FISHERIES BILL 1971

House of Assembly, March 17, 1971, Page 4125

Second Reading

**The Hon. J. D. CORCORAN** (Minister of Works) obtained leave and introduced a Bill for an Act to repeal the Fisheries Act, 1917-1969, and to enact other provisions relating to the management and conservation of fisheries and the regulation of fishing, and to matters incidental thereto. Read a first time.

**The Hon. J, D. CORCORAN**: I move:

*That this Bill be now read a second time.*

In response to representations from commercial fishermen for more effective fisheries legislation and the department’s long recognition and strong support for this obvious need, the House of Assembly appointed a Select Committee to inquire into and report on:

1. all aspects of the survey and equipment of fishing vessels and regulations therefor; and
2. the need for any amendments to the Fisheries Act, 1917-1962, considered necessary to ensure the proper management of fisheries resources, including amendments to provide for licences for master fishermen, part-time commercial fishermen, employee fishermen, amateur fishermen and fish dealers.

The Select Committee on the Fishing Industry was appointed on October 6, 1966, and, following a reorganisation of membership on November 17, 1966, the Select Committee submitted its report to Parliament on September 14, 1967. In the course of its inquiry the committee held 36 meetings and examined 137 witnesses, 64 of whom appeared before the committee as private individuals. Twenty-two associations were represented in evidence given to the committee at sittings held from Ceduna to Port MacDonnell.

Under the terms of reference, part (a) referred to matters within the jurisdiction of the Marine Act, 1936-1966, whereas part (b) concerned the need for amending the Fisheries Act, 1917-1962, to provide legislation for the proper management of fisheries resources and to overcome the inadequacies of the existing licensing provisions. The Select Committee expressed the opinion that the Fisheries Act, 1917-1962, should be redrafted to produce legislation which would be more precise and more appropriate for current conditions. Sir Edgar Bean, the former Parliamentary Draftsman, was retained by the then Government to consult with the newly appointed Director of Fisheries and Fauna Conservation Department (Mr. A. M. Olsen) and to prepare draft amendments to the Fisheries Act, 1917-1962, so as to update the legislation to bring it into line with modern fisheries management practices. However, it was soon realised that the whole Act needed redrafting and the present Fisheries Bill was prepared to replace the outmoded Fisheries Act.

An amendment to the Fisheries Act, 1917- 1962, which provided that a fisherman, who had not engaged in crayfishing prior to September, 1967, could not be granted a permit to catch crayfish, that is, take control as master of an authorised cray fishing vessel, has been deleted. Introduced as an interim measure to aid the introduction of management practices in the cray fishery, the amendment has now been found to be too restrictive and has not been carried forward in the present Bill. The licensing provisions incorporated in the Act follow the recommendations of the Select Committee. New provisions in this Bill also provide for setting aquatic reserves and the establishment of a fisheries research and development fund to aid fisheries research for so long neglected in this State.

The present restrictive legislation whereby anglers may only use a single rod and line or one handline has been liberalised in this Bill so that they may at any time use two rods or two handlines at the one time. In considering the individual clauses of the Bill I will indicate as far as possible the changes they effect to the existing law. Clauses 1 to 3 are formal. Clause 4 repeals the Fisheries Act, 1917-1969, and makes appropriate transitional provisions.

Clause 5 sets out the definitions for the Bill, and I would draw honourable members attention to the following: the definition of “boat” has been extended so as to include marine hovercraft and submersibles; the definition of “fish” has been extended to include aquatic animals; definitions of “rod and line”, “hand line” and “dab-net” are included in view of new provisions entitling people to fish with these devices without a licence; and a definition of “honorary warden” is included. There are new provisions for the appointment of these persons as wardens.

Clause 6 sets out some general provisions relating to proclamations under the Bill. It provides that any proclamation may be varied or revoked by another proclamation. Clauses 7 to 15, which constitute Division I of Part II of the Act, make appropriate provision for its general administration. Clause 7 provides for a power of delegation that may be exercised by the Minister or Director in relation to their respective powers. Clause 8 provides for appointments as inspectors of fisheries and also provides that members of the Police Force will be *ex officio* such inspectors. Clause 9 provides for the appointment of honorary wardens and clause 10 provides for identity cards for inspectors and honorary wardens. Clause 11 prohibits persons having a financial interest in fishing being appointed as inspectors, and clause 12 sets out in some detail the powers of inspectors. Clause 13 enlarges on these powers, and clauses 14 and 15 set out certain offences relating to inspectors and honorary wardens.

Clauses 16 to 20 deal with the registration of boats intended to be used for commercial fishing and are generally self-explanatory. Clause 21 enables the Minister to construct artificial reefs and to remove certain obstructions which interfere with the free passage of fish. The exercise of the Minister’s powers in this regard are expressed to be subject to the approval of the Minister of Marine. Clause 22 authorises the Minister of Marine to construct certain facilities for use by fishermen, and subclause (2) of that provision provides for the prescription of charges for the use of those facilities.

Clause 23 is a new clause empowering the Minister and the Director to conduct research, exploration and experiments relating to fishing and marketing of fish, and also to establish biological stations and other establishments for such research. Clause 24 provides for the setting aside of aquatic reserves for research and development purposes and for regulating entry into and conduct of persons on such reserves, and clause 25 provides for the preservation of certain waters from undue disturbance for the same purpose. Clause 26 reproduces the provisions of the present Act relating to the marking of fish boxes. No alteration of substance is proposed.

Clause 27 is a new provision. Its effect is to require the person or company which first handles or processes fish after they are caught to take out a licence. The clause is not aimed at general control of the dealers, but is merely for the purpose of enabling the department to know who they are and where they carry on business, and what fish they are handling. With the aid of this information the tasks of preventing illegal fishing and enforcing the licensing requirements of the Act will be considerably simplified. Similar provisions have been found necessary in the other States. Clauses 28 and 29 specify the types of fishing licence which will be required in future, and set out the penalties for fishing without a licence in cases where one is required. They also specify the circumstances in which fish may be taken without a licence. They are based generally on recommendations of the Parliamentary Select Committee and in substance embody the principles recommended by the committee, although some of the terminology is different.

The present Act provides for only one class of fishing licence for which the fee is $4. Such a licence entitled the holder to take and sell fish of all kinds, except species such as crayfish, prawns and abalone for which a special permit is required in addition to a licence. There is no distinction at present between the licence granted to a professional full-time fisherman, and a licence granted to a person who fishes periodically and desires to sell his catch. No fishing licence, however, will be required if the fish are not taken for sale and are not sold and the holder of the licence fishes only with certain gear mentioned in the Bill, namely, (a) a rod and line or hand line; (b) a hoop-net for taking crabs; and (c) a dab-net for taking garfish.

Clause 30 is an important clause which sets out the qualifications for obtaining a commercial fishing licence. To be granted a class A fishing licence, an applicant must satisfy the Director (subject to a right of review) that he intends to carry on the business of fishing as his principal business. To be granted a class B licence, he must satisfy the Director that he will carry on business as a seasonal or part-time business, and in either case that he has equipment, experience and resources to enable him to fish efficiently and profitably. Clause 31 reproduces in part a provision in the existing Act relating to companies holding fishing licences. The previous restriction on aliens holding fishing licences has not been carried forward into this Bill.

Clause 32 requires the holder of a fishing licence who employs other persons in fishing, to take out a licence authorising him to employ such persons. The existing law provides that a licensed fisherman must take out a separate employee’s licence for each person employed. The Bill simplifies this scheme allowing a licensed fisherman to take a licence to employ any number of persons up to a limit specified in the licence. If an employee of a licensed fisherman is the holder of a fishing licence, no licence to employ will be required in respect of him.

Clauses 33 and 34 set out the procedure and requirements for obtaining licences. The Director will decide the applications, and the fees will be fixed by regulation. Fishermen of long standing over 65 years of age and in. necessitous circumstances may obtain licences; without paying fees. If licences are held for less than six months, half the fee paid will be refunded, and reduced fees may be charged for licences granted for three months or less. Licences properly applied for cannot be refused except on grounds set out in the Bill. One ground for refusal is that the applicant does not comply with a requirement of the Act, for example, as to qualifications, experience or resources. The other is that a licence can be refused for the purpose of giving effect to an approved administrative policy for conservation of fish or proper management of any fishery. Research has shown that fish resources are not limitless and from time to time restrictions on the number of licences may be necessary. A person whose application for a licence is refused may obtain a review of the decision on request to the Minister. On receiving such a request, the Minister is required by the Bill to have the matters in issue investigated and decided by a competent authority. This decision must be given effect to by the Director. These provisions for ensuring that applications for licences are not arbitrarily refused are new.

Clause 35 retains the principle of annual licences but will enable the department to have different expiry days for licences, instead of one fixed day for all licences. This will enable the work of issuing licences to be spread over the year. Regarding clause 36, in recent years it has been found necessary to introduce special codes of regulations for certain important fisheries such as crayfish, prawns and abalone. Regulations about crayfish were specially authorised by an amending Act in 1967, and other regulations by some general provisions of the Act of 1917. In view of the need for further management and for improving the existing schemes, it is now desirable that the Governor should have an explicit authority to make codes of regulations for the management of any specified fisheries. For this reason, clause 36 has been drafted. Codes of regulations under this clause may require special permits for taking specified fish in addition to the ordinary commercial licence, and may require authorisation certificates for boats used in specified fisheries, and prescribe rules to be observed for carrying out schemes of management of such fisheries.

Subclause (1) of clause 37 enables the holder of a licence or permit to surrender it. There is no similar provision in the present law. Subclause (2) enables the Minister to revoke licences or permits. Subclause (3) enables the Minister to suspend a licence or permit when the holder is charged with an offence, pending the hearing of the charge. Clause 38 is similar in principle to a provision of the existing Act that makes it an offence to lend or hire a licence or obtain one unlawfully or falsely pretend to be the holder of a licence. It is wider than the present provision in that it applies to permits as well as licences.

Clause 39 makes it clear that licences and permits do not confer rights over private land or over water on private land, unless the owner of the land consents to the exercise of such rights. A similar provision is contained in section 46 of the present Act. Regarding clause 40, the present Act contains a provision penalising a person who refuses to produce a fishing licence on demand made by an inspector. The new clause alters the present law in a number of ways:

1. It extends the law to permits as well as licences.
2. It empowers honorary wardens as well as inspectors to demand production of licences.
3. It requires the inspector or warden making the demand to identify himself by producing his identity card or, if the inspector is a plain-clothes policeman, by producing his certificate of authority issued under the police regulations.
4. It gives the person who is required to produce a licence or permit the option of producing it at a police station or public office within 48 hours, and not necessarily immediately on demand.

Clause 41 makes it an offence for the holder of a licence or permit to take fish contrary to the terms of the licence or permit, or to contravene those terms in any other way. Clause 42 confers on the Minister a power to grant a special permit to any person to take fish in any circumstances. It is contemplated that such permits may be required to facilitate research or for stocking waters. A similar but more limited power is in section 7 (1) {d) of the Act.

Clause 43, which is similar in principle j to section 15a of the present Act, enables the Minister to grant an exclusive right to any person to take specified fish from any waters. An example of the purpose for which such a franchise may be granted is the taking of eels. An eel fishery would be difficult to develop in a particular area if eels could be taken without restriction. Clauses 44 and 45 enable the Governor to grant leases of or licences to occupy Crown land with or without adjacent waters for fish culture. Such rights are at present available only for the culture of oysters. The new clauses, however, are in general terms and enable leases and licences to be granted for the culture of oysters or fish of any kind. No grant of a lease or licence under these clauses can be made unless any Crown land affected has first been dedicated under the Crown Lands Act for the purpose of fish culture. The maximum term of any lease or licence is 10 years, but renewals may be granted subject to the same limitation, Provisions are included in clause 45 to restrict entry by unauthorised persons into any fish culture area.

**Mr. Rodda**: This will apply anywhere, will it?

**The Hon. J. D. CORCORAN**: It will apply where an area has been declared; it restricts entry by unauthorised persons. Clauses 46 to 55 contain all the general restrictions on taking fish which apply whether or not the person taking them is a licensed fisherman. They are based on principles such as the protection of undersize fish, the prevention of the use of devices that are harmful to fisheries, and the closing of waters where that is necessary to conserve or build up stocks of fish. To achieve these objects, the Bill gives the Governor power to make, revoke and vary proclamations that may be made to operate for short terms or long terms. Such controls have been found essential by every Government that has undertaken the task of conserving and building up its fisheries. In drafting the Bill, care has been taken to provide only for those forms of control for which there is a clear justification. Put shortly, clause 46 enables the Governor to restrict the taking of fish of all species or of any prescribed species.

The restriction may be temporary or permanent, and either general or limited as to area. Proclamations of the kind authorised by this clause have been in force for many years.

Clause 47 enables the Governor by proclamation to declare that fish not complying with a minimum dimension or weight are not to be taken. It is somewhat wider than the present power to prohibit the taking of undersize fish in that it enables the Governor to prescribe the minimum permissible size for any part of a fish, for example, the length of the carapace of a crayfish or lobster. No exemptions allowing the taking of undersize fish are specified in the Bill, but the Governor is given power to proclaim such exemptions, with or without bag limits, on the number of undersize fish that may be taken.

Clause 48 declares that if fish of species subject to size limits are caught from a boat, they must be brought ashore without being cut up or otherwise mutilated, except by scaling and gutting. At present, people who have caught undersize fish from a boat often fillet or otherwise cut up the fish before coming ashore so that (as they hope) the fact that the fish are undersize cannot be proved. These offences sometimes occur on a big scale and their prevalence justifies the restriction in the clause. The clause will not apply to fish used on the boat as food for persons therein.

Clause 49 brings together all the powers that are contained in the present law to regulate and control the use of devices for taking fish. The regulation of such devices is an essential factor in conserving and improving fisheries, and a variety of restrictions are now in force as a result of many years of experience and are generally accepted as being necessary. This clause has been drafted so as to authorise the types of control now in force as well as others that may be found necessary as a result of the development of new fisheries.

Clause 50: As previously mentioned, no licence is required for fishing by hand lines, rods and lines, crab nets and dab nets for garfish. However, by the use of numerous lines at once an unlicensed person would in some waters be able to take substantial quantities of fish and in this respect be almost as well off as the holder of a licence. This would be an anomalous situation and would tend to cause illegal sales. For this reason, it is proposed to limit the number of fishing devices which may be used at one time by an unlicensed person. The limit proposed is two. Clause 51 empowers the Governor to proclaim what are commonly called “bag limits”; that is, maximum limits on the number of fish, or fish of a specified kind, which may be taken by a person in one day. It is not likely that bag limits will be imposed on professional fishermen except in special cases. But if, as may happen, unlicensed persons are to be allowed to take undersize fish it may be necessary to put a bag limit on the number of such fish which may be taken.

Clause 52 makes it an offence to place obstructions in positions where they may hinder the lawful use of fishing devices or damage devices being lawfully used. Its main purpose is the protection of nets. It also penalises persons who unlawfully hinder lawful fishing or interfere with or take fish from devices set by other persons. Conduct of this kind has been reported from time to time and is not adequately dealt with in the present law. Clause 53 prohibits the taking of fish by the use of explosives or poisons. It is substantially similar to provisions contained in section 53 of the present Act. Clause 54 lays down that pipelines through which water is pumped from the sea or a river must be fitted with sieves of a pattern approved by the Director. This rule has been in the law since 1938.

Clause 55 prohibits the breeding, keeping and release into waters of noxious fish. The Director is empowered to grant exemptions from the prohibitions. Clause 56 sets out the matters on which regulations may be made. In general, the regulations which may be made are ancillary to the other provisions of the Bill. However, paragraph (b) of clause 56 is designed to enable provisions additional to those in the other parts of the Bill to be made for research and for the conservation, improvement and protection of fisheries and the regulation of trade in and processing of fish. In addition, wider powers to prevent pollution of waters are conferred by paragraph (c). It should also be noted that paragraph (f) provides for the registration of devices more commonly known as fishing gear.

Clause 57, which is of a kind usually found in Fisheries Acts, is designed to facilitate the proof (in legal proceedings) of various matters. Most matters dealt with are matters of departmental record, and the clause provides that *prima facie* evidence of these may be given by a departmental certificate. The clause also facilitates the proof of proclamations and of the fact that a place referred to in evidence was within waters specified in a proclamation. Other provisions lay down that the onus of proving that fish taken were not for sale shall be on the defendant, and that distances, depths and heights may be proved by evidence of measurements taken by electronic, sonic or mechanical devices.

Clause 58 makes it an offence to make a false or misleading statement in any application or statistical return furnished tinder the Bill. It is a defence to a charge for any such offence that the defendant believed on reasonable grounds that the statement was true. Clause 59 provides that offences under the Bill must be dealt with in courts of summary jurisdiction. It also provides that complaints for an offence may be laid within 12 months after the commission of the offence. The usual period of six months is extended because various types of offence under the Bill, for example, failure to lodge returns or renew registrations, may not be discovered until more than six months have expired.

Regarding clause 60, throughout the Bill the normal maximum penalties for offences are stated in the clauses creating the offences. The most usual maximum penalty is $100. Some less severe offences carry $20 or $50, and some more serious up to $200. These are on the whole somewhat higher than those in the present Act in which the standard maximum is $100. Apart from these standard penalties, however, the Bill continues the system of additional penalties for offences involving the illegal taking of fish. This system has been in force for many years and it is a most effective means of deterring offenders. The core of it is that the court is required to impose an additional penalty (above the basic penalty) for each fish taken illegally. At present the rate of the additional penalty is expressed as not less than $1, with no maximum. The Bill provides that the additional penalty per fish will be not less than $1 and not more than $2.

Clause 61 enables the court, when convicting a person of a second or subsequent offence against the Act, to cancel or suspend any fishing licence or permit held by him or disqualify him, for a fixed period not exceeding three years, from obtaining a licence or permit. Section 57 of the present Act is to the same effect. Such a provision is justified by the difficulty inherent in policing fishing legislation. Clause 62 enables the court to order the forfeiture of a fishing device where a person has been convicted of using it to commit an offence against the Bill. The justification for a power of this kind lies in the fact that some devices, for example, nets of certain kinds, are such that it is not legal to use them for fishing in any circumstances.

Clause 63 declares that fish illegally taken are the property of the Crown and that an inspector may seize them and dispose of them in accordance with Ministerial directions. It also reproduces a long-standing rule that if one-tenth of the fish in a receptacle are undersize all the fish may be seized and disposed of as directed by the Minister. This has been found to be a most useful deterrent and beneficial to public institutions which have received the fish. Clause 64 requires any person having in his possession fish belonging to the Crown or ordered to be forfeited to the Crown, to deliver the fish to an inspector on request. A provision to the like effect is in section 53 of the present Act.

Clause 65 makes the master of a vessel liable for offences committed on the vessel unless he can make out the defence provided for in that clause. Clause 66 enables the Director, under his official title, to institute legal proceedings to recover money due to the Crown under the Bill. By clause 67 a fisheries research and development fund is established in the Treasury. It will consist of one-third of all licence fees and registration fees paid under the Bill other than fees paid for the use of facilities provided by the Minister of Marine under clause 22 of the Bill and money appropriated for the fund by Parliament. It is contemplated that money will also be made available by the Commonwealth.

Subclause (3) sets out the purposes for which the fund may be used—that is, fishing research in South Australian waters, conservation and development of fisheries, and other purposes beneficial to the fishing industry. Clauses' 68 and 69 are the usual financial provisions stating that money received under the Bill (except money for a fisheries research and development fund) must go into general revenue, and moneys required for the administration of the Bill (other than money from the fund) must be appropriated by Parliament.

Mr. RODDA secured the adjournment of the debate.