

Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill

Government Bill

As reported from the Primary Production
Committee

Commentary

Recommendation

The Primary Production Committee has examined the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Fisheries Act 1996 to improve the management of matters pertaining to vessel safety, employment, and fisheries management on foreign charter vessels (FCVs) operating in New Zealand waters. The proposed amendments to the Act seek to protect the human rights of crews, and to ensure that New Zealand's reputation as a responsible and sustainable fishing nation is maintained.

The bill proposes to introduce a new regime that would widen the range of matters the chief executive could consider when deciding FCV registrations. It would also expand the chief executive's powers

to include the suspension of consent for registration, and extend the functions of on-board observers.

The bill aims to strengthen the Government's ability to enforce New Zealand law by requiring all FCVs except those operating within certain specified criteria to be reflagged to New Zealand while operating within New Zealand's Exclusive Economic Zone (EEZ).

Our commentary covers the main amendments we recommend to the bill.

Registration of fishing vessels

We were concerned that although the bill as introduced would amend the conditions for the chief executive's consent for vessel registrations to include employment and vessel safety matters, it did not allow the chief executive to consider issues, or impose specific conditions, relating to pollution and waste discharge. We recommend amending clauses 4(2) and 4(4) to supply these deficiencies. We considered whether environmental matters should be explicitly set out, but on balance we were assured and wish to record for the avoidance of doubt that the powers of the chief executive include those set out in sections 8 and 9 of the Fisheries Act.

Extension of powers to New Zealand-owned vessels

The bill seeks to extend the chief executive's powers to consent to, suspend, and cancel vessel registrations to include New Zealand-owned vessels. We consider that these proposed powers are not required and so recommend that references to New Zealand-owned vessels be removed from clauses 5 and 6.

Suspension of consent to registration and rights of review and appeal

The bill seeks to introduce new powers to suspend vessels' registration, and expand cancellation powers to give government agencies more tools for managing risk. We are concerned that while the bill's provisions would strengthen the powers of the chief executive, there was no provision in the legislation for an appeals process for affected operators.

We recommend amending clause 5 to limit the suspension power so that it applies to the consent to registration (rather than registration itself) and by inserting new section 106B, which sets out a review and appeals process for parties to a decision, and sets a time-limit on the chief executive's review of a decision.

We recommend that clause 6 be deleted, as we are satisfied that sufficient management tools are already available under the Fisheries Act 1996 to manage the risks posed by FCVs, and that the proposed cancellation powers are not required.

We sought advice on the risk of litigious behaviour by industry participants pertaining to the narrow suspension criteria and new appeal rights. We received assurance from officials that they consider that a balance had been struck, but we would expect that careful monitoring would occur to ensure that the intent of the legislation is maintained.

Mandatory reflagging of all FCVs to New Zealand

The bill as introduced includes the mandatory reflagging of all FCVs to New Zealand while operating in the New Zealand EEZ. We are aware of a weight of opinion that the "deeming" model used by Australia, whereby FCVs are "deemed" to be operating under the host country's jurisdiction while within its waters, would be more appropriate. Reflagging could result in some countries such as Japan being unable to comply with the new requirements because of domestic legal complications.

Some FCV operators that catch certain highly migratory species spend only a short time in the zone before moving to fish elsewhere, and would find it uneconomic and excessively time-consuming to reflag each time they did so. Such fisheries are unique among those fished by FCVs in that they are managed under international agreements.

However, after a detailed examination of the issues involved, we were persuaded that the deeming model would not allow the government to meet its principal objectives for the management of FCVs. We noted advice from officials that the species for which the highly migratory species exemption should be limited to tuna and support the narrowing of these exemption provisions.

We consider that the requirement to reflag should be retained as introduced, with exceptions for certain circumstances; we recommend

amending clause 10 by inserting section 103A(1AA) to specify these exemptions. Section 103A(1AA) would require the chief executive when approving an exemption to consider whether it would be “in New Zealand’s interest”, and whether there would be “sufficient control” over the operations of the FCV during the period of exemption. We considered the desirability of inserting definitions of these terms, to provide some protection from possible litigation against the chief executive’s discretion, but decided on balance that the wording of the amendment would give the chief executive sufficient flexibility in making an assessment, and that this discretion is desirable.

We urge the Ministry to liaise with foreign governments and vessel operators who may be affected by the reflagging requirement, to discuss ways to minimise any adverse effects.

The role of observers

The bill as introduced would expand the purpose of the observer programme to include collecting information about vessel safety and employment issues. We recommend that clause 20 be amended to include a requirement in section 223(1) to collect information about compliance with maritime rules relating to pollution and waste discharge.

We note that monitoring environmental effects is already covered in the Act and we were assured and wish to record for the avoidance of doubt that the powers of the chief executive include those set out in sections 8 and 9 of the Fisheries Act.

Mandatory New Zealand crew requirement

We are aware of the argument that the bill represents an opportunity to impose a mandatory New Zealand crew requirement. We note that the Seafood Industry Council submitted that it is already training New Zealand crews to supply potential demand. We note the need for wage rates on all New Zealand fishing vessels, including on FCVs, to meet New Zealand minimum standards and market wage rates, after all deductions, to ensure that fishing becomes an attractive career for New Zealand workers. We note that under current immigration regulations and practices, FCV operators are required to meet New Zealand’s minimum standards and the industry code of practice which includes paying market wages above the New Zealand

minimum wage. We recognise that developing minimum crew requirements should be considered as part of a broader workforce and industry development approach, and would recommend further consideration of these issues in another context.

Transition period

The bill as introduced would require the reflagging of FCVs from 1 May 2016, but we recognise an argument for a shorter transition period. We believe however that on balance a shorter period would demonstrate New Zealand's commitment to addressing the issues concerning FCVs promptly; a shorter transition may be considered impractical for some operators because of the complexity of the process for both foreign operators and the government agencies involved.

Settlement quota

The committee received amendments immediately prior to deliberation. Unusually the committee did not receive written departmental advice pertaining to these amendments. Acting on reliance on the oral advice we received from officials we have recorded below our questions and their responses.

New subsection 103A(1AA)(a)(iii) provides an additional exemption for vessels operated by an operator who, on 30 April 2012 held annual catch entitlements that were derived from settlement quota that represented a "significant proportion" of all annual catch entitlement held by that operator or operators.

We were concerned that unless clearly defined, that clause could result in operators with only a relatively small proportion of Annual Catch Entitlement (ACE) derived from settlement quota, or those that might seek to acquire a settlement quota could seek to qualify for an exemption beyond the intent of the Act.

We note that the exemption is limited to ACE held on 30 April 2012, which effectively means the holdings cannot be manipulated post implementation of the Act.

We note that settlement quota is only quota defined as such in the Act and the Maori Fisheries Act.

We discussed whether the term “significant proportion” should be defined in the Act. We were advised that the Government preferred it to be a matter of the chief executive’s discretion, reflecting the intent of the Act to remove undesirable FCV activities. This discretion would be subject to criteria including promotion of the New Zealand national interest, and retention of effective national control. In addition, for the annual re-registration for vessels under this exemption, the other criteria that apply to the registration for consent apply.

We clarified that the new Order in Council provisions set out in (1AC)(b) would be strictly limited to the subsection (1AA)(a)(iii) and (iv) to which they explicitly apply. As such, we note this does not confer any new grounds for exemptions or broader regulation-making powers.

Green Party minority view

The Green Party recognised that the bill had exemplary aims, that of protecting the human rights of crew on FCVs operating within New Zealand’s jurisdiction, and to ensure a full observer programme on fishing vessels, for the purposes of vessel safety, employment, fisheries research, management, and enforcement.

Further committee consideration ran to pollution, waste discharge, and the environmental impacts of fishing.

Observers

An opportunity was lost by the bill’s observer programme emphasis being reduced to a FCV focus, and its environmental component effectively reduced, by not including wording such as, “*the environmental impacts of fishing*” which would have reinforced the Fisheries Act 1996, Purpose, Section 8.

Section 8 Purpose,

(2) *In this Act—*

ensuring sustainability means—

- *maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and*
- *avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment*

Section 8 is supported by Section 9 Environmental principles, but only by taking into account, as in; *'shall take into account the following environmental principles: ...*

Currently the environmental provisions of the Act are weak and weakly enforced. Ensuring that the observer programme collects information about the environmental impacts of fishing is necessary to support the purpose and principles of the Fisheries Act 1996, and as a step towards fishers having a sustainable economic and credible fishery into the future.

Exemptions

The Green Party does not agree with the exemption for fishing that targets *"a tuna species named in Schedule 4B"*. The exemption is unnecessary for the New Zealand registered vessels and fishers that are already significant fishers of tuna species and the other Schedule 4B Highly Migratory Species (HMS), so an exemption for individuals is inappropriate.

Capability is significant in the New Zealand fishing industry and individual companies already with New Zealand registered vessels should readily adapt to the provisions of this bill without exemptions. Other New Zealand fishers can be expected to pick up any opportunity presented by fishers choosing to exit the high- value tuna fishery. The exemption for fishing that *"targets a tuna species"* also allows misuse, by the looseness of the term *'targets'*. Removing the exemption in its entirety, would have reduced the potential for gaming of targeting.

The Green Party will be watching the chief executive's consideration of *"whether it will be in New Zealand's interests"* when approving exemptions, as the significant flexibility in that term in the bill can allow for a wide range of outcomes. Such an exemption must not be a loophole that fails the original intent of the bill.

Appendix

Committee process

The Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill was referred to the committee on 14 February 2013. The closing date for submissions was 28 March 2013. We received and considered 48 submissions from interested groups and individuals. We heard 28 submissions in Wellington.

We received advice from the Ministry for Primary Industries, the Ministry of Business Innovation and Employment, the Ministry of Transport, and Maritime New Zealand.

Committee membership

Shane Ardern (Chairperson)

Steffan Browning

Hon Shane Jones

Colin King

Ian McKelvie

Hon Damien O'Connor

Eric Roy

Hon John Banks was appointed as a temporary member for consideration of this bill.

Hon David Cunliffe replaced Hon Damien O'Connor for this item of business.

**Fisheries (Foreign Charter Vessels and
Other Matters) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nathan Guy

Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act	2

Part 1

Registration of fishing vessels

*Amendments taking effect on day after date on which Act
receives Royal assent*

4	Section 103 amended (Fishing vessels must be registered)	3
5	New sections 106A and 106B inserted	3
	106A Suspension of consent to registration	3
	106B Rights of review and appeal relating to suspension of consent to registration of vessel	6
7	Section 252 amended (Penalties)	8

Amendments taking effect on 1 May 2016

9	Section 2 amended (Interpretation)	8
10	Section 103 replaced (Fishing vessels must be registered)	8
	103 Fishing vessels must be registered	9
	103A Process for granting exemption from requirement to be New Zealand ship and granting consent to registration	10

cl 1	Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill	
12	Section 107 amended (Cancellation of registration of fishing vessel)	14
18	Saving and transitional provisions	16
Part 2		
Observers and other matters		
<i>Amendments taking effect on day after date on which Act receives Royal assent</i>		
19	Section 2 amended (Interpretation)	17
20	Section 223 amended (Observer programme established)	17
21	Section 225 amended (Powers of observers and obligations of persons on vessels carrying observers)	18
22	New section 227A inserted (Installation and maintenance of equipment on vessels may be required)	18
	227A Installation and maintenance of equipment on vessels may be required	18
23	Section 262 amended (Cost recovery principles)	18
24	Section 297 amended (General regulations)	19

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act **2012**.
- 2 Commencement** 5
 - (1) **Sections 9 to 18** come into force on **1 May 2016**.
 - (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10
This Act amends the Fisheries Act 1996 (the **principal Act**).

Part 1
Registration of fishing vessels

*Amendments taking effect on day after date on
which Act receives Royal assent*

- 4 Section 103 amended (Fishing vessels must be registered) 5**
- (1) Replace section 103(1)(c) with:
“(c) that person complies with all conditions of registration.”
- (2) In section 103(4), after “to impose”, insert “(and such conditions may include, but are not limited to, conditions that relate to fisheries management, employment, ~~or~~ vessel safety, or compliance with maritime rules relating to pollution and the discharge of waste material from vessels)”.
- (3) After section 103(4), insert:
“(4A) The chief executive may, from time to time, by written notice to the operator of a vessel with effect from the date specified in the notice amend, add to, or revoke any conditions of the consent to the registration of the vessel.”
- (4) After section 103(6)(b), insert:
“(ba) any risk associated with fisheries management, employment, ~~or~~ vessel safety, or compliance with maritime rules relating to pollution and the discharge of waste material from vessels that the chief executive considers would be likely to result if the vessel were to be registered; and”.
- (5) After section 103(6), insert: 25
“(6AA) All conditions of the chief executive’s consent to the registration of a vessel in the Fishing Vessel Register are deemed for all purposes to be conditions of the registration of the vessel.”
- 5 New section 106A inserted (Suspension of registration)sections 106A and 106B inserted 30**
- After section 106, insert:
“106A Suspension of consent to registration
“(1) The chief executive may, after complying with **subsections (4) and (5)**, suspend a vessel’s registration for any reason- 35

able period determined by him or her if satisfied on reasonable grounds that—

“(a) its registration for the time being poses a risk of a breach of fisheries management, employment, or vessel safety laws justifying that action; or

“(b) there has been a breach of any condition of its registration.

“(1) The chief executive may, after complying with **subsections (4) and (5)**, suspend his or her consent to the registration of any foreign-owned New Zealand fishing vessel for any reasonable period determined by him or her if satisfied on reasonable grounds that there has been a breach of any condition of consent to its registration.

“(2) If any person, department, or agency in the course of performing or exercising functions, duties, or powers under any Act obtains any information that is relevant for the purposes of **subsection (1)**, the person, department, or agency may provide the information to the chief executive.

“(3) For the purposes of **subsection (1)**, the chief executive may take into account information provided by any person, department, or agency.

“(4) The chief executive must notify the operator of the vessel in writing stating—

“(a) that he or she ~~considers that the matters in **subsection (1)(a) or (b)** have occurred or are likely to occur~~ is satisfied on reasonable grounds that there has been a breach of any condition of consent to registration; and

“(b) the grounds on which the chief executive has based his or her belief; and

“(c) the actions the chief executive requires the operator to undertake or cease; and

“(d) the period within which the actions must be undertaken or cease (which must not be less than ~~48~~72 hours from the date on which the operator is notified).

“(5) If the actions specified in the notice given under **subsection (4)** have not been undertaken or have not ceased (as the case may be) within the period required by the notice, the chief executive must do the following if he or she decides to proceed with suspension of consent to the vessel’s registration:

- “(a) give the operator not less than 7 days’ notice in writing of the intention to suspend consent to registration; and
- “(b) give the operator a reasonable opportunity to make submissions to the chief executive; and
- “(c) consider any submissions made to the chief executive 5
by the operator.
- “(6) The chief executive may impose conditions and requirements in respect of the implementation and operation of a suspension under this section.
- “(7) If the chief executive suspends consent to a vessel’s registration, — 10
- “(a) he or she must notify the operator in writing that consent to the vessel’s registration has been suspended; and
- “(b) the notification must state—
- “(i) ~~the grounds relied on to suspend~~ the reasons for the suspension of the chief executive’s consent to the vessel’s registration; and 15
- “(ii) the period of the suspension; and
- “(iii) the conditions and requirements imposed under **subsection (6)** (if any); and 20
- “(iv) the rights of review and appeal available to a person directly affected under **section 106B**.
- “(8) A period of suspension may be extended by the chief executive from time to time ~~on the same or any other ground specified in **subsection (4)**~~ if he or she is satisfied that any conditions and requirements referred to in **subsection (7)(b)(iii)** have not been met, and **subsection (7)(except paragraph (b)(iv))** (with the necessary modifications) applies to any extension of the suspension. 25
- “(8A) The chief executive may lift the suspension of consent if satisfied that suspension conditions and requirements referred to in **subsection (7)(b)(iii)** have been met. 30
- “(9) A person commits an offence and is liable to the penalty set out in section 252(5) if the person uses a fishing vessel, or any tender of that fishing vessel, to take fish, aquatic life, or seaweed for sale while the chief executive’s consent to registration of the vessel is suspended. 35

“(10) Nothing in this section requires the chief executive to remit or refund any fees, charges, or levies paid or payable by the operator under this Act for the period from the date of registration to the close of the period of suspension.

“(11) For the purposes of section 103(1), a vessel must be treated as being not registered while the chief executive’s consent to its registration is suspended under this section. 5

“106B Rights of review and appeal relating to suspension of consent to registration of vessel

“(1) A person directly affected by the chief executive’s decision under **section 106A(1)** to suspend his or her consent to a vessel’s registration may, within 7 days after the date on which the decision was notified, apply to the chief executive for a review of that decision. 10

“(2) The chief executive must, within 14 days after the date of receipt of an application under **subsection (1)**, confirm, reverse, or modify the decision under review. 15

“(3) If the applicant is dissatisfied with the chief executive’s decision under **subsection (2)**, the applicant may appeal to a District Court against the decision. 20

“(4) The District Court may confirm, reverse, or modify the decision appealed against.

“(5) If any party to any proceedings before the District Court under this section is dissatisfied with any determination of the court as being erroneous in point of law, the party may appeal to the High Court by way of case stated for the opinion of the court on a question of law only. 25

“(6) On an appeal under **subsection (5)**, the High Court may confirm, reverse, or modify the decision appealed against.

“(7) Appeals under this section must be heard and determined in accordance with any applicable rules of court. 30

“(8) The operation of a decision to suspend the chief executive’s consent to a vessel’s registration continues in force pending the determination of a review or appeal under this section, except where the chief executive (in the case of a review) or the court hearing the appeal (in any other case) otherwise directs. 35

“(9) This section confers no right of review or appeal in relation to a decision under **section 106A(8)** to extend a suspension.”

6 Section 107 amended (Cancellation of registration of fishing vessel)

(1) Replace section 107(6) and (7) with: 5

“(6) The chief executive—

“(a) may cancel a vessel’s registration if a notification of suspension has been given in respect of the vessel under **section 106A(7)** and he or she is satisfied that the operator has not complied with any conditions and requirements imposed under **section 106A(6)**;

“(b) may cancel a vessel’s registration if the vessel’s owner, operator, foreign charter party, or notified user is convicted in New Zealand or another country of an offence relating to fishing or transportation in the fisheries jurisdiction of New Zealand or that other country;

“(c) must, as soon as practicable, ensure that the registration of a vessel is cancelled if satisfied that the vessel is forfeit to the Crown.

“(7) Before cancelling a vessel’s registration under **subsection (6)(a) or (b)**, the chief executive must— 20

“(a) give the operator of the vessel not less than 7 days’ notice in writing of the intention to cancel registration; and

“(b) state the grounds relied on to cancel the vessel’s registration. 25

“(7A) If the operator of a vessel receives a notice given under **subsection (7)** on the ground specified in **subsection (6)(a)** (notice of intention to cancel the vessel’s registration for non-compliance with any conditions and requirements), the vessel must not be used to take fish, aquatic life, or seaweed for sale. 30

“(7B) The chief executive must notify in writing the operator of the vessel that the vessel’s registration has been cancelled and must state the grounds relied on to cancel the vessel’s registration. 35

“(7C) Nothing in this section requires the chief executive to remit or refund any fees, charges, or levies paid or payable by the oper-

ator under this Act for the period from the date of registration to the date of cancellation.”

(2) After section 107(9), insert:

“(10) A person who uses a vessel in contravention of **subsection (7A)** commits an offence and is liable to the penalty set out in section 252(5).”

“(11) If registration is cancelled under this section, the operator must ensure that the certificate of registration and any duplicates are surrendered to the chief executive.”

7 Section 252 amended (Penalties) 10

After section 252(5)(g), insert:

“(ga) **section 106A(9)** (using vessel while consent to registration suspended):

“(gb) **section 107(10)** (using vessel after operator notified of intention to cancel registration):” 15

8 Amendment to Fisheries (Transfer of Functions, Duties, and Powers to The New Zealand Seafood Industry Council Limited) Order 2006

(1) This section amends the Fisheries (Transfer of Functions, Duties, and Powers to The New Zealand Seafood Industry Council Limited) Order 2006. 20

(2) In Schedule 1, Part 1, replace “107” with “107(3) to (5), **(6)(c)**, and (8)”. 20

Amendments taking effect on 1 May 2016

9 Section 2 amended (Interpretation) 25

(1) In section 2(1), repeal the definition of **foreign-owned New Zealand fishing vessel**.

In section 2(1), definition of **foreign-owned New Zealand fishing vessel**, replace “section 103(4)” with “**section 103A(1)**”. 30

10 Section 103 replaced (Fishing vessels must be registered)

Replace section 103 with:

“103 Fishing vessels must be registered

- “(1) A person must not use a fishing vessel, or any tender of that fishing vessel, to take fish, aquatic life, or seaweed for sale, in New Zealand fisheries waters, unless—
- “(a) the vessel is a New Zealand ship or has been exempted under **section 103A(1AA)** from that requirement; and 5
 - “(b) the vessel is registered under this section in the Fishing Vessel Register as a fishing vessel; and
 - “(c) that person complies with all conditions of registration.
- “(2) An application to register a fishing vessel must— 10
- “(a) be made by the operator of that fishing vessel; and
 - “(b) be made to the chief executive in the approved form and be accompanied by the prescribed fee (if any); and
 - “(c) be supported by evidence of the vessel’s registration as a New Zealand ship or its exemption under **section 103A(1AA)**, and any other evidence that may be specified in the approved form. 15
- “(3) ~~The consent of the chief executive, given in accordance with **section 103A**,~~ Consent under **section 103A(1)** is required before a foreign-owned vessel (other than a vessel owned or operated by an overseas person who has obtained consent under the overseas investment fishing provisions or is exempt from the requirement for that consent) may be registered as a fishing vessel. 20
- “(4) If the chief executive, having received an application made in accordance with this section, is satisfied that the vessel is registered as a New Zealand ship or has been exempted under **section 103A(1AA)** from that requirement, and is otherwise eligible to be registered under this section, he or she must, as soon as practicable,— 25
- “(a) ~~register the fishing vessel for a specified period not exceeding 5 years; and~~ 30
 - “(a) register the fishing vessel,—
 - “(i) in the case of a New Zealand ship, for a period not exceeding 5 years; or 35
 - “(ii) in the case of a vessel exempted from the requirement to be a New Zealand ship, for the relevant period under **section 103A(1AD)**.

- “(b) issue to the operator a certificate of registration in respect of that vessel.
- “(5) All conditions of the chief executive’s consent to the registration of a vessel in the Fishing Vessel Register are deemed for all purposes to be conditions of the registration of the vessel. 5
- “(6) This section does not require that a vessel be registered as a fishing vessel merely because it is used to take fish, aquatic life, or seaweed produced as part of a lawful fish farming operation.
- “(7) A person commits an offence and is liable to the penalty set out in section 252(5) if the person contravenes **subsection (1)**. 10
- “**103A Process for granting consent to registration, and power to change condition exemption from requirement to be New Zealand ship and granting consent to registration**
- “(1AA) The chief executive may, on application, exempt a vessel from the requirement to be a New Zealand ship if satisfied that— 15
- “(a) one of the following applies:
- “(i) the vessel will be used only for fishing that targets a tuna species named in Schedule 4B; or 20
- “(ii) the vessel will be used only for carrying out fisheries-related research commissioned or approved by the chief executive, and the operator of the vessel or, if the operator is an overseas person, the authorised agent has made reasonable efforts to find a replacement vessel that is a New Zealand ship but was unsuccessful; or 25
- “(iii) the vessel is operated by an operator that, on 30 April 2012, held annual catch entitlement that was derived from settlement quota that represented a significant proportion of all annual catch entitlement held by that operator on that date; or 30
- “(iv) exceptional circumstances specified by an Order in Council made under **subsection (1AC)** apply and the operator of the vessel or, if the operator is an overseas person, the authorised agent has made reasonable efforts to find a replacement 35

- vessel that is a New Zealand ship but was unsuccessful; and
- “(b) the exemption will be in New Zealand’s interests; and
“(c) there will be sufficient New Zealand control of the operations of the vessel during the period for which it is exempted. 5
- “(1AB) An application under **subsection (1AA)** must—
- “(a) be made by the operator of the vessel or, if the operator is an overseas person, by the authorised agent; and
“(b) be made in the approved form; and 10
“(c) be accompanied by the prescribed fee and the evidence specified in the approved form.
- “(1AC) The Governor-General may, by Order in Council made on the recommendation of the Minister, specify—
- “(a) for the purposes of **subsection (1AA)(a)(iv)**, any exceptional circumstances in which the chief executive may consider granting an exemption: 15
“(b) for the purposes of **subsection (1AA)(a)(iii) or (iv)**, any additional criteria and conditions that apply in relation to the application or an exemption that is granted. 20
- “(1AD) An exemption may be granted,—
- “(a) if **subsection (1AA)(a)(i)** applies, for a continuous period not exceeding 4 months within any 12-month period:
“(b) if **subsection (1AA)(a)(ii)** applies, for the period specified in the special permit issued for the purposes of the fisheries-related research: 25
“(c) if **subsection (1AA)(a)(iii)** applies,—
“(i) for a continuous period not exceeding 12 months that does not exceed the period for which consent to registration is granted; and 30
“(ii) the exemption must be granted before 1 May 2020 and no exemption under that provision may be granted on or after that date:
“(d) if **subsection (1AA)(a)(iii)** applies, for a continuous period not exceeding 4 months. 35
- “(1) For the purposes of **section 103(3)**, the chief executive may—

- “(a) grant consent, either generally or particularly, to the registration of ~~the vessel or~~ 1 or more foreign-owned vessels operated by any person; and
- “(b) grant consent under this section subject to any conditions that the chief executive thinks fit to impose (and such conditions may include, but are not limited to, conditions that relate to fisheries management, employment, ~~or vessel safety,~~ or compliance with maritime rules relating to pollution and the discharge of waste material from vessels).
- “(2) The chief executive must ~~take into account~~ have regard to the following matters before deciding whether or not to grant consent under this section:
- “(a) any risk associated with fisheries management, employment, ~~or vessel safety,~~ or compliance with maritime rules relating to pollution and the discharge of waste material from vessels that the chief executive considers would be likely to result if the vessel were to be registered; and
- “(b) the previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel’s owner, operator, foreign charter party, notified user, master, or crew; and
- “(ba) the nature of the charter or other agreement with the operator (if any); and
- “(c) any other matters that the chief executive considers relevant.
- “(3) The chief executive may, from time to time, by written notice to the operator of a vessel with effect from the date specified in the notice amend, add to, or revoke any conditions of the consent to the registration of the vessel.
- “(4) If the chief executive grants an exemption under **subsection (1AA)** from the requirement to be a New Zealand ship, or if a vessel is owned or operated by an overseas person who has obtained consent under the overseas investment fishing provisions or is exempt from the requirement for that consent, the following provisions apply while the vessel is in New Zealand fisheries waters:

- “(a) for the purposes of the Minimum Wage Act 1983, the Wages Protection Act 1983, and any provisions of any other enactments that are necessary to give full effect to those Acts, a person engaged or employed to do work on the vessel who holds a temporary entry class visa with conditions that allow the person to work under the Immigration Act 2009 is deemed to be an employee: 5
- “(b) for the purposes of the Minimum Wage Act 1983, the Wages Protection Act 1983, and any provisions of any other enactments that are necessary to give full effect to those Acts, the employer of a person referred to in **paragraph (a)** is deemed to be,— 10
- “(i) if the operator of the vessel is the employer or contractor of those persons, the operator: 15
- “(ii) in any other case, the person from whom the operator has, by virtue of a lease, a sublease, a charter, a subcharter, or otherwise, for the time being obtained possession and control of the vessel: 20
- “(c) for the purpose of determining whether the payment to any person engaged or employed to do work on any such vessel meets the requirements of the Minimum Wage Act 1983, the hours of work of, the payments received by, and the entitlements to payment of that person must be assessed in relation to the whole of each period of such engagement or employment in New Zealand fisheries waters: 25
- “(d) Labour Inspectors within the meaning of the Employment Relations Act 2000 may exercise their powers under that Act and under the enactments referred to in **paragraph (a)** within New Zealand fisheries waters in respect of any person deemed to be an employee or employer by virtue of **paragraph (a) or (b)**: 30
- “(e) if the operator of any vessel is not the employer by virtue of **paragraph (b)**, then, despite any responsibility that may rest with the employer, the authorised agent referred to in **subsection (1AB)** is responsible under the enactments referred to in **paragraph (a)** for providing any information and records to any Labour Inspector exercising powers under those Acts: 35

- “(f) the authorised agent referred to in **subsection (1AB)** may be served with any documents requiring service under any of the enactments referred to in **paragraph (a)**, and such service is deemed to be service on the employer: 5
- “(g) the Employment Relations Authority and the Employment Court may exercise jurisdiction in respect of any employment relationship that arises by virtue of **paragraph (a) or (b)** as if it were a lawful employment relationship subject to New Zealand law.” 10
- 11 Section 104 amended (Provisions relating to notified users of fishing vessels)**
Repeal section 104(3).
- 12 Section 107 amended (Cancellation of registration of fishing vessel)** 15
- (1) After **section 107(6)(c)**, insert:
- “(d) must, as soon as practicable, ensure that the registration of a vessel is cancelled if satisfied that the vessel is no longer a New Zealand ship.”
- (2) In section 107(8), omit “section 103 or”. 20
- (3) After section 107(8), insert:
- “(8A) If a vessel exempted under **section 103A(1AA)(a)(i)** from the requirement to be a New Zealand ship is registered, its registration is cancelled as from the earlier of—
- “(a) the close of the period for which the exemption was granted; or
- “(b) the date on which the vessel leaves New Zealand fisheries waters.” 25
- 13 Section 237 amended (Summons may be served on agent of foreign vessel)** 30
- Replace section 237(1) with:
- “(1) Any summons in respect of an offence against this Act that relates to any foreign fishing vessel or foreign-operated fish carrier is deemed to have been served on the defendant in accordance with section 24 of the Summary Proceedings Act 1957 35

if the summons is served, in any one of the ways specified in subsection (1) of that section, on the authorised agent of the operator of the vessel.”

- 14 Section 256 amended (Provisions relating to forfeit property)** 5
- (1) In section 256(1), definition of **interest**, paragraph (b), delete “; a foreign-owned New Zealand fishing vessel.”
- (2) In section 256(1), definition of **interest**, paragraph (c), delete “; a foreign-owned New Zealand fishing vessel.”
- 15 Amendments to Fisheries (Commercial Fishing) Regulations 2001** 10
- (1) This section amends the Fisheries (Commercial Fishing) Regulations 2001.
- (2) In regulation 3, definition of **commercial fisher**, paragraph (a), delete “or a foreign-owned New Zealand fishing vessel”. 15
- (3) In regulation 3, definition of **New Zealand fishing vessel**, delete “; but does not include foreign-owned New Zealand fishing vessels registered with consent under section 103(4) of the Act”.
- (4) In the Part 1 heading, delete “**and foreign-owned New Zealand fishing vessels**”. 20
- (5) In regulation 5(1), delete “and to foreign-owned New Zealand fishing vessels”.
- (6) In regulation 10(1), delete “foreign-owned New Zealand fishing vessels or to”. 25
- (7) In regulation 11(1), delete “a foreign-owned New Zealand fishing vessel”.
- (8) In regulation 14(1), delete “or foreign-owned New Zealand fishing vessel”.
- (9) In the Part 2 heading, delete “**foreign-owned New Zealand fishing vessels and**”. 30
- (10) Replace regulation 17(1) with:
- “(1) Unless otherwise specified, this regulation and regulations 18 to 23 apply to fish carriers registered under section 105 of the Act.” 35

- (11) In regulation 18(2), replace “foreign-owned New Zealand fishing vessel; a fish carrier,” with “fish carrier”.
 - (12) Revoke regulations 19(10), 24, 27(1AA) and (1), and 29.
 - (13) In regulations 64, 72, and 76(c), delete “or foreign-owned New Zealand fishing vessels”.
 - (14) In regulation 84(3), delete “24(2),”.
- 16 Amendments to Fisheries (Registers) Regulations 2001**
- (1) This section amends the Fisheries (Registers) Regulations 2001.
 - (2) In regulation 7(g), delete “a foreign-owned New Zealand fishing vessel,”.
 - (3) In regulation 7(h), delete “foreign-owned New Zealand fishing vessel,”.
- 17 Amendments to Fisheries (Satellite Vessel Monitoring) Regulations 1993**
- (1) This section amends the Fisheries (Satellite Vessel Monitoring) Regulations 1993.
 - (2) Revoke regulation 3(1)(b).
 - (3) In regulation 3(1)(f), delete “or foreign chartered fishing vessels”.
 - (4) In regulation 4(1), delete “or foreign chartered fishing vessels”.
- 18 Saving and transitional provisions**
- (1) This section applies to every fishing vessel registered under the principal Act immediately before the commencement of this section.
 - (2) On the commencement of this section, every vessel to which this section applies that is a New Zealand ship is deemed to be a vessel in respect of which the chief executive has given consent under **section 103A** of the principal Act.
 - (3) On the commencement of this section, every vessel to which this section applies that is not a New Zealand ship is deemed to be an unregistered fishing vessel under the principal Act.

Part 2

Observers and other matters

*Amendments taking effect on day after date on
which Act receives Royal assent*

- 19 Section 2 amended (Interpretation)** 5
In section 2(1), definition of **fisheries services**, paragraph (d), after “fish farming”, insert “(including any observer performing or exercising a function, duty, or power in accordance with the observer programme)”.
- 20 Section 223 amended (Observer programme established)** 10
(1) Replace section 223(1) with:
“(1) The observer programme is established for the purposes of—
“(a) collecting reliable and accurate information for fisheries research, fisheries management, and fisheries enforcement: 15
“(b) collecting reliable and accurate information about vessel safety and employment on fishing vessels:
“(c) collecting reliable and accurate information about compliance with maritime rules relating to pollution and the discharge of waste material from vessels.” 20
(1A) Replace section 223(3) with:
“(3) The chief executive may place any observer appointed under this section on any vessel to—
“(a) observe fishing and the transshipment, transportation, and landing of fish, aquatic life, or seaweed; and 25
“(b) collect reliable and accurate information specified in subsection (1).”
(2) In section 223(4), after “the effect of fishing on the aquatic environment, and the transportation of fish, aquatic life, or seaweed,”, insert “or on any other matter,”. 30
(3) In section 223(4)(d), after “vessel”, insert “(including any matter relating to vessel safety or the employment of any person on the vessel, or maritime rules relating to pollution and the discharge of waste material from vessels)”.
(4) In section 223(4)(e), replace “or seaweed” with “seaweed, 35 waste, or any other matter”.

- (5) After section 223(4)(f), insert:
- “(g) any other matter that may assist any person, department, or agency with statutory responsibilities for vessel safety ~~or~~ employment matters, or maritime rules relating to pollution and the discharge of waste material from vessels to obtain, analyse, or verify information relevant to those responsibilities.” 5
- 21 Section 225 amended (Powers of observers and obligations of persons on vessels carrying observers)**
- After section 225(1)(d), insert: 10
- “(da) have access to any safety equipment and to any document concerning the manufacture or operation of the equipment:
- “(db) have access to any person engaged or employed to do work on the vessel so that, if the observer so wishes, the observer may discuss with that person any matter concerning his or her engagement or employment on the vessel.”. 15
- 22 New section 227A inserted (Installation and maintenance of equipment on vessels may be required)** 20
- After section 227, insert:
- “227A Installation and maintenance of equipment on vessels may be required**
- The chief executive may require, in relation to any vessel, that specified equipment to observe fishing and transportation be installed and maintained on the vessel in accordance with regulations made under **section 297(1)(ca)**.” 25
- 23 Section 262 amended (Cost recovery principles)**
- After section 262(c), insert:
- “(ca) costs of fisheries services relating to any observer performing or exercising a function, duty, or power in accordance with the observer programme must, so far as practicable, be attributed to the persons who benefit from those services.”. 30

**Fisheries (Foreign Charter Vessels and
Other Matters) Amendment Bill**

24 Section 297 amended (General regulations)

- (1) Replace section 297(1)(ca) with:
- “(ca) prescribing requirements or matters relating to the installation and maintenance of equipment (including electronic equipment) to observe fishing or transportation, and to the payment of any associated prescribed fees and charges:”.
- (2) After section 297(1)(ma), insert:
- “(mb) without limiting paragraph (m), prescribing fees and charges payable under this Act in respect of the functions of observers, including regulations—
- “(i) authorising the chief executive to determine the amount payable in individual cases within the minimum and maximum amounts or rates prescribed in the regulations: 15
- “(ii) prescribing different amounts or rates in respect of different areas or classes of vessels: 10
- “(iii) specifying the period in respect of which fees and charges are payable, which period may begin when the observer is available to board the vessel concerned while it is waiting in port: 20
- “(iv) specifying the method by which the amount payable in any case is to be determined:”.

Legislative history

15 October 2012
14 February 2013

Introduction (Bill 75–1)
First reading and referral to Primary Production
Committee
