

New Zealand



ANALYSIS

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1945, No. 21

AN ACT to make Better Provision for the Conservation Title of Sea-fisheries, and to amend the Fisheries Act, 1908. [24th November, 1945

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

Short Title.

1. This Act may be cited as the Fisheries Amendment Act, 1945, and shall be read together with and deemed part of Part I of the Fisheries Act, 1908 (hereinafter referred to as the principal Act).

See Reprint of Statutes, Vol. III, p. 344**Interpretation.**

2. For the purposes of this Act and the principal Act, unless the context otherwise requires,—

“ Appeal Authority ” means the Sea-fisheries Licensing Appeal Authority appointed under this Act:

“ Licensing Authority ” means the Sea-fisheries Licensing Authority appointed under this Act:

“ Owner ”, in relation to any fishing-boat, includes any body of persons, whether incorporated or not, by which the boat is owned.

REGISTRATION OF FISHING-BOATS AND LICENSING OF
FISHERMEN

Fishing-boats to be registered and licensed.

3. (1) It shall not be lawful for any boat to be used in fishing (not being the taking of whitebait) for purposes of sale unless—

(a) The boat is registered in accordance with this Act; and

(b) The owner of the boat is the holder of a license in force under this Act and the principal Act authorizing the boat to be so used.

(2) If any fishing-boat is used in fishing in contravention of this section, the owner and the master of the boat shall each be deemed to have committed an offence and shall each be liable to a fine not exceeding fifty pounds.

(3) If any fishing-boat is used in fishing in contravention of this section, then (without prejudice to any proceedings that may be taken against any person in respect of an offence against this section) any fishery officer may seize and detain the boat and prevent her from being used in fishing until the boat is registered as aforesaid and the owner is the holder of a license granted under this Act in respect of the boat.

Fishermen to be licensed.

4. (1) No person shall be employed in any capacity, whether as master or otherwise, on any fishing-boat (not being a boat used only for the taking of whitebait)

unless he is the holder of a license in force under this Act and the principal Act authorizing him to engage in fishing:

Provided that nothing in this subsection shall apply with respect to the employment on any boat of—

(a) The owner of the boat:

(b) Any person employed as an engineer and engaged wholly in connection with the propelling machinery of the boat:

(c) Any person employed wholly as a fireman or as a cook.

(2) No person, not being a person employed on a fishing-boat and holding a license in accordance with the last preceding subsection, shall engage in fishing (not being the taking of whitebait) for purposes of sale unless he is the holder of a license in force under this Act and the principal Act authorizing him to engage in fishing.

(3) Every person who in contravention of this section is employed on any fishing-boat or engages in fishing commits an offence and shall be liable to a fine not exceeding fifty pounds.

(4) If any person is employed on any fishing-boat in contravention of this section, then (without prejudice to any proceedings that may be taken against that person) the owner and the master of the boat shall each be deemed to have committed an offence and shall each be liable to a fine not exceeding fifty pounds:

Provided that in any proceedings under this section against the owner or the master of any boat it shall be a good defence for the defendant to prove that the contravention occurred without his knowledge and that he had taken all reasonable steps to secure compliance with this section.

Registration of Boats

5. (1) For the purposes of this Act and the principal Act every fishing-boat shall be registered in accordance with this section.

Registration of fishing-boats.

(2) On application made in the prescribed manner by the owner of any fishing-boat to the Superintendent at the port of the place to which the boat belongs, or at the port nearest to that place, and on production to

the Superintendent of a license granted under this Act in respect of the use of the boat, the Superintendent shall, subject to the provisions of any regulations made under the principal Act, enter in a register of fishing-boats the name of the boat and such other particulars as may be prescribed, and shall issue to the owner a certificate of registry in the prescribed form.

(3) No entry in the register of fishing-boats shall confer, take away, or in any way affect any title to or interest in any fishing-boat.

Licenses

Sea-fisheries
Licensing
Authority.

6. (1) For the purposes of this Act and the principal Act the Minister may from time to time appoint any person to be the Sea-fisheries Licensing Authority.

(2) The Licensing Authority shall be appointed for a term not exceeding three years, but he may be re-appointed or may be at any time removed from office by the Minister for disability, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister.

Deputy of
Licensing
Authority.

7. (1) The Minister may appoint such person as he thinks fit as the deputy of the Licensing Authority to act in any case of temporary absence of the Licensing Authority.

(2) While so acting any person appointed under this section may exercise all the powers and perform all the duties and functions of the Licensing Authority.

(3) The appointment of any person under this section may be for such term, not exceeding the unexpired balance of the term of the appointment of the Licensing Authority, as the Minister thinks fit, or may be for any specified period or periods of absence of the Licensing Authority.

(4) The provisions of this Act relating to the Licensing Authority shall, so far as they are applicable and with the necessary modifications, apply with respect to every person appointed under this section.

(5) The fact that any person purporting to act as deputy of the Licensing Authority exercises any power or performs any duty or function of the Licensing

Authority shall be sufficient evidence of his authority so to do; and no person shall be concerned to inquire whether any occasion has arisen or continues requiring or authorizing him so to do, or be affected by notice that no such occasion has arisen.

8. (1) Subject to the provisions of this Act and of any regulations made under the principal Act, on application made in the prescribed manner by any person desiring to obtain a license under this Act, and on payment of the prescribed fee, the Licensing Authority may grant to the applicant a license in the prescribed form, or may, if he thinks fit, refuse to grant a license to the applicant. Grant of licenses.

(2) Any license granted under this section may be granted subject to such conditions, in addition to any conditions that may be prescribed in respect of licenses generally, as the Licensing Authority thinks fit to impose. Any conditions so imposed may at any time be varied, added to, or revoked by the Licensing Authority.

(3) Any license granted under this section may, in the discretion of the Licensing Authority, be a temporary license which shall, unless previously cancelled under this Act or forfeited under section sixty-two of the principal Act, continue in force only for such period or until such date as may be specified in the license. The Licensing Authority may from time to time extend the operation of any temporary license for a further period or, as the case may require, until a later date.

(4) Except in the case of a temporary license under subsection three of this section, every license granted under this section shall, unless previously cancelled under this Act or forfeited under section sixty-two of the principal Act, continue in force until the thirty-first day of December in the year in which it is granted.

(5) If in any case the Licensing Authority refuses to grant a license he shall, in notifying his decision to the applicant, state the grounds of his decision.

9. (1) In considering applications for licenses under this Act the Licensing Authority shall have regard to— Matters to be considered on application for license.

(a) The desirability in the public interest of conserving sea-fisheries:

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(b) The desirability in the public interest of re-establishing in civil life discharged servicemen within the meaning of Part I of the Rehabilitation Act, 1941:

(c) Such other matters as in his opinion are relevant to the application.

(2) The Director of Rehabilitation under the Rehabilitation Act, 1941, or any officer in the service of the Crown authorized by the Director in that behalf, shall be entitled to make representations to the Licensing Authority with respect to the subject-matter of any application for a license under this Act.

Cancellation of licenses.

10. (1) Subject to the right of appeal conferred by section twelve of this Act, the Licensing Authority may, in his discretion, cancel any license granted under this Act if the holder of the license fails to comply with any of the provisions of this Act or of the principal Act or of any regulations made under the principal Act, or commits a breach of any of the conditions of his license.

(2) The provisions of this section are in addition to, and not in derogation of, the provisions of section sixty-two of the principal Act.

Licensing Authority may, with approval of Minister, delegate any of his powers under this Act.

11. (1) The Licensing Authority may from time to time, with the approval of the Minister, delegate to any person such of the powers conferred on him by this Act as he thinks fit, including the power of delegation conferred by this section.

(2) Subject to any general or special directions given or conditions attached by the Licensing Authority or other person by whom any powers are delegated as aforesaid, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been directly conferred on him by this Act and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation unless and until the contrary is proved.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office.

(5) Any delegation under this section may be at any time revoked, in whole or in part, by the Licensing Authority, or by any person by whom it was made.

(6) The delegation by the Licensing Authority or by any other person of any powers conferred on him by or by virtue of this Act shall not prevent the personal exercise of those powers by the Licensing Authority or by that person.

Appeals

12. In any case where the Licensing Authority refuses to grant a license under this Act, or where any license is cancelled under section ten of this Act, the applicant for the license or, as the case may be, the person whose license is so cancelled may, at any time within one month after the Licensing Authority's decision has been communicated to him, and on payment of such fee as may be prescribed, appeal in the prescribed manner to the Appeal Authority.

Right of appeal against refusal or cancellation of license.

13. Where under this Act the Licensing Authority grants, or refuses to grant, a license to any person in respect of whose application representations have been made by or on behalf of the Director of Rehabilitation under section nine of this Act, the Licensing Authority shall notify his decision to the Director, and the Director, or any officer in the service of the Crown authorized by the Director in that behalf, may at any time within one month after the decision has been communicated to the Director appeal in the prescribed manner to the Appeal Authority against the decision.

Director of Rehabilitation may appeal against grant or refusal of license to any person.

14. (1) For the purposes of appeals under this Act the Governor-General may from time to time appoint any person to be the Sea-fisheries Licensing Appeal Authority.

Sea-fisheries Licensing Appeal Authority.

(2) The Appeal Authority shall be appointed for a term not exceeding three years, but he may be re-appointed or may be at any time removed from office by the Governor-General for disability, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister.

15. (1) The Governor-General may appoint such person as he thinks fit as the deputy of the Appeal Authority to act in any case of temporary absence of the Appeal Authority.

Deputy of Appeal Authority.

(2) While so acting any person appointed under this section may exercise all the powers and perform all the duties and functions of the Appeal Authority.

(3) The appointment of any person under this section may be for such term, not exceeding the unexpired balance of the term of the appointment of the Appeal Authority, as the Governor-General thinks fit, or may be for any specified period or periods of absence of the Appeal Authority.

(4) The provisions of this Act relating to the Appeal Authority shall, so far as they are applicable and with the necessary modifications, apply with respect to every person appointed under this section.

(5) The fact that any person purporting to act as deputy of the Appeal Authority exercises any power or performs any duty or function of the Appeal Authority shall be sufficient evidence of his authority so to do; and no person shall be concerned to inquire whether any occasion has arisen or continues requiring or authorizing him so to do, or be affected by notice that no such occasion has arisen.

Determination
of appeals.

16. (1) The Appeal Authority shall determine every appeal under this Act and may in his discretion, subject to the provisions of subsection two of this section, confirm, modify, or reverse the decision appealed against, and his decision shall be final and binding on all parties.

(2) In determining every appeal, not being an appeal by the holder of a license against the cancellation of his license, the Appeal Authority shall have regard to all matters that the Licensing Authority is required by this Act to take into consideration on applications for licenses, and to such other matters as in the opinion of the Appeal Authority are relevant to the appeal.

(3) For the purposes of any appeal the provisions of the Commissions of Inquiry Act, 1908, shall, so far as they are applicable and with the necessary modifications, apply as if the Appeal Authority were a Commission of Inquiry under that Act.

(4) Except as may be provided by any regulations under the principal Act in relation to appeals under this Act, the Appeal Authority may regulate his own procedure in such manner as he thinks fit.

See Reprint
of Statutes,
Vol. I, p. 1036

MISCELLANEOUS

17. (1) Any Magistrate or Justices before whom any person is convicted of an offence against the principal Act or this Act or any regulations made under the principal Act may, if the person convicted holds any license granted under this Act, order that particulars of the conviction be endorsed thereon and on any such license that may be granted to him during the period of three years immediately succeeding the date of the order, and may cause particulars of the order to be sent to the Licensing Authority.

Power of Court to endorse licenses.

(2) Every person so convicted who fails to produce his license to the proper officer of the Court for endorsement under this section within seven days after being required to produce it commits an offence and shall be liable to a fine not exceeding twenty pounds.

18. (1) The master or person in charge of every fishing-boat shall, at all times while the boat is in use, cause the license for the time being in force in respect of the boat to be exhibited and maintained in some conspicuous place in the cabin or engine-room or some other enclosed part of the boat, and in such a position as to enable its being read by all persons on board:

Master or person in charge of fishing-boat to have license on board.

Provided that if in the case of any boat there is no cabin or engine-room or other suitable enclosed space it shall be sufficient compliance with this section if the master or person in charge of the boat keeps the license in his possession at all times while the boat is in use.

(2) If the provisions of this section are contravened or not complied with in the case of any boat, the owner and the master or person in charge of the boat shall each be deemed to have committed an offence and shall each be liable to a fine not exceeding twenty pounds:

Provided that in any proceedings under this section against the owner or the master or person in charge of any boat it shall be a good defence for the defendant, being the owner, to prove that the contravention occurred without his knowledge and that he had taken all reasonable steps to secure compliance with this section, or for the defendant, being the master or person in charge, to prove that he had taken all reasonable steps to secure compliance with this section.

Regulations.

19. Section five of the principal Act is hereby amended by repealing paragraph (e), and substituting the following paragraphs:—

“(e) Prescribing the manner of making applications for licenses in respect of fishing-boats and engaging in fishing for purposes of sale; prescribing forms of applications and of licenses and such other forms as may be required in relation thereto, fees payable in respect of the grant of licenses, the method of ascertaining the measurements of fishing-boats for the purpose of assessing fees payable for licenses in respect thereof, and conditions subject to which licenses may be granted; and providing for the issue of duplicates of licenses, and prescribing conditions subject to which duplicates may be issued and fees payable in respect thereof:

“(ee) Prescribing the manner of lodging appeals to the Sea-fisheries Licensing Appeal Authority, and prescribing fees payable in respect of such appeals, and the procedure to be adopted in respect thereof:”.

20. (1) Sections six and seven of the principal Act are hereby repealed.

(2) All licenses and certificates of registry in respect of fishing-boats that originated under the said section six and are subsisting or in force on the passing of this Act shall enure for the purposes of this Act and the principal Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

21. (1) Notwithstanding anything in the Industrial Efficiency Act, 1936, nothing in Part III of that Act shall, after the passing of this Act, apply with respect to fishing for purposes of sale.

(2) The Industry Licensing (Oyster-dredging) Notice 1939 and the Industrial Efficiency (Fish) Regulations 1941 are hereby revoked.

(3) All licenses in respect of the taking of fish for purposes of sale that originated under Part III of the Industrial Efficiency Act, 1936, and were in force on the

Repeals and savings.

Part III of Industrial Efficiency Act, 1936, not to apply to fishing industry. Savings. 1936, No. 40 Serial numbers 1939/178 and 1941/109

eight day of November, nineteen hundred and forty-five, and all licenses in respect of the taking of oysters that originated under the said Part III and are in force on the passing of this Act, shall enure for the purposes of this Act and the principal Act as fully and effectually as if they had originated under this Act, and accordingly shall, where necessary, be deemed to have so originated. For the purposes of this Act and the principal Act every such license as aforesaid shall, unless previously cancelled under this Act or forfeited under section sixty-two of the principal Act, be deemed to continue in force until the thirty-first day of December, nineteen hundred and forty-five, and no longer.

22. All moneys in the Bureau of Industry Account that at the passing of this Act are standing to the credit of the fishing industry, the oyster-dredging industry, the fish-export industry, the fish-wholesalers' industry, and the fish-retailing industry shall, after deduction therefrom of all administration expenses that would, but for the passing of this Act, be lawfully payable to the Crown in respect of the application (before the passing of this Act) to the said industries of the Industrial Efficiency Act, 1936, be transferred, without further authority than this section, to a Deposit Account in the Public Account, and the moneys so transferred shall be held under the principal Act in trust for the purposes of defraying expenses incurred by direction of the Minister for research in relation to sea-fisheries, and shall from time to time, as required, be applied as a credit-in-aid of the vote of the Marine Department.

Moneys held by Bureau of Industry on account of fishing and related industries to be held by Marine Department for research relating to sea-fisheries.