

BILL C-52: AN ACT TO AMEND THE FISHERIES ACT

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LEGISLATIVE HISTORY OF BILL C-52

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 20 May 2005

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-52: AN ACT TO AMEND THE FISHERIES ACT*

BACKGROUND

Bill C-52, An Act to amend the Fisheries Act (terms and conditions of permissions, leases and licences), was introduced in the House of Commons on 20 May 2005. The bill makes it a statutory requirement that holders of fishing licences comply with any terms or conditions attached to those licences; failure to comply will constitute an offence.

The bill is proposed in response to *Report No. 75 – Disallowance*, issued by the Standing Joint Committee for the Scrutiny of Regulations on 14 March 2005. The Committee resolved that subsection 36(2) of the *Ontario Fishery Regulations* (OFR) under the *Fisheries Act* be revoked as it “trespasses unduly on the rights and liberties of the subject and makes an unusual and unexpected use of the powers conferred by Parliament.” According to the Committee, this provision of the *Ontario Fishery Regulations* is not authorized by the *Fisheries Act*. Subsection 36(2) of the OFR states: “No holder of a commercial fishing licence shall violate any of the terms or conditions of the licence.” The Committee had already drawn the attention of the Houses to subsection 36(2) of the OFR in its Report No. 66, issued in March 2000.

The *Fisheries Act* deals primarily with the proper management and control of the fisheries, the conservation and protection of fish, and the protection of fish habitat and prevention of pollution. Under the *Constitution Act, 1867*, the federal parliament was assigned responsibility for sea coast and inland fisheries while provincial legislatures were assigned responsibility for matters of property and civil rights and the management of public lands. While

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

the federal government has retained final authority over all fisheries, a number of court references between 1882 and 1898 confirmed provincial legislative responsibilities for inland fisheries; as a result, a system of delegation of federal administrative authority over a number of fisheries was instituted. For example, commercial fisheries in Ontario are regulated by the *Ontario Fishery Regulations*.

The *Fisheries Act* is 137 years old and has not undergone any significant overhaul since it came into force,⁽¹⁾ although it has been amended on several occasions over the years to adapt to evolving management of fisheries and to correct problems in the Act. The Department of Fisheries and Oceans (DFO) has expressed the intention to reform Canadian fisheries management structures and update the enforcement tools available to the Department. Many of these changes would entail significant amendments to the *Fisheries Act*.

Bill C-52 was introduced with no advance notice or indication as to what it is designed to accomplish. Two earlier versions of the bill, however, have been introduced in the last two years. Bill C-43, An Act to amend the Fisheries Act, was given first reading on 11 June 2003. This bill did not progress further before the session was prorogued on 12 November 2003. It was reintroduced as Bill C-33 on 30 April 2004, in the 3rd Session of the 37th Parliament, but had not been given second reading when Parliament was dissolved. The debate during second reading of Bill C-33 on 3 and 12 May 2004 nevertheless help to clarify the government's intent in introducing its successor, Bill C-52. Both C-43 and C-33 were designed to amend the *Fisheries Act* in two ways. First, the bills provided that the Governor in Council could make regulations respecting the method of designation where a licence is issued to an Aboriginal organization; and second, the bills provided that breach of a term or condition of a licence issued under the *Fisheries Act* would be an offence. Bill C-52 differs from the previous bills in that it proposes only the second of those two amendments.

It is important to note that the conditions attached to a fishing licence are an integral part of the licence, and compliance with them is a key element in the proper management and control of the fishery and in the conservation and protection of fish. The provisions of the *Fisheries Act* and regulations give the Minister the discretionary power not only to issue fishing licences but also to place conditions on them with respect to, among other things,

(1) There has been one recent attempt to proceed with a major rewrite of the *Fisheries Act*: Bill C-62, introduced in October 1996. The bill died on the *Order Paper* when the 1997 general election was called.

species of fish, quantity of fish, gear, period of fishing activity, and area where the fishing can take place. The regulations provide guidance on the conditions that may be included in a licence. Individuals who choose to participate in a fishery are aware of licence terms and conditions, and agree to fish in accordance with them. Licences are thus both a fisheries management and an enforcement mechanism.

DESCRIPTION AND ANALYSIS

Bill C-52 consists of only two clauses. Clause 1 adds a new section 10 after section 9 of the *Fisheries Act*.⁽²⁾ Subsection 10(1) explicitly makes it a requirement of the Act to comply with terms and conditions of permissions, leases and licences issued under the Act. Failure to comply with these terms and conditions becomes an offence by virtue of section 78, which states that it is an offence to contravene the Act. The proposed requirement is currently found in subsection 36(2) of the OFR.

Subsection 10(2) provides that, for greater certainty, fishing permissions, leases and licences are not statutory instruments. This provision does not provide an “exemption” from the *Statutory Instruments Act*. According to DFO, it only clarifies that the thousands of fishing licences issued each year are not instruments of a legislative nature as defined in the *Statutory Instruments Act*.

Clause 2 states that the Governor in Council shall fix the day on which this Act comes into force.

COMMENTARY

According to DFO, the main purpose of the proposed amendment is to clarify and reinforce the fact that compliance with fishing licence terms and conditions is a requirement of the Act. The Department further states that the Standing Joint Committee for the Scrutiny of Regulations has seen Bill C-52 and believes that it addresses the Committee’s legal concerns. During the debate at second reading of Bill C-52, which started on 6 June 2005, the Minister of Fisheries and Oceans confirmed having discussed the matter with some members of the Standing Joint Committee who, according to the Minister, have indicated that Bill C-52 would address the problems raised by the Committee.

(2) There is currently no section 10 in the Act, as sections 10 to 16 were repealed in 1991.

It should be noted that in reference to a previous version of Bill C-52 – Bill C-43 – the Chairs of the Standing Joint Committee had acknowledged in a letter to the Minister of Fisheries and Oceans that amendments included in Bill C-43 would resolve the Committee’s objections concerning the legality of the relevant regulatory provisions. The Chairs had pointed out, however, with respect to the proposed subsection 10(1), that some parliamentarians might object to the proposal that non-compliance with terms and conditions of licences would be subject to penal sanctions that would include imprisonment. The Chairs further noted that this proposal could be thought undesirable as a matter of legislative policy. The Committee was advised by counsel that it should not be seen to endorse what was in the bill.⁽³⁾

It should also be noted that while subsection 36(2) of the *Ontario Fishery Regulations* applies only to Ontario fisheries, the new section 10 of the *Fisheries Act* as proposed in Bill C-52 would apply to fisheries nationwide.

The decision of the Minister of Fisheries and Oceans to introduce Bill C-52 on 20 May 2005 departs from the position expressed in his letters to the Chairs of the Standing Joint Committee for the Scrutiny of Regulations on 24 March 2005 and 19 April 2005. In those letters, the Minister stated that he did not intend to reintroduce a bill to amend the *Fisheries Act* at this time, but that his officials were “planning to carry out a broader renewal of the *Fisheries Act* as soon as possible.”⁽⁴⁾ This position was, evidently, instrumental in the Standing Joint Committee’s decision to recommend revoking subsection 36(2) of the OFR. The Committee felt “justified in treating [the Minister’s] response as an indication that illegal provisions such as section 36(2) will remain in place for the foreseeable future.”⁽⁵⁾

The Standing Joint Committee’s report was presented in the Senate on 5 May 2005 and in the House of Commons on 9 May 2005. Pursuant to subsection 19.1(5) of the *Statutory Instruments Act*, the Committee’s resolution would be deemed to have been adopted by the Senate or the House of Commons on the 15th sitting day after the report is presented to that House unless, before that time, a Minister files with the Speaker of that House a motion to the effect that the resolution not be adopted.

(3) Standing Joint Committee for the Scrutiny of Regulations, *Evidence*, 3rd Session, 37th Parliament, Issue 1, 11 March 2004.

(4) Standing Joint Committee for the Scrutiny of Regulations, *Report No. 75 – Disallowance*, Appendix B, 1st Session, 38th Parliament, 5 May 2005.

(5) *Ibid.*, Appendix C.

On 3 June 2005, the Minister of Fisheries and Oceans filed the following motion: “That, given the importance of the fisheries in Ontario and the introduction of Bill C-52, An Act to amend the Fisheries Act (terms and conditions of permissions, leases and licenses) by the Minister of Fisheries and Oceans which addresses the concerns of the Standing Joint Committee on the Scrutiny of Regulations, and pursuant to Standing Order 124 and subsection 19.1(5) of the Statutory Instruments Act, the resolution of the Standing Joint Committee providing that subsection 36(2) of the Ontario Fishery Regulations, 1989 be revoked, presented to this House on May 9, 2005 in its Second Report (Report No. 75 – Disallowance), not be adopted, and that this matter be referred back to the Standing Joint Committee for further study.”⁽⁶⁾ Pursuant to Standing Order 128, a debate on the motion was scheduled for 8 June 2005. The Minister’s motion was agreed upon by the House of Commons, and therefore subsection 36(2) of the *Ontario Fishery Regulations* will not be revoked at this time. By filing this motion, the Minister intended, pending the adoption of Bill C-52 by Parliament, to prevent an “enforcement vacuum” in Ontario fisheries, which might have been created by the revocation of subsection 36(2) of the OFR.

Concern to avert a possible enforcement vacuum was expressed by the Ontario Minister of Natural Resources, David Ramsey, in a letter to the Minister of Fisheries and Oceans. Minister Ramsey wrote: “Without this provision, Ontario would literally have its hands tied with respect to the enforcement of the commercial fishery. It is entirely likely that the revocation of subsection 36(2) would result in chaos in this sector and threaten the sustainability of our fisheries resources.”⁽⁷⁾

The Standing Joint Committee for the Scrutiny of Regulations responded to the concern by affirming that “disallowance of [section 36(2)] may change the manner of enforcing compliance with terms and conditions of licences, but would certainly not affect in any way the ability to impose such terms and conditions.”⁽⁸⁾ The Committee further stated that “Whether or not section 36(2) remains in the Regulations, the authority to issue licences and to impose terms and conditions on the licence would remain unimpaired, as would the ability to enforce observance of those terms and conditions. The imposition of a fine or a jail term for breach of a licence condition, as opposed to suspending or cancelling the same licence, has nothing to do with the sustainability of the fishery resource.”⁽⁹⁾

(6) House of Commons, *Notice Paper*, No. 109, 6 June 2005.

(7) Standing Joint Committee for the Scrutiny of Regulations (2005), Appendix B.

(8) *Ibid.*, Appendix C.

(9) *Ibid.*

Finally, it should be noted that the kind of provision proposed by Bill C-52 may be found in other federal statutes, including the *Canada Transportation Act*, which requires the holders of licences for scheduled and non-scheduled flights to comply with the terms of the licence (subsections 71(2) and 74(2)). Section 174 of the Act makes it an offence to contravene any provision of the Act. Similarly, the *Nuclear Safety and Control Act* makes it an explicit offence to breach a condition of a licence (section 48(c)).