

RSNL1990 CHAPTER A-13

## **AQUACULTURE ACT**

Amended:

1991 c36 s74; 1994 c39; 1997 c13 s2; 1998 c24; 2001 c6; 2004 cL-3.1 s16; 2004 c36 s2; 2005 c23; 2012 c20; 2013 c16 s25

CHAPTER A-13

### **AN ACT RESPECTING THE ENCOURAGEMENT AND REGULATION OF AN AQUACULTURE INDUSTRY IN THE PROVINCE**

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#### Short title

- 1. This Act may be cited as the Aquaculture Act.

1987 c15 s1

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#### Definitions

- 2. In this Act

- (a) "aquaculture" means

- (i) the farming of fish, molluscs, crustaceans, aquatic plants and other aquatic organisms with an intervention in the rearing process to enhance production by activities such as regular stocking, feeding, and protection from predation, and includes fallowing and processes to mitigate environmental degradation and the placement of necessary gear and equipment, and

- (ii) the stocking of fish by private facilities for the purpose of fishing by customers;

- (b) "aquaculture facility" means

- (i) a site where aquaculture is being carried on, or

- (ii) a parcel of land with respect to which an application has been made to carry on aquaculture and includes all structures, machinery, equipment and tools on the site or parcel of land;

- (b.1) "aquaculture gear" means equipment used in the conduct of aquaculture including rope, socking material, collection material, nets, sea pens, tanks, incubation equipment, raceways, transport tanks, containers and buoys;

- (b.2) "aquaculture inspector" means an aquaculture inspector appointed under section 6;

- (c) "aquaculture licence" means a licence granted by the minister under section 4;

- (d) "aquatic plants or animals" means plants or animals, including eggs and gametes, that at all stages of their development or life cycles have water as their natural habitat;

- (e) "department" means the department presided over by the minister;

- (e.1) "egg" means a viable fertilized ovum of an aquatic animal;

- (e.2) "gametes" means the sperm or unfertilized ova of an aquatic animal;

- (f) "land" includes land covered by water, both tidal and non-tidal, and the water column superjacent to it;

- (g) "licensee" means a person to whom an aquaculture licence has been issued;

- (g.1) "low water mark" means the ordinary low water mark of water reached during cyclical tides;

- (h) "minister" means the minister appointed under the Executive Council Act to administer this Act;

(h.1) "mooring system" means the method by which aquaculture gear at an aquaculture facility is attached so that it remains at its intended location and includes those cables, chains, ropes, anchors, weights or other equipment that may be necessary to that attachment;

(h.2) "pathogenic agent" means an organism that causes or contributes to, or has the potential to cause or contribute to, the development of a disease;

(h.3) "peace officer" means

(i) a member of the Royal Newfoundland Constabulary,

(ii) a member of the Royal Canadian Mounted Police stationed in the province, and

(iii) an aquaculture inspector, or a member of a class of aquaculture inspectors, who is designated as a peace officer by the minister under section 6.2;

(h.4) "place" includes land, buildings and enclosures on land, a feed storage facility, a net cleaning facility, a wharf and a vehicle;

(i) "person" includes a partnership, association and a co-operative society registered under the Co-operatives Act ;

(i.1) "shore fastened mooring system" means a mooring system that has mooring lines attached to the shore or anchored to the seabed at a depth of fewer than 2 vertical metres below the low water mark;

(j) [Rep. by 2005 c23 s1]

(k) "site" means a parcel of land on which a person has been authorized by a licence to carry on aquaculture;

(l) "strain" means aquatic plants or animals that have, or have been bred to have, genetic characteristics that distinguish them from other members of the same species;

(l.1) "vehicle" means a motor vehicle, vessel, boat or barge; and

(m) "water" includes fresh, brackish and marine waters, both tidal and non-tidal.

1987 c15 s2; 1994 c39 s1; 2001 c6 s1; 2005 c23 s1; 2012 c20 s1

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#### Purpose of Act

3. The purpose of this Act is to govern the conduct of aquaculture in the province in order to

(a) promote, in consultation with the private sector, the prudent and orderly development of an aquaculture industry;

(b) secure the property rights of those carrying on aquaculture;

(c) minimize conflicts with competing interests and uses; and

(d) help in consultative and co-operative decision making within the province and between the government of the province and the Government of Canada.

1987 c15 s3

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#### Labrador Inuit rights

3.1 (1) This Act and regulations made under this Act shall be read and applied in conjunction with the Labrador Inuit Land Claims Agreement Act and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the Labrador Inuit Land Claims Agreement Act , the provision, term or condition of the Labrador Inuit Land Claims Agreement Act shall have precedence over the provision of this Act or a regulation made under this Act.

(2) Where, under this Act, the minister issues an aquaculture licence he or she may add to that licence terms and conditions that the licensee must comply with in order to ensure compliance with the terms and conditions of the Labrador Inuit Land Claims Agreement Act .

2004 cL-3.1 s16

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#### Aquaculture licence

4. (1) A person shall not carry on aquaculture without an aquaculture licence for each site where aquaculture is carried on.

(2) A person who intends to carry on aquaculture shall apply to the minister, in writing, for an aquaculture licence for each site at which that person proposes to carry on aquaculture.

(3) An application made under subsection (2) shall include the information that the minister may require for each

- (a) site; and
- (b) species intended to be cultivated.

(4) An aquaculture licence shall

- (a) contain a description of the site on which aquaculture may be conducted under the licence;
- (b) specify the species of aquatic plants or animals that may be cultivated;
- (c) include the date on which the aquaculture licence expires;
- (d) specify the fee or rent payable to the Crown in respect of the licence;

(e) contain terms and conditions relating to access to a site, optimal resource utilization, health and safety and the environment;

(f) state that aquaculture shall be conducted under the licence with diligence, in a reasonable manner and in accordance with standards, practices and procedures set by the minister; and

(g) specify those other terms and conditions that the minister may determine are necessary for the conduct of aquaculture by the licensee at the proposed aquaculture site.

(5) Where the land that is described in an aquaculture licence as the site on which aquaculture may be carried on is held by the licensee under a lease or other right of occupancy, the term of that licence shall not extend beyond the term of the lease or other right of occupancy.

(6) The minister may

- (a) incorporate into an aquaculture licence a plan relating to
  - (i) health, safety and environmental matters, and
  - (ii) resource utilization and sustainable development;

(b) impose standards relating to the use, stocking, investment in or production of an aquaculture facility;

(c) make provision for access by contiguous landowners through a site;

(d) require records to be kept and information and documents to be provided that the minister considers advisable;

(e) specify the source and strain, and require approval in advance of the source and strain, of all seed and stock to be cultivated;

(f) impose limits on the intensity with which aquaculture is conducted and organisms are concentrated at a site;

(g) specify measures to be taken to prevent the escape of aquatic animals, to mitigate the development of pathogenic agents and prevent the spread of pathogenic agents, and to minimize the risk of damage to the environment or other aquaculture facilities;

(h) specify measures to be taken to minimize risk to other aquaculture facilities; and

(i) incorporate whatever other terms may be necessary to carry out the purpose of this Act.

(7) The minister shall not grant an aquaculture licence unless

(a) the proposed licensee owns, leases or otherwise has a right to occupy the parcel of land comprising the site at which the proposed licensee intends to carry on aquaculture; and

(b) the proposed licensee has complied with this Act and the regulations and other applicable legislation.

(7.1) Notwithstanding subsection (7), the minister may refuse an application for an aquaculture licence where, in the opinion of the minister, it is in the public interest to do so.

(8) Where an aquaculture site or facility or an activity at that site or facility is

(a) varied or intended to be varied to an extent that is not contemplated by the aquaculture licence issued for that site or facility; or

(b) purchased by a person who is not the licensee for that site or facility, an application for an aquaculture licence for that site or facility shall be made under subsection (2).

(9) Notwithstanding subsection (8), the minister may vary or amend an existing aquaculture licence.

(9.1) A licensee shall comply with aquatic animal health policies set by the minister.

(10) The minister may

(a) suspend an aquaculture licence upon breach of a term, condition or provision of that licence, this Act or the regulations; and

(b) issue directives respecting the maintenance, removal or destruction of aquatic plants or animals at that site, the maintenance of the site, the destruction of feed, or the disinfection of aquaculture gear, vehicles or the aquaculture facility while the licence is suspended.

(11) Where the minister suspends an aquaculture licence under subsection (10), the licensee shall not harvest or remove aquatic plants or animals to or from the aquaculture site for which the aquaculture licence was suspended except in accordance with a directive of the minister.

(12) A licensee who operates an aquaculture facility while the aquaculture licence for that facility is suspended, except to the limited extent as may be required to comply with a directive of the minister, is guilty of an offence.

(13) Notwithstanding subsections (11) and (12), a licensee shall maintain a site and aquatic plants and animals at that site in accordance with standards, practices and procedures set by the minister, unless otherwise directed by the minister.

(14) A suspension of an aquaculture licence under this section continues until the minister is satisfied that the breach causing the suspension is no longer continuing.

(15) The minister may cancel an aquaculture licence where a breach causing a suspension under subsection (10) has not been corrected within a reasonable time, for repeated breaches or if the licensee stops owning or holding a lease or right of occupancy for the site.

(16) An aquaculture licence or a certified copy of that licence shall be presented to an aquaculture inspector upon request or, where this is not possible, a licensee or another person responsible for the aquaculture facility for which the request was made shall present the requested licence or certified copy to the aquaculture inspector not later than 24 hours following the time when the request was made.

(17) [Rep. by 2012 c20 s2]

2005 c23 s2; 2012 c20 s2

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#### Hazardous mooring

4.1 (1) The minister may establish criteria for shore fastened mooring systems at aquaculture facilities and aquaculture sites.

(2) Where, in the opinion of the minister or of an aquaculture inspector, a shore fastened mooring system poses a hazard to

(a) public safety;

(b) persons using an aquaculture site; or

(c) persons travelling upon land, ice, snow or water that is a part of or adjacent to that site, the minister or aquaculture inspector may

(d) release, sever, untie or otherwise remove that shore fastened mooring system; or

(e) direct, in writing, a person to release, sever, untie or otherwise remove that shore fastened mooring system.

2005 c23 s2

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#### Security

4.2 (1) The minister may require financial or other security, which in the opinion of the minister covers the operations of a proposed licensee or a licensee, to the satisfaction of and in an amount and a form required by the minister.

(2) The operations of a proposed licensee or licensee include removal of aquaculture gear and aquatic plants or animals and restoration of a site upon cancellation of an aquaculture licence or where an aquaculture licence is not renewed.

2012 c20 s3

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#### Removal and restoration

4.3 (1) Where a person does not renew an aquaculture licence or where an aquaculture licence is cancelled under this Act, the person who held the last valid aquaculture licence for a site shall, to the satisfaction of the minister, remove from that site aquaculture gear and aquatic plants or animals and restore that site.

(2) The person who held the last valid aquaculture licence for the site shall comply with subsection (1) within a period of time that the minister considers reasonable.

(3) Where the minister believes on reasonable grounds that a person has failed to comply with subsection (1), the minister or an aquaculture inspector may, to the satisfaction of the minister, remove aquaculture gear and aquatic plants or animals from the site.

(4) The minister or the aquaculture inspector shall give reasonable notice of his or her intention to remove aquaculture gear and aquatic plants and animals from the site to

(a) the person who held the last valid aquaculture licence for the site; or

(b) a person who, to the knowledge of the minister or the aquaculture inspector, is a person responsible for the site.

(5) Where the minister or an aquaculture inspector removes aquaculture gear and aquatic plants or animals from a site under subsection (3), the aquaculture gear and aquatic plants or animals removed from the site become the property of the Crown.

(6) Where the minister or an aquaculture inspector removes aquaculture gear and aquatic plants or animals from the site, the cost incurred shall constitute a debt owed to the Crown and may be satisfied by

(a) the drawing on the financial or other security;

(b) the sale of aquatic plants or animals and aquaculture gear by the minister; and

(c) the issuance and filing of a certificate in accordance with section 17.

(7) Aquaculture gear and aquatic plants or animals removed from a site may be disposed of or destroyed by the minister or an aquaculture inspector.

(8) No compensation is payable by the Crown to the person who held the last valid aquaculture licence for a site for aquaculture gear and aquatic plants or animals that become the property of the Crown under subsection (5).

(9) The validity of actions taken under this Act is not affected by the inability of the minister or an aquaculture inspector, after reasonable efforts, to give notice to the person who held the last valid aquaculture licence for the site where

(a) the person who held the last valid aquaculture licence is not known, cannot be located or resides outside of the jurisdiction; and

(b) the person who held the last valid aquaculture licence has no known agent in the province.

2012 c20 s3

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#### Personal property rights

5. (1) All aquatic plants or animals of the species specified in an aquaculture licence are, while contained within the boundaries of the site, the exclusive personal property of, and belong to, the licensee, until sold, traded, transferred or otherwise disposed of by the licensee.

(2) Aquatic animals referred to in subsection (1) that escape shall remain the exclusive personal property of the licensee while within 100 metres of the boundary of the site.

1987 c15 s5

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#### Inspection

6. (1) The minister may designate a person or class of persons to be aquaculture inspectors for the purpose of this Act.

(2) An aquaculture inspector may at reasonable times so long as it is reasonably necessary to determine compliance with this Act or the regulations, or an aquaculture licence or a directive issued under this Act or the regulations,

(a) enter an aquaculture facility, except a dwelling house;

(b) enter a place, except a dwelling house, where the inspector has reason to believe aquaculture is being conducted;

(c) enter a place, except a dwelling house, in or on which the inspector has reason to believe

(i) aquatic plants or animals that are farmed or used in the conduct of aquaculture are contained, transported loaded or unloaded,

(ii) feed that is used in the conduct of aquaculture is contained, transported, loaded or unloaded, or

(iii) aquaculture gear is cleaned, repaired, maintained, contained, transported, loaded or unloaded;

(d) enter a place, except a dwelling house, that the inspector has reason to believe contains records relating to aquaculture, an aquaculture facility, or a vehicle used in the conduct of aquaculture;

(e) enter a vehicle, except a dwelling house, that the inspector has reason to believe is used in the conduct of aquaculture or transports people for the conduct of aquaculture; and

(f) open aquaculture gear.

(3) In carrying out the inspection referred to in subsection (2), the aquaculture inspector may have regard to

(a) the presence of pathogenic agents and the likelihood of pathogenic agents developing;

(b) the adequacy of measures being taken to ensure aquatic plants or animals being cultured do not escape;

(c) whether the activities being carried on are authorized by and are in accordance with an aquaculture licence; and

(d) compliance with the terms, conditions and provisions of the aquaculture licence, this Act and the regulations and, where applicable, a directive issued under this Act or the regulations.

(4) A person responsible for aquaculture gear, an aquaculture facility or other place referred to in subsection (2) shall provide the information, documents and samples and carry out the tests and examinations that an aquaculture inspector may reasonably require.

(5) A peace officer may detain a vehicle for the purpose of the performance of an inspection, the carrying out of tests and examinations, or the obtaining of information, documents and samples referred to in this section.

(6) Where he or she considers it necessary, an aquaculture inspector may direct a licensee or other person responsible for aquaculture gear, an aquaculture facility or other place referred to in subsection (2) to take measures

(a) to prevent the escape of an organism;

(b) to mitigate the development of pathogenic agents or prevent the spread of pathogenic agents, including the isolation, quarantine, detention, treatment, disposal or destruction of aquatic plants or animals, the disposal or destruction of feed, and the disinfection, quarantine, detention or prohibition of movement or transport of gear, facilities and vehicles; and

(c) to ensure that aquaculture is conducted in accordance with the terms, conditions and provisions of a licence, this Act and the regulations and, where applicable, a directive issued under this Act or the regulations.

(7) The minister may

(a) suspend an aquaculture licence where the licensee or other person responsible for the aquaculture gear, aquaculture facility or other place referred to in subsection (2) does not comply with subsection (4) or (6); and

(b) issue directives to the licensee or other person responsible for the aquaculture facility respecting the maintenance, removal or destruction of aquatic plants or animals at that site, the maintenance of the site, the destruction of feed, or the disinfection of aquaculture gear, vehicles, or the aquaculture facility while the licence is suspended.

(8) Where the minister suspends an aquaculture licence under subsection (7), the licensee shall not harvest or remove aquatic plants or animals to or from the aquaculture site for which the aquaculture licence was suspended except in accordance with a directive of the minister.

(9) A licensee who operates an aquaculture facility while the aquaculture licence for that facility is suspended, except to the limited extent as may be required to comply with a directive of the minister, is guilty of an offence.

(10) Notwithstanding subsections (8) and (9), a licensee shall maintain a site and aquatic plants and animals at that site in accordance with standards, practices and procedures set by the minister, unless otherwise directed by the minister.

(11) A suspension under subsection (7) continues until the minister is satisfied that the breach causing the suspension is no longer continuing.

(12) The minister may cancel a licence where a breach causing a suspension under subsection (7) has not been corrected within a reasonable time or for repeated breaches.

(13) Where an aquaculture inspector determines that a person is engaged in aquaculture without having obtained the appropriate licence, he or she may direct a person to take a measure referred to in paragraphs (6)(a) to (c) or to stop activities or to immediately apply for a licence.

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#### Action prohibition

6.1 (1) The minister, an aquaculture inspector or an employee of the department or other person authorized under this Act is not personally liable in an action or a proceeding for or in respect of an act or thing done or omitted by him or her in good faith in the exercise or purported exercise of his or her duties or powers under this Act or for costs in connection with an action or proceeding.

(2) A person is not entitled to compensation from the government of the province for a loss or damages resulting as a consequence of a direction made or action taken under subsection 4.1(2).

2005 c23 s4

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#### Designation as peace officers

6.2 (1) The minister may designate an aquaculture inspector or class of inspectors to be a peace officer.

(2) An aquaculture inspector designated as a peace officer under subsection (1) has the powers of a peace officer to enforce this Act and the regulations and when performing his or her duties is entitled to the protection to which a peace officer is entitled under the Criminal Code .

2012 c20 s5

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#### Report of pathogenic agents

7. (1) For the purpose of this section, an outbreak is defined as one or more individual plants or animals infected by a pathogenic agent, with or without clinical signs, within a group of aquatic plants or animals that share approximately the same risk of exposure to the pathogenic agent.

(2) A licensee shall immediately report to the minister or an aquaculture inspector an outbreak.

(3) A licensee shall take all measures that the minister or an aquaculture inspector may direct to mitigate the development of pathogenic agents and prevent the spread of pathogenic agents, including the isolation, quarantine, detention, treatment, disposal or destruction of aquatic plants or animals, the disposal or destruction of feed, and the disinfection, quarantine, detention or prohibition of movement or transport of gear, facilities and vehicles.

2012 c20 s6

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#### Introduction, transfer and transport

8. (1) A person shall not introduce, transfer or transport live aquatic plants or animals from 1 body of water or aquaculture facility in the province to a 2nd body of water or aquaculture facility in the province, or from outside the province to a body of water or aquaculture facility in the province, without the prior written approval of the minister or a person whom the minister may by order designate.

(2) An approval granted by the minister under subsection (1) may be subject to those terms and conditions, including inspection and supervision, that the minister considers advisable.

(3) The minister shall not approve the introduction into or transfer to a body of water or aquaculture facility in the province of a species or strain of aquatic plants or animals not present in that body of water or that aquaculture facility unless the impact of that introduction or transfer has been assessed in accordance with the Part X of the Environmental Protection Act, whether or not that introduction or transfer is an activity of the type otherwise requiring assessment under that Act.

(4) Nothing in subsection (3) shall be taken to require an assessment where the minister responsible for the Part X of the Environmental Protection Act has determined that no risk is posed to the environment or natural stocks of aquatic plants or animals.

(5) An assessment under subsection (3) or a determination under subsection (4) shall be made on the assumption that the aquatic plants or animals proposed for introduction or transfer will escape into the natural environment.

1987 c15 s8; 1994 c39 s4; 2005 c23 s5

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Registrar

9. (1) The minister may designate a person in the department to be Registrar of Aquaculture.

(2) The registrar shall keep copies and records of aquaculture licences, leases of land granted for aquaculture purposes under the Lands Act, environmental preview reports and environmental impact statements prepared under the Part X of the Environmental Protection Act and other documents that the minister may direct or that may be prescribed.

(3) The records kept by the registrar under subsection (2) shall be open for inspection by members of the public during office hours upon payment of a prescribed fee.

(4) Notwithstanding subsection (3), information prescribed as confidential shall not be available to the public.

(5) The registrar may carry out a function or perform a duty delegated to him or her under an Act or regulation of Canada .

1987 c15 s9; 1991 c36 s74; 2005 c23 s6

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#### Committees

10. The minister may establish committees consisting of officials of the department, the aquaculture industry and others to advise him or her of laws, regulations, policies, programs and activities of government that will help in the development of aquaculture.

1987 c15 s10

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#### Regulations

11. The Lieutenant-Governor in Council may make regulations

(a) determining and prescribing categories of licences, including research, experimental, developmental, temporary, commercial or other types of licences, and the terms and conditions relating to each category of licence;

(b) respecting terms and conditions to which an aquaculture licence may be subject or under which such a licence may be issued;

(c) prescribing limitations and qualifications related to who may receive an aquaculture licence;

(d) prescribing the number of aquaculture licences that may be held by one person;

(e) respecting the duties and powers of aquaculture inspectors and peace officers;

(f) respecting the exemption of persons or classes of persons or types of aquaculture or activities from the application of all or part of this Act or the regulations;

(g) classifying information in the records of the Registrar of Aquaculture as confidential;

(h) respecting the establishment of compensation schemes for the purpose of this Act;

(i) respecting the establishment of insurance schemes for the purpose of this Act;

(j) defining a word or expression used in this Act and not defined in this Act;

(k) respecting the detention, return, sale, disposition and destruction of things seized under a warrant;

(l) respecting the contravention of sections of this Act and regulations for which an administrative penalty may be imposed and the time and manner in which those penalties may be imposed and collected; and

(m) respecting ticketable offences and penalties for those offences.

2012 c20 s7

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#### Fees and forms

11.1 The minister may set fees and prescribe forms for the purpose and administration of this Act.

1997 c13 s2

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#### Regulations

11.2 The minister may make regulations

(a) respecting optimal resource utilization and sustainable development, and related prohibitions;

(b) respecting matters related to health, including the health of aquatic plants or animals, safety and the protection of the environment, and related prohibitions;

- (c) respecting terms and conditions to which an approval to introduce, transfer or transport aquatic plants or animals may be subject or under which such approval may be issued;
- (d) respecting, subject to the Plant Protection Act , the introduction into and the transfer and transport of aquatic plants in the province and from place to place within the province, including the conducting of assessments in relation to that introduction, transfer or transport;
- (e) respecting, subject to the Plant Protection Act , the isolation, quarantine, detention, treatment, disposal or destruction of aquatic plants, the disposal or destruction of feed, the disinfection, quarantine, detention or prohibition of movement or transport of related gear, equipment, tanks, ponds and other facilities and vehicles, and other measures to mitigate the development of pathogenic agents or prevent the spread of pathogenic agents;
- (f) respecting the introduction into and the transfer and transport of aquatic animals in the province and from place to place within the province, including the conducting of assessments in relation to that introduction, transfer or transport;
- (g) respecting the isolation, quarantine, detention, treatment, disposal or destruction of aquatic animals, the disposal or destruction of feed, the disinfection, quarantine, detention or prohibition of movement or transport of related gear, equipment, tanks, ponds and other facilities and vehicles, and other measures to mitigate the development of pathogenic agents or prevent the spread of pathogenic agents;
- (h) respecting the use, or prohibiting the use, of chemicals, fertilizers, vaccines, drugs, feed, and other substances in the conduct of aquaculture;
- (i) respecting the isolation, quarantine, detention, treatment, disposal or destruction of aquatic plants or animals, the disposal or destruction of feed, the quarantine, disinfection, detention or prohibition of movement or transport of aquaculture gear, vehicles, tanks, ponds and other facilities, and other measures related to the use of chemicals, fertilizers, vaccines, drugs, feed and other substances in the conduct of aquaculture;
- (j) prescribing the marking of aquaculture gear, of the boundaries of a site and any other markings or identification;
- (k) prescribing the information to be provided and the procedures to be followed in applying for
  - (i) an aquaculture licence,
  - (ii) an approval to introduce, transfer or transport aquatic plants or animals, and
  - (iii) another licence, permission or approval required by this Act or the regulations;
- (l) prescribing the use, content and enforcement of development plans for sites;
- (m) prescribing performance standards for aquaculture facilities;
- (n) prescribing maximum sizes for aquaculture facilities;
- (o) respecting the rent payable for an aquaculture licence;
- (p) prescribing standards relating to the construction, layout, equipping and operation of an aquaculture facility;
- (q) respecting methods of handling, buying, selling, holding in possession, offering or advertising for sale, processing and maintaining the quality of aquatic plants or animals;
- (r) respecting information and documents to be provided to the minister by a licensee concerning the use, productivity, investment and obligations of the licensee in respect of an aquaculture facility and other matters pertinent to the conduct of aquaculture and the marketing and sale of aquaculture produce by the licensee;
- (s) respecting the provision of financial or other security for the purpose of this Act;
- (t) prescribing procedures by which the neighbouring land owners, municipalities, other affected or interested persons and the general public may participate in helping the minister in his or her decision whether to grant an aquaculture licence, and if so on what terms or conditions, including the manner in which the applicant, the minister or a designate or others are to meet with, provide information to and record the opinions, concerns and questions of those participating;
- (u) respecting the duties of, and the records and documents to be kept by the Registrar of Aquaculture and other matters pertaining to the proper conduct and operation of a registry of aquaculture records; and
- (v) prescribing rules, procedures, composition, functions and powers of committees created under this Act.

## Regulations

11.3 (1) The Lieutenant-Governor in Council and the minister may in addition to or instead of regulations made under sections 11 and 11.2 adopt by reference and constitute as regulations the whole or part or provisions of a code adopted or standards fixed, with or without modification, and including amendments to the code or standard of an organization acceptable to the Lieutenant-Governor in Council or the minister.

(2) A certificate of the minister that a document is a copy of a code or standard referred to in subsection (1) or an extract from, a modification of, or an amendment to, a code or standard is without further proof presumptive evidence of the content of that code, standard, extract or amendment.

2012 c20 s9

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## Prohibition

12. A person shall not harvest aquatic plants or animals in an aquaculture facility without the consent of the licensee.

1987 c15 s12

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Rep. by 2005 c23 s7

13. [Rep. by 2005 c23 s7]

2005 c23 s7

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## Seizure

13.1 (1) Where a peace officer believes on reasonable grounds that a person has committed an offence under this Act or the regulations, the peace officer may, with a warrant issued under subsection (2), seize anything that will give evidence with respect to the offence.

(2) A Provincial Court judge who is satisfied by an information upon oath or affirmation that there are reasonable grounds for believing that there is at a place anything that there are reasonable grounds to believe will give evidence with respect to an offence under this Act or the regulations may issue a warrant authorizing a peace officer named in the warrant to seize anything that will give evidence with respect to the offence, subject to the conditions that may be specified in the warrant.

(3) A peace officer acting under a warrant issued under subsection (2) may carry out one or more of the following actions, provided that the Provincial Court judge who issued the warrant under subsection (2) has ordered those actions as conditions of that warrant:

(a) take into custody or release from seized aquaculture gear live aquatic plants or animals;

(b) order a person whom he or she reasonably believes to have committed the offence, to remove and relinquish to the custody of the peace officer the aquaculture gear or other thing and where applicable, aquatic plants or animals; and

(c) order a person having the custody of aquatic plants or animals, aquaculture gear or other thing that will give evidence with respect to the offence, to detain the aquatic plants or animals, aquaculture gear or other thing in the place where they are seized and, in the case of aquatic plants or animals, that person may deal subsequently with aquatic plants or animals in accordance with directives that may be issued by the minister.

(4) Where a document or data is seized under subsection (1) or (3), a copy of that document or data, on proof by affidavit that it is a true copy, is admissible in evidence in proceedings under this Act and has the same probative force as the original

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## Detention and disposition of things seized

13.2 (1) Aquaculture gear seized or removed under subsection 13.1(1) or (3) may be detained for a period not greater than 180 days following the day of seizure or removal, unless during that period, proceedings under this Act in respect of that aquaculture gear are undertaken, in which case the aquaculture gear may be further detained until the proceedings are finally concluded.

(2) Where aquatic plants or animals are seized or removed under subsection 13.1(1) or (3), the peace officer or other person having custody of the aquatic plants or animals may, in accordance with a directive of the minister,

(a) detain, maintain and quarantine, as directed, aquatic plants or animals for a period not greater than 180 days following the day of seizure or removal, unless during that period, proceedings under this Act in respect of those aquatic plants or animals are undertaken, in which case the aquatic plants or animals may be further detained until the proceedings are finally concluded; or

(b) sell, dispose, remove or destroy aquatic plants or animals where the aquatic plants or animals will rot, spoil or otherwise perish or it is necessary to prevent the spread of pathogenic agents.

(3) A thing, other than aquaculture gear or aquatic plants or animals, that is seized or removed under subsection 13.1(1) or (3) may be

(a) detained for a period not greater than 180 days following the day of seizure or removal, unless during that period, proceedings under this Act in respect of that thing are undertaken, in which case the thing may be further detained until the proceedings are finally concluded; or

(b) sold, disposed of, removed or destroyed where the thing will rot, spoil or otherwise perish.

(4) The minister may issue directives respecting the detention, quarantine, maintenance, removal, sale, disposal or destruction of aquatic plants or animals that have been seized or removed under section 13.1.

(5) Where aquatic plants or animals, aquaculture gear or other things are seized or removed under section 13.1, a person having an interest in them may apply to a judge of the Trial Division for their return or for an amendment or cancellation of an order made under paragraph 13.1(3)(c).

(6) A judge may order the return of the aquatic plants or animals, aquaculture gear or other thing or an amendment or cancellation of an order made under paragraph 13.1(3)(c) where

(a) he or she is satisfied that the seized or removed aquaculture gear is licensed or was located at a licensed site;

(b) he or she is satisfied that the retention or detention of the aquatic plants or animals, aquaculture gear or other thing is not necessary as evidence of the commission of an offence;

(c) he or she is satisfied as to the value of the aquatic plants or animals, aquaculture gear or other thing; and

(d) the applicant posts a bond or other form of security in an amount satisfactory to the judge.

(7) Where the ownership of aquaculture gear or other thing that is not perishable seized under subsection 13.1(1) cannot, at the time of and within 180 days of seizure, be ascertained by the peace officer who has made that seizure, that aquaculture gear or other thing is forfeited to the Crown and may be disposed of as directed by the minister.

(8) For the purpose of preserving the identity of aquatic plants or animals, aquaculture gear or other thing seized or removed under section 13.1, a peace officer may attach to the aquatic plants or animals, aquaculture gear or other thing or an aquaculture facility a numbered tag or other form of identification in the form prescribed by the minister.

(9) A person shall not

(a) remove or alter a tag or other form of identification attached to an aquatic plant or animal, aquaculture gear or other thing or an aquaculture facility under subsection (8);

(b) remove aquatic plants or animals detained under this section unless directed by the minister; and

(c) remove aquaculture gear or other things detained under this section.

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#### Special purpose account

13.3 (1) The proceeds of a sale referred to in section 13.2 shall be paid into a non-interest bearing special purpose account

(a) established in the Consolidated Revenue Fund by the Comptroller General of Finance; and

(b) administered by the deputy minister of the department or his or her delegate.

(2) The deputy minister of the department or his or her delegate shall keep and maintain records of sales and proceeds paid into and out of a special purpose account under this Act.

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#### Disposition upon conclusion of proceedings

13.4 (1) Where proceedings are not taken following a seizure or removal under section 13.1 or where they are taken and the person charged is acquitted of the charge made against him or her or the charge is dismissed or withdrawn,

(a) the peace officer or other person having the custody of the aquatic plants or animals, aquaculture gear or other thing seized or removed shall return them to the person from whom he or she seized or received them;

(b) where the aquatic plants or animals or thing is sold under section 13.2, the minister shall pay the proceeds of the sale to the person from whom the aquatic plants or animals or thing were seized or received; and

(c) a detention order under paragraph 13.1(3)(c) shall be revoked.

(2) Where a person is convicted of an offence under this Act or the regulations, the judge before whom he or she is convicted may, in addition to another penalty imposed under this Act,

(a) order that the aquatic plants or animals, aquaculture gear or other thing in relation to which the offence was committed

(i) be seized or removed,

(ii) be destroyed,

(iii) be harvested and sold and the proceeds of the sale forfeited to the Crown,

(iv) be forfeited to the Crown, or

(v) be disposed of as the minister directs;

(b) order that proceeds in a special purpose account following a sale under section 13.2 be forfeited to the Crown and paid immediately into the Consolidated Revenue Fund; and

(c) where a bond or other security has been posted under paragraph 13.2(6)(d), call upon the bond or other security and order the person posting it to pay immediately the amount of the bond or other security into the Consolidated Revenue Fund.

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#### Offence

14. A person who

(a) contravenes a provision of this Act or regulations made under this Act;

(b) contravenes a term or condition attached to an aquaculture licence issued under this Act or regulations made under this Act;

(c) contravenes an approval of the minister under section 8;

(d) fails to comply with a directive issued under this Act or regulations made under this Act; and

(e) knowingly provides false or misleading information under a requirement under this Act or the regulations to provide information or knowingly does not provide information as required under this Act or the regulations,

is guilty of an offence.

2005 c23 s8

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#### Penalty

15. (1) A person found guilty of an offence under this Act or the regulations is liable on summary conviction

(a) for a first offence, to a fine not exceeding \$5,000 or, in default of payment, to imprisonment for a term of not more than 6 months or to both the fine and imprisonment; and

(b) for a subsequent offence, to a fine of not less than \$5,000 and not more than \$10,000 or, in default of payment, to imprisonment for a term of not more than 12 months or to both the fine and imprisonment.

(2) A continuance for a day or a part of a day of an offence under this Act or the regulations constitutes a separate offence.

(3) For the purpose of paragraph (1)(b), a person shall be considered to have committed a subsequent offence where that person is convicted of an offence under this Act or the regulations within 2 years of being convicted of a first offence under this Act or the regulations.

(4) Notwithstanding subsection (1), where, with respect to an offence under this Act or the regulations, a complaint is laid and a summons issued by means of a ticket in accordance with the Provincial Offences Act, a person found guilty of that offence is liable on summary conviction to a fine that may be established by regulation.

2012 c20 s12

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#### Administrative penalty

16. (1) Where the minister is of the opinion that a person has committed, as specified by regulation, a contravention of this Act or the regulations for which an administrative penalty applies, the minister or a person authorized by the minister may, in writing, notify that person that he or she is to pay to the government of the province an administrative penalty in the amount set out in the notice for each contravention.

(2) A person who pays an administrative penalty with respect to a contravention may not be ticketed under the Provincial Offences Act and regulations or charged with an offence under this Act with respect to that contravention.

(3) Where a person fails to pay an administrative penalty in accordance with a notification under subsection (1), the government of the province may recover the amount owing in respect of the penalty as a debt owed to the Crown.

(4) For the purpose of this section, an administrative penalty is a monetary penalty imposed in accordance with the regulations for a contravention of this Act or the regulations.

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#### Collection of debt

17. (1) Where there is a debt owed to the Crown under this Act, the minister may issue a certificate stating the amount due and remaining unpaid to the Crown and the name of the person by whom it is payable, and file the certificate with the Trial Division.

(2) When a certificate is filed with the Trial Division under subsection (1) it is of the same effect and all proceedings may be taken on the certificate as if it were a judgment of the Trial Division for the recovery of the amount stated in the certificate against the person named in the certificate.

(3) A person named in the certificate filed under this section may, within 30 days after the certificate is filed, apply to a judge of the Trial Division for a review, on a question of law or jurisdiction, of the certificate.

(4) On application under subsection (3), the judge may make an amendment to the certificate that is necessary to make the certificate accord with the judge's decision.

(5) There is no appeal from a decision of a judge made under this section.

(6) A certificate filed under this section may also be filed in the judgement enforcement registry on the expiration of the 30 day period referred to in subsection (3) in accordance with Part III of the Judgment Enforcement Act and be enforced in accordance with that Act.

2012 c20 s13; 2013 c16 s25

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#### Limitation period

18. A prosecution under this Act or the regulations shall be commenced within 3 years of the date upon which the deputy minister of the department becomes aware of the alleged offence.

2012 c20 s13

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