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1965, No. 132

An Act to amend the Fisheries Act 1908

[29 October 1965]

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

1. Short Title—This Act may be cited as the Fisheries Amendment Act 1965, and shall be read together with and deemed part of the Fisheries Act 1908 (hereinafter referred to as the principal Act).

PART I

OYSTERS

2. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Dredge oyster” includes the kinds of oyster known as *Ostrea sinuata*, *Ostrea charlottae*, *Ostrea heffordi*, mud oyster, Bluff oyster, or Stewart Island oyster, or any oyster of a like kind by whatever name it may locally be known or wherever it may occur:

“Oyster bed” does not include an oyster bed situated on an oyster farm:

“Oyster farm” has the same meaning as in section 2 of the Rock Oyster Farming Act 1964:

“Rock oyster” includes the kinds of oyster known as *Ostrea purpurea*, *Saxostrea glomerata*, *Crassostrea glomerata*, *Ostrea glomerata*, *Ostrea mordax*, shore oyster, drift oyster, or mangrove oyster, or any oyster of a like kind by whatever name it may locally be known or wherever it may occur:

Expressions defined in section 2 of the principal Act have the meanings so defined.

(2) For the purposes of Part I of the principal Act this Part of this Act shall be deemed to form part of Part I of the principal Act.

3. Picking of rock oysters—(1) For the purpose of making rock oysters available for sale to members of the public, the Minister may employ under contract or otherwise any person to pick rock oysters.

(2) The Minister may sell, or authorise the sale of, any oysters picked by any person so employed on such terms as he thinks fit.

(3) Without limiting the provisions of section 5 of the principal Act, regulations may be made under that section for the effectual carrying out of the provisions of this section.

(4) All expenses incurred under this section by the Minister in employing persons to pick rock oysters shall be paid out of money appropriated by Parliament for that purpose, and all money received from the sale of rock oysters by the Minister shall be paid into the Public Account.

(5) This section shall not apply to any rock oysters picked by or on behalf of a lessee under any lease granted pursuant to the provisions of the Rock Oyster Farming Act 1964.

Cf. 1908, No. 63, s. 40

4. Rock oysters deemed absolute property of lessee—All rock oysters in any oyster farm held under a lease granted pursuant to the provisions of the Rock Oyster Farming Act 1964 shall be the absolute property of the lessee, and shall in all Courts and for all purposes be deemed to be in his actual possession.

Cf. 1908, No. 65, s. 30

5. Injury to oyster beds or oyster farms—(1) Every person is liable to a fine not exceeding five hundred pounds who wilfully does any act which causes damage to any oyster bed or oyster farm.

(2) Any person convicted of an offence under this section shall, in addition to any penalty for which he may be liable for the offence, be liable to pay compensation to any person who has sustained damage as a result of the act of the convicted person.

(3) The compensation shall be assessed by the convicting Court, and shall be recoverable in like manner as a fine.

Cf. 1908, No. 65, s. 33

6. Penalty for unlawfully removing rock oysters from oyster beds—Every person is liable to a fine not exceeding two hundred and fifty pounds who, except in pursuance of a licence, any regulation in that behalf, or the permission of the Minister, takes any rock oysters from an oyster bed, or from an area on which rock oysters have been planted by or under the direction of the Marine Department.

Cf. 1912, No. 49, s. 8 (1)

7. Defining the boundaries of oyster beds—The Minister may from time to time, by notice in the *Gazette*, define the boundaries of any oyster bed or any area on which oysters have been planted. That notice shall, in all proceedings relating to an offence under this Part of this Act, be conclusive evidence of the boundaries so defined.

Cf. 1923, No. 10, s. 9

8. Unlawfully possessing rock oysters—Every person is liable to a fine not exceeding two hundred and fifty pounds who has in his possession any rock oysters knowing them to have been taken otherwise than pursuant to the provisions of this Part of this Act or any licence, lease, or authority granted or given pursuant to the provisions of this Part of this Act or any other enactment.

9. Obstructing persons lawfully taking oysters—Every person commits an offence who obstructs, hinders, or prevents any other person from lawfully taking oysters from any oyster bed or oyster farm.

Cf. 1908, No. 65, s. 37

10. Bottling rock oysters on oyster bed—Every person commits an offence who opens or bottles rock oysters on any oyster bed.

Cf. 1908, No. 65, s. 32

11. Not returning oyster brood to the place from which it was taken—Every person is liable to a fine not exceeding one hundred pounds who, while taking dredge oysters from any oyster bed pursuant to a fishing permit under the Fisheries Amendment Act 1963, raises or takes any dredge oyster brood, and does not return the brood to the place from which it was taken within such period as is specified as a condition in the permit:

Provided that this section shall not apply to any person lawfully taking oysters or oyster brood for the purpose only of supplying or replenishing any other oyster bed.

Cf. 1908, No. 65, s. 36

12. Special oyster fisheries for Maoris—(1) The Governor-General may from time to time, by Order in Council, declare any tidal land or tidal waters defined in the order and situated in the neighbourhood of any Maori pa or village as an oyster fishery where only Maoris may take oysters for their own food.

(2) Where an oyster fishery has been set aside for the use of Maoris under the provisions of subsection (1) of this section, the Minister shall appoint a committee of Maoris resident in the neighbourhood of the fishery to control the fishery, and the following provisions shall apply to every committee so appointed:

(a) The members of the committee shall hold office for such period as the Minister thinks fit and may from time to time be reappointed:

(b) The committee shall have the following powers and duties:

(i) To maintain the fishery in good order and condition to the satisfaction of the Minister;

(ii) To regulate the taking of oysters;

(iii) To account to the satisfaction of the Minister for the expenditure of all money received by the committee pursuant to this section; and

(iv) To report to the Minister any breach by any person of any of the provisions of this section.

(3) The Minister may, on the recommendation of the committee, declare, by notice in the *Gazette*, that no oysters shall be taken during such period as may be specified in the notice, and it shall not be lawful for any person to take oysters from the fishery during that period.

(4) If at any time the committee finds that there are more mature oysters in the fishery under its control than are required for the food of the Maoris in the neighbourhood and for the further propagation of oysters, the surplus quantity may be sold to the Minister, and the proceeds of the sale shall be paid to the committee, which shall apply those proceeds solely for the purpose of extending and conserving the oyster beds in the fishery. All oysters so purchased by the Minister shall be sold or otherwise disposed of in such manner as he thinks fit.

(5) Except as provided in subsection (4) of this section, no Maori shall sell or give to any European any oysters taken from any fishery to which this section applies.

(6) Every Maori who, in contravention of the provisions of this section, takes or sells or otherwise disposes of oysters from any such fishery, and every European who takes oysters therefrom or in any manner unlawfully obtains any oysters taken from any such fishery, commits an offence and is liable to a fine not exceeding one hundred pounds.

(7) Without limiting the provisions of section 5 of the principal Act, regulations may be made under that section for the effectual carrying out of the provisions of this section.

(8) In this section the terms "Maori" and "European" have the same meaning as in the Maori Affairs Act 1953.

Cf. 1923, No. 10, s. 10

13. Fees—The principal Act is hereby further amended by repealing section 73, and substituting the following section:

"73. All fees received under this Part of this Act shall be paid into the Public Account."

14. Repeals and amendment—(1) The following enactments are hereby repealed:

(a) Sections 13 to 16, sections 18 to 41, and section 66 of the principal Act:

- (b) Section 8 of the Fisheries Amendment Act 1912:
 - (c) Sections 9 to 11 of the Fisheries Amendment Act 1923 and the Schedule to that Act:
 - (d) Section 8 of the Fisheries Amendment Act 1948:
 - (e) Subsection (1) of section 9 of the Rock Oyster Farming Act 1964.
- (2) Section 10 of the Rock Oyster Farming Act 1964 is hereby amended by omitting the words "or in section 29 of the Fisheries Act 1908".

PART II

MISCELLANEOUS PROVISIONS

15. Ownership and possession of fish—The Fisheries Amendment Act 1963 is hereby amended by inserting, after section 18, the following section:

"18A. (1) Subject to the provisions of any agreement in writing to the contrary signed by the owner of the fishing boat, all fish caught by any means whatsoever from a registered fishing boat shall, for the purposes of this Part of this Act, every other enactment, and any rule of law, be deemed to be in the possession of, and owned by, the owner of the fishing boat.

"(2) For the purposes of this section, fish shall be deemed to be caught from a fishing boat when caught with any line or in any net, pot, trap, or other contrivance used or set from the fishing boat or from any small boat or tender carried by or attached to the fishing boat.

"(3) For the purposes of this section, the term 'owner', in relation to a fishing boat, includes any charterer under any charter or demise of the fishing boat."

16. Regulations as to freshwater fisheries—(1) Section 83 of the principal Act (as substituted by section 11 (1) of the Fisheries Amendment Act 1948) is hereby amended by inserting in subsection (2), after paragraph (c), the following paragraphs:

"(cc) Declaring any specified waters to be spawning grounds for fish, and prohibiting or imposing restrictions and conditions on entry into any such waters or onto land within a specified distance of any such waters:

“(ccc) Prohibiting or imposing restrictions and conditions on entry into any waters within a specified distance of any device erected in those waters for the purpose of preventing or controlling the movement of fish upstream or downstream or on entry onto any land within a specified distance of any such device:”.

(2) Section 83 of the principal Act (as so substituted) is hereby further amended by inserting in subsection (5), after the words “regulation made thereunder”, the words “(not being a regulation made pursuant to paragraph (cc) or paragraph (ccc) of subsection (2) of this section)”.

This Act is administered in the Marine Department.
