

Reprint  
as at 21 December 2018



## Marine Mammals Protection Act 1978

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Department of Conservation.**

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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**

## 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 1 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), 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

**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)

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

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

**conservation management plan** means a conservation management plan approved under section 3D

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

**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

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

**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

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

**infringement fee**, in relation to an infringement offence, means the infringement fee for the offence prescribed in regulations made under this Act

**infringement offence** means—

- (a) an offence against section 27A; or
- (b) an offence against regulations made under this Act that is declared by regulations to be an infringement offence

**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

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

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

**officer** means a Marine Mammals Officer declared or appointed as such under section 11

**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

**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)

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

**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.

- (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.

Section 2(1) **aircraft**: substituted, on 1 February 1995, by section 203 of the Maritime Transport Act 1994 (1994 No 104).

Section 2(1) **aquatic life**: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 2(1) **Board**: inserted, on 10 April 1990, by section 106 of the Conservation Law Reform Act 1990 (1990 No 31).

Section 2(1) **Conservation Authority**: inserted, on 10 April 1990, by section 106 of the Conservation Law Reform Act 1990 (1990 No 31).

Section 2(1) **conservation management plan**: inserted, on 10 April 1990, by section 106 of the Conservation Law Reform Act 1990 (1990 No 31).

Section 2(1) **conservation management strategy**: inserted, on 10 April 1990, by section 106 of the Conservation Law Reform Act 1990 (1990 No 31).

Section 2(1) **Director-General**: substituted, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 2(1) **fishing**: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 2(1) **fishing-related mortality**: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 2(1) **hovercraft**: substituted, on 1 February 1995, by section 203 of the Maritime Transport Act 1994 (1994 No 104).

Section 2(1) **human-induced mortality**: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 2(1) **infringement fee**: inserted, on 21 December 2018, by section 15 of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 2(1) **infringement offence**: inserted, on 21 December 2018, by section 15 of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 2(1) **Inspector of Sea Fishing**: repealed, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 2(1) **Minister**: amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 2(1) **New Zealand fisheries waters**: amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 2(1) **New Zealand ship**: substituted, on 1 February 1995, by section 203 of the Maritime Transport Act 1994 (1994 No 104).

Section 2(1) **population management plan**: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 2(1) **Registrar**: repealed, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 2(1) **threatened species**: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 2(1) **warranted officer**: added, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 2(3): added, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

### 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; and
- (b) any conservation management strategy and any conservation management plan for the time being in force for the area concerned.

Section 3A: inserted, on 10 April 1990, by section 107 of the 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 comments made by the persons referred to in paragraph (a).

Section 3B: inserted, on 10 April 1990, by section 107 of the Conservation Law Reform Act 1990 (1990 No 31).

Section 3B(3)(a): amended, on 1 July 1995, pursuant to section 6(1)(a) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

### **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.

Section 3C: inserted, on 10 April 1990, by section 107 of the Conservation Law Reform Act 1990 (1990 No 31).

Section 3C(2)(a): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 3C(2)(a): amended, on 1 July 1995, pursuant to section 6(1)(a) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

Section 3C(2)(b): amended, on 1 July 1995, pursuant to section 6(1)(a) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

Section 3C(2)(c): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 3C(2)(c): amended, on 1 July 1995, pursuant to section 6(1)(a) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

### **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.

Section 3D: inserted, on 10 April 1990, by section 107 of the Conservation Law Reform Act 1990 (1990 No 31).

Section 3D(2): amended, on 25 November 1994, by section 2 of the Marine Mammals Protection Amendment Act 1994 (1994 No 111).

Section 3D(2)(a): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 3D(2)(a): amended, on 1 July 1995, pursuant to section 6(1)(a) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

Section 3D(2)(b): amended, on 1 July 1995, pursuant to section 6(1)(a) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

Section 3D(2)(c): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 3D(2)(c): amended, on 1 July 1995, pursuant to section 6(1)(a) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

### **3E Population management plans**

- (1) The Minister may from time to time approve a population management plan in respect of 1 or more species, being threatened species or other species of mar-



ine 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 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 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 to be met:
  - (g) subject to section 3G, if a level has been set under paragraph (f), 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) 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).

Section 3E: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

### **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), 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.

Section 3F: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

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

- (1) Area-based limits set under section 3E(1)(g) 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), the Minister shall determine a level of fishing-related mortality for a discrete population referred to in subsection (1) which should neither cause a net reduction in the size of the population nor seriously threaten the reproductive capacity of that population.

Section 3G: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

### **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) 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 working 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) 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),—
  - (i) may amend the draft:
  - (ii) shall send to the Minister the summary prepared under paragraph (h) together with a copy of the draft plan:
- (m) after having regard to—
  - (i) the provisions of sections 3E, 3F, and 3G; 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).
- (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 paragraph (a) and paragraphs (l) to (p) of subsection (1) and subsection (2) shall apply to every such amendment with any necessary modifications.

Section 3H: inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 3H(1)(o): inserted, on 23 June 1998, by section 36 of the Fisheries (Remedial Issues) Amendment Act 1998 (1998 No 67).

#### 4 Restrictions on holding or 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); 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) and to any regulations made under section 28, 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) shall apply with respect to any whale product the subject of an order made under section 96 of the Customs and Excise Act 2018.
- (4) *[Repealed]*
- (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.

Section 4 heading: substituted, on 25 November 1994, by section 3 of the Marine Mammals Protection Act Amendment 1994 (1994 No 111).

Section 4(1): substituted, on 25 May 1995, by section 3(1) of the Marine Mammals Protection Amendment Act 1994 (1994 No 111).

Section 4(1A): inserted, on 25 November 1994, by section 3(1) of the Marine Mammals Protection Act Amendment 1994 (1994 No 111).

Section 4(3): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(4): repealed, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 4(5)(a): amended, on 1 April 1987, pursuant to section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 4(5)(b): amended, on 1 April 1987, pursuant to section 65(1) of the Conservation Act 1987 (1987 No 65).

## **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, 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), 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).

Section 5(1): amended, on 25 November 1994, by section 4(1) of the Marine Mammals Protection Amendment Act 1994 (1994 No 111).

Section 5(5) proviso: added, on 25 November 1994, by section 4(2) of the Marine Mammals Protection Amendment 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 2 years or to a fine not exceeding \$250,000 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), 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.

Section 9(1): substituted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 9(1): amended, on 25 October 2013, by section 39(a) of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

Section 9(1): amended, on 25 October 2013, by section 39(b) of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

## **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).



## **11 Marine Mammals Officers**

- (1) Every warranted officer, and every fishery officer appointed under section 196 of the Fisheries Act 1996, 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) 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) 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) 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) 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) shall have and may exercise, in respect of supervising, administering, and enforcing the provisions of this Act, all the powers that a warranted officer has in relation to supervising, administering, and enforcing the provisions of the Conservation Act 1987.
- (8) Every officer appointed under subsection (2) 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 196 of the Fisheries Act 1996 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).

Section 11(1): amended, on 1 October 2001, pursuant to section 314(1)(v) of the Fisheries Act 1996 (1996 No 88).

Section 11(1): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 11(6): amended, on 1 April 1988, pursuant to section 90(a) of the State Sector Act 1988 (1988 No 20).

Section 11(7): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 11(8): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 11(10): amended, on 1 October 2001, pursuant to section 314(1)(v) of the Fisheries Act 1996 (1996 No 88).

Section 11(10): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

## **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).
- (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) The provisions of Part 4 of the Search and Surveillance Act 2012 (except for subpart 3) apply in respect of the powers in subsection (1).
- (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.
- (5) Every officer may, in the course of any search under this section or section 14, 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.

- (5A) The provisions of subparts 1, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply in respect of the powers in subsection (5).
- (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.

Section 13(1): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 13(2): replaced, on 1 October 2012, by section 274(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 13(4): amended, on 13 December 1979, by section 2 of the Marine Mammals Protection Amendment Act 1979 (1979 No 98).

Section 13(5A): inserted, on 1 October 2012, by section 274(2) of the Search and Surveillance Act 2012 (2012 No 24).

#### **14 Officer may obtain warrant**

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may, on application by an officer made in the manner provided in subpart 3 of Part 4 of that Act, issue a search warrant, to every officer named in the warrant, authorising the entry and search of any dwellinghouse, place, vehicle, aircraft, or hovercraft if the issuing officer is satisfied that there are reasonable grounds to suspect that—
- (a) any breach of this Act or any regulation made under it has been, is being, or will be committed; or
  - (b) preparation has been made to commit a breach of this kind.

- (2) The provisions of Part 4 of the Search and Surveillance Act 2012 apply.

Section 14: replaced, on 1 October 2012, by section 275 of the Search and Surveillance Act 2012 (2012 No 24).

Section 14(1): amended, on 26 March 2015, by section 4 of the Marine Mammals Protection Amendment Act 2015 (2015 No 24).

#### **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 1983, 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) 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) 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), 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).
- (5) Every person commits an offence against this Act who refuses or fails to furnish any information or particulars required by the Director-General under subsection (3A).
- (6) Every person who commits an offence against this section is liable on conviction before a District Court Judge to a fine not exceeding \$10,000.

Section 16(1): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 16(1): amended, on 1 October 1983, by section 108(1) of the Fisheries Act 1983 (1983 No 14).

Section 16(1)(a): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 16(1)(b): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 16(2): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 16(3)(a): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 16(3)(c): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 16(3A): inserted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 16(5): inserted, on 25 October 2013, by section 40 of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

Section 16(6): inserted, on 25 October 2013, by section 40 of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

## **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), 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), 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) 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) or, where any exemption has been granted by notice under subsection (2), 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 marine 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.

Section 18(1)(a): amended (with effect on 1 April 1987), on 1 July 1987, by section 11(1) of the State-Owned Enterprises Amendment Act 1987 (1987 No 117).

Section 18(1)(a): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 18(1)(c): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 18(2): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

## **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, veterinarian within the meaning of section 4 of the Veterinarians Act 2005, 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.

Section 19(1): amended, on 22 December 2005, pursuant to section 95 of the Veterinarians Act 2005 (2005 No 126).

## **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 31 October 1929 at pages 2747 and 2748.

Section 20(a): substituted, on 1 January 2000, by section 194 of the Animal Welfare Act 1999 (1999 No 142).

Section 20(b): substituted, on 23 January 1998, by section 56(1) of the Antarctica (Environmental Protection) Act 1994 (1994 No 119).

## **21 Advisory, research, and technical committees**

(1) The Minister may from time to time appoint such advisory, research, or technical committees of 1 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 mat-

ters 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.

Section 21(6): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

## **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).
- (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 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
  - (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
  - (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.
- (1A) 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 any regulations made under this Act; 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 any regulations made under this Act; 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 any regulations made under this Act.
- (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.
- (2A) Every person who commits an offence against subsection (1) or section 10 or 12(3) is liable on conviction to,—
- (a) in the case of an individual, imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both:



- (b) in the case of a body corporate, a fine not exceeding \$200,000:
  - (c) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues.
- (3) Every person who commits an offence against this Act for which no penalty is provided otherwise than in this section is liable, on conviction before a District Court Judge, to a fine not exceeding—
- (a) in the case of an offence against subsection (2) or section 17,—
    - (i) in the case of an individual, imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both:
    - (ii) in the case of a body corporate, a fine not exceeding \$200,000:
    - (iii) in any case, where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues; and
  - (b) in any other case, \$10,000.

Section 23(1): replaced, on 25 October 2013, by section 41(1) of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

Section 23(1A): inserted, on 25 October 2013, by section 41(1) of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

Section 23(2A): inserted, on 25 October 2013, by section 41(2) of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

Section 23(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 23(3): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 23(3)(a): replaced, on 25 October 2013, by section 41(4) of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

Section 23(3)(b): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

### **23A Penalties for offences committed for commercial gain or reward**

- (1) If a person is convicted of an offence against this Act and, on sentencing for that offence, the court is satisfied beyond reasonable doubt that the offence was committed for the purpose of commercial gain or reward (whether or not any gain or reward is realised), the person is liable instead of any penalty otherwise prescribed to,—
- (a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or both:
  - (b) in the case of a body corporate, a fine not exceeding \$300,000:
  - (c) in any case, where the offence is a continuing one, a further fine not exceeding \$20,000 for every day on which the offence continues.
- (2) Subsection (1) overrides every other provision of this Act to the contrary.

Section 23A: inserted, on 25 October 2013, by section 42 of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

#### **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**

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, 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.

Section 25: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **26 Defences in respect of certain offences**

- (1) Where any person (not being a New Zealand citizen) is proceeded against in respect of any offence under this Act, it shall be a defence to the proceedings 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 proceeded against in respect of any offence under this Act, it shall be a defence to the proceedings 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 or by any other enactment.
- (3) Where any person is proceeded against in respect of any offence under this Act, it shall be a defence to the proceedings 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 proceeded against in respect of 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) do not apply in the circumstances of the case, it shall be a defence to the proceedings if the defendant proves that the death of or injury to the marine mam-

mal was accidental, or incidental, and that the requirements of section 16 were complied with.

Section 26(1): amended, on 21 December 2018, by section 16(a) of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 26(1): amended, on 21 December 2018, by section 16(b) of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 26(2): amended, on 21 December 2018, by section 16(a) of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 26(2): amended, on 21 December 2018, by section 16(b) of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 26(3): amended, on 21 December 2018, by section 16(a) of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 26(3): amended, on 21 December 2018, by section 16(b) of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 26(4): amended, on 21 December 2018, by section 16(a) of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 26(4): amended, on 21 December 2018, by section 16(b) of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 26(4): amended, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

## **26A Sentence of community work**

A court may sentence any individual who is convicted of an offence against this Act to a sentence of community work, and the provisions of Part 2 of the Sentencing Act 2002 apply with all necessary modifications.

Section 26A: inserted, on 25 October 2013, by section 43 of the Conservation (Natural Heritage Protection) Act 2013 (2013 No 89).

Section 26A: amended, on 21 December 2018, by section 17 of the Conservation (Infringement System) Act 2018 (2018 No 61).

## **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.

## **27A Infringement offences**

- (1) A person must not—
  - (a) take, possess, export, import, have on board any vessel, vehicle, aircraft, or hovercraft, or have control of any marine mammal otherwise than under this Act or a permit; or

- (b) fail to give the Director-General information that the person is required to give under section 10(1); or
  - (c) except under the authority of any enactment, place or leave any structure or trap or chemical or other substance in any place where a marine mammal is or is likely to be and that injures or harms, or is likely to injure or harm, any marine mammal; or
  - (d) use any vehicle, vessel, aircraft, or hovercraft to herd or harass any marine mammal; or
  - (e) contravene or fail to comply with any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act or under any regulations made under this Act.
- (2) A person who fails to comply with this section commits an infringement offence.

Section 27A: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **27B Relationship between infringement offences and other offences**

Nothing in section 27A prevents the prosecution of, and conviction for, an offence in any other section of this Act (instead of proceeding under section 27A).

Section 27B: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **27C Proceedings for infringement offences**

- (1) A person who is alleged to have committed an infringement offence may either—
- (a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
  - (b) be served with an infringement notice under section 27E.
- (2) If an infringement notice has been issued under section 27E, proceedings for the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the provisions of that section apply with all necessary modifications.

Section 27C: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **27D Who may issue infringement notices**

The Director-General may authorise a warranted officer, in writing, to issue infringement notices under this Act.

Section 27D: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **27E Infringement notices**

- (1) A warranted officer authorised under section 27D may issue an infringement notice to a person if the warranted officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- (2) The warranted officer may deliver the infringement notice (or a copy of it) in person to the person alleged to have committed an infringement offence or send the notice by post addressed to that person's last known place of residence or business.
- (3) An infringement notice (or a copy of it) sent by post to a person under subsection (2) is to be treated as having been served on that person when it was posted.
- (4) An infringement notice must be in the prescribed form and must contain the following particulars:
  - (a) such details of the alleged infringement offence as are sufficient to fairly inform a person of the time, place, and nature of the alleged offence; and
  - (b) the amount of the infringement fee; and
  - (c) the address of the place at which the infringement fee may be paid; and
  - (d) the time within which the infringement fee must be paid; and
  - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
  - (f) a statement that the person served with the notice has a right to request a hearing; and
  - (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and
  - (h) any other particulars that may be prescribed.

Section 27E: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **27F Reminder notices**

A reminder notice must be in the prescribed form, and must include the same particulars, or substantially the same particulars, as the infringement notice.

Section 27F: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **27G Forfeiture for infringement offence**

- (1) A marine mammal in respect of which an infringement offence is committed is forfeited to the Crown if—
  - (a) the infringement fee for the offence is paid;
  - (b) a copy of a reminder notice in respect of the infringement offence is filed or a reminder notice is deemed to have been filed in a court under section 21 of the Summary Proceedings Act 1957, as the case requires,

- within 6 months after the time when the offence is alleged to have been committed:
- (c) the informant and the person enter into an arrangement under section 21(3A) of the Summary Proceedings Act 1957 allowing the person to pay the relevant infringement fee by instalments:
  - (d) the person is found guilty, or admits the commission, of the infringement offence.
- (2) In addition, the court may order that any vessels, vehicles, aircraft, hovercraft, gear, nets, tackle, equipment, or apparatus used in respect of the commission of the infringement offence be forfeited to the Crown if—
- (a) proceedings in respect of an infringement offence against section 27A(1)(a) are commenced by the filing of a charging document under the Criminal Procedure Act 2011; and
  - (b) a person is found guilty, or admits the commission, of the infringement offence.
- (3) Items that are forfeited to the Crown may be disposed of as the Minister thinks fit.

Section 27G: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **27H Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

Section 27H: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **27I Penalties for infringement offences**

A person who commits an infringement offence is liable on conviction to—

- (a) the infringement fee prescribed in regulations for that offence; or
- (b) a fine imposed by a court not exceeding the maximum fine prescribed in regulations for that offence.

Section 27I: inserted, on 21 December 2018, by section 18 of the Conservation (Infringement System) Act 2018 (2018 No 61).

### **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:
  - (ia) prescribing infringement offences for the contravention of regulations made under this Act:
  - (ib) prescribing penalties for infringement offences, which,—
    - (i) in the case of infringement fees, must not be more than \$1,000; and
    - (ii) in the case of maximum fines, must not be more than twice the amount of the infringement fee for the offence:
  - (ic) prescribing information to be included in infringement notices and reminder notices:
  - (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.

Section 28(1)(ia): inserted, on 21 December 2018, by section 19 of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 28(1)(ib): inserted, on 21 December 2018, by section 19 of the Conservation (Infringement System) Act 2018 (2018 No 61).

Section 28(1)(ic): inserted, on 21 December 2018, by section 19 of the Conservation (Infringement System) Act 2018 (2018 No 61).

## **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.

Section 29(2): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

## **30 Amendments, repeals, and revocations**

- (1) The enactments specified in the Schedule 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 4 March 1913, and published in the *Gazette* on 13 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 18 August 1913, and published in the *Gazette* on 21 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

s 30(1)

**Animals Protection Act 1960 (1960 No 30)***Amendment(s) incorporated in the Act(s).***Fisheries Act 1908 (1908 No 65) (Reprinted 1976, Vol 5, p 3705)***Amendment(s) incorporated in the Act(s).***Fisheries Amendment Act 1948 (1948 No 11) (Reprinted 1976, Vol 5, p 3793)***Amendment(s) incorporated in the Act(s).***Fisheries Amendment Act 1959 (1959 No 8) (Reprinted 1976, Vol 5, p 3796)***Amendment(s) incorporated in the Act(s).***Fisheries Amendment Act 1967 (1967 No 49) (Reprinted 1976, Vol 5, p 3836)***Amendment(s) incorporated in the Act(s).***Fisheries Amendment Act (No 2) 1969 (1969 No 57) (Reprinted 1976, Vol 5, p 3840)***Amendment(s) incorporated in the Act(s).***Fisheries Amendment Act (No 2) 1977 (1977 No 131)***Amendment(s) incorporated in the Act(s).***Ministry of Agriculture and Fisheries Act 1953 (1953 No 7) (Reprinted 1972, Vol 3, p 2575)***Amendment(s) incorporated in the Act(s).***Territorial Sea and Exclusive Economic Zone Act 1977 (1977 No 28)***Amendment(s) incorporated in the Act(s).*

## **Reprints notes**

### **1 *General***

This is a reprint of the Marine Mammals Protection Act 1978 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2 *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3 *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4 *Amendments incorporated in this reprint***

Conservation (Infringement System) Act 2018 (2018 No 61): Part 2

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Marine Mammals Protection Amendment Act 2015 (2015 No 24)

Conservation (Natural Heritage Protection) Act 2013 (2013 No 89): Part 6

Search and Surveillance Act 2012 (2012 No 24): sections 274, 275

Criminal Procedure Act 2011 (2011 No 81): section 413

Veterinarians Act 2005 (2005 No 126): section 95

Local Government Act 2002 (2002 No 84): section 262

Animal Welfare Act 1999 (1999 No 142): section 194

Fisheries (Remedial Issues) Amendment Act 1998 (1998 No 67): section 36

Fisheries Act 1996 (1996 No 88): sections 314(1)(v), 316(1)

Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31): section 6(1)(a)

Antarctica (Environmental Protection) Act 1994 (1994 No 119): section 56(1)

Marine Mammals Protection Amendment Act 1994 (1994 No 111)

Maritime Transport Act 1994 (1994 No 104): section 203

Conservation Law Reform Act 1990 (1990 No 31): sections 106, 107

State Sector Act 1988 (1988 No 20): section 90(a)

State-Owned Enterprises Amendment Act 1987 (1987 No 117): section 11(1)

Conservation Act 1987 (1987 No 65): section 65(1)

Fisheries Act 1983 (1983 No 14): section 108(1)

District Courts Amendment Act 1979 (1979 No 125): section 18(2)

Marine Mammals Protection Amendment Act 1979 (1979 No 98)

