

Not a Statement by Quebec

FISHING

I- The problem

At present the federal government has the exclusive right to regulate property and civil operations and they can regulate

Quebec both its interior and coastal fisheries since the agreements of 1922 and 1943, for which the administrative responsibilities were transferred to the Quebec government. However, these agreements in no way affect the distribution of powers under the constitution. Despite the fact that authority has been delegated to Quebec, the federal government has administered the Fisheries Act since 1959 when fishing and the distribution of fish for export have been involved.

On the other hand, the BNA Act, by conferring on the federal parliament the necessary authority to establish measures essential to protect species, has justified a number of federal actions directly involving water management. Amendments made in 1959 to the federal Fisheries Act gave the federal government authority to control substances hazardous to fish entering the water. In 1977, the federal government began to control not only substances hazardous to fish, but any action likely to result in a decrease in or the disappearance of the biological resources of the fishes' habitat, whether through the discharge of harmful substances, construction or exploitation. By providing itself with such broad means of protecting the fisheries, the federal government is at the same time becoming involved in a major way in water management.

The suggestions put forward by various people fall under the following headings:

- into inland or coastal waters;
- tidal waters and the others;
- quotas, licences and water development;
- provincial coastal borders;
- the migratory nature of species and international treaties;
- salmon;
- legislative preponderance by sector;
- supervision and inspection;
- constitutional changes and administrative agreements;
- the fishermen's rights.

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II- Quebec's position

A) The importance of fishing

Aware of its responsibility to manage and exploit the resources in its territory for the welfare of Quebecers, the government of Quebec proposes conferring on the provinces exclusive legal jurisdiction over fishing and fisheries in the waters within its territory. It is time that the anomaly in the constitution, which excludes fishing and fisheries (that is, the facilities and equipment related to fishing) from general provincial jurisdiction over natural resources.

The importance Quebec attaches to fishing and fisheries need not be demonstrated, considering that, since 1922, Quebec has been largely responsible for administering federal laws and regulations on fishing under a federal-provincial agreement. It seems more logical and more respectful of Quebecers' interests that Quebec should administer its own laws in this area rather than laws enacted by another authority. Furthermore, because of the importance of the fishing industry in the life of their citizens, the governments of the provinces bordering on the sea (Quebec, British Columbia, Newfoundland, Prince Edward Island, Nova Scotia and New Brunswick) obviously have greater interest in fishing and related facilities than do the other governments in Canada.

Furthermore, progress in science and technology oblige the provincial governments not to restrict themselves to exploiting natural resources, but also to actively work to protect their ecological systems, including man's interaction and that of his products and works with other species, the land and waters. Since the decision handed down on June 17, 1980 by the Supreme Court of Canada in the case of *Dan Fowler v Her Majesty the Queen* which declared unconstitutional a section in the federal Fisheries Act aimed at protecting the waters against certain substances, the need for the provinces to take control over their aquatic environments has become more and more pressing.

B) Quebec's position

Quebec's proposal has two aspects. First, "the fishing and fisheries in the province" would be added to the list of substances over which the provincial legislatures have the exclusive right to enact legislation. At the same time, fishing and fisheries would be eliminated from the list of subjects over which the federal parliament has the exclusive right to enact legislation.

Secondly, we will add to the Canadian constitution a provision which will confirm, in the Gulf of the St. Lawrence, the rights of the adjacent provinces, specifying that the borders of the provinces of Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland extend to the dividing lines equidistant from their respective coasts in the gulf.

Fishing

Quebec's proposal

- 1) Repeal subsection 12 of section 91 of the BNAA, 1867.
- 2) Add to section 92 of the BNAA, 1867, the following subsection after subsection 13:

"13A. Fishing and fisheries in the Province"
- 3) Add after section 7 of the BNAA, 1867, the following provision:

7A. The Gulf of the St. Lawrence is, and has always been, an integral part of the territory of the Provinces of Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland in accordance with a plan following the dividing lines equidistant from their respective coasts".