

## **Fisheries and Aquaculture Loan Regulations**

made under Section 42 of the

Fisheries and Coastal Resources Act

S.N.S. 1996, c. 25

O.I.C. 80-1707 (December 16, 1980), N.S. Reg. 191/80

as amended up to O.I.C. 2009-227 (May 4, 2009), N.S. Reg. 212/2009

### Interpretation

1 In these regulations

(a) “boat” means all types of fishing craft fully equipped and ready to engage in commercial fisheries and aquaculture operations;

Clause 1(a) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

(b) “builder” means a person or persons, or body corporate, engaged in the construction, conversion, modification or upgrading of fishing boats;

(c) “engine” (main and/or auxiliary) includes

(i) inboard engines, clutches, reduction gears, shaft, propeller, controls and other accessories that properly form part of the mechanism for the propulsion of a boat, and

(ii) outboard engines, for aquaculture operations only;

Clause 1(c) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

(d) “equipment” means

(i) mechanical, electrical or hydraulic devices used in the commercial fishery or safety devices such as life rafts and any gear considered by the Board to be essential to the intended fishing activity of any boat for which a loan is being considered, and

(ii) buildings, floats, pumps and other hardware pertaining to an aquaculture operation;

Clause 1(d) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

(e) “fish” includes finfish, bivalves, crustaceans, and all forms of marine life including those of a vegetable nature;

(f) “fisher” includes “aquaculturist” and means a person, company, cooperative or association that is engaged in the catching or harvesting of fish from the sea or culturing fish in coastal or inland waters;

Clause 1(f) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

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

(h) “licence” means a licence issued or granted under the Fisheries Act (Canada).

Clause 1(h) repealed: O.I.C. 98-180, N.S. Reg. 33/98; added: O.I.C. 2009-227, N.S. Reg. 212/2009.

#### Purpose of loans

2 (1) Loans may be made to a fisher for the purpose of

(a) purchasing or building a hull or boat;

(b) purchasing and installing an engine or equipment in a boat;

(ba) purchasing a licence;

Clause 2(1)(ba) added: O.I.C. 2009-227, N.S. Reg. 212/2009.

(c) converting or modifying or upgrading an existing boat;

(d) refinancing or combining loans with the Board at the discretion of the Board;

Clause 2(1)(d) added: O.I.C. 2008-171, N.S. Reg. 130/2008.

- (e) developing or enhancing aquaculture facilities; and

Clause 2(1)(d) replaced: O.I.C. 98-180, N.S. Reg. 33/98; relettered (e): O.I.C. 2008-171, N.S. Reg. 130/2008.

- (f) assisting and developing the fishing industry of the Province.

Clause 2(1)(e) relettered (f): O.I.C. 2008-171, N.S. Reg. 130/2008.

(2) The Board may, at its discretion, consider loans for boats to include all or any part of the several types of loans referred to in subsection (1) as one loan, and thereby require a single deposit and a single term of repayment.

#### Eligibility for loans

3 To be eligible for a loan, a fisher,

- (a) if an individual, shall

- (i) be a Canadian citizen and a resident of Nova Scotia,

- (ii) be of the age of majority at the time of application for a loan,

- (iii) have at least two years commercial fishing experience out of the last five years and be able to demonstrate to the Board that the larger portion of time spent or income received directly relates to commercial fishing; or in the case of aquaculture provide evidence of competency recognized by the Board,

- (iv) satisfy the Board that the security for the loan will be adequately protected during the term of the loan;

- (b) if a body corporate, shall

- (i) be in good standing pursuant to the Corporations Registration Act of Nova Scotia,

(ii) commit not to transfer voting control in whole or in part during the term of the loan without prior written notification to the Board,

Subclause 3(b)(ii) amended: O.I.C. 2008-171, N.S. Reg. 130/2008.

(iii) engage a captain or mate with not less than two years commercial fishing experience and provide evidence of competency recognized by the Board; or in the case of aquaculture projects, provide evidence of competency,

(iv) satisfy the Board that the security for the loan will be adequately protected during the term of the loan.

#### Requirements for an application

4 An application for a loan shall include the following:

(a) a statement of the purpose for which the loan is required;

(b) complete details of the costs including appropriate quotations from the builder and engine and equipment suppliers;

(c) complete plans and specifications for new boats subject to applicable regulations of the Board of Steamship Inspection and Canada Shipping Act and related regulations, or complete plans and specifications of a proposed aquaculture facility;

Clause 4(c) amended: O.I.C. 98-180, N.S. Reg. 33/98.

Clause 4(d) repealed: O.I.C. 98-180, N.S. Reg. 33/98.

(e) an agreement by the applicant to insure and keep insurance on terms satisfactory to the Board and to assign the said insurance to the Board;

Clause 4(e) amended: O.I.C. 98-180, N.S. Reg. 33/98.

(f) a signed statement of assets and liabilities for individual applicants;

(g) audited financial statements or financial statements satisfactory to the Board;

(h) satisfactory evidence of the availability of the required deposit;

(i) a special or extraordinary resolution authorizing the borrowing of money if the borrower is a body corporate;

(j) if a body corporate or co-operative, the names of directors and officers of same;

(k) evidence of the availability of a fishing license or licenses and, if applicable, attached quota for the proposed boat, or a license or permit as may be required for an aquaculture project;

Clause 4(k) amended: O.I.C. 2008-171, N.S. Reg. 130/2008.

(l) names and addresses of three references, all of whom are in a position to make a statement, satisfactory to the Board, concerning the ability of the applicant to honour the applicant's financial commitments; and

Clause 4(l) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

(m) such other information as the Board may require.

#### Application for loan for licence

4A In addition to the requirement for an application in Section 4, an application for a loan for a licence shall include all of the following:

(a) a business plan in a form acceptable to the Board;

(b) forms entitled "Acknowledgment of Request for Licence Activity" and "Notice to Department of Fisheries and Oceans of an Arrangement with Recognized Financial Institution" published by the federal Department of Fisheries and Oceans.

Section 4A added: O.I.C. 2009-227, N.S. Reg. 212/2009.

## Deposits for loans

5 (1) The deposits to be paid to the Board in connection with all approved loans, except those referred to in subsections (2) and (2A), shall be a minimum of 10% of the total loan.

Subsection 5(1) amended: O.I.C. 98-180, N.S. Reg. 33/98; O.I.C. 2004-154, N.S. Reg. 44/2004; O.I.C. 2009-227, N.S. Reg. 212/2009.

(2) Notwithstanding subsection (1), when a fisher who has a loan with the Board sells the boat, or receives an insurance settlement on the loss of the boat, with respect to which the loan was granted, and applies to the Board for a loan to purchase or have built another boat, the Board may require a deposit of whatever percentage of the total cost the Board, at its sole discretion, deems advisable, provided such deposit be a minimum of 10% of the total cost.

Subsection 5(2) amended: O.I.C. 2004-154, N.S. Reg. 44/2004.

(2A) The deposits paid to the Board in connection with an approved loan for purchasing a licence is a minimum deposit of 5% of the total loan.

Subsection 5(2A) added: O.I.C. 2009-227, N.S. Reg. 212/2009.

(3) All deposits are payable to the Board by the applicant immediately upon notification by the Board that, subject to receipt of the deposit, approval is given to the loan.

(4) The deposit shall be credited to the borrower's account and shall be utilized as part or all of the first progress payment of the loan.

Section 5 replaced: O.I.C. 82-563, N.S. Reg. 96/82.

## Repayment terms of loans

6 (1) The repayment terms for loans shall be as follows:

(a) up to a maximum of 20 years for a boat;

Clause 6(1)(a) replaced: O.I.C. 2008-171, N.S. Reg. 130/2008.

(b) up to a maximum of 15 years for conversion or technical modification of a boat;

Clause 6(1)(b) amended: O.I.C. 2008-171, N.S. Reg. 130/2008.

(c) up to a maximum of eight years for diesel engines;

(d) up to a maximum of five years for gas engines and equipment;

(da) up to a maximum of 20 years for a loan for a licence;

Clause 6(1)(da) added: O.I.C. 2009-227, N.S. Reg. 212/2009.

(e) for combined loans made under subsection 2(2) the Board may, at its discretion, use the repayment term set out above for any of the purposes included in the loan.

Clause 6(1)(e) amended: O.I.C. 2008-171, N.S. Reg. 130/2008.

(2) The Board may reduce the term of a loan if in the opinion of the Board, the condition of the boat, hull, engine, or equipment warrants such a reduction.

(3) The repayment of loans for the purpose of aquaculture shall be as follows:

(a) for salmonids, no principal repayment required until 60 days after the completion of the first harvest after the loan has been made, and the loan must be completely repaid within 10 years;

(b) for mussels, no principal repayment required until 60 days after the completion of the first harvest after the loan has been made, and the loan must be completely repaid within 10 years;

(c) for oysters and sea plants, no principal repayment required until 60 days after the completion of the first harvest after the loan has been made, and the loan must be completely repaid within 12 years; and

(d) for all other aquaculture projects, repayments of loan principal shall be at the discretion of the Board.

Subsection 6(3) replaced: O.I.C. 2008-331, 306/2008.

Limitations on loans

7 (1) No loan shall be made for an amount under \$3000.

Subsection 7(1) amended: O.I.C. 98-180, N.S. Reg. 33/98.

(2) No loan shall be made with respect to a boat which is under 22 feet in overall length except when it is used in an aquaculture operation.

Subsection 7(2) amended: O.I.C. 98-180, N.S. Reg. 33/98.

(3) Subject to subsection (4), no loans shall be made for any of the following purposes:

(a) to replace private financing, except to replace existing loans with the Board;

(b) to retire existing loans provided by banks or other commercial lending institutions.

Subsection 7(3) replaced: O.I.C. 2008-171, N.S. Reg. 130/2008.

(4) The Board may approve or recommend the approval of a loan for the purpose of retiring bridge or interim financing where the Board is in receipt of a complete application for a loan, or an application which the Board deems to be a bona fide attempt at a complete application, within three months from the date the bridge or interim financing commenced.

## Security

8 The security for any loan shall include the following:

(a) a loan agreement between the Board, the fisher and, if applicable, the builder;

Clause 8(a) replaced: O.I.C. 2008-171, N.S. Reg. 130/2008.

(b) a first marine mortgage on the boat in favour of the Board, and such security as the Board considers appropriate under the circumstances;

Clause 8(b) replaced: O.I.C. 2008-171, N.S. Reg. 130/2008.

(c) adequate builders risk insurance coverage assigned to the Board during the construction, conversion, modification or upgrading of the boat, and adequate marine insurance coverage thereafter, also assigned to the Board;

(d) a first mortgage on land, buildings, rafts, boats, floats, pumps and all other hardware pertaining to an aquaculture operation;

Clause 8(d) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

(da) on loans for licences, an enforceable security interest ranking in first priority when registered or otherwise perfected under the Personal Property Security Act on all personal property as the Board considers appropriate;

Clause 8(da) added: O.I.C. 2009-227, N.S. Reg. 212/2009.

(e) on loans made to limited companies, personal guarantees from the principals involved;

Clause 8(e) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

(f) such other security as the Board may require.

Section 8 replaced: O.I.C. 82-563, N.S. Reg. 96/82.

#### Interest rates

9 (1) The interest rate for all loans granted by the Board shall be the all in Provincial borrowing cost, as determined by the Department of Finance from time to time, plus a minimum of 1.75%.

Section 9 replaced: O.I.C. 98-285, N.S. Reg. 43/98; renumbered 9(1): O.I.C. 2008-171, N.S. Reg. 130/2008.

(2) Despite subsection (1), a blended rate shall be applied to loans that are refinanced or combined.

Subsection 9(2) added: O.I.C. 2008-171, 130/2008.

#### Other terms and conditions

10 If required by the Board, borrowers shall provide the Board with detailed financial statements covering their fishing and aquaculture operations and such other information regarding their operations as the Board may require including personal and/or corporate tax returns.

Section 10 replaced: O.I.C. 98-180, N.S. Reg. 33/98.

## Registered builders

11 (1) Every fishing boat built with loan assistance must be constructed by a builder approved in accordance with such terms and conditions of approval as the Board shall determine.

(2) The Board shall establish and maintain a list of builders approved by the Board for the construction of fishing boats, such list shall indicate the current status of builder approval including any limitations or restrictions thereto.

(3) Plans and specifications for all vessels must be approved prior to construction by the technical staff of the Board.

Subsection 11(3) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

## Reduction of loans

12 (1) When a loan has been approved by the Governor in Council, the Board shall not reduce the amount of the loan without the approval of the Governor in Council.

(2) Subsection (1) shall not impair the ability of the Board to reduce an outstanding loan by the amount of any payments made on the loan.

Section 13 repealed: O.I.C. 2008-171, N.S. Reg. 130/2008.

## Principal and interest extension in individual hardship cases

13 In cases where an individual fisher or aquaculturist is suffering economic hardship as a result of reduced income, the Board may enter into an agreement with the borrower to extend, defer, adjust or compromise the repayment of a loan or the terms and conditions of any loan or loan guarantee subject to the following guidelines:

(a) each request from a fisher or aquaculturist will be looked at by the Fisheries and Aquaculture Loan Board on an individual basis;

(b) there will be no delegation of the Loan Board authority to its staff of its power to adjust repayment terms;

Clause 14(c) repealed: O.I.C. 2008-171, N.S. Reg. 130/2008.

(d) the maximum extension for loan repayment will be three years;

(e) the Loan Board may capitalize outstanding interest by setting up a loan commitment;

Clause 14(e) replaced: O.I.C. 98-180, N.S. Reg. 33/98.

(f) the Loan Board may restructure the security documents if necessary.

Section 14 added: O.I.C. 97-240, N.S. Reg. 42/97; renumbered 13: O.I.C. 2008-171, N.S. Reg. 130/2008.

#### Existing Financing

14 No loan guarantees shall be made for the purpose of replacing existing financing.

Section 15 added: O.I.C. 98-180, N.S. Reg. 33/98; renumbered 14: O.I.C. 2008-171, N.S. Reg. 130/2008.

#### Loans requiring Governor in Council approval

15 The Board shall not make a loan or guarantee of loan in excess of \$1,000,000 without the approval of the Governor in Council.

Section 16 added: O.I.C. 2007-344, N.S. Reg. 307/2007; renumbered 15: O.I.C. 2008-171, 130/2008.

[Note: “fisherman” replaced with “fisher” by O.I.C. 98-180, N.S. Reg. 33/98.]

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