

[AS REPORTED FROM THE PRIMARY PRODUCTION COMMITTEE]

House of Representatives, 12 September 1989.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. Colin Moyle

FISHERIES AMENDMENT

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A BILL INTITULED

An Act to amend the Fisheries Act 1983

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

1. Short Title and commencement—(1) This Act may be cited as the Fisheries Amendment Act 1988, and shall be read together with and deemed part of the Fisheries Act 1983*.

(2) Except as provided in sections 1B (4), 4 (4), 5B (2), and 13A (3) of this Act, this Act shall come into force on the (28th day after the date on which it receives the Royal assent) 1st day of October 1989.

New

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1A. References to weight of fish to be reference to greenweight—Section 3A of the principal Act (as inserted by section 4 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (2), and substituting the following subsections:

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“(2) The Minister may from time to time, by notice in the *Gazette*, given after consultation with the Fishing Industry Board, specify conversion factors which shall, except in the case of fish that are subject to a certificate given under subsection (3) of this section, for all purposes and in any proceedings for an offence against this Act or any regulation made or notice given under this Act be used to determine the greenweight of any fish.

“(3) The Director-General may, in respect of any vessel on which fish are processed and frozen, having regard to the method of processing or the processing history of the vessel and after consultation with the owner or master of the vessel, certify in writing conversion factors which shall, in relation to fish taken, processed, or landed by that vessel, for all purposes and in any proceedings for an offence against this Act or any regulation made or notice given under this Act be used to determine the greenweight of any fish taken, processed, or landed by that vessel within the terms of the certificate.

“(4) A certificate given under subsection (3) of this section—

“(a) Shall be notified to the owner or master of the vessel concerned as soon as practicable after it is made:

“(b) Subject to subsection (5) of this section, shall apply in respect of fish taken, processed, or landed after such

*1983, No. 14

Amendment: 1986, No. 34

New

- 5 date or occasion as may be specified in the certificate,
and may be expressed to apply for such period or
until such date or occasion as may be specified in the
certificate:
- “(c) May be subject to such terms and conditions, whether as
to methods of taking, processing, or packing fish, the
presence of scientific observers or Fishery Officers,
the recording of catches, or otherwise, as the
10 Director-General thinks fit to impose:
- “(d) Subject to **subsection (5)** of this section, may at any time
be revoked by the Director-General by notice in
writing, or may be amended by a further certificate
given by the Director-General under **subsection (3)** of
15 this section, with effect from such date or occasion as
may be specified in the notice or certificate.
- “**(5)** Any certificate given under **subsection (3)** of this section,
and any revocation made under **subsection (4)** of this section,
shall take effect not earlier than the earliest of the following
20 dates or occasions:
- “**(a)** The commencement of the fishing year following that in
which the owner or master of the vessel is notified of
the certificate or revocation:
- “**(b)** The next departure of the vessel from any New Zealand
25 port following the notification of the certificate or
revocation:
- “**(c)** The day on which any scientific observer who is present
on the vessel concerned after the owner or master is
notified of the certificate or revocation certifies that
30 the current catch of the vessel has been recorded by
that observer:
- “**(d)** Such earlier date as may be agreed between the
Director-General and the owner or master of the
vessel.
- 35 **1B. Transfers and leases of individual transferable
quotas**—(1) Section 28Q(2) of the principal Act (as inserted by
section 10 of the Fisheries Amendment Act 1986) is hereby
amended by omitting the expression “5 days”, and substituting
the expression “10 days”.

New

(2) Section 28Q of the principal Act (as so inserted) is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) No transfer or lease referred to in subsection (1) of this section shall have effect for any of the purposes of this Act to transfer any right (including the right to take fish), obligation, or liability from the transferor or lessor to the transferee or lessee until notification in the approved form of the transfer or lease has been received by the Ministry. 5 10

(3) Section 28Q of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

“(7) Where any person who holds individual transferable quota or any interest as lessee in such quota has been charged with the commission of a quota management offence or an offence relating to returns and records (as those terms are defined in section 107B (1) of this Act),— 15

“(a) No transfer or lease of that quota or interest in quota shall be registered under section 28P or section 28Q of this Act before the proceedings for the offence are finally determined; and 20

“(b) No transfer or lease of that quota or interest in quota shall confer any right to take fish on the transferee or lessee under that quota or interest; and

“(c) No transfer or lease of that quota or interest in quota shall be effective against the Crown in the event of forfeiture of the quota or interest pursuant to section 107B of this Act.” 25

(4) Subsection (3) of this section shall come into force on a date to be fixed by the Governor-General by Order in Council. 30

1c. Form of transfers and leases of individual transferable quota—Section 28R (2) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by adding the following paragraph:

“(f) Such other matters as may be required or authorised by regulations made under this Act to be shown.” 35

1d. Minimum holdings of quota and interests in quota—(1) Section 28s of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby

New

amended by repealing subsection (2), and substituting the following subsections:

5 “(1A) Notwithstanding that a person may have purchased or taken on lease not less than the minimum amount of quota specified in subsection (1) of this section, that person shall not take fish pursuant to any such quota at any time when the person has disposed in whole or in part of the right to take fish under the quota (whether by way of lease or otherwise), unless
10 the person has the current right to take fish to an amount not less than that specified in that subsection.

“ (2) Nothing in subsection (1) or **subsection (1A)** of this section shall prevent—

15 “(a) The allocation under section 28F of this Act of guaranteed minimum individual transferable quota or the allocation under section 28O of this Act of individual transferable quota in amounts less than those specified in subsection (1) of this section; or

20 “(b) The taking of fish pursuant to any such quota by the person to whom it was allocated at any time when the person has the current right to take fish to an amount not less than the amount so allocated.”

(2) Section 28s (5) of the principal Act (as so inserted), is hereby amended by omitting the words “subsection (1) (a) of
25 that section”, and substituting the words “subsection (1) (a) of this section, and may take fish pursuant to any such quota at any time during which the person has the current right to take shellfish to an amount not less than that specified in subsection (1) (b) of this section”.

30 (3) Section 28s of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

35 “(8) No agreement shall be entered into, whether under section 99 (1) of this Act or otherwise, or if entered into shall not be effective, to the extent that it authorises any person to take any fish subject to a quota management system on behalf of any other person unless the first-mentioned person has the current right to take fish subject to a quota management system to an amount not less than that specified in paragraph (a) or paragraph (b) of subsection (1) of this section.”

40 **1E. Taking of fish in excess of quota, and carrying forward of unused quota**—(1) The principal Act is hereby

New

amended by repealing section 28v (as inserted by section 10 of the Fisheries Amendment Act 1986), and substituting the following section:

“28v. (1) Subject to the provisions of this section and the requirements of this Act relating to fishing permits, any holder of an individual transferable quota may in any fishing year take in total not more than 10 percent more fish than is specified in that quota, or such greater amount as may be permitted under **subsection (2)** of this section. 5 10

“(2) The Director-General may, by notice in writing to the person concerned, permit the taking in any fishing year of a specified percentage or amount of fish that is greater than 10 percent more fish than is specified in the quota.

“(3) Nothing in **subsection (1)** or **subsection (2)** or **subsection (5)** of this section shall apply to permit the taking in any fishing year of more fish than is specified in the quota— 15

“(a) By any lessee of the quota, or by any person having the right to take fish under the authority of the quota otherwise than as holder of the quota; or 20

“(b) By any holder of the quota if, at any time during the fishing year, the quota is leased or the rights of the holder to take fish under the quota are otherwise disposed of to any other person other than by way of a permanent transfer of the quota. 25

“(4) Where fish are taken in excess of the amount specified in a quota by any person acting under the authority of **subsection (1)** or **subsection (2)** of this section, the amount of fish that may be taken under that quota in the next fishing year, whether by that person or by any other person, shall be reduced by the amount of that excess. 30

“(5) Subject to **subsection (3)** of this section, where in any fishing year the total tonnage of fish specified in any quota is not taken, the holder of that quota in the next fishing year may, in addition to the amount specified in the quota, take up to 10 percent of the total tonnage specified in the quota or the tonnage that was not taken, whichever is the lesser. 35

“(6) Where the right to take any fish is carried forward to the next year under **subsection (5)** of this section, the tonnage of fish concerned shall not form part of the quota for the purposes of **subsection (1)** or **subsection (2)** of this section, and, if the tonnage of 40

New

fish is not taken in that next year, the right to take the tonnage of fish carried forward shall lapse.

5 “(7) Where more than one person holds any quota during any fishing year, nothing in subsection (1) or subsection (2) or subsection (5) of this section shall allow the taking in total of more than the amount of fish authorised under the relevant one of those subsections.”

10 (2) Where in the fishing year ending on the 30th day of September 1989 the total tonnage of fish specified in any quota has not been taken, any person who, in the year ending on the 30th day of September 1990,—

15 (a) Has the right to take fish under the authority of the quota, whether as lessee of the quota or otherwise, pursuant to an arrangement entered into before the commencement of this Act; and

20 (b) But for the enactment of subsection (1) of this section, would have been entitled under section 28v (5) of the principal Act (as in force before its repeal by subsection (1) of this section) to take in that year fish additional to the amount specified in the quota,—

may take that additional amount as if subsection (1) of this section had not been enacted.

25 (3) Section 28v (3) (b) of the principal Act (as enacted by subsection (1) of this section) shall not apply to restrict the right of any holder of quota to take additional fish in the fishing year ending on the 30th day of September 1990 except to the extent that any disposal of the right to take fish under the quota, whether by way of lease of the quota or otherwise, is effected
30 pursuant to an arrangement entered into after the commencement of this Act.

2. Fish subject to quota fishing cannot be taken for sale other than under quota—Section 28ZA of the principal Act (as inserted by section 10 of the Fisheries Amendment Act
35 1986) is hereby amended by adding the following subsection(s):

“(3) Where—

40 “(a) A commercial fisherman takes fish subject to a quota management system without the authority of, or in excess of any amount authorised to be taken under, any quota (*allocated to that fisherman*) held under this Act; and

New

“(aa) The commercial fisherman has not notified the taking of the fish to a Registrar and surrendered and disposed of the fish in the manner specified in **section 105AA (2) (c)** of this Act; and

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“(b) The commercial fisherman subsequently buys or leases quota that would have authorised the taking of the fish by that fisherman if the quota had been held by that fisherman at the date the fish were taken, or enters into an arrangement with another commercial fisherman for the fish to be counted against the quota of that other fisherman,—

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any such fish shall, whether or not any offence has been committed in relation to the fish, be attributed to and counted against the relevant quota so bought, leased, or arranged.

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Struck Out

“(4) Nothing in **subsection (3)** of this section authorises the taking of fish without the authority of, or in excess of any amount authorised to be taken under, any quota allocated under this Act.”

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3. Dumping of fish taken under quota prohibited—Section 28ZB (1) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by omitting the words “taken by that commercial fisherman under an individual transferable quota”, and substituting the words “that is subject to a quota management system”.

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New

3. Dumping of quota management system fish prohibited—The principal Act is hereby amended by repealing section 28ZB (as inserted by section 10 of the Fisheries Amendment Act 1986), and substituting the following section:

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“28ZB. (1) No commercial fisherman shall return to the sea or abandon in the sea any fish subject to a quota management system.

New

“(2) It shall be a defence to any proceedings for an offence against **subsection (1)** of this section if the defendant proves that—

5 “(a) The fish were neither dead nor unlikely to survive if returned to the sea and were returned to the sea, with as little injury as possible, as soon as practicable after they were taken; or

10 “(b) The return was a return of parts of fish lawfully processed at sea; or

 “(c) The fish were diseased; or

 “(d) The fish were returned or abandoned to ensure the safety of the vessel; or

15 “(e) The fish were returned or abandoned in accordance with **subsection (3)** of this section.

“(3) A commercial fisherman may return to or abandon in the sea any fish subject to a quota management system where—

20 “(a) The fisherman holds the current right under any quota to take those fish from the area in which they were taken; and

 “(b) A Fishery Officer or scientific observer was present when the fish were taken; and

25 “(c) The Fishery Officer or scientific observer authorises the return or abandonment of the fish; and

30 “(d) The commercial fisherman returns or abandons the fish under the supervision of the Fishery Officer or scientific observer, and complies with such directions of the officer or observer as may be necessary to enable the officer or observer to record the fish being so returned or abandoned.

35 “(4) Where fish are returned to or abandoned in the sea pursuant to **subsection (3)** of this section, the amount of the fish, as recorded by a Fishery Officer or scientific observer, shall be included in the returns for the appropriate period required to be made by the fisherman under this Act, and shall be counted against the quota under which the fish were taken.

3A. Resource rental payable in respect of quota—

40. (1) Section 28zc of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (2).

New

(2) The said section 28zc is hereby further amended by inserting, after subsection (4), the following subsection:

“(4A) Where in respect of any fishing year any person has paid or is liable to pay resource rentals in respect of any quota at the higher of the 2 rates specified for any species or class of fish in Schedule 1B to this Act, the Minister shall waive or remit the difference between the resource rental at that higher rate and the resource rental at the lower rate—

“(a) In respect of so much of the quota as authorises the taking of any fish that the Minister is satisfied were taken using a vessel that was not at the time the fish were taken a foreign owned New Zealand fishing vessel:

“(b) In respect of so much of the quota as remains unused at the end of the fishing year.”

3B. New sections inserted relating to unauthorised taking of quota fish—The principal Act is hereby amended by inserting, immediately after section 28zc (as inserted by section 10 of the Fisheries Amendment Act 1986), the following sections:

“28ZD. **Commercial fishermen may be required to pay deemed value of excess or unauthorised quota fish**—(1) A commercial fisherman who, at a time when the fisherman has a current right to take any species or class of fish subject to a quota management system, takes any fish subject to a quota management system otherwise than in the circumstances permitted by section 28ZA (1) of this Act,—

“(a) Shall include any fish so taken in the returns for the appropriate period required to be made by the fisherman under this Act; and

“(b) Shall, unless the fisherman—

“(i) Has returned the fish to the sea in circumstances in which such a return is permitted by section 28ZB (2) of this Act; or

“(ii) Has notified the taking of the fish to a Registrar and surrendered and disposed of the fish in the manner specified in section 105AA (2) (c) of this Act; or

New

5 “(iii) Has, not later than 15 days after the end of
the calendar month in which the fish were taken,
bought, leased, or arranged quota in the manner
specified in **subparagraph (i) or subparagraph (ii) of section**
105AB (e) of this Act,—

10 pay to the Crown, within 20 days of demand being
made by notice in writing given by an employee of
the Ministry, the deemed value of the fish assessed
by the Director-General in accordance with **section**
28ZE of this Act.

15 “(2) Any amount required to be paid under **subsection (1)** of
this section in respect of the deemed value of any fish shall be
payable whether or not the commercial fisherman committed
an offence in respect of the fish.

20 “**28ZE. Assessment of deemed value of fish**—(1) For the
purposes of **section 28ZD** of this Act the Director-General may
assess the deemed value of any fish taken without authority,
and may assess different deemed values in relation to different
classes or species of fish, different classes of fishermen, and
different areas or circumstances in which fish are taken.

 “(2) In assessing the deemed value of any fish the Director-
General shall have regard to—

25 “(a) The market value of the fish to commercial fishermen, to
licensed fish receivers, and to consumers:

 “(b) Any proceeds or benefit received or likely to be received
by the commercial fisherman or any other person in
respect of the fish:

30 “(c) The removal of the commercial fisherman or any
licensed fish receiver or person with whom the
commercial fisherman is associated of any economic
incentive for the taking, processing, or sale of the
fish, or from the taking, processing, or sale of fish
taken without authority generally:

35 “(d) The need to provide an incentive for commercial
fishermen to land fish taken without authority,
particularly where such fish are dead or unlikely to
survive if returned to the water.

40 “(3) For the purposes of making any assessment of deemed
value under this section, the Director-General shall where
practicable consult with the Fishing Industry Board on—

New

- “(a) The appropriate deemed value, or guidelines for determining the appropriate deemed value, payable for any class or species of fish or class of fisherman: 5
- “(b) The circumstances in which it may be appropriate for a different deemed value to be assessed in relation to any particular area or circumstances in which fish are taken. 5
- “(4) Where any assessment of the deemed value of any fish is made under this section by any officer acting under the delegated authority of the Director-General, the fisherman is entitled to have the decision reviewed by the Director-General, or by an officer designated by the Director-General who was not involved in the making of the original assessment. 10
- “**28ZF. Amount of deemed value to be returned to fisherman where quota subsequently obtained**—(1) The amount of any deemed value paid to the Crown by a commercial fisherman pursuant to **section 28ZD** of this Act shall be held by the Crown on trust for the fisherman until the trust ends in accordance with this section or the fisherman is sooner refunded the amount of the deemed value. 15 20
- “(2) Subject to the provisions of this section, a commercial fisherman shall be entitled to a refund of the amount of any deemed value paid by the fisherman under **section 28ZD** of this Act in respect of any fish caught in any fishing year if, not later than one calendar month after the end of that fishing year,— 25
- “(a) The fisherman has—
- “(i) Bought or leased quota that would have authorised the taking of the fish if it had been held by the commercial fisherman at the time the fish were taken, being quota that applied to and was not otherwise fished in that fishing year; or 30
- “(ii) Entered into an arrangement with another commercial fisherman for the fish to be counted against unused quota for that fishing year of that other fisherman; and 35
- “(b) The fisherman notifies the Director-General accordingly and requests that the deemed value of the fish be refunded.
- “(3) No obtaining or arrangement of quota shall qualify a commercial fisherman to obtain a refund under this section of 40

New

the amount of the deemed value paid in respect of any fish to the extent that—

- 5 “(a) The quota has been fully fished by the end of the fishing year in which the unauthorised fish were taken; or
- “(b) The quota is used to obtain a refund under this section of the amount of deemed value paid in respect of any other fish.
- 10 “(4) The amount of any deemed value paid under **section 28zo** of this Act in respect of fish taken in any fishing year shall cease to be held on trust—
- “(a) On the 20th day of December following the end of that fishing year, where no claim for a refund of that amount has been made under this section:
- 15 “(b) On such date as the Director-General determines that a claim to a refund is not justified, where such a claim has been made under this section.
- “5) Notwithstanding section 69 of the Public Finance Act 1989, no interest shall be payable in respect of any amount that
- 20 is refundable under this section to the person entitled to the refund.”

3c. Taking fish, etc., commercially without permit prohibited—Section 62 of the principal Act (as substituted by section 13 (1) of the Fisheries Amendment Act 1986) is hereby

25 amended by inserting, after subsection (1), the following subsection:

“(1A) No person shall take any fish, aquatic life, or seaweed under the authority of a permit for the taking of fish, aquatic life, or seaweed otherwise than from a vessel if that person is

30 not named in that permit, unless a written agreement in a prescribed form or a form approved for the purpose by the Director-General authorising the person to take any fish, aquatic life, or seaweed under the authority of the permit—

- 35 “(a) Has been signed by the person and the commercial fisherman named in the permit; and
- “(b) Has been furnished to the Director-General.”

4. Records and returns—(1) The principal Act is hereby amended by repealing section 66 (as substituted by section 13

40 of the Fisheries Amendment Act 1986 and amended by section

35 (1) of the Official Information Amendment Act 1987), and substituting the following heading and section:

“Records, Returns, and Restrictions on Disposal of Fish, etc., by Commercial Fishermen and Others

“66. **Records and returns**—(1) The following persons shall 5
keep such accounts and records and furnish to the Ministry such returns and information as may be required by or under regulations made under this Act to assist the management and conservation of any fishery resource:

“(a) Holders of permits, licences, authorities, or approvals 10
issued under this Act to take fish, aquatic life, or seaweed by any method for any purpose:

“(b) Persons who have the right to take fish under any quota 15
issued under Part IIA of this Act and persons who hold an interest in any such quota:

“(c) Masters and owners of vessels registered under this Act: 15

“(d) Owners and persons in charge of any premises, vessel 20
(whether or not registered under this Act), or vehicle where fish, aquatic life, or seaweed are received, purchased, stored, transported, processed, sold, or otherwise disposed of:

“(e) Persons engaged in the receiving, purchasing, 25
transporting, processing, storage, sale, or disposal of fish, aquatic life, or seaweed, including persons who are—

“(i) Licensed to receive fish under regulations made pursuant to this Act:

“(ii) Licensed to export fish under the Fishing Industry Board Act 1963:

“(iii) Licensed to process fish under the Meat Act 30
1981.

“(2) Every holder of a licence issued by the Authority shall, in addition to complying with **subsection (1)** of this section, keep such accounts and records, and furnish to the Authority such 35
returns and information, as may be required by or under regulations made under this Act to assist the management and conservation of any fishery resource.

“(3) The Director-General or the Authority may, in any particular case or class of cases, require accounts, records, 40
returns, and information additional to those specified in regulations referred to in **subsections (1) and (2)** of this section to be kept and furnished by any person specified in those subsections to assist the management and conservation of any fishery resource.

“(4) Any return or information that is required pursuant to this Act to be furnished to any particular office of the Ministry shall be deemed not to have been properly furnished until it has been received at that office.

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New

“(4A) Any return or information or agreement that is required pursuant to regulations made under this Act to be furnished in a prescribed or approved manner or form shall be deemed not to have been properly furnished until it has been completed and furnished in the prescribed or approved manner or form.

“(5) Except in respect of a prosecution under this Act or any proceedings for the recovery by the Crown of the *(deemed value of salmon or excess or unauthorised bycatch fish assessed under section 88B)* amount of the deemed value of any fish payable under section 28zd of this Act, or where a Court so directs, no return or information furnished pursuant to this Act shall be disclosed or used in any proceedings whatever.

“(6) Nothing in subsection (5) of this section shall prohibit the Director-General or any officer authorised by the Director-General in that behalf from communicating to—

“(a) Any officer of the Department of Statistics any information which that officer is authorised by that Department to receive and which the Director-General considers is not undesirable to disclose and is reasonably necessary to enable that officer to carry out any official duty lawfully imposed by the Statistics Act 1975:

“(b) The Commissioner of Inland Revenue any information which the Director-General is lawfully bound to disclose.”

(2) Section 67B(1) of the principal Act (as so enacted) is hereby amended—

(a) By inserting, after the words “of this Act”, the words “, and of regulations referred to in section 66 of this Act,”:

(b) By adding the words “or regulations”.

(3) The Third Schedule to the Official Information Amendment Act 1987 is hereby amended by repealing so much of the item relating to the Fisheries Act 1983 as refers to section 66 (3).

New

(4) This section shall come into force on a date to be fixed by the Governor-General by Order in Council.

4A. Disposal of fish by commercial fishermen—Section 67 of the principal Act (as substituted by section 13 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after subsection (2), the following subsection: 5

“(2A) A commercial fisherman shall not enter into more than one such transaction with the same person within any 24-hour period.” 10

4B. Restrictions on purchase or acquisition of fish by certain persons—Section 67A of the principal Act (as substituted by section 13 (1) of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (2), and substituting the following subsection: 15

“(2) No person who is not a commercial fisherman or a person deemed to be licensed under regulations made under section 89 (1) (h) of this Act may purchase or otherwise acquire or be in possession of any fish for the purposes of sale, in any form, unless the person purchased or acquired the fish from— 20

“(a) A commercial fisherman in a transaction referred to in section 67 (2) of this Act; or

“(b) A person licensed or deemed to be licensed under regulations made under section 89 (1) (h) of this Act; or 25

“(c) The Crown.

4c. Supervision by scientific observers of transshipments, dumping of fish, and operation of greenweight conversion factors—The principal Act is hereby amended by inserting, after 67C (as substituted by section 13 (1) of the Fisheries Amendment Act 1986), the following section: 30

“67H. (1) Where—

“(a) A scientific observer is on board a vessel—

“(i) From which any fish are transhipped to another vessel; or 35

“(ii) From which any fish subject to a quota management system are returned to or abandoned in the sea; or

New

- “(iii) In respect of which any greenweight conversion factor certificate has been given pursuant to **section 3A (3)** of this Act; and
- 5 “(b) But for the presence and supervision of a scientific observer (whether required by any provision of this Act or regulation made or notice given under this Act, or by any term or condition imposed by the Director-General in relation to any consent, approval,
- 10 or certificate), the transshipment or dumping would be in contravention of section 101 or section 28zB or any other provision of this Act or any regulation made under it, or the conversion factor could not be applied within the terms and conditions of the certificate,—
- 15 the master of the vessel shall supply such information, and shall allow the scientific observer to carry out such inspections of the vessel, fish taken or processed, and documents, as the scientific observer may require for the purpose of supervising the transshipment, dumping, or processes relevant to determining
- 20 any greenweight conversion factor.
- “(2) Where a scientific observer is supervising any transshipment of fish from one vessel to another, the master of each vessel involved in the transshipment shall allow the observer on board the vessel, and shall supply such
- 25 information, and allow the observer to carry out such inspections, as the observer may require for the purpose of supervising the transshipment.
- “(3) Any regulations made under this Act may prescribe fees in respect of the provision of supervision by a scientific observer
- 30 in circumstances referred to in **subsection (1)** of this section, and, notwithstanding section 67G (2) of this Act, may provide for the cost of food and accommodation of the observer, while on the vessel for any period, to be met by the owner of the vessel.”

5. Powers of Fishery Officer—

New

(1) Section 79 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph: 5

“(a) Enter, or pass across any land and enter, examine, and search (by stopping or by opening where necessary), any vessel, conveyance of any kind, premises, place, parcel, package, record, or thing, where that Fishery Officer believes, on reasonable grounds,— 10

“(i) That any offence is being or has been committed against this Act or any regulations made under this Act; and

“(ii) That any fish, aquatic life, or seaweed taken or thing used or intended to be used in contravention of this Act or those regulations, or any record or information required by or under this Act to be furnished, or any article, record, document or thing which there is reasonable ground to believe will be evidence as to the commission of an offence against this Act or those regulations, may be concealed or located or held in that vessel, conveyance, premises, place, parcel, package, record, or thing:” 15 20

(2) Section 79 (1) (b) of the principal Act is hereby amended by omitting the words “(except a private dwelling place)”. 25

(3) Section 79 (1) (d) of the principal Act is hereby amended by omitting the words “and cause him to be brought before a District Judge to be dealt with by law as soon as practicable”.

(4) Section 79 of the principal Act is hereby amended by inserting, after subsection (5), the following subsection: 30

“(5A) Where a Fishery Officer arrests a person pursuant to subsection (1) (d) of this section,—

“(a) The officer shall cause the person to be delivered into the custody of a constable as soon as practicable; and

“(b) If the person so delivered into custody is released by a constable without bail pursuant to section 19A of the Summary Proceedings Act 1957, the duties under subsections (3) to (5) of that section relating to the laying and filing of an information shall be the duties of a Fishery Officer and not of a constable.” 35 40

New

- “(c) The Director-General may, in the case of failure to comply with the conditions of any bond, apply to a Court presided over by a District Court Judge for an order for estreat of the bond; and 5
- “(d) Where the Director-General so applies the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed; and 10
- “(e) If on the hearing of any such application it is proved to the satisfaction of the Court that any condition of the bond has not been kept, the Court may make an order to estreat the bond to such an amount as it thinks fit to any person bound thereby on whom notice is proved to have been served in accordance with this subsection; and 15
- “(f) Any penalty payable in accordance with this subsection shall be recoverable as if it were a fine. 20
- “(4) Where, in the opinion of the Director-General, any fish, aquatic life, or seaweed or other article seized pursuant to subsection (1) of this section may rot, spoil, or otherwise perish, the Director-General may arrange for its sale in such manner and for such price as the Director-General may determine. 25
- “(5) Where the ownership of any property cannot at the time of seizure be ascertained, the property seized shall be forfeit to the Crown and shall be disposed of as directed by the Director-General after 90 days from the date of seizure if, within that time, it has not been possible to establish the ownership of the property. 30
- “(6) Subject to **subsection (3)** of this section, all property seized pursuant to subsection (1) of this section and the proceeds from the sale of any such property pursuant to **subsection (4)** of this section, except where such property or proceeds have been forfeited to the Crown pursuant to **subsection (5)** of this section, shall be held in the custody of the Crown until— 35
- “(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 40
- “(b) Where such a charge or information is laid, upon the completion of proceedings in respect of the alleged

New

offence for which the property was seized, or such
sooner time as the Court may determine.

5 “(6A) Where any information or charge has been laid in
respect of the alleged offence for which the property was seized
pursuant to subsection (1) of this section, and that property
remains in the custody of the Crown, the Court may at any
time, on application by—

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

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

15 **5B. Director-General may direct that transfer or lease
of quota not to be registered pending laying of
information for quota management offence—**(1) The
principal Act is hereby amended by inserting, after section 80,
the following section:

20 “80A. (1) Where the Director-General—

“(a) Believes on reasonable grounds that any person has
committed a quota management offence or an
offence relating to returns and records (as those
terms are defined in **section 107B (1)** of this Act); and

25 “(b) Is satisfied that an information or charge will be laid
against that person in respect of the commission of
that offence,—

the Director-General may, at any time before an information or
charge is laid in respect of the offence, in writing direct any
30 Registrar that no transfer or lease of any quota or interest in
quota held by that person may be registered under **section 28P** or
section 28Q of this Act, and the provisions of **section 28Q (7)** of this
Act shall thereafter apply in respect of any such quota or
interest in quota while the direction is in force.

35 “(2) A direction given under **subsection (1)** of this section shall
not have effect until it is received by the Registrar, and shall
lapse on the expiry of the 30th day after the date on which the
direction was given by the Director-General, or at such earlier
date as may be specified in the direction.

New

“(3) On any decision being made not to lay an information or charge against the person, the Director-General shall forthwith notify the Registrar to whom the direction was given that the direction is withdrawn, and the direction shall thereupon cease to have effect. 5

“(4) The Director-General shall, as soon as practicable after a direction is given or withdrawn under this section, notify the person who is the subject of the direction of that fact.”

(2) This section shall come into force on a date to be fixed by the Governor-General by Order in Council. 10

6. Act not to apply to taking of fish in certain circumstances—(1) Section 88 of the principal Act (as amended by section 22 of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (1), and substituting the following subsections: 15

“(1) Nothing in this Act shall apply to any person using a landing net to secure fish lawfully taken with a rod and line.

“(1A) (*Subject to section 88A of this Act,*) Nothing in this Act shall apply to any person (not being a commercial fisherman) who, having unintentionally taken any fish or aquatic life contrary to the provisions of this Act or any regulations made under (it) this Act, immediately returns the fish or aquatic life with as little injury as possible to the water.” 20 25

(2) Section 22 of the Fisheries Amendment Act 1986 is hereby consequentially repealed.

Struck Out

7. New sections inserted relating to excess and unauthorised bycatch fish and salmon, and to giving of notices—The principal Act is hereby amended by inserting, after section 88, the following sections: 30

“88A. Salmon and certain excess or unauthorised bycatch fish taken by commercial fishermen to be returned to water—(1) A commercial fisherman who takes any excess or unauthorised bycatch fish, or who takes any salmon in contravention of any of the provisions of this Act or of any regulations or notice made under this Act, shall 35

Struck Out

immediately return the fish or salmon with as little injury as possible to the water, except where the fish or salmon are dead or so damaged as to be unlikely to survive.

5 “(2) In this section and in **section 88B** of this Act, the term ‘excess or unauthorised bycatch fish’ means fish that—

“(a) Are controlled fish, or fish subject to a quota management system, or fish subject to an allocation pursuant to regulations made under section 89 (1) (g) of this Act; and

10 “(b) Are taken by a commercial fisherman without the authority of, or in excess of any amount authorised to be taken under,—

15 “(i) Any controlled fishery licence held by that fisherman; or

“(ii) Any quota allocated to that fisherman under Part IIA of this Act; or

20 “(iii) Any allocation made to that fisherman pursuant to regulations made under section 89 (1) (g) of this Act; or

“(iv) Any public notice given under section 28T (3) (d) of this Act; or

“(v) Any arrangement or agreement entered into under section 87 of this Act.

25 “**88B. Deemed value of excess or unauthorised bycatch fish or salmon unlawfully taken to be paid to Crown—**

(1) Where a commercial fisherman who takes any excess or unauthorised bycatch fish or any salmon—

30 “(a) Fails, in contravention of **section 88A** of this Act, to return the fish or salmon to the water; or

“(b) Returns to the water fish or salmon that are dead or so damaged as to be unlikely to survive,—

35 the commercial fisherman shall, within 14 days of demand being made by the Director-General or a Registrar, and whether or not the fisherman has committed any offence, pay to the Crown the deemed value of the excess or unauthorised bycatch fish or salmon assessed by the Director-General in accordance with this section.

40 “(2) A commercial fisherman shall not be liable under this section to pay the deemed value of excess or unauthorised bycatch fish that are subject to a quota management system,

Struck Out

and shall be entitled to a refund of any such payment if already made, if, not later than 10 days after the end of the calendar month in which the fish were taken, the fisherman—

“(a) Buys or leases quota that would have authorised the taking of the fish if the quota had been held by the fisherman at the date the fish were taken, and notifies the Director-General accordingly; or

“(b) Enters into an arrangement with another commercial fisherman for the fish to be counted against the quota of that other fisherman, and notifies the Director-General accordingly and supplies a copy of the agreement to the Director-General.

“(3) In assessing the deemed value of any fish or salmon for the purposes of this section, the Director-General shall have regard to—

“(a) The market value of the fish or salmon to commercial fishermen, to licensed fish receivers, and to consumers:

“(b) Any proceeds or benefit received or likely to be received by the commercial fisherman or any other person in respect of the fish or salmon:

“(c) The removal from the commercial fisherman or any licensed fish receiver or person with whom the commercial fisherman is associated of any economic benefit from the taking, processing, or sale of the fish or salmon, or from the taking, processing, or sale of excess or unauthorised bycatch fish or salmon generally:

“(d) The need to provide an incentive for commercial fishermen to land fish or salmon taken without authority that are dead or are unlikely to survive if returned to the water.

“(4) Where any decision is made under this section as to the deemed value of any fish or salmon by any officer acting under the delegated authority of the Director-General, the fisherman is entitled to have the decision reviewed by the Director-General, or by an officer designated by the Director-General who was not involved in the making of the original decision.

“(5) Any money payable to the Crown under subsection (1) of this section in respect of the deemed value of any salmon shall, after deduction of such reasonable fee as the Minister may

Struck Out

determine in respect of the costs of assessment and collection, be paid without further appropriation than this section to such national association of acclimatisation societies as the Minister
 5 may designate, for allocation by that body to acclimatisation societies for the purpose of enhancing stocks of salmon.

“88c. **Giving of notices, etc.**—(1) Where pursuant to this

New

7. Giving of notices, etc.—The principal Act is hereby
 10 amended by inserting, after section 88, the following section:

“88A. (1) Except as otherwise specified in this Act or in regulations made under this Act, where pursuant to this

Act any notice or other document is to be given, served on, or furnished to any person, that notice or other document may
 15 be—

“(a) Given to the person personally; or

“(b) Sent by registered post to the person at the person’s usual or last known place of business or abode; or

“(c) Given personally to any other person authorised to act on behalf of the person; or
 20

“(d) Sent by registered post to that other person at that other person’s usual or last known place of business or abode; or

“(e) Except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence against this Act or any regulations made under this Act, sent by post to the person, or any other person authorised to act on the person’s behalf, at that person’s or other person’s usual or last known place of business or abode.
 25

“(2) Any notice or other document so sent by post or registered post shall be deemed to have been given, served, or received 7 days after the date on which it was posted, unless the person to whom it was posted proves that, otherwise than
 30 through that person’s fault, the notice or document was not received.”

8. Regulations—(1) Section 89 (1) of the principal Act is hereby amended by inserting, after paragraph (k), the following paragraphs:

“(ka) Prescribing the accounts, records, returns, and information that any person or class of person may be required to keep or furnish pursuant to section 66 or any other provision of this Act, and providing for— 5

“(i) The manner and form in which such accounts, records, returns, and information are to be kept or furnished: 10

“(ii) The time for or within which such accounts, records, returns, and information are to be kept or furnished:

“(iii) The person to whom or office of the Ministry to which such accounts, records, returns, and information are to be furnished: (”. 15

New

“(kb) Specifying for the purposes of Part IIA of this Act rules as to the manner and order in which fish catch is to be counted (or any underfishing is to be credited) against any quota, having regard to the basis on which the quota or any right to take fish under or count fish against the quota is held, the period for which any such quota or right is held, whether or not the quota or right is held by more than one person during any fishing year, the effects of overfishing and the carrying forward of quota pursuant to section 28v of this Act, and other relevant matters; and prescribing circumstances in which or conditions on which any such rules will not apply:” 20 25 30

(2) Section 89 (1) of the principal Act is hereby further amended by inserting, after paragraph (m), the following paragraph:

“(ma) Prescribing forms for the purposes of this Act:” 35

9. Liability of directors and managers—The principal Act is hereby amended by repealing section 94 (as substituted by section 27 (1) of the Fisheries Amendment Act 1986).

New

- 9A. Knowingly permitting premises to be used for offence against Act**—The principal Act is hereby amended by inserting, after section 98 (as substituted by section 27 (1) of the Fisheries Amendment Act 1986), the following section:
- 5 “98A. (1) Every person commits an offence who knowingly permits any premises, vessel, or vehicle to be used for the purpose of the commission of an offence against this Act or any regulation made or notice given under this Act.
- 10 “(2) Section 105 (1) of this Act shall not apply in respect of any proceedings for an offence against **subsection (1)** of this section.”

Struck Out

- 15 **10. Ownership and possession of fish**—Section 99 (1) of the principal Act (as substituted by section 27 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the words “owner of the vessel” where they first occur, the words “and deposited by the owner with the
- 20 Registrar at the port where the vessel is registered”.

New

- 10. Ownership and possession of fish**—Section 99 of the principal Act (as substituted by section 27 (1) of the Fisheries Amendment Act 1986) is hereby amended by repealing subsection (1), and substituting the following subsection:
- 25 “(1) Subject to the provisions of any agreement to the contrary that is—
- “(a) In the prescribed form or a form approved by the Director-General; and
- “(b) Signed by the owner of the vessel and the other party or
- 30 parties to the agreement; and
- “(c) Furnished to the Registrar at the port where the vessel is registered—
- all fish (except acclimatised fish), aquatic life, or seaweed taken by any means from a vessel shall, for the purposes of this Act

New

and any regulations made or notice given under this Act, be deemed to be owned by the owner of the vessel.”

10A. Fish taken in New Zealand fisheries waters must be landed in New Zealand—Section 101 of the principal Act (as substituted by section 27 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of subsection (1) of this section, fish shall be deemed to have been landed at a place outside New Zealand if those fish are landed in New Zealand but—

“(a) Are not delivered to a person who is licensed or deemed to be licensed under regulations made pursuant to section 89 (1) (h) of this Act; and

“(b) Are loaded aboard a vessel or aircraft for export from New Zealand.”

11. Controlled fish and gear deemed to be taken or used in controlled fishery—The principal Act is hereby amended by inserting, after section 102 (as substituted by section 27 (1) of the Fisheries Amendment Act 1986), the following section:

Struck Out

“102A. (1) Where in any proceedings for an offence against this Act or against any regulations made under this Act it is established that any controlled fish were found on board a vessel, it shall be presumed in the absence of proof to the contrary that the fish were taken from a controlled fishery.

“(2) Where in any proceedings for an offence against this Act or against any regulations made under this Act it is established that any gear or equipment was found on board a vessel which controlled fish were also found, it shall be presumed in the absence of proof to the contrary that the gear or equipment was used in a controlled fishery.”

New

“102A. For the purposes of this Act and any regulation made or notice given under this Act, if, in the opinion of a Fishery Officer, any controlled fish was taken from a controlled fishery or any gear or equipment was used in a controlled fishery, being controlled fish, gear, or equipment found on board a fishing vessel by the Fishery Officer, then, in the absence of proof to the contrary, that controlled fish, gear, or equipment, as the case may be, shall be deemed to have been so taken or used.”

11A. Fish in excess of certain quantities deemed to have been acquired or possessed for purposes of sale—

The principal Act is hereby amended by inserting, after section 103 (as substituted by section 27 (1) of the Fisheries Amendment Act 1986), the following section:

“103A. For the purposes of this Act and any regulation made or notice given under this Act, any person who is found in possession of any species or class of fish of an amount or quantity exceeding 7 times the amateur individual daily limit (if any) prescribed in respect of that class or species of fish shall, in the absence of proof to the contrary, be deemed to have acquired or to possess the fish for the purposes of sale.”

Struck Out

12. Strict liability—Section 105 of the principal Act (as substituted by section 27 (1) of the Fisheries Amendment Act 1986) is hereby amended by adding the following subsection:

“(3) It shall be a defence in any prosecution of a commercial fisherman for an offence against section 28ZA (1) or section 88A (1) of this Act, or for any offence of taking or being in possession of fish without the authority of any quota, or in excess of any amount authorised to be taken under any quota allocated to the commercial fisherman under this Act, if the commercial fisherman proves that—

“(a) At the time of the alleged offence the fisherman held a quota that authorised the taking of any species or class of fish subject to a quota management system; and

Struck Out

- “(b) The fish were taken as an inevitable or unintended consequence of the lawful taking of other fish; and
- “(c) The fisherman has notified the Ministry of the taking of the fish in any return for the appropriate period 5 required to be made pursuant to **section 66** of this Act; and
- “(d) Not later than 10 days after the end of the calendar month in which the fish the subject of the proceedings were taken, the fisherman— 10
- “(i) Had bought or leased quota that would have authorised the taking of the fish by that fisherman if the quota had been held by the fisherman at the date the fish were taken; or
- “(ii) Had entered into an arrangement with 15 another commercial fisherman for the fish to be counted against the quota of that other fisherman, and had notified the Director-General accordingly and supplied a copy of the agreement to the Director-General.” 20

New

12. New sections inserted relating to defences in proceedings under Act—The principal Act is hereby amended by inserting, after section 105 (as substituted by section 27 (1) of the Fisheries Amendment Act 1986), the 25 following sections:

- “105AA. **Defence where fish returned to water with as little injury as possible, or notified and surrendered to Crown**—(1) It shall be a defence in any proceedings for an offence concerning the unauthorised taking or possession of 30 any fish or aquatic life in contravention of this Act or any regulations made under this Act if the defendant proves that—
- “(a) The defendant did not intend to commit the offence; and
- “(b) The fish or aquatic life were neither dead nor unlikely to survive if returned to the sea; and 35
- “(c) The fish or aquatic life were returned to the sea, with as little injury as possible, as soon as practicable after they were taken.

New

5 “(2) It shall be a defence in any proceedings for an offence concerning the unauthorised taking or possession of any fish or aquatic life in contravention of this Act or any regulations made under this Act if the defendant proves that—

“(a) The defendant did not intend to take the fish; and

“(b) The fish were taken as an inevitable consequence of the lawful taking of other fish; and

10 “(c) The defendant notified a Registrar as soon as practicable of the taking of the fish, and surrendered ownership of the fish to the Crown and disposed of the fish in accordance with the directions of the Registrar.

15 “105AB. **Defence available to commercial fisherman taking unauthorised quota management system fish**—It shall be a defence in any proceedings against a commercial fisherman for an offence concerning the taking or possession of any fish subject to a quota management system otherwise than in the circumstances permitted by section 28ZA (1) of this Act if the commercial fisherman proves that—

20 “(a) At the time the fish were taken by the commercial fisherman, the fisherman had a current right to take any species or class of fish subject to a quota management system; and

25 “(b) The commercial fisherman did not intend to take the fish; and

“(c) The fish were taken as an inevitable consequence of the lawful taking of other fish; and

30 “(d) The commercial fisherman has notified the Ministry of the taking of the fish in any return for the appropriate period required to be made under this Act; and

“(e) The commercial fisherman has either—

35 “(i) Not later than 15 days after the end of the calendar month in which the fish were taken, bought or leased quota that would have authorised the taking of the fish if it had been held by the commercial fisherman at the time the fish were taken, and notified the Registrar accordingly; or

40 “(ii) Not later than 15 days after the end of the calendar month in which the fish were taken, entered into an arrangement with another

New

commercial fisherman (being a fisherman who has the current right to take fish under any quota) for the fish to be counted against unused quota of that other fisherman, and has notified the Registrar 5 accordingly; or

“(iii) Where neither subparagraph (i) nor subparagraph (ii) of this paragraph applies, and where demand has been made by notice in writing given by any employee of the Ministry, paid to the Crown within 10 20 days of such demand being made the deemed value of the fish assessed by the Director-General in accordance with section 28ZE of this Act.”

13. New sections inserted relating to liability of companies and principals for actions of servants and agents, evidence in proceedings, etc.— 15
The principal Act is hereby amended by repealing sections 106 and 107 (as substituted by section 27 (1) of the Fisheries Amendment Act 1986), and substituting the following sections and headings:

“105A. **Liability of principal for actions of agent—** 20
(1) Where a person (in this section referred to as the principal) is required by or under this Act to—

“(a) Keep any account or record; or

“(b) Furnish any return or information; or

“(c) Complete any form; or 25

“(d) Take any action in relation to the keeping of any account or record or the furnishing of any return or information or the completing of any form,—

every act or omission of any person acting or purporting to act as agent for the principal in respect of any such requirement 30 shall be deemed for the purposes of this Act to be the act or omission of the principal, unless the principal proves that the person purporting to act as agent had no authority, either express or implied, to act as the principal's agent for the purpose of keeping any account or record, or furnishing any 35 return or information, or completing any form, or taking any action in respect of such matters, as the case may be.

“(2) Subject to subsection (3) of this section, any defence specified in section 105 (2) of this Act is available to the principal only to the extent that it can be proved in respect of 40

the person in relation to whose act or omission the prosecution is brought.

Struck Out

5 “(3) A defence specified in section 105 (2) of this Act is available to a principal prosecuted in respect of the act or omission of an agent if the principal satisfies the Court that—
“(a) The principal could not or would not have benefited, or would have suffered a detriment, from the act or omission in respect of which the prosecution is brought, if the alleged offence had remained undetected; and
10 “(b) Having regard to—
“ (i) The purpose or motive of the agent whose act or omission it was; and
15 “ (ii) The relationship between the principal and the agent whose act or omission it was, or between the principal and any person appearing or likely to benefit from the alleged offence; and
20 “ (iii) In the case of a principal that is a body corporate, whether or not any person responsible for or closely associated with the management of the body corporate appears to have benefited from the act or omission, or would have been likely to so benefit if the alleged offence had remained undetected; and
25 “ (iv) Any action taken by the principal, once aware of the act or omission, in respect of the agent whose act or omission it was, or any person appearing likely to benefit from the alleged offence,—
30

New

35 “(3) A defence specified in section 105 (2) of this Act is available to a principal prosecuted in respect of the act or omission of an agent if the principal satisfies the Court that, having regard to—
“ (a) Any likely or possible benefit or detriment arising to the principal from the act or omission in respect of which the prosecution is brought if the alleged offence had remained undetected; and

New

- “(b) The purpose or motive of the agent whose act or omission it was; and
- “(c) The relationship between the principal and the agent whose act or omission it was, or between the principal and any person appearing or likely to benefit from the alleged offence; and 5
- “(d) Where the principal is a body corporate, whether or not any person responsible for or closely associated with the management of the body corporate appears to have benefited from the act or omission, or would have been likely to so benefit if the alleged offence had remained undetected; and 10
- “(e) Any action taken by the principal, once aware of the act or omission, in respect of the agent whose act or omission it was or any person appearing likely to benefit from the alleged offence,— 15

it would be repugnant to justice to apply to the principal the limitation imposed by subsection (2) of this section in relation to any defence provided for in section 105 (2) of this Act. 20

- “(4) For the purposes of this section,—
- “(a) A person may act as an agent for a principal whether or not that person is employed by the principal and whether or not acting for reward:
- “(b) Any agent of a person acting as agent shall be deemed to be acting as an agent of the principal. 25

“105B. **Liability of companies and persons for actions of officers and servants**—(1) Every act or omission of any officer or employee of a (*body corporate*) person, or of the master or any member of the crew of a vessel that is chartered or leased by the (*body corporate*) person for the purpose of engaging in fishing, shall be deemed for the purposes of this Act to be the act or omission of the (*body corporate*) person. 30

“(2) Subject to subsection (3) of this section, any defence specified in section 105 (2) of this Act in relation to a prosecution under this Act or any regulation made under this Act is available to a (*body corporate*) person only to the extent that it can be proved in respect of the officer, employee, master, or crew member in relation to whose act or omission the prosecution is brought. 40

Struck Out

- 5 “(3) A defence specified in section 105 (2) of this Act is available to a body corporate prosecuted in respect of the act or omission of a person referred to in **subsection (1)** of this section if the body corporate satisfies the Court that—
- “ (a) The body corporate could not or would not have benefited, or would have suffered a detriment, from the act or omission in respect of which the prosecution is brought, if the alleged offence had remained undetected; and
- 10 “ (b) Having regard to—
- “ (i) The purpose or motive of the person whose act or omission it was; and
- 15 “ (ii) The relationship between the body corporate and the person whose act or omission it was, or between the body corporate and any person appearing or likely to benefit from the alleged offence; and
- 20 “ (iii) Whether or not any person responsible for or closely associated with the management of the body corporate appears to have benefited from the act or omission, or would have been likely to so benefit if the alleged offence had remained undetected; and
- 25 “ (iv) Any action taken by the body corporate, or by any person responsible for its management, once aware of the act or omission, in respect of the person whose act or omission it was, or any person appearing or likely to benefit from the alleged offence,—
- 30 it would be repugnant to justice to apply to the body corporate the limitation imposed by **subsection (2)** of this section in relation to any defence provided for in section 105 (2) of this Act.

New

- 35 “(3) A defence specified in section 105 (2) of this Act is available to a person prosecuted in respect of the act or omission of a person referred to in **subsection (1)** of this section if the person satisfies the Court that, having regard to—

New

- “(a) Any likely or possible benefit or detriment arising to the person from the act or omission in respect of which the prosecution is brought if the alleged offence had remained undetected; and 5
- “(b) The purpose or motive of the person whose act or omission it was; and
- “(c) The relationship between the person and the person whose act or omission it was, or between the person and any person appearing or likely to benefit from the alleged offence; and 10
- “(d) Where the person is a body corporate, whether or not any person responsible for or closely associated with the management of the body corporate appears to have benefited from the act or omission, or would have been likely to so benefit if the alleged offence had remained undetected; and 15
- “(e) Any action taken by the person, or, where the person is a body corporate, by any person responsible for its management, once aware of the act or omission, in respect of the person whose act or omission it was or any person appearing or likely to benefit from the alleged offence,— 20
- it would be repugnant to justice to apply to the person the limitation imposed by subsection (2) of this section in relation to any defence provided for in section 105 (2) of this Act.” 25

“105c. **Liability of directors and managers**—Where any body corporate is convicted of an offence against this Act or any offence against any regulation made under this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act that constituted the offence took place with the person’s authority, permission, or consent, or that the person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it. 30 35

“105d. **Presumption as to authority**—A return or other information purporting to be furnished by or on behalf of any person shall, for all purposes of this Act, be deemed to have been furnished by that person or by that person’s authority unless the contrary is proved. 40

“Evidence in Proceedings

“106. **Certificates and official documents**—(1) Subject to subsection (4) of this section, in any proceedings for an offence against this Act or against any regulation made under this Act, the following certificates or documents shall be admissible in evidence and shall, in the absence of proof to the contrary, be sufficient evidence of the matter stated in the certificate or of the contents of the document, as the case may require:

“(a) A certificate purporting to be signed by the Director-General or any Registrar to the effect that, on a date specified in the certificate,—

“(i) A vessel specified in the certificate was or was not registered under this Act; or

“(ii) A person specified in the certificate was or was not the owner of a registered fishing vessel specified in the certificate; or

“(iii) A fishing permit, authority, or approval authorising a person named in the certificate to take fish, aquatic life, or seaweed was or was not in force; or

“(iv) A fishing permit, authority, or approval authorising the taking of fish, aquatic life, or seaweed from a vessel named in the certificate was or was not in force; or

“(v) Any fishing permit, authority, or approval referred to in subparagraph (iii) or subparagraph (iv) of this paragraph was or was not subject to any specified condition attached or relating to the permit, authority, or approval; or

“(vi) Any specified interest in any specified quota allocated under Part IIA of this Act was or was not held by a person named in the certificate; or

“(vii) Any licence relating to the acquisition, storage, processing, or disposal of fish, aquatic life, or seaweed was or was not held by a person named in the certificate; or

“(viii) Any licence referred to in subparagraph (vii) of this paragraph was or was not subject to any specified condition attached or relating to the licence; or

“(ix) Any specified return or information required to be furnished under this Act was or was not furnished:

New

“(x) Any vessel was or was not subject to a conversion factor certificate given under **section 3A (3)** of this Act; or

“(xi) Any conversion factor certificate referred to in **subparagraph (x)** of this paragraph was or was not subject to any specified term or condition: 5

“(b) A certificate purporting to be signed by the Secretary to the Authority to the effect that, on a date specified in the certificate,— 10

“(i) A vessel specified in the certificate was not the subject of a boat authority; or

“(ii) The defendant or any other named person was not the holder of a licence or a temporary licence: 15

“(c) A copy of any licence, boat authority, or other document granted or issued under this Act purporting to be certified as correct by the Secretary to the Authority or the Director-General or any Registrar:

“(d) Any— 20

“(i) Certificate purporting to be signed by a Chief Surveyor appointed under the Survey Act 1986, or by the Royal New Zealand Naval Hydrographer, and stating the status of any area; or

“(ii) Map, plan, or other such document purporting to be certified as true by a Chief Surveyor or by the Royal New Zealand Naval Hydrographer: 25

“(e) Any—

“(i) Certificate purporting to be signed by the Registrar of Ships appointed under the Shipping and Seamen Act 1952 that, on a date specified in the certificate, a vessel specified in the certificate was not a New Zealand ship within the meaning of that Act; or 30 35

“(ii) Copy of a certificate of registry issued under the Shipping and Seamen Act 1952 which purports to be certified correct by the Registrar of Ships or by any officer duly authorised by the Registrar of Ships in that behalf: 40

“(f) Any certificate purporting to be signed by a serviceman within the meaning of the Defence Act 1971 and stating—

5 “(i) The position of any fishing vessel at a date and time specified in the certificate; or

10 “(ii) That the serviceman is satisfied that the equipment used to determine the position of any fishing vessel was in proper working order and that the equipment was accurate within specifications detailed in the certificate.

“(2) A certificate purporting to be signed by a person referred to in **subsection (1)** of this section may relate to any 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
20 it.

“(4) Any certificate (not being a certified copy of a document) referred to in **subsection (1)** of this section shall be admissible in evidence only if—

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
30 not propose to call the person who signed the certificate as a witness at the hearing; and

35 “(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.

40 “(5) The Court shall not make an order under **subsection (4)** of this section unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of a certificate.

“106A. **Copies of accounts, records, returns, and other documents**—(1) A copy of any account, record, return, or information required to be kept or furnished pursuant to this

Act that purports to be certified by the Director-General or a Registrar as having been kept or furnished (as the case may require), at or within or in relation to any specified time or date or period, shall be sufficient evidence, in the absence of proof to the contrary, of the fact that the account, record, return, or information was so kept or furnished. 5

“(2) Any copy of a record or other document taken by a Fishery Officer or an examiner under section 79 (4) of this Act, or any copy of such a copy, shall, subject to **subsection (3)** of this section, be admissible, to the same extent as the original record or document would itself be admissible, as evidence of the record or document and of any transactions, dealings, amounts, or other matters contained in the record or document. 10

“(3) A copy of a record or document referred to in **subsection (2)** of this section (including a copy of such a copy) shall be admissible in evidence only if— 15

“(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,— 20

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

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

“(b) The Court has not, on the application of the defendant made not less than 4 days before the hearing (or such lesser period as the Court in the special circumstances of the case thinks fit), ordered that the copy should not be admissible in the proceedings. 25

“(4) The Court shall not make an order under **subsection (3)** of this section unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of the copy. 30

“106B. **Presumption as to master of fishing vessel**—In any proceedings for an offence against this Act or any regulations made under this Act, an allegation made by the informant in any information relating to whether or not any person was the master of any registered fishing vessel at any specified time shall be presumed to be true in the absence of proof to the contrary. 35

“106C. **Presumptions to apply whether or not separate or further evidence adduced in support**—Where it is provided in this Act that any presumption is to apply in respect of any matter, the presumption shall apply whether or not 40

separate or further evidence is adduced by or on behalf of the informant in support of the relevant allegation or presumption.

“Penalties

New

5 **“107. Penalties—**(1) Every person who commits an offence against this Act or any regulation made under this Act for which no other penalty is prescribed shall on conviction be liable to a fine not exceeding \$250,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every
10 day after the first day on which the offence has continued.

15 **“(2)** Subject to section 73 (2) of the Public Finance Act 1977, all fines imposed and recovered in proceedings taken by an acclimatisation society for any breach of this Act or any regulations made or notice given under this Act shall be paid to the acclimatisation society in the district of which the fines were received, for the purpose of the distribution, rearing, cultivation, and protection of fish in the district of that society.”

20 **13A. New sections substituted relating to forfeiture of property and quota on conviction—**(1) The principal Act is hereby amended by repealing sections 107B and 107C (as substituted by section 27 (1) of the Fisheries Amendment Act 1986 and amended by section 86 (1) of the Public Finance Act 1989), and substituting the following sections:

25 **“107B. Forfeiture of property and quota on conviction—**(1) In this section, unless the context otherwise requires,—

 “‘Fish’ includes any aquatic life or seaweed:

30 “‘Offence relating to returns and records’ means an offence against section 66 of this Act or any regulations made under section 89 (1) (ka) of this Act; but does not include an offence for which the maximum penalty does not exceed \$5,000:

35 “‘Property’ means any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, or equipment; but does not include quota:

 “‘Quota’, in relation to a person convicted of an offence, means any guaranteed minimum individual transferable quota (including any right to receive

New

individual transferable quota attached to the quota) and any individual transferable quota held or leased by that person, and—

“(a) Includes any interest held by that person in 5 any quota:

“(b) Does not include—

“(i) Any quota or interest in quota acquired by the person after the date of the offence; or

“(ii) Any quota or interest in quota that, before 10 the date of the conviction, has been transferred or leased otherwise than in circumstances in which the transfer or lease would be ineffective under **section 28a (7)** of this Act; or 15

“(iii) Any leasehold or other interest in quota that was for a specified period only, where that interest has lapsed by effluxion of time:

“‘Quota management offence’ means—

“(a) An offence against any of the provisions of Part 20 IIA of this Act; and

“(b) An offence against—

“(i) Section 67 (1) of this Act (which relates to the selling of fish by commercial fishermen otherwise than to certain authorised 25 persons); or

“(ii) Section 67A of this Act (which relates to the purchase or acquisition of fish otherwise than from certain authorised persons); or

“(iii) Section 101 of this Act (which relates to the 30 landing of fish outside New Zealand),—

where the fish to which the offence relates are subject to a quota management system; and

“(c) An offence against any regulation made under this Act that is specified by this Act or by regulations 35 made under this Act to be a quota management offence;—

but does not include an offence for which the maximum penalty does not exceed \$5,000.

“(2) On the conviction of any person for a quota 40 management offence or an offence relating to returns and records,—

New

- “(a) Any property used in respect of the commission of the offence (whether or not seized pursuant to section 80 of this Act); and
- 5 “(b) Any fish in respect of which the offence was committed (whether or not seized pursuant to section 80 of this Act); and
- “(c) Any proceeds from the sale of such fish pursuant to **section 80 (4)** of this Act; and
- 10 “(d) Any quota held by the person at the time the offence was committed—
shall be forfeit to the Crown unless the Court for special reasons relating to the offence thinks fit to order otherwise.
- “(3) On the conviction of any person for an offence against
15 this Act or regulations made under this Act (not being a quota management offence or an offence relating to records and returns or an offence for which the maximum penalty is a fine not exceeding \$5,000),—
- 20 “(a) There shall be forfeit to the Crown, unless the Court for special reasons relating to the offence thinks fit to order otherwise,—
- “(i) Any property used in respect of the commission of the offence (whether or not seized pursuant to section 80 of this Act); and
- 25 “(ii) Any fish in respect of which the offence was committed (whether or not seized pursuant to section 80 of this Act); and
- “(iii) Any proceeds from the sale of such fish pursuant to **section 80 (4)** of this Act:
- 30 “(b) The Court may order that any quota held by the person at the time the offence was committed shall be forfeit to the Crown.
- “(4) On the conviction of any person for an offence against this Act or any regulations made under this Act for which the
35 maximum penalty is a fine not exceeding \$5,000, or on the discharge of any person without conviction pursuant to section 19 of the Criminal Justice Act 1985 in respect of any offence against this Act or any regulations made under this Act,—
- 40 “(a) Any fish in respect of which the offence was committed (whether or not seized pursuant to section 80 of this Act); and

New

“(b) Any proceeds from the sale of such fish pursuant to section 80 (4) of this Act; and

“(c) Any illegal fishing gear in respect of which the offence was committed (whether or not seized pursuant to section 80 of this Act),—

shall be forfeit to the Crown, unless the Court for special reasons relating to the offence thinks fit to order otherwise.

“(5) For the purposes of section 19 of the Criminal Justice Act 1985, any forfeiture referred to in subsection (2) or subsection (3) (a) of this section shall be deemed to be a minimum penalty in respect of the commission of an offence referred to in those subsections, except to the extent that the Court for special reasons relating to the offence thinks fit to order that the property, fish, proceeds, or quota not be forfeit.

“107c. **Provisions relating to forfeited property and quota**—(1) Where any property, fish, proceeds, quota, or interest in quota (hereafter in this section all referred to as property) is forfeit or ordered to be forfeit to the Crown under section 107b of this Act, the Minister may, subject to the provisions of this section, dispose of that property as the Minister thinks fit.

“(2) Any person whose property has been forfeit to the Crown under section 107b of this Act or any person having a legal or equitable interest in such property may apply to the Minister within 30 days of the conviction for the release of the property so forfeited; and the Minister may order the release of such property on payment to the Crown of such amount (if any) as the Minister thinks appropriate, being an amount not exceeding the amount the items otherwise forfeited are estimated by the Director-General to realise if sold by public auction in New Zealand.

“(3) In considering whether or not to release any forfeited property that is quota or an interest in quota, or in determining the amount of any payment upon which such property may be released, the Minister shall have regard to, and may give such weight in respect of each such matter as the Minister thinks fit in the circumstances of the case to, the following matters:

“(a) The management and conservation of fisheries and fishery resources within New Zealand and New Zealand fisheries waters:

New

- “(b) The need for adequate deterrents against the commission of offences against this Act and regulations made under this Act:
- 5 “(c) The effect of the offence from which the forfeiture arose on the fishery from which the fish were taken or in which the vessel was, and on other fishermen (whether commercial or amateur) in that fishery:
- 10 “(d) The effect of offending of the type from which the forfeiture arose on the relevant fishery, and on fishermen (whether commercial or amateur) in that fishery:
- 15 “(e) The social and economic effects on the person who held the quota or interest in quota, and persons employed by that person, of non-release of the forfeited quota or interest:
- “ (f) The previous offending history (if any) of the person who held the quota or interest in quota:
- 20 “(g) The economic benefits that accrued or might have accrued to the person who held the quota or interest in quota through the commission of the offence:
- “ (h) The interest of any other person in the quota concerned:
- “ (i) Such other matters as the Minister considers relevant.
- 25 “(4) Any forfeiture directed or redemption payment imposed pursuant to this section shall be in addition to, and not in substitution for, any other penalty that may be imposed by the Court or by this Act.
- “ (5) Notwithstanding **subsection (2)** of this section, where the prosecution was commenced on the information of an officer of
- 30 an acclimatisation society, the forfeited property shall be disposed of by the Minister to that acclimatisation society for the purposes of sale and may be sold by the society, and the proceeds of sale shall be paid into its funds and applied for the purposes of the society.
- 35 “(6) Nothing in this section or in **section 107B** of this Act shall prevent the acquisition of any individual transferable quota or any interest in any individual transferable quota (including any quota or interest in quota forfeited under **section 107B** of this Act) from the Crown or any other person.”
- 40 (2) The Public Finance Act 1989 is hereby consequentially amended by repealing so much of the Schedule as relates to section 107B (5) of the Fisheries Act 1983.

New

(3) This section shall come into force on a date to be fixed by the Governor-General by Order in Council.

Struck Out

14. Assault, etc., on person acting as Fishery Officer or examiner deemed to be offence against this Act—The principal Act is hereby amended by inserting, after section 107D (as enacted by section 27 (1) of the Fisheries Amendment Act 1986), the following section:

“107DA. (1) Where a person is convicted of assault or any other offence involving violence or the threat of violence on or to a person who was at the time of the assault or other offence carrying out the duties of a Fishery Officer or examiner under this Act, that conviction shall, for the purposes of sections 107B to 107D of this Act, be deemed to be a conviction for an offence against this Act.

“(2) This section shall apply with respect to offences committed on or after the commencement of the Fisheries Amendment Act 1988.”

New

14. Forfeiture of licence, approval, permission, or permit, and banning from industry on second conviction—(1) Section 107D of the principal Act (as substituted by section 27 (1) of the Fisheries Amendment Act 1986) is hereby amended—

- (a) By inserting in subsection (1), after the words “regulation made under this Act”, the words “(not being an offence referred to in subsection (6) of this section)”;
- (b) By omitting from subsection (1) the words “or notice given under this Act”, and substituting the words “under this Act (not being an offence referred to in subsection (6) of this section)”;
- (c) By inserting in subsection (3), after the words “regulation made under this Act”, the words “(not being an offence referred to in subsection (6) of this section)”.

New

(2) Section 107D of the principal Act (as so substituted) is hereby further amended by adding the following subsections:

“(5) For the purposes of this section, where—

5 “(a) A person is convicted of assault, or of any other offence of which an assault constitutes an element (being an offence committed on or after the **1st day of October 1989**); and

10 “(b) The assault was on a person who was at the time carrying out the duties of a Fishery Officer or examiner under this Act,—
that conviction shall be deemed to be a conviction in respect of an offence against this Act.

15 “(6) Nothing in **subsection (1)** of this section shall apply to any offence committed by a person in respect of which—

 “(a) A conviction is entered on or after the date on which **section 13A** of the Fisheries Amendment Act **1989** comes into force; and

 “(b) The maximum penalty is a fine not exceeding \$5,000.”