

[AS REPORTED FROM THE PLANNING AND DEVELOPMENT
COMMITTEE]

House of Representatives, 4 September 1990.

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

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 20 February 1991.

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

John Armstrong

SUGAR LOAF ISLANDS MARINE PROTECTED AREA

ANALYSIS

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A BILL INTITLED

5 **An Act to provide for the setting up and management of the Sugar Loaf Islands Marine Protected Area for the purpose of protecting that area of the sea and foreshore in its natural state as the habitat of marine life, and to provide for the enhancement of recreational activities**

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

No. 26—3

Price
incl. GST \$2.20

1. Short Title—This Act may be cited as the Sugar Loaf Islands Marine Protected Area Act 1990.

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

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“Area” means any part of—

(a) The seabed vertically below an area of the surface of—

(i) The territorial sea of New Zealand; or

(ii) The internal waters of New Zealand as defined by section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977; or

(b) The foreshore of the coast of New Zealand;— and includes any water at any material time upon or vertically above it:

“Commercial fisherman” means any person who has a fishing permit issued under section 63 of the Fisheries Act 1983 entitling the person to take any species or class of fish, aquatic life, or seaweed; and includes—

(a) Any person who is engaged in any capacity on a New Zealand fishing vessel; and

(b) Any person, whether or not on board any fishing vessel, who takes any fish, aquatic life, or seaweed for the purposes of sale:

“Conservation area” means that part of the protected area that is the area of New Zealand fishery waters enclosed by a circle of 500 m radius with a centre point at 39°03'29.34"S and 174°00'11.21"E on Waikaranga (Seal Rock):

“Director-General” means the Director-General of Conservation:

“Marine life” means any species of the plant or animal kingdoms which at any time of the life of the species inhabits the sea or foreshore; and includes any specimen of the species whether alive or dead, and any part of any specimen, and the seed, spores, eggs, spawn, young, fry, and offspring of the species; but does not include wildlife within the meaning of the Wildlife Act 1953:

New

“Mining” means any mining or prospecting that may be carried on under a mining right:

“Mining right” means—

5 (a) A coal mining right within the meaning of the Coal Mines Act 1979:

(b) (*Mining operations or prospecting within the meaning of*) A mining licence or a prospecting licence granted under the Petroleum Act 1937:

10 (c) Any authority to prospect or mine for ironsands granted by the (*Ministry*) Minister of Energy pursuant to section 3 of the Iron and Steel Industry Act 1959, and any authority to enter on land given by him or her pursuant to section 6 of that Act, and any right to
15 prospect or mine for ironsands which by virtue of section 5 of that Act may continue to be exercised as if the said section 3 had not been passed:

(d) A mining privilege within the meaning of the Mining Act 1971:

20 (e) Any licence issued under section 5 of the Continental Shelf Act 1964 to prospect or mine for any mineral, or carry on any operations for the recovery of any mineral:

25 (f) Any right to prospect or mine for minerals conferred by any other enactment or by any instrument:

“Minister” means the Minister of Conservation:

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30 “Protected Area” means the area, waters, and islands bounded by a line commencing at the mean high-water mark drawn from a point 39°04'19.75"S and 174°01.10.85"E; then in a westerly direction to a point 39°03'56.37"S and 173°59'57.10"E; then
35 along the line of an arc of 900 m radius from a point 39°03'29.34"S and 174°00'11.21"E on Waikaranga (Seal Rock) to a point 39°03'10.69"S and 173°59'42.41"E; then in a line to a point 39°02'31.90"S and 174°00'23.72"E; then along the line of an arc of

*Sugar Loaf Islands Marine
Protected Area*

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900 m radius from a point 39°02'50.54"S and 174°00'52.51"E on Motumahanga (Saddleback Island) to a point 39°02'28.42"S and 174°01'16.93"E; then along a line from the navigation light on the lee breakwater of Port Taranaki at 39°03'24.15"S and 174°02'39.98"E; to a point where this line intersects the northwestern boundary of the New Plymouth Roadstead extended; then to a point where the northwestern boundary of the New Plymouth Roadstead crosses the mean high-water mark in the vicinity of Paritutu; then in a southwesterly direction along the mean high-water mark to the point of commencement.

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New

"Protected Area" means the land and waters commencing at mean high-water springs at the south bank of Herekawe Stream in position 39°04.24'S 174°01.11'E; then to a point 39°03.93'S 174°00'E; then along the line of an arc of a circle of 900 metres radius from a point 39°03.49'S 174°00.19'E being the peak of Waikaranga Island to a point 39°03.18'S 173°59.70'E; then along the line to a point 39°02.52'S 174°00.4'E; then along the line of an arc of a circle of 900 metres radius from a point 39°02.84'S 174°00.88'E being the peak of Motumahanga (Saddleback Island) to a point 39°02.47'S 174°01.27'E; then in a line to a point 39°03.19'S 174°02.37'E being 20 metres to seaward (northwest) of the main breakwater; then in a southwesterly direction and 20 metres to seaward of the main breakwater to a point at mean high water springs at position 39°03.40'S 174°01.78'E; then by

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the line of mean low water mark to the point of commencement; and includes all seabed and subsoil below those waters that extends down to the bedrock or 10 metres below the surface of the seabed, whichever distance is the greater.

New

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“Petroleum mining exclusion area” means all the land and water bounded by a line commencing at 39° 03' 36.0" S and 174° 01' 24.6" E to a point 39° 02' 51.77" S and 174° 01' 51.71" E; then along a line from the navigation light on the lee breakwater of Port Taranaki at 39° 03' 24.15" S and 174° 02' 39.98" E to the breakwater; then in a westerly and south-westerly direction along the line of mean high water mark to the point of commencement; and includes all seabed and subsoil below those waters that extends down to the bedrock or 10 metres below the surface of the seabed, whichever distance is the greater:

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“Protected Area” means all the land and water bounded by a line commencing at the mean high water mark drawn from a point 39° 04' 19.75" S and 174° 01' 10.85" E; then in a westerly direction to a point 39° 03' 56.37" S and 173° 59' 57.10" E; then along the line of an arc of 900 metres radius from a point 39° 03' 29.34" S and 174° 00' 11.21" E on Waikaranga (Seal Rock) to a point 39° 03' 10.69" S and 173° 59' 42.41" E; then in a line to a point 39° 02' 31.90" S and 174° 00' 23.72" E; then along the line of an arc of 900 metres radius from a point 39° 02' 50.54" S and 174° 00' 52.51" E on

*Sugar Loaf Islands Marine
Protected Area*

New

Motumahanga (Saddleback Island) to a point
 39° 02' 28.42" S and 174° 01' 16.93" E; then along
 the line from the navigation light on the lee
 breakwater of Port Taranaki at 39° 03' 24.15" S and 5
 174° 02' 39.98" E to a point at 39° 02' 51.77" S and
 174° 01' 51.71" E; then to a point 39° 03' 36.0" S
 and 174° 01' 24.6" E; then in a westerly and south-
 westerly direction along the line of mean high water
 mark to the point of commencement; and includes all 10
 seabed and subsoil below those waters that extends
 down to the bedrock or 10 metres below the surface
 of the seabed, whichever distance is the greater.

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- 3. Sugar Loaf Marine Protected Area to be maintained 15**
in natural state, and public to have right of entry—
 (1) It is hereby declared that the provisions of this Act shall have effect
 for the purpose of protecting the Sugar Loaf Marine Protected
 Area (the "protected area"), which contains underwater
 scenery, natural features, and marine life, of such distinctive 20
 quality, or so typical, or beautiful, or unique, that their
 continued preservation is in the national interest.
 (2) It is hereby further declared that, having regard to the
 general purpose specified in subsection (1) of this section, the
 protected area shall be so administered and maintained under 25
 the provisions of this Act that—
 (a) It shall be preserved as far as possible in its natural state:
 (b) The marine life of the protected area shall as far as
 possible be protected and preserved:
 (c) The value of the protected area as the natural habitat of 30
 marine life shall as far as possible be maintained:
 (d) Subject to the provisions of this Act and to the imposition
 of such conditions and restrictions as may be
 necessary for the preservation of the marine life or
 for the welfare in general of the reserves, the public 35
 shall have freedom of access and entry to the
 protected area, so that they may enjoy in full

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measure the opportunity to study, observe, and record marine life in its natural habitat.

- 5 (e) The protected area shall henceforth be exempt from mining or from any specified mining purpose.

4. Restrictions on fishing around Sugar Loaf Islands—

(1) No commercial fisherman shall take or have in possession any fish taken within the protected area other than as permitted under subsection (2) and (3) of this section.

- 10 (2) Subject to subsection (3) of this section, any commercial fisherman may take by trolling a combined total of 100 kingfish and kahawai within the protected area in any day.

15 (3) Where more than one commercial fisherman is on board any vessel, the maximum combined total of kingfish and kahawai that may be taken within the protected area from that vessel shall be 100.

20 (4) No commercial fisherman shall be in possession of any fishing gear within the protected area that is not permitted to be used in that area unless the gear is stowed or sealed in such a manner that it cannot readily be used for fishing.

(5) No person shall use any net or set line within the protected area.

(6) No person may use within the protected area any line having more than 3 hooks.

25 (7) No person shall take any fish within the conservation area other than kingfish or kahawai taken by trolling or by spearfishing.

30 (8) No person shall be in possession of any fishing gear within the protected area that is not permitted to be used in that area unless the gear is stowed or sealed in such a manner that it cannot readily be used for fishing.

35 (9) No person shall be in possession of any fishing gear within the protected area that is not permitted to be used in that area unless the gear is stowed or sealed in such a manner that it cannot readily be used for fishing.

(10) For the purposes of this section, the expression “trolling” means line fishing using an artificial lure with the line being towed by a vessel making way.

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5. Protected area to be Conservation Park—(1) The protected area is hereby deemed to be a Conservation Park within the meaning of section 19 of the Conservation Act 1987 and the provisions of that Act, with any necessary modifications, shall apply to the protected area. 5

(2) Section 38 (5) of the Conservation Act 1987 shall not apply to the protected area.

6. Boundaries of protected area to be marked—The boundaries of the protected area shall be marked and at all times be kept marked, by means of such beacons, lights, buoys, or marks as may be indicated by the Director-General: 10

Provided that the Director-General may waive the requirements of this section in respect of any boundary satisfactorily indicated by means of a natural geographical feature. 15

7. Rights of access and navigation—(1) Subject to any bylaw made under this Act, any right of access to or upon any foreshore or part of the foreshore of the protected area or any right of navigation (other than anchorage) through or across any water at any material time comprised in the protected area shall remain unaffected. 20

(2) Notwithstanding anything in this Act, or in any regulations or bylaws made under this Act, in time of stress or emergency any vessel may anchor within the protected area and such measures may be taken by any person to avoid loss of human life or of property or injury to human life or to property as in the circumstances shall be expedient. 25

8. Regulations—The Governor-General may from time to time, by Order in Council, make, all such regulations as are necessary for the due administration of, and for giving full effect to, the provisions of this Act. 30

New

3. Purpose of Act—The purpose of this Act is to ensure that the scenery, natural features, and eco-systems of the 35

New

Protected Area that should be protected and conserved by reason of their distinctive quality, beauty, typicality, or uniqueness are conserved.

5 **3A. Principles**—The Protected Area shall be administered and maintained so as to ensure that, so far as is ~~((possible))~~ practicable,—

10 (a) The area, and its scenery, natural features, and ecosystems are protected and conserved in their natural state:

(b) The value the area has in providing natural habitats is maintained:

15 (c) Members of the public have access to the area for recreational purposes and for the purpose of studying, observing, and recording any marine life in its natural habitat:

20 (d) The provisions of ~~((every))~~ any relevant management plan for the time being in force under the Fisheries Act 1983 or the Conservation Act 1987 are complied with.

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3B. Prohibition on mining—(1) No person shall carry on mining in the Protected Area.

25 (2) No mining right shall be granted in respect of the Protected Area.

(3) Notwithstanding **subsections (1) and (2)** of this section, nothing in this Act shall—

30 (a) Limit or affect the exercise by the operator for the time being of the Port of Taranaki of any right to remove sand from that part of the Protected Area marked “A” on DOSLI Map No. P19; or

(b) Prevent the granting to that operator of any right to remove sand from that part of the Protected Area; or

35 (c) Limit or affect any existing water right that has been granted in favour of the New Plymouth Power Station and is exercisable in the Protected Area.

New

New

3B. Prohibition on mining—(1) No person shall carry on mining in the Protected Area or be granted a mining right in respect of that area.

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(2) No person shall carry on mining operations within the meaning of the Petroleum Act 1937 in the petroleum mining exclusion area or be granted the right to carry on such operations in that area.

(3) Notwithstanding subsections (1) and (2) of this section, nothing in this section shall limit or affect any water right granted before or on or after the commencement of this Act in respect of the New Plymouth Power Station.

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4. Effect of Act on Fisheries Act 1983—Nothing in this Act shall limit or affect the provisions of the Fisheries Act 1983 or any regulations made under that Act.

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5. Area to be conservation area—(1) The Protected Area is hereby deemed to be a conservation area under the Conservation Act 1987.

(2) Moturoa Island, Motumahanga (Saddlebank Island), Waikaranga (Seal Rocks), and Whareumu (Lion Rock) are hereby deemed to be sanctuary areas under the Conservation Act 1987; and each ~~((sanctuary area))~~ of those sanctuary areas shall be deemed to extend to the mean low water mark.

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(3) The remainder of the Protected Area (being the parts not referred to in subsection (2) of this section) is hereby deemed to be a conservation park under the Conservation Act 1987.

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(4) No person shall enter any such sanctuary area except pursuant to a permit issued by the Director-General; and the Director-General may issue a permit subject to such conditions as he or she thinks fit.

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(5) The provisions of the Conservation Act 1987 shall, with any necessary modifications, apply to the Protected Area accordingly.

New

(6) The wildlife refuges declared in respect of Moturoa Island and Motumahanga (Saddleback Island) under section 14 of the Wildlife Act 1953 are hereby revoked.

5 **6. Area may be marked**—(1) Subject to **subsection (2)** of this section, the Director-General may cause the boundaries of the Protected Area to be marked by beacons, lights, buoys, or other marks.

10 (2) The Director-General shall not cause the boundaries of the area to be so marked without the approval of the Minister of Transport.

15 **7. Rights of access and navigation**—(1) For the purposes of this Act, every person shall have free ingress, passage, and egress, into, through, and out of the Protected Area, by land or water, and with vessels or otherwise.

(2) No person shall anchor in the Protected Area, except—

(a) For recreational purposes only; or

(b) Pursuant to an authorisation given in writing by the Director-General; or

20 (c) Where it is necessitated by stress or emergency.

(3) Where a vessel anchors in the Protected Area in circumstances of stress or emergency, any person may take such measures as may be reasonably necessary to avoid the loss of or injury to human life or property.

25 (4) The Director-General may, by notice in the *Gazette*, declare anchoring to be prohibited in any specified waters of the Protected Area; and, in that case, no vessel shall anchor in those waters except in the ((cases)) circumstances specified in **subsection (2) (c)** of this section.

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8. Offences—Every person who contravenes **section 3a (1)** or any prohibition imposed by **subsection (2)** or notified under **subsection (4) of section 7** of this Act shall be deemed to have committed an offence against the Conservation Act 1987.

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New

- 8. Offences**—(1) Every person commits an offence who—
- (a) Carries on mining in the protected area; or
 - (b) Carries on mining operations within the meaning of the Petroleum Act 1937 in the petroleum mining exclusion area; or
 - (c) Anchors in the protected area in contravention of **section 7** of this Act.
- (2) Every person who commits an offence against **subsection (1)** of this section is liable on summary conviction,—
- (a) In the case of a natural person, to imprisonment for a term not exceeding 1 year, or to a fine not exceeding \$10,000;
 - (b) In the case of a body corporate, to a fine not exceeding \$80,000.

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- 9. Transitional provision relating to existing prospecting licence**—(1) Notwithstanding anything in the Petroleum Act 1937 or in **section 3B** of this Act, prospecting licence 38437 shall continue in force according to its tenor until the expiration of the term for which it has been granted, and that term may be extended under the provisions of the Petroleum Act 1937.
- (2) In addition to complying with the provisions of the Petroleum Act 1937, the holder of that licence shall also obtain the approval of the Minister to any specific programme of work proposed to be carried out under the licence if such work is reasonably likely to affect the Protected Area.

New

New

5 **9. Transitional provisions relating to existing petroleum prospecting licence**—(1) Notwithstanding anything in this Act or any other Act, but subject to **subsection (2)** of this section, petroleum prospecting licence 38437 shall continue in force according to its tenor and the Petroleum Act 1937 shall apply in relation to that prospecting licence as if **section 3B** of this Act had not been enacted.

10 (2) Subject to **subsection (3)** of this section, in addition to complying with the provisions of the Petroleum Act 1937, the holder of petroleum prospecting licence 38437 shall also obtain the approval of the Minister to any specific programme of work proposed to be carried out under that licence or any mining
15 licence granted to the holder in accordance with section 11 of the Petroleum Act 1937 if such work is reasonably likely to affect the petroleum mining exclusion area or the Protected Area.

20 (3) Nothing in **subsection (2)** of this section applies to any work that the holder proposes to carry out under petroleum prospecting licence 38437, if the work was approved by the Minister before the commencement of this Act or an application for approval of the work was received by the Minister before that date.

25 **10. Consequential amendment to Conservation Act 1987**—The Conservation Act 1987 is hereby amended by inserting in the First Schedule, in its appropriate alphabetical order, the item “The Sugar Loaf Islands Marine Protected Area Act 1990”.