

THE FISHING INDUSTRY (UNION COVERAGE)  
ACT 1979

Penelope Jane Pepperell

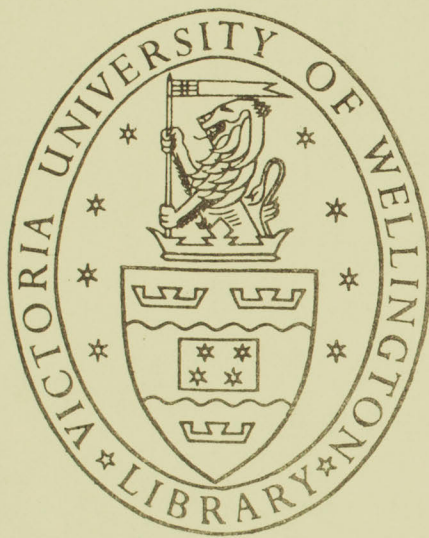
Research Paper for Law and the  
Legislative Process  
LLM (Laws 537)

PEPPERELL, P.J. The Fishing Industry (Union Coverage) Act 1979.



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PENELOPE JANE PEPPERELL

I am grateful to all who assisted by providing information for this paper, in particular:

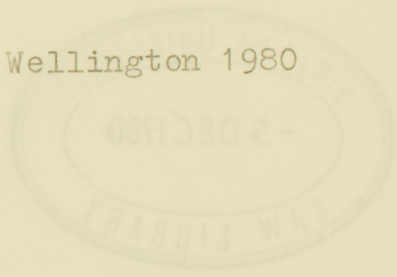
THE FISHING INDUSTRY (UNION COVERAGE)

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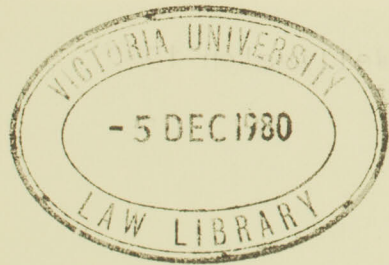
Wellington 1980



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ACKNOWLEDGEMENTS

My grateful thanks to all who assisted by providing information for this paper, in particular;

Mr D. Butcher	Member of Parliament, Hastings
Mr J.S. Campbell	Fisheries Consultant for High Seas Fisheries (NZ) Limited
Mr V.R. Jamieson	Advocate, Employers' Federation
Mr N.E. Jarman	General Manager, Fishing Industry Board
Mr A.G. Malcolm	Parliamentary Under-Secretary to the Minister of Labour, Minister of Immigration
Mr D. Martin	Industrial Relations Division, Department of Labour
Mr D.J. Morgan	National President, New Zealand Seamen's Union
Mr E.G. Thompson	General Secretary, New Zealand Waterside Workers Federation

Views expressed in this paper should be treated as those of the writer alone and should not be attributed to any of the abovenamed people.



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INTRODUCTION

In many ways, 1979 was regarded by contemporary commentators as a high point in terms of government activity in the legislative arena. By the late 1970s, phrases such as 'constitutional crisis', 'executive domination' and even 'the death of democracy', and because so prevalent they had assumed an almost jargon-like quality. In 1979 it seemed to many that the turning point had arrived, the pattern of government for the 1980s was emerging. 1979, the year

of the "the output of legislative institutions includes not only 'law', but various kinds of political statement, ritual reaffirmation of values, electoral sop, and rhetorical threat. The production of such material is no doubt (within limits) a legitimate use of the forum provided by a politically organised, democratically representative and deliberative body: but such material may have to be treated very differently from the 'laws' which are made by such a body. And this is so even when the material in question has been clothed in the form of a statute. A rough test of whether we are dealing with 'legal law' or only 'political law' might be; which is more important? What the Statute actually says, or the fact that the statute was passed? Was the government in question making law, or was it staging a political event."

(Blackshield, A.R. Legal Responses to Cultural Change p.32)

This paper is based on the view that for such an investigation to be successful, wider perspectives encompassing the role of the New Zealand legislative process need to be asked and cannot be separated from a discussion of the evolution of the development and passage of a piece of legislation. It may well, for example, be a trap to assume that because the passage of a piece of legislation does not conform to what are usually understood to be the aims of the New Zealand legislative process, that the process is in some way deficient. On the contrary, the discrepancies may instead alert us to the possibility that in reality the process operated with a different set of aims.

In New Zealand:

"The political assumptions on which the major New Zealand political parties base their vision of a 'preferred order' are those of a nineteenth century liberal-democracy."

## INTRODUCTION

In many ways, 1979 was regarded by contemporary commentators as a high point in terms of government activity in the legislative arena. By the late 1970s, phrases such as 'constitutional crisis', 'executive domination' and even 'the death of democracy', had become so prevalent they had assumed an almost jargon like quality. In 1979 it seemed to many that the turning point had arrived, the pattern of government for the 1980s was emerging. 1979, the year of the National Development Act, the Remuneration Act, the Commerce Amendment Act and the Fishing Industry (Union Coverage) Act (not to forget the abortive Fiscal Regulator and the Public Service Association Withdrawal of Recognition Bill); all interpreted as central government grasping more and more power unto itself.

What is the present state of our legislative machinery?

It is hoped to be able to shed some light on this matter by undertaking a study of the Fishing Industry (Union Coverage) Act 1979 with a view to ascertaining how well the New Zealand legislative process responds to pressures from different elements in Government and the community.

This paper is based on the assumption that for such an investigation to be successful, wider questions concerning the aims of the New Zealand legislative process need to be asked and cannot be separated from a discussion of the mechanics of the development and passage of a piece of legislation. It may well, for example, be a trap to assume that because the passage of a piece of legislation does not conform to what are commonly understood to be the aims of the New Zealand legislative process, that the process is in some way deficient. On the contrary, the discrepancies may instead alert us to the possibility that in reality the process operates with a different set of aims.

In New Zealand;

"The political assumptions on which the major New Zealand political parties base their vision of a 'preferred order' are those of a nineteenth century liberal-democracy."



and;

"the essence of liberal-democratic theory is that power can somehow be distributed in the hands of the people in such a way that they can keep a check on their leaders and, by means of regular consultation, can exert some influence over decisions made on their behalf."<sup>1</sup>

Such an approach is within the consensus mode of thinking which has;

"its roots in the social contract theories and sees the law as the outcome of value-consensus among the members of society developed within a value-neutral framework of the State."<sup>2</sup>

Such a view contrasts with a conflict approach to the functioning of society, which does not see the state as a neutral umpire arbitrating impartially between competing groups but rather as;

"simply coercive power used to protect the system of rights and duties of one process of economic relationship from invasion by another class which seeks to change them in the interests of another process."<sup>3</sup>

It is apparent, that depending upon the view of the legislative process adopted, different conclusions may be reached as to how well the process responds to pressures from different elements in Government and the community. By utilising both of these opposing approaches when looking at the passage of a piece of legislation through the parliamentary process, it is hoped that worthwhile insights may be drawn as to the working realities of our legislative system. The Fishing Industry (Union Coverage) Act 1979 will be studied in this way. The first part of the paper will concentrate on providing a detailed discussion of events leading up to the drafting of the Bill, the input from various interested groups as the Bill passed through the legislative process and subsequent events. The second part will involve an analysis of this material from both the consensus and conflict perspectives which will provide an opportunity make observations on the present state of our legislative machinery.

- 
1. Cleveland, L., The Politics of Utopia (Wellington, 1979) 37.
  2. Schichor, D., "The New Criminology: Some Critical Issues" The British Journal of Criminology Vol.20 No.1, January 1980 p.1.
  3. Laski, H., The State in Theory and Practice (London, 1934) 118.



## I. EMERGENCE AND PASSAGE OF THE LEGISLATION

### A. Background

The Fishing Industry (Union Coverage) Act 1979 was generated by a particular industrial relations incident, the "Wesermunde" dispute, however, a closer analysis shows that the seeds for such legislation had been sown somewhat earlier, the dispute acting as a catalyst.

The four or five years prior to 1979 had seen a rapid expansion in the New Zealand fishing industry, particularly after the introduction of the 200-mile exclusive economic zone (EEZ) in 1977. Under the Geneva Law of the Sea Conference, countries with an EEZ, must allocate fishing rights to foreign vessels if they cannot maintain the level of past catches. Joint fishing ventures with other countries were seen as a means of bridging the gap until New Zealand was able to fully exploit her fish resources on her own. One such venture goes under the name "High Seas Fisheries". This company is the vehicle for a deep sea commercial/research fishing joint venture between New Zealand and West German interests.<sup>4</sup> At the time of the dispute the Company had the 3,500 tonne West German owned factory/trawler, the F.M.S. Wesermunde, on charter for an initial term of one year, expiring January 1980. The vessel was to spend half of her time engaged in research and the rest, commercial fishing; such activities aimed at ascertaining the viability of future joint fishing ventures.

Traditionally, fishing in New Zealand has never involved a master-servant type of relationship. Rather, fishermen are paid on a share basis, participating in both the risks and the profits. Industrial relations had then, apart from a couple of isolated incidents,<sup>5</sup> never been a problem in the area. However, with the advent of the big joint venture vessels, the union movement, in particular the maritime unions, began to show an interest.

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4. The shareholders in High Seas Fisheries (New Zealand) Limited are, Macdonald Investments Limited, 25.5%; The Southland Frozen Meat & Produce Export Company Limited, 25.5% and Hanseatische Hochseefischerei Overseas Operations G.M.B.H., 49%.
  5. The unsuccessful first New Zealand joint fishing venture, the "Taimoana" in 1967, is an example.



In October 1976 the New Zealand Seamen's Union wrote to Sealord Products Ltd claiming Seamen's Union manning of proposed joint ventures.<sup>6</sup> The rules of the Union cover fishermen,<sup>7</sup> although past attempts by the Union to encourage fishermen to join have been somewhat unsuccessful. This is because fishermen, an independent breed of people, are not attracted to compulsory unionism and moreover, do not regard themselves as 'workers' within a master/servant type relationship. Fishermen in the industry are represented by the New Zealand Federation of Commercial Fishermen, which has affiliated associations in 30 different ports, one-third of its members being owner-skipppers, and the New Zealand Share Fishermen's Association (based in Auckland) which is affiliated to the Federation of Labour (FOL) and mainly represents fishermen working on company fishing boats.

In August 1978 a group called the "Bluff Port Study Group", to which the Bluff Branch of the New Zealand Waterside Workers Federation was a party, made a supporting statement in a submission by the Southland Harbour Board relating to proposed West German and Korean joint ventures and large ocean going fishing vessels.<sup>8</sup> The tenor of it was that all groups on the Bluff waterfront, employer and employee, would give their assistance to the establishment of a viable large scale export fishing enterprise at Bluff and that they would "undertake to use their best endeavours to prevent any industrial misunderstanding from jeopardising the commercial success of either fishing venture".<sup>9</sup>

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6. Letter, Mr D.J. Morgan (National President, NZ Seamen's Union) to Sealord Products Ltd, 29.10.76. Sealord promptly informed the Hon D. MacIntyre of the fact with copies to, among others, the Federation of Commercial Fishermen.
  7. The Seamen's Union rules give the Union the power to include "trawler hands, fishermen, oystermen ... or any other such person employed on or about ships, fishing vessels ..."
  8. "Southland Harbour Board 'Port of Bluff' a Deep Water Fishing Base" dated 7th August 1978. Submitted to the New Zealand Government, the West German Government, West German and New Zealand parties to the proposed High Seas venture and to Korean and New Zealand parties to the proposed New Zealand/Korean joint venture.
  9. Ibid.



On December 19th 1978 the New Zealand Fishing Industry Board (FIB) a statutory body<sup>10</sup> formed to promote and represent the interests of the fishing industry as a whole and to play a co-ordinating role for the various involved groups, held a meeting to discuss industrial relations in the fishing industry. In November the Board had received a letter from the Watersiders Federation expressing delight at the way the industry was expanding and noting that, in its view, watersiders would be unloading the joint venture vessels on the basis that the vessels were foreign and discharging cargo. The FIB decided to deal directly with the FOL on this matter, a course of action which did not altogether please the Watersiders, but no response was forthcoming from the FIB's approaches to the FOL. The FIB's letter was discussed by the National Executive of the FOL and Sir Tom Skinner (then President of the FOL) agreed to support the watersiders' position on the condition that the unloading claim did not extend to local trawlers.

A paper prepared by the FIB as a result of the December meeting<sup>11</sup> discussed approaches by the Seamen's Union and the Watersiders Federation, in this area. On the 8th of January 1979, Mr Morgan of the Seamen's Union had written to R.C. Macdonald over the matter of manning the "Wesermunde". According to the FIB paper, R.C. Macdonald had replied advising the Union that, "any New Zealanders going to work on this vessel, will be share fishermen drawn from the New Zealand Federation of Commercial Fishermen members".<sup>12</sup> The FIB was concerned that, even though the Unions were at this stage primarily focusing attention upon the "Wesermunde", that the joint venture schemes would be 'picked off' one by one. In an attempt to avoid this the Board kept up a constant telex communication with all joint ventures.

The Board had obtained legal opinions as to whether or not the Watersiders had unloading rights in terms of the Waterfront Industry Act 1976. The Act specifically defines "Waterside work" and does not include wording in the 1953 Act to the effect that watersiders were excluded from any work not customarily performed by them.

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10. The Fishing Industry Board Act 1963.

11. "Industrial Relations as They Affect the Fishing Industry" J.S. Campbell.

12. Ibid.



Legal advice received by the Board had caused it to come to the conclusion that it was "problematical whether we can defend industry's traditional rights to handle its own product".<sup>13</sup> Indeed the watersiders position was that they were legally entitled to unloading rights and to not take a stance on the matter would reveal a clear weakness in the union movement.

The New Zealand Food Processors and Chemical Workers Union, some of whose members had always had a traditional role in the unloading of fishing vessels, was apparently not invited to the FOL Executive meeting where the decision was made to support the watersiders in their claims for unloading rights. The Processors Union, with support from the FIB then began to agitate within the FOL in an attempt to reach some sort of agreement between the unions involved.

However, it was apparent that events had begun to gain momentum and in a letter dated the 22nd of February to the Minister of Fisheries from Mr Polsen of the New Zealand Federation of Commercial Fishermen, concern was expressed at "latest moves by both the Seamen's Union and the Watersiders Union to become involved in our fishing industry." The letter urged a thorough investigation of current industrial legislation to ensure that the legislation properly protects the traditional practices of the industry, and if not, to pass such legislation. The letter clearly showed that the Federation believed that the unions were attempting to become involved in all aspects of the fishing industry, not just the joint venture schemes.

A meeting between the FIB and the Watersiders Federation on the 9th of March discussed questions raised as to who should unload fish and fish products from New Zealand vessels and alternatively, joint venture vessels. Mr Jarman, General Manager of the FIB replied in writing<sup>14</sup> that in both instances, unloading would be done by fishermen and/or shed hands; joint ventures being registered New Zealand vessels. In reply, Mr E.G. Thompson of the Watersiders stated that not all answers to the questions were acceptable and

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13. "Industrial Relations: The Current Situation" Paper prepared by the Fishing Industry Board 17/4/79.

14. Letter N.E. Jarman, FIB, to E.G. Thompson, Waterside Workers Federation, 13 March 1979.



stating further that;

"The vessel 'Wesermunde' which is scheduled to unload processed fish cargo at the Port of Bluff in the near future is work covered by the Waterfront Industry Act and should be undertaken by Waterside Workers." 15

On the 19th of March the "Wesermunde" arrived at the Port of Bluff to unload its catch. Although it had unloaded in mid-January at Bluff without incident, this time the vessel was met by watersiders claiming the right to unload the vessel. High Seas Fisheries promptly sent a telegram to the Ministers of Fisheries and Labour informing them of the situation and urging intervention to seek a solution on a national basis. 16

After apparent concern that the crew of the "Wesermunde" (West German nationals who had joined the Federation of Commercial Fishermen) would attempt to unload the vessel, the watersiders set up a picket line alongside the boat on the 22nd of March.

The incident hit the headlines nationwide. A typical example read; "Bluff wharf row may kill New Zealand's biggest joint fishing venture". 17 Emphasis was placed upon the additional costs that would be incurred if watersiders became involved in the unloading of fishing vessels, additional costs which could not be absorbed by the industry. High Seas Fisheries spokesmen were quoted as saying they would have to consider abandoning the joint fishing venture if the dispute was not resolved. It was also clear that the commercial fishermen saw their livelihood threatened. The Manager of the Southland Fishermen's Society, Mr K. Te Au, was reported as saying; "This is the thin end of the wedge; they will get control of larger trawlers next, and eventually end up unloading all fishing boats." 18

The terms of reference for the debate were thus rapidly set by the media, 19 and can be summed up in the following statement by the President of the New Zealand Chambers of Commerce (Mr J.R. Greenfield)

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15. Letter E G Thompson to N E Jarman, 15 March 1979.

16. Telegram, High Seas Fisheries to the Ministers of Labour and Fisheries, 20 March 1979.

17. The Press 23 March 1979.

18. Ibid.

19. See the discussion in Hall, S. et al Policing the Crisis: Mugging, the State and Law and Order (London, 1978) Chapter 3. The Social Production of News.



which was issued on the 23rd of March;

"Regional development, foreign capital availability, joint ventures, fishing and exports, all face a crisis situation which appears to be developing at the Port of Bluff, where our major new export fishing venture is threatened by Waterside unions which have picketed the vessel 'Wesermunde'".

Such were the themes canvassed in the media.

A telex to the Minister of Fisheries from Mr Spiers, President of the New Zealand Federation of Commercial Fishermen dated the 23rd of March, indicated that they would not accept any decision of the FOL to allow watersiders to unload the vessel, urged a Government decision and conveyed support for a letter to the Minister of Labour from High Seas, "which summarises the issues". The High Seas letter<sup>20</sup> expressed belief that the watersiders had breached the Port Study Group submission, such submission being one of the major reasons that High Seas had based its operations in Bluff. The letter emphasised the detrimental effect the watersiders action would have on the future of joint fishing ventures and suggested the "Wesermunde" might have to cease operations in New Zealand.

A meeting in Wellington on the same day chaired by Waterfront Industrial Conciliator, Mr Davey (former Secretary of Labour), to discuss the unloading with representatives of the various interested groups was unsuccessful. The employer interests expressed the view that the watersiders had breached the Port Study Group submission to which the watersiders replied that they did not agree with the employer's interpretation of that submission and, in any case a representative of the Bluff watersiders could not sign on behalf of the New Zealand Waterside Workers Federation. Three compromise proposals for unloading the "Wesermunde" (without prejudice to future unloadings) were rejected by representatives of the employers and fishing industry who wanted unloading to continue in the customary way until the wider issue was settled. To this the watersiders replied that the type of ship and form in which the catch was landed represented a new departure and that custom and practice did not therefore apply. The meeting ended with an announcement by the Chairman that he intended to recommend to the

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20. Letter, High Seas Fisheries to Minister of Labour, Mr Bolger, 23 March 1979.



Minister of Labour that there be a meeting between the FOL, employers representatives, the Fishing Industry and the Trade Unions.

Mr Bolger was informed of the recommendation which he reported to Cabinet on the 26th of March and he was given the go ahead to act on the recommendation. Meanwhile, the previous day, the "Wesermunde" had returned to sea without unloading, 6 days after the original docking.

High Seas Fisheries kept up a running correspondence with Mr Bolger giving him accounts of daily events. A letter thanking him for a personal meeting he had had with them on the 3rd of April said that they had been encouraged to believe that;

"Government and you in particular recognise that we are dealing with a critical and urgent issue which has an immediate bearing on the future development of fishing in New Zealand waters."<sup>21</sup>

In a letter to Mr Bolger dated the 2nd of April, they had expressed the view that although the present dispute related basically to watersiders,

"there is a real danger that any success by the watersiders will be followed immediately by moves by the Seamen's, Cooks and Stewards, and Fish Processors Unions to man fishing vessels."

Meanwhile, mainly on the initiative of Mr Jarman, the FIB had adopted an aggressive stance on the matter. The Board acts for a wide diversity of interests within the fishing industry and experiences a not inconsiderable difficulty in keeping the industry united when it is under pressure. The joint venture schemes are for example, regarded with suspicion by the local fishermen. The Board had been engaged in consultations with Mr Bolger who, although sympathetic, had given them no clear statement on the matter. The Board had been requesting amendments to the Waterfront Industry Act 1976 and it seems that this was in fact the line along which Cabinet was thinking. It is probable that Government was holding back from giving any positive assurances until it could be ascertained whether or not the watersiders would co-operate in the matter by relinquishing claims to the unloading of the joint venture vessels.

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21. Letter, High Seas Fisheries to Mr Bolger, 4 April 1979.



On the 12th of April, Mr Jarman sent all 92 Members of Parliament a 300-word telegram in which he said that the planned compulsory conference on the unloading of the "Wesermunde" was unlikely to do anything other than polarise conflicting views.<sup>22</sup> Union sources were reported as annoyed, believing the telegram ill-timed and sent at a time when hopes were rising that a compromise formula worked out among the interested unions by the FOL would be acceptable to employers in the industry.<sup>23</sup> By this stage the Processors Unions had been brought back under the FOL wing and three of them (the New Zealand Food Processing Union, the Northern Industrial Fish Trade Employees' Union and the Otago & Southland Manufacturing Chemists' ... Union) were parties to the agreement. The agreement (see Appendix I) was intended to ensure that work was shared between the appropriate workers. The work of unloading fishing vessels berthed at traditional "fishing" wharf facilities would continue to be the work of fishermen and process workers as is customary; the unloading of vessels berthed at conventional wharf facilities would be watersiders work except where the fish required further processing (this includes fish in a frozen state), and any disputes arising on the interpretation of the operation of unloading from Joint Venture fishing vessels would be referred to the National Executive of the FOL. The agreement was signed and dated the 6th of April 1979.

The compulsory conference to discuss the unloading of fishing vessels was convened on the 17th of April. Chaired by the Minister of Labour, Mr Bolger, also in attendance were the Minister of Agriculture and Fisheries and representatives of the Fishing Industry Board, the Seafood Exporters Association, the Port Employers Association, the Federation of Commercial Fishermen, the Share Fishermens Association, the FOL, the Watersiders Federation, the Food Processing and Chemical Union, the Seamen's Union (as observers only), the Ministry of Agriculture and Fisheries and Department of Labour.

Three members of the Seamen's Union had been permitted to attend the meeting as observers in spite of strong objections from the Fishing Industry Board and the Commercial Fishermen. The seamen

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22. The Press 14.4.79

23. Ibid.



had been checking manning details with German unions in the development of their expressed interest in manning the joint venture boats.<sup>24</sup>

The meeting began with the various parties setting out their positions. Mr MacIntyre gave an outline of the development of the fishing industry and the importance of the joint ventures in the scheme of things. Mr Knox emphasised that the unions too, were concerned for the future development of the industry but they were also concerned about losing work which was rightfully theirs. They took the view that they could not give the Government an exemption from its own legislation, namely the Waterfront Industry Act 1976. Fishing industry representatives outlined why in their view it was necessary to unload all fishing vessels using the crew and food process workers under the control of the company's management. Apart from the question of extra costs if waterside workers were involved there was the matter of the special conditions under which the fishing industry operated. Catches need to be unloaded rapidly and whenever they arrive at Port, no matter what the time of day or night. It was their view that the watersiders would not be able to maintain the flexibility needed.

The agreement as to unloading which had been reached between the appropriate unions affiliated to the FOL was discussed but agreement could not be reached on all aspects of it. The agreement was not acceptable to the FIB as it gave controlling rights to the FOL.

Mr Jarman of the FIB had prepared a paper for the meeting outlining the options he saw. His conclusion was that a short-term compromise was probably the only solution. There had been some criticism from within the industry at this compromise stance but as Government had given the industry no positive assurances up to this point, and indeed Mr Bolger had suggested at a meeting on the 12th of April that the industry should look at accepting the FOL compromise 'without prejudice' to future unloadings, he saw compromise as the only possibility if the industry was not going to be torn apart at the seams. One of his options was to cancel joint ventures as a means of bringing home to the Government the seriousness of the matter, however, understandably, none of the joint ventures were keen to be

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24. The Herald 21.4.79



the sacrificial lamb. In addition, the Bluff Waterside Workers' Union had referred the "Wesermunde" incident to the Waterfront Industry Tribunal for a ruling as to whether the unloading of the vessel was "waterside work" in terms of ss. 2 and 29 of the Waterfront Industry Act 1976. The hearing was scheduled for the 26-27th of April and the FIB felt that if the Tribunal ruled against them in terms of current law their request to the Government for urgent legislative action would become much more difficult.

On the first day of the meeting the delegates returned from lunch to discover that the Prime Minister had issued a press statement. A report in the Dominion read;

"Legislation would be introduced if necessary to specifically exclude watersiders from unloading fishing boats, the Prime Minister, Mr Muldoon said yesterday.

It was made clear joint venture fishing schemes would not become attractive to investing countries if watersiders became involved, he said.

Similarly it would be impossible to contemplate a New Zealand fishing industry with Seamen's Union members manning boats, he said." 25

Mr Muldoon made it clear that Cabinet's view was that the traditional situation should prevail, namely that the watersiders could handle fish for export but that unloading otherwise was to be done by fishermen assisted by process workers where necessary.

Neither the FIB nor the Unions were particularly happy with the timing of this particular statement; the Unions for obvious reasons, the FIB because if it had been made earlier it would have changed bargaining strategies.

At the end of the first day the meeting focussed on a proposal from the Waterside Workers Federation for unloading of the "Wesermunde" and agreed to adjourn until the following day for the parties to consider this proposal. A last plea by Mr Bolger to the Watersiders to forego this one unloading was rejected.



On the second day of the meeting Mr Bolger announced that the Minister of Agriculture and Fisheries would outline the Government's position on legislation in response to a query the previous day as to whether the Government would clarify its position vis a vis legislation to amend the Waterfront Industry Act. Mr MacIntyre announced that;

"the Government's position had always been that the unloading of fishing vessels was the work of fishermen and process workers. The Government therefore intended to make this quite clear and unambiguous by introducing legislation. Representation on the proposed legislation would be received from interested parties."<sup>26</sup>

The meeting concluded and representatives of High Seas Fisheries and the unions were left to draw up an agreement for the unloading of the "Wesermunde" (See Appendix II). The agreement was signed to run for the balance of the initial charter period (to 31 January 1980) subject to any legislation that might be passed subsequent and was subject to the conditions that the agreement not create a precedent for the future unloading of fishing vessels, not apply to other fishing vessels and that the application presently before the Waterfront Industry Tribunal regarding the unloading of the "Wesermunde" be withdrawn.

Mr Muldoon was reported in the press as saying soon after the meeting agreement had been reached, that it was "absolutely essential" that the agreement should not be taken as a precedent for the future. He intended to promote legislation to clarify watersiders work and work which should be left to fishermen.<sup>27</sup>

The following day, Thursday the 19th of April, the Government caucus was reported as unanimous in its intention to introduce legislation making it compulsory that fish be handled in the traditional way by fishermen and food processors. It was reported that legislation would over-ride the agreement reached at the meeting.<sup>28</sup> The

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26. "Note of a Meeting Held on April 17 and 18, 1979 to Discuss The Unloading of Fishing Vessels." p.3

27. The Press 19.4.79

28. Evening Post 19.4.79



Secretary of Labour, Mr G. Jackson, responded promptly the following day, saying that;

"reports on yesterday's Government caucus decision indicated that legislation had been prepared ready to disrupt the Wellington agreement. 'That is definitely not the case' Mr Jackson said, 'There has been too much emphasis on legislation overriding the agreement.'" 29

The same article indicated that at this stage, although the form the legislation would take was unclear, it did not seem that an amendment to the Waterfront Industry Act would be brought down as this would not give full expression to the Government's intention. Sources thought a totally new Act defining the handling of fish on the waterfront was likely.

The "Wesermunde" returned to Bluff for unloading on the 21st of April and was subsequently unloaded in terms of the agreement reached at the meeting.

#### B. The Drafting Stage

After the unanimous resolution of the Government caucus to pass legislation on the subject, the Bill submerged into what can be called the 'invisible stage' of legislation making, until introduction to the House on the 8th of June.

On the 17th of May the Governor-General in his speech from the throne upon the opening of Parliament, foreshadowed the introduction of the legislation with the words;

"The Government will introduce legislation to make it clear that unloading of commercial fishing vessels is not to be undertaken by waterside workers but will be reserved for fishermen assisted where necessary by fish processing workers." 30

The Minister of Fisheries had promised, at the compulsory meeting, that representation on the proposed legislation would be received from interested parties. Who then was consulted?

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29. Evening Post 20.4.79

30. N.Z. Parliamentary Debates Vol.422, p.8.



The main pressure group involved was the Fishing Industry Board as representative of the fishing industry. The other pressure groups consulted were the FOL as representative of union interests, but not until the main points of the proposed bill had been decided upon, and the Employers' Federation who kept a background presence. Other than this input, the main task of shaping the proposed legislation fell to Department of Labour officials in liaison with Chief Parliamentary Counsel, Mr Walter Iles.

(i) The role of the Prime Minister

The Prime Minister, Mr Muldoon, had been present at negotiations leading up to the establishment of the Exclusive Economic Zone in 1977 and is known to have a keen interest in the development of the fishing industry. His influence in the drafting of the legislation is difficult to ascertain, although there is a consciousness of his presence in the background, as has been his wont in industrial relations matters. There are indications that some fishing industry interests were writing directly to him on the whole matter, rather than working through the Ministers of Labour and Agriculture and Fisheries. It is probable that the Prime Minister's influence was strongest prior to the drafting stage and indeed, it is possible to view him as the key figure in the precipitation of the legislation with his press release during the compulsory conference which made negotiation on the matter for anything other than the short-term, impossible.

(ii) The Minister of Labour

Mr Bolger was new to the job of Minister of Labour at the time the dispute arose, having been allocated the Labour portfolio after the 1978 election and upon the retirement of Mr Peter Gordon. Having previously been Minister of Fisheries for two years and at the time the industry was expanding, it can be expected that he had strong views on the question of union involvement in the industry. The Bill was regarded as an industrial relations rather than a fishing matter and ministerial responsibility for it thus fell upon Mr Bolger rather than Mr MacIntyre.

Mr Bolger is very interested in modernisation of the industrial relations system in New Zealand. In an interview in April of 1980



he was reported as saying;

"There is a concern in the community that we don't have as good industrial relations as some of our competitors and this is an additional cost that we bear in New Zealand and unless we can improve our industrial framework, unless we can improve the working of the system, this is going to be to New Zealand's detriment, competitively, internationally."<sup>31</sup>

Accordingly, he is keen to see a move towards industry unions so the employees in a particular industry have an interest in seeing their industry doing well. In a second interview he indicated that in the case of the Fishing Industry (Union Coverage) Act he seized the opportunity to create an industry union.<sup>32</sup> As will be seen, to give effect to Government policy there was really no alternative but to create a provision for an industry union and thus, this particular comment can be seen as politicking, however, Mr Bolger did, throughout the ensuing debates, emphasise heavily the industry union concept and it cannot be discounted that the title of the Bill was intended to reflect this.

(iii) The Government Caucus

The role of caucus with respect to this particular piece of legislation was limited to indicating that the drafting of the legislation should proceed, by unanimously lending support to the announcement to introduce legislation on the matter. It can be expected that the 92-word telegram sent to all MP's by Mr Jarman of the FIB was an influential factor.

(iv) The Government Labour Caucus Committee

The Labour caucus committee was not consulted until the Bill was in its final drafting stages. Its role was, as apparently is customary under Mr Bolger, in contrast to his predecessor Mr Gordon who involved his caucus committee at early stages of legislation drafting, that of indicating a willingness to proceed with the legislation.

(v) The Department of Labour

The Department of Labour rather than the Ministry of Agriculture and Fisheries assumed the main role in the shaping of the Bill.

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31. National Business Review April 14, 1980 p.19.

32. National Business Review April 21, 1980 p.27.



It was the Department's job to put into legislative form, Government policy. Although as announced, this policy was to make it clear by legislation that the unloading of fishing vessels was the work of fishermen and process workers, in fact the policy broadened to cover the separate question of the manning of fishing vessels by the Seamen's and other unions.

There appears to have been an awareness in the Department that the costs of watersider involvement in the unloading of the joint venture fishing vessels had been over-rated. With continuing reports of the Seamen's Union's interest in claiming coverage of the joint venture vessels (exacerbated by the Union's presence at the compulsory meeting to discuss the unloading of the "Wesermunde") and as the Seamen's Union had been the subject of concern at Governmental level at the time of discussions for the establishment of the EEZ, it became apparent that if overall policy of keeping down costs in the fishing industry to allow it to expand further was to be realised, the Seamen's Union and any other Union interested in manning fishing vessels, would have to be brought within the ambit of the proposed legislation.

It had become apparent that an amendment to the Waterfront Industry Act would be insufficient as it would not prevent the Watersiders from negotiating an agreement under the Industrial Relations Act to unload fishing vessels. Such an amendment would also not cover the question of manning of fishing vessels. Although it would have been possible to cover the problem of the seamen manning the fishing vessels by legislation declaring fishermen to be share fishermen and not within a master/servant relationship (thus outside the scope of the Union), this would not have solved the watersider difficulty and as well, there were other unions interested in working on the joint venture vessels - Cooks and Stewards, NZ Merchant Service Guild and NZ Institute of Marine and Power Engineers Incorporated. It was evident that completely new legislation covering the manning and unloading of fishing vessels was necessary.

(vi) The Ministry of Agriculture and Fisheries

Although not responsible for the formulation of the Bill, the Fisheries Management Division had a continuing input role.



(vii) The Fishing Industry Board

The Board acting as the representative of the fishing industry and thus, regarded as the central pressure group, had a great deal of contact with Mr Bolger over this period. Near the end of May the Board was invited along to an evening meeting with the Department of Labour to discuss a draft of the Bill. The Department explained that the intention of the Bill was to exclude existing unions from involvement in the fishing industry. The exclusion included the process workers who had traditional involvement at some ports in the unloading of fishing vessels. The broadness of the proposed legislation suprised the Board which is perhaps not suprising when it is remembered that it was thinking in terms of amendments to the 1976 Waterfront Industry Act. The Board expressed its concern about the exclusion of the process workers from coverage while unloading fishing vessels. There is also some suggestion that at this stage no provision had been written into the Bill for the possibility of a new Union being formed by workers in the industry and that this was pointed out as contrary to democratic principles of freedom of association.

Although the FIB was not privy to all of the confidential drafting stages, its influence was strong as representative of the fishing industry and its strong lobbying of the Minister on the basis of the future success of the fishing industry.

(viii) The Federation of Labour

The FOL was first contacted concerning the proposed legislation on Queen's Birthday Weekend, the 2-4th of June. Mr Knox, newly elected President of the FOL, and Mr Thompson of the Watersiders Federation who was acting secretary of the FOL until the position was filled, met with Mr Bolger early on the morning of Tuesday the 5th of June. Also in attendance were Department of Labour officials.

The men were asked for their comments on the draft legislation. They pointed out that the exclusion of Harbour Board employees by the Bill would lead to the situation where fishing vessels could not be brought into port or tied up. As a result, the Bill was changed to make it clear that work customarily performed by employees



of harbour boards was not covered by the Bill. Concern was also expressed at the exclusion of the process workers from involvement in unloading fishing vessels. The most significant change that occurred as a result of this meeting, as it was this provision in the Act which assumed the most importance in the ensuing debate, was in the provision relating to the machinery provided in the Bill for the setting up of a new union to cover the fishing industry. The draft Bill left the consent to the formation of any such union to the Registrar (as is customary). Apparently, at the time the Registrar was not viewed favourably by the FOL, it being the time when attempts were being made to hold ballots over compulsory unionism. Mr Thompson suggested that perhaps in this instance it would be preferable for the Minister to be the one responsible for giving consent to the formation of such a union, as the Minister was politically accountable in contrast to a paid civil servant. Mr Knox was in favour of the suggestion and pressed for it.

Apart from this meeting there was no consultation with the FOL over the contents of the proposed legislation and indeed, in the Department's view, there would have been very little point in elaborate consultation as the Government policy was to legislate for something the Union movement could never be happy with.

(ix) The Employers Federation

The Employers Federation was in communication with the Department of Labour during the drafting stages and apparently aware of the direction the Bill was taking.

Going on information obtained, it would seem that the Bill was put together very rapidly in its last stages. Up until the beginning of June it was in very rough form, according to groups consulted, and changes suggested by the FOL meeting on the 4th of June were incorporated in the Bill before it was introduced into the House on Friday the 8th of June.



### C. The First Reading

The Bill was introduced into the House on the 8th of June by the Minister of Labour who laid emphasis on the statement that the Bill reinforced the status quo as far as the traditional employment pattern in the fishing industry is concerned. In making it quite clear that fishermen had the right to handle their own products at each stage from catching to wharfside, the Bill excluded all existing unions from coverage of the fishing industry, which would enable the industry, if it wished, to continue on a share-fishing basis in the traditional way. The Bill also provided the machinery for the registration of a single union covering the fishing industry. Before such a union could be formed, the consent of the Minister of Labour would have to be obtained. The rationale for the single industry union was that as boats and crew get larger some fishermen may become employees rather than partners or share fishermen as at present. The Minister added that;

"The concept of a single-industry union is one that I believe is gaining wider acceptance in trade union circles as a means by which unnecessary demarcation disputes can be avoided in the future."<sup>33</sup>

Although the Opposition Labour caucus committee had been alerted to the contents of the Bill prior to its introduction, their response was nevertheless somewhat confused and disjointed. The Opposition speakers immediately focused upon Clause 5, in which the consent of the Minister of Labour is required before a union representing the fishing industry can be formed, and saw it as, yet a further "extension of executive power"<sup>34</sup>, and an attempt to "obtain tame-cat, supine and docile unions".<sup>35</sup> They further warned that the Bill had "the seeds of a great deal of future industrial difficulty"<sup>36</sup> and that legislative restraints would not bring about good industrial relations. The Opposition did not however, force a division on the introduction of the Bill, a failure which was later criticised by Mr Knox.<sup>37</sup>

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33. Hon. J.B. Bolger, NZ Parliamentary Debates Vol.422, p.551

34. Hon. A.J. Faulkner, NZ Parliamentary Debates Vol.422, p.552.

35. Mr S. Rodger, NZ Parliamentary Debates Vol.422, p.560.

36. Mr S. Rodger, NZ Parliamentary Debates Vol.422, p.559.

37. The Southland Times 12.6.79.



During the introduction debate Mr MacIntyre revealed that the ministerial consent had been written into the Bill on the request of Mr Knox and this was met with disbelief both during and after the debate. Mr Knox subsequently indicated<sup>38</sup> that he had indeed asked for the Minister to assume this role as he had no faith in the Registrar, although this did not mean that he was anything other than totally opposed to the Bill overall. In the ensuing debate however, the issue of the Minister's role continued to feature prominently.

The Bill was also greeted with some suspicion by Commercial Fishermen who were concerned that they might be forced to join a union, something they had no desire to do.

The Bill was referred to the Labour Committee with proceedings of the committee during the hearing of evidence, open to the media.

#### D. The Select Committee Stage

During 1979 the Labour Select Committee was comprised of the following Members of Parliament;

Mr Malcolm (Chair) (National)	Mr Bell (National)
Mr Butcher (Labour)	Hon J.B. Bolger (National)
Hon A.J. Faulkner (Labour)	Mr Gray (National)
Mr Isbey (Labour)	Mr Stan Rodger (Labour)
Mr Townshend (National)	Hon. P.I. Wilkinson (National)

These members provided the basic core during the hearings on the Fishing Industry (Union Coverage) Act, although at various times the following National party members appeared as replacements - Mr Holland, Mr Falloon, Mr Cox, Mr Kidd, Mr McKinnon and Mr Elliot. Also in attendance were officials from the Legal and Industrial Relations Divisions of the Department of Labour, and a representative from the Department of Agriculture and Fisheries.

The hearings began on the 31st of July and the Committee received 24 submissions from interested parties, 15 of these appearing before the Committee. (See Appendix III)

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38. Ibid.



Shortly before the hearings began, the FOL had made a last ditch attempt to reach agreement with employer interests and prevent the need for legislation. On the 16th of July the National Executive of the FOL had called a meeting between the Fishing Industry unions and fishing industry employers after they had failed to arrange such a meeting through the Fishing Industry Board. A week before this meeting, a Wellington Trades Council Meeting attended by 250 Unionists carried a unanimous resolution calling the Bill an "undemocratic attack on the historic and traditional trade union rights of New Zealand workers".<sup>39</sup> The meeting with employer interests had in the end, only provided a forum for the airing of the opposing viewpoints.

Broadly speaking, the submissions to the select committee could be divided into two camps; those from fishermen and employers in the fishing industry who supported the Bill and those representing trade union interests who were opposed to it.

The submissions from the New Zealand Federation of Commercial Fishermen and The Southland Fishermen's Co-operative Society Ltd. (the largest group affiliated to the Commercial Fishermen), supported the Bill, seeing it as a recognition by Government of the need to protect them from trade union activity threatening their livelihood.

Submissions from employer interests in the fishing industry were those from High Seas Fisheries, Sealord Products Ltd, Sanford Ltd, Bing Harris Samthwa, and in the same category can be placed the submissions of the Fishing Industry Board, the NZ Seafood Exporters Association and the NZ Seafood Processors Association. The submissions emphasised the need to preserve the status quo in respect of the fishing industry, such arrangements whereby remuneration is dependent upon the catch and its quality, having evolved to ensure flexibility of operation in response to the hunting nature of the industry and the extreme perishability of the product. The submissions also heavily stressed the need for the New Zealand fishing industry to remain competitive if it was to develop.

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39. The Timaru Herald 10.7.79



It was argued that joint venture schemes are an essential part of the development of our fishing resources, as under the Law of the sea, New Zealand must let foreign vessels fish within the zone for fish which New Zealand cannot herself land. As the joint venture schemes have to compete with these foreign vessels who can, unlike the joint venture vessels, transship their catches at sea to take to their markets, and as the joint ventures are competing on the same markets as the foreign vessels, it is absolutely essential that costs be kept down. The involvement of the maritime unions in the fishing industry, it was argued, would ruin competitiveness on international markets and thus hinder the expansion of the New Zealand fishing industry.

A number of Harbour Boards, the Southland Harbour Board, the Nelson Harbour Board, the Timaru Harbour Board and the Harbours Association of New Zealand, made submissions which were generally in favour of the Bill, noting satisfaction that their employees had not been included within the ambit of the Bill. However, two of the submissions,<sup>40</sup> wondered "why a less controversial method of achieving the same result was not attempted".<sup>41</sup>

Submissions representing union interests and one from the Council for Civil Liberties, were firmly opposed to the Bill, seeing it as an attack on the ability of workers to freely combine in trade unions and as contravening International Labour Convention 87 on Freedom of Association.<sup>42</sup> The Maritime Unions were particularly opposed to the Bill on the grounds that it removed coverage they already had in the industry, and argued that it was not unreasonable for them to expect to become involved in the industry as it expanded.

More specifically, concern was expressed in a number of submissions over the exclusion of the process workers from union coverage while involved in the unloading of fishing vessels. The Process Workers

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40. The Harbours Association of New Zealand and The Southland Harbour Board.

41. The Southland Harbour Board. p.3

42. Subsequent to the Bills report back to the House, it was discovered that the Bill also apparently contravened Article 8 1 (a) of the International Covenant on Economic, Social and Cultural Rights which New Zealand ratified on 19 December 1978.



were naturally unhappy with the way the Bill removed coverage from them while unloading fishing vessels. In their view, it made utter nonsense of the statement by Mr MacIntyre at the compulsory meeting to discuss the unloading of fishing vessels, when he said that "the Government's position had always been that the work of unloading fishing vessels was the work of fishermen and process workers". A number of those submissions in favour of the Bill were concerned and suprised that the process workers' role in unloading fishing vessels was unrecognised by the Bill and expressed fears that it would harm good industrial relations.<sup>43</sup>

Although many employer interests expressed the hope that the traditionally good industrial relations situation prevailing in the industry would continue, the Employers' Federation expressed the view that as Government "is committed to an industry union for fishing it should 'go the whole hog'".<sup>44</sup> They submitted that the legislation should be extended to encompass not only the sea-going side of the industry but the shore-side as well. This, it was suggested, would solve the Food Processors problem and likely future difficulties of dual membership claims. This suggestion also spurred the Drivers' Federation to make a submission although they had originally not intended to do so. It was concerned that coverage of the Bill could be "arbitrarily extended to include whichever group of workers the Employers' Federation happens to name".<sup>45</sup> Its submission contained the most powerful of the rhetoric found in the union submissions, for example;

"every attempt is being made to create a docile union movement incapable of effectively representing the interests and aspirations of working people in New Zealand. Apparently the Employers Federation and the Government have taken to heart the comments of a member of a German Investment Mission who was reported as saying that he did not like the industrial relations set up currently operating in New Zealand."<sup>46</sup>

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43. Sanford Ltd.

44. The NZ Employers' Federation, p.5.

45. The New Zealand Drivers' Federation, p.3.

46. Ibid. p.1.



Submissions supporting the Bill were generally in favour of the concept of an industry union for the fishing industry seeing it as a way of establishing the machinery for the development and growth of the industry to the benefit of the country and those employed in the industry,<sup>47</sup> however, the Commercial Fishermen mentioned that, given the present state of the industry, it was unlikely such a union would be formed in the near future.<sup>48</sup>

The requirement of ministerial consent prior to the registration of a fishing industry union was regarded with suspicion by submissions from both those opposing and those supporting the Bill. In the Union submissions the provision for ministerial consent became somewhat merged with the idea of setting up 'puppet unions'.

The Committee conducted its deliberations on the 18th of September and the Bill was reported back to the House on the 21st of September. (See Appendix IV - The Bill as reported back from Committee)

Amendments made to the Bill by the Select Committee closed potential loopholes which would have thwarted the policy intention of the Bill. On the suggestion of the submission from High Seas Fisheries, the definition of 'fishing industry' was widened and a definition of 'wharf limits' included, as in its original form the Bill would have excluded watersiders from being on board a fishing vessel but not from doing work alongside the vessel. The word 'bait' was added to the definition section to expand on the items able to be loaded on or unloaded from fishing boats by the fishermen. An amendment to Clause 5, granted the Minister more flexibility in granting his consent before a new union could be formed. Now he was required to first consult with the FOL. Finally, the Arbitration Court was, when considering any dispute related to the fishing industry, required to have regard to the special circumstances of fishing. A similar provision to this exists in the Agricultural Workers Act 1977.

In the debate on the report back of the Bill to the House, Mr Malcolm stated that "Of the submissions received, 12 were clearly in favour of the Bill and 9 were opposed to it".<sup>49</sup> Given the

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47. High Seas Fisheries (NZ) Limited

48. NZ Federation of Commercial Fishermen

49. NZ Parliamentary Debates Vol.426, p.3111.



qualifications in the submissions of some of those "clearly in favour" of the Bill, this claim would seem a little optimistic. The ensuing short debate was rather more general than normally would be expected on a debate on the reporting back of a bill from a committee when it is usual to discuss amendments to the Bill and submissions received. Labour speaker, Mr Isbey, warned of the industrial problems which would result from the Bill's passage and alluded to the General Strike a few days before.<sup>50</sup> The Opposition opposed the recommendation that the Bill be allowed to proceed as amended and the House divided on the question 'That the report do lie on the table'.

#### E. The Second Reading

The Bill came up for its second reading on the 12th of October but Mr Bolger only had time to indicate what he saw as the very clear division in approach between the Government and the Opposition on how the fishing industry will develop, before the House adjourned for the weekend. The debate resumed on the 26th of October.

The debate canvassed all the issues raised earlier, however, there was a noticeable shift in emphasis in the Government line of argument from that of reinforcement of the status quo in so far as the traditional employment pattern of the industry is concerned, to ensure restrictive practices that have plagued other industries are kept out, to an emphasis on the purpose of the Bill being to facilitate the expansion and development of the fishing industry. At the same time, the National Development Bill was progressing through the legislative system and the Government policy emerging was one of an emphasis on national development. The political rhetoric took the form of statements such as Bolger's;

"The Government is on the side of development, but the Opposition - as with this Bill - is on the side of those who seek to frustrate the development of industry in New Zealand."<sup>51</sup>

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50. NZ Parliamentary Debates Vol.426, p.3123.

51. NZ Parliamentary Debates Vol.427, p.3855.



In response, the Opposition took up a stance along the lines of the following words from Mr Isbey;

"We believe that the Government and the Minister of Labour have been subjected to outside influence by overseas interests and multinationals from other countries. The Minister of Labour said loudly and clearly that he would tell the world that New Zealand would not have expensive manning situations in its fishing industry ... He is telling the world we will have cheap labour." 52

In September, the "Wesermunde" had unloaded 9 tonnes of terakihi fillets for sale onto the Wellington market, in direct competition with local fishermen. The Commercial fishermen felt they had been 'stabbed in the back' after their fight to save the "Wesermunde's" operations.<sup>53</sup> Mr Isbey raised this matter in the debate and commented that the fishermen have now found that the real threat is not the trade unions but the joint ventures; "The Government and the Minister of Labour conned the commercial fishermen into believing that the trade union movement would be a threat to them." 54

The debate resumed on the 30th of October with Mr Malcolm commenting on how the increase in volume of the fishing industry in the last 4-5 years had been 400%, whilst the increase in value had been 500%, these figures holding the key to union interest in the industry. In commenting on the watersiders union, he said;

"if I were the secretary of that union I would want to be in on this lucrative industry ... While the union's action is understandable it is not necessarily in the interests of the fishing industry or the country." 55

The next Opposition speaker, the Hon. Sir Basil Arthur hammered the theme of "the determination of the Government to take into its hands as much Executive power as it possibly can as quickly as it can" 56 and told of how the Bill was;

"viewed by the industrial movement as an attack on its total structure, not just on the areas covered in the fishing industry. The industrial movement is asking what will be next. Will there be an energy union ..." 57

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52. NZ Parliamentary Debates Vol.427,p.3858.

53. Evening Post 25.9.79

54. NZ Parliamentary Debates Vol.427,p.3859.

55. NZ Parliamentary Debates Vol.427,p.3892.

56. NZ Parliamentary Debates Vol.427,p.3895.

57. NZ Parliamentary Debates Vol.427,p.3894.



The following Government speaker, the Hon. P.I. Wilkinson, developed the theme of the virtues of industry unions.

The Bill did not remove the coverage that the Seamen's Union have of the Ministry of Agriculture and Fisheries two research vessels, as these vessels do not take for 'profit' in terms of the definition of 'fishing industry' in the Bill. Furthermore, in the absence of an express clause binding the Crown, the Crown is not bound by Acts of Parliament. In the debate Mr MacIntyre used this manning as an example of how expensive it is to have vessels manned by the Seamen's union crews.

Article 8 1 (a) of the International Covenant on Economic, Social and Cultural Rights, which New Zealand ratified on 19 December 1978, was raised by Labour members, Mr Stan Rodger and Mr Frank O'Flynn, who claimed that the Bill cut across the convention.

The convention reads;

"(1) The States parties to the covenant undertake to ensure:

(a) The right of everyone to form trade unions and to join the trade union of his choice subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restriction may be placed on the exercise of this right, other than those prescribed by law, and which are necessary in a democratic society in the interests of national security, or public order, or for the protection of the rights and freedoms of others."

The Minister responded to this claim in his summing up by emphasising the last sentence of this convention and stated;

"The Bill is in the House for that very purpose - to preserve and protect the rights and freedoms of the fishermen of New Zealand who would be coerced or forced into a union that they had no historical association with whatever." 58

Opposition member, Mr Butcher, gave a speech which showed that he at least, had carefully considered the submissions to the select committee. In his view, the only point at issue in the series of meetings leading up to the Bill's introduction, was the question of what is and what is not, cargo. He pointed out that since 1924 there has been a general order operating among the Waterfront Workers Union that prohibits foreign seamen from working vessels larger than



275 tonnes if waterfront industry workers are available (the "Wesermunde" is 3500 tonnes). The issue in dispute between the Fishing Industry Board and the watersiders, he said, was whether or not it was 'cargo' coming off the "Wesermunde" and this was a matter of interpretation for the appropriate tribunal - the Waterfront Industry Tribunal - not a call for legislation. At the heart of the matter lay a misunderstanding by the commercial fishermen of the nature of the Unions' claim. They believed it to be a claim to take away fishermens' traditional rights to unload fishing vessels and instead of obeying the first rule of industrial relations by going to the union with the authority to make the agreement, they went to the Government who rushed into legislation. As such, the Bill ignored the principles on which good industrial relations are based and would cause nothing but trouble. Accordingly, he moved, as a procedural amendment;

"That the Fishing Industry (Union Coverage) Bill do lie upon the table of the House for 12 months and a working committee be formed under the joint chairmanship of Mr F Corner of the Fishing Industry Board and Mr J Knox of the Federation of Labour to explore the serious underlying implications to the Bill, to devise means by which continuing industrial harmony in the industry may be ensured for the purposes of the smooth development of a sound and economic fishing industry, and to allow the parties involved to bring down a joint formula that will serve the interests of both New Zealand and the fishing industry as a whole." 59

Mr Butcher supported his amendment by arguing that the Government did not understand that industrial relations is a system of joint regulation of industry, not an arbitrarily and unilaterally imposed set of laws. The Deputy Speaker (Mr Jack Luxton) ruled the proposed amendment out of order on the ground that Parliament did not have the power to do what was proposed. Mr O'Flynn shortly after, moved as an alternative and simpler amendment;

"That the motion before the House be amended by deleting the word 'now' and adding at the end of the question before the House the words 'this day 12 months'" 60

pursuant to Standing Order 227.

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59. NZ Parliamentary Debates Vol.427,p.3912.

60. NZ Parliamentary Debates Vol.427,p.3918.



Mr Marshall seconded the motion but a vote on the amendment was lost 35/42.

The second reading debate, a lengthy one involving 14 speakers, finally ended with a division on the question "That this Bill be now read a second time", resulting in Ayes, 42; Noes, 35.

#### F. The Committee of the Whole House

The Bill was referred to the committee of the whole House on the 8th of November and amendments made by the Labour Select Committee were read into the Bill. There was a division on the question of whether the Short Title should be agreed to and minor amendments to Clauses 2 and 8, as set out in Supplementary Order Paper 39 were moved and agreed to.

#### G. The Third Reading

When the Bill came up for its third reading on the 13th of November, no new issues were raised and two speakers only were heard from each side.<sup>61</sup> The Opposition once again forced a division which they lost 41/30.

The Fishing Industry (Union Coverage) Act 1979 received the Royal Assent and became law on the 30th of November 1979.

#### H. Events Subsequent to the Passing of the Act

A period of quiet on the union front followed the passing of the Act, a quiet which suprised the Fishing Industry Board who had expected some sort of protest. At the end of February 1980, just when it seemed the whole matter had died down, the watersiders placed a ban on the export of fish and fish products. Although the ban seemed to result initially from a breakdown in award talks, it quickly became identified with a refusal of the Watersiders to recognise the legislation. Indeed, the ban came right on the heels of the expiry of the temporary agreement giving them rights to unload the "Wesermunde". FOL President, Mr Jim Knox was reported as saying;

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61. Speakers were the Hon. J. B. Bolger, Hon. A. J. Faulkner, Hon. P. I. Wilkinson and Mr Isbey.



"The Federation strongly opposed the fishing industry union coverage act in submissions and made it clear to the Government that it would not be accepted.

We consider that the agreement between the industry and unions last year covering the operations of the Wesermunde in Bluff should have been extended by negotiation.

The Government action in bringing down the legislation has done nothing but create major unrest."<sup>62</sup>

Moreover, the Unions saw the issues as going wider than simply the fishing industry. For them it was simply the thin end of the wedge, union coverage being a dangerous precedent which does not simply start and end with the fishing industry. The FOL had lodged a formal complaint with the International Labour Organisation, claiming that the Act is in direct defiance of the ILO Convention on Freedom of Association. The result is awaited.

The Fishing Industry Board found itself under extreme pressure. The stores for fish fill within two weeks and with the diversity of interests represented by the Board, often not compatible, it was having difficulty presenting a united front. At the end of October 1979, the Managing Director of the German half of the "Wesermunde" joint venture had announced that the vessel was to stay on in New Zealand for at least another year, the next year to be on a purely commercial basis.<sup>63</sup> The same article noted that the New Zealand Federation of Commercial Fishermen were meeting in Wellington and "High on the agenda for its executive was a review of its previously welcoming stance to joint venture boats".<sup>64</sup> Approaches by the Board to Mr Bolger for intervention met with little success and the Board found that it had little option but to accept the watersiders offer to lift the ban if the Board would enter into talks with them on proposals that the watersiders handle all catch from joint ventures which is not to be processed and is being unloaded from conventional rather than non-fishing berths and where the vessels concerned are crewed wholly or substantially by foreign nationals. In other words, the proposals were essentially based on the lines of the FOL compromise agreement between the concerned unions which was put before the compulsory "Wesermunde" meeting in April the year before. At the time of writing, consultations between the Board and the Watersiders Federation are continuing, apparently along these lines.

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62. Evening Post 29.2.80

63. Evening Post 26.10.79

64. Ibid.



In its annual report for the year ended 31 March 1980 (C.6), the Fishing Industry Board noted that although the industry had earned a record \$97.6 million in export earnings in the past year, the industry was not without difficulties which if not resolved would mean "not only the future expansion but even the present industry will falter".<sup>65</sup> In February 1980, the Board and the Director of the Fisheries Division of the Ministry of Agriculture and Fisheries, Mr B.T. Cunningham, had spoken out on problems facing the fishing industry.<sup>66</sup> In their view, the fishing bonanza was over; it had been allowed to expand too rapidly and is now overcapitalised with too many boats. The joint fishing ventures are a particular bone of contention with local fishermen, who see them as a threat to their livelihood. There is resentment that joint venture schemes, where New Zealand companies often with no background in fishing, join up with a foreign concern which provides the ship and the crew, have not increased New Zealand involvement as originally planned. The Board's annual report urged greater 'New Zealandisation' of the joint venture schemes if New Zealand was to benefit from them. In recent years nine of the world's fishing grounds have collapsed and the Ministry of Agriculture and Fisheries' research division had forecast over 2 years ago, problems concerning overfishing of inshore fields although it had only recently received the results of catch returns which tended to confirm this. In the early stages after the introduction of the 200-mile EEZ the Ministry had been obliged to rely on foreign catch data, much of which has since been found to be grossly inaccurate. The current problem facing the Board is how to get local fishermen out of the over-exploited inshore waters into deepsea trawling. This can only be done, not only by providing opportunities for New Zealanders on foreign crewed mixed fishing venture vessels but also by providing opportunities for the owner-operators to move out into the under-exploited areas which requires investment on a larger scale than previously. In the Board's view; "We believe that what is required is a fishing development plan".<sup>67</sup>

In late May, early June of 1980, after the end of the lengthy strike at Kinleith, Government had adopted a sufficiently conciliatory stance towards the union movement to enable tripartate discussions

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65. Report of the New Zealand Fishing Industry Board. C.6. For the year ended 31 March 1980, p.4.

66. Evening Post 27.2.80 and NZ Herald 12.3.80

67. Op.cit.n.65, p.6.



between itself, the FOL and Employers' Federation to begin. Discussions centered around a new wage fixing policy and as part of this, one of the points being considered was the concept of moving towards vertical industry wide negotiations away from horizontal craft structures.

As noted in the introductory paragraph, the 1970s have witnessed a trend of liberalisation in some of all manner of political parameters in the constitutional structure of our legislative machinery. The view emerging was that of a central government, through the medium of a dominant executive, using the legislative system to give effect to decisions made without due regard to the wishes of the public at large. Is this view reasonable? If so, how and why is such a trend occurring?

It is proposed to consider the question of the present state of our legislative machinery by analysing the material already presented. Firstly, within the context of New Zealand's 'preferred' political order, 'liberal-democracy', seeing how it conforms to these ideals, and secondly, from what can be called, for the sake of convenience, a conflict perspective, which views legislative enactments as a means through which government in a given society attempts to preserve the status quo. In our society, a capitalist economy. It is hoped that, by utilising these two opposing approaches to the same material, some insights into the working realities of our legislative system will be possible.

#### A. A Liberal-Democracy's Interpretation of the Fishing Industry (Union Coverage) Act 1979.

New Zealand's 'preferred' political order, liberal-democracy, focuses on the ideal of an elected representative government controlled by the majority in such a way that minority rights can be protected. At the core of liberal-democracy lies the values of freedom and individualism. For this reason the State is regarded as being



## II. ANALYSIS

Legislative law, although arguably not the main source of social control is, at the very least, the most visible. As such it is important to make attempts to understand the process of legislation making and the reasons for the enactment of particular pieces of legislation. Such an understanding cannot be reached by examining a particular piece of legislation in isolation from wider political, economic and social concerns.

As noted in the introductory paragraph, the 1970s bore witness to a rash of literature from those of all manner of political persuasion on the unsatisfactory state of our legislative machinery. The view emerging was that of a central government, through the medium of a dominant executive, using the legislative system to give effect to decisions made without due regard to the wishes of the public at large. Is this view reasonably held? If so, how and why is such a trend occurring?

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### A. A Liberal-Democrat's Interpretation of the Fishing Industry (Union Coverage) Act 1979.

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suspicion, seen as needing to be limited and controlled insofar as it steps beyond the boundaries of being a resolver of conflict, such conflict resulting from clashes between competing equally able groups. Although it is obvious enough that this is the ideal rather than practical reality, a Government departs from the ideal too blatantly at its own peril. Great emphasis is thus placed on gestures indicating that government is not departing too widely from its mandate; in particular the emphasis upon consultation with interested and affected parties and the protection of individual rights vis a vis the State apparatus.

How does the passage of the Fishing Industry (Union Coverage) Act measure up to the liberal-democratic ideal? The Act was and is regarded as a highly controversial piece of legislation. It attracted the total opposition of the Opposition Parliamentary party and the union movement has refused to recognise its validity, forcing the parties back into negotiations outside the legislative framework. Even groups who pressured for the legislation, hold an ambivalent attitude towards it; satisfied in that it indicates Government's stance on the matter, but concerned that in many ways it has only made things more difficult for them.

On the face of it, the Act does not appear to fit comfortably with the ideal of liberal democratic theory of the resolution of conflicts and the finding of a consensus. It is not only now, with the advantage of hindsight, that it is possible to say that the result of the legislation has been heightened conflict. Although on the introduction of the Bill, Mr Bolger, in reply to Mr Isbey's query as to whether the Bill was designed to improve industrial relations, said 'categorically' that it was,<sup>68</sup> in the second reading debate, Mr Malcolm said, "the inevitability of demarcation disputes will remain regardless of whether or not the Bill is passed".<sup>69</sup> The Opposition constantly reiterated through all the debates that the legislation was 'provocative' and would bring disruption into the fishing industry. It is evident that the Government was determined to push on with this legislation in spite of the knowledge that it would cause industrial problems.

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68. NZ Parliamentary Debates, Vol.422,p.556.

69. NZ Parliamentary Debates, Vol.427,p.3892.



It would seem appropriate to focus in more detail on three particular aspects of liberal-democracy; the ideals of, consultation with various groups and interests affected before government decisions are made, the emphasis on citizens' freedoms and civil liberties and thirdly, and overriding, the question of limited government as against the individual and the group.

(i) The Ideal of Consultation

For the purposes of legislative processes it is convenient to distinguish between informal consultation, as evidenced by consultation with various groups before and during the drafting of legislation and formal, as evidenced by the select committee procedure after introduction of a Bill into the House.

Presumably, the Government would point to the compulsory meeting of the 17th and 18th of April 1979, to discuss the unloading of fishing vessels, as a consultation forum before the decision to legislate was taken. However, the Prime Minister's announcement of the Government's position so soon after the conference had begun, totally destroyed any chance there might have been for the matter to be resolved by negotiation without the need for legislation. How real the possibility of such negotiation can only be a matter of speculation. The Fishing Industry Board, in the face of a lack of Government commitment, had moved towards a compromise stance before the meeting began and the unions had produced a compromise formula for the meeting to discuss. High Seas however, had been lobbying the Government not only on the basis of watersider unloadings of the "Wesermunde" but also on the basis of the problems if other maritime unions became involved in the industry. The presence of the Seamen at the meeting may have been the 'last straw' for the Prime Minister. The Commercial Fishermen had also been adopting an uncompromising stance on the matter, remaining convinced that it was only a matter of time before the Watersiders moved in on all fishing boats if they won this battle.

It has been noted that consultation in the drafting stages was heavily weighted in favour of fishing industry interests. It is fair to say that the unions were more 'informed' than consulted.



Select committees are now mandatory for all but money bills<sup>70</sup> and have been hailed as an important step towards the reform of Parliament. Ideally, they are regarded as an arena in which the Government can consult more widely before a given Bill becomes law. Amendments made at the select committee stage on the Fishing Industry (Union Coverage) Bill, however, tightened up the Bill rather than making any concessions to groups adversely affected by the legislation. Submissions from all except those who had been closely involved in the drafting stages, lacked detail and dealt mainly with principle. Does this indicate difficulty in getting to grasp with the full implications of a Bill in a way to make worthwhile comments on specific provisions without prior consultation, or does it indicate a cynicism on the value of making submissions to the select committee? The latter would seem to be the case with some of the Union submissions.

There were constant changes in select committee personnel during the hearings, particularly among government members. Were the MPs really interested in coming to grips with the legislation or interested in listening to opposing points of view? Did they regard it as a waste of time when they realised that policy lines had been well and truly set; or was it more a lack of time available to get a grasp of a not uncomplicated Bill?

(ii) The Civil Liberties Ideal

At the core of liberal-democracy is an emphasis on certain civil liberties for citizens as a means of guaranteeing that the State will observe limitations on the use of power. Much of the outrage over the Fishing Industry (Union Coverage) Act, therefore, centered around the claim that the Act breached International Labour Organisation Convention 87 concerning freedom of association (which New Zealand has not actually ratified) and Article 8 1 (a) of the International Covenant on Economic, Social and Cultural Rights which New Zealand had ratified on 19 December 1978. Part of the liberal-democratic ideal is the emphasis on the rule of law and international conventions have become part of this concept.

The Government claimed that the Act did not in fact breach the Covenant as it fell within the exception of restrictions on the right

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70. Standing Order 221.



of everyone to form trade unions, namely if "for the protection of the rights and freedoms of others". The Bill, in the words of Mr Bolger in his second reading speech was to;

"preserve and protect the rights and freedoms of the fishermen of New Zealand who would be coerced or forced into a union that they had no historical association with whatever."<sup>71</sup>

Whether or not the Bill breached the covenant seems to revolve around the factual interpretation at the centre of the dispute. The Watersiders had consistently held to the line that they were only interested in unloading the big joint venture vessels on the basis that they were foreign and discharging cargo and the Seamen's Union had been checking manning details with German unions with the aim of ensuring that the German and Portugeuse crew of the "Wesermunde" were members of the local union (as is required under the rules of the International Transport Union to which the New Zealand Seamen's Union is affiliated). The Seamen's Union had apparently long given up attempts to unionize New Zealand fishermen and this role was and is being performed anyway, by the New Zealand Sharefishermen's Association. On this view, there was no question of New Zealand fishermen being forced into unions they had not been associated with. In his final summing up on the third reading however, Mr Bolger changed his tack on this issue by rephrasing the justification for the Bill as;

"having been brought forward to protect the rights and freedoms of New Zealand fishermen to manage and organise the industry as they - not some outside union with no traditional involvement - want it managed and organised."<sup>72</sup>

From the point of view of those who regarded the Act as breaching the Convention, this statement could be read as saying that employers in the fishing industry have a right to expand without incurring costs that other industries would expect to incur. Is this a 'right and freedom' which a convention on the right to form trade unions would regard as a legitimate exception?

However, as the question of the Watersiders and Seamens intentions in the long term, was very much in dispute and as the maritime unions do not enjoy a favourable public image, the Bolger interpretation would probably be generally accepted by the public at large and the Act not regarded as flagrantly ignoring the convention.

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71. NZ Parliamentary Debates Vol.427,p.3921.

72. NZ Parliamentary Debates Vol.427,p.4284.



(iii) The Ideal of Limited Government

As originally announced, the legislation was to be to make it clear that the "unloading of fishing vessels was the work of fishermen and process workers".<sup>73</sup> However, as has been seen, the legislation in fact became far wider than this, being so coined to prevent the involvement of any union in the fishing industry except one formed by the fishermen themselves and regarded by the Minister as properly representing the industry. By the second reading debate the Bill was being couched in terms such as, "The Bill before the House is designed to promote the national development of the country and the development of the fishing industry".<sup>74</sup> This was to be done by preventing the "intrusion of some of the more expensive and restrictive union practices into the fishing industry".<sup>75</sup> Within the professed aims of our system, the widening of the scope of the legislation would be justifiable if it was nevertheless in accordance with majority wishes. Did the Government have a mandate to pass legislation which in effect, gave special development privileges to the fishing industry?

Traditionally, the first place to look for such a mandate, is the election manifesto, as the document assumed to be that on the strength of which a government is elected into office by the people. The 1978 National Party Manifesto in relation to the fishing industry contained the following general statement;

"National, having launched the fishing industry on a pattern of growth and development, will ensure that this growth continues to the benefit of New Zealand's fishermen and the nation's economy."

Was this enough? The only relevant section of the industrial relations policy read;

"National will, with the co-operation of the FOL continue to encourage union amalgamation or association at plant level. It believes that this is best achieved by consultation and agreement."

It is possible that, standing on its own, the claim by the Watersiders to unload the "Wesermunde" on the basis that the processed fish was 'cargo', would not have been regarded as unreasonable by the Government. However, once wider implications were pointed out,

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73. Op.cit. n.26.

74. NZ Parliamentary Debates Vol.427,p.3856, Hon.J.B.Bolger.

75. NZ Parliamentary Debates Vol.426,p.3532, Hon.J.B.Bolger.



the potential involvement of all the maritime unions, the intention to legislate for wider contingencies became determined. The expansion of the fishing industry became, quite naturally, part and parcel of the Government's emerging national development programme; they were now looking ahead, beyond the immediate needs of those who had asked for the legislation. The Government's intention became that of ensuring that in the future, when it was anticipated there would be many larger fishing boats and more 'workers' in the truer sense, that union involvement in the industry would be limited to those who had previously had the most involvement and experience in the industry and to ensure that the 'restrictive' practices of the maritime unions would be kept out.

Is the projection of government into the area of future economic planning, assuming certain directions of development without full consultation with the electorate, a legitimate function within the liberal-democratic model? This trend of government has been severely criticised by commentators who perceive this type of activity as an unwarranted shift towards executive government in New Zealand. 1979 was a somewhat unique year in this regard with the passing of a number of statutes which appeared to compound this tendency more rapidly; the National Development Act, the Commerce Amendment Act and the Remuneration Act. The views of the critics can be called the "constitutional shift" interpretation of current trends within our political process and can be expressed as follows;

"In times of economic and social anxiety it is often the case that there are calls for action regardless of the consequences to the more intangible values of society, to established constitutional practices and principles. It is understandable that governments, whatever political persuasion, should be tempted to override such practices and principles. But the temptation should be resisted. If New Zealand is to move towards an increasingly centralised society where all important decisions are taken by the Executive, where government is by Executive regulation and not by debate and legislation then the public should be very clear about what is happening. Such a shift in the constitutional balance of power should not be decided by default." 76

Although this quotation specifically refers to the insertion into legislation of what are known as 'Henry VIII' clauses, which give regulation making power to the Executive in terms which make review difficult (the three Acts mentioned above being examples of its use) the argument is also relevant in general terms to the Fishing Industry

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76. "More Government by Regulation - Disturbing Constitutional Changes" Auckland District Law Society Public Issues Committee, 25.10.70.



(Union Coverage) Act. The "constitutional shift" view is within the liberal-democratic mode of thinking and calls for vigilance to ensure that a shift from established democratic principles of government to government by an executive does not occur by default. As such, it adheres to the view that enough of the integrity of liberal-democracy remains to enable the citizenry to still exert an influence over whether the movement to executive dominance should continue.

As pointed out by the authors of the previous quotation, shifts from established constitutional practices often occur in times of economic and social anxiety. In this regard it is difficult to isolate this particular Act from the Government's response to a general economic downturn by revealing an intention to embark upon a programme of unprecedented economic and industrial development with the establishment of capital intensive industries dependent upon the obtaining of overseas investment finance. Such a programme involves, of necessity, that the Government play an even greater role in economic planning which also, of course, includes industrial relations. Indeed the Act was immediately categorised as a "labour control" device for the purposes of overseas developers, by the union movement. The FOL regarded it as "a particularly repugnant piece of legislation",<sup>77</sup> "a direct attack upon the rights of workers to join a trade union of their choice"<sup>78</sup> and as allowing "the creation of a Government-sponsored State controlled union in which the Government determined membership".<sup>79</sup>

The Government's own view appears to be that greater government control in the area is legitimate. For example, Bolger has said;

"We need to get accepted in trade union circles in the next little while that the Government has a legitimate role, has a right to be concerned, and, in certain circumstances, to be involved."<sup>80</sup>

However, does this legislation in fact represent part of a constitutional shift away from the principles of liberal-democracy? The issue most constitutional reformers would hone in on, would be the concept of the establishment of a single industry union

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77. Federation of Labour National Conference. Evening Post 6.5.80

78. Ibid.

79. Ibid.

80. National Business Review April 21, 1980.



only with the consent of the Minister. However, as noted, it was Mr Knox who had asked for the Minister to be in charge, and for the reason that he had more faith in the Minister than in the Registrar. Proof that the democratic system is alive and well? Or the only concession to a group being legislated against?

It is possible to argue that the claim of the establishment of a Minister's puppet union is nothing more than rhetoric and was cited as yet another example of unwarranted executive power only because there was so much literature at the time on the subject and because of the type of Acts going through the legislative process at the same time. After all, within the mode of liberal-democracy, it can be expected that opposition to a government in such a political system would be expressed in terms of movement to an executive government, away from the ideal of limited and representative government. It would be expected that criticism would be along the lines of government trampling on civil liberties, 'sticking its nose into industrial relations' and selling off New Zealand's resources cheaply to overseas investors. This is the tenor in which opposition to a government would be expressed, particularly bearing in mind that the present Government is not a majority Government in terms of votes cast. In the 1978 election, although the Opposition received 40.4% of the vote in contrast to the Government's 39.8%, the Opposition received 10 less seats.

Even if the Act cannot be exactly described as a 'swoop' towards executive power, there are features about the passage of the Act which would disturb the dedicated liberal-democrat. Does the Act illustrate a trend towards Prime-Ministerial government? Would, for example, negotiation have been possible 'but for' the Prime Minister's intervention? Is the legislative system so open that one determined pressure group can get a Government to commit itself to legislation when proper consultation with all groups concerned might have provided a preferable remedy? To those with many years experience in the industry, the fishing industry seems inherently unsuited for the imposition of a legislative framework from above without proper discussion beforehand. Local conditions



and customs vary widely in the industry.

In many ways, the Act looks rather like a pragmatic, even emotional response to a particular incident, leading to a decision to legislate being taken without proper consideration of the matter. Taking into account the aftermath of the passing of the Act, the refusal to recognise the Act by the union movement and the subsequent forcing of the fishing industry into negotiation over matters concerning union involvement in the joint venture schemes, it is easy to conclude that the wisest course for all concerned would have been to delay the passage of the Bill for all concerned parties to talk over the problems properly. Does our legislative system lack checks and balances to ensure decisions to legislate are not taken prematurely in the heat of the moment? The claimed threat of the rapid unionisation of the fishing industry and thus loss of profits, was surely not so imminent that rushed legislation was called for? Subsequent events showed that in the industrial relations area, legislation is no substitute for sound negotiation. The Bill drawn up to give effect to Government policy on the matter was conceptually neat and it can be expected that those involved in the drafting of it were pleased with the result. However, it is another thing, within the boundaries of liberal-democracy, to impose such schemes from above when one of the affected parties has enough muscle to prevent it working.

Within the liberal-democratic mode of thinking, to answer the question, how well does the legislative process respond to pressures from different elements in Government and the community, the answer to the question, did the Act achieve its stated objectives, would be looked for. In the case of the Fishing Industry (Union Coverage) Act 1979, the stated objective of regulating union coverage in the fishing industry by excluding existing union coverage (those registered under the Industrial Relations Act 1973) from the fishing industry, has not been met in practice. The Watersiders and Seamen's Unions are continuing to make claims for coverage in respect of the joint venture schemes.



B. A Conflict Theoretician's Interpretation of the Fishing Industry (Union Coverage) Act 1979.

A Conflict Theoretician would perhaps be popularly regarded as one who holds a view along the lines of "law is the tool of the capitalist classes"<sup>81</sup> and indeed, when dealing with industrial relations type legislation, there is a temptation to put such enactments into this category. This approach however, ignores the mobilisation of ideology by interest groups to achieve their goals.

Ideology can be viewed as "an integral and substantive element in all social practice",<sup>82</sup> the cement holding unstable social structures together. "Legal enactments are partly ideological and partly political forms"<sup>83</sup> and as such cannot be just an instrument of class rule, "but can only successfully operate on the basis of a politico-ideological consensus (whether spontaneous or constructed)".<sup>84</sup> The politico-ideological consensus in New Zealand is that of liberal-democracy and thus from this standpoint;

"[liberal-democratic theory can be taken seriously only as an ideology which supports the existing social and economic forces. It fails ... as a way of understanding the current order of society." <sup>85</sup>

Law is not as pluralist as other ideological forms as it is subject to the political process and hence, "the relative ability of different classes and groups to establish their ideas as law".<sup>86</sup> This means that although during periods of comparative prosperity such as the post war affluent period, the State is able to reflect the interests of various groups (union demands for example, can be handled within the ideological canopy), in times of recession the myth of the neutral state is difficult to uphold. In such slump periods the extra burdens placed upon workers lead to intensified class conflict. With world capitalism suffering a crisis of profitability, exacerbated by growing inflation, the

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81. i.e. Quinney, R. "Crime Control in Capitalist Society: a critical philosophy of legal order" in Taylor, I., Walton, P., and Young, J. Critical Criminology (London, 1975) 181, 192.

82. Sumner, C. Reading Ideologies (London, 1979) 290.

83. Sumner, op.cit. 270.

84. Sumner, op.cit. 269.

85. Megill, Kenneth A. The New Democratic Theory (New York, 1970) 28.

86. Sumner, op.cit. 270.



question arises, who is to bear the cost of the crisis? To maintain its position the ruling class is forced to move to a more coercive state. As a result, in the words of one commentator, "The magic of the social democratic consensus began silently to depart"<sup>87</sup> and, in the words of another;

"The social relations of production stand starkly revealed. The privileged, the exploiters, the middle class elites, stand in contrast to the disadvantaged, the unemployed, the young and to the generally declining position of the mass of the working class."<sup>88</sup>

The Law, in such economic conditions is increasingly resorted to to defend the hegemonic position of the capitalist class. Although the law, "is the site of the more coercive aspect of the capitalist state", this;

"exercise in coercion remains legitimate because the law, too, has its base ultimately in popular representation and the 'will of the people through Parliament' which legislates."<sup>89</sup>

In such periods of a crisis of profitability for capitalism, propaganda increases and is aimed at 'divide and rule' strategies to diffuse the energies of the working classes.

"in modern times, the latest attempts to suppress the unionized power of the working class, in order to prise more surplus value out of that class, can be seen to take the form of legislative proposals to protect the freedom of the individual from the collective pressure of 'the closed shop'. What is essentially a matter of class power and interest becomes transformed into a legislative proposal which raises the universal moral question of the individual versus the collective. And, of course, as individuals we can all sympathise with the freedom of the individual, especially if the other issues at stake are minimized and distorted by the mass media."<sup>90</sup>

These features can be seen in the passage of the Fishing Industry (Union Coverage) Act. The role of the mass media in bolstering up the ideology of a particular society, must be seen as crucial.

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87. Hall et al op.cit.

88. Don Quixote "Windmills of the Mind" New Zealand Monthly Review July 1980, p.24.

89. Hall et al, op.cit.206..

90. Sumner, op.cit.271



In relation to this Act the terms of reference set for the debate over the "Wesermunde" dispute are instructive. As seen in the material already presented, the issue became immediately identified in terms of the dispute being a threat to New Zealand's overall economic security. The defence of the economy became synonymous with the need to control union demands in the area. The unions were immediately placed on the defensive and their position weakened by the presentation of the view that they wished to partake in the unloading of all fishing vessels rather than just the big joint ventures. The supposed consensus among the New Zealand public that these 'threats' to the economic wellbeing of the country must be controlled, as portrayed by the media, was 'played back' to the Government who in turn used this presumed consensus as its mandate to take coercive legal measures against the unions concerned.

One commentator has described the situation;

"The appeals to patriotism, and to individuals' self-sacrifice have always worked well in dividing the working class. It enables the state to blame one section of the community for the crisis and to turn the rest of the working class against it. Traditionally in New Zealand, the scapegoat is the militant vanguard of the labour movement, which is usually pictured as a foreign subversive element in New Zealand society."<sup>91</sup>

The periodic campaigns conducted by government members to identify trade union activity with subversive communist elements have been to the fore over recent years, reaching a new peak of intensity in early 1980. So successful is this type of appeal, that, as one commentator has pointed out, the dominant ideology in New Zealand is such that even the Labour party, which is presumed to represent the interests of the working man, is almost required, "to dissociate itself from trade unions if it is to maximise its prospects of electoral success".<sup>92</sup> Opposition members in the debates in the House, in the main focused more on matters such as executive power, the destruction of good industrial relations in the industry which would hamper its development, rather than arguing for the rights of the union movement to take a share in the expanding fishing industry. In a debate on an issue of this kind, an opposition party is forced very much on the defensive if not wishing to alienate the electorate. As it was, the Government made

91. Bedggood, D. Rich and Poor in New Zealand (Sydney, 1980) 162.

92. Garnier, T. "Weekwatch" The Evening Post 20.5.80



much political play of the Opposition's attitude towards the Bill, with words such as;

"They follow their traditional blind adherence, supporting the trade union movement, irrespective of whether or not it is in the best interests of a particular industry or of New Zealand." 93

The division of the working class in this particular instance was especially easy. The fishing industry has traditionally been run by small family concerns. Fishermen 'workers' in the industry tend not to regard themselves as such, but rather as self-employed and thus outside the scope of union activity. Allegiances of the process workers, who have traditional involvement in the industry, also tends to lie more with the local company than with the union head office. At a distance, however, the central union organisations were observing the trends. With the advent of the joint venture schemes, companies with very little traditional involvement in the fishing area were moving in for the investment opportunities. The chances of exploitation of labour were becoming greater. By the use of their foreign crew to unload the vessel, the charterers of the "Wesermunde" seemed, to the Watersiders, to be bypassing the proper channels. This coupled with attention focused on the change in the Waterfront Industry Act when it was revamped in 1976, meant that to allow that situation to continue would have revealed a weakness in the union movement. Inevitably, given the localized nature of the industry, the claim by the Bluff Watersiders to unload the "Wesermunde" was interpreted as the union movement driving a wedge into the local society where fishermen and watersiders had lived harmoniously beside one another. Tension also built up between employees of the Southland Harbour board and the watersiders. Because of the emphasis on individualism in our society, it is often difficult for the union movement to rally enough support to present a united front and this was especially so in this particular incident where the nature of the watersiders' claim was distorted by the media.

The strength of the value of individualism in our society is also well illustrated by the way in which it was argued that the Bill did not breach the International Covenant on Freedom of Association. Indeed, within the conflict mode, of thinking, covenants which are ostensibly to assist collectivist activities but which have an exception for the protection of the rights and freedoms of others, can never be anything other than window-dressing.

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93. Hon. J. B. Bolger, NZ Parliamentary Debates Vol. 427, p. 3857.



Recently, the FOL has been seen to adopt a more aggressive stance. The unprecedented amount of 'anti-trade union' legislation in 1979 led to the union movement speaking out strongly against what it sees in Government policy as a reversion to old style laissez-faire capitalism. Mr Knox, in his presidential address to the 1980 FOL Conference, spoke of the restructuring of the New Zealand economy, not for the benefit of all but for a few and to "integrate our economy more fully into the world system dominated by the multinational corporation".<sup>94</sup> He added;

"Of course one of the essential pre-requisites is a docile trade union movement and it is clear that the aim of the present Government offensive is to achieve that."<sup>95</sup>

However, even in times of severe economic stress, a Government is still constrained by the prevailing ideology and cannot mount a frontal attack on the trade union movement without endangering its election prospects. As one writer has put it;

"the structural role of the state in capitalist society is to maintain the integration of all classes within the arena of the capitalist mode of production, rather than be the simple 'tool' of the economically dominant class. Naked class domination of the polity would destroy the legitimating and institutionalising processes which secure the co-operation of the working class."<sup>96</sup>

Indeed, 1980 has been host to two occasions witnessing a drawback by the Government in relation to the trade union movement. Firstly, the promise to repeal the Remuneration Act as part of the wage talks package and secondly, the withdrawal of the State Services Conditions of Employment Bill 1980, in the face of intense opposition from the teaching profession. Mr Knox's comments must then, be seen as rhetoric. In fact it is probably more accurate, from the conflict perspective to regard the Fishing Industry (Union Coverage) Act as part of the propaganda, an increase in which accompanies crises in profitability for capitalism. As one writer has put it;

"the output of legislative institutions includes not only 'law', but various kinds of political statement, ritual reaffirmation of values, electoral sop and rhetorical threat."<sup>97</sup>

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94. National Business Review 12 May 1980, p.13.

95. Ibid.

96. O'Malley, Pat, "Theories of Structure Versus Causal Determination: Accounting for Legislative Change in Capitalist Societies." in Tomasic, R.(Ed.), Legislation and Society in Australia (Sydney, 1980) 57.

97. Blackshield, A.R. Legal Responses to Cultural Change p.32



The Fishing Industry (Union Coverage) Act contains no sanctions to actually prevent, for example, the watersiders coming to private arrangements for the unloading of joint venture vessels. Indeed this has been happening. The provision for the formation of an industry union was the necessary corollary of the exclusion of existing union coverage. The Government was well aware that there was no desire among fishermen in the industry to form such a union in the near future or even, for that matter, the distant future. Yet the concept of an industry union was one that was highlighted in the debates on the Bill.

The Act can be seen as making a statement to three different groups. Firstly, it can be regarded as a statement to the commercial fishermen that the Government was on their side and prepared to legislate to preserve their traditional practices. Secondly, it can be viewed in the way described by Mr Bell (National) in the debates;

"to restore the good name of New Zealand in the eyes of overseas countries that are prepared to enter into joint ventures, the Fishing Industry (Union Coverage) Bill was introduced." 98

Thirdly, the Act can be viewed as a symbolic statement to New Zealanders as a whole, as part and parcel of the big development programme the Government had embarked upon and was attempting to sell to the public at large. Certainly, as the Bill progressed through the legislative machinery, this latter aspect became more prominent. As the passage of the Act has not made life any easier for the New Zealand fishing industry owing to the refusal of the union movement to recognise it, it is possible to suggest that in some ways the industry's real needs were sacrificed for wider political aims.

The "Wesermunde" dispute provided the ideal opportunity for Government to make a statement on its position with respect to organised labour. It is not suggested that this was a calculated move; a conflict theoretician would see the response by Government and in particular the Prime Minister, to the Watersiders' action, as a completely predictable reaction in a capitalist economy. Helped along by media distortion of the events, the issue was clear, (and reinforced when it is remembered that three members of Cabinet,

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98. NZ Parliamentary Debates, Vol.427, p.3906.



Mr Muldoon, Mr MacIntyre and Mr Bolger, all had close contact with the fishing industry in its developmental period) new claims were not going to be allowed to be made on the increasing profits from the industry. It is not a misrepresentation to say that the genesis of the Act was engulfed in a wave of emotionalism. Horror stories of past involvement in the fishing industry by the Seamen's Union were dragged out and the costs of watersider involvement greatly exaggerated.

To evaluate the effectiveness of the Act from the conflict perspective, the question would be asked, how far did the passing of this particular piece of legislation assist to preserve the status quo - in our society a capitalist economy? Overall, the result of the Act has been to put the Watersiders and Seamen's Unions, in particular, on the back foot. The Watersiders were successfully negotiated out of having their case as to whether or not it was 'cargo' coming off the "Wesermunde", put before the Waterfront Industry Tribunal for interpretation. As one Opposition speaker put it;

"Clause 6 excludes the Waterfront Industry Act, for no better reason than that is the appropriate legislation to follow." 99

Employer interests seemed fairly certain that if the case had gone to the Tribunal it would have been decided in favour of the Watersiders. It is, of course, much easier to exclude groups participating in any given activity before they are fully involved. Now when the Watersiders and Seamen's Unions make moves to acquire rights of involvement in the fishing industry, these moves are regarded as essentially illegitimate and if successful, the result of coercion.

Although the union movement strongly reacted to the concept of a single-industry union for the fishing industry, less than a year after the passage of the Act serious consideration was being given to the movement of industry based union structures as part of a new wage fixing policy. Obviously the Union movement would be opposed to the imposition of industry unions by the Government rather than by negotiation, but it is at least possible that the emphasis placed upon the virtues of industry unions, especially in light of the new industrial developments planned, acted as an accelerant for negotiation on this point.



Viewed as an enactment designed to preserve the status quo, the Act can be regarded as reasonably successful. Although the original protagonists are back in negotiation outside the legislative framework, the Act's passage has effectively removed the legal claim the Watersiders had to unload the "Wesermunde" on the basis that the vessel was discharging 'cargo'. On a symbolic basis the opportunity was provided to launch an attack on successful organised labour such as the Watersiders and Seamen's Unions, by identifying such union activity as a threat to individual freedom (the foremost value of liberal-democracy), and, as well, an excellent opportunity was provided for the Government to develop its "national development" theme and the need to restructure the industrial relations system as part of this.

### C. Conclusion

How to sum up observations made on the present state of our legislative machinery? Both the liberal-democratic and the conflict views would see an increasing centralisation of power in the hands of the executive of the governing party. Both would see this trend as the consequence of economic and social crises. However, whereas the liberal-democrat would assume that the system's basically 'democratic' and desirable character is well established<sup>100</sup> and reform of this illegitimate trend away from established constitutional principles is possible by strengthening and improving the system; the conflict theoretician would see the redistribution of power back to the people as only possible when liberal-democracy is recognised by the working classes as an ideology which preserves the existing capitalist order.

In relation to the Fishing Industry (Union Coverage) Act, depending upon the viewpoint adopted, the Act's passage through the legislative process can either provide evidence that the legislative machinery is not working in the way it should - as a means of reconciling competing interests; or rather, that it is functioning in the way intended - to preserve the status quo of a capitalist society.

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100. Miliband, R., The State in Capitalist Society (London, 1969) 4.



APPENDIX I

AN AGREEMENT made this 6th day of April 1979 between the New Zealand Federation of Labour and the following unions':

- New Zealand Waterside Workers' Federation
- New Zealand Food Processing Union
- Northern Industrial District Fish Trade Employees' Union
- Otago and Southland Manufacturing Chemists etc. Union

1. General Principles to protect the traditional work of Unions concerned with unloading of fish, fish meal and other fish bye products from vessels operating under Joint Venture fishing operations.
2. The practise for the unloading and processing to be carried out by the fishermen operating the vessels and by processing workers shall continue in present wharf facilities as is customary.
3. In cases where the vessels berth at conventional wharf areas or future designated wharf areas, the work of unloading will be carried out by Waterside Workers in terms of the Waterfront Industry Act, except in the case where fish in a raw state and is required to be further processed in shore facilities as is at present customary.
4. Should future designated Wharf Areas encompass an area defined for processing fish or fish bye products from Joint Venture vessels, this work will be carried out by Processing Workers as is at present customary.
5. Any dispute that should arise on the interpretation of the operation of unloading from Joint Venture fishing vessels arising from the decisions of this meeting should be referred to the National Executive of the N.Z. Federation of Labour who will consult with the Unions' concerned before any action is taken to have this matter resolved.

New Zealand Federation of Labour	Signed .....
New Zealand Waterside Workers' Federation	Signed .....
New Zealand Food Processing Union	Signed .....
Northern Industrial Fish Trade Employees' Union	Signed .....
Otago & Southland Manufacturing Chemists' etc Union	Signed .....
	Date .....



APPENDIX II

Terms of an Agreement between High Seas Fisheries New Zealand Ltd and, the New Zealand Federation of Labour, for and on behalf of the following unions:

New Zealand Waterside Workers Federation  
New Zealand Food Processing Union  
Northern Industrial Fish Trade Employees' Union  
Otago and Southland Manufacturing Chemists etc Union

on the unloading of the WESERMUNDE .

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Conditions of the Agreement:

This agreement is made subject to the following conditions:

1. The parties agree that this agreement shall not create a precedent for the future unloading of fishing vessels.
2. Fishing vessels other than the WESERMUNDE which are presently fishing in New Zealand waters shall continue to be unloaded in the customary manner.
3. Any dispute that may arise on the interpretation of the operation from the joint venture fishing vessel WESERMUNDE arising from the terms of this agreement shall be referred to the National Executive of the NZ Federation of Labour, who will consult with the unions and employers concerned before any action is taken to have the matter resolved.
4. The parties agree that the application presently before the Waterfront Industry Tribunal regarding the unloading of the WESERMUNDE shall be withdrawn.

Manning:

1. Work in the vessel's hold shall be undertaken by the vessel's crew.
2. Work on the vessel's deck shall be performed by waterside workers (three deck-men).
3. Two waterside workers shall be engaged as wharf landers for each gang employed.
4. Any additional labour required shall be employed at the discretion of the Company and need not necessarily be waterside workers.

Wet Weather:

The parties shall agree on appropriate provision for wet weather work in accordance with established practice.

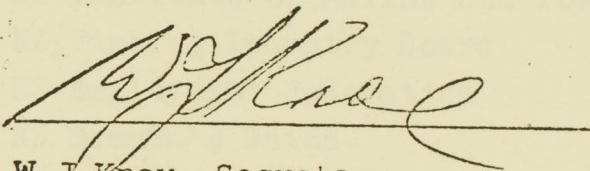


Hours of Work:

The hours of work shall be the normal hours provided for in the general principal order and a shift system if required shall be discussed between the parties.

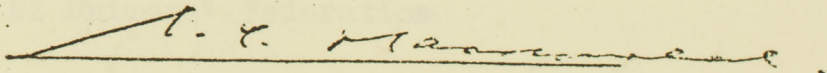
Terms of the Agreement:

This agreement shall continue for the balance of the initial charter period (to 31 January 1980) subject to any legislation that may be passed subsequent to the date of signing of this agreement.



W J Knox, Secretary,  
NZ Federation of Labour,  
for and on behalf of the -

New Zealand Waterside Workers' Federation  
New Zealand Food Processing Union  
Northern Industrial Fish Trade Employees'  
Union  
Otago and Southland Manufacturing Chemists'  
etc Union



R C Macdonald,  
for and on behalf of High Seas  
Fisheries New Zealand Ltd

Dated at Wellington this day, 18 April 1979.



APPENDIX III

LIST OF SUBMISSIONS TO THE LABOUR SELECT COMMITTEE ON THE  
FISHING INDUSTRY (UNION COVERAGE) BILL 1979.

- 1A NZ Federation of Commercial Fishermen
- 2 Southland Harbour Board
- 3 NZ Merchant Service Guild
- 4 Sealord Products Limited
- 5 Sandford Limited
- 6 NZ Food Processing Union
- 7 Federation of Tally Clerks Association
- 8 Harbours Association of New Zealand
- 9 NZ Waterside Workers' Federation
- 10 NZ Seafood Exporters Association
- 11 High Seas Fisheries (NZ) Limited
- 12 NZ Institute of Marine and Power Engineers Incorporated
- 13 NZ Fishing Industry Board
- 14 NZ Employers' Federation
- 15 NZ Seamen's Union
- 16 NZ Federation of Labour
- 51W NZ Seafood Processors' Association Incorporated
- 52W Bing Harris Samhwa NZ Limited
- 53W Southland Fishermen's Co-operative Society Limited
- 54W NZ Public Service Association Incorporated
- 55W Nelson Harbour Board
- 56W Timaru Harbour Board
- 57W Council for Civil Liberties
- 58W NZ Drivers' Federation

'W' indicates a written submission without appearance before the Committee.



APPENDIX IV

[AS REPORTED FROM THE LABOUR COMMITTEE]

*House of Representatives, 21 September 1979.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

*Hon. Mr Bolger*

**FISHING INDUSTRY (UNION COVERAGE)**

ANALYSIS

Title	7. Marine and Power Engineers' Institute Incorporation Act 1925 excluded
1. Short Title	8. Application of Industrial Relations Act 1973
2. Interpretation	9. Functions of Shipping Industry Tribunal
3. Existing union coverage excluded	10. Transitional provisions
4. Future union coverage	
5. Consent of the Minister	
6. Waterfront Industry Act 1976 excluded	

A BILL INTITULED

**An Act to ensure that not more than one union of workers is registered under the Industrial Relations Act 1973 in respect of the fishing industry**

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Fishing Industry (Union Coverage) Act 1979.

10 2. **Interpretation**—In this Act, unless the context otherwise requires,—

“Award” means an award of the Arbitration Court under the Industrial Relations Act 1973:

15 “Collective agreement” has the same meaning as in the Industrial Relations Act 1973:

“Employer” means a person employing any worker or workers; and has the extended meaning assigned to it by section 2 (2) of the Industrial Relations Act 1973:

No. 17—2



## Fishing Industry (Union Coverage)

## "Fishing industry"—

(a) Means the taking for profit, at sea or in tidal waters, of fish, crustaceans, shellfish, or other living resources of the sea or of tidal waters; and

(b) Includes—

(i) The work performed by any officer, apprentice, or member of the crew of any fishing vessel in his capacity as such; and

(ii) The transferring of a catch (whether processed or not), or of any byproducts (whether processed or not) of a catch, from one fishing vessel to another; and

(c) Includes the processing on a fishing vessel—

(i) Of a catch taken by the fishing vessel or any other fishing vessel; or

(ii) Of any byproducts of a catch to which subparagraph (i) of this paragraph applies; and

(d) Includes the unloading from a fishing vessel—

(i) Of a catch (whether processed or not) taken by the fishing vessel or any other fishing vessel; or

(ii) Of any byproducts (whether processed or not) of a catch to which subparagraph (i) of this paragraph applies; and

*New*

(da) Subject to paragraph (ea) of this definition, includes the handling and transporting within wharf limits at any port of—

(i) A catch (whether processed or not) that is unloaded at that port from a fishing vessel; or

(ii) Any byproducts (whether processed or not) of a catch that are unloaded at that port from a fishing vessel; and

(e) Includes the loading onto, or the unloading from, any fishing vessel of any stores, bait, equipment, or gear; but



*New*

(ea) Except in the cases mentioned in paragraph (b) of this definition, does not include—

- 5 (i) The work of transporting from any place within wharf limits at any port to any place outside wharf limits at that port of a catch (whether processed or not) or any byproducts (whether processed or not) of a catch; or
- 10 (ii) The work, within wharf limits at any port, of loading a catch (whether processed or not) or any byproducts (whether processed or not) of a catch onto a vessel; and

15 (f) Does not include, in respect of any port, work customarily performed at that port immediately before the commencement of this Act by employees of the harbour board:

“Fishing vessel” means a ship that is ordinarily used or is ordinarily to be used—

- 20 (a) For the taking for profit, at sea or in tidal waters, of fish, crustaceans, shellfish, or other living resources of the sea or of tidal waters; or
- (b) For research or experimental work conducted by or on behalf of any person engaged in the taking for profit, at sea or in tidal waters, of fish, crustaceans, shellfish, or other living resources of the sea or of tidal waters; or
- 25 (c) For the processing or holding of a catch or any byproducts of a catch; or
- 30 (d) For any two or more of the activities mentioned in paragraphs (a) to (c) of this definition:

“Minister” means the Minister of Labour:

“New Zealand ship” means—

- 35 (a) A ship which is registered in New Zealand under the Shipping and Seamen Act 1952; or
- (b) A ship employed solely in New Zealand fisheries waters (as defined in section 2 (1) of the Fisheries Act 1908):

40 “Registrar” means the Registrar of Industrial Unions under the Industrial Relations Act 1973:

“Ship” means every description of vessel (including barges, lighters, and like vessels) used in navigation, however propelled:



“Take” and all references thereto have the meanings assigned to them by section 2 (1) of the Fisheries Act 1908:

“Union” means an industrial union of workers which is registered under the Industrial Relations Act 1973: 5

*New*

“Wharf limits” means the limits and boundaries of all wharves, quays, piers, jetties, land, and premises in, on, or from which passengers or goods may be taken on board of or landed from vessels and, in any case 10 where any such limits and boundaries are for the time being defined under section 190 of the Harbours Act 1950, means the limits and boundaries so defined:

“Worker” means a person of any age of either sex employed by an employer to do any work for hire 15 or reward; and has the extended meaning assigned to it by section 2 (2) of the Industrial Relations Act 1973.

**3. Existing union coverage excluded**—(1) In respect of every union that was, immediately before the commencement of this Act, registered or deemed to be registered under the Industrial Relations Act 1973, the following provisions shall apply as from the commencement of this Act: 20

- (a) The membership rule of the union, to the extent 25 that workers employed in the fishing industry are within the scope of that rule, shall be deemed to be amended so as to exclude such workers; and
- (b) Workers employed in the fishing industry shall not be represented by the union in respect of any matter 30 affecting their employment in the fishing industry; and
- (c) No award or collective agreement, so far as it relates to the union and to workers employed in the fishing industry, shall apply to such workers. 35

(2) Notwithstanding anything in the Industrial Relations Act 1973, no union to which subsection (1) of this section applies may—

- (a) Amend its rules to include within the scope of the membership of the union workers employed in the 40 fishing industry; or



(b) Become a party, with the union for the time being registered in respect of the fishing industry, to—

(i) An arrangement to amalgamate under section 192 (1) of that Act; or

5 (ii) An application under section 192 (2) of that Act for the registration of one amalgamated union.

4. **Future union coverage**—Notwithstanding anything in the Industrial Relations Act 1973,—

10 (a) Only one union may at any one time be registered under that Act in respect of the fishing industry; and

(b) The consent of the Minister shall be required before an application may be made under section 164 of that Act for the registration of any society as the union in respect of the fishing industry; and

15 (c) The consent of the Minister shall be required before the union registered in respect of the fishing industry may amend its rules by adding or altering any provision that relates to the admission of persons to, or the exclusion of persons from, membership of the union; and

20 (d) The union registered in respect of the fishing industry may not become a party to—

25 (i) An arrangement to amalgamate under section 192 (1) of that Act; or

(ii) An application under section 192 (2) of that Act for the registration of one amalgamated union; and

30 (e) The union registered in respect of the fishing industry may not be a member of an industrial association registered under that Act.

5. **Consent of the Minister**—(1) Without limiting the matters that the Minister may take into account in deciding whether to give his consent for the purposes of section 4 (b)  
35 or section 4 (c) of this Act, it is hereby declared—

*Struck Out*

(a) That the Minister shall not give his consent for the purposes of section 4 (b) of this Act unless, in his opinion,—



*New*

(a) That the Minister may refuse to give his consent for the purposes of section 4 (b) of this Act if he is not satisfied that—

(i) The members of the society comprise only 5  
workers employed in the fishing industry; and

(ii) All of the classes of workers employed in the fishing industry are adequately represented among the members of the society; and

(iii) The membership rule of the proposed union 10  
is such that only workers employed in the fishing industry may be admitted to membership of that union; and

(b) That the Minister shall not give his consent for the purposes of section 4 (c) of this Act unless, in 15  
his opinion,—

(i) The members of the union will, after the amendment takes effect, comprise only workers employed in the fishing industry; and

(ii) All of the classes of workers employed in the 20  
fishing industry will, after the amendment takes effect, be adequately represented among the members of the union; and

(c) That the Minister shall not give his consent for the purposes of section 4 (b) or section 4 (c) of this 25  
Act unless, in his opinion, the registration of the society or the amendment of the rules will assist in the establishment or maintenance of harmonious industrial relations within the fishing industry.

*New*

(1A) The Minister shall, before giving his consent for the purposes of section 4 (b) or section 4 (c) of this Act, give the organisation known as the New Zealand Federation of Labour a reasonable opportunity of consulting with him with regard to the giving of his consent. 30

(2) Any consent given for the purposes of section 4 (b) of this Act shall be endorsed on the application for the registration of the society.

(3) Any consent given for the purposes of section 4 (c) of this Act shall be endorsed on a document in which the 40  
proposed amendment to the rules is set out in full.



(4) Any consent given for the purposes of section 4 (b) or section 4 (c) of this Act—

- 5 (a) May be revoked at any time before the application to which it relates is made or the amendment to which it relates takes effect; and
- (b) Shall lapse if the application to which it relates is not made, or the amendment to which it relates does not take effect, within 3 months after the date on which the consent is given.

10 (5) For the purposes of subsection (1) of this section, workers—

- (a) Who are officers, apprentices, or members of the crew of a fishing vessel that is not a New Zealand ship; and
- 15 (b) Who were not engaged in New Zealand,—  
are not workers employed in the fishing industry.

6. Waterfront Industry Act 1976 excluded—Nothing—

- (a) In the Waterfront Industry Act 1976; or
- 20 (b) In any principal order or other order made under the Waterfront Industry Act 1976, whether before or after the commencement of this Act; or
- (c) In any agreement within the meaning of the Waterfront Industry Act 1976, whether made before or after the commencement of this Act,—

25 shall apply in respect of—

- (d) Any work performed in the fishing industry; or
- (e) Workers employed in the fishing industry; or
- (f) Any award or collective agreement containing terms or conditions of employment of workers employed
- 30 in the fishing industry.

7. Marine and Power Engineers' Institute Incorporation Act 1925 excluded—Notwithstanding anything in the Marine and Power Engineers' Institute Incorporation Act 1925 or in any agreement entered into pursuant to

35 section 7 (g) of that Act, whether before or after the commencement of this Act,—

(a) Nothing in that Act or in any such agreement shall apply in respect of the rates of pay, hours, terms, and conditions of employment in the fishing industry of—

40

- (i) Members of the New Zealand Institute of Marine and Power Engineers incorporated under that Act; or



- (ii) Members of any branch of that Institute;  
and  
(b) Members of that Institute or of any branch of that Institute shall not be represented by that Institute or any branch of that Institute in respect of any industrial matter affecting their employment in the fishing industry. 5

**8. Application of Industrial Relations Act 1973**—(1) The provisions of this Act are in addition to, and not in substitution for, the provisions of the Industrial Relations Act 1973. 10

(2) The granting, for the purposes of section 4 (b) or section 4 (c) of this Act, of the consent of the Minister shall not excuse the Registrar or any society, union, or person from complying (subject to this Act) with the provisions of the Industrial Relations Act 1973. 15

*New*

(3) The Arbitration Court, in considering any dispute relating to the fishing industry, shall have regard to—

- (a) The tidal, seasonal, and climatic conditions affecting the fishing industry; and 20  
(b) All the particular characteristics of work in the fishing industry including those incidental to the hunting of fish.

**9. Functions of Shipping Industry Tribunal**—(1) The Shipping Industry Tribunal established by section 151B of the Shipping and Seamen Act 1952 shall not exercise its functions in respect of any fishing vessel or of persons employed on fishing vessels. 25

(2) The Arbitration Court may exercise in respect of any fishing vessel or of persons employed on fishing vessels or on any specified fishing vessel any function that the Shipping Industry Tribunal could, but for subsection (1) of this section, exercise in respect of that fishing vessel or those persons; and any question or decision that is required, by subsection (5) or subsection (8) of section 151A of the Shipping and Seamen Act 1952, to be referred to the Shipping Industry Tribunal shall, if that question or decision relates to a fishing vessel or to persons employed on fishing vessels or on any specified fishing vessel, be referred instead to the Arbitration Court. 30 35 40



10. **Transitional provisions**—(1) Any application for the registration of a society as a union in respect of the fishing industry, being an application which has been made before the commencement of this Act under section 164 of the Industrial Relations Act 1973 and which has not been determined before the commencement of this Act, shall, as from the commencement of this Act, cease to have effect.

(2) Any amendment made before the commencement of this Act to the rules of a union, being an amendment which will have the effect of including within the scope of the membership of the union workers employed in the fishing industry but which has not been recorded under section 178 or section 192 of the Industrial Relations Act 1973 before the commencement of this Act, shall, as from the commencement of this Act, be of no effect, and shall not be recorded under section 178 or section 192 of the Industrial Relations Act 1973.

(3) Any application by 2 or more unions for the registration in respect of the fishing industry of one amalgamated union in their stead, being an application which has been made before the commencement of this Act under section 192 (2) of the Industrial Relations Act 1973 and which has not been determined before the commencement of this Act, shall, as from the commencement of this Act, cease to have effect.



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