
NATIONAL ASSEMBLY

THIRTY-SECOND LEGISLATURE

FOURTH SESSION

Bill 48

**An Act respecting commercial fisheries
and aquaculture and amending other legislation**

First reading



Introduced by
Mr Jean Garon
Minister of Agriculture, Fisheries and Food

EXPLANATORY NOTES

The object of this bill is to further the development of commercial fisheries and aquaculture and promote the commerce of aquatic products taken from the waters of the public domain of Québec.

To attain its object the bill provides, first, for the adoption, every year, of a governmental commercial fisheries program that will indicate, in particular, the species for which and the places where fishing rights may be granted.

Secondly, the bill introduces a concession system whereby the Minister of Agriculture, Fisheries and Food is empowered to grant commercial fishing rights in tideless waters and the right to use the shore or bed of tidal waters to affix or set up fishing gear and installations intended for commercial fishing.

The bill also provides for an administrative system under which the Minister will issue the licences required to operate commercial fish-breeding plants and for the commercial cultivation or harvesting of aquatic plants.

The bill empowers the Government to regulate the exercise of ministerial powers in connection with the granting of concessions or licences, introduces administrative and penal measures and establishes in what cases and on which conditions an inspection seizure or confiscation of property may be made.

Finally, the bill amends certain legislative provisions, in particular, the provisions of the Act respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation which concern the functions and powers of the Minister.

ACTS AMENDED BY THIS BILL:

- the Maritime Fisheries Credit Act (R.S.Q., chapter C-76);
- the Act respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (R.S.Q., chapter M-14);
- the Act respecting the Ministère de l'Environnement (R.S.Q., chapter M-15.2).

Bill 48

An Act respecting commercial
fisheries and aquaculture and amending
other legislation

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

COMMERCIAL FISHERIES

DIVISION I

PROGRAM

1. The Minister of Agriculture, Fisheries and Food shall devise, every year, taking into account the fishing management plan established under the Act respecting the conservation and development of wildlife (1983, chapter *insert here the chapter number assigned to the said Act*), a program to promote the development of commercial fisheries and the commerce of aquatic products caught or taken from tideless waters of the public domain.

The program indicates, in particular,

- (1) the species of fish, amphibians, echinoderms, crustaceans or shellfish for which commercial fishing rights may be granted;
- (2) the places where commercial fishing rights may be granted;
- (3) the maximum number of concessions which, in each of the places contemplated in paragraph 2, may be granted under section 2, and the maximum quantity of aquatic products of each specie that may be caught.

2. The program is subject to the approval of the Government which may amend it.

DIVISION II

CONCESSIONS

3. The Minister may grant the right to fish for commercial purposes in tideless waters of the public domain.

In tideless waters, the right comprises the right to use that part of the shore or bed that is part of the public domain to affix or deposit fishing gear or installations intended for commercial fishing.

4. The Minister may, in tidal waters, grant the right to use that part of the shore or bed that is part of the public domain to affix or deposit fishing gear or installations intended for commercial fishing.

5. Where part of the shore or bed of tidal or tideless waters is not part of the public domain, the Minister may, after having reached an agreement with the owner of that part, grant the right to use it to affix or deposit thereon fishing gear or installations intended for commercial fishing.

6. The Minister may, within the limits and for each place indicated in the program approved by the Government, grant such number of concessions as he may fix and determine, for each concession, the species and quantity of aquatic products that may be caught or taken.

7. The Minister shall select concession holders according to such criteria and procedure as he may determine.

The criteria and the procedure are made public in the manner fixed by the Minister.

8. On granting a concession, the Minister may prescribe any condition, restriction or prohibition that he considers expedient.

Concession holders are also subject to every condition, restriction or prohibition that the Government may fix by regulation.

9. The term of a concession is 12 months.

The Minister may, however, fix a shorter term.

10. Concession holders are required to pay to the Minister the royalty fixed by regulation.

Concession holders shall, in carrying on their activities, use and produce to the Minister the books, registers and other documents prescribed by regulation.

11. Unless the holder of a concession granted under this division, no person may engage in commercial fishing in tideless waters of the public domain or use for that purpose part of the shore or bed of tideless or tidal waters of the public domain, or any part of the shore or bed that is not part of the public domain and that is under an agreement contemplated in section 5.

CHAPTER II

COMMERCIAL AQUACULTURE

12. Except under a licence issued by the Minister of Agriculture, Fisheries and Food, no person may operate a fish-breeding plant.

For the purposes of this Act, a fish-breeding plant is an establishment where fish, amphibians, echinoderms, crustaceans or shellfish or their eggs, sexual products or larvae are commercially produced or bred for consumption or stocking purposes.

13. Except under a licence issued by the Minister, no person may, in the places determined by regulation, cultivate or harvest aquatic plants on a commercial basis.

14. The Minister shall issue a licence to every person who meets the conditions and pays the fee prescribed by regulation.

The Minister may, however, after having allowed the interested person to make representations, refuse to issue a licence on grounds of public interest.

The decision of the Minister refusing the issue of a licence must be substantiated and forwarded in writing to the interested person.

15. The Minister may subject the issue of a licence to any condition, restriction or prohibition that he determines and enters on the licence.

16. The term of a licence is 12 months.

The Minister may, however, fix a shorter term.

17. The holder of a licence shall, in carrying on his activities, use and produce to the Minister the books, registers and other documents prescribed by regulation.

18. The Minister may establish and manage fish-breeding plants for research purposes.

CHAPTER III

ADMINISTRATIVE PENALTIES AND APPEAL

DIVISION I

SUSPENSION OR CANCELLATION OF A
CONCESSION OR LICENCE

19. The Minister may, after having allowed the interested person to make representations, suspend or cancel a concession or a licence

(1) if the interested person is found guilty of an offence against this Act or the regulations,

(2) if the interested person fails to comply with the conditions, restrictions or prohibitions affecting the concession or licence.

The Minister may, in the same manner, suspend or cancel the licence of any person who refuses to implement a measure prescribed by an inspector or officer in application of section 47.

20. In the cases contemplated in section 19, the Minister's decision must be substantiated and forwarded in writing to the interested person.

DIVISION II

APPEAL

21. An appeal lies to the Provincial Court from any decision of the Minister on any question of law or jurisdiction in respect of any person

(1) whose concession or licence is suspended or cancelled;

(2) whose application for a licence is refused on grounds other than the public interest.

22. Appeals are brought by a motion served on the Minister.

The motion must be filed at the office of the Provincial Court of the judicial district where the appellant has his domicile, corporate seat or establishment, within 15 days of receipt of the Minister's decision by the appellant.

23. On receiving the motion for appeal, the Minister shall transfer to the Provincial Court the record relating to the decision appealed from.

24. The appeal is heard and decided by preference.

25. Subject to any additional proof it may require, the court shall render its decision on the record transmitted by the Minister, after having allowed the parties to make representations.

26. The appeal does not suspend the execution of the decision of the Minister unless the court decides otherwise.

27. No appeal lies from the decision of the Provincial Court.

28. The Provincial Court may, in the manner provided in article 47 of the Code of Civil Procedure, adopt the rules of practice considered necessary for the application of this division.

CHAPTER IV

INSPECTION, SEIZURE AND CONFISCATION

29. The Minister may, for the administration of this Act and the regulations and within the limits authorized by the Conseil du trésor, appoint inspectors, analysts and officers and determine their remuneration and other conditions of employment.

30. Every inspector or officer has, in the performance of his duties, the powers of a peace officer.

An inspector or an officer must identify himself on demand and show the certificate bearing the signature of the Minister and attesting his capacity.

31. No person may hinder any inspector, analyst or officer in the performance of his duties or refuse to obey him.

32. No inspector, analyst or officer may be prosecuted for any official act done in good faith in the performance of his duties.

33. Every inspector or officer, in the performance of his duties, may

(1) enter, at any reasonable hour, the establishment of a licence holder to inspect it; he may inspect the products found therein and take free samples thereof, examine the registers or other documents and take extracts from or make copies of them;

(2) require any document relating to the application of this Act and the regulations and the production of any document relating thereto.

34. Any inspector or officer may board any fishing boat to verify whether its occupants are in compliance with this Act or the regulations and, in particular, whether any part of the shore or bed of the waters

of the public domain used by them is used in accordance with this Act and the regulations.

35. Any inspector or officer may enter and, without a warrant, search any vehicle, boat, fishing boat, aircraft or any premises other than a dwelling house and open or cause to be opened any receptacle if he has reasonable and probable cause to believe that it contains aquatic products obtained or held in contravention of this Act or the regulations or any other property which has been used to commit an offence against this Act or the regulations.

36. Any inspector or officer may, without a warrant, seize any property in respect of which he has reasonable and probable cause to believe that an offence against this Act or the regulations has been committed, or which has been used to commit such an offence.

37. The inspector or officer who seizes any property shall draw up a minute on which he indicates, in particular,

- (1) the date and place of the seizure;
- (2) the circumstances of and the reasons for the seizure;
- (3) the description of the seized property;
- (4) the name of the person from whom the property was seized;
- (5) any information permitting the rightful owner or possessor of the seized property to be identified;
- (6) the identity and capacity of the person making the seizure.

38. A copy of the minute is given to the person from whom the property was seized.

39. The inspector or officer shall, without delay, make a written report to the Minister of any seizure made by him under this Act.

40. The inspector or officer is responsible for the custody of the property seized until it has been produced in a judicial proceeding or until it is disposed of under section 41, 42, 44, 45 or 46.

41. If perishable goods are found among the seized property, the inspector or officer having custody of them may sell them according to the modalities and for the price justified by the circumstances.

The proceeds of the sale are credited to the Minister of Finance in a bank or financial institution that he determines and the Deposit Act (R.S.Q., chapter D-5) applies, *mutatis mutandis*.

42. Subject to section 45 or 46, any property seized or the proceeds of its sale must be returned to the rightful owner or possessor if no charge is laid in respect of the property within 90 days of the date of seizure.

43. On the application of the person making the seizure, a justice of the peace may order that the period of retention of the seized property be extended for a maximum of 90 days.

Before deciding on the merit of the application, the justice of the peace may order that it be served on the person he designates.

44. The rightful owner or possessor of the seized property may, at any time, request the justice of the peace that his property be returned to him.

The request must be served on the person who seized the property, or if proceedings are instituted, on the prosecuting party.

The judge shall grant the request if he is convinced that the person making the request will suffer grave and irreparable prejudice if retention of the property is continued and returning it will not impede justice.

45. Any property seized by an inspector or officer whose rightful owner or possessor is unknown or untraceable, or the proceeds of sale of the property, shall be confiscated 90 days after the day of seizure; it is thereupon disposed of according to the instructions of the Minister.

46. Any aquatic product seized by an inspector or by an officer on the grounds that it was taken from or caught in waters of the public domain by a person who is not the grantee of a right contemplated in Division II of Chapter I, or the proceeds of sale of the product, shall be confiscated unless, within 10 days of the date of seizure, the person who intends to claim the product has served an action to that effect on the Attorney General.

The Minister shall prescribe the manner in which the property seized under this section is to be disposed of.

47. Any inspector or officer may order the isolation, quarantine or treating, or with the authorization of the Minister, the destruction, within the time he indicates, of all or part of the products of a fish-breeding plant

(1) if the products are affected by a contagious or parasitic disease;

(2) if the operator does not comply with the standards applicable to his plant or his activities or with the conditions, restrictions or

prohibitions affecting his licence or if he does not hold a licence authorizing him to engage in that production or breeding.

48. Where a person refuses to implement, within a fixed time, a measure ordered by an inspector or officer, the inspector or officer may cause the measure to be implemented at the expense of the offender.

CHAPTER V

REGULATIONS

49. The Government may, by regulation,

- (1) fix the royalties exigible from a concession holder;
- (2) determine the gear and installations intended for commercial fishing the affixing or depositing of which on a part of the shore or bed of waters of the public domain may be authorized by the Minister;
- (3) determine the conditions, restrictions or prohibitions relating to the use of a part of the shore or bed of waters of the public domain to affix or deposit thereon any gear or installations intended for commercial fishing, to the situation and size of such part of the shore or bed and to the restoration of the premises used to their former condition on the expiry of a concession;
- (4) prescribe norms relating to the construction, layout and equipment of a fish-breeding plant;
- (5) prescribe norms relating to the production and breeding, in a fish-breeding plant, of fish, amphibians, echinoderms, crustaceans or shellfish and their eggs, sexual products or larvae, and norms relating to the transportation of live products intended for consumption;
- (6) prescribe norms relating to the commercial cultivation and harvesting of aquatic plants;
- (7) determine the waters and places in such waters where commercial cultivation or harvesting of aquatic plants is prohibited except with a licence;
- (8) determine categories of licences and the rights, conditions, restrictions or prohibitions relating to each category;
- (9) prescribe conditions of issue and the form, tenor and cost of a licence;
- (10) prescribe the books, registers or other documents to be used by the grantee of a right or the holder of a licence in carrying on his activities, and which he must furnish to the Minister;

(11) determine the contagious or parasitic diseases giving rise to the measures prescribed in section 47;

(12) determine the provisions of a regulation under this section the infringement of which is punishable pursuant to section 51.

50. The Government shall publish every draft regulation in the *Gazette officielle du Québec* with a notice that it may be adopted with or without amendment on the expiry of not less than 30 days from that publication.

The regulation comes into force on the day of its publication in the *Gazette officielle du Québec* or on any later date fixed therein.

CHAPTER VI

PENAL PROVISIONS

51. Whoever contravenes section 11, 12, 14 or 31 or any regulatory provision determined under paragraph 12 of section 49 is liable, in addition to costs, to a fine of \$200 to \$2 000 in the case of an individual and of \$500 to \$5 000 in the case of a corporation.

For any subsequent offence within two years of conviction for the same offence, the offender is liable, in addition to costs, to a fine of \$1 000 to \$10 000 in the case of an individual and of \$3 000 to \$30 000 in the case of a corporation.

52. Where a seizure is made under section 36, the judge who imposes a penalty for any offence against section 11, 12 or 14 may declare the confiscation of the seized property.

In such a case, if aquatic products are found in the seized property, the judge shall declare the confiscation thereof.

The Minister shall prescribe the manner of disposing of property confiscated under this section.

53. Where a corporation is guilty of an offence against this Act or the regulations, the director, employee or representative of the corporation who ordered, authorized or advised the commission of the offence or consented thereto is a party to the offence and is liable to the penalty prescribed for the offence.

54. Every person who knowingly aids, by any act or omission, another person to commit an offence contemplated in section 51 or who advises, encourages or incites a person to commit an offence is a party to the offence and is liable to the penalty prescribed for the offence.

55. Where an offence contemplated in section 51 continues for more than one day, it constitutes a separate offence for each day or part of a day during which it continues.

Notwithstanding section 12 of the Summary Convictions Act (R.S.Q., chapter P-15), separate offences may be described under a single count.

56. Prosecutions are brought under the Summary Convictions Act.

CHAPTER VII

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

57. Section 5.1 of the Maritime Fisheries Credit Act (R.S.Q., chapter C-76) is replaced by the following section:

“5.1 In order to promote the development of maritime fisheries, the Minister of Agriculture, Fisheries and Food may, in accordance with a regulation made to that effect by the Government, assume part of the cost of the loans obtained by the fishermen, persons, companies or organizations contemplated in section 5.”

58. Section 6 of the said Act is amended by replacing subparagraph *d* of the first paragraph by the following subparagraph:

“(d) the objects, the conditions and the modes and procedures of the assumption of a part of the cost of loans granted under section 5.1.”

59. Section 2 of the Act respecting the Ministère de l’Agriculture, des Pêcheries et de l’Alimentation (R.S.Q., chapter M-14) is amended

(1) by replacing paragraph 1 by the following paragraph:

“(1) he shall devise and see to the implementation of policies and measures respecting the production, processing, distribution, marketing and use of agricultural, aquatic or food products;”;

(2) by replacing paragraphs 6 and 6.1 by the following paragraphs:

“(6) he may, for the purposes contemplated in paragraphs 1 and 2 and under such conditions as he determines, make loans, grants or advances;

“(6.1) he may make grants for the carrying out of drainage works to any agency responsible for the administration of a territory for municipal purposes, and have land improvements executed by day labour or by contract;”;

(3) by adding, at the end, the following paragraph:

“The Minister may, with the authorization of the Government, acquire by agreement, lease or expropriate any immovable property or real right necessary for the carrying out of his duties.”

60. Section 13 of the said Act is replaced by the following section:

“**13.** A document or copy of a document from the department or forming part of the archives of the department, signed or certified by a person contemplated in the first paragraph of section 12 as a true copy, is authentic.

61. The heading of Division VI of the said Act is replaced by the following heading:

“DEVELOPMENT OF THE AGRICULTURAL AND FOOD SECTORS”.

62. Section 23 of the said Act is replaced by the following section:

“**23.** The Minister may prepare plans, programs or projects to encourage the recovery or development of agriculture, a better use or conservation of agricultural resources or the setting up, extension, consolidation and modernization of agricultural or food products packing and processing firms.”

63. The Act respecting the Ministère de l'Environnement (R.S.Q., chapter M-15.2) is amended by inserting, after section 11, the following section:

“**11.1** For the purposes of sections 10 and 11, the Minister of the Environment may, by order,

(1) determine the places where the use of a part of the shore or bed of waters of the public domain to affix or deposit any gear or installations intended for commercial fishing is prohibited;

(2) determine the gear or installations intended for commercial fishing the affixing or depositing of which on any part of the shore or bed of waters of the public domain is prohibited.

The order is published in the *Gazette officielle du Québec*.”

64. Licences for the operation of a piscicultural establishment contemplated in section 12 of this Act, issued under the Wild-life Conservation Act (R.S.Q., chapter C-61), remain valid until their date of expiry.

[[65. The sums required for the carrying out of this Act are taken, for the fiscal year 1983-84 and to the extent determined by the Government, out of the consolidated revenue fund and, for subsequent fiscal years, from the sums granted annually for that purpose by the Parliament.]]

66. The Minister of Agriculture, Fisheries and Food is responsible for the administration of this Act.

67. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

68. This Act will come into force on the date fixed by proclamation of the Government, except the provisions excluded by the proclamation, which will come into force on any later date fixed by proclamation of the Government.

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