

**NEWFOUNDLAND AND LABRADOR AQUACULTURE INDUSTRY ASSOCIATION
(NAIA)**

**SUBMISSION TO THE ACCESS TO INFORMATION AND PROTECTION OF PRIVACY
ACT, 2015 STATUTORY REVIEW COMMITTEE 2025**

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Submitted to:

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Background

The Newfoundland and Labrador Aquaculture Industry Association (NAIA) welcomes the opportunity to make this submission to the Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015) Statutory Review Committee 2025. NAIA is a member-based organization representing seafood farmers and their suppliers in Newfoundland and Labrador, and advocates on behalf of its members for the responsible development of the aquaculture industry in the province.

Aquaculture is one of the fastest-growing food-production sectors in Canada, and farmed seafood now accounts for most of the seafood consumed worldwide. In Newfoundland and Labrador, the farming of high-quality salmon, steelhead trout, blue mussels, and oysters contributes significantly to the province's gross domestic product and is an important source of employment growth in rural communities. In 2025, the industry represented an estimated \$453 million in annual production value.

That growth depends on a stable, predictable regulatory environment, which in turn depends on operators having confidence that commercially sensitive information shared with government will be protected and not made available to competitors, speculators, or the public at large. NAIA's position is straightforward: the aquaculture industry is, and intends to remain, an open and transparent participant in Newfoundland and Labrador's regulatory system, but that openness must be met with clear, reliable protection for the commercially sensitive information operators are required to disclose.

The Aquaculture Industry, Public Reporting, and ATIPPA, 2015

Aquaculture operators in Newfoundland and Labrador are subject to extensive reporting obligations under the Aquaculture Act, 2023, the 2019 Aquaculture Policy Manual, and the provincial aquaculture licensing process. These obligations require operators to submit detailed operational, environmental, fish health, production, and financial information to government on a continuous basis. The volume and sensitivity of this information distinguishes aquaculture from many other regulated sectors in the province.

Through the licensing process and the 2019 Aquaculture Policy Manual, companies must provide environmental information, financial information, standard operating procedures, fish health and biosecurity plans, production data, incident and escape reports, and in some cases, contracts negotiated with third parties. These documents contain proprietary information that can directly affect competitiveness, investment confidence, and commercial strategy.

NAIA's members accept responsible regulatory oversight, and the industry has consistently supported transparency with government. But that openness creates a corresponding obligation: information supplied under statutory compulsion should be managed in a way that protects legitimate business interests while still supporting public accountability.

ATIPPA, 2015 applies to all records in custody or control of public bodies unless they fall within the exclusions in subsection 5(1). Records collected under the Aquaculture Act, 2023 are not excluded. As a result, the Act presumes that this information is accessible to the public unless a specific exception applies. This creates a practical tension: aquaculture operators are required by law to provide detailed

business information to government, yet that same information is treated as publicly accessible unless it fits within a narrow exception. The main exception available to aquaculture operators, subsection 39(1), is difficult to meet in practice, as outlined below.

The result is ongoing uncertainty for operators as to whether information they are legally required to provide will remain confidential. That uncertainty affects investment decisions, competitive position, and confidence in the regulatory process. NAIA submits that the Act should provide clearer, more consistent protection for commercially sensitive information, consistent with the industry's willingness to be open with government.

Subsection 39(1) of ATIPPA, 2015

When NAIA's members are consulted by public bodies in preparing responses to access to information requests, the primary statutory exception they rely on is subsection 39(1), which addresses disclosure that could be harmful to the business interests of a third party.

This is a three-part test, and in practice it is seldom met.

The first part is straightforward: aquaculture operators routinely provide commercial, financial, scientific, and technical information.

The second part, whether the information was supplied "in confidence," is significantly more difficult. Information required under statutory compulsion or licence conditions is often characterized as negotiated rather than supplied, even when it contains sensitive business details. This interpretation has been consistently applied in ATIPPA decisions.

The third part, harm, is applied just as stringently. Operators must demonstrate a reasonable expectation of significant harm, a threshold often interpreted narrowly even where disclosure could plainly affect competitive position, investment decisions, or market relationships.

This challenge is amplified in aquaculture because operators must provide government with operational, environmental, production, infrastructure, financial, technical, and regulatory information under sections 3 and 4 of the Aquaculture Act, 2023. Meeting the three-part test in section 39 has proven almost impossible for information supplied to government through mandatory regulatory reporting, licence applications, compliance and incidence reports, environmental information, animal-health and escape reports, and other production information.

Companies have no choice about supplying this information. Yet the statutory exemption still turns partly on the circumstances in which it was supplied. This creates a procedural barrier that prevents decision-makers from reaching the underlying question of whether disclosure would cause commercial harm.

Section 39 also requires a reasonable expectation of specified harm. Disclosure must be capable of significantly harming competitive position, negotiating position, or producing undue economic loss or gain. Government may regard some of this information as routine regulatory data, even though it can reveal operating models, vulnerabilities, production strategies, or competitive positioning.

Over the past several years, company-sensitive information has been released to anti-aquaculture activists and used to influence decision-makers and the public without proper context. This does not support the collection of information for the public good when it is used only to advance anti-aquaculture positions. In addition, the inability to meet the section 39 test has negatively affected investor confidence, particularly when other aquaculture jurisdictions do not allow the release of proprietary information.

NAIA recommends that amendments to section 39 include:

- removing the requirement that information be supplied in confidence;
- creating a mandatory exception for trade secrets;
- introducing a sunset provision; and
- subjecting the third-party business-interest exemption to the public-interest override.

The present legislative framework does not provide a comprehensive or predictable confidentiality regime for proprietary aquaculture information supplied to government. Instead, operators must rely on the conditional third-party exemption in section 39 while aquaculture regulations simultaneously require the submission, and in some cases, public disclosure of increasingly detailed operational, technical, and incident information. This creates uncertainty as to which information will remain confidential, places the onus on the operator in contested access proceedings, and may permit disclosure without prior consultation where the public body determines that subsection 39 does not apply.

The former Aquaculture Regulations contained express confidentiality protections for unique trade practices, technology, and financial information. The current framework no longer provides that certainty.

Privacy Safeguards and Emerging Technologies

The 2026 Statutory Review Committee Terms of Reference direct the Committee to consider privacy risks associated with artificial intelligence, biometric data, and surveillance technologies.

Aquaculture operators provide extensive business information to government, much of which is held digitally. As public bodies adopt AI-enabled systems, there is a real risk that this information could be repurposed for algorithmic training, automated decision-making, or secondary analysis without the operator's knowledge or consent. Such uses could reveal proprietary operational detail, affect competitive position, or produce consequences the original disclosure requirement never contemplated.

NAIA recommends that ATIPPA, 2015 include explicit safeguards preventing business information provided under statutory compulsion from being repurposed for artificial intelligence training, automated decision-making, or any other secondary use that could reveal proprietary details or competitive sensitivities without the express consent of the party who supplied it.

Public Body Practices and Accountability

The Terms of Reference direct the Committee to review privacy management frameworks, Privacy Impact Assessments, mandatory training, and oversight mechanisms within public bodies.

NAIA supports strong accountability measures for public bodies, particularly those holding sensitive commercial information of the kind aquaculture operators are required to supply.

NAIA submits that public bodies collecting aquaculture information should be required to conduct Privacy Impact Assessments before adopting new technologies or processes that touch that information, ensure mandatory training for staff who handle commercially sensitive information, and apply clear, consistent breach-response obligations communicated promptly to affected operators.

Given the volume and sensitivity of aquaculture data already held by public bodies, and the amount that will continue to accumulate as the industry grows, NAIA submits that enhanced accountability measures of this kind would strengthen public trust and support responsible information management.

Schedule A Review

As noted throughout this submission, the mandatory reporting required under the *Aquaculture Act, 2023* makes it very difficult for our operators to meet the strict confidentiality tests under Section 39. Because this sensitive business information must be supplied by law, proprietary data can be left vulnerable to disclosure without the proper context. This creates a lot of operational uncertainty and can inadvertently impact investor confidence in our province's seafood sector.

With that in mind, and in line with the Committee's Terms of Reference to evaluate statutory frameworks and access exceptions, NAIA recommends that the Committee look to Schedule A to help create better regulatory certainty. We suggest that the Committee recommend expanding or clarifying Schedule A to explicitly include and protect mandatory, commercially sensitive industry data that companies are legally compelled to provide to the province. Utilizing Schedule A in this manner would give our sector the predictable framework it needs to stay competitive, while still respecting the overall balance of public accountability.

Conclusion

NAIA appreciates the opportunity to contribute to the 2026 statutory review. Aquaculture is a transparent, publicly reporting sector that provides extensive information to government as a matter of responsible regulatory oversight, and NAIA's members are proud of that record. But transparency on the industry's part must be matched by reliable, balanced protection by government that ensures commercially sensitive information is not disclosed in ways that undermine competitive position or investment confidence.

NAIA respectfully submits that the Committee recommend:

- amendments to subsection 39(1) to reflect the realities of ongoing reporting by the aquaculture sector;

- creation of a dedicated aquaculture confidentiality provision with statutory priority;
- explicit safeguards against the repurposing of compelled business information in AI systems or automated decision-making;
- enhanced accountability measures for public bodies holding aquaculture information, including mandatory Privacy Impact Assessments and staff training; and
- strengthening Schedule A to enhance the protection of commercially sensitive information.