

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FISHERIES AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Honourable John Kerin M.P.,
Minister for Primary Industries and Energy)

FISHERIES AMENDMENT BILL 1987GENERAL OUTLINE

This Bill amends the Fisheries Act 1952, principally to enable effect to be given to Australia's rights and obligations under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America. The Treaty was signed by Australia on 2 April 1987 and will enter into force when the United States and at least 10 Pacific Island States (which must include Papua New Guinea, Kiribati and Federated States of Micronesia) have ratified it. All members of the South Pacific Forum Fisheries Agency (which include Australia) are entitled to be parties.

2. The Treaty will authorize US tuna purse-seine fishing vessels to fish in a licensing area which includes a part of the Australian fishing zone around the Coral Sea Islands Territory, as shown approximately in the attached map. The US Government is required under the Treaty to enforce the requirements of the Treaty including by preventing unlicensed fishing and by ensuring Treaty licence conditions are complied with. This does not diminish the right of each Pacific Island party to enforce the treaty requirements in its own fishing zone.

3. The amendments have the effect of making it an offence against Australian law to breach the conditions of a Treaty licence, and disapply the licensing and other relevant provisions of the Act from vessels fishing under the Treaty.

4. The Bill also contains provision for enabling regulations to be made to compel the return of various kinds of instruments, and for enabling any matters which may be dealt with by regulation to be done by Ministerial order.

FINANCIAL IMPACT STATEMENT

5. The Bill itself will not affect Government expenditure and will have no staffing implications in the Department of Primary Industries and Energy.

6. Australia will share in the distribution of US \$60 million in licence fees, to be paid by the United States for fishing under the treaty for the first five years of its operation. After that, fee levels will be renegotiated.

ABBREVIATIONS

7. The following abbreviations are used in this Explanatory Memorandum

Act : Fisheries Act 1952 as amended (except by this Bill)

AFZ : Australian fishing zone

Bill : Fisheries Amendment Bill 1987

Minister : Minister for Primary Industries and Energy
or Minister for Resources

Parties : All parties to the Treaty

Treaty : Treaty on Fisheries between the Governments
of Certain Pacific Island States and the
Government of the United States of America.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 : Short Title

8. Sub-clause 1(1) provides that the Bill, when enacted, will be known as the Fisheries Amendment Act 1987

9. Sub-clause 1(2) provides that the expression "Principal Act", when used in the Bill, means the Fisheries Act 1982

Clause 2 : Commencement

10. Sub-clause 2(1) provides that clauses 1 and 2 (which establish the machinery of the Bill), paragraph (a) of clause 15 (which empowers the making of regulations concerning the return of cancelled instruments) and clause 16 (which empowers the making of Ministerial orders) will come into force 28 days after Royal Assent.

11. Subclause 2(2) provides that the other clauses, which deal with the implementation of the Treaty, will come into force on a date to be proclaimed.

Clause 3 : Interpretation

12. Paragraph (a) of clause 3 adds the following definitions to subsection 4(1) of the Act:

"Administrator" is defined so as to have the same meaning as in the Treaty;

"fishing vessel of the United States" is defined so as to have the same meaning as in the Treaty;

"licence" is defined to mean a licence issued under section 9 of the Act and so as not to include aa Treaty licence;

"observer" is defined to mean a person appointed to perform functions under Part 6 of Annex I to the Treaty;

"Pacific Island party" is defined so as to have the same meaning as in the Treaty;

"Pacific Island party officer" is defined to mean a person appointed as an observer under the Treaty;

"party" is defined so as to have the same meaning as in the Treaty;

"Treaty" is defined to mean the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, as set out in the Schedule to the Act, as amended from time to time;

"Treaty area" is defined to have the same meaning as in the Treaty;

"Treaty boat" is defined so as to mean a fishing vessel of the United States;

"Treaty licence" is defined so as to mean a licence issued under the Treaty; and

"Treaty licensing area" is defined to mean that part of the Licensing Area (within the meaning of the Treaty) which is within the AFZ, as set out in the indicative map attached to this Explanatory Memorandum.

13. Paragraph (b) of clause 3 adds new subsections (4) and (5) to section 4 of the Act.

14. The new subsection 4(4) describes 'relevant Treaty purpose' (as that expression is used in the new subsection 10(1A)) as either the scientific observation function or the enforcement officer function of an observer.

15. The new subsection 4(5) requires amendments to the Treaty (as envisaged in the new definition of 'Treaty') to be effected by Regulations.

Clause 4 - Insertion of new Section - Treaty licences

16. Clause 4 inserts a new section 9E in the Act to describe when a Treaty licence shall be taken to be in force.

17. The new subsection 9E(1) provides that a Treaty licence is in force for its whole period of validity, except when it is suspended in accordance with subsection 9E(2).

18. The new subsections 9E(2) and (3) give effect to paragraphs 7 and 8 of Article 5 of the Treaty by providing that a Treaty licence is suspended:

- (a) for the period of an investigation into an alleged contravention of the Treaty, when the Minister has informed all parties of that; or
- (b) when the licence is suspended by the Administrator.

Clause 5 - Powers of Officers

19. Clause 5 amends section 10 of the Act to empower officers (who may include Pacific Island party officers in some circumstances) to enforce the requirements of the Treaty, and to perform observer functions.

20. Paragraph (a) of clause 5 replaces paragraph (g) of subsection 10(1) of the Act with new paragraphs (g) and (ga), to expand the powers to compel the production of a licence and to take copies of a licence, to apply to Treaty licences.

21. Paragraphs (b) and (c) of clause 5 amend paragraphs (h) and (i) respectively of subsection 10(1) to expand the powers in these paragraphs to obtain information so that they are applicable to Treaty boats.

22. Paragraph (d) of clause 5 adds new subsections (1A) and (1B) to section 10. The new subsection 10(1A) restricts the powers of a Pacific Island party officer to those in subsection 10(1) which are specified, and for Treaty purposes (as defined in clause 2). The new subsection 10(1B) gives consequential interpretations of the expressions 'officer' and 'identity card' so that those expressions are read as including Pacific Island party officers and their foreign identification.

Clause 6 - Offences

23. Clause 6 amends the offence provisions in paragraphs 13(1)(a) and 13(1)(b) of the Act so that they are not applicable to Treaty boats which are licensed under the Treaty.

24. Paragraph (a) of clause 6 replaces paragraph 13(1)(a) of the Act, which requires a person who is in charge of a boat to hold a master-fisherman's licence, with a new paragraph 13(1)(a) which exempts from that requirement a person who is in charge of a Treaty boat which is licensed under the Treaty.

25. Paragraph (b) of clause 6 amends paragraph 13(1)(b) of the Act, which exempts licensed boats from the prohibition against using a boat for taking or processing fish, so that the exemption extends to Treaty boats which are licensed under the Treaty.

Clause 7 - Having foreign boat equipped with nets etc

26. Clause 7 amends the offence provision in section 13AB of the Act so that it is not applicable to Treaty boats which are licensed under the Treaty.

27. Paragraph (a) of clause 7 amends subsection 13AB(1) of the Act, which exempts licensed boats from the prohibition against being in charge of a foreign fishing boat, so that the exemption extends to Treaty boats which are licensed under the Treaty.

28. Paragraph (b) of clause 7 replaces subsection 13AB(4) of the Act with a new subsection 13AB(4) which defines 'authorized area' as including any part of the Treaty licensing area.

Clause 8 - Using foreign boat for fishing in AFZ

29. Clause 8 replaces subsection 13B(1) of the Act, which requires a foreign boat in the AFZ for taking fish or for processing fish to be licensed for that purpose, with a new subsection 13B(1) which exempts from this requirement a Treaty boat which is licensed under the Treaty.

Clause 9 - Foreign boats not to contravene condition of Treaty licence

30. Clause 9 inserts a new section 13BC into the Act, which makes it an offence to contravene a Treaty licence condition.

31. The new subsection 13BC(1) prohibits the use of a Treaty boat or the doing of anything in relation to a Treaty boat which is licensed under the Treaty contrary to a Treaty licence condition, as set out in Annex I of the Treaty. These conditions include a requirement to comply with applicable Australian laws, as defined in the Annex.

32. The new subsection 13BC(2) establishes the maximum offence of contravening the new subsection 13BC(1) and sets penalties, on summary conviction of \$5,000 for an individual and \$25,000 for a company and on indictment, of ten times those amounts.

33. The new subsection 13BC(3) makes it clear that aircraft use comes within the scope of the offence.

Clause 10 - Forfeiture

34. Clause 10 amends section 13C of the Act to extend the range of offences for which a Court may order the forfeiture of certain items to include the offence in the new section 13BC of contravening a Treaty licence condition.

Clause 11 - Court may make certain orders

35. Clause 11 amends section 13E of the Act to extend the range of offences for which a Court may order that a person may not be on a boat in the AFZ to include the offence in the new section 13BC, of contravening a Treaty licence condition.

Clause 12 - Certain offences to be indictable offences

36. Clause 12 amends section 15 of the Act to expand the range of offences which are triable on indictment to include the offence in the new section 13BC, of contravening a Treaty licence condition.

Clause 13 - Insertion of new section - Certain prosecutions to require consent of Minister

37. Clause 13 inserts a new section 15AA in the Act, which requires the Minister to consent before a prosecution may be instituted against a Treaty boat. This is to enable paragraph 6 of Article 5 of the Treaty to be effected by the Minister, which paragraph prohibits the institution of proceedings where proceedings are in train or have been concluded in relation to the same matters by US authorities.

Clause 14 - Evidence

38. Clause 14 amends section 16 of the Act to empower the Minister to issue certificates (which are prima facie evidence of the facts stated in the certificates) concerning actions taken for the purposes of the Treaty.

39. Paragraph (a) of clause 14 adds a new subsection (1B) to section 16, which enables a Pacific Island party officer to give evidence under subsections 16(1) or 16(1A).

40. Paragraph (b) of clause 14 adds paragraphs (de), (df), (dg) and (dh) to subsection 16(2). The new paragraph 16(2)(de) provides that the certification may be as to whether the Minister has notified all parties of an investigation or has notified the Administrator of the cessation of an investigation, pursuant to paragraph 9E(2)(a) or 9E(3)(a). The new paragraph 16(2)(df) provides that the certification may be as to whether the Minister has been notified of a licence suspension by the Administrator, pursuant to paragraph 9E(2)(b). The new paragraph 16(2)(dg) provides that the certificate may be as to the genuineness of a copy of a communication from the Administrator concerning the issuance of Treaty licences. The new paragraph 16(2)(dh) provides that the certificate may be as to the genuineness of a copy of a communication from a Pacific Island party concerning the authorization of an observer under the Treaty.

41. Paragraph (c) of clause 14 replaces subsection 16(4) of the Act with a new subsection 16(4) to take account of the kind of certification allowed by the new paragraphs 16(2)(dg) and 16(2)(dh), so that certification given under those paragraphs is prima facie evidence of the matters stated in the documents attached to the certificate, as well as of the matters stated in the certificate itself.

Clause 15 - Regulations

42. Clause 15 amends section 17 of the Act to expand the regulation making power in three respects.

43. Paragraph (a) of clause 15 inserts a new paragraph (ac) into subsection 17(1) of the Act which empowers the making of regulations to provide for the return to persons of cancelled instruments.

44. Paragraph (b) of clause 15 replaces paragraph 17(1)(b) of the Act, which enables the regulations to prescribe signals and rules of navigation to be observed by masters of licensed boats, with a new paragraph 17(1)(b) which expands that power to cover the masters of Treaty boats.

45. Paragraph (c) of clause 15 amends paragraph 17(1)(g) of the Act, which provides that regulations may provide for the inspection of licensed foreign fishing boats and gear, to cover Treaty boats.

Clause 16 - Insertion of new Section - Orders

46. Clause 16 adds a new section 18 to the Act to empower the making of Ministerial orders.

47. The new subsection 18(1) provides that the regulations may empower the Minister to make orders about any matter about which regulations may be made.

48. The new subsection 18(2) provides that an order may not prescribe a penalty.

49. The new subsection 18(3) provides that an order has the same effect in the Act as if it were a regulation.

50. The new subsection 18(4) provides that Part XII of the Acts Interpretation Act 1901, applies to orders. The effect of this is that

- (a) pursuant to section 48 of that Act, orders are required to be gazetted and are subject to tabling in and disallowance by the Parliament in the same manner as are regulations;
- (b) pursuant to section 49 of that Act, a disallowed order may not be remade, except as provided in that section;
- (c) pursuant to section 49A of that Act, orders may only adopt or incorporate matters by reference to another instrument as in force at a specified time; and;
- (d) pursuant to section 50 of that Act, the repeal of an order does not affect any pre-existing rights or penalties or proceedings existing under the repealed order.

51. The new subsections 18(5) and 18(6) provide that subsections 5(3) to 5(3C) of the Statutory Rules Publication Act 1903 apply to orders. The effect of this is that:

- (a) pursuant to subsection 5(3) of that Act, the Gazette notification of orders need only describe that the orders have been made and where they may be purchased and;
- (b) pursuant to subsection 5(3A) (3B) and (3C) of that Act, copies of the orders must be made available for sale in accordance with the Gazette notice, and if they are not, the same procedures are involved as are applicable to regulations.

Clause 17 - Schedule

52. Clause 17 inserts into the Act the Schedule to the Bill, which sets out the text of the Treaty.

Schedule

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