Date Introduced: 26 March 1981
House: House of Representatives
Presented by: Hon. D.T. McVeigh, Acting Minister for Science and Technology

Short Digest of Bill

Purpose

To provide a legislative framework within which Australia will be enabled to fulfill its obligations under the Convention on the Conservation of Antarctic Marine Living Resources.

Background

The text of the Convention, provided as a schedule to the Bill, was developed within the Antarctic Treaty forum in order to ensure the conservation of the Southern Ocean ecosystem. The protection of all marine organisms, rather than those only of present economic interest, is sought by the Convention.

The Convention will come into force after eight of the original signatories have advised the Depository Government (Australia) of formal acceptance.

The original signatories of the Convention are:

- Argentina
- Australia
- Belgium
- Chile
- Federal Republic of Germany
- France
- German Democratic Republic
- Japan
- New Zealand
- Norway
- Poland
- Republic of South Africa
- U.S.S.R.
- United Kingdom
- United States of America
Many other countries are expected to accede to the Convention soon.

An international Commission based in Hobart is to be set up to implement the conservation standards on which the Convention is based.

One of the Commission's major functions will be the development of conservation measures, such as catch limits, reserved areas, protected species and closed seasons, which will be formed as recommendations made to member countries.

This Bill establishes a permit system and provides for regulations to be made to facilitate implementation of these conservation measures. Except when carried out under the authority of a permit, all activities associated with harvesting of, or research relating to, marine living organisms within the Convention area will be prohibited.

Main Provisions

Clause 1 gives the short title, which reflects the main purpose of the Bill; implementation of the Convention on the Conservation of Antarctic Marine Living Resources.

Clause 2; the operational provisions of the Bill will not come into force until the Convention is in force for Australia. This occurs after eight of the original signatories lodge articles of acceptance or ratification with the depository Government; in this case, Australia.

In clause 3 the Convention Area is defined as applying in the area south of the Antarctic Convergence, a boundary at which the colder water of the Southern Ocean meets the warmer temperature oceans. Thus, the Antarctic marine ecosystem is largely isolated.

Clause 4 exempts Commonwealth States and Territories from prosecution, although they are bound by the Act.

Clause 5 states that this Bill will apply to Australians within the Convention Zone and to all foreigners within the Australian Fishing Zone. Further, the Bill does not detract from Australia's obligations under the International Whaling Convention and the Convention on the Conservation of Antarctic Seals.

Clause 6 states that a law of the territory shall be ineffective to the extent to which it is incompatible with a provision of the regulations.
Clause 7 says that a person is not guilty under this Act if he/she has acted in accordance with Commonwealth law or with the authority of another Contracting Party.

Clause 8 deals with harvesting of and research of prohibited marine organisms.

As explained in the Explanatory Memorandum, the broad prohibition is partly a result of difficulties in arriving at strict legal definitions and partly due to Australia's obligations to provide scientific data. The Bill is not intended to unduly restrict scientific research or fishing when these are subject to Commission recommendations.

In Clause 8 an offence is an indictable offence and, if convicted, a natural person may be fined to $50,000 and a body corporate may be fined to $100,000. In Clause 18 it is noted that if a person is convicted by a court of summary jurisdiction, a natural person may be fined to $5,000 and a body corporate may be fined to $10,000.

Clauses 9, 10, 11 and 12 give details regarding permits for harvesting of, or carrying out scientific research on, specified kinds of marine organisms. Topics covered are: permits in general, contravention of permits, suspension of and cancellation of permits.

Clause 13 deals with inspectors and special inspectors. As explained in the Explanatory Memorandum, where possible, officers and inspectors under the Fisheries Act will have appropriate powers under this Section. A special inspector is defined as a person nominated by the Commission to act on its behalf by observing the application of Conservation Measures on ships under national jurisdiction.

Clause 14 covers the issuing of identity cards to inspectors other than police.

Clause 15 deals with grounds under which an inspector may make an arrest without a warrant.

Clause 16 outlines the powers of inspectors. Briefly, an inspector may search a vessel (warships excepted) if he suspects it of carrying a protected marine organism or any other evidence of an offence against this Act. He may require any suspect to produce his name and address, and his permit allowing him to perform the acts about which he is being questioned. The identity and authorisation of the policeman or inspector must be shown to the suspect. Non-compliance with an inspector or police
officer may result in a fine to $1,000.

Clause 18 deals with prosecution against subsection 8(1) and has been dealt with here as part of Clause 8.

Clause 19 describes the circumstances under which the Minister or a person authorised in writing by him may give a certificate concerning the ownership of a vessel, the area (Convention or Australian fishing zone or other) and permit status of a person specified in the certificate.

Clauses 20 and 21 cover officers and employees of governments and authorities and programs etc. relating to Antarctic marine living resources.

Clause 22 deals with delegation. It is envisaged according to the Explanatory Memorandum, that the Minister's powers to issue, suspend and vary the conditions of permits will be delegated to appropriate officials including the Director of the Antarctic Division, Department of Science and Technology.

Clause 23 provides for review by the Administrative Appeals Tribunal of decisions by the Minister on the granting, suspension or cancellation of permits.

Clause 24; regulations. Conservation measures brought down by the Commission will be implemented through the Regulations. Conservation measures may relate to restrictions on the harvesting of protected species or to certain areas. Closed seasons may be declared and certain types of scientific information may be required as part of a conservation measure.

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