

LEGISLATIVE FRAMEWORK OVERVIEW

The protection, ownership, allocation, use and management of fish and fish habitat, in Manitoba, are governed by the Canadian constitution, duly signed treaties and federal and provincial legislation.

Conservation of Fish Resources in Federal Jurisdiction:

Under section 92.12 of the Constitution Act, 1867, the Canadian Parliament has exclusive legislative authority to make laws respecting “Sea Coast and Inland Fisheries”. This has been judicially interpreted to mean that only the federal parliament, and not the provincial legislatures, can make laws that are essentially about the conservation and preservation of fisheries.

Under the authority of s. 91.12 of the Constitution Act, 1867, Parliament has enacted the Fisheries Act (Canada). Under the authority of the Fisheries Act (Canada), regulations have been made to address specific fish management issues in each of the provinces. In Manitoba, fish are managed under the Manitoba Fishery Regulations, made under the Fisheries Act (Canada).

Fish on Crown Property are a Provincial Resource:

Until 1930, the Government of Canada administered and controlled all Crown lands and resources in Manitoba, Alberta and Saskatchewan. The Constitution Act of 1930 gave legal effect to Natural Resources Transfer Agreements in each of the prairie provinces.

These agreements transferred administrative control of Crown lands and resources to provincial governments, in order that the Governments of Manitoba, Saskatchewan and Alberta would be in the same position as the other provinces of Canada.

Par. 10 of the Manitoba Natural Resources Transfer Agreement states:

“10 Except as herein otherwise provided, all rights of fishery shall, after the coming into force of this agreement, belong to and be administered by the Province, and the Province shall have the right to dispose of all such rights of fishery by sales, licence or otherwise, subject to the exercise by the Parliament of Canada of its legislative jurisdiction over sea-coast and inland fisheries.”

Therefore, since 1930, the Legislature of Manitoba has been able to make laws relating to the use of its own property, under the authority of s. 92(5) of the Constitution Act, 1867 (“the Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon”).

Mixed Federal and Provincial Jurisdiction:

Consequently:

1. The Canadian Parliament has exclusive constitutional jurisdiction to make laws for the conservation of fish, including setting fishing seasons, quotas, size limits and gear

restrictions, and does this under the authority of the Fisheries Act (Canada) and regulations to that Act; while

2. The Legislature of Manitoba maintains constitutional jurisdiction to make laws relating to the use and allocation of fish in Crown (Manitoba) waters as part of the public property. This includes the right to determine who can fish on provincial Crown land (licencing), what conditions may be included in a licence and what fee would be paid for the licence. This authority is exercised under The Fisheries Act of Manitoba and regulations to that Act.

Simply, those matters dealing with the conservation of the fish resource are addressed by the Fisheries Act (Canada) and the Manitoba Fishery Regulations made under the Act. Those matters relating to property rights in fish on Manitoba Crown land (water) are covered by The Fisheries Act (Manitoba) and regulations to that Act.

Fish Management and Administration:

While the Government of Canada retains ultimate legal authority and responsibility for fish and fish habitat conservation matters, some of the day to day management and administration of federal fisheries regulations has effectively been delegated to Manitoba officials: The Minister of Water Stewardship, the Director of Fisheries and fishery officers employed by Manitoba.

Under the Manitoba Fishery Regulations (Canada), the Minister of Water Stewardship and the Director of Fisheries have been given the authority to vary close times, quotas and gear types established under those regulations. Changes to the Manitoba Fishery Regulations (Canada) are proposed by the Minister of Water Stewardship to Fisheries and Oceans Canada. Fisheries and Oceans Canada then reviews the proposed changes and forwards them for approval by Federal Cabinet (Governor in Council).

Legislative responsibility for management of fish habitat has not been specifically legislatively delegated to Manitoba officials. However, Manitoba Water Stewardship continues to manage habitat as an adjunct to other fish management activities.