

# Departmental Disclosure Statement

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Fisheries (International Fishing and Other Matters) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 May 2023

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## Part One: General Policy Statement

New Zealand's international fisheries management and compliance regime was established in 1999, through Part 6A of the Fisheries Act 1996. International obligations have evolved since then, especially in relation to the prevention of illegal, unreported and unregulated (IUU) fishing, which is a significant threat to the sustainability of global and regional fisheries.

In recent years, States have collectively and individually adopted a range of instruments to combat IUU fishing. Public scrutiny and international oversight over the management of high seas fishing has increased and key markets (the European Union, the United States and Japan) have adopted sanction regimes and measures to prevent IUU fishing products from entering their markets.

Amending the Act to address these developments strengthens New Zealand's reputation as a responsible fishing nation, and its ability to continue accessing high value seafood markets.

This Bill seeks to amend the Fisheries Act 1996 to achieve two objectives:

- to enable New Zealand to better meet its international fisheries management and compliance obligations in relation to IUU fishing, including those flowing from the international arrangements that New Zealand is party to; and
- to improve the efficiency and clarity of the statutory provisions and associated decision-making processes related to international fisheries, for government and stakeholders.

The legislative amendments will improve:

- the monitoring and regulation of New Zealand flagged vessels operating outside New Zealand waters;
- New Zealand's capacity to combat illegal, unreported and unregulated (IUU) fishing;
- the high seas fishing permitting regime for fishing operators and decision-makers; and
- the efficiency and effectiveness of actions against international fisheries violations.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
Ridings, Penelope, 1 March 2021, Review of the Fisheries Act 1996 against New Zealand's International Obligations and Related Market Requirements, <a href="https://www.mpi.govt.nz/dmsdocument/47896-Review-of-the-Fisheries-Act-1996-against-New-Zealands-International-Obligations-and-Related-Market-Requirements">https://www.mpi.govt.nz/dmsdocument/47896-Review-of-the-Fisheries-Act-1996-against-New-Zealands-International-Obligations-and-Related-Market-Requirements</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
The Bill does not seek to give effect to New Zealand action in relation to an international treaty but it does seek to improve the alignment with: <ul style="list-style-type: none"><li>- the United Nations Fish Stocks Agreement (Schedule 1A to the Fisheries Act);</li><li>- the UN's Food and Agriculture Organization International Plan of Action against IUU Fishing (IPOA-IUU); and</li><li>- the conservation and management measures adopted by international arrangements that New Zealand is a member of (Western and Central Pacific Fisheries Commission, South Pacific Fisheries Management Organisation, Commission for the Conservation of Southern Bluefin Tuna, and Commission for the Conservation of Antarctic Marine Living Resources).</li></ul>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
Ministry for Primary Industries, 25 May 2022, Regulatory Impact Statement: Amendments to Part 6A of the Fisheries Act 1996, <a href="https://www.mpi.govt.nz/dmsdocument/55747-Appendix-2-Regulatory-Impact-Statement-Amendments-to-Part-6A-of-the-Fisheries-Act-1996">https://www.mpi.govt.nz/dmsdocument/55747-Appendix-2-Regulatory-Impact-Statement-Amendments-to-Part-6A-of-the-Fisheries-Act-1996</a>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
On 4 February 2022, the RIA Team in the Treasury confirmed that quality assurance would be undertaken by an internal MPI panel.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
<p>The Regulatory Impact Statement contains data on the regulated groups and on the value of New Zealand exports that might be affected from retaining the status quo and on the estimated losses resulting from IUU fishing to economies in the Pacific region.</p> <p>The main regulated groups affected by the Bill are limited: yearly, 15 to 17 high seas fishing permits are issued to 6-8 seafood companies. No industry submitters to the public consultation mentioned significant risks of loss of income or wealth resulting from the policy.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>For provisions related to the permitting regime (s 94, and ss 113D to 113N), the policy to be given effect by this Bill seeks to reduce the costs for the regulated groups and for the Crown resulting from lack of clarity or outdated provisions in the Act, including lower litigation costs for stakeholders and the Crown. Clarifying the requirements to be met before an international fishing permit can be issued and removing barriers to the suspension or revocation of permits are measures intended to diminish the risk of non-compliance with permit conditions.</p> <p>For provisions related to compliance with conditions and regulations (ss 113 J, 113 K, 113 Z, 113ZC, and 113ZCA) the Bill seeks to increase the effectiveness and efficiency of provisions related to permitting conditions on the high seas. The policy seeks to improve the level of compliance by enabling greater proportionality in the approach to offences and increasing their amounts if settled administratively, thereby also reducing costs to the regulated groups and the Crown. These amendments are based on the regulator's experience in incentivising and securing compliance under the current provisions in the Act.</p> <p>Finally, ss 113S to 113 UD and s 235A seek to increase compliance through increased powers to investigate serious violations, including IUU fishing conducted by stateless vessels or the assistance provided to IUU fishing vessels. Increasing the level of effective compliance might result in increased costs for the Crown, but the likelihood of such events remains low, and the potential costs remain significantly lower than the costs to the regulated groups and the Crown of not addressing these compliance gaps.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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A key objective of this Bill is to enable New Zealand to better meet its international fisheries management and compliance obligations against IUU fishing, including those flowing from the international arrangements that New Zealand is party to.

The policy is informed by an analysis and review commissioned by the Ministry for Primary Industries of the Act against New Zealand's international compliance obligations and related market requirements. The author of this Review is New Zealand's member to the International Law Commission 2023-2027, Dr Penelope J. Ridings.

The Ministry of Foreign Affairs and Trade has provided feedback on the Bill throughout the drafting process, including on alignment with the Maritime Powers Act 2022.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Te Ohu Kaimoana was formally mandated by iwi to engage with the Ministry, which took place in the form of consultation meetings. Te Arawhiti was consulted on the policy and whether the paper needed to be considered by the Treaty Provisions Officials Group. Given no broad Treaty provisions are proposed and the policy intent is clear, it was determined that a full session with TPOG was not required.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>NO</b>
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The BORA vetting team has confirmed that advice will be due with the Attorney-General one week before the intended LEG Cabinet Committee meeting.

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
Section 113Z amended and new s 113ZCA inserted (Administrative penalties): The Bill amends the administrative penalties for breaches of international fishing permit conditions and introduces a requirement to publicise decisions.	
Section 229 amended (Obstructing fishery inspectors): The Bill extends the offence of obstructing fishery officers to high seas fishery inspectors.	
New s 235A inserted and s 252 amended (penalties): The Bill creates an offence to engage with/assist IUU-listed vessels.	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry was consulted at policy development stage and at drafting stage:</p> <p>At policy development stage, feedback was incorporated into the amendments related to administrative penalties and on the new offence to engage with IUU-listed vessels.</p> <p>At drafting stage, further information was provided to MoJ on the policy rationale for the strict liability offence in s 235A, the consequences of non-compliance with high seas fishery inspectors (s 229 amended), and the offences and administrative penalties.</p> <p>Also at drafting stage, MoJ commented on several aspects of the Bill with implications for the Bill of Rights. All feedback was integrated in the Bill, responding to MoJ's comments.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>New section, s 113ZCA inserted (Administrative penalties): The Bill amends the administrative penalties for breaches of international fishing permit conditions and introduces a requirement to publicise decisions.</p> <p>New sections, ss 113UA to 113UD inserted on the powers of high seas fishery inspectors in relation to detention at port of vessels and investigation of serious violations contain provisions in this respect.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Privacy Commissioner was informed that a Privacy Impact Statement, including addressing BORA advice, has been completed, and that the Minister for Oceans and Fisheries had authorised sharing the draft Bill with the Office of the Privacy Commissioner. The Office confirmed that no further information is needed from the Department at this stage.</p> <p>The detailed Privacy Impact Assessment covers off any privacy risks, and controls and will be updated with any significant changes as the draft Bill goes through the legislative process. If any 'high risk' privacy concerns eventuate, MPI will raise them with the Privacy Commissioner for further discussion.</p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>A public consultation took place in late 2021 and submissions were proactively released in early 2023, available at: <a href="https://www.mpi.govt.nz/consultations/proposed-amendments-to-the-fisheries-act-to-ensure-new-zealand-continues-to-meet-its-international-fisheries-obligations/">https://www.mpi.govt.nz/consultations/proposed-amendments-to-the-fisheries-act-to-ensure-new-zealand-continues-to-meet-its-international-fisheries-obligations/</a></p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>Targeted engagement with stakeholders and Te Ohu Kaimoana on behalf of iwi took place in the form of six meetings at policy development stage and four meetings at drafting stage.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<p>(a) Section 235A creates a strict liability offence: to assist or support IUU-listed vessels.</p> <p>The policy rationale for the strict liability offence stems from the high evidentiary burden on the high seas. Unlike fishing in the EEZ, offences on the high seas take place over remote, huge swathes of water outside State jurisdiction. Opportunity to evade detection of the offence is high, and the monitoring, control, and surveillance of fishing activity is challenging, lifting the barriers to obtaining evidence.</p> <p>The rationale for the inclusion of the offence under s 252(3) (a fine of up to \$250,000) is the following:</p> <p>Under Article 19.2 of the United Nations Fish Stocks Agreement, to which New Zealand is Party, sanctions applicable for serious fisheries violations 'shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities'.</p> <p>As a member of the Commission for the Conservation of Atlantic Marine Living Resources (CCAMLR) and the South Pacific Regional Fisheries Management Organisation (SPRFMO), New Zealand is required to verify if any of their nationals or any natural or legal persons subject to their jurisdiction are responsible for, benefiting from, supporting or engaging in IUU fishing, and to take appropriate action in response to any verified activities. When a vessel has committed a fisheries violation and the flag State has failed to take effective action, the vessel may be included on a final IUU vessel list and the flag State risks being the subject of market measures from importing markets across its seafood exports.</p> <p>What is deemed as 'effective action' is ultimately subject to decisions in the international arrangement governing the fishing area, but severity has increased over the past twenty years as technological advancements and market demand increase the return for fishing operations, together with increased public scrutiny on the impacts of illegal fishing on the high</p>	

seas. Members of international arrangements that New Zealand is Party to have sanctioned their vessels with amounts totalling millions of dollars.

To ensure adequate safeguards for compliance and consistency with the Bill of Rights, s 235A offers a precise definition of the behaviours that are the subject of the offence, so that the acts captured by the offence are clear in law to potential offenders. Also, a defence has been provided in s 235A to provide for conduct that is carried out to save or prevent danger to human life, or serious threats to the vessel, or *force majeure*.

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p><b>Permitting regime:</b> The Bill amends the decision powers of the Chief Executive to issue, suspend and revoke international fishing permits to meet the policy intent to expand and clarify these powers, so as to better meet New Zealand’s international obligations. The Bill will not affect the existing administrative practice of providing permit applicants an opportunity to comment on a draft decision. Further, the Bill changes the review provisions in the existing Act to provide for a time-bound review. It also clarifies his/her powers to determine whether a breach of a permit condition is not serious, and an administrative penalty may be imposed.</p> <p><b>Investigation of serious violations:</b> The Bill expands the powers of high seas fishery inspectors to stateless vessels, and to investigate serious fisheries violations in port.</p> <p>Appendix One details the sections amended and the safeguards introduced to exercise these powers in accordance with international law, the New Zealand Bill of Rights, the Privacy Act 2020 and the Search and Surveillance Act 2012.</p>	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

## Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The offence under s 235A applies extraterritorially (in foreign jurisdictions). It extends to New Zealand vessels wherever they fish, and New Zealand nationals wherever they are, provided the public interest test has been met and the prior consent of the Attorney General has been obtained.</p> <p>International law provides that states possess the right to regulate the conduct of their nationals wherever they are and can therefore pass laws to that effect (prescriptive jurisdiction). There has been a general trend of New Zealand's extraterritorial prescriptive jurisdiction being increasingly extended. Section 7A of the Crimes Act 1961 gives New Zealand extraterritorial criminal jurisdiction in respect of certain offences involving New Zealand citizens that have transnational aspects, such as human trafficking and smuggling migrants.</p> <p>New Zealand and other jurisdictions tend to limit extraterritorial jurisdiction to egregious offences, such as IUU fishing activities under s 235A. In New Zealand, IUU fishing is included in the Transnational Organised Crime Strategy in New Zealand 2020-2025 (<a href="https://www.police.govt.nz/transnational-organised-crime-in-new-zealand-our-strategy-2020-to-2025.pdf">transnational-organised-crime-in-new-zealand-our-strategy-2020-to-2025.pdf</a> (police.govt.nz)).</p> <p>Other relevant jurisdictions have similar extraterritorial provisions for these offences. For instance, the European Union Regulation 1005/2008 on IUU fishing and the United Kingdom in the Sea Fishing (IUU Fishing) Order 2009 apply the offence of engaging in IUU fishing extraterritorially.</p> <p>Applying an offence in foreign jurisdictions presents challenges related to State sovereignty, including lack of enforcement jurisdiction, and reliance on the cooperation of the other State. However, New Zealand has successfully prosecuted its nationals for offences committed in the waters of another State, and on a foreign flagged vessel, with the consent of the Attorney General and the cooperation of the relevant State.</p>	

## Appendix One: Further Information Relating to Part Four

### Significant decision-making powers - question 4.6

**Permitting regime:** Sections 113H, 113HA, 113HB and 113N amend the decision powers of the Chief Executive to issue, suspend and revoke international fishing permits, following the agreed recommendations to clarify and expand his/her discretion. The powers of the Chief Executive are expanded to include that relevant persons in the application must not be included on an IUU vessel list; clarified by specifying what conducts constitute the undermining of international conservation and management measures; and by expanding and clarifying the timeframe within which a permit will not be issued.

The following safeguards have been introduced for these powers:

1. A defence under s 113HA(4) for persons included on IUU vessel lists in organisations that New Zealand is not party to, to ensure due process in listing decisions.
2. A requirement in s 113BC(3) for the Chief Executive to consider gravity of the matters and including the relevant factors when assessing when a relevant activity has undermined the effectiveness of international conservation and management measures, and a definition of what constitutes a relevant activity.
3. A defence under s 113J(3) against offences committed to comply with the law of the foreign country in which the contravention occurred.

Section 113F clarifies and expands the discretion of the Minister to decline an exemption for the use of a non-New Zealand vessel by New Zealand nationals, consistent with the amendment to s 113HA.

Section 113Z amends the powers of the Chief Executive to enable the issuing of administrative penalties for non-serious breaches of international fishing permit conditions and clarifies the matters that the Chief Executive must have regard to when determining that an offence is not serious.

**Power of high seas fishery inspectors to verify nationality of vessels:** Section 113 SA creates a power to verify the nationality of a vessel when boarding and inspecting it under the current powers in s 113 S in order to determine whether the vessel is without nationality. This power is modelled on s 13 of the Maritime Powers Act 2022.

**Powers of high seas fishery inspectors to detain vessels and persons in port for the investigation of serious violations:** Sections 113UA to 113UD create powers for the Chief Executive and high seas fishery inspectors in relation to the detention in port of vessels (ss 113UA, 113UB, 113 UC) and persons (s 113 UD) for the investigation of serious violations. The following safeguards have been introduced to ensure these powers are exercised in accordance with international law, with the Bill of Rights, and with other relevant legislation (Privacy Act 2020 and Search and Surveillance Act 2012):

1. Safeguards for the exercise of the powers related to the detention in port of vessels include ensuring flag State primary jurisdiction and the mandatory release of the vessel on request of the flag State or on payment of a reasonable bond in s 113UA(4).
2. Safeguards for the exercise of the powers of high seas fishery inspectors for the detention of persons include prior request or consent from the flag State (s 113UD(1)) and limitation of the powers to detain a person under s 113UD (2) and (4) (purpose and limits).
3. Safeguards for the exercise of these powers include the application of the Search and Surveillance Act 2012 in ss 113UB(4), 113UC(2), 113UC(3), 113UC(4), and 113UD(5), including requirements for search warrants under s 113 UC.