



ANALYSIS

Title

1. Short Title

PART I

SEA FISHERIES

2. Increased penalty for breach of regulations
3. Power of fishery officers to enter on land abutting sea or rivers
4. Protection of fishery officers from liability
5. Repeal of section relating to the dragging of nets onto dry land
6. Repeal of section relating to edible shellfish and sponges
7. Fishing in close season
8. Using explosives, etc., in fisheries
9. Penalties for continuing offences
10. Penalty for hindering fishery officers, etc.
11. Obstructing officers
12. Penalty in cases not otherwise provided for
13. Imprisonment on third or subsequent conviction

14. Honorary fishery officers under Part I of principal Act may be appointed for a particular area or for the whole of New Zealand
15. Boat-fishing permits inoperative unless certificate of survey in force in certain cases
16. Ownership of fish caught from registered fishing boats
17. Repeal of provision relating to general penalty for breach of provisions relating to registration of fishing boats
18. Powers of fishery officers under the Fisheries Amendment Act 1963

PART II

FRESHWATER FISHERIES

19. Obstructing officers in freshwater fisheries
20. Increased penalty for breach of freshwater fisheries regulations
21. Using explosives, etc., to catch or destroy freshwater fish
22. Continuing offences
23. General penalty

1968, No. 27

An Act to amend the Fisheries Act 1908

[25 November 1968]

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 1968, and shall be read together with and deemed part of the Fisheries Act 1908 (hereinafter referred to as the principal Act).

PART I

SEA FISHERIES

2. Increased penalty for breach of regulations—(1) Section 5 of the principal Act is hereby amended by repealing paragraph (t) of subsection (1), and substituting the following paragraph:

“(t) Prescribing offences for breaches of any such regulations, and prescribing—

“(i) A fine not exceeding two thousand dollars in respect of any such offence; and

“(ii) A further fine not exceeding five dollars for each fish or specified quantity of fish or oysters in respect of which the offence was committed; and

“(iii) In the case of a continuing offence, a further fine not exceeding ten dollars for every day on which the offence has continued.”

(2) Section 2 of the Fisheries Amendment Act 1948 is hereby consequentially amended by repealing paragraph (a).

3. Power of fishery officers to enter on land abutting sea or rivers—Section 9 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (d), the following paragraph:

“(dd) Enter upon (by foot or by means of a boat, vehicle, or other form of transport) and pass along the land abutting any part of the sea, or abutting any tidal waters, estuary, or navigable river, or any lake to which the sea is able to gain access (whether continuously or otherwise), whether or not the land is owned or occupied by any private person or any public body:

“Provided that nothing in this paragraph shall be construed to empower any fishery officer to enter the enclosed garden or curtilage of any dwellinghouse without the consent of its occupier; and”.

4. Protection of fishery officers from liability—The principal Act is hereby further amended by inserting, after section 9, the following section:

“9A. (1) Any fishery officer who—

“(a) Examines or renders ineffective any net, line, pot, gear, tackle, or device which the officer has reasonable cause to believe has been set for the

purpose of catching fish in contravention of this Part of this Act or any regulations made under this Part; or

“(b) Does any act in pursuance of this Part of this Act or any regulations made under this Part, or omits to do any act required by this Part or any regulations made under this Part—

shall not be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or on any other ground, unless he has acted or omitted to act in bad faith or, in the case of any act or omission to which paragraph (b) of this subsection applies, without reasonable care.

“(2) The Crown shall not be held vicariously liable for any such act or omission of any such officer, unless the officer himself would incur liability for the act or omission.”

5. Repeal of section relating to the dragging of nets onto dry land—(1) Section 11 of the principal Act is hereby repealed.

(2) Regulation 17 of the Fisheries (General) Regulations 1950 is hereby revoked.

6. Repeal of section relating to edible shellfish and sponges—Section 46 of the principal Act is hereby repealed.

7. Fishing in close season—The principal Act is hereby further amended by repealing section 47, and substituting the following section:

“47. (1) Every person commits an offence, and is liable to a fine not exceeding five hundred dollars, and to a further fine not exceeding five dollars in respect of every fish or oyster in relation to which the offence is committed, who, during any prescribed close season for the taking of any species of fish or oyster, takes any fish or oyster of any such species.

“(2) Every person commits an offence, and is liable to a fine not exceeding five hundred dollars, who, during any prescribed close season for the taking of any species of fish or oyster, wilfully injures or disturbs any fish or oyster of that species.”

8. Using explosives, etc., in fisheries—(1) The principal Act is hereby further amended by repealing section 50, and substituting the following section:

“50. (1) Every person commits an offence, and is liable to imprisonment for a term not exceeding two months or to a

fine not exceeding five hundred dollars, or to both, who uses for the purpose of catching or destroying fish in New Zealand fisheries waters any explosive or any toxic gas or any toxic, poisonous, or narcotic substance.

“(2) Where any person is charged with having committed an offence against subsection (1) of this section, it shall be presumed that any explosive or any toxic gas or any toxic, poisonous, or narcotic substance used by the defendant was used by him for the purpose of catching or destroying fish, unless he satisfies the Court to the contrary.

“(3) Every person commits an offence, and is liable to a fine not exceeding five hundred dollars, who has in his possession any fish caught by means of any explosive or any toxic gas or any toxic, poisonous, or narcotic substance:

“Provided that (without limiting the effect of the proviso to subsection (2) of section 2 of this Act) in any proceedings for an offence against this subsection, it shall be a defence if the defendant satisfies the Court that he did not know, and could not with the exercise of reasonable care have known, that the fish to which the alleged offence relates were caught as aforesaid.

“(4) For the purposes of this section the term ‘explosive’ has the same meaning as in the Explosives Act 1957.”

(2) Section 4 of the Fisheries Amendment Act 1948 is hereby consequentially repealed.

(3) The Territorial Sea and Fishing Zone Act 1965 is hereby consequentially amended by repealing so much of the Schedule to that Act as relates to section 50 of the Fisheries Act 1908.

9. Penalties for continuing offences—Section 51 of the principal Act is hereby amended by omitting from subsection (1) (as amended by section 7 (1) of the Decimal Currency Act 1964) the words “ten dollars”, and substituting the words “twenty dollars”.

10. Penalty for hindering fishery officers, etc.—(1) Section 56 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) Every person commits an offence, and is liable to a fine not exceeding two hundred dollars, who wilfully prevents or hinders any lawful entry, search, seizure, or forfeiture authorised under this Part of this Act or any regulations made under this Part, or, being the driver of any conveyance or the rider or person in charge of any riding or pack animal, fails

to stop that conveyance or animal on the request of any fishery officer.

“(3) For the purposes of this section, the term ‘conveyance’ includes any motor or horse driven vehicle, or any cycle, aircraft, or hovercraft.”

(2) Section 24 of the Fisheries Amendment Act 1963 is hereby consequentially amended by repealing subsection (3).

11. Obstructing officers—The principal Act is hereby further amended by repealing section 60, and substituting the following section:

“60. (1) Every person commits an offence, and is liable to a fine not exceeding two hundred dollars, who—

“(a) Assaults, resists, or obstructs any fishery officer in his execution of any of the powers or duties conferred on him by this Part of this Act, or by any regulations made under this Part, or any person lawfully acting under the officer’s orders or in his aid; or

“(b) Incites or encourages any other person to assault, resist, or obstruct any fishery officer, while in the execution of his powers or duties, or any person lawfully acting under the officer’s orders or in his aid; or

“(c) Uses threatening language or behaves in a threatening manner towards any fishery officer, while in the execution of his powers or duties, or any person lawfully acting under the officer’s orders or in his aid; or

“(d) Fails to comply with the lawful requirements of any fishery officer; or

“(e) Furnishes under this Part of this Act, or under any regulations made under this Part, any particulars which, to his knowledge, are false or misleading in any material respect.

“(2) For the purpose of subsection (1) of this section, any person who refuses to allow any fishery officer, or any person acting by his order or in his aid, to exercise any of the powers conferred on a fishery officer by this Part of this Act shall be deemed to be obstructing that officer or person.”

12. Penalty in cases not otherwise provided for—The principal Act is hereby further amended by repealing section 61, and substituting the following section:

“61. Every person who commits an offence against this Part of this Act for which no penalty is provided elsewhere

than in this section is liable to a fine not exceeding five hundred dollars.”

13. Imprisonment on third or subsequent conviction—The principal Act is hereby further amended by inserting, after section 62, the following section:

“62A. Every person who, having been previously convicted of offences against this Part of this Act, or against any regulations made under this Part, on three or more previous occasions on separate dates, whether before or after the commencement of this section, and on at least three of those occasions having been fined a sum of not less than fifty dollars, is subsequently convicted of any offence against this Part or against regulations made under this Part (whether he has been previously convicted of the same offence or not) shall be liable to imprisonment for a term not exceeding six months in addition to any fine to which he may be liable under the enactment creating the offence.”

14. Honorary fishery officers under Part I of principal Act may be appointed for a particular area or for the whole of New Zealand—Section 9 of the Fisheries Amendment Act 1959 is hereby amended by adding to subsection (1) the words “Any such person may be appointed to carry out his duties in any particular area or generally throughout New Zealand. If a person is appointed in respect of a particular area only that area shall be described in his warrant of appointment.”

15. Boat-fishing permits inoperative unless certificate of survey in force in certain cases—Section 10 of the Fisheries Amendment Act 1963 is hereby amended by adding the following subsection:

“(3) Where under the Shipping and Seamen Act 1952 a certificate of survey is required to be in force in respect of any fishing boat, then, notwithstanding anything in this section to the contrary, the following provisions shall apply:

“(a) Unless a certificate of survey is in force in respect of the boat, no boat-fishing permit shall be issued under this section to the owner of the boat, and if, through mistake or any other reason, any such permit is issued, it shall be void:

“(b) If, during the currency of any boat-fishing permit issued to the owner of the boat under this section, the boat’s certificate of survey is cancelled or

expires, the permit shall be of no effect until a further certificate of survey is obtained in respect of the boat.”

16. Ownership of fish caught from registered fishing boats—Section 18A of the Fisheries Amendment Act 1963 (as inserted by section 15 of the Fisheries Amendment Act 1965) is hereby amended by omitting from subsection (1) the words “in the possession of, and owned by, the owner”, and substituting the words “owned by the owner”.

17. Repeal of provision relating to general penalty for breach of provisions relating to registration of fishing boats—Section 19 of the Fisheries Amendment Act 1963 is hereby repealed.

18. Powers of fishery officers under the Fisheries Amendment Act 1963—Section 20 of the Fisheries Amendment Act 1963 is hereby amended by adding to paragraph (c) of subsection (1) the words “or to any other nearer port or place specified by the master or person in charge and agreed to by the officer”.

PART II

FRESHWATER FISHERIES

19. Obstructing officers in freshwater fisheries—(1) The principal Act is hereby further amended by repealing section 82, and substituting the following section:

“82. (1) Every person commits an offence, and is liable to a fine not exceeding two hundred dollars, who—

“(a) Assaults, resists, or obstructs any officer (being an officer or honorary officer appointed for the purposes of this Part of this Act) in his execution of any of the powers or duties conferred on him by this Part, or by any regulations made under this Part, or any person lawfully acting under the officer’s orders or in his aid; or

“(b) Incites or encourages any other person to assault, resist, or obstruct any such officer, while in the execution of his powers or duties, or any person lawfully acting under the officer’s orders or in his aid; or

“(c) Uses threatening language or behaves in a threatening manner towards any such officer, while in the execution of his powers or duties, or any person

lawfully acting under the officer's orders or in his aid; or

“(d) Fails to comply with the lawful requirement of any such officer; or

“(e) Furnishes under this Part of this Act or under any regulations made under this Part any particulars which, to his knowledge, are false or misleading in any material respect.

“(2) For the purposes of subsection (1) of this section, any person who refuses to allow any officer or any person acting by his order or in his aid to exercise any of the powers conferred on an officer by this Part of this Act, or by any regulations made under this Part, shall be deemed to be obstructing that officer or person.”

(2) Section 10 of the Fisheries Amendment Act 1948 is hereby consequentially repealed.

20. Increased penalty for breach of freshwater fisheries regulations—Section 83 of the principal Act (as substituted by section 11 of the Fisheries Amendment Act 1948) is hereby amended by repealing paragraph (i) of subsection (2), and substituting the following paragraph:

“(i) Prescribing offences for breaches of any such regulations, and prescribing—

“(i) A fine not exceeding three hundred dollars in respect of any such offence; and

“(ii) A further fine not exceeding five dollars for each fish or specified quantity of fish in respect of which the offence was committed; and

“(iii) In the case of a continuing offence, a further fine not exceeding five dollars for every day on which the offence has continued.”

21. Using explosives, etc., to catch or destroy freshwater fish—(1) The principal Act is hereby further amended by repealing section 85, and substituting the following section:

“85. (1) Every person (not being an officer appointed in accordance with section 79 of this Act acting in the course of his official duties) commits an offence, and is liable to imprisonment for a term not exceeding two months or to a fine not exceeding five hundred dollars, or to both, who uses for the purpose of catching or destroying fish in any waters any explosive or any toxic gas or any toxic, poisonous, or narcotic substance or, unless the written permission of the Secretary for Marine has first been obtained, any electric device.

“(2) Where any person is charged with having committed an offence against subsection (1) of this section, it shall be presumed that any explosive or any toxic gas or any toxic, poisonous, or narcotic substance or any electric device used by the defendant was used by him for the purpose of catching or destroying fish, unless he satisfies the Court to the contrary.

“(3) Every person commits an offence, and is liable to a fine not exceeding five hundred dollars, who has in his possession any fish caught by means of any explosive or any toxic gas or any toxic, poisonous, or narcotic substance or, unless the Secretary for Marine has given written permission for its use, any electric device:

“Provided that (without limiting the effect of the proviso to subsection (2) of section 78 of this Act) in any proceedings for an offence against this subsection, it shall be a defence if the defendant satisfies the Court that he did not know, and could not with the exercise of reasonable care have known, that the fish to which the alleged offence relates were caught as aforesaid.

“(4) In this section the term ‘explosive’ has the same meaning as in the Explosives Act 1957.”

(2) Section 13 of the Fisheries Amendment Act 1948 is hereby consequentially repealed.

22. Continuing offences—The principal Act is hereby further amended by inserting, after section 97, the following section:

“97A. Where an offence against this Part of this Act is a continuing one, the penalty in respect of it may, in addition to any other fine prescribed by this Part of this Act, be increased by any sum not exceeding ten dollars for every day during which the offence continues after the first day.”

23. General penalty—The principal Act is hereby further amended by repealing section 98, and substituting the following section:

“98. Every person who commits an offence against this Part of this Act or any regulations made under this Part for which no penalty is provided elsewhere than in this section is liable to a fine not exceeding forty dollars.”