

2021

NSARB-2021-001

Nova Scotia Aquaculture Review Board

BETWEEN:

Kelly Cove Salmon Ltd.

APPLICANT

and-

Minister of Nova Scotia Department of Fisheries and Aquaculture

PARTY

and

Gregory Heming

INTERVENOR

**REPLY BRIEF ON BEHALF OF
THE DEPARTMENT OF FISHERIES AND AQUACULTURE**

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INDEX

I. Argument	3
a) <i>Factual Correction</i>	3
b) <i>Role of Evidence</i>	4
c) <i>Evidence of Adverse Impact</i>	5
d) <i>Adverse Impact Must be “Novel”</i>	5
e) <i>Pictou Landing First Nation Case</i>	6
AUTHORITIES	8

I. Argument

1. Please accept this brief as the reply submissions of the Department of Fisheries and Aquaculture (the Department) to the Intervenor's written submissions dated December 16, 2021.

a) Factual Correction - Marking/Traceability

2. The Intervenor states that Nova Scotia has declined to adopt a number of the most critical elements of the Maine Model for containment management. Specifically, the Intervenor states that Nova Scotia has not adopted a mandatory marking/traceability program. This statement is not accurate.

Intervenor's Closing Submissions, para. 32

3. Mandatory marking/traceability is part of Nova Scotia's Containment Management Framework. Section 15(h) of the *Aquaculture Management Regulations*, NS Reg 118/2019 ("AMRs") expressly states:

Containment management content

- 15 The containment management section of a Farm Management Plan for a holder of an aquaculture licence for finfish in a marine aquaculture site must include information and procedures related to all of the following:

...

- (h) a **finfish marking plan**. [Emphasis added]

4. As the Intervenor points out, Kelly Cove has committed to implementing a traceability/marking program by 2023. As Mr. Feindel stated in his testimony, Kelly Cove is currently rearing fish that will have genetic markers that will enable the fish farmed by Kelly Cove to be traced back to it.

5. Contrary to the Intervenor's assertion that there is "no legal mechanism" to hold Kelly Cove accountable, s. 8 of the *AMRs* requires operators to adhere to the procedures contained in their Farm Management Plans. Under s. 59A of the *Fisheries and Coastal Resources Act*, SNS 1996, c. 25 an operator who fails to comply with the regulations, could have their lease or license revoked.
6. The Intervenor's statements that the Department has failed to make marking/traceability plans mandatory, and possesses no legal mechanism for holding operators accountable, are false.

b) Role of Evidence

7. The Intervenor states that the KMKNO is not required to prove the existence of rights set out in treaties and confirmed in caselaw.

Intervenor's Closing Submissions, para. 58

8. The Intervenor misunderstands the Department's submissions on this issue. The Department expressly acknowledged that the Mi'kmaq of Nova Scotia have Aboriginal rights as articulated by the Nova Scotia Court of Appeal and treaty rights as articulated by the Supreme Court of Canada, and that these rights are sufficient to satisfy the first part of the three part test from *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council*, 2010 SCC 43 ("*Carrier Sekani*").

Brief on Behalf of the Department, para. 30

9. The Department's position is that some evidence and clarity is necessary when it comes to assessing whether a right is impacted under the third part of the test. In this case, the Department submits that the evidence is insufficient.

Brief on Behalf of the Department, paras. 36-37

c) *Evidence of Adverse Impact*

10. The Intervenor's submissions ignore the following clear statements made by the Supreme Court of Canada in *Carrier Sekani*:

[45] The third element of a duty to consult is the possibility that the Crown conduct may affect the Aboriginal claim or right. The claimant must show a **causal relationship** between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights. **Past wrongs, including previous breaches of the duty to consult, do not suffice.**

[46] Again, a generous, purposive approach to this element is in order, given that the doctrine's purpose, as stated by Newman, is "to recognize that actions affecting unproven Aboriginal title or rights or treaty rights can have irreversible effects that are not in keeping with the honour of the Crown" (p. 30, citing Haida Nation, at paras. 27 and 33). **Mere speculative impacts, however, will not suffice.** As stated in *R. v. Douglas*, 2007 BCCA 265, 278 D.L.R. (4th) 653, at para. 44, there must be an "**appreciable adverse effect on the First Nations' ability to exercise their aboriginal right**". The adverse effect must be on the future exercise of the right itself; an adverse effect on a First Nation's future negotiating position does not suffice. [Emphasis added]

11. The Supreme Court's requirement that the claimant show a "causal connection" and that the connection be more than merely "speculative" is clear direction that some evidence of impact is required.

d) *Adverse Impact Must be "Novel"*

12. Surprisingly, the Intervenor's submissions do not address the fact that in a case like this where the adverse impact alleged is a "continuing breach," the test is whether the adverse impact is novel.
13. The Intervenor cites *Carrier Sekani* as authority for the three part test for determining when the duty to consult is triggered, but fails to acknowledge the Supreme Court of Canada's significant statements regarding situations where a continuing breach is alleged

and the claimant is required to the Crown conduct at issue has the potential of causing a “novel adverse impact.”

Intervenor’s Closing Submissions, para. 54

14. The Department is not going to repeat its submissions on this point.

See Brief on Behalf of the Department, paras. 50 and 51

e) Pictou Landing First Nation Case

15. The Intervenor states that this case is analogous to the circumstances in *Nova Scotia (Aboriginal Affairs) v Pictou Landing First Nation*, 2019 NSCA 75 (“*Pictou Landing First Nation*”), and takes issue with the Department’s characterization of the case stating: “Contrary to DFA’s characterization, in that case the Nova Scotia Court of Appeal did not base its finding that the Province owed a duty of consultation to the First Nation on any “new impacts” caused by the redesigned effluent treatment facility.”

Intervenor’s Closing Submissions, para. 71

16. This is incorrect. The Court of Appeal expressly found that there was a novel adverse impact.

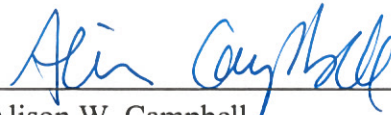
17. As explained in the Department’s brief, the distinguishing feature of the *Pictou Landing First Nation* case is the fact that the Province passed the *Boat Harbour Act* which created an absolute moratorium on any effluent or emissions after January 30, 2020. The Court of Appeal held that the *Boat Harbour Act* created a “new legal baseline”:

The 2015 *Boat Harbour Act* means that, as of January 30, 2020, the effluent and emissions “must cease” unless there is a New ETF and a new Industrial Approval. **That was the new legal baseline as of 2015.** It was a partial accommodation by the Crown to PLFN. As discussed, the Funding Agreements of 2016 and 2017 constitute Crown conduct that potentially impacts whether there will be a New ETF and new Industrial Approval for the period after January 30, 2020. The adverse impact would be caused by the contaminants discharged after January 30,

2020. Given the new legal baseline of a partial accommodation, **this is a novel impact.** [Emphasis added]

Pictou Landing First Nation, 2019 NSCA 75, para 162
(Department's Book of Authorities, Tab 10)
Brief on Behalf of the Department, para. 57

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Alison W. Campbell

**Solicitor for the Department of Fisheries and
Aquaculture**

AUTHORITIES

Cases	Tab
<i>Pictou Landing First Nation</i> , 2019 NSCA 75 – Please see Department’s Book of Authorities, Tab 10	
<i>Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council</i> , 2010 SCC 43 – Please see Department’s Book of Authorities, Tab 11	
Legislation & Regulations	
<i>Aquaculture Management Regulations</i> , NS Reg 347/2015, as amended to NS Reg 186/2019	1
<i>Fisheries and Coastal Resources Act</i> , SNS 1996, c. 25	2

TAB 1

This consolidation is unofficial and is for reference only. For the official version of the regulations, consult the original documents on file with the Office of the Registrar of Regulations, or refer to the Royal Gazette Part II.

Regulations are amended frequently. Please check the list of Regulations by Act to see if there are any recent amendments to these regulations filed with our office that are not yet included in this consolidation.

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**Aquaculture Management Regulations
made under Section 64 of the
Fisheries and Coastal Resources Act
S.N.S. 1996, c. 25**

**O.I.C. 2015-339 (effective October 26, 2015), N.S. Reg. 348/2015
amended to O.I.C. 2019-218 (effective August 13, 2019), N.S. Reg. 118/2019**

Table of Contents

Please note: this table of contents is provided for convenience of reference and does not form part of the regulations.

[Click here to go to the text of the regulations.](#)

Table of Contents

- Citation
- Definitions
- Administration
 - Chief Aquatic Animal Health Veterinarian
 - Release of information to the public
- Farm Management Plans
 - Farm Management Plan and record of amendments
 - Required content for Farm Management Plan
 - Minister may require amendments to Farm Management Plan
 - Adherence to Farm Management Plan
 - Fish health content
 - Environmental monitoring content for finfish in marine aquaculture site
 - Environmental monitoring content for shellfish and plants in marine aquaculture site
 - Environmental monitoring content for land-based aquaculture site
 - Alternative procedures to achieve effective environmental monitoring
 - Farm operations content
 - Containment management content
- Aquaculture Management Areas
 - Minister may define aquaculture management area
 - Agreement among multiple licensees in aquaculture management area
- Disease Surveillance and Reporting

- Health records for aquaculture sites
 - Diagnostic testing by approved laboratory
 - Mandatory reporting of products used for treatments
 - Mandatory reporting of disease or mortality
 - Managing Outbreaks of Disease
 - Outbreak of disease
 - Authority during outbreak
 - Minister may make quarantine order
 - Serving quarantine order
 - Minister may order slaughter, destruction or disposal
 - Disease management measures for quarantine area
 - Testing and sampling restocked fish in quarantine area
 - Consequences of non-compliance
 - Environmental Monitoring Management
 - Requirements for stocking
 - Updating mitigation plan
 - Oxic conditions remediation requirements
 - Containment Management Monitoring
 - Mandatory notification to Department of breach
 - Third-party audit of containment management section required
 - Report to Minister on third-party audit of containment management section
 - Adopted federal containment management procedures
 - Audits of Farm Management Plans
 - Appointment of aquaculture management specialist
 - When audit may be conducted
 - Powers of auditor
 - Records, Reports and Release of Information
 - Records to be kept by aquaculture licence holder
 - Documents requested by auditor
 - Reports on records
 - Aquatic Animal Health Transfer Permit
 - Obtaining permit
 - Permit required for transfer
 - Permit kept and produced on request
-

Citation

1 These regulations may be cited as the *Aquaculture Management Regulations*.

Definitions

2 In these regulations,

“biosecurity measures”, in relation to an aquaculture site, means the measures taken to prevent the entry or escape of disease causing agents;

“breach” means any escaping of fish from an aquaculture site;

“Chief Aquatic Animal Health Veterinarian” means the veterinarian appointed by the Minister under Section 3;

“containment management” means the structures in place, and practices carried out, to contain the fish at an aquaculture site;

“critical control limit” means the level or range of a value measured at a critical control point at which no remedial action is required;

“critical control point” means a stage in a procedure at which an action could be taken, if necessary, to prevent, eliminate or reduce a risk;

“disease” means any condition that adversely affects the health of fish;

“fallow period” means a period of time during which aquacultural produce must not be present and aquaculture must not be carried out at an aquaculture site;

“Farm Management Plan” means the document required by Section 5 that sets out how the aquaculture licence holder must address issues such as fish health management, environmental monitoring, farm operations and containment management at their aquacultural operation;

“fish” means any finfish or shellfish;

“holding unit” means a cage, tank, pond or other device used to contain, hold or demarcate groups of fish;

“laboratory” means any of the following:

- (i) a laboratory operated or managed by an aquaculture licence holder,
- (ii) a veterinary diagnostic or research laboratory,
- (iii) a medical or clinical diagnostic laboratory,

(iv) a medical research laboratory;

“mitigation plan” means a mitigation plan to address poor environmental performance determined through monitoring, as required by clause 10(1)(e) or 11(1)(e) for a marine aquaculture site or by subsection 12(1) for a land-based aquaculture site;

“oxic conditions”, in relation to sub-aquatic lands, means oxygen availability indicated directly or indirectly by a verifiable and quantifiable measure;

“quarantine” means the isolation of an aquaculture site and the control or prohibition of the movement of fish, fish products, food, equipment or any other thing to or from the site;

“quarantine order” means an order for a quarantine issued by the Minister under Section 24;

“test”, in relation to an aquatic animal, includes the collection of body tissue or fluid from the aquatic animal for the purpose of determining whether the animal is infected with a disease causing agent;

“veterinarian” means a person who is permitted to practise veterinary medicine in the Province under the *Veterinary Medical Act*;

“veterinary administrator” means a veterinarian employed by the Department to assist in administering these regulations.

Administration

Chief Aquatic Animal Health Veterinarian

- 3 (1) The Minister must appoint a person as the chief aquatic animal health veterinarian to administer parts of these regulations.
- (2) In the absence of the Chief Aquatic Animal Health Veterinarian, the Minister may temporarily delegate the powers and duties of the Chief Aquatic Animal Health Veterinarian to a veterinary administrator.
- (3) The Chief Aquatic Animal Health Veterinarian or a veterinary administrator, in exercising powers under these regulations, may be accompanied by any person they consider necessary to enable them to exercise those powers.

Release of information to the public

- 4 The Minister may establish policies for the routine release to the public of aquaculture related information held by the Department, including policies for any of the following:
- (a) the type of information to be released;
 - (b) the manner in which information is released;
 - (c) the timing of the release of information.

Farm Management Plans

Farm Management Plan and record of amendments

- 5 (1) An aquaculture licence holder must prepare a Farm Management Plan in accordance with these regulations.
- (1A) Before the initial stocking of their aquaculture site, an aquaculture licence holder must notify the Minister that they have prepared their Farm Management Plan, and make it available for review and approval by the Minister.
- (2) An aquaculture licence holder must keep a record of any amendments to their Farm Management Plan, to be provided as required as part of an audit under Section 38.

Required content for Farm Management Plan

- 6 (1) A Farm Management Plan must include any information required by the Minister, including sections for all of the following:
- (a) fish health management, in accordance with Section 9;
 - (b) environmental monitoring, in accordance with Sections 10 to 13;
 - (c) farm operations, in accordance with Section 14;
 - (d) containment management, in accordance with Section 15, for holders of aquaculture licences for finfish in marine aquaculture sites.
- (2) Each procedure contained in a Farm Management Plan must include any of the following that apply with respect to that procedure:
- (a) critical control points;
 - (b) critical control limits;
 - (c) details about how the procedure is to be monitored;
 - (d) details about corrective actions to be taken.
- (3) The Minister may establish minimum requirements for the procedures referred to in subsection (2).
- (4) The Minister must publish any minimum requirements established under subsection (3) on the Department's website.

Minister may require amendments to Farm Management Plan

- 7 On reviewing a Farm Management Plan, the Minister may require the Plan to be amended.

Adherence to Farm Management Plan

8 An aquaculture licence holder must adhere to the procedures contained in their Farm Management Plan and must keep records that

- (a) verify adherence to the procedures; and
- (b) demonstrate that effective action was taken at critical control points.

Fish health content

9 (1) The fish health section of a Farm Management Plan must include any information and procedures the Minister requires to ensure the effective management of fish health at an aquacultural operation, including all of the following:

- (a) for a holder of an aquaculture licence for shellfish, shellfish husbandry;
 - (b) for a holder of an aquaculture licence for finfish, all of the following:
 - (i) finfish husbandry and welfare,
 - (ii) veterinary care and disease surveillance practices,
 - (iii) culling and mass stock depopulation practices;
 - (c) biosecurity measures;
 - (d) general emergency measures, other than culling or mass stock depopulation practices.
- (2)** In addition to the procedures required by subsection (1), the fish health section of a Farm Management Plan for an aquacultural operation in which trout or salmon is farmed at a marine aquaculture site must include procedures for managing sea lice.
- (3)** The holder of an aquaculture licence for finfish in a marine aquaculture site must prepare an updated fish health section of their Farm Management Plan for approval for each production cycle, at a time determined by the Minister.

Environmental monitoring content for finfish in marine aquaculture site

10 (1) For a holder of an aquaculture licence for finfish in a marine aquaculture site, the environmental monitoring section of a Farm Management Plan must include any information and procedures the Minister requires to ensure the effective environmental monitoring of the site, including all of the following:

- (a) processes for measuring oxie conditions within the boundaries of the site and at any other locations determined by the Minister;
- (b) the monitoring schedule and associated process for reporting results;

- (c) sampling locations for each monitoring event;
 - (d) processes for assessing and reporting on the stocking levels associated with monitoring events;
 - (e) a mitigation plan.
- (2) Any information resulting from the environmental monitoring procedures required by subsection (1) must be submitted by the aquaculture licence holder to the Minister on annual basis, at a time determined by the Minister.

Environmental monitoring content for shellfish and plants in marine aquaculture site

- 11 (1) For the holder of an aquaculture licence for shellfish or plants in a marine aquaculture site, the environmental monitoring section of a Farm Management Plan must include any information and procedures the Minister requires to ensure the effective environmental monitoring of the site, including a mitigation plan.
- (2) Any information resulting from the environmental monitoring procedures required by subsection (1) must be submitted by the aquaculture licence holder to the Minister, at a time determined by the Minister.

Environmental monitoring content for land-based aquaculture site

- 12 (1) The environmental monitoring section of a Farm Management Plan for a holder of an aquaculture licence for a land-based aquaculture site must include any information and procedures the Minister requires to ensure the effective environmental monitoring of that type of aquacultural operation, including a mitigation plan.
- (2) Any information resulting from the environmental monitoring procedures required by subsection (1) must be submitted by the aquaculture licence holder to the Minister periodically, at a time determined by the Minister.

Alternative procedures to achieve effective environmental monitoring

- 13 If an aquaculture licence holder establishes to the Minister's satisfaction that not all of the requirements in these regulations are relevant to their aquacultural operation, or that different requirements would be more appropriate to achieve effective environmental monitoring of their aquacultural operation, the Minister may do any of the following:
- (a) waive the requirement for the aquaculture licence holder to provide all of the information and procedures required by these regulations;
 - (b) accept alternative information and procedures proposed by the aquaculture licence holder.

Farm operations content

- 14 The farm operation section of a Farm Management Plan must include any information the Minister requires to ensure the responsible operation of an aquacultural operation, including information and procedures that are consistent with industry best practices relating to all of the following:

- (a) storing and disposing of feed, fuel, lubricants and chemicals;
- (b) removing and disposing of accumulated refuse and decommissioned farm supplies and equipment;
- (c) retrieving any gear or debris from the aquacultural operation that has broken loose;
- (d) interactions with wildlife;
- (e) maintaining the site in good order;
- (f) noise.

Containment management content

15 The containment management section of a Farm Management Plan for a holder of an aquaculture licence for finfish in a marine aquaculture site must include information and procedures related to all of the following:

- (a) operating procedures that limit the risk of a breach;
- (b) processes for installing and maintaining infrastructure in place to limit the risk of a breach;
- (c) responses to breaches;
- (d) areas of potential impact if a breach occurs;
- (e) management of the site if unusual events or severe weather occurs;
- (f) schedules for reporting all of the following:
 - (i) initial farm stocking,
 - (ii) inventory levels during production,
 - (iii) audits of the containment management system;
- (g) proof of a professional engineer's approval of the design of the structures in place for containment management;
- (h) a finfish marking plan.

Aquaculture Management Areas

Minister may define aquaculture management area

- 16 The Minister may establish an area with multiple aquaculture sites as an aquaculture management area for the purpose of managing the health of aquatic animals in the area.

Agreement among multiple licensees in aquaculture management area

- 17 (1) If the aquaculture sites within an aquaculture management area established under Section 16 are operated by 2 or more aquaculture licence holders, all the aquaculture licence holders within the aquaculture management area must agree among themselves, in writing, to do all of the following:
- (a) share procedures that are required to be carried out under their Fish Health Management Plans;
 - (b) coordinate treatments where applicable;
 - (c) coordinate fallow periods;
 - (d) create communication protocols concerning all fish health issues of common concern.
- (2) A copy of an agreement required by subsection (1) must be submitted to the Minister annually at a time determined by the Minister.
- (3) If the Minister considers it necessary to better prevent and manage disease, the Minister may require an amendment to any agreement submitted under subsection (2).
- (4) If the aquaculture licence holders within an aquaculture management area fail to agree on any of the requirements in subsection (1), the Minister must determine the requirements and notify the licence holders that they must comply with the Minister's direction.

Disease Surveillance and Reporting

Health records for aquaculture sites

- 18 (1) An aquaculture licence holder must keep health records for the current stock in each of the licence holder's aquaculture sites and must submit the records to the Minister at the Minister's request.
- (2) The Minister may determine the information that an aquaculture licence holder must include in the health records required by subsection (1).

Diagnostic testing by approved laboratory

- 19 (1) In this Section, "approved laboratory" means a laboratory approved by the Minister to conduct diagnostic testing on fish for the purpose of disease surveillance.
- (2) The Chief Aquatic Animal Health Veterinarian may require an aquaculture licence holder to collect and submit samples to an approved laboratory for diagnostic testing.

Mandatory reporting of products used for treatments

20 An aquaculture licence holder must report any use of any of the following at their aquacultural operation to the Minister in the manner and at the times determined by the Minister:

- (a) antibiotics;
- (b) products to treat sea lice.

Mandatory reporting of disease or mortality

21 (1) In this Section,

“mortality event”, in relation to fish in an aquaculture site, means the death of a number of fish

- (i) within a 24-hour period, equivalent to at least 2% of the current aquaculture site inventory, or
- (ii) within a 5-day period, equivalent to at least 5% of the current aquaculture site inventory;

“reportable disease” means a disease that the Minister determines must be reported to the Chief Aquatic Animal Health Veterinarian in accordance with subsection (4).

- (2) The Minister must post a list of all reportable diseases on the Department’s website.
- (3) The reporting requirements in this Section apply to all of the following persons:
 - (a) an aquaculture licence holder;
 - (b) a member of the personnel of an aquacultural operation;
 - (c) a veterinarian;
 - (d) a member of the personnel of a laboratory.
- (4) A person listed in subsection (3) must immediately report any of the following to the Chief Aquatic Animal Health Veterinarian by telephone, followed by a written report no later than 24 hours after the telephone report:
 - (a) knowledge or suspicion that a fish may have a reportable disease;
 - (b) a mortality event.
- (5) A report under this Section must include the name and contact information of the person who is making the report together with all of the following information, if available, about the aquaculture site and fish that are the subject of the report:
 - (a) all of the following information about the aquacultural operation:

- (i) name of the aquaculture licence holder,
- (ii) license or lease number,
- (iii) location of the site, including the address,
- (iv) holding unit number infected or suspected to be infected;
- (b) the species, age and number of fish in the holding unit;
- (c) the presumptive diagnosis;
- (d) clinical signs of disease in the affected fish;
- (e) the mortality rate.

Managing Outbreaks of Disease

Outbreak of disease

22 For the purposes of Sections 23 and 24, an outbreak of disease is the presence of disease that, in the opinion of the Chief Aquatic Animal Health Veterinarian, requires extraordinary means for control.

Authority during outbreak

23 If the Chief Aquatic Animal Health Veterinarian suspects or considers a situation to be an outbreak of disease, the Chief Aquatic Animal Health Veterinarian or veterinary administrator may

- (a) with respect to each aquaculture site where the disease was reported, do any of the following:
 - (i) take samples of the fish, other organisms or water,
 - (ii) undertake an epidemiological investigation,
 - (iii) order the treatment of a group of fish,
 - (iv) order the vaccination of a group of fish,
 - (v) order that no fish be moved to or from the site,
 - (vi) require the aquaculture licence holder to take enhanced biosecurity measures;
- (b) for the purpose of inspecting or examining fish to determine whether the fish are infected with a disease, do any of the following:

- (i) stop and inspect any vehicle, including the vehicle's load, in which the Chief Aquatic Animal Health Veterinarian or veterinary administrator believes fish are being or have been transported,
- (ii) inspect each aquaculture site where the fish originated or to which a disease causing agent may have spread.

Minister may make quarantine order

- 24 (1) The Minister may make an order designating any aquaculture site or any other area where an outbreak of disease is known or suspected as a quarantine area.
- (2) A quarantine order may include any conditions or restrictions with respect to the quarantine area that the Minister considers necessary or advisable in the circumstances, including biosecurity measures.

Serving quarantine order

- 25 A quarantine area order must be served on each holder of an aquaculture licence for an aquaculture site within the quarantine area.

Minister may order slaughter, destruction or disposal

- 26 (1) The Minister may order the slaughter, destruction or disposal of any fish in a quarantine area.
- (2) Nothing in these regulations imposes an obligation on the Minister to pay compensation for any fish slaughtered, destroyed or disposed of under an order under subsection (1).

Disease management measures for quarantine area

- 27 (1) The Chief Aquatic Animal Health Veterinarian may specify disease management measures required for complying with a quarantine order, including any of the following:
- (a) controlling the movement of any fish or thing into or out of the quarantine area;
 - (b) slaughtering, destroying or disposing of any fish in the quarantine area, as ordered under Section 26;
 - (c) operating a disinfection station at the entrance to and exit from any aquaculture site in the quarantine area;
 - (d) disinfecting any thing in the quarantine area;
 - (e) eradicating the disease or disease causing agents in the quarantine area;
 - (f) establishing a fallow period for the quarantine area;
 - (g) preventing the spread of the disease or disease-causing agents out of or into the quarantine area.

- (2) An aquaculture licence holder whose aquaculture site is the subject of a quarantine order must provide to the Chief Aquatic Animal Health Veterinarian, for approval, written incident-specific information indicating how they will take any disease management measures specified under subsection (1).

Testing and sampling restocked fish in quarantine area

- 28
- (1) The Chief Aquatic Animal Health Veterinarian may require an aquaculture licence holder whose aquaculture site is subject to a quarantine order to complete specified testing of newly stocked fish within a specified period of time after the date the site is restocked.
 - (2) The Chief Aquatic Animal Health Veterinarian or veterinary administrator may collect samples of newly stocked fish for testing.

Consequences of non-compliance

- 29
- (1) If the Minister believes, on reasonable grounds, that a quarantine order, a disease management requirement under Section 27 or a requirement for testing under Section 28 has not been complied with, the Chief Aquatic Animal Health Veterinarian or veterinary administrator may enter any place in the quarantine area and take or cause to be taken any steps they consider necessary to accomplish the following:
 - (a) ensure compliance with the order or requirement;
 - (b) remedy the consequences of the failure to carry out the order or requirement.
 - (2) The Minister may recover any expenses reasonably incurred in taking steps under subsection (1) from the person who failed to comply with the quarantine order or the requirement.

Environmental Monitoring Management

Requirements for stocking

- 30
- (1) In this Section, “baseline assessment” means environmental monitoring procedures carried out at an aquaculture site to record, for the purpose of future comparison, the state of environmental conditions that prevail without aquacultural produce at the site.
 - (2) Before the initial stocking or restocking of a marine finfish aquaculture site, an aquaculture licence holder must obtain the Minister’s approval for the proposed stocking level as being supported by either the baseline assessment of the site or by environmental monitoring results.

Updating mitigation plan

- 31
- (1) If poor environmental performance is determined through monitoring, an aquaculture licence holder must update their mitigation plan to address the poor environmental performance and submit the updated plan for the Minister’s approval.
 - (2) An aquaculture licence holder must implement an updated mitigation plan approved under subsection (1) within the timeframe determined by the Minister.

Oxic conditions remediation requirements

- 32** (1) A holder of an aquaculture licence for finfish in a marine aquaculture site must conduct their aquacultural operation in a manner that maintains oxic conditions that indicate that sufficient oxygen is present within the boundaries of their site.
- (2) If monitoring results indicate that the oxic conditions referred to in subsection (1) are not maintained, an aquaculture licence holder must do all of the following:
- (a) conduct follow up (level II) monitoring no later than 35 days after initial (level I) monitoring;
 - (b) submit the results of the follow up (level II) monitoring conducted under clause (a), along with an updated mitigation plan, no later than 14 days after conducting the monitoring, for the Minister's approval.
- (3) In addition to the requirements in subsection (2), the aquaculture licence holder must take any action at the aquaculture site required by the Minister to reduce environmental impact, including any of the following:
- (a) expediting the harvest program;
 - (b) extending a fallow period;
 - (c) limiting approved stocking levels;
 - (d) adjusting the site layout.

Containment Management Monitoring

Mandatory notification to Department of breach

- 33** (1) A holder of an aquaculture licence for finfish in a marine aquaculture site must conduct their aquacultural operation in a manner that is designed to prevent breaches.
- (2) A holder of an aquaculture licence for finfish in a marine aquaculture site or any personnel of their aquacultural operation who know or suspect a breach must immediately notify the Department in the manner determined by the Minister and in accordance with subsection (3).
- (3) A notice required by subsection (2) must include any information the Minister requires to ensure that the suspected or confirmed breach is remedied, including all of the following information:
- (a) name and contact information of the individual who is making the report;
 - (b) suspected date of the breach;
 - (c) all of the following information about the aquacultural operation:

- (i) name of the aquaculture licence holder,
- (ii) licence or lease number,
- (iii) address of the site,
- (iv) holding unit number where the suspected or confirmed breach occurred;
- (d) species and approximate age, size, and weight of the fish that escaped;
- (e) approximate number of fish in the holding unit where the suspected or confirmed breach occurred;
- (f) freshwater place of origin of the fish that escaped;
- (g) level of the suspected or confirmed breach;
- (h) suspected or confirmed cause of the breach;
- (i) any mitigation efforts that have been undertaken, are in progress or are proposed.

Third-party audit of containment management section required

34 The containment management section of a Farm Management Plan must be audited at all of the following times by a third party approved by the Minister:

- (a) before the initial stocking of an aquaculture site;
- (b) [repealed]
- (c) no later than 30 days after the date that a breach of more than 50 fish is reported;
- (d) when 1 or more cultured salmonids are identified in a water body, for all aquaculture licence holders who have identified the water body in their containment management section as being potentially affected by a breach other than aquaculture licence holders who have an approved marking plan that verifies the fish are not part of their operation;
- (e) other times, as required by the Minister.

Report to Minister on third-party audit of containment management section

35 (1) A report on the results of a third-party audit of the containment management section of a Farm Management Plan must be submitted to the Minister no later than the following dates:

- (a) for an audit required by clause 34(a), (b) or (e), 30 days after the date the audit is completed;

- (b) for an audit required by clause 34(c) or (d), 15 days after the date that the audit is completed.
- (2) A report required by subsection (1) must include any corrective actions taken in response to the results of the audit.

Adopted federal containment management procedures

- 36 (1) If requirements that are more stringent than the requirements for containment management in these regulations are established under the laws of Canada, the Minister may adopt and impose those requirements on aquaculture licence holders.
- (2) The Minister must notify all affected aquaculture licence holders before imposing any requirements under subsection (1).

Audits of Farm Management Plans

Appointment of aquaculture management specialist

- 37 The Minister may appoint a person as an aquaculture management specialist to audit the implementation of a Farm Management Plan at an aquacultural operation.

When audit may be conducted

- 38 An aquaculture management specialist, the Chief Aquatic Animal Health Veterinarian, or a veterinary administrator may audit an aquacultural operation's Farm Management Plan at any time.

Powers of auditor

- 39 As part of an audit under Section 38, an auditor may do any of the following:
 - (a) enter and inspect any aquaculture site or any other facility or location that the Farm Management Plan applies to;
 - (b) accompany individuals who are collecting or analyzing samples;
 - (c) accompany individuals who are inspecting equipment or gear;
 - (d) observe and document the procedures used in collecting or analyzing samples;
 - (e) collect samples of any substance for examination and analyses;
 - (f) examine or test equipment and materials;
 - (g) require production of written and electronic copies of procedures, records or documents that they believe contain information related to the Farm Management Plan, and examine and make copies of them.

Records, Reports and Release of Information

Records to be kept by aquaculture licence holder

- 40 (1) An aquaculture licence holder must keep all records relating to their Farm Management Plan at their place of business in the Province, and make them available, in whole or in part, to the Minister on request.
- (2) A record referred to in subsection (1) must be kept for at least 7 years from the date the record is created or updated.

Reports on records

- 41 An aquaculture licence holder must submit reports relating to the records required by these regulations at times determined by the Minister, or on the request of the Minister or the Minister's designate.

Documents requested by auditor

- 41A An aquaculture licence holder must submit any documents related to an audit under these regulations that are requested by an auditor to the auditor no later than 72 hours after the auditor's request.

Aquatic Animal Health Transfer Permit

Obtaining permit

- 42 (1) In this Section and in Sections 43 and 44, "aquatic animal health transfer permit" means a certificate issued by the Minister that authorizes an aquaculture licence holder to move fish to an aquaculture site.
- (2) An aquaculture licence holder must comply with any conditions set by the Minister for issuing an aquatic animal health transfer permit.
- (3) An aquatic animal health transfer permit must be in the form approved by the Minister.

Permit required for transfer

- 43 An aquaculture licence holder must ensure that an aquatic animal health transfer permit accompanies each group of live fish that is being moved to their aquaculture site.

Permit kept and produced on request

- 44 (1) An aquaculture licence holder must keep a copy at their aquacultural operation of each aquatic animal health transfer permit for fish that have been moved to their aquaculture site.
- (2) An aquaculture licence holder must produce a copy of any aquatic animal health transfer permit for any specified group of fish in the time and manner specified in a request by the Chief Aquatic Animal Health Veterinarian or a person designated by the Minister.

Legislative History Reference Tables

Aquaculture Management Regulations
Fisheries and Coastal Resources Act

N.S. Reg. 348/2015

Note: The information in these tables does not form part of the regulations and is compiled by the Office of the Registrar of Regulations for reference only.

Source Law

The current consolidation of the *Aquaculture Management Regulations* made under the *Fisheries and Coastal Resources Act* includes all of the following regulations:

N.S. Regulation	In force date*	How in force	Royal Gazette Part II Issue
348/2015	Oct 26, 2015	date specified	Nov 13, 2015
118/2019	Aug 13, 2019	date specified	Aug 30, 2019

The following regulations are not yet in force and are not included in the current consolidation:

N.S. Regulation	In force date*	How in force	Royal Gazette Part II Issue
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*See subsection 3(6) of the *Regulations Act* for rules about in force dates of regulations.

Amendments by Provision

ad. = added
am. = amended

fc. = fee change
ra. = reassigned

rep. = repealed
rs. = repealed and substituted

Provision affected	How affected
5(1).....	rs. 118/2019
5(1A).....	ad. 118/2019
9(1)(b).....	rs. 118/2019

ad. = added
am. = amended

fc. = fee change
ra. = reassigned

rep. = repealed
rs. = repealed and substituted

Provision affected	How affected
9(1)(d).....	am. 118/2019
9(3).....	am. 118/2019
11(1).....	rs. 118/2019
11(2).....	am. 118/2019
15(f).....	am. 118/2019
15(f)(i).....	am. 118/2019
15(f)(ii).....	am. 118/2019
15(f)(iii).....	ad. 118/2019
15(g).....	am. 118/2019
15(h).....	ad. 118/2019
21(1) defn. of “mass mortality”.....	rep. 118/2019
21(1) defn. of “mortality event”.....	ad. 118/2019
21(1) defn. of “reportable disease”..	am. 118/2019
21(1) defn. of “significant mortality event”.....	rep. 118/2019
21(4)(b).....	am. 118/2019
21(4)(c).....	rep. 118/2019
30(2).....	am. 118/2019
32(2)(a).....	am. 118/2019
34(b).....	rep. 118/2019
34(d).....	am. 118/2019
34(e).....	rs. 118/2019
40(1).....	am. 118/2019
41A.....	ad. 118/2019
42(1).....	am. 118/2019
42(2).....	am. 118/2019
42(3).....	am. 118/2019
43.....	rs. 118/2019
44(1).....	am. 118/2019
44(2).....	am. 118/2019

Note that changes to headings are not included in the above table.

Editorial Notes and Corrections

Note	Effective date
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Repealed and Superseded

N.S. Regulation	Title	In force date	Repealed date
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Note: Only regulations that are specifically repealed and replaced appear in this table. It may not reflect the entire history of regulations on this subject matter.

Webpage last updated: 21-05-2020

TAB 2

Fisheries and Coastal Resources Act

CHAPTER 25 OF THE ACTS OF 1996

as amended by

1999, c. 2; 2001, c. 6, s. 108; 2005, c. 19; 2005, c. 50, s. 1;
2010, c. 51; 2012, c. 22; 2015, cc. 18, 19; 2015, c. 32, s. 73;
2018, c. 8; 2019, c. 31, ss. 2, 3; 2021, c. 31



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CHAPTER 25 OF THE ACTS OF 1996
 amended 1999, c. 2; 2001, c. 6, s. 108; 2005, c. 19; 2005, c. 50, s. 1;
 2010, c. 51; 2012, c. 22; 2015, cc. 18, 19; 2015, c. 32, s. 73;
 2018, c. 8; 2019, c. 31, ss. 2, 3; 2021, c. 31

**An Act to Revise and Consolidate
 the Laws of the Province Respecting
 the Fishery and to Encourage and Promote
 Programs to Sustain and Improve the Fishery**

Table of Contents

(The table of contents is not part of the statute)

	Section
PART I	
Introduction	
Short title	1
Purpose of Act	2
Interpretation	3
PART II	
Administration	
Personnel	4
Supervision and management of Act	5
Powers of Minister	6
Committees	7
Public registry	8
Alternate dispute resolution	9
Development of objectives and standards	10
Delegation by Minister	11
Transfer of administration and control	12
Agreements	13
Purchase and disposal of real property	14
Inspectors	15
Identification of inspectors	16
Laboratory analyses	17
Mode of serving documents	18
Regulations	19
PART III	
Training, Technology and Development	
Fisheries training	20
Undertaking of projects by Minister	21
Establishment of programs by Minister	22
Regulations	23
PART IV	
Lending for Fisheries and Aquaculture Development	
Interpretation of Part	24
Board continued	25
Remuneration and reimbursement of members	26

Quorum and term of office	27
Object of Board.....	28
Use of Fund.....	29
Powers and duties of Board	30
Board subject to Ministerial directions.....	31
Personnel.....	32
Administration expenses.....	33
Fisheries and Aquaculture Development Fund.....	34
Transfers to Fund.....	35
Guarantees as charges.....	36
Treatment of repayments and recoveries	37
Approval for certain guarantees.....	38
Execution of documents	39
Finances and fiscal year.....	40
Annual statements.....	41
Regulations	42

PART V

Aquaculture

Interpretation of Part.....	43
Purpose of Part.....	43A
Licences	44
Proposals for options to lease undesignated Crown land	44A
Application for licence	45
Contents of application	46
Procedure upon receipt of application	47
Proposal to advance application	47A
Review Board	48
Review Board's duties with respect to undesignated marine areas.....	49
Review Board decision	49A
Appeal.....	50
Public hearing	51
Review Board decision	52
Prohibition	54
Administrator	54A
Special experimental licence or lease	55
Institutional licence or lease	55A
Powers of Minister respecting aquaculture.....	56
Consequences of designation.....	57
Powers of Administrator.....	58
Powers where licence or lease revoked	59
Power to revoke licence or lease	59A
Title to plants and animals	60
Exclusive property of holder	61
Certain provisions prevail.....	63
Regulations	64

PART VI

Sea Plants Harvesting

Interpretation of Part.....	65
Leases	66
Exclusion from lease.....	67
Application for lease.....	68
Notice of application and objection.....	69
Permit for harvesting	70
Regulations	71

PART VII

Licensing and Inspecting
of Fish Products

General supervision and control	72
Prohibition	73

Licences.....	74
Grounds for refusing licence.....	75
Particulars respecting licence.....	76
Certain powers of Governor in Council and Minister.....	77
Existing regulations.....	78

PART VIII

Recreational Fishing

Requirement for licence.....	79
Permit for fishing event.....	80
Regulations.....	81

PART IX

Enforcement, Investigations and Penalties

Powers of inspector.....	82
Seizure.....	83
Further powers of inspector.....	84
Requirement to stop vehicle or vessel.....	85
Seizure.....	86
Persons accompanying inspector.....	87
Requirement to assist inspector.....	88
Custody of fish seized.....	89
Treatment of seized fish.....	90
Order to pay compensation.....	91
Power of court.....	92
Disposal of seized fish and property.....	93
Treatment of unforfeited property.....	94
Return of fish to water.....	95
Holder of interests in forfeited property.....	96
Appeal.....	97
Exception from application of Sections 96 and 97.....	98
Prohibition of retaliation.....	99
Ministerial order.....	100
Permitted contents of order.....	101
Persons bound by order.....	102
Enforcement of order.....	103
Additional penalty.....	104
Persons liable under order.....	105
Duty of insurer.....	106
Conviction as evidence of negligence.....	107
Immunity from liability.....	108
Recovery of costs and expenses.....	109
Limitation period.....	109A
Offence.....	110
Defences.....	111
Additional fine.....	112
Proof of offence.....	113
Effect of corporate offence on certain persons.....	114
Powers of court on conviction.....	115
Penalties.....	116
Regulations.....	117

PART X

Appeals

Appeal to Minister.....	118
Appeal to Supreme Court.....	119
Duty to dismiss appeal.....	120
Regulations.....	121

PART XI

Miscellaneous

Valid provisions severable	122
Prohibitions re marine renewable-electricity areas	122A
Comprehensive review of Act	123
Transitional provisions	124
Repeal	125
Executive Council Act amended	126
Public Service Act amended	127
Substituted reference	128
Proclamation	129

Short title

1 This Act may be cited as the *Fisheries and Coastal Resources Act*, 1996, c. 25, s. 1.

PART I

INTRODUCTION

Purpose of Act

- 2** The purpose of this Act is to
- (a) consolidate and revise the law respecting the fishery;
 - (b) encourage, promote and implement programs that will sustain and improve the fishery, including aquaculture;
 - (c) service, develop and optimize the harvesting and processing segments of the fishing and aquaculture industries for the betterment of coastal communities and the Province as a whole;
 - (d) support the sustainable growth of the aquaculture industry;
 - (e) expand recreational and sport-fishing opportunities and ecotourism;
 - (f) foster community involvement in the management of coastal resources;
 - (g) provide training to enhance the skills and knowledge of participants in the fishery, including aquaculture;
 - (h) increase the productivity and competitiveness of the processing sector by encouraging value-added processing and diversification. 1996, c. 25, s. 2; 2015, c. 19, s. 1.

Interpretation

- 3** (1) In this Act,
- (a) “aquaculture” means the farming for commercial purposes of aquatic plants and animals over which the Minister exercises

control but does not include raising or breeding in tanks, nets, pens or cages of aquatic plants and animals either as aquarium species, in laboratory experiments or by individuals on their own property as food for their own use;

(b) “aquaculturist” means a person who practises aquaculture;

(c) “Department” means the Department of Fisheries and Aquaculture;

(d) *repealed 1999, c. 2, s. 1.*

(da) “fish products” includes fishery resources and any parts, products or by-products derived from fishery resources, including, for greater certainty, processed fish;

(e) “fishery resources” includes all vertebrate and invertebrate animals and all plants which spend all or part of their life in the aquatic and marine environment;

(f) “Government” means Her Majesty in right of the Province;

(g) “inspector” means an inspector appointed pursuant to this Act;

(h) “marketing” means offering or advertising for sale;

(i) “Minister” means the Minister of Fisheries and Aquaculture;

(j) “processing” includes cleaning, filleting, icing, packing, canning, freezing, smoking, salting, cooking, pickling, drying or preparing fish for market in any other manner;

(k) “solum” means the soil or land lying under the tidal water and extending seaward from mean high water mark and includes the foreshore;

(l) “veterinary medical record” means

(i) a record of medical services, including examination, diagnosis, care or treatment, or

(ii) any information pertaining to medical history,

provided by or to a professional veterinarian in relation to the health of an aquatic animal, and may include documents, data or images produced by any means.

(2) For the purpose of this Act,

(a) a person is in possession of a thing when it is in that person’s personal possession or when that person knowingly

(i) has it in the actual possession or custody of another person, or

(ii) has it in any place, whether or not that place belongs to or is occupied by that person, for the use or benefit of that person or of another person; and

(b) when one of two or more persons, with the knowledge and consent of the rest has anything in that person's custody or possession, it is in the possession of each of them. 1996, c. 25, s. 3; 1999, c. 2, s. 1; 2010, c. 51, s. 1; 2012, c. 22, s. 1; 2015, c. 19, s. 2.

PART II

ADMINISTRATION

Personnel

4 Such officers and employees as are necessary for the administration of this Act shall be appointed in accordance with the *Civil Service Act*. 1996, c. 25, s. 4.

Supervision and management of Act

5 The Minister is responsible for the general supervision and management of this Act. 1996, c. 25, s. 5.

Powers of Minister

6 The Minister, for the purpose of the administration and enforcement of this Act, may

(a) establish and administer policies, programs and guidelines pertaining to the administrative development and protection of the fishery and coastal zone aquatic resources;

(b) consult with and co-ordinate the work and efforts of other departments and agencies of the Province respecting any matter relating to the maintenance and development of fishery resources;

(c) enter into agreements with the Government of Canada or the government of any other province on matters relating to the management or development of fishery resources;

(d) develop scientific databases, especially with respect to determining the impact of various geotypes on the fisheries environment and engage in consultations with the Government of Canada to ensure equitable access to fishery resources;

(e) gather, compile, publish and disseminate information, including statistical data, relating to the maintenance and development of fishery resources;

(f) establish and assist demonstration programs that are consistent with the intent of this Act;

(g) conduct economic analyses to determine the costs and benefits of proposed alterations to traditional harvesting and processing of fisheries resources and aquaculture;

- (h) convene conferences and conduct seminars and educational programs relating to the development, management and protection of fisheries resources;
- (i) give financial assistance to any person, group, society or association for purposes related to the promotion and enhancement of the fishery;
- (j) establish fees for the provision, registration or filing of any information, documents, returns and reports, any application for, processing and issuance of an approval, certificate, licence or lease, any inspection or investigation and any services or material provided in the course of the administration of this Act;
- (k) prescribe forms for the purpose of this Act. 1996, c. 25, s. 6.

Committees

7 The Minister may

- (a) establish advisory and *ad hoc* committees and retain experts to report to the Minister with respect to
 - (i) the content and administration of this Act, and
 - (ii) any policies, programs, standards, guidelines or other matters under the administration of the Minister;
- (b) specify the functions that the committees and experts are to perform, including the seeking of input from the public, and the manner and time period in which those functions are to be performed;
- (c) provide for the remuneration of and payment of expenses to experts, witnesses and members of advisory committees;
- (d) provide for the issue of summonses requiring the attendance of witnesses, the production of documents and things and the payments of fees to witnesses. 1996, c. 25, s. 7.

Public registry

- 8 (1) The Minister may establish a public registry containing
- (a) procedures, standards, codes of practice or guidelines established pursuant to this Act;
 - (aa) all trust agreements entered into between fishermen and corporations;
 - (b) information or documents required by regulation to be included in the registry;
 - (c) any other information or document considered appropriate by the Minister.

(2) The Minister shall ensure public access to the information and documents contained in the public registry during business hours of the Department.

(3) Subject to subsection (4) and subject to the *Freedom of Information and Protection of Privacy Act*,

(a) all information under the control of the Department is accessible to the public; and

(b) the Minister shall ensure that information under the control of the Department is shared with other government departments and agencies.

(4) A veterinary medical record under the control of the Department is to be kept in confidence and may only be disclosed in accordance with subsection (5).

(5) A veterinary medical record may only be disclosed

(a) for the protection of human health;

(b) if so required by the laws of the Parliament or Government of Canada;

(c) to enable the enforcement of this Act or the regulations;

(d) in the form of summary health data that reveals no identifiable personal information; or

(e) if the owner of the animal that is the subject of the record has consented. 1996, c. 25, s. 8; 2005, c. 19, s. 1; 2015, c. 19, s. 3.

Alternate dispute resolution

9 (1) For the purpose of resolving a dispute, the Minister may refer a matter to a form of alternate dispute resolution, including but not limited to, conciliation, negotiation, mediation or arbitration.

(2) Where the Minister decides to use a form of alternate dispute resolution to resolve a dispute, the Minister, in consultation with the affected parties and using criteria prescribed or adopted by the Department, shall determine which form of dispute resolution is most appropriate to use to resolve the dispute.

(3) Any form of alternate dispute resolution used shall strive to achieve consensus to resolve procedural and substantive issues throughout the process.

(4) Where a form of alternate dispute resolution is being used to resolve a dispute, and where an independent party or neutral third party has been chosen to facilitate, mediate or arbitrate, at the conclusion of the process that person

shall file a report with the Minister and with the parties whether or not the dispute was resolved.

(5) Without limiting the generality of subsections (1) to (4), a form of alternate dispute resolution may be used

- (a) in case of a dispute over the issuance, cancellation or suspension of a licence or lease;
- (b) in case of a dispute over an approval;
- (c) as a substitute for a hearing; or
- (d) generally, for conflict resolution. 1996, c. 25, s. 9.

Development of objectives and standards

10 (1) In order to further the protection and wise use of fishery and coastal zone aquatic resources the Minister may develop and adopt quality objectives in qualitative or quantitative terms for all or part of the Province.

(2) The Minister may develop other policies, standards, guidelines and objectives to meet goals and purposes towards which fishery and coastal zone aquatic resource development and protection efforts of the Government are directed, including procedures, practices and methods for monitoring and analysis. 1996, c. 25, s. 10.

Delegation by Minister

11 (1) The Minister may, in writing, delegate to

- (a) an employee of the Department;
- (b) any employee of the Government or a Government agency;
- (c) any employee of the Government of Canada or an agency of that government; or
- (d) any person,

who has the qualifications and experience, any power or duty conferred or imposed on the Minister pursuant to this Act.

(2) Before making a delegation to a person pursuant to clause (1)(b), (c) or (d), the Minister shall consult with and obtain the consent of the person or, where applicable, the employer of the person.

(3) The Minister may revoke a delegation made pursuant to this Section.

(4) The Minister, with the approval of the Governor in Council, may utilize the facilities and personnel of other Government agencies or departments in furtherance of the objectives of this Act. 1996, c. 25, s. 11.

Transfer of administration and control

12 (1) The Minister may, with the approval of the Governor in Council, transfer the administration and control of a provision of this Act, after appropriate consultation, to

- (a) another minister of the Government or a Government agency; or
- (b) any other person,

and may specify the terms and conditions under which and subject to which the transfer is made.

(2) The Minister may, with the approval of the Governor in Council, revoke a transfer of administration and control made pursuant to this Section. 1996, c. 25, s. 12.

Agreements

13 The Minister may enter into agreements with

- (a) any person relating to any matter pertaining to the fishery and coastal zone aquatic resources; or
- (b) the Government of Canada with respect to the administration of this Act, the *Fisheries Act* (Canada) or any other federal enactment for the purpose of protection of the fishery and coastal zone aquatic resources. 1996, c. 25, s. 13.

Purchase and disposal of real property

14 The Minister may, with the approval of the Governor in Council, purchase and dispose of any estate or interest in real property for the purpose of this Act. 1996, c. 25, s. 14.

Inspectors

15 (1) The Minister may appoint as an inspector a person who has the qualifications and experience to be an inspector for the purpose of all or part of this Act.

(2) Where a person appointed pursuant to subsection (1) is not an employee of the Department, the Minister, before making the appointment, shall consult with and obtain the consent of the person or, where applicable, the employer of the person.

(3) An appointment under subsection (1) may direct that the authority of the inspector be exercised subject to any terms and conditions that the Minister prescribes in the appointment, including limitations on the scope of the appointment. 1996, c. 25, s. 15.

Identification of inspectors

16 On entering any place, an inspector shall, on request, produce an identification card provided by the Department and provide reasons for the entry. 1996, c. 25, s. 16.

Laboratory analyses

17 (1) Before accepting results from any laboratory, the Minister may require proof of acceptable certification of the laboratory.

(2) The Minister may prescribe standards and procedures for any sampling or analysis that is required pursuant to this Act or the regulations. 1996, c. 25, s. 17.

Mode of serving documents

18 (1) Where any notice, request, order, direction or other document is required to be given in writing or served pursuant to this Act, it is deemed to be sufficiently given or served

(a) upon a copy being personally given to or served on the person to whom it is directed;

(b) upon a copy being sent by facsimile or by other electronic means to the person to whom it is directed and an acknowledgement of receipt being received;

(c) five days after a copy is sent by mail addressed to the person to whom it is directed at the last known address for that person; or

(d) in the case of a registered owner of real property, five days after a copy is sent by mail to the address for the registered owner shown on the last revised assessment roll.

(2) Where the person to be served is a corporation, service on a director, officer or recognized agent of the corporation in accordance with subsection (1), or service in accordance with the *Corporations Registration Act*, is deemed to be service on the corporation for the purpose of this Act.

(3) Where it is impractical for any reason to serve a document in the manner prescribed in subsection (1), an *ex parte* application may be made to a judge of the Supreme Court of Nova Scotia who may make an order for substituted service providing for such steps to be taken to bring the matter to the attention of the person to be served. 1996, c. 25, s. 18.

Regulations

19 (1) The Governor in Council may make regulations

(a) respecting information or documentation to be filed in the public registry established pursuant to this Part;

- (b) respecting the manner in which reports of advisory or *ad hoc* committees are made public;
- (c) respecting alternate dispute-resolution mechanisms;
- (d) defining any word or expression used but not defined in this Act;
- (e) for the effective administration of this Act, and, without restricting the generality of the foregoing, exempting a person or a class of persons, activities, matters or things from this Act;
- (f) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 1996, c. 25, s. 19.

PART III

TRAINING, TECHNOLOGY AND DEVELOPMENT

Fisheries training

20 (1) The Minister is responsible for fisheries training in the Province and for the operation of any fisheries training school or facility operated by the Province and may, in the Minister's discretion, make provision for the standards and mode of admission, course of study, curriculum and apprenticeship in each branch in which instruction is given, and may authorize diplomas, certificates of proficiency, scholarships or other awards to be given after evaluation in any such subjects.

(2) For greater certainty, nothing in subsection (1) affects a fisheries training program offered by the private sector. 1996, c. 25, s. 20.

Undertaking of projects by Minister

21 (1) The Minister may undertake projects

- (a) for the exploration, development and enhancement of fisheries resources;
- (b) for the more efficient harvesting and utilization of fishery resources;
- (c) for the introduction and demonstration to fishers and aquaculturists and others of new types of fishing and aquaculture vessels, gear, equipment, methods, techniques and operations;
- (d) respecting the encouragement of the aquaculture industry, including the provision of financial or technical assistance, or a combination thereof, to persons engaged in aquaculture or in the

applied research and development or applied technology related to aquaculture;

(e) for the introduction of more efficient methods in landing, handling, transporting, processing and storing fish;

(f) for the training, education and career planning of fishers and processing plant workers;

(g) for the promotion and marketing of fishery products;

(h) for the more efficient processing of fishery products;

(i) for the improvement of the quality of fish products and for the encouragement of value-added processing;

(j) for the improvement of fishing ports and aquaculture landing sites under Provincial jurisdiction, and their facilities and services;

(k) for the development of aquaculture;

(l) for the enhancement of fishing communities;

(m) to collect and disseminate statistics related to the fishery, including aquaculture.

(2) Without restricting the generality of subsection (1), the Minister may undertake economic studies to assist in the effective formulation of policies relating to the fishery and coastal zone aquatic resources. 1996, c. 25, s. 21.

Establishment of programs by Minister

22 The Minister may, in accordance with the regulations, establish programs for the research, development and use of economic instruments and market-based approaches for the management of the fishery and coastal zone aquatic resources and for the purpose of achieving quality objectives in a cost-effective manner, including, without limiting the generality of the foregoing,

(a) user charges;

(b) resource pricing and physical resource accounts;

(c) deposit refund systems;

(d) product charges;

(e) charges on inputs or materials;

(f) tax incentives and tax differentiation;

(g) subsidies, loans and grants. 1996, c. 25, s. 22.

Regulations

23 (1) The Governor in Council may make regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1996, c. 25, s. 23.

PART IV

LENDING FOR FISHERIES AND AQUACULTURE DEVELOPMENT

Interpretation of Part

24 In this Part,

(a) “Board” means the Nova Scotia Fisheries and Aquaculture Loan Board;

(b) “fishing industry” includes the catching, harvesting, raising, handling, processing, marketing and distributing of fisheries resources and products and includes aquaculture;

(c) “Fund” means the Fisheries and Aquaculture Development Fund. 1996, c. 25, s. 24.

Board continued

25 (1) The body corporate known as the Nova Scotia Fisheries Loan Board is hereby continued under the name Nova Scotia Fisheries and Aquaculture Loan Board and is responsible for the administration of this Part.

(2) The Board consists of such members as are appointed to it by the Governor in Council.

(3) The Governor in Council may designate one member of the Board to be Chair and one member to be Vice-chair. 1996, c. 25, s. 25.

Remuneration and reimbursement of members

26 (1) The members of the Board shall receive such remuneration and allowances as may be determined by the Governor in Council.

(2) The members of the Board shall be paid such reasonable expenses incurred by them in the performance of their duties as are determined by the Governor in Council. 1996, c. 25, s. 26.

Quorum and term of office

27 (1) A majority of members constitutes a quorum of the Board.

(2) A vacancy on the Board does not impair the right of the remaining members to act.

(3) Each member of the Board holds office for a term, not exceeding three years, prescribed in the member's appointment, unless the member's appointment is sooner revoked by the Governor in Council, and is eligible for re-appointment to the Board.

(4) The Governor in Council may appoint persons to fill vacancies occurring from time to time on the Board. 1996, c. 25, s. 27.

Object of Board

28 The object and purpose of the Board is to make loans and guarantees of loans to fishers, aquaculturists, companies, co-operatives, associations or other persons in order to encourage, sustain, improve and develop the fishing industry in the Province. 1996, c. 25, s. 28.

Use of Fund

29 Subject to the regulations, the Board may, out of the Fund or other money under its control, make loans and guarantees of loans to or on behalf of fishers, aquaculturists, companies, co-operatives, associations or other persons engaged directly in the fishing industry or to or on behalf of any person for any purpose which, in the opinion of the Governor in Council, will encourage, sustain, improve or develop the fishing industry in the Province. 1996, c. 25, s. 29.

Powers and duties of Board

30 The Board

(a) shall administer, in accordance with the regulations, the Fund and any other fund or money as shall from time to time come under the control of the Board;

(b) with the approval of the Governor in Council, may enter into agreements with the Government of Canada or another province, or with any person or any organization, whether public or private, or any combination of them, for the better carrying out of this Part on such terms and conditions as may be approved by the Governor in Council notwithstanding the provisions of this Part;

(c) subject to the regulations, may receive, take, hold, mortgage, sell, convey or otherwise dispose of real or personal property;

(d) shall perform such duties and exercise powers as may from time to time be approved or determined by the Governor in Council;

(e) has power to do all such matters and things as may be necessary for or incidental to the attainment of its objects and purposes and the exercise of its powers. 1996, c. 25, s. 30.

Board subject to Ministerial directions

31 In the exercise and performance of its functions, powers and duties under this or any other enactment the Board shall act in accordance with any general directions of the Minister. 1996, c. 25, s. 31.

Personnel

32 The Minister may, in accordance with the *Civil Service Act*, appoint from the staff of the Department such officers, assistants, supervisors, clerks and other staff and employees as may be necessary to carry on the work of the Board or to carry out the provisions of this Part. 1996, c. 25, s. 32.

Administration expenses

33 The administration expenses of the Minister and the Board pursuant to this Part are administration expenses of the Department and shall not be a charge upon the Fund. 1996, c. 25, s. 33.

Fisheries and Aquaculture Development Fund

34 For the purpose of this Part, there is established in the office of the Minister of Finance a special account to be known as the Fisheries and Aquaculture Development Fund. 1996, c. 25, s. 34.

Transfers to Fund

35 The Governor in Council, upon the recommendation of the Minister, may from time to time transfer to the Fund such amounts as are considered necessary for the purpose of this Part and may charge the same to Capital Account, Special Reserve Account or Revenue of the Province for any year or years. 1996, c. 25, s. 35.

Guarantees as charges

36 All guarantees of loans made pursuant to this Part or pursuant to any other Act are a charge upon the Fund to the amount of the guarantees from time to time outstanding. 1996, c. 25, s. 36.

Treatment of repayments and recoveries

37 All repayments and all recoveries made in respect of any transaction out of the Fund shall be credited to the Fund. 1996, c. 25, s. 37.

Approval for certain guarantees

38 The Board shall not make a loan or guarantee of loan in excess of the amount prescribed by regulation without the approval of the Governor in Council. 1996, c. 25, s. 38; 2005, c. 50, s. 1.

Execution of documents

39 All deeds, mortgages, transfers, assignments, discharges, releases, agreements, securitics or other documents of whatsoever nature or kind must be executed by officers of the Board as designated by the members of the Board and approved by the Deputy Minister of the Department. 2019, c. 31, s. 2.

Finances and fiscal year

40 (1) The system of accounting and the books and records of the Board shall be subject to the approval and supervision of the Minister of Finance and subject to audit by the Auditor General or any person designated by the Auditor General.

(2) The fiscal year of the Board shall be the same as the fiscal year of the Province. 1996, c. 25, s. 40.

Annual statements

41 The Board shall, not later than January 31 in each year, prepare and submit to the Minister a financial statement setting forth the assets and liabilities of the Board, the receipts and expenditures of the Board for the previous year, together with a report concerning the work of the Board during the previous year, and the report shall be tabled by the Minister at the next ensuing session of the Legislature. 1996, c. 25, s. 41.

Regulations

42 (1) The Governor in Council, on the recommendation of the Minister, may make such regulations as the Governor in Council deems necessary or advisable for the more effective carrying out of the provisions of this Part and for dealing with matters for which no express provision has been made and, without restricting the generality of the foregoing, may make regulations

(a) prescribing the manner in which applications for loans or guarantees of loans may be made;

(b) prescribing the terms and conditions on which loans or guarantees of loans may be made;

(c) prescribing the manner and conditions on which fishers, aquaculturists, companies, co-operatives, associations or other persons may sell or transfer any asset, boat, equipment or product in respect of which a loan has not been fully repaid;

(d) prescribing or limiting the size or type of assets, boats, equipment or products for or in respect of which loans or guarantees of loans may be made;

(e) limiting the amount of any loan or guarantee of loan;

(ea) prescribing the fees and expenses payable with respect to loans or guarantees of loans;

(f) prescribing the terms, conditions or circumstances under which the Board, in its discretion, may extend, defer, adjust or compromise

(i) the repayment of a loan, or

(ii) the terms and conditions of any loan or guarantee of loan;

- (g) fixing rates of interest on loans;
- (h) providing for the commuting of any payment due to the Board;
- (i) prescribing the amount and nature of the security to be required before a loan or guarantee of loan is made;
- (j) prescribing the form of any mortgage and the manner of its execution;
- (k) prescribing or regulating the form and contents of any agreement between a fisher, aquaculturist, company, co-operative, association or other person and a boat builder for the construction of a boat;
- (l) respecting the design, plans and specifications for fishing boats;
- (m) prescribing the purposes for which loans or guarantees of loans may be made;
- (n) prescribing the manner in which meetings of the Board shall be called, the time and place of such meetings and the manner in which business shall be conducted at the meetings;
- (o) respecting records to be kept by fishers, aquaculturists, companies, co-operatives, associations or other person to or for whom any loan or guarantee of loan has been made;
- (p) for the examination and audit of records and accounts and for the inspection of any premises, plant, boat, assets, products or equipment in respect of which a loan or guarantee of loan has been made;
- (q) notwithstanding the definition of "fishing industry", prescribing commercial, business or other activities that are deemed to be included in the definition of "fishing industry" for the purpose of this Part and the regulations;
- (r) defining any word or expression used but not defined in this Part;
- (s) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 1996, c. 25, s. 42; 2019, c. 31, s. 3.

PART V

AQUACULTURE

Interpretation of Part

43 In this Part,

(a) “adjudicative amendment” means an amendment to an aquaculture licence or to an aquaculture lease approved by the Review Board on the hearing of an application to amend pursuant to clause 49(b) or (c); and

(aa) “aquacultural operation” means the practice of aquaculture at a site;

(ab) “aquacultural produce” means aquatic plants and animals farmed or being farmed as part of an aquacultural operation;

(b) “aquaculture lease” means an aquaculture lease issued pursuant to this Part;

(c) “aquaculture licence” means an aquaculture licence issued pursuant to this Part;

(ca) “aquaculture registry” means a public registry of Provincial aquaculture licences and leases and information related to sites available for reallocation in the Province;

(d) “aquatic” refers to fresh, brackish or marine water;

(e) “aquatic plants and animals” means plants and animals that during all stages of their development or life cycles have water as their natural habitat;

(f) “brackish water” means water situated in tidal areas where fresh water mixes with marine water;

(g) “experimental licence” means an experimental licence issued pursuant to this Part;

(h) “farming” means the culture, husbandry, production, development or improvement of aquatic plants and animals;

(i) “feed stock” includes any form of flora or fauna given or intended to be given as food to aquacultural produce;

(ia) “finfish” means any cultured cold-blooded aquatic vertebrate possessing fins and gills;

(j) “prescribed” means prescribed by the regulations;

(ja) “Review Board” means the Nova Scotia Aquaculture Review Board established pursuant to this Act;

(k) “seed stock” includes eggs, alevins, parr, smolt, juvenile and adult fish, crustaceans and shellfish, seeds, spat, seedlings and other forms of aquatic plants and animals used or intended to be used as the primary source of the aquacultural produce;

(ka) “shellfish” means any cultured mollusc or crustacean, at any stage of its life cycle;

(l) “sub-aquatic land” means the bed of a natural body of water including the solum of the sea;

(m) “water column” means the aqueous medium superjacent to a defined area of sub-aquatic land. 1996, c. 25, s. 43; 2015, c. 19, s. 4; 2018, c. 8, s. 1.

Purpose of Part

43A The purpose of this Part is to

(a) recognize that aquaculture is a legitimate and valuable use of the Province’s coastal resources;

(b) ensure aquaculture is conducted under conditions and in accordance with controls that protect the environment;

(c) provide a predictable and efficient regulatory environment for business and public confidence;

(d) ensure equity, fairness and compatibility in access to, and utilization of, public water resources for aquaculture;

(e) ensure that members of the public have access to information with respect to the regulatory process and an opportunity to participate in the process;

(f) ensure that regulations governing aquaculture are achievable, contain incentives for compliance and are enforceable;

(g) ensure that coastal communities derive positive social and economic benefits from aquaculture;

(h) ensure that aquaculture is conducted with due regard to the health, well-being and recovery of species at risk; and

(i) ensure that the regulation of aquaculture contributes to the productive development of the Province’s coastal resources. 2015, c. 19, s. 5.

Licences

44 (1) No person shall carry on aquaculture without an aquaculture licence.

(2) No person shall carry on aquaculture on Crown land without an aquaculture licence and an aquaculture lease.

(3) Unless otherwise restricted by this Part or the terms of the lease, the granting of an aquaculture lease carries with it the exclusive right, for aquacultural purposes, to possession of the water column and sub-aquatic land described in the lease. 1996, c. 25, s. 44; 2015, c. 19, s. 6.

Proposals for options to lease undesignated Crown land

44A (1) From time to time, the Minister may issue a call for proposals for options to lease a tract of Crown land chosen by the Minister that is not designated as an aquaculture development area.

(2) A person may submit a proposal within such time and in such manner as the Minister determines.

(3) A proposal shall include such information as the Minister determines.

(4) Upon review of a proposal, the Minister may issue an option to lease for an area within the tract.

(5) An option to lease shall

(a) convey the exclusive right, for the duration of the option, to apply for an aquaculture lease for a site within the area;

(b) be for a prescribed duration; and

(c) be subject to a prescribed fee.

(6) Where there are competing proposals of equivalent and acceptable stature, the Minister shall issue an option to lease to the proponent who, in the opinion of the Minister, is the best overall proponent based on the information available to the Minister under this Section. 2015, c. 19, s. 7; 2018, c. 8, s. 2.

Application for licence

45 (1) A person may apply to the Minister, in the manner prescribed by the Minister, for an aquaculture licence.

(2) Where the site at which aquacultural activities are proposed to be carried on is on Crown land, the applicant shall, in addition to applying for a licence pursuant to subsection (1), apply to the Minister, in the manner prescribed by the Minister, for an aquaculture lease.

(3) Where the site at which aquacultural activities are proposed to be carried on is on private land, an aquaculture licence may only be issued to the owner or lessee of the land. 1996, c. 25, s. 45; 2015, c. 19, s. 8.

Contents of application

46 (1) An application for an aquaculture licence or aquaculture lease shall be accompanied by the information stipulated by the Minister.

(2) The Minister may require an applicant for an aquaculture licence or aquaculture lease to submit any additional information the Minister considers necessary.

(3) Where the Minister considers an application to be incomplete, the application shall not be processed until the information required is submitted. 1996, c. 25, s. 46.

Procedure upon receipt of application

47 (1) Upon receipt of an application referred to in subsection 54A(1) for an aquaculture licence or aquaculture lease, the Minister shall refer the application to the Administrator.

(2) Upon the receipt of an application for an aquaculture licence or aquaculture lease for an area not designated as an aquaculture development area, the Minister shall appoint an employee of the Department to consult with

(a) other departments or agencies of the Government or the Government of Canada, as may be required under the laws of the Province or of Canada; and

(b) any person, group of persons or organization that the Minister considers necessary or advisable in the circumstances,

and shall refer the application, along with a report on the outcome of the consultation described in clauses (a) and (b), to the Review Board for decision. 2015, c. 19, s. 9.

Proposal to advance application

47A (1) The holder of an aquaculture licence or an aquaculture lease may submit a proposal to the Minister to advance an application before the Review Board for an adjudicative amendment to the licence or lease.

(2) The proposal must be submitted within such time and in such manner as the Minister determines.

(3) The proposal must include such information as the Minister determines.

(4) Upon review of the proposal, the Minister may issue an approval to advance the application for an adjudicative amendment before the Review Board.

(5) The approval to advance the application

(a) must convey the exclusive right, for the duration of the approval, to apply for the adjudicative amendment to the Review Board;

(b) must be for a prescribed duration; and

(c) is subject to a prescribed fee.

(6) Where the Minister grants an approval pursuant to subsection (4) and the Review Board could approve an increase of the area of an existing aquaculture site under that application, the Minister shall not, pending the Review

Board's determination, grant an option to lease or approve another proposal to advance an application relating to the area that may be added to the existing aquaculture site.

(7) Where there are competing proposals of equivalent and acceptable stature, the Minister shall issue an approval to advance an application for an adjudicative amendment to the proponent who, in the opinion of the Minister, is the best overall proponent based on the information available to the Minister under this Section. 2018, c. 8, s. 3

Review Board

48 (1) There is hereby established a board to be known as the Nova Scotia Aquaculture Review Board consisting of not more than ten members appointed by the Minister for such terms as the Minister may determine.

(2) The Minister shall appoint one member of the Review Board to be its Chair and another member to be its Vice-chair.

(3) The Minister shall appoint an employee of the Department to act as the clerk of the Review Board.

(4) A majority of the members of the Review Board constitutes a quorum.

(4) The Chair of the Review Board shall assign three or more of its members to constitute a panel to hear an application before the Review Board.

(4A) The Chair of the Review Board shall determine a quorum of the Review Board or of a hearing panel.

(5) Members of the Review Board shall be paid such remuneration as the Minister determines.

(6) Members of the Review Board shall be reimbursed as the Minister determines for reasonable travelling and other expenses incurred by them in accordance with the work of the Review Board.

(7) A vacancy on the Board does not impair the ability of the Review Board to act.

(8) The Review Board may make rules of procedure for the conduct and management of its affairs.

(9) The Review Board and each member of the Review Board has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment. 2015, c. 19, s. 9; 2021, c. 31, s. 1.

Review Board's duties with respect to undesignated marine areas

49 The Review Board shall, with respect to marine areas not designated as aquaculture development areas, make decisions with respect to

- (a) an application for an aquaculture licence or aquaculture lease;
- (b) where an existing aquaculture licence or aquaculture lease authorizes the production of shellfish or aquatic plants but not finfish species, an application to amend the aquaculture licence or aquaculture lease to authorize the production of a finfish species; and
- (c) an application to amend an aquaculture licence or aquaculture lease to change the boundaries of an existing aquaculture site if the change results in an increase in the area of the aquaculture site. 2015, c. 19, s. 9.

Review Board decision

49A Where a panel is constituted to hear an application before the Review Board, a decision of a majority of the panel is the decision of the Review Board but, where there is no majority, a decision of the chair of the panel is the decision of the Review Board. 2021, c. 31, s. 2.

Appeal

50 (1) A party to an application may appeal a Review Board decision to the Supreme Court of Nova Scotia, upon any question as to the jurisdiction of the Review Board or upon any question of law, upon filing with the Court a notice of appeal within thirty days after the decision is issued.

(2) An appeal made pursuant to subsection (1) does not operate as a stay of the Review Board decision pending the outcome of the appeal. 2015, c. 19, s. 9; 2018, c. 8, s. 4.

Public hearing

51 Where the Minister refers an application to the Review Board, the Review Board shall hold a public hearing as prescribed. 2015, c. 19, s. 9.

Review Board decision

52 (1) Upon receiving a decision of the Review Board made pursuant to Section 49, the Minister shall, in accordance with the decision,

- (a) issue the aquaculture licence or aquaculture lease;
- (b) issue the aquaculture licence or aquaculture lease, subject to any conditions the Review Board considered appropriate;
- (c) reject the application for the aquaculture licence or aquaculture lease; or
- (d) amend the aquaculture licence or aquaculture lease.

(2) The Minister shall make publicly available a decision of the Review Board upon implementation pursuant to subsection (1). 2015, c. 19, s. 9.

53 *repealed 2015, c. 19, s. 9.*

Prohibition

54 (1) No person shall introduce a species of aquatic plants or animals foreign to the area where it is intended to introduce them without having first obtained an aquaculture licence authorizing such introduction.

(2) and (3) *repealed 2015, c. 19, s. 10.*

1996, c. 25, s. 54; 2015, c. 19, s. 10.

Administrator

54A (1) The Minister shall appoint an employee of the Department to act as Administrator and make decisions with respect to

(a) applications for aquaculture licences or aquaculture leases in designated aquaculture development areas only;

(b) applications for aquaculture licences for land-based aquaculture sites;

(c) applications to amend aquaculture licences or aquaculture leases except those applications referred to in clauses 49(b) and (c);

(d) applications to renew aquaculture licences or aquaculture leases;

(e) applications to assign aquaculture licences or aquaculture leases;

(f) applications with respect to an aquaculture site for which the licence or lease has been revoked; and

(g) applications to amalgamate two or more aquaculture licences or aquaculture leases and their associated aquaculture sites.

(2) In making a decision under subsection (1), the Administrator shall follow the prescribed process. 2015, c. 19, s. 11; 2018, c. 8, s. 5.

Special experimental licence or lease

55 Notwithstanding anything contained in this Part, the Administrator may grant a special experimental licence or special experimental lease upon such terms and conditions as the Administrator considers necessary or advisable. 2015, c. 19, s. 12.

Institutional licence or lease

55A Notwithstanding anything contained in this Part, the Administrator may grant an institutional licence or institutional lease, upon such terms and condi-

tions as the Administrator considers necessary or advisable, to a person who is carrying out public fishery enhancement and research activities that are not for the purpose of commercial gain. 2018, c. 8, s. 6.

Powers of Minister respecting aquaculture

56 (1) The Minister may, with the approval of the Governor in Council,

(a) designate as an aquaculture development area sub-aquatic lands under marine or brackish waters and their water columns;

(b) impose conditions and restrictions on the conduct of aquaculture and other activities in an aquaculture development area;

(c) change any designation, condition, restriction or determination pursuant to clause (a) or (b);

(d) designate as a provisional aquaculture development area sub-aquatic lands under marine or brackish waters and their water columns not otherwise designated as an aquaculture development area or a closed area;

(e) designate as a closed area sub-aquatic lands under marine or brackish waters and their water columns which, in the opinion of the Minister, are not suitable for aquaculture development;

(f) determine when aquaculture development areas may be designated.

(2) Before designating an aquaculture development area or imposing conditions or restrictions to be applicable thereto, the Minister shall consult with

(a) other departments or agencies of the Government or the Government of Canada, as may be required by the laws of the Province or of Canada; and

(b) any person, group of persons or organization that the Minister considers necessary or advisable in the circumstances.

(3) and (4) *repealed 2015, c. 19, s. 13.*

(5) When

(a) an aquaculture development area has been designated;

(b) conditions and restrictions are imposed on the conduct of aquaculture or of other activities in an aquaculture development area; or

(c) there have been changes in those matters outlined in clauses (a) or (b),

the Minister shall cause a copy of the plan and description of the area designated and the conditions or restrictions imposed to be registered in the registry of deeds for the county or district in which the area is located and the Minister shall cause a notice to be published on the Department's website and in the Royal Gazette.

(6) Property is deemed not to be injuriously affected by reason of the exercise, pursuant to subsection (1), by the Minister of the authority conferred upon the Minister by that subsection. 1996, c. 25, s. 56; 2015, c. 19, s. 13.

Consequences of designation

57 (1) Where the Minister has designated an area as an aquaculture development area, a person may apply to the Administrator for an aquaculture licence or an aquaculture lease and the Administrator may issue an aquaculture licence or aquaculture lease in the aquaculture development area on such terms and conditions as the Administrator considers necessary or advisable.

(1A) The Minister may determine when applications in aquaculture development areas may be submitted.

(2) For greater certainty, Sections 51 and 52 do not apply to an aquaculture licence or aquaculture lease issued by the Administrator pursuant to subsection (1). 1996, c. 25, s. 57; 2015, c. 19, s. 14.

Powers of Administrator

58 (1) The Administrator may

- (a) issue aquaculture licences for land-based aquaculture sites;
- (b) amend aquaculture licences and aquaculture leases except those applications referred to in clauses 49(b) and (c);
- (c) renew aquaculture licences and aquaculture leases;
- (d) approve applications to assign aquaculture licences and aquaculture leases; and
- (e) issue in accordance with the regulations aquaculture licences and aquaculture leases with respect to aquaculture sites for which the licence or lease has been revoked; and
- (f) amalgamate aquaculture licences and aquaculture leases and their associated aquaculture sites.

(2) The Administrator may assign any conditions that the Administrator considers necessary or advisable to an aquaculture licence or aquaculture lease referred to in subsection (1). 2015, c. 19, s. 15; 2018, c. 8, s. 7.

Powers where licence or lease revoked

59 (1) Where an aquaculture licence or aquaculture lease has been revoked, the Administrator may

- (a) maintain use and activity information related to the aquaculture site on the aquaculture registry for a prescribed period; or
- (b) remove use and activity information related to the aquaculture site from the aquaculture registry.

(2) A person may apply to the Administrator in the prescribed manner for an aquaculture licence or aquaculture lease to a site for which the licence or lease has been revoked. 2015, c. 19, s. 15.

Power to revoke licence or lease

59A An aquaculture licence or aquaculture lease issued pursuant to this Part may be revoked by the Administrator if

- (a) the holder is in breach of this Part, the regulations or any term or condition of the licence or lease;
- (b) in the opinion of the Administrator, the aquaculture activities authorized by the licence or lease are detrimental to or interfere with previously licensed or leased aquaculture sites;
- (c) the holder is found by a court of competent jurisdiction to be in violation of any law of the Province or of the Parliament or Government of Canada relating to fishery activities; or
- (d) the holder requests revocation of the licence or lease. 2015, c. 19, s. 15.

Title to plants and animals

60 All aquatic plants and animals of the species specified in an aquaculture licence or aquaculture lease in or on the licensed or leased area, except free-swimming or drifting flora or fauna not enclosed by a net, pen, cage or enclosure, are the exclusive property of the holder of the licence or lease. 1996, c. 25, s. 60.

Exclusive property of holder

61 (1) All aquatic animals owned by the holder of an aquaculture licence or aquaculture lease remain the exclusive property of the licence or lease holder while within the licensed or leased area boundaries.

(2) Notwithstanding subsection (1), if the aquatic animals owned by the holder of an aquaculture licence or aquaculture lease escape from the licensed or leased area, the holder of the licence or lease retains the exclusive property right to those aquatic animals while within one hundred metres of the boundaries of the licensed or leased area. 1996, c. 25, s. 61.

62 *repealed 2015, c. 19, s. 16.*

Certain provisions prevail

63 Where there is a conflict between Sections 44, 50 or 57 of this Part and any other enactment, those Sections prevail. 1996, c. 25, s. 63; 2015, c. 19, s. 17.

Regulations

- 64 (1) The Governor in Council may make regulations
- (a) for the proper development, management and control of aquaculture;
 - (b) respecting the forms and information required upon an application;
 - (ba) respecting the application process for the reallocation of an aquaculture site;
 - (bb) respecting options to lease including, without limiting the generality of the foregoing, their duration and the payment of fees required for their issuance;
 - (c) respecting the term and conditions under which an aquaculture lease or aquaculture licence may be issued;
 - (ca) respecting the issuance of an aquaculture licence or aquaculture lease for an aquaculture site that is being reallocated pursuant to clause 58(1)(e);
 - (d) respecting fees for aquaculture licences and aquaculture leases;
 - (e) respecting the environmental monitoring, conservation and protection of licensed or leased areas;
 - (f) respecting the introduction of new species or strains of aquatic plants and animals;
 - (g) respecting the health of aquacultural produce including, without limiting the generality of the foregoing,
 - (i) the isolation, quarantining, gathering, disposal and destruction of aquacultural produce, seedstock and feedstock,
 - (ii) payments to the Minister for costs incurred, and
 - (iii) the payment of compensation;
 - (h) respecting methods of handling, marketing and maintaining the quality of aquacultural produce;
 - (i) providing for the use, control or prohibition of feedstock and seedstock;
 - (j) providing for inspection of feedstock and seedstock;

(k) respecting the manner and methods of marking the boundaries of licensed areas, leased areas or aquaculture development areas;

(l) respecting the marking of aquacultural operations so as to provide notice to mariners;

(m) respecting information to be submitted to the Minister by the holder of a lease or licence concerning the productivity and obligations in respect of the area leased or licensed;

(n) respecting the exemption of persons or classes of persons or activities from all or part of this Part;

(o) determining whether or not compensation for anything done pursuant to this Part is payable and, if payable, the circumstances in which, the extent to which, by whom and to whom such compensation is payable and the manner in which and the person by whom the amount of such compensation is to be determined;

(oa) respecting the requirement for security bonds in connection with issuance of licences or leases;

(ob) prescribing the powers and duties of the Review Board;

(oc) prescribing the procedures of the Review Board for conducting hearings, public consultations, investigations and issuing decisions;

(od) prescribing procedures and fees payable for making an application to the Administrator;

(oe) respecting applications to the Administrator for the granting, renewing, amending, assigning or revoking of aquaculture licences and aquaculture leases;

(p) defining any word or expression used but not defined in this Part;

(q) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 1996, c. 25, s. 64; 2015, c. 19, s. 18.

PART VI

SEA PLANTS HARVESTING

Interpretation of Part

65 In this Part,

- (a) “lease” means a lease issued pursuant to this Part;
- (b) “sea plant” means all fucoids (commonly known as rock weeds) and laminarians (commonly known as kelp) but does not include *chondrus crispus* (commonly known as Irish moss), dulce or eel grass. 1996, c. 25, s. 65.

Leases

66 (1) The Minister may issue a lease to an individual, corporation or other entity to harvest sea plants from an area or areas of the solum, based on commercialization of harvest.

(2) No lease shall be issued in respect of an area for which a lease is in force.

(3) No lease shall be issued for a period, or combined extension of periods, in excess of fifteen years. 1996, c. 25, s. 66.

Exclusion from lease

67 No lease shall include any part of the solum which has been granted or leased under the *Beaches and Foreshores Act*. 1996, c. 25, s. 67.

Application for lease

68 (1) Application for a lease shall be made to the Minister on the form or forms provided by the Minister and shall contain the information required by the Minister or by the regulations.

(2) The Minister, if the Minister is satisfied that it is in the best interests of the Province, may adjourn, reject or allow the application for a lease.

(3) A lease is subject to the regulations and other relevant enactments.

(4) The Minister may from time to time extend the term of a lease for periods not to exceed fifteen years.

(5) The Minister may terminate a lease at any time if the lessee breaches any of the terms or conditions of the lease. 1996, c. 25, s. 68.

Notice of application and objection

69 (1) Notice of an application for a lease shall be served on the Minister not less than twenty days before the application is made.

(2) The notice referred to in subsection (1) shall contain

- (a) the name and residence of the applicant;
- (b) a description of the area in respect of which the application is made;

- (c) the date of the application; and
- (d) a detailed management and commercialization plan.

(3) The notice shall be published in a newspaper having a general circulation in the county or counties to which the area is contiguous and in the Royal Gazette not less than ten days before the date of the application.

(4) Any person who objects to the issuance of a lease in respect of the area referred to in the notice shall notify the Minister, in written form, not more than seven days after the date of publication of the later of the two notices required by subsection (3).

(5) Upon receipt of a notice of objection to the issuance of a lease, the Minister may hold a public hearing at a time and place determined by the Minister and shall notify the applicant and the person or persons who have given notice pursuant to subsection (4) of the time and place of the hearing. 1996, c. 25, s. 69.

Permit for harvesting

70 (1) No person shall harvest sea plants in an area for which a lease is in force unless that person has applied to the Minister for a permit and been granted a permit by the Minister to harvest in the leased area.

(2) The Minister shall issue an identification card to each person granted a permit pursuant to subsection (1) and that identification card shall be in the possession of that person at all times while harvesting sea plants in a leased area.

(3) A person who harvests sea plants in a leased area without a permit issued pursuant to subsection (1) is guilty of an offence. 1996, c. 25, s. 70.

Regulations

71 (1) The Governor in Council may make regulations

(a) exempting from the application of this Part certain classes of persons who harvest sea plants for agricultural or scientific purposes and not for processing or sale;

(b) providing for the method by which sea plants shall be harvested;

(c) providing for conservation of sea plants;

(d) prescribing the form of notice, application and lease and providing for hearings and notice of and the procedure at hearings;

(e) respecting the duration of leases and permits;

(f) prescribing the terms and conditions of leases and permits;

(g) providing for the payment of fees by lessees and persons applying for a permit and fixing the amount and rate of those fees;

(h) providing for the revocation of leases and permits;

(i) designating an area as a closed or open area;

(j) defining any word or expression used but not defined in this Part;

(k) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 1996, c. 25, s. 71.

PART VII

LICENSING AND INSPECTING OF FISH PRODUCTS

General supervision and control

72 The Minister has the general supervision and control of processing, buying, selling, possession and marketing of fish products within the Province for the purpose of maintaining product quality, protecting the health and safety of seafood consumers and assisting in the orderly development of the fisheries industry. 1996, c. 25, s. 72; 1999, c. 2, s. 2; 2010, c. 51, s. 2; 2010, c. 22, s. 3.

Prohibition

73 No person shall process, buy, sell, be in possession of or market, within the Province, fish products except in accordance with the terms of a licence from the Minister unless the person is exempt pursuant to the regulations. 1996, c. 25, s. 73; 1999, c. 2, s. 3; 2010, c. 51, s. 3; 2012, c. 22, s. 4.

Licences

74 (1) A person may apply to the Minister, in the manner required by the Minister, for a licence to

(a) process fish products; or

(b) buy fish products.

(2) An application for a licence shall be accompanied by the information stipulated by the Minister.

(3) The Minister may require an applicant for a licence to submit any additional information the Minister considers necessary.

(4) Where the Minister considers an application to be incomplete, the application shall not be processed until the information required is submitted. 1996, c. 25, s. 74; 1999, c. 2, s. 4; 2010, c. 51, s. 4; 2012, c. 22, s. 5.

Grounds for refusing licence

75 The Minister may refuse to issue a licence to process or buy fish products if the Minister is not satisfied that it is in the public interest to issue the licence having regard to the supply of fisheries resources available, the presence of existing under-utilized processing capacity or any other factor that, in the opinion of the Minister, is relevant to determining the public interest. 1996, c. 25, s. 75; 1999, c. 2, s. 5; 2010, c. 51, s. 5; 2012, c. 22, s. 6.

Particulars respecting licence

- 76 (1) A licence issued pursuant to this Part
- (a) shall be granted for a period prescribed by the regulations, with a right of renewal by the licensee at the Minister's option;
 - (b) may specify what fees are payable; and
 - (c) is subject to any terms and conditions prescribed by the Minister.
- (2) A licence may be varied or amended by the Minister at any time as may be reasonably necessary to carry out the purpose of this Part.
- (3) A licence may be terminated by the Minister at any time if
- (a) the application for a licence is false in any material particular;
 - (b) the holder of the licence fails to pay, within thirty days, any fee or charges pursuant to this Part;
 - (ba) the holder of the licence fails to meet any requirement placed on the licence holder by the regulations;
 - (c) the holder of the licence fails to comply with this Part.
- (4) The holder of a licence shall submit to the Minister such information as is prescribed by the regulations. 1996, c. 25, s. 76; 1999, c. 2, s. 6; 2010, c. 51, s. 6.

Certain powers of Governor in Council and Minister

- 77 (1) Notwithstanding anything contained in this Act or any other enactment, the Minister may, with the approval of the Governor in Council,
- (a) authorize any action or invoke any measure to encourage the development and protection of fishery resources in the Province;

(b) authorize any action or invoke any measure relating to fish products deemed necessary by the Minister to effect the purposes of this Act.

(2) Notwithstanding anything contained in this Part, the Governor in Council may make regulations on any matter relating to fishing, the fishing industry, fishery resources and fish products, and so as not to limit the generality of the foregoing, may make regulations

(a) exempting a person or class of persons from this Part;

(b) prescribing fees for the purpose of this Part;

(c) prescribing information to be submitted to the Minister by the holder of a licence issued pursuant to this Part;

(ca) prescribing information to be submitted to the Minister by a person processing, buying, selling, in possession of or marketing fishery products who is exempt pursuant to the regulations;

(d) governing the licensing of intra-provincial trade in fish products;

(e) respecting the licensing of persons involved in the processing or buying of fish products;

(ea) providing for financial contributions by the lobster industry for use in the promotion and development of that industry, including the designation of those members of that industry required to make the contributions, the determination of the amount of the contributions, the designation of an organization to receive and disburse the contributions and the enforcement of the payment of the contributions;

(f) respecting the inspection of premises or facilities used in the processing, buying, selling, possession or marketing of fish products and vehicles used for the transportation of fish products;

(g) limiting the number and the kind or type of licences issued pursuant to this Part;

(h) defining any word or expression used but not defined in this Part;

(i) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2A) A regulation made pursuant to subsection (2) may be of general application or may apply to such classes of persons, matters or things as the Governor in Council determines and there may be different regulations with respect to different classes of persons, matters or things.

(3) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*. 1996, c. 25, s. 77; 1999, c. 2, s. 7; 2010, c. 51, s. 7; 2012, c. 22, s. 7; 2015, c. 18, s. 1.

Existing regulations

78 For greater certainty, regulations made prior to the coming into force of this Part respecting those matters referred to in clauses 77(2)(e), (f) and (g) are hereby ratified and confirmed and have the force of law on, from and after the day those regulations were made until varied in accordance with this Part. 1996, c. 25, s. 78.

PART VIII

RECREATIONAL FISHING

Requirement for licence

79 (1) In this Part, “Provincial waters” means such of the waters upon any shore or land, or on or in any lake, river, stream or watercourse, wholly or partially within the Province, over or in respect of which the Province has authority to legislate with respect to fishing.

(2) No person shall angle or fish in Provincial waters without a valid licence issued pursuant to the *Wildlife Act* or the regulations made pursuant to that Act.

(3) Every person is guilty of an offence who is found in possession of a fish which is not tagged in the manner prescribed by the regulations made pursuant to the ~~Wildlife~~ [Wildlife] Act. 1996, c. 25, s. 79.

Permit for fishing event

80 (1) The Minister may establish a competitive fishing policy respecting fishing derbies, tournaments, competitive fishing events and fund raising events involving fishing.

(2) An individual, person, group or organization that intends to conduct an event covered by the competitive fishing policy shall apply to the Minister, at the time and in the manner prescribed by the Minister, for a permit to conduct the event.

(3) The Minister may grant the permit if

(a) the requirements of the competitive fishing policy have been complied with; and

(b) the event is consistent with the goals of the Department with respect to the management of the fishery resource.

(4) The Minister may attach terms and conditions to a permit issued pursuant to this Section.

(5) If an individual, person, group or organization to whom a permit is issued fails to comply with the permit, the permit is revoked.

(6) No individual, person, group or organization shall conduct a fishing derby, tournament, competitive fishing event or fund raising event involving fishing unless the individual, person, group or organization has been issued a permit pursuant to this Section. 1996, c. 25, s. 80.

Regulations

- 81 (1) The Governor in Council may make regulations
- (a) exempting persons or classes of persons from this Part or the regulations;
 - (b) respecting the angling of fish in the Province;
 - (c) respecting a competitive fishing policy;
 - (d) fixing fees for a permit and prescribing the manner of their collection and persons entitled to collect them;
 - (e) respecting permits for competitive fishing events;
 - (f) respecting the non-authorized introduction of fish into Provincial waters;
 - (fa) respecting the possession and transport of live fish;
 - (g) defining any word or expression used but not defined in this Part;
 - (h) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1996, c. 25, s. 81; 2010, c. 51, s. 8.

PART IX

ENFORCEMENT, INVESTIGATIONS AND PENALTIES

Powers of inspector

82 An inspector, in carrying out duties pursuant to this Act or the regulations, has and may exercise in any part of the Province all the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada). 1996, c. 25, s. 82.

Seizure

83 Where an inspector believes on reasonable grounds that an offence against this Act or the regulations has been committed, the inspector may seize any

fish or other thing by means of or in relation to which the inspector reasonably believes the offence was committed. 1996, c. 25, s. 83.

Further powers of inspector

84 (1) In the course of exercising powers pursuant to this Act or the regulations, an inspector may do any or all of the following:

- (a) enter any place for the purpose of carrying out an inspection pursuant to this Act or the regulations;
- (b) require that any thing be operated, used or set in motion under conditions specified by the inspector;
- (c) use any machine, structure, material or equipment in the place the inspector is inspecting in order to carry out the inspection;
- (d) take samples of any substance;
- (e) conduct tests or take measurements;
- (f) use any computer system at any place to examine any data contained in or available to the computer system;
- (g) record or copy any information by any method;
- (h) reproduce any record from data in the form of a print-out or other intelligible output;
- (i) take a printout or other output for examination or copying;
- (j) use any copying equipment to make copies;
- (k) take any photographs or audio-video records;
- (l) make reasonable inquiries of any person, orally or in writing.

(2) An inspector may remove documents that the inspector is entitled to examine or copy or otherwise reproduce but shall give a receipt to the person from whom they were taken and shall promptly return them on completion of the examination or reproduction.

(3) An inspector who exercises the power set out in clause (1)(l) may exclude from the questioning any person, except counsel for the person being questioned.

(4) Upon request, an inspector who exercises a power set out in subsection (1) shall produce an identification card and explain the purpose of the inspection. 1996, c. 25, s. 84.

Requirement to stop vehicle or vessel

85 The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by an inspector who is readily identifiable as such, or who has identified himself or herself as an inspector. 1996, c. 25, s. 85.

Seizure

86 (1) An inspector may, without a court order or a search warrant, seize any thing that is produced to the inspector, or that is in plain view during an inspection pursuant to Section 84 if the inspector has reasonable grounds to believe that there has been an offence committed under this Act or the regulations and that the thing will afford evidence as to the commission of the offence.

(2) The inspector may remove the thing seized or may detain it in the place where it is seized.

(3) The inspector shall inform the person from whom the thing was seized of the reason for the seizure and shall give the person a receipt for it. 1996, c. 25, s. 86.

Persons accompanying inspector

87 An inspector, in carrying out duties or exercising powers pursuant to this Act or the regulations, may be accompanied by any person considered by the inspector to be necessary to enable the inspector to carry out those duties and exercise those powers. 1996, c. 25, s. 87.

Requirement to assist inspector

88 The owner of and every person found in any place in respect of which an inspector is exercising powers or carrying out duties pursuant to this Part shall

(a) give the inspector all reasonable assistance to enable the inspector to exercise those powers and carry out those duties; and

(b) furnish all information relative to the exercising of those powers and the carrying out of those duties that the inspector may reasonably require. 1996, c. 25, s. 88.

Custody of fish seized

89 (1) An inspector who seizes any fish or other thing pursuant to this Act may retain custody of it or deliver it into the custody of any person the inspector considers appropriate.

(2) A person who is given custody of any fish or other thing pursuant to subsection (1) shall, on the request of an inspector at any reasonable time, make the fish or thing available for inspection by or deliver it into the custody of the inspector.

(3) An inspector who has custody of any fish or other perishable thing seized pursuant to this Act may dispose of it in any manner the inspector con-

siders appropriate and any proceeds realized from its disposition shall be paid to Her Majesty in right of the Province. 1996, c. 25, s. 89.

Treatment of seized fish

90 (1) Subject to this Section, any fish or other thing seized pursuant to this Act, or any proceeds from its disposition, may be detained until the fish or thing or proceeds are forfeited or proceedings relating to the fish or thing are finally concluded.

(2) Subject to subsection 92(4), a court may order any fish or other thing seized pursuant to this Act to be returned to the person from whom it was seized if security is given to Her Majesty in right of the Province in a form and amount that is satisfactory to the Minister.

(3) Subject to subsection 92(4), where proceedings are not instituted in relation to any fish or other thing seized pursuant to this Act, the fish or thing or any proceeds realized from its disposition shall be returned to the person from whom it was seized

(a) on the Minister's decision not to institute proceedings;

or

(b) on the expiration of ninety days after the day of the seizure or any further period that may be specified in an order made pursuant to subsection (4).

(4) Where a court is satisfied, on the application of the Minister within ninety days after the day on which any fish or other thing is seized, that detention of the fish or thing for a period greater than ninety days is justified in the circumstances, the court may, by order, permit the fish or thing to be detained for any further period that may be specified in the order. 1996, c. 25, s. 90.

Order to pay compensation

91 (1) Where a person is convicted of an offence under this Act, the court may, in addition to any punishment imposed, order the person to pay the Minister an amount of money for compensation for any costs incurred in the seizure, storage or disposition of any fish or other thing seized pursuant to this Act by means of or in relation to which the offence was committed.

(2) Where a court orders a person to pay an amount of money as compensation pursuant to subsection (1), the amount and any interest payable on that amount constitute a debt due to Her Majesty in right of the Province and may be recovered as such in any court of competent jurisdiction. 1996, c. 25, s. 91.

Power of court

92 (1) Where a person is convicted of an offence under this Act, the court may, in addition to any punishment imposed, order that any thing seized pursuant to this Act by means of or in relation to which the offence was committed, or

any proceeds realized from its disposition, be forfeited to Her Majesty in right of the Province.

(2) Where a person is convicted of an offence under this Act that relates to fish seized, the court shall, in addition to any punishment imposed, order that the fish, or any proceeds realized from its disposition, be forfeited to Her Majesty in right of the Province.

(3) Where a person is charged with an offence under this Act that relates to fish seized and the person is acquitted but it is proved that the fish was caught in contravention of this Act or the regulations, the court may order that the fish, or any proceeds realized from its disposition, be forfeited to Her Majesty in right of the Province.

(4) Where the ownership of any fish or other thing seized pursuant to this Act cannot be ascertained at the time of the seizure, the fish or thing is thereupon forfeited to Her Majesty in right of the Province. 1996, c. 25, s. 92.

Disposal of seized fish and property

93 (1) Subject to Sections 96 to 98, any fish or other thing forfeited to Her Majesty in right of the Province pursuant to subsection 92(1), (2) or (3) shall be disposed of after the final conclusion of the proceedings relating to the fish or thing, as the Minister directs.

(2) Subject to Sections 96 to 98, any fish or other thing forfeited to Her Majesty in right of the Province pursuant to subsection 92(4) shall be disposed of after the expiration of thirty days from the day of forfeiture, as the Minister directs.

(3) Notwithstanding subsection (2), where any fishing gear or equipment is forfeited pursuant to subsection 92(4) it may be disposed of immediately on its forfeiture, as the Minister directs. 1996, c. 25, s. 93.

Treatment of unforfeited property

94 (1) Subject to subsection (2), any fish or other thing seized pursuant to this Act, or any proceeds realized from its disposition, that are not forfeited to Her Majesty in right of the Province pursuant to Section 92 shall, on the final conclusion of the proceedings relating to the fish or thing, be delivered to the person from whom the fish or thing was seized.

(2) Subject to subsection 92(4), where a person is convicted of an offence relating to any fish or other thing seized pursuant to this Act and the court imposes a fine but does not order forfeiture,

- (a) the fish or thing may be detained until the fine is paid;
- (b) it may be sold under execution in satisfaction of the fine; or

(c) any proceeds realized from its disposition may be applied in payment of the fine. 1996, c. 25, s. 94.

Return of fish to water

95 Notwithstanding anything contained in Sections 89 to 94, an inspector who seizes any fish pursuant to this Act may, at the time of the seizure, return to the water any fish that the inspector believes to be alive. 1996, c. 25, s. 95.

Holders of interests in forfeited property

96 (1) Where any thing other than fish is forfeited to Her Majesty in right of the Province pursuant to subsection 92(1) or (4), any person who claims an interest in the thing as owner, mortgagee, lienholder or holder of any like interest, other than a person convicted of the offence that resulted in the forfeiture or a person from whom the thing was seized may, within thirty days after the forfeiture, apply in writing to a judge of the Supreme Court of Nova Scotia for an order pursuant to subsection (4).

(2) The judge to whom an application is made pursuant to subsection (1) shall fix a day not less than thirty days after the date of filing of the application for the hearing thereof.

(3) The applicant shall serve a notice of the application and of the hearing on the Minister at least fifteen days before the day fixed for the hearing.

(4) Where, on the hearing of an application made pursuant to subsection (1), it is made to appear to the satisfaction of the judge

(a) that the applicant is innocent of any complicity in the offence or alleged offence that resulted in the forfeiture and of any collusion in relation to that offence with the person who was convicted of, or who may have committed the offence; and

(b) that the applicant exercised all reasonable care in respect of the person permitted to obtain the possession of the thing in respect of which the application is made to satisfy the applicant that the thing was not likely to be used contrary to this Act or the regulations, or, in the case of a mortgagee or lienholder, that the mortgagee or lienholder exercised such care with respect to the mortgagor or the liengiver,

the applicant is entitled to an order declaring that the applicant's interest is not affected by the forfeiture and declaring the nature and extent of the applicant's interest. 1996, c. 25, s. 96.

Appeal

97 (1) The applicant or the Minister may appeal to the Nova Scotia Court of Appeal from an order made pursuant to subsection 96(4) and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the Court of Appeal from orders or judgments of a judge.

(2) The Minister shall, on application made to the Minister by any person who has obtained a final order pursuant to this Section or Section 96,

(a) except in the case of any thing disposed of pursuant to subsection 89(3), direct that the thing to which the interest of the applicant relates be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant. 1996, c. 25, s. 97.

Exception from application of Sections 96 and 97

98 Sections 96 and 97 do not apply to

(a) any fishing gear or equipment that has been disposed of pursuant to subsection 93(3); or

(b) any fish that have been returned to the water pursuant to Section 95. 1996, c. 25, s. 98.

Prohibition of retaliation

99 (1) No employer shall

(a) dismiss or threaten to dismiss an employee;

(b) discipline or suspend an employee;

(c) impose a penalty on an employee; or

(d) intimidate or coerce an employee,

because the employee has reported or proposes to report to any person an act or omission that contravenes, or that the employee has reasonable grounds to believe may contravene, this Act or the regulations.

(2) Any person who wilfully or intentionally provides false or misleading information pursuant to subsection (1) is guilty of an offence. 1996, c. 25, s. 99.

Ministerial order

100 Where the Minister believes on reasonable and probable grounds that a person has contravened or will contravene this Act or the regulations, the Minister may, whether or not the person has been charged or convicted in respect of the contravention, issue an order requiring a person, at that person's own expense, to

(a) cease the specified activity;

(b) undertake remedial action to control, reduce, eliminate or mitigate an adverse affect;

(c) carry out clean-up, site rehabilitation or management, site security and protection or other remedial actions in accordance with directions set out in the order;

(d) provide security in an amount and form specified by the Department during a clean-up and afterwards for monitoring or other purposes;

(e) do all things and take all steps necessary to comply with this Act, to repair any injury or damage or to control, eliminate or manage an adverse effect. 1996, c. 25, s. 100.

Permitted contents of order

101 In addition to any other requirements that may be included in an order issued pursuant to this Part, the order may contain provisions

(a) requiring a person, at that person's own expense, to

(i) maintain records on any relevant matter, and report periodically to the Minister or person appointed by the Minister,

(ii) hire an expert to prepare a report for submission to the Minister or person appointed by the Minister,

(iii) submit to the Minister or person appointed by the Minister any information, proposal or plan specified by the Minister setting out any action to be taken by the person with respect to the subject-matter of the order,

(iv) prepare and submit a contingency plan,

(v) undertake tests, investigations, surveys and other action and report results to the Minister,

(vi) take any other measure that the Minister considers necessary to facilitate compliance with the order or to protect or restore the fishery;

(b) fixing the manner or method of, or the procedures to be used in, carrying out the measures required by the order;

(c) fixing the time within which any measure required by the order is to be commenced and the time in which the order or any portion of the order is to be complied with. 1996, c. 25, s. 101.

Persons bound by order

102 An order issued pursuant to this Part is binding on the heirs, successors, executors, administrators, trustees, receiver, receiver manager and assigns of the person to whom it is directed. 1996, c. 25, s. 102.

Enforcement of order

103 (1) When an order is served on a person to whom it is directed, that person shall comply with the order forthwith or, where a period for compliance is specified in the order, within the time period specified.

(2) Where the person to whom an order is directed does not comply with the order or part thereof, the Minister may take whatever action the Minister considers necessary to carry out the terms of the order.

(3) Reasonable costs, expenses or charges incurred by the Minister pursuant to this Part are recoverable by order of the Minister

(a) against the person to whom the order was directed; or

(b) directing any person who has purchased real property from the person to whom the order was directed to pay to the Minister from any money which is still owed to the vendor, a sum not to exceed the amount owing in respect of the costs, expenses or charges.

(4) A purchaser who pays an amount to the Minister pursuant to clause (3)(b) is discharged from any obligation to pay that amount to the vendor.

(5) For the purpose of this Section, the costs referred to in subsection (3) include any costs incurred in investigating and responding to

(a) any matter to which an order relates; or

(b) the failure to comply with an order.

(6) In any claim or action under this Section, a certificate purporting to be signed by the Minister setting out the amount of costs, expense or charge is admissible in evidence and is, in the absence of evidence to the contrary, proof of the amount of the cost, expense or charge set out in the certificate.

(7) Where an order to pay is issued by the Minister pursuant to subsection (3), the order may be filed with the prothonotary of the Supreme Court of Nova Scotia and, when so filed,

(a) the order is of the same force and effect as if it were a judgment against real property that the person named in the order may now or hereafter own;

(b) a lien is established on the property referred to in clause (a) for the amount stated and it is deemed to be taxes in respect of the real property and may be collected in the same way and in the same priority as taxes under the *Assessment Act*; and

(c) the order may be enforced as if it were a judgment of the Supreme Court of Nova Scotia in civil proceedings.

(8) The lien referred to in subsection (7) is not a charge against a parcel registered pursuant to the *Land Registration Act* until a certificate evidencing the lien has been recorded in the register of the parcel. 1996, c. 25, s. 103; 2001, c. 6, s. 108.

Additional penalty

104 Where a person is guilty of an offence under subsection 103(1), a court may, in addition to any other penalty it may impose, order the person to comply with subsection 103(1), the violation for which that person has been convicted. 1996, c. 25, s. 104.

Persons liable under order

105 (1) Where an order pursuant to this Part is directed to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order and are jointly and severally liable for payment of the costs of doing so, including any costs incurred by the Minister pursuant to this Part.

(2) Subsection (1) does not apply to an order where the Minister and the persons responsible have agreed to an apportionment of costs. 1996, c. 25, s. 105.

Duty of insurer

106 Where a person to whom an order issued pursuant to this Part is insured under an insurance policy that provides for coverage for any cost, expense, loss, damage or charge, the insurer shall, subject to the terms of the relevant policy, pay to the Minister on demand in writing any cost, expense, loss, damage or charge incurred by the Minister while acting pursuant to this Part. 1996, c. 25, s. 106.

Conviction as evidence of negligence

107 Where a person is convicted of an offence under this Act, the conviction is *prima facie* evidence of negligence and any person who suffers loss or damage as a result of the conduct that constituted the offence may, in a court of competent jurisdiction, sue for an amount equal to the reasonably foreseeable loss or damage proved to have been suffered as a result of the conduct that constituted the offence. 1996, c. 25, s. 107.

Immunity from liability

108 Notwithstanding anything contained in this Act, no action for damages may be commenced or maintained and no cause of action lies against

- (a) an employee, as defined in the *Civil Service Act*, who is
 - (i) under the direction of the Minister,
 - (ii) acting under the direction of an employee referred to in subclause (i), or
 - (iii) acting pursuant to a delegation pursuant to Part II;
- (b) an agent of the Government;
- (c) an employee or agent of a Government agency, a municipality or the Government of Canada, any department or agency of that Government, or any person if there has been a delegation pursuant to Part II;

- (d) an employee or agent of a Government agency or a municipality, or any person if there has been a transfer of administration pursuant to Part II;
- (e) a person who has been retained or employed to serve on any board, or committee;
- (f) a person referred to in Section 87,

if the action arises out of any act or omission of that person that occurs while that person is carrying out duties or exercising powers pursuant to this Act or the regulations in good faith and, without restricting the generality of the foregoing, no person referred to in this Section is liable for damage caused by a system of inspection or the manner in which inspections are to be performed or the frequency, infrequency or absence of inspections. 1996, c. 25, s. 108.

Recovery of costs and expenses

109 The Government may recover in debt either in an action or as prescribed in this Act or the regulations against any person who is convicted of an offence under this Act the costs and expenses incurred by the Government

- (a) in responding to any matter related to the offence; and
- (b) in carrying out or causing to be carried out any preventive or remedial action made necessary by the act or omission that constituted the offence. 1996, c. 25, s. 109.

Limitation period

109A A prosecution for an offence under this Act may not be commenced more than two years after

- (a) the date on which the offence was committed; or
- (b) the date on which evidence of the offence first came to the attention of an inspector,

whichever is later. 1999, c. 2, s. 8.

Offence

110 A person who

- (a) knowingly provides false or misleading information pursuant to a requirement under this Act or the regulations to provide information;
- (b) provides false or misleading information pursuant to a requirement under this Act or the regulations to provide information;
- (c) does not provide information as required pursuant to this Act or the regulations;
- (d) hinders or obstructs an inspector who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act or the regulations;

- (e) knowingly contravenes an order; or
- (f) otherwise contravenes this Act or the regulations,

is guilty of an offence. 1996, c. 25, s. 110.

Defences

111 Unless otherwise provided in this Act, no person shall be convicted of an offence under this Act if the person establishes that the person

- (a) exercised all due diligence to prevent the commission of the offence; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would render the conduct of that person innocent. 1996, c. 25, s. 111.

Additional fine

112 Where a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine pursuant to this Act, a fine in an amount equal to the estimation of the court of the amount of those monetary benefits. 1996, c. 25, s. 112.

Proof of offence

113 In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused. 1996, c. 25, s. 113.

Effect of corporate offence on certain persons

114 Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the violation of this Act or the regulations is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted. 1996, c. 25, s. 114.

Powers of court on conviction

115 (1) Where a person is convicted of an offence under this Act, in addition to any other penalty that may be imposed pursuant to this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order

- (a) prohibiting the offender from doing anything that may result in the continuation or repetition of the offence;
- (b) directing the offender to take any action the court considers appropriate to remedy or prevent any adverse effect that results or may result from the act or omission that constituted the offence;

(c) directing the offender to post a bond or pay money into court in an amount that will ensure compliance with any order made pursuant to this Section;

(d) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action that was carried out or caused to be carried out by the Government and was made necessary by the act or omission that constituted the offence;

(e) directing the offender to perform community services;

(f) requiring the offender to comply with any other conditions the court considers appropriate in the circumstances for securing the good conduct of the offender and for preventing the offender from repeating the offence or committing other offences.

(2) An order made pursuant to subsection (1) comes into force on the day on which it is made or on any other day specified in the order and continues in force for the period specified in the order. 1996, c. 25, s. 115.

Penalties

116 (1) A person who contravenes any provision of this Act or the regulations or fails to comply with a term or condition of any licence or lease issued pursuant to this Act is guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period of not more than ninety days, or to both a fine and imprisonment.

(2) Where an offence under subsection (1) is committed on more than one day or continues for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

(3) Notwithstanding subsection (1), a person who is guilty of a second or subsequent offence, other than by virtue of subsection (2), is liable to a fine of not less than one hundred thousand dollars nor more than five hundred thousand dollars or to imprisonment for a period of not more than six months, or to both a fine and imprisonment. 1996, c. 25, s. 116; 1999, c. 2, s. 9.

Regulations

117 (1) The Governor in Council may make regulations

(a) prescribing penalties in respect of offences created pursuant to this Act;

(aa) respecting any matter necessary or advisable for the administration of a system of administrative penalties;

(ab) defining any word or expression used but not defined in this Part;

(b) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1996, c. 25, s. 117; 1999, c. 2, s. 10.

PART X

APPEALS

Appeal to Minister

118 (1) A person who is aggrieved by a decision or order of an employee of the Department may, within thirty days of the date of the decision or order, appeal to the Minister by notice in writing, stating concisely the reasons for the appeal.

(2) A notice of appeal may be in a form prescribed by the Minister and shall be accompanied by the fee, if any, prescribed by the Minister.

(3) The Minister shall notify the appellant, in writing, of the decision within thirty days of receipt of the notice of appeal.

(4) The Minister may dismiss the appeal, allow the appeal or make any decision or order the employee could have made.

(5) The employee and the appellant shall take such action as is necessary to implement the decision of the Minister disposing of the appeal. 1996, c. 25, s. 118.

Appeal to Supreme Court

119 (1) A person aggrieved by a decision of the Minister may, within thirty days of the decision, appeal on a question of law or on a question of fact, or on a question of law and fact, to a judge of the Supreme Court of Nova Scotia and the decision of that court is final and binding on the Minister and the appellant, and the Minister and the appellant shall take such action as may be necessary to implement the decision.

(2) The decision of the court pursuant to subsection (1) is final and there is no further appeal to the Nova Scotia Court of Appeal. 1996, c. 25, s. 119.

Duty to dismiss appeal

120 An appeal in connection with any matter under this Act shall be dismissed by the Supreme Court of Nova Scotia if the sole ground for relief established on the appeal is a defect in form or a technical irregularity. 1996, c. 25, s. 120.

Regulations

121 (1) The Governor in Council may make regulations respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1996, c. 25, s. 121.

PART XI

MISCELLANEOUS

Valid provisions severable

122 If a provision of this Act is for any reason held to be beyond the legislative authority of the Province, all the remaining provisions of this Act shall stand and be valid and operative and shall have the same effect as if they had been originally enacted as an enactment separate and independent of the provisions held to be beyond the legislative authority of the Province. 1996, c. 25, s. 122.

Prohibitions re marine renewable-electricity areas

122A (1) Notwithstanding anything in this Act, no lease may be entered into and no licence, permit or other authorization may be issued under this Act in respect of any part of a marine renewable-electricity area as defined by the *Marine Renewable-energy Act*.

(2) Notwithstanding subsection 56(1), the Minister may not designate as an aquaculture development area any sub-aquatic lands situated within a marine renewable-electricity area as defined by the *Marine Renewable-energy Act*. 2015, c. 32, s. 73.

Comprehensive review of Act

123 The Minister shall appoint an advisory committee to initiate a comprehensive review of this Act and the regulations within five years of its coming into force and the committee shall submit to the Minister, within six months of initiating the review, a report that includes amendments, if any, recommended by the committee. 1996, c. 25, s. 123.

Transitional provisions

124 (1) Every permit, requirement, licence, lease, approval, order, designation or certificate given, made or issued pursuant to one or more of the Acts listed in Section 125 that is subsisting and in force on the coming into force of this Act, is deemed to have been given, made or issued pursuant to this Act and continues in force until varied, cancelled, suspended or appealed in accordance with this Act.

(2) Where a right of appeal existed in one or more of the Acts listed in Section 125 and an appeal arises after the coming into force of this Act, the appeal provisions in this Act apply. 1996, c. 25, s. 124.

Repeal

125 (1) Chapter 18 of the Revised Statutes, 1989, the *Aquaculture Act*, is repealed.

(2) Chapter 173 of the Revised Statutes, 1989, the *Fisheries Act*, is repealed.

(3) Chapter 174 of the Revised Statutes, 1989, the *Fisheries Development Act*, is repealed.

(4) Chapter 175 of the Revised Statutes, 1989, the *Fishermen's Associations Act*, is repealed.

(5) Chapter 237 of the Revised Statutes, 1989, the *Irish Moss Act*, is repealed.

(6) Chapter 209 of the Revised Statutes, 1967, the *Nova Scotia Fish Inspection Act*, is repealed.

(7) Chapter 330 of the Revised Statutes, 1989, the *Oyster Fisheries Act*, is repealed.

(8) Chapter 14 of the Acts of 1970, the *Salt Fish Marketing Act*, is repealed.

(9) Chapter 416 of the Revised Statutes, 1989, the *Sea Plants Harvesting Act*, is repealed. 1996, c. 25, s. 125.

Executive Council Act amended

126 amendment

Public Service Act amended

127 amendment

Substituted reference

128 A reference in any Act of the Legislature or in any rule, order, regulation, by-law, ordinance or proceeding or in any document whatsoever to the Department of Fisheries or the Minister or Deputy Minister of that Department, whether the reference is by official name or otherwise, shall as regards any subsequent transaction, matter or thing be held and construed to be a reference to the Department of Fisheries and Aquaculture or to the Minister or Deputy Minister of that Department, where the reference relates to an affair, matter or function that, by or pursuant to the

Public Service Act or this Act, is assigned to the Department of Fisheries and Aquaculture or to the Minister or Deputy Minister of that Department. 1996, c. 25, s. 128.

Proclamation

129 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 1996, c. 25, s. 129.

Proclaimed	-	February 18, 1997
In force	-	February 28, 1997
