



One of the objectives of the regulatory amendments<sup>1</sup> to the *Atlantic Fishery Regulations, 1985* and the *Maritime Provinces Fishery Regulations* that came into force on April 1, 2021 is to keep the benefits of inshore fishing licences in the hands of independent core harvesters.

To better protect the independence of inshore harvesters, previously existing policies are now enshrined in regulations that outline who may be issued an inshore commercial licence. Only harvesters who have not transferred the use or control of the rights or privileges conferred under an inshore licence are eligible to hold inshore licences. Among other things, this means that licence holders must maintain control over the use of the licence and control all decisions related to the licence, at all times. This document is intended to provide the inshore fishing industry with guidance on certain implementation aspects of the regulatory amendments.

### CORPORATE STRUCTURES: GUIDING PRINCIPLES

While the regulatory amendments were under development, Fisheries and Oceans Canada (DFO) received questions expressing concerns regarding the varied corporate structures used in the fishing industry that may lead to the transfer of the use or control of the rights or privileges away from the licence holder. In response to these concerns, particular corporate structures have been considered acceptable in the regulatory amendments, provided that licence holders maintain control over their entire corporate structure. This was done to ensure the preservation of the owner-operator regime.

Thus, if a licence holder chooses to have a single fishing corporation or a more complex multi-tiered structure, the licence holder is allowed to transfer the use or control of the rights or privileges associated with the licence to an *inshore family fishing corporation* as long as the licence holder has total control over the entirety of their corporate structure. This includes control over the fishing activities and the fishing business, as well as over the decisions on redistribution of the benefits from fishing, within the entirety of the corporate structure.

The guiding principles can be summarized as follows:

1. The inshore licence must be issued in the name of an eligible independent core harvester or in the name of their wholly owned company (WOC).
2. The licence holder<sup>2</sup> must own all voting shares in the entire fishing corporate structure.
3. The licence holder<sup>3</sup> must be the only director (or trustee in the case of an *inshore fishing family trust*) of the entire fishing corporate structure.

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<sup>1</sup> This guidance applies to the implementation of Part III (sections 17.2 to 22) of the *Atlantic Fishery Regulations, 1985* (AFR) and Part I.1 (sections 29.01 to 29.5) of the *Maritime Provinces Fishery Regulations* (MPFR), also known as the “Inshore Regulations”. Specifically, this guidance applies to section 17.2 and paragraphs 19(5) (f),(g) and (k) of the AFR and to section 29.01 and paragraphs 29.2(5) (f),(g) and (k) of the MPFR.

<sup>2</sup> In the case of a licence being held by a WOC, “the licence holder” can also be read as “the sole owner of the WOC holding the licence”.

<sup>3</sup> In the case of a licence being held by a WOC, a reference to “the licence holder” in principles 3 and 4 must be read as a reference to “the sole owner of the WOC holding the licence”.



4. Other than the licence holder, the only individuals who can be party to the entire corporate structure are the members of the licence holder's family. This participation is limited to non-voting shares (or beneficiaries in the case of an *inshore fishing family trust*).

### ISSUING LICENCES TO COMPANIES POLICY: A WHOLLY OWNED COMPANY AS THE LICENCE HOLDER

If the licence holder is utilizing DFO's existing Issuing Licences to Companies Policy now included in section 15.3 of the [Commercial Fisheries Licensing Policy for Eastern Canada](#), the inshore licence can be issued in the name of a wholly owned company (WOC). In this case, the owner of the WOC must own and control 100% of the shares (voting and non-voting) and be the only director.

### ALLOWABLE FISHING CORPORATE STRUCTURES FOR INDEPENDENT CORE HARVESTER

Apart from a WOC, which is defined in policy, there are three types of structures defined in the regulations.

#### Inshore fishing corporation (IFC) or inshore family fishing corporation (IFFC)

If the corporate structure includes an IFC, or an IFFC, the licence holder must ensure the following:

- The licence holder<sup>4</sup>, as the owner of the fishing corporation, must control 100% of the voting shares, and be the sole director.
- Non-voting shareholders, must be family members, an IFC or an inshore fishing family trust (IFFT) of the licence holder. The licence holder can be a non-voting shareholder in their corporation(s).

The *inshore family fishing corporation* operates the inshore fishing enterprise. As an example, this means that it is the corporation involved, if applicable, in supply agreement, vessel leasing, and payment of wages to the crew.

#### Inshore fishing family trust (IFFT)

If the corporate structure includes an IFFT the licence holder must ensure the following

- The licence holder<sup>5</sup> is the only trustee.
- The beneficiaries of the IFFT must be family members or an IFC of the licence holder. The licence holder can be a beneficiary, subject to provincial laws, of their IFFT.

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<sup>4</sup> In the case of a licence being held by a WOC, "the licence holder" in control of the voting shares can also be read as "the sole owner of the WOC holding the licence". However, the "sole director" must be read as a reference to "the sole owner of the WOC holding the licence".

<sup>5</sup> In the case of a licence being held by a WOC, "the licence holder" must be read as "the sole owner of the WOC holding the licence".



### GENERAL INTERPRETATION PRINCIPLES

DFO does not encourage the duplication of requirements or the use of generic agreements that do not take fishing sector realities into consideration, or the fact that a licence is not a tangible good.

Approval of a request for licence issuance where a particular agreement exists cannot be interpreted as confirmation that all clauses in the agreement will be given full effect by DFO. Rights and privileges available are those granted by law and by DFO policy, irrespective of how a particular agreement may be interpreted from time to time.

All licensing requests are evaluated on a case-by-case basis, at the time of application, and the determination of compliance of some provisions or the interpretation of previously reviewed agreements may be impacted depending on the particular circumstances or other arrangements that may exist at the time of application. For example, a financial arrangement that is determined to be in compliance with the Inshore Regulations may, in a subsequent assessment of a licence, be determined to be non-compliant if other arrangements have been in place since the initial assessment.

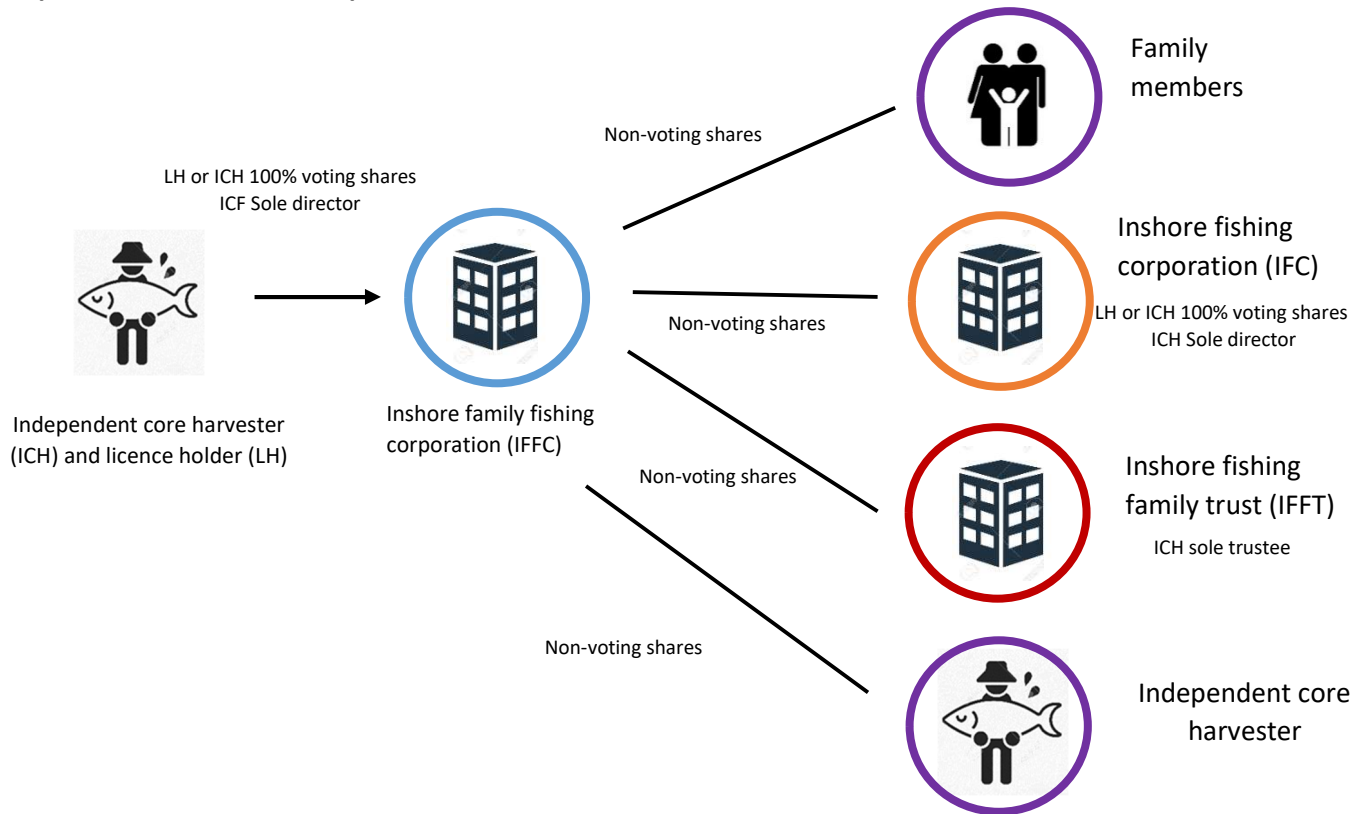
At the request of a licence holder, DFO's licensing teams may examine existing or proposed fishing corporate structure to assess and confirm regulatory compliance.

DFO remind all parties that making a false or misleading statement, whether orally or in writing, in an application for a licence is an offence under subsection 63(2) of the Fisheries Act.

See [DFO's website](#) for separate guidance documents on **the review process, agreements and stipulations, financial agreements** and additional information.

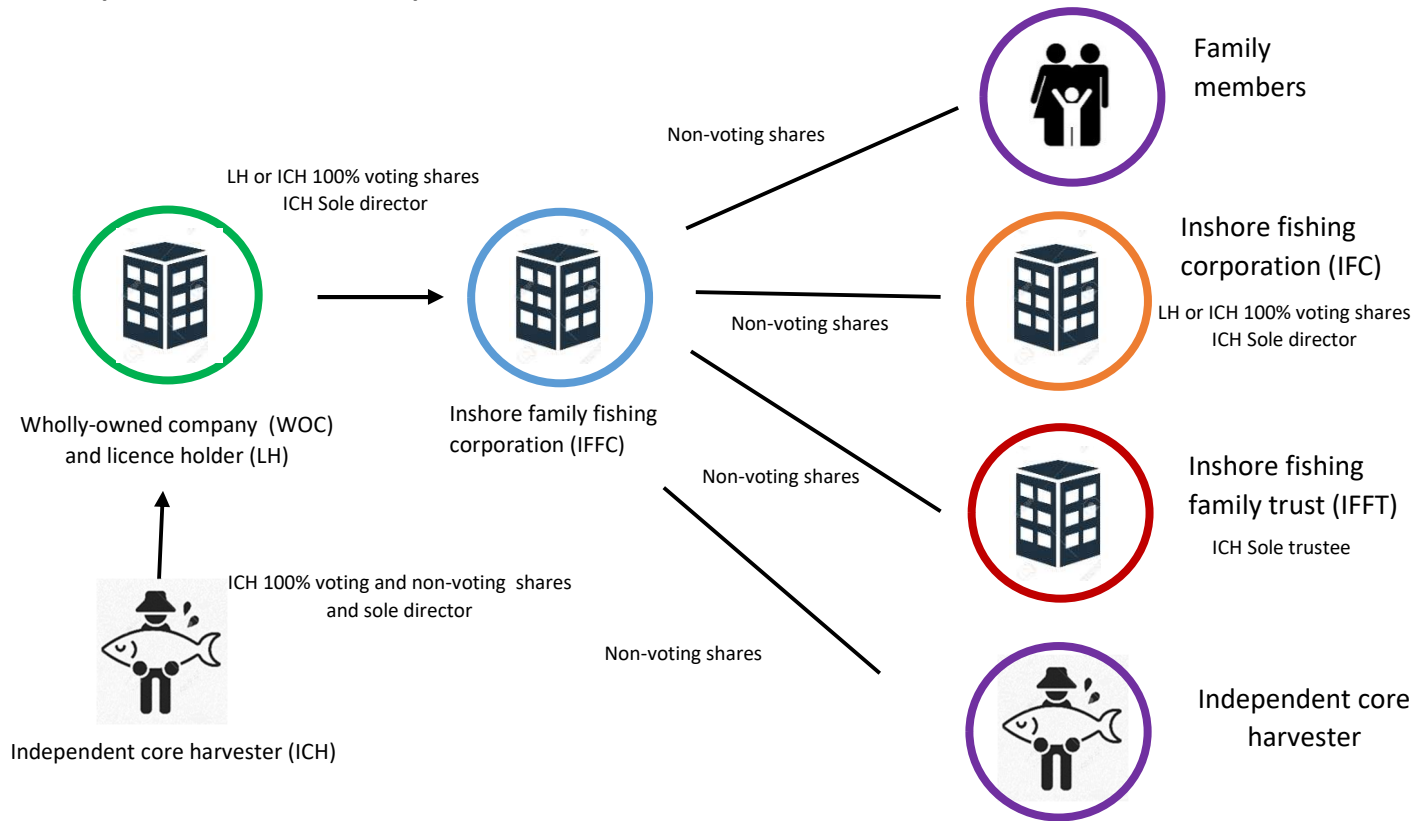


## Example 1 of an authorized corporate structure





## Example 2 of an authorized corporate structure

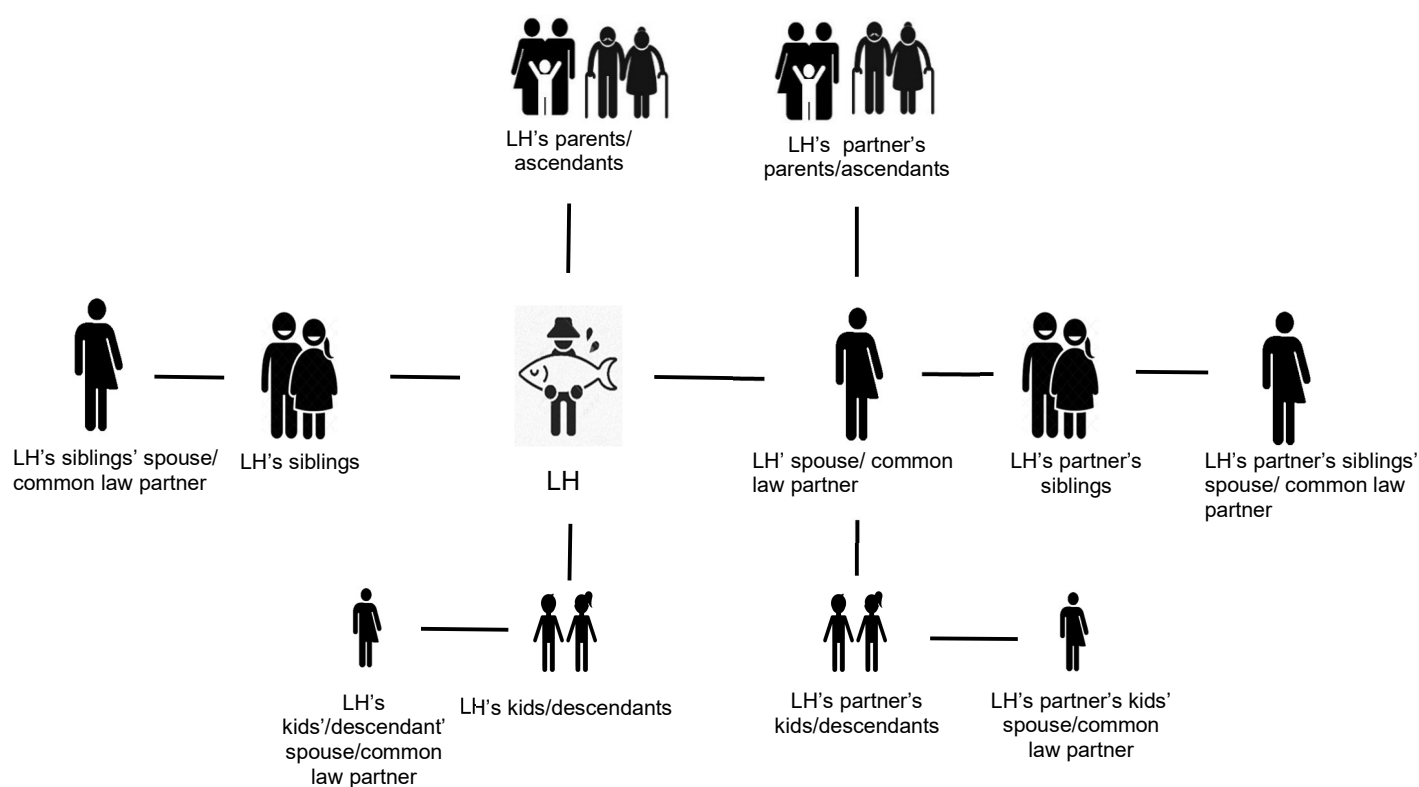




### Family members<sup>6</sup>

Family members of the licence holder (LH) are individuals connected by blood relationship (child, brother or sister), marriage or common-law partnership for at least one year (including in-laws) or adoption. For the purposes of the application of the regulation, licence holders are a member of their family.

Among others, possible persons included in a licence holder's family are identified in this simplified graphical representation:



Family members not permitted in a fishing corporate structure are:

- Nieces
- Nephews
- Aunts
- Uncles
- Cousins

<sup>6</sup> Family member has the meaning assigned by paragraph (a) of the definition *related persons* in subsection 251(2) of the *Income Tax Act*.