

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Fishing Legislation Amendment Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary
Industry, the Hon. John Kerin, MP)

OUTLINE

The Fishing Legislation Amendment Bill will amend the Fisheries Act 1952, Continental Shelf (Living Natural Resources) Act 1968, and Fishing Industry Research Act 1969.

The proposed amendments to the Fisheries Act 1952 will simplify licensing requirements, overcome a number of administrative difficulties and include review provisions in relation to licensing functions and the making of fisheries notices by the Minister; the proposed amendments to the Continental Shelf (Living Natural Resources) Act 1968 will remove a hiatus which has led to enforcement difficulties, and the proposed amendment to the Fishing Industry Research Act will overcome a technical problem in respect of the Northern Territory.

PART I - PRELIMINARY

NO. OF CLAUSE

1 Short title

Formal

PART II - AMENDMENT OF CONTINENTAL SHELF (LIVING NATURAL RESOURCES) ACT 1968

2 Principal Act

Formal

3 Interpretation

Inserts new sub-section 5(4) to extend the application of the Act to include the seabed and subsoil beneath the territorial sea of the Coral Sea Islands Territory.

PART III - AMENDMENTS OF THE FISHERIES ACT 1952

4 Principal Act

Formal

5 Title

Amends the title of the Act. This amendment together with amendments to section 5 of the Act, will permit application of the Act to Australian fishermen operating in waters adjacent to Australia which are beyond Australia's 200 nautical mile fishing zone.

6 Interpretation

Paragraphs 6(a) and (b) amend section 4 as a consequence of the proposed substitution of the requirement for individual crew members to be licensed with a requirement for only the master of a boat to be licensed.

Paragraph 6(c) amends section 4 to remove the definition of "traditional fishing". Traditional fishing as defined in the Fisheries Act relates to fishing by indigenous inhabitants of Australia's external Territories, with particular application to Papua New Guinea. With the granting of independence to that country several years ago that term is no longer necessary for fisheries management under the Act.

7 Application

Inserts new sub-section 5(3) to clarify that the Act does not apply to foreign fishing boats in proclaimed waters beyond the outer limits of the Australian fishing zone. This amendment together with the proposed amendment to the long title of the Act will allow the application of fisheries controls to Australian fishermen operating beyond Australian waters, should this be required under future international fisheries management arrangements.

8 Delegation

Amends section 6A to provide for the delegation by the Minister or Secretary of powers under section 9A and new section 6B and sub-sections 9(4B), 9(5B) and 16A(4), to departmental officers only.

9 Issue of permits for scientific purposes

Inserts new section 6B to empower the Minister or Secretary to grant permits for scientific purposes and indemnify the holder in respect of actions performed in pursuance of the permit which are otherwise prohibited under the Act.

10 Regulation of fishing

Paragraph 10(1)(d) inserts new paragraph 8(1)(d) to empower the Minister to make a notice prohibiting the master of a boat of a specified kind from having a number of persons on board the boat for the purposes of engaging in fishing, that exceeds a number specified in, or ascertainable by reference to, the notice.

Paragraph 10(1)(j) inserts new sub-sections 8(4D) and 8(4E) to provide a mechanism whereby the licence endorsement principle is extended to all prohibition notices issued under section 8 of the Act.

At present, exemptions by means of licence endorsement are limited to exemptions from prohibitions imposed by notices issued under existing paragraph 8(1)(d) of the Act. This amendment is complemented by proposed new sub-section 9(4).

Sub-clause 10(1) also effects a number of minor machinery, drafting and consequential amendments to section 8 of the Act.

Sub-clause 10(2) provides for the continued effect of current notices made under paragraph 8(1)(a) on amendment of that paragraph by this Bill.

Sub-clause 10(3) provides for the continued effect of current notices made under paragraph 8(1)(d) on amendment of that paragraph by this Bill and provides that endorsements which provide exemption from a prohibition contained in such a notice, may be made under new sub-section 9(4) as amended by this Bill.

11 Tabling, disallowance, &c., of notices

Inserts new section 8A to provide that notices made by the Minister under section 8 of the Act must be tabled in Parliament and may be disallowed.

12 Licences

Paragraph 12(1)(a) inserts new sub-section 9(1) to empower the Minister or Secretary to grant to a person a master fisherman's licence to permit that person to be in charge of a boat being used for fishing. This provision replaces the present power to grant a Licence to Engage in Fishing to each person who is engaged in fishing on a boat. This amendment is complemented by the amendment to section 13 of the Act which replaces the present requirement for each person on a boat to hold a separate licence, with a requirement for only the master of a boat to hold a master fisherman's licence.

Paragraph 12(1)(b) substitutes new sub-section 9(4) to provide that boat licences may be endorsed to provide exemption from prohibition notices made under sub-section 8(1). This provision, which complements proposed new sub-sections 8(4D) and 8(4E), replaces existing sub-section 9(4) which permits the endorsement of licences to exempt the licensee from prohibitions made under paragraph 8(1)(d) only. The extension of the exemption powers will provide greater flexibility in the management of individual fisheries.

Paragraph 12(1)(b) also inserts new sub-section 9(4A) to provide that a licence endorsement under sub-section 9(4) may be revoked on the written request of the licensee, and new sub-section 9(4B) to provide that a licence endorsement under either sub-section 9(3A) or 9(4) may be revoked by notice in writing given to the licensee.

Paragraph 12(1)(c) inserts new sub-section 9(5B) to provide that the Minister or the Secretary may, by notice in writing given to the licensee, vary or revoke a condition of the licence or specify further conditions to which the licence is subject.

Sub-clause 12(2) provides for the continued effect of Licences to Engage in Fishing granted under sub-section 9(1) by deeming those licences to be master fisherman's licences, until the date of expiry specified in the licence.

Sub-clause 12(3) provides for the continued effect of licences granted under sub-section 9(2) or (3) and endorsed under sub-section 9(4).

13 Cancellation and suspension of licences

Effects a drafting amendment to section 9A.

14 Powers of officers

Substitutes new paragraph 10(1)(j) to complement proposed paragraph 13(1)(a) by empowering a fisheries officer to require the production of a master fisherman's licence.

15 Delegation

Amends sub-section 12E(1) to permit a Joint Authority to delegate its powers under section 9A and inserts new 12E(3A) to provide that the power of internal review under new 12S(4) may only be delegated to a Commonwealth officer.

16 Arrangements

Amends section 12J as a consequence of new section 6B to provide for the granting of permits by a Joint Authority for scientific purposes. These amendments will ensure that such permits are covered by section 12J which relate to procedures for making or terminating arrangements with the States.

17 Powers of Joint Authority with respect to permits

Inserts new section 12NA to provide that, in respect of a Joint Authority fishery, the power under new section 6B to grant or revoke permits for scientific purposes may be exercised by the Joint Authority, in respect of Australian boats. This section also disapplies permits granted by the Minister or Secretary in a fishery which becomes a Joint Authority fishery.

18 Powers of Joint Authority with respect to licences

Amends section 12P as a consequence of new sub-section 9(5B) which provides for the variation or revocation of a condition of a licence or the specification of further licence conditions. This amendment will ensure that all appropriate licensing powers of the Minister or Secretary may also be exercised by a Joint Authority.

19 Reconsideration and review of decisions by Joint Authority

Inserts new section 12S to provide for administrative review of decisions of delegates of a Joint Authority relating to the licensing of Australian boats and Australian residents or citizens, including the issue,

endorsement, transfer, cancellation and suspension of fishing licences and scientific permits and attachment of conditions to those licences and permits.

Decisions made by the Joint Authority itself will not be reviewable. However, decisions by delegates of a Joint Authority may be subject to reconsideration by a delegated Commonwealth official. Any decision by that official would then be reviewable by the Administrative Appeals Tribunal (AAT).

20 Offences

Paragraph 20(a) substitutes new paragraph 13(1)(a) to create the new offence for a person to be in charge of a fishing boat in proclaimed waters unless that person is the holder of a master fisherman's licence that is in force. This provision replaces the existing requirement that individual crew members must hold a licence.

Paragraph 20(b) omits sub-section 13(3) to remove the exemption from compliance with licence requirements granted to persons involved in traditional fishing as that provision is no longer required for fisheries management under the Act.

21 Having foreign boats equipped with nets, etc

Amends section 13AB of the Act to recast the offence of having an unlicensed foreign boat equipped with nets, traps or other fishing equipment. The defence to a prosecution in existing sub-section 13AB(2), of holding a licence, has been incorporated in the offence provision in line with current drafting practice. The defence to a prosecution in existing sub-section 13AB(2) of being involved in traditional fishing has also been removed.

22 Using foreign boat for fishing in Australian Fishing Zone

Omits sub-section 13B(4) to remove the exemption granted to persons engaged in traditional fishing from the requirement to comply with the prohibition on the use of unlicensed foreign boats in the Australian fishing zone

23 Certain foreign boats not to enter Australian ports

Amends section 13BA to allow the entry to a port in Australia or in an external Territory of an unlicensed foreign boat where the Minister or the Secretary has granted an authorization under new sub-section 13BAA(1).

24 Certain foreign boats authorised to enter Australian ports

Inserts new section 13BAA to empower the Minister or the Secretary to authorize, by notice in writing, the entry to a specified port in Australia or in an external Territory of an unlicensed foreign fishing boat at a time or during a period specified in the notice for purposes specified in the notice.

25 Court may make certain orders

Inserts new section 13E to provide that where a court convicts a person for certain offences relating to contravention of a licence condition or a notice of prohibition, the court may, in addition to imposing a penalty, order that the person shall not, during such period as the court determines, be on a boat in an area of proclaimed waters for the purpose of engaging in fishing. The maximum penalty for a contravention of a court order under this section is \$2,000 or 6 months imprisonment, or both.

26 Evidence

Paragraph 26(1)(a) amends paragraphs 16(2)(a)(b)(c) and (d) to provide that certain evidentiary certificates may relate to a specified time or a specified period of time.

Paragraph 26(1)(b) amends paragraph 16(2)(b) to correct a typographical error.

Paragraph 26(1)(c) effects a consequential amendment.

Paragraph 26(1)(d) effects a drafting amendment.

Paragraphs 26(1)(e) and (f) amend sub-section 16(2) to provide for the issue of evidentiary certificates in relation to a master fisherman's licence granted under new sub-section 9(1), an authorization given under new sub-section 13BAA(1), and a licence endorsement made under new sub-section 9(4).

Sub-clause 26(2) provides for the continued operation of sub-section 16(2) of the Fisheries Act for the purposes of proceedings for an offence committed before the commencement of the amendments to that sub-section.

27

Reconsideration and review of decisions by the Minister or Secretary

Inserts new section 16A to provide for administrative review of decisions of the Minister or Secretary or a delegate of the Minister or Secretary relating to licensing functions, including the issue, endorsement, transfer, cancellation and suspension of fishing licences and scientific permits and attachment of conditions to licences and permits. Decisions relating to foreign boats or persons who are not citizens or residents of Australia will not be reviewable by the AAT. Decisions on licensing matters by delegates of the Minister or Secretary, including State officials acting on behalf of the Commonwealth, are not to be reviewable by the AAT but may be subject to reconsideration by the Minister or Secretary or a delegated Commonwealth official. Any decision made following such reconsideration may be reviewed by the AAT. Decisions relating to licensing matters made personally by the Minister or Secretary would also be reviewable by the AAT.

28

Regulations

Paragraph 28(a) amend paragraphs 17(1)(b) and (e) to remove the references to "fishermen" and substitute a reference to the masters of boats licensed under the Act.

Paragraph 28(b) inserts new paragraph 17(1)(ka) to provide for the making of regulations for providing for the furnishing of information relating to persons on board a licensed boat in proclaimed waters. This amendment will allow the making of regulations, to require the keeping of a crew manifest by the master of a boat and has been included as a consequence of the removal of the requirement for individual crew members' licences.

Paragraph 28(c) substitutes new sub-section 17(3) to recast the existing provision to ensure that the restriction on the use of information derived from returns furnished in accordance with the Regulations does not extend to the use of information furnished under new paragraph 17(1)(ka).

PART IV - AMENDMENT OF THE FISHING INDUSTRY
RESEARCH ACT 1969

29 Principal Act

Formal

30 Interpretation

Amends the Act to deem the Northern Territory to be a State for the purposes of the Act. This amendment will authorise the Minister to approve the Northern Territory Research and Development Trust Fund as a fund for the purposes of determining fishery research funding levels in the Trust Fund established under this Act. The Commonwealth matches the amounts paid into approved State funds on a \$1 for \$1 basis, with funds appropriated for credit to FIRTA.

