



## Department of Justice

This document is in force from 2002-12-31 to 2003-03-31

### Fisheries Act

**R.S.C., 1985, c. F-14**

An Act respecting fisheries

#### SHORT TITLE

Short title

1. This Act may be cited as the *Fisheries Act*.

R.S., c. F-14, s. 1.

#### INTERPRETATION

Definitions

2. In this Act,

"Canadian fisheries waters"

« *eaux de pêche canadiennes* »

"Canadian fisheries waters" means all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada;

"close time"

« *période d'interdiction* » et « *période de fermeture* » ou « *saison de fermeture* »

"close time" means a specified period during which fish to which it applies may not be fished, and "closed time" or "closed season" has a similar meaning;

"fish"

« *poissons* »

"fish" includes

(a) parts of fish,

(b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and

(c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;

"fishery"

« *pêcherie* »

"fishery" includes the area, locality, place or station in or on which a pound, seine, net, weir or other fishing appliance is used, set, placed or located, and the area, tract or stretch of water in or from which fish may be taken by the said pound, seine, net, weir or other fishing appliance, and also the pound, seine, net, weir, or other fishing appliance used in connection therewith;

"fishery guardian"

« *garde-pêche* »

“fishery guardian” means a person who is designated as a fishery guardian pursuant to subsection 5(1);

“fishery officer”  
« *agent des pêches* »

“fishery officer” means a person who is designated as a fishery officer pursuant to subsection 5(1);

“fishing”  
« *pêche* »

“fishing” means fishing for, catching or attempting to catch fish by any method;

“fishing vessel”  
« *bateau de pêche* »

“fishing vessel” means any vessel used, outfitted or designed for the purpose of catching, processing or transporting fish;

“inspector”  
« *inspecteur* »

“inspector” means a person who is designated as an inspector pursuant to subsection 38(1);

“lawful excuse”[*Repealed, 1991, c. 1, s. 1*]

“Minister”  
« *ministre* »

“Minister” means the Minister of Fisheries and Oceans or, in respect of any matter related to the Northern Pipeline referred to in the *Northern Pipeline Act*, the member of the Queen’s Privy Council for Canada designated as the Minister for the purposes of that Act;

“obstruction”  
« *obstacle* »

“obstruction” means any slide, dam or other obstruction impeding the free passage of fish;

“vehicle”  
« *véhicule* »

“vehicle” means any conveyance that may be used for transportation, including aircraft.

R.S., 1985, c. F-14, s. 2; R.S., 1985, c. 35 (1st Supp.), ss. 1, 5; 1991, c. 1, s. 1.

## PURPOSES

**2.1** [*Repealed, R.S., 1985, c. 35 (1st Supp.), s. 6*]

## APPLICATION

Provincial rights not affected

**3.** (1) Nothing in this Act shall be taken to authorize the granting of fishery leases that confer an exclusive right to fish in property belonging to a province.

Application of Act to Her Majesty

(2) This Act is binding on Her Majesty in right of Canada or a province.

R.S., c. F-14, s. 3; R.S., c. 17(1st Supp.), s. 9.

Licences to take spawn

**4.** Nothing in this Act precludes the granting by the Minister of written permission to obtain fish for purposes of stocking or artificial breeding or for scientific purposes.

R.S., c. F-14, s. 4.

#### FISHERY OFFICERS AND FISHERY GUARDIANS

Designation

**5.** (1) The Minister may designate any persons or classes of persons as fishery officers or fishery guardians for the purposes of this Act and may limit in any manner the Minister considers appropriate the powers that a fishery officer or fishery guardian may exercise under this Act or any other Act of Parliament.

Certificate of designation

(2) Each fishery officer and fishery guardian shall be provided with a certificate in a form the Minister considers appropriate certifying their designation as such and, where the powers of a fishery officer or fishery guardian are limited pursuant to subsection (1), specifying the powers that the officer or guardian may exercise under this Act or any other Act of Parliament.

Presentation of certificate

(3) On entering any place under this Act or any other Act of Parliament, a fishery officer or fishery guardian shall, on request, show the certificate of designation to the person in charge of the place.

Nisga'a laws

(4) The powers and protections that a fishery officer or fishery guardian has under this or any other Act of Parliament, including the powers and protections of a peace officer under the *Criminal Code*, apply to a fishery officer or fishery guardian enforcing Nisga'a laws made under the Fisheries Chapter of the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*.

R.S., 1985, c. F-14, s. 5; 1991, c. 1, s. 2; 2000, c. 7, s. 22.

**6.** [Repealed, 1991, c. 1, s. 2]

#### FISHERY LEASES AND LICENCES

Fishery leases and licences

**7.** (1) Subject to subsection (2), the Minister may, in his absolute discretion, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued leases and licences for fisheries or fishing, wherever situated or carried on.

Idem

(2) Except as otherwise provided in this Act, leases or licences for any term exceeding nine years shall be issued only under the authority of the Governor in Council.

R.S., c. F-14, s. 7.

Fees

**8.** Except where licence fees are prescribed in this Act, the Governor in Council may prescribe the fees that are to be charged for fishery or fishing licences.

R.S., c. F-14, s. 8.

Minister may cancel licence

**9.** The Minister may suspend or cancel any lease or licence issued under the authority of

this Act, if

(a) the Minister has ascertained that the operations under the lease or licence were not conducted in conformity with its provisions; and

(b) no proceedings under this Act have been commenced with respect to the operations under the lease or licence.

R.S., 1985, c. F-14, s. 9; R.S., 1985, c. 31 (1st Supp.), s. 95.

**10. to 16.** [Repealed, 1991, c. 1, s. 3]

## LOBSTER FISHERIES

**17.** [Repealed, 1991, c. 1, s. 4]

Licences for lobster pounds

**18.** (1) No one shall maintain a pound or enclosure in which lobsters, legally caught during the open season, are retained for sale during the close season at a place where the pound or enclosure is located, or for export therefrom, except under a licence from the Minister, and no lobsters shall be taken from any such pound or enclosure and disposed of during the close season at the place where it is located, except under a certificate from a fishery officer or fishery guardian, setting out the pound or enclosure from which the lobsters were taken and that they had been legally caught during the open season.

Marking of pounds

(2) Each pound or enclosure referred to in subsection (1) shall be marked with the name of the licensee and the number of his licence, and the marking shall be in black on a white ground, with letters and figures that are at least six inches in height.

Fee

(3) The annual fee for a licence referred to in subsection (1) shall be seventy-five dollars.

R.S., c. F-14, s. 18.

**19.** [Repealed, 1991, c. 1, s. 5]

## CONSTRUCTION OF FISH-WAYS

Fish-ways to be made as Minister directs

**20.** (1) Every obstruction across or in any stream where the Minister determines it to be necessary for the public interest that a fish-pass should exist shall be provided by the owner or occupier with a durable and efficient fish-way or canal around the obstruction, which shall be maintained in a good and effective condition by the owner or occupier, in such place and of such form and capacity as will in the opinion of the Minister satisfactorily permit the free passage of fish through it.

Idem

(2) Where it is determined by the Minister in any case that the provision of an efficient fish-way or canal around the obstruction is not feasible, or that the spawning areas above the obstruction are destroyed, the Minister may require the owner or occupier of the obstruction to pay to him from time to time such sum or sums of money as he may require to construct, operate and maintain such complete fish hatchery establishment as will in his opinion meet the requirements for maintaining the annual return of migratory fish.

Place, form, etc.

(3) The place, form and capacity of the fish-way or canal to be provided pursuant to subsection (1) must be approved by the Minister before construction thereof is begun and,

immediately after the fish-way is completed and in operation, the owner or occupier of any obstruction shall make such changes and adjustments at his own cost as will in the opinion of the Minister be necessary for its efficient operation under actual working conditions.

To be kept open

(4) The owner or occupier of every fish-way or canal shall keep it open and unobstructed and shall keep it supplied with such sufficient quantity of water as the Minister considers necessary to enable the fish frequenting the waters in which the fish-way or canal is placed to pass through it during such times as are specified by any fishery officer, and, where leaks in a dam cause a fish-way therein to be inefficient, the Minister may require the owner or occupier of the dam to prevent the leaks therein.

R.S., c. F-14, s. 20.

Minister may authorize payment of one-half of expense

**21.** (1) The Minister may authorize the payment of one-half of the expense incurred by an owner or occupier in constructing and maintaining any fish-way or canal and, after a fish-way or canal that has been duly approved by the Minister has been built at the cost of the owner or occupier of any obstruction, or after the owner or occupier has paid one-half the cost thereof and the fish-way or canal thereafter proves to be ineffective, the total cost of any change in the fish-way or canal or any new fish-way or canal required to enable the fish to pass by the obstruction shall, except as provided in subsection 20(3), be paid by Her Majesty.

May construct and recover the cost in certain cases

(2) The Minister, in order to procure the construction of any fish-way or canal, pending proceedings against any owner or occupier for the punishment imposed by this Act, may make and complete the construction forthwith, and may authorize any person to enter on the premises with the necessary workmen, means and materials for that purpose and may recover from the owner or occupier the whole expense so incurred by action in the name of Her Majesty.

May remove or destroy after notice

(3) Where an unused obstruction or a thing detrimental to fish exists and the owner or occupier thereof does not after notice given by the Minister remove it, or if the owner is not resident in Canada, or his exact place of residence is unknown to the Minister, the Minister may, without being liable to damages, or in any way to indemnify the owner or occupier, cause the obstruction or thing detrimental to fish to be removed or destroyed and, where notice has been given to the owner or occupier, may recover from the owner or occupier the expense of the removal or destruction.

Minister may require fish stops or diverters

(4) The Minister may require the owner or occupier of any obstruction to install and maintain such fish stops or diverters, both above and below the obstruction, as will in his opinion be adequate to prevent the destruction of fish or to assist in providing for their ascent.

R.S., c. F-14, s. 20.

Water for the descent of fish

**22.** (1) At every obstruction, where the Minister determines it to be necessary, the owner or occupier thereof shall, when required by the Minister, provide a sufficient flow of water over the spill-way or crest, with connecting sluices into the river below, to permit the safe and unimpeded descent of fish.

Protection during construction

(2) The owner or occupier of any obstruction shall make such provision as the Minister determines to be necessary for the free passage of both ascending and descending migratory

fish during the period of construction thereof.

Sufficient water for river bed below dam

(3) The owner or occupier of any obstruction shall permit the escape into the river-bed below the obstruction of such quantity of water, at all times, as will, in the opinion of the Minister, be sufficient for the safety of fish and for the flooding of the spawning grounds to such depth as will, in the opinion of the Minister, be necessary for the safety of the ova deposited thereon.

R.S., c. F-14, s. 20.

## GENERAL PROHIBITIONS

Fishing in limits leased to another prohibited

**23.** No one shall fish for, take, catch or kill fish in any water, along any beach or within any fishery described in any lease or licence, or place, use, draw or set therein any fishing gear or apparatus, except by permission of the occupant under the lease or licence for the time being, or shall disturb or injure any such fishery.

R.S., c. F-14, s. 21.

Seines, nets, etc., not to obstruct navigation

**24.** Seines, nets or other fishing apparatus shall not be set or used in such manner or in such place as to obstruct the navigation of boats and vessels and no boats or vessels shall destroy or wantonly injure in any way seines, nets or other fishing apparatus lawfully set.

R.S., c. F-14, s. 22.

Setting gear during close time

**25.** (1) Subject to the regulations, no person shall place or set any fishing gear or apparatus in any water, along any beach or within any fishery during a close time.

Removal of gear

(2) Subject to the regulations and subsection (3), any person who places or sets any fishing gear or apparatus in any water, along any beach or within any fishery shall remove it when the gear or apparatus is not being tended and prior to the commencement of a close time.

Officer's discretion

(3) A fishery officer may permit fishing gear or apparatus to remain in the water, along a beach or within a fishery after the commencement of a close time for any period the fishery officer considers necessary to permit the removal of the gear or apparatus.

R.S., 1985, c. F-14, s. 25; 1991, c. 1, s. 6.

Main channel not to be obstructed

**26.** (1) One-third of the width of any river or stream and not less than two-thirds of the width of the main channel at low tide in every tidal stream shall be always left open, and no kind of net or other fishing apparatus, logs or any material of any kind shall be used or placed therein.

(2) [Repealed, 1991, c. 1, s. 7]

Devices to prevent escape of fish

(3) The Minister may authorize the placing and maintaining of barriers, screens or other obstructions in streams to prevent the escape of fish held for fish breeding purposes or any other purpose that the Minister deems in the public interest, and no person shall injure any such barrier, screen or other obstruction.

R.S., 1985, c. F-14, s. 26; 1991, c. 1, s. 7.

## Fish-ways and canals

**27.** No one shall

(a) damage or obstruct any fish-way or canal built, constructed or used to enable fish to pass over or around any obstruction;

(b) do anything to stop, impede or hinder fish from entering or passing the fish-way or canal or to stop, impede or hinder fish from surmounting any obstacle or leap; or

(c) fish in any manner within twenty-five yards downstream from the lower entrance to any fish-way, canal, obstacle or leap.

R.S., c. F-14, s. 25.

## Use of explosives prohibited

**28.** No one shall hunt or kill fish or marine animals of any kind, other than porpoises, whales, walrus, sea-lions and hair seals, by means of rockets, explosive materials, explosive projectiles or shells.

R.S., c. F-14, s. 26.

## Nets, weirs, etc., not to obstruct passage of fish

**29.** (1) No one shall erect, use or maintain in any of the Canadian fisheries waters, whether subject to any exclusive right of fishery or not, any net, weir or other device that unduly obstructs the passage of fish.

## Removal

(2) The Minister or a fishery officer may order the removal of or remove any net, weir or other device that, in the opinion of the Minister or fishery officer, unduly obstructs the passage of fish.

R.S., c. F-14, s. 27.

## Fish guards only where Minister deems necessary

**30.** (1) Every water intake, ditch, channel or canal in Canada constructed or adapted for conducting water from any Canadian fisheries waters for irrigating, manufacturing, power generation, domestic or other purposes shall, if the Minister deems it necessary in the public interest, be provided at its entrance or intake with a fish guard or a screen, covering or netting so fixed as to prevent the passage of fish from any Canadian fisheries waters into the water intake, ditch, channel or canal.

## Structure of fish guards

(2) The fish guard, screen, covering or netting referred to in subsection (1) shall

(a) have meshes or holes of such dimensions as the Minister may prescribe; and

(b) be built and maintained by the owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1), subject to the approval of the Minister or of such officer as the Minister may appoint to examine it.

## Duty of owner to keep in repair

(3) The owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1) shall maintain the fish guard, screen, covering or netting referred to in that subsection in a good and efficient state of repair and shall not permit its removal except for renewal or repair.

## Removal

(4) During the time in which a renewal or repair referred to in subsection (1) is being

effected, the sluice or gate at the intake or entrance of the water intake, ditch, channel or canal shall be closed in order to prevent the passage of fish into the water intake, ditch, channel or canal.

R.S., c. F-14, s. 28; 1976-77, c. 35, s. 4.

Permit required

**31.** (1) No one shall catch, fish for, take, buy, sell, possess or export any fish for the purposes of converting it into fish meal, manure, guano or fertilizer, or for the manufacture or conversion of the fish into oil, fish meal or manure or other fertilizing product, except under authority of the Minister.

Exception by Minister

(2) The Minister may, by notice published in the *Canada Gazette*, except any kind or kinds of fish from the operation of all or any part of subsection (1).

R.S., c. F-14, s. 29.

Destruction of fish

**32.** No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act.

R.S., c. F-14, s. 30; 1976-77, c. 35, s. 5.

Unlawful sale or possession

**33.** No person shall purchase, sell or possess any fish that has been caught in contravention of this Act or the regulations.

R.S., 1985, c. F-14, s. 33; 1991, c. 1, s. 8.

Definition of "fishing plan"

**33.1** (1) In this section, "fishing plan" means a Nisga'a annual fishing plan, as defined in the Fisheries Chapter of the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*, that is approved, or varied and approved, by the Minister in accordance with that Agreement.

Contravention of fishing plan

(2) Where a fishing plan stipulates that this subsection applies to certain of its provisions relating to persons engaged in harvesting, sale or related activities, no person shall contravene any of those provisions.

Conditions of prosecution

(3) No proceedings may be commenced in respect of an offence for the contravention of subsection (2)

(a) except in accordance with an agreement, made under paragraph 93 of the Fisheries Chapter of the Nisga'a Final Agreement, concerning enforcement of federal laws or Nisga'a laws; or

(b) unless the Minister, or a person appointed to a position in the Department of Fisheries and Oceans who is authorized by the Minister, considers such proceedings to be necessary to ensure compliance with the fishing plan.

2000, c. 7, s. 23.

## FISH HABITAT PROTECTION AND POLLUTION PREVENTION

Definitions

**34.** (1) For the purposes of sections 35 to 43,



"deleterious substance"

« *substance nocive* »

"deleterious substance" means

(a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water,

and without limiting the generality of the foregoing includes

(c) any substance or class of substances prescribed pursuant to paragraph (2)(a),

(d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (2)(b), and

(e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (2)(c);

"deposit"

« *immersion* » ou « *rejet* »

"deposit" means any discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping or placing;

"fish habitat"

« *habitat du poisson* »

"fish habitat" means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes;

"water frequented by fish"

« *eaux où vivent des poissons* »

"water frequented by fish" means Canadian fisheries waters.

Regulations for purpose of definition "deleterious substance"

(2) The Governor in Council may make regulations prescribing

(a) substances and classes of substances,

(b) quantities or concentrations of substances and classes of substances in water, and

(c) treatments, processes and changes of water

for the purpose of paragraphs (c) to (e) of the definition "deleterious substance" in subsection (1).

R.S., c. F-14, s. 31; R.S., c. 17(1st Supp.), ss. 2, 3; 1976-77, c. 35, ss. 5, 7.

Harmful alteration, etc., of fish habitat

**35.** (1) No person shall carry on any work or undertaking that results in the harmful

alteration, disruption or destruction of fish habitat.

Alteration, etc., authorized

(2) No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act.

R.S., c. F-14, s. 31; R.S., c. 17(1st Supp.), s. 2; 1976-77, c. 35, s. 5.

Throwing overboard of certain substances prohibited

**36.** (1) No one shall

(a) throw overboard ballast, coal ashes, stones or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on;

(b) leave or deposit or cause to be thrown, left or deposited, on the shore, beach or bank of any water or on the beach between high and low water mark, remains or offal of fish or of marine animals; or

(c) leave decayed or decaying fish in any net or other fishing apparatus.

Disposal of remains, etc.

(2) Remains or offal described in subsection (1) may be buried ashore, above high water mark.

Deposit of deleterious substance prohibited

(3) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.

Deposits authorized by regulation

(4) No person contravenes subsection (3) by depositing or permitting the deposit in any water or place of

(a) waste or pollutant of a type, in a quantity and under conditions authorized by regulations applicable to that water or place made by the Governor in Council under any Act other than this Act; or

(b) a deleterious substance of a class, in a quantity or concentration and under conditions authorized by or pursuant to regulations applicable to that water or place or to any work or undertaking or class thereof, made by the Governor in Council under subsection (5).

Regulations for authorizing certain deposits

(5) The Governor in Council may make regulations for the purpose of paragraph (4)(b) prescribing

(a) the deleterious substances or classes thereof authorized to be deposited notwithstanding subsection (3);

(b) the waters or places or classes thereof where any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;

(c) the works or undertakings or classes thereof in the course or conduct of which any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;

(d) the quantities or concentrations of any deleterious substances or classes thereof referred to in paragraph (a) that are authorized to be deposited;

(e) the conditions or circumstances under which and the requirements subject to which any deleterious substances or classes thereof referred to in paragraph (a) or any quantities or concentrations of those deleterious substances or classes thereof are authorized to be deposited in any waters or places or classes thereof referred to in paragraph (b) or in the course or conduct of any works or undertakings or classes thereof referred to in paragraph (c); and

(f) the persons who may authorize the deposit of any deleterious substances or classes thereof in the absence of any other authority, and the conditions or circumstances under which and requirements subject to which those persons may grant the authorization.

#### Directions by the Minister

(6) A person authorized to deposit a deleterious substance by or under regulations made pursuant to subsection (5) shall, when directed in writing by the Minister, notwithstanding any regulations made pursuant to paragraph (5)(e) or any conditions set out in an authorization made pursuant to paragraph (5)(f), conduct such sampling, analyses, tests, measurements or monitoring, install or operate such equipment or comply with such procedures, and report such information, as may be required by the Minister in order to determine whether the person is depositing the deleterious substance in the manner authorized.

R.S., c. F-14, s. 33; R.S., c. 17(1st Supp.), s. 3; 1976-77, c. 35, s. 7; 1984, c. 40, s. 29.

#### Minister may require plans and specifications

**37.** (1) Where a person carries on or proposes to carry on any work or undertaking that results or is likely to result in the alteration, disruption or destruction of fish habitat, or in the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such waters, the person shall, on the request of the Minister or without request in the manner and circumstances prescribed by regulations made under paragraph (3)(a), provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

(a) whether the work or undertaking results or is likely to result in any alteration, disruption or destruction of fish habitat that constitutes or would constitute an offence under subsection 40(1) and what measures, if any, would prevent that result or mitigate the effects thereof; or

(b) whether there is or is likely to be a deposit of a deleterious substance by reason of the work or undertaking that constitutes or would constitute an offence under subsection 40(2) and what measures, if any, would prevent that deposit or mitigate the effects thereof.

#### Powers of Minister

(2) If, after reviewing any material or information provided under subsection (1) and affording the persons who provided it a reasonable opportunity to make representations, the Minister or a person designated by the Minister is of the opinion that an offence under subsection 40(1) or (2) is being or is likely to be committed, the Minister or a person designated by the Minister may, by order, subject to regulations made pursuant to paragraph (3)(b), or, if there are no such regulations in force, with the approval of the Governor in Council,

(a) require such modifications or additions to the work or undertaking or such modifications to any plans, specifications, procedures or schedules relating thereto as the Minister or a person designated by the Minister considers necessary in the circumstances, or

(b) restrict the operation of the work or undertaking,

and, with the approval of the Governor in Council in any case, direct the closing of the work or undertaking for such period as the Minister or a person designated by the Minister considers necessary in the circumstances.

#### Regulations

(3) The Governor in Council may make regulations

(a) prescribing the manner and circumstances in which any information or material shall be provided to the Minister without request under subsection (1); and

(b) prescribing the manner and circumstances in which the Minister or a person designated by the Minister may make orders under subsection (2) and the terms of the orders.

#### Consultation with provinces

(4) Where the Minister or a person designated by the Minister proposes to make an order pursuant to subsection (2), he shall offer to consult with the governments of any provinces that he considers to be interested in the proposed order and with any departments or agencies of the Government of Canada that he considers appropriate.

#### Exception

(5) Nothing in subsection (4) prevents the Minister or a person designated by the Minister from making an interim order pursuant to subsection (2) without the offer of consultation referred to in subsection (4) where he considers that immediate action is necessary.

R.S., c. 17(1st Supp.), s. 3; 1976-77, c. 35, s. 8.

#### Inspectors and analysts

**38.** (1) For the purposes of this section, the Minister may designate as an inspector or analyst any person who, in the opinion of the Minister, is qualified to be so designated.

#### Certificate to be produced

(2) The Minister shall furnish every inspector with a certificate of his designation and on entering any place, premises, vehicle or vessel referred to in subsection (3) an inspector shall, if so required, produce the certificate to the person in charge thereof.

#### Powers of inspector

(3) An inspector may, at any reasonable time, enter any place, premises, vehicle or vessel, other than a private dwelling-place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling-place, where the inspector believes on reasonable grounds that any work or undertaking resulting or likely to result in the deposit of a deleterious substance in water frequented by fish or in any place under any conditions referred to in subsection 37(1) is being, has been or is likely to be carried on, and the inspector may, for any purpose related to the enforcement of this section, conduct inspections, including examining any substance or product found therein, taking samples thereof and conducting tests and measurements.

#### Search

(3.1) An inspector with a warrant issued under subsection (3.2) may at any reasonable time enter any place, premises, vehicle or vessel, other than a private dwelling-place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling-place, where the inspector believes on reasonable grounds that an offence under subsection 40 (2) is being or has been committed and search that place, premises, vehicle or vessel for evidence of the offence.

#### Authority to issue warrant

(3.2) Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any place, premises, vehicle or vessel referred to in subsection (3.1)

(a) anything on or in respect of which an offence under subsection 40(2) is being or has been committed, or

(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence under subsection 40(2),

the justice of the peace may issue a warrant under his hand authorizing the inspector named therein to enter and search the place, premises, vehicle or vessel for any such thing subject to such conditions as may be specified in the warrant.

#### Use of force

(3.3) In executing a warrant issued under subsection (3.2), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

#### Where warrant not necessary

(3.4) An inspector may exercise the powers of entry and search referred to in subsection (3.1) without a warrant issued under subsection (3.2) if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

#### Exigent circumstances

(3.5) For the purposes of subsection (3.4), exigent circumstances include circumstances in which the delay necessary to obtain a warrant would result in danger to human life or safety or the loss or destruction of evidence.

#### Duty to report

(4) Where, out of the normal course of events, there occurs a deposit of a deleterious substance in water frequented by fish or a serious and imminent danger thereof by reason of any condition, and where any damage or danger to fish habitat or fish or the use by man of fish results or may reasonably be expected to result therefrom, any person who at any material time

(a) owns the deleterious substance or has the charge, management or control thereof, or

(b) causes or contributes to the causation of the deposit or danger thereof,

shall, in accordance with any regulations applicable thereto, report such occurrence to an inspector or such other person or authority as is prescribed by the regulations.

#### Duty to take all reasonable measures

(5) Every person referred to in paragraph (4)(a) or (b) shall, as soon as possible in the circumstances, take all reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent any occurrence referred to in subsection (4) or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

#### Power to take or direct remedial measures

(6) Where an inspector, whether or not a report has been made under subsection (4), is satisfied on reasonable grounds that there is an occurrence referred to in subsection (4) and that immediate action is necessary in order to carry out any reasonable measures referred to in subsection (5), he may, subject to subsection (7) and the regulations, take any such measures or direct that they be taken by any person referred to in paragraph (4)(a) or (b).

## Inconsistent orders

(7) Any requirement or direction of an inspector under this section that is inconsistent with any requirement or order of a pollution prevention officer under the *Canada Shipping Act* is void to the extent of the inconsistency.

## Access to property

(8) For the purposes of subsections (4) to (6), any inspector or other person may enter and have access through any place, premises, vehicle or vessel and may take all reasonable action in order to comply with those subsections or any of them, but nothing in this subsection relieves any person from liability at law for his illegal or negligent acts or omissions or for loss or damage caused to others by such entry, access or action.

## Regulations

(9) The Governor in Council may make regulations prescribing

(a) the person or authority to whom or which a report is to be made under subsection (4), the manner in which the report is to be made, the information to be contained therein and the circumstances in which no report is required to be made;

(b) the manner in which inspectors may take any measures or give any directions under subsection (6) and the conditions to which such measures or directions are subject;

(c) the manner and circumstances in which any measures taken or directions given under subsection (6) may be reviewed, rescinded or varied; and

(d) any other matters necessary for or incidental to carrying out the purposes and provisions of this section.

## Assistance to inspectors

(10) The owner or person in charge of any place, premises, vehicle or vessel entered by an inspector pursuant to subsection (3) and every person found therein shall give the inspector all reasonable assistance to enable the inspector to carry out his duties and functions under this section and shall furnish the inspector with such information with respect to the administration of this section as he may reasonably require.

## Certificate of analyst as proof

(11) Subject to subsections (12) and (13), a certificate purporting to be signed by an analyst stating that he has analyzed or tested a substance or product and stating the result of his analysis or test is admissible in evidence in any prosecution for an offence under subsection 40(2) or (3) without proof of the signature or official character of the person appearing to have signed the certificate and, in the absence of any evidence to the contrary, is proof of the statements contained in the certificate.

## Attendance of analyst

(12) The party against whom there is produced any certificate pursuant to subsection (11) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

## Notice

(13) No certificate shall be admitted in evidence pursuant to subsection (11) unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate in question.

R.S., 1985, c. F-14, s. 38; R.S., 1985, c. 31 (1st Supp.), s. 34.

**39. [Repealed, 1991, c. 1, s. 9]**

## Offence and punishment

**40.** (1) Every person who contravenes subsection 35(1) is guilty of

(a) an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or to both.

## Idem

(2) Every person who contravenes subsection 36(1) or (3) is guilty of

(a) an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or to both.

## Other offences

(3) Every person who

(a) fails to provide the Minister with any material or information requested pursuant to subsection 37(1) within a reasonable time after the request is made,

(b) fails to provide or submit any material, information or report that is to be provided or submitted under regulations made pursuant to subsection 37(3),

(c) fails to make a report that he is required to make under subsection 38(4),

(d) carries on any work or undertaking described in subsection 37(1)

(i) otherwise than in accordance with any material or information relating to the work or undertaking that he provides to the Minister under subsection 37(1),

(ii) otherwise than in accordance with any such material or information as required to be modified by any order of the Minister under paragraph 37(2)(a), or

(iii) contrary to any order made by the Minister under subsection 37(2),

(e) fails to take any reasonable measures that he is required to take under subsection 38(5) or fails to take such measures in the required manner, or

(f) fails to comply with the whole or any part of a direction of an inspector under subsection 38(6),

(g) [Repealed, 1991, c. 1, s. 10]

is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(4) [Repealed, 1991, c. 1, s. 10]

## Matters of proof

(5) For the purpose of any proceedings for an offence under subsection (2) or (3),

(a) a "deposit" as defined in subsection 34(1) takes place whether or not any act or omission resulting in the deposit is intentional; and

(b) no water is "water frequented by fish", as defined in subsection 34(1), where proof is made that at all times material to the proceedings the water is not, has not been and is not likely to be frequented in fact by fish.

R.S., 1985, c. F-14, s. 40; 1991, c. 1, s. 10.

**41.** (1) to (3) [Repealed, 1991, c. 1, s. 11]

Action to enjoin not prejudiced by prosecution

(4) Notwithstanding that a prosecution has been instituted in respect of an offence under section 40, the Attorney General of Canada may commence and maintain proceedings to enjoin anything punishable as an offence under that section.

R.S., 1985, c. F-14, s. 41; 1991, c. 1, s. 11.

Civil liability to Her Majesty

**42.** (1) Where there occurs a deposit of a deleterious substance in water frequented by fish that is not authorized under section 36 or a serious and imminent danger thereof by reason of any condition, the persons who at any material time

(a) own the deleterious substance or have the charge, management or control thereof, or

(b) are persons other than those described in paragraph (a) who cause or contribute to the causation of the deposit or danger thereof,

are, subject to subsection (4) in the case of the persons referred to in paragraph (a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons referred to in paragraph (b), jointly and severally liable for all costs and expenses incurred by Her Majesty in right of Canada or a province, to the extent that those costs and expenses can be established to have been reasonably incurred in the circumstances, of and incidental to the taking of any measures to prevent any such deposit or condition or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

Recovery

(2) All the costs and expenses referred to in subsection (1) are recoverable by Her Majesty in right of Canada or a province with costs in proceedings brought or taken therefor in the name of Her Majesty in any such right in any court of competent jurisdiction.

Liability to fishermen

(3) Where, as a result of a deposit that is not authorized under section 36, a deleterious substance enters water frequented by fish, the persons described in paragraphs (1)(a) and (b) are, subject to subsection (4) in the case of the persons described in paragraph (1)(a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons described in paragraph (1)(b), jointly and severally liable for all loss of income incurred by any licensed commercial fisherman, to the extent that the loss can be established to have been incurred as a result of the deposit or of a prohibition to fish resulting therefrom, and all such loss is recoverable with costs in proceedings brought or taken therefor in any court of competent jurisdiction.

Defences to liability

(4) The liability of any person described in paragraph (1)(a) is absolute and does not depend on proof of fault or negligence but no such person is liable for any costs and expenses pursuant to subsection (1) or loss of income pursuant to subsection (3) if he establishes that



the occurrence giving rise to the liability was wholly caused by

(a) an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) an act or omission with intent to cause damage by a person other than a person for whose wrongful act or omission he is by law responsible.

#### Exception

(5) Nothing in this section limits or restricts any right of recourse that any person who is liable pursuant to this section may have against any other person.

#### Limitation

(6) No proceedings may be commenced under subsections (1) to (3) at any time later than two years after the occurrence to which the proceedings relate could reasonably be expected to have become known to Her Majesty in right of Canada or a province or to any licensed commercial fisherman, as the case may be.

#### Exception

(7) Subsections (1) to (3) do not apply in respect of any deposit of a deleterious substance that, within the meaning of Part XV of the *Canada Shipping Act*, constitutes a discharge of a pollutant caused by or otherwise attributable to a ship.

#### Other civil remedies not affected

(8) No civil remedy for any act or omission is suspended or affected by reason only that the act or omission is authorized under this Act, is an offence under this Act or gives rise to civil liability under this Act.

R.S., c. 17(1st Supp.), s. 3; 1976-77, c. 35, s. 7.

#### Annual report

**42.1** (1) The Minister shall, as soon as possible after the end of each fiscal year, prepare and cause to be laid before Parliament a report on the administration and enforcement of the provisions of this Act relating to fish habitat protection and pollution prevention for that year.

#### Statistical summary

(2) The annual report shall include a statistical summary of convictions under section 40 for that year.

1991, c. 1, s. 11.1.

## REGULATIONS

#### Regulations

**43.** The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and in particular, but without restricting the generality of the foregoing, may make regulations

(a) for the proper management and control of the sea-coast and inland fisheries;

(b) respecting the conservation and protection of fish;

(c) respecting the catching, loading, landing, handling, transporting, possession and disposal of fish;

(d) respecting the operation of fishing vessels;

(e) respecting the use of fishing gear and equipment;

- (e.1) respecting the marking, identification and tracking of fishing vessels;
- (e.2) respecting the designation of persons as observers, their duties and their carriage on board fishing vessels;
- (f) respecting the issue, suspension and cancellation of licences and leases;
- (g) respecting the terms and conditions under which a licence and lease may be issued;
- (g.1) respecting any records, books of account or other documents to be kept under this Act and the manner and form in which and the period for which they shall be kept;
- (g.2) respecting the manner in which records, books of account or other documents shall be produced and information shall be provided under this Act;
- (h) respecting the obstruction and pollution of any waters frequented by fish;
- (i) respecting the conservation and protection of spawning grounds;
- (j) respecting the export of fish or any part thereof from Canada;
- (k) respecting the taking or carrying of fish or any part thereof from one province to any other province;
- (l) prescribing the powers and duties of persons engaged or employed in the administration or enforcement of this Act and providing for the carrying out of those powers and duties; and
- (m) where a close time, fishing quota or limit on the size or weight of fish has been fixed in respect of an area under the regulations, authorizing persons referred to in paragraph (l) to vary the close time, fishing quota or limit in respect of that area or any portion of that area.

R.S., 1985, c. F-14, s. 43; R.S., 1985, c. 35 (1st Supp.), ss. 3, 7; 1991, c. 1, s. 12.

#### MARINE PLANTS

Prohibition of harvesting of marine plants in certain cases

**44.** Except in accordance with the conditions of a licence issued by the Minister under section 45, no person shall harvest marine plants in the coastal waters of Canada in contravention of any regulation made pursuant to paragraph 46(a).

R.S., c. 17(1st Supp.), s. 5.

Licences

**45.** The Minister may, on receipt of an application made in accordance with the regulations, issue a licence to the applicant for the harvesting of marine plants in the coastal waters of Canada for a term not exceeding one year and on such conditions relating to

- (a) the nature of the gear and equipment to be used in the harvesting,
- (b) the manner in which the harvesting is to be carried out,
- (c) the quantity of marine plants authorized to be harvested thereunder, and
- (d) the area or areas within the coastal waters of Canada where the harvesting is to be carried out or where harvesting may not be carried out,

as the Minister considers to be necessary for the protection and conservation of the marine plant resources of the coastal waters of Canada.

R.S., c. 17(1st Supp.), s. 5.

Regulations

**46.** The Governor in Council may make regulations

(a) prohibiting, subject to the conditions of any licence issued by the Minister under section 45,

(i) the harvesting of marine plants or of any class of marine plants,

(ii) the harvesting of marine plants or of any class of marine plants in quantities in excess of quantities specified in the regulations, or

(iii) the harvesting of marine plants or of any class of marine plants in a manner specified in the regulations,

in the coastal waters of Canada or any area or areas of the coastal waters of Canada specified in the regulations;

(b) prohibiting, notwithstanding the conditions of any licence, the harvesting of marine plants or of any class of marine plants in any area or areas of the coastal waters of Canada for such period or periods as are specified in the regulations;

(c) requiring persons to whom licences are issued under section 45 to maintain such books and records and to make such returns of information to the Minister as the Governor in Council deems necessary for the enforcement of this Act and the regulations; and

(d) prescribing the fees to be paid for licences issued under section 45.

R.S., c. 17(1st Supp.), s. 5; 1976-77, c. 35, s. 11.

#### Interpretation

**47.** For the purposes of sections 44 to 46,

"coastal waters of Canada"

« *eaux côtières du Canada* »

"coastal waters of Canada" means all Canadian fisheries waters not within the geographical limits of any province;

"harvest"

« *récolte* »

"harvest" includes cut, take, dredge, rake or otherwise obtain;

"marine plant"

« *plante marine* »

"marine plant" includes all benthic and detached algae, marine flowering plants, brown algae, red algae, green algae and phytoplankton.

R.S., c. 17(1st Supp.), s. 5.

#### Saving

**48.** Nothing in sections 44 to 47 shall be construed as preventing traditional harvesting of marine plants by aborigines for their use as food.

R.S., c. 17(1st Supp.), s. 5.

### POWERS OF FISHERY OFFICERS AND FISHERY GUARDIANS

#### Inspection

**49.** (1) Subject to subsection (2), for the purpose of ensuring compliance with this Act and the regulations, a fishery officer or fishery guardian may enter and inspect any place, including any premises, vessel or vehicle, in which the officer or guardian believes on reasonable grounds there is any work or undertaking or any fish or other thing in respect of which this Act

or the regulations apply and may

- (a) open any container that the officer or guardian believes on reasonable grounds contains any fish or other thing in respect of which this Act or the regulations apply;
- (b) examine any fish or other thing that the officer or guardian finds and take samples of it;
- (c) conduct any tests or analyses and take any measurements; and
- (d) require any person to produce for examination or copying any records, books of account or other documents that the officer or guardian believes on reasonable grounds contain information that is relevant to the administration of this Act or the regulations.

#### Operation of data processing systems and copying equipment

(1.1) In carrying out an inspection of a place under subsection (1), a fishery officer or fishery guardian may,

- (a) use or cause to be used any data processing system at the place to examine any data contained in or available to the data processing system;
- (b) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and remove the print-out or other output for examination or copying; and
- (c) use or cause to be used any copying equipment at the place to make copies of any record, book of account or other document.

#### Duty to assist

(1.2) The owner or person in charge of a place that is inspected by a fishery officer or fishery guardian under subsection (1) and every person found in the place shall

- (a) give the officer or guardian all reasonable assistance to enable the officer or guardian to carry out the inspection and exercise any power conferred by this section; and
- (b) provide the officer or guardian with any information relevant to the administration of this Act or the regulations that the officer or guardian may reasonably require.

#### Disposition of samples

(1.3) A fishery officer or fishery guardian who takes a sample under paragraph (1)(b) may dispose of it in any manner that the officer or guardian considers appropriate.

#### Warrant required to enter dwelling-house

(2) Where any place, premises, vessel or vehicle referred to in subsection (1) is a dwelling-house, a fishery officer or fishery guardian may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (3).

#### Authority to issue warrant

- (3) Where on *ex parte* application a justice of the peace is satisfied by information on oath
  - (a) that the conditions for entry described in subsection (1) exist in relation to a dwelling-house,
  - (b) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and
  - (c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

the justice of the peace may issue a warrant under his hand authorizing the fishery officer or fishery guardian named therein to enter that dwelling-house subject to such conditions as may

be specified in the warrant.

(4) [Repealed, 1991, c. 1, s. 13]

R.S., 1985, c. F-14, s. 49; R.S., 1985, c. 31 (1st Supp.), s. 35; 1991, c. 1, s. 13.

#### Search

**49.1** (1) A fishery officer with a warrant issued under subsection (2) may enter and search any place, including any premises, vessel or vehicle, in which the officer believes on reasonable grounds there is

(a) any work or undertaking that is being or has been carried on in contravention of this Act or the regulations;

(b) any fish or other thing by means of or in relation to which this Act or the regulations have been contravened; or

(c) any fish or other thing that will afford evidence in respect of a contravention of this Act or the regulations.

#### Authority to issue warrant

(2) Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any place referred to in subsection (1) any fish or other thing referred to in subsection (1), the justice may issue a warrant authorizing the fishery officer named in the warrant to enter and search the place for the thing subject to any conditions that may be specified in the warrant.

#### Where warrant not necessary

(3) Notwithstanding subsection (1), a fishery officer may exercise the power of search referred to in that subsection without a warrant issued under subsection (2) if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

#### Exigent circumstances

(4) For the purposes of subsection (3), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

#### Powers during search

(5) In carrying out a search of a place under this section, a fishery officer may exercise any power mentioned in subsection 49(1), (1.1) or (1.3).

R.S., 1985, c. 31 (1st Supp.), s. 35; 1991, c. 1, s. 14.

#### Arrest

**50.** Any fishery officer, fishery guardian or peace officer may arrest without warrant a person who that fishery officer, guardian or peace officer believes, on reasonable grounds, has committed an offence against this Act or any of the regulations, or whom he finds committing or preparing to commit an offence against this Act or any of the regulations.

R.S., c. F-14, s. 36.

#### Seizure of fishing vessel, etc.

**51.** A fishery officer or fishery guardian may seize any fishing vessel, vehicle, fish or other thing that the officer or guardian believes on reasonable grounds was obtained by or used in the commission of an offence under this Act or will afford evidence of an offence under this Act, including any fish that the officer or guardian believes on reasonable grounds

(a) was caught, killed, processed, transported, purchased, sold or possessed in

contravention of this Act or the regulations; or

(b) has been intermixed with fish referred to in paragraph (a).

R.S., 1985, c. F-14, s. 51; 1991, c. 1, s. 15.

Entry by fishery officer

**52.** In the discharge of his duties, any fishery officer, fishery guardian or other person accompanying him or authorized to such effect by the fishery officer may enter on and pass through or over private property without being liable for trespass.

R.S., c. F-14, s. 39.

Disputes

**53.** Disputes between persons relating to fishing limits or claims to fishery stations, or relating to the position and use of nets and other fishing apparatus, shall be settled by the local fishery officer.

R.S., c. F-14, s. 40.

Distances between fisheries

**54.** Fishery officers may determine or prescribe the distance between each and every fishery and shall forthwith remove any fishing apparatus or materials that the owner neglects or refuses to remove, and the owner is liable for a contravention of this Act and for the cost of removing the apparatus and materials and any damages that may result therefrom.

R.S., c. F-14, s. 41.

Boundaries of estuary fishing

**55.** The Minister, or any fishery officer duly authorized by the Minister, has power to define the boundaries of tidal waters and estuaries and to designate what is the mouth of any river, stream or other water for the purposes of this Act.

R.S., c. F-14, s. 42.

Gurry grounds

**56.** Gurry grounds may be designated or defined by any fishery officer.

R.S., c. F-14, s. 43.

## CULTURE OF FISH

Waters for propagation of fish

**57.** The Minister may authorize any river or other water to be set apart for the natural or artificial propagation of fish.

R.S., c. F-14, s. 44.

Special licences for oyster beds

**58.** Special licences and leases for any term of years may be granted to any person who wishes to plant or form oyster beds in any of the bays, inlets, harbours, creeks or rivers, or between any of the islands on the coast of Canada, and the holder of any such licence or lease has the exclusive right to the oysters produced or found on the beds within the limits of the licence or lease.

R.S., 1985, c. F-14, s. 58; 1999, c. 31, s. 123(F).

Authority to provinces to grant leases for oyster cultivation

**59.** (1) The Governor in Council may, on such terms and conditions as are agreed on, authorize the government of any province to grant leases of such areas of the sea-coast, bays, inlets, harbours, creeks, rivers and estuaries of the province as the government of the province

considers suitable for the cultivation and production of oysters, and any persons to whom such leases are granted by the province, subject to the fishery regulations of Canada, have the exclusive right to the oysters produced or found on the beds within the limits of their respective leases.

Rights of Canada preserved

(2) Where an area referred to in subsection (1) or any part thereof is in a public harbour, nothing in that subsection prejudices the right or title of Canada to the enjoyment and use of the harbour for every purpose other than the cultivation and production of oysters.

R.S., 1985, c. F-14, s. 59; 1999, c. 31, s. 124(F).

#### VACANT PUBLIC PROPERTY

Vacant public property

**60.** (1) Every subject of Her Majesty may, for the purpose of landing, salting, curing and drying fish, use, and cut wood on, vacant public property that by law is common and accessory to public rights of fishery and navigation.

Prohibition

(2) No person shall occupy the same station on vacant public property described in subsection (1) unless it has been abandoned by the first occupant for twelve consecutive months.

Payment may be required

(3) At the expiration of the twelve months referred to in subsection (2), any new occupier shall pay the value of the flakes and stages and other property thereon, of which he takes possession, or the buildings and improvements may be removed by the original owner.

Leased property

(4) No property leased or licensed shall be deemed vacant.

R.S., c. F-14, s. 47.

#### INFORMATION RETURNS

Persons who may be required to provide information

**61.** (1) The following persons may be required under this Act to provide information or to keep records, books of account or other documents:

- (a) any person who engages in fishing;
- (b) any person who purchases fish for the purpose of resale;
- (c) any owner, operator or manager of an enterprise that catches, cultures, processes or transports fish; and
- (d) any agent or employee of a person referred to in paragraphs (a) to (c).

Information that may be required

(2) A person referred to in subsection (1) may be required to provide information or to keep records or other documents relating to any of the following matters:

- (a) the number, sex, size, weight, species, product form, value or other particulars of any fish caught, cultured, processed, transported, sold or purchased;
- (b) the time and place at which any fish was caught or landed and the person, enterprise or vessel by which the fish was caught or landed;

(c) the time and place at which any fish was purchased and the person, enterprise or vessel from which the fish was purchased;

(d) the vessels, gear and methods used and the number of persons employed for the purpose of catching fish;

(e) the buildings, equipment, products and methods used and the number of persons employed for the purpose of culturing or processing fish; and

(f) any other matter relating to the proper management and control of fisheries or the conservation and protection of fish.

#### Duty to keep books

(3) A person referred to in subsection (1) shall keep any records, books of account or other documents that may be required by the regulations or by the terms and conditions of any lease or licence issued to the person under this Act and the records, books of account or other documents shall be kept in the manner and form and for the period prescribed by the regulations, lease or licence.

#### Duty to provide information

(4) A person referred to in subsection (1) shall, on the request of any fishery officer or fishery guardian, provide the officer or guardian, or any authority designated by the officer or guardian, with any information relating to a matter mentioned in subsection (2) that the officer or guardian may request.

#### Idem

(5) A person referred to in subsection (1) shall, in accordance with the regulations and the terms and conditions of any lease or licence issued to the person under this Act, provide a fishery officer, a fishery guardian or any authority designated in the regulations, lease or licence with any information relating to a matter mentioned in subsection (2) that the regulations, lease or licence requires.

R.S., 1985, c. F-14, s. 61; 1991, c. 1, s. 18.

### OBSTRUCTION AND FALSE INFORMATION

#### Obstruction

**62.** No person shall obstruct or hinder a fishery officer, a fishery guardian or an inspector who is carrying out duties or functions under this Act.

R.S., 1985, c. F-14, s. 62; R.S., 1985, c. 1 (2nd Supp.), s. 213; 1991, c. 1, s. 18.

#### False statements to fishery officer, etc.

**63.** (1) No person shall make a false or misleading statement, whether orally or in writing, to an inspector, a fishery officer or a fishery guardian or any authority designated by a fishery officer or a fishery guardian who is carrying out duties or functions under this Act.

#### False statements in licence application

(2) No person shall make a false or misleading statement, whether orally or in writing, in an application for a lease or licence under this Act.

#### False records

(3) No person shall produce for examination or copying by an inspector, a fishery officer or a fishery guardian or any authority designated by a fishery officer or a fishery guardian any records, books of account or other documents that contain false or misleading information.

R.S., 1985, c. F-14, s. 63; 1991, c. 1, s. 18.

**64. and 65.** [Repealed, 1991, c. 1, s. 18]



## CONSEQUENCES OF OBSTRUCTION

Failure to provide fish-way, etc.

**66.** Every owner or occupier of an obstruction across or in any stream who refuses or neglects to provide and maintain a fish-way or canal in accordance with section 20, to install and maintain fish stops or diverters in accordance with subsection 21(4) or to provide for a sufficient flow of water and the free passage of fish in accordance with section 22 is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

R.S., 1985, c. F-14, s. 66; 1991, c. 1, s. 19.

Payment respecting certain obstructions

**67.** (1) Where the Minister determines that the provision, which he deems necessary for the public interest, of an efficient fish-way or canal around any obstruction is not feasible or that the spawning areas above the obstruction are destroyed by reason of the obstruction, the owner or occupier of the obstruction shall from time to time pay to the Receiver General such lump sum or annual sum of money as may be assessed against the owner or occupier by the Minister for the purpose of constructing, operating and maintaining such complete hatchery establishment as will, in the opinion of the Minister, meet the requirements for maintaining the annual return of migratory fish.

Assessment recoverable on suit in Federal Court

(2) The lump sum or annual sum referred to in subsection (1) shall be payable at such time or times as the Minister may direct and may be sued for and recovered with full costs of suit in the Federal Court.

R.S., c. F-14, s. 53; R.S., c. 10(2nd Supp.), s. 64.

**68.** [Repealed, 1991, c. 1, s. 20]

Failure to provide fish guard, etc.

**69.** Every owner or occupier of a water intake, ditch, channel or canal referred to in subsection 30(1) who refuses or neglects to provide and maintain a fish guard, screen, covering or netting in accordance with subsections 30(1) to (3), permits the removal of a fish guard, screen, covering or netting in contravention of subsection 30(3) or refuses or neglects to close a sluice or gate in accordance with subsection 30(4) is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

R.S., 1985, c. F-14, s. 69; 1991, c. 1, s. 21.

## DISPOSITION OF SEIZED THINGS

Custody of seized things

**70.** (1) A fishery officer or fishery guardian who seizes any fish or other thing under this Act may retain custody of it or deliver it into the custody of any person the officer or guardian considers appropriate.

Request by officer or guardian

(2) A person who is given custody of any fish or other thing under subsection (1) shall, on the request of a fishery officer or fishery guardian at any reasonable time, make the fish or thing available for inspection by or deliver it into the custody of the officer or guardian.

## Perishables

(3) A fishery officer or fishery guardian who has custody of any fish or other perishable thing seized under this Act may dispose of it in any manner the officer or guardian considers appropriate and any proceeds realized from its disposition shall be paid to the Receiver General.

R.S., 1985, c. F-14, s. 70; 1991, c. 1, s. 21.

## Detention of seized things

**71.** (1) Subject to this section, any fish or other thing seized under this Act, or any proceeds realized from its disposition, may be detained until the fish or thing or proceeds are forfeited or proceedings relating to the fish or thing are finally concluded.

## Return on deposit of security

(2) Subject to subsection 72(4), a court may order any fish or other thing seized under this Act to be returned to the person from whom it was seized if security is given to Her Majesty in a form and amount that is satisfactory to the Minister.

## Return where proceedings not instituted

(3) Subject to subsection 72(4), where proceedings are not instituted in relation to any fish or other thing seized under this Act, the fish or thing or any proceeds realized from its disposition shall be returned to the person from whom it was seized

(a) on the Minister's decision not to institute proceedings; or

(b) on the expiration of ninety days after the day of the seizure or any further period that may be specified in an order made under subsection (4).

## Order to extend detention

(4) Where a court is satisfied, on the application of the Minister within ninety days after the day on which any fish or other thing is seized, that detention of the fish or thing for a period greater than ninety days is justified in the circumstances, the court may, by order, permit the fish or thing to be detained for any further period that may be specified in the order.

R.S., 1985, c. F-14, s. 71; 1991, c. 1, s. 21.

## Recovery of costs

**71.1** (1) Where a person is convicted of an offence under this Act, the court may, in addition to any punishment imposed, order the person to pay the Minister an amount of money as compensation for any costs incurred in the seizure, storage or disposition of any fish or other thing seized under this Act by means of or in relation to which the offence was committed.

## Debt due to Her Majesty

(2) Where a court orders a person to pay an amount of money as compensation under subsection (1), the amount and any interest payable on that amount constitute a debt due to Her Majesty and may be recovered as such in any court of competent jurisdiction.

1991, c. 1, s. 21.

## Forfeiture of things

**72.** (1) Where a person is convicted of an offence under this Act, the court may, in addition to any punishment imposed, order that any thing seized under this Act by means of or in relation to which the offence was committed, or any proceeds realized from its disposition, be forfeited to Her Majesty.

## Forfeiture of fish

(2) Where a person is convicted of an offence under this Act that relates to fish seized pursuant to paragraph 51(a), the court shall, in addition to any punishment imposed, order that the fish, or any proceeds realized from its disposition, be forfeited to Her Majesty.

Idem

(3) Where a person is charged with an offence under this Act that relates to fish seized pursuant to paragraph 51(a) and the person is acquitted but it is proved that the fish was caught in contravention of this Act or the regulations, the court may order that the fish, or any proceeds realized from its disposition, be forfeited to Her Majesty.

Forfeiture where ownership not ascertainable

(4) Where the ownership of any fish or other thing seized under this Act cannot be ascertained at the time of the seizure, the fish or thing is thereupon forfeited to Her Majesty.

R.S., 1985, c. F-14, s. 72; R.S., 1985, c. 31 (1st Supp.), s. 96; 1991, c. 1, s. 21.

Disposal of forfeited things

**73.** (1) Subject to sections 75 to 77, any fish or other thing forfeited to Her Majesty under subsection 72(1), (2) or (3) shall be disposed of after the final conclusion of the proceedings relating to the fish or thing, as the Minister directs.

Disposal where ownership not ascertained

(2) Subject to sections 75 to 77, any fish or other thing forfeited to Her Majesty under subsection 72(4) shall be disposed of after the expiration of thirty days from the day of forfeiture, as the Minister directs.

Exception

(3) Notwithstanding subsection (2), where any fishing gear or equipment is forfeited under subsection 72(4), it may be disposed of immediately on its forfeiture, as the Minister directs.

R.S., 1985, c. F-14, s. 73; 1991, c. 1, s. 21.

Return of things not forfeited

**73.1** (1) Subject to subsection (2), any fish or other thing seized under this Act, or any proceeds realized from its disposition, that are not forfeited to Her Majesty under section 72 shall, on the final conclusion of the proceedings relating to the fish or thing, be delivered to the person from whom the fish or thing was seized.

Exception

(2) Subject to subsection 72(4), where a person is convicted of an offence relating to any fish or other thing seized under this Act and the court imposes a fine but does not order forfeiture,

(a) the fish or thing may be detained until the fine is paid;

(b) it may be sold under execution in satisfaction of the fine; or

(c) any proceeds realized from its disposition may be applied in payment of the fine.

1991, c. 1, s. 21.

Release of seized fish

**73.2** Notwithstanding anything in sections 70 to 73.1, a fishery officer or fishery guardian who seizes any fish under this Act may, at the time of the seizure, return to the water any fish that the officer or guardian believes to be alive.

1991, c. 1, s. 21.

Definitions

**74.** In sections 75 and 76,

“court of appeal”

« *cour d’appel* »

“court of appeal” means, in the province in which an order under section 75 is made, the court of appeal for that province as defined in section 2 of the *Criminal Code*;

“judge”

« *juge* »

“judge” means

(a) in the Province of Quebec, a judge of the Superior Court for the district in which the thing in respect of which an application for an order under section 75 is made was seized,

(a.1) in the Province of Ontario, a judge of the Superior Court of Justice,

(b) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, a judge of the Court of Queen’s Bench,

(c) in the Province of Prince Edward Island, a judge of the Trial Division of the Supreme Court,

(c.1) [Repealed, 1992, c. 51, s. 50]

(d) in the Provinces of Nova Scotia, British Columbia and Newfoundland, the Yukon Territory and the Northwest Territories, a judge of the Supreme Court, and

(e) in Nunavut, a judge of the Nunavut Court of Justice.

R.S., 1985, c. F-14, s. 74; R.S., 1985, c. 27 (2nd Supp.), s. 10; 1990, c. 16, s. 10, c. 17, s. 20; 1992, c. 51, s. 50; 1998, c. 30, s. 14; 1999, c. 3, s. 65.

Application by person claiming interest

**75.** (1) Where any thing other than fish is forfeited to Her Majesty under subsection 72(1) or (4), any person who claims an interest in the thing as owner, mortgagee, lienholder or holder of any like interest, other than a person convicted of the offence that resulted in the forfeiture or a person from whom the thing was seized, may, within thirty days after the forfeiture, apply in writing to a judge for an order pursuant to subsection (4).

Date of hearing

(2) The judge to whom an application is made pursuant to subsection (1) shall fix a day not less than thirty days after the date of filing of the application for the hearing thereof.

Notice

(3) The applicant shall serve a notice of the application and of the hearing on the Minister at least fifteen days before the day fixed for the hearing.

Order by judge

(4) Where, on the hearing of an application made pursuant to subsection (1), it is made to appear to the satisfaction of the judge,

(a) that the applicant is innocent of any complicity in the offence or alleged offence that resulted in the forfeiture and of any collusion in relation to that offence with the person who was convicted of, or who may have committed, the offence, and

(b) that the applicant exercised all reasonable care in respect of the person permitted to obtain the possession of the thing in respect of which the application is made to satisfy himself that the thing was not likely to be used contrary to this Act or the regulations, or, in the case of a mortgagee or lienholder, that he exercised such care with respect to the

mortgagor or the liengiver,

the applicant is entitled to an order declaring that his interest is not affected by the forfeiture and declaring the nature and extent of his interest.

R.S., 1985, c. F-14, s. 75; 1991, c. 1, s. 22.

Appeal

**76.** (1) The applicant or the Minister may appeal to the court of appeal from an order made under subsection 75(4) and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a judge.

Application to Minister

(2) The Minister shall, on application made to him by any person who has obtained a final order pursuant to this section or section 75,

(a) except in the case of any thing disposed of under subsection 70(3), direct that the thing to which the interest of the applicant relates be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to him.

R.S., 1985, c. F-14, s. 76; 1991, c. 1, s. 23.

Exception

**77.** Sections 74 to 76 do not apply to

(a) any fishing gear or equipment that has been disposed of pursuant to subsection 73(3);  
or

(b) any fish that have been returned to the water pursuant to section 73.2.

R.S., 1985, c. F-14, s. 77; 1991, c. 1, s. 24.

## OFFENCE AND PUNISHMENT

Punishment not otherwise provided for

**78.** Except as otherwise provided in this Act, every person who contravenes this Act or the regulations is guilty of

(a) an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding one hundred thousand dollars and, for any subsequent offence, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) an indictable offence and liable, for a first offence, to a fine not exceeding five hundred thousand dollars and, for any subsequent offence, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both.

R.S., 1985, c. F-14, s. 78; 1991, c. 1, s. 24.

Continuing offences

**78.1** Where any contravention of this Act or the regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which the contravention is committed or continued.

1991, c. 1, s. 24.

Offences by corporate officers, etc.

**78.2** Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the

commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted.

1991, c. 1, s. 24.

#### Offences by employers

**78.3** In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

1991, c. 1, s. 24.

#### Offences by licence holders

**78.4** In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by a person in respect of any matter relating to any operations under a lease or licence issued to the accused pursuant to this Act or the regulations, whether or not the person is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

1991, c. 1, s. 24.

#### Burden of proving licence

**78.5** In any prosecution for an offence under this Act, where a question arises as to whether a person was issued a licence, the burden is on the person to establish that the licence was issued.

1991, c. 1, s. 24.

#### Due diligence defence

**78.6** No person shall be convicted of an offence under this Act if the person establishes that the person

- (a) exercised all due diligence to prevent the commission of the offence; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would render the person's conduct innocent.

1991, c. 1, s. 24.

#### Additional fine

**79.** Where a person is convicted of an offence under this Act and the court is satisfied that as a result of committing the offence the person acquired monetary benefits or monetary benefits accrued to the person, the court may, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, order the person to pay an additional fine in an amount equal to the court's finding of the amount of those monetary benefits.

R.S., 1985, c. F-14, s. 79; 1991, c. 1, s. 24.

#### Lease or licence cancelled, etc.

**79.1** Where a person is convicted of an offence under this Act in respect of any matter relating to any operations under a lease or licence issued pursuant to this Act or the regulations, in addition to any punishment imposed, the court may, by order,

- (a) cancel the lease or licence or suspend it for any period the court considers appropriate; and
- (b) prohibit the person to whom the lease or licence was issued from applying for any new lease or licence under this Act during any period the court considers appropriate.

R.S., 1985, c. 31 (1st Supp.), s. 97; 1991, c. 1, s. 24.

## Orders of court

**79.2** Where a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing any one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to any fish, fishery or fish habitat that resulted or may result from the commission of the offence;
- (c) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;
- (d) directing the person to pay the Minister an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the commission of the offence;
- (e) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;
- (f) directing the person to pay Her Majesty an amount of money the court considers appropriate for the purpose of promoting the proper management and control of fisheries or fish habitat or the conservation and protection of fish or fish habitat;
- (g) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this section;
- (h) directing the person to submit to the Minister, on application by the Minister within three years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances; and
- (i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

1991, c. 1, s. 24.

## Suspended sentence

**79.3** (1) Where a person is convicted of an offence under this Act and the court suspends the passing of sentence pursuant to paragraph 731(1)(a) of the *Criminal Code*, the court may, in addition to any probation order made under that paragraph, make an order directing the person to comply with any prohibition, direction or requirement mentioned in section 79.2.

## Imposition of sentence

(2) Where a person whose sentence has been suspended fails to comply with an order made under subsection (1) or is convicted, within three years after the day on which the order was made, of another offence under this Act, the court may, on the application of the Attorney General, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

1991, c. 1, s. 24; 1995, c. 22, s. 17.

## Debt due to Her Majesty

**79.4** (1) Where the court makes an order under section 79.2 or 79.3 directing a person to pay an amount of money as compensation or for any other purpose, the amount and any interest payable on that amount constitute a debt due to Her Majesty and may be recovered as

such in any court of competent jurisdiction.

#### Publication

(2) Where a person fails to comply with an order made under section 79.2 or 79.3 directing the person to publish the facts relating to the commission of an offence, the Minister may publish those facts and recover the costs of publication from the person.

#### Idem

(3) Where the Minister incurs publication costs under subsection (2), the amount of the costs and any interest payable on that amount constitute a debt due to Her Majesty and may be recovered as such in any court of competent jurisdiction.

1991, c. 1, s. 24.

#### Variation of orders

**79.5** (1) A court that has made an order under section 79.2 or 79.3 may, on application by the Attorney General or the person to whom the order applies, require the person to appear before it and, after hearing the person and the Attorney General, vary the order in any of the following ways that the court considers appropriate because of a change in the circumstances of the person since the order was made:

- (a) change the order or any prohibition, direction or requirement mentioned in the order;
- (b) relieve the person, either absolutely or partially and for any period that the court considers appropriate, of compliance with any prohibition, direction or requirement mentioned in the order; or
- (c) extend or decrease the period during which the order shall remain in force.

#### Limitation

(2) Where an application has been heard by a court under subsection (1), no other application may be made in respect of the same order except with leave of the court.

1991, c. 1, s. 24.

#### Offence and punishment

**79.6** Every person convicted of an offence under this Act who subsequently contravenes an order made under section 79.2 or 79.3 is guilty of

- (a) an offence punishable on summary conviction and liable to a punishment not exceeding the maximum punishment to which a person is liable on summary conviction for the original offence; or
- (b) an indictable offence and liable to a punishment not exceeding the maximum punishment to which a person is liable on conviction on indictment for the original offence.

1991, c. 1, s. 24.

### TICKETABLE OFFENCES

#### Procedure

**79.7** (1) In addition to the procedures set out in the *Criminal Code* for commencing a proceeding, proceedings in respect of any offence prescribed by regulation may be commenced by a fishery officer, fishery guardian or inspector

- (a) completing a ticket that consists of a summons portion and an information portion;
- (b) delivering the summons portion of the ticket to the accused or mailing it to the accused at the accused's latest known address; and
- (c) filing the information portion of the ticket with a court of competent jurisdiction before



or as soon as practicable after the summons portion has been delivered or mailed.

#### Content of ticket

- (2) The summons and information portions of a ticket shall
- (a) set out a description of the offence and the time and place of its alleged commission;
  - (b) include a statement, signed by the fishery officer, fishery guardian or inspector who completes the ticket, that the officer, guardian or inspector, as the case may be, has reasonable grounds to believe that the accused committed the offence;
  - (c) set out the amount of the fine prescribed by regulation for the offence and the manner in which and period within which it may be paid;
  - (d) include a statement that if the accused pays the fine within the period set out in the ticket, a conviction will be entered and recorded against the accused; and
  - (e) include a statement that if the accused wishes to plead not guilty or for any other reason fails to pay the fine within the period set out in the ticket, the accused must appear in the court and at the time set out in the ticket.

#### Notice of forfeiture

(3) Where any fish or other thing is seized under this Act and proceedings relating to the fish or thing are commenced by way of the ticketing procedure described in subsection (1), the fishery officer, fishery guardian or inspector who completes the ticket shall give written notice to the accused that if the accused pays the fine prescribed by regulation within the period set out in the ticket, the fish or thing, or any proceeds realized from its disposition, shall thereupon be forfeited to Her Majesty.

#### Consequences of payment

- (4) Where an accused to whom the summons portion of a ticket is delivered or mailed pays the fine prescribed by regulation within the period set out in the ticket,
- (a) the payment constitutes a plea of guilty to the offence described in the ticket and a conviction shall be entered against the accused and no further action shall be taken against the accused in respect of that offence; and
  - (b) notwithstanding sections 71 to 77, any fish or other thing seized from the accused under this Act relating to the offence described in the ticket, or any proceeds realized from its disposition, are forfeited to Her Majesty and may be disposed of as the Minister directs.

#### Regulations

- (5) The Governor in Council may make regulations prescribing
- (a) offences under this Act to which this section applies and the manner in which those offences may be described in tickets; and
  - (b) the amount of the fine for a prescribed offence, which amount shall not exceed one thousand dollars.

1991, c. 1, s. 24.

### JOINT LIABILITY

#### Who shall be liable

**80.** Unless otherwise specified, every proprietor, owner, agent, tenant, occupier, partner or person actually in charge, either as occupant or servant, shall be deemed to be jointly and severally liable for any penalties or moneys recovered under any provision of this Act or the regulations.

R.S., c. F-14, s. 62.

**81.** [Repealed, 1991, c. 1, s. 25]

#### LIMITATION OF SUITS

Limitation period

**82.** (1) Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within but not later than two years after the time when the Minister became aware of the subject-matter of the proceedings.

Minister's certificate

(2) A document purporting to have been issued by the Minister, certifying the day on which the Minister became aware of the subject-matter of any proceedings, is admissible in evidence without proof of the signature or of the official character of the person appearing to have signed the document and, in the absence of any evidence to the contrary, is proof of the matter asserted in it.

R.S., 1985, c. F-14, s. 82; 1991, c. 1, s. 26.

#### FORM OF PROCEDURE

Form of procedure

**83.** Except as otherwise provided in this Act, all penalties and forfeitures incurred under this Act or any of the regulations are recoverable and enforceable by summary proceedings taken under the provisions of the *Criminal Code* relating to summary convictions.

R.S., c. F-14, s. 65.

No quashing for want of form

**84.** No proceeding or conviction under this Act or any of the regulations shall be set aside or quashed on *certiorari* or otherwise for irregularity or defect in form, and no warrant of arrest or commitment shall be held void by reason of any defect therein, if it is therein alleged that the defendant has been convicted and there is a good and valid conviction to sustain the same.

R.S., c. F-14, s. 66.

#### APPLICATIONS OF PENALTIES AND FORFEITURES

Penalties and forfeitures

**85.** The Governor in Council may prescribe the manner in which the proceeds of penalties and the proceeds of the sale of confiscated things shall be distributed.

R.S., c. F-14, s. 67.

Appeal in proceedings by indictment

**86.** (1) For the purpose of Part XXI of the *Criminal Code*, any order and any decision not to make an order under subsection 71.1(1), subsection 72(1), (2) or (3) or section 79, 79.1, 79.2 or 79.3 as well as any sentence passed by the court under this Act shall be considered a sentence within the meaning of section 673 of the *Criminal Code*.

Appeal in summary conviction proceedings

(2) For the purpose of Part XXVII of the *Criminal Code*, any order and any decision not to make an order under subsection 71.1(1), subsection 72(1), (2) or (3) or section 79, 79.1, 79.2 or 79.3 as well as any sentence passed by the court under this Act shall be considered a sentence within the meaning of section 785 of the *Criminal Code*.

R.S., 1985, c. F-14, s. 86; 1991, c. 1, s. 27.

#### APPLICATION OF ACT TO WATERS OTHER THAN CANADIAN FISHERIES WATERS

#### Application of Act to High Seas

**87.** (1) The provisions of this Act and the regulations that apply to any or all of Canadian fisheries waters, without anything in the context of those provisions indicating that they apply to any specified area of Canadian fisheries waters, shall, in relation to any fishing vessel or aircraft on or over the High Seas that is subject to the jurisdiction of Canada, or any act or thing done or omitted to be done on, from or by means of any such fishing vessel or aircraft, be deemed to extend and apply to the High Seas.

#### Regulations

(2) The Governor in Council may make regulations respecting fisheries located in waters other than Canadian fisheries waters applicable to vessels or aircraft subject to the jurisdiction of Canada.

#### Inconsistency or conflict

(3) Where there is any inconsistency or conflict between any regulations that apply to the High Seas by virtue of subsection (1) and any regulations made under subsection (2), the latter regulations prevail to the extent of the inconsistency or conflict, unless the context otherwise requires.

R.S., c. F-14, s. 69; 1976-77, c. 35, s. 19.

#### Jurisdiction of courts

**88.** All courts and justices in Canada have the same jurisdiction with respect to offences under this Act as they have under sections 610 and 611 of the *Canada Shipping Act* with respect to offences under that Act, and those sections apply to offences under this Act in the same manner and to the same extent as they apply to offences under the *Canada Shipping Act*.

R.S., 1985, c. F-14, s. 88; 1990, c. 44, s. 18.

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