

SUBMARINE CABLES AND PIPELINES PROTECTION BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the Submarine Cables and Pipelines Protection Act 1966.

Clause 1 relates to the Short Title and commencement. The Bill will come into force on the day on which it receives the Royal assent.

PART I

PRELIMINARY PROVISIONS

Clause 2 defines certain terms used in the Bill.

Clause 3 provides that the Bill binds the Crown.

Clause 4, which relates to the application of the Bill, substantially re-enacts section 3 of the present Act.

Clause 5, which provides that the Bill does not affect other Acts, substantially re-enacts section 10 of the present Act.

PART II

PROTECTION AND ENFORCEMENT

Clause 6 provides that liability for damages in respect of any damage to a submarine cable or pipeline is to be determined in accordance with the general law relating to liability in tort. The clause substantially re-enacts section 9 of the present Act.

Clause 7 provides that where a person, in the course of laying or repairing a submarine cable or pipeline of which that person is the owner, damages another submarine cable or pipeline, that person is liable for the cost of repair whether or not the damage was caused by that person's negligence. The clause substantially re-enacts section 5 of the present Act.

Clause 8 provides that the owner of a ship is entitled to be indemnified by the owner of a submarine cable or pipeline, if the owner of the ship has had to sacrifice an anchor, net, or any other fishing equipment in order to avoid damaging the cable or pipeline. The clause substantially re-enacts section 6 of the present Act.

Clause 9 provides that the owner of an abandoned submarine cable or pipeline must notify the Minister that the cable or pipeline is unlikely to be used again.

A person who fails to comply with the notification requirement commits an offence and is liable to a fine not exceeding \$5,000. The clause substantially re-enacts section 6A of the present Act.

Clause 10—

- (a) Empowers a District Court to order the removal of an abandoned submarine cable or pipeline that constitutes a hazard to fishing operations or the anchoring of ships; and
- (b) Provides for the Minister to carry out any work ordered to be carried out by the Court, if an owner of the submarine cable or pipeline fails to comply with the order. The clause substantially re-enacts section 6B of the present Act.

Clause 11 relates to the offences of wilfully damaging a submarine cable or pipeline and causing or permitting a ship to damage a submarine cable or pipeline. It is similar to section 4 of the present Act except that—

- (a) The maximum penalty for an offence committed against the clause is increased to a fine not exceeding \$250,000, and the penalty of imprisonment is removed;
- (b) Where a ship has been used in the commission of the offence of wilfully damaging a submarine cable or pipeline, the owner and master each commits an offence against the clause (*subclause (1) (b)*);
- (c) The defence that the damage to the submarine cable or pipeline was caused as a result of action taken to save life or a ship will be available to a master and an owner of a ship.

Clause 12 provides that the Governor-General may declare certain areas to be protected areas or restricted areas for the purposes of the Bill. It also authorises the Minister by notice in the *Gazette* to alter the application of any such Order in Council in respect of certain ships. The clause substantially re-enacts section 7 of the present Act.

Clause 12 (6) also re-enacts section 7A(2) of the present Act and makes it an offence to fail to comply with an Order in Council under the new clause.

Clause 13 makes it an offence to—

- (a) Conduct fishing operations from a ship in an area declared to be a protected area or restricted area in respect of that ship under *clause 12* of the Bill; and
- (b) Anchor a ship in any such area.

The clause also provides that where in proceedings for such an offence, an enforcement officer or a cable protection officer gives evidence that he or she observed, or evidence is given of a record made by approved maritime surveillance equipment of,—

- (a) A net, line, rope, chain, or any other thing used in connection with fishing operations being towed by, or operated or suspended from, a ship; or
 - (b) An anchor being lowered or suspended from, or raised by, a ship—
- it shall be presumed that, in the absence of evidence to the contrary, fishing operations were being conducted from the ship or the ship was anchored, as the case may be.

Clause 14 provides that it is a defence to a charge against *clause 12 (6)* or against *clause 13*, as the case may be, if it is proved that the anchoring of the ship alleged

to constitute the offence was necessary to save life or a ship in distress. This defence is carried over from the present Act in respect of these same offences.

The clause also provides a new defence to a charge against *clauses 12 (6) or 13* of the Bill, if the defendant proves that the defendant did not intend to commit the offence and the defendant took all reasonable steps to prevent the commission of the offence.

Clause 15 specifies the penalties in respect of offences committed against *clauses 12 (6) and 13* as follows:

- (a) A fine not exceeding \$100,000 in respect of an offence relating to activities conducted for commercial gain:
- (b) A fine not exceeding \$10,000 in respect of an offence relating to activities conducted otherwise than for commercial gain.

Under the equivalent provisions of the present Act, the maximum fine that may be imposed is \$5,000.

Clause 16 is new and provides for the appointment of cable protection officers who will have powers that are presently exercised by a Superintendent of Mercantile Marine under sections 7B and 7C of the present Act.

The clause deems an enforcement officer to be a cable protection officer.

Clause 17 provides that a cable protection officer may order a ship from a protected or restricted area.

Any master who, without reasonable cause, fails to comply with the order commits an offence. The clause substantially re-enacts section 7B of the present Act but increases the maximum fine that may be imposed to \$10,000.

Clause 18 provides that a cable protection officer may seize any fishing equipment that he or she finds in the water in a protected or restricted area. The clause substantially re-enacts section 7C of the present Act.

Clause 19 is new. It empowers a cable protection officer to request a master of a ship that is in a restricted or protected area to provide information relating to the identity of the ship.

Any master who, without reasonable cause, fails to comply with the request within a reasonable period of time commits an offence and is liable to a fine not exceeding \$5,000.

Clauses 20 to 24 are new provisions relating to the powers of enforcement officers.

Clause 20 provides that if an enforcement officer has reasonable cause to believe that an offence involving a ship is being or has been committed against the Act, the enforcement officer may require documents to be produced or information to be given to him or her.

The clause makes it an offence to fail to comply with such a requirement.

Clause 21 provides that an enforcement officer may seize a ship or other property if—

- (a) The officer believes on reasonable grounds that the ship or other property is being used for the commission of an offence against *clause 13 (1) (a)* of the Bill; and
- (b) In the circumstances, the officer believes on reasonable grounds that on conviction of the defendant, the penalty specified in *section 15 (a)* of the Bill would apply.

The clause makes it an offence to—

- (a) Resist or obstruct an enforcement officer exercising the power of seizure; or
- (b) Fail, without reasonable cause, to comply with the requirements of an enforcement officer exercising the power of seizure.

Clause 22 enables enforcement officers to call upon members of the Police or other persons in the vicinity to assist them in the course of their duties.

Clause 23 provides that enforcement officers and persons who assist them and cable protection officers are not under any civil or criminal liability in certain circumstances, unless the officer or person giving assistance has acted or omitted to act in bad faith or without reasonable cause.

Clause 24 requires an enforcement officer to produce evidence of authority on exercising a power under *clauses 20* and *21*.

Clauses 25 to *27* are new provisions relating to seized property.

Clause 25 provides that, subject to *clauses 26* and *27*, property seized by the Crown under *clause 21* is to be retained by the Crown and released only if—

- (a) A decision is made not to charge a person with an offence in relation to which the property was seized; or
 - (b) An information against the person charged is dismissed,—
- and, in that event, it must be released immediately from the custody of the Crown.

Clause 26 relates to the Minister's power to release seized property in certain circumstances.

Clause 27 enables a District Court to release seized property to the person from whom the property was seized or to the owner or person entitled to the possession of the property.

Clause 28 is similar to section 8 of the present Act except that the consent of the Attorney-General to prosecute will be required only in the case of an offence that is committed outside New Zealand territorial waters.

Clauses 29 to *31* are new and relate to evidential matters relating to approved maritime surveillance equipment.

Clause 29 provides that an image, as defined in *clause 2* of the Bill, taken by approved maritime surveillance equipment shall, in the absence of proof to the contrary, be sufficient evidence of the information recorded in the image.

The clause also provides that the production of what appears to be such an image in proceedings for an offence against the Act is, in the absence of proof to the contrary, sufficient evidence that the image was taken by approved maritime surveillance equipment.

Clause 30 makes it an offence to tamper with any approved maritime surveillance equipment or interfere with any approved maritime surveillance equipment or the operation of any such equipment.

Clause 31 relates to evidence of the testing and accuracy of approved maritime surveillance equipment in any proceedings for an offence against the Act.

Clauses 32 to *35* are new and relate to the forfeiture of property on conviction for certain offences against the Bill.

Clause 32 provides that, on the conviction of a person for an offence against—
(a) *Clause 11* of the Bill; or

(b) *Clause 13 (1)* of the Bill, in any case where the penalty imposed in respect of the offence is specified in *clause 15 (a)* of the Bill,—
the court in which the conviction is entered may order that a ship or other property used in respect of the commission of the offence be forfeited to the Crown.

Clause 33 provides that if property has been forfeited to the Crown under *clause 32*, the court that ordered the forfeiture may grant relief to a person who claims an interest in the property, unless that person was involved in the commission of the offence, or did not acquire the interest in the property in good faith.

Clause 34 provides that the Minister may release forfeited property to a person having a legal or equitable interest in the property either on payment of an amount not exceeding the amount that the property forfeited is likely to realise if sold by public auction in New Zealand or without payment.

Clause 35 provides that any forfeiture of property or redemption payment imposed by the Minister is in addition to any other penalty that may be imposed by the court.

PART III MISCELLANEOUS PROVISIONS

Clause 36 is new and provides that the Minister may, by notice in the *Gazette*, approve maritime surveillance equipment for the purposes of the Bill.

Clause 37 provides for the making of regulations and substantially re-enacts section 13 of the present Act. The principal change is to provide for a new maximum fine of \$50,000 for offences against regulations made under the Bill and to remove the penalty of imprisonment.

Clause 38 relates to repeals and savings.

Subclause (1) effects consequential repeals.

Subclause (2) provides that every Order in Council, regulation, and notice made under the present Act and in force immediately before the repeal of that Act shall, until revoked, continue in force after the repeal of that Act as if it had been made under the Bill.

Subclauses (3) and *(4)* provide for amending or revoking any such Order in Council, regulation, or notice that is continued in force by *subclause (2)*.

SUBMARINE CABLES AND PIPELINES PROTECTION

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A BILL INTITULED

An Act to provide better protection of submarine cables and pipelines and to consolidate and amend the Submarine Cables and Pipelines Protection Act 1966

BE IT ENACTED by the Parliament of New Zealand as follows: 5

1. Short Title and commencement—(1) This Act may be cited as the Submarine Cables and Pipelines Protection Act 1995.

(2) This Act shall come into force on the day on which it receives the Royal assent. 10

PART I

PRELIMINARY PROVISIONS

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

“Anchor” includes an anchor chain and an anchor cable: 15

“Approved maritime surveillance equipment” means any maritime surveillance equipment of a kind approved by the Minister under **section 36** of this Act:

“Cable” includes works within the meaning of section 2 of the Electricity Act 1992 and a line within the meaning of section 2 of the Telecommunications Act 1987: 20

“Cable protection officer” means a cable protection officer appointed under **section 16** of this Act:

“Director” means the person who is for the time being the Director of Maritime Safety under section 439 of the Maritime Transport Act 1994: 25

“Enforcement officer” means—

(a) A member of the Police:

(b) An officer in command of a ship of the New Zealand Naval Forces: 30

(c) An officer of the New Zealand Naval Forces of the rank of Midshipman or above:

“Fishing ship” means a ship used for catching fish, whales, seals, or other living resources of the sea for 35

profit; and includes a ship that is recognised by the Director as being engaged in fisheries research:

5 “High seas” means all parts of the sea that are not included in the territorial sea or in the internal waters of a country:

“Image”, in relation to approved maritime surveillance equipment, includes a photograph, information stored in electronic form, and the display and transmission of pictorial or digital information:

10 “Internal waters of New Zealand” means the internal waters of New Zealand as defined by section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977:

15 “Low-water mark” means the line of low water for an area depicted on the charts in the Territorial Limits Chart Folio held by the Royal New Zealand Navy Hydrographic Office:

“Master” means a person (except a pilot) having command or charge of a ship:

20 “Minister” means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act:

25 “New Zealand ship” means a ship that is registered under the Ship Registration Act 1992; and includes a ship that is not registered under that Act but is required or entitled to be registered under that Act:

“Owner”,—

30 (a) In relation to a ship registered in New Zealand under the Ship Registration Act 1992, means the registered owner of the ship:

(b) In relation to a ship registered in any place outside New Zealand, means the registered owner of the ship:

35 (c) In relation to a fishing ship, other than one to which paragraph (a) or paragraph (b) of this definition applies, means the person registered as the owner of the ship under section 57 of the Fisheries Act 1983:

40 (d) In relation to a ship to which paragraph (a) or paragraph (b) or paragraph (c) of this definition applies, if, by virtue of any charter or demise or for any other reason, the registered owner is not responsible for the management of the ship, means the charterer or other person who is for the time being so responsible:

- (e) In relation to an unregistered ship or a registered ship that does not have a registered owner, means the person who is for the time being responsible for the management of the ship:
- “Pipeline” means a pipeline used or intended to be used for the conveyance of gas (including natural gas), petroleum, oil, water, or any other mineral, liquid, or substance; and includes all fittings, pumps, tanks, appurtenances, or appliances used in connection with a pipeline: 5
- “Ship” means every description of boat or craft used in navigation, whether or not it has the means of propulsion; and includes— 10
- (a) A barge, lighter, or other like vessel:
- (b) A hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates: 15
- (c) A submarine or other submersible:
- “Submarine cable” means a cable that lies beneath the high seas or the territorial sea or internal waters of New Zealand: 20
- “Submarine pipeline” means a pipeline that lies beneath the high seas or the territorial sea or internal waters of New Zealand: 25
- “Territorial sea” means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977.
- Cf. 1966, No. 5, s. 2; 1977, No. 28, s. 33; 1977, No. 96, s. 2; 1987, No. 184, s. 29 (3); 1992, No. 122, s. 173 (2) 30

*Application***3. Act to bind the Crown**—This Act binds the Crown.

Cf. 1966, No. 5, s. 12

- 4. Application of Act**—(1) For the purpose of jurisdiction in respect of offences against this Act or regulations or notices under this Act, and subject to **section 28** of this Act, this Act applies to acts or omissions— 35
- (a) By a person (whether or not a New Zealand citizen or ordinarily resident in New Zealand) within the territorial sea or internal waters of New Zealand; or 40

(b) By a person (whether or not a New Zealand citizen or ordinarily resident in New Zealand) on board or by means of a New Zealand ship on the high seas; or

5 (c) By a New Zealand citizen or a person ordinarily resident in New Zealand on board or by means of a ship, other than a New Zealand ship, on the high seas.

(2) This Act does not apply to any part of a cable or pipeline situated on the landward side of low-water mark in any area nor to any part of a cable or pipeline not ordinarily beneath
10 the surface of the sea.

Cf. 1966, No. 5, s. 3

5. Other Acts not affected—The provisions of this Act are in addition to, and not in substitution for, the provisions of any other enactment and, except as expressly provided by this Act,
15 nothing in this Act derogates from the provisions of any other enactment.

Cf. 1966, No. 5, s. 10

PART II

PROTECTION AND ENFORCEMENT

20 *Liability for Damage to Submarine Cable or Pipeline*

6. Civil liability—Notwithstanding the provisions of any other enactment, liability for damages in respect of any damage to a submarine cable or submarine pipeline shall, except as expressly provided by this Act, be determined in
25 accordance with the general law in respect of liability in tort.

Cf. 1966, No. 5, s. 9

7. Liability in respect of damage to cable or pipeline—
A person who, in the course of laying or repairing a submarine cable or submarine pipeline of which the person is the owner,
30 damages another submarine cable or submarine pipeline, is liable for the cost of repairing that damage, and such liability—

(a) Is in addition to any other liability to which the person may be subject; and

35 (b) Applies whether or not—

(i) The damage to the submarine cable or submarine pipeline was caused by that person's negligence; or

(ii) The person has been convicted for an offence
40 relating to that damage.

Cf. 1966, No. 5, s. 5

Indemnity for Loss of Certain Equipment

8. Indemnity for loss of certain equipment—If, after all reasonable precautionary measures have been taken, an anchor, a net, or any other fishing equipment belonging to a ship is sacrificed in order to avoid damaging a submarine cable or submarine pipeline, the owner of the ship is entitled to be indemnified for that owner's loss by the owner of the cable or pipeline. 5

Cf. 1966, No. 5, s. 6

Abandoned Submarine Cable or Pipeline 10

9. Owner of abandoned submarine cable or pipeline to notify Minister—(1) If—

- (a) The use of a submarine cable or submarine pipeline, as the case may be, has ceased; and
- (b) The submarine cable or submarine pipeline is unlikely to be used again,— 15

the owner of the submarine cable or submarine pipeline, as the case may be, shall, immediately after use of the cable or pipeline has ceased, notify the Minister in writing that the cable or pipeline is unlikely to be used again. 20

(2) Every person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Cf. 1966, No. 5, s. 6A; 1977, No. 96, s. 3

10. District Court may order removal of abandoned submarine cable or pipeline—(1) On the application of the Minister, a District Court may order that a submarine cable or submarine pipeline, or part of the cable or pipeline, that, in its opinion,— 25

- (a) Is unlikely to be used again; and 30
- (b) Constitutes a hazard to fishing operations or the anchoring of ships—

be removed by the owner of the submarine cable or submarine pipeline, at the owner's expense, from the territorial sea or internal waters of New Zealand, as the case may be, within such time and in accordance with such conditions as may be specified in the order. 35

(2) If the owner of a submarine cable or submarine pipeline that has been ordered to be removed under this section fails to comply with all or any part of the order, within the time specified in the order or within such further period as the District Court may allow, the Minister may— 40

(a) Carry out all or any part of the work ordered to be carried out, and do all things incidental to the work; and

5 (b) Recover the costs for carrying out the work referred to in **paragraph (a)** of this subsection from the owner of the submarine cable or submarine pipeline, as the case may be, as a debt due to the Crown.

Cf. 1966, No. 5, s. 6B; 1977, No. 96, s. 3

Offence to Damage Submarine Cable or Pipeline

10 **11. Offence to damage submarine cable or pipeline—**

(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$250,000 who—

(a) Wilfully damages or causes or permits a ship to damage a submarine cable or submarine pipeline; or

15 (b) Is the owner or master of a ship that is used to commit an offence against **paragraph (a)** of this subsection.

(2) An owner or master of a ship who is convicted of an offence against **paragraph (a)** of **subsection (1)** of this section is not liable for an offence against **paragraph (b)** of that subsection arising out of the same course of conduct.

20 (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the damage which is alleged to constitute the offence was caused by persons acting with the sole object of saving life or a ship after having taken all necessary precautions to avoid the damage.

25 (4) For the purposes of this section, a person who causes an event by an act or omission which he or she knows would probably cause it, being reckless whether that event happens or not, is deemed to have caused it wilfully.

30 Cf. 1966, No. 5, s. 4

Prohibition on Certain Activities in Protected or Restricted Areas

12. Protected and restricted areas—(1) The Governor-General may from time to time, by Order in Council, declare—

35 (a) An area within the territorial sea or internal waters of New Zealand to be a protected area for the purposes of this Act:

(b) An area within the exclusive economic zone of New Zealand (as described in section 9 of the Territorial Sea and Exclusive Economic Zone Act 1977) to be a restricted area for the purposes of this Act.

40 (2) An Order in Council under this section may—

- (a) Impose such terms and conditions as the Governor-General in Council thinks necessary or desirable for the protection of submarine cables and submarine pipelines:
- (b) Apply— 5
- (i) Generally in respect of an area to which it relates:
- (ii) In respect of specified areas or classes of areas:
- (iii) Generally in respect of all ships:
- (iv) In respect of specified ships or classes of ships. 10
- (3) The Minister may, by notice in the *Gazette*, declare that an Order in Council under this section does not apply in respect of any specified ship or ships or class or classes of ships, and may in like manner vary or revoke any such notice.
- (4) A declaration under **subsection (3)** of this section may be made unconditionally or upon or subject to such conditions that are specified in the notice. 15
- (5) Notwithstanding the provisions of an Order in Council under this section, any such notice has effect according to its tenor. 20
- (6) Every person who fails to comply with, or acts in contravention of, an Order in Council under this section commits an offence and is liable on summary conviction to the appropriate penalty under **section 15** of this Act.
- Cf. 1966, No. 5, ss. 7, 7A (2); 1977, No. 96, ss. 4, 5 25
- 13. Certain activities prohibited in protected and restricted areas—**(1) If—
- (a) Fishing operations are conducted from a ship in an area declared to be a protected or restricted area in respect of that ship under **section 12** of this Act; or 30
- (b) A ship is anchored in any such area—
the owner and the master of the ship each commits an offence and is each liable on summary conviction to the appropriate penalty under **section 15** of this Act.
- (2) Where in proceedings for an offence against this section, an enforcement officer or a cable protection officer gives evidence that he or she observed— 35
- (a) A net, line, rope, chain, or any other thing used in connection with fishing operations being towed by, or operated or suspended from, a ship; or 40
- (b) An anchor being lowered or suspended from, or raised by, a ship—

it shall be presumed that, in the absence of evidence to the contrary, fishing operations were being conducted from the ship or the ship was anchored, as the case may be.

5 (3) Where in proceedings for an offence against this section, evidence is given of a record made by approved maritime surveillance equipment of—

(a) A net, line, rope, chain, or any other thing used in connection with fishing operations being towed by, or operated or suspended from, a ship; or

10 (b) An anchor being lowered or suspended from, or raised by, a ship—

it shall be presumed that, in the absence of evidence to the contrary, fishing operations were being conducted from the ship or the ship was anchored, as the case may be.

15 Cf. 1966, No. 5, s. 7A (1); 1977, No. 96, s. 5

14. Defences in respect of certain offences—(1) It is a defence to a prosecution for an offence against **section 12 (6)** or **section 13 (1)** of this Act if the defendant proves that any anchoring which is alleged to constitute the offence was
20 necessary for the purpose of saving life or a ship in distress.

(2) It is a defence to a prosecution for an offence against **section 12 (6)** or **section 13 (1)** of this Act if the defendant proves—

(a) That the defendant did not intend to commit the offence; and

25 (b) That the defendant took all reasonable steps to prevent the commission of the offence.

Cf. 1966, No. s. 7A (3); 1977, No. 96, s. 5

15. Penalties in respect of certain offences—Every person who commits an offence against **section 12 (6)** or
30 **section 13 (1)** of this Act is liable on summary conviction,—

(a) To a fine not exceeding \$100,000, if—

(i) The offence was committed in the course of conducting an activity for the purpose of producing a commercial gain; or

35 (ii) A ship, which is used for an activity that has, as its predominant purpose, the making of a commercial gain, was used in the commission of the offence:

40 (b) To a fine not exceeding \$10,000, if the offence was committed, otherwise than in any of the circumstances specified in **paragraph (a)** of this section.

Cf. 1966, No. 5, s. 7A (2); 1977, No. 96, s. 5

Appointment and Powers of Cable Protection Officers, Etc.

16. Cable protection officers—(1) The Minister may from time to time, by notice in the *Gazette*, appoint a person to be a cable protection officer.

(2) For the purposes of this Act, an enforcement officer is deemed to be a cable protection officer. 5

17. Ship may be ordered from protected or restricted area—(1) If a cable protection officer believes on reasonable grounds that—

(a) Fishing operations are being conducted from a ship in an area declared to be a protected area or restricted area in respect of that ship under **section 12** of this Act; 10
or

(b) A ship is anchored in any such area,—
he or she may order the master of the ship to remove the ship from that area; and any such order may be given by any means of communication. 15

(2) Without derogating from any other provision of this Act, a master who, without reasonable cause, fails within a reasonable period of time to comply with an order given under this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 20

Cf. 1966, No. 5, s. 7B; 1977, No. 96, s. 5

18. Fishing equipment in protected or restricted area may be seized—(1) A cable protection officer may seize fishing equipment that he or she— 25

(a) Finds in the water in an area declared to be a protected area or restricted area under **section 12** of this Act; and

(b) Believes, on reasonable grounds, has been left there by a ship to which that declaration applies. 30

(2) When equipment is seized under this section, the person making the seizure shall forthwith arrange for notice of the seizure to be posted at the police station nearest to where the seizure was made.

(3) Subject to **subsection (4)** of this section, equipment seized under this section shall be returned, at the expense of the person, to any person who establishes ownership of the equipment to the satisfaction of a cable protection officer. 35

(4) If no one establishes, to the satisfaction of a cable protection officer, ownership of equipment seized under this section within 60 days after the posting of the notice of seizure under **subsection (2)** of this section, the equipment becomes the property of the Crown subject only to those encumbrances, 40

liens, and interests of which a cable protection officer is then aware, and may be sold or otherwise disposed of as the Minister thinks fit.

Cf. 1966, No. 5, s. 7c; 1977, No. 96, s. 5

- 5 **19. Master to identify ship**—(1) If,—
- (a) A ship is in an area that is declared under **section 12** of this Act to be a restricted area or a protected area in respect of that ship; and
- 10 (b) A cable protection officer believes on reasonable grounds that the ship is conducting fishing operations or is anchored; and
- (c) A request for identification is made to the ship by a cable protection officer,—
- 15 the master of the ship must advise the cable protection officer of the ship's name, place of registry, register number, and such further information as may be relevant to the ship's identity that may be requested by the cable protection officer.
- (2) A master who, without reasonable cause, fails within a reasonable period of time to comply with **subsection (1)** of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
- 20

Powers of Enforcement Officers, Etc.

- 25 **20. Power to obtain documents and information**—(1) If an enforcement officer has reasonable cause to believe that an offence is being or has been committed against this Act by or from or in relation to a ship, the enforcement officer may, for the purposes of enforcing the provisions of this Act,—
- 30 (a) Require the owner or the master or a member of the crew of the ship to produce a certificate, official logbook, or other document in the possession or under the control of the owner, master, or crew member that relates to the ship:
- 35 (b) Require the master to produce a certificate of registration, charter, or other document, or to provide other information relating to the owner of the ship:
- 40 (c) Require the master of the ship, or any other person on board the ship, to give an explanation or information as may be necessary to assist in identifying the location, conduct, and movements of the ship, or the actions of any person on board the ship at the time relevant to the suspected commission of an offence against this Act:

(d) Take copies of a record or document produced under this section, if the record or document is relevant to the suspected commission of an offence against this Act.

(2) An enforcement officer may, for the purpose of exercising a power under this section, take possession of and remove any such record or document from the place where it is kept for such period of time as is reasonable in the circumstances. 5

(3) Nothing in paragraph (c) of subsection (1) of this section requires a person to answer a question if to do so would tend to incriminate that person. 10

(4) Every person who fails without reasonable cause to comply with subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Cf. 1991, No. 18, s. 13 15

21. Power of seizure—(1) An enforcement officer may seize a ship or other property if—

(a) The officer believes on reasonable grounds that the ship or other property is being used for the commission of an offence against section 13 (1) (a) of this Act; and 20

(b) In the circumstances, the officer believes on reasonable grounds that, on conviction of the defendant, the penalty specified in section 15 (a) of this Act would apply.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who— 25

(a) Resists or obstructs an enforcement officer exercising the power of seizure under this section; or

(b) Fails without reasonable cause to comply with the requirements of an enforcement officer exercising the power of seizure under this section. 30

Cf. 1991, No. 18, s. 15

22. Persons assisting enforcement officer—An enforcement officer exercising a power conferred on the officer by this Act may call upon a member of the Police or upon a person in the vicinity for assistance, and every person so called upon is authorised to render such assistance. 35

Cf. 1991, No. 18, s. 22

23. Protection of enforcement officers and assistants and cable protection officers from liability—(1) An enforcement officer or cable protection officer who does, or omits to do, an act in pursuance or intended pursuance of this 40

Act, and a person giving assistance to an enforcement officer when called upon to do so under **section 22** of this Act, is not under any civil or criminal liability as a result of that act or omission or assistance on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless the officer or person giving assistance has acted or omitted to act in bad faith or without reasonable cause.

5 (2) The Crown is not directly or indirectly liable for any such act or omission or assistance, unless the enforcement officer or cable protection officer or person concerned would himself or herself incur liability for the act or omission or assistance.

Cf. 1991, No. 18, s. 23

24. Enforcement officer to produce evidence of authority to act—Every enforcement officer exercising a power conferred by **section 20** or **section 21** of this Act shall, at the time of exercising that power, and thereafter on reasonable request, produce—

- (a) Evidence that that person is an enforcement officer; and
- (b) Evidence of that person's identity.

20 Cf. 1991, No. 18, s. 24

Provisions Relating to Seized Property

25. Custody of property seized—(1) Subject to **sections 26** and **27** of this Act, property seized under **section 21** of this Act shall be held in the custody of the Crown and shall not be released until—

- (a) A decision is made not to lay an information in respect of the alleged offence for which the property was seized; or
- (b) An information against the person charged with the offence for which the property was seized is dismissed,—

and, in that event, it must be released immediately from the custody of the Crown.

35 (2) The decision whether or not to lay an information in respect of an alleged offence for which property is seized under **section 21** of this Act shall be made as soon as reasonably practicable after the property is seized.

Cf. 1991, No. 18, s. 16

26. Release of property by Minister—(1) The Minister may, at any time before the completion of proceedings in

respect of the alleged offence for which the property was seized under **section 21** of this Act, on application by—

(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 that person under bond in such sum and under such sureties and conditions (if any) as the Minister may specify.

(2) If the person to whom property is released under **subsection (1)** of this section fails to comply with the conditions of a bond or with a condition specified by the Minister,—

(a) The property may be resealed at any time at the direction of the Minister; and

(b) The Minister may, in the case of failure to comply with the conditions of a bond, apply to a District Court for an order for estreat of the bond.

(3) If the Minister applies for an order for estreat of the bond, the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed.

(4) If, on the hearing of the application, it is proved to the satisfaction of the Court that a 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 by the bond on whom notice is proved to have been served in accordance with **subsection (3)** of this section.

(5) A penalty payable under **subsection (4)** of this section is recoverable as if it were a fine.

Cf. 1991, No. 18, s. 17

27. Release of property by Court—If an information is laid in respect of the alleged offence for which property was seized under **section 21** of this Act, and that property remains in the custody of the Crown, a District Court may at any time, on application by—

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

Cf. 1991, No. 18, s. 20

Proceedings for Offences, Etc.

5 **28. Leave of Attorney-General to prosecute if offence committed outside territorial waters**—Notwithstanding anything in any other enactment, proceedings for an offence against this Act or regulations under this Act that is committed outside the territorial sea shall not be instituted in any court except with the consent of the Attorney-General and on his or her certificate that it is expedient that the proceedings should be instituted.

10 Cf. 1966, No. 5, s. 8

15 **29. Evidential provisions relating to approved maritime surveillance equipment**—(1) In proceedings against a person for an offence against this Act or regulations under this Act, the production of an image produced by means of an exposure taken by any approved maritime surveillance equipment, being an image—

- 20 (a) Recording the presence, position, or image of a ship; and
(b) Recording the date on which the image was taken, the time when the image was taken, and the location at which the image was taken, or recording any of those particulars,—

25 is, in the absence of proof to the contrary, sufficient evidence that the ship was present in a particular position or that the image was taken on that date or at that time or at that location, as the case may be.

30 (2) The production in evidence in the proceedings of an image that appears to be an image referred to in subsection (1) of this section is, in the absence of proof to the contrary, sufficient evidence that the image was produced by means of an exposure taken by approved maritime surveillance equipment.

Cf. 1962, No. 135, s. 42 (1), (1A); 1992, No. 108, s. 8; 1993, No. 88, s. 35

35 **30. Offence to tamper or interfere with approved maritime surveillance equipment**—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who—

- 40 (a) Tampers with approved maritime surveillance equipment; or
(b) Interferes with—
(i) Approved maritime surveillance equipment; or

(ii) The operation of approved maritime surveillance equipment.

Cf. 1962, No. 135, s. 42 (2); 1992, No. 108, s. 8

31. Evidence of testing and accuracy of approved maritime surveillance equipment—(1) In proceedings for an offence against this Act or regulations under this Act, the production of a certificate (or a document that appears to be a copy of the certificate) that appears to be signed by the Director or by a person authorised by the Director, as to the testing and accuracy of approved maritime surveillance equipment referred to in the certificate, is admissible as evidence that the equipment referred to has been tested and is accurate.

(2) Every document that appears to be a copy of a certificate issued under **subsection (1)** of this section shall, in the absence of proof to the contrary, be presumed to be a true copy.

(3) Every certificate issued under **subsection (1)** of this section shall, in the absence of proof to the contrary, be presumed to have been signed by a person duly authorised to sign it; and it is not necessary for the certificate to show on its face that the person signing it was so authorised.

Cf. 1962, No. 135, s. 197 (3), (4), (5); 1992, No. 108, s. 38 (2)

Forfeiture of Property on Conviction

32. Forfeiture of property on conviction—On the conviction of a person for an offence against—

(a) **Section 11** of this Act; or

(b) **Section 13 (1) (a)** or **section 13 (1) (b)** of this Act, in any case where the penalty imposed in respect of the offence is specified in **section 15 (a)** of this Act,—

the Court in which the conviction is entered may order that a ship or other property used in respect of the commission of the offence be forfeited to the Crown.

Cf. 1991, No. 18, s. 30

33. Court may grant relief to third party—(1) Subject to **subsection (2)** of this section, if property has been forfeited to the Crown under **section 32** of this Act, a person who claims an interest in the forfeited property may apply to the Court that ordered the forfeiture for an order under **subsection (3)** of this section.

(2) Nothing in **subsection (1)** of this section applies to—

- (a) A person who was involved in the commission of the offence in respect of which the property has been forfeited; or
- 5 (b) A person who did not acquire his or her interest in the property in good faith and who knew or had reason to believe at the time of the acquisition that the property was or would be involved in the commission of the offence in respect of which the property has been forfeited.
- 10 (3) If the Court is satisfied that—
- (a) The applicant is a person to whom **subsection (1)** of this section applies; and
- (b) The applicant's claim to an interest in the property is valid,—
- 15 the Court may make an order—
- (c) Declaring the nature, extent, and value of the applicant's interest in the property; and
- (d) Either—
- 20 (i) Directing the Crown to transfer the interest to the applicant; or
- (ii) Declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the Court.
- (4) The Court may make an order under this section on such
- 25 terms and conditions as the Court thinks fit.

Cf. 1991, No. 120, s. 18

34. Minister's powers in respect of forfeited property—

- (1) The Minister may sell or otherwise dispose of property that is forfeited to the Crown under **section 32** of this Act.
- 30 (2) A person having a legal or equitable interest in such property may apply to the Minister within 30 days after the conviction for the release of the property so forfeited.
- (3) On an application under **subsection (2)** of this section, the Minister may order the release of such property—
- 35 (a) On payment to the Crown of such amount as the Minister thinks appropriate, being an amount not exceeding the amount the property forfeited is estimated by the Minister to be likely to realise if sold by public auction in New Zealand; or
- 40 (b) Without payment of any amount.

Cf. 1983, No. 14, s. 107c (1), (2); 1990, No. 29, s. 52 (1)

35. Forfeiture of property or redemption payment is in addition to any other penalty—A forfeiture ordered by the

Court under **section 32** of this Act or a redemption payment imposed by the Minister under **section 34 (2)** of this Act is in addition to, and not in substitution for, any other penalty that may be imposed by the Court.

Cf. 1983, No. 14, s. 107c(4); 1990, No. 29, s. 52(1) 5

PART III

MISCELLANEOUS PROVISIONS

36. Approved maritime surveillance equipment—The Minister may from time to time, by notice in the *Gazette*, approve equipment of any kind to be approved maritime surveillance equipment for the purposes of this Act. 10

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

- (a) Regulating the navigation or conduct of ships engaged in the laying, repairing, or maintenance of submarine cables or submarine pipelines and prescribing the lights or signals to be displayed by those ships while engaged in those operations: 15
- (b) Prescribing the duties of owners of submarine cables or submarine pipelines in respect of the marking or definition of those cables and pipelines and prescribing records to be kept in respect of the location of those cables or pipelines: 20
- (c) Regulating the navigation or conduct of ships in relation to other ships engaged in the laying, repairing, or maintenance of submarine cables or submarine pipelines or in relation to those cables or pipelines or in relation to buoys or signals indicating the presence or proximity of those cables or pipelines: 25
- (d) Prescribing the duties of persons in respect of reporting damage caused or likely to be caused to submarine cables or submarine pipelines: 30
- (e) Prescribing offences against the regulations and defining the persons or classes of persons liable to conviction for those offences: 35
- (f) Prescribing fines not exceeding \$50,000 for offences against the regulations:
- (g) 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 of this Act. 40

Cf. 1966, No. 5, s. 13

38. Repeals and savings—(1) The enactments specified in the Schedule to this Act are hereby repealed.

5 (2) Notwithstanding the repeal of the Submarine Cables and Pipelines Protection Act 1966 by **subsection (1)** of this section, every Order in Council, regulation, and notice made under that Act and in force immediately before its repeal shall, until revoked, continue in force after the repeal of that Act as if it had been made under this Act.

10 (3) The Governor-General may from time to time, by Order in Council,—

(a) Make regulations amending, or revoking in whole or in part, any regulations continued in force by **subsection (2)** of this section; or

15 (b) Make Orders in Council amending, or revoking in whole or in part, any orders continued in force by **subsection (2)** of this section.

(4) The Minister may from time to time, by notice in the *Gazette*, amend, or revoke in whole or in part, any notice continued in force by **subsection (2)** of this section.

SCHEDULE

Section 38 (1)

ENACTMENTS REPEALED

- 1966, No. 5—The Submarine Cables and Pipelines Protection Act 1966. (R.S. Vol. 13, p. 629.)
- 1977, No. 28—The Territorial Sea and Exclusive Economic Zone Act 1977. (R.S. Vol. 27, p. 877.): So much of the Schedule as relates to the Submarine Cables and Pipelines Protection Act 1966.
- 1977, No. 96—The Submarine Cables and Pipelines Protection Amendment Act 1977.
- 1992, No. 122—The Electricity Act 1992: So much of the Fourth Schedule as relates to the Submarine Cables and Pipelines Protection Act 1966.