

NATIONAL ASSEMBLY

FIRST SESSION

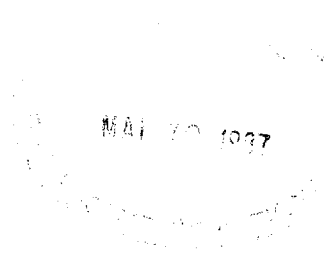
THIRTY-THIRD LEGISLATURE

Bill 38

The Marine Products Processing Act

Introduction

**Introduced by
Mr Robert Dutil
Minister for Fisheries**



**Québec Official Publisher
1987**

EXPLANATORY NOTES

This bill provides that a fisherman, the holder of an acquirer's permit or the operator of a marine products processing factory may transfer, deliver or transmit such products only to another holder of an acquirer's permit or operator of a marine products processing factory or to a restaurateur, retailer or consumer.

This bill also provides that only an operator, the holder of an acquirer's permit, a restaurateur or a retailer may acquire from a fisherman or cause him to deliver or transmit to him marine products for resale, or may serve as an intermediary for the acquisition or transfer of marine products.

This bill does not apply to marine products prepared or canned in accordance with minimum processing standards prescribed by regulation of the Minister.

It also provides a procedure for the issue of acquirer's permits and a procedure for appeal to the Provincial Court from decisions related to the refusal to issue or renew a permit or the suspension or cancellation of a permit.

Provisions regarding inspection, seizure, confiscation and offences are also introduced in this bill.

Finally, the bill provides for regulations for the administration of the Act.

Bill 38

The Marine Products Processing Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

DEFINITION

1. In this Act, unless the context indicates a different meaning, “marine product” means any fish, shellfish or crustacean able to live in a marine environment and any echinoderm, including parts of such animals and the products or by-products derived therefrom.

DIVISION II

PROCESSING OF MARINE PRODUCTS

2. This Act does not apply to any marine product prepared or canned in accordance with minimum processing standards prescribed by regulation of the Minister.

3. For the purposes of this Act, every person who, for remuneration, serves or sells meals or refreshments for consumption, every operator of a teaching establishment or of any establishment governed by the Act respecting probation and houses of detention (R.S.Q., chapter P-26), the Act respecting health services and social services (R.S.Q., chapter S-5), the Mental Patients Protection Act (R.S.Q., chapter P-41), the Government and any department or agency of the Government is deemed to be a restaurateur.

For the purposes of this Act, every person who operates a processing factory or a packing-house for the purposes of sale at wholesale, by that person or the person retaining his services for remuneration, of marine products intended for human consumption and who holds a permit under subparagraph *e* of the first paragraph of section 9 of the Agricultural Products, Marine Products and Food Act (R.S.Q., chapter P-29) is deemed to be an operator.

4. A fisherman shall transfer, deliver or transmit marine products to no person other than an operator, the holder of an acquirer's permit, a restaurateur, a retailer or a consumer.

5. No person other than an operator, the holder of an acquirer's permit, a restaurateur or a retailer may acquire from a fisherman or cause a fisherman to deliver or transmit to him marine products for resale.

6. No person other than an operator, the holder of an acquirer's permit, a restaurateur or a retailer may serve as intermediary for the acquisition or transfer of marine products.

7. An operator shall not acquire marine products from any person other than a fisherman, another operator or the holder of an acquirer's permit nor cause them to be delivered or transmitted to him except by such a person.

8. The holder of an acquirer's permit shall transfer, deliver or transmit marine products to no person other than an operator, another holder of an acquirer's permit, a restaurateur, a retailer or a consumer.

9. An operator shall transfer, deliver or transmit marine products to no person other than another operator, the holder of an acquirer's permit, a restaurateur, a retailer or a consumer.

10. No person may transport marine products without a bill of lading or shipment bill indicating the information prescribed by regulation.

11. In preparing or canning marine products, every operator shall comply with minimum processing standards prescribed by regulation of the Minister, which may vary according to the marine products.

12. Every holder of an acquirer's permit shall, in carrying on his activities, use and provide the Minister with the books, accounts, registers and other documents prescribed by regulation.

DIVISION III

ACQUIRER'S PERMIT

13. Applications for an acquirer's permit must be filed with the Minister in the form prescribed by regulation and accompanied with the documents prescribed therein.

The application shall be accompanied with a security, proof of the person's solvency or a guarantee in such amount and in accordance with the terms and conditions prescribed by regulation.

14. Where the applicant fulfils the conditions prescribed by regulation and pays the duties fixed therein, the Minister shall issue the permit.

The Minister may refuse to issue a permit for reasons of public interest, after giving the applicant an opportunity to be heard.

15. The holder of a permit shall comply with any condition, restriction or prohibition determined by the Minister and indicated on the permit.

16. The term of a permit is twelve months unless the Minister prescribes a shorter term.

A permit is renewable on the conditions and upon payment of the duties prescribed by regulation.

17. Permits are unassignable.

18. The Minister, after giving the holder of a permit an opportunity to be heard, may suspend, cancel or refuse to renew his permit where he

(1) fails or ceases to comply with the conditions prescribed by regulation for the issue or renewal of the permit, as the case may be;

(2) fails to comply with the terms and conditions, restrictions or prohibitions indicated on the permit;

(3) is found guilty of an offence under this Act or the regulations thereunder for which he has not been pardoned.

19. The Minister's decision must give reasons and the person whom it concerns shall be notified in writing.

20. The cancellation or suspension of a permit has effect from the date on which the holder receives the decision.

DIVISION IV

APPEAL

21. An appeal lies from the decision of the Minister to the Provincial Court, on any question of law or jurisdiction, by any person whose permit application has been refused or any person whose permit has been suspended, cancelled or not renewed.

22. An appeal is brought by filing a motion in the office of the Provincial Court in the judicial district where the appellant is domiciled or has its head office or his or its establishment, within thirty days of the date of receipt of the decision of the Minister by the appellant.

The motion must be served on the Minister before filing.

23. Upon service of the motion, the Minister shall transmit the record respecting the decision appealed from to the Provincial Court.

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 to it by the Minister, after giving the parties an opportunity to be heard.

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

27. The decision of the Provincial Court is without appeal.

28. The Provincial Court may, in the manner prescribed in article 47 of the Code of Civil Procedure (R.S.Q., chapter C-25), adopt any rules of practice which, in its judgment, are necessary for the carrying out of this division.

DIVISION V

INSPECTION, SEIZURE AND CONFISCATION

§ 1.—*Inspection*

29. Every person authorized by the Minister to act as an inspector or analyst for the purposes of this Act who believes, on reasonable

grounds, that there is a marine product or other object to which this Act applies in premises where a marine product is prepared, packed, processed, packaged, stored, unloaded, offered for sale or sold, or kept for sale, transfer, delivery, transmission or shipping may, in the performance of his duties,

- (1) enter such premises at any reasonable time;
- (2) inspect the premises and any marine product or other object to which this Act applies and take samples free of charge;
- (3) stop any vehicle in which marine products are transported and inspect the vehicle and marine products;
- (4) take photographs of the marine products, object or premises;
- (5) require communication of any book, shipment bill, bill of lading or other document or record if he believes, on reasonable grounds, that it contains information relevant to the administration of this Act or the regulations, for examination, reproduction or the obtaining of extracts.

30. The owner or person in charge of a vehicle or premises subject to inspection and any person therein shall lend assistance to an inspector or analyst in the performance of his duties.

The inspector or analyst shall, on request, identify himself and produce a certificate of his capacity signed by the Minister.

31. It is forbidden to hinder in any manner the work of an inspector or analyst in the performance of his duties, to mislead him by false statements or to refuse to provide him with information that he is entitled to obtain under this Act.

32. No inspector or analyst may be prosecuted for acts done in good faith in the performance of his duties.

§ 2.—Seizure and confiscation

33. Every inspector may seize a marine product or other object to which this Act applies if he believes, on reasonable grounds, that an offence under this Act or the regulations has been committed in relation to or by means of such product.

34. Every inspector who makes a seizure under section 33 shall prepare a report setting forth

- (1) the date, time and place of the seizure;
- (2) the circumstances of and grounds for the seizure;
- (3) the description of the marine product or object seized;
- (4) the name of the person from whom the marine product or object was seized;
- (5) any information allowing identification of the owner or person who had possession of the marine product or object seized;
- (6) the identity and capacity of the seizer.

35. A copy of the report and, where samples are taken, a sealed sample, if necessary, shall be remitted to the person from whom the marine product or object was physically seized.

36. The inspector shall immediately transmit a report in writing to the Minister of every seizure he makes.

37. The owner or person who had possession of the marine product or object seized shall have custody thereof. Every inspector may, however, if he considers it advisable, remove it to other premises for purposes of safekeeping.

The marine product or object seized shall be detained until a decision is made under sections 39, 40, 41 and 43 or, if proceedings are instituted, until a court has decided by judgment.

38. No person may use, remove or allow the removal of a marine product or object seized unless authorized by the inspector.

39. The marine product or object seized shall be returned to the owner or person who had possession of it

(1) after the expiration of ninety days from the date of seizure, unless proceedings have been instituted; or

(2) when the inspector is of opinion, after verification during that time, that no offence under this Act or the regulations has been committed or that the owner or person who had possession of the marine product or object seized has, since the seizure, complied with the conditions of this Act or the regulations.

40. The owner or person who had possession of the marine product or object seized may apply to a justice of the peace to obtain its release.

The application shall be served on the seizer or, if proceedings have been instituted, on the prosecutor.

The justice of the peace shall grant the application if he is satisfied that the applicant will suffer serious or irreparable damage if detention of the seized product or object is maintained and its release will not hinder the course of justice.

41. Every marine product or object that has been seized shall be confiscated ninety days after the day of seizure if its owner or the person who had possession of it is unknown or cannot be found, and shall be disposed of as the Minister may direct.

42. A justice of the peace may, on the application of the seizer, order that the period of detention be prolonged for a maximum period of ninety days.

43. The judge who imposes a penalty for an offence against this Act or the regulations may, on the application of one of the parties, order that any marine product or object seized under section 33 be confiscated.

The Minister shall prescribe the manner of disposing of the marine product or object confiscated under this section.

DIVISION VI

REGULATIONS

44. The Government may, by regulation,

(1) indicate the information that must be contained in a bill of lading or shipment bill;

(2) determine the books, accounts, registers and other documents that a permit holder must keep, the premises where he must keep them, the reports he must transmit to the Minister, the contents of the reports and the time at which he must file them;

(3) prescribe the form of a permit application, the required accompanying documents, the fees payable and the conditions of issue and renewal of permits;

(4) prescribe the amount and the terms and conditions relating to the security, the proof of the person's solvency or the guarantee that must accompany an application for a permit;

(5) prescribe the modalities of inspection, sampling or seizure and establish a model for the certificates or reports prepared by authorized persons;

(6) prescribe that the contravention of a regulation made under this section or section 45 which it indicates constitutes an offence.

45. The Minister may, by regulation, prescribe the minimum processing standards with which an operator must comply for the preparation or canning of a marine product.

DIVISION VII

PENAL PROVISIONS

46. Every person who contravenes a provision of sections 4 to 12, 30, 31, 37, 38 or a provision of the regulations the contravention of which constitutes an offence under paragraph 6 of section 44 or a condition, restriction or prohibition specified on his permit 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 legal person.

In the event of a subsequent offence within two years after a 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 \$2 500 to \$25 000 in the case of a legal person.

47. Every person who, by his encouragement, advice or order, causes a person to commit an offence is guilty of the offence as if he had committed it himself and of any other offence committed by the other person as a consequence of the encouragement, advice or order if he knew or should have known that his encouragement, advice or order would likely result in the commission of the offences.

48. Every person who, by his act or omission, assists a person in committing an offence is guilty of the offence as if he had committed it himself if he knew or should have known that his act or omission would likely result in assisting the person in committing the offence.

49. Penal proceedings under this Act shall be brought in accordance with the Summary Convictions Act (R.S.Q., chapter P-15).

50. Every owner or lessee of a place where an offence under a provision of this Act is committed who authorizes or allows the commission of the offence therein is liable, in addition to costs, to a

fine equal to that prescribed for the offence which he has authorized or allowed.

Every owner or lessee of a motor vehicle who authorizes or allows the commission, by means of the vehicle, of an offence under a provision of sections 4 to 12, 30, 31, 37 and 38 is liable, in addition to costs, to a fine equal to that prescribed for the offence which he has authorized or allowed.

In proceedings brought under the first or second paragraph, evidence that an offence under a provision of this Act was committed by a person in the employ of such owner or lessee shall be, in the absence of any evidence to the contrary, proof that the person committed the offence with the authorization or consent of the owner or lessee.

51. In the absence of any evidence to the contrary, the person having possession of a marine product in a quantity exceeding his own consumption needs is presumed to intend it for sale.

52. The Government may wholly or partially exempt any class of persons, marine products, objects or activities it indicates from the application of this Act or the regulations.

DIVISION VIII

FINAL PROVISIONS

53. The Government shall designate the minister responsible for the administration of this Act.

54. This Act will come into force on the date fixed by the Government.