



## **PLEASE NOTE**

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For more information concerning the history of these regulations, please see the [Table of Regulations](#).

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## CHAPTER F-13.01

### FISHERIES ACT

#### LOBSTER MARKETING LEVY REGULATIONS

Pursuant to section 9 of the *Fisheries Act* R.S.P.E.I. 1988, Cap. F-13.01, the Lieutenant Governor in Council made the following regulations:

#### Interpretation

**1.** In these regulations,

Definitions

- (a) “buying license” means a license to buy one or more classes of fish specified on the license, issued by the Minister pursuant to section 7 of the *Fisheries Act* Regulations (EC873/95); buying license
- (a.1) “commodity board” means the Lobster Fishers of Prince Edward Island, the commodity board constituted under the Lobster Marketing Board Regulations (EC413/15) made pursuant to the *Natural Products Marketing Act* R.S.P.E.I. 1988, Cap. N-3; commodity board
- (b) “first point of sale” means the first point at which lobster is sold to a lobster buyer by a lobster fisher; first point of sale
- (c) “levy” means a levy imposed on each lobster buyer pursuant to section 2; levy
- (d) “lobster buyer” means a buyer who holds a lobster buying license; lobster buyer
- (e) “lobster buying license” means a buying license for lobster; lobster buying license
- (f) “lobster fisher” means a person who is authorized under the *Fisheries Act* (Canada) to fish lobster for gain; lobster fisher
- (g) “marketing authority” means the person or entity with whom the Minister enters into an agreement pursuant to section 3; marketing authority
- (h) “weekly buying record” means a record referred to in section 5. (EC704/15; 289/16) weekly buying record

#### Lobster Marketing Levy

- 2.** (1) The Minister may impose on every lobster buyer, as a condition on a lobster buying license, a levy in the amount of one cent per pound of lobster bought by the lobster buyer at the first point of sale. Minister may impose levy

Purpose of levy (2) The purpose of the levy is to fund the development and implementation of a marketing plan for lobster. (EC704/15)

#### Administration

Minister may enter into agreement **3.** (1) The Minister may enter into an agreement with a non-profit corporation or entity that meets the requirements of subsection (2), to act as the marketing authority responsible for

- (a) the collection of the levy; and
- (b) the development and implementation of a marketing plan for lobster using the proceeds of the levy.

Requirements, non-profit corporation (2) For the purposes of subsection (1), the non-profit corporation or entity shall

- (a) be legally entitled to conduct business in the province; and
- (b) have a membership that
  - (i) is open to all lobster buyers, and
  - (ii) includes lobster buyers from each of the three counties in the province.

Contents of agreement (3) An agreement referred to in subsection (1) shall include

- (a) processes and procedures respecting the collection of the levy;
- (b) the purposes for which the levy may be used and parameters respecting the allocation of funds for each of those purposes;
- (c) a requirement that the marketing authority develop a marketing plan and provide a copy to the Minister;
- (d) a requirement that the marketing plan be generic in nature, so as not to promote particular processors, distributors or brands;
- (e) a requirement that the marketing authority prepare and submit an annual report and audited financial statements to the Minister;
- (f) the required contents of the annual report;
- (g) requirements respecting the disposition of the balance of the proceeds of the levy on the dissolution or expiry of the agreement, on the revocation of the condition on lobster buying licenses imposing the levy or where no condition is imposed in a subsequent year;
- (h) requirements respecting the collection, use and disclosure of information related to the levy by the marketing authority and the protection of confidentiality; and
- (i) provisions respecting the use of agents by the marketing authority, if applicable.

Notice to lobster buyer (4) On imposing the levy as a condition on a lobster buying license, the Minister shall give notice in writing to the lobster buyer of the name and business contact information of the marketing authority and instructions respecting how to remit the levy. (EC704/15)

### Duties of Lobster Buyers

- 4.** (1) Where the Minister has imposed a levy and given the notice required under subsection 3(4), a lobster buyer shall remit to the marketing authority or its agent, if applicable, the amount of one cent per pound of lobster bought by the lobster buyer at the first point of sale during a calendar month, within 30 days after the end of that calendar month. Duty to remit levy
- (2) For greater certainty, an amount payable pursuant to subsection (1) is a debt due to the marketing authority. (EC704/15) Debt due to marketing agency
- 5.** (1) During an open season of the lobster fishery in the province, a lobster buyer shall submit to the Minister a weekly buying record of lobsters bought at the first point of sale by the lobster buyer each week, which contains the following information: Weekly buying record
- (a) the beginning and end dates of the week to which the record applies;
  - (b) the name and business contact information of the lobster buyer;
  - (c) the number of pounds of canner-sized lobsters the lobster buyer bought during that week;
  - (d) the number of pounds of market-sized lobsters the lobster buyer bought during that week;
  - (e) the price the lobster buyer paid per pound for canner-sized lobsters and market-sized lobsters during that week;
  - (f) the harbour or port in which the buyer bought the lobster.
- (2) A lobster buyer shall submit a weekly buying record to the Minister by the end of the week following the week to which the record relates. Deadline
- (3) No lobster buyer shall submit a weekly buying record that is misleading, inaccurate or false to the Minister. Misleading, inaccurate or false record
- (4) The Minister shall provide to the marketing authority or its agent, if applicable, the information contained in the weekly buying records of each lobster buyer for a calendar month, within 30 days after the end of that calendar month. Copy to marketing authority
- (5) The Minister may, on request, provide to the commodity board or its agent the information contained in the weekly buying records of a lobster buyer to ensure the levy imposed on lobster fishers under the Lobster Marketing Board Regulations is calculated, collected and remitted by lobster buyers in accordance with those regulations. (EC704/15; 289/16) Copy to commodity board

### Resolution of Disputes

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| Request for determination of dispute | <b>6.</b> (1) Where a dispute arises between the marketing authority and a lobster buyer respecting the calculation or remittance of an amount due, or alleged to be due, pursuant to section 4, either party may submit a request in writing to the Minister, within 30 days after the end of the month in which the amount in question was due or is alleged to have been due, for a determination of the dispute. |
| Submission of other party            | (2) The Minister shall provide a copy of the request to the other party to the dispute, who may make a written submission regarding the dispute to the Minister within 10 days of receiving a copy of the request.                                                                                                                                                                                                   |
| Determination of dispute             | (3) Upon considering the written submissions of the parties and any other relevant information available to him or her, the Minister shall determine the matter in dispute and give notice to the parties of the decision, including the reasons for the decision, in writing.                                                                                                                                       |
| Final and binding                    | (4) A decision of the Minister under subsection (3) is final and binding on the parties. (EC704/15)                                                                                                                                                                                                                                                                                                                  |

### Disposition of Proceeds

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| Dissolution of agreement        | <b>7.</b> (1) On the dissolution or expiry of an agreement with a marketing authority, where no further agreement is made with that person or entity under these regulations, the Minister shall ensure that any proceeds of the levy remaining after the fulfilment of commitments and liabilities under the marketing plan are <ul style="list-style-type: none"> <li>(a) where the Minister enters into an agreement with a subsequent marketing authority, transferred to the custody of the subsequent marketing authority; or</li> <li>(b) where the Minister does not enter into an agreement with a subsequent marketing authority, distributed to lobster buyers on a pro rata basis in relation to amounts remitted.</li> </ul> |
| Revocation of condition of levy | (2) Where the Minister revokes the condition on lobster buying licenses imposing the levy during a calendar year or does not impose the levy during the calendar year following a calendar year in which the levy was imposed, the Minister shall ensure that any proceeds of the levy remaining after the fulfilment of commitments and liabilities under a marketing plan are distributed to lobster buyers on a pro rata basis in relation to amounts remitted. (EC704/15)                                                                                                                                                                                                                                                             |

### Administrative Penalties

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| Non-compliance | <b>8.</b> (1) Where a lobster buyer contravenes these regulations, the Minister may take one or more of the following actions: |
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- (a) suspend or cancel the lobster buyer's lobster buying license and any other buying license held by the lobster buyer;
- (b) refuse to issue a subsequent lobster buying license and any other buying license to the buyer.

(2) The Minister shall give notice in writing to a lobster buyer or applicant, as the case may be, of a suspension, cancellation or refusal under subsection (1), and a suspension or cancellation does not come into effect until the notice is given. (EC704/15) Notice

#### Giving Notice

**9.** A notice that is required to be given under these regulations is considered to have been given on the date Notice considered given

- (a) it is personally served on the person to whom it is directed;
- (b) a copy is sent by facsimile or by other electronic means to the person to whom it is directed and an acknowledgement of receipt is received; or
- (c) five days after a copy is sent by mail addressed to the person to whom it is directed at the last known mailing address for that person. (EC704/15)

#### Offence and Penalty

**10.** A person who contravenes subsection 4(1) or 5(1), (2) or (3) is guilty of an offence and is liable on summary conviction to a fine of not less than \$500 and not more than \$10,000. (EC704/15) Offence and penalty