

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 29 September 1978

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 double rule, or with double rule before first line and after last line.

Hon. Mr Bolger

MARINE MAMMALS PROTECTION

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A BILL INTITULED

An Act to make provision for the protection, conservation, and management of marine mammals within New Zealand and within New Zealand fisheries waters

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

1. **Short Title and application**—(1) This Act may be cited as the Marine Mammals Protection Act 1978.

10 (2) Nothing in this Act shall apply—
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(a) With respect to any dead marine mammal taken before the commencement of this Act:

- (b) Before the 1st day of January 1979 with respect to any permit, licence, or permission issued or given pursuant to—
- (i) Section 45 of the Fisheries Act 1908; or
 - (ii) Any other Act. 5
- (3) The provisions of this Act shall apply in respect of—
- (a) Any matter or thing done, to be done, or omitted to be done within New Zealand or New Zealand fisheries waters:
 - (b) Any act or omission occurring on any New Zealand ship or aircraft, wherever that ship or aircraft may be: 10
 - (c) Subject to section 24 (1A) of this Act, any act or omission by any person who is a New Zealand citizen, wherever that person may be. 15

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

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

“Approved” means approved by the Minister: 20

“Crown-owned land” means unoccupied land vested in Her Majesty and administered by a Minister of the Crown for the time being charged with the administration of the Department of State that has control of the land: 25

“Director-General” means the Director-General of Agriculture and Fisheries:

“Hovercraft” has the same meaning as in the Hovercraft Act 1971:

“Inspector of Sea Fishing” means any person appointed or declared to have been appointed as such under section 4 of the Fisheries Act 1908: 30

“International agreement” means any bilateral or multilateral treaty, convention, or agreement, to which New Zealand is a party, and any understanding concluded by the Government of New Zealand and the government of any other country: 35

“Marine mammal” includes—

(a) Any mammal which is morphologically adapted to, or which primarily inhabits, any marine environment; and 40

(b) All species of seal (*Pinnipedia*), whale, dolphin, and porpoise (*Cetacea*), and dugong and manatee (*Sirenia*); and

(c) The progeny of any marine mammal; and

(d) Any part of any marine mammal:

“Minister” means the Minister of Fisheries:

5 “New Zealand fisheries waters” has the same meaning as in section 2 (1) of the Fisheries Act 1908:

“New Zealand ship” has the same meaning as in the Shipping and Seamen Act 1952:

“Officer” means a Marine Mammals Officer declared or appointed as such under section 10 of this Act:

10 “Permit” means a permit issued under this Act:

“Place” includes any building (not being a dwelling-house), any land, and any waters:

15 “Registrar” means an officer of the Ministry of Agriculture and Fisheries authorised by the Director-General to issue licences, permits, and permissions under Part I of the Fisheries Act 1908:

“Take” includes—

20 (a) To take, catch, kill, injure, attract, poison, tranquillise, herd, harass, disturb, or possess:

(b) To brand, tag, mark, or do any similar thing:

(c) To flense, render down, or separate any part from a carcass:

25 (d) To attempt to do any act specified in paragraph (a) or paragraph (b) or paragraph (c) of this definition:

30 “Vessel” means any ship, boat, steamer, lighter, launch, raft, barge, punt, or ferry boat; and includes every description of vessel, whether used in navigation or in any way kept or used as a hulk or storeship or for any other purpose.

35 (2) For the purposes of this Act, a marine mammal shall be in the possession of any person when that person has, alone or jointly with any other person, possession of or control over the marine mammal, or possession of or control over any vessel, vehicle, aircraft, hovercraft, container, package, receptacle, or place in or on which the marine mammal is kept.

3. Act to bind the Crown—This Act shall bind the Crown.

40 **4. Restrictions on taking marine mammals**—(1) Subject to this Act, no person shall take any marine mammal, whether alive or dead, in or from its natural habitat or in or from any other place without first obtaining a permit to do so from the Minister or from any person or persons authorised in that behalf by the Minister.

(2) Subject to section 5 (3) of this Act and to any regulations made under section 26 of this Act, no person shall import into New Zealand or export from New Zealand any marine mammal or marine mammal product except pursuant to a permit issued under this Act.

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(3) Nothing in subsection (2) of this section shall apply with respect to any whale product the subject of an order made under section 48 or section 70 of the Customs Act 1966.

(4) No permit shall be issued for the taking of any marine mammal in or from a reserve within the meaning of the Reserves Act 1977 or in or from a National Park within the meaning of the National Parks Act 1952 without the concurrence of the Minister of Lands.

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(5) A permit shall not be required—

(a) By any person who finds or collects bones, teeth, ivory, or ambergris that have already separated naturally from a marine mammal if that person, as soon as practicable, notifies a Registrar or Inspector of Sea Fishing of the find, and gives details of the time, place, and circumstances under which the find was made:

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(b) By any person who finds any dead marine mammal or part of one and, if authorised to do so by an Inspector of Sea Fishing and acting pursuant to his directions, sends the mammal or part to the Ministry of Agriculture and Fisheries or *(, if authorised to do so by an Inspector of Sea Fishing,)* to any approved research establishment, laboratory, or public museum:

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New

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(c) By any person taking from or bringing into New Zealand any marine mammal product, being an ornament or an item for personal use or adornment made wholly or principally from any part or parts of a marine mammal, if the marine mammal product accompanies that person from or into New Zealand or comprises part of that person's belongings and was in existence in a similar form as at the commencement of this Act.

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5. Application for permit—(1) Every person who desires to obtain a permit to take any marine mammal or to import or

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export any marine mammal or marine mammal product shall make application in writing to the Director-General accompanied by the prescribed fee (if any).

(2) Every application shall specify—

- 5 (a) The full name and address of the applicant, whether or not the applicant is a New Zealand citizen, details of such qualifications and experience as the applicant considers will assist the Minister in his consideration of the application:
- 10 (b) In the case of an intended research project, a full description of the project or programme in which the marine mammal to be taken will be used, a complete list of the sponsors or co-operating institutions concerned with the project, and the names and qualifications of any scientists involved:
- 15 (c) Where the marine mammal is for display or zoological purposes, details relating to the facilities where the mammal taken will be held or displayed or, if a certificate has been issued in respect of any zoological garden pursuant to regulations made under section 25 of the Animals Act 1967, details of the certificate:
- 20 (d) Where a marine mammal is to be captured, the number of persons to be involved, the population or area from which it is proposed to take the mammal, and details of the proposed methods of capture and transportation.
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(3) No person shall make an application under this section to import any marine mammal or marine mammal product unless a permit issued under the Animals Act 1967 in respect of such import has first been obtained.

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(4) The Director-General may investigate any application, and may request the applicant to provide such further information as the Director-General thinks will assist the Minister.

35 On completing any such investigation the Director-General shall forward the application and all supporting documents to the Minister, together with a report on the nature and extent of the investigation and any conclusions that the Director-General may have drawn as a result.

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New

(4A) The Minister shall, before he grants a permit under section 6 of this Act, publish, by notice in the *Gazette*, details of the application for that permit and shall, in the same notice, call for submissions in respect of that application to be made to him in writing by any person within 28 days after the date of publication of the notice.

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New

(4B) Notwithstanding subsection (4A) of this section, the Minister shall not, except in the case of an application for a permit to hunt and kill any marine mammal or capture any marine mammal for display purposes, be required to publish the notice referred to in that subsection if he is satisfied that it is expedient for the notice not to be published in any case where the application relates to an emergency situation or to the taking of any marine mammal solely for the purposes of research.

- (5) In considering any application for a permit, the Minister shall have regard to—
- (a) The need to conserve, protect, or manage any marine mammal:
 - (b) Any international agreement to which New Zealand is a party(.):
 - (c) Any submissions received pursuant to subsection (4A) of this section.

6. Grant of permit—The Minister, in his discretion, may grant a permit under this Act or refuse to grant a permit, and his decision shall be final.

7. Conditions of permit—(1) Subject to such conditions as may be prescribed by regulations made under this Act, the Minister may attach to any permit such conditions as he thinks fit, including conditions relating to—

- (a) The taking of marine mammals solely for the purpose of research:
- (b) The taking of marine mammals to be held in zoological gardens or aquaria or other places of a similar nature for observation by the public under such conditions as may also be specified in the permit:
- (c) The methods by which any species of marine mammals may be managed:
- (d) The boats, gear, equipment, and methods to be used in taking any marine mammal:
- (e) The payment of a deposit or fee (*or royalty*) not exceeding such amount as may be prescribed by regulations made under this Act in respect of any marine mammal:
- (f) The entering into of a bond in favour of the Crown, either with or without sureties, for such amount as

the Minister thinks will give security for the performance by the permit holder of any obligation incurred under this Act or the permit:

5 (g) The records that are to be kept by the permit holder in relation to any marine mammal, and any information which is to be supplied to either the Minister or the Director-General.

(2) Any permit may be revoked and the conditions attached to it amended at any time by the Minister or by any person
10 authorised by him.

(3) No permit shall be transferred to any other person except with the consent in writing of the Minister.

New

7A. Register of marine mammal permits—(1) For the purposes of this Act, the Director-General shall set up and
15 maintain a Register of permits granted by the Minister.

(2) The Register shall be open to inspection by the public during ordinary office hours on payment of a fee of \$2.

(3) On payment to him of a fee of \$5, the Director-
20 General shall send to any person requesting the same in writing a copy of any specified entry in the Register.

(4) Wherever a permit is granted, renewed, amended, or revoked by the Minister under this Act, the Director-General shall make an appropriate entry in the Register, showing—

25 (a) In the case of the issue of a permit, the name and address of the holder, the actions authorised by the permit, any conditions which the Minister may attach or any directions he may have given in respect of it, and the date on which the application
30 was granted:

(b) In the case of the revocation of a permit, the date and the grounds on which the revocation was made.

(5) The Director-General shall also, in respect of any entry, record such other particulars as may from time to time
35 be prescribed by regulations made under this Act, and such further conditions, amendments, or directions as the Minister may from time to time attach, make, or give in respect of any permit.

8. Offence to take marine mammal without permit—

40 (1) Every person commits an offence and is liable on summary conviction before a Magistrate to a fine not exceeding \$10,000 who takes, has in possession, exports, imports, has

on board any vessel, vehicle, aircraft, or hovercraft, or has control of any marine mammal otherwise than under or pursuant to this Act or a permit.

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(2) Where any person is convicted of an offence against subsection (1) of this section, the Court may direct that any vessel, vehicle, aircraft, hovercraft, conveyance, gear, or equipment used in respect of the commission of the offence shall be forfeited to the Crown and either disposed of as the Minister directs, or redeemed by the offender upon payment to the Crown of such amount as the Court thinks appropriate, being an amount not exceeding the amount that the Director-General estimates would be realised if those items were sold by public auction in New Zealand.

(3) Any forfeiture directed or redemption payment imposed pursuant to subsection (2) of this section shall be in addition to, and not in substitution for, any fine imposed pursuant to subsection (1) of this section.

New

(2) Upon the conviction of any person for an offence against subsection (1) of this section, any marine mammal unlawfully taken, in possession, under the control of any person, or on board any vessel, vehicle, aircraft, or hovercraft, and all vessels, vehicles, aircraft, hovercraft, gear, nets, tackle, equipment, and apparatus used in respect of the commission of the offence shall be forfeit to the Crown, and shall be disposed of as the Minister thinks fit.

9. Director-General to be notified of actions taken in respect of marine mammals—(1) Where any person completes any action in relation to a marine mammal, being an action that he is authorised to take under or pursuant to this Act or to a permit, he shall forthwith give to the Director-General full details of the results of that action, including—

- (a) The number of injuries caused or deaths among any taken marine mammals, together with the date on and the location at which those injuries or deaths occurred, and the species injured or killed;
- (b) The cause, as far as may be determined, of any such injury or death;
- (c) The measures taken to avoid further such injuries or deaths;
- (d) Whether any species of marine mammal other than that authorised was taken, the location and date of

such a taking, the method by which it was taken, and whether or not it appeared to be unharmed when it was released.

(2) Every person commits an offence against this Act who
5 contravenes subsection (1) of this section.

10. Marine Mammals Officers—(1) Every Inspector of Sea Fishing, and every constable, shall be a Marine Mammals Officer for the purposes of this Act.

(2) For the purposes of this Act, the Director-General may
10 from time to time appoint any person to be a Marine Mammals Officer on such terms and conditions as may be approved. If any person appointed as an Officer is a full-time officer or employee of the State services he shall not be entitled to any additional remuneration in respect of his
15 appointment under this subsection.

(3) Every person appointed under subsection (2) of this section shall be appointed for such term, not exceeding 3 years, as the Director-General thinks fit, and may be
reappointed.

20 (4) Any person appointed under subsection (2) of this section may at any time be removed from office by the Director-General for incapacity, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Director-General.

25 (5) Any person appointed under subsection (2) of this section shall, on the expiration of the term of his appointment, or on the sooner expiry of his appointment by removal from office or resignation, surrender to the Director-General his warrant of appointment.

30 (6) No person appointed under subsection (2) of this section shall, by virtue of that appointment, be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956.

35 (7) Every person declared to be an Officer under subsection (1) of this section shall have and may exercise, in respect of supervising, administering, and enforcing the provisions of this Act, all the powers that an Inspector of Sea Fishing has in relation to supervising, administering, and
40 enforcing the provisions of Part I and Part III of the Fisheries Act 1908.

(8) Every Officer appointed under subsection (2) of this section shall have such duties and may exercise such powers

in relation to marine mammals as the Director-General may direct, being powers of no greater extent than those exercised by a fishery officer pursuant to the Fisheries Act 1908.

(9) The Director-General shall issue to every Officer (except a constable) a warrant showing the Officer's authority to exercise any powers conferred on him pursuant to this section. 5

(10) The production by any Officer of any warrant issued under this section or section 4 of the Fisheries Act 1908 or of any evidence that the Officer is a constable shall, until the contrary is proved, be sufficient authority for any such Officer to do anything authorised by subsection (7) or subsection (8) of this section. 10

11. Officers to be provided with subsistence and accommodation—(1) Any Officer authorised in that behalf by the Director-General may go on board any vessel, aircraft, or hovercraft used for taking any marine mammal and shall, during such period as may be specified in his authority, be entitled to remain on board, to be provided with subsistence and, where appropriate, accommodation, and to be present at all operations relating to the taking of marine mammals. 15 20

(2) The master or person in command of any vessel or aircraft or hovercraft shall be paid such amount as may be approved for supplying any subsistence or accommodation to an Officer under subsection (1) of this section. 25

(3) Every person commits an offence against this Act who refuses to supply subsistence or accommodation to any Officer under this section, or to allow him to be present at all operations relating to the taking of marine mammals.

12. Powers of search—(1) Subject to this Act and notwithstanding anything to the contrary in the Fisheries Act 1908, every Officer 30

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may, by force if necessary, enter, inspect, and examine any place, vehicle, vessel, aircraft, or hovercraft where he has reason to believe or suspect that a breach of this Act or of any regulation made under it has been or is being committed, or that preparation has been made to commit such a breach. 35

New

5 who has reason to believe or suspect that a breach of this Act or of any regulation made under it has been or is being committed, may enter, inspect, and examine any vehicle, vessel, aircraft, or hovercraft.

(2) An Officer shall, before entering on any (place,) vehicle, vessel, aircraft, or hovercraft, produce his warrant of appointment or other evidence that he is an Officer if asked to do so by the person in actual (occupation of the place or
10 in actual) charge of the vehicle, vessel, aircraft, or hovercraft.

(3) An Officer shall not enter, inspect, or examine any aircraft or hovercraft unless he is accompanied by the pilot in command, or the owner, or a representative or agent of
15 the owner, of the aircraft or hovercraft.

(4) An Officer shall not enter any dwellinghouse or place except pursuant to a warrant issued under section 13 of this Act.

(5) Every Officer may, in the course of any search under
20 this section or section 13 of this Act, open (by force if necessary) any container, package, or receptacle, and seize and take away any marine mammal supposedly illegally taken together with any such container, package, or receptacle, or
25 seize and take away any thing which he has reason to believe will be evidence of a breach of the provisions of this Act or of any regulation made under it.

New

(6) Every person in or about any dwellinghouse, place,
30 vehicle, or vessel inspected under the provisions of this Act, and the pilot in command and the owner and every agent or representative of the owner of any aircraft or hovercraft so inspected, shall—

- (a) Facilitate the entry, inspection, and examination by an Officer:
- 35 (b) Facilitate the removal of any container, package, receptacle, or thing.

13. Officer may (search dwellinghouse) obtain search warrant—

(1) Where any Justice of the Peace or Magistrate is satisfied on oath that there is probable cause to
40 suspect—

- (a) That any breach of this Act or of any regulations made under it has been or is being committed (within any dwellinghouse); or

(b) That preparation has been made to commit such a breach,—
 the Justice or Magistrate may, by warrant under his hand, authorise an Officer named in the warrant together with such assistants as may be necessary to enter and search the dwellinghouse, place, vehicle, vessel, aircraft, or hovercraft that is mentioned in the warrant, by force if necessary, at the time or times that are so mentioned. (*in the warrant.*)
 Every warrant shall continue in force until the purpose for which it was issued has been satisfied.

(2) It is the duty of every one executing a warrant under this section to have it with him and to produce it if required to do so.

14. Officers, etc., protected from proceedings—No action or proceedings shall be brought against the Crown, or any Officer, or any person acting under the instructions of an Officer, in respect of any thing done or undertaken for the purpose of carrying out the provisions of this Act or any regulations made under it where the Crown or those persons have acted in good faith and with reasonable care.

15. Reporting of accidental death or injury—(1) Where any person, in the course of fishing pursuant to any licence, permit, or permission granted or given under the Fisheries Act 1908, accidentally kills or injures a marine mammal he shall—

- (a) If fishing from a vessel, record the accident in the vessel's log and report the accident in writing to a Registrar or Inspector of Sea Fishing not later than 48 hours after the arrival of the vessel in port; and
 (b) In any other case, report the accident in writing to a Registrar or Inspector of Sea Fishing as soon as practicable.

(2) Any person (not being a person to whom subsection (1) of this section applies) who, by any means whatsoever, accidentally kills or injures any marine mammal shall report the accident to a Registrar or Inspector of Sea Fishing as soon as practicable.

(3) Every report under subsection (1) or subsection (2) of this section shall include—

- (a) The location of the area where the accident took place; and

(b) **(The species of the marine mammal killed or injured;)**
The species (if known) of the marine mammal
killed or injured, or a general description of the
mammal; and

5 (c) A description of conditions and the circumstances of the accident.

(4) Every person commits an offence against this Act who contravenes subsection (1) or subsection (2) of this section.

New

10 **15A. Purse seining**—(1) No person shall use any purse seine net for the purposes of fishing unless—

(a) That person has in the net an escape panel or aperture from which any dolphin or porpoise can readily escape; and

15 (b) That person follows a fishing practice acceptable to the Director-General.

(2) Subject to subsection (3) of this section, the Director-General may, from time to time by notice in the *Gazette*, grant, in respect of any person or class of persons, or any vessel, vehicle, aircraft, or hovercraft, or any fish, or any waters, exemption from the requirements of subsection (1) of this section, either wholly or partially and either with or without conditions; and may in like manner amend or revoke any such notice.

25 (3) No exemption from the requirements of subsection (1) of this section shall be given in respect of a purse seine net used in fishing for yellowfin tuna.

(4) Every person commits an offence against this Act who contravenes subsection (1) of this section or, where any exemption has been granted by notice under subsection (2) of this section, contravenes or fails to comply with any conditions imposed by such notice.

16. Treatment or disposal of sick or dead marine mammals—(1) Nothing in this Act shall affect—

35 (a) Any person who gives any humane assistance, care, or medication to any stranded, sick, or injured marine mammal if (where known) details of the mammal's species, length, sex, and condition, or a general description of the mammal, and details of the treatment and any results of the treatment are forwarded to the nearest Registrar or Inspector of Sea Fishing as soon as practicable:

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(b) The moving of any marine mammal by or under the direction of any Officer in the interests of public safety or the well-being of the mammal:

(c) The destruction of any aged, sick, distressed, or troublesome marine mammal by or under the direction of an Inspector of Sea Fishing or person authorised by the Minister. 5

(2) Dead marine mammals shall be disposed of in accordance with the advice of an Inspector of Sea Fishing or person authorised by the Minister, which advice shall be given, 10 where practicable, after consultation with the occupier of the place where the marine mammal is found.

17. Destruction of diseased captive marine mammals—

(1) Where any marine mammal is taken or kept pursuant to a permit issued under this Act, and is found at any time— 15

(a) To be affected with any unhealthy condition or to be diseased or suffering from any disability; or

(b) To be so injured or debilitated that it might be suffering—

an Officer, registered veterinary surgeon, or other person 20 authorised by the Minister, may seize or destroy that marine mammal.

(2) The costs of and incidental to any such seizure or destruction shall be borne by the person keeping the marine mammal concerned. 25

(3) No compensation shall be payable to any person under this section.

18. No derogation from certain enactments—Nothing in this Act shall derogate from the provisions of—

(a) The Animals Protection Act 1960: 30

(b) Regulations made under the Antarctica Act 1960 relating to Antarctic flora and fauna:

(c) The Ross Dependency Whaling Regulations, 1929, as published in the *Gazette* on the 31st day of October 1929 at pages 2747 and 2748. 35

19. Advisory, research, and technical committees—(1) The Minister may from time to time appoint such advisory, research, or technical committees of one or more persons as he thinks fit, and he may delegate to any such committee such of the powers conferred on him under this Act as he thinks fit or require the committee to investigate and report to him on such matters relating to marine mammals as he

may direct or of which the committee, or any member or members of it, may have special knowledge or experience.

(2) Every committee purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) Every delegation under this section shall be revocable at will.

(4) No delegation under this section shall prevent the exercise of any power by the Minister.

New

(5) Every committee appointed under this section is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951, and there shall be paid to the members of the committee, from money appropriated by Parliament for the purpose, remuneration by way of salary, fees, allowances, travelling allowances, or expenses in accordance with that Act and its provisions shall apply accordingly.

(6) The Minister may direct the Director-General to provide from his Ministry such services as may be necessary to enable any committee to discharge its functions more properly.

20. Marine mammal sanctuaries—(1) Subject to this section, the Minister may, by notice in the *Gazette*, define any place and declare it to be a marine mammal sanctuary, and may in like manner, after considering any submissions in writing he may have received within 28 days after the date of publication of a notice in the *Gazette* indicating his intention,

(*may in like manner*) vary, redefine, or abolish the sanctuary.

(2) Where any other Minister of the Crown has the control of any Crown-owned land, foreshore, seabed, or waters of the sea which is declared to be a marine mammal sanctuary or which forms part of one, the consent of that Minister to the declaration shall be notified concurrently with the notice given under subsection (1) of this section.

(3) When defining and declaring a sanctuary under this section, the Minister may specify the activities that may or may not be engaged in within the sanctuary, and may impose restrictions in respect of the sanctuary.

(4) No marine mammal sanctuary shall be declared in any Maritime or National Park, in any reserve within the meaning of the Reserves Act 1977, or in any marine reserve declared under the Marine Reserves Act 1971.

(5) Every constable, and every ranger appointed under section 38 of the Wildlife Act 1953, section 27 of the National Parks Act 1952, or under section 8 of the Reserves Act 1977 shall have the authority to exercise any of the powers conferred on a ranger under section 39 of the Wildlife Act 1953 in any marine mammal sanctuary. 5

21. Offences and penalties—(1) Every person commits an offence against this Act who—

- (a) Acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act or any regulations made under it; or 10
 - (b) Makes any false or misleading statement or any material omission in any communication with or application or return to the Minister, to the Director-General, or to the Ministry of Agriculture and Fisheries or any duly authorised officer or employee of the Ministry of Agriculture and Fisheries, or any Officer, (whether in writing or otherwise) for the purposes of this Act or of any regulations made under it; or 15
 - (c) Refuses or fails to furnish any return or information or particulars required by the Minister, the Director-General, or any duly authorised officer or employee of the Ministry of Agriculture and Fisheries, or any Officer, for the purposes of this Act or of any regulations under it. 20
- (2) Every person commits an offence against this Act who—
- (a) Except under the authority of any enactment, places or leaves any structure or trap or chemical or other substance in any place where a marine mammal is or is likely to be and which injures or harms, or is likely to injure or harm, any marine mammal: 25

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- (b) Uses any purse seine net in any area in which marine mammals are present without having in the net an escape panel or aperture from which any dolphin or porpoise can readily escape: 35

- (c) Uses any vehicle, (*speed boat*), vessel, aircraft, or hovercraft to herd or harass any marine mammal. 40

(3) Every person who commits an offence against this Act for which no penalty is provided otherwise than in this section is liable, on summary conviction before a Magistrate, to a fine not exceeding—

- (a) In the case of an offence against section 15A of this Act or subsection (2) of this section, \$5,000; and
- (b) In any other case, \$1,000.

22. **Onus of proof in respect of certain offences**—Where any
5 person is charged with an offence under this Act arising out
of his taking or doing, without a permit or authority, any
action for the taking or doing of which a permit or authority
is required, the onus shall be on that person to prove that at
the relevant time he held the required permit or authority.

10 23. **Proceedings in respect of offences**—Notwithstanding
anything to the contrary in section 14 of the Summary Pro-
ceedings Act 1957, proceedings may be taken under this Act
against any person for an offence committed at sea or beyond
15 the outer limits of New Zealand fisheries waters at any time
within 12 months from the date on which that person first
lands in New Zealand after the commission of the offence
or, for an offence committed in New Zealand, within 12
months after the date of the commission of the offence.

24. **Defences in respect of certain offences**—(1) Where any
20 person (not being a New Zealand citizen) is charged with
any offence under this Act, it shall be a defence to the charge
if the defendant proves that the act or omission constituting
the offence took place beyond the outer limits of New Zealand
fisheries waters or, not being an offence concerning the
25 importing of any marine mammal or marine mammal
product, relates only to marine mammals taken beyond those
outer limits.

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30 (1A) Where any New Zealand citizen is charged with any
offence under this Act, it shall be a defence to the charge if
the defendant proves that the act or omission constituting
the offence took place beyond the outer limits of New Zea-
land fisheries waters and did not contravene any international
agreement to which effect had been given by regulations
35 made under section 26 of this Act or by any other enact-
ment.

(2) Where any person is charged with any offence under this Act, it shall be a defence to the charge if the defendant proves that the act or omission constituting the offence took place in circumstances of stress or emergency and was necessary for the preservation, protection, or maintenance of human life. 5

(3) Where any person is charged with killing or injuring any marine mammal contrary to the provisions of this Act or any regulations made under it and the provisions of subsection (1) or subsection (2) of this section do not apply in the circumstances of the case, it shall be a defence to the charge if the defendant proves that the death of or injury to the marine mammal was accidental and that the requirements of section 15 of this Act were complied with. 10

25. Liability for causing Officer to incur expense—Where any person causes an Officer to incur any expense that he would not otherwise have incurred, by failing to comply with or acting in contravention of any provision of this Act or any regulations made under it, or by failing to comply with or acting in contravention of any order or direction or requirement or conditions reasonably and properly given or imposed in accordance with this Act or any such regulations, that person shall reimburse the Crown for the amount of any such expense that is reasonably and properly incurred, and that amount shall be recoverable from that person as a debt due to the Crown. 15 20 25

26. Regulations—(1) The Governor-General may, from time to time by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the manner in which any marine mammal may be measured: 30
- (b) Prescribing forms of applications and of permits required for the purposes of this Act:
- (c) Prescribing the amount of any deposit or fees to be paid in respect of any application made under this Act, and in respect of the granting of any permit: 35

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(d) Prescribing the maximum amount of any royalty payable in respect of any species of marine mammal:

- (e) Prescribing conditions pursuant to which permits may be issued, and conditions which may be attached to permits already issued: 40

- (f) Prescribing and limiting the number of permits of any class or classes that may be issued in any year:
 - (g) Prescribing the amount of any deposit, bond, or security, which may be required under this Act:
 - 5 (h) Giving effect to the terms of any international agreement to which New Zealand is a party:
 - (i) Regulating, prohibiting, or restricting the sale, distribution, custody, carriage, packaging, handling, or use of any marine mammal, marine mammal product, or any product containing anything derived from a marine mammal:
 - 10 (j) Regulating, prohibiting, or restricting the keeping of any marine mammal, marine mammal product, or any product containing anything derived from a marine mammal:
 - 15 (k) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) The Governor-General may, from time to time by Order in Council, make such regulations as the Governor-General in Council thinks necessary or expedient for the protection, conservation, or management of any marine mammal.
- (3) Any regulations under this section may apply generally throughout New Zealand or New Zealand fisheries waters or may be made to apply only within such area or areas as may be specified in the regulations.
- (4) Any regulations under this section may confer on the Minister or on the Director-General power to issue, in such manner as may be prescribed, instructions, orders, requirements, permits, authorities, or notices for the purpose of ensuring the protection, management, or conservation of any marine mammal and, where the regulations so provide, any such instruction, order, requirement, permit, authority, or notice shall have effect according to its tenor and shall be
- 35 complied with by all persons affected by it.

27. Costs of administering Act, receipts—(1) All costs and expenses properly incurred by any person for the purposes of this Act shall be met from money appropriated by Parliament for the purpose.

40 (2) All fees (, *royalties,*) or other money (except fines) received pursuant to this Act shall be deemed to be a receipt of the Ministry of Agriculture and Fisheries and shall be accounted for accordingly.

- 28. Amendments, repeals, and revocations—**(1) The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.
- (2) The following enactments are hereby repealed: 5
- (a) The Whaling Industry Act 1935:
 - (b) The Whaling Industry Amendment Act 1974:
 - (c) The Fisheries Amendment Act 1956.
- (3) The following regulations are hereby revoked:
- (a) The Whaling Industry Regulations 1961:
 - (b) The Whaling Industry Regulations 1961, Amendment 10 No. 1:
 - (c) The Whaling Industry Regulations 1961, Amendment No. 2:
 - (d) The Seal Fishery Regulations 1946:
 - (e) The Seal Fishery Regulations 1946, Amendment No. 7: 15
 - (f) The Seal Fishery Regulations 1946, Amendment No. 11.
- (4) As from the commencement of this Act, the enactments of the Parliament of the United Kingdom intituled—
- (a) The Seal Fisheries (North Pacific) Act, 1895, 58 and 20 59 Vict., c. 21; and
 - (b) The Seal Fisheries (North Pacific) Act, 1912, 2 and 3 Geo. 5, c. 10—
- shall cease to have effect as part of the law of New Zealand.
- (5) The following Orders in Council are hereby consequen- 25 tially revoked:
- (a) The Order in Council dated the 4th day of March 1913, and published in the *Gazette* on the 13th day of March 1913 at page 815, whereby consent was given to sections 3 and 4 of the enactment men- 30 tioned in subsection (4) (b) of this section being extended to New Zealand:
 - (b) The Order in Council dated the 18th day of August 1913, and published in the *Gazette* on the 21st day of August 1913 at pages 2633 and 2634, whereby a 35 paragraph (a) of this subsection to come into operation in New Zealand.
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SCHEDULE

Section 28 (1)

ENACTMENTS AMENDED

Enactment Amended	Amendment
<p>1908, No. 65 — The Fisheries Act 1908 (Re-printed 1976, Vol. 5, p. 3705)</p>	<p>By omitting from the definition of the term “fishing” in section 2 (1) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By repealing from section 2 (1) the definition of the term “seals”.</p> <p>By repealing section 2 (2) (as added by section 2 (5) of the Fisheries Amendment Act 1959, and amended by section 2 of the Fisheries Amendment Act (No. 2) 1969 and section 2 of the Fisheries Amendment Act (No. 2) 1977), and substituting the following subsection:</p> <p>“(2) For the purposes of this Part and Part III of this Act and of any regulations under this Part and Part III of this Act, fish or oysters, or any parts thereof, shall be deemed to be in the possession of any person when that person has, alone or jointly with any other person, possession of or control over the fish or oysters, or the parts thereof, or possession of or control over any vessel, vehicle, container, package, thing, or place in or on which are the fish or oysters, or the parts thereof:</p> <p>Provided that, in any proceedings for an offence against this Part or Part III of this Act or any regulations under this Part or Part III of this Act, being an offence relating to the possession of any fish or oysters, or any parts thereof, found in or on any vessel, vehicle, container, package, thing, or place in the possession or under the control of the defendant, alone or jointly with any other person, it shall be a good defence if the defendant satisfies the Court that he had no knowledge that they were in or on that vessel, vehicle, container, package, thing, or place or that, although he did know that they were in or on the vessel, vehicle, container, package, thing, or place, he did not know and could not with reasonable diligence have ascertained that the possession of the fish or oysters, or the parts thereof, would constitute the offence charged against him.”</p>

*Marine Mammals Protection*SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment Amended	Amendment
1908, No. 65—The Fisheries Act 1908— <i>continued</i>	<p>By repealing section 2 (3) (as added by section 2 of the Fisheries Amendment Act 1967, and amended by section 2 of the Fisheries Amendment Act (No. 2) 1977), and substituting the following subsection:</p> <p>“(3) Every reference in this Part and Part III of this Act or in any regulations made under this Part or Part III to any fish or oyster shall, unless the context otherwise requires, be deemed to include any part of any such fish or oyster.”</p> <p>By omitting from section 5 (1) (d) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By omitting from section 5 (1) (h) (as amended by section 2 (a) of the Fisheries Amendment Act 1956) the words “, oysters, or marine mammals (including seals)”, and substituting the words “or oysters”.</p> <p>By omitting from section 5 (1) (j) (as substituted by section 3 (2) of the Fisheries Amendment Act 1959) the words “, oyster, or marine mammal (including any seal), or any part of any fish or oyster or of any such marine mammal, or any oil or blubber from any such marine mammal”, and substituting the words “or oyster, or any part of any fish or oyster”.</p> <p>By omitting from section 5 (1) (k) the words “, oyster, or seal”, and substituting the words “or oyster”.</p> <p>By omitting from section 5 (1) (m) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By omitting from section 5 (1) (o) (as amended by section 2 (a) of the Fisheries Amendment Act 1956) the words “, oysters, or marine mammals (including seals)”, and substituting the words “or oysters”.</p>

SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

Enactment Amended	Amendment
1908, No. 65—The Fisheries Act 1908— <i>continued</i>	<p>By omitting from section 5 (1) (p) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By omitting from section 5 (1) (pp) (as inserted by section 2 (1) of the Fisheries Amendment Act 1964) the words “, oysters, and marine mammals (including seals)”, and substituting the words “or oysters”.</p> <p>By omitting from section 10 (1) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By repealing sections 42, 43, 44, 45, 45A (as inserted by section 5 of the Fisheries Amendment Act 1959), and 48.</p> <p>By omitting from section 49 (1) (as substituted by section 4 (1) of the Fisheries Amendment Act 1967) the words “, oysters, or seals” wherever they occur, and substituting in each case the words “or oysters”.</p> <p>By omitting from section 49 (6) (as so substituted) the words “, oyster, or seal”, and substituting the words “or oyster”.</p> <p>By omitting from section 53 (as amended by section 6 (1) of the Fisheries Amendment Act 1948) the words “, oysters, or seals”, and substituting the words “or oysters”, and by omitting the words “and any skins, oil, or blubber from seals unlawfully taken.”.</p> <p>By repealing section 57 (as amended by section 6 (2) of the Fisheries Amendment Act 1948).</p> <p>By omitting from section 58 (1) (b) (as substituted by section 5 (1) of the Fisheries Amendment Act 1967, and amended by section 7 of the Fisheries Amendment Act (No. 2) 1977) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By omitting from section 68 the words “or of any seal, or of any skin, oil, blubber, or other unmanufactured product of any seal.”.</p>

SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Act Amended	Amendment
1948, No. 11 — The Fisheries Amendment Act 1948 (Reprinted 1976, Vol. 5, p. 3793)	By repealing section 6 (2).
1953, No. 7—The Ministry of Agriculture and Fisheries Act 1953 (Reprinted 1972, Vol. 3, p. 2575)	By inserting in the Schedule (as substituted by section 4 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972) after the reference to the Marine Farming Act 1971, the words “The Marine Mammals Protection Act 1978”. By omitting from the Schedule the reference to the Whaling Industry Act 1935.
1959, No. 8 — The Fisheries Amendment Act 1959 (Reprinted 1976, Vol. 5, p. 3796)	By repealing sections 2 (5) and 5.
1960, No. 30—The Animals Protection Act 1960	By repealing subsection (5) of section 12, and substituting the following subsection: “(5) Where any Inspector finds any marine mammal which appears to the Inspector to be <u>stranded</u> , aged, sick, distressed, or troublesome, he shall forthwith report the matter to an Inspector of Sea Fishing as defined in the Marine Mammals Protection Act 1978 to be dealt with pursuant to that Act.”
1967, No. 49—The Fisheries Amendment Act 1967 (Reprinted 1976, Vol. 5, p. 3836)	By repealing section 2.
1969, No. 57—The Fisheries Amendment Act (No. 2) 1969 (Reprinted 1976, Vol. 5, p. 3840)	By repealing section 2.
1977, No. 28—The Territorial Sea and Exclusive Economic Zone Act 1977	By repealing paragraph (b) of section 10 (2), and substituting the following paragraph: “(b) The Marine Mammals Protection Act 1978.”
1977, No. 131—The Fisheries Amendment Act (No. 2) 1977	By repealing section 2 (3), (5).