

Site Restoration Plan and Financial Assurance Requirements Guidance Document

Department of Fisheries, Forestry and Agriculture
Aquaculture Development Division

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Information in this document is subject to change.

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1. Site Restoration Plan Guide

The purpose of this document is to provide guidance to licensees in preparing a Site Restoration Plan to meet the Department of Fisheries, Forestry and Agriculture (FFA) surety requirement. It is important to note that any activity identified in the Site Restoration Plan must conform to all applicable municipal, provincial and federal regulatory requirements as well as departmental approved management plans on file for operations.

A Site Restoration Plan shall be divided into four main parts, as follows:

- 1.1 Background Information
- 1.2 Work Plan
- 1.3 Cost Estimate
- 1.4 Financial Assurance Proposal

1.1 Background Information

a) Description of Operations

Provide a brief description of the site including the species; production plan details; infrastructure; facilities; equipment; and inventories at peak production.

b) Objectives and Scope

Define the objectives and scope of the Site Restoration Plan. Identify legislative requirements and any applicable company or subsidiaries criteria.

The following are examples of Site Restoration Plan objectives that may be included in the plan:

- 1) Reduce or eliminate potential adverse environmental effects associated with the site;
- 2) Decommission and restore the site; and/or
- 3) Remove potential navigational and other safety hazards.

1.2 Work Plan

Provide a detailed Work Plan that identifies the following components.

- a) Schedule
 - (i) Site assessment
 - (ii) Restoration work
 - (iii) Completion date
- b) Reporting to FFA on progress at the following stages, may include:

- (i) Site assessment;
- (ii) Completion of corrective actions;
- (iii) Completion of key stages of the restoration (i.e. removal of stock inventory, if necessary, facilities, equipment and infrastructure, hazards and disposal in accordance with departmental approved management plans);
- (iv) Attestation to completion of site restoration (Appendix A).

Reports are to be submitted to the Director of Aquaculture Development.

1.3 Cost Estimation

Site restoration estimated costs are to capture all activities associated with site restoration. Appendix B provides a list of restoration criteria that may be taken into consideration in determining estimated costs. To ensure that restoration costs are indicative of operations, estimates are to be based on peak production for site(s).

Cost estimates should include:

- (i) A comprehensive **third party cost estimate** by a certified entity; and
- (ii) Costs associated with the restoration, which will be combined into a sub-total.

A list of certified third party entities that may be able to provide third party cost estimates for restoration activities are identified in the following link: <https://www.gov.nl.ca/ecc/env-protection/impactedsites/#envconsult>. Other service providers with the ability to provide an independent cost estimate may be considered by FFA.

Conditions that apply to the completion of estimates are as follows:

- (i) All cost estimates must be third party costs (not in-house costs);
- (ii) All costs should be in Canadian funds (excluding HST);
- (iii) All costs should be in current year dollars, with no allowance made for escalation; and
- (iv) The cost estimate is to be based upon peak production, schedule, and site restoration work.

1.4 Financial Assurance Proposal

The financial assurance proposal shall be based upon a supportable cost estimate of restoration costs certified by a qualified entity and provide a description of the means to fund an acceptable Site Restoration Plan. Appendix C includes further details regarding financial assurance proposals, as well as standard financial assurance templates that may be used as part of a submission is provided.

Appendix A: Attestation to Completion of Site Restoration

Persons holding the last aquaculture licence for a site are required to attest that the site has been restored. A Declaration is required to be provided to FFA, signed in the presence of a Commissioner for Oaths for Newfoundland and Labrador or a Notary Public in and for the Province of Newfoundland and Labrador, swearing the site is now free from aquaculture infrastructure and restored.

Person shall also provide verification that the work has been completed. Verification will include methods to validate the removal of aquaculture gear and aquatic animals at the water's surface and below, the benthos, within the lease. Depending on the location, verification will be supported by pictures, remote sensing, and/or video. An inspector and other departmental staff, as deemed necessary, may be present to monitor and inspect. The person will be required to submit to FFA a report that encompasses the attestation, supporting methods and results to verify restoration.

Appendix B: Cost Estimations

The following may be considered when estimating the costs:

- Type and size of the site;
- Type and amount of gear deployed;
- Methods to remove infrastructure and aquatic animals cultivated, if necessary
- Removal methods of gear, as well as aquatic animals cultivated (if not processed);
- Presence of hazardous material and potential contaminants;
- Transportation costs;
- Labour costs;
- Final restoration costs: attestation to site restoration; and
- Other components, not captured above, that may be specific to the operation (e.g. overall project management, engineering, administrative, etc.).

Appendix C: Financial Assurance

The types of financial assurances accepted by FFA are Security Bonds and Irrevocable Letters of Credit (ILoC). Documentation is to be submitted to FFA in an electronic format. Under legislation, financial assurance requirements may be changed at any time by the Minister, as deemed necessary.

1. Security Bond

A Security Bond is an indemnity agreement in a specific and fixed amount executed by a surety insurer licensed to do business in the Province of Newfoundland and Labrador:

[Insurance Valid Licences - Digital Government and Service NL](#)

Security Bonds are issued for a specific period and cannot be cancelled until the Minister of FFA approves new financial security. In addition, bonds must include a clause requiring the written notice of cancellation to the Minister a minimum of three calendar months prior to any such cancellation. If the Licensee does not provide the required notice, the Minister may cancel the licence.

The Security Bond template in Appendix C may be used. If availing of a bond program administered by an approved association (i.e. Newfoundland Aquaculture Industry Association), an agreement in accordance with the program may be provided to FFA for consideration.

2. ILoC

An ILoC is a non-negotiable form of security. It is issued by any bank listed in Schedule I of the **Bank Act (Canada)** and authorized to conduct business in Newfoundland and Labrador. It shall be for a specific period of time and must not be revocable by the Licensee until;

- 1) restoration is completed pursuant to the accepted Site Restoration Plan;
- 2) the Minister has issued a Notice of Release to the Licensee; or
- 3) the ILoC is replaced with another acceptable form of financial assurance.

The ILoC template in Appendix C may be used.

3. Activities to be Covered

Activities that may be covered are those associated with the development and operation of an aquaculture site: removal/processing of inventory, removal and care for stock if present, removal methods, project management and administrative costs, on-site monitoring and underwater footage of restoration, etc. If necessary, activities required for environmental effects monitoring, as well as measures to ensure compliance with Transport Canada navigation requirements throughout the course of restoration, may be included in financial

assurance coverage.

4. Financial Assurance Amount

Financial assurance amount must be sufficient to cover all costs associated with restoration activities and must be verified by a third party estimator.

The amount of financial assurance may have to be adjusted if the site is approved for an amendment: site boundary, species add-on, etc., which may result in an increase in the estimated cost of the site restoration.

The amount of financial assurance required shall not be reduced by the inclusion of salvage costs.

5. Financial Assurance Details

The financial assurance proposal must include information specific to the type and value of the assurance. The submission should include, as a minimum, the following information:

- (i) Security Description; and
- (ii) Security Value (at cost).

6. Period of Liability for the Licensee

The Licensee shall maintain adequate financial assurance continuously throughout the life of the aquaculture operation and until:

- 1) restoration has been completed pursuant to the accepted Site Restoration Plan;
- 2) restoration has been attested to and verified by the Licensee; and
- 3) the Minister has approved the release of financial assurance, if necessary.

7. Site Transitions: Site Restoration Plan and Financial Assurance Requirements

When there is a change in ownership or a sub-lease of an aquaculture operation, the original Licensee's Security Bond or ILoC must remain until the Minister has approved the site transition. The successor Licensee will be required, through the licence application process, to submit a Site Restoration Plan that will include financial assurance in accordance with departmental requirements.

8. Annual Requirements

Annually, proof of financial assurance will be required for licence validation. Proof is to be

provided in the form of a letter from either the association administering a bond program, the surety insurer, or financial institution.

9. Excess Funds on Completion of Restoration Work

Where the Minister deems it necessary to invoke a financial assurance (Appendix D), residual balances will be refunded once the Minister is satisfied that the restoration work has been completed, as required.

Fisheries, Forestry and Agriculture Security Bond Template

AQUACULTURE SITE RESTORATION SECURITY BOND

Bond #_____

Amount:_____ \$

KNOW ALL PERSONS by these presents that [name of company] ("the Principal") whose place of business is at [full company address] and the [name of insurance company] ("the Surety") whose place of business is at [full company address] are held and firmly bound unto Her Majesty the Queen in Right of Newfoundland and Labrador as represented by the Minister of Fisheries, Forestry and Agriculture, its heirs, and successors ("the Obligee") whose place of business is at 30 Strawberry Marsh Rd., P.O. Box 8700, St. John's, Newfoundland and Labrador, A1B 4J6 in the penal sum of [amount of bond] of lawful money of Canada for the payment of which we bind ourselves, our heirs, administrators and successors, and assigns firmly by these presents.

WHEREAS, the Principal will operate/operates a [type of aquaculture operation] located at [site location stated on the licence] in accordance with a Site Restoration Plan accepted by the Minister's letter dated [insert date], which is attached hereto.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall comply with the terms of the Site Restoration Plan then this obligation shall be void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. Whenever the Principal shall be in default and declared by the Obligee to be in default of the terms of the Site Restoration Plan, the Obligee shall send a registered letter to both the Principal and Surety, stating in substantial detail the facts leading to the default.
2. That the Surety's obligation to the Obligee shall only be to pay such amounts demanded by the Obligee and this bond will be totally exonerated by remitting to the Obligee such amounts in default, provided however, the total liability of the Surety shall in no event exceed the penal sum of the Surety.
3. This bond shall remain in full force and effect until released by the Obligee, or replaced by a form of financial assurance acceptable to the Obligee.

Provided that, if the Surety at any time gives at least three calendar months' notice in writing to the Obligee and to the Principal of its intention to terminate this obligation, then this obligation shall be deemed to be terminated on the date stated in the notice, which date shall not be less than three calendar months after the date of the receipt of the notice by the said Obligee or by the said Principal, whichever is the later date of receipt, provided that, should the Principal fail, within two calendar months of the above referred to later date of receipt, to provide a financial assurance in at least the same amount as this bond in a form acceptable to the Obligee, the Surety shall automatically and immediately pay the full amount of the bond to the Obligee.

4. Any suit or action on this bond against the Surety must be commenced by the Obligee within 120 days from the date of notice of default mentioned in clause #1 above.
5. In the event the Surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately, by registered mail, to the Principal and the Obligee. Upon Obligee's receipt of Surety's notification or upon the incapacity of the Surety by reason of bankruptcy, insolvency, or suspension or revocation of its license, the Principal shall be deemed to be without bond coverage and will be required to submit alternate financial assurance, subject to the approval of the Obligee and as required by Section 4.2 of the **Aquaculture Act**, within 30 days.
6. The Surety is duly registered to carry on the business of surety in the Province of Newfoundland and Labrador.
7. Upon partial completion of the site restoration and the submission by the Principal of a written application including technical supports and relevant information, the Obligee at its discretion may reduce the amount of the bond to an amount consistent with the financial requirements of the restoration work left to be completed.
8. This bond will be valid for the term of **[date bond sealed]** to **[date 1 year hence]** and shall be automatically renewed, without further documentation from year to year thereafter unless terminated as aforesaid, provided that the Surety may, if it wishes, issue certificates evidencing such renewal.

Sealed with the respective seals of the Principal and of the Surety the _____ day of,
[insert month] 20[insert year].

SEALED, SIGNED AND DELIVERED
by the Principal in the presence of

Witness

Principal

SIGNED, SEALED AND DELIVERED
by the Surety in the presence of:

Witness

Surety

Surety Approved Signatory
[NAME, ADDRESS, & TELEPHONE
NO. OF SURETY]

Fisheries, Forestry and Agriculture Irrevocable Letter of Credit Template

Irrevocable Letter of Credit

Financial Institution

Letterhead

Date of Issue: **[date]**

Beneficiary: Government of Newfoundland and Labrador
Department of Fisheries, Forestry and
Agriculture
P.O. Box 8700
St. John's, NL A1B 4J6

IRREVOCABLE LETTER OF CREDIT NO. [number]

At the request of **[company name, address]** ("the Customer") we, **[name of financial institution]**, hereby establish our Irrevocable Letter of Credit No. **[number]** ("the Letter of Credit") in your favour for an amount not exceeding CAD $[\$ \$ \$ \$. \$ \$]$ (**written out xx**/100 Canadian Dollars) available to you against presentation of the original documents mentioned hereinafter:

1. Your dated and written declaration referring to **[name of financial institution]** Letter of Credit No. **[number]** purportedly signed by an authorized officer, stating the amount claimed and certifying that the amount claimed is due to you by the Customer for either one of the following reasons:
 - A. The Minister of Fisheries, Forestry and Agriculture has reasonable grounds to believe that the Customer is not complying with or has not complied with an order to undertake site restoration measures under its Site Restoration Plan for the restoration of operations under the terms of Aquaculture Licence**[AQ number]**; or
 - B. You have received a notice from **[name of financial institution]** of its election not to extend its Irrevocable Standby Letter of Credit No. **[number]** and as of the date of the present demand for payment, you have not received a substitute Irrevocable Standby Letter of Credit acceptable to you.
2. The present original Letter of Credit.

Any claims made by you under this Letter of Credit must be presented to us on or before **[date]** (the expiry date). It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment on our part for one year from its present expiry date or from any future expiry date unless thirty (30) days prior to any such expiry date we shall notify you by courier that we elect not to consider this Letter of Credit extended for any such additional period. In case of non-

extension, you shall have the right to draw upon this Letter of Credit up to the full amount then outstanding upon presentation of the original of the present Letter of Credit and your written declaration in the fashion described in 1.B above.

This Letter of Credit is neither transferable nor assignable. Partial drawings are permitted. In the event of any partial drawing we will note the amount of the drawing on the original of this Letter of Credit and immediately return directly to you the original of this Letter of Credit.

We hereby undertake that any drawing made by you on us under this Letter of Credit will be duly honoured on presentation provided that all above-mentioned terms and conditions have been complied with.

All correspondence and/or demand shall be addressed to **[full legal address of financial institution]** and shall refer to our Letter of Credit No. **[number]**.

This Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits 2007 Revision, I.C.C., Publication Number 600.

[financial institution]

Authorized Signature **[name]**

Authorized Signature **[name]**

The present document consists of 2 pages.

Appendix D: Invoking Financial Assurance

In the event an operation ceases, the Licensee shall initiate the Site Restoration Plan to ensure the site is restored and provide FFA with the required reports. If the department determines that no site restoration activities have been undertaken or the Licensee is not in compliance with the Site Restoration Plan, FFA may make a demand under the financial assurance document.

No court order or procedures are required to act. All that is required for action is the existence of reasonable grounds for the belief on the part of the Minister that the last Licensee has not commenced or completed site restoration activities.