

## HOUSE OF REPRESENTATIVES

## Supplementary Order Paper

Thursday, the 15th Day of September 1977

## TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE

*Proposed Amendments*

Right Hon. Mr TALBOYS, in Committee, instead of the amendments in Supplementary Order Paper No. 22, to move the following amendments:

*Clause 10:* To omit subclauses (2) and (3), on page 8, and substitute the following subclause:

(2) The following enactments shall apply accordingly (subject to any provisions to the contrary in those enactments) within the exclusive economic zone:

- (a) The Fisheries Act 1908 (except Part II of that Act):
- (b) The Whaling Industry Act 1935.

*Clause 15:* to omit from subclause (2) (a) the word "calculated", in line 40 on page 9, and substitute the words "as determined".

To insert in subclause (3) (n), after the words "made by" in line 4 on page 11, the words "vessels or aircraft of the New Zealand Armed Forces or other".

*Clause 19 (2):* To omit the word "granted" in line 16 on page 12, and substitute the word "issued".

*Clause 20 (1):* To add to paragraph (b) of this subclause, in line 14 on page 13, the expression "; or", and to add after that paragraph the following paragraph:

- (c) Any licensee, master, or crew member of a foreign fishing craft has failed to pay to the Crown, within the time limit specified in section 24A (8) of this Act, the amount of any penalty imposed on him under that section by the Minister—

*Clause 20 (2):* To insert after the word "licences", in both places where it occurs on page 13, the words "or class or classes of licence".

*Clause 21 (1):* To insert in this subclause, after paragraph (e) on page 14, the following paragraph:

- (ea) Requiring applicants for licences, and licensees, to designate authorised agents in New Zealand in respect of foreign fishing craft:

To add to this subclause, after paragraph (k) on page 14, the following paragraph:

- (1) Prescribing forms of notices and procedures to be followed for the purposes of section 24A of this Act:
- (m) Providing, in respect of notices, summonses, and other documents to be served under this Act or in any civil or criminal proceedings under this Act, that specified methods of service (including service on the authorised agent of a foreign fishing craft or on the diplomatic or consular representative in respect of New Zealand of the country in which the craft is registered) shall be deemed to be service on any licensee, owner, master, or crew member of the craft, and providing that specified methods of proof of service shall be deemed to be sufficient proof of service.

*Clause 23:* To omit subclause (1) on page 15, and substitute the following subclause:

(1) Any officer specified in subsection (11) of this section may at any time stop, board, inspect, and search any foreign fishing craft in New Zealand fisheries waters, and inspect any fish on board the craft; and where he has reasonable cause to believe that an offence against this Act, or against regulations made under section 21 of this Act, or against any other New Zealand law, relating to fishing within the exclusive economic zone, has been committed in respect of any foreign fishing craft he may—

- (a) Seize and detain all fish on board the craft; and
- (b) Apprehend any person who he has reasonable cause to believe has committed any offence specified in this subsection; and
- (c) If he has reasonable cause to believe that any such offence has been committed by the licensee, owner, or master of the craft, seize and detain the craft.

*Clause 24 (5):* To insert, after the words “in full”, in line 17 on page 19, the words “, in any Court of competent jurisdiction,”.

*New clause 24A:* To insert, after clause 24 on page 19, the following new clause:

**24A. Administrative penalties for minor fisheries offences—**

- (1) Where the Minister has reasonable cause to believe that—
- (a) An offence against this Act or against regulations made under section 21 of this Act, or against any other New Zealand law, relating to fishing within the exclusive economic zone, may have been committed by any person in respect of any foreign fishing craft; and
- (b) Having regard to all the circumstances relating to the alleged offence it is of a minor nature, and having regard to the previous conduct of the craft and of the person concerned in New Zealand fisheries waters, it would be appropriate to impose a penalty under this section—

he may cause a notice in writing in accordance with subsection (2) of this section, and otherwise in the prescribed form, to be served on that person.

(2) A notice under subsection (1) of this section shall specify—

- (a) The date and nature of the offence;
- (b) A summary of the facts on which the allegation that an offence has been committed is based (being a sufficient summary to fully and fairly inform the person of the allegation against him); and
- (c) Any other matters (not being previous convictions) that the Minister considers relevant to the imposition of a penalty—

and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) of this section is served may, within 28 days after the notice is served on him, by a notice in writing in the prescribed form served on the Director-General of Agriculture and Fisheries require that any proceedings in respect of the alleged offence shall be dealt with before a Court, in which case the following provisions shall apply:

(a) No further proceedings shall be taken under this section by the Minister:

(b) Nothing in this section shall be construed to prevent the subsequent laying of any information or charge in respect of the alleged offence, or the conviction of the person of the offence by a Court, or the imposition of any penalty under any enactment or forfeiture under this Act on such a conviction.

(4) Any person on whom a notice under subsection (1) of this section is served, who does not require that any proceedings in respect of the alleged offence shall be dealt with before a Court, may by notice in writing served on the Director-General of Agriculture and Fisheries—

(a) Admit the offence; and

(b) In any case make submissions to the Minister as to the matters he wishes the Minister to take into account in imposing any penalty under this section.

(5) Where a person on whom a notice under subsection (1) of this section is served does not, within 28 days after the notice is served on him,—

(a) Require that any proceedings in respect of the alleged offence shall be dealt with before a Court; or

(b) Admit the offence—

he shall on the expiration of that period be deemed to have admitted the offence.

(6) Where under this section a person admits or is deemed to have admitted an offence, the Minister may, after taking into account any submissions made by that person under subsection (4) of this section, impose a monetary penalty on the person in respect of the offence, not exceeding one-third of the maximum monetary penalty to which the person would be liable if he were convicted of the offence by a Court.

(7) Where the Minister imposes a penalty on a person under this section in respect of an offence, the Minister shall cause a notice in writing in the prescribed form of the particulars of the penalty to be served on the person.

(8) A person on whom a penalty is imposed under this section shall pay the amount of the penalty to the Crown within 28 days after the notice of the penalty is served on him in accordance with subsection (7) of this section.

(9) Without prejudice to the requirements of subsection (8) of this section, or to section 20 (1) of this Act, a penalty that has been imposed under this section shall be recoverable by the Crown, from the person on whom it has been imposed, in the same manner as a fine is recoverable on summary conviction for any offence.

(10) Notwithstanding the provisions of sections 19, 21, 23, and 24 of this Act, or of any other enactment, where any offence has been admitted under this section, no information or charge may be laid in respect of the offence against the person by whom it is admitted.

(11) Nothing in this section shall apply—

(a) In respect of any offence or alleged offence under subsection (1) or subsection (1A) of section 19 of this Act; or

(b) In respect of any offence or alleged offence in respect of which any information or charge has been laid.

*Clause 26 (1)*: To insert in this subclause after the words “against this Act” in line 34 on page 20, the words “, or against any regulations made under this Act,”.

*Schedule*: In the second column of the item relating to the Fisheries Act 1908, on page 24, to insert in the new section 1A (1) (a), after the words “of a permit”, the words “or of any consent”.

In the second column of the item relating to the Fisheries Act 1908, on page 24, to insert in the new section 1A (1) (b), after the word “fishing”, the words “in the exclusive economic zone”.

In the second column of the item relating to the Fisheries Act 1908, on page 24, to insert after subsection (1) the following subsection:

(1A) Nothing in part III of this Act or in section 12A of the Fisheries Amendment Act 1963 shall apply to fishing by foreign fishing craft within the exclusive economic zone.

In the second column of the item relating to the Fisheries Amendment Act 1963, on page 26, to omit the paragraph inserting a new subsection (5) to section 12A of that Act.

In the second column of the item relating to the Continental Shelf Act 1964, on page 27, to omit the words “adding to section 2”, and substitute the words “inserting in section 2, after the definition of the term ‘continental shelf’,”.

## EXPLANATORY NOTE

The amendments to clauses 10, 15, 19, and 20 (2) effect drafting improvements and corrections.

*Clause 20 (2)*: This amendment would empower the Minister to suspend or cancel the licence of a foreign fishing craft where a member of the craft fails to pay an administrative fine imposed under clause 24A within the time required by that clause.

*Clause 21 (1)* provides for authorised agents to be appointed in New Zealand in respect of foreign fishing craft and for service of documents on such agents.

*Clause 23*: The effect of this amendment is to empower law enforcement officers to stop, board, and inspect a foreign fishing craft, whether or not it is believed to have committed an offence in the zone.

New clause 24A provides for the imposition of an administrative fine by the Minister, in lieu of criminal prosecution, where he is satisfied that an offence that is committed in respect of licensed foreign fishing craft in the exclusive economic zone is of a minor nature.

Where it is intended to use this procedure, the Minister will cause a notice to be served on the defendant specifying particulars of the alleged offence. The defendant may within 28 days require that the matter should be dealt with by a Court. If he does not do so, he will be deemed to have admitted the offence. He may in any case admit the offence and make submissions in mitigation.

Where an offence is admitted, the Minister may, after taking into account any submissions made by the defendant, impose a monetary penalty not exceeding one-third of the maximum fine a Court could impose for the offence. The craft will not be subject to forfeiture.

The remaining amendments all effect minor drafting improvements or corrections.

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