

Aquaculture and Commercial Fisheries Licensing

Policy and Procedures Manual

Licensing and Compliance Branch
Ministry of Agriculture, Food and Fisheries

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Approved:

Deputy Minister
Ministry of Agriculture, Food & Fisheries

Date _____

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1. Introduction

1.1. Purpose of this manual

The purpose of this manual is to:

- Provide guidance to fisheries licensing officials,
- Enhance the efficiency, quality and consistency of licensing decisions made pursuant to the *BC Fisheries Act* and *Fish Inspection Act* and related regulations,
- Ensure transparency and accountability in the procedures applied by licensing officials.

Use of this manual is subject to several caveats:

- This policy manual is subject to regular review and revision.
- This manual does not have the force of law and it does not alter in any way the relevant legislation and regulations.
- Although references to relevant sections of the Acts and Regulations are included in this manual, full quotations are not included, and licensing officials must consult the acts and regulations when appropriate. In any case where legal questions exist, appropriate legal advice must be obtained.
- Licensing officials must recognize that every case is unique, and if they believe that the policy and procedures set out in this manual are not appropriate for a specific case, they may consult with the Manager of Licensing and Compliance Branch for additional guidance.

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1.2. Who does this manual apply to?

This manual applies to all ministry staff involved in the licensing processes for commercial fisheries and aquaculture industries in the province. These include the following:

Licensing clerks

Licensing clerks are responsible for the receipt and processing of applications, for administration of files and computer licence tracking system, and for providing information to the Senior Licensing Officer or other decision-makers in support of licensing decisions.

The Commercial Fisheries Licensing Clerk is responsible for licences pertaining to buyers, processors, vendors, brokers and wild oyster harvests. The Finfish Aquaculture Licensing Clerk is responsible for licences pertaining to finfish aquaculture, marine plants and non-tidal commercial fisheries. The Shellfish Aquaculture Licensing Clerk is responsible for licences pertaining to shellfish aquaculture.

Senior Licensing Officer

The Senior Licensing Officer holds delegated authority¹ from the Minister of Agriculture, Food & Fisheries to issue licences under the *Fisheries Act* and *Fish Inspection Act*, and is the principal person responsible for the consideration of licence applications.

Manager of Aquaculture Licensing and Compliance

The Manager of the Licensing and Compliance Branch is responsible for the overall supervision of the Branch, holds delegated authority¹ from the Minister to issue licences under the *Fisheries Act* and *Fish Inspection Act*, and is responsible for the supervision of the Senior Licensing Officer. The Manager of Aquaculture Licensing and Compliance is also responsible for management and supervision of the Chief Inspector and Fisheries Inspectors.

This manual may also be of relevance to the work of Fisheries Inspectors, the Fish Health Veterinarian, and Aquaculture Development Branch officials (who report to the Director of Aquaculture Development Branch).

¹ Delegation of ministerial powers will be made in writing. Delegations may specify restrictions as the Minister deems appropriate.

1.3. Process for review, comment and revision

This manual will be made publicly available upon request. It can be viewed on the ministry website (<http://www.gov.bc.ca/agf/>), or a copy can be obtained from the ministry for the cost of reproduction.

Any person having comments or suggestions is invited to provide them to the Manager of the Licensing and Compliance Branch, at:

Ministry of Agriculture, Food and Fisheries
2500 Cliffe Avenue
Courtenay, BC V9N 5M6

Tel. (250) 897-7540
Fax (250) 334-1410

2. Mandate of Licensing and Compliance Branch and related agencies

The mandate of the Licensing and Compliance Branch is to license and regulate various aquaculture and commercial fisheries operators that fall within provincial authority. These include:

- Fish buyers
- Fish processors
- Fish vendors
- Fish brokers
- Wild oyster harvests
- Harvest of marine plants
- Non-tidal commercial fisheries
- Finfish aquaculture operations, including hatchery operations
- Shellfish aquaculture operations

The legal authority for these functions is set out in the following statutory instruments:

Fisheries Act (Appendix 1)

- Fisheries Act Regulation (Appendix 2)
- Aquaculture Regulation (Appendix 3)

Fish Inspection Act (Appendix 4)

Fish Inspection Regulation (Appendix 5)

There are a number of other agencies that have functions related to the licensing of fisheries. These include the following:

- Fisheries and Oceans Canada

Responsible for the management of all tidal commercial fisheries in B.C., as well as non-tidal anadromous fisheries².

- Land and Water British Columbia Inc. (LWBC)

Responsible for the issuance and administration of Crown land tenures.

² Ministry of Agriculture, Food and Fisheries (MAFF) has entered into an MOU with Fisheries and Oceans Canada regarding aquaculture development (September 6, 1988).

- **Ministry of Water, Land and Air Protection (MWLAP)**

Responsible for administration of the *Finfish Aquaculture Waste Control Regulation* and the licensing and enforcement of non-tidal recreational fisheries. Also a joint partner with MAFF inspection staff on compliance and enforcement issues pursuant to March 2002 Service Agreement on Compliance and Enforcement Programs.

- **MOHP**

Responsible for food safety regulations under the Health Act and Food Safety Act.

- **BC Centre for Disease Control (BCCDC)**

Responsible for the inspection and licensing of provincially licensed fish, dairy and slaughter plants.

- **Health Authorities**

Responsible for inspection and licensing of all other food premises.

- **Canadian Food Inspection Agency (CFIA)**

Responsible for the licensing and regulation of federally registered fish processing facilities under the federal *Fish Inspection Act*. Federal licensing is required for any processing of fish sold outside of the province, and for processing of farmed salmon and bivalve mollusks.

3. Guiding principles

All licensing officials must adhere to the following guiding principles in the exercise of their duties.

3.1. Compliance with mandate and limitations of authority

Licensing officials must comply with their statutory mandate and the limitations of their authority. They must not knowingly take any action that is beyond their authority.

3.2. Independence

Personal independence

Licensing officials must maintain **personal independence** in respect of all actions taken in the course of their duties. This means that they must avoid assuming responsibility for any matter where a personal relationship (family, financial, previous employment, etc.) exists that could give rise to a reasonable apprehension of bias. It is important to recognize that the test is “reasonable apprehension” of bias, and no actual bias need exist for personal independence to be compromised. In any case where a licensing official believes a question of personal independence may exist, he or she must consult with the Manager of the Licensing and Compliance Branch.

Institutional independence

Institutional independence means that licensing officials must perform their licensing functions independently from other organizations or other branches and divisions of the ministry that may have different interests and mandates.

Institutional independence does not require that licensing officials remain completely isolated from other officials or organizations with an interest in fisheries licensing matters. To the contrary, ongoing general communication with these persons and agencies may assist the work of licensing officials in appropriate cases. All licensing decisions, however, must be made by licensing officials based solely on their assessment of the facts and applicable regulatory provisions, and only delegated authorities may approve approvals on any matters of licensing. This principle is considered essential in order to avoid any instances of implied consent, thereby jeopardizing our public accountability objectives.

3.3. Impartiality

Licensing officials must be impartial in all dealings. Impartiality means that a person does not take sides in respect of a matter, that she or he treats the various parties in a fair and equal way, that she or he does not reach any conclusion until sufficient investigation, information collection and analysis has occurred, and that any analysis and conclusion is based upon objective, principled criteria.

3.4. Fairness

Licensing officials must respect the principles of administrative fairness and natural justice. In basic terms, this requires that decision-making processes be open and transparent, and that persons be informed of the basis upon which decisions may be made, so that they can ensure their positions are made known. It also requires that any decision affecting a person be made by an impartial decision-maker.

The specific procedural requirements necessary to respect the principles of administrative fairness and natural justice will depend on the facts of each case and the interests at stake in any decision. In general, greater procedural protections must be afforded where the decision-making function is of a quasi-judicial nature, or where a person has substantial interests at stake (e.g., licence suspension or revocation). Procedural protections might include formal notification of a pending decision, disclosure of information obtained as a result of an investigation, and a hearing process. It may also include the right to be represented by legal counsel, the right to question witnesses and the right to be provided reasons for a decision in appropriate cases. Any questions in respect of procedural protections should be raised with legal counsel to the ministry (see section 10.1 below).

3.5. Respect

Licensing officials must at all times treat persons with respect. They must ensure that personal issues and opinions do not affect the exercise of their professional duties.

3.6. Professionalism

Licensing officials must maintain professional standards of conduct, commensurate with the statutory powers and functions being administered. Any persons dealing with a licensing official should be able to clearly understand that the official is performing a specific statutory function and is not making decisions or taking actions for personal purposes or based on personal opinions. Professionalism does not, however, require that parties be treated in an unduly officious or impersonal manner.

3.7. Efficiency

Licensing officials should attempt to conduct licensing functions in as efficient a manner possible. Efforts should be made to harmonize licence application processes with other agencies when possible and appropriate (e.g., submission of Management Plans for review by the Licensing and Compliance Branch and Land and Water British Columbia Inc.).

4. General factors that may be considered in licensing decisions

Licensing officials may consider any relevant factors in deciding whether to issue a licence and what conditions may or may not be attached to a licence approval. These factors may include but are not limited to the following:

- Adequacy of information presented.
- Compliance with the requirements of the *Fisheries Act* and *Fish Inspection Act* and related regulations.
- Suitability of the proposed site / facilities for proposed operation.
- Past or demonstrable performance of the applicant³.
- Comments from referral agencies and potentially interested First Nations.
- Nature and adequacy of public input / comments.
- Community support or opposition.
- Potential economic and employment benefits⁴.

The specific factors relevant to a particular licensing decision may vary with the type of licence under consideration.

³ This may include a review of the following:

- whether the operator has any previous convictions under the provincial *Fisheries Act*, *Fish Inspection Act* or related regulations;
- whether the operator has been the subject of any licence suspensions, cancellations or refusals to issue licences;
- whether there are any outstanding fees or royalties owed to the Crown in relation to any other licences currently or previously held by the applicant;
- whether the operator has been using a licence previously issued;
- the financial capacity and ability of the applicant to support the proposed operation, including liability insurance; and,
- adequacy of experience/qualifications in the proposed operations.

⁴ This may include an identification and review of the impact on secondary businesses and industries, as well as whether the proposed operation will involve technological innovations or enhancements of general benefit to the industry.

5. Specific licence types and application review processes

5.1. Fish buying stations

Relevant legislative provisions

<i>Fisheries Act</i>	Section 12	Definition of fish buying station
	Section 13	Licence requirements and exceptions
	Section 14	Minister may issue licence
	Section 16	Information to be contained on a licence
	Section 20	Record keeping requirements
	Section 23	Prohibition on purchase of fish from unauthorized harvester
<i>Fisheries Act Regulation</i>	Section 1	Fee requirements
	Section 19	Fish slip reporting requirements
<i>Fish Inspection Regulations</i>	Section 23	Buyer must meet requirements of Schedule E

Fish Buying Station is defined as:

- (a) a building, structure, machinery, appurtenances, appliances and apparatus,*
 - (b) a vehicle, and*
 - (c) a vessel, scow, barge, or float,*
- within British Columbia or its coastal waters, with or without installed propulsion machinery, used in the business of buying, collecting, assembling, transporting, conveying, packing or carrying fish direct from a fisher.*

Process for making applications

Applicants must complete the fish buying station application form provided by the ministry (appendix 6), and enclose the relevant application fee, as specified on the application form.

A separate application form is required for each fish buying station.

Applications for fish buying station licences may be submitted at any time; however, all licences expire December 31st.

Process for consideration of applications

Fish Buying Station licence applications should be referred to the Commercial Fisheries Licensing Clerk, who should review the materials and confirm or assemble information pertaining to the following:

- Application form completed
- Fees paid

-
- Residency requirements satisfied
 - Canadian citizen,
 - permanent resident of Canada, or
 - If neither of above, operation through a business registered in BC (shore-based buying stations only)
 - Valid Fisheries and Oceans Canada Commercial Fishing Licence (if vessel)
 - Satisfactory MAFF or Fisheries and Oceans Canada inspection within previous 12 months
 - Requirements of *Fish Inspection Regulation* Schedule E satisfied

Once the necessary information has been obtained, the Licensing Clerk should provide the information and make recommendations to the Senior Licensing Officer.

In assessing the application, the Senior Licensing Officer should consider the general licensing criteria set out previously in section 4 above, as well as the specific requirements for buying station licences set out in the relevant legislation and regulations.

The Senior Licensing Officer may decide to grant or refuse a licence, or to refer / return the application for further information. This decision should be communicated to the applicant in writing. If the decision is to refuse or defer an application, the applicant should be provided with reasons for the decision.

A sample fish buying station licence and cover letter is included in appendix 7.

Post-issuance requirements

Holders of fish buying station licences must keep records and produce reports as required by the Minister, pursuant to section 20 of the *Fisheries Act*. This includes production of the Annual Fisheries Production Schedule.

Holders of fish buying station licences must also submit weekly reports to Fisheries and Oceans Canada, in accordance with the requirements set out in section 19 of the *Fisheries Act Regulations*.

5.2. Processors and cold-storage facilities

Relevant legislative provisions

<i>Fisheries Act</i>	Section 12	Definition of processing
	Section 13	Licence requirements and exceptions ⁵
	Section 22	Licence requirements for dogfish and fish offal plants
	Section 14	Minister may provide forms and issue licence
	Section 15	Special restriction for floating processors
	Section 16	Information to be contained on a licence
	Section 20	Record keeping requirements
<i>Fisheries Act Regulation</i>	Section 23	Prohibition on purchase of fish from unauthorized harvester
	Section 1	Fee requirements
<i>Fish Inspection Regulations</i>	Section 19	Fish slip reporting requirements
	Section 14	Processor must meet requirements of Schedule A

Fish cold storage plant is defined as a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of freezing fish or storing frozen fish, either alone or in conjunction with any other business, but excludes the following:

- (a) a fish buying station as defined in the previous section;*
- (b) a licensed fishing vessel engaged in fishing, eviscerating and freezing on board the product of its catch, or while delivering that catch;*
- (c) a building, equipment or plant occupied or used by a person for storing fish for the purpose only of resale by the person at retail in British Columbia*

Fish processing plant is defined as:

- (a) a building, structure, machinery, appurtenances, appliances and apparatus, and*
- (b) a vessel, scow, barge, or float, within coastal waters, with or without installed propulsion machinery, either ashore or afloat, occupied and used in the business of processing fish.*

Processing includes eviscerating, filleting, icing, freezing, canning, packaging, smoking, salting, cooking, pickling, drying, preserving or preparing fish or aquatic plants for market in any other manner, but does not include a licensed fishing vessel which, while fishing or delivering its catch, engages in eviscerating and icing, freezing or packaging on board the product of its catch.

⁵ This provision applies to processors that engage in the sale of products within the province. Processors that sell their product in international or interprovincial trade must also be licensed under the federal *Fish Inspection Act*.

Process for making applications

Applicants must complete the fish or marine plant processing/cold storage application form provided by the ministry (appendix 8), and enclose the relevant application fee, as specified on the application form.

Applications for processing/cold storage licences may be submitted at any time, however all licences expire December 31st.

Process for consideration of applications

Processor licence applications should be referred to the Commercial Fisheries Licensing Clerk, who should review the materials and confirm or assemble information pertaining to the following:

- ❑ Application form completed
- ❑ Fees paid
- ❑ Residency requirements satisfied
 - Permanent resident in Canada, or
 - If person is resident outside Canada, operate through a business registered in BC (shore-based facilities only)
- ❑ If shore based plant - must be federally registered with CFIA or have passed follow up inspection by Ministry of Health⁶
- ❑ Satisfactory MAFF or Fisheries and Oceans Canada inspection within previous 12 months (if vessel or shore station)
- ❑ Requirements of *Fish Inspection Regulation* Schedule A satisfied

Once the necessary information has been obtained, the Licensing Clerk should provide the information and make recommendations to the Senior Licensing Officer.

In assessing the application, the Senior Licensing Officer should consider the general licensing criteria set out in section 4 above, as well as the specific requirements for processing/cold storage licences set out in the relevant legislation and regulations.

⁶ Plants that do not process for human consumption do not require inspection. Processing facilities for sports-caught fish will be inspected by MAFF inspectors.

The Senior Licensing Officer may decide to grant or refuse a licence, or to refer / return the application for further information. This decision should be communicated to the applicant in writing. If the decision is to refuse or defer an application, the applicant should be provided with reasons for the decision.

A sample processing/cold storage licence and cover letter is included in appendix 9.

Post-issuance requirements

Holders of processing/cold storage licences must keep records and produce reports as required by the minister, pursuant to section 20 of the *Fisheries Act*. This includes production of the Annual Fisheries Production Schedule.⁷

Holders of processing licences must also submit weekly reports to Fisheries and Oceans Canada, in accordance with section 19 of the *Fisheries Act Regulations*.

5.3. Vendors

Relevant legislative provisions

<i>Fisheries Act</i>	Section 13	Licence requirements and exceptions ⁸
	Section 14	Minister may issue licence
	Section 16	Information to be contained on a licence
	Section 20	Record keeping requirements
<i>Fisheries Act Regulation</i>	Section 1	Fee requirements
	Section 19	Fish slip reporting requirements
<i>Fish Inspection Regulations</i>	Section 24	Vendor must meet requirements of Schedule F

A fisher must not sell or offer to sell fish to the public under subsection (3) (b) unless he or she has a fisher's vending licence issued under the appropriate legislation and regulations.

⁷ Additional requirements apply to certain types of processors. For example, licensed cold storage facilities must produce an Annual Report of Frozen Fish, large commercial canning facilities must produce a Weekly Report of Canning, and processors of cultured products must produce Quarterly Shellfish Production Reports.

⁸ The fish vending licence referred to in section 13(6) does not apply to shellfish, which is governed by section 13(7) and section 12 of the *Fish Inspection Regulations* (sale only through federally licensed facilities).

Process for making applications

Applicants must complete the fish vending licence application form provided by the ministry (appendix 10), and must enclose the relevant application fee, as specified on the application form.

Applications for fish vending licences may be submitted at any time, however, all licences expire December 31st.

Process for consideration of applications

Fish Vending licence applications will be referred to the Commercial Fisheries Licensing Clerk, who should review the materials and confirm or assemble information pertaining to the following:

- ❑ Application form completed
- ❑ Fees paid
- ❑ Valid Fisheries and Oceans Canada commercial fishing licence (by category) and Fisher Registration Card (personal commercial fishing licence); includes residency requirement
- ❑ Requirements of *Fish Inspection Regulation* Schedule F satisfied

Once the necessary information has been obtained, the Licensing Clerk should provide the information and make recommendations to the Senior Licensing Officer.

In assessing the application, the Senior Licensing Officer should consider the general licensing criteria set out in section 4 above, as well as the specific requirements for fish vending licences set out in the relevant legislation and regulations.

The Senior Licensing Officer may decide to grant or refuse a licence, or to refer/return the application for further information. This decision should be communicated to the applicant in writing. If the decision is to refuse or defer an application, the applicant should be provided with reasons for the decision.

The sale of fish under a Fish Vending Licence is limited to immediate family (husband, wife, son, daughter only, and does not include parents, in-laws, etc.).

A sample fish vending licence and cover letter is included in appendix 11.

Post-issuance requirements

Holders of vendor's licences must submit weekly reports to Fisheries and Oceans Canada, in accordance with section 19 of the *Fisheries Act Regulations*.

5.4. Brokers

Relevant legislative provisions

<i>Fish Inspection Regulations</i>	Section 2	Definition of fish broker and exceptions
	Section 22	Requirement to hold licence
	Section 23.1	Fish broker's licence

Fish broker is defined as a person who buys or offers to buy fish whether on the person's own behalf or as an agent for another and whether on a commission basis or otherwise, but does not include a person who is

- (a) licensed under section 13 or 22 of the Fisheries Act, or*
- (b) purchasing for the purchaser's own personal consumption or for resale to others for their own personal consumption.*

Process for making applications

Applicants must complete the fish broker licence application form provided by the ministry (appendix 12) and enclose the relevant application fee, as specified on the application form.

Applications for fish broker licences may be submitted at any time, however all licences expire December 31st.

Process for consideration of applications

Fish Broker licence applications will be referred to the Commercial Fisheries Licensing Clerk, who will review the materials and confirm or assemble information pertaining to the following:

- Application form completed
- Fees paid (see *Fish Inspection Regulations* s. 23.1(5))
- Residency requirements satisfied
 - 1) Canadian Citizen;
 - 2) Permanent resident of Canada;
 - 3) Registered office in BC under the Company Act or the Partnership Act.
- Requirements of *Fish Inspection Regulation* Schedule E satisfied

Once the necessary information has been obtained, the Licensing Clerk should provide the information and make recommendations to the Senior Licensing Officer.

In assessing the application, the Senior Licensing Officer should consider the general licensing criteria set out in section 4 above, as well as the specific requirements for fish broker licences set out in the relevant legislation and regulations.

The Senior Licensing Officer may decide to grant or refuse a licence, or to refer/return the application for further information. This decision should be communicated to the applicant in writing. In cases where the decision is to refuse or defer an application, the applicant should be provided with reasons for the decision.

A standard fish broker licence and cover letter is included in appendix 13.

Post-issuance requirements

Holders of fish broker licences must keep records and produce reports as required by the minister, pursuant to section 20 of the *Fisheries Act*. This includes production of the Annual Fisheries Production Schedule.

Holders of fish broker licences must also submit weekly reports to Fisheries and Oceans Canada, in accordance with the requirements set out in section 19 of the *Fisheries Act Regulations*.

5.5. Wild oyster harvests

Relevant legislative provisions

<i>Fisheries Act Regulation</i>	Section 8	Planting or transportation of oysters
	Section 9	Licence requirements and exceptions

A person who gathers oysters from Crown land for any purpose other than domestic consumption unconnected with any kind of commercial transaction, shall be deemed to have taken them for commercial purposes.

Process for making applications

Applicants must complete the Application to Harvest Oysters from Vacant Crown Foreshore form provided by the ministry (appendix 14), and must enclose the relevant application fee, as specified on the application form. A separate application form must be submitted for each proposed harvest area.

Applications for harvesting oysters from vacant Crown foreshore will be accepted until the last working day of January of each year.

Process for consideration of applications

Applications for harvesting oysters from vacant Crown foreshore should be referred to the Commercial Fisheries Licensing Clerk, who should review the materials and confirm or assemble information pertaining to the following:

- ❑ Application form completed
- ❑ Fees paid (see *Fisheries Act Regulation*, section 9(e))
- ❑ Written approval of First Nations with reserve upland of the proposed area (or comment if based on other asserted interest in area)
- ❑ Possession of a valid Fisheries and Oceans Canada Fisher Registration Card (personal commercial fishing licence)
- ❑ The most current stock assessment of proposed site completed (in consultation with First Nations where applicable and Fisheries and Oceans Canada)⁹
- ❑ Identify proposed limits or closure times in light of comments of First Nations, Fisheries and Oceans Canada and MAFF staff
- ❑ Determine whether site is important for recreation or conservation purposes
- ❑ Confirm site is not closed (if Schedule 1 closure area – obtain copy of federal Contaminated Shellfish Harvest Licence)
- ❑ Determine if area is under lease and make necessary referrals if applicable

Once the necessary information has been obtained, the Licensing Clerk will provide the information and make recommendations to the Senior Licensing Officer.

⁹ This process will be undertaken by an Aquaculture Development Branch official.

In assessing the application, the Senior Licensing Officer will consider the general licensing criteria set out in section 4 above, as well as the specific wild oyster harvest permit requirements set out in the relevant legislation and regulations.

In cases where there are more applicants than available stock, permits should be allocated among applicants (to a minimum of 1 tonne each). If there is not sufficient stock to provide a minimum of 1 tonne to each qualified applicant, permits will be issued on the basis of a random draw.

The Senior Licensing Officer may decide to grant or refuse a permit, or to refer / return the application for further information. This decision will be communicated to the applicant in writing. In cases where the decision is to refuse or defer an application, the applicant will be provided with reasons for the decision.

A sample Permit to Harvest Wild Oysters from Vacant Crown Foreshore and cover letter is included in appendix 15

Post-issuance requirements

Every holder of a permit to take wild oysters from vacant crown foreshore must provide a report to the ministry within 10 days of expiry of the permit, setting out the harvest and disposition of wild oysters under the permit. Permit holders must also pay a royalty of \$25 per tonne of oysters taken. A reporting form will be provided to successful permit applicants at the time the permit is issued.

5.6. Marine plants

Relevant legislative provisions

<i>Fisheries Act</i>	Section 24	Harvesting of kelp
	Section 16	Information to be contained on a licence
<i>Fisheries Act Regulation</i>	Section 1	Fee requirements
	Section 5	Definitions
	Section 6	Harvesting and processing of marine plants

A person must not harvest kelp or other aquatic plants commercially in the waters of British Columbia unless the person is licensed under the appropriate legislation and regulations.

Process for making applications

Applicants must complete the marine plant harvest application form provided by the ministry (appendix 16), and must enclose the relevant application fee, as specified on the application form.

Applications for marine plant harvest licences to be used in the spawn-on-kelp fishery should be submitted by October 15 for licences to be issued the following season. Application for other types of marine plant harvests should be submitted by June 30th (to be in effect from approximately September to the following August).

Process for consideration of applications

Marine plant harvest licence applications will be referred to the Aquaculture Licensing Clerk, who will review the materials and confirm or assemble information pertaining to the following:

- ❑ Application form completed
- ❑ Fees paid
- ❑ Information regarding J licence for spawn on kelp harvest, if applicable
- ❑ Outline of proposed harvest operation, processing arrangement and sales / marketing channel
- ❑ Confirm proposed harvest is not in a protected area (in consultation with Aquaculture Development Branch staff)
- ❑ Assessment of stock inventory in area (including comments of interested referral agencies such as potentially interested First Nations, MWLAP, Fisheries and Oceans Canada).¹⁰

Once the necessary information has been obtained, the Licensing Clerk will provide the information and make recommendations to the Senior Licensing Officer.

In assessing the application, the Senior Licensing Officer will consider the general licensing criteria set out in section 4 above, as well as the specific requirements for marine plant licences set out in the relevant legislation and regulations.

¹⁰ This process will be undertaken by an Aquaculture Development Branch official.

The Senior Licensing Officer may decide to grant or refuse a licence, or to refer / return the application for further information. This decision will be communicated to the applicant in writing. In cases where the decision is to refuse or defer an application, the applicant will be provided with reasons for the decision.

A sample Licence to Harvest Marine Plants and cover letter is included in appendix 17. Terms and conditions may include restrictions on area, time of harvest, maximum harvest, method of harvesting, where a plant may be cut, what portion of a plant may be harvested, restrictions on the percentage of plants that may be harvested in any area, record-keeping and reporting.

Post-issuance requirements

Harvesters of marine plants are required to maintain records and submit reports in accordance with sections 6(13) and 6(14) of the *Fisheries Act Regulations*. Harvesters must also pay a royalty in accordance with section 6(10) and Schedule II. Monthly return forms will be provided to approved applicants, at the time the licence is issued.

5.7. Finfish and Shellfish aquaculture

The licensing of finfish and shellfish aquaculture operations under the *Fisheries Act* is distinct from the licensing of use of Crown foreshore. In any case where a person wishes to operate an aquaculture facility over Crown land (including foreshore), a separate Crown lease or licence of occupation must be obtained from Land and Water British Columbia Inc. (LWBC)

Relevant legislative provisions

<i>Fisheries Act</i>	Section 1	Definition of aquaculture
	Section 13	Licence requirements
	Section 14	Minister may issue licence
	Section 16	Information to be contained on a licence
	Section 20	Record keeping requirements
<i>Fisheries Act Regulation</i>	Section 1	Fee requirements

Aquaculture Regulation

Finfish aquaculture is defined as the raising of finfish for sale on either Crown or private land.

Shellfish aquaculture is defined as the raising of shellfish for sale on either Crown or private land.

Process for making applications

Applicants for aquaculture licences should complete an Application for Commercial Finfish/Shellfish Aquaculture Licence (appendix 18 and 20) and a

Commercial Aquaculture Management Plan (the “Plan”). Templates for the Plans are set out in appendix 19 and 21. The Plan serves as the basis of both the aquaculture licence application to the Ministry of Agriculture, Food and Fisheries, and as the Crown land foreshore tenure application under the *Land Act*, which is reviewed by Land and Water British Columbia Inc. (LWBC), if applicable.

Officials from the Aquaculture Development Branch will work with the applicant to provide any required assistance in preparing the Plan.

The ministry may request additional information from the applicant at any point in the application process.

Process for consideration of applications

□ ***Initial review by LWBC***

Aquaculture plans for operations on Crown land should be submitted in first instance to LWBC, which will undertake its own referral process. This will include a referral of the plan to Aquaculture Development Branch officials in MAFF for comments on the proposed plan from a biological perspective.

□ ***Approval by LWBC***

When a Plan is approved by LWBC for the purposes of Crown land tenure, LWBC should notify the Aquaculture Licensing Clerk.

□ **Commencement of ministry’s application review process**

When the Aquaculture Licensing Clerk is advised of approval of a tenure application by LWBC, she or he will notify the Senior Licensing Officer.

Applications for aquaculture facilities on private land will be made directly to the Ministry and the review process will commence immediately.

□ **Referrals**

Land and Water British Columbia Inc. is the primary agency that conducts consultation on aquaculture applications. Pursuant to a shared administrative agreement between LWBC and MAFF, LWBC provides MAFF with summaries of referral responses. These responses are taken into consideration when adjudicating on an Aquaculture licence application.

If the licensing authority is not satisfied with the detail collected on behalf of MAFF, he or she may independently refer or request more information with respect to the application before them.

In addition, the Aquaculture Licensing Clerk may refer the plan to other agencies if deemed appropriate by the Senior Licensing Officer.

□ **Public notice**

The statutory authority may request that the applicant provide public notice of the proposed application.

□ **Consultations with other individuals and agencies**

The statutory authority may consult with other individuals or bodies as deemed appropriate. They may include:

- The Aquaculture Biologist, Aquaculture Development Branch, or equivalent;
- The Ministry of Agriculture, Food and Fisheries Fish Health Veterinarian.

□ **Applicant's Response**

The applicant should be provided with an opportunity to respond to any relevant material or information obtained through the referral and public consultation process that may adversely affect the application.

□ **Decision**

Once the necessary information has been obtained, the Aquaculture Licensing Clerk will provide the information to the Senior Licensing Officer.

In assessing the application, the statutory decision maker will consider the general licensing criteria set out in section 4 above, as well as the specific requirements for aquaculture licences set out in the relevant legislation and regulations.

The statutory decision maker may decide to grant or refuse a licence, or to refer / return the application for further information. This decision will be communicated to the applicant in writing. If the decision is to refuse or defer an application, the applicant will be provided with reasons for the decision.

A sample Commercial Aquaculture Licence and cover letter is included in appendix 22. Terms and conditions may include restrictions on types of species, maximum production, compliance with other applicable laws and regulations

(including zoning), requirements with respect to escape prevention, detection and response (finfish), inspection prior to operation, reporting requirements, etc..

Post-issuance requirements

Holders of aquaculture licences must keep records and produce reports as required by the minister, pursuant to section 20 of the *Fisheries Act*.¹¹ This includes the Annual Aquaculture Statistical Report.

¹¹ See also section 2 of the *Shellfish Regulation*.

6. Renewals

The Ministry should provide renewal notices to all licence holders, at least 30 days prior to expiration of the licence.

In making renewal decisions, the Senior Licensing Officer may adopt any or all aspects of the licence application review process relevant to that licence. The Senior Licensing Officer may also consider the provisions of section 19 of the *Fisheries Act*, which state that the minister may refuse to issue licences to a person if:

- the person has had a licence revoked, or
- it is shown to the satisfaction of the minister that the licensee has violated a provision of Part 3 of the Act, the regulations, a condition of a licence, or has conducted business in contravention of the spirit and intent of Part 3 of the Act

7. Transfer

According to section 17(1) of the *Fisheries Act*, licences issued under Part 3, are not transferable. However, section 17(2) provides that, in the case of change of ownership of a plant, the minister may agree to transfer a licence to a new owner.

With respect to fish broker licences, section 23.1(2) of the *Fish Inspection Regulation* provides that such licences are non-transferable. Non-Tidal Commercial Fishing Licences are made non-transferable by a standard term and condition to this effect.

8. Suspension and revocation

Section 18 of the *Fisheries Act* provides the minister with the authority to suspend or revoke a licence issued under Part 3 of the *Fisheries Act* if the Minister determines that the holder has violated any provision of that Part, the regulations, or any condition of a licence. Similarly, section 16 of the *Fish Inspection Regulation* provides the minister with the power to cancel a licence where serious contamination is present in an establishment, or a processing establishment fails to meet the specified operating requirements of the *Fish Inspection Regulations*.

In any case where the Senior Licensing Officer believes a matter may warrant suspension or revocation of a licence, the Manager of the Licensing and Compliance Branch must be consulted. The general process for a suspension, revocation or cancellation proceeding will be as follows:

1. The Manager of the Licensing and Compliance Branch will assign the matter to an inspector for investigation.
2. The inspector will investigate the matter and report to the Manager of Aquaculture Licensing and Compliance. The Manager of Aquaculture Licensing and Compliance will review the results of the investigation and determine whether it appears a licence suspension, revocation or cancellation is warranted.
3. In cases where the Manager of Licensing and Compliance recommends pursuing suspension, revocation or cancellation, the matter will be referred to the Minister or Deputy Minister (as the Minister directs).
4. The Minister or Deputy Minister will make a decision with respect to suspension, revocation or cancellation, and advise the licence holder and the Manager of Licensing and Compliance.

The enclosed licence suspension and cancellation policy (appendix 23) details the protocol for the hearing process

Different provisions apply to suspension or revocation of marine plant licences and broker licences.

With respect to licences for the harvest of marine plants, the minister has broader powers to suspend or revoke a licence, as provided in section 24(10) of the *Fisheries Act* and section 6(7) of the *Fisheries Act Regulation*.

As fish broker licences are issued under the authority of the *Fish Inspection Act*, section 18 of the *Fisheries Act* does not apply to them. However, section 23.1(3) of the *Fish Inspection Regulations* provides that the minister may suspend or cancel a fish broker licence for contravention of the *Fisheries Act*, *Fish Inspection Act* and related regulations, or if the licence holder ceases to meet the qualifications for eligibility.

In any such case where a licensing officials believes a licence suspension, revocation or cancellation may be warranted, they must discuss the matter with the Manager of Licensing and Compliance Branch as soon as possible.

9. Record keeping, confidentiality and information sharing

9.1. Record keeping

Section 26 of the *Freedom of Information and Protection of Privacy Act* (the “FOIPPA”) (Appendix 24) states, “No personal information may be collected by or for a public body unless

- (a) the collection of that information is expressly authorized by or under an Act,
- (b) that information is collected for the purposes of law enforcement, or
- (c) that information relates directly to and is necessary for an operating program or activity of the public body.”

Licensing officials should keep records of all licensing applications and decisions, and all reporting relevant to licensing matters.

Electronic records pertaining to Commercial Aquaculture Licences should be maintained and tracked in the Aquaculture Licensing and Referrals Administration System (ALRAS) database.

Electronic records pertaining to Buyers, Processors, Vendors and Brokers Licences should be maintained and tracked in the ministry’s Commercial Fisheries Licensing System (CFLS) database.

Electronic records pertaining to Permits To Harvest Wild Oysters From Vacant Crown Foreshore, Licences To Harvest Marine Plants, and Non-tidal Commercial Fishing Licences should be maintained and tracked in electronic spreadsheets.

9.2. Confidentiality

Licensing officials must protect the confidentiality of personal information in accordance with the provisions of the *Freedom of Information and Protection of Privacy Act* (discussed below).

9.3. Information sharing

Information sharing among ministry staff

Section 32 of the *Freedom of Information and Protection of Privacy Act* states, “A public body may use personal information¹² only

- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose¹³ is,
- (b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or
- (c) for a purpose for which that information may be disclosed to that public body under section 33 to 36”

The implications of these sections on the sharing and use of information among ministry staff will vary with the facts of each case, and this is a matter for which the guidance of the Manager of Licensing and Compliance Branch should be obtained whenever questions arise. As a general rule, the following principles may be applied.

¹² “personal information” is defined in schedule 1 of the *Freedom of Information and Protection of Privacy Act* as recorded information about an identifiable individual, including

- (a) the individual's name, address or telephone number,
- (b) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
- (c) the individual's age, sex, sexual orientation, marital status or family status,
- (d) an identifying number, symbol or other particular assigned to the individual,
- (e) the individual's fingerprints, blood type or inheritable characteristics,
- (f) information about the individual's health care history, including a physical or mental disability,
- (g) information about the individual's educational, financial, criminal or employment history,
- (h) anyone else's opinions about the individual, and
- (i) the individual's personal views or opinions, except if they are about someone else;

¹³ Section 34 of the FOIPPA states,

“1) A use of personal information is consistent under section 32 or 33 with the purposes for which the information was obtained or compiled if the use a) has a reasonable and direct connection to that purpose, and b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses the information or to which the information is disclosed.

2) The minister responsible for this Act must publish annually a list of the consistent purposes for which personal information is used or disclosed.”

Information sharing with Fisheries Inspectors

Given the integrated functions of licensing and compliance staff, Licensing officials may share information with Fisheries Inspectors to enable the respective officials to perform their functions. For example, licensing officials should advise Fisheries Inspectors if they become aware of potential non-compliance with the relevant legislation or licence provisions (such as a facility that is operating without a licence). Similarly, Fisheries Inspectors may provide information to licensing officers if issues of non-compliance may be relevant to present or future licensing decisions. The Manager of Licensing and Compliance Branch should be consulted if staff are unclear on the boundaries surrounding information sharing.

Information sharing with Aquaculture Development Branch officials

Licensing officials may obtain and use information from Aquaculture Development Branch officials whenever the information was obtained in relation to a licence application, or where the applicant is aware the information may be shared with licensing officials and so consents.

Licensing officials may also share information with Aquaculture Development Branch staff in cases if appropriate for the purposes of considering a licence application. For example, the licensing officials may request the Aquaculture Development Branch official to assist in obtaining clarification from an applicant on a matter, such as a component of a proposed aquaculture management plan.

Information sharing with other agencies

Personal information (as defined in the FOIPPA) may only be shared with other government agencies in accordance with section 33 of the *Freedom of Information and Protection of Privacy Act*. This would include situations such as where the person in question has consented to the disclosure, where the sharing occurs pursuant to an agreement entered into under an enactment of BC or Canada, where it is necessary for a law enforcement investigation, or where the disclosure is for a purpose that is consistent with the purpose for which the information was obtained.

Process for responding to requests for information

Routine information requests from the public or other government ministries are responded to by the Senior Licensing Officer and Licensing Clerks. Formal requests for information must be discussed with the Manager of the Licensing and Compliance Branch before the disclosure is made. The Manager of Licensing and Compliance will consult the Ministry's designated information and privacy official or legal counsel as appropriate.

10. Miscellaneous

10.1. Process for obtaining guidance and legal advice

Licensing officials should feel free to raise any questions with the Manager of Licensing and Compliance Branch at any time. The Manager of Licensing and Compliance may request legal advice whenever a question of authority, jurisdiction, information disclosure or other legal issue arises in discussion with the Director of the Legislation Branch.

10.2. Complaints / challenges to decisions and actions of licensing officials

Informal methods of resolution

If a party raises a concern about a decision or action of a licensing official, the official should attempt to resolve the concern consensually if possible. This may involve providing an explanation of the decision or action, or agreement to have the matter reviewed by a colleague to obtain an additional perspective.

Internal complaint review process

If a person expresses concern about a decision or action of a licensing official that cannot be resolved informally, they should be referred to the Manager of Licensing and Compliance. The Manager of Licensing and Compliance Branch will consider the concern and take the action he or she deems appropriate in the circumstances. This may include:

- confirming the action or decision of the licensing official;
- requesting another official to assume responsibility for the matter; or,
- modifying the action or decision of the licensing official.

If a person expresses concern about a decision or action of the Manager of Licensing and Compliance Branch that cannot be resolved informally, they should be referred to the Assistant Deputy Minister, Resource Development and Sustainability Division, who will review and attempt to resolve the matter.

Appeals

There is no right of appeal from a decision of a licensing official under the *Fisheries Act*, the *Fish Inspection Act* or the related regulations.

Ombudsman

If a party remains unsatisfied with a decision or action of a licensing official, despite efforts to resolve the matter through the internal complaint review process, they may be referred to the Office of the Ombudsman. The Ombudsman has authority to investigate complaints about decisions or actions taken by government agencies in the course of public administration. The Ombudsman should contact the appropriate licensing official if a complaint is accepted and investigated.

Judicial review

Parties may challenge decisions and actions taken pursuant to the *Fisheries Act*, the *Fish Inspection Act* and all subordinate regulations in the B.C. Supreme Court pursuant to the *Judicial Review Procedure Act*. On judicial review a court will usually seek to ensure that a statutory decision-maker exercised his or her authority in accordance with their jurisdiction and in accordance with the principles of administrative fairness and natural justice. A judicial review is not an appeal on the merits of a decision. If the court concludes the decision or action was improperly taken it may refer the matter back to the decision-maker for reconsideration. A court will not usually, on judicial review, substitute its own decision on the merits for that of the decision-maker.

If a licensing official is advised that a party intends to seek judicial review of a decision they should advise the Manager of Licensing and Compliance Branch accordingly.

11. Appendices

1. [Fisheries Act](#)
2. [Fisheries Act Regulations](#)
3. [Aquaculture Regulation](#)
4. [Fish Inspection Act](#)
5. [Fish Inspection Regulations](#)
6. Fish Buying Station Licence Application form
7. Sample Fish Buying Station Licence and cover letter
8. Processing / Cold Storage Licence Application form
9. Sample Processing Licence, cover letter, Cultured Finfish Quarterly Report and Culture Shellfish Quarterly Report
10. Fish Vending Licence Application form
11. Sample Fish Vending Licence and cover letter
12. Fish Broker Licence Application form
13. Sample Fish Broker Licence and cover letter
14. Application To Harvest Oysters From Vacant Crown Foreshore form
15. Sample Permit To Harvest Oysters From Vacant Crown Foreshore and cover letter
16. Licence to Harvest Marine Plant Application form
17. Sample Licence to Harvest Marine Plant and cover letter
18. Application for Commercial Finfish Aquaculture Licence
19. Template for Commercial Finfish Aquaculture Management Plan
20. Application for Commercial Shellfish Aquaculture Licence
21. Template for Commercial Shellfish Aquaculture Management Plan
22. Sample Aquaculture Licence and cover letter
23. Licence Suspension and Cancellation Policy
24. [Freedom of Information and Protection of Privacy Act](#)