Date Introduced: 17 April 1985
House: House of Representatives
Presented by: Hon. John Kerin, M.P., Minister for Primary Industry

Purpose

To provide a legislative basis for management plans in the fisheries industry; to increase penalties for breaches of the Fisheries Act 1952 and the Torres Strait Fisheries Act 1984, and to improve the current regulatory system.

Background

The last decade has seen considerable growth in the Australian fishing industry, the gross value of production increasing from $95.2m[1] in 1972/73 to an estimated $440m in 1983/84[2]. This increase in production has placed greater pressure on the more marketable species, particularly the southern bluefin tuna and school prawn. Furthermore, it has increased the need for tighter control to ensure the efficient long term exploitation of current and future reserves. The development of such controls has, however, been hindered by constitutional developments in this area.

The Commonwealth has power, by section 51(x) of the Constitution, to make laws with regard to fisheries in Australian waters beyond territorial limits. Prior to 1975 it was thought that the Commonwealth's power commenced at three miles from the low water mark, the States being responsible for the region from the low water to three mile marks. In 1975 the High Court ruled in New South Wales v The Commonwealth[3] that the Commonwealth's power extended from the low water mark. This decision led to the Offshore Constitutional Settlement agreement between the Commonwealth and States at a Premiers' Conference in Canberra on 24 November 1979. Under the agreement, the Commonwealth returned to the States and Northern Territory title over the sea and sea-bed to the three mile limit.[4] The agreement proposed to establish four Joint Fisheries Authorities (Joint Authorities), comprising the Commonwealth and relevant State/Northern Territory Ministers, to ensure
co-operation between the States, Northern Territory and Commonwealth in managing fisheries.

The agreement also dealt with other matters, petroleum exploration and exploitation being the most important. Problems in these areas have led to delays in establishing the Joint Authorities (the part of the Fisheries Amendment Act 1980 establishing the Joint Authorities came into force on 14 February 1983).

The Commonwealth currently regulates the fishing industry through the Fisheries Act 1952 (the Principal Act), which provides for the licensing of fishermen and their vessels, restrictions on boat and gear size and limits entry to certain areas.

The Principal Act is complemented by a number of voluntary management plans, the most important relating to northern prawn and southern bluefin tuna fishing. The adequacy of current methods was examined by the Senate Standing Committee on Trade and Commerce. It concluded that the Principal Act was not conclusive enough and that the voluntary management plan were not achieving their aims.[5] It recommended that a national fisheries policy be established to prevent excessive exploitation of current reserves and to facilitate the development of new fisheries.[6] It further recommended that the policy be enforced by statutory management plans or Ministerial Order.[7]

Fishery management was discussed at the Australian Fisheries Conference, held in Canberra from 31 January to 2 February 1985. The Conference was attended by 130 representatives from the industry, Commonwealth, State and Northern Territory Governments. In its paper titled Fisheries Management, the Department of Primary Industry explained the need for tighter control and adopted the recommendation of the recent United Nations Food and Agriculture Organisation World Fisheries Conference:

"Where there is open access to the resources (for nationals) there is little incentive for individual fishermen to conserve the stocks. As stocks become fully utilised, competition among fishermen often leads to depletion of the resources, severe over-capitalisation and lower earnings for individual operators. To prevent such consequences, governments should seek to ensure that fishermen have clearly-defined fishing rights and that the allowable catches do not exceed the productivity of the resources."[8]
The Department noted that there are two ways to bestow and manage rights to take fish, one based on the capacity to fish, the other based on quotas that may be taken. Both methods are used in Australia, the northern prawn fishery being regulated through the control of fishing capacity and the southern bluefin tuna industry being regulated through total catch controls. Both methods will be available under the Bill, the most appropriate being determined by consultation with the industry and States/Northern Territory involved.

Outline

Management Plans are given statutory backing and the current licensing system and penalties are reviewed in Part II of the Bill. Part III amends the Torres Strait Fisheries Act 1984.

Main Provisions

The Bill is to operate from a date fixed by Proclamation (clause 2).

Management plans in proclaimed waters are introduced by clause 6 of the Bill which inserts a new section 7B in the Principal Act. Under this provision, the Minister may institute a management plan in relation to a species of fish, an area or method of fishing. The plan is to state its objectives and how they are to be attained. The Minister can determine the fishing capacity permitted in the plan and the allocation of this capacity. This clause also allows for fees relating to the allocation of fishing rights to be set by regulation.

Areas under joint State-Commonwealth control are subject to the Joint Authorities, which are given the same power, in respect to the areas under their control, as the Minister will have under section 7B (clause 15). This clause also states that when an area becomes a Joint Authority fishery, any management plan instituted by the Minister is to cease to apply.

Penalties in the Principal Act are increased by varying amounts by amendments to sections 13, 14 and 17 (clauses 18 to 25 and 29). For example, the maximum fine for a breach of licence condition is to increase from $1,000 to $5,000 for a natural person and $25,000 for corporations and the maximum penalty for breach of a court order imposed under the Principal Act is increased from 6 to 12 months imprisonment.
The major amendments to the current licensing system are:

The range of conditions to which a licence may be subject is extended by an amendment to section 9 (clause 9).

Clause 10 amends the current provisions relating to the cancellation and suspension of licences (section 9A of the Principal Act). The major changes include the suspension of a licence where, in an application for renewal or additional licences, a licence holder intentionally makes a false or misleading statement; and the Minister may revoke suspensions.

Amendments to the Torres Strait Fisheries Act 1984 increase penalties and officers' powers in line with the amendments to the Principal Act or are consequential upon the creation of statutory management plans.

For further information, if required, contact:

7 May 1985

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References

2. Fisheries Management, Department of Primary Industry Paper presented to the Australian Fisheries Conference 1985, p.11.1.
4. This was achieved through the Coastal Waters (Northern Territory Powers) Act 1980, the Coastal Waters (Northern Territory Title) Act 1980, the Coastal Waters (State Power) Act 1980, and the Coastal Waters (State Title) Act 1980.
6. Ibid., p.19.
7. Ibid., p.17.
9. Ibid., p.11.6.