

Marine Mammals Protection Act 1978

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An Act to make provision for the protection, conservation, and management of marine mammals within New Zealand and within New Zealand fisheries waters

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 and application

- (1) This Act may be cited as the Marine Mammals Protection Act 1978.
- (2) Nothing in this Act shall apply before the 1st day of January 1979 with respect to any permit, licence, or permission issued or given pursuant to section 45 of the Fisheries Act 1908 or any other Act.
- (3) The provisions of this Act shall apply in respect of—
 - (a) Any matter or thing done, to be done, or omitted to be done within New Zealand or New Zealand fisheries waters:

- (b) Any act or omission occurring on any New Zealand ship or aircraft, wherever that ship or aircraft may be:
- (c) Subject to section 26(2) of this Act, any act or omission by any person who is a New Zealand citizen, wherever that person may be.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Aircraft has the same meaning as in section 2 of the Civil Aviation Act 1990

Aircraft: this definition was substituted, as from 1 February 1995, by section 203 Maritime Transport Act 1994 (1994 No 104). *See* regulation 2 Maritime Transport Act Commencement Order 1994 (SR 1994/272).

Approved means approved by the Minister

Aquatic life means any species of plant or animal life which, at any time in the life history of the species, must inhabit water; and includes seabirds (whether or not in an aquatic environment)

Aquatic life: this definition was inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Board means a Conservation Board established under section 6L of the Conservation Act 1987

Board: this definition was inserted, as from 10 April 1990, by section 106 Conservation Law Reform Act 1990 (1990 No 31).

Conservation Authority means the New Zealand Conservation Authority established under section 6A of the Conservation Act 1987

Conservation Authority: this definition was inserted, as from 10 April 1990, by section 106 Conservation Law Reform Act 1990 (1990 No 31).

Conservation management plan means a conservation management plan approved under section 3D of this Act

Conservation management plan: this definition was inserted, as from 10 April 1990, by section 106 Conservation Law Reform Act 1990 (1990 No 31).

Conservation management strategy means a conservation management strategy approved under section 17F of the Conservation Act 1987

Conservation management strategy: this definition was inserted, as from 10 April 1990, by section 106 Conservation Law Reform Act 1990 (1990 No 31).

Crown-owned land means unoccupied land vested in Her Majesty and administered by a Minister of the Crown for the time being charged with the administration of the Department of State that has control of the land

Director-General means the Director-General of Conservation

Director-General: this definition was substituted, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65).

Fishing—

- (a) Means the catching, taking, or harvesting of fish, aquatic life, or seaweed; and
- (b) Includes—
 - (i) Any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish, aquatic life, or seaweed; and
 - (ii) Any operation in support of or in preparation for any activities described in this definition:

Fishing: this definition was inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Fishing-related mortality means the accidental death or incidental death of any marine mammal in the course of fishing

Fishing-related mortality: this definition was inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Hovercraft means a machine designed to be supported in the atmosphere, wholly or partly by air expelled from the machine to form a cushion extending beneath the machine to the surface of any ground, water, or other portion of the earth's surface

Hovercraft: this definition was substituted, as from 1 February 1995, by section 203 Maritime Transport Act 1994 (1994 No 104). *See* regulation 2 Maritime Transport Act Commencement Order 1994 (SR 1994/272).

Human-induced mortality means the death of any marine mammal that can be attributed directly or indirectly to any human activity

Human-induced mortality: this definition was inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Inspector of Sea Fishing*[Repealed]*

Inspector of Sea Fishing: this definition was repealed, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65).

[Repealed]

International agreement means any bilateral or multilateral treaty, convention, or agreement, to which New Zealand is a party, and any understanding concluded by the Government of New Zealand and the government of any other country

Marine mammal includes—

- (a) Any mammal which is morphologically adapted to, or which primarily inhabits, any marine environment; and
- (b) All species of seal (*Pinnipedia*), whale, dolphin, and porpoise (*Cetacea*), and dugong and manatee (*Sirenia*); and
- (c) The progeny of any marine mammal; and
- (d) Any part of any marine mammal:

Minister means the Minister of Conservation

Minister: this definition was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the word “Conservation” for the word “Fisheries”.

New Zealand fisheries waters has the same meaning as in section 2(1) of the Fisheries Act 1996

New Zealand fisheries waters: this definition was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words “Fisheries Act 1996” for the words “Fisheries Act 1908”.

New Zealand ship has the same meaning as in section 2(1) of the Maritime Transport Act 1994

New Zealand ship: this definition was substituted, as from 1 February 1995, by section 203 Maritime Transport Act 1994 (1994 No 104). *See* regulation 2 Maritime Transport Act Commencement Order 1994 (SR 1994/272).

Officer means a Marine Mammals Officer declared or appointed as such under section 11 of this Act

Permit means a permit issued under this Act

Place includes any building (not being a dwellinghouse), any land, and any waters

Population management plan means a plan approved under section 3E of this Act

Population management plan: this definition was inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Registrar *[Repealed]*

Registrar: this definition was repealed, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65).

[Repealed]

Take includes—

- (a) To take, catch, kill, injure, attract, poison, tranquillise, herd, harass, disturb, or possess:
- (b) To brand, tag, mark, or do any similar thing:
- (c) To flense, render down, or separate any part from a carcass:
- (d) To attempt to do any act specified in paragraph (a) or paragraph (b) or paragraph (c) of this definition:

Threatened species means any marine mammal that is for the time being declared by notice under subsection (3) of this section to be a threatened species

Threatened species: this definition was inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Vessel means any ship, boat, steamer, lighter, launch, raft, barge, punt, or ferry boat; and includes every description of vessel, whether used in navigation or in any way kept or used as a hulk or storeship or for any other purpose.

Warranted officer has the same meaning as in the Conservation Act 1987.

Warranted Officer: this definition was inserted, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65).

- (2) For the purposes of this Act, a marine mammal shall be in the possession of any person when that person has, alone or jointly with any other person, possession of or control over the marine mammal, or possession of or control over any vessel, vehicle, aircraft, hovercraft, container, package, receptacle, or place in or on which the marine mammal is kept.
- (3) The Minister, after having regard to any relevant international standards and any relevant standards within New Zealand, may from time to time, by notice in the *Gazette*, declare any species of marine mammal to be a threatened species for the purposes of this Act.

Subsection (3) was inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

3 Act to bind the Crown

This Act shall bind the Crown.

3A Department of Conservation to administer marine mammals and sanctuaries

The Department of Conservation shall administer and manage marine mammals and marine mammal sanctuaries in accordance with—

- (a) Any statements of general policy approved under section 3B of this Act; and
- (b) Any conservation management strategy and any conservation management plan for the time being in force for the area concerned.

Sections 3A to 3D were inserted, as from 10 April 1990, by section 107 Conservation Law Reform Act 1990 (1990 No 31).

3B General policy

- (1) The Minister may approve statements of general policy for the implementation of this Act in any area or areas; and may from time to time amend any such statement in the light of changing circumstances or increased knowledge.
- (2) Nothing in any such general policy shall derogate from any provision in this Act or any other Act.
- (3) For the purposes of this section, sections 17B (except subsections (1) and (2)) and 17N of the Conservation Act 1987 shall, with any necessary modifications, apply with respect to such general policies, subject to the following provisions:
 - (a) In addition to the consultation required by section 17B(3)(a) of that Act, the Director-General shall also consult the responsible chief executive, the Secretary for Transport, and the Secretary for the Environment before preparing any such policy:
 - (b) As soon as practicable after a draft policy is prepared under section 17B(3) of that Act, the Director-General shall send a copy of it to each of the persons referred to in paragraph (a) of this subsection:
 - (c) Before sending a draft policy to the Conservation Authority, the Director-General shall consider any com-

ments made by the persons referred to in paragraph (a) of this subsection.

Sections 3A to 3D were inserted, as from 10 April 1990, by section 107 Conservation Law Reform Act 1990 (1990 No 31).

Subsection (3)(a) was amended, as from 1 July 1995, by section 6(1) Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31) by substituting the reference to the “responsible chief executive” for the reference to the Director-General of Agriculture and Fisheries.

3C Conservation management strategies

- (1) Every conservation management strategy shall establish objectives for the integrated management of marine mammals under this Act.
- (2) For the purposes of this section, the following provisions shall apply in addition to those in section 17F of the Conservation Act 1987:
 - (a) In addition to the consultation required by section 17F(a) of that Act, the Director-General shall consult the responsible chief executive, the Secretary for Transport, and all regional councils within the meaning of the Local Government Act 2002 that are affected:
 - (b) In addition to the notification required by section 17F(a) of that Act, the Director-General shall also send a copy of the draft strategy to the responsible chief executive and the Secretary for Transport:
 - (c) Before sending the strategy to the Boards affected, the Director-General shall consider any comments made by the responsible chief executive, the Secretary for Transport, and all such regional councils that are affected.

Sections 3A to 3D were inserted, as from 10 April 1990, by section 107 Conservation Law Reform Act 1990 (1990 No 31).

Section 3C was amended, as from 1 July 1995, by section 6(1) Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31) by substituting the reference to the “responsible chief executive” for the reference to the Director-General of Agriculture and Fisheries.

Subsection (2)(a) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84), by substituting the words “all regional councils within the meaning of the Local Government Act 2002 that are affected” for the words “all affected regional councils constituted under the Local Government Act 1974”. See sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (2)(c) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84), by substituting the words “regional councils that are affected” for the words “affected regional councils”. *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

3D Conservation management plans

- (1) The purpose of a conservation management plan under this section is to establish objectives for the management of a marine mammal sanctuary or sanctuaries.
- (2) For the purposes of this section, sections 17E (except subsections (1), (4), (6), and (7)), 17G, 17H, 17I, and 17N of the Conservation Act 1987 shall, with any necessary modifications, apply with respect to conservation management plans under this section, subject to the following provisions:
 - (a) In addition to the consultation required by section 17F(a) of that Act (as applied by section 17G(1) of that Act), the Director-General shall also consult the responsible chief executive, the Secretary for Transport, and all regional councils within the meaning of the Local Government Act 2002 that are affected:
 - (b) In addition to the notification required by section 17F(a) of that Act (as so applied), the Director-General shall also send a copy of the draft plan to the responsible chief executive, the Secretary for Transport, and all such affected regional councils:
 - (c) Before sending the plans to the Boards affected, the Director-General shall consider any comments made by the responsible chief executive, the Secretary for Transport, and all such regional councils that are affected.

Sections 3A to 3D were inserted, as from 10 April 1990, by section 107 Conservation Law Reform Act 1990 (1990 No 31).

Subsection (2) was amended, as from 25 November 1994, by section 2 Marine Mammals Protection Act 1994 (1994 No 111) by inserting the expression “17H, 17I,”.

Subsection (2)(a) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84), by substituting the words “all regional councils within the meaning of the Local Government Act 2002 that are affected” for the words “all affected regional councils constituted under the Local Government Act 1974”. *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (2)(c) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84), by substituting the words “regional

councils that are affected” for the words “affected regional councils”. *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Section 3D was amended, as from 1 July 1995, by section 6(1) Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31) by substituting the reference to the “responsible chief executive” for the reference to the Director-General of Agriculture and Fisheries.

3E Population management plans

- (1) The Minister may from time to time approve a population management plan in respect of one or more species, being threatened species or other species of marine mammal, containing all or any of the following matters in respect of each species:
- (a) An assessment of the biology and status of the species:
 - (b) An assessment of any known fisheries interaction with the species:
 - (c) An assessment of the degree of risk caused by fishing-related mortality and other human-induced sources of mortality to the species, whether within New Zealand fisheries waters or elsewhere within the range of the species:
 - (d) An estimate of the range of human-induced mortality for the species which would allow the criteria specified in section 3F of this Act to be met:
 - (e) An estimate of the range of fishing-related mortality for the species which would allow the criteria specified in section 3F of this Act to be met:
 - (f) The maximum allowable level of fishing-related mortality for the species, in New Zealand fisheries waters, which would allow the criteria specified in section 3F of this Act to be met:
 - (g) Subject to section 3G of this Act, if a level has been set under paragraph (f) of this subsection, the maximum allowable level of fishing-related mortality for the species, in specified areas within New Zealand fisheries waters:
 - (h) Recommendations to the Minister of Fisheries on measures to mitigate the fishing-related mortality of the species:

- (i) Recommendations to the Minister of Fisheries on the standard of information to be collected on fishing-related mortality.
- (2) In the case of any marine mammals ranging outside New Zealand fisheries waters, the maximum allowable level of fishing-related mortality set under paragraph (f) or paragraph (g) of subsection (1) of this section shall be based on a fair and equitable consideration of the proportion that the estimated fishing-related mortality of marine mammals within those waters bears to the total estimated mortality of marine mammals in all waters (including waters outside New Zealand fisheries waters).

Sections 3E to 3H were inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

3F Determining maximum allowable level of fishing-related mortality

In determining the maximum allowable level of fishing-related mortality for threatened species or any other marine mammals under section 3E(1)(f) of this Act, the Minister,—

- (a) In the case of any threatened species, shall determine a level of fishing-related mortality which should allow the species to achieve non-threatened status as soon as reasonably practicable, and in any event within a period not exceeding 20 years:
- (b) In the case of any other marine mammal, shall determine a level of fishing-related mortality which should neither cause a net reduction in the size of the population nor seriously threaten the reproductive capacity of the species.

Sections 3E to 3H were inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

3G Determining area-based maximum levels of fishing-related mortality

- (1) Area-based limits set under section 3E(1)(g) of this Act shall be set only—

- (a) For populations of threatened species that are geographically or genetically discrete; and
 - (b) For areas corresponding to areas having effect under the Fisheries Act 1996 as fisheries management areas or quota management areas.
- (2) In setting any area-based limit for a threatened species under section 3E(1)(g) of this Act, the Minister shall determine a level of fishing-related mortality for a discrete population referred to in subsection (1) of this section which should neither cause a net reduction in the size of the population nor seriously threaten the reproductive capacity of that population.

Sections 3E to 3H were inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88). See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

3H Procedure for preparation and approval of population management plans

- (1) Population management plans shall be prepared and approved as follows:
- (a) The Director-General shall prepare every population management plan in consultation with every Conservation Board and with such persons as the Director-General considers are representative of those classes of persons interested in the plan, including such persons or organisations as the Director-General considers are representative of Maori, environmental interests, commercial interests, and recreational interests:
 - (b) The Director-General shall then publish notice of the draft plan at least once in each of the daily newspapers published in Auckland, Wellington, Christchurch, and Dunedin, respectively:
 - (c) Every notice under paragraph (b) of this subsection shall—
 - (i) State that the draft plan is available for inspection at the places and times specified in the notice; and
 - (ii) Call upon persons or organisations interested to lodge with the Director-General submissions on the draft before the date specified for the purpose in the notice, being a date not less than 40 work-

ing days after the date of the publication of the notice; and

- (iii) Require any person who wishes to be heard in support of the person's submission to so advise the Director-General:
- (d) Any person or organisation may make written submissions to the Director-General on any draft plan, at the place and before the date specified for the purpose in the notice:
- (e) From the time of publication of a draft plan until public opinion on it has been made known to the Director-General, he or she shall make the draft available for public inspection during normal office hours, in such places and quantities as are likely to encourage public participation in the development of the proposal:
- (f) The Director-General shall give every person or organisation who or which, in making submissions on the draft, asked to be heard in support of his or her or its comments a reasonable opportunity of appearing before the Director-General or the Director-General's representative or representatives:
- (g) The Director-General, or his or her representative or representatives, may hear submissions from any other person or organisation consulted on the draft:
- (h) The Director-General shall prepare a summary of the submissions received on the draft and public opinion made known on the draft:
- (i) After considering such submissions and public opinion, the Director-General may revise the draft:
- (j) The Director-General shall send to the Minister of Fisheries and to the New Zealand Conservation Authority a copy of the summary prepared under paragraph (h) of this subsection together with a copy of the draft plan:
- (k) The New Zealand Conservation Authority shall consider the summary of submissions and the draft plan and send to the Minister and the Director-General any comments on the draft:

- (l) The Director-General, after having regard to any comments received under paragraph (k) of this subsection,—
 - (i) May amend the draft;
 - (ii) Shall send to the Minister the summary prepared under paragraph (h) of this subsection together with a copy of the draft plan;
 - (m) After having regard to—
 - (i) The provisions of sections 3E, 3F, and 3G of this Act; and
 - (ii) All submissions made on the draft plan; and
 - (iii) Such other matters as the Minister considers relevant,—

the Minister may approve the plan subject to the concurrence of the Minister of Fisheries and refer it to that Minister for concurrence:
 - (n) The Minister of Fisheries may concur with the draft plan after having regard to the impacts of implementing the maximum allowable level of fishing-related mortality on commercial fishing and such other matters as that Minister considers relevant:
 - (o) The Minister, with the concurrence of the Minister of Fisheries, may approve the plan:
 - (p) The approved plan shall be available for public inspection at the head office of the Department of Conservation at such times as may be specified in the notice given in respect of the plan under subsection (2) of this section.
- (2) The Director-General shall, by notice in the *Gazette*, specify—
- (a) The species to which the approved plan relates; and
 - (b) The maximum allowable level of fishing-related mortality specified in the approved plan; and
 - (c) The times at which the approved plan is available for public inspection at the head office of the Department of Conservation.
- (3) Any approved plan may be amended, and paragraphs (a) and paragraphs (l) to (p) of subsection (1) and subsection (2) of this section shall apply to every such amendment with any necessary modifications.

Sections 3E to 3H were inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88). See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (1)(o) was inserted, as from 23 June 1998, by section 36 Fisheries (Remedial Issues) Amendment Act 1998 (1998 No 67).

4 Restrictions on taking marine mammals

- (1) Notwithstanding anything in any other enactment, but subject to this Act, no person shall—
 - (a) Hold a marine mammal in captivity; or
 - (b) Take any marine mammal, whether alive or dead, in or from its natural habitat or in or from any other place—without first obtaining a permit to do so from the Minister or from any person or persons authorised in that behalf by the Minister.
- (1A) The Minister may from time to time, by notice in the *Gazette*, prescribe criteria and standards in respect of any kind of permit referred to in subsection (1) of this section; and the prescribed criteria and standards shall be deemed to form part of permits of that kind and shall be complied with accordingly.
- (2) Subject to section 5(3) of this Act and to any regulations made under section 28 of this Act, no person shall import into New Zealand or export from New Zealand any marine mammal or marine mammal product except pursuant to a permit issued under this Act.
- (3) Nothing in subsection (2) of this section shall apply with respect to any whale product the subject of an order made under section 54 or section 56 of the Customs and Excise Act 1996.
- (4)
- (5) A permit shall not be required—
 - (a) By any person who finds or collects bones, teeth, ivory, or ambergris that have already separated naturally from a marine mammal if that person, as soon as practicable, notifies the Director-General or an officer of the find, and gives details of the time, place, and circumstances under which the find was made:
 - (b) By any person who finds any dead marine mammal or part of one and, if authorised to do so by an officer

and acting pursuant to his directions, sends the mammal or part to the Department of Conservation or to any approved research establishment, laboratory, or public museum:

- (c) By any person taking from or bringing into New Zealand any marine mammal product, being an ornament or an item for personal use or adornment made wholly or principally from any part or parts of a marine mammal, if the marine mammal product accompanies that person from or into New Zealand or comprises part of that person's belongings and was in existence in a similar form as at the commencement of this Act.

Subsection (1) was substituted, as from 25 May 1995, by section 3(1) Marine Mammals Protection Act 1994 (1994 No 111).

Subsection (1A) was inserted, as from 25 November 1994, by section 3(1) Marine Mammals Protection Act 1994 (1994 No 111).

Subsection (3) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting the words "section 54 or section 56 of the Customs and Excise Act 1996" for the words "section 48 or section 70 of the Customs Act 1966."

Subsection 4 was repealed, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65).

Subsection (5)(a) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words "the Director-General or an officer" for the words "a Register or Inspector of Sea Fishing".

Subsection 5(b) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the word "officer" and the words "Department of Conservation" for the words "Inspector of Sea Fishing" and the words "Ministry of Agriculture and Fisheries", respectively.

5 Application for permit

- (1) Every person who desires to obtain a permit to hold or take any marine mammal or to import or export any marine mammal or marine mammal product shall make application in writing to the Director-General accompanied by the prescribed fee (if any).
- (2) Every application shall specify—
- (a) The full name and address of the applicant, whether or not the applicant is a New Zealand citizen, and details of such qualifications and experience as the applicant

considers will assist the Minister in his consideration of the application:

- (b) In the case of an intended research project, a full description of the project or programme in which the marine mammal to be taken will be used, a complete list of the sponsors or co-operating institutions concerned with the project, and the names and qualifications of any scientists involved:
 - (c) Where the marine mammal is for display or zoological purposes, details relating to the facilities where the mammal taken will be held or displayed or, if a certificate has been issued in respect of any zoological garden pursuant to regulations made under section 25 of the Animals Act 1967, details of the certificate:
 - (d) Where a marine mammal is to be captured, the number of persons to be involved, the population or area from which it is proposed to take the mammal, and details of the proposed methods of capture and transportation.
- (3) No person shall make an application under this section to import any marine mammal or marine mammal product unless a permit issued under the Animals Act 1967 in respect of such import has first been obtained.
- (4) The Director-General may investigate any application, and may request the applicant to provide such further information as the Director-General thinks will assist the Minister. On completing any such investigation the Director-General shall forward the application and all supporting documents to the Minister, together with a report on the nature and extent of the investigation and any conclusions that the Director-General may have drawn as a result.
- (5) The Minister shall, before he grants a permit under section 6 of this Act, publish, by notice in the *Gazette*, details of the application for that permit and shall, in the same notice, call for submissions in respect of that application to be made to him in writing by any person within 28 days after the date of publication of the notice:
- Provided that nothing in this subsection applies to an application for a permit to take whalebone from dead whales.

- (6) Notwithstanding subsection (5) of this section, the Minister shall not, except in the case of an application for a permit to hunt and kill any marine mammal or capture any marine mammal for display purposes, be required to publish the notice referred to in that subsection if he is satisfied that it is expedient for the notice not to be published in any case where the application relates to an emergency situation or to the taking of any marine mammal solely for the purposes of research.
- (7) In considering any application for a permit, the Minister shall have regard to—
- (a) The need to conserve, protect, or manage any marine mammal:
 - (b) Any international agreement to which New Zealand is a party:
 - (c) Any submissions received pursuant to subsection (5) of this section.

Subsection (1) was amended, as from 25 November 1994, by section 4(1) Marine Mammals Protection Act 1994 (1994 No 111) by inserting the words “hold or”.

The proviso to subsection (5) was inserted, as from 25 November 1994, by section 4(2) Marine Mammals Protection Act 1994 (1994 No 111).

6 Grant of permit

The Minister, in his discretion, may grant a permit under this Act or refuse to grant a permit, and his decision shall be final.

7 Conditions of permit

- (1) Subject to such conditions as may be prescribed by regulations made under this Act, the Minister may attach to any permit such conditions as he thinks fit, including conditions relating to—
- (a) The taking of marine mammals solely for the purpose of research:
 - (b) The taking of marine mammals to be held in zoological gardens or aquaria or other places of a similar nature for observation by the public under such conditions as may also be specified in the permit:
 - (c) The methods by which any species of marine mammals may be managed:

- (d) The boats, gear, equipment, and methods to be used in taking any marine mammal:
 - (e) The payment of a deposit or fee not exceeding such amount as may be prescribed by regulations made under this Act in respect of any marine mammal:
 - (f) The entering into of a bond in favour of the Crown, either with or without sureties, for such amount as the Minister thinks will give security for the performance by the permit holder of any obligation incurred under this Act or the permit:
 - (g) The records that are to be kept by the permit holder in relation to any marine mammal, and any information which is to be supplied to either the Minister or the Director-General.
- (2) Any permit may be revoked and the conditions attached to it amended at any time by the Minister or by any person authorised by him.
 - (3) No permit shall be transferred to any other person except with the consent in writing of the Minister.

8 Register of marine mammal permits

- (1) For the purposes of this Act, the Director-General shall set up and maintain a Register of permits granted by the Minister.
- (2) The Register shall be open to inspection by the public during ordinary office hours on payment of a fee of \$2.
- (3) On payment to him of a fee of \$5, the Director-General shall send to any person requesting the same in writing a copy of any specified entry in the Register.
- (4) Wherever a permit is granted, renewed, amended, or revoked by the Minister under this Act, the Director-General shall make an appropriate entry in the Register, showing—
 - (a) In the case of the issue of a permit, the name and address of the holder, the actions authorised by the permit, any conditions which the Minister may attach or any directions he may have given in respect of it, and the date on which the application was granted:
 - (b) In the case of the revocation of a permit, the date and the grounds on which the revocation was made.

- (5) The Director-General shall also, in respect of any entry, record such other particulars as may from time to time be prescribed by regulations made under this Act, and such further conditions, amendments, or directions as the Minister may from time to time attach, make, or give in respect of any permit.

9 Offence to take marine mammal without permit

- (1) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$250,000, and to a further fine not exceeding \$10,000 for every marine mammal in respect of which the offence was committed, who takes, has in possession, exports, imports, has on board any vessel, vehicle, aircraft, or hovercraft, or has control of any marine mammal, otherwise than under this Act or a permit.
- (2) Upon the conviction of any person for an offence against subsection (1) of this section, any marine mammal unlawfully taken, in possession, under the control of any person, or on board any vessel, vehicle, aircraft, or hovercraft, and all vessels, vehicles, aircraft, hovercraft, gear, nets, tackle, equipment, and apparatus used in respect of the commission of the offence shall be forfeit to the Crown, and shall be disposed of as the Minister thinks fit.

The words “District Court Judge” have been substituted, as from 1 April 1980, for the word “Magistrate” pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

Subsection (1) was substituted, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88). See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

10 Director-General to be notified of actions taken in respect of marine mammals

- (1) Where any person completes any action in relation to a marine mammal, being an action that he is authorised to take under or pursuant to this Act or to a permit, he shall forthwith give to the Director-General full details of the results of that action, including—
- (a) The number of injuries caused or deaths among any taken marine mammals, together with the date on and

- the location at which those injuries or deaths occurred, and the species injured or killed:
- (b) The cause, as far as may be determined, of any such injury or death:
 - (c) The measures taken to avoid further such injuries or deaths:
 - (d) Whether any species of marine mammal other than that authorised was taken, the location and date of such a taking, the method by which it was taken, and whether or not it appeared to be unharmed when it was released.
- (2) Every person commits an offence against this Act who contravenes subsection (1) of this section.

11 Marine Mammals Officers

- (1) Every warranted officer, and every Fisheries Officer appointed under section 76 of the Fisheries Act 1983, and every constable, shall be a Marine Mammals Officer for the purposes of this Act.
- (2) For the purposes of this Act, the Director-General may from time to time appoint any person to be a Marine Mammals Officer on such terms and conditions as may be approved. If any person appointed as an Officer is a full-time officer or employee of the State services he shall not be entitled to any additional remuneration in respect of his appointment under this subsection.
- (3) Every person appointed under subsection (2) of this section shall be appointed for such term, not exceeding 3 years, as the Director-General thinks fit, and may be reappointed.
- (4) Any person appointed under subsection (2) of this section may at any time be removed from office by the Director-General for incapacity, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Director-General.
- (5) Any person appointed under subsection (2) of this section shall, on the expiration of the term of his appointment, or on the sooner expiry of his appointment by removal from office or resignation, surrender to the Director-General his warrant of appointment.

- (6) No person appointed under subsection (2) of this section shall, by virtue of that appointment, be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956.
- (7) Every person declared to be an Officer under subsection (1) of this section shall have and may exercise, in respect of supervising, administering, and enforcing the provisions of this Act, all the powers that an warranted officer has in relation to supervising, administering, and enforcing the provisions of the Conservation Act 1987.
- (8) Every Officer appointed under subsection (2) of this section shall have such duties and may exercise such powers in relation to marine mammals as the Director-General may direct, being powers of no greater extent than those exercised by a warranted officer.
- (9) The Director-General shall issue to every Officer (except a constable) a warrant showing the Officer's authority to exercise any powers conferred on him pursuant to this section.
- (10) The production by any Officer of any warrant issued under this section or section 59 of the Conservation Act 1987 or section 76 of the Fisheries Act 1983 or of any evidence that the Officer is a constable shall, until the contrary is proved, be sufficient authority for any such Officer to do anything authorised by subsection (7) or subsection (8) of this section.

Subsection (1) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words "Every warranted officer, and every Fisheries Officer appointed under section 76 of the Fisheries Act 1983" for the words "Every Inspector of Sea Fishing".

The reference to the State Services Act 1962 in subsection 6 was repealed, as from 1 April 1988, by section 88(1) State Sector Act 1988 (1988 No 20).

Subsection (7) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words "warranted officer has in relation to supervising, administering, and enforcing the provisions of the Conservation Act 1987" for the words "Inspector of Sea Fishing has in relation to supervising, administering, and enforcing the provisions of Part 1 and Part 3 of the Fisheries Act 1908".

Subsection (8) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words "warranted officer" for the words "fishery officer pursuant to the Fisheries Act 1908".

Subsection (10) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words “or section 59 of the Conservation Act 1987 or section 76 of the Fisheries Act 1983” for the words “or section 4 of the Fisheries Act 1908”.

12 Officers to be provided with subsistence and accommodation

- (1) Any Officer authorised in that behalf by the Director-General may go on board any vessel, aircraft, or hovercraft used for taking any marine mammal and shall, during such period as may be specified in his authority, be entitled to remain on board, to be provided with subsistence and, where appropriate, accommodation, and to be present at all operations relating to the taking of marine mammals.
- (2) The master or person in command of any vessel or aircraft or hovercraft shall be paid such amount as may be approved for supplying any subsistence or accommodation to an Officer under subsection (1) of this section.
- (3) Every person commits an offence against this Act who refuses to supply subsistence or accommodation to any Officer under this section, or to allow him to be present at all operations relating to the taking of marine mammals.

13 Powers of search

- (1) Subject to this Act and notwithstanding anything to the contrary in the Conservation Act 1987, every Officer who has reason to believe or suspect that a breach of this Act or of any regulation made under it has been or is being committed, may enter, inspect, and examine any vehicle, vessel, aircraft, or hovercraft.
- (2) An Officer shall, before entering on any vehicle, vessel, aircraft, or hovercraft, produce his warrant of appointment or other evidence that he is an Officer if asked to do so by the person in actual charge of the vehicle, vessel, aircraft, or hovercraft.
- (3) An Officer shall not enter, inspect, or examine any aircraft or hovercraft unless he is accompanied by the pilot in command, or the owner, or a representative or agent of the owner, of the aircraft or hovercraft.

- (4) An Officer shall not enter any dwellinghouse except pursuant to a warrant issued under section 14 of this Act.
- (5) Every Officer may, in the course of any search under this section or section 14 of this Act, open (by force if necessary) any container, package, or receptacle, and seize and take away any marine mammal supposedly illegally taken together with any such container, package, or receptacle, or seize and take away any thing which he has reason to believe will be evidence of a breach of the provisions of this Act or of any regulation made under it.
- (6) Every person in or about any dwellinghouse, place, vehicle, or vessel inspected under the provisions of this Act, and the pilot in command and the owner and every agent or representative of the owner of any aircraft or hovercraft so inspected, shall—
 - (a) Facilitate the entry, inspection, and examination by an Officer:
 - (b) Facilitate the removal of any container, package, receptacle, or thing.

Subsection (1) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words “Conservation Act 1987” for the words “Fisheries Act 1908”.

Subsection (4) was amended, as from 13 December 1979, by section 2 Marine Mammals Protection Amendment Act 1979 (1979 No 98) by omitting the words “or place”.

14 Officer may obtain search warrant

- (1) Where any Justice of the Peace or Community Magistrate or District Court Judge is satisfied on oath that there is probable cause to suspect—
 - (a) That any breach of this Act or of any regulations made under it has been or is being committed; or
 - (b) That preparation has been made to commit such a breach,—

the Justice or Community Magistrate or District Court Judge may, by warrant under his hand, authorise an Officer named in the warrant together with such assistants as may be necessary to enter and search the dwellinghouse, place, vehicle, vessel, aircraft, or hovercraft that is mentioned in the warrant, by force if necessary, at the time or times that are so mentioned. Every

warrant shall continue in force until the purpose for which it was issued has been satisfied.

- (2) It is the duty of every one executing a warrant under this section to have it with him and to produce it if required to do so.

Subsection (1) was amended, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76), by inserting the words “or Community Magistrate”.

The words “District Court Judge” have been substituted, as from 1 April 1980, for the word “Magistrate” pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

15 Officers, etc, protected from proceedings

No action or proceedings shall be brought against the Crown, or any Officer, or any person acting under the instructions of an Officer, in respect of any thing done or undertaken for the purpose of carrying out the provisions of this Act or any regulations made under it where the Crown or those persons have acted in good faith and with reasonable care.

16 Reporting of accidental death or injury

- (1) Where any person, in the course of fishing pursuant to any licence, permit, or permission granted or given under the Fisheries Act 1996, accidentally or incidentally kills or injures a marine mammal he shall—
- (a) If fishing from a vessel, record the event in the vessel’s log and report the event in writing to an officer or a fishery officer (as defined in section 2(1) of the Fisheries Act 1996) not later than 48 hours after the arrival of the vessel in port; and
 - (b) In any other case, report the event in writing to an officer or a fishery officer (as defined in section 2(1) of the Fisheries Act 1996) as soon as practicable.
- (2) Any person (not being a person to whom subsection (1) of this section applies) who, by any means whatsoever, accidentally or incidentally kills or injures any marine mammal shall report the event to an officer or a fishery officer (as defined in section 2(1) of the Fisheries Act 1996) as soon as practicable.
- (3) Every report under subsection (1) or subsection (2) of this section shall include—

- (a) The location of the area where the event took place; and
 - (b) The species (if known) of the marine mammal killed or injured, or a general description of the mammal; and
 - (c) A description of conditions and the circumstances of the event.
- (3A) In addition to providing the particulars required by subsection (1) or subsection (2) of this section, a person required to report an event to which that subsection applies shall provide to the Director-General such other particulars relating to the event as the Director-General may require for the purposes of this Act.
- (4) Every person commits an offence against this Act who contravenes subsection (1) or subsection (2) of this section.

Subsection (1) was amended, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88) by inserting the words “or incidentally”. See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (1)(a) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words “the Director-General or an officer” for the words “a Registrar or Inspector of Sea Fishing”.

Subsection (1)(a) was further amended, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88) by substituting the word “event” and the words “an officer or a fishery officer as defined in section 2(1) of the Fisheries Act 1996)” for the word “accident” and the words “the Director-General or an officer” respectively. See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (1)(b) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words “the Director-General or an officer” for the words “a Registrar or Inspector of Sea Fishing”.

Subsection (1)(b) was further amended, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88) by substituting the word “event” and the words “an officer or a fishery officer as defined in section 2(1) of the Fisheries Act 1996)” for the word “accident” and the words “the Director-General or an officer” respectively. See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (2) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words “the Director-General or an officer” for the words “a Registrar or Inspector of Sea Fishing”.

Subsection (2) was further, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88) by inserting the words “or incidentally”. See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (2) was further amended, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88) by substituting the word “event” and the words “an officer or a fishery officer as defined in section 2(1)

of the Fisheries Act 1996)” for the word “accident” and the words “the Director-General or an officer” respectively. See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (3)(a) and (c) was amended, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88) by substituting the word “event” for the word “accident”. See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (3A) was inserted, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88). See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

17 Purse seining

- (1) No person shall use any purse seine net for the purposes of fishing unless—
 - (a) That person has in the net an escape panel or aperture from which any dolphin or porpoise can readily escape; and
 - (b) That person follows a fishing practice acceptable to the Director-General.
- (2) Subject to subsection (3) of this section, the Director-General may, from time to time by notice in the *Gazette*, grant, in respect of any person or class of persons, or any vessel, vehicle, aircraft, or hovercraft, or any fish, or any waters, exemption from the requirements of subsection (1) of this section, either wholly or partially and either with or without conditions; and may in like manner amend or revoke any such notice.
- (3) No exemption from the requirements of subsection (1) of this section shall be given in respect of a purse seine net used in fishing for yellowfin tuna.
- (4) Every person commits an offence against this Act who contravenes subsection (1) of this section or, where any exemption has been granted by notice under subsection (2) of this section, contravenes or fails to comply with any conditions imposed by such notice.

18 Treatment or disposal of sick or dead marine mammals

- (1) Nothing in this Act shall affect—
 - (a) Any person who gives any humane assistance, care, or medication to any stranded, sick, or injured mar-

- ine mammal if (where known) details of the mammal's species, length, sex, and condition, or a general description of the mammal, and details of the treatment and any results of the treatment are forwarded to the Director-General or an officer as soon as practicable:
- (b) The moving of any marine mammal by or under the direction of any Officer in the interests of public safety or the well-being of the mammal:
 - (c) The destruction of any aged, sick, distressed, or troublesome marine mammal by or under the direction of an officer or person authorised by the Minister.
- (2) Dead marine mammals shall be disposed of in accordance with the advice of an officer or person authorised by the Minister, which advice shall be given, where practicable, after consultation with the occupier of the place where the marine mammal is found.

Subsection (1)(a) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words "Director-General or an officer" for the words "Registrar or Inspector of Sea Fishing".

Subsection (1)(a) was amended, as from 1 April 1987, by section 11(1) State-Owned Enterprises Amendment Act 1987 (1987 No 117) by omitting the word "nearest".

Subsections (1)(c) and (2) were amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the word "officer" for the words "Inspector of Sea Fishing".

19 Destruction of diseased captive marine mammals

- (1) Where any marine mammal is taken or kept pursuant to a permit issued under this Act, and is found at any time—
- (a) To be affected with any unhealthy condition or to be diseased or suffering from any disability; or
 - (b) To be so injured or debilitated that it might be suffering—
- an Officer, registered veterinary surgeon, or other person authorised by the Minister, may seize or destroy that marine mammal.
- (2) The costs of and incidental to any such seizure or destruction shall be borne by the person keeping the marine mammal concerned.

- (3) No compensation shall be payable to any person under this section.

20 No derogation from certain enactments

Nothing in this Act shall derogate from the provisions of—

- (a) The Animal Welfare Act 1999:
- (b) Part 4 of the Antarctica (Environmental Protection) Act 1994:
- (c) The Ross Dependency Whaling Regulations, 1929, as published in the *Gazette* on the 31st day of October 1929 at pages 2747 and 2748.

Paragraph (a) was substituted, as from 1 January 2000, by section 194 Animal Welfare Act 1999 (1999 No 142).

Paragraph (b) was substituted, as from 23 January 1998, by section 56(1) Antarctica (Environmental Protection) Act 1994 (1994 No 119).
See clause 2 Antarctica (Environmental Protection) Act 1994 (SR 1998/1).

21 Advisory, research, and technical committees

- (1) The Minister may from time to time appoint such advisory, research, or technical committees of one or more persons as he thinks fit, and he may delegate to any such committee such of the powers conferred on him under this Act as he thinks fit or require the committee to investigate and report to him on such matters relating to marine mammals as he may direct or of which the committee, or any member or members of it, may have special knowledge or experience.
- (2) Every committee purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (3) Every delegation under this section shall be revocable at will.
- (4) No delegation under this section shall prevent the exercise of any power by the Minister.
- (5) Every committee appointed under this section is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951, and there shall be paid to the members of the committee, from money appropriated by Parliament for the purpose, remuneration by way of salary, fees, allowances, travelling allowances, or

expenses in accordance with that Act and its provisions shall apply accordingly.

- (6) The Minister may direct the Director-General to provide from his Department such services as may be necessary to enable any committee to discharge its functions more properly.

Subsection (6) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the word “Department” for the word “Ministry”.

22 Marine mammal sanctuaries

- (1) Subject to this section, the Minister may, by notice in the *Gazette*, define any place and declare it to be a marine mammal sanctuary, and may in like manner, after considering any submissions in writing he may have received within 28 days after the date of publication of a notice in the *Gazette* indicating his intention, vary, redefine, or abolish the sanctuary.
- (2) Where any other Minister of the Crown has the control of any Crown-owned land, foreshore, seabed, or waters of the sea which is declared to be a marine mammal sanctuary or which forms part of one, the consent of that Minister to the declaration shall be notified concurrently with the notice given under subsection (1) of this section.
- (3) When defining and declaring a sanctuary under this section, the Minister may specify the activities that may or may not be engaged in within the sanctuary, and may impose restrictions in respect of the sanctuary.
- (4) No marine mammal sanctuary shall be declared in any Maritime or National Park, in any reserve within the meaning of the Reserves Act 1977, or in any marine reserve declared under the Marine Reserves Act 1971.
- (5) Every constable, and every ranger appointed under section 38 of the Wildlife Act 1953, section 27 of the National Parks Act 1952, or under section 8 of the Reserves Act 1977 shall have the authority to exercise any of the powers conferred on a ranger under section 39 of the Wildlife Act 1953 in any marine mammal sanctuary.

23 Offences and penalties

- (1) Every person commits an offence against this Act who—
 - (a) Acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act or any regulations made under it; or
 - (b) Makes any false or misleading statement or any material omission in any communication with or application or return to the Minister, to the Director-General, or to the Department of Conservation or any duly authorised officer or employee of the Department of Conservation, or any Officer (whether in writing or otherwise), for the purposes of this Act or of any regulations made under it; or
 - (c) Refuses or fails to furnish any return or information or particulars required by the Minister, the Director-General, or any duly authorised officer or employee of the Department of Conservation, or any Officer, for the purposes of this Act or of any regulations under it.
- (2) Every person commits an offence against this Act who—
 - (a) Except under the authority of any enactment, places or leaves any structure or trap or chemical or other substance in any place where a marine mammal is or is likely to be and which injures or harms, or is likely to injure or harm, any marine mammal;
 - (b) Uses any vehicle, vessel, aircraft, or hovercraft to herd or harass any marine mammal.
- (3) Every person who commits an offence against this Act for which no penalty is provided otherwise than in this section is liable, on summary conviction before a District Court Judge, to a fine not exceeding—
 - (a) In the case of an offence against section 17 of this Act or subsection (2) of this section, \$30,000; and
 - (b) In any other case, \$10,000.

Subsection (1)(b) and (c) were amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words “Department of Conservation” for the words “Ministry of Agriculture”.

The words “District Court Judge” in subsection (3) have been substituted, as from 1 April 1980, for the word “Magistrate” pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

Subsection (3)(a) and (b) were amended, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88) by substituting the expressions “\$30,000” and “\$10,000” for the expressions “\$5,000” and “\$1,000” respectively. See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

24 Onus of proof in respect of certain offences

Where any person is charged with an offence under this Act arising out of his taking or doing, without a permit or authority, any action for the taking or doing of which a permit or authority is required, the onus shall be on that person to prove that at the relevant time he held the required permit or authority.

25 Proceedings in respect of offences

Notwithstanding anything to the contrary in section 14 of the Summary Proceedings Act 1957, proceedings may be taken under this Act against any person for an offence committed at sea or beyond the outer limits of New Zealand fisheries waters at any time within 12 months from the date on which that person first lands in New Zealand after the commission of the offence or, for an offence committed in New Zealand, within 12 months after the date of the commission of the offence.

26 Defences in respect of certain offences

- (1) Where any person (not being a New Zealand citizen) is charged with any offence under this Act, it shall be a defence to the charge if the defendant proves that the act or omission constituting the offence took place beyond the outer limits of New Zealand fisheries waters or, not being an offence concerning the importing of any marine mammal or marine mammal product, relates only to marine mammals taken beyond those outer limits.
- (2) Where any New Zealand citizen is charged with any offence under this Act, it shall be a defence to the charge if the defendant proves that the act or omission constituting the offence took place beyond the outer limits of New Zealand fisheries waters and did not contravene any international agreement to which effect had been given by regulations made under section 28 of this Act or by any other enactment.

- (3) Where any person is charged with any offence under this Act, it shall be a defence to the charge if the defendant proves that the act or omission constituting the offence took place in circumstances of stress or emergency and was necessary for the preservation, protection, or maintenance of human life.
- (4) Where any person is charged with killing or injuring any marine mammal contrary to the provisions of this Act or any regulations made under it and the provisions of subsection (1) or subsection (2) or subsection (3) of this section do not apply in the circumstances of the case, it shall be a defence to the charge if the defendant proves that the death of or injury to the marine mammal was accidental, or incidental, and that the requirements of section 16 of this Act were complied with.

Subsection (4) was amended, as from 1 October 1996, by section 316(1) Fisheries Act 1988 (1996 No 88) by inserting the words “, or incidental,”. See clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

27 Liability for causing Officer to incur expense

Where any person causes an Officer to incur any expense that he would not otherwise have incurred, by failing to comply with or acting in contravention of any provision of this Act or any regulations made under it, or by failing to comply with or acting in contravention of any order or direction or requirement or conditions reasonably and properly given or imposed in accordance with this Act or any such regulations, that person shall reimburse the Crown for the amount of any such expense that is reasonably and properly incurred, and that amount shall be recoverable from that person as a debt due to the Crown.

28 Regulations

- (1) The Governor-General may, from time to time by Order in Council, make regulations for all or any of the following purposes:
- (a) Prescribing the manner in which any marine mammal may be measured:
 - (b) Prescribing forms of applications and of permits required for the purposes of this Act:

- (c) Prescribing the amount of any deposit or fees to be paid in respect of any application made under this Act, and in respect of the granting of any permit:
 - (d) Prescribing conditions pursuant to which permits may be issued, and conditions which may be attached to permits already issued:
 - (e) Prescribing and limiting the number of permits of any class or classes that may be issued in any year:
 - (f) Prescribing the amount of any deposit, bond, or security, which may be required under this Act:
 - (g) Giving effect to the terms of any international agreement to which New Zealand is a party:
 - (h) Regulating, prohibiting, or restricting the sale, distribution, custody, carriage, packaging, handling, or use of any marine mammal, marine mammal product, or any product containing anything derived from a marine mammal:
 - (i) Regulating, prohibiting, or restricting the keeping of any marine mammal, marine mammal product, or any product containing anything derived from a marine mammal:
 - (j) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) The Governor-General may, from time to time by Order in Council, make such regulations as the Governor-General in Council thinks necessary or expedient for the protection, conservation, or management of any marine mammal.
- (3) Any regulations under this section may apply generally throughout New Zealand or New Zealand fisheries waters or may be made to apply only within such area or areas as may be specified in the regulations.
- (4) Any regulations under this section may confer on the Minister or on the Director-General power to issue, in such manner as may be prescribed, instructions, orders, requirements, permits, authorities, or notices for the purpose of ensuring the protection, management, or conservation of any marine mammal and, where the regulations so provide, any such instruction, order, requirement, permit, authority, or notice

shall have effect according to its tenor and shall be complied with by all persons affected by it.

29 Costs of administering Act, receipts

- (1) All costs and expenses properly incurred by any person for the purposes of this Act shall be met from money appropriated by Parliament for the purpose.
- (2) All fees or other money (except fines) received pursuant to this Act shall be deemed to be a receipt of the Department of Conservation and shall be accounted for accordingly.

Subsection (2) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words “Department of Conservation” for the words “Ministry of Agriculture”.

30 Amendments, repeals, and revocations

- (1) The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.
- (2) The following enactments are hereby repealed:
 - (a) The Whaling Industry Act 1935:
 - (b) The Whaling Industry Amendment Act 1974:
 - (c) The Fisheries Amendment Act 1956.
- (3) The following regulations are hereby revoked:
 - (a) The Whaling Industry Regulations 1961:
 - (b) The Whaling Industry Regulations 1961, Amendment No 1:
 - (c) The Whaling Industry Regulations 1961, Amendment No 2:
 - (d) The Seal Fishery Regulations 1946:
 - (e) The Seal Fishery Regulations 1946, Amendment No 7:
 - (f) The Seal Fishery Regulations 1946, Amendment No 11.
- (4) As from the commencement of this Act, the enactments of the Parliament of the United Kingdom intituled—
 - (a) The Seal Fisheries (North Pacific) Act 1895, 58 and 59 Vict, c 21; and
 - (b) The Seal Fisheries (North Pacific) Act 1912, 2 and 3 Geo 5, c 10—shall cease to have effect as part of the law of New Zealand.
- (5) The following Orders in Council are hereby consequentially revoked:

- (a) The Order in Council dated the 4th day of March 1913, and published in the *Gazette* on the 13th day of March 1913 at page 815, whereby consent was given to sections 3 and 4 of the enactment mentioned in subsection (4)(b) of this section being extended to New Zealand:
- (b) The Order in Council dated the 18th day of August 1913, and published in the *Gazette* on the 21st day of August 1913 at pages 2633 and 2634, whereby a date was declared for the sections mentioned in paragraph (a) of this subsection to come into operation in New Zealand.

Schedule
Enactments amended

Section 30(1)

Enactment Amended	Amendment
1908, No 65-The Fisheries Act 1908 (Reprinted 1976, Vol 5, p 3705)	<p>By omitting from the definition of the term fishing in section 2(1) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By repealing from section 2(1) the definition of the term seals.</p> <p>By repealing section 2(2) (as added by section 2(5) of the Fisheries Amendment Act 1959, and amended by section 2 of the Fisheries Amendment Act (No 2) 1969 and section 2 of the Fisheries Amendment Act (No 2) 1977), and substituting the following subsection:</p> <p>“(2) For the purposes of this Part and Part III of this Act and of any regulations under this Part and Part III of this Act, fish or oysters, or any parts thereof, shall be deemed to be in the possession of any person when that per-</p>

Enactment Amended	Amendment
	<p>son has, alone or jointly with any other person, possession of or control over the fish or oysters, or the parts thereof, or possession of or control over any vessel, vehicle, aircraft, hovercraft, container, package, thing, or place in or on which are the fish or oysters, or the parts thereof:</p> <p>“Provided that, in any proceedings for an offence against this Part or Part III of this Act or any regulations under this Part or Part III of this Act, being an offence relating to the possession of any fish or oysters, or any parts thereof, found in or on any vessel, vehicle, aircraft, hovercraft, container, package, thing, or place in the possession or under the control of the defendant, alone or jointly with any other person, it shall be a good defence if the defendant satisfies the Court that he had no knowledge that they were in or on that vessel, vehicle, aircraft, hovercraft, container, package, thing, or place or that, although he did know that they were in or on the vessel, vehicle, aircraft, hovercraft, container, package, thing, or place, he did not know and could not with reasonable diligence have ascertained that the possession of the fish or oysters, or the parts thereof, would</p>

Enactment Amended	Amendment
	<p>constitute the offence charged against him.</p> <p>By repealing section 2(3) (as added by section 2 of the Fisheries Amendment Act 1967, and amended by section 2 of the Fisheries Amendment Act (No 2) 1977), and substituting the following subsection:</p> <p>“(3) Every reference in this Part and Part III of this Act or in any regulations made under this Part or Part III to any fish or oyster shall, unless the context otherwise requires, be deemed to include any part of any such fish or oyster.</p> <p>By omitting from section 5(1)(d) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By omitting from section 5(1)(h) (as amended by section 2(a) of the Fisheries Amendment Act 1956) the words “, oysters, or marine mammals (including seals)”, and substituting the words “or oysters”.</p> <p>By omitting from section 5(1)(k) the words “, oyster, or seal”, and substituting the words “or oyster”.</p> <p>By omitting from section 5(1)(o) (as amended by section 2(a) of the Fisheries Amendment Act 1956) the words “, oysters, or marine mammals (including seals)”, and substituting the words “or oysters”.</p> <p>By omitting from section 5(1)(p) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By omitting from section 5(1)(pp) (as inserted by section 2(1) of the Fisheries</p>

Enactment Amended	Amendment
	<p>Amendment Act 1964) the words “, oysters, and marine mammals (including seals)”, and substituting the words “or oysters”.</p> <p>By omitting from section 10(1) the words “, oysters, or seals”, and substituting the words “or oysters”.</p> <p>By repealing sections 42, 43, 44, 45, 45A (as inserted by section 5 of the Fisheries Amendment Act 1959), and 48.</p> <p>By omitting from section 49(1) (as substituted by section 4(1) of the Fisheries Amendment Act 1967) the words “, oysters, or seals” wherever they occur, and substituting in each case the words “or oysters”.</p> <p>By omitting from section 49(6) (as so substituted) the words “, oyster, or seal”, and substituting the words “or oyster”.</p> <p>By omitting from section 53 (as amended by section 6(1) of the Fisheries Amendment Act 1948) the words “, oysters, or seals”, and substituting the words “or oysters”, and by omitting the words “and any skins, oil, or blubber from seals unlawfully taken.”.</p> <p>By repealing section 57 (as amended by section 6(2) of the Fisheries Amendment Act 1948).</p> <p>By omitting from section 58(1)(b) (as substituted by section 5(1) of the Fisheries Amendment Act 1967, and amended by section 7 of the Fisheries Amendment Act (No 2) 1977) the words “, oysters, or seals”, and substituting the words “or oysters”.</p>

Enactment Amended	Amendment
	By omitting from section 68 the words “or of any seal, or of any skin, oil, blubber, or other unmanufactured product of any seal.”.
1948, No 11-The Fisheries Amendment Act 1948 (Reprinted 1976, Vol 5, p 3793)	By repealing section 6(2).
1959, No 8-The Fisheries Amendment Act 1959 (Reprinted 1976, Vol 5, p 3796)	By repealing sections 2(5) and 5.
1960, No 30-The Animals Protection Act 1960	By repealing subsection (5) of section 12, and substituting the following subsection: “(5) Where any Inspector finds any marine mammal which appears to the Inspector to be stranded, aged, sick, distressed, or troublesome, he shall forthwith report the matter to an Inspector of Sea Fishing as defined in the Marine Mammals Protection Act 1978 to be dealt with pursuant to that Act.
1967, No 49-The Fisheries Amendment Act 1967 (Reprinted 1976, Vol 5, p 3836)	By repealing section 2.

Enactment Amended	Amendment
1969, No 57-The Fisheries Amendment Act (No 2) 1969 (Reprinted 1976, Vol 5, p 3840)	By repealing section 2.
1977, No 28-The Territorial Sea and Exclusive Economic Zone Act 1977	By repealing paragraph (b) of section 10(2), and substituting the following paragraph: “(b) The Marine Mammals Protection Act 1978.
1977, No 131-The Fisheries Amendment Act (No 2) 1977	By repealing section 2(3), (5).

Fisheries Act 1908, No 65: This item was amended, as from 2 November 1979, by section 2(6) Fisheries Amendment Act 1979 (1979 No 35) by inserting the words “aircraft, hovercraft,”.

This Schedule was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by omitting as much as related to the Ministry of Agriculture and Fisheries Act 1953.