

**COMMONWEALTH OF PUERTO RICO  
DEPARTMENT OF AGRICULTURE  
SAN JUAN, PUERTO RICO**

**REGULATION NO. 1 OF THE OFFICE  
FOR THE PROMOTION AND ORDINANCE OF THE FISHING  
AND AQUACULTURE INDUSTRY OF PUERTO RICO**

**SECTION I – LEGAL BASE**

This Regulation is adopted by virtue of Act No. 238 of September 18, 1996, which creates the Office for the Regulating the Livestock Industry and Act No. 61 of August 23, 1990, which creates the Fishing Industry Promotion, Development, and Administration Program in the Department of Agriculture. In addition, it is promulgated pursuant to Act No. 170 of August 12, 1988, as amended, known as “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.”

**SECTION II – PURPOSE**

The Office for the Promotion and Ordinance of the Fishing and Aquaculture Industry of Puerto Rico was created with the main purpose of promoting activities, programs and services, which foster the a responsible and sustainable development of the Fishing Industry in Puerto Rico. It is known that all aquatic and semi-aquatic organisms found in non-private water bodies are considered of public domain and that the same may be liberally caught, profited and commercialized, with subjection to the provisions of Act No. 278 of November 28, 1998, as amended, and Act No. 115 of September 6, 1997 and any other applicable act or regulation.

On the other hand, Act No. 238 of September 18, 1996, in order to foster the development and welfare of the Fishing Industry of Puerto Rico, among other things, has the commitment of stimulating this sector’s self-control through the encouragement of the active participation of its components in the processes of planning and in the creation of those mechanisms to strengthen them.

In agreement, the Fishing Industry requires to be organized, in a way that it can provide more accessibility to the information and technical orientation, and the mechanisms necessary to make this industry more efficient and productive taking into account the status of the fishing resource and the efficacy of the existent conservation and development measures destined to assure a responsible development and profitability at short and long terms of the fisheries and aquatic ecosystems. All fishing activities to be promoted shall keep in mind the status of the resource and the need to maintain the quality, diversity and availability of the fishing resources in a sufficient amount for present and future generations in the context of alimentary safety and profitable development.

### **SECTION III – DEFINITIONS**

For the purposes of this Regulation, the following terms shall have the meanings stated below, except otherwise indicated by the text thereof:

1. Fishery Equipment: Any apparatus or devise used for fishing.
2. Fishing Vessel: Any vehicle of maritime navigation which is used for fishing.
3. Fishing Industry: Any activity comprised in the areas of aquaculture, mariculture, fish breeding or fishing by commercial or artisanal fishermen of any sea or lacustrine product and/or the processing or industrialization of aquatic organisms.
4. Commercial Fisherman License: Written authorization granted by the Secretary of the Department of Natural and Environmental Resources pursuant to Act No. 278 of November 29, 1998 as amended, known as “Fisheries Act of Puerto Rico and Organic Act of the Department of Natural Resources” to catch aquatic and semi-aquatic organisms in the jurisdictional waters of Puerto Rico.
5. Mariculture: Cultivation of aquatic plants and animals under controlled conditions in salt and brackish water.
6. Shellfish: Mollusk and/or crustaceous.

7. Docks: Place for embarkation and debarkation.
8. Regulating Officer: Official designated by the Secretary of Agriculture for regulating the Fishing Industry.
9. Person: Natural or juridical person including the Commonwealth of Puerto Rico and its instrumentalities
10. Fishing: Product of the fishing activity; to catch a fish from the water.
11. Fish Market: Place to buy and sell fish, area within the fishing facilities or physical structure destined for the sale of marine products and which generally contains a refrigerated display, scale, cash register, and equipments for refrigeration and freezing.
12. Frozen Fish: Fish that after it has been protected to avoid quality loss, is kept at freezing temperatures, preferably without viscera and gills.
13. Fresh Fish: Eatable fish caught from the water, and kept at a refrigerating temperature, (preferably between 32 and 40 degrees F), without reaching freezing temperatures.
14. Commercial Fisherman: Natural person devoted to capturing fish with lucrative purposes and which posses a license to such effect issued by the Secretary of the Department of Natural and Environmental Resources.
15. Bona-fide commercial fisherman: Natural person devoted to the capturing fish with lucrative purposes, who receives fifty percent or more of his total annual income from the catch fish, and which posses a license to such effect issued by the Secretary of the Department of Natural and Environmental Resources.

16. Secretary: The Secretary of the Department of Agriculture of Puerto Rico or his authorized representative.
17. Sector: Group of persons engaged in a similar activity within the Livestock Industry, such as producer, manufacturers, etc.
18. Deputy Regulating Officer: Official designated by the Secretary to preside over the business of the Administrative Board of the Office, pursuant to Act No. 238 of September 18, 1996.
19. Production Unit: Individual Commercial Fisherman, group of commercial fishermen or cooperative associations devoted to the capture and processing of marine products.
20. Drydocks: Area for beaching the vessels to repair them or for its maintenance.
21. Fishing Facilities: Physical structure for the exclusive use of commercial fisherman, and holders of an updated commercial fisherman license and which may have: docks, ramps, repair shops, drydocks, lockers, sanitary services and areas to remove scales, gut the fish, to fillet, to slice and cut the marine product, areas of refrigerators and/or freezers and in some cases an area designated for the sale of the product, either fresh or processed.

#### **SECTION IV – OFFICE FOR THE PROMOTION AND ORDINANCE OF THE FISHING AND AQUACULTURE INDUSTRY OF PUERTO RICO**

The office for the Promotion and Ordinance of the Fishing Aquaculture Industry is created in the Department of Agriculture, which shall have the functions provided by Law and this Regulation, the responsibility to adopt and enforce the programs and measures geared to foster the development of the Fishing Industry, as well as to order, regulate and organize the different situations or aspects related with the production, manufacture, promotion, distribution,

importation, exportation and purchase and sale of marine products and its derived products. The Office shall be obligated to take into consideration federal and state acts and regulations applicable to the fishing activity in the jurisdictional waters of Puerto Rico.

The Office for the Promotion and Ordinance of the Fishing and Aquaculture Industry of Puerto Rico, shall be attached to the Office for Regulating the Livestock Industry, whose operations shall be financed with charges to the resources provided for in the consolidated budget of the Department of Agriculture, as well as to the Fishing Industry of Puerto Rico Development Fund, subject to the effects of Act No. 238 and this Regulation.

#### **SECTION V – DEPUTY REGULATING OFFICER**

The Secretary shall appoint a Deputy Regulating Officer, who shall direct and administrate the Office for the Promotion and Ordinance of the Fishing Industry of Puerto Rico. The Secretary shall fix the salary or remuneration of the Deputy Regulating Officer according to the norms usually followed by the Department for positions of an equal or similar nature or with the same level of responsibility.

The Deputy Regulating Officer shall discharge his office at the will of the Secretary and shall be a person of acknowledged competency and experience in fields such as fisheries, production and marketing. The Deputy Regulating Officer shall preside over the business of the Administrative Board. In addition, shall have voice and vote only when there exist disagreements between the parties and it is necessary to resolve a matter in dispute.

#### **SECTION VI – POWERS AND DUTIES OF THE DEPUTY REGULATING OFFICER**

The Deputy Regulating Officer shall have, in addition to the powers and duties provided on Act 238, this Regulation and the regulations promulgated thereunder, the following duties.

1. Shall coordinate the ordinance of the Fishing Industry of Puerto Rico and shall order, the responsible development of the Industry, putting emphasis to the marketing of its products.
2. Develop regulations, programs, and promotion, research and publicity projects and orientation for the consumer about Fishing Industry of Puerto Rico prior consultation and approval of the Administrative Board.
3. Shall propitiate greater participation of the producers and manufacturers of marine products of Puerto Rico on governmental decisions with respect to the production and marketing of this industry.

4. Shall enforce the public policy established by act and regulations under his management.
5. Shall establish a registry of manufacturers and fishermen in agreement with the Department of Natural Resources of Puerto Rico and any other component within the Sector.
6. Shall issue, grant, suspend and/or deny certifications to any natural or juridical person who wants to be engaged to the business of production and marketing of fish, shrimps and shellfish and elaborated by-products, as apply, and pursuant to the provisions of the federal and state acts and regulations, without entering into duplicity with the commercial fishermen license issued by the Department of Natural Resources of Puerto Rico.
7. Shall perform all the activities, agreements, contracts and programs, which are proper and necessary to comply with the purposes of the Acts and regulations at his charge, prior consultation and approval of the Administrative Board.
8. Determine, with the prior approval of the Regulating Officer, the internal organization of the Office and shall establish those systems needed for its proper functioning and operation, as well as to carry out those administrative and managerial tasks needed to put into effect the Act as well as any other laws, regulations and programs under his/her responsibility.
9. Appoint, with the approval of the Secretary, the personnel needed to carry out the purposes of the Act, which shall be subject to the provisions of Act No. 5 of October 14, 1975, as amended, known as the "Puerto Rico Public Service Personnel Act" and who shall avail themselves to the benefits of Act No. 447 of May 15, 1951, as amended, which establishes the Retirement System of the Employees of the Government of Puerto Rico and its instrumentalities, and of the benefits of Act No. 133 of June 28, 1966, as amended, which establishes the Savings and Loan Fund of Commonwealth of Puerto Rico Employees. Any person with a financial interest in any business or activity related to the Fishing Industry shall hold a position in the Office. The Officials and employees shall also be subject to the provisions of

Act No. 12 of July 24, 1985, as amended, known as “Ethics in Government Act” of the Commonwealth of Puerto Rico.

10. Contract with the approval of the Secretary of Agriculture, those technical and professional services he may deem necessary to achieve the purposes of the Act subject to the applicable norms and regulations of the Department of the Treasury
11. Render, no later than the month of January of each year, to the Secretary and to the Legislative Assembly, a complete and detailed report stating all Office activities as well as its achievements, programs, aids and trainings granted and the surplus of funds.
12. Develop and keep satisfactory conditions of marketing which tend to protect the production and distribution of fish and shellfish and elaborated products and by-products in Puerto Rico.
13. Shall establish norms of classification, packing, containing, labeling, quality and presentation of the fish and the shellfish and its elaborated products and by-products in Puerto Rico as applicable.
14. Avoid monopolized practices and disloyal competency, as well as discrimination in the various phases of the industry from production to selling of fish and shellfish of Puerto Rico its by-products to the consumer.

## **SECTION VII – INVESTIGATIVE POWERS OF THE DEPUTY REGULATING OFFICER**

In the performance of the duties imposed by Act No. 238 and in the exercise of the powers by it conferred, the Deputy Regulating Officer may issue summons commanding the presence of witnesses and the presentation of financial data the information he/she deemed necessary for the administration of Act No. 238 and the regulations approved thereunder. The information thus obtained shall be confidential in nature and shall be kept confidential by all officials and employees of the Department of Agriculture and through prior order of the Superior Court of Puerto Rico. The aforementioned provisions shall not be construed as limiting the power of the Deputy Regulating Officer to issue general information based upon the reports about the number of persons subject to Office regulations, statistical data compiled, which reports shall not identify the source of information supplied by any person whatsoever.

Witnesses summoned by the Deputy Regulating Officer in the interest of the Office, shall receive per diems at the rate stipulated for witnesses summoned by the Superior Court of Puerto Rico.

The Deputy Regulating Officer or his duly authorized representative may take oaths, hear testimony, and receive data and information.

Should a summon issued by the Deputy Regulating Officer were not duly complied with, said official may appear before the First Instance Court of Justice of Puerto Rico and request the Court to order that the summons be complied with. The Court shall give preference to the course and dispatch of said petition and shall have the authority to dictate orders to compel the appearance of witnesses or the presentation of any data or information previously requested by the Deputy Regulating Officer according to the provisions of Act No. 238 and this Regulation.

No natural or juridical person may refuse to comply with a summons from the Deputy Regulating Officer or with a judicial order so issued, claiming that the testimony, data or information thus required could incriminate him/her; or lead to the imposition of a penalty. Although, said person may not be criminally prosecuted regarding any transaction, matter or thing with relation to which said person has given testimony or provided data or information.

#### **SECTION VIII – NORMS**

The Deputy Regulating Officer may order, in accordance with the Administrative Board the various phases of the Fishing Industry of Puerto Rico subject to the provisions of the “Fisheries of Puerto Rico Act” and its regulations subject to Act No. 238 and this one and any other regulation promulgated whenever it is necessary to put into effect the public policy and the purposes of said Act.

In the determination of the limits of regulations of the Industry, the Deputy Regulating Officer shall take into account that it is public policy of the Commonwealth the most efficient of its natural resources, as well as a greater development and profits of the same and shall take into consideration the needs and the interests of the different sectors within the industry represented by the Administrative Board, in a way that any measure adopted tends to provide stability and to stimulate the progress in the fishing production, fish marketing and shellfish, as well as its by- products and therefore the prosperity of the industry.

The Deputy Regulating Officer shall require persons who operate businesses within the Livestock Industry all information needed for the implementation of Act 238 and the regulations promulgated thereunder, but shall not require confidential information whose disclosure may injure the person in relation to its competitors or other person regarding a mechanism to guarantee the confidentiality of the information furnished.

#### **SECTION IX – PRODUCTION CENTERS**

1. Production and distribution centers of the Industry shall be created with the Approval of the Board and the Secretary. Each centre shall have its own collection center.
2. Each production center shall elect its own Board of Directors, which shall be organized by agreement of its members and shall be empowered to approve their own regulations.
3. To belong to a production center, the commercial fisherman shall have his license of commercial fisherman updated and shall pay the corresponding contributions to the Fishing Industry Development Fund.
4. Each production center shall elect one representative to participate in the assemblies called by the Deputy Regulating Officer to elect the members of the Administrative Board.

#### **SECTION X – FISHING INDUSTRY OF PUERTO RICO DEVELOPMENT FUND**

The Fund for the Development of the Fishing Industry of Puerto Rico is created through Act No. 238, to be used for the promotion of the production, sale, elaboration and consumption of fish, shellfish and elaborated products and by-products in Puerto Rico and for taking any other necessary steps for the progress of the Fishing Industry. The fund shall be administered by an Administrative Board, which is described below. Contributions to the Fund shall become payable thirty days after the effective date of this Regulation.

The Fund shall be nourished by contributions obtained as a result of the services rendered in the facilities administered by the Board, tariff charges due to the importation of fish and seafood, legislative funds assigned yearly, contributions of the fishermen and processors, at a rate the total amount of the contributions as determined by the Administrative Board, after a consultation with its components as well as any other economic source proposed by its constituents.

The money shall be deposited in those banking institutions determined by the Board, which are acknowledged as depositaries for the funds of the Commonwealth of Puerto Rico, although they shall be maintained in account or accounts in the name of the Fund. Collections and disbursements shall be performed pursuant to the Regulations adopted by the Administrative Board. Disbursements shall not be subject to pre-audited by the Secretary of the Treasury.

#### **Accountability of Funds**

- A. When the Administrative Board receives the public funds assigned under Joint Resolutions of the General Budget, other contributions of producers from the budget for Functioning Expenses of the Legislative, Judicial and Executive Branches of the Commonwealth of Puerto Rico shall deposit said funds in banking accounts separated from any other funds. The deposit slips shall be marked with successive numbers during each fiscal year and shall have as a prefix the number of the year.
- B. Every transaction related to these funds shall be recorded in the appropriate records in accordance with the accountability practices generally accepted. The accountability books shall be kept separated from books corresponding to any other funds. It shall be reconciled monthly with the bank account.
- C. The Director or Administrator of the Office for the Promotion and Ordinance of the Fishing and Aquaculture Industry of Puerto Rico may not act as the Fiscal Agent of the same. A Fiscal Agent shall be designated, who shall be in charge of receiving, recording and making disbursements of money as well as keeping all vouchers and fiscal related documents. Two (2) signatures shall be required to draw on said account.
- D. Disbursements shall be made only through checks and only for the payment of the expenses directly related to the purposes to which the contribution was assigned in accordance to the application documents submitted to the Legislative Assembly.
- E. No checks shall be draw on the holder, or payments in cash with charges to the contribution. The entities shall keep in their records Invoices, vouchers or any other document which proves the incurred expenses of each budget

line, where indicates the amount, the account of, and the person or entity who issues said document. These shall be kept at the disposition of the officials of the Department of Agriculture, the Committees of the Treasury, of the Legislature and the Office of the Comptroller for any fiscal auditing and for the corresponding revision and confirmation of the trimestral reports for a term of six (6) years or until the officials of the Department of Agriculture have performed the corresponding examination, whichever come first.

- F. The entity shall be responsible of any claim of wages and benefits owed to persons contracted in order to render any service related to the function for which the donation was assigned.

#### **SECTION XI – ADMINISTRATIVE BOARD**

The Administrative Board, in addition to administer the Fund, pursuant to the public policy of the Government, shall have the power to regulate and arrange all phases of the Fishing Industry in Puerto Rico in matters of production, manufacture, processing, storage, purchasing and selling, marketing, transportation and distribution. Also, is empowered to approve its own regulations and establish those internal procedures that are necessary for its proper operation.

The Board shall be composed of ten members of the industry and the Deputy Regulating Officer. The members of the Board shall occupy their positions until their successors are appointed and take office. No member shall serve as such for more than two consecutive terms, excepting the Deputy Regulating Officer. The ten members shall be representative of a duly organized sector.

Board members shall receive no remuneration or compensation whatsoever for discharging their duties, but those who are not public officials or employees shall have the right to a reimbursement of a per diem of fifty (\$50.00) dollars for each day in which they discharge the duties and perform the functions pertaining to their office, once the fund for the development of the sector is created and once it has available resources.

#### **SECTION XII – LICENSES OR CERTIFICATIONS**

For the purposes of establishing an updated registry of the producers engaged in any way to the commercial fishing, as well as the elaboration, processing and/or distribution of

local by-products, the Board shall issue a license or certification naming them. Licenses or Certifications shall expire two years after its issuance, and shall be subject to renewal after determining that the applicant has comply with the applicable Acts and Regulations and with the requirements of license established by the Deputy Regulating Officer to such fines, with prior authorization of the Board.

The Deputy Regulating Officer shall take into consideration that the different components at the moment of the issuing or renewal of the license are updated with the contributions to the Fund. In addition, the Deputy Regulating Officer may recommend to the Secretary to forbid any member of the Sector from the benefits granted by Act No. 225 of Agricultural Incentives Tax; if him does not comply with the provisions of this Section or any other Section of this Regulation.

Prior to the final determination of rejection, renewal, revocation, suspension or cancellation of any license, the Deputy Regulating Officer shall call for a hearing before him or his agent with absolute protection of the constitutional rights of the affected person and subject to the procedures established to such effects by this Regulation, pursuant to the “Uniform Administrative Procedures Act” (Act No. 170 of August 12, 1988, as amended.)

### **SECTION XIII - COLLECTION OF CONTRIBUTIONS**

The Deputy Regulating Officer of the Office shall establish, in consultation with the Board by Regulations, the mechanisms needed for the adequate management of the collection process to nourish the Fund, as well as the separation of the 10% for the administration of the Office for Regulating the Fishing Industry.

The Board may appoint and contract the personnel needed to meet the purposes of this Act without being subject to Act No. 5 of October 14, 1975, as amended and may contract the purchase and sale of goods and services without being subject to Act No.96 of June 29, 1954, but shall be governed by the standard business procedures of the private industrial sector in the performance of their functions.

### **SECTION XIV- PUBLIC HEARINGS**

The Administrator is empowered to call public hearing before him or his duly authorized agent as long as thus deem it necessary to comply with the public policy and the provisions of Act 95, Act 238 and any regulation issued thereunder.

## **SECTION XV- ILLEGAL PRACTICES**

Any person operating a business within the Fishing Industry, direct derivate products, or manufactured which performed any violation to the provisions of Act No. 238, this Regulation and the Regulations promulgated thereunder, or against an administrative order or resolution, shall incur in an illegal practice and shall be subject to the sanctions established to such purposes.

## **SECTION XVI- SUSPENSION OF RESOLUTIONS OR ADMINISTRATIVE ORDERS**

The Administrator may leave without effect a resolution after concluding that the same obstructs or does not tend to put into effect the public policy and the provisions of Act 238 and this Regulation or those regulations promulgated thereunder. Likewise, he may leave in suspense such order or resolution until the same is needed to carry out the public policy and the purposes of said acts.

## **SECTION XVII – INJUNCTIONS**

When Deputy Regulating Officer, with prior investigation to such effect, has reasonable motives to believe that determined natural or juridical person has infringe or is infringing any provision of Act 238, this Regulation or other regulations promulgated thereunder, he may request under his name the issue of the appropriate injunction resource before the corresponding Court, which shall be in force until the final adjudication of Deputy Regulating Officer has take place.

Any provisional injunction order will be issued without previous notification unless that a petition declaring that it can cause irreparable harm to the public interest. An order issued without previous notification shall have a maximum duration of five (5) days.

It is hereby prohibited the issuing of injunctions to stop the application of the provisions of Act No. 238, this regulation and the regulations approved in accordance to them.

## **SECTION XVIII – ADMINISTRATIVE FINES**

Prior calling the corresponding Administrative Hearing, with absolute protection of the affected person's constitutional rights and subject to the procedures that are established by the Act No. 170 previously quoted, it is provided that any person who violates the provisions of this Regulation may be penalized by an administrative fine of two thousand and five hundred dollars (\$2,500.00) for the first violation. For every subsequent violation said person shall be penalized by a fine, which shall not exceed five thousand dollars (\$5,000.00).

## **SECTION XIX - PENALTIES**

1. Any person who violates the provisions of this Regulation may be prevented from participating in the incentive and subsidy programs for the sectors or groups of sectors pursuant to the regulations established for such purposes and of Act No. 225 of December 1<sup>st</sup>, 1995 as amended, known as “Agricultural Incentives Tax Act of Puerto Rico”.
2. Prior to the imposition of the penalties hereinabove described, the Deputy Regulating Officer shall call a hearing before him or his agent, with absolute protection of the affected person’s constitutional rights and subject to the procedures that are established bylaw for such effects.
3. In the event that a person, fails to comply with any order or resolution issued by the Administrative Board, a fine may be imposed that shall not exceed two hundred dollars (\$200.00) for each case

## **SECTION XX– NORMS OF INTERPRETATION**

This Regulation shall be freely interpreted in favor of the authority of the Deputy Regulating Officer to promote a responsible development of the Fishing Industry with the purpose to enforce the public policy and the purposes of its articles. To such effects, the Deputy Regulating Officer may, promulgate and adopt programs and measures needed to face the variations and changing conditions of the Industry, with the purpose of protecting the general interest and the public policy.

## **SECTION XXI – ANNUAL REPORT**

The Board, in agreement with the Deputy Regulating Officer, shall submit a report on their activities during the preceding fiscal year, including information; data recommendations related to matters addressed under Act No. 238.

## **SECTION XXII – SANITATION LAWS IN EFFECT**

None of the provisions of this Regulation or any regulations approved hereunder shall have the effect of repealing or amending any federal or state sanitation laws that regulate the manufacture and elaboration of food in Puerto Rico.

Nevertheless, the Deputy Regulating Officer may promulgate and adopt bylaws needed to establish additional requirements of sanitation nature, additional to the ones in force, according to the powers vested by Act 238 and this Regulation.

**SECTION XXIII – REASSIGNMENT OF RELATED PROGRAMS**

All programs related to the Fishing Industry and its corresponding budget appropriations shall be transferred by the Secretary to the Fund through an agreement between the parties.

**SECTION XXIV – QUORUM OF ASSEMBLIES**

Half of the members of the Board plus one shall constitute the required quorum in the meetings of the Board.

**SECTION XXV – AMENDMENTS**

This regulation may be amended in any ordinary or extraordinary meeting called to such purposes by 2/3 parts of the total members of the Board. To the assembly, the amendments proposed shall be sent or rendered in person to each member within ten (10) days prior to the meeting.

**SECTION XXVI – SEPARABILITY CLAUSES**

If any provision of this Regulation is declared invalid, null, such declaration shall not affect the remaining provisions of this Regulation or its application.

**SECTION XXVII– EFFECTIVENESS**

This Regulation and any amendment to the same shall take effect as soon as the same is approved by the Secretary of the Department of State once filed and signed by the Secretary of Agriculture.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2002 in San Juan, Puerto Rico.

LUIS RIVERO CUBANO  
SECRETARY OF AGRICULTURE