



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.

ELIGIBILITY OF INSHORE LICENCES: NATIONAL ONLINE LICENCING SYSTEM DECLARATION

Fisheries and Oceans Canada (DFO) has put in place various measures to implement the Inshore Regulations. As a result, all applicants for an inshore fishing licence must declare that they have not transferred the use or control of any of the rights or privileges conferred under the licence they apply for beyond the circumstances authorized under the regulations. This declaration must be made prior to being issued an inshore licence. For most licence holders, this applies every year when they pay their fees in the National Online Licensing System (NOLS).

ELIGIBILITY OF INSHORE LICENCES: REVIEW OF APPLICANTS

Other administrative measures are also in place to ensure that only eligible inshore licences are issued. DFO will review applicants making licence issuance requests according to the following priorities:

- All potential recipients (“applicant recipient”) of a licence in what is commonly referred to as a “transfer request” or a “reissuance request.”
- All current licence holders (“applicant holder”) for which triggers are found by DFO.
- Randomly selected licence holders (“applicant holder”) that are in a fishery, area or group that is identified as “of concern” by DFO.

Review of applicants: Documents to be provided

When an applicant for a licence (recipient or holder) is selected for a review, DFO will request that the applicant provide all information or documents tied to the licence in question, to the applicant’s fishing enterprises, and when applicable, to the potential transaction.

A reissuance request cannot be used to become compliant with the regulation. A non-eligible licence cannot be reassigned.

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”.



It is important to note that even though eligibility is assessed by licence, DFO can review all relevant documents and information relating to the entire fishing enterprise of an applicant selected for a review. DFO's authority to request this information is grounded in section 8 of the *Fishery (General) Regulations*, and the request may be made verbally or in the form of a letter or, electronic communication. Documents, agreements or information that may be requested include, but are not limited to the following:

- Loan agreements
- General security agreements
- Purchase and sale agreement
- Supply agreements
- Vessel leasing agreements
- Management and operations agreements
- Catch-share agreements
- Crew registry
- Promissory note
- Power of attorney
- Corporate structure information

DFO uses the information, documents or agreements it receives for the purpose of administering the *Fisheries Act*, and does not disclose any personal information publicly. Personal information will only be disclosed in accordance with the *Privacy Act*. Non-disclosure agreements cannot be invoked as a reason for not sharing information with DFO.

All documents provided must be in their final version. If applicable, documents provided must be specific to the transaction, the fisheries or the agreement between the parties. Alternatively, DFO will accept a list of clauses that apply to the specific situation in cases where general/template agreements are provided.

In the case of verbal agreements, DFO will ask the applicant to explain in writing the nature of the agreement in order to identify the parties involved and summarize the rights and obligations of each party under the agreement.

An applicant can identify a third party for the purpose of representing him or her during DFO's eligibility review. DFO will not recognize *de facto* any applicant representative (e.g., NOLS representative) without a confirmation from the applicant that the representative is authorized to answer DFO on this subject. DFO may also request direct confirmation, in writing or verbally, from the applicant of the validity of information provided.

Review of applicants: DFO's review of information, service standards and issuance of licence

During DFO's review, written and verbal exchanges might take place between DFO and the applicant to request more documents and confirm relevant information or the intention of those party to the agreement(s). In circumstances where service standards are in place, the service standard will start when DFO has received all requested information from the applicant.



Failure to provide the requested information to DFO could lead to DFO's inability to make a determination on the eligibility of a licence. In such cases, no decision will be made until DFO receives all the information it needs to make the determination. Consequently, no inshore licences will be issued during that period. During the review process, fees relating to the inshore licences the fisher holds will not be available to be paid.

Review of applicants: DFO's determination of eligibility

When the file is complete and DFO has concluded its review, the applicant will be informed of DFO's decision.

In cases where DFO determines that a licence is eligible, a letter will be sent to the applicant confirming the licence eligibility or, where an applicant recipient is involved, DFO will complete the reissuance requested.

If DFO is of the view that the applicant has transferred the use or control of the rights or privileges under a licence, DFO will communicate in writing with the applicant and provide reasons to support its views. The applicant will then have 10 business days to provide information to DFO that could be relevant to the eligibility review. If no information is provided or if DFO finds that the information provided does not change its views, DFO would take the decision that the licence is not eligible under subsection 19(3) of the *Atlantic Fishery Regulations* (AFR) or 29.2(1)(3) of the *Maritime Provinces Fishery Regulation* (MPFR), and the licence would not be issued.

In cases where an applicant recipient is involved the reissuance request would be denied.

In cases where the request is to issue the licence to the same applicant, when DFO determines that the licence is not eligible under subsection 19(3) of the AFR or 29.2(1)(3) of the MPFR, the licence is not issued and therefore the applicant holder cannot fish this particular licence beyond the validity period of its last issuance. The applicant holder will be informed in writing that they have 12 months from the time of DFO's decision to comply with the regulations. At the end of that period, if no relevant information is provided to demonstrate how use or control of the rights or privileges under the licence is no longer transferred, the applicant holder will no longer be eligible to fish that particular 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 agreements 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 **corporate structures, agreements and stipulations, financial agreements** and additional information.