

FISHERIES ACT

[RSBC 1996] CHAPTER 149

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Part 1 — General Provisions

Definitions

1 In this Act:

"aquaculture" means the growing and cultivation of aquatic plants, as defined in section 12, or fish, for commercial purposes, in any water environment or in human made containers of water, and includes the growing and cultivation of shellfish on, in or under the foreshore or in water;

"branch" means the Aquaculture and Commercial Fisheries Branch continued under section 2;

"conservation officer" means a conservation officer defined in section 1 (1) of the *Environment Management Act*;

"fish" means the whole or any part of an aquatic animal.

Aquaculture and Commercial Fisheries Branch

2 (1) There is in the ministry an Aquaculture and Commercial Fisheries Branch responsible for the administration of this Act.

(2) A director of fisheries, supervisor of fisheries and inspectors of fisheries, and other officers and employees as required for the functioning of the branch, may be appointed under the *Public Service Act*.

(3) Every officer and constable of the provincial force as defined in the *Police Act*, and every conservation officer, is an inspector of fisheries under this Act and has power to act in that capacity in every part of British Columbia.

(4) An inspector under the *Fish Inspection Act* is an inspector of fisheries under this Act.

(5) Every inspector under the *Fish Inspection Act* (Canada) and every fishery officer or fishery guardian under the *Fisheries Act* (Canada) is an inspector of fisheries under this Act.

Entering on private property

3 For enforcing this Act, or otherwise in the discharge of duties, the minister, director of fisheries, supervisor of fisheries and inspector of fisheries may

(a) enter on and pass through or over private property without being liable for trespass, and

(b) without warrant enter any premises, building, boat, car or other place on or about which any fishing implements or apparatus are located, and may inspect and examine all fishing implements and apparatus found there.

Restocking exhausted fisheries

4 (1) The Lieutenant Governor in Council may authorize to be expended annually any sum appropriated by the Legislature for

(a) the formation of oyster beds in waters adapted for that purpose,

(b) transplanting oysters and restocking oysters and other exhausted fisheries by natural or artificial means, and

(c) improving streams where natural obstructions exist.

(2) The Lieutenant Governor in Council may authorize the construction, erection or placement of any artificial barrier or grating in any stream, river, watercourse, channel or bed.

Reports

5 The director of fisheries must furnish annual or other reports of the business conducted by the branch under this Act as may be required by the Lieutenant Governor in Council.

Offence and penalty

6 A person who obstructs, hinders, delays or interferes with the minister, or any officer referred to in section 3, in the discharge of his or her duties under this Act, or in the exercise of any power vested in him or her by that section, commits an offence and is liable on conviction to the penalties provided in the *Offence Act*.

Part 2 — Licensing of Fisheries

Presumption

7 For this Part, a person is deemed to fish or take fish, or to attempt to fish or take fish, who in any way aids or assists any person who fishes or takes fish, or attempts to fish or take fish other than by angling.

Licence required

8 (1) A person must not fish or take fish, or attempt to take fish, within British Columbia or its coastal waters, unless the person holds a valid licence issued for that purpose and has paid the fee prescribed by the Lieutenant Governor in Council.

(2) Only the following persons are entitled to apply for and obtain a licence:

- (a) a Canadian citizen;
- (b) a person who is serving or has served in the Canadian Armed Forces;
- (c) a person who has been lawfully admitted to *Canada under the Immigration Act* (Canada) for permanent residence.

(3) Subsection (1) does not apply to a person under 16 years of age.

Licence fees

9 (1) An order in council may impose licence fees either generally as to all fish or as to certain specified kinds of fish and may have effect in all of British Columbia or in any part of it.

(2) For the purposes of subsection (1), the licence fees may vary in amount as applied to the taking of different kinds of fish.

Offence and penalty

10 (1) A person who fishes or takes fish, or attempts to fish or take fish, without having paid the

licence fee imposed by order of the Lieutenant Governor in Council, or who is convicted of any other offence against this Part, is liable on conviction to the penalties provided in the *Offence Act*.

(2) Each day's continuance of fishing or taking of fish, or attempting to fish or take fish, in contravention of this Part is deemed to constitute a separate offence.

(3) The onus of proving that the licence fee imposed by the Lieutenant Governor in Council under this Part has been paid lies on the person charged with an offence against this Part.

(4) A person contravening or committing any breach of or committing any offence against any rule or regulation made under this Part is guilty of an offence against this Part.

Power to make regulations for Part 2

11 For this Part, the Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

Part 3 — Licensing of Fish and Aquatic Plant Processors and Fish Buying Stations

Definitions

12 In this Part:

"aquatic plant" includes benthic and detached algae, marine flowering plants, brown algae, red algae, green algae and phytoplankton;

"coastal waters" includes waters in the fishing zones of Canada adjacent to British Columbia, all waters in the territorial sea of Canada adjacent to British Columbia, and all internal waters of British Columbia;

"dogfish reduction plant" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of producing oil, fish meal, fish scrap, chicken feed or fertilizer from dogfish;

"establishment" means a place, including a place used for the business of aqua-culture, where fish or aquatic plants are handled, processed, graded, stored, grown or cultivated;

"fish buying station" means

(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;

"fish cold storage plant" means 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 this 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 liver reduction plant" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of producing fish oil from fish livers;

"fish offal reduction plant" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of producing oil, fish meal, fish scrap, chicken feed or fertilizer from fish offal;

"fish processing plant" means

(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;

"fisher" means a person licensed under the *Fisheries Act* (Canada) for commercial fishing;

"harvesting" means cutting, taking, dredging, raking or otherwise procuring kelp or other aquatic plants from their natural habitat on the sea bottom;

"herring cannery" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of herring canning, or of converting the natural herring into canned herring;

"herring dry saltery" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of dry salting herring, or of converting the natural herring into dry salted herring, where the herring are not kept or shipped in a brine solution after being processed;

"herring reduction plant" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of producing oil, fish meal, fish scrap, chicken feed or fertilizer from herring;

"pickled herring plant" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of pickling or brine curing herring, or of converting the natural herring into brine cured or pickled herring;

"plant" includes a cannery, dry saltery or plant of any description within the scope of this Part;

"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;

"salmon" includes all kinds and classes of fish usually known and described by the trade names of sockeyes, red and white springs, pinks, chums, cohoes, steelheads and bluebacks;

"salmon brine curing plant" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of brine curing any species of salmon or of converting any species of salmon into brine cured salmon;

"salmon cannery" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of salmon canning, or of converting the natural salmon into canned salmon;

"salmon dry saltery" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of dry salting salmon, or of converting the natural salmon into dry salted salmon, where the salmon are not kept or shipped in a brine solution;

"shell fish cannery" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of shell fish canning, or of converting the natural shell fish into canned shell fish;

"tierced salmon plant" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of tiercing or mild curing salmon, or of converting the natural salmon into tierced salmon;

"tuna fish cannery" means a building, structure, machinery, appurtenances, appliances and apparatus occupied and used in the business of canning any of the species of tuna fish or of converting the fresh tuna fish into canned tuna fish.

Licence required

13 (1) A person must not process fish or aquatic plants, or operate a plant in British Columbia or its coastal waters, unless the person holds a licence issued for that purpose under this Part and has paid the fee prescribed by the Lieutenant Governor in Council.

(2) A person must not operate a fish buying station unless the person holds a licence issued for that purpose under this Part and has paid the fee prescribed by the Lieutenant Governor in Council.

(3) Subsection (2) does not apply to

(a) a person holding a licence under subsection (1) who purchases fish or aquatic plants only from a fisher at a duly licensed plant, or

(b) a person buying aquatic plants or fish, other than shellfish as defined in the regulations, direct from a fisher for that person's personal use.

(4) A fisher must not sell or offer to sell fish under subsection (3) (b) unless he or she has a fisher's vending licence issued under this Part and has paid the fee prescribed by the Lieutenant Governor in Council.

(5) A person must not carry on the business of aquaculture at any location or facility in British Columbia or its coastal waters unless the person holds a licence issued for that purpose under this Part and has paid the fee prescribed by the Lieutenant Governor in Council.

(6) A fisher licensed under subsection (4) must not sell or offer to sell fish except in accordance with the regulations.

(7) A fisher must not sell or offer to sell shellfish except in accordance with the regulations.

(8) Despite subsections (1) to (4), a person who holds a licence under the *Fish Inspection Act* is not required, in respect of the activities authorized by that licence, to hold a licence under this

Part.

Applications for licences

14 (1) An application for a licence under section 13 must be made in writing to the minister, on a form to be supplied by the minister.

(2) On receipt of the application the minister may issue a licence.

Floating processing plants

15 (1) A person must not operate within British Columbia or its coastal waters a floating processing plant equipped, occupied or used for the canning of salmon or tuna.

(2) A licence granted in respect of a floating processing plant is subject to the condition that the plant must operate only within an area approved in writing by the minister.

Form of licences

16 A licence under this Part must set out the following:

- (a) the name and address of the licensee;
- (b) subject to section 15 (2), the location of the plant for which the licence is issued or the area in which the licensed activity is to be carried on, or both;
- (c) the effective date and the term of the licence;
- (d) other terms and conditions the minister considers appropriate.

Transfer of licences

17 (1) A licence issued under this Part is not transferable.

(2) Despite subsection (1), in the case of a change of ownership of the plant the minister may agree to a transfer of the licence to the new owner.

Suspension or revocation of licence

18 (1) If the holder of a licence issued under this Part violates any provision of this Part or the regulations or a condition of a licence, the minister, after due investigation and hearing, if a hearing is requested by the licensee, and on proof to the minister's satisfaction of the violation,

and in addition to all other penalties to which the licensee may be liable, may

- (a) suspend the licence and all rights of the licensee for a period the minister thinks fit, or
- (b) revoke the licence.

(2) The minister must preside at the hearing, and has the same powers as the Supreme Court

- (a) for compelling the attendance of witnesses and of examining them under oath, and
- (b) for compelling the production and inspection of books, documents and things.

Power to refuse further licence

19 If the licence held by any licensee has been revoked, or if it is shown to the satisfaction of the minister that a licensee has violated any provision of this Part or the regulations or a condition of a licence or has conducted the business of the licensee's establishment in contravention of the spirit and intent of this Part, the minister may, in addition to all other penalties to which the licensee may be liable, refuse after that to issue a licence under this Act to that licensee or to any person for the establishment of that licensee.

Records kept by licensees

20 (1) A person holding a licence under this Part must make reports in the manner and form and at intervals specified by the minister.

(2) A person holding a licence under this Part must keep a record of transactions with fish suppliers of the fish to be processed or held by the licensee.

(3) Subsection (1) does not apply to a fisher who holds a valid fisher's vending licence.

(4) A fisher who holds a fisher's vending licence must keep and submit a record of operations for which he or she is licensed on a form and at a time prescribed by regulations.

(5) A fisher who is required to keep a record under subsection (4) must produce the record at any time on demand by an inspector of fisheries or a conservation officer.

Arbitration of price

21 (1) If a dispute or difference arises in any year between the licensees of herring canneries, herring reduction plants, herring dry salteries, salmon canneries, salmon dry salteries or tierced salmon plants, and fishers engaged in blueback fishing, and fishers owning or operating nets or

seines for the catching of fish of the kind processed in plants of that class, as to the price to be paid by the licensees for fish caught by the fishers, and if no agreement for the settlement of the dispute or difference is arrived at before April 1 in that year, the matter of the dispute or difference may be referred to arbitration under this section.

(2) On application to the Lieutenant Governor in Council on behalf of the licensees or of the fishers, the matter may be referred to 3 arbitrators to be appointed by the Lieutenant Governor in Council, one of whom may be nominated by an association representative of the licensees and designated by the minister, and one by an association representative of the fishers and designated by the minister.

(3) For the purposes of subsection (2), an application on behalf of licensees may be made by an association representative of the licensees, and an application on behalf of fishers may be made by an association representative of the fishers.

(4) The order in council appointing the 3 arbitrators must

(a) designate the parties to the arbitration, and

(b) define the scope of the arbitration.

(5) The order in council is conclusive evidence that all the requirements of this Part and the regulations in respect of the appointment of arbitrators and of matters precedent and incidental to the arbitration have been complied with.

(6) The *Commercial Arbitration Act* applies to an arbitration under this section.

(7) An award of arbitrators appointed under this section must set the price of fish as between the parties to the arbitration for the current season or any part of the current season.

Licences for dogfish and fish offal reduction plants and shell fish canneries

22 (1) A person must not operate a fish liver reduction plant, dogfish reduction plant, fish offal reduction plant, shell fish cannery, tuna fish cannery or fish processing plant in British Columbia unless the person holds a licence.

(2) Every application for a licence under subsection (1) must be made in writing to the minister, on a form supplied by the minister.

(3) On receipt of the application and the prescribed fee, the minister may issue the licence.

(4) [Repealed 1998-42-16.]

(5) Despite subsection (1), a person who holds a licence under the *Fish Inspection Act* is not required, in respect of the activities authorized by that licence, to hold a licence under this Part.

Purchase prohibited if licence unpaid

23 A person who holds a licence under this Part must not purchase, within British Columbia or its coastal waters, fish or aquatic plants that have been taken or caught by another person, unless that other person holds a valid licence required under either this Act or the *Fisheries Act* (Canada).

Harvesting of kelp

24 (1) A person must not harvest kelp or other aquatic plants commercially in the waters of British Columbia unless the person holds a licence under this section and has paid the licence fee prescribed by the Lieutenant Governor in Council.

(2) A holder of a licence under subsection (1) must pay to the government a royalty on all kelp and other aquatic plants harvested by the holder of the licence.

(3) The royalty payable under subsection (2) may be prescribed by regulation by the Lieutenant Governor in Council.

(4) A person must not operate a plant for treating, curing, drying or otherwise processing kelp or other aquatic plants in British Columbia unless the person holds a licence under this section and has paid the licence fee prescribed by the Lieutenant Governor in Council.

(5) An application for a licence under this section must be made in writing to the minister on a form supplied by the minister.

(6) On receipt of the application and the prescribed fee, the minister may issue the licence subject to conditions the minister may specify.

(7) An application for a licence under this section must be made on a form supplied by the minister and must indicate

- (a) the location of the area to be harvested or of the plant for which the licence is required,
- (b) the name and address of the applicant, and
- (c) other information as the minister requires.

(8) Subject to terms specified in the permit, the minister or a person designated by the minister

may grant a permit to any scientific or educational institution to harvest kelp or other aquatic plants at any time for scientific or experimental purposes without payment of a licence fee.

(9) With the approval of the Lieutenant Governor in Council, the minister may make regulations the minister thinks advisable for regulating the production, harvesting and processing of kelp and other aquatic plants.

(10) In addition to the powers that may be exercised by the minister under section 18, the minister may suspend, revoke or refuse to issue a licence under this section in the minister's opinion

(a) the licensee has failed to comply with a condition of a licence, or

(b) the harvesting of kelp or other aquatic plants under the licence would

(i) tend to impair or destroy a bed or part of a bed on which kelp or other aquatic plants grow,

(ii) tend to impair or destroy the supply of any food for fish, or

(iii) be detrimental to fish life.

Offence and penalties

25 (1) In all prosecutions for offences under this Part or the regulations, the burden of proof as to all of the following is on the person purchasing, obtaining or possessing the fish:

(a) the place where any fish were caught;

(b) the person by whom the fish were caught;

(c) the nets, seines, traps or other means by which the fish were caught;

(d) the person from whom the fish were bought or obtained.

(2) A person who contravenes a provision of this Part, a regulation made under this Part or a condition of a licence issued under this Part commits an offence.

(3) On conviction for contravention of section 13 (1), (2) or (5), the penalty is a fine of not less than \$500 and not more than \$10 000.

(4) On conviction for contravention of a provision of this Part other than section 13 (1), (2) or (5),

the penalty is a fine of not less than \$100 and not more than \$2 000.

(5) On conviction for contravention of

(a) a regulation made under this Part, or

(b) a condition of a licence issued under this Part,

the penalty is a fine of not more than \$2 000.

(6) Each day an establishment is operated in circumstances that constitute an offence under subsection (2) constitutes a separate offence.

(7) In addition to other penalties or measures taken under this Act or the regulations, all fish or fish products or aquatic plants or aquatic plant products, whether processed or not, on or about an establishment on or after an offence occurs at that establishment, may be seized by a provincial constable as defined in the *Police Act* or by an inspector of fisheries and, on the direction of the minister, be forfeited to the government and sold with the proceeds to be paid into the consolidated revenue fund.

Power to make regulations

26 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable

(a) for safe and orderly aquaculture, and

(b) for safe and orderly distribution of fish and aquatic plants.

Part 4 — Fish Protective Devices

Definition

27 In this Part, "**person**" includes municipalities and agencies of the government.

Dam or hydraulic project

28 (1) A person who starts the construction of any dam or other hydraulic project that will use, divert, obstruct, impound or change the natural flow or course of any river or stream, or otherwise

utilize any of the waters of British Columbia, must provide fish passes, fish ladders, fish ways or other fish protective devices as the minister requires for the safe and adequate passage of fish over, around or through the dam or other hydraulic project.

(2) Before any person may start the construction of any dam or other hydraulic project of a class or kind referred to in subsection (1), that person must submit to the minister complete plans and specifications of the fish passes, fish ladders, fish ways or other fish protective devices required by the minister.

(3) The plans and specifications must, in addition to all other information, indicate the exact location of the fish protective devices in relation to the hydraulic project or work, and must show the exact location of the fish passes, fish ladders, fish ways or other fish protective devices in the river or stream.

(4) Before starting the construction of any dam or other hydraulic project of a class or kind referred to in subsection (1), the person must submit to the minister in writing the approximate date

(a) on which work will start and the approximate length of time expected to be required to complete the work, and

(b) of the start of any temporary obstructions or work which may be required for the completion of the dam or hydraulic project, and the approximate date on which the temporary obstruction or work will be removed.

(5) A person must not start construction of any dam or other hydraulic project of a class or kind referred to in subsection (1) until the minister has given notification in writing that, in the minister's opinion, the proposed dam or other hydraulic work will not be materially detrimental to fish life, or that the work proposed for the protection of fish life is adequate, and that the time proposed for the start of construction and completion of work is suitable, having due regard to protection of fish life.

(6) A person who owns or operates or is otherwise responsible for the operation of any dam or other hydraulic work of a class or kind referred to in subsection (1) must, as the minister directs, divert sufficient water into any fish pass, fish way, fish ladder or other fish protective device to permit the fish pass, fish way, fish ladder or other fish protective device to function properly and provide adequate water for the transportation of fish on their usual migration routes.

(7) A person who owns or operates or is otherwise responsible for the operation of a dam or other hydraulic work of a class or kind referred to in subsection (1) must provide and install, as the minister directs, fish screens of a design approved by the minister and in a manner satisfactory to the minister for preventing fish from passing into penstocks, pumps, diversion channels for

irrigation projects, tail races, waterworks systems or other diversions that endanger fish life.

(8) An unauthorized person must not damage, tamper with or render ineffective fish screens installed under subsection (7).

(9) This Part applies to rivers, streams or waterways designated by the Lieutenant Governor in Council.

Offence and penalty

29 (1) A person who violates any provision of this Part commits an offence and is liable on conviction to a fine of not less than \$100 and not more than \$10 000.

(2) Each day's violation of a provision of this Part is deemed to constitute a separate offence.

(3) It is the duty of every person responsible for carrying out any project to which this Part applies to complete the work for the protection of fish life, and failure to do so is an offence.

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