

Aquaculture issuing policy (FisPp.9.2.1)

The policy governing how aquaculture licences, renewals, transfers, amendments, refusals and cancellations are issued. This policy's goal is to minimize the risk of ecological damage from aquaculture activities.

Subject: Issuance of aquaculture licence, renewals, transfers, amendments, refusals and cancellations

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1.0 Definitions

In this policy/procedure,

Act

means the *Fish and Wildlife Conservation Act (FWCA)*

aquaculture

is as defined in the *Act* and means the breeding or husbandry of fish, and the verb "culture" has, with respect to fish, a corresponding meaning

aquarium

is as defined in subsection 24(3) of the *Fish Licensing Regulation* made under the *Act* and means an artificial container used to culture fish for personal use or the aquarium trade

aquarium trade

is as defined in subsection 24(3) of the *Fish Licensing Regulation* made under the *Act* and means the culturing, buying or selling of aquarium, tropical or ornamental fish for the pet or hobby market

artificial waters

are described in clause 3(2)(b) of the *Ontario Fishery Regulations* made under the *Fisheries Act* and may be referred to as artificial ponds in this policy. The water body (e.g., pond) must be artificial and meet the following additional criteria: It cannot be on a regional flood plain. It must be wholly within the boundaries of privately-owned land. It can contain water from surface run-off, natural springs, ground water or water pumped from a stream or lake; however, it cannot have a connection or outflow to natural waters. Use is restricted to non-commercial purposes and fish deposited into the water body must be obtained from either an aquaculture facility licensed under the provincial *Act* or a commercial fishing operation licensed under the provincial *Act*.

culture

is defined in the definition of "aquaculture" and when used as a verb with respect to fish has a corresponding meaning with aquaculture.

fish

is defined in the *Act* as having the same meaning as in the *Fisheries Act* and therefore includes:

- parts of fish
- shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and
- the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals

Land-based aquaculture

describes those facilities culturing fish in tanks, raceways, or ponds (including mine or gravel pits).

receiving waters

are those waters connected to the discharge from an aquaculture facility. Waters are considered to be connected up to a physical or ecological barrier (e.g. temperature) to the species in question.

2.0 Rationale

The Ontario Ministry of Natural Resources (OMNR) has the lead role in ensuring that aquaculture in Ontario is developed in an ecologically sustainable manner. For this reason, an aquaculture licence is required to culture fish (Section 47 - *Fish and Wildlife Conservation Act*) except for certain exemptions such as for the aquarium industry (Section 24, *Fish Licensing Regulation*).

By controlling the culture of fish (Section 19, *Fish Licensing Regulation*), OMNR seeks to minimize the risk of ecological damage resulting from aquaculture activities. In addition, licensing reduces the potential for illegal traffic in wild fish by providing a paper trail for legitimate fish sales.

The licence provides for the culture of eligible fish species and for the sale of eligible fish species. Under the authority of this licence fish are cultured for purposes such as human consumption, ornamental and aquarium trade, stocking, use as bait and fee-for-fishing operations. The licence is valid only for the location(s) and species named.

This policy/procedure describes licence issuance, renewals, transfers, amendments, refusals and cancellations.

3.0 Program direction

3.1 Licence requirements

An aquaculture licence is required to culture fish in Ontario (except as otherwise exempted). It also conveys authority to buy fish to deposit into waters as set out in the licence and sell fish taken from waters as set out in the licence and to transport live fish as set out in the licence. Note that there are other licenses and mechanisms that allow for the buying, selling and transportation of fish.

In addition to the standard aquaculture licence review criteria described in these policies there are additional criteria that must be considered when applications for culture of bait-fish are received. Please contact Fish Culture Section (Aquaculture Policy and Planning Biologist) for additional details.

Depositing fish into waters exempted from the *Ontario Fishery Regulations* (Subsection 3 (3)) and defined in these policies as artificial waters for non-commercial purposes is not considered culture (see [FisPp.9.4.1 - Artificial Waters \(Ponds\)](#) and Application of the *Ontario Fishery Regulations*).

A licence is not required to culture fish in aquariums (section 24(1) *Fish Licensing Regulation*). A person may, without a licence, buy or sell (see Section 51 of the *Act*) goldfish, koi, tilapia and fish that do not exist in Ontario waters if the fish are bought or sold solely for the purpose of the aquarium trade (section 24.(2) *Fish Licensing Regulation*).

A commercial bait harvest licence does not convey any authority to culture bait-fish.

3.2 Licence applications

To obtain an aquaculture licence, applicants must provide detailed information on the proposed site location. The information will vary depending whether the site is on public (see [FisPp.9.2.2 - Aquaculture on Crown Land](#), which includes aquaculture above Crown land (when available)) or private land (see [FisPp.9.2.3 - Aquaculture on Private Land](#)).

For land based operations, including cage operations in artificial ponds, gravel or mine pits on private land, pump-ashore facilities, and for cage culture on inland lakes, the District Manager is responsible for ensuring the applicant carries out an appropriate risk analysis (see [FisPp.9.2.5 - Risk Analysis and Facility Security](#)) for a new or revised aquaculture licence. For cage culture and pump-ashore facilities in any of the Great Lakes, the Great Lake Manager and District Manager share joint responsibility for ensuring the applicant carries out an appropriate risk analysis.

Environmental Assessment Act considerations

The issuance of an aquaculture licence is not in itself considered to be an undertaking under the *Environmental Assessment Act* because it does not constitute the disposition of rights to Crown resources, except in the situation described below. The issuance of an aquaculture licence is a type of regulatory function specifying the manner in which the aquaculture operation will be conducted, such as measures to prevent escape. Water itself is not a Crown resource; it is subject to riparian rights of access and use. The Crown does not own or have exclusive rights to use water in waterbodies or watercourses. At common law, moving water is not capable of ownership; by statute, Ontario has not vested ownership of water within Ontario in the Crown in right of Ontario.

Exception: Where an aquaculture licence is issued for an operation in all the waters of a natural pond or small lake, the fish naturally in those waters are no longer covered by the *Ontario Fishery Regulations*, allowing the aquaculture operation to utilize them as the operator desires. In this situation, the issuance of an aquaculture licence would be considered to be an undertaking under the *Environmental Assessment Act* because it goes beyond a regulatory function and constitutes the disposition of rights to the fish naturally in those waters.

In some cases, licences under this policy and/or procedure may be associated with and be a step towards implementing an undertaking which provides for a person to utilize or obtain a right to a Crown resource. The primary example is the issuance of a land use permit or other tenure document under the *Public Lands Act* for the use of Crown land for the purpose of aquaculture.

If the granting of the aquaculture licence is considered to be or associated with an undertaking, the direction set out for that undertaking must be followed, such as following the "Class Environmental Assessment for [MNR Resource Stewardship and Facility Development Projects](#)" for disposition of rights to Crown resources where a tenure document is issued under the *Public Lands Act*. For further information and details staff should refer to the "Class Environmental Assessment for [MNR Resource Stewardship and Facility Development Projects](#)" and consult their lead EA contact.

3.3 [EBR Instrument Posting Regulation](#)

The *Environmental Bill of Rights (EBR) Classification of Proposals for Instruments Regulation* sets out that issuance of an aquaculture licence is subject to the [EBR instrument posting requirements](#) if:

- (a) the applicant is required by the Ministry of Natural Resources to submit a Detailed Ecological Risk Analysis (see [FisPp.9.2.5 - Risk Analysis and Facility Security](#)), or;

(b) the licence authorizes the culture of fish in a cage in water covering Crown land or covering land described in letters patent issued under the *Public Lands Act* as a water lot or part of the bed of a body of water (see [FisPp.9.2.2 - Aquaculture on Crown Land \(when available\)](#)).

Section 32(1)(b) of the EBR sets out that the requirement to post a proposal notice and decision notice for an aquaculture licence under consideration does not apply where, in the Minister's opinion (delegated as per the Delegation of Authority manual to a number of positions, including District Manager), the issuance would be a step towards implementing an undertaking/project approved by a decision under the *Environmental Assessment Act*. In these cases OMNR will utilize the EBR registry to post an information notice, with a comment period, for the proposed aquaculture licence, and an updated information notice to advise of the decision, but will not post a proposal notice or decision notice.

For most land based aquaculture operations the proposal will not involve disposition of rights to a Crown resource (see *Environmental Assessment Act* considerations), hence posting proposal and decision notices on the EBR registry will be necessary when OMNR requires the proponent to submit a Detailed Ecological Risk Analysis (see [FisPp.9.2.5 - Risk Analysis and Facility Security](#)).

Timing of these main steps is identified in the procedures below. Additional details on the posting process are available by contacting the EBR Registry Planner, Conservation and Planning Section, Lands and Waters Branch.

3.4 Licence "reissuance"

The *Fish and Wildlife Conservation Act Regulations* and the *EBR Instrument Posting Regulations* do not provide for aquaculture licence renewals in that they address a previously/currently licensed aquaculture facility in the identical manner as an application for a new facility.

However, in most cases the ability to review information collected when the licence was previously issued will streamline the review process necessary for issuance of a new aquaculture licence. Such reviews should take into account the effectiveness of previously identified escape prevention mechanisms as well as any new information pertaining to species in question, the receiving waters and the risk analysis process.

A licence generally should not be reissued if the licence holder is in violation of conditions of the expiring licence or the regulations (see Licence Refusal).

Where an existing facility is in compliance with the conditions on the expiring licence, but does not conform to the current Risk Analysis and Facility Security procedure ([FisPp.9.2.5](#)) for a species cultured under authority of the expiring licence, a grace period should be granted where ecological risk allows. The grace period should not exceed six months and can only be considered if the species is currently cultured (i.e. if the species was listed on the licence but is not currently cultured at the facility, a grace period should not be considered). The grace period is to allow the existing aquaculture operation time to meet the requirements identified via the Risk Analysis and Facility Security procedure ([FisPp.9.2.5](#)) with minimal disruption of ongoing business that was previously approved by MNR. Alternatively, if the requirements identified via the Risk Analysis and Facility Security procedure ([FisPp.9.2.5](#)) cannot be met the grace period can provide an operator with time to dispose of existing stock and shift to the culture of other species appropriate to their current level of security. OMNR staff can seek advice on the assessment of risk pertaining to an appropriate grace period from the Ontario Introductions and Transfers Committee.

The terms of the grace period must be set out as specific conditions on the new aquaculture licence. As such, if the licensee does not conform within the specified grace period, they will be in violation of conditions of licence and subject to enforcement action.

Most fee-for-fishing operations in the past will have been licensed as Fishing Preserves under the *Game and Fish Act*. The Fishing Preserve licence has been eliminated and all fee-for-fishing operations will now be licensed as aquaculture facilities via the aquaculture licence. As such, these types of facilities will now be evaluated under the risk assessment process set out for

all aquaculture facilities (FisPp.9.2.5). Guidelines have been developed to streamline the renewal process for many of these facilities (FisPo.9.2.4 - Licensing of Fee-for-fishing Operations) while ensuring that ecological concerns are addressed.

3.5 Licence transfers

OMNR will approve all applications for transfers of licences if the holder is in compliance with the conditions on the licence (Section 23 - *Fish Licensing Regulation*). Note that this includes the standard conditions set in regulation. The original licence will be reissued in the new applicant's name. There is no additional fee associated with a licence transfer and the licence term will continue to run from the original effective date.

3.6 Licence amendments

OMNR will allow amendments to the licence based on mutual agreement between the licensee and OMNR. The amendments must be consistent with the *Fish and Wildlife Conservation Act*, its regulations and the *Ontario Fishery Regulations*. There is no fee to amend a licence.

3.7 Licence refusal and cancellation

3.7.1 Refusal

A refusal to issue a licence is permitted under Section 71 of the *Fish and Wildlife Conservation Act*. Licences may be refused for reasons consistent with the purpose of the *Act* including the conservation and management of fish.

The details of the process are set out in FWPP.2.2.1 - Cancellation or refusal of a fish or wildlife licence and notification requirements. An applicant who has been refused a licence for reasons of conservation and management of fish must be notified of the refusal and his or her right to a hearing (Form FW3502). Refusal for any other reason consistent with the purpose of the *Act* is not subject to a hearing.

3.7.2 Cancellation

The Minister may cancel a licence (*Fish and Wildlife Conservation Act* s. 75(1)). This must only occur in extreme circumstances for situations where the cancellation is reasonably necessary for the conservation and management of fish. Cancellation must only occur if the problems cannot be addressed using enforcement of appropriate regulation and licence conditions. Authority to cancel an aquaculture licence has been delegated to the Regional Directors in Field Services Division. Before a licence can be cancelled under Section 75 of the *Act*, the licence holder must be served a Notice of Proposal to Cancel a Licence (Form FW3501, available from the Fish and Wildlife are set out in FWPP.2.2.1 - Cancellation or refusal of a fish or wildlife licence and notification requirements.

4.0 Issuance procedure

The authority to issue licences for aquaculture facilities is found in the *Fish and Wildlife Conservation Act* (Section 60) and the *Ontario Regulations* (Section 19 - *Fish Licensing Regulation*).

For land-based operations, including cage operations in artificial ponds, gravel or mine pits on private land, pump-ashore facilities, and for cage culture on inland lakes, the District Manager is responsible for issuing an aquaculture licence. For cage culture or pump-ashore facilities on any of the Great Lakes, the District Manager and Great Lake Manager share joint responsibility for issuing an aquaculture licence with the District Manager taking the lead.

In all cases an aquaculture licence is valid for five years from a date set out on the licence.

A. Land based aquaculture

District Office/Great Lake Management Unit:

1. Obtains an application for an aquaculture licence (Form FW1014) from the Fish and Wildlife Documentation Site. Licences (Form FW0012) will be issued through the Electronic Licence Information System (ELIS).
2. Provides or sends application forms to current licence holders and new applicants on request.
3. Ensures that the applicants have correctly completed applications and that the proper licence fees have been received.
4. Where the applicant is a corporation, includes a list of names and addresses of the corporation's officers.
5. Checks that the fish species which either new or current licensees propose to culture are included on the list of species eligible for culture (Schedule B, *Fish Licensing Regulation*). If the fish species are not on the list of species eligible for culture go to Step 13(c).
6. Determines if the proposed issuance of the aquaculture licence, or the associated land tenure document, is subject to the Class Environmental Assessment for MNR. If yes, informs the applicant of the requirements set out in the Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects. Note that in these cases final review of the application for an aquaculture licence cannot proceed without completion of the Class EA requirement. If the Class EA requirements are not completed the review process cannot continue - proceed to Step 13(a).
7. Informs the applicant of the requirement to complete the Short Form Risk Analysis and provide a description of escape prevention mechanisms that are or will be in place for the operation being reviewed. If the Short Form Risk Analysis is not completed or if a facility security plan is not provided the review process cannot continue - proceed to Step 13(a). Otherwise, ensures that applications are evaluated on an individual species and location specific basis through the Short Form Risk Analysis procedure (FisPp.9.2.5 - Risk Analysis and Facility Security).
8. Determines if the provided facility security plan meets the requirements identified in the Short Form Risk Analysis (FisPp.9.2.5 - Risk Analysis and Facility Security) for each species and location applied for. If yes proceed to Step 9. If no and the applicant is unwilling/unable to make necessary changes to the facility security plan then proceed to Step 10.
9. Determines if this is an application where, due to very high ecological risk, OMNR will require completion of a Detailed Ecological Risk Analysis despite the application meeting the recommended security level of the Short Form Risk Analysis (see FisPp.9.2.5 - Risk Analysis and Facility Security - this should only occur in very unusual circumstances. If the applicant refuses to complete a Detailed Ecological Risk Analysis the licence should be refused giving the applicant a right to a hearing under the FWCA - go to Step 13(b)). If no go to Step 11, if yes go to Step 10.
10. Where a Detailed Ecological Risk Analysis is necessary (as determined through the risk analysis procedure (FisPp.9.2.5 - Risk Analysis and Facility Security) E.g. proposed species or strain is not present in the receiving waters and approval in medium security (F2) facility is requested):
 - (a) Informs applicant that they must complete a Detailed Ecological Risk Analysis before the application can be further evaluated. Provides applicant with Risk Analysis Template from the Ontario Introductions and Transfers Committee and a copy of "FisPp.9.2.5 - Risk Analysis and Facility Security".
 - (b) If a Detailed Ecological Risk Analysis is not completed proceed to Step 13(a) unless OMNR determined a Detailed Ecological Risk Analysis was necessary contrary to the Short Form Risk Analysis in which case proceed to Step 13(b).
 - (c) Forwards a copy of the completed Detailed Ecological Risk Analysis to the recommendation from the committee will go to the Great Lake and/or District Manager.
 - i. If the project is not being screened through the Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects, then once the Chair of the Ontario Introductions and Transfers Committee confirms that the submitted Detailed Ecological Risk Analysis is suitable for review (i.e. all necessary information has been provided), contacts EBR Registry Planner, Conservation and Planning Section, Lands and Waters Branch to complete the process for posting a proposal notice to issue the aquaculture licence (45 day posting period recommended).

- ii. If the project is being screened through the Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects, then once the Chair of the Ontario Introductions and Transfers Committee confirms that the submitted Detailed Ecological Risk Analysis is suitable for review (i.e. all necessary information has been provided), contacts EBR Registry Planner, Conservation and Planning Section, Lands and Waters Branch to complete the process for posting an information notice (with a comment period) of the proposal to issue the aquaculture licence (45 day posting period recommended).

11. **Conduct a full review of all materials** (could include Class EA review feedback, EBR comments, Detailed Ecological Risk Analysis, Ontario Introductions and Transfers Committee recommendations) and discuss any identified changes needed to the operation with the applicant and provide an opportunity for a final revised application / facility security plan before determining if the licence can/cannot be issued. If the licence will be approved proceed to Step 12. If the licence will be refused proceed to Step 13(b).

Step 12 - For approved applications

12.1. Completes all fields on the licence and ensures that appropriate licence conditions are identified on the face of the licence or are attached to it (see FisPp.9.2.3 - Aquaculture on Private Land).

12.2. Signs each copy of the licence;

12.3. Has applicant sign each copy of the licence;

12.4. Gives one copy of licence to applicant;

12.5. Files copy in district and enters the data into the appropriate Ministry information database.

12.6. If a Proposal Notice was posted on the EBR registry, works with EBR Registry Planner, Conservation and Planning Section, Lands and Waters Branch, to post an EBR Instrument Decision Notice.

If an Information Notice was posted on the EBR registry, works with EBR Registry Planner, Conservation and Planning Section, Lands and Waters Branch, to update the Information Notice to advise of the decision.

12.7. Ensures periodic inspection of the facility by a Conservation Officer (s.90 Fish and Wildlife Conservation Act). The inspection is to determine adherence to the terms and conditions indicated on the licence, particularly with respect to species and facility security. Facilities requiring a high level of security (F1) should be inspected a minimum of once per year. Those requiring a medium security level (F2) should be inspected a minimum of biennially and those requiring a low facility security level (F3) should be inspected at least once during the licence term (Note that these are only suggested inspection frequencies).

12.8. Makes applicant(s) for an aquaculture licence aware of additional approvals that may be required from the Ontario Ministry of Environment (MOE) for the taking of water (Permit to Take Water) and effluent treatment (Certificate of Approval for Industrial Sewage Works). In addition, approvals may be required from local authorities such as a Conservation Authority regarding flood plains or a Municipality regarding zoning as well as from Transport Canada for cage operations with regard to navigation hazards. These are obtained independently from OMNR licences. OMNR will not withhold the aquaculture licence pending other approvals but should notify MOE when a licence has been issued.

Step 13 - Incomplete / rejected / refused applications:

- (a) **Incomplete Application** - Notifies applicant in writing of OMNR's decision to not proceed with further review of the application. Identifies the reasons why the application will not be further reviewed. Rationale could include failure to complete a Short Form Risk Analysis, failure to submit a facility security plan that meets the requirements of the Short Form Risk Analysis, failure to complete a Detailed Ecological Risk Analysis when the proposed facility security

requirements are less than recommended through the Short Form Risk Analysis and failure to complete a required review under the Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects. Where a licence cannot be issued because the application is considered to be incomplete it is not considered to be a refusal of licence for the purpose of Section 71 of the *FWCA*.

- (b) **Licence Refusal** - Notifies applicant in writing of OMNR's decision to refuse to issue an aquaculture licence and provides the applicant with rationale for the decision. This process should be followed for all complete applications that were refused. If appropriate (i.e. refusal was for conservation and management of fish) formally notifies the applicant of the refusal and his or her right to a hearing (Form FW3502, available from the Fish and Wildlife Documentation Site). Refusal for any other reason consistent with the purpose of the act is not subject to a hearing (see FWPP.2.2.1 -Cancellation or refusal of a fish and wildlife licence and notification requirements).
- (c) **Species Not On List Eligible for Culture** - Where the species is not included on the list of species eligible for culture (Schedule B, *Fish Licensing Regulation*) informs the applicant that a licence cannot be issued for the species in question because it is not on the list of species eligible for culture in Ontario.

Note that a hybrid can only be cultured if it is explicitly listed on the approved species list (e.g. Splake) and named on the licence. That is, approval to culture two species does not imply approval to culture the hybrid of those two species. Where a licence cannot be issued because the species is not on the approved species list it is not considered to be a refusal of licence for the purpose of Section 71 of the *FWCA*.

- Informs the applicant that if they wish to further pursue having the species added to the list eligible for culture in Ontario that they should contact the Aquaculture Policy and Planning Biologist, Fish Culture Section (the Manager of Fish Culture Section in turn decides if the request should be forwarded to the Ontario Introductions and Transfers Committee for review).
- Informs the applicant that the request for an amendment to the species list will be reviewed by Fish Culture Section. If Fish Culture Section determines the species merits further consideration for addition to the list eligible for culture in Ontario the request will require review by the Ontario Introductions and Transfers Committee on the basis of a risk analysis to be completed by the applicant.
- Informs the applicant that if the species is added to the list eligible for culture, the licence application can then be considered on a site-specific basis by the local OMNR office.

5.0 References

5.1 Legislative references

- *Fish and Wildlife Conservation Act*
 - Section 34 - fishing preserves
 - Subsection 36(5) - abandonment
 - Section 37 - possession of nets
 - Section 47 - aquaculture
 - Section 51- buying or selling fish
 - Subsection 57(1) - transport of containers
 - Section 60 - issuance of licences
 - Section 62 - licence conditions

- Section 71 - refusal of licences - general
- Section 72 - refusal of licence on conservation or management grounds
- Section 75 - cancellation of licences on conservation or management grounds
- Section 76 - notice of proposal to cancel a licence
- Section 77 - hearing process
- *Fish Licencing Regulation*
 - Section 19 - application for aquaculture licence
 - Section 20 - aquaculture licence authorizations and limitations
 - Section 21 - aquaculture licence conditions
 - Section 22 - aquaculture licence holder disease reporting requirements
 - Section 23 - transfer of an aquaculture licence
 - Section 24 - exemptions for aquariums and the aquarium trade
 - Schedule B - species eligible for culture in Ontario
 - Schedule C - fish disease agents
- *Environmental Assessment Act/Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects*
- *Environmental Bill of Rights/Environmental Bill of Rights Classification of Proposals for Instruments Regulation (O.Reg. 681/94)*

5.2 Directive cross references

- Policy and procedures
 - FisPp.9.2.2 - Aquaculture on Crown Land (when available)
 - FisPp.9.2.3 - Aquaculture on Private Land - Conditions of Licence
 - FisPo.9.2.4 - Licensing of Fee for fishing Operations (formerly called fishing preserves)
 - FisPp.9.2.5 - Risk Analysis and Facility Security
 - FWPP.2.2.1 - Cancellation or refusal of a licence/notification requirements
 - FWPP.2.2.2 - Organization of a FWCA Hearing for refusal / cancellation
- Ontario Introductions and Transfers Committee Terms of Reference
- A Joint Strategic Plan for Management of Great Lakes Fisheries

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