



BILL NO. 95

Government Bill

*2nd Session, 62nd General Assembly
Nova Scotia
64 Elizabeth II, 2015*

**An Act to Amend Chapter 25
of the Acts of 1996,
the Fisheries and Coastal Resources Act,
Respecting Aquaculture**

CHAPTER 19
ACTS OF 2015

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 11, 2015**

The Honourable Keith Colwell
Minister of Fisheries and Aquaculture

*Halifax, Nova Scotia
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**An Act to Amend Chapter 25
of the Acts of 1996,
the Fisheries and Coastal Resources Act,
Respecting Aquaculture**

Be it enacted by the Governor and Assembly as follows:

1 Clause 2(d) of Chapter 25 of the Acts of 1996, the *Fisheries and Coastal Resources Act*, is repealed and the following clause substituted:

(d) support the sustainable growth of the aquaculture industry;

2 Section 3 of Chapter 25, as amended by Chapter 2 of the Acts of 1999, Chapter 51 of the Acts of 2010 and Chapter 22 of the Acts of 2012, is further amended by

(a) striking out the period at the end of clause (k) and substituting a semicolon; and

(b) adding immediately after clause (k) the following clause:

(l) “veterinary medical record” means

(i) a record of medical services, including examination, diagnosis, care or treatment, or

(ii) any information pertaining to medical history,

provided by or to a professional veterinarian in relation to the health of an aquatic animal, and may include documents, data or images produced by any means.

3 (1) Subsection 8(3) of Chapter 25 is amended by adding “to subsection (4) and subject” immediately after “Subject” in the first line.

(2) Section 8 of Chapter 25, as amended by Chapter 19 of the Acts of 2005, is further amended by adding immediately after subsection (3) the following subsections:

(4) A veterinary medical record under the control of the Department is to be kept in confidence and may only be disclosed in accordance with subsection (5).

(5) A veterinary medical record may only be disclosed

(a) for the protection of human health;

(b) if so required by the laws of the Parliament or Government of Canada;

(c) to enable the enforcement of this Act or the regulations;

(d) in the form of summary health data that reveals no identifiable personal information; or

(e) if the owner of the animal that is the subject of the record has consented.

4 Section 43 of Chapter 25 is amended by

(a) relettering clause (a) as clause (aa) and adding immediately before that clause the following clause:

(a) “aquacultural operation” means the practice of aquaculture at a site;

(b) adding immediately after clause (c) the following clause:

(ca) “aquaculture registry” means a public registry of Provincial aquaculture licences and leases and information related to sites available for reallocation in the Province;

(c) adding immediately after clause (i) the following clause:

(ia) “finfish” means any cultured cold-blooded aquatic vertebrate possessing fins and gills;

(d) adding immediately after clause (j) the following clause:

(ja) “Review Board” means the Nova Scotia Aquaculture Review Board established pursuant to this Act;

(e) striking out “shell fish” in the second and third lines of clause (k) and substituting “shellfish”; and

(f) adding immediately after clause (k) the following clause:

(ka) “shellfish” means any cultured mollusc or crustacean, at any stage of its life cycle;

5 Chapter 25 is further amended by adding immediately after Section 43 the following Section:

43A The purpose of this Part is to

(a) recognize that aquaculture is a legitimate and valuable use of the Province’s coastal resources;

(b) ensure aquaculture is conducted under conditions and in accordance with controls that protect the environment;

(c) provide a predictable and efficient regulatory environment for business and public confidence;

(d) ensure equity, fairness and compatibility in access to, and utilization of, public water resources for aquaculture;

(e) ensure that members of the public have access to information with respect to the regulatory process and an opportunity to participate in the process;

(f) ensure that regulations governing aquaculture are achievable, contain incentives for compliance and are enforceable;

(g) ensure that coastal communities derive positive social and economic benefits from aquaculture;

(h) ensure that aquaculture is conducted with due regard to the health, well-being and recovery of species at risk; and

(i) ensure that the regulation of aquaculture contributes to the productive development of the Province's coastal resources.

6 (1) Subsection 44(1) of Chapter 25 is amended by striking out “from the Minister” in the last line.

(2) Subsection 44(2) of Chapter 25 is amended by striking out “from the Minister” in the last line.

(3) Subsection 44(3) of Chapter 25 is repealed and the following subsection substituted:

(3) Unless otherwise restricted by this Part or the terms of the lease, the granting of an aquaculture lease carries with it the exclusive right, for aquacultural purposes, to possession of the water column and sub-aquatic land described in the lease.

7 Chapter 25 is further amended by adding immediately after Section 44 the following Section:

44A (1) From time to time, the Minister may issue a call for proposals for options to lease a tract of Crown land chosen by the Minister that is not designated as an aquaculture development area.

(2) A person may submit a proposal within such time and in such manner as the Minister determines.

(3) A proposal shall include such information as the Minister determines.

(4) Upon review of a proposal, the Minister may issue an option to lease for an area within the tract.

(5) An option to lease shall

(a) convey the exclusive right, for the duration of the option, to apply for an aquaculture lease for a site within the area;

(b) be for a prescribed duration; and

(c) be subject to a prescribed fee.

(6) Where there are competing proposals of equivalent stature, the Minister shall issue an option to lease to the proponent who, in the opinion of the Minister, is the best overall proponent based on the information available to the Minister under this Section.

8 Subsection 45(3) of Chapter 25 is repealed and the following subsection substituted:

(3) Where the site at which aquacultural activities are proposed to be carried on is on private land, an aquaculture licence may only be issued to the owner or lessee of the land.

9 Sections 47 to 53 of Chapter 25 are repealed and the following Sections substituted:

47 (1) Upon receipt of an application referred to in subsection 54A(1) for an aquaculture licence or aquaculture lease, the Minister shall refer the application to the Administrator.

(2) Upon the receipt of an application for an aquaculture licence or aquaculture lease for an area not designated as an aquaculture development area, the Minister shall appoint an employee of the Department to consult with

(a) other departments or agencies of the Government or the Government of Canada, as may be required under the laws of the Province or of Canada; and

(b) any person, group of persons or organization that the Minister considers necessary or advisable in the circumstances,

and shall refer the application, along with a report on the outcome of the consultation described in clauses (a) and (b), to the Review Board for decision.

48 (1) There is hereby established a board to be known as the Nova Scotia Aquaculture Review Board consisting of three members appointed by the Minister.

(2) The Minister shall appoint one member of the Review Board to be its Chair.

(3) The Minister shall appoint an employee of the Department to act as the clerk of the Review Board.

(4) A majority of the members of the Review Board constitutes a quorum.

(5) Members of the Review Board shall be paid such remuneration as the Minister determines.

(6) Members of the Review Board shall be reimbursed as the Minister determines for reasonable travelling and other expenses incurred by them in accordance with the work of the Review Board.

(7) A vacancy on the Board does not impair the ability of the Review Board to act.

(8) The Review Board may make rules of procedure for the conduct and management of its affairs.

(9) The Review Board and each member of the Review Board has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

49 The Review Board shall, with respect to marine areas not designated as aquaculture development areas, make decisions with respect to

- (a) an application for an aquaculture licence or aquaculture lease;
- (b) where an existing aquaculture licence or aquaculture lease authorizes the production of shellfish or aquatic plants but not finfish species, an application to amend the aquaculture licence or aquaculture lease to authorize the production of a finfish species; and
- (c) an application to amend an aquaculture licence or aquaculture lease to change the boundaries of an existing aquaculture site if the change results in an increase in the area of the aquaculture site.

50 (1) A party to an application may appeal a Review Board decision to the Supreme Court of Nova Scotia, upon any question as to the jurisdiction of the Review Board or upon any question of law, upon filing with the Court a notice of appeal within thirty days after the decision is issued.

(2) Where no appeal is commenced within thirty days after the decision is issued, the Review Board shall forthwith provide the Minister with a copy of its decision for implementation pursuant to Section 52.

51 Where the Minister refers an application to the Review Board, the Review Board shall hold a public hearing as prescribed.

52 (1) Upon receiving a decision of the Review Board made pursuant to Section 49, the Minister shall, in accordance with the decision,

- (a) issue the aquaculture licence or aquaculture lease;
- (b) issue the aquaculture licence or aquaculture lease, subject to any conditions the Review Board considered appropriate;
- (c) reject the application for the aquaculture licence or aquaculture lease; or
- (d) amend the aquaculture licence or aquaculture lease.

(2) The Minister shall make publicly available a decision of the Review Board upon implementation pursuant to subsection (1).

10 Subsections 54(2) and (3) of Chapter 25 are repealed.

11 Chapter 25 is further amended by adding immediately after Section 54 the following Section:

54A (1) The Minister shall appoint an employee of the Department to act as Administrator and make decisions with respect to

- (a) applications for aquaculture licences or aquaculture leases in designated aquacultural areas only;
- (b) applications for aquaculture licences for land-based aquaculture sites;

(c) applications to amend aquaculture licences or aquaculture leases except those applications referred to in clauses 49(b) and (c);

(d) applications to renew aquaculture licences or aquaculture leases;

(e) applications to assign aquaculture licences or aquaculture leases; and

(f) applications with respect to an aquaculture site for which the licence or lease has been revoked.

(2) In making a decision under subsection (1), the Administrator shall follow the prescribed process.

12 Section 55 of Chapter 25 is repealed and the following Section substituted:

55 Notwithstanding anything contained in this Part, the Administrator may grant a special experimental licence or special experimental lease upon such terms and conditions as the Administrator considers necessary or advisable.

13 (1) Subsection 56(1) of Chapter 25 is amended by

(a) striking out the period at the end of clause (e) and substituting a semicolon; and

(b) adding immediately after clause (e) the following clause:

(f) determine when aquaculture development areas may be designated.

(2) Subsections 56(2) to (4) of Chapter 25 are repealed and the following subsection substituted:

(2) Before designating an aquaculture development area or imposing conditions or restrictions to be applicable thereto, the Minister shall consult with

(a) other departments or agencies of the Government or the Government of Canada, as may be required by the laws of the Province or of Canada; and

(b) any person, group of persons or organization that the Minister considers necessary or advisable in the circumstances.

(3) Subsection 56(5) of Chapter 25 is amended by striking out “in a newspaper in general circulation in the area affected” in the third last and second last lines and substituting “on the Department’s website”.

14 (1) Subsection 57(1) of Chapter 25 is repealed and the following subsections substituted:

(1) Where the Minister has designated an area as an aquaculture development area, a person may apply to the Administrator for an aquaculture licence or an aquaculture lease and the Administrator may issue an aquaculture

licence or aquaculture lease in the aquaculture development area on such terms and conditions as the Administrator considers necessary or advisable.

(1A) The Minister may determine when applications in aquaculture development areas may be submitted.

(2) Subsection 57(2) of Chapter 25 is amended by

(a) striking out “47 to 50” in the first line and substituting “51 and 52”; and

(b) striking out “Minister” in the last line and substituting “Administrator”.

15 Sections 58 and 59 of Chapter 25 are repealed and the following Sections substituted:

58 (1) The Administrator may

- (a) issue aquaculture licences for land-based aquaculture sites;
- (b) amend aquaculture licences and aquaculture leases except those applications referred to in clauses 49(b) and (c);
- (c) renew aquaculture licences and aquaculture leases;
- (d) approve applications to assign aquaculture licences and aquaculture leases; and
- (e) issue in accordance with the regulations aquaculture licences and aquaculture leases with respect to aquaculture sites for which the licence or lease has been revoked.

(2) The Administrator may assign any conditions that the Administrator considers necessary or advisable to an aquaculture licence or aquaculture lease referred to in subsection (1).

59 (1) Where an aquaculture licence or aquaculture lease has been revoked, the Administrator may

- (a) maintain use and activity information related to the aquaculture site on the aquaculture registry for a prescribed period; or
- (b) remove use and activity information related to the aquaculture site from the aquaculture registry.

(2) A person may apply to the Administrator in the prescribed manner for an aquaculture licence or aquaculture lease to a site for which the licence or lease has been revoked.

59A An aquaculture licence or aquaculture lease issued pursuant to this Part may be revoked by the Administrator if

- (a) the holder is in breach of this Part, the regulations or any term or condition of the licence or lease;

(b) in the opinion of the Administrator, the aquaculture activities authorized by the licence or lease are detrimental to or interfere with previously licensed or leased aquaculture sites;

(c) the holder is found by a court of competent jurisdiction to be in violation of any law of the Province or of the Parliament or Government of Canada relating to fishery activities; or

(d) the holder requests revocation of the licence or lease.

16 Section 62 of Chapter 25 is repealed.

17 Section 63 of Chapter 25 is amended by striking out “, 48” in the first line.

18 Section 64 of Chapter 25 is amended by

(a) adding immediately after clause (b) the following clauses:

(ba) respecting the application process for the reallocation of an aquaculture site;

(bb) respecting options to lease including, without limiting the generality of the foregoing, their duration and the payment of fees required for their issuance;

(b) adding immediately after clause (c) the following clause:

(ca) respecting the issuance of an aquaculture licence or aquaculture lease for an aquaculture site that is being reallocated pursuant to clause 58(1)(e);

(c) adding “environmental monitoring,” immediately after “the” in the first line of clause (e);

(d) striking out clause (g) and substituting the following clause:

(g) respecting the health of aquacultural produce including, without limiting the generality of the foregoing,

(i) the isolation, quarantining, gathering, disposal and destruction of aquacultural produce, seedstock and feedstock,

(ii) payments to the Minister for costs incurred, and

(iii) the payment of compensation;

(e) striking out “aquatic plants and animals” in the second and third lines of clause (g) and substituting “aquacultural produce”; and

(f) adding immediately after clause (o) the following clauses:

(oa) respecting the requirement for security bonds in connection with issuance of licences or leases;

(ob) prescribing the powers and duties of the Review Board;

(oc) prescribing the procedures of the Review Board for conducting hearings, public consultations, investigations and issuing decisions;

(od) prescribing procedures and fees payable for making an application to the Administrator;

(oe) respecting applications to the Administrator for the granting, renewing, amending, assigning or revoking of aquaculture licences and aquaculture leases;

19 Subsection 4A(2) of Chapter 5 of the Acts of 1993, the *Freedom of Information and Protection of Privacy Act*, as enacted by Chapter 11 of the Acts of 1999 (Second Session) and amended by Chapter 4 of the Acts of 2004, Chapter 35 of the Acts of 2008, Chapter 41 of the Acts of 2010, Chapter 67 of the Acts of 2011 and Chapters 24 and 62 of the Acts of 2012, is further amended by adding immediately after clause (d) the following clause:

(da) subsection 8(4) of the *Fisheries and Coastal Resources Act*;

20 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
