

**CHAPTER 2, SUBJECT 4****SEIZURE AND FORFEITURE OF FISH PRODUCTS****1. SCOPE**

This document outlines the policy and procedures governing the seizure and forfeiture of fish, fish products and containers.

**NOTE:** This document does not cover the detention of product which is covered under Section 8 of the *Fish Inspection Regulations*, and outlined in Chapter 2, Subject 3 of this manual.

**2. AUTHORITIES**

*Fish Inspection Act*, R.S.C., 1970, C. F-12: Section 7

Section 7

(1) An inspector may seize all fish, containers and other things by means of or in relation to which the inspector believes on reasonable grounds that an offence against this Part or any regulation made under it has been committed.

(2) A thing seized under this Act, or the proceeds realized from its disposition, shall not be detained after

(a) an inspector determines that this Act and the regulations have been complied with in relation to the thing, or

(b) the expiration of one hundred and eighty days after the day of its seizure, or such longer period as may be prescribed,

unless before that time proceedings are instituted in relation to the thing seized, in which case it may be detained until the proceedings are finally concluded.

(3) Where a person is convicted of an offence against this Part or any regulation made thereunder, in addition to any punishment imposed, the fish and containers by means of or in relation to which the offence was committed are, on the conviction, forfeited to Her Majesty and may be disposed of as the Minister may direct.

### 3. POLICY

- 3.1 a) Seizure is employed where an Inspector, on reasonable grounds, believes that an offence has been committed against Part I of the Act or any regulation thereunder. The fish and containers involved in the offence are seized to prevent their shipment, movement, or disposal.
- b) Seizure is only employed as a last resort in those circumstances where an inspector believes that a detention could be, or has been, violated.
- 3.2 Following seizure action, every effort must be made to remove all seized fish, fish products, and containers to a secure storage location as soon as possible. All costs for removal and storage are to be borne by the CFIA. The Crown can request that removal and storage costs be considered by the Court when any fine is levied.
- 3.3 Although the *Fish Inspection Act* does not provide the authority to sell seized goods and to retain the proceeds of the sale, pending the outcome of the legal proceedings, nothing precludes an understanding between Crown Counsel and Defence Counsel as to the disposal of the seized goods at an agreed upon price. The monies generated from such sales could be placed in escrow.

Inspectors are reminded that a person charged with any offence is considered innocent until proven guilty. Therefore, any product seized must be maintained in the best possible conditions in order to mitigate any losses in product quality. All costs incurred from the point of seizure are borne by the CFIA.

Seized product determined to be tainted, decomposed or unwholesome by the initial inspection and reinspection procedures will not be further processed and is to be disposed of by the CFIA. Seized product that can be stored, will be, until the completion of the trial.

- 3.4 Section 7(3) of the *Fish Inspection Act* demands the automatic forfeiture of all seized goods where the accused is found guilty. Inspectors must ensure that the Crown Counsel is aware of the forfeiture requirements.
- 3.5 Only the Minister can decide the eventual disposition of all seized and forfeited fish and containers, as per Section 7(3) of the Act. In cases where decisions on the disposition of forfeited fish, fish products and containers are required, Regional Directors are to prepare a Memorandum to the Minister via the Executive Director.

#### 4. PROCEDURES

- 4.1 Pursuant to Section 7 of the *Fish Inspection Act*, an inspector shall seize fish, fish products and containers by completing the "CFIA Fish Inspection Seized Goods Receipt" (Appendix A) and advising the owner of the goods or the agent controlling the goods that the inspector has grounds to believe that an offence (specify the offence) has been committed.

A receipt must be issued at the time of seizure for all goods seized.

- 4.2 If an owner wishes to regain control of the goods following seizure, this may be done through a court hearing. In permitting such an action, the court will require a bond be posted for the value of the goods pending a court decision. Where such an action would not be in the public's interest (i.e., health and safety concerns), Crown Counsel can put forth arguments to this effect and request the action be refused.

- 4.3 Section 7(2) of the Act allows for a two month period of seizure commencing the day following the seizure action during which time legal proceedings must be initiated. If legal proceedings are not initiated within this two month time frame, the seizure becomes null and void and the fish and containers must then be returned to the owner or agent originally having control over the fish and containers.

Once legal proceedings have commenced, the seizure remains in effect until a court decision is reached. If it is determined that legal proceedings will not be undertaken, the seized goods must be released immediately; an inspector must not wait for the two months to lapse.

Legal proceedings begin when the inspector lays an information before the Justice of the Peace outlining the offence that has been committed and for which the fish is seized. This action is completed in conjunction with Crown Counsel and the Department of Justice.

- 4.4 If the owner or agent having control over the fish being seized obstructs, impedes, or refuses to admit an inspector seizing fish, fish products and containers pursuant to Part I of the *Fish Inspection Act* and any regulation made thereunder, this person is liable to prosecution for obstruction pursuant to section 4(2) of the *Fish Inspection Act*.

Procedures for the secure storage and transportation for seized fish products is the responsibility of the Regional Director.

- 4.5 To ensure compliance with section 7(3) of the *Fish Inspection Act*, the inspector must remind Crown Counsel of the forfeiture requirements of the section. During the court proceedings evidence must be produced as to the description, quantity and record of seizure of the seized goods in order for the Court to order forfeiture.
- 4.6 Upon conviction of the accused and Court ordered forfeiture of the fish and containers, inspectors shall instruct their prosecuting attorneys to complete an Order of Forfeiture Form (Appendix B) for the Provincial Court Judge's signature. In this way, the Agency has legal proof that it is now the true owner of all seized and forfeited fish and containers.
- 4.7 Once the seized goods are forfeited to the Crown, only the Minister or a person designated by the Minister may decide the disposition of the goods.

Upon receipt of the completed "Prosecutor's Information and Return Form" at the Regional Office, the Regional Director is to prepare, for review by the Executive Director, a Memorandum to the Minister or person designated to handle such matters outlining the following:

- the charge(s) laid;
- history of offence;
- penalties levied;
- quantities of fish forfeited and their value; and- recommendations to the Minister regarding disposition of the forfeited lots of fish.

## 5. **FORMS/DOCUMENTS**

"Seized Goods Receipt" - Appendix A

"Order of Forfeiture" - Appendix B

The following Seized Goods Receipt can be reproduced locally on Agency letterhead, and is to be given to owners and agents of seized fish at the time of seizure.

CFIA FISH INSPECTION SEIZED GOODS RECEIPT

Date of Seizure: \_\_\_\_\_

Place of Seizure: \_\_\_\_\_

Seized from: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Lot Description: Complete description of lot seized

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The goods described above have been seized in relation to the following offence: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF INSPECTOR MAKING SEIZURE

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