

NOVA SCOTIA AQUACULTURE REVIEW BOARD

RULES OF PROCEDURE RESPECTING ADJUDICATIVE HEARINGS

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NOVA SCOTIA AQUACULTURE REVIEW BOARD
RULES OF PROCEDURE RESPECTING ADJUDICATIVE HEARINGS

AUTHORITY

- 1** These Rules of Procedure respecting Adjudicative Hearings (hereinafter “the Rules”) are made pursuant to Section 48 of the *Fisheries and Coastal Resources Act* and apply to proceedings before the Nova Scotia Aquaculture Review Board under the *Fisheries and Coastal Resources Act* and the *Aquaculture Licence and Lease Regulations*.

OBJECT

- 2** The object of these Rules is to secure the just and speedy determination of every application.

DEFINITIONS

- 3** In these Rules, unless the context otherwise requires:
- (a)** “Act” means the *Fisheries and Coastal Resources Act*;
 - (b)** “Applicant” means any person whose application pursuant to s.49 of the Act is referred to the Board to hear and determine;
 - (c)** “Board” means the Nova Scotia Aquaculture Review Board;
 - (d)** “Clerk” means the Clerk of the Nova Scotia Aquaculture Review Board;
 - (e)** “Intervenor” means a person who has been granted intervenor status pursuant to s. 23 of the Regulations;
 - (f)** “Minister” means the Minister of Fisheries and Aquaculture;
 - (g)** “Party” means an applicant, an intervenor, the Minister or the Minister’s Designate;
 - (h)** “Public Participation” means either the right of the public to submit written comments to the Board pursuant to s.20 of the Regulations or the right of the public to participate at a hearing by making a sworn statement or affirmation pursuant to s.32 of the Regulations.
 - (i)** “Record” includes all the following:
 - i. any document, submission or exhibit filed in respect of an application with the Board;
 - ii. a decision made by the Board under s. 49 of the Act;
 - (j)** “Regulations” means the Aquaculture Licence and Lease Regulations.

GENERAL

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- (1) No application before the Board shall be affected by any technical objection or by any objection based upon defects in form or procedure.

APPLICATIONS

5

- (1) Every application referred to the Board shall include:
 - (a) for a new marine aquaculture licence or lease in a non-designated area
 - (i) any application information required by the Minister pursuant to s.46 and s.47 of the Act and s.11 of the Regulations;
 - (b) for an adjudicative amendment
 - (i) any application information required by the Minister pursuant to s.46 of the Act and s.13 and s.16 of the Regulations;

FILING

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- (1) Any document to be filed with the Board shall be filed with the Clerk.
- (2) Members of the public may submit documents to be filed with the Clerk by any of the following methods:
 - (a) e-mailing a digital copy, consistent with the technical requirements set out at Rule 6(5), to the Clerk;
 - (b) delivering a copy to the Clerk, or Clerk's designate, at the Clerk's office;
 - (c) mailing a copy to the Clerk;
 - (d) such other manner as the Board may determine.
- (3) Parties must submit all documents to the Board in digital format, consistent with the technical requirements set out at Rule 6(5).
- (4) If intending to refer at a hearing to a document, including evidence, affidavits, application packages, and expert reports, parties must submit four identical hard copies of the document to the Board at least 15 days in advance of the hearing.
- (5) All documents submitted to the Board in digital format must adhere to the following technical requirements:
 - (a) they must be In PDF format using the Optical Character Recognition (OCR) feature;

- (b) resolution must be set to 300 dots per inch (dpi) and in colour;
 - (c) they must not exceed 75 megabytes (MB), and email attachments must not exceed 15 MB;
 - (d) the use of password-protected File Transfer Protocol (FTP) for digital files larger than 15 MB is accepted;
 - (e) forwarding password-protected USB drives or USB sticks for digital files larger than 15 MB is accepted.
- (6) If a document submitted to the Board, either in hard copy or in digital format, contains multiple pages, the pages must be numbered.
 - (7) All documents filed shall be date-stamped by the Clerk and any document filed on a Saturday, Sunday or holiday shall be considered filed with the Board on the next working day.
 - (8) To be considered by the Board, all filings (intervenor status applications, written comments, hearing participation requests, submissions of evidence and any other documents) must be filed in accordance with the applicable filing deadline date requirements set by the Board.
 - (9) Documents received by the Board after 16h30 (local Nova Scotia time) on a prescribed deadline date will not be accepted or processed without leave of the Board.

PRIVACY OF INFORMATION

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- (1) Subject to Rule 14(1), all documents filed with the Board become part of the record of the adjudicative hearing.
- (2) The Board reserves the right to post all documents contained within the record of an adjudicative hearing publicly on the Board's website.
- (3) All documents submitted to the Board may be requested under the *Freedom of Information and Protection of Privacy Act* ("FOIPOP").
- (4) Per Rule 14(1) a party may request that all or part of any document be held in confidence by the Board, which request shall be placed on the record and as such may be requested under the FOIPOP.
- (5) Information withheld by the Board under Rule 14 may be released under a FOIPOP request unless it is exempt from release per the provisions of FOIPOP.

SERVICE

8

- (1) Where any document is required to be served on a party, service shall be effected by any of the following methods:
 - (a) transmitting a copy to the party via e-mail, where the party has provided an e-mail address;
 - (b) sending a copy by ordinary mail addressed to the party at his or her proper address;
 - (c) personal service;
 - (d) delivering a copy to the party's proper address; or
 - (e) such other manner as the Board may determine.
- (2) Where the party is represented, service of a document shall be effected on the party's representative by any of the methods of service set out in Rule 8(1).
- (3) Any subpoena to a witness, including a party, shall be effected by personal service. The Subpoena form is included as Schedule A.
- (4) Service of a document may be proved by affidavit, oral testimony or both.

HEARING PLANNING

9

- (1) The Board will classify applications received for hearing and decision, in accordance with the Board's jurisdiction at s. 49 of the Act, into one of three categories. Unless the Board in its sole discretion permits additional time for a hearing, each category is associated with an adjudicative hearing of a maximum duration, set out as follows:
 - (a) Boundary amendment applications are Category 1 applications, to be decided at an adjudicative hearing lasting a maximum of two days.
 - (b) Applications to amend existing aquaculture licences or aquaculture leases to authorize the production of a finfish species, where the licence or lease does not currently authorize the production of finfish species, are Category 2 applications, to be decided at an adjudicative hearing lasting a maximum of three days.
 - (c) Applications for new aquaculture licences or aquaculture leases are Category 3 applications, to be decided at an adjudicative hearing lasting a maximum of five days.

- (2) The date of an adjudicative hearing must be set in accordance with s.18 of the Regulations.
- (3) The location of an adjudicative hearing must be chosen in accordance with s.21 of the Regulations.
- (4) Public notice of an adjudicative hearing must be posted in accordance with s.19 of the Regulations.
- (5) Where the Board issues a hearing notice, it may make available a copy of the application documents contained within the record of an adjudicative hearing, not deemed confidential subject to Rule 14(2), on the Board's website.

INTERVENOR STATUS

10

- (1) Applications for intervenor status with respect to an adjudicative hearing will not be accepted until a notice of public hearing has been published.
- (2) Where a hearing notice has been issued pursuant to s.19 of the Regulations, any person interested in applying for intervenor status at the adjudicative hearing, pursuant to s.23 of the Regulations, must file a completed *Intervenor Status Application* form with the Board in compliance with s.23 of the Regulations.
- (3) Individuals may not submit an individual application for intervenor status and also be part of a group application for intervenor status.
- (4) Any parties to the hearing may submit written arguments to the Board on the suitability of an application for intervenor status.
- (5) If an individual or group is granted intervenor status, given that an intervenor is a party, neither an individual intervenor nor any member of an intervenor group may also participate in an adjudicative hearing as a member of the general public by submitting a written statement or by requesting to present an oral statement.

PUBLIC PARTICIPATION SUBMISSIONS AND REQUESTS

11 GENERAL

- (1) Submissions from members of the public with respect to a specific application will not be accepted until a notice of public hearing has been published.
- (2) Members of the public who are not individual intervenors or members of an intervenor group, and who choose to participate in an adjudicative hearing by means of a written statement will not be entitled to also participate by means of an oral statement or affirmation.
- (3) Written comment submissions and requests to participate at a public hearing to

the Board must be filed with the Board no later than fifteen (15) days before the date of the adjudicative hearing and in accordance with Rule 6.

- (4) The Clerk will date stamp received written comment submissions and public participation requests.
- (5) Submissions described in Rules 12 and 13 must be specific to an individual adjudicative hearing and application.
- (6) The Board will not accord the status of expert opinion evidence, including expert legal opinion, to written statements or oral statements or affirmations made further to Rules 12 or 13.
- (7) Legal submissions and arguments by legal counsel are reserved for the parties in the proceeding.

12 SUBMISSION OF WRITTEN COMMENTS

- (1) Pursuant to s.20 of the Regulations, members of the public wanting to submit a written comment to the Board about an application that is before the Board must include, at minimum, the following information in their submission:
 - (a) Their full name;
 - (b) Their place of residence (civic address); and
 - (c) The application about which they would like to provide comment and how the comment relates to 1 or more of the factors set out in section 3 of the Aquaculture Licence and Lease Regulations.
- (2) Written statements must be no longer than five (5) pages.
- (3) The Board reserves the right to not consider a written statement if, in the opinion of the Board, the written statement does not meet the above criteria.

13 REQUEST FOR PUBLIC PARTICIPATION AT ADJUDICATIVE HEARING

- (1) Members of the public wishing to participate at an adjudicative hearing pursuant to s.32 of the Regulations must submit a written request to the Board including, at minimum, the following information:
 - (a) Their full name;
 - (b) Their place of residence (civic address); and
 - (c) The application about which they would like to provide a sworn oral statement or affirmation and how the comment relates to 1 or more of the factors set out in section 3 of the Aquaculture Licence and Lease Regulations.
- (2) Sworn oral statements/affirmations must be no longer than six (6) minutes.
- (3) Presentation order for those making sworn oral statements/affirmations will be

based on the order that public participation submissions are received by the Clerk.

- (4) The Board reserves the right to limit a sworn oral statement or affirmation if, in the opinion of the Board, the statement is not related to the factors described in s. 3 of the Regulations or if the speaker is being unduly repetitious.

CONFIDENTIAL INFORMATION

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- (1) A party may request that all or any part of any document be held in confidence by the Board, which request shall be placed on the record.
- (2) The burden of satisfying the Board that a document should be held in confidence is on the party claiming confidentiality.
- (3) Any request for confidentiality shall:
 - (a) include a summary of the nature of the information in the document;
 - (b) state:
 - (i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were publicly disclosed, and
 - (ii) any objection to placing an abridged version of the document on the record, and the reasons for such an objection; and
 - (c) be filed with the Clerk and served on the parties.
- (4) Where a party has made a request under Rule 14(1), the document shall be held in confidence unless the Board orders otherwise.
- (5) In ruling on a request for confidentiality the Board shall consider:
 - (a) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of adhering to the principle that documents be available to the public; or
 - (b) such other matters as the Board deems appropriate.
- (6) The Board may:
 - (a) order that the document be held in confidence by the Board;
 - (b) order that the document be placed on the record;
 - (c) order that an abridged version of the document be placed on the record;
 - (d) order that the document be withdrawn; and

- (e) make any other order the Board may deem to be in the public interest.
- (7) If the Board orders that the document be held in confidence under Rule 14 (6), a party, prior to receiving a copy of the document, must sign a confidentiality agreement as set out in Schedule B.

INFORMATION REQUESTS

15

- (1) Before the commencement of an adjudicative hearing, the Clerk, on behalf of the Board, may contact a party to the hearing to request additional information about the evidence that the party has filed with the Board.
- (2) Information requests made by the Board to a party will be copied to all other parties.
- (3) Responses to information request must be filed with the Board in accordance with Rule 6 and copied to all other parties.

ADJUDICATIVE HEARINGS

16 GENERAL CONDUCT

- (1) Adjudicative hearings may be conducted in an informal manner and do not need to follow the strict rules of practice and procedures required in a court of law.
- (2) A party may be represented before the Board by counsel or an agent, as deemed appropriate by the Board.

17 WITNESSES

- (1) At least fifteen (15) days before the date of an adjudicative hearing, a party who intends to present witness testimony at the adjudicative hearing as a part of their presentation must file a list of witnesses with the Board.
- (2) At the discretion of the Board, witnesses may be excluded from the hearing room until they are called to testify.

18 OATH / AFFIRMATION

- (1) Evidence at an adjudicative hearing shall be presented only after the person gives an oath or affirmation that the evidence will be the truth and shall be otherwise received only at the discretion of the Board.

19 PRE-HEARING MATTERS

- (1) The Chair may conduct a pre-hearing conference before an adjudicative hearing

begins.

- (2) Notice of a pre-hearing conference will be issued to the parties by the Clerk and will aim to be given no later than three (3) days before the date of the pre-hearing conference.
- (3) Any party seeking to present the evidence of an expert at an adjudicative hearing must, no later than fifteen (15) days before the date of the hearing, submit a written request, including qualifications of the proposed expert, to the Board for a determination as to the expert's status for the purpose of the hearing.
- (4) No later than 15 days before the date of the public hearing, each party will be required to submit to the Board an issues list that includes a precise statement of the issues that the party would like the Review Board to decide, and a general characterization of the evidence that the party intends to lead.

20 ORDER OF PROCEEDINGS

- (1) Unless varied by the Board under s. 27 and s. 33(1) of the Regulations, hearing testimony shall be offered in the following order:

(a) Presentation by the applicant

- i. The Board shall grant the applicant a reasonable amount of time to present its case to the hearing panel (Board) and to address issues raised in the preparation of its application (including the scoping report).
- ii. Upon completion of testimony by the applicant, questioning of the applicant by another party or by a member of the Board may be permitted at the discretion of the Chair in the following order:
 - a. Department of Fisheries and Aquaculture
 - b. Intervenor(s)

(b) Presentation by the Department of Fisheries and Aquaculture

- (i) The Board shall grant the Department a reasonable amount of time to present its case to the Board and to address issues raised during its review of the application.
- (ii) Upon completion of testimony by the Department, questioning of the Department by another party or by a member of the Board may be permitted at the discretion of the Chair in the following order:

- a. Applicant
- b. Intervenor(s)

(c) Presentations by the intervenor(s)

- (i) An intervenor who has requested to make a presentation shall make that presentation after the initial presentations by the applicant and the Department of Fisheries and Aquaculture.
- (ii) The Board shall grant intervenors a reasonable amount of time to present their case(s), including all witness testimony, to the Board.
- (iii) Upon completion of testimony by an intervenor, questioning of the intervenor by another party or by a member of the Board may be permitted at the discretion of the Chair in the following order:
 - a. Applicant
 - b. Department of Fisheries and Aquaculture

(d) Public participation

- (i) After the completion of presentations by the other parties, the Board will allow sworn oral statements or affirmations by any member of the public who submitted a request to participate pursuant to Rule 12.
- (ii) Presentations made by the public under this Rule must be conducted pursuant to s.32 of the Regulations.
- (iii) Members of the public not present in the hearing room when their name is called to give their sworn oral statement or affirmation will be moved to the end of the presentation list.
- (iv) Members of the public making presentations to the Board are not permitted to cross-examine (question) witnesses or the parties to the adjudicative hearing.
- (v) The Board may limit any oral statement or affirmation that it deems overly repetitious or does not meet the criteria laid out in s.32 of the Regulations.
- (vi) The Board may ask questions of those making sworn oral statements or affirmations to ensure the Board's understanding of the statements or affirmations being presented.

(e) Final response and summation by parties

- (i) Before the close of the adjudicative hearing, the Board may, at its sole discretion, grant the parties the opportunity to submit a final closing written summary to the Board in response to matters raised

at the hearing.

- (2) To prevent undue repetition, the Board may limit the duration of a presentation at an adjudicative hearing.

21 QUESTIONS AT THE ADJUDICATIVE HEARING

- (1) All questions at an adjudicative hearing will be handled pursuant to s.33 of the Regulations.

22 EVIDENCE

- (1) Evidence submitted to the Board to support a party's position must be done in accordance with s.30 of the Regulations.
- (2) The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.
- (3) All evidence received by the Board at an adjudicative hearing will be handled pursuant to s.31 of the Regulations.

23 ADJOURNING AND RECONVENING AN ADJUDICATIVE HEARING

- (1) Adjournment and reconvening of an adjudicative hearing will be handled pursuant to s.29 of the Regulations.

24 RECORD OF AN ADJUDICATIVE HEARING

- (1) The record of an adjudicative hearing must be kept in accordance with s.35 of the Regulations.

25 RECORDING OF ADJUDICATIVE HEARINGS

- (1) Adjudicative hearings may be audio recorded by the Board; and
- (2) Audio and video recording of adjudicative hearings, other than recordings made by the Board, is not permitted.
- (3) A person may request a copy of the audio-visual recording of the hearing, to have transcribed at their own expense, by completing the request form in Schedule C.
- (4) To be used in court or for the purpose of another Board hearing, transcripts must be made by a certified court transcriber.
- (5) The original audio-visual recording made by the Board will be considered the official recording of proceedings at the adjudicative hearing.

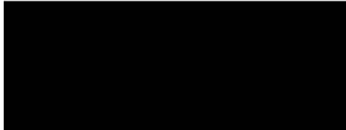
HEARING DECISION

26

- (1) Only members of the Board who are present at the adjudicative hearing can decide on the application.
- (2) All Board decisions shall be written and issued pursuant to s.36 of the Regulations.

These *Board Rules* were approved and adopted by the Nova Scotia Aquaculture Review Board JULY 16, 2024.

Signed:



Stacy Bruce
Clerk to the Nova Scotia Aquaculture Review Board

Schedule A: Subpoena

SUBPOENA

NSARB

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF A HEARING before the Nova Scotia Aquaculture Review Board
pursuant to the provisions of the Fisheries and Coastal Resources Act

-and-

IN THE MATTER OF

in the Province of Nova Scotia

SUBPOENA

TO:

of

**, the Nova Scotia Aquaculture Review Board
requires your attendance.**

You must attend a hearing in a proceeding described by the above heading. You will be called upon to give evidence on behalf of

You must bring with you the following documents and other evidence, or provide access to the following electronic information:

Time, date and place

You must come to

at

on

Party issuing

This subpoena is issued by the Nova Scotia Aquaculture Review Board on behalf of _____, who is _____.

Waiting to be called

When you attend at the required place, you must wait there until you are called to appear. If there is an adjournment, you must come back at the time and date set for resumption.

Permission to not attend

You may ask the Nova Scotia Aquaculture Review Board for permission to not attend some of the hearing.

Arrest, costs, and punishment for contempt

If you fail to attend as required, on application of the Nova Scotia Aquaculture Review Board to the Supreme Court of Nova Scotia, you may be arrested and taken to give evidence. If you fail to attend as required, bring required documents or other evidence as required, or fail to provide access to electronic information as required, on application of the Nova Scotia Aquaculture Review Board to the Supreme Court of Nova Scotia, you may be ordered to pay the expenses caused by an adjournment, and be punished for contempt.

Issued

Clerk of the Nova Scotia Aquaculture Review Board

Affidavit of Delivery

I, _____, of _____, make
oath, and say/affirm that I did, on _____, before the hour
of _____, personally deliver the sum of _____
and a certified copy of a subpoena, the same as the certified copy to which this
affidavit is attached, to _____ . The delivery took place
at _____ . I knew the person to be the one to
whom the delivery was made because _____ .

Sworn to before me on _____, 20_____ .

At Halifax, Province of Nova Scotia:

Commissioner of
The Supreme Court of Nova Scotia

Schedule B: Confidentiality Undertaking

NOVA SCOTIA AQUACULTURE REVIEW BOARD

WHEREAS [the Subscriber] is a party to an adjudicative hearing (the “hearing”) before the Nova Scotia Aquaculture Review Board (the “Board”);

AND WHEREAS [the Subscriber], for the purpose of participating as a party to the hearing, wishes to obtain copies of certain documents, which have been filed by another party with the Board, and which the Board has ordered to be held in confidence (those documents, the “Confidential Documents”);

AND WHEREAS the Board is willing to provide **[the Subscriber]** with copies of the Confidential Documents, for the sole purpose of participating as a party in the hearing, so long as **[the Subscriber]** holds the confidential documents in the strictest confidence;

NOW THEREFORE [the Subscriber] undertakes and agrees with the Board as follows:

1. **[The Subscriber]** shall at all times keep the Confidential Documents in confidence and trust and shall hold and treat the Confidential Documents with the highest degree of care so as to prevent disclosure.
2. **[The Subscriber]** shall not use the Confidential Documents in any way whatsoever except as permitted in writing by the Board, and shall not, except as expressly authorized in writing by the Board, copy, disseminate, publish, or disclose to any third party any contents of the Confidential Documents.
3. Upon the request of the Board, **[the Subscriber]** shall immediately return all of the Confidential Documents in the custody or control of **[the Subscriber]** to the Board, whether it is in hard copy form, on disk, or contained in any other medium whatsoever.

Schedule C: Request for Copies of Audio Recording of Adjudicative Hearings held by the Nova Scotia Aquaculture Review Board

**REQUEST FOR COPIES OF AUDIO RECORDING OF ADJUDICATIVE HEARINGS HELD
BY THE NOVA SCOTIA AQUACULTURE REVIEW BOARD**

NSARB File #:

Date of Proceedings: _____

Location of Public Hearing (Town/County): _____ # of Days: _____

Reason for Request: Appeal Other

Applicant's Name: _____

Applicant's Address: _____

Applicant's Phone Number: _____

**THE BROADCAST OF ANY AUDIO RECORDING OF COURT PROCEEDINGS, WITHOUT THE PRIOR
CONSENT OF THE NOVA SCOTIA AQUACULTURE REVIEW BOARD, IS STRICTLY PROHIBITED.**

I, the undersigned, understand and agree that the audio recordings to be provided pursuant to this request will be provided subject to the following terms and conditions:

1. that I will not broadcast the audio recording(s) on radio, television, the internet, or any other medium without the prior consent of the Nova Scotia Aquaculture Review Board;
2. that I will not distribute the audio recording(s) without the prior consent of the Nova Scotia Aquaculture Review Board;
3. that I will not make copies of the audio recording(s) without prior consent of the Nova Scotia Aquaculture Review Board;
4. that I will not provide the audio recording(s) or copies of same, to any third party who I know, or ought reasonably to know, may broadcast or distribute them; and
5. that I will not transcribe or distribute or use any of the Board's remarks without providing the Board with a copy of the typed transcript for approval in advance.

I further warrant that I am authorized to sign this agreement on behalf of any company or organization named below. I understand that this agreement is binding upon me personally and upon that corporation or organization.

Signature:

Print Name:

Company/Organization:

Date of Request:

SUBMITTING THE FORM:

Completed, signed request forms are to be submitted to the Office of Nova Scotia Aquaculture Review Board according to s.6 of the Board Rules of Procedure Respecting Adjudicative Hearings. Requests are filled on a first-come-first-served basis.

*** IF YOU ARE PURSUING AN APPEAL:**

Audio recordings must be transcribed by a certified transcription service. The Appellate Courts require numerous copies of the transcript and it is your responsibility to arrange and pay for the transcription and copies.

If you have any questions regarding this form or its requirements contact the Clerk of the Nova Scotia Aquaculture Review Board at 902-722-1426 or aquaculture.board@novascotia.ca.