**FISHERIES (PROTECTION OF FISH FARMS) AMENDMENT BILL 1996**

**Legislative Assembly, 10 April 1996, page 1426**

Second reading

**The Hon. R.G. KERIN (Minister for Primary Industries)** obtained leave and introduced a Bill for an Act to amend the Fisheries Act 1982. Read a first time.

The Hon. R.G. KERIN: I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

In recent years there has been substantial investment in the development of aquaculture operations throughout South Australia. One of the most successful ventures has been the farming of southern bluefin tuna, where operators net the tuna and then transport the catch to cages in Port Lincoln waters where the fish are fattened before sale to the lucrative Japanese market.

With the expansion of tuna farming, there have been reports of unlawful taking of tuna from the cages. According to the farm operators, commercial farms have experienced losses of thousands of dollars due to such activity. The operators have attempted to minimise theft by seeking police assistance and by hiring private security guards. In addition, the industry has requested the introduction of legislation to minimise theft of fish from aquaculture sites— specifically, amendments to the Fisheries Act 1982.

There is a provision in the Fisheries Act that makes it an offence for a person to interfere with a lawful fishing activity. However, as a lawful fishing activity is defined in the context of taking fish, not farming fish, this provision does not cover instances involving theft of farm fish from aquaculture sites.

Although the matter has been raised by tuna farm operators, other marine fish farm operators (eg oysters, mussels, and finfish) would be susceptible to the same problem. Therefore, any amendments to the Fisheries Act should encompass all marine fish farming activities.

It is proposed to amend the Fisheries Act to include trespass provisions based on those contained in the Summary Offences Act 1953. Specifically, it would be an offence for a person who enters a fish farm area to fail, without reasonable excuse, to leave immediately if asked to do so by the operator or a person acting on the authority of the operator, or to re-enter the area without the express permission of such a person or without a reasonable excuse. It would also be an offence to take or interfere with any fish within the fish farm area or to interfere with any equipment used by the farm operator. A further offence of entering a fish farm area intending to take or interfere with fish or interfere with equipment is also created. These amendments should address the concerns of the aquaculture industry by providing measures that will assist in minimising theft of fish from aquaculture operations.

I commend the measures to the House.

 *Clause 1: Short title*

This clause is formal.

*Clause 2: Insertion of s. 53A*

The proposed new section 53A creates offences relating to trespassing on fish farms and interfering with fish within fish farms and equipment used in fish farming.

 ‘Fish farm’ is defined as the land and waters within the area subject to a lease or licence under section 53 of the Fisheries Act.

 ‘Marked-off area’ of a fish farm is defined as an area comprised of or within the fish farm the boundaries of which are marked off or indicated in the manner required under the terms of the lease or licence in respect of the fish farm.

Subsection (2) provides that the operator of a fish farm has a right of exclusive occupation of the marked-off area of the fish farm subject to the terms, covenants, conditions, limitations, etc., of the lease or licence.

A person will commit an offence (punishable by a maximum penalty of $2 000 or 6 months imprisonment) if the person has entered the marked-off area of a fish farm and having been asked by an authorised person to leave the area, fails (without reasonable excuse) to do so immediately or re-enters without the express permission of an authorised person or without a reasonable excuse.

 ‘Authorised person’ is defined as an operator of a fish farm or a person acting with the authority of an operator.

Further offences are created under the proposed new section:

* a person must not use offensive language or behave in an offensive manner while present in the marked-off area of a fish farm in contravention of the section (maximum penalty—$1 000)
* a person who is present in the marked-off area of a fish farm must not fail to give his or her name and address when asked to do so by an authorised person (maximum penalty—$1 000)
* an authorised person, having exercised a power under the proposed new section in relation to another person, must not fail to give his or her name and address and the capacity in which he or she is an authorised person when requested to do so by the other person (maximum penalty—$500)
* an authorised person must not address offensive language to, or behave offensively towards, a person in relation to whom the authorised person is exercising a power under the proposed new section (maximum penalty—$1 000)
* a person must not, without lawful excuse—

 - take or interfere with fish within the marked-off area of a fish farm; or

 - interfere with equipment that is being used in fish farming, including equipment that is being used to mark off or indicate the marked-off area of a fish farm (Subsection (7)). (maximum penalty—imprisonment for 2 years)

* a person must not enter the marked-off area of a fish farm intending to commit an offence against subsection (7) in the area (maximum penalty—imprisonment for 1 year)
* a person must not falsely pretend, by words or conduct, to have the powers of an authorised person (maximum penalty—$500).

The section provides evidentiary assistance for a prosecution by providing that an allegation in the complaint that a person named in the complaint was, on a specified date, an authorised person in relation to a specified fish farm will be accepted as proved in the absence of proof to the contrary.

Mr CLARKE secured the adjournment of the debate.