

FISH AND SEAFOOD ACT

[SBC 2015] CHAPTER 14

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Part 1 — Definitions and Application

Definitions

1 In this Act:

"analyses" includes the taking of samples and the conducting of tests and visual examinations;

"analyst" means a person

(a) designated as an analyst under section 43 [power to designate analysts], or

(b) retained to exercise the powers of an analyst under section 44 [power to retain other persons];

"aquatic plants" means

(a) benthic and detached algae, brown algae, green algae, red algae, marine flowering plants and phytoplankton, whether grown domestically or wild,

(b) the products and byproducts of the aquatic plants described in paragraph (a), and

(c) part of an aquatic plant described in paragraph (a);

"byproduct" means materials, taken from fish or aquatic plants, that are not intended to be used for human consumption;

"cause" includes to contribute to, directly or indirectly, beyond a minimal extent;

"distribute" includes to provide or offer to provide fish or aquatic plants to a person, whether directly or indirectly and with or without a fee;

"employee" includes a person who provides services

(a) under contract, or

(b) under the direction or supervision of an operator, whether or not for a fee;

"facility" includes

(a) the premises on which a facility is located,

(b) the soil and water

(i) on or in which a facility is located, or

(ii) that are used while a person does, in a facility, an activity described in section 2 [activities to which this Act applies], and

(c) vehicles that are used while a person does an activity described in section 2, unless the vehicles are used only to transport fish or aquatic plants;

"fish" includes

(a) crustaceans and mollusks,

(b) echinoderms,

(c) other aquatic animals, except birds and mammals,

(d) the products and byproducts of fish and of the animals described in paragraphs (a) to (c), and

(e) parts of fish and of the animals described in paragraphs (a) to (c);

"inspector" means a person who is

(a) an inspector under section 41 [inspectors], or

(b) retained to exercise the powers of an inspector under section 44;

"licensing officer" means a person

(a) designated as a licensing officer under section 40 [power to designate licensing and reviewing officers], or

(b) retained to exercise the powers of a licensing officer under section 44;

"operator" means

(a) a person licensed under this Act, or

(b) an owner, manager or lessee of a facility that is the subject of a licence under this Act;

"personal information" means recorded information about an identifiable individual;

"process" includes

(a) to preserve, by any method, fish or aquatic plants for future consumption,

(b) to prepare, by any method, fish or aquatic plants,

(c) to hold or maintain live fish or aquatic plants until their preservation or preparation,

(d) to kill fish held under paragraph (c), and

(e) to package fish or aquatic plants that have been preserved or prepared;

"product" means materials, taken from fish or aquatic plants, that are intended to be used for human consumption;

"regional health board" means a regional health board as designated under the Health Authorities Act;

"reviewing officer" means a person

- (a) appointed as a reviewing officer under section 40, or
- (b) retained to exercise the powers of a reviewing officer under section 44;

"traceability system" means a system designed to track the location or transport of

- (a) fish or aquatic plants, or
- (b) prescribed things in relation to fish or aquatic plants;

"unsafe food" means fish or aquatic plants that

- (a) do not meet the requirements of section 3 (1) (a) [duty to ensure food safety], or
- (b) have been possessed, reared, grown, harvested, processed, stored, transported or distributed in contravention of a regulation made for the purposes of section 3 (2);

"vehicle" includes

- (a) any means of transporting fish or aquatic plants, whether by land, water or air, and
- (b) trailers and cargo containers used in transporting fish or aquatic plants.

Activities to which this Act applies

2 This Act applies to a person who possesses, rears, grows, harvests, processes, stores, transports or distributes fish or aquatic plants that may be distributed to the public for human consumption.

Part 2 — General Prohibitions

Duty to ensure food safety

3 (1) A person must ensure that fish or aquatic plants the person possesses, rears, grows, harvests, processes, stores, transports or distributes

(a) are safe for human consumption, are not contaminated and are not otherwise unfit for human consumption, or

(b) if the standards under paragraph (a) are not met, are not distributed for human consumption and do not come into contact with products that may be distributed for human consumption.

(2) If fish or aquatic plants that a person possesses, rears, grows, harvests, processes, stores, transports or distributes may be consumed by humans or come into contact with products that may be consumed by humans, the person must ensure that all applicable prescribed standards are met and all applicable prescribed measures are taken to ensure the safety and quality of the fish or aquatic plants.

(3) For the purposes of subsection (1) (a), fish or aquatic plants are contaminated if the fish or aquatic plants have been, or may have been, exposed to conditions that may permit the presence of any of the following:

- (a) foreign matter, including filth, a poisonous substance or a pest;
- (b) disease-causing micro-organisms or parasites;
- (c) toxins.

If licence required

4 If a regulation made under this Act requires a person to be licensed to do an activity described in section 2 [activities to which this Act applies], a person must not do the activity unless licensed, or exempted from being licensed, under this Act.

No possession or distribution if Act contravened

5 A person must not possess or distribute fish or aquatic plants that the person knows or has reason to believe have been possessed, reared, grown, harvested, processed, stored, transported or distributed in contravention of this Act.

Possession or distribution of restricted fish or aquatic plants

6 (1) In this section, "restricted fish or aquatic plants" means prescribed fish or aquatic plants that

- (a) are subject to prohibitions or restrictions on harvesting under an enactment of Canada or an international agreement to which Canada is a party, or
- (b) may be subject to harvesting practices that are inhumane or unsustainable.
- (2) A person must not possess or distribute for human consumption restricted fish or aquatic plants except as authorized under
 - (a) a licence, permit or other authorization issued under an enactment of Canada, or
 - (b) a permit issued by a licensing officer.
- (3) A licensing officer may issue a permit, with or without terms or conditions, for the purposes of subsection (2) (b)
 - (a) subject to the regulations, and
 - (b) only for a purpose that, in the opinion of the licensing officer, is in the public interest.
- (4) A person who holds a permit issued under subsection (3) must comply with all terms and conditions of the permit.

Part 3 — Licensing and Duties of Operators

Division 1 — Licensing

Issuing licences

7 (1) If a person is required by regulation to be licensed to do an activity described in section 2 [activities to which this Act applies], the person may apply for a licence by submitting to a licensing officer

- (a) an application, and
- (b) the prescribed records and fees, if any.
- (2) On receiving an application for a licence, a licensing officer may do one or more of the following:
 - (a) request, in writing, from the applicant or from a person referred to by the applicant further information, samples, proof of a fact, records or any other thing necessary to evaluate the application;
 - (b) refer the application to an inspector for an inspection under Division 1 [Inspections and Orders] of Part 4;
 - (c) refer the application for review and comment to
 - (i) a public officer,
 - (ii) an employee of Canada, or
 - (iii) a person who has special expertise;
 - (d) issue the licence with or without terms or conditions;
 - (e) reject the application, providing to the applicant, in writing, the reason for the rejection.
- (3) A licence issued under this section is not transferable.
- (4) A licensing officer may waive the fee for a licence if the licensing officer is of the opinion that activities to be conducted under the licence will have an educational, scientific or research purpose.

If food offered directly to public

8 (1) A person who intends to distribute fish or aquatic plants directly to the public for human consumption must state this in an application made under section 7 [issuing licences].

- (2) Without limiting any other reason for which a licence may be refused under this Act, a licensing officer may refuse to issue a licence to a person referred to in subsection (1) on the grounds that the person has been denied a licence or permit, or has been or is subject to a licensing action or a prosecution, under the Food Safety Act or the Public Health Act.

Varying licences

9 (1) An operator may request a variation of the operator's licence by

- (a) submitting to a licensing officer
 - (i) an application, and
 - (ii) the prescribed records and fees, if any, and
- (b) providing to the licensing officer information, samples, proof of a fact, records or any other thing necessary to evaluate the application.
- (2) On receiving an application for a variation, a licensing officer may do the following:
 - (a) exercise any of the powers set out in section 7 (2) (a) to (c) and (e) [issuing licences];
 - (b) vary the licence.

Taking administrative action

10 (1) In this section, "administrative action" means to vary, suspend or cancel an operator's licence.

(2) In addition to any other action that may be taken under this Act, a licensing officer may take an administrative action if

(a) an operator has contravened a provision of this Act,

(b) an operator is carrying out an activity, to which the licence applies, in a manner that the licensing officer reasonably believes may cause the distribution of unsafe food, or

(c) both of the following apply to an operator:

(i) the operator is distributing, or has distributed, fish or aquatic plants directly to the public for human consumption, and

(ii) the operator is the subject of a licensing action or a prosecution under the Food Safety Act or the Public Health Act.

(3) Before taking an administrative action, the licensing officer must give to the operator

(a) a written notice stating

(i) the administrative action the licensing officer proposes to take,

(ii) the reason for taking the proposed administrative action,

(iii) the date the proposed administrative action is to take effect, and

(iv) the manner in which the operator may respond to the proposed administrative action, and

(b) a reasonable opportunity to respond, in writing, to the proposed administrative action.

(4) After providing the operator with a reasonable opportunity to respond in accordance with the manner set out in the notice given under subsection (3) (a), the licensing officer may do one or both of the following:

(a) delay the date the administrative action is to take effect or suspend the administrative action, if satisfied that the delay or suspension would not cause the distribution of unsafe food;

(b) after considering the operator's response, if any, and any supporting records or written submissions of the operator,

(i) take the proposed administrative action,

(ii) take a different administrative action, or

(iii) rescind the notice and take no administrative action.

(5) The licensing officer must give written reasons for a decision made under subsection (4) (b) (i) or (ii).

Taking licensing action to protect marine beds

11 (1) A licensing officer may refuse to issue or renew, add terms or conditions on, or vary, suspend or cancel, a licence to harvest aquatic plants if the licensing officer is of the opinion that doing so is necessary to protect, or to prevent, reduce or address any adverse effect on, all or part of a bed on which aquatic plants grow.

(2) Nothing in this section limits any other reason for which a licensing officer may make a decision or take an action under this Act with respect to a licence, or an application for a licence, to harvest aquatic plants.

Reconsideration of licensing decisions

12 (1) In this section and section 13 [review of licensing decisions], "decision" means a decision of a licensing officer to

(a) reject an application for a licence or an application to vary a licence,

(b) issue a licence subject to terms and conditions, or

(c) vary, suspend or cancel a licence.

(2) On receiving notice of a decision, a person subject to the decision may request the licensing officer who made the decision to reconsider the decision by submitting a request to the licensing officer within 30 days after receiving the notice.

(3) After considering a request for reconsideration, the licensing officer may take, as applicable, one or more of the actions described in section 7 (2) [issuing licences], 9 (2) (b) [varying licences] or 10 (4) [taking administrative action].

(4) The licensing officer must give written reasons for an action taken under subsection (3), and a person may not request further reconsideration.

Review of licensing decisions

13 (1) Subject to subsection (2) and the regulations, a person subject to a decision may request a reviewing officer to review the decision by submitting a request and the prescribed fee to the reviewing officer.

- (2) A request for a review may be made only
 - (a) if a reconsideration has been completed under section 12 [reconsideration of licensing decisions], and
 - (b) within 20 days after written reasons are given under section 12 (4).
- (3) A review must be based on the record.
- (4) A decision is not suspended during the period of review unless the reviewing officer states, in writing, that the decision is suspended.
- (5) After considering a request for a review, the reviewing officer may confirm, vary or rescind the decision under review.
- (6) The reviewing officer must give written reasons for confirming or varying the decision under review, and the person subject to the decision may not request further review of the decision.

Division 2 — Duties of Operators

General duty of compliance

14 An operator must comply with

- (a) this Act,
- (b) all regulations made under this Act respecting the activity for which the operator is licensed, and
- (c) all terms and conditions of the operator's licence.

Duties with respect to food safety

15 (1) Without limiting section 3 [duty to ensure food safety], an operator who engages in fish or aquatic plant processing must take preventive measures consistent with reasonable practices of fish or aquatic plant processing, as applicable, including the following:

- (a) applying disinfection and decontamination measures;
 - (b) using a type of equipment or implementing a process, or removing or altering equipment or processes;
 - (c) meeting any standard or taking any measure set out in the regulations;
 - (d) taking any measure required by an inspector in an order made under this Act.
- (2) An operator must conduct, in accordance with the regulations,
- (a) analyses of fish and aquatic plants the operator possesses, rears, grows, harvests, processes, stores, transports or distributes, and
 - (b) monitoring of activities, carried out under the operator's licence, for conditions that may cause unsafe food.
- (3) An operator must ensure that the operator's employees are adequately trained and sufficiently equipped for the purpose of complying with section 3 and this section.

Duties with respect to facilities, vehicles and equipment

16 (1) An operator must ensure that facilities the operator uses

- (a) are sufficiently maintained and equipped for the purpose of complying with section 3 [duty to ensure food safety], and
 - (b) meet all applicable prescribed requirements with respect to construction, maintenance, management, sanitation and operation.
- (2) An operator must ensure that vehicles and equipment the operator uses are sufficiently maintained and sanitized for the purpose of complying with section 3.

Duty to keep records and make reports

17 (1) An operator must

- (a) keep, in accordance with the regulations, the prescribed records, and
 - (b) produce the records required under paragraph (a)
 - (i) to the minister or an inspector, on request and within the time requested, and
 - (ii) to the minister, at prescribed intervals or under prescribed circumstances.
- (2) An operator must make reports as required by the regulations.
- (3) On receiving a report under this section, the minister may order the operator to take one or more prescribed actions.
- (4) Division 2 [Making and Reviewing Orders] of Part 4 and section 35 [duty to comply with orders] apply to an order made under subsection (3) of this section as if it were an order made under that Part.

Duty to report unsafe food

18 (1) If an operator has reason to believe that fish or aquatic plants the operator has distributed may be unsafe food, the operator must promptly

- (a) take measures to prevent further distribution of the fish or aquatic plants, and
- (b) report to an inspector the following information:
 - (i) the identity and contact information, if known, of all persons to whom the fish or aquatic plants have been distributed;
 - (ii) the reason for believing the fish or aquatic plants the operator has distributed may be unsafe food;
 - (iii) if analyses of the fish or aquatic plants were conducted, the nature of the analyses and the results;
 - (iv) any measures taken under paragraph (a);
 - (v) any prescribed information;
 - (vi) any other relevant information the inspector requests.

(2) On receiving a report under this section, the inspector may order the operator to do one or more of the following:

- (a) give specified information by specified means to one or more persons or to the public;
- (b) conduct specified forms of analyses or submit samples to an analyst for analyses;
- (c) take specified measures to prevent further distribution, by the operator or by a person referred to in subsection (1) (b) (i), of fish or aquatic plants that may be unsafe food;
- (d) make records and further reports;
- (e) take other prescribed actions.

(3) Division 2 [Making and Reviewing Orders] of Part 4 and section 35 [duty to comply with orders] apply to an order made under subsection (2) of this section as if it were an order made under that Part.

Duty to participate in traceability system

19 (1) In this section and section 61 [regulations respecting traceability and certification]:

"traceability program" means a program established and maintained, or designated, under subsection (2) (b) of this section;

"traceable food" means fish or aquatic plants that are subject to a traceability system.

(2) The minister may, for the purposes of this Act, establish and maintain, or designate, one or both of the following:

- (a) traceability systems;
- (b) programs that, in the opinion of the minister,
 - (i) facilitate the effectiveness of a traceability system, or
 - (ii) are an integral part of a traceability system.

(3) A program may be designated under subsection (2) (b) whether

- (a) the program is established or maintained by a public or private body, including, without limitation, the government of another jurisdiction and a voluntary association, or
- (b) the traceability system to which the program relates, or is intended to relate, has not yet been established or designated.

(4) An operator must do all of the following if and as required by a regulation made under section 60 [regulations respecting operators]:

- (a) obtain unique identifiers for traceable food, facilities, vehicles or things associated with the activity for which the operator is licensed;
- (b) attach identifiers or notices of identifiers to the corresponding traceable food, facilities, vehicles or things;
- (c) make records respecting traceable food, facilities, vehicles or things, and, if applicable, conduct analyses;
- (d) report to the minister or a prescribed person all prescribed information respecting
 - (i) traceable food, facilities, vehicles or things,
 - (ii) facilities, vehicles or things used in connection with traceable food, even if those facilities, vehicles or things are not themselves subject to a traceability program, and
 - (iii) the transport or other movement of traceable food, including the means of transport or movement and the destination;
- (e) take other prescribed actions.

(5) Requirements made under this Act in relation to traceable food may be made with respect to containers or packages of traceable food rather than with respect to single items of traceable food.

Duties if certification program prescribed

20 If a certification program is prescribed for the purposes of this section,

(a) a person must not hold himself or herself out as being certified unless the person is certified in accordance with the regulations, and

(b) a person who is certified must meet all prescribed standards.

Duty to pay royalties

21 (1) An operator who harvests wild aquatic plants must pay to the government royalties in an amount, at the times and in the manner prescribed.

(2) Royalties owing under this section constitute a debt due to the government and are recoverable by action in a court that has jurisdiction.

Part 4 — Enforcement

Division 1 — Inspections and Orders

When inspections may be made

22 (1) Inspections under this section are subject to the limits set out in section 24 [entering to inspect].

(2) On referral under section 7 (2) (b) [issuing licences] or 9 (2) (a) [varying licences], an inspector may enter and inspect a vehicle or place to determine whether

(a) a licence should be issued, or

(b) a term or condition of a licence should be varied or rescinded.

(3) An inspector may stop a vehicle, and enter and inspect a vehicle or place, if

(a) the inspector reasonably believes that the vehicle or place

(i) is being or will be used, by an operator or employee, in relation to an activity for which the operator is licensed under this Act,

(ii) is being or will be used, by any person, in relation to an activity for which the person must be licensed under this Act, or

(iii) is the subject of an order made under this Act, and

(b) the purpose of the inspection is

(i) to monitor or confirm compliance with this Act, the order or a provision of another enactment, including an enactment of Canada, in respect of which the inspector has a power of inspection, or

(ii) to determine whether the order should be varied or terminated.

(4) Subject to subsection (5), an inspector may stop a person or vehicle, and enter and inspect a vehicle or place, if the inspector reasonably believes that

(a) the person possesses or may possess, or the vehicle or place contains or may contain, fish or aquatic plants, and

(b) the fish or aquatic plants

(i) may be unsafe food, or

(ii) are being, have been or may be possessed, reared, grown, harvested, processed, stored, transported or distributed in contravention of this Act.

(5) An action may be taken under subsection (4) for one or more of the following purposes only:

(a) to determine if the fish or aquatic plants described in subsection (4) are in a person's possession or present in a vehicle or place;

(b) if a report is made under section 17 [duty to keep records and make reports] or 18 [duty to report unsafe food], to confirm the information given in the report or to obtain further information;

(c) to take measures to stop or prevent a contravention of this Act;

(d) for any other purpose for which an inspection by an inspector is authorized under this or any other enactment, including an enactment of Canada;

(e) for a prescribed purpose.

Inspection powers

23 (1) An inspector may do one or more of the following for the purpose of an inspection:

- (a) pass through a place to reach a vehicle or place that is to be the subject of the inspection;
 - (b) be accompanied or assisted by an analyst or a person who has special, expert or professional knowledge of a matter relevant to the inspection;
 - (c) require a person to produce relevant records or things in the person's possession or control;
 - (d) inspect, copy or remove relevant records or things, and, for this purpose, open any container or package;
 - (e) make records in respect of a person, place or thing;
 - (f) require a person to stop doing an activity or stop the operation of a thing;
 - (g) require a person whom the inspector reasonably believes to have relevant information to answer questions and otherwise give that information;
 - (h) conduct analyses, including removing fish, aquatic plants or samples from a container, package or facility for the purpose of having an analyst conduct analyses;
 - (i) require that a place or thing not be altered or disturbed for a reasonable period of time;
 - (j) require a person to operate a thing, carry out a procedure or demonstrate a relevant skill, as the inspector directs;
 - (k) attach to fish or aquatic plants, or to containers or packages, identifying marks or tags that permit identification of the fish or aquatic plants as having been inspected;
 - (l) make an order that is necessary for the purpose of exercising a power of inspection, including ordering a person found in a vehicle or place under inspection to assist in the inspection.
- (2) If an inspector removes records or things under subsection (1) (d), the inspector must do both of the following:
- (a) give a receipt for the records or things to the person from whom the records or things were taken;
 - (b) subject to a power under this or any other enactment to order a thing destroyed, promptly return the records or things
 - (i) when the records or things have served the purposes for which the records or things were taken, or
 - (ii) if a proceeding is taken under this or any other enactment as a result of an inspection and the records or things are relevant to the proceeding, in accordance with an order of a court, or, if no order is made, no later than 3 months after the conclusion of the proceeding.
- (3) Sections 23 (4) and 24 to 24.2 of the Offence Act do not apply for the purposes of subsections (1) (d) and (2) of this section.
- (4) An inspector must, on request, produce, to a person subject to an inspection, identification as described under section 42 (3) [powers respecting inspectors].

Entering to inspect

24 (1) An inspector may conduct an inspection at any reasonable hour.

(2) Before entering a place, an inspector must

- (a) take reasonable steps to notify the owner or occupier of the place of the date and time that the inspector will be entering, and
 - (b) if the place is a private dwelling, obtain either the consent of the owner or occupier or a warrant to enter.
- (3) Despite subsection (2) (a), an inspector may conduct an inspection without providing notice in any of the following circumstances:
- (a) the thing to be inspected is on display in a public place;
 - (b) providing notice would not be reasonably practical in the circumstances;
 - (c) providing notice might frustrate the purpose of the inspection.

Orders that may be made

25 (1) An inspector may order a person to do one or more of the following:

- (a) keep fish, aquatic plants or vehicles in a specified place;
- (b) prevent fish or aquatic plants from
 - (i) being transported to or from a place,
 - (ii) being unloaded from a vehicle, or
 - (iii) entering a specified place;
- (c) give to the inspector or a specified person information, records, samples or other things relevant to the purpose of the inspection, including information respecting persons to whom fish or aquatic plants have been distributed or were intended to be distributed;
- (d) have fish or aquatic plants undergo analyses, including requiring fish, aquatic plants or samples to be given to an analyst to conduct analyses;

- (e) take specified measures to prevent a contravention of this Act;
 - (f) do specified work in respect of a facility, vehicle or place, including removing or altering things found in the facility, vehicle or place and altering or locking the facility, vehicle or place to restrict or prevent entry to the facility, vehicle or place;
 - (g) not deal with or dispose of fish or aquatic plants, or do so only in accordance with a specified procedure;
 - (h) stop operating, or not operate, a thing;
 - (i) attach an identifying mark or tag to fish, aquatic plants or things;
 - (j) make or keep a specified record;
 - (k) stop distribution of fish or aquatic plants that are being, have been or may be possessed, reared, grown, harvested, processed, stored, transported or distributed in contravention of this Act;
 - (l) if the person is an operator, take specified measures to bring the operator into compliance with this Act;
 - (m) take specified measures to monitor activities, carried out under the operator's licence, for conditions that may cause unsafe food;
 - (n) take a prescribed action.
- (2) For greater certainty but subject to section 4 [if licence required], an inspector may make an order under this section even if the person subject to the order complies with all terms and conditions of a licence issued under this or any other enactment.

Seizure and destruction

26 (1) If an inspector reasonably believes that fish or aquatic plants may be unsafe food, the inspector may

- (a) seize the fish or aquatic plants, and
 - (b) conduct analyses of the fish or aquatic plants or submit the fish or aquatic plants, or samples of them, to an analyst for analyses.
- (2) If, on analysis, seized fish or aquatic plants are not found to be unsafe food, an inspector
- (a) must return the fish or aquatic plants to the person from whom the fish or aquatic plants were seized, or
 - (b) may dispose of or destroy the fish or aquatic plants if return under paragraph (a) is not reasonably practical.
- (3) If, on analysis, seized fish or aquatic plants are found to be unsafe food, an inspector may do one or more of the following:
- (a) detain the fish or aquatic plants;
 - (b) dispose of or destroy the fish or aquatic plants, or order another person to dispose of or destroy the fish or aquatic plants;
 - (c) make any order that may be made under section 25 [orders that may be made].
- (4) An inspector must give written notice to a person from whom fish or aquatic plants are seized before taking an action under subsection (2) (b) or (3) (a) or (b).

Recall orders

27 If an inspector acts under section 26 (3) [seizure or destruction], the minister may

- (a) order an operator to recall any fish or aquatic plants that the operator has distributed, and
- (b) take, or order the operator to take, any other action the minister reasonably believes is necessary to protect the public from unsafe food the operator has distributed or may have distributed.

Costs

28 (1) This section applies to

- (a) an order made under section 25 [orders that may be made] or 27 [recall orders], or
 - (b) the seizure, and disposal or destruction, under section 26 [seizure and destruction] of fish or aquatic plants.
- (2) A person subject to an order or from whom fish or aquatic plants were seized is responsible for all costs incurred under section 25, 26 or 27, as applicable, by an inspector or the minister, including costs to have another person take an action on behalf of the inspector or minister.
- (3) The costs referred to in subsection (2) constitute a debt due to the government and are recoverable by action in a court that has jurisdiction.
- (4) A person has no right of action as a result of an action referred to in subsection (1) and must not commence or maintain proceedings
- (a) to claim damages or compensation of any kind from the government, or
 - (b) to obtain a declaration that damages or compensation is payable by the government.

Division 2 — Making and Reviewing Orders

Contents of orders

29 (1) An order made under this Part must be made in writing and describe all of the following:

- (a) who must comply with the order;
- (b) what must be done or not done, and any conditions, including, if applicable, the date by which something must be done;
- (c) the date on which, or the circumstances under which, the order is to terminate, if the date or circumstances are known;
- (d) subject to the regulations, information sufficient to enable a person to contact the person who made the order;
- (e) how the person subject to the order may have the order reconsidered;
- (f) any prescribed matter.

(2) Two or more orders may be combined in a single written notice.

(3) Despite subsection (1), an inspector or the minister may make an order under this Part orally and describe only the matters set out in subsection (1) (a), (b) and (d) if the inspector or minister

(a) reasonably believes that immediate action is necessary to

(i) prevent the distribution of unsafe food, or

(ii) protect the public from unsafe food that may have been distributed, and

(b) makes the order in accordance with subsection (1) within 2 days of making the order orally.

Service of orders

30 An order made under this Part must be served in accordance with the regulations.

Variation and reassessment of orders

31 (1) A person who makes an order under this Part may vary or terminate the order, at any time, on the person's own initiative.

(2) Subject to the regulations, a person subject to an order under this Part may request the person who made the order to

(a) reassess the relevant circumstances,

(b) assess the extent to which the order has been complied with, and

(c) determine whether the order continues to be necessary for the purposes of this Act.

(3) On receiving a request under subsection (2), the person who made the order may, based on the matters referred to in that subsection, confirm, vary or terminate the order.

Reconsideration of orders

32 (1) A person subject to an order made under this Part may request the person who made the order to reconsider the order if

(a) the person subject to the order has additional relevant information that was not reasonably available at the time the order was made, and

(b) fewer than 20 days have passed since the order was made.

(2) After considering a request for reconsideration, the person who made the order may do one or more of the following:

(a) reject the request on the basis that the information submitted in support of the request is not relevant or was reasonably available at the time the order was made;

(b) delay the date the order is to take effect or suspend the order, if satisfied that the delay or suspension would not cause the distribution of unsafe food;

(c) confirm, vary or rescind the order.

(3) The person who made the order must give written reasons for a decision to reject the request under subsection (2) (a) or to confirm or vary the order under subsection (2) (c), and the person subject to the order may not request further reconsideration.

(4) An order is not suspended during the period of reconsideration unless the person who made the order states, in writing, that the order is suspended.

(5) For the purposes of this section, if multiple orders are made that address related matters or issues, the person who made the orders may reconsider the orders separately or together.

(6) If a person is unable or unavailable to reconsider an order he or she made, a person the minister designates may act under this section in respect of the order as if the designated person had made the order.

Review of orders

33 (1) Subject to subsection (2), a person subject to an order made under this Part may request a reviewing officer to review the order by submitting a request and the prescribed fee to the reviewing officer.

(2) A request for a review may be made only if less than 20 days has passed since

(a) the order was made, if reconsideration is not available under section 32 (1) (a) [reconsideration of orders], or

(b) an action was taken under section 32 (2).

(3) A review must be based on the record.

(4) An order is not suspended during the period of review unless the reviewing officer states, in writing, that the order is suspended.

(5) After considering a request for a review, the reviewing officer may do one or more of the following in relation to the order under review:

(a) delay the date the order is to take effect or suspend the order, if satisfied that the delay or suspension would not cause the distribution of unsafe food;

(b) confirm, vary or rescind the order;

(c) refer the matter back to the person who made the order, with or without directions.

(6) The reviewing officer must give written reasons for an action taken under subsection (5) (b) or (c), and the person subject to the order under review may not request further review of the order.

Summary action

34 Despite sections 31 (2) and (3) [variation and reassessment of orders], 32 [reconsideration of orders] and 33 [review of orders], requests may not be made under those sections if

(a) fish or aquatic plants are found under section 26 (3) [seizure and destruction] to be unsafe food, and

(b) an inspector reasonably believes that the fish or aquatic plants must be destroyed immediately to prevent the distribution of unsafe food.

Division 3 — Compliance and Enforcement

Duty to comply with orders

35 A person subject to an order made under this Part must comply with the order.

Postings and identification

36 (1) If the minister or an inspector, or a person acting under the direction of either of them, posts an order or a notice under this Act, a person other than the minister, an inspector or a person acting under the direction of either of them must not remove, deface or alter the posted order or notice.

(2) If the minister or an inspector requires that fish or aquatic plants, or containers or packages of fish or aquatic plants, have identifying marks or tags, a person other than the minister, an inspector or a person acting under the direction of either of them must not remove, deface or alter the identifying marks or tags.

Warrants

37 (1) Without notice to any person, an inspector may apply, in the manner set out in the regulations, to a justice of the peace for a warrant under this section.

(2) A justice of the peace may issue a warrant in the prescribed form authorizing an inspector, or a person acting on behalf of an inspector, to enter and search a place, including a private dwelling, and take any necessary action if satisfied by evidence on oath or affirmation that doing so is necessary for the purpose of

(a) taking an action authorized under this Act, or

(b) determining whether an action authorized under this Act should be taken.

(3) If an inspector is of the opinion that it would be impractical to appear personally before a justice of the peace to apply for a warrant under this section, the inspector may submit an information on oath by telephone or other means of telecommunication and, for this purpose, section 22 of the Offence Act applies.

Injunctions

38 (1) Without notice to any person, an inspector may apply, in the manner set out in the regulations, to a judge of the Supreme Court for an injunction or an order under this section.

(2) A judge of the Supreme Court may grant an injunction restraining a person from contravening, or requiring a person to comply with, a provision of this Act if satisfied by evidence on oath or affirmation that there has been or will be a contravention of this Act.

(3) A judge of the Supreme Court may order a person to do or refrain from doing those things the judge considers necessary if satisfied by evidence on oath or affirmation that the person is interfering with or obstructing, or will likely interfere with or obstruct, a person who is exercising powers or performing duties under this Act.

(4) A judge of the Supreme Court may grant an interim injunction or order until the outcome of an application commenced under this section.

Peace officer assistance

39 (1) An inspector may call on the assistance of a peace officer for the purpose of taking an action authorized under this or any other enactment, including, without limitation, for either of the following purposes:

- (a) making or enforcing an order or carrying out an inspection;
 - (b) assisting a person to comply with or to carry out an order of the inspector.
- (2) A peace officer called on under this section may take any action that is necessary for a purpose described in subsection (1) and may use such force as is reasonably required for that purpose.

Part 5 — Ministerial Powers

Power to designate licensing and reviewing officers

40 (1) The minister may designate, by order,

- (a) employees of the ministry of the minister as licensing officers,
 - (b) employees of a regional health board as licensing officers if
 - (i) the employee, in the opinion of the minister, has sufficient training, knowledge, skills and experience to exercise the powers and perform the duties of a licensing officer, and
 - (ii) the regional health board approves the designation, and
 - (c) employees of a ministry of the government as reviewing officers.
- (2) A person may not be both a licensing officer and a reviewing officer.
- (3) The minister may do one or more of the following in an order made under subsection (1):
- (a) name a specific person as a licensing officer or a reviewing officer;
 - (b) provide that a person who holds a specified title or position is a licensing officer or a reviewing officer;
 - (c) limit the powers and duties of a person designated as
 - (i) a licensing officer or a reviewing officer to a class of fish, aquatic plants, operators or facilities, or
 - (ii) a reviewing officer to a review under section 13 [review of licensing decisions] or 33 [review of orders].

Inspectors

41 (1) Subject to any limits imposed under subsection (4), the following persons may exercise powers and perform duties as inspectors for the purposes of this Act:

- (a) inspectors under the Fish Inspection Act (Canada);
 - (b) fishery officers and fishery guardians under the Fisheries Act (Canada);
 - (c) conservation officers under the Environmental Management Act;
 - (d) officers of the provincial police force under the Police Act;
 - (e) persons the minister designates under subsection (2).
- (2) The minister may designate as inspectors, by order,
- (a) employees of a ministry of the government,
 - (b) employees of a regional health board if
 - (i) the employee, in the opinion of the minister, has sufficient training, knowledge, skills and experience to exercise the powers and perform the duties of an inspector, and
 - (ii) the regional health board approves the designation, or
 - (c) employees of the government of Canada having duties under an enactment of Canada related to animal or food inspection.
- (3) The minister may do one or both of the following in an order made under subsection (2):
- (a) name a specific person as an inspector;

(b) provide that a person who holds a specified title or position is an inspector.

(4) The minister may limit, by order, the powers and duties of an inspector or a class of inspectors, including to one or both of the following:

(a) a geographic area;

(b) a class of fish, aquatic plants, operators or facilities.

Powers respecting inspectors

42 (1) The minister may do, by order, one or more of the following:

(a) establish training and qualifications for inspectors, including requiring that inspectors designated under section 41 (2) [inspectors] participate in ongoing training;

(b) establish standards of practice for inspectors, and issue instructions to inspectors designated under section 41 (2), in relation to the exercise of their powers and the performance of their duties under this or any other enactment.

(2) An inspector designated under section 41 (2) must comply with all applicable standards established, and instructions issued, under subsection (1) of this section.

(3) The minister may give to inspectors identification for use in exercising powers and performing duties under this Act.

Power to designate analysts

43 The minister may designate, by order, employees of the ministry of the minister for the purpose of conducting analyses under this Act and, for this purpose, may

(a) name a specific person as an analyst, or

(b) provide that a person who holds a specified title or position, or who is employed for the purpose of conducting analyses by a specified laboratory or other facility, is an analyst.

Power to retain other persons

44 (1) This section applies despite sections 40 (1) [power to designate licensing and reviewing officers], 41 (1) and (2) [inspectors] and 43 [power to designate analysts].

(2) The minister may retain, as necessary, persons who are not employees of a ministry of the government to be licensing officers, reviewing officers, inspectors or analysts and, for this purpose, grant to those persons any power or duty of a licensing officer, a reviewing officer, an inspector or an analyst.

(3) A person retained under subsection (2) may be remunerated in accordance with the prescribed fees for being a licensing officer, a reviewing officer, an inspector or an analyst, as applicable.

(4) The Public Service Act does not apply to a person retained under subsection (2).

Power to enter into agreements

45 The minister may enter into agreements with any person or body, including the government of another jurisdiction, for one or more of the following purposes:

(a) to administer this Act;

(b) to exercise powers or perform duties, in relation to fish or aquatic plants, under an enactment of another jurisdiction;

(c) to exchange information, including personal information,

(i) under an agreement referred to in paragraph (a) or (b),

(ii) for the purpose of a traceability system, or

(iii) if necessary or advisable for the protection of public health in relation to unsafe food.

Power to collect or disclose information

46 (1) The minister may collect or disclose information under this Act for one or more of the following purposes:

(a) to administer this Act;

(b) to administer or to assist with the administration of an enactment or a government program, of Canada or any jurisdiction in Canada, that has as one of its purposes the protection or promotion of human or animal health;

(c) to disclose, in accordance with the regulations, prescribed information contained in a traceability system;

(d) to disclose prescribed information in respect of an order made under this Act;

(e) to publish or disclose statistical information for economic, educational, scientific or research purposes in relation to fish or aquatic plants;
(f) to publish or disclose information if, in the opinion of the minister, it would be in the public interest to publish or disclose that information.

(2) For greater certainty, information that may be collected or disclosed under subsection (1) (a) to (d) and (f) includes personal information.

Power to delegate

47 (1) The minister may delegate, in writing, to a person or class of persons any of the minister's powers or duties under the following provisions:

(a) section 17 [duty to keep records and make reports];

(b) section 27 [recall orders];

(c) section 46 [power to collect or disclose information].

(2) A person to whom the minister delegates a power or duty referred to in subsection (1) may not further delegate the power or duty.

General administrative powers

48 (1) The minister may make, by order, forms for the purposes of this Act and the regulations made under it, other than a form for the purposes of section 53 (3) [recovery of administrative penalties].

(2) Unless the minister provides otherwise, use of a form made under subsection (1) is compulsory.

(3) The minister may specify, by order, the manner in which applications, requests or reports may be made, or notices or information must be given, under this Act.

(4) An application, a record or a report made under this Act must include all information the minister requires.

Part 6 — Contraventions

Division 1 — Evidence

Documentary and certificate evidence

49 (1) A copy of a document issued under this Act by an inspector or the minister, and certified by the inspector or minister as a true copy, is

(a) evidence of the document, and

(b) evidence that the inspector or minister was authorized to issue the document.

(2) In a proceeding under this Act, a certificate, as to the results of analyses, that is signed, or purports to be signed, by an analyst is

(a) evidence of the facts stated in the certificate, and

(b) evidence that the person who signed the certificate was authorized to sign the certificate.

(3) Subsections (1) and (2) apply without proof of the person's signature, appointment or authorization.

(4) A person against whom a certificate under subsection (2) is produced may, with leave of the court, require for the purpose of cross examination the attendance of the analyst who signed the certificate.

Inspector may seize offence-related things

50 (1) If, on inspection, an inspector reasonably believes that an offence under this Act has been committed, the inspector may seize anything that may constitute evidence of the offence.

(2) If things seized under subsection (1) are fish or aquatic plants and the inspector reasonably believes the fish or aquatic plants are unsafe food, sections 26 (1) (b), (2) (b), (3) (a) and (b) and (4) [seizure and destruction] and 28 [costs] apply.

Division 2 — Administrative Penalties

Imposing administrative penalties

51 (1) If authorized by regulation to impose an administrative penalty, the minister may impose an administrative penalty in the amount permitted by the regulations if satisfied on a balance of probabilities that a person has done either of the following:

(a) contravened a prescribed provision of this Act or a regulation made under it;

- (b) failed to comply with an order made under this Act.
- (2) An administrative penalty may be imposed by serving notice of the administrative penalty in the prescribed manner.
- (3) If a person is subject to an administrative penalty, the person must do one of the following within the prescribed time:
- (a) pay the administrative penalty;
 - (b) dispute the administrative penalty in accordance with the regulations, including disputing the amount of the administrative penalty on any ground permitted by the regulations;
 - (c) agree, in writing, with the minister to do one or more things, including paying a reduced administrative penalty, that the minister is of the opinion would
 - (i) be sufficient for the protection of public health in relation to unsafe food, and
 - (ii) if applicable, bring the person into compliance with this Act or the regulations or an order made under it.
- (4) If an administrative penalty is disputed or made the subject of an agreement under subsection (3) (b) or (c), as the case may be, the person subject to the administrative penalty must pay the administrative penalty, or any part of it that remains outstanding,
- (a) under the terms of the agreement,
 - (b) on receiving notice, following a dispute, that the person remains subject to all or part of the administrative penalty, or
 - (c) on receiving notice that the person failed to meet the terms of the agreement to the satisfaction of the person who imposed the administrative penalty.
- (5) If a corporation contravenes this Act or a regulation made under it, or fails to comply with an order made under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure to comply is also liable under this section even though the corporation is liable for or pays an administrative penalty.

Operator not to be subject to both administrative penalty and offence

52 (1) A person who must pay an administrative penalty must not be convicted of an offence in respect of the same incident that gave rise to the administrative penalty.

(2) A person convicted of an offence must not be required to pay an administrative penalty in respect of the same incident that gave rise to the conviction.

Recovery of administrative penalties

53 (1) An administrative penalty under this Act may be recovered as a debt due to the government.

(2) If a person fails to pay an administrative penalty as required, the minister may file a certificate with a court that has jurisdiction, and, on filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) must be in the prescribed form, be signed by the minister and contain

- (a) the name of the person who is liable for the administrative penalty,
- (b) the contravention or failure in relation to which the administrative penalty is imposed, and
- (c) the amount of the administrative penalty.

(4) All administrative penalties received under this Division must be paid into the consolidated revenue fund.

Division 3 — Offences and Penalties

Offences

54 (1) A person who contravenes any of the following provisions commits an offence:

- (a) section 3 [failure to ensure safe food];
- (b) section 4 [failure to be licensed as required];
- (c) section 5 [possession or distribution of unlawful fish or aquatic plants];
- (d) section 6 [unlawful possession or distribution of restricted fish or aquatic plants];
- (e) section 14 [failure to comply with Act, regulations or licence];
- (f) section 15 [failure to undertake preventive measures, analyses or monitoring or to train and equip employees];
- (g) section 16 [failure to meet requirements respecting facilities, vehicles and equipment];
- (h) section 17 [failure to keep or produce records or make reports as required];
- (i) section 18 [failure to make reports or comply with orders respecting unsafe food];

- (j) section 19 [failure to participate in traceability system as required];
 - (k) section 20 (a) [falsely holding oneself out as certified];
 - (l) section 20 (b) [failure to meet prescribed standards];
 - (m) section 35 [failure to comply with order];
 - (n) section 36 [unlawful removal, defacement or alteration of order, notice, mark or tag].
- (2) A person who does either of the following commits an offence:
- (a) knowingly gives false or misleading information to a person exercising powers or duties under this Act, or to a person acting under the order or direction of a person exercising powers or duties under this Act;
 - (b) wilfully interferes with, or obstructs, a person exercising powers or duties under this Act, or a person acting under the order or direction of a person exercising powers or duties under this Act.

Other matters respecting offences

55 (1) A person who commits an offence under this Act may be liable for the offence whether or not an order is made under this Act in respect of the matter that is the subject of the offence.

(2) A proceeding for an offence under this Act may not be commenced in any court more than 2 years after the facts on which the proceeding is based first come to the knowledge of the minister.

(3) A document purporting to have been issued by the minister, certifying the date on which the minister became aware of the facts on which a proceeding is based,

(a) is admissible without proof of the signature or official character of the person appearing to have signed the certificate, and

(b) is proof of the certified facts.

(4) If a person commits an offence under this Act and an order is made by an inspector in respect of the matter that is the subject of the offence, but the offence continues after the date by which the order is to be complied with, the person may be prosecuted both for the original offence and for the additional offence of contravening the order.

(5) Sections 4 and 5 of the Offence Act do not apply in respect of this Act or the regulations made under it.

Offence by corporation or employee

56 (1) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence whether or not the corporation is convicted.

(2) If an employee commits an offence under this Act, an employer who authorized, permitted or acquiesced in the offence commits the offence whether or not the employee is identified or convicted.

Penalties

57 (1) An individual who commits an offence under this Act is liable to the following:

(a) on a first conviction, a fine of not more than \$25 000 for each day or part of a day on which the offence occurs or continues;

(b) on each subsequent conviction, a fine of not more than \$50 000 for each day or part of a day on which the offence occurs or continues;

(c) imprisonment for not more than 6 months;

(d) both the fine referred to in paragraph (a) or (b) and the imprisonment referred to in paragraph (c).

(2) A corporation that commits an offence under this Act is liable to the following:

(a) on a first conviction, a fine of not more than \$100 000 for each day or part of a day on which the offence occurs or continues;

(b) on each subsequent conviction, a fine of not more than \$200 000 for each day or part of a day on which the offence occurs or continues.

Sentencing

58 (1) When sentencing a person convicted of an offence under this Act, the court may order the offender to pay compensation or make restitution to the government or a person for the actual loss or damage caused by or arising out of the commission of the offence, including, without limitation, compensation or restitution for any costs incurred in relation to

(a) any inspection related to an investigation of the offence, and

(b) an investigation of the offence.

- (2) When sentencing a person convicted of an offence under this Act, the court may order that any fish or aquatic plants in relation to which the offence was committed are forfeited, without compensation to any person, to the government and may be disposed of or destroyed as the minister may direct.
- (3) An order for compensation or restitution under subsection (1) or forfeiture under subsection (2) is in addition to and not in place of any other fine or penalty under this Act.
- (4) If an order is made under subsection (1) in favour of the government or a person,
- (a) the government or person may, by filing the order in a registry of the Supreme Court, enter as a judgment the amount ordered to be paid, and
- (b) that judgment is enforceable against the offender in the same manner as if it were a judgment against that offender in civil proceedings in that court.
- (5) Nothing in this section precludes the government or any person from taking any civil action or exercising any right of recovery against a person who commits an offence under this Act.
- Part 7 — Regulation-Making Powers

Regulations respecting application of Act and general prohibitions

59 (1) The Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing species of fish or aquatic plants to which this Act does not apply;
- (b) respecting standards that must be met or measures that must be taken for the purposes of section 3 (2) [duty to ensure food safety];
- (c) exempting classes of persons from a requirement to hold a licence under this Act, including
- (i) exempting persons who, under the Food Safety Act, the Public Health Act or an enactment of Canada, hold or are required to hold a licence or permit, or are registered or are required to be registered, in relation to a class of activities or facilities,
- (ii) making exemptions based on the type of activities being carried out or the circumstances in which the activities are carried out,
- (iii) putting limits or conditions on an exemption, and
- (iv) requiring an exempted person to comply with one or more provisions of Division 2 [Duties of Operators] of Part 3 as if the person were an operator;
- (d) prescribing fish and aquatic plants for the purposes of section 6 [possession or distribution of restricted fish or aquatic plants];
- (e) respecting applications for, renewals of and the issuance of permits for the purposes of section 6 (2) (b), including
- (i) requiring a fee to be paid on application or renewal, and
- (ii) applying or modifying any provision of Part 3 [Licensing and Duties of Operators] or a regulation made under section 60 [regulations respecting operators] as if the permit were a licence and the holder of the permit were an operator.
- (2) The Lieutenant Governor in Council may prescribe, in a regulation made under subsection (1) (d), products or byproducts of fish or aquatic plants that are not themselves prescribed.

Regulations respecting operators

60 (1) The Lieutenant Governor in Council may make regulations respecting the licensing of operators as follows:

- (a) requiring persons to be licensed to do one or more of the activities described in section 2 [activities to which this Act applies];
- (b) respecting applications and renewals;
- (c) requiring certification under section 20 [duties if certification program prescribed] as a condition of licensing;
- (d) prescribing factors that may or must be considered in determining whether to issue a licence;
- (e) respecting terms and conditions that may be attached to a licence;
- (f) prescribing fees for applications, variations, renewals and reviews of licensing decisions, and prescribing different fees based on
- (i) the class of licence,
- (ii) the species of fish or aquatic plants to which the licence will apply, or
- (iii) the class or size of facilities used for the purpose of doing the activity to which the license will apply;

(g) respecting actions operators must take during a suspension or cancellation of a licence, or after a cancellation of a licence, in relation to their facilities or the fish or aquatic plants in their possession or control.

(2) The Lieutenant Governor in Council may make regulations respecting the duties of operators as follows:

(a) prohibiting matters in respect of the activities described in section 2, and regulating, restricting or putting conditions on the performance of those activities;

(b) respecting analyses and monitoring for the purposes of section 15 (2) [duties with respect to food safety], including requiring samples to be submitted for analyses;

(c) without limiting section 59 (1) (b) [regulations respecting application of Act and general prohibitions], respecting standards that must be met or measures that must be taken in relation to the safety and quality of fish and aquatic plants;

(d) respecting information that must be given by an operator to the government or the public about fish or aquatic plants that an operator distributes, has distributed or intends to distribute;

(e) respecting the disposition of unsafe food by an operator, including prohibiting and putting conditions on the disposition;

(f) without limiting section 61 (2) (c) [regulations respecting traceability and certification], respecting training and qualifications for operators and employees, including

(i) requiring ongoing training, and

(ii) setting examinations and charging fees for taking examinations;

(g) respecting the construction, maintenance, management, sanitation and operation of facilities, vehicles and equipment used by operators while the operators do an activity for which the operators are licensed;

(h) respecting the making, keeping and production of records by an operator;

(i) respecting the making of reports by an operator and the actions that the minister may require an operator to take on making a report, including requiring monitoring, making records, conducting analyses or submitting samples for analyses;

(j) respecting royalties payable by an operator who harvests wild aquatic plants.

Regulations respecting traceability and certification

61 (1) The Lieutenant Governor in Council may make regulations for the purposes of section 19 [duty to participate in traceability system] as follows:

(a) prescribing traceability systems and traceability programs in respect of which section 19 applies;

(b) respecting unique identifiers, including respecting fees for the issuance of unique identifiers and their replacement;

(c) respecting the making of reports, including

(i) prescribing persons to whom reports must be made or persons who must receive a copy of a report,

(ii) respecting the form of a report and the manner of making the report,

(iii) respecting information, in addition to anything described in this Act, that must be reported, and

(iv) respecting records or analyses that must accompany a report;

(d) respecting actions that must be taken by a person subject to section 19 (4), including conducting analyses or submitting traceable food or samples for analyses;

(e) prohibiting or putting conditions on the distribution or disposition of traceable food;

(f) respecting audits of traceability systems and traceability programs;

(g) respecting the types of, the linking and disclosure of, and access to information kept in respect of a traceability system or traceability program;

(h) respecting the participation by British Columbia in extrajurisdictional traceability systems or extrajurisdictional traceability programs;

(i) authorizing the collection, use and disclosure of information contained in the assessment roll, as that term is defined in the Assessment Act, for the purpose of a traceability system or traceability program.

(2) The Lieutenant Governor in Council may make regulations respecting certification programs as follows:

(a) prescribing certification programs;

(b) respecting applications and fees for certification;

(c) respecting the training and qualifications an operator must have to be certified, including requiring a licence or certification under another enactment or an enactment of the government of Canada;

(d) respecting standards that a certified operator must meet.

Regulations respecting enforcement

62 (1) The Lieutenant Governor in Council may make regulations respecting inspections as follows:

- (a) authorizing further purposes for which an inspection may be made;
- (b) requiring a person who is subject to an order to pay a fee for each inspection conducted for the purpose of monitoring or confirming compliance with the order;
- (c) prescribing fees for the purposes of paragraph (b).

(2) The Lieutenant Governor in Council may make regulations respecting orders made under this Act as follows:

- (a) respecting measures that an inspector may require to be taken by order for the purposes of section 25 (1) (m) [orders that may be made];
- (b) respecting the contents of an order;
- (c) respecting service of orders, including service by posting or publishing notice of the order or by any other means;
- (d) respecting reassessments under section 31 [variation and reassessment of orders], including limiting the circumstances in which and how often a request may be made;
- (e) prescribing fees for reviews of orders, and prescribing different fees based on
 - (i) the provision of this Act or of a regulation under which the order was made,
 - (ii) the class of licence held by the person who is subject to the order,
 - (iii) the species of fish or aquatic plants to which the order will apply, or
 - (iv) the class or size of facilities to which the order will apply;
- (f) respecting the publication of orders, including the disclosure of information in respect of an order.

(3) The Lieutenant Governor in Council may make regulations respecting enforcement as follows:

- (a) respecting the process for making an application to the court, including
 - (i) authorizing applications to be made electronically or by any other means,
 - (ii) respecting the giving of notice of an application, and
 - (iii) respecting affidavits or other evidence that must accompany an application;
- (b) prescribing the rules that apply to the hearing of an application by the court, including providing that the Supreme Court Civil Rules apply with or without modification;
- (c) prescribing the form of a warrant for the purposes of section 37 [warrants].

Regulations respecting administrative penalties

63 (1) The Lieutenant Governor in Council may make regulations respecting administrative penalties under Division 2 [Administrative Penalties] of Part 6 as follows:

- (a) authorizing the imposition of administrative penalties;
- (b) prescribing provisions of this Act or the regulations made under it in respect of which administrative penalties may be imposed;
- (c) respecting an administrative penalty that may be imposed in respect of any failure to comply with a provision of this Act, including
 - (i) providing for greater penalties for subsequent contraventions,
 - (ii) setting the maximum and minimum penalties that may be imposed,
 - (iii) providing, if the penalty is expressed as a range, factors to be considered in the determination of the appropriate penalty, and
 - (iv) prescribing the grounds on which a penalty may be reduced;
- (d) respecting notices for the purposes of that Division, including the form, content and service of notices;
- (e) prescribing the time in which an administrative penalty must be paid, disputed or made the subject of an agreement, including the time in which the penalty must be paid following a dispute, an agreement or a failure to meet the terms of an agreement;
- (f) providing for payment, by instalments, of an administrative penalty;
- (g) respecting disputes of administrative penalties, including
 - (i) providing for a reconsideration of the penalty, and
 - (ii) authorizing a reconsideration of the penalty to be considered together with a reconsideration of an order made under this Act;
- (h) respecting the form of a certificate under section 53 (3) [recovery of administrative penalties].

(2) A penalty prescribed under subsection (1) (c) must not be greater than \$25 000.

Other regulation-making powers

64 (1) The Lieutenant Governor in Council may make regulations exempting a class of persons, fish, aquatic plants, facilities or things from one or more provisions of the regulations.

(2) The Lieutenant Governor in Council may make regulations respecting service and deemed receipt of a notice that an inspector or the minister must give under this Act.

(3) The Lieutenant Governor in Council may make regulations prescribing fees for the purposes of section 44 (3) [power to retain other persons].

(4) To the extent that regulation-making authority has not already been provided for in this Part, the Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act.

General powers respecting regulations

65 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) A person must not read any section of this Part as limiting the general powers to make regulations described in subsection (1) of this section or as limiting the specific powers to make regulations described in each section of this Part.

(3) A regulation made under this Act may

(a) establish classes of persons, fish, aquatic plants, facilities, things or activities to which this Act applies, and

(b) make regulations that are different for different classes.

(4) A regulation made under this Act may limit the application of the regulation

(a) to one or more geographic areas, and

(b) to one or more classes of persons, fish, aquatic plants, facilities, things or activities to which this Act applies.

(5) A regulation made under this Act may confer a discretion on the minister, a licensing officer, a reviewing officer or an inspector.

(6) A regulation made under this Act may adopt by reference, in whole or in part and with any changes the Lieutenant Governor in Council considers appropriate, a regulation, code, standard or rule

(a) enacted as or under a law of another jurisdiction, including a foreign jurisdiction, or

(b) set by a provincial, national or international body or any other body that may make codes, standards or rules.

(7) If, in a regulation made under this Act, the Lieutenant Governor in Council provides that contravention of the regulation is an offence, the Lieutenant Governor in Council may provide that a person who commits the offence is liable on conviction to a fine not exceeding \$75 000 or to imprisonment for a term not exceeding 6 months, or to both.

Part 8 — Transitional Provision, Repeals and Consequential Amendments

Transitional Provision

Transition

66 (1) If

(a) a person holds a valid and subsisting licence issued under the Fish Inspection Act or the Fisheries Act at the time that Act is repealed by this Act, and

(b) a regulation made under this Act prescribes the activity for which the person is licensed under that Act as an activity that requires a licence under this Act,

the person is deemed to hold a licence for the activity under this Act, subject to any limits and conditions set out in the regulation or attached to the licence.

(2) An order, direction or instruction of an inspector, issued under the Fish Inspection Act or the Fisheries Act, that is in force at the time that Act is repealed by this Act is deemed to be an order issued under this Act.

(3) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the orderly transition to this Act from the Fish Inspection Act or the Fisheries Act.

(4) The authority to make or amend a regulation under subsection (3), but not the authority to repeal a regulation made under that subsection, ends 3 years after the date on which that subsection comes into force.

Repeals

Repeals

67 The following are repealed:

- (a) the Fish Inspection Act, R.S.B.C. 1996, c. 148;
 - (b) the Fisheries Act, R.S.B.C. 1996, c. 149;
 - (c) section 27 of the Food Safety Act, S.B.C. 2002, c. 28;
 - (d) section 26 of the Miscellaneous Statutes Amendment Act (No. 2), 1999, S.B.C. 1999, c. 38;
 - (e) sections 11 and 12 of the Miscellaneous Statutes Amendment Act (No. 2), 2000, S.B.C. 2000, c. 26.
- Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 68 to 74.]

Section(s)	Affected Act
68	Agricultural Produce Grading Act
69	Business Practices and Consumer Protection Act
70-72	Farm Practices Protection (Right to Farm) Act
73	Food Safety Act
74	Local Government Act
Commencement	
75	This Act comes into force by regulation of the Lieutenant Governor in Council.

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