derogate from any provision of Part I or Part II of this Act or any regulation made pursuant to either of those Parts that relates to Maori fishing rights unless the regulation made under this section expressly so provides.

“Second Schedule May be Amended

“148. Second Schedule may be amended—The Governor-General may from time to time, by Order in Council, amend the Second Schedule to this Act by adding the description of fisheries that may be declared to be controlled fisheries if the Governor-General in Council is satisfied that the Fishing Industry Board has been consulted in respect of the addition.”

3. Second Schedule added—The principal Act is hereby further amended by adding the Schedule set out in the Schedule to this Act.

4. Consequential amendments and repeals—(1) Section 1 (2) of the principal Act and the Schedule to that Act are hereby amended by omitting the word “Schedule”, and substituting the words “First Schedule”.

(2) Section 1 (3) of the principal Act is hereby repealed.

(3) Section 10 of the Fisheries Amendment Act 1963 (as amended by section 15 of the Fisheries Amendment Act 1968 and section 8 (3) of the Fisheries Amendment Act (No. 2) 1969) is hereby further amended by adding the following subsection:

“(5) A boat-fishing permit shall not of itself entitle any person to fish in any fishery declared to be a controlled fishery under Part III of this Act.”

(4) The principal Act is hereby further amended by repealing section 62 (as amended by section 22 (2) (b) of the Fisheries Amendment Act 1963, section 4 of the Fisheries Amendment Act (No. 2) 1969, and section 2 (1) of the Fisheries Amendment Act 1975), and substituting the following section:

“62. Forfeiture of licence—(1) Every person who is convicted of an offence against Part I or Part III of this Act or any regulations made under either of those Parts and is

later convicted on another occasion of an offence against those Parts of this Act or those regulations shall, in addition to any other penalty, be liable to forfeit any licence, permission, or fishing permit obtained pursuant to the said Part I or Part III of this Act or any regulations made under either of those Parts, and shall be incapable for a period of 3 years from the date of conviction of holding any such licence, permission, or fishing permit.

“(2) Notwithstanding subsection (1) of this section, the Minister may in the circumstances of any particular case and upon application in writing by the person concerned, direct that the provisions of that subsection is not to apply to any particular licence, permission, or fishing permit otherwise forfeit.”

(5) The following enactments are hereby repealed:

- (a) Section 22 (2) (b) of the Fisheries Amendment Act 1963:
 - (b) Section 4 of the Fisheries Amendment Act (No. 2) 1969:
 - (c) The Fisheries Amendment Act 1975.
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SCHEDULE

Section 3

"SECOND SCHEDULE Sections 100, 118 (1), 148

"FISHERIES THAT MAY BE DECLARED TO BE CONTROLLED FISHERIES

Fishery	Area in Which Controlled Fishery May be Declared	Methods of Fishing Which May be Controlled
Scallops	(a) Scallop fisheries within New Zealand fisheries waters between Cape Campbell and Kahurangi Point (b) Scallop fisheries within New Zealand fisheries waters on the East Coast of the North Island between Town Point in the Bay of Plenty and the Northernmost point of Great Barrier Island and thence across to Cape Rodney	Dredging
Rock Lobsters	New Zealand fisheries waters	Any
Paua	New Zealand fisheries waters	Any
Eels	New Zealand fisheries waters	Any
Mussels	New Zealand fisheries waters	Any
Oysters	Foveaux Strait Oyster Fishery, including any special area	Dredging"

This Act is administered in the Ministry of Agriculture and Fisheries.