

SUBMARINE CABLES AND PIPELINES PROTECTION BILL

AS REPORTED FROM THE TRANSPORT COMMITTEE

COMMENTARY

Recommendation

The Transport Committee has examined the Submarine Cables and Pipelines Protection Bill and recommends that the Bill be passed in the form in which it was introduced into the House, with the amendments shown in the attached version of the Bill.

The Submarine Cables and Pipelines Protection Bill was introduced by the Hon Maurice Williamson on 11 October 1995 and referred to the Transport Committee.

We sought submissions on the Bill by direct invitations to interested and relevant organisations as well as advertising in the main metropolitan areas.

Thirteen submissions were received, with 5 from the energy sector, 2 from the telecommunications industry and 3 from the fishing industry. Nine submissions provided oral as well as written evidence.

The Ministry of Transport advised us on the Bill.

We heard 3 hours 55 minutes of oral evidence with a further 5 hours 10 minutes for considering the evidence and advice from officials.

The Bill as introduced

The Bill consolidates and amends the Submarine Cables and Pipelines Protection Act 1966 to provide for better protection of submarine cables and pipelines. A new enforcement and surveillance regime as well as evidential presumptions is proposed and technological evidence would be permitted. The enforcement regime is to be bolstered by enhancing provisions relating to seizure, increasing fines and including new provisions on forfeiture of ships and other property.

Background

The Submarine Cables and Pipelines Protection Act 1966 was introduced to protect the three original Cook Strait power cables laid in 1964. There are now three additional power cables as well as two fibre-optic telecommunications cables, with other telecommunications cables linking New Zealand with Australia and North America. With the growth of fishing activity within the last decade,

there has been a significant increase in the risk of damage to the Cook Strait submarine cables.

The Bill's rationale is that repair and replacement costs, and the effects of disruption to power transmission and telecommunications, far outweigh the inconvenience to fishing or commercial shipping operators in restricting fishing or anchoring in cable and pipeline protection areas. Cable and pipeline damage, particularly in the Cook Strait protection area, indicates that the current Act's deterrent effect is inadequate.

Main provisions

Similar definitions to those in the current legislation apply¹, and the offences of wilful damage and fishing or anchoring in a protected or restricted area are to be retained.

Enforcement and surveillance

The Bill provides a new enforcement and surveillance regime by "enforcement officers" and "cable protection officers". Enforcement officers would include members of the Police, and specified personnel of the New Zealand Naval Forces (officers in command and officers of midshipman rank and above).² They would have powers in relation to the production of information and documents, and the seizure of ships and property.³ Enforcement officers would be able to call upon any person in the vicinity for assistance, subject to exclusions from liability for actions in assisting or for declining to assist.⁴

The Bill allows for the responsible Minister to appoint cable protection officers by notice in the *Gazette*.⁵ An enforcement officer would also be deemed to be a cable protection officer. Cable protection officers would have powers of requesting identification, ordering ships from protected or restricted areas, and seizing fishing equipment left in a protected or restricted area.⁶

Evidence

The Bill introduces a new *presumption* in relation to fishing or anchoring in a protected or restricted area.⁷ The use of any equipment associated with fishing operations, the raising or lowering an anchor, or the suspension of fishing equipment or anchor would establish a rebuttable presumption that fishing operations were being conducted, or that the ship was anchored.

Defences

In addition to the defences of saving life or a ship in distress, there is a provision containing a new defence for the following offences⁸:

- a. not complying with an Order in Council;⁹
- b. fishing operations in a protected or restricted area;¹⁰ or
- c. anchoring in a protected or restricted area.¹¹

¹ Clause 2

² Clause 2

³ Clauses 20 & 21

⁴ Clauses 22 & 23 (*Note: See committee consideration on Clause 23*)

⁵ Clause 16

⁶ Clauses 17-19

⁷ Clause 13

⁸ Clause 14(2)

⁹ Clause 12(6)

¹⁰ Clause 13(1)(a)

¹¹ Clause 13(1)(b)

New provisions are introduced enabling evidence to be obtained by approved maritime surveillance equipment (approved by the Minister, by notice in the *Gazette*), providing an image which records the presence, position, or image of a ship.¹² An “image” includes a photograph, information stored in electronic form, and pictorial or digital transmissions.¹³ The provisions are backed up with the new offence of tampering with approved maritime surveillance equipment.¹⁴

Penalties

The Bill increases penalties for existing offences and provides penalties for new offences. These include:

- owner failing to notify abandoned submarine cable or pipeline—fine up to \$5,000 (up from \$1,000);¹⁵
- wilful damage—fine up to \$250,000 (up from \$1,000);¹⁶
- fishing or anchoring in a protected area—fine up to \$100,000 for commercial operators (new distinction, up from \$5,000); fine up to \$10,000 for non-commercial operators (new distinction, up from \$5,000);¹⁷
- failing within a reasonable time to leave a protected area as ordered—fine up to \$10,000 (up from \$1,000);¹⁸
- master failing to identify ship—fine up to \$5,000 (new);¹⁹
- obstructing an enforcement officer in the seizure of a ship or other property—fine up to \$10,000 (new);²⁰
- tampering with approved maritime surveillance equipment—fine up to \$5,000 (new);²¹ and
- fines under regulations relating to shipping and reporting damage—fines up to \$50,000 (up from \$1,000).²²

The Bill proposes to discontinue imprisonment for any offence, such as wilful damage, which is included in the current Act.

Seizure and forfeiture

The Bill continues provision for the return (at the owner’s expense) or disposal by the Crown of fishing equipment left in a protected or restricted area.²³ New provisions are introduced relating to the custody of ships and other property seized by enforcement officers relating to fishing or anchoring in protected areas.²⁴ The Crown would not be able to release such property until either a decision is made not to prosecute, or the relevant charge has been dismissed. However, the Minister or the Court may release property earlier under bond on application from the owner or person from whom the property was seized.

The Bill proposes new forfeiture provisions following conviction for damaging submarine cables or pipelines, or for fishing or anchoring in protected or

¹² Clauses 29, 31 and 36 (*Note: See committee consideration on Clause 20*)

¹³ Clause 2

¹⁴ Clause 30

¹⁵ Clause 9

¹⁶ Clause 11 (*Note: See committee consideration of Clause 11*)

¹⁷ Clause 15 (*Note: See committee consideration of Clause 15*)

¹⁸ Clause 17

¹⁹ Clause 19

²⁰ Clause 21

²¹ Clause 30

²² Clause 37

²³ Clause 18

²⁴ Clauses 25–27

restricted areas.²⁵ The Court would be able to order forfeiture to the Crown of property used in commission of an offence. However, the Court would be able to grant relief, as it thinks fit, to a third party with an interest in the property, who acquired that interest in good faith and was not involved in committing the offence.²⁶

General comment made by submissions

Energy sector

Submissions from the energy sector were strongly supportive of the Bill. We were told it was essential for the continued integrity of energy supply and the national transmission network. With only four of the six Cook Strait cables in working order, the loss of a single cable due to mechanical damage would have very serious consequences for a repair or replacement period of 12–18 months and put the whole link at risk in the event of a fault in a second cable. The loss of two or more cables would not only result in much higher direct costs, but also restrict the supply of electricity with costs ranging from \$7 million to \$45 million. Anchoring or fishing in protected zones poses a serious threat to vital national assets and risks substantial disruption to business and domestic activity. Energy sector witnesses said that the national interest must take precedence over the interests of those whose activities threaten submarine cables, whether by negligence, carelessness or wilful intent.

Telecommunications industry

The Bill was also strongly supported by the two telecommunication companies making submissions. We were told that the international links are vital for virtually all international telecommunications traffic between New Zealand and the rest of the world and would cost millions to repair. While fishing and anchoring activities have been the main causes for cable disruption in the past, we were informed that, in the future, seismic surveying and oil exploration surveying could also cause damage. The companies considered the Bill should be amended to refocus on the act of damaging submarine cables rather than the act of fishing or anchoring.

Fishing industry

We found the fishing industry to be supportive of the concept of protection zones and accepted that punitive damages are necessary to make the areas effective. However, fishing industry submissions felt that the penalty provisions in the Bill were excessive as, in the majority of cases, there will be little relationship between being in the area and actual damage occurring. Concern was also expressed to us about the need for adequate consultation in respect of the decision to declare an area as a prohibited area and to minimise the impact of any such declaration on the fishing industry.

Committee consideration

1. Long title

The Legislation Advisory Committee (LAC) advocated that the Bill should be consistent with international treaty obligations. As New Zealand is a party to the International Convention for the Protection of Submarine Telegraph Cables 1885, the Convention on the High Seas 1958 and intends to become a party to the United Nations Convention on the Law of the Sea 1982 (UNCLOS), we were told

²⁵ Clauses 32–35

²⁶ An example of such relief would be to order the Crown to pay an amount equivalent to the value of that interest. Otherwise, the Minister would be able to dispose of the property, or release it to a person with a legal or equitable interest in it, on payment of an amount up to the amount estimated to be realisable if the property was otherwise sold by public auction in New Zealand.

that consideration should be given to recognising this treaty basis for the legislation in the statute itself.

We agree with the committee's views and recommend that the Long Title be amended by inserting a provision that recognises the international responsibilities New Zealand has under the international conventions relating to protection of submarine cables and pipelines.

2. Clause 2—Interpretation

Seven definitions were commented on by submissions including:

“Internal waters of New Zealand”

The Electricity Supply Association said it was unclear whether the definition of “internal waters of New Zealand” covered estuaries and harbours. The Association was concerned as its members had a considerable number of undersea cables across harbour entrances or to navigation lights. We were advised that the definition provides an unequivocal formula prescribing the boundary of the internal waters of New Zealand.²⁷

“Ship”

Two submissions said the definition of “ship” should be amended to be consistent with section 2 of the Maritime Transport Act 1994.²⁸ We agree and have recommended that the expression “*the* means of propulsion” in the definition be changed to “*any* means of propulsion” to make it consistent with the Act.

“Territorial sea”

The LAC informed us that the definition of “territorial sea” is not needed as it is contained in section 4 of the Acts Interpretation Act 1924. We agree and recommend that it be deleted. This would also avoid the possible ambiguity suggested by the New Zealand Law Society in relation to the term “high seas”.

“Cable Protection Officer”/“Protection Officer”

Trans Power New Zealand Limited (Trans Power) pointed out that the term, “cable protection officer”, did not cover pipelines, which it suggested, should also be included. We agree and recommend that the term, “cable protection officer”, be replaced by the term, “protection officer”, and that clauses relating to cable protection officers be amended accordingly.

3. Clause 4—Application of the Act

We agree with the LAC recommendation of making clause 4(1) a *general* application provision so the Act would apply—

- (1) within New Zealand internal waters and territorial seas;
- (2) to New Zealand ships on the high seas; and
- (3) to New Zealand citizens and ordinary residents on foreign ships on the high seas.

In addition, as clause 4(2) raises some uncertainty about whether the Bill applies to internal waters, we are recommending that the subclause be omitted to avoid any confusion as the definition of internal waters includes areas of sea on the landward side of the low water mark.

4. Clause 5—Other Acts not affected

The LAC suggested that this provision could be deleted because it was unclear whether the provision served a useful purpose. We note that the clause could be omitted without affecting the Bill or any other statute, but have decided it should

²⁷ “The internal waters of New Zealand include any areas of sea that are on the landward side of the baseline of the territorial sea of New Zealand.”, section 4, Territorial Sea and Exclusive Economic Zone Act 1977

²⁸ Trans Power New Zealand Limited and Paul Myburgh

be retained as its omission from the Bill, having been in the current Act, could be regarded by the courts as a policy change signalling an intention that the Act would affect other Acts.

5. Clause 6—Civil liability

Trans Power wanted the clause to be amended to exempt damage to submarine cables and pipelines from limitations of liability under section 87 of the Maritime Transport Act 1994. We were advised that this proposal was inconsistent with New Zealand's obligations as a party to the International Convention on the Limitation of Liability for Maritime Claims 1976, which are reflected in Part VII of the Maritime Transport Act 1994.

The LAC also said clause 6 could be deleted as the essence of the clause was already covered by clauses 7 and 8 and it only refers to liability in tort and the parties might have relationships under other parts of the law. While omitting the clause, as suggested by the LAC, might not affect the application of the general law to damage to submarine cables and pipelines, we have decided to retain this provision, with an amendment to address the LAC's specific concern. As the provision is in the current Act, there is a possibility that the courts may regard its omission as a policy change signalling an intention to modify the application of the general law as it applies to damage to submarine cables and pipelines.

6. Clause 8—Indemnity for loss of certain equipment

Clause 8 gives continued effect to the provisions of Article 7 of the 1885 Convention, which does not qualify the entitlement to indemnity. Three submissions said the clause should be amended so that the exemption of having taken all reasonable precautions should not apply where a person has been convicted of an offence under clauses 12 or 13.²⁹ We agree as all significant cables and pipelines are in protected areas. While anyone able to claim one of the defences under the Bill would still be entitled to the indemnity, it would be odd if a person convicted of an offence that endangered a cable or pipeline were able to claim the indemnity. We recommend, therefore, a new provision, clause 8(2), to specify that a shipowner is not to be entitled to indemnity if convicted of an offence against clause 11(1) or clause 13 of the Bill.

7. Clause 9—Owner of abandoned submarine cable or pipeline to notify Minister

This clause carries forward section 6A of the existing Act. The LAC considered that the provision does not operate in a sensible way because it requires notification immediately after initial usage ceases, even though the owner may yet decide whether the cable is likely to be used again. We noted the committee's point and recommend that the clause be amended so that the duty to notify the Minister arises as soon as use ceases.³⁰

8. Clause 11—Offence to damage submarine cable or pipeline

We were advised that the provision is a balance between competing interests. Cable and pipeline owners sought strict liability, wide scope and heavy penalties. The fishing industry, on the other hand, wanted wide defences, narrow scope and lower penalties. Officials said the penalties attempted to balance the level of deterrence needed, given the high possible cost to the nation of cable damage and the high possible catch values, against the possible impact on a fishing operator's livelihood, and the national economic benefits from the fishing industry.

²⁹ Electricity Corporation of New Zealand Limited, Trans Power New Zealand Limited and Electricity Engineers' Association of New Zealand (Note: See committee consideration of Clause 13)

³⁰ We consider that reporting could otherwise be deferred indefinitely, pending a future decision on the possible reuse of the cable or pipeline.

Fine not exceeding \$250,000

We were told by the fishing industry the \$250,000 penalty is harsh and oppressive. It argued that the innocent owner of a ship faces an excessive monetary fine and possible forfeiture unless it can be shown that the damage was necessary to save a life or ship. The monetary penalty should be reduced and the owner of a ship not additionally liable.³¹

Two electrical industry submissions sought an increase in the maximum penalty to \$500,000 in order to provide a greater deterrent and better reflect the consequences of damage.³²

We consider the proposed penalty of \$250,000 is sufficient to provide a strong deterrent as the penalty of forfeiture can also be applied. In addition, we were advised that the cable or pipeline owner could make a civil claim in respect of property damage.

Issues of “wilful” and “negligence”

The LAC said the clause appeared to be narrower than the provision required by the treaty on which the clause is based and should include culpable negligence. The Electricity Corporation of New Zealand strongly recommended that “wilfully” should be deleted while Trans Power said the wording should be amended to include negligence.

We agree that the concept of negligence should be incorporated into the provision. The officials advised that, to comply with the treaty, the concept of “culpable negligence” should be used. We were informed that “negligence” would be interpreted by the Courts to mean “criminal negligence” which was appropriate given the penalty. We, therefore, recommend that clause 11(1)(a) be amended to include “negligently” as part of the offence. We do not recommend that “wilfully” be omitted as the definition has already been tested in court.

Two submissions urged that the phrase “or ought to know” as contained in section 4(3) of the existing legislation should be re-instated so ignorance could not be allowed to be a defence.³³ We were told the existing legislation enables an allegation of recklessness to be assessed according to an objective standard. By omitting the phrase, “or ought to know”, the prosecutor must prove that the person actually knew that their act would probably cause damage. Trans Power stated that in civil aviation experience of a similar provision had shown that convictions based on recklessness assessed according to a subjective standard are extremely difficult to obtain. However, we consider the inclusion of “negligence” as part of the definition of the offence covers the concerns raised on this issue.

Other equipment

Three submissions raised the issue that it was not just ships but equipment deployed from ships which should be covered under the provision.³⁴ We agree and have recommended that clause 11(1)(a) be amended accordingly.

Owner liability

The New Zealand Fishing Industry Association believed that making the *owner* of a vessel liable on a pure strict liability basis for the wilful or reckless actions of people on board the vessel went too far as this is not provided for in UNCLOS (Article 113), on which this provision is based. The liability of ship owners was already covered by the lesser offence provision in clause 13, which has the

³¹ New Zealand Fishing Industry Board

³² Electricity Corporation of New Zealand Limited and Trans Power New Zealand Limited

³³ Electricity Corporation of New Zealand and Trans Power New Zealand Limited

³⁴ Electricity Corporation of New Zealand, Trans Power New Zealand Limited, Telecom New Zealand Limited

defence available under clause 14. If retained, then the Association maintained that the defence provided for in clause 14 should also be available to any offence committed under clause 11(1)(b).

Officials advised that in maritime transport law liability is placed with the master and the owner, including those chartering foreign fishing vessels, for offences involving ships. We consider, therefore, that the provision should continue to apply to ship owners, but do not believe that the clause 14 defence should be included in clause 11(1)(a). The offences giving rise to a ship owner's liability require actions involving a high degree of culpability on the part of those operating the ship. If a further level of intent had to be established on the part of the owner or master, it would become almost impossible to invoke clause 11 against an owner or master unless they personally caused the damage.

9. Clause 12—Protected areas

The LAC submitted that the scope of offences that could be created by Order in Council under clause 12(2) should be limited to declaring the areas and ships affected by the protections and restrictions imposed by Order in Council. The Regulations Review Committee was equally concerned about the wide powers given to the Governor-General to impose conditions and expressed in subjective terms, "thinks necessary or desirable". The committee pointed out that a breach of these conditions could lead to a significant penalty while a subjective power could have the effect of limiting or ousting the jurisdiction of the courts.

We agree with both committees that clause 12(2) gives too wide a power to impose conditions. We therefore recommend that the provision be amended by replacing it with a more restrictive power to specify in the Order in Council conditions that specified ships must follow to qualify for an exemption from a clause 13(1) offence.

Other clausal amendments we are recommending concur with the fishing industry's concern that the Minister should consult with persons or organisations whose interests are likely to be affected prior to a protected area being declared and that, in addition to the *Gazette*, notification of the making of Orders in Council declaring a protected area should be made in the metropolitan daily newspapers.

We are also recommending a new provision, clause 12(2A), where failure to comply with these requirements does not affect the validity of any Order in Council made. The decision to make the order is still grounds for judicial review, but we do not believe the lack of consultation or notification should be available as grounds for avoiding prosecution through the Order in Council being invalidated as a consequence.

"Protected"/"restricted" areas

Upon the advice of officials, we accept that there is no need to distinguish between "protected" and "restricted" areas, as submitted by the New Zealand Fishing Industry Association. In practice no distinction is made between the two types of areas in relation to the offences, enforcement powers and penalties. We recommend, therefore, that the clause be amended to provide for only one class of Order which could declare protected areas.

10. Clause 13—Certain activities prohibited in protected areas

Three submissions strongly supported the inclusion of the new rebuttable presumption in the Bill as essential for the practical use of the Bill.⁵⁵ The fishing industry, on the other hand, was critical of the low standard of proof required,

⁵⁵ Electricity Corporation of New Zealand, Trans Power New Zealand Limited, Electricity Engineers' Association of New Zealand

which it said made the excessive penalty even more oppressive.³⁶ We do not agree, however, because the presumption applies unless evidence is put forward to the contrary.

We were advised that the scope of the provision could be extended to include not only fishing and anchoring in protected areas, but also any other acts in contravention of an Order in Council made under clause 12. We recommend, therefore, that the two offence provisions in clause 12(6) and clause 13(1) be amalgamated in clause 13, clause 13(1) and clause 13(1A). We do not consider that a breach of a condition of an Order made under this provision would be merely a technical offence, but could be a serious matter. The conditions may, for example, allow operations such as fishing that would otherwise be prohibited, provided that specific operational activities designed to prevent cable damage are strictly observed.

We also recommend a new provision, clause 13(1B), which makes it clear that a person acting in compliance with a *Gazette* notice under clause 12(3) is not liable to prosecution for an offence against clause 13 in respect of conduct permitted by that notice.³⁷

11. Clause 14—Defences in respect of certain offences

This provision relates to conduct that is prohibited or controlled inside cable protection areas. It makes available a defence in that no offence is committed if there was no intent to commit an offence *and* all reasonable precautions had been taken to avoid the commission of an offence.

We were advised by officials that the defence had been included so that the rebuttable presumption in clause 13(2) would, in effect, be balanced by clarifying that there would still be a defence available where a defendant acted with due diligence or without fault, for example, where malfunctioning equipment had given rise to an offence, despite all reasonable precautions having been taken by the defendant.

The electricity industry expressed strong opposition to the provision in their submissions.³⁸ Trans Power said the defence should be deleted entirely as this was their single most important concern in the Bill. It would allow an offender to escape liability by showing lack of intent to commit the offence and would almost certainly provide serious problems for practical enforcement of the Bill. Along with Telecom New Zealand, Trans Power considered that intent and steps taken to avoid commission of an offence were factors to be taken into account by the Court when sentencing, rather than being made available as a specific defence.

We were advised by officials that, notwithstanding these concerns, the defence would not compromise the effectiveness of the Bill. We accept that a defendant must not only raise, but prove the defence rather than the prosecution having to disprove it. Although precautions taken to avoid an offence can be taken into account when sentencing, we consider that it is more appropriate that they be taken into account in assessing whether an offence has occurred, rather than as mitigating circumstances upon conviction.

We were advised by officials that the lack of intent element of the defence was unnecessary because a person could not intend to commit an offence if that person took all reasonable precautions to avoid committing an offence. We are, therefore, recommending that the defence be amended by deleting clause 14(2)(a), as introduced.

³⁶ New Zealand Fishing Industry Association

³⁷ This was a concern raised by the New Zealand Fishing Industry Association.

³⁸ Electricity Corporation of New Zealand, Trans Power New Zealand Limited, Electricity Engineers' Association of New Zealand

We note that the use of a different standard of defence to that of clause 11, as questioned by the LAC, is intentional. Officials informed us that Clause 11 is intended to give effect to Article 2 of the International Convention for the Protection of Submarine Telegraph Cables 1885. Unlike clause 11, which necessitates the defence that a person has not acted wilfully or negligently, the proposed aim of clause 14(2), as amended, is to allow a limited defence when an offence has arisen due essentially to circumstances outside the defendant's control, but only if the defendant had acted responsibly in the circumstances.

12. Clause 15—Penalties in respect of certain offences

The Bill specifies for a fine up to \$10,000 for non-commercial operators who commit an offence for certain activities prohibited in protected areas.⁵⁹ We consider that it would be more appropriate to maintain the relativities to penalties in relation to those for offences under the Maritime Transport Act 1994 committed by companies and individuals (five to one) as well as sending a stronger signal of the consequences for committing such an offence. We, therefore, recommend that the maximum fine be increased to \$20,000.

13. Clause 17—Ship may be ordered from protected area

We are recommending an amendment to clause 17 consequential to the amendment to clause 13(1) expanding its scope to apply not only to fishing and anchoring in a protected area, but also any other conduct within such an area that fails to comply with an Order under clause 12.

14. Clause 18—Fishing equipment in protected area may be seized

The LAC noted that the powers in clause 18 are stated in a partly objective manner whereas clauses 17, 20 and 21 authorise the use of powers on the basis of an officer having reasonable grounds to believe that certain circumstances existed. While clause 23 would shield an officer acting mistakenly from liability in tort, the committee suggested that clause 18 should be redrafted so that this protection is specifically included, as in clauses 17, 20 and 21. We agree and recommend that clause 18 be amended so that a protection officer must believe on reasonable grounds that the area in which the equipment has been found is a protected area.

15. Clause 19—Master to identify ship

Trans Power wanted the provision extended to enable a protection officer to require a master to identify his or her vessel where there were reasonable grounds to believe that a ship may be about to enter or about to conduct fishing operations in a protected or restricted area. Paul Myburgh submitted that in order to facilitate court proceedings, it could be useful for an officer to be able to require the master to identify himself or herself and the owner.

While we do not agree with the proposal to extend the powers of a protection officer to allow him or her to prejudge the intent of those in charge of a ship, we are recommending an amendment to extend the officer's power to require identification if there are reasonable grounds to believe that a ship or its equipment is being used in committing an offence under clause 13. We also agree with Mr Myburgh's submission and have proposed an amendment which will require the identification of the owner as well the master.

16. Clause 20—Power to obtain documents and information

Trans Power submitted that it was important to explicitly state that taking copies of documentation may include downloading of electronically stored information such as that stored under the Global Positioning System or similar equipment. We

⁵⁹ Clause 13

concur and have proposed amendments to assist the protection officer's obtaining electronic information and which provide for a very wide definition of "document" to aid such efforts. A consequential amendment to clause 29(1)(a) to omit "image" is also recommended.

17. Clause 23—Protection of enforcement officers and assistants and cable protection officers from liability

The LAC submitted that while the clause is modelled on section 23 of the Driftnet Prohibition Act 1991, no such provision was included in the present Act or its predecessor or in other comparable statutes. The LAC noted that, under clause 18, an officer could act on the basis that the set of facts existed and yet find subsequently that they did not. If an officer did act mistakenly, then it would appear that an officer would not be acting under the authority of the relevant clauses and would possibly be liable in tort for actions taken outside the powers conferred on them. We agree with the LAC's position that, if clause 18 is amended to include the protection for using the powers in the clause, then clause 23 should be omitted. We have recommended that clause 23 be deleted.

18. Clauses 27 and 33—Release of property by Court/Court may grant relief to third party

The New Zealand Law Society submitted that, while both clauses refer to applications to a court, no procedure was specified. The Society advocated it should be explicitly stated that both types of applications are brought by originating application to avoid the issue of whether it might be necessary to proceed by statement of claim. Although officials advised that such procedures are not generally set out in legislation, for the sake of clarity we are proposing amendments which specify the standard jurisdiction demarcation in these matters.

19. Clause 28—Consent of Attorney-General required for certain proceedings

We are proposing that this provision be amended as suggested by the LAC so that:

- a. the Attorney-General's consent is required in respect of offences alleged to have occurred outside New Zealand's territorial sea, or committed by a foreign ship or by a person who is not a New Zealand citizen or ordinarily resident in New Zealand; and
- b. The person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further proceedings shall be taken until the Attorney-General's consent is obtained.

20. Clause 32—Forfeiture of property on conviction

Trans Power strongly supported the deterrent effect provided by forfeiture at the discretion of the Court as a key part of practical protection of nationally important submarine assets. We agree with their view that the clause should expressly state that a vessel forfeited to the Crown was forfeited free of encumbrances (such as mortgages) for the sake of clarity and have recommended amending the clause to this effect. The consequence of this to those having any interest in the property is that security would be extinguished, leaving an unsecured debt.⁴⁰

⁴⁰ We were informed by Parliamentary Counsel that in the Court of Appeal case of *Equal Enterprise Limited v A-G* [1995] 3 NZLR 293, it was held in the context of forfeiture provisions of the Fisheries Act 1983, that forfeiture extinguished all ownership interests, including security interests in the vessel, but the contractual debt between mortgagor and mortgagee remained.

21. A number of consequential, technical and minor drafting amendments are also recommended.

Finally, we wish to acknowledge the assistance provided by Ministry of Transport officials, the Parliamentary Counsel officer and committee staff in our consideration of the Submarine Cables and Pipelines Protection Bill.

APPENDIX 1

LIST OF SUBMISSIONS⁴¹

- 1W Power Direct
- 2 Electricity Corporation of New Zealand Limited
- 3W Clear Communications Limited
- 4 New Zealand Federation of Commercial Fishermen (Inc)
- 5 Trans Power New Zealand Limited
- 6 Electricity Supply Association
- 7 New Zealand Fishing Industry Board
- 8 Telecom New Zealand Limited
- 9 Legislation Advisory Committee
- 10W Paul Myburgh, Senior Lecturer, Department of Commercial Law, University of Auckland
- 11 Electricity Engineers' Association of New Zealand Inc
- 12W New Zealand Law Society Inc
- 13 New Zealand Fishing Industry Association

APPENDIX 2

TRANSPORT COMMITTEE

Hon W Rob Storey *Chairperson*
Robert Anderson
Harry Duynhoven
Ian Revell
Suzanne Sinclair

⁴¹ W denotes written submission only

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

The quick brown fox

Text struck out unanimously

New (Unanimous)

The quick brown fox

Text inserted unanimously

~~(The quick brown fox)~~

Words struck out unanimously

The quick brown fox

Words inserted unanimously

SUBMARINE CABLES AND PIPELINES PROTECTION

ANALYSIS

Title	<i>Prohibition on Certain Activities in Protected Areas</i>
1. Short Title and commencement	12. Protected areas 13. Offences in respect of protected areas 14. Defences in respect of certain offences 15. Penalties in respect of certain offences
PART I	
PRELIMINARY PROVISIONS	
2. Interpretation	<i>Appointment and Powers of Protection Officers, Etc.</i>
<i>Application</i>	
3. Act to bind the Crown	16. Protection officers
4. Application of Act	17. Ship may be ordered from protected area
5. Other Acts not affected	18. Seizure of fishing equipment in protected area 19. Master to identify ship
PART II	
PROTECTION AND ENFORCEMENT	
<i>Liability for Damage to Submarine Cable or Pipeline</i>	
6. Civil liability	<i>Powers of Enforcement Officers, Etc.</i>
7. Liability in respect of damage to cable or pipeline	20. Power to obtain documents and information 21. Power of seizure 22. Persons assisting enforcement officer 24. Enforcement officer to produce evidence of authority to act
<i>Indemnity for Loss of Certain Equipment</i>	
8. Indemnity for loss of certain equipment	<i>Provisions Relating to Seized Property</i>
<i>Submarine Cable or Pipeline that has Ceased to be Used</i>	
9. Owner of submarine cable or pipeline that has ceased to be used to notify Minister	25. Custody of property seized 26. Release of property by Minister 27. Release of property by Court
10. District Court may order removal of abandoned submarine cable or pipeline	<i>Proceedings for Offences, Etc.</i>
<i>Offence to Damage Submarine Cable or Pipeline</i>	
11. Offence to damage submarine cable or pipeline	28. Consent of Attorney-General required for certain proceedings 29. Evidential provisions relating to approved maritime surveillance equipment 30. Offence to tamper or interfere with approved maritime surveillance equipment 31. Evidence of testing and accuracy of approved maritime surveillance equipment
<i>Forfeiture of Property on Conviction</i>	
	32. Forfeiture of property on conviction

33. Court may grant relief to third party
 34. Minister's powers in respect of forfeited property
 35. Forfeiture of property or redemption payment is in addition to any other penalty

PART III
 MISCELLANEOUS PROVISIONS
 36. Approved maritime surveillance equipment
 37. Regulations
 38. Repeals and savings Schedule

A BILL INTITULED

Struck Out (Unanimous)

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

5

New (Unanimous)

An Act—

(a) To provide better protection of submarine cables and pipelines; and

(b) To continue, or enable, the implementation of obligations on New Zealand under various international conventions relating to protection of submarine cables and pipelines; and

10

(c) To consolidate and amend the Submarine Cables and Pipelines Protection Act 1966

15

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

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

20

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

PART I

PRELIMINARY PROVISIONS

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

25

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

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

5 “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:

Struck Out (Unanimous)

10 “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:

15 “Enforcement officer” means—

(a) A member of the Police:

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

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

20 *Struck Out (Unanimous)*

“Fishing ship” means a ship used for catching fish, whales, seals, or other living resources of the sea for profit; and includes a ship that is recognised by the Director as being engaged in fisheries research:

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

30 “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:

35 “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:

Struck Out (Unanimous)

“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:

5

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

“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:

10

“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:

15

“Owner”,—

(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:

20

(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:

25

(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:

30

(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:

35

New (Unanimous)

“Owner”, in relation to a submarine cable or submarine pipeline includes the person who, if the cable or

New (Unanimous)

pipeline has ceased to be used, owned the cable or pipeline at the time it ceased to be used:

5 “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:

New (Unanimous)

10 “Protection officer” means a protection officer appointed under **section 16** of this Act:

15 “Ship” means every description of boat or craft used in navigation, whether or not it has *(the)* any means of propulsion; and includes—

(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:

(c) A submarine or other submersible:

20 “Submarine cable” means a cable that lies beneath the high seas or the territorial sea *(or)* of New Zealand or the internal waters of New Zealand:

25 “Submarine pipeline” means a pipeline that lies beneath the high seas or the territorial sea *(or)* of New Zealand or the internal waters of New Zealand.

Struck Out (Unanimous)

30 “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)

Application

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

Cf. 1966, No. 5, s. 12

Struck Out (Unanimous)

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—

- (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
- (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
- (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 the surface of the sea.

Cf. 1966, No. 5, s. 3

New (Unanimous)

4. Application of Act—This Act applies to acts or omissions—

- (a) By a person within the territorial sea of New Zealand or the internal waters of New Zealand; or
- (b) By a person on board or by means of a New Zealand ship on the high seas; or
- (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.

Cf. 1966, No. 5, s. 3 (1)

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,

nothing in this Act derogates from the provisions of any other enactment.

Cf. 1966, No. 5, s. 10

PART II

PROTECTION AND ENFORCEMENT

Liability for Damage to Submarine Cable or Pipeline

Struck Out (Unanimous)

5

10

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 accordance with the general law in respect of liability in tort.

New (Unanimous)

15

6. Civil liability—Nothing in this Act limits or affects the liability for damages of any person in respect of any damage to a submarine cable or submarine pipeline.

Cf. 1966, No. 5, s. 9

20

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, damages another submarine cable or submarine pipeline, is liable for the cost of repairing that damage, and such liability—

25

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

(b) Applies whether or not—

30

(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 relating to that damage.

Cf. 1966, No. 5, s. 5

Indemnity for Loss of Certain Equipment

35

8. Indemnity for loss of certain equipment—(1) *(If, after all reasonable precautionary measures)* Subject to **subsection (2)** of

this section, if after all reasonable precautions 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

New (Unanimous)

(2) An owner of a ship is not entitled to be indemnified under **subsection (1)** of this section, if a person is convicted of an offence against **section 11 (1)** or **section 13** of this Act arising out of the conduct that would, but for this subsection, give rise to the indemnity. 10

Cf. 1966, No. 5, s. 6

Struck Out (Unanimous)

Abandoned Submarine Cable or Pipeline 15

New (Unanimous)

Submarine Cable or Pipeline that has Ceased to be Used

9. Owner of submarine cable or pipeline that has ceased to be used to notify Minister—

Struck Out (Unanimous) 20

(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,— 25
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.

New (Unanimous)

(1) The owner of a submarine cable or submarine pipeline, as the case may be, shall, immediately after the use of the submarine cable or submarine pipeline has ceased, notify the Minister in writing that the cable or pipeline has ceased to be used.

(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,—

(a) Is unlikely to be used again; and

(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)* of New Zealand or the 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.

(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—

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

(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***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—

Struck Out (Unanimous)

5

- (a) Wilfully damages or causes or permits a ship to damage a submarine cable or submarine pipeline; or
- (b) Is the owner or master of a ship that is used to commit an offence against **paragraph (a)** of this subsection.

New (Unanimous)

10

- (a) Wilfully or negligently either damages, or causes or permits a ship or equipment belonging to a ship to damage, a submarine cable or submarine pipeline; or
- (b) Is the owner or master of a ship that is used in the commission of an offence against **paragraph (a)** of this subsection.

15

(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*) reasonable 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.

Cf. 1966, No. 5, s. 4

30

Prohibition on Certain Activities in Protected (or Restricted) Areas

12. Protected areas—

Struck Out (Unanimous)

- 5 (1) The Governor-General may from time to time, by Order in Council, declare—
- (a) An area within the territorial sea or internal waters of New Zealand to be a protected area for the purposes of this Act:
 - 10 (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.
- (2) An Order in Council under this section may—
- 15 (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—
 - 20 (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.

New (Unanimous)

- 25 (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, declare any of the following areas to be a protected area for the purposes of this Act:
- 30 (a) An area within the internal waters of New Zealand:
 - (b) An area within the territorial sea of New Zealand:
 - (c) 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).
- (2) The Minister shall not make a recommendation under
- 35 **subsection (1)** of this section unless—
- (a) The Minister has first consulted with such persons or organisations representing such persons as the Minister considers would be affected by the order; and

New (Unanimous)

- | | |
|---|--|
| <p>(b) Those persons or organisations have a reasonable opportunity to make submissions to the Minister; and</p> <p>(c) The Minister has regard to those submissions.</p> <p>(2A) A failure to comply with subsection (2) of this section does not affect the validity of any Order in Council made under subsection (1) of this section.</p> <p>(2B) An Order in Council under subsection (1) of this section may—</p> <p>(a) Apply—</p> <p style="padding-left: 2em;">(i) Generally in respect of an area to which it relates:</p> <p style="padding-left: 4em;">(ii) Differently in respect of specified areas or classes of areas within the general area specified in the Order in Council:</p> <p style="padding-left: 4em;">(iii) Generally in respect of all ships:</p> <p style="padding-left: 4em;">(iv) Differently in respect of specified ships or classes of ships:</p> <p style="padding-left: 4em;">(v) Generally in respect of all methods of fishing:</p> <p style="padding-left: 4em;">(vi) Differently in respect of specified methods of fishing:</p> <p>(b) Impose requirements in respect of specified ships or classes of ships that must be met before a ship or class of ships qualifies for exclusion from the application of the order.</p> <p>(2c) The Minister shall publish a notice of the making of an Order in Council under subsection (1) of this section in—</p> <p style="padding-left: 2em;">(a) Each of the metropolitan daily newspapers published in Auckland, Wellington, Christchurch, and Dunedin, respectively; and</p> <p style="padding-left: 2em;">(b) The <i>Gazette</i>.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
| <p>(3) The Minister may, by notice in the <i>Gazette</i>, declare that an Order in Council under this section does not apply in respect of <u>(any specified ship or ships or class or classes) a specified ship or class of ships</u>, and may in like manner vary or revoke any such notice.</p> <p>(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.</p> | |

(5) Notwithstanding the provisions of an Order in Council under this section, any such notice has effect according to its tenor.

Struck Out (Unanimous)

5 (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.

New (Unanimous)

10 (6) **Subsections (2), (2A), and (2c)** of this section apply, with such modifications as may be necessary, to the making of a declaration under **subsection (3)** of this section.

Cf. 1966, No. 5, ss. 7, 7A (2); 1977, No. 96, ss. 4, 5

15 **13. Offences in respect of protected areas—(1) (If)** Subject to **subsection (1B)** of this section, 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 (1)** of this Act; or

20 (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.

New (Unanimous)

25 (1A) Subject to **subsection (1B)** of this section, every person who fails to comply with, or acts in contravention of, an Order in Council under **section 12 (1)** of this Act commits an offence and is liable on summary conviction to the appropriate penalty under **section 15** of this Act.

30 (1B) A person is not liable for an offence against this section involving a ship to which a notice under **section 12 (3)** of this Act applies.

(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—

(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—

5

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.

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

10

(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

15

(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.

20

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)) section 13** of this Act if the defendant proves that any anchoring which is alleged to constitute the offence was necessary for the purpose of saving life or a ship *(in distress)*.

25

Struck Out (Unanimous)

(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

30

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

New (Unanimous)

(2) It is a defence to a prosecution for an offence against **section 13** of this Act if the defendant proves that the defendant

35

New (Unanimous)

took all reasonable steps to prevent the commission of the offence.

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

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

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

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

15 (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:

(b) To a fine not exceeding (~~\$10,000~~) \$20,000, if the offence was committed, otherwise than in any of the circumstances specified in **paragraph (a)** of this section.

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

Appointment and Powers of (Cable) Protection Officers, Etc.

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

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

17. Ship may be ordered from protected area—*Struck Out (Unanimous)*

30 (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; or

35 (b) A ship is anchored in any such area,—

Struck Out (Unanimous)

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.

New (Unanimous)

5

(1) If a protection officer believes on reasonable grounds that a ship or equipment belonging to a ship is being used in a protected area in the commission of an offence against **section 13** of this Act, the protection officer may, by any means of communication, order the master of the ship to remove the ship from that area.

10

(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.

15

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

Struck Out (Unanimous)

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

20

- (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.

25

(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.

30

(4) If no one establishes, to the satisfaction of a cable protection officer, ownership of equipment seized under this

35

Struck Out (Unanimous)

5 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, 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.

New (Unanimous)

10 **18. Seizure of fishing equipment in protected area—**
(1) A protection officer who finds fishing equipment may seize the equipment if he or she believes on reasonable grounds that—

15 (a) The area in which he or she finds the equipment is declared to be a protected area by an Order in Council under **section 12 (1)** of this Act; and

(b) The equipment has been left there by a ship to which the order applies.

20 (2) A protection officer who has seized fishing equipment under **subsection (1)** of this section shall without delay arrange for notice of the seizure to be posted at the police station nearest to where the seizure was made.

25 (3) Subject to **subsection (4)** of this section, a protection officer shall return fishing equipment seized under **subsection (1)** of this section, at the expense of the person, to a person who establishes ownership to the satisfaction of the protection officer.

30 (4) If ownership of the fishing equipment is not established under **subsection (3)** of this section within 60 days after the posting of the notice of seizure under **subsection (2)** of this section,—

35 (a) The fishing equipment becomes the property of the Crown subject only to those encumbrances, liens, and interests of which a protection officer is aware at the time the fishing equipment becomes the property of the Crown; and

(b) The fishing equipment may be sold or otherwise disposed of as the Minister thinks fit.

19. Master to identify ship—*Struck Out (Unanimous)*

(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 5
- (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,— 10
- 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. 15

New (Unanimous)

(1) If,—

- (a) A protection officer believes on reasonable grounds that a ship or equipment belonging to a ship is being used in the commission of an offence against **section 13** of this Act; and 20
- (b) A request for identification is made to the ship by the protection officer,—
- the master of the ship must advise the protection officer of the master's name, owner's name, ship's name, place of registry, register number, and such further information as may be relevant to the identity of the master and owner and the identity of the ship that may be requested by the protection officer. 25

(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. 30

Powers of Enforcement Officers, Etc.

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 35

from or in relation to a ship, the enforcement officer may, for the purposes of enforcing the provisions of this Act,—

- 5 (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:
- 10 (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:
- 15 (c) Require the master of the ship, or any other person on board the ship, (to give an explanation or information) to produce a document, or 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:
- 20 (d) Take or make 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.

Struck Out (Unanimous)

- 25 (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.

New (Unanimous)

- 30 (2) An enforcement officer may—
- (a) Take possession of and remove any such document from the place where it is kept for such period of time as is reasonable in the circumstances; and
- 35 (b) Require a person to reproduce, or assist the enforcement officer to reproduce, in usable form any information recorded or stored on a document electronically or by other means.

(3) Nothing in paragraph (b) or 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.

New (Unanimous)

(3A) For the purposes of this section “document” means a document in any form; and includes—

- (a) Any writing on or in any material; and
- (b) Information recorded or stored by means of a tape-recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and
- (c) A record, book, graph, or drawing; and
- (d) A photograph, film, negative, tape, disk, or other device in which one or more visual images are embodied or stored so as to be capable (with or without the aid of equipment) of being reproduced.

(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

21. Power of seizure—

Struck Out (Unanimous)

(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
- (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.

New (Unanimous)

(1) An enforcement officer may seize a ship or other property if the officer believes on reasonable grounds that the ship or other property is being

New (Unanimous)

used in the commission of an offence against **section 13** of this Act.

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

(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.

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.

Cf. 1991, No. 18, s. 22

Struck Out (Unanimous)

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 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.

(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.

5

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— 10

- (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,— 15

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

(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. 20

Cf. 1991, No. 18, s. 16

26. Release of property by Minister—(1) The Minister may, at any time after property has been seized under **section 21** of this Act and before the completion of proceedings in respect of the alleged offence for which the property was seized under (**section 21 of this Act**) that section, on application by— 25

- (a) The person from whom the property was seized; or 30
- (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. 35

(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 40

(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.

5 (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) 14 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.

10 (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.

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

Cf. 1991, No. 18, s. 17

Struck Out (Unanimous)

20 **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
 - 25 (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.

30 *New (Unanimous)*

27. Release of property by Court—(1) Where property has been seized under section 21 of this Act,—

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

may, in accordance with this section, apply to a District Court or the High Court, as the case may be, for an order releasing the property to that person, and any such release may be

New (Unanimous)

subject to such sureties and conditions as the Court may specify.

(2) Where the property does not exceed \$200,000 in value, the application shall be by way of originating application made to a District Court and the rules relating to the practice and procedure of District Courts for the time being in force under the District Courts Act 1947 apply with respect to every such application.

(3) Where the property exceeds \$200,000 in value, the application shall be by way of originating application made to the High Court and the High Court Rules apply with respect to every such application.

Cf. 1991, No. 18, s. 20

*Proceedings for Offences, Etc.**Struck Out (Unanimous)*

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.

Cf. 1966, No. 5, s. 8

New (Unanimous)

28. Consent of Attorney-General required for certain proceedings—(1) Notwithstanding anything in any other enactment, proceedings for an offence against this Act or regulations under this Act, being an offence that is alleged to have been committed—

- (a) Outside the territorial sea of New Zealand; or
- (b) On board or by means of a ship, other than a New Zealand ship; or

New (Unanimous)

(c) By a person who is not a New Zealand citizen or a person ordinarily resident in New Zealand,—
 shall not be instituted in any Court except with the consent of
 5 the Attorney-General and on his or her certificate that it is
 expedient that the proceedings should be instituted.

(2) Notwithstanding **subsection (1)** of this section, a person may
 be arrested, or a warrant for a person's arrest may be issued
 and executed, and the person may be remanded in custody or
 10 on bail, but no further proceedings shall be taken until the
 Attorney-General's consent under **subsection (1)** of this section
 has been obtained.

Cf. 1994, No. 119, s. 6

**29. Evidential provisions relating to approved
 15 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*) or position 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
 25 those particulars,—

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
 35 equipment.

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

- (a) Tamperers with approved maritime surveillance equipment; or
- (b) Interferes with—
 - (i) Approved maritime surveillance equipment; or
 - (ii) The operation of approved maritime surveillance equipment.

5

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.

10

15

(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.

20

(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.

25

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

Forfeiture of Property on Conviction

30

32. Forfeiture of property on conviction—(1) 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)**) **Section 13** of this Act, in any case where the penalty imposed in respect of the offence is specified in **section 15 (a)** of this Act,—

35

the District 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.

New (Unanimous)

5 (2) Where any property is forfeited to the Crown under **subsection (1)** of this section, the property shall upon forfeiture vest in the Crown absolutely and free of all encumbrances, liens, and interests.

Cf. 1991, No. 18, s. 30

33. Court may grant relief to third party—

Struck Out (Unanimous)

10 (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.

15 *New (Unanimous)*

20 (1) Subject to **subsection (2)** of this section, if property has been forfeited to the Crown under **section 32 (1)** of this Act, a person who claims that the person had an interest in the forfeited property prior to its forfeiture to the Crown may, in accordance with this section, apply to the District Court that ordered the forfeiture or the High Court, as the case may be, for an order under **subsection (3)** of this section.

25 (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
 30 (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.

New (Unanimous)

(2A) Where the property forfeited under **section 32 (1)** of this Act does not exceed \$200,000 in value, the application shall be by way of originating application made to, and filed in, the office of the District Court that ordered the forfeiture. 5

(2B) Except as modified by **subsection (2A)** of this section, the rules relating to the practice and procedure of District Courts for the time being in force under the District Courts Act 1947 apply with respect to every such application made to the District Court that ordered the forfeiture. 10

(2c) Where the property forfeited under **section 32 (1)** of this Act exceeds \$200,000 in value, the application shall be by way of originating application made to the High Court and the High Court Rules apply with respect to every such application. 15

(3) If the Court is satisfied that— 15

(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,—

the Court may make an order— 20

(c) Declaring the nature, extent, and value of the applicant's interest in the property; and

(d) Either—

(i) Directing the Crown to transfer the interest to the applicant; or 25

(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 terms and conditions as the Court thinks fit. 30

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*) **section 32 (1)** of this Act as the Minister thinks fit. 35

(2) A person (*having a legal or equitable interest in such property*) who had a legal or equitable interest in such property prior to its forfeiture to the Crown may apply to the Minister within 30 days after the conviction for the release of the property so forfeited. 40

Struck Out (Unanimous)

(3) On an application under **subsection (2)** of this section, the Minister may order the release of such property—

- 5 (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
- (b) Without payment of any amount.

10 *New (Unanimous)*

(3) On an application under **subsection (2)** of this section, the Minister may order the release of such property 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.

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

20 **35. Forfeiture of property or redemption payment is in addition to any other penalty**—A forfeiture ordered by the Court under **section 32 (1)** of this Act or a redemption payment imposed by the Minister under **(section 34 (2)) section 34 (3)** 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)

25

PART III

MISCELLANEOUS PROVISIONS

30 **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.

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

- 35 (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:
- (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: 5
 - (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: 10
 - (d) Prescribing the duties of persons in respect of reporting damage caused or likely to be caused to submarine cables or submarine pipelines: 15
 - (e) Prescribing offences against the regulations and defining the persons or classes of persons liable to conviction for those offences:
 - (f) Prescribing fines not exceeding \$50,000 for offences against the regulations: 20
 - (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. 25
- Cf. 1966, No. 5, s. 13

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

(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. 30

(3) The Governor-General may from time to time, by Order in Council,— 35

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

(b) Make Orders in Council amending, or revoking in whole or in part, any orders continued in force by **subsection (2)** of this section. 40

(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.

Section 38 (1)

SCHEDULE

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.