

NEWFOUNDLAND AND LABRADOR
REGULATION 74/07
Fish Inspection Administrative Regulations
under the
Fish Inspection Act
(O.C. 2007-293)

Amended by:
49/08
75/15
93/15

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Fish Inspection Administrative Regulations
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Fish Inspection Act
(O.C. 2007-293)
(Filed July 10, 2007)

Under the authority of subsection 4(1) of the Fish Inspection Act , the Lieutenant-Governor in Council makes the following regulations.
Dated at St. John's , July 3, 2007 .

Gary Norris
Clerk of the Executive Council
REGULATIONS

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Schedule

Short title

1. These regulations may be cited as the Fish Inspection Administrative Regulations.

74/07 s1

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Interpretation

2. (1) In these regulations

- (a) "Act" means the Fish Inspection Act ; and

- (b) "fish harvester" means a person licensed under the Fisheries Act (Canada) or regulations under the Fisheries Act (Canada) to fish for commercial purposes.

- (2) A provision of these regulations that authorizes or prescribes the use of a form shall be considered to include the authority to prescribe an electronic form and a provision of these regulations that authorizes or prescribes the manner of filing, sending or delivering a form shall be considered to include the authority to prescribe filing, mailing or delivering by means of facsimile telecommunication or other electronic means.

- (3) A requirement under these regulations that an action be carried out or information be provided in writing includes a form of telecommunication that produces a writing and is satisfied by the provision of electronic information where the electronic information that is provided is accessible by the recipient, and capable of being retained in its original form by the recipient for subsequent reference.

- (4) A reference in these regulations to "approved form" means a form approved by the minister.

74/07 s2

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Licence required

3. (1) Except as otherwise provided in section 4, a person shall not engage in, or engage in a specific aspect of, handling, storing, grading, marketing, transporting or operating a vehicle for transporting fish except under the authorization of a fish buyer's licence or a fish processing licence issued by the minister.

- (2) Except as otherwise provided in section 4, a person shall not buy or attempt to buy fish for processing or marketing from a fish harvester or a person licensed under the Aquaculture Act except under the authorization of a fish buyer's licence or a fish processing licence issued by the minister.

- (3) Except as otherwise provided in section 4 a person shall not engage in, or engage in a specific aspect of, processing except under authorization of a fish processing licence issued by the minister.

74/07 s3; 49/08 s1

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Licence not required

4. A fish buyer's licence or a fish processing licence issued by the minister is not required by

(a) a fish harvester or a person licensed under the Aquaculture Act selling fish directly to a fish buyer or fish processor within the province who is licensed under the Act and the regulations;

(a.1) a fish harvester selling the following fish, which shall be from his or her catch and caught in accordance with his or her commercial fishing licence issued under the Fisheries Act (Canada) and regulations under that Act, directly to an individual at an establishment:

- (i) fresh finfish,
- (ii) live crustaceans,
- (iii) seal meat,
- (iv) shucked scallops, or
- (v) squid;

(a.2) a fish harvester filleting finfish for the purpose of selling it or offering to sell it in accordance with paragraph (a.1);

(b) a person marketing fish for a purpose other than human consumption;

(c) an individual purchasing fish for personal consumption and not for resale directly from

- (i) a fish processor who is licensed under the Act and the regulations,
- (ii) a person licensed under section 5 of the Food Premises Regulations , or
- (iii) a person referred to in paragraph (d);

(c.1) an individual purchasing the following fish for personal consumption and not for resale directly from a fish harvester:

- (i) fresh finfish,
- (ii) live crustaceans,
- (iii) seal meat,
- (iv) shucked scallops, or
- (v) squid;

(d) a person purchasing fish for resale without further processing from a fish processor who is licensed under the Act and the regulations; or

(e) a person licensed under section 5 of the Food Premises Regulations

(i) purchasing fish for resale from a fish processor who is licensed under the Act and the regulations, or

(ii) purchasing live lobsters directly from a fish buyer licensed under the Act and the regulations.

74/07 s4; 49/08 s2; 75/15 s1

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Restriction on direct sales

4.1 A direct sale between a fish harvester and either a person who holds both a fish buyer's licence and a licence under section 5 of the Food Premises Regulations or an individual shall take place at an establishment and shall not take place from a vehicle or by means of door-to-door sales.

75/15 s2

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Licences generally

5. (1) An application for a fish buyer's licence or a fish processing licence shall be made to the minister in the approved form and containing the information that the minister shall require.

(2) A fish buyer's licence or a fish processing licence may be issued by the minister upon the terms and conditions that the minister considers necessary and advisable, including terms and conditions not related to quality, and the minister may prescribe and attach different conditions to fish buyer's licences or fish processing licences in respect of different areas of the province.

(3) The minister may attach supplemental conditions to, or vary or amend, the terms and conditions of a fish buyer's licence or a fish processing licence issued under subsection (2) as the minister sees fit while the fish buyer's licence or fish processing licence is in effect.

(4) A fish buyer's licence shall be issued only to a specific person and may contain authorizations with respect to one or more species of fish.

(5) A fish processing licence shall be issued only to a specific person and may contain authorizations with respect to one or more specified establishments or to one or more species of fish.

(6) A fish buyer's licence or a fish processing licence issued by the minister shall, unless cancelled by the minister under section 12 or 14, expire on March 31 of the calendar year immediately following the calendar year in which the licence was issued or such other period as the minister may stipulate.

(7) A fish processing licence may not be transferred or assigned without the approval of the minister.

(8) A fish buyer's licence may not be assigned without the approval of the minister.

74/07 s5

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Licence renewal

6. (1) A fish buyer's licence or a fish processing licence which has expired under subsection 5(6) may be renewed by the minister.

(2) An application for renewal of a fish buyer's licence or a fish processing licence shall be made to the minister in the form and containing the information that the minister may require.

(3) Subsections 5(2), (3), (4), (5), (6), (7) and (8) shall apply, with the necessary changes, in relation to the issuance of a renewed licence as if it were a licence issued under section 5.

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Classes of fish processing licences

7. (1) A fish processing licence issued by the minister may be of one of the following classes:

(a) a primary processing licence under which the holder of the licence shall comply with the minimum processing requirements set out in the Schedule to the Fish Inspection Operations Regulations or such other minimum processing requirements as are approved in advance in writing by the minister;

(b) a secondary processing licence under which the holder of the licence shall process fish as part of its preparation for market beyond the primary processing stage by

(i) adding one or more ingredients, other than water or salt, resulting in a substantive increase in the bulk of the fish or a substantive transformation of the taste and texture of the fish as a food product, or

(ii) applying a treatment or process to the fish, other than salting, curing or drying, that results in a significant taste, flavour or texture enhancement of the fish as a food product;

(c) an in-province retail fish establishment processing licence under which the holder of the licence is authorized to market the fish that it processes only for in-province trade;

(d) a handling and grading licence; and

(e) a research and development licence.

(2) The minister may prescribe new classes of fish processing licences from time to time.

74/07 s7; 49/08 s3

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Licence suspension

8. (1) The minister may suspend, for a definite or indefinite period, the licence or licences of a fish buyer or fish processor or any one or more of them where the holder of the licence has committed a breach of the Act, the regulations under the Act or a condition of his or her licence, or where the minister has reasonable grounds to believe that such a breach has been committed.

(2) Where a fish buyer's licence or a fish processing licence is suspended under subsection (1), the suspension may apply to the licence in its entirety or to one or more of the authorizations contained in the licence.

(3) The minister may prescribe terms and conditions respecting the licence suspension, including terms and conditions relating to the duration of the suspension and reinstatement of a suspended licence as the minister considers necessary and advisable.

(4) Where a fish buyer's licence or a fish processing licence is suspended under subsection (1), the rights and privileges of the licence holder cease while the suspension is in effect.

74/07 s8

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Notice of suspension

9. (1) Immediately after suspending a fish buyer's licence or a fish processing licence under subsection 8(1), the minister shall send a notice of suspension in writing in the approved form to the licence holder, setting out

- (a) the date on which the suspension takes effect;
- (b) the duration of the suspension;
- (c) the reasons for the suspension; and
- (d) the terms and conditions, if any, with which the licence holder shall comply in order to have the suspension revoked and the manner and form of compliance.

(2) The notice of suspension shall also advise the person whose licence has been suspended of his or her right to make representations to the minister with respect to either or both of the matters referred to in paragraphs (1)(a) and (b).

(3) The representations referred to in subsection (2) shall be submitted in writing to the minister within 5 days of the date of the notice of suspension.

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Period of suspension

10. A licence suspension shall remain in effect until the minister is satisfied that

- (a) the person whose licence has been suspended

(i) has complied with the terms and conditions of reinstatement referred to in paragraph 9(1)(d) within the time stipulated for compliance and has provided proof of compliance in the manner and form that the minister may require,

(ii) has not, while the licence is suspended, committed an act which would be grounds for suspension if committed while the licence was in good standing, and

(iii) would not, for any other reason, be disqualified from obtaining a licence under section 5 or a renewed licence under section 6;

(b) as a result of representations which have been made under subsection 9(2), the suspension should be revoked or the terms and conditions of compliance varied; or

- (c) as a result of a material change in circumstances,

(i) the suspension is no longer required to prevent the commission, repetition or continuation of, a breach of the Act, the regulations or a condition of licence, or

(ii) it would not be practicable to require the person whose licence has been suspended to comply with the terms and conditions of reinstatement referred to in paragraph 9(1)(d).

74/07 s10

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Reinstatement of suspended licence

11. (1) The minister may reinstate a licence which has been suspended on such terms and conditions as the minister considers necessary and advisable, including terms and conditions additional to or different from the terms and conditions of the licence which was suspended.

(2) A licence that has expired while under suspension may not be reinstated by the minister and the holder of that licence shall apply under subsection 5(1) or 6(2), as the case may be, for a fish buyer's licence or a fish processing licence.

- (3) Nothing in this section affects the ability of a minister to cancel a licence under section 12 or 14.

74/07 s11

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Licence cancellation

12. (1) The minister may cancel the licence or licences of a fish buyer or a fish processor or any one or more of them where

(a) the minister is satisfied that the holder of the licence has committed a breach of the Act or the regulations or a condition of his or her licence; or

(b) the holder of a licence that has been suspended under section 8 has failed to comply with the terms and conditions of reinstatement prescribed by the minister.

(2) Where a fish buyer's licence or a fish processing licence is cancelled under subsection (1), the cancellation may apply to the licence in its entirety or to one or more of the authorizations contained in the licence.

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Notice of cancellation

13. (1) The minister shall not cancel a licence under subsection 12(1) without first sending a notice of intent in writing in the approved form to the holder of the licence stating

(a) the intention to cancel the licence, together with reasons for the cancellation; and

(b) that if the holder of the licence objects to the proposed cancellation, he or she shall, within 10 days of the date of the notice of intent, deliver to the minister a notice of objection in writing setting out the reasons for the objection and a summary of facts relating to the objection.

(2) Where a notice of objection under paragraph (1)(b) is received by the minister within the period referred to in paragraph (1)(b), the minister shall review the matter, taking into account the reasons for the objection and any other circumstances respecting the proposed cancellation.

(3) Where

(a) the minister does not receive a notice of objection under paragraph (1)(b) within the period referred to in paragraph (1)(b); or

(b) the minister is satisfied after the review referred to in subsection (2) that a sufficient basis exists for cancellation

the cancellation shall take effect and the holder of the licence shall be so advised.

(4) A fish buyer's licence or a fish processing licence that has been cancelled may not be reinstated or renewed by the minister and the holder of a fish buyer's licence or a fish processing licence that has been cancelled shall make application under subsection 5(1) for a new licence and the minister may issue a new licence to that person on such terms and conditions as the minister sees fit.

(5) Where a fish buyer's licence or fish processing licence is cancelled in whole or in part under this section, all rights granted under the licence or the authorization, as the case may be, cease and the minister may issue a licence or other authorization for those rights to another person.

74/07 s13

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Change in de facto control

14. (1) Where the directors of a company or a corporation that is the holder of a fish buyer's licence or a fish processing licence propose to issue or transfer shares of its capital stock, the directors shall submit a notice of intent in writing to the minister at least 30 days prior to the issue or transfer.

(2) Where the minister is satisfied that the number of shares proposed to be issued or transferred will affect the de facto control of the operations of the company or corporation, the fish buyer's licence or the fish processing licence shall be cancelled upon the issue or transfer of capital stock unless that issue or transfer is approved by the minister.

74/07 s14

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Other powers not affected

15. The power of the minister to suspend a licence under section 8 or to cancel a licence under section 12 or 14 is in addition to any other action that may be taken by the minister or other penalty that may be imposed under the Act or the regulations.

74/07 s15

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Appeal to the minister

16. (1) Where a person is aggrieved by a decision of an inspector in respect of an inspection, grading, labelling or other matter under the Act or the regulations, that person may appeal the decision to the minister in accordance with this section.

(2) An appeal shall be made by submitting a notice in writing to the minister within 30 days of the disputed inspection or, where the inspector has ordered the fish to be disposed of under section 11 of the Fish Inspection Operations Regulations , within the time period specified for disposal.

(3) Except as otherwise provided under subsection (4), after consideration of the notice of appeal, the minister may order a reinspection to be conducted in the manner and on such terms and conditions as the minister considers appropriate.

(4) A reinspection shall not be ordered under subsection (3) where

(a) the identity of the fish or container of fish in dispute has not been preserved;

(b) the notice of appeal was not submitted to the minister within the time prescribed in subsection

(2); or

(c) the fish or container of fish has been previously reinspected.

(5) The decision of the inspector following the reinspection shall be final.

74/07 s16

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Administrative penalty

17. (1) Where the directors of a company or corporation fail to submit a notice of intent as required by section 14, the minister may order that the company or corporation pay to the government of the province a penalty of \$100 per day for each day or part thereof that the notice of intent is not submitted to a maximum of \$20,000.

(2) Where the holder of a fish processing licence fails to file a report as required by section 15 of the Fish Inspection Operations Regulations or the holder of a fish buyer's licence fails to file a report as required by section 15.01 of the Fish Inspection Operations Regulations , the minister may order that person to pay to the government of the province a penalty of \$100 per day for each day or part thereof that the report is not filed to a maximum of \$20,000.

(3) Where the holder of a fish processing licence that contains an authorization in respect of snow crab fails to comply with the minimum processing requirements respecting snow crab set out in the Schedule to the Fish Inspection Operations Regulations , the minister may order that person to pay to the government of the province a penalty in accordance with the Schedule to these regulations.

(3.1) Where the holder of a fish processing licence that contains an authorization in respect of sea urchin fails to comply with the minimum processing requirements respecting sea urchin set out in the Schedule to the Fish Inspection Operations Regulations , the minister may order that person to pay to the government of the province a penalty in accordance with the Schedule to these regulations.

(4) For the purpose of calculating a penalty under subsection (3), the percentage of value added production shall be determined by the Department of Fisheries and Aquaculture on the basis of the records of production submitted by a processor to that department under the requirements of section 15 of the Fish Inspection Operations Regulations converted to round weight equivalents using yield factors which the minister may determine.

(5) For the purpose of calculating a penalty under subsection (3.1), the percentage under minimum processing requirements shall be determined by the Department of Fisheries and Aquaculture on the basis of audited records of that department or the records of production submitted by a processor to that department under the requirements of section 15 of the Fish Inspection Operations Regulations converted to round weight equivalents using yield factors which the minister may determine.

74/07 s17; 75/15 s3; 93/15 s1

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Notice of administrative penalty

18. (1) Where the minister orders a person to pay a penalty under subsections 17(1), (2), (3) or (3.1), he or she shall give notice to the person in accordance with this section and the penalty shall be payable within 60 days from the date of the service of the notice.

(2) The notice required to be given under subsection (1) shall be in writing in the approved form and shall state the amount of the penalty and the basis on which the penalty is ordered.

(3) Notice under subsection (1) shall be given

(a) to a person other than a corporation, by

(i) personal delivery,

- (ii) registered mail or other mail delivery which produces a receipt or other proof of delivery, to the address given to the minister by the person for that purpose, or
 - (iii) facsimile telecommunication or other electronic communication; and
- (b) to a corporation, by
- (i) personal delivery to a director or chief executive officer of that corporate body at the address provided to the minister for that purpose,
 - (ii) registered mail or other mail delivery which produces a receipt or other proof of delivery, to the registered office of that corporate body in the province, or
 - (iii) personal delivery to the corporation's counsel, provided that counsel may accept service of that notice in the province.

74/07 s18; 49/08 s4; 93/15 s2

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Licence may not be issued

19. The minister may refuse to renew a fish buyer's or fish processing licence until a penalty ordered under section 17 is paid in full.

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No liability

20. (1) The minister, a person acting under the authority of the minister or another person authorized under this Act shall not be liable in any action or proceeding for or in respect of an act or thing done or omitted to be done by him or her in good faith in the exercise or purported exercise of his or her duties or powers under the regulations.

(2) A person is not entitled to compensation from the government of the province for any loss, cost, injury or damage resulting from a decision by the minister, made in accordance with the regulations, to

- (a) refuse to issue or renew or reinstate a fish buyer's licence or fish processing licence;
- (b) amend or vary the terms and conditions of a fish buyer's licence or fish processing licence or add supplemental terms to a fish buyer's licence or fish processing licence; or
- (c) suspend or cancel a fish buyer's licence or fish processing licence.

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Repeal

21. The Fish Inspection Regulations , Consolidated Newfoundland and Labrador Regulation 1141/96, are repealed .

74/07 s21

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Schedule

Penalties

Sea Urchin

Percentage under minimum processing requirements (UMPR)

Surcharge per pound

0.1 - 5.0

UMPR x \$0.02

5.1 - 10.0

\$0.15 + [(UMPR - 6) x \$0.05]

10.1 - 15.0

\$0.50 + [(UMPR - 11) x \$0.15]

15.1 or greater

\$1.25

Snow Crab

Percentage of value added production (VAP)

Surcharge per tonne

0

\$110

0.1 - 9.9

$\$100 - [(VAP / 0.10) \times \$100]$

93/15 s3

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