

## FISHERIES AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill amends the Fisheries Act 1908.

*Clause 1* relates to the Short Title.

### PART I

#### OYSTERS

The purpose of this Part of the Bill is to revise the provisions of the principal Act relating to oysters, many of which have become redundant or out of date in consequence of the provisions of Part I of the Fisheries Amendment Act 1963 which introduced the permit system to control the taking of fish (including oysters) for sale, and of the provisions of the Rock Oyster Farming Act 1964.

As many of the provisions of the principal Act relating to oysters are to be repealed, this Part, for convenience, brings together all the remaining provisions relating solely to oysters (some of them with modifications, either in substance or to conform to current drafting practice), and adds some new provisions. Other provisions of the principal Act that relate to fish or shellfish as well as to oysters are not affected.

*Clause 2* is an interpretation clause.

*Clause 3* re-enacts in an amended form section 40 of the principal Act, relating to the power of the Minister to employ persons to pick oysters from any oyster fishery in the North Island for sale by the Minister.

The new section empowers the Minister, for the purpose of making rock oysters available for sale to members of the public, to employ persons, whether on contract or otherwise, to pick rock oysters. Nothing in this clause will apply to oysters in a rock oyster farm.

*Clause 4* replaces section 30 of the principal Act, which declares that oysters in an oyster bed held under an exclusive or permissive licence are the property of the licensee. The provisions of the principal Act relating to exclusive and permissive licences are being repealed by *clause 14* of this Bill.

This clause now declares that oysters in an oyster farm are the property of the lessee.

*Clause 5* replaces section 33 of the principal Act, and makes provision for penalties and compensation in cases where a person wilfully does any act which causes damage to an oyster bed.

The new clause covers oyster farms as well as oyster beds, and increases the maximum penalty to a fine of £500. The present maximum fine is £50.

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Price 1s.

*Clause 6* replaces subsection (1) of section 8 of the Fisheries Amendment Act 1912 which sets out penalties for unlawfully removing oysters from oyster beds.

The new clause modifies section 8 by making it an offence to take rock oysters from any rock oyster bed except in pursuance of a licence or other authorisation or from any rock oyster farm without the consent of the lessee, and increases the maximum fine from £100 to £250.

*Clause 7* replaces subsection (2) of section 8 of the Fisheries Amendment Act 1912 and empowers the Minister, by notice in the *Gazette*, to define the boundaries of any oyster bed, or any area on which oysters have been planted.

*Clause 8* is new, and provides that it shall be an offence for any person to have in his possession any rock oysters that he knows have been unlawfully acquired (i.e., oysters that have not been acquired pursuant to a lease, licence, or other authority).

*Clause 9* replaces subsection (1) of section 37 of the principal Act which makes it an offence to obstruct persons lawfully taking oysters from any oyster bed.

This clause also makes it an offence to obstruct any person lawfully taking oysters from an oyster farm. The reference in the principal Act to the minimum penalty has been omitted.

Subsection (2) of section 37 is not to be re-enacted since it could result in a person being punished more than once for the same offence.

*Clause 10* replaces section 32 of the principal Act, which makes it an offence to open or bottle oysters on an oyster bed.

The new clause modifies the effect of section 32 by making it an offence to open or bottle rock oysters on an oyster bed.

*Clause 11* re-enacts section 36 of the principal Act, which makes it an offence not to return any oyster brood to the place from which it was taken within six hours of taking, unless the brood has been taken in order to supply or replenish any other oyster bed.

A slight modification has been made in order to bring the provision in line with the permit system established by the Fisheries Amendment Act 1963, and to make it clear that the provision applies only to dredge oysters and oyster brood. The words "artificial" and "natural" have been omitted from the re-enacted provision.

*Clause 12* re-enacts subsections (1) to (7) of section 10 of the Fisheries Amendment Act 1923, which empowers the Governor-General in Council to set aside certain areas as special oyster fisheries for the exclusive use of the Maoris of the neighbourhood.

Slight modification has been made to the wording to give effect to current drafting practice.

*Clause 13* repeals section 73 of the principal Act, which provides that all licence fees are to be paid into the Public Account. Since the Fisheries Amendment Act 1963 abolished licences and this Part of the Bill repeals the provisions as to licences to take oysters, subsections (1) and (2) of section 73 are now redundant. The general effect of subsection (3) of section 73 is embodied in the new *clause 13*.

*Clause 14* provides for repeals and a consequential amendment. The sections of the principal Act to be repealed by *subclause (1)* are—

- (a) Section 13, which prescribes a close season for rock oysters.

- (b) Section 14, which prohibits the stacking of rock oysters without a permit.
- (c) Sections 15 to 24, 26 to 29, 31, 34, 35, 38, and 39, all of which relate to the granting of exclusive or permissive licences for the taking of oysters.
- (d) Section 25, which empowers the Minister to establish experimental oyster farms. This power is no longer required.
- (e) Sections 30, 32, 33, 36, 37, and 40, which are re-enacted in this Part of the Bill.
- (f) Section 41, which makes provision for export duty to be levied on oysters. No regulations have ever been made under this section.
- (g) Section 66, which requires owners of licensed fishing boats, fish curers, and persons licensed to take oysters to furnish returns of fish caught or cured, or oysters taken, as the case may be. This section is redundant since the passing of the Fisheries Amendment Act 1963 which abolished licensing. Furnishing of returns is now covered by regulation.

Section 8 of the Fisheries Amendment Act 1912, and sections 9 and 10 of the Fisheries Amendment Act 1923 are re-enacted in this Part of the Bill.

The repeal of section 8 of the Fisheries Amendment Act 1948 is consequential on the repeal of section 66 of the principal Act. Subsection (1) of section 9 of the Rock Oyster Farming Act 1964 will be redundant on the passing of this Bill.

*Subclause (2)* is a consequential amendment.

## PART II

### MISCELLANEOUS PROVISIONS

*Clause 15* is new, and provides that subject to any agreement to the contrary all fish (including shellfish and oysters) caught by the crew of any registered fishing boat are deemed to be the property of the owner or charterer of that boat. This clause is intended to resolve doubts that have arisen in recent Court proceedings as to the ownership of such fish.

*Clause 16* extends the power conferred by section 83 of the principal Act to make regulations relating to freshwater fisheries, and confers power to make regulations—

- (a) Declaring specified waters to be spawning grounds for fish, and prohibiting or restricting entry into those waters or onto any land within a specified distance of those waters.
  - (b) Prohibiting or restricting entry into waters within a specified distance of any device erected therein to prevent or control the movement of fish upstream or downstream or entry onto any land within a specified distance of any such device.
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*Hon. Mr Scott*

## FISHERIES AMENDMENT

### ANALYSIS

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### A BILL INTITULED

#### An Act to amend the Fisheries Act 1908

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

**1. Short Title**—This Act may be cited as the Fisheries Amendment Act 1965, and shall be read together with and deemed part of the Fisheries Act 1908\* (hereinafter referred to as the principal Act).

\*1957 Reprint, Vol. 5, p. 261

Amendments: 1959, No. 8; 1962, No. 68; 1963, No. 69; 1964, No. 35

## PART I

## OYSTERS

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

“Dredge oyster” includes the kinds of oyster known as 5  
*Ostrea sinuata*, *Ostrea charlottae*, *Ostrea heffordi*,  
mud oyster, Bluff oyster, or Stewart Island oyster, or  
any oyster of a like kind by whatever name it may  
locally be known or wherever it may occur:

“Oyster bed” does not include an oyster bed situated 10  
on an oyster farm:

“Oyster farm” has the same meaning as in section 2 of  
the Rock Oyster Farming Act 1964:

“Rock oyster” includes the kinds of oyster known as 15  
*Ostrea purpurea*, *Saxostrea glomerata*, *Crassostrea*  
*glomerata*, *Ostrea glomerata*, *Ostrea mordax*, shore  
oyster, drift oyster, or mangrove oyster, or any oyster  
of a like kind by whatever name it may locally be  
known or wherever it may occur:

Expressions defined in section 2 of the principal Act 20  
have the meanings so defined.

(2) For the purposes of Part I of the principal Act this  
Part of this Act shall be deemed to form part of Part I of  
the principal Act.

**3. Picking of rock oysters—**(1) For the purpose of making 25  
rock oysters available for sale to members of the public, the  
Minister may employ under contract or otherwise any person  
to pick rock oysters.

(2) The Minister may sell, or authorise the sale of, any  
oysters picked by any person so employed on such terms as 30  
he thinks fit.

(3) Without limiting the provisions of section 5 of the  
principal Act, regulations may be made under that section for  
the effectual carrying out of the provisions of this section.

(4) All expenses incurred under this section by the Minister 35  
in employing persons to pick rock oysters shall be paid out of  
money appropriated by Parliament for that purpose, and all  
money received from the sale of rock oysters by the Minister  
shall be paid into the Public Account.

(5) This section shall not apply to any rock oysters picked by or on behalf of a lessee under any lease granted pursuant to the provisions of the Rock Oyster Farming Act 1964.

Cf. 1908, No. 63, s. 40

5    **4. Rock oysters deemed absolute property of lessee**—All  
rock oysters in any oyster farm held under a lease granted  
pursuant to the provisions of the Rock Oyster Farming Act  
1964 shall be the absolute property of the lessee, and shall in  
all Courts and for all purposes be deemed to be in his actual  
10 possession.

Cf. 1908, No. 65, s. 30

**5. Injury to oyster beds or oyster farms**—(1) Every person  
is liable to a fine not exceeding five hundred pounds who  
wilfully does any act which causes damage to any oyster bed  
15 or oyster farm.

(2) Any person convicted of an offence under this section  
shall, in addition to any penalty for which he may be liable  
for the offence, be liable to pay compensation to any person  
who has sustained damage as a result of the act of the  
20 convicted person.

(3) The compensation shall be assessed by the convicting  
Court, and shall be recoverable in like manner as a fine.

Cf. 1908, No. 65, s. 33

**6. Penalty for unlawfully removing rock oysters from**  
25 **oyster beds**—Every person is liable to a fine not exceeding two  
hundred and fifty pounds who, except in pursuance of a  
licence, any regulation in that behalf, or the permission  
of the Minister, takes any rock oysters from an oyster bed,  
or from an area on which rock oysters have been planted by  
30 or under the direction of the Marine Department.

Cf. 1912, No. 49, s. 8 (1)

**7. Defining the boundaries of oyster beds**—The Minister  
may from time to time, by notice in the *Gazette*, define the  
boundaries of any oyster bed or any area on which oysters  
35 have been planted. That notice shall, in all proceedings  
relating to an offence under this Part of this Act, be conclusive  
evidence of the boundaries so defined.

Cf. 1923, No. 10, s. 9

**8. Unlawfully possessing rock oysters**—Every person is liable to a fine not exceeding two hundred and fifty pounds, who has in his possession any rock oysters knowing them to have been taken otherwise than pursuant to the provisions of this Part of this Act or any licence, lease, or authority granted or given pursuant to the provisions of this Part of this Act or any other enactment. 5

**9. Obstructing persons lawfully taking oysters**—Every person commits an offence who obstructs, hinders, or prevents any other person from lawfully taking oysters from any oyster bed or oyster farm. 10

Cf. 1908, No. 65, s. 37

**10. Bottling rock oysters on oyster bed**—Every person commits an offence who opens or bottles rock oysters on any oyster bed. 15

Cf. 1908, No. 65, s. 32

**11. Not returning oyster brood to the place from which it was taken**—Every person is liable to a fine not exceeding one hundred pounds who, while taking dredge oysters from any oyster bed pursuant to a fishing permit under the Fisheries Amendment Act 1963, raises or takes any dredge oyster brood, and does not return the brood to the place from which it was taken within such period as is specified as a condition in the permit: 20

Provided that this section shall not apply to any person lawfully taking oysters or oyster brood for the purpose only of supplying or replenishing any other oyster bed. 25

Cf. 1908, No. 65, s. 36

**12. Special oyster fisheries for Maoris**—(1) The Governor-General may from time to time, by Order in Council, declare any tidal land or tidal waters defined in the order and situated in the neighbourhood of any Maori pa or village as an oyster fishery where only Maoris may take oysters for their own food. 30

(2) Where an oyster fishery has been set aside for the use of Maoris under the provisions of subsection (1) of this section, the Minister shall appoint a committee of Maoris resident in the neighbourhood of the fishery to control the fishery, and the following provisions shall apply to every committee so appointed: 35 40

- (a) The members of the committee shall hold office for such period as the Minister thinks fit and may from time to time be reappointed:
- 5 (b) The committee shall have the following powers and duties:
- (i) To maintain the fishery in good order and condition to the satisfaction of the Minister;
  - (ii) To regulate the taking of oysters;
  - 10 (iii) To account to the satisfaction of the Minister for the expenditure of all money received by the committee pursuant to this section; and
  - (iv) To report to the Minister any breach by any person of any of the provisions of this section.
- (3) The Minister may, on the recommendation of the 15 committee, declare, by notice in the *Gazette*, that no oysters shall be taken during such period as may be specified in the notice, and it shall not be lawful for any person to take oysters from the fishery during that period.
- (4) If at any time the committee finds that there are more 20 mature oysters in the fishery under its control than are required for the food of the Maoris in the neighbourhood and for the further propagation of oysters, the surplus quantity may be sold to the Minister, and the proceeds of the sale shall be paid to the committee, which shall apply those proceeds 25 solely for the purpose of extending and conserving the oyster beds in the fishery. All oysters so purchased by the Minister shall be sold or otherwise disposed of in such manner as he thinks fit.
- (5) Except as provided in subsection (4) of this section, 30 no Maori shall sell or give to any European any oysters taken from any fishery to which this section applies.
- (6) Every Maori who in contravention of the provisions of this section takes or sells or otherwise disposes of oysters from any such fishery, and every European who takes oysters 35 therefrom or in any manner unlawfully obtains any oysters taken from any such fishery, commits an offence and is liable to a fine not exceeding one hundred pounds.
- (7) Without limiting the provisions of section 5 of the principal Act, regulations may be made under that section for 40 the effectual carrying out of the provisions of this section.
- (8) In this section the terms "Maori" and "European" have the same meaning as in the Maori Affairs Act 1953.

Cf. 1923, No. 10, s. 10



**13. Fees**—The principal Act is hereby further amended by repealing section 73, and substituting the following section:  
 “73. All fees received under this Part of this Act shall be paid into the Public Account.”

**14. Repeals and amendment**—(1) The following enactments are hereby repealed: 5

- (a) Sections 13 to 16, sections 18 to 41, and section 66 of the principal Act:
- (b) Section 8 of the Fisheries Amendment Act 1912:
- (c) Sections 9 to 11 of the Fisheries Amendment Act 1923 10 and the Schedule to that Act:
- (d) Section 8 of the Fisheries Amendment Act 1948:
- (e) Subsection (1) of section 9 of the Rock Oyster Farming Act 1964.

(2) Section 10 of the Rock Oyster Farming Act 1964 is 15 hereby amended by omitting the words “or in section 29 of the Fisheries Act 1908”.

## PART II

### MISCELLANEOUS PROVISIONS

**15. Ownership and possession of fish**—The Fisheries 20 Amendment Act 1963 is hereby amended by inserting, after section 18, the following section:

“18A. (1) Subject to the provisions of any agreement to the contrary, all fish caught by any means whatsoever from a registered fishing boat shall, for the purposes of this Part of 25 this Act, every other enactment, and any rule of law, be deemed to be in the possession of, and owned by, the owner of the fishing boat.

“(2) For the purposes of this section, fish shall be deemed to be caught from a fishing boat when caught with any line, 30 or in any net, pot, trap, or other contrivance used or set from the fishing boat or from any small boat or tender carried by or attached to the fishing boat.

“(3) For the purposes of this section, the term ‘owner’, in relation to a fishing boat, includes any charterer under any 35 charter or demise of the fishing boat.”

**16. Regulations as to freshwater fisheries**—(1) Section 83 of the principal Act (as substituted by section 11 (1) of the Fisheries Amendment Act 1948) is hereby amended by inserting in subsection (2), after paragraph (c), the following paragraphs:  
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“(cc) Declaring any specified waters to be spawning grounds for fish, and prohibiting or imposing restrictions and conditions on entry into any such waters or onto land within a specified distance of any such waters:  
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“(ccc) Prohibiting or imposing restrictions and conditions on entry into any waters within a specified distance of any device erected in those waters for the purpose of preventing or controlling the movement of fish upstream or downstream or on entry onto any land within a specified distance of any such device.”  
15

(2) Section 83 of the principal Act (as so substituted) is hereby further amended by inserting in subsection (5),  
20 after the words “regulation made thereunder”, the words “(not being a regulation made pursuant to paragraph (cc) or paragraph (ccc) of subsection (2) of this section)”.