TORRES STRAIT FISHERIES BILL 1983

Date Introduced: 19 October 1983
House: House of Representatives
Presented by: Hon. John Kerin, M.P., Minister for Primary Industry

Short Digest of Bill

Purpose

To implement the aspects of the Torres Strait Treaty dealing with fisheries in the Protected Zone and adjacent areas of Torres Strait under Australian jurisdiction and, in conjunction with clauses 4 and 14 of the Torres Strait Treaty (Miscellaneous Amendments) Bill 1983, to replace the provisions of the Fisheries Act 1952 and the Continental Shelf (Living Natural Resources) Act 1968 in those areas.

Background

The Treaty was signed by Australia and Papua New Guinea in Sydney on 18 December 1978 after six years of negotiation. It settles the border between Australia and Papua New Guinea in a novel way by providing separately for sovereignty over islands, for delimitation of seabed jurisdiction and fisheries jurisdiction and for a Protected Zone to preserve the traditional way of life of the Torres Strait Islanders and the natural resources of the area.

The lines of seabed jurisdiction, fisheries jurisdiction and the Protected Zone are indicated on the map attached. (This map is unofficial and has been prepared for the Legislative Research Service for the purposes of the digests of the Torres Strait Fisheries Bill 1983 and the Torres Strait Treaty (Miscellaneous Amendments) Bill 1983). Australia has jurisdiction south of the median lines, Papua New Guinea to the north. The fisheries line diverges from the seabed line to form a "top hat" shape around the only inhabited Australian islands north of the seabed line. In this area Australia has jurisdiction over swimming species of fish while Papua New Guinea's seabed jurisdiction includes sedentary organisms.

Papua New Guinea has recognized Australian sovereignty over all islands south of the line and also over
15 islands named in the Treaty to the north. These latter islands with their territorial seas form Australian enclaves in areas that are otherwise within PNG jurisdiction.

In the Protected Zone and its vicinity the traditional inhabitants of the islands and the PNG coast are to enjoy freedom of movement and use of resources for their lawful traditional activities including traditional fishing. This is subject only to restrictions necessary to prevent abuses and health and quarantine risks.

"Traditional inhabitants" are narrowly defined in the Treaty to mean Torres Strait Islanders who live in the Protected Zone or adjacent coastal areas of Australia or PNG, who are citizens of Australia or PNG and who maintain traditional activities in the region. The Treaty provides for consultation with the traditional inhabitants particularly through the Torres Strait Joint Advisory Council.

There is a ten year moratorium on seabed mining and drilling within the zone.

Commercial fisheries in the Protected Zone are dealt with in a way which largely disregards jurisdictional lines and seeks to manage the living resources as a whole. The total catch of the Protected Zone is to be shared on a jurisdictional formula.

In enforcing fisheries laws through the area each party will investigate offences in its own jurisdictional waters but offenders will be dealt with by the court of nationality. This meets the desire of the Australians who live and work in the Strait to continue to be dealt with by Australian courts.

Ratification of the Treaty has been delayed only because of the complexity of the implementing legislation. However this Bill together with the Torres Strait Treaty (Miscellaneous Amendments) Bill 1983 will enable Australia to ratify the Treaty. Queensland and Papua New Guinea have agreed to introduce complementary legislation in the near future and it is expected that ratification will take place simultaneously with the commencement of the new legislation.

Main Provisions

Where possible the Bill follows the Fisheries Act 1952.

Commencement is on a date to be fixed by Proclamation (clause 2).
Definitions are provided in clause 3.

"The Protected Zone", "traditional inhabitants" and "traditional fishing" have the definitions they are given in the Treaty which is set out in the schedule to the Bill.

The "area of Australian jurisdiction" means the area of the Protected Zone south of the fisheries jurisdiction line other than the Protected Zone coastal waters of Queensland. The "area of New Guinea jurisdiction" means the area of the Protected Zone north of the seabed line.

"Community fishing" is a category not mentioned in the treaty. It means commercial fishing by Australian traditional inhabitants acting for themselves. It is given special privileges in the Bill.

"Treaty endorsement" means endorsement of a PNG licence by Australia.

Clause 5 provides that the Act shall not apply to Protected Zone coastal waters of Queensland (defined in Clause 4) except where there is an arrangement under Part V for management of a fishery by the Commonwealth. This is not required by the Treaty but is in accordance with the Offshore Constitutional Settlement.

The Bill does not apply to recreational fishing from Australian boats (Clause 7).

Part II Administration

Clause 8 requires the Act to be administered with regard to the Treaty and the traditional way of life of the traditional inhabitants.

Part III Regulation of Fishing

Clause 14 provides for the reporting of commercial and community catches to enforce the arrangements concerning the total allowable catch in the Zone. Sub-clauses 6 and 7 provide that commercial fishing may be prohibited in areas in which community fishing is allowed.

Clause 15 provides that the Governor-General may proclaim an area of water adjacent to the Protected Zone to be subject to the provisions of the Act for commercial and traditional fishing. Proclamations relating to Queensland coastal waters must have the agreement of the Queensland Minister.
Part IV - Licences, Endorsements and Entries

Licences are not required for community fishing unless the Minister so declares (Clause 17). Masters and boats must be licensed for commercial fishing by the Minister but a foreign boat shall not be licenced without agreement with his PNG counterpart (Clause 19).

Clause 20 provides in accordance with the Treaty for the endorsement of nominated PNG boat licences by the Australian authorities to enable PNG boats to fish in areas of Australian jurisdiction. Conversely the Minister may nominate a boat to Papua New Guinea for endorsement of its Australian licence.

Part V - Arrangements with Queensland

Clause 30 establishes a Protected Zone Joint Authority consisting of the Commonwealth and Queensland Ministers responsible for fisheries.

Clause 31 provides for arrangements with Queensland giving the Joint Authority powers to manage particular fisheries wholly or partly in Protected Zone coastal waters of Queensland.

Clauses 35 and 36 give the Joint Authority the powers of the Commonwealth Minister in respect of fisheries except for the licencing of foreign boats which is reserved to the Minister.

Enforcement

Clauses 49 and 50 prohibit foreign fishing boats and Papua New Guinea boats from being brought in to land or from landing fish in a place in Australia within the Protected Zone unless specially permitted by an entry on the licence under Clause 21. Exception is made for boats being used or fish taken and landed in the course of traditional activities. Several defences for the landing of fish are specified where the landing is in accord with Commonwealth orders or particular legislation.

Clause 54 makes it an offence under Australian law punishable by a fine of $1000 for an Australian citizen, or a person on an Australian boat or a licenced foreign boat to commit an offence under PNG fisheries legislation while in PNG jurisdiction. It is a defence that the person charged has already been prosecuted for the same offence in Papua New Guinea. The court may have regard to the law of Papua New Guinea in order to give effect to Article 28 of the Treaty which provides that corrective action in respect of
fishing offences in the Protected Zone is to be undertaken by the country of nationality, not the country of jurisdiction.

Miscellaneous

Clause 56 requires the consent of the Minister or the Joint Authority, as appropriate, to the prosecution of an offence involving a Papua New Guinea licenced boat, or committed by a person holding a PNG commercial fishing licence or a PNG traditional inhabitant in the course of traditional fishing.

Evidence

Clause 58 deals with prosecutions in Australian courts under Clause 54 for offences against PNG law. It indicates the evidence which will be accepted to prove the law of PNG or a PNG court order or legal document (sub-clauses 1-2). Evidence of PNG residents may be taken on affidavit unless a party to the proceedings objects in good faith. It also provides that evidence by the prosecutor as to the waters where the offence was committed, whether a person was the holder of a boat licence endorsed by Papua New Guinea and the conditions to which the endorsement was subject is prima facie evidence of these matters.

For further information, if required, contact:

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