

DRIFTNET PROHIBITION BILL

EXPLANATORY NOTE

THIS Bill prohibits driftnet fishing and related activities in accordance with the requirements of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific.

Clause 1 relates to the Short Title, and provides that the Bill is to come into force on 1 November 1990.

Clause 2 is the interpretation clause. Of particular note is the definition of the term “driftnet”, which will apply to nets of the appropriate sort that, either singly or tied or connected together in combination with other nets, are more than 1 kilometre in length.

Clause 3 defines the term “driftnet fishing”. The definition extends beyond the simple taking of fish or marine life by use of a driftnet to include other related activities such as searching for and locating fish to be taken by that method, and numerous operations at sea in support of or in preparation for driftnet fishing.

Clause 4 prohibits driftnet fishing by vessels and persons in New Zealand fisheries waters.

Clause 5 prohibits driftnet fishing by New Zealand vessels and New Zealand citizens in the Convention Area.

Clause 6 prohibits vessels from having any driftnet on board.

Clause 7 prohibits the transportation and transshipment in New Zealand fisheries waters of fish or marine life taken by use of a driftnet, and similarly prohibits transportation and transshipment in the Convention Area by New Zealand vessels or New Zealand citizens.

Clause 8 prohibits the landing in New Zealand of fish or marine life taken by use of a driftnet.

Clause 9 prohibits the processing in New Zealand of fish or marine life taken by use of a driftnet.

Clause 10 prohibits the entry into the internal waters of New Zealand of foreign vessels that have on board any driftnet or are otherwise equipped for

No. 47 —1

Price
incl. GST \$2.20

driftnet fishing, and also of foreign vessels that within the preceding 3 months have been engaged in driftnet fishing.

Clause 11 imposes a series of prohibitions on the supplying and provisioning of driftnet fishing vessels.

Clause 12 allows the Director-General of Agriculture and Fisheries to direct a foreign vessel not to enter or to leave the internal waters of New Zealand where the Director-General has reasonable grounds to believe that the vessel is equipped for or has in the preceding 3 months been engaged in driftnet fishing, or is to be used to supply vessels engaged or to engage in driftnet fishing in New Zealand fisheries waters or the Convention Area.

Clause 13 sets out the powers of search of enforcement officers.

Clause 14 sets out their powers of arrest.

Clause 15 sets out their powers of seizure.

Clauses 16 to 21 set out the manner in which seized property is to be dealt with.

Clause 22 provides that enforcement officers may call on constables and other persons to assist them.

Clause 23 provides protection from liability in respect of the actions of enforcement officers and persons assisting them, except where the officer or person acts in bad faith or without reasonable cause.

Clause 24 requires enforcement officers to produce evidence of their authority to act.

Clause 25 specifies offences relating to the contravention of *clauses 4 to 12* of the Bill. In the case of offences committed by vessels rather than persons, the owner (which under the definition in *clause 2* includes charterers, lessees, and others) and master of the vessel each commit an offence.

Subclause (4) sets out offences relating to the obstruction of enforcement officers.

Clause 26 provides that offences against the Act will be deemed to have been committed in New Zealand, will be punishable on summary conviction, and will be subject to a 2-year limitation on the bringing of proceedings rather than the normal 6-month period that applies to summary proceedings.

Clause 27 provides that in respect of offences against *clauses 4 to 12* of the Act it will not be necessary for the prosecution to prove that the defendant intended to commit an offence.

Clause 28 (1) sets out various defences to proceedings for offences against the Act.

Depending on the nature of the particular charge, it may be a defence if the defendant proves that the defendant did not know, and could not with the exercise of reasonable diligence have ascertained, that the operation, activity, vessel, or fish or marine life to which the charge relates was involved with or taken by driftnet fishing.

Further defences are provided where, for example, the fish or marine life to which the offence relates was preserved in containers in a country other than New Zealand, or where the relevant activity is conducted at the direction or request of an enforcement officer.

Subclause (2) provides that where the owner or master of a vessel is charged with an offence that relates to the use of a vessel, certain of the defences specified in *subclause (1)* will not be available unless the defendant can show that he or she took all reasonable steps to ensure that the offence would not occur.

Subclause (3) provides a general defence in respect of acts and omissions occurring in circumstances of stress or emergency.

Clause 29 makes provision for the admissibility in evidence of various certificates, documents, and copies of records and documents.

Clause 30 specifies penalties for offences against the Bill, with maximum fines ranging from \$20,000 to \$250,000.

Clause 31 provides for the forfeiture of vessels and other property used in respect of the commission of offences against the Bill, and of fish and marine life in respect of which any such offences are committed.

Clause 32 revokes the Exclusive Economic Zone (Driftnet) Regulations 1989 and the Fisheries (Driftnet) Regulations 1989.

Right Hon. Mike Moore

DRIFTNET PROHIBITION

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 transshipment | 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. Penalties |
| | 31. Forfeiture of property on conviction |
| | 32. Revocations |

A BILL INTITULED

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

5 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 1990.

(2) This Act shall come into force on the 1st day of November 1990.

10 **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: 5
- “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 10
 - (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 15
 - (ii) Are adjacent to any territory of the Party that is situated wholly or partly within that area: 20
- “Director-General” means the Director-General of Agriculture and Fisheries: 20
- “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 25
 - (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): 30
- “Enforcement officer” means—
- (a) Any officer of the New Zealand Naval Forces of the rank of Midshipman or above: 35
 - (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: 40
 - (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: 40
- “Foreign vessel” means any vessel that is not a New Zealand vessel: 45

“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:

5 “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:

10 “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

15 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:

20 “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.

25 **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:

30 (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:

35 (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

40 (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. 5

(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. 10

(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. 15

7. Prohibition on transportation and transhipment—(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. 20

(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. 25

(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. 30

(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. 35

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),—
- 5 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.

10 (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.

15 (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.

20 (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.

25 (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—

30 (a) Any foreign vessel—
(i) Has on board any driftnet, or is otherwise equipped for driftnet fishing; or

35 (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,—

40 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:

5 (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:

10 (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:

15 (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),—

25 (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:

30 (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.

35 (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.

40 (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.

5 **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—

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

15 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,—

- 20 (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

- 25 (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.

30 (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.

35 (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.

- 40 (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. 5

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. 10

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— 15

(a) The person from whom the property was seized; or 20

(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. 25

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 30

(b) On the acquittal of any person charged with an 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. 35

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 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) 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 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 who contravenes **section 11 (2) or section 11 (4)** of this Act.
- (4) Every person commits an offence against this Act 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 5
- (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. 10

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. 15

(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. 20

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. 25

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— 30
 - (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 35
 - (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: 40
- (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,—

5 (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

10 (ii) The fish or marine life to which the offence relates was preserved in containers in a country other than New Zealand; or

15 (iii) The transportation, transshipment, 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 31** of this Act:

20 (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:

25 (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.

30 (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.

35 (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— 5
- (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: 10
- (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 15
 - (ii) A person specified in the certificate was or was not the owner of a registered fishing vessel specified in the certificate; or 20
 - (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 25
 - (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: 30
- (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 35
 - (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: 40

(e) Any certificate purporting to be signed by a member of the Armed Forces within the meaning of the Defence Act 1990 and stating—

5 (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.

10 (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.

15 (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.

20 (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—

25 (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

30 (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.

35 (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.

40

(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. Penalties—Every person who commits an offence against this Act is liable on conviction to—

- (a) A fine not exceeding \$250,000 in the case of an offence specified in **section 25 (1)** of this Act:
- (b) A fine not exceeding \$100,000 in the case of an offence specified in **section 25 (2)** of this Act:
- (c) A fine not exceeding \$50,000 in the case of an offence specified in **section 25 (3)** of this Act:
- (d) A fine not exceeding \$20,000 in the case of an offence specified in **section 25 (4)** of this Act.

31. 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.

- 5 (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.

32. Revocations—The following regulations are hereby revoked:

- 10 (a) The Exclusive Economic Zone (Driftnet) Regulations 1989 (S.R. 1989/197);
(b) The Fisheries (Driftnet) Regulations 1989 (S.R. 1989/198).