



COLLECTION OF OUTSTANDING COAST GUARD IMPOSED FINES AND SECTION 79.2 ORDERS

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STANDARD OPERATING PROCEDURE (SOP)

January 21, 2005

This SOP deals with the collection of outstanding fines and section 79.2 orders

1. APPLICATION

This Standard Operating Procedure applies to employees of the Department who are designated pursuant to Section 5 of the *Fisheries Act* to carry out enforcement functions. This includes:

- (a) Fishery Officers to Area Chiefs;
- (b) Fishery Guardians; and
- (c) Marine Enforcement Officers
(collectively referred to as "Enforcement Officers").

2. DEFINITIONS

"outstanding fine" refers to any court-imposed financial penalty (specifically referred to as a fine) made pursuant to section 40, 66, 69, 78 or 79 of the *Fisheries Act* that has not been paid and the deadline for payment set out in the Court Order has expired. This includes Voluntary Penalty tickets that have been unsuccessfully challenged by the offender in a court.

"outstanding s.79.2 order" refers to any Court Order made pursuant to section 79.2 of the *Fisheries Act* that has not been complied with and the deadline for completion set out in the Court Order has expired. This includes all "creative sentences" involving payment of monies for the conservation and protection of the resource.

3. EFFECTIVE DATE

The effective date of this policy is **March 7 2009**

4. AUTHORITY

Section 734.5 of the *Criminal Code of Canada* and sections 79.4 and 79.6 of the *Fisheries Act* provide authority for this Standard Operating Procedure. Section 734.5 of the *Criminal Code* provides that where an offender is in default of payment of a fine, the Department has the authority to refuse to issue a licence or suspend a licence until the fine is paid in full, proof of which lies on the offender. Section 79.4 of the *Fisheries Act* confirms that a 79.2 order constitutes a debt due to Her Majesty. Section 79.6 of the *Fisheries Act* confirms that a person who contravenes a section 79.2 order is guilty of a summary or indictable offence.

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5. OBJECTIVE

The objective of this Standard Operating Procedure is to:

- (a) Promote compliance with and respect for the *Fisheries Act* and related legislation;
- (b) Reduce the number of outstanding fines and s.79.2 orders;
- (c) Ensure that Enforcement Officers are aware of the procedure to follow in the case of outstanding fines and s. 79.2 orders; and
- (d) Ensure that all outstanding fines and s.79.2 orders are addressed through a consistent and Departmentally-approved set of procedures.

6. GENERAL

- 6.1 Enforcement Officers are responsible for pursuing all outstanding fines and s. 79.2 orders as set out in this SOP and must retain a copy of the original Court Order on their file.
- 6.2 Enforcement Officers are encouraged to use reasonable judgement as to the appropriate approach to take in light of the particular circumstances of each case.
- 6.3 Enforcement Officers are responsible for identifying which of their files have outstanding fines or s. 79.2 orders and the amount of those outstanding fines and s. 79.2 orders by checking periodically with the local Court registry. The Enforcement Officer should obtain written confirmation of the amount of the outstanding fine or s. 79.2 order from the Court Registry. Also, Area Chiefs will receive an electronic copy of the BC Ministry of Finance's list of unpaid federal fines on a quarterly basis from the Department of Justice Fine Enforcement Unit (currently Susan Mansoor at 604.666.9104).

7. DEMAND LETTER

- 7.1 Once the Enforcement Officer has confirmed the amount of an outstanding fine or s. 79.2 order, the offender's address and other relevant information, the Enforcement Officer should draft a demand letter using one of the templates prepared by Legal Services and attached as Appendices A and B. Use Appendix A for cases involving outstanding fines only. Use Appendix B for cases involving outstanding fines and s. 79.2 orders.

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- 7.2 If there is anything unusual about the Court Order, the Enforcement Officers should send the demand letter and the Court Order to DFO Legal Services counsel for review before sending it to the offender.
- 7.3 Enforcement Officers are responsible for delivering the demand letter to the offender. If the offender is an individual, send the demand letter and the Court Order by registered mail or personal service. If the offender is a corporation, send the demand letter and Court Order by registered mail.
- 7.4 If the offender pays the outstanding fine or s. 79.2 order within the time period set out in the demand letter, the Enforcement Officer should enter the required information in DVS and close the file.
- 7.5 If the offender does not pay the outstanding fine or s. 79.2 order within the time period set out in the demand letter and the file involves an outstanding fine only, see section 8 below (If Demand Letter Not Complied With - Outstanding Fines Only). If the file involves an outstanding fine and s. 79.2 order, see section 9 below (If Demand Letter Not Complied With - Outstanding Fines and s. 79.2 Orders).

8. IF DEMAND LETTER NOT COMPLIED WITH - OUTSTANDING FINES ONLY

- 8.1 If the demand letter is not complied with and the file relates to an outstanding fine only, Enforcement Officers should obtain written approval from the Area Chief of Conservation and Protection to:
 - (a) where the offender is a commercial licence holder, proceed with suspending or refusing to issue the offender's commercial licence or fisher's registration card (FRC); and/or
 - (b) for any type of offender, refer the file to Public Prosecution Service of Canada (PPSC) Fine Enforcement Unit for collection.
- 8.2 If the Area Chief has approved the licence suspension/refusal, the Enforcement Officer should provide a written request to the Vancouver Pacific Fishery Licence Unit (PFLU) asking them to suspend or refuse to issue the offender's licence. If the offender has more than one licence, the Enforcement Officer should specify which licence to suspend. Enforcement Officers should provide the PFLU with a copy of the demand letter and the name and contact information of the Enforcement Officer responsible for the file.
- 8.3 Once the Enforcement Officer gets confirmation from the PFLU that the offender's licence has been suspended, the Enforcement Officer should send a letter to the offender (with a cc to PFLU) as set out in Appendix C.

STANDARD OPERATING PROCEDURE (SOP)

January 21, 2005

This SOP deals with the collection of outstanding fines and section 79.2 orders

- 8.4 Once the Enforcement Officer receives written confirmation that the offender has paid the fine in full the Officer must immediately notify the PFLU in writing.
- 8.5 If the Area Chief has approved the referral of file to PPSC Fine Enforcement Unit, the Enforcement Officer should contact the PPSC Fine Enforcement Unit (Susan Mansoor) at 604.666.9104 and advise them DFO would like them to pursue enforcement of the unpaid fine. Enforcement Officers should provide PPSC with the offender's full name, current address, court file number, court registry, amount of the fine and, if possible, any information about assets the offender may own (e.g. boat, motor vehicle).
- 8.6 PPSC will enforce fines in excess of \$1,000 (either for a single offence or cumulatively). In certain cases, PPSC may consider requests from Enforcement Officers to enforce fines less than \$1,000.

9. IF DEMAND LETTER NOT COMPLIED WITH - OUTSTANDING FINES AND S. 79.2 ORDERS

- 9.1 If the demand letter described in section 7 is not complied with and the file relates to an outstanding fine and s. 79.2 order, Enforcement Officers should obtain written approval from the Area Chief of Conservation and Protection to:
 - (a) where the offender is a commercial licence holder, proceed with suspending or refusing to issue the offender's commercial licence or fisher's registration card (FRC); and/or
 - (b) for any type of offender, refer the file to the local Crown agent for enforcement (e.g. further prosecution under section 79.6 of the *Fisheries Act*, enforcement under section 734.6 or 734.7 of the *Criminal Code of Canada*).
- 9.2 If the Area Chief has approved the licence suspension/refusal, the Enforcement Officer should provide a written request to the Vancouver Pacific Fishery Licence Unit (PFLU) asking them to suspend or refuse to issue the offender's licence. If the offender has more than one licence, the Enforcement Officer should specify which licence to suspend. Enforcement Officers should provide the PFLU with a copy of the demand letter and the name and contact information of the Enforcement Officer responsible for the file.
- 9.3 Once the Enforcement Officer gets confirmation from the PFLU that the offender's licence has been suspended, the Enforcement Officer should send a letter to the offender (with a cc to PFLU) as set out in Appendix C.

STANDARD OPERATING PROCEDURE (SOP)

January 21, 2005

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- 9.4 Once the Enforcement Officer receives written confirmation that the offender has paid the fine in full the Officer must immediately notify the PFLU in writing.

- 9.5 If the Area Chief has approved the referral of file to the local Crown agent for enforcement, Enforcement Officers should provide the Crown with the offender's full name, current address, court file number, court registry, amount of the fine and, if possible, any information about assets the offender may own (e.g. boat, motor vehicle).

**APPENDIX A
SAMPLE DEMAND LETTER
FOR FINES ONLY**

Fisheries
and Oceans

Pêches
et Océans

Pacific Region



<Insert Date Here>

BY (choose one of REGISTERED MAIL / PERSONAL SERVICE)

(Offender Xxxx
- ### Address Street
XXXXXXXX), BC (Postal Code)

Dear Sir/Madam:

Re: Regina v. Xxxxxx Xxxxx XXXX
Court File Number: #####
Conviction Date (Month XX, Year)

As you are aware, on [Month ##, Year], by Order of [the Honourable Judge Xxxxx of the British Columbia Provincial Court or Mr. or Madame Justice Xxxxx of the British Columbia Supreme Court] you were convicted of violating the *Fisheries Act* and ordered to pay a fine of \$XXX no later than [date ordered by court to pay fine]. A copy of the Court Order is attached for your reference.

A recent review of our files indicates that as of [current date], you have failed to comply with the Court Order in that you have failed to pay the \$XXX. As a result of your failure to comply with the Court Order, the Crown is considering all legal options available to it, including but not limited to suspending or refusing to issue any licences or permits issued to you. The Crown may also request that Canada Revenue Agency set-off and apply against the fines any tax refund or repayment that is or may become payable to you. A copy of sections 164(2) and 220(2.01) of the *Income Tax Act* is enclosed.

I hereby put you on notice that if, within ten (10) days after receipt of this demand letter, you do not provide me with written proof of your full compliance with the terms of the Court Order or a certified cheque or money order in the amount of \$##,###.00, payable to the Minister of Finance, the Crown will pursue legal recourse without further notice to you.

If you wish to discuss making arrangements to dispose of this matter, please call me at XXX-XXX-XXXX.

Yours truly,

Xxxxx XXXXXXXX
Fishery Officer
Department of Fisheries and Oceans Canada
Pacific Region

Enclosure: Court Order
ss.164(2) and 220(2.01) of the *Income Tax Act*

**APPENDIX B
SAMPLE DEMAND LETTER
FOR FINES AND S. 79.2 ORDERS**

INCOME TAX ACT

Application to other debts

164(2) Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is, or is about to become, liable to make any payment to Her Majesty in right of Canada or in right of a province, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

Delegation

220(2.01) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Act.

**APPENDIX B
SAMPLE DEMAND LETTER
FOR FINES AND S. 79.2 ORDERS**

Fisheries
and Oceans

Pêches
et Océans

Pacific Region



< Insert Department Letterhead here >

< Insert Date Here >

BY (choose = REGISTERED MAIL or PERSONAL SERVICE)

(Offender Xxxx
- ### Address Street
Xxxxxxxx), BC (Postal Code)

Dear Sir/Madam:

Re: Regina v. Xxxxxx Xxxxx XXXX
Court File Number: #####
Conviction Date (Month XX, Year)

As you are aware, on (Month ##, Year), by Order of [the Honourable Judge Xxxxx of the British Columbia Provincial Court or Mr. or Madame Justice Xxxxx of the British Columbia Supreme Court] you were convicted of violating the *Fisheries Act* and ordered to pay a fine of \$XXX no later than [date ordered by court to pay fine] and ordered to [set out the details of the s.79.2 order]. A copy of the Court Order is attached for your reference.

A recent review of our files indicates that as of [current date], you have failed to comply with this Court Order in that you have failed to [set out the provisions of the Court Order the offender has not complied with]. As a result of your failure to comply with the Court Order, the Crown is considering all legal options available to it including but not limited to suspending or refusing to issue any licences or permits issued to you. The Crown may also request that Canada Revenue Agency set-off and apply against the fines any tax refund or repayment that is or may become payable to you. A copy of sections 164(2) and 220(2.01) of the *Income Tax Act* is enclosed.

Also, please note the following sections of the *Fisheries Act* which refer to Court Orders made pursuant s.79.2 of the *Fisheries Act*:

- Section 79.4 provides that where the court makes an order under section 79.2 of the *Fisheries Act* 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; and
- Section 79.6 provides that where a person convicted of an offence under section 79.2 of the *Fisheries Act* does not comply with an order made pursuant to such section, that person is guilty of an offence and liable to the maximum penalty allowable on the original offence.

I hereby put you on notice that if, within ten (10) days after receipt of this demand letter, you do not provide me with written proof of your full compliance with the terms of the Court Order [if the Order contains 79.2(f) component add: and a certified cheque or money order in the amount of \$##,###.00, payable to the Department of Fisheries and Oceans, Conservation & Protection, (Revenue Section) at (### Street, Xxxxxxx), B.C. (Postal Code), Attention: Xxxxxxxx Xxxxxx], the Crown will pursue legal recourse without further notice to you.

**APPENDIX B
SAMPLE DEMAND LETTER
FOR FINES AND S. 79.2 ORDERS**

If you wish to discuss making arrangements to dispose of this matter, please call me at XXX-XXX-XXXX.

Yours truly,

Xxxxx XXXXXXXX
Fishery Officer
Department of Fisheries and Oceans Canada
Pacific Region

Enclosure: Court Order
ss.164(2) and 220(2.01) of the *Income Tax Act*

**APPENDIX B
SAMPLE DEMAND LETTER
FOR FINES AND S. 79.2 ORDERS**

INCOME TAX ACT

Application to other debts

164(2) Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is, or is about to become, liable to make any payment to Her Majesty in right of Canada or in right of a province, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

Delegation

220(2.01) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Act.

**APPENDIX C
SAMPLE LETTER OF
LICENCE SUSPENSION/REFUSAL**

Fisheries
and Oceans

Pêches
et Océans

Pacific Region



< Insert Department Letterhead here >

< Insert Date Here >

BY (choose one of REGISTERED MAIL / PERSONAL SERVICE)

(Offender Xxxx
- ### Address Street
XXXXXXXX), BC (Postal Code)

Dear Sir/Madam:

Re: Regina v. XXXXXX XXXX XXXX
Court File Number: #####
Conviction Date (Month XX, Year)

This letter is further to our letter to you dated [Insert date of demand letter], a copy of which is attached. As you have not provided us with written confirmation of your full compliance with the terms of the Court Order, we hereby confirm we have suspended [or refused to issue] your [insert type of licence] effective [insert date PFLU suspended the licence]. You are therefore required to return the licence to the local DFO office at [insert address and contact info].

Please be advised that your licence will not be re-issued until you provide me with written proof of full payment of your outstanding fine [and s. 79.2 order, if applicable]. Also, we wish to remind you that it is an offence to commercially fish without a valid licence.

If you wish to discuss making arrangements to dispose of this matter, please call me at XXX-XXX-XXXX.

Yours truly,

XXXX XXXXXXXX
Fishery Officer
Department of Fisheries and Oceans Canada
Pacific Region

Enclosure: Demand Letter and Court Order