

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

Government Bill

As reported from the committee of the whole
House

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Other Matters) Amendment Bill**

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

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Hon Nathan Guy

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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

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- (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

This Act amends the Fisheries Act 1996 (the **principal Act**). 10

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)** 15
- (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, vessel safety, or compliance with maritime rules relating to pollution and the discharge of waste material from vessels)”. 5
- (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.” 10
- (4) After section 103(6)(b), insert:
“(ba) any risk associated with fisheries management, employment, 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”. 15
- (5) After section 103(6), insert:
“(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.” 20

5 New sections 106A and 106B inserted

After section 106, insert:

“106A Suspension of consent to 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. 25 30
- “(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. 35

- “(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— 5
- “(a) that he or she 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 10
- “(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 72 hours from the date on which the operator is notified). 15
- “(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: 20
- “(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 by the operator. 25
- “(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,— 30
- “(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— 35
- “(i) the reasons for the suspension of the chief executive’s consent to the vessel’s registration; and
- “(ii) the period of the suspension; and
- “(iii) the conditions and requirements imposed under **subsection (6)** (if any); and

- “(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 if he or she is satisfied that any conditions and requirements referred to in **subsection (7)(b)(iii)** 5
(b)(iv) (with the necessary modifications) applies to any extension of the suspension.
- “(8A) The chief executive may lift the suspension of consent if satisfied that suspension conditions and requirements referred to 10
in **subsection (7)(b)(iii)** have been met.
- “(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. 15
- “(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. 20
- “(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.
- “**106B Rights of review and appeal relating to suspension of consent to registration of vessel** 25
- “(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. 30
- “(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.
- “(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. 35

- “(4) The District Court may confirm, reverse, ~~or~~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. 5
- “(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. 10
- “(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. 15
- “(9) This section confers no right of review or appeal in relation to a decision under **section 106A(8)** to extend a suspension.”

- 7 Section 252 amended (Penalties)**
After section 252(5)(g), insert: 20
“(ga) **section 106A(9)** (using vessel while consent to registration suspended).”

Amendments taking effect on 1 May 2016

- 9 Section 2 amended (Interpretation)**
In section 2(1), definition of **foreign-owned New Zealand fishing vessel**, replace “section 103(4)” with “**section 103A(1)**”. 25
- 10 Section 103 replaced (Fishing vessels must be registered)**
Replace section 103 with:
“**103 Fishing vessels must be registered** 30
“(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
- “(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. 5
- “(2) An application to register a fishing vessel must—
- “(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. 10
- “(3) 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. 15
- “(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,— 20
- “(a) register the fishing vessel,— 25
- “(i) in the case of a New Zealand ship, for a period not exceeding 5 years; or
- “(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)–103A(1AC)**. 30
- “(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. 35
- “(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)**.

“**103A Process for granting 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—

“(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

“(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

“(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

“(iv) exceptional circumstances specified by an Order in Council made under **subsection (1AG)** 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 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.

“(1AA) The chief executive may, on application, exempt a vessel from the requirement to be a New Zealand ship if satisfied that—

- “(a) the vessel will be used only for carrying out fisheries-related research commissioned or approved by the chief executive; and
- “(b) 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; and 5
- “(c) the exemption will be in New Zealand’s interests; and
- “(d) there will be sufficient New Zealand control of the operations of the vessel during the period for which it is exempted. 10
- “(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 15
- “(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: 20
- “(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: 25
- “(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: 30
- “(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 35
- “(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.
- “(1AC) An exemption may be granted for the period specified in the special permit issued for the purposes of the fisheries-related research. 5
- “(1) For the purposes of **section 103(3)**, the chief executive may—
- “(a) grant consent, either generally or particularly, to the registration of 1 or more foreign-owned vessels operated by any person; and 10
- “(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, vessel safety, or compliance with maritime rules relating to pollution and the discharge of waste material from vessels). 15
- “(2) The chief executive must have regard to the following matters before deciding whether or not to grant consent under this section: 20
- “(a) any risk associated with fisheries management, employment, 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 25
- “(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 30
- “(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. 35

- “(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: 5
- “(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: 10
- “(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,— 15
- “(i) if the operator of the vessel is the employer or contractor of those persons, the operator: 20
- “(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: 25
- “(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: 30
- “(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)**: 35

- “(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: 5
- “(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: 10
- “(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.” 15

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

- (3) After section 107(8), insert: 20
- “(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— 25
- “(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.”

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. 30
- (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, 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, waste, or any other matter”. 35

- (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, 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

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:
 - “(ii) prescribing different amounts or rates in respect of different areas or classes of vessels:
 - “(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:
 - “(iv) specifying the method by which the amount payable in any case is to be determined:”.

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

Legislative history

15 October 2012	Introduction (Bill 75-1)
14 February 2013	First reading and referral to Primary Production Committee
25 July 2013	Reported from Primary Production Committee (Bill 75-2)
15 April 2014	Second reading
30 July 2014	Committee of the whole House
