



One of the objectives of the regulatory amendments¹ 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.

GENERAL REGULATORY STIPULATION

As stated above, the regulatory amendments include an eligibility criterion that restricts the issuance of inshore licences only to those applicants (including current licence holders applying for renewal or reissuance) that have not transferred the use or control of the rights or privileges of the licence.

In simple terms, the rights and privileges² obtained by a fisher through an inshore licence, and subject to licence conditions, include:

- the right to make fishing decisions (e.g., when, where, how, with whom to fish, what vessel to use);
- the right to make fishing enterprise decisions (e.g., revenue distribution, who to sell the fish to); and
- privileges granted through Fisheries and Oceans Canada (DFO) policy (e.g., the privilege to request: substitute operators, licence renewal, licence reissuance or quota transfers).

Under the Inshore Regulations, the licence holder must personally retain and exercise the rights and privileges conferred under the licence, and cannot transfer them to any third party, unless authorized under the regulations.

The purpose of the amendments is to protect and preserve independence in the inshore fishery while not interfering with the potential for licence holders to obtain legitimate access to capital and have successful fishing enterprises. To maintain acceptable current practices, the amendments authorize the use and control of all or part of the rights and privileges under an inshore licence to be transferred to a third party only in the following circumstances:

- if the licence is offered as a security in a financial agreement;

¹ 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”.

² For more details on the concept of the “rights and privileges” obtained through a licence, refer to the [Regulatory Impact Analysis Statement](#) of the regulatory amendments.



- in cases of bankruptcy, incapacity or death of the licence holder;
- to allow certain corporate structures in the fishing enterprise;
- in cases where a substitute operator is used or when quota or gear is transferred between inshore licence holders;
- when a catch share agreement with the crew is in place; or
- in some circumstances when a community-based organization is an inshore licence holder.

Guidance on how these circumstances are applied is provided in national policies such as the [Commercial fisheries licensing policy for Eastern Canada](#) (e.g., substitute operator, estates) and regional licensing policies. Regional guidelines (e.g., ITQ guidelines) and other Inshore Regulations specific guidelines (i.e., guidance on corporate structures or guidance on financial agreements) also provide guidance on authorized circumstances.

GENERAL AGREEMENTS GUIDANCE

No type of agreement generally used in the inshore fishing industry is prohibited by the Inshore Regulations per se. DFO acknowledges that the following types of agreements exist:

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| • Loan agreement | • Management and operations agreement |
| • General security agreement | • Catch-share agreement |
| • Purchase and sale agreement | • Promissory note |
| • Supply agreement | • Power of attorney |
| • Vessel leasing agreement | • Corporate structure agreement |

However, any agreement, written or verbal, must not contain provisions that would lead to an unauthorized transfer of the use or control of the rights or privileges conferred under the licence to a third party. The following are some examples of such clauses or agreements that **would not comply** with regulations:

- Clauses that affect the inshore licence holder's total control of the fishing operation, such as the ability to select crew, gear and fishing practices;
- In perpetuity agreements, agreements without a clear term or termination clause or with termination penalty that would be so high as to amount to control over the privilege of the licence holder to seek a licence reissuance or any other rights or privileges;
- Clauses, even of a temporary nature, that transfer the rights and privileges conferred under the licence to a family member or another third party;
- Clauses in a purchase and sale agreement that would force the licence holder to hire a specific crew member;
- Agreements linked to the practice of "holding the licence" for another fisher until the fisher becomes eligible to hold that licence;
- Clauses that require the licence holder to obtain a third party's prior agreement before requesting a licence reissuance other than those mentioned in section 19(5) (a), (b) and (c) of the AFR or 29.2(1) (a), (b) and (c) of the MPFR;



- Agreements forcing licence holders to reissue an inshore licence to a particular person upon the occurrence of a particular event (e.g., a divorce).

Examples of clause or agreements that generally **would be deemed in compliance** with regulations are :

- Payment clauses expressed as a percentage of the value of the catch landed or directly in catch landed;
- Verbal agreements (e.g., financing agreements) between related or unrelated persons to obtain a licence. The format (e.g., verbal, formal written contract, email) is not determinative in deciding whether the eligibility criteria are met. However, DFO might request written details about the terms of more informal agreements.
- Agreements requiring the licence holder to offer a licence to a specific third party before requesting a reissuance of the licence to DFO (i.e., right of first refusal). The agreement must not limit the ability of the licence holder to request the reissuance of the licence.

In general, contrary to “right of first refusal” clauses that impose an extra step on licence holders before they freely exercise a privilege conveyed under the licence, agreements that transfer or limit the use or control of the privilege to seek a licence reissuance, even only if a specific condition materialized (e.g., divorce), will not be deemed in compliance.

SPECIFIC AGREEMENT GUIDANCE

As stated above, no type of agreement generally used in the inshore fishing industry is prohibited by the Inshore Regulations. In addition, no **combination of multiple agreements** is automatically prohibited by the Inshore Regulations. For example, an inshore licence holder may decide to secure a loan with a licence, lease a vessel and enter into a supply agreement. However, an inshore licence holder covered by the Inshore Regulations may not transfer decision-making over the fishing activities and benefits resulting from their catch. DFO might request proof of the licence holder’s control over the fishing activities and benefits resulting from the catch. The licence holder might also be called upon to demonstrate that he or she receives benefits or assumes risk from being the licence holder that are different from those of a crew member, for example.

Fish supply agreements (i.e., supply agreement) are generally accepted and DFO will not dictate limits on their term. However, a clearly stated fixed term must be part of the agreement. Also, as with financial agreements, licence holders must always have the option to withdraw from supply agreements with no penalty or with a penalty that would not be so high as to amount to control over the proprietary right to the fish caught under the licence or over the licence holder’s privilege to apply for a licence reissuance. The penalty cannot be set so high and the term so long that a licence holder is in a *de facto* perpetual agreement. Fish processors might be required to demonstrate potential damages incurred by the termination of a supply agreement prior to DFO’s agreeing to issue a licence.



Integrated supply and financial agreements³ (i.e., loans) are also acceptable. However, if the supply aspects last longer than the financial aspects, i.e., the loan is repaid and the harvester is still required to supply fish to the lender, the supply aspect of the agreement still in effect must be clear (the opposite is also true). As a general rule, DFO will not accept a failure to comply with the terms of a supply agreement as a default on a loan agreement for the purposes of a creditor exercising its rights on a secured licence. This means, for example, that a lender/fish processor cannot request the reissuance of the loan secured licence or the transfer of quota on the secured licence to DFO because the licence holder decides to enter into a supply agreement with another fish processor unless the licence holder fails to repay the loan.

A co-signatory or a co-borrower in a financial agreement is also acceptable and, in itself is not considered a transfer of the rights or privileges, unless other related agreements lead to such transfer. Per example, the co-signatory or co-borrower cannot be a co-licence holder. Only one individual or one wholly-owned company may hold an inshore licence at a given time. A co-signatory or co-borrower can also have a supply agreement in place with a licence holder in exchange for its signature of security documents. In such a case, DFO would address a **supply and cosignatory/co-borrower agreement** in the same way as an integrated supply and financial agreement.

Vessel leasing agreements are common practice and generally accepted in the inshore fisheries. However DFO does not allow these types of agreements to include specific limitations on where or when to fish. Crew and captain selection must be the licence holder's prerogative at all times. General limitations on where the vessel can be used, such as area, zone or period of time can be acceptable. The owner of the vessel leased by the licence holder can be any party, including a fish processor, another licence holder or a company subject to policy restrictions such as, for example, on vessel length, foreign ownership or vessel registration, as stated in the *Commercial Fisheries Licensing Policy for Eastern Canada*. As is the case with other agreements, the licence holder must be able to withdraw from this type of agreement at any time with no penalty or with a penalty proportional to the damage.

A transfer of the right of ownership of all or part of the catch or proceeds from the sale of that catch is considered a transfer of the rights. However, **catch or crew share agreements** are acceptable under paragraphs 19 (5) (e) of the AFR and 29.2(5)(e) of the MPFR. Parties to this type of agreement must be on board the vessel participating in the catch to be considered covered under this exception to the Inshore Regulations. DFO has the authority to request the crew registry that all inshore licence holders must keep for every fishing trip. At this time, as a condition of licence, fishers must keep the crew registry for a five-year period. All other types of agreements transferring the right of ownership of all or part of the catch or proceeds from the sale of that catch, such as the **assignment of catch agreements** linked to loans for example, would not be deemed in compliance.

REISSUANCE AND COMPLIANCE WITH THE INSHORE REGULATIONS

DFO is aware that a licence reissuance can be complex. However, DFO cannot issue a licence to applicants that are not considered eligible at the time of application, even for a short period of time. For example,

³ For more information on financial agreements, refer to the specific guidance document on DFO's web site



all intermediary corporate structures set up for tax optimization purposes in cases of reissuance must be in compliance. If this is not the case, DFO will have to request that the applicants become eligible before the reissuance request may be granted.

Purchase and sale agreements are not considered a transfer of the use or control of rights or privileges under subsections 19(3) of the AFR and 29.2(3) of the MPFR, if the transfer is conditional upon the acceptance of the licence transfer application by DFO. While the licence holder is exercising the privilege to request the reissuance, all the rights and privileges must stay with the current licence holder until DFO accepts the request. At the time of the signing of the agreement, both applicants must be eligible to hold a licence under the Inshore Regulations and the applicant-recipient must be eligible under current DFO policies (e.g., residency criteria or new entrant criteria).

Agreements designated as purchase and sale agreements by their parties cannot be used as a mechanism to transfer the use or control of rights or privileges to the applicant-recipient. For example, a purchase and sale agreement cannot be used to formalize a situation where a licence holder is “holding a licence” for another fisher. DFO does not consider this type of agreement to be a genuine purchase and sale agreement. Instead they are “transfer agreements” which render their parties ineligible for inshore licences. Typically, an unreasonable amount of time between the signing of a purchase and sale agreement and the filing of a licence transfer application with DFO is an indication that the agreement is not a genuine purchase and sale agreement. As a general rule, DFO may request that the applicants provide an explanation for delays longer than four months between the signing of a purchase and sale agreement and the filing of a licence transfer application.

ESTATES, POWER OF ATTORNEY, AND INCAPACITATED LICENCE HOLDERS

In cases where a licence holder is incapacitated, under provincial law, a person may be legally authorized to act on behalf of the licence holder. Paragraphs 19(5)(k) of the AFR and 29.2(5)(k) of the MPFR recognize that where a **person duly authorized acts on behalf of an incapacitated licence holder**, this does not amount to a transfer of the use or control of rights or privileges conferred under a licence to fish. With respect to the licence holder’s responsibilities in its corporate structure, DFO will consider that the licence holder remains in compliance for as long as the licence holder is incapacitated and insofar as the person acting on behalf of the licence holder remains legally authorized to do so.

DFO will deal with only one person authorized to act on behalf of an incapacitated licence holder. In cases where more than one person is authorized to act on behalf of the holder, it is incumbent upon these persons to designate one person among them who will be authorized to deal with DFO on behalf of the licence holder.

Persons referred to in paragraphs 19(5)(k) of the AFR and 29.2(5)(k) of the MPFR would have the same rights, privileges and obligations as those to which the licence holder is entitled. For example, DFO’s policy on medical substitute operators will continue to apply and up to five years⁴ after the incapacity of the

⁴ This is assuming the licence holder did not use medical substitute operators prior to becoming incapacitated. In that case, this time would be deducted from the five years.



licence holder would be given to the person authorized to act its behalf to recommend an eligible person to whom a re-issuable licence may be transferred.

DFO will apply the same principles in the event of the **licence holder's death** (except for note 4). Paragraphs 19(5)(j) of the AFR and 29.2(5)(j) of the MPFR recognize that where a liquidator, an executor or an administrator is appointed upon the death of the licence holder, this does not amount to a transfer of the use or control of rights or privileges conferred under a licence to fish. In these instances, DFO's estate policy would apply and, among other things, the estate would be given up to five years after the death of the licence holder to recommend an eligible person to whom a reissuable licence may be transferred .

If the licence holder has a **general power of attorney ("POA")**, meaning a POA that does not explicitly mention making decisions with regard to fishing licence, DFO will deem that the POA does not apply to the licence and there would therefore be no transfer of the use or control of the rights or privileges.

However, should a third party with a general POA contact DFO and request a licensing transaction on behalf of a licence holder who is not incapacitated, DFO will deem that the POA was intended to apply to the licence. DFO will take the position that using it in this manner is a transfer of the use or control of the rights or privileges and DFO will not authorize the transaction.

A POA that applies specifically to a licence and licence transactions constitutes a transfer of the use or control of the rights or privileges. DFO considers that a POA that applies specifically to a licence is not deemed in compliance with the Inshore Regulations unless it is restricted to only coming into effect in case of the licence holder's incapacity as provided by the exception in paragraphs 19(5)(k) of the AFR and 29.2(5)(k) of the MPFR.

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 agreements to assess and confirm regulatory compliance.



Protecting inshore
independent
harvesters

Inshore regulations implementation: Agreements and stipulations

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**, **financial agreements**, **corporate structures** and additional information.