

## ROCK OYSTER FARMING BILL

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### EXPLANATORY NOTE

THIS Bill makes provision for the grant of leases of land below high-water mark for the purpose of establishing oyster farms for the cultivation of rock oysters. At present the provisions of section 150 of the Harbours Act 1950 prohibit leasing such land unless authority to do so is granted by a special enactment of the General Assembly. Most of the land which may be leased is the property of the Crown but in some areas Harbour Boards and local authorities may have vested in them the foreshore or a harbour bed. Where this occurs leases may be granted by such bodies only with the consent of the Minister of Marine.

This Bill makes provision for public notification of applications for leases and for the lodging of objections to the grant of leases. The leases may be registered at the Land Registry Office, and where there is no head title, or there are description or survey difficulties, such leases shall be kept on the register of leases required to be kept at that office by the District Land Registrar under the provisions of subsection (1) of section 83 of the Land Act 1948.

*Clause 1* relates to the Short Title to the Bill.

*Clause 2* is the interpretation clause and defines certain terms used in the Bill, the most important of which is "lease-land".

*Clause 3* provides that notwithstanding the provisions of the Harbours Act 1950 it shall be lawful for the Minister of Marine to grant leases of lease-land which is the property of the Crown, and where lease-land is vested in Harbour Boards and local authorities, for such bodies to grant leases with the consent of the Minister.

*Clause 4:* This clause sets out the procedure governing the making of applications for leases and for the lodging of objections thereto. *Subclause (2)* provides that the applicant shall publish notice of his application in a prescribed form at least twice in a newspaper circulating in the district where the lease-land is situated. *Subclause (3)* requires the applicant to send a copy of the notice of application to the owner of any land contiguous to the lease-land or to the foreshore reserve adjoining that lease-land. *Subclause (4)* provides that notices of objection to the grant of a lease shall be sent to the Secretary of Marine within 14 days of the first publication of the notice of application.

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*Subclause (5)* provides that the Minister shall not grant or consent to the granting of a lease until after one month from the date of first publication of the notice.

*Subclause (6)* requires the Minister to have regard to all objections and to refuse to grant or consent to a lease where to do so would interfere with existing rights of navigation or the public interest.

*Clause 5* limits the maximum term of years of a lease to 14 years, and provides that leases shall be subject to such terms and conditions as may be prescribed or as determined by the Minister. A right of renewal may be included in a lease.

*Clause 6: Subclause (1)* gives the Minister power to cancel leases as to the whole or part of the lease-land within two years after the date of grant where the lessee has made no reasonable attempt to establish an oyster farm on the lease-land.

*Subclauses (2) and (3)* enable the Minister, at any time after the initial two-year period, to cancel a lease as to the whole or part of the lease-land comprised therein on three months' notice to the lessee where the whole or part of the lease-land is not being utilised for the cultivation of rock oysters.

*Clause 7* provides for the registration of leases. Where the conditions relating to registrability of title under the Land Transfer Act 1952 are complied with the provisions of that Act shall apply. Where for any reason a lease is not so registrable the District Land Registrar may register a copy of the lease in the register of leases he is required to keep under the provisions of subsection (1) of section 83 of the Land Act 1948. Provision is made for dealings with the lease to be registered.

*Clause 8* relates to the power of the Governor-General in Council to make regulations under the Bill. Provision is made to make regulations in relation to the terms contained in leases, methods of assessing rentals and royalties payable to the Crown or leasing body, and for the management of oyster farms in the interests of health, navigation, and oyster cultivation.

*Clause 9* applies certain of the provisions of the Fisheries Act 1908, which relate to natural oyster-beds and to licences to take oysters, to oyster farms and leases under this Bill. *Subclause (2)* deems an oyster farm under this Bill to be an oyster-bed for the purposes of subsection (5) of section 219 of the Crimes Act 1961. (The subsection relates to theft of oysters.)

*Clause 10* is a conservation measure and provides that, notwithstanding the provisions of this Bill or of section 29 of the Fisheries Act 1908, the grant of a lease shall not authorise the lessee to take oysters from any bed on lease-land which was not formed by him.

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*Hon. Mr Scott*

## ROCK OYSTER FARMING

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### ANALYSIS

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### A BILL INTITULED

**An Act to provide for the establishment and carrying on in New Zealand waters of a rock oyster farming industry**

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

**1. Short Title**—This Act may be cited as the Rock Oyster Farming Act 1964.

**2. Interpretation**—In this Act, unless the context otherwise  
10 requires,—

“Harbour Board” means any Harbour Board within the meaning of the Harbours Act 1950:

“Lease” means any lease granted to any person under this Act:

“Lease-land” means any part of the bed of the sea or of a river, whether within the ebb and flow of the tide at ordinary spring tides or not:

“Local authority” means a local authority within the meaning of the Harbours Act 1950: 5

“Minister” means the Minister of Marine:

“Prescribed” means prescribed by any regulations made under this Act:

“Oyster farm” means any lease-land and any erection or structure thereon or therein used for or in connection 10 with the propagation or cultivation of rock oysters:

“Secretary” means the Secretary for Marine appointed under the Shipping and Seamen Act 1952; and includes his deputy.

**3. Act to apply notwithstanding Harbours Act 1950 and other enactments**—Notwithstanding the provisions of the Harbours Act 1950 or of any other enactment, it shall be lawful.— 15

(a) Where any lease-land is the property of the Crown, for the Minister to grant leases of such lease-land 20 for oyster farms under this Act; and

(b) Where any lease-land is vested in a Harbour Board or local authority, for that Harbour Board or local authority, with the consent of the Minister, to grant leases of such lease-land for oyster farms 25 under this Act.

**4. Applications for leases and objections**—(1) Every application for a lease under this Act shall be made in the prescribed form to the Secretary where the lease-land is the property of the Crown, or to the Harbour Board or local authority in whom such land is vested. 30

(2) Notice in the prescribed form of every application for a lease shall be published by the applicant twice at least at intervals of not more than seven days in some newspaper circulating in the district in which the lease-land is situated 35 and every such notice shall state the date of the first publication of that notice.

(3) A copy of the notice referred to in subsection (2) of this section shall, not later than the date of first publication of the same, be sent by registered post by the applicant to the registered proprietors of any land adjoining the foreshore or the foreshore reserve contiguous with the lease-land that is the subject of the application. 40

(4) The locality or area within which the lease-land is situated shall be sufficiently described or referred to in the notice to enable it to be readily identified without the necessity of reference to the plans or records of any office.

5 (5) Any person who objects to the granting of a lease under this Act may, within fourteen days after the first publication of the notice of application pursuant to subsection (2) of this section, file with the Secretary a notice of his objection to the application and to the grounds thereof. A  
10 copy of the notice of objection shall be sent by the Secretary to the applicant.

(6) The Minister shall not grant or consent to the granting of any lease before the expiry of one month after the first publication of the notice of application.

15 (7) The Minister shall have regard to any objections filed under subsection (5) of this section and to any representations made by the applicant in respect thereof, and, if satisfied that the grant of a lease would interfere with any existing right of navigation or would not be in the public interest,  
20 shall refuse to grant or consent to the granting of the lease.

**5. General conditions relating to leases—**(1) Any lease granted under this Act shall be in such form and contain such terms and conditions as may be prescribed and be at such rent and subject to such other conditions, and for such  
25 term of years not exceeding fourteen years, as the Minister thinks fit.

(2) Any lease may contain provisions for the renewal thereof at the expiration of the term at a rental to be determined in such manner as may be prescribed in respect of renewal  
30 of such leases.

**6. Power to cancel leases—**(1) The Minister may, if satisfied that a lessee has not made reasonable attempts to establish an oyster farm on lease-land or on any part thereof within two years after the date of the grant of the lease, cancel the  
35 lease as to the whole of the lease-land or that part, as the case may be, without payment of compensation, and thereupon the lessee's rights to the lease-land or, as the case may be, to that part, shall cease absolutely.

(2) The Minister may, at any time after the expiration of two years from the date of the grant of the lease, if of the opinion that the whole or any part of the lease-land is not being utilised for the cultivation of rock oysters, serve a notice upon the lessee requiring him within three months to take such steps as may be specified therein to utilise the area of lease-land (being the whole or part of the lease-land comprised in the lease) referred to in the notice. 5

(3) After the expiration of the period of three months from the date of the notice referred to in subsection (2) of this section, the Minister may, if satisfied that the lessee has not made substantial compliance with the terms of the notice, cancel the lease as to the area of lease-land referred to in the said notice, without payment of compensation, and thereupon the lessee's rights to such area shall cease absolutely. 10 15

**7. Registration of leases**—(1) Where any lease is presented to the District Land Registrar for registration, and because of the lack of an adequate description, or of survey definition of the area leased, or for any other reason such lease is not capable of being registered under the Land Transfer Act 1952, the District Land Registrar may enter it in the register of leases kept in the Land Registry Office under the provisions of subsection (1) of section 83 of the Land Act 1948. 20

(2) Every transfer, sublease, mortgage, transmission, or other disposition of or dealing with any such lease shall be registered in the Land Registry Office, and the District Land Registrar on presentation to him of the instrument of disposition or dealing, and also of the outstanding copy of the lease, shall endorse an appropriate memorial on the register copy of the lease and also on the outstanding copy thereof, as evidence of the disposition or dealing. Every instrument of transfer, sublease, mortgage, or other dealing registered under this subsection shall have the effect of a deed duly executed by the parties signing the same. 25 30

(3) Every instrument of disposition or dealing referred to in subsection (2) of this section shall comply as to form with the provisions of the Land Transfer Act 1952 relating to corresponding instruments registered under that Act. 35

(4) There shall be paid to the District Land Registrar for the registration of any lease or other instrument pursuant to this section the same fee as that prescribed by regulations in force under the Land Transfer Act 1952 in respect of the corresponding instrument under that Act. 40

(5) All dealings with or under any such lease in contravention of the provisions of this section shall be void and the District Land Registrar shall not register any dealing with or under a lease until he is satisfied that the said provisions  
5 have been complied with.

(6) Where the Minister acting under the provisions of section 6 of this Act has cancelled any lease or part of any lease which has been registered under the provisions of the Land Transfer Act 1952 or of this section, the District Land  
10 Registrar shall, on presentation of a certificate to that effect under the hand of the Secretary, register the same, without fee against the register copy of the relative certificate of title (if any) and of the lease, and against the outstanding copies of the said title and lease if they are produced to him for  
15 that purpose.

**8. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes—

- 20 (a) Prescribing the forms of application and notices, made or issued under or for the purposes of this Act:
- (b) Prescribing the terms and conditions to be contained in leases granted pursuant to this Act and the form thereof:
- 25 (c) Prescribing methods of assessing the rental payable in respect of lease-lands or royalties payable to the Crown or the body by whom the lease was granted in respect of rock oysters harvested therefrom:
- (d) Prohibiting, regulating, or controlling the picking of oysters from natural oyster beds in any lease-lands:
- 30 (e) Regulating the right of access of persons authorised by the Secretary to pick oysters from natural oyster beds in any lease-land and of inspectors of fisheries or fishery officers:
- (f) Prescribing terms for the renewal of leases and for the  
35 determination of renewal rentals:
- (g) Providing for the marking of boundaries, accessways, and navigational hazards on any lease-land:
- (h) Providing for the management and control of any  
40 lease-land or of any structures erected in or on any lease-land:
- (i) Declaring any area of lease-land to be affected by disease or marine pests and prescribing steps to be taken by the lessee to rid such area of disease or marine pests:

- (j) Declaring any area of lease-land to be contaminated or likely to become contaminated by sewage or by any other cause, and prescribing steps to be taken by the lessee to rid such area of contamination or to prevent the arising of contamination in such area or for the purification of oysters taken from any such area: 5
- (k) Prohibiting the taking of oysters from any area of lease-land declared to be affected by disease, or marine pests, or to be contaminated, or likely to become contaminated, and requiring the destruction or removal of any structures erected in such area and of any oysters growing thereon or harvested therefrom: 10
- (l) Regulating and fostering the artificial culture of rock oysters: 15
- (m) Imposing fines, not exceeding five hundred pounds, for breaches of any such regulations:
- (n) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof. 20

**9. Application of certain provisions of Fisheries Act and Crimes Act—**(1) In sections 29 to 33, 37 and 41 of the Fisheries Act 1908, the term “exclusive or permissive licence” shall be deemed to include a lease granted under this Act and “licensee” shall have a corresponding meaning, and the term “oyster-bed” shall be deemed to include an oyster farm under this Act. 25

(2) Section 219 of the Crimes Act 1961 is hereby amended by inserting in subsection (5), after the term “oyster-beds”, the words “oyster farms,”. 30

**10. Lease not to grant right to take oysters from natural beds—**Nothing in this Act, or in section 29 of the Fisheries Act 1908, shall be construed as authorising any lessee, or any servant or agent of such lessee, to take oysters growing on any natural or artificial oyster-bed (not being an oyster-bed made by that lessee) unless he is otherwise authorised to do so by regulations made under this Act. 35