

Fisheries and Aquaculture Loan Board Regulations
made under Section 42 of the
Fisheries and Coastal Resources Act
S.N.S. 1996, c. 25

O.I.C. 2018-308 (effective December 11, 2018), N.S. Reg. 207/2018
as amended to O.I.C. 2020-055 (effective February 20, 2020), N.S. Reg. 29/2020

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Citation

- 1** These regulations may be cited as the *Fisheries and Aquaculture Loan Board Regulations*.

Definitions

- 2** In these regulations,

“Act” means the *Fisheries and Coastal Resources Act*;

“applicant” means an applicant for a loan;

“boat” means a watercraft, of any type, that is fully equipped and ready to be used in the fishing industry;

“borrower” means an individual, partnership or body corporate that has been granted a loan;

“engine” means an engine used to propel or provide auxiliary power to a boat, and includes

- (i) an inboard engine, a clutch, reduction gears, a shaft, a propeller, controls and any other accessory that properly forms part of the mechanism for propelling the boat, and
- (ii) an outboard engine;

“equipment”,

- (i) in relation to a boat used in the commercial fishery, includes any of the following:
 - (A) mechanical, electrical or hydraulic devices used for fishery operations,
 - (B) safety devices such as life rafts,
 - (C) any gear the Board considers to be essential to the intended activity of the boat,
- (ii) in relation to an aquacultural operation, includes any hardware or materials pertaining to the aquacultural operation, including buildings, rafts, buoys, floats, pumps, anchors, nets and cages;

“fee”, in relation to a fee payable to the Board, means the applicable fee established by the Minister under clause 6(j) of the Act;

“hull” means a boat exclusive of engine and equipment;

“loan” means a loan made by the Board under the Act and these regulations;

“partnership” means a partnership as defined in the *Partnership Act*.

Purpose of loans

3 (1) A loan may be for any purpose relating to the fishing industry in the Province, including any of the following:

- (a) purchasing or building a hull or boat;

- (b) purchasing and installing an engine or equipment in a boat;
 - (c) purchasing a licence or quota;
 - (d) converting, modifying or upgrading an existing boat;
 - (e) refinancing or combining loans of a borrower;
 - (f) developing or enhancing aquaculture facilities;
 - (g) providing working capital for a business in the fishing industry;
 - (h) purchasing seed stock, seed or spat for use in aquaculture;
 - (i) any other purpose that is in accord with the object and purpose of the Board set out in Section 28 of the Act.
- (2) The Board must not make a loan guarantee for the purpose of replacing existing financing.
- (3) The Board may set policies and priorities for loans and loan guarantees.

Eligibility for loans

4 To be eligible for a loan,

- (a) an individual must meet all of the following requirements:
 - (i) they must be a Canadian citizen or be able to satisfy the Board of their intention to become a Canadian citizen,
 - (ii) they must be at least 19 years old at the time of their application,
 - (iii) they must have adequate experience, training or education in the fishing industry,
 - (iv) they must be able to adequately protect the assets to be used as security for the loan during the term of the loan, including by obtaining and keeping insurance as required by Section 14;
- (b) a partnership must have a representative who satisfies the requirements for an individual in clause (a);
- (c) a body corporate must meet all of the following requirements:
 - (i) it must be in good standing under the laws of the jurisdiction in which it was incorporated,

- (ii) it must be registered with the Nova Scotia Registry of Joint Stock Companies,
- (iii) it must commit to not transfer voting control in whole or in part during the term of the loan without prior written notice to the Board,
- (iv) its officers, directors, employees or agents must have adequate experience, training or education in the fishing industry,
- (v) it must be able to adequately protect the assets to be used as security for the loan during the term of the loan, including by obtaining and keeping insurance as required by Section 14.

Applying for loan

5 An applicant must submit all of the following to the Board:

- (a) the application fee set out in Section 8;
- (b) a statement of the purpose of the loan;
- (c) a business plan in a form acceptable to the Board;
- (d) complete details of the costs relating to the loan, including appropriate quotations from any suppliers or contractors;
- (e) the applicant's written agreement to obtain and keep insurance on the assets to be used as security for the loan on terms satisfactory to the Board, and to assign the insurance to the Board;
- (f) for an application by an individual, a signed statement of assets and liabilities;
- (g) audited financial statements or financial statements satisfactory to the Board;
- (h) for an application by a partnership,
 - (i) the full name of each of the partners, together with a statement of each partner's interest in the partnership, and
 - (ii) a signed partnership agreement in a form acceptable to the Board;
- (i) for an application by a body corporate,
 - (i) the names of its officers and directors,

- (ii) the names of all persons who have subscribed for shares, with a statement showing the amount paid up on all shares authorized or issued,
 - (iii) a certified copy of a special or extraordinary resolution of its shareholders authorizing it to borrow money, and
 - (iv) evidence that it is in good standing issued by the Registrar of Joint Stock Companies or equivalent authority in the jurisdiction in which it was incorporated;
- (j) any additional information that the Board requires to assess the application.

Requirements for loan for licence or quota purchase

6 In addition to the requirements for all applications set out in Section 5, an applicant for a loan for the purchase of a licence or quota must provide the Board with the following:

- (a) for a loan to purchase a licence, evidence that the applicant meets all requirements prescribed by a federal or a provincial body for holding the proposed licence;
- (b) for a loan to purchase a licence or quota issued under the *Fisheries Act* (Canada), a completed form “Notice to Department of Fisheries and Oceans of a Financial Arrangement with an Eligible Lender” published by the federal Department of Fisheries and Oceans Canada; and
- (c) for a loan to purchase a licence issued under the Act, confirmation that the assignment of the licence has been approved by the Administrator under Section 58 of the Act.

Processing applications

7 The Board may establish guidelines for and the manner in which loan applications are to be processed by staff.

Application fee and legal costs

8 (1) The application fee for a loan other than a loan for vessel construction is as set out in the following table:

Loan amount	Fee (plus applicable taxes)	
up to \$5 000 000	0.25% of the amount of the loan being applied for	minimum fee: \$400
		maximum fee: \$2000
\$5 000 000 and over	\$3000	

- (2) The application fee for a loan for vessel construction is as set out in the following table:

Loan amount	Fee (plus applicable taxes)
up to and including \$10 000	\$311.00
over \$10 000 to \$100 000	\$498.35
over \$100 000 to \$300 000	\$1495.15
over \$300 000 to \$500 000	\$3737.00
over \$500 000	\$6229.00

- (3) The Board may include the legal costs to close a transaction as part of the loan amount.
- (4) If an application is processed, but is withdrawn by the applicant before completion, the applicant is liable for all legal costs incurred by the Board in processing the application.
- (5) If an application is not approved, the Board may refund 25% of the application fee to the applicant.

Deposits for loans

- 9 (1) The Board may require an applicant to pay a minimum deposit, as determined by the Board, on the total loan amount approved by the Board.
- (2) A deposit is payable to the Board by an applicant immediately on notification by the Board that, subject to receipt of the deposit, the loan is approved.
- (3) A deposit must be credited to the borrower's account and must be used as part or all of the first progress payment of the loan.

Approved builders

- 10 (1) In this Section, "builder" means a person engaged in constructing, converting, modifying or upgrading boats.
- (2) Any work to be carried out with loan assistance must be carried out by a builder approved in accordance with any terms and conditions determined by the Board.
- (3) The Board must establish and maintain a list of approved builders, indicating the current status of the builder approval including any limitations or restrictions on the approval.
- (4) Before the start of any work to be carried out with loan assistance, plans and specifications for the work must be approved by Board technical staff or qualified agents of the Board.

Appraisal

- 11** (1) The Board may at any time require the appraisal of any assets used to secure a loan to determine the sufficiency of the Board's security.
- (2) The borrower is responsible for the cost of any appraisal required by the Board under subsection (1).

Loan limit

- 12** (1) Except as provided in subsection (2), the maximum amount of a loan is 90% of the appraised value of the assets securing the loan.
- (2) The Board may lend additional funds to a borrower based on the Board's assessment of the managerial ability of the borrower, the ability of the fishery or aquacultural operation to repay the loan and the value of other security items.

Loans requiring Governor in Council approval

- 13** For the purpose of Section 38 of the Act, which requires Governor in Council approval for a loan or guarantee of loan in excess of the prescribed amount, any amount that would result in the borrower's total obligation to the Board exceeding \$5 000 000 is prescribed as the maximum amount of a loan or guarantee of loan that may be granted without the approval of the Governor in Council.

Insurance

- 14** A borrower must obtain and keep insurance on terms satisfactory to the Board on the assets to be used as security for the loan, and must assign the insurance to the Board.

Security

- 15** (1) The Board may take any security or guarantee that it considers appropriate for any loan and enforce the security or guarantee in accordance with its terms and conditions, or release the security or guarantee on terms and conditions specified by the Board.
- (2) The Board may make any payments necessary to protect the security of a loan, and the borrower is liable for any amounts paid by the Board under this subsection.
- (3) In enforcing security held under this Section, the Board may do any of the following:
- (a) advance money to a receiver;
 - (b) guarantee the accounts of a receiver;
 - (c) pay or guarantee a payroll of a borrower in default under the security;
 - (d) expend money in attracting a person to revive, take over or re-establish a borrower's business.

- (4) It is a term and condition of each loan that the Board may add to the amount of the loan the amount of any fees and expenses incurred by the Board to register any security the Board requires for the loan.

Security document

16 The security documents securing a loan must together contain all of the following covenants:

- (a) that the borrower will repay the loan in accordance with the following, all to be specified in the security document:
 - (i) the amortization period and interest rate,
 - (ii) the payment schedule, specifying whether the loan payments are to be made weekly, bi-weekly, semi-monthly, monthly, bi-monthly, quarterly, semi-annually or yearly,
 - (iii) the dates and times when and place where loan payments are to be made;
- (b) that the borrower will keep all secured property, both real and personal, including improvements to the property, in good condition and state of repair;
- (c) that the borrower will comply with all relevant standards and requirements for the secured property, including any relevant registrations, inspections and licences;
- (d) for an aquacultural operation, that the borrower will not remove any chattels from the aquaculture site without the prior written permission of the Board;
- (e) that, if required by the Board, the borrower will provide the Board with detailed financial statements covering the borrower's operations and any additional information about their operations that the Board specifies, including copies of personal or corporate tax returns.

Combining or transferring loan

17 (1) If a borrower obtains additional funds from the Board at an interest rate different from that charged on existing indebtedness to the Board, the total indebtedness to the Board may be combined into 1 principal balance with 1 repayment schedule at the composite interest rate.

- (2) If a borrower that is a partnership or body corporate is dissolved and 1 or more of its partners or shareholders will continue as the borrower, the Board may transfer the balance of the existing loan at the interest rate and on the same terms and conditions that applied to the existing loan.

- (3) If a borrower that is an individual or partnership forms a body corporate to include the assets held by the Board as security for the loan, the Board may transfer the balance of the existing loan to the body corporate at the interest rate and on the same terms and conditions that applied to the existing loan.
- (4) The Board may require a party to a loan transfer under subsection (2) or (3) to provide any information or submit any documentation that the Board considers necessary to complete the transfer.

Interest rate, terms and amortization

- 18** (1) Subject to any deferral or adjustment under subsection (4), the interest rate, amortization period and term of a loan must be established in accordance with 1 of the following options:
- (a) a fixed interest rate for an amortization period to a maximum of 30 years with the loan of the same term;
 - (b) a fixed interest rate for a specified term of years with an amortization period to a maximum of 30 years;
 - (c) a variable interest rate for a specified term of years with an amortization period to a maximum of 30 years.
- (2) A loan may be
- (a) open for prepayment at any time during the term of the loan; or
 - (b) a closed-prepayment loan in accordance with Sections 19 and 20.
- (3) The Board may reduce the amortization period of a loan if, in the opinion of the Board, conditions warrant the reduction.
- (4) The Board may defer or adjust payment of principal, interest and other accruals for any length of time the Board considers necessary
- (a) to permit the borrower to establish a business; or
 - (b) to permit the borrower's business to recover, if the business is suffering economic hardship as a result of reduced income.
- (5) A deferral under subsection (4) must be capitalized.
- (6) At the request of a borrower under an open-prepayment loan dated on or before the date these regulations come into force, the Board may replace the existing loan with a new closed-prepayment loan on the same terms and conditions as the existing loan, except that any prepayment under the new loan is subject to the prepayment fee referred to in Section 19 and to the prepayment options referred to in Section 20.

Prepayment under closed-prepayment loan

19 (1) A borrower under a closed-prepayment loan who is not in default under the loan may, at any time during the term of the loan, prepay the whole or any part of the loan on payment to the Board of a prepayment fee in an amount equal to the greater of

- (a) 3 months' interest on the loan balance at the established interest rate; and
- (b) interest calculated using the interest rate differential for the period remaining in the term of the existing loan or 5 years, whichever is shorter.

(2) In clause (1)(b),

“interest rate differential” means the difference between an existing loan’s actual interest rate and the interest rate that would be applicable to a new loan with a term, calculated in number of months, equivalent to the period remaining in the term of the existing loan.

Annual prepayment options under closed-prepayment loan

20 (1) A borrower under a closed-prepayment loan may, if not in default under the loan, exercise 1 of the following prepayment options once in each calendar year:

- (a) to increase the amount of each payment of principal and interest by an amount no greater than 10% of the current amount of a payment of principal and interest;
- (b) to pay down the principal of the loan, without payment of interest, in an amount that is no greater than 10% of the original amount of the loan, unless the Board accepts a higher amount in accordance with subsection (2).

(2) The Board may accept, without the payment of interest, a payment that exceeds the 10% limit specified in clause (1)(b), but only if the Board is satisfied that 1 of the following special and unforeseen circumstances exists:

- (a) proceeds from property insurance on secured assets have been recovered;
- (b) proceeds have been recovered from a subsidy or grant that has been assigned to the Board;
- (c) proceeds from life insurance on the death of an insured borrower have been recovered;
- (d) the Board refinances the existing loan with a loan of similar terms and outstanding principal but that bears a higher interest rate.

Determining interest rate

- 21** (1) The minimum interest rate for a loan is the Government of Nova Scotia's all-in cost of borrowing on similar terms plus 0.50% for the relevant term, including any prepayment options permitted by Section 20.
- (2) Subject to the minimum interest rate in subsection (1), the Board must fix interest rates based on the cost of borrowing for the Government of Nova Scotia provided quarterly by the Department of Finance and Treasury Board and adjusted to include any markup that the Board considers appropriate.
- (3) The Board may adjust the interest rate on an individual loan for any of the following factors:
- (a) business risk factors, including debt servicing capacity, security and the management ability of the borrower;
 - (b) development policy factors of the Department of Fisheries and Aquaculture and the Board.

Prescribed fees

- 22** (1) Subject to subsections (2) and (3), the fees payable to the Board by borrowers are as set out in the following table:

Fees Payable to Board	
Type of Fee	Fee (plus any applicable taxes)
Mortgage release fee	\$50.00
Reamortization fee	lesser of: <ul style="list-style-type: none"> • 0.125% of loan balance • \$250
Mortgage assumption fee	\$310.00
Loan guarantee fee	1.5% on the outstanding balance, paid annually
Fee for preparing deeds, mortgages, agreements of sale, chattel mortgages, leases or any related documents	\$124.00
Fee for preparation of detailed financial statements, search of legal records and providing statistical data	\$62.00
File review fee	\$100.00
Insufficient funds fee	\$35.00

- (2) The Board may charge to a loan account any fees charged by an external agency for registration or release of registration of the Board's security interest.
- (3) The Board may exempt a borrower from the file review fee if the borrower meets the reporting requirements set out in their loan agreement.

Legislative History Reference Tables

Fisheries and Aquaculture Loan Board Regulations

N.S.
Reg. 207/2018

Fisheries and Coastal Resources Act

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

Source Law

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

N.S. Regulation	In force date*	How in force	Royal Gazette Part II Issue
207/2018	Dec 11, 2018	date specified	Dec 21, 2018
29/2020	Feb 20, 2020	date specified	Mar 13, 2020

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

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

Amendments by Provision

ad. = added
am. = amended

fc. = fee change
ra. = reassigned

rep. = repealed
rs. = repealed and substituted

Provision affected	How affected
5(a).....	am. 29/2020
8.....	rs. 29/2020
19.....	rs. 29/2020
22.....	ad. 29/2020

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

Editorial Notes and Corrections:

Note	Effective date
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Repealed and Superseded:

N.S. Regulation	Title	In force date	Repealed date
191/1980	<i>Fisheries and Aquaculture Loan Regulations</i>	Dec 16, 1980	Dec 11, 2018

Note: Only regulations that are specifically repealed and replaced appear in this table. It may not reflect the entire history of regulations on this subject matter.