Strengthening the Inshore Regulations

Purpose

This document is intended to support the Department of Fisheries and Oceans (referred to as DFO throughout this document) in conducting the comprehensive review of the Inshore Regulations. It outlines what the Inshore Regulations are and how they are applied. It then summarizes some identified concerns with the regulations in their current form and offers ideas for discussion about where future efforts may be targeted. The ideas for discussion are intended to help get a sense of the types of options stakeholders think DFO could pursue to respond to the issues laid out in this document. Following the comprehensive review, DFO will use all feedback received to develop options for what to do next.

Introduction

What are the Inshore Regulations and what do they do?

DFO uses the **Inshore Regulations** to guide licensing in the inshore and coastal sectors in Atlantic Canada and Quebec.

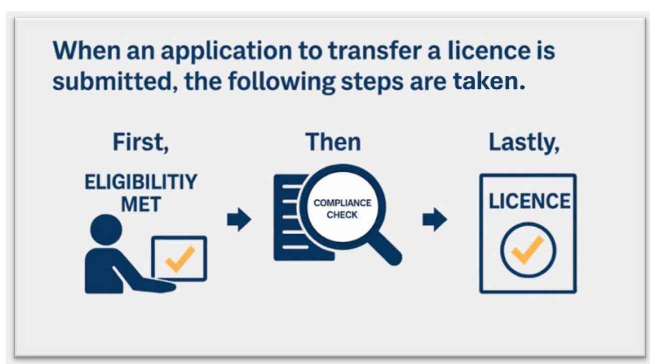
The Inshore Regulations are rules that clarify who can hold a licence, who must do the fishing, and who can make decisions about the fishing activities.

They were made to ensure licence holders own, operate, and control their enterprises, prevent unauthorized control by others, support independent owner operators, and keep benefits in local communities.

The **Inshore Regulations**: Part III of the *Atlantic Fishery Regulations, 1985* and the Part I.1 of the *Maritime Provinces Fishery Regulations*

How does DFO apply the regulations?

When an inshore licence is issued, the licence holder receives the benefits (referred to as the rights and privileges). Only the licence holder can use and control the rights and privileges that come from holding a licence. When DFO receives a request to reissue a licence to a different individual the following steps are taken: 1) DFO checks whether the person requesting the licence is eligible to receive it; 2) If the recipient is eligible, DFO requests all agreements that are part of the transaction for review; and, 3) DFO evaluates whether all requirements are met and makes its decision.



While reviewing the agreements, DFO is ultimately looking at:

- Who makes the decisions;
- Who controls the licence in practice;
- Whether someone has control or influence over the licence holder; and
- Who receives the benefits.

When a transfer of rights and privileges requires follow up enforcement by DFO's Conservation and Protection program (C&P), the following steps are taken: Information is gathered from multiple sources, including from licensing, members of the public, and directly by Conservation and Protection officers. Once information is received, it is carefully reviewed and assessed to determine whether follow-up action is required. Then an investigation may be opened, which can vary in scope and complexity. When sufficient evidence is gathered, investigators prepare Reports to Crown Counsel along with full disclosure packages.

Experience from implementation

Experience shows that attempts to obtain control over a licence can happen through a variety of **agreements**, such as lending, supply, and service contracts. These agreements may not change who is the legal title holder (i.e., the licence holder), but can have effects on day-to-day fishery operations and who benefits from the licence (the beneficial owner).

Control is not all-or-nothing. It can be small or big, direct or indirect. Sometimes it is hard to tell when an agreement crosses the line and needs further review to ensure compliance.

Areas of focus

There are four key areas where DFO is interested in gathering views on the impact of the current regulations. These were identified through discussions with frontline staff, stakeholder feedback, and by witnesses at the House of Commons Standing Committee on Fisheries and Oceans.

1. Understanding use, control, and transfer

The concepts of **use**, **control**, and **transfer** are central to the inshore rules. Licence holders are expected to decide, when, where, and with whom to fish, and are restricted from separating the **rights** and **privileges** under a licence to a third party. Third parties are prohibited from controlling or using the rights and privileges that are granted by a licence, except in a limited number of circumstances outlined in the regulations.

Rights	Privileges
• the right to engage in an exclusive fishery under the conditions imposed by the licence (including decision-making over fishing activities authorized by the licence); and • the proprietary right to the fish caught under the licence (including, but not limited to, decision-making over the benefits resulting from their catch)	granted through policy, include but are not limited to, the ability to make requests: • for substitute operators, • licence renewal, • licence reissuance, or • quota transfers.

Three (3) central concepts:

- **Use** — Doing the activities allowed by the licence, or making choices about those activities and the results.
- **Control** — Making choices about the licence or telling someone else how to use it. Control by a third party can occur through loans, supply agreements, or buyer rules. Even if the licence is still in the licence holder’s name, operational decisions may be made by someone else.

- **Transfer** — When the rights or privileges of a licence are given to someone else to use or control. Transfer means rights and privileges are no longer fully with the licence holder in practice.

Understanding how these concepts apply in real life can be difficult. Licence holders may need to hire crew, services, borrow money, or share gear, that’s normal. But if another person decides when, where, or how you fish, that may be a problem.

DFO looks at each agreement by itself and all agreements together to see if they break any of the rules about separation by identifying who controls**,** who can make choices about **daily operations,** and who receives the benefits (money from the catch). Essentially, DFO asks: does this agreement take away the licence holder’s own right to decide? Or does it take the benefits away from the licence holder?

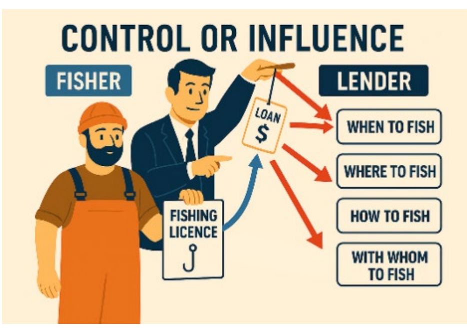
Ideas for discussion

Should DFO:

- Develop some real-life examples of use (what it looks like when the licence holder truly fishes under the licence).

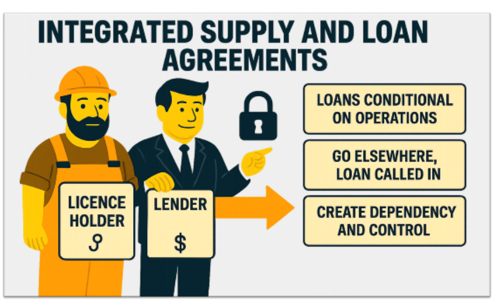
- Develop some real-life examples of control (what it looks like when someone else is calling the shots).
- Set clear lines (**thresholds**) that could be considered a transfer, such as:
  - 60% of **revenue** goes to paying debt associated with a lending agreement;
  - **Loan principal (**the amount borrowed**)** grows even when you make payments;
  - In an **Individual Transferable Quota** fishery, the licence holder transfers all their quota every season and never fishes in person.
- Identify **clauses (**terms and conditions of an agreement) that should not be allowed (especially for **third party lenders**):
  - Clauses that lead to **default** because of supply or other side rules (e.g. requirement to land at a particular place)
  - Clauses that let the lender set or influence daily **fishing choices** (crew selection, or when, where, and how to fish)
  - Clauses that let the lender influence who gets the licence next (**reissuance**)
  - Clauses that assign **licence rights** (like payments in fish instead of money), or
  - Clauses that force the borrower to sign **future unknown deals** or pay undefined future costs.

2. Using money to control a licence



Starting and running a fishing business can be expensive. Many harvesters take out loans to fund their enterprise, sometimes from more than one lender. Loans can become a primary way for others to try to control a licence.

Some lenders create agreements that make a licence holder fully dependent on them rather than being an independent owner operator. It is important for DFO to find the right balance: support access to money while maintaining harvester control.



Some participants (most often new entrants) may be offered appealing terms, but the loan terms can lock borrowers into the lender's wishes. For example, licence holders may be required to sell the **supply** to only one buyer, make payments in fish, or follow the agreement longer than the loan. If any of these conditions are not met, the lender may attempt to call in the collateral and gain control of the licence.

In some cases, lenders trigger agreement **default clauses** to take control of the licence and recommend a new licence holder who fits their own business interests. This can include a nonfinancial default, which occurs if the terms of any agreement are breached, even though loan payments are made.

When a licence holder requires a **guarantor** or **co-signer** independence can be further reduced. A party with commercial interests (like a buyer or processor) who guarantees or co-signs a loan might only agree to it if certain requirements are met, such as requiring the licence holder to use their services or sell to them exclusively. This puts the guarantor or co-signer in a position to influence how the licence holder operates.

Some recognized lenders prefer and/or require a guarantor/cosigner to help approve a loan when an applicant (e.g., an existing owner operator or new entrant) does not have enough credit or experience. Depending on the terms, and the inclusion of third party corporate interests, guarantors and cosigners can be used as a way to gain control or leverage over an enterprise by a third party.

Ideas for discussion:

Should DFO:

- Work towards increasing access to loans from recognized lenders (like banks or credit unions).
  - Talk with banks and public lenders (like the **Business Development Bank of Canada**) about how they decide on their lending to harvesters.
- Explore how fishers work together for better terms.
  - Let fisher associations help members deal with lenders.
  - Look at shared services for finance and business support.
- Place stronger limits on **non-recognized lenders**.
  - Limit or ban some lenders or types of agreements:
    - Remove the ability for non-recognized lenders from naming the next licence holder (General Securities Agreement rules to be clarified).
    - Ban integrated agreements that link loan defaults to supply conditions.
  - Set different rules for processors, family members, or other harvesters (when they act as lenders).
  - Limit or ban guarantors/co-signers if the guarantee is linked to supply.
  - Require guarantors or co-signers to disclose any **commercial interests**.

3. Intergenerational transfers (passing on the business)

The inshore sector is aging with many licence holders nearing retirement age who are looking to pass on their business to a new entrant. Passing on the business (also called intergenerational transfer or succession) is important to keep skills and renew the fleet. But, DFO has heard that the current owner operator model can make slow, mentored hand-overs difficult, including within families.

Getting started also takes time and includes taking courses, understanding rules (safety, navigation, environment, and more), and spending time on the water. New entrants are looking for a clear pathway to get skills and certification.

There is often a need for large amounts of money to get started which can push people into loans that reduce their independence. **Turn-key enterprises** offer an all-in option (licences, crew, vessels, gear, etc.) but can result in operational decisions being made by someone other than the licence holder. When new entrants agree to a turn-key enterprise they may end up more like employees. The future of the sector and coastal communities rely on the next generation of true owner operators.

Additionally, the current definition of family allows licence holders to share the benefits of their enterprise only with those who are in their or their spouse's immediate family (parents, siblings, and children). However, DFO knows that fishing skills and responsibilities are often passed between aunts, uncles, cousins, nieces, nephews, or other close relatives, who do not meet the current definition. DFO is interested in definitions that would help licence holders share the benefits of their enterprise with family members, while respecting the owner operator principle..

Ideas for discussion:

Should DFO:

- Identify supports to attract and retain new entrants.
- Consider shared ownership or partnership for a set time, or buy-in over time, to help with transition planning.
- Expand the scope of who is included as family (such as, cousins, uncles, etc.).

4. Licence holder education and obligations

Being an owner operator includes more than fishing, it also includes managing an enterprise. It requires licence holders to be aware of their regulatory requirements. Some licence holders require help from trained advisors, such as lawyers, accountants, or management companies. These advisors help provide **independent advice** so licence holders better understand what they need to do and get help running parts of the business. But, in smaller communities access can be difficult.

Sometimes, professionals provide services to licence holders while being paid by a lender. This is referred to as **dual representation.** When one advisor works for both a licence holder and a third party at the same time it can make it impossible for the advisor to be fair to both sides. Because each group wants different things the advice may favour the one paying the bill.

When the advisor is acting on behalf of a lender yet providing services to the licence holder it can create a "**conflict of interest**". Even when advisors act in good faith, the perception of a conflict can cause doubt and lower trust.

Ideas for discussion:

Should DFO:

- Develop information or guidance documents to help licence holders better understand their regulatory obligations.
- Require business plans in non-RFI funding.
- Identify ways to support licence holders in obtaining independent advice.
- Identify ways to address conflicts of interest.

Finding the right balance

For all of the ideas discussed in this document, DFO realizes that trade-offs exist.

For many inshore licence holders, the value of their enterprise is not just a business asset, it also represents a significant portion of their retirement plan and long-term financial security.

This also points to broader economic and social considerations that need to be taken into account. Options that might affect market prices of licences and enterprises have the potential to create financial strain for licence holders, and could have downstream effects on the coastal communities that depend on inshore fisheries for prosperity.

As licences can be used as collateral for financing vessels, gear, and operational costs, changes to eligibility, Owner Operator rules, or third-party lending rules can affect access to capital used for daily business operations. Rules that are too narrow may slow transactions, while ones that are too broad may allow more outside involvement, which can undermine licence holder independence.

The impacts will also be felt differently by individuals. DFO is interested in hearing your perspective. We want to know what's important to you as we look to strengthen the Inshore Regulations.

Conclusion

The Inshore Regulations help keep independent harvesters in control. They support local fisheries and make sure the benefits of Canada's ocean resources stay with the people who fish them and the communities where they live.

With clear rules, fair changes, and by talking with licence holders and communities, the inshore regime can keep doing what it is intended to do: support fair and sustainable fishing, protect and promote coastal jobs, and serve the public interest for years to come.

We look forward to hearing your views and your ideas.