**FISHERIES (MISCELLANEOUS) AMENDMENT BILL 1995**

**Legislative Assembly, 9 Mach 1995, pages 1889-92**

Second reading

**The Hon. J.K.G. Oswald, for the Hon. D.S. BAKER (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. J.K.G. OSWALD: I move: That this Bill be now read a second time. I insert the second reading explanation in Hansard without my reading it.

This Bill makes a number of amendments to the Fisheries Act 1982.

*1. Fish processor registration*

Under the current Act and regulations, any person who deals in fish is a fish processor and is required to be registered as such. Fish processors who sell directly to the consumer (retailers) are required to register their operations but are exempt from the registration fee. They are not required to submit monthly returns, as are wholesale processors, but are required to maintain written records of fish transactions on their premises. These requirements apply irrespective of where the processors obtain fish supplies, whether from licence holders or other processors. Following discussions with the South Australian Seafood Marketers and Processors Association, it is proposed that— all fish processors (wholesale, distributor or retail) who obtain fish from a licence holder be registered; and fisheries officers be empowered to enter unregistered processor premises (other than domestic premises) without a warrant. The intent of the proposed arrangements is to have a common system which applies to all registered processors. In particular, all registered processors will be required to pay an annual fee and submit monthly returns as well as maintain written records of fish transactions on their premises. This will assist in the monitoring of catches and sales of fish and help to reduce opportunities for illegal operators to dispose of fish taken without a licence. Under the new arrangements processors such as fish and chip shops, restaurants and hotels will not be required to be registered if they obtain their supplies from sources other than direct from licence holders, ie from wholesalers and distributors. However, they will continue to be required to maintain written records of fish transactions. It is understood that as very few retailers obtain fish direct from licence holders, there will be a minimal impact on this industry in general.

The proposed arrangements are consistent with the report of the Government Adviser on Deregulation who conducted a review of statutory licences in South Australia, with the objective of reducing unnecessary government impact on business operations.

With regard to compliance by the fish processing sector, fisheries officers have the power to enter registered premises without a warrant where it is suspected that the premises are being used for, or in connection with, an activity regulated by or under the Fisheries Act. The proposal to remove the requirement for retailers to be registered would mean that officers would no longer have the power to enter such premises when urgent action is deemed necessary. In order to restore flexibility it is proposed that the Act be amended to allow fisheries officers to enter unregistered fish processor premises (other than domestic premises) without a warrant. Industry has indicated that it supports the proposal.

It is proposed that the Fisheries Act be amended to empower fisheries officers to enter unregistered fish processor premises (other than domestic premises) without a warrant.

*2. Production of identification*

Where a fisheries officer reasonably suspects that a person is engaged in an activity regulated by or under the Fisheries Act, the officer is empowered to request the person to state his or her name and address.

If action is to be taken in respect of an offence, whether by way of a warning letter, expiation notice or prosecution, the outcome is dependent on having the person’s correct name and address. A number of offenders deliberately provide false names and addresses to fisheries officers when apprehended, in the hope of avoiding prosecution. This results in considerable non productive time as officers attempt to resolve the matter.

Unfortunately more and more persons are becoming involved in illegal activity and are prepared to provide false names and addresses.

It is proposed that the Fisheries Act be amended so that a fisheries officer may require a person to produce evidence of the correctness of his or her stated name or address. In most cases this should not cause any difficulty as individuals would have ready access to documents such as a driver’s licence, credit card, Medicare card, passport etc.

It is proposed that the Fisheries Act be amended to empower fisheries officers to request evidence of the correctness of the name or address of persons engaged in activities regulated by or under the Act.

*3. Unlawful possession of abalone*

Following the House of Assembly Select Committee inquiry into the abalone industry in 1991, penalties were substantially increased for the unlawful taking, possession, purchase and sale of abalone. These penalties are intended to combat the organised criminal groups which strip the State’s abalone resources without regard to the management controls aimed at ensuring long term sustainability of the fishery.

Section 44 of the Act provides that where a person sells, purchases or has possession or control of abalone taken without a licence, that person is guilty of an offence. However, the same section also provides that where a person sells or purchases, or has possession or control of abalone for the purposes of sale, the person is liable to higher penalties than for simple possession or control.

As a result of prosecution action since the penalties were increased, the Crown Solicitor has advised that in order to secure the higher penalties, it must be proven that the person in possession of unlawfully taken abalone was intending to sell it. In a number of cases it has proven difficult, if not impossible, to prove that the offender was intending to sell the abalone even though the circumstances of the cases led to such a conclusion.

If the increased penalties are to be used effectively to counter criminal elements, the problem should be addressed. It could be done by specifying that possession of more than a quantity of abalone prescribed by regulation is presumed to be for the purposes of sale unless the alleged offender proves to the contrary.

It is proposed that the Fisheries Act be amended so that the possession of more than the prescribed quantity of abalone is presumed to be for the purposes of sale unless the alleged offender proves to the contrary.

*4. Aquaculture management*

In 1992, agreement was reached between the government and the fishing industry that integrated fisheries management committees be established to manage the State’s fisheries resources. Committee membership could include representatives of commercial and recreational fishing interests, the South Australian Research and Development Institute (SARDI) Aquatic Sciences (or any other research agency) and the Department of Primary Industries— Fisheries. It was also agreed that the role of the committees be acknowledged in the fisheries legislation.

In 1993, amendments were made to the Fisheries Act whereby the Act recognised the existence of integrated fisheries management committees, and provision was made for the committee structures, functions, powers and procedures to be formalised by regulation.

Since then, representations have been made by the aquaculture industry to have similar arrangements in respect of marine and freshwater fish farming. Operating as an integrated management committee would bring together, on a formal basis, all relevant interest groups to consider management arrangements that would be beneficial to the industry. At the same time, such a forum would assist in resolving any conflicts that may occur between user groups. The net result would be coordinated management of the aquaculture industry.

It is proposed that the Fisheries Act be amended to provide for management of the aquaculture industry by way of integrated aquaculture management committees.

*5. Additional penalty for any offence*

Where a person is convicted of an offence that involves the unlawful taking of fish, the court, in addition to imposing any other penalty under the Fisheries Act, is required to impose an additional penalty equal to five times the wholesale value of the fish or $30 000, whichever is the lesser amount.

This provision applies specifically where the offence involves the taking of fish. However, there are a number of conditions imposed on fishery licences which limit the operations of licence holders. For example, licence holders are prohibited from taking snapper by net. Where a licence holder takes snapper by net, the offence is a breach of licence condition. In such a case the court would be unable to apply the additional penalty provision.

In 1993, the Fisheries Act was amended to, amongst other things, increase the penalty provisions relating to the unlawful taking of abalone. This followed the recommendations of the Select Committee referred to earlier.

The Crown Solicitor’s Office has advised that there is an anomaly insofar as the taker of abalone is liable to both the increased penalty and an additional penalty, whereas a receiver of the same abalone is liable to an increased penalty but not to the additional penalty. Indeed, this anomaly pertains to all fish species.

The additional penalty provision has long been recognised as a strong deterrent to offenders who breach the legislation. However, as the provision currently stands it applies only where an essential element of the offence is the taking of fish. The receiving of unlawfully taken fish is outside the scope of the existing provision, as is the purchase or sale of unlawfully taken fish, or any other offence involving fish unlawfully taken.

By way of comparison, under the criminal law the maximum penalty for housebreaking and larceny is exactly the same as for someone who receives stolen goods knowing them to have been stolen. The identical penalties are in place to act as a deterrent to someone who would act as a receiver of stolen goods.

It is proposed that the Fisheries Act be amended so that the additional penalty provisions apply to all offences against the Act involving fish taken unlawfully.

*6. Evidentiary provisions*

The evidentiary provisions of the Fisheries Act specify particular matters that may be the subject of a certificate signed by the Director of Fisheries for the purposes of proceedings for offences against the Act.

In particular prosecutions undertaken by the Crown Solicitor, the evidentiary provisions in relation to the preparation of a certificate were not specific enough to cover two instances. The Crown Solicitor has identified the need for a certificate to state whether the Director gave consent to any fishing activity that may have been undertaken outside the scope of the licence; and state the wholesale value of fish (which would be used by the court in imposing the mandatory additional penalty based on wholesale value of the fish).

Clarification of these two items in the evidentiary provisions would facilitate the production of relevant documentation to the courts and would help in the presentation of the facts of each case.

It is proposed that the Fisheries Act be amended so that the evidentiary provisions allow for Director’s certificates to specify whether the Director’s consent was given for any fishing activity, and to specify the wholesale value of fish in proceedings for an offence against the Act.

*7. Offences committed by agents*

In some fisheries, licence holders may engage agents to conduct fishing operations pursuant to the licence. Where an agent is convicted of an offence, the Fisheries Act provides for the licence holder to be liable to the same penalty as is prescribed for the offence committed by the agent. This provision ensures that licence holders are responsible for the actions of their agents, and that the licence is subject to suspension or cancellation in the event of multiple convictions within a three year period.

At present there is an anomaly insofar as the offence must be committed by the agent while on board the boat for the licence holder to be liable to the same penalty. Where the offence is committed on shore, there is no scope for the licence holder to be liable. There are some operations that are part of a fishery which are conducted on shore, e.g. weighing of catch, shucking of abalone and completion of catch and disposal record documentation. This anomaly should be rectified in order to ensure licence holders engage fit and proper persons to act as their agents.

It is proposed that the Fisheries Act be amended so that a licence holder is liable to the same penalty for an offence committed by an agent, regardless of whether the agent was on board a boat or on shore.

*8. Proceedings in respect of offences*

Offences against the Fisheries Act are summary offences and proceedings must be commenced within twelve months of the day on which the offence is alleged to have been committed.

The current Fisheries Act was promulgated in 1984. Since then, major changes have occurred in the way fisheries are managed. In particular, quota systems have been implemented in the Abalone and Southern Zone Rock Lobster Fisheries. In the Marine Scalefish Fishery, limited quota arrangements have been implemented, and it is likely that such arrangements may be phased in to a greater degree than at present.

In order to ensure the success of any quota system, there must be comprehensive monitoring of catches landed by licence holders. This is done by way of a catch and disposal record which is completed by the licence holder and validated by the fish processor receiving the fish. Then the documentation has to be submitted to the Department for reconciliation. This critical process is essential not only to secure compliance by licence holders, but also to secure compliance by fish processors who obtain the fish.

An important factor in the prosecution of those operating outside quota arrangements is the need to properly audit catch documentation and compare it against sales dockets. This process can often take considerable time because the fish may be sold within the State, interstate and overseas.

Experience has shown that obtaining sufficient evidence can, in some cases, take more than twelve months because of the ability of offenders to tamper with documentation. Also, it has become evident from licence holders and/or fish processors attempting to avoid compliance with the quota system that they seek to delay proceedings by not being able to locate documentation and present it for examination within a reasonable period of time.

It is proposed that the Fisheries Act be amended so that the twelve month time period for commencement of prosecution action in relation to an offence against the Act be extended to three years.

*9. Cost recovery—issue of permits*

At the present time, numerous permits or authorities are issued by the Minister or Director each year for fishing activities that are not covered by existing licensing arrangements. For example, authorities have been granted to licence holders and non-licence holders for the taking of pilchards under a developmental fishing plan. The preparation of such authorities may require considerable input by departmental staff, for which there is no provision to recover any of the costs incurred by the Department.

Under existing arrangements, licence holders are contributing towards the costs of managing their particular fishery. This follows an agreement between industry and the government after developing general cost recovery principles. However, the principles only address activities conducted pursuant to a licence, not activities conducted pursuant to a permit or special authority—for which no fee can be charged.

Making provision for the Minister or Director to charge a fee in such circumstances would be consistent with the agreed principles of cost recovery, and would be based on a user pays system. Furthermore, a number of duplicate authorities or licences are issued when the original has been lost or mislaid by the holder of the authority. In such cases it would be appropriate for a nominal charge to apply to cover administrative costs.

It is recognised that some permits or authorities should not be subject to a fee, eg a permit to collect a limited number of specimens for scientific research, or for a school as part of a marine science education program. In circumstances such as these the fee would be waived.

It is proposed that the Fisheries Act be amended so that the issue of exemption notices or permits, or duplicate authorities, by the Minister or Director be subject to a fee to recover the administrative costs of processing such transactions.

In providing the above explanation of the proposed amendments, I advise that the South Australian Fishing Industry Council (SAFIC) which represents the interests of commercial fishers, and the South Australian Recreational Fishing Advisory Council (SARFAC) which represents the interests of recreational fishers, have been consulted and have indicated support for the proposed amendments.

I commend the measures to the House.

Explanation of Clauses

*Clause 1: Short title*

This clause is formal.

*Clause 2: Amendment of s.5—Interpretation*

This clause generalises the definition of ‘fishery management committee’ to ‘management committee’ to cover fish farming management committees as well as committees established in respect of wild fisheries.

*Clause 3: Amendment of s. 20—Objectives*

This clause simply replaces the reference to ‘fishery management committees’ with ‘management committees’.

*Clause 4: Amendment of s. 23—Delegation*

This clause also replaces the references to ‘fishery management committee’ with ‘management committee’.

*Clause 5: Amendment of s. 28—Powers of fisheries officers*

This clause amends section 28 of the principal Act to expand the powers of fisheries officers. It amends the section to empower a fisheries officer to require a person to produce evidence of their identity as well as stating their name and address.

The clause also amends the section to make it an offence for a person to state a false name or address or produce false evidence of their identity and to allow a fisheries officer to arrest without warrant a person who fails to state truthfully their name or address or to produce true evidence of their identity.

A new provision is included to make it an offence for a fisheries officer or a person accompanying or assisting a fisheries officer exercising powers under the section to address offensive language to any other person or, without lawful authority or a reasonable belief as to lawful authority, to hinder or obstruct, or use or threaten to use force in relation to, any other person. The maximum penalty is a division 6 fine ($4 000).

The clause further amends the section to make it clear that a warrant is required to allow fisheries officers to enter residential premises and to allow officers to enter non-residential premises without warrant if the premises are used by a fish processor for fish processing activities (whether or not the premises are registered).

*Clause 6: Amendment of s. 44—Offences with respect to sale, purchase or possession of fish*

This clause amends section 44 of the principal Act which makes it an offence for a person to sell or purchase, or have possession or control of, fish taken in contravention of the Act, protected fish and fish of prescribed classes. Offences involving abalone attract higher maximum penalties.

The amendment inserts an evidentiary provision for cases where an offence of possession or control of abalone for the purposes of sale is alleged. If it is proved that a person had more than the prescribed quantity of abalone in his possession or control, it will be presumed, unless there is evidence to the contrary, that the person had possession or control of the abalone for the purposes of sale.

*Clause 7: Amendment of s. 48C—Non-application of Development Act 1993*

This clause amends section 48C of the principal Act to update the reference to planning legislation.

*Clause 8: Insertion of s. 50A—Regulations relating to fish farming management committees*

This clause inserts new section 50A to enable the making of regulations establishing management committees for prescribed classes of fish farming.

*Clause 9: Amendment of s. 53—Leases or licences to farm or take fish*

This clause amends section 53 of the principal Act to remove a reference to repealed legislation.

*Clause 10: Amendment of s. 58—Review of decisions relating to authorities*

This clause amends section 58 of the principal Act to rectify an error in the wording of the section.

*Clause 11: Amendment of s. 66—Additional penalty based on value of fish unlawfully taken*

This clause amends section 66 of the principal Act so that an additional penalty must be imposed for all offences involving fish taken in contravention of the Act, not just taking offences.

*Clause 12: Amendment of s. 67—Evidentiary provisions*

This clause amends section 67 of the principal Act to allow the use of certificates given by the Director as evidence of the wholesale value of fish, or whether a consent was given by the Director under section 34 to the use of a boat other than the registered boat, or for a person other than the registered master to be in charge of a boat.

*Clause 13: Amendment of s. 69—Offences committed by bodies corporate or agents or involving registered boats*

This clause amends section 69 of the principal Act to ensure that registered owners are liable for acts and omissions of a registered master while the master is not on a boat, in relation to fishing activities conducted by use of the boat. It also ensures that registered masters and registered owners are liable for act and omissions of their agents while the agents are not on a boat, in relation to fishing activities conducted by use of the boat.

*Clause 14: Amendment of s. 70—Summary offences*

This clause amends section 70 of the principal Act to increase the time within which a prosecution for an offence against the Act can be commenced from 12 months to three years.

*Clause 15: Amendment of s. 72—Regulations*

This clause amends section 72 of the principal Act to enable the making of regulations prescribing fees payable on application for a permit or exemption under the Act or for the issue of a duplicate authority and providing for the payment and recovery of such fees.

Mr CLARKE secured the adjournment of the debate.