Date Introduced: 13 September 1984
House: House of Representatives
Presented by: Hon. J.C. Kerin, M.P., Minister for Primary Industry

Short Digest of Bill

Purpose

To amend the Fisheries Act 1952 and the Torres Strait Fisheries Act 1984 to provide for the implementation of the fisheries management plans that the fishing industry levy is intended to support.

Background

Responsibility for the management and development of Australian fisheries is shared by the Commonwealth State and Northern Territory Governments. The constitution empowers the Commonwealth Parliament to make laws in respect of fisheries in Australian waters beyond territorial limits. Since federation, territorial limits has been taken to mean 3 nautical miles seawards of low water mark. The State and Northern Territory Government are empowered to regulate fisheries within their respective territorial limits. The framework of Commonwealth and State fisheries legislation has been built round these powers.

The Fisheries Act 1952 is still in force with amendments and is the main Commonwealth law for the regulation of Australian fisheries. The initial purpose of the Fisheries Act 1952 was to legislate in respect of swimming fish in Australian waters beyond territorial limits, in order that fishing in such waters can be so regulated that existing fisheries resources will be conserved for regular commercial development, and excessive exploitation of fish resources would be prevented. The Act provided for the licencing of fishing vessels and fishermen in proclaimed waters and the issuing of regulation including entry limitations, boat and gear restrictions, fish size regulations, and seasonal and area closures. In 1973 the Act was amended to provide, among other things, for the rational utilization of existing fisheries and the development of new ones as well as the conservation of fisheries resources.
One of the intentions of the Act was to clarify the jurisdictional division between the States and the Commonwealth in the regulation of fisheries in Australian waters beyond territorial limits and reconcile various functions and administrative arrangements between Commonwealth and State administrations. At the present time the Commonwealth, States and the Northern Territory participate in the management of fisheries in Australian waters in a formal structure of consultation and co-operation under the aegis of the Australian Fisheries Council. The Australian Fisheries Council was established in 1968 as the principal forum for Commonwealth-State co-operation and for the promotion and development of the Australian fishing industry generally.

The Torres Strait Fisheries Act 1984 replaces provisions of the Fisheries Act 1952 dealing with fisheries in the Protected Zone and adjacent areas of Torres Strait under Australian jurisdiction.

Because of the common property of marine resources, no individual fisherman or group of fishermen has exclusive property rights over the resource. Because fishermen cannot claim an exclusive right to exploit a particular fishery or fish stock, each fisherman is motivated to exploit the resource to his maximum capacity. There is therefore little incentive for an individual fisherman to practice conservation measures even though the combined effect of all fishermen's operations will deplete the resources on which they depend. In the absence of appropriate institutional control, it is difficult to predict the long-term consequences of exploiting common property resources and to prevent their over exploitation and depletion. The extent to which a particular marine resource will become depleted under common property conditions depends on the demand for its products and on the cost of capturing it.

The aim of fisheries management is to maintain the marine population at a level where it is capable of regeneration and can be harvested on a sustained basis. The relationship between the growth and size of a marine population forms the basis for determining the population level capable of providing a maximum sustainable yield. If the population is below the level which can produce the maximum yield, continued fishing at established levels may result in depletion of the fishery and extinction of the population. The size of a particular resource and the desirable level of exploitation are determined through the conduct of research programs and systematic collection of data. Once these factors have been determined, it is
possible to define the most appropriate fishing methods, the
maximum sustainable yield, and the optimum fishing effort
necessary to achieve the total allowable catch.

Outline

The Bill provides a framework to enable recoupment
of the costs of management programs from the beneficiaries
of the implementation of fisheries management programs.

Main Provisions

With regard to amendments to the Fishing Act 1952:
Clause 4 provides that a licence will not be granted,
endorsed or transferred unless the applicant, licence-holder
or proposed transferee tenders the requisite levy or
statutory fee.

Clause 5 provides an officer with the power to
board and inspect a boat which he believes is one for which
levy may be payable.

Clause 6 provides that a joint authority will only
make a leivable endorsement on a licence if the holder of
the licence tenders the levy and any statutory fee payable
for endorsing the licence.

Clause 7 provides a maximum penalty of $5,000 where
a person is convicted for an offence of using or having
charge of a boat in proclaimed waters for catching fish and
processing and carrying its own catch or for processing or
carrying the catch of another boat, of having fish in his
possession or control in a boat in an area of proclaimed
waters at a time when taking that fish in that area is
prohibited by a fisheries notice, or of doing an act
prohibited by a fisheries notice and either

- the boat was not covered by the necessary
  leivable licence; or

- the boat's licence did not authorise it use in
  that area for that purpose and a licence that
  would authorise such use is leivable.

In addition to any penalty imposed subsequent to conviction,
the court may order that the person pay to the Commonwealth
an amount not exceeding the relevant levy amount.

In all significant respects Part III (Clauses
14-26) provides for analogous amendments to the Torres
Stait Fisheries Act 1984 that have already been outlined for the Fisheries Act 1952.

Remarks

Appropriate fisheries management will vary between different parts of the industry and over time. Accordingly, levy imposts necessary to finance management schemes may be expected to vary. This Bill, together with the associated Fisheries Licences Levy Bill, constitute the framework for imposing and collecting the levy. Details of particular levies will be contained in regulations made from time to time in accordance with the provisions in the Fisheries Licences Levy Bill.

For further information, if required, contact:

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References
