

COMMERCIAL FISHERIES LICENSING POLICY FOR GULF REGION

Fisheries and Oceans Canada

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NOTE

- 1. All persons making use of this document are reminded that it has no official sanction and its content may change without prior notice. Fisheries and Oceans Canada should be consulted for all purposes of interpreting and applying this policy.**

- 2. In this document, words importing the masculine gender shall include the feminine gender.**

- 3. Notwithstanding the provisions specified in this Licensing Policy Document, the Minister of Fisheries and Oceans Canada retains complete discretion to approve an exception to these provisions.**

- 4. The following policies have been extracted from the “Commercial Fisheries Licensing Policy for Eastern Canada 1996” and represent the policies along with additions, which are applicable to the Gulf Region.**

- 5. The following policies are available in the Intranet, Internet sites with amendment lists.**

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**COMMERCIAL FISHERIES LICENSING POLICY
FOR GULF REGION**

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CHAPTER ONE

1. Introduction

Licensing policies for the fisheries of the Gulf Region take into account the fact that for the most part, the fishing industry is located in areas of scarce alternative employment opportunities, and that completely unregulated entry to the fishery usually leads to over-capitalization, elimination of net returns and resource depletion. Added to this background is a situation where, in most fisheries throughout the Atlantic, excess fishing capacity exists. Furthermore, the resource and the social and economic forces have a high impact on the rural communities.

The Licensing Policy is an integral part of a number of federal government initiatives to restructure the commercial fisheries and lay the foundation for a fishery that is environmentally sustainable and economically viable. The objectives of the Commercial Fisheries Licensing Policy for Eastern Canada adopted December 20, 1995 are to reduce capacity, improve the economic viability of participants in commercial fishing operations and prevent future growth of capacity in the commercial fishery. The Licensing Policy reform along with other fisheries renewal initiatives brings about fundamental changes to the way we do business in fisheries, and in the Department's relationship with the fishing industry. The industry will be given more responsibility in the decisions regarding the fisheries and will become a partner and true steward of the resource.

Fisheries and Oceans Canada's approach to licensing favors limiting access to the fishery as much as is necessary to provide for an orderly harvesting of the fishery resource, to promote viable and profitable operations for the average participant and, finally, to adopt policies and Integrated Fisheries Management Plans, which are consistent where consistency is desirable and practical, while at the same time recognizing that specific measures may be necessary for certain fisheries and geographical locations of the Gulf Region.

2. Purpose of Policy Document

This policy document has been prepared to provide fishers, corporations, Aboriginal organizations, and other interested Canadians with a clear and consistent statement of the Fisheries and Oceans Canada's policy respecting the registration of commercial fishing enterprises and vessels, and the issuance of fishing licences in the Gulf Region.

3. Legislative Background

By virtue of the *Constitution Act, 1867* (formerly the *British North America Act, 1867*), the Parliament of Canada on behalf of the Canadian public has legislative responsibility for Canada's seacoast and inland fisheries. As a result, the federal government has constitutional authority for all fisheries in Canada. Canada manages directly fisheries in the Atlantic provinces of Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island; the marine and anadromous salmon fisheries of British Columbia; the marine fisheries of Quebec; and the fisheries of the Yukon and Northwest Territories.

Following references to the Privy Council and a number of court decisions, formal agreements were negotiated during the period from 1899 to 1930 between the federal government and some of the provinces. In the Gulf Region, the federal government has retained overall jurisdiction for the management of fisheries.

4. Aboriginal Access

Special consideration is given to Aboriginal individuals or organizations for access to commercial fisheries for economic development purposes. In this context, the policy provides for some exemption from eligibility criteria respecting the issuance of licences. This policy is to be interpreted in conjunction with DFO's Aboriginal Fisheries Strategy. (Refer to Chapter Four).

5. What is a Licence?

(a) *General*

A “licence” grants permission to do something which, without such permission, would be prohibited. As such, a licence confers no property or other rights which can be legally sold, bartered or bequeathed. Essentially, it is a privilege to do something, subject to the terms and conditions of the licence.

(b) *Fishing Licence*

A “fishing licence” is an instrument by which the Minister of Fisheries and Oceans Canada, pursuant to his discretionary authority under the *Fisheries Act*, grants permission to a person including an Aboriginal organization to harvest certain species of fish or marine plants subject to the conditions attached to the licence. This is in no sense a permanent permission; it terminates upon expiry of the licence. The licensee is essentially given a limited fishing privilege rather than any kind of absolute or permanent “right or property”.

(c) *Future Commitment*

As provided under the *Fishery (General) Regulations*, the issuance of a document of any type to any person does not imply or confer any future right or privilege for that person to be issued a document of the same type or any other type upon expiry of the document.

6. Licensing Principles

The “Commercial Fisheries Licensing Policy for Gulf Region” is built on the following principles:

- (a) Be consistent with Fisheries & Oceans Canada’s core mandate following the Program Review exercise,
- (b) Achieve a balance between capacity and the resource,
- (c) Encourage environmentally sustainable harvesting,
- (d) Foster greater economic viability of the fishery sector,
- (e) Facilitate industry self-reliance,
- (f) Develop a greater degree of partnership with a professional group of harvesters,
- (g) Streamline administration of licensing.

7. Licensing Parameters

The licensing parameters which have guided the development of the “Commercial Fisheries Licensing Policy for Gulf Region” are:

- (a) Adjacency to the resource recognized as a priority factor for the issuance of new regular/temporary licences and for the issuance of replacement licences,
- (b) Area specificities of fisheries recognized and accommodated,
- (c) Continuous reduction in capacity promoted through self-rationalization programs,
- (d) Geographic distribution of economic opportunities maintained,
- (e) Integrated Fisheries Management Plans may specify additional management measures and restriction
- (f) Withdrawal of licence privileges recognized as a valid means of ensuring compliance with regulations and management plans.

CHAPTER TWO

GENERAL POLICY FRAMEWORK

8. Application of Policy

This policy applies to the registration of fishers, fishing enterprises, the registration of fishing vessels and the issuance of fishing licences to engage in commercial fishing for the Gulf Region. This policy also applies to commercial freshwater fisheries in the Eastern New Brunswick, Gulf Nova Scotia and Prince Edward Island Areas of the Gulf Region.

9. Terminology

Unless defined below, expressions in this document have the same meanings as those found in the *Fisheries Act*, the *Coastal Fisheries Protection Act*, and the regulations made under those acts.

- (1) **Aboriginal Organization:** as defined under the *Aboriginal Communal Fishing Licences Regulations*.
- (2) **Area of Historical Fishing:** refers to a fishing area where a fisher has participated in fisheries during a period of not less than 24 months unless a longer period is provided into a management plan.
- (3) **Authorized Overlap:** refers to those specific areas beyond home sectors where fishers restricted to using groundfish vessels less than 19.8 m (65') LOA are permitted to continue fishing as a result of their home port being located in the extremities of their sector in 1981 specifically:

<u>Home Port Division</u>	<u>Authorized Overlap</u>
4T	4Vn
4Vn	4T

- (4) **Breadth:** for the purpose of determining Cubic Number, is the external, maximum horizontal distance measured across the vessel between perpendiculars erected at the extreme width of the vessel. This measurement excludes all appendages and trimming such as side fenders and rubbing strakes.

- (5) **Certification Board:** means a Board established under provincial legislation for the certification of professional fishers.

- (6) **Coastal Fisher:** means a fisher, who is not part of a core enterprise and who holds at least one key commercial non-vessel based licence. Key commercial non-vessel based licences for the three Administrative Areas of the Gulf Region are as follows:
 Eastern New Brunswick: Clams, eel, gaspereau, oysters, smelt;
 Gulf Nova Scotia: Clams, eel, gaspereau, oysters, smelt;
 Prince Edward Island: Clams, eel, marine plants, oysters, smelt.

- (7) **Core Enterprise:** means a fishing unit composed of a fisher (head of enterprise), registered vessel(s) and the licences he holds and which has been designated as such in 1996 under the following criteria:

Aboriginal Organization is considered as a Core Enterprise for the purpose of this policy.

For Bonafide fishers

Have Bonafide status; and

Hold one key licence.

Key licences are snow crab, lobster “A”, groundfish (but not handline), scallop, tuna and herring.

For non-bonafide fishers

Hold either two key licences, or one key licence and have fished for a full season with minimum landings of \$25,000 from his own licences for two of the years 1993, 1994, 1995.

Key licences are shrimp, snow crab, lobster “A”, groundfish ITQ only.

Licence holders who meet the eligibility criteria for the Atlantic Groundfish Strategy (TAGS) may use the TAGS qualifying years instead.

- (8) **Cubic Number:** = Length x Breadth x Depth
- (9) **Depth:** for the purpose of determining Cubic Number, is the vertical distance measured at the half-length point on the centre line of the vessel between the top of the uppermost continuous deck, to the top of the keel or rabbet line, whichever is greater. For open vessels, the depth shall be determined as 85 percent of the distance measured between the gunwale and the top of the keel or rabbet line.
- (10) **DFO Administrative Areas:** means the portions of the Gulf Region established for the purpose of administering departmental programs. They are Eastern New Brunswick Area, Gulf Nova Scotia Area and Prince Edward Island Area.
- (11) **Estuarial fisher:** means a fisher who holds only non-key commercial non-vessel based licences.
- (12) **Gulf Region:** means the DFO Administrative Region, which is responsible for administering departmental programs for Eastern New Brunswick, Gulf Nova Scotia and Prince Edward Island.
- (13) **Grandfather Clause:** refers to an exemption to policy authorized on the basis of historic activity or procedure. Such an exemption expires when a replacement licence is issued to another individual.
- (14) **Historic Overlap Privilege:** refers to those specific areas beyond home sectors where inshore fishers are permitted to continue fishing for groundfish as a result of participation for a two year period during the years 1978-1980. (This qualifying period was extended to the years 1980 and 1981 when it could be shown that commitments had been made to have a vessel replaced prior to 1980.)
- (15) **Home Port:** means that port identified by the fisher upon registration.
- (16) **Individual Quota:** refers to an amount of fish from a specific stock allocated exclusively to a licence holder as a condition of licence.

- (17) **Inshore:** refers to the fishing sector where fishers are restricted to using vessels less than 19.8m (65') LOA.
- (18) **Key Licences:** mean those licences referred to in the definitions of coastal fisher and core enterprise.
- (19) **Kouchibouguac National Park:** means that area which lies within the boundaries of the Kouchibouguac National Park in the Province of New Brunswick.
- (20) **Length:** for the purpose of determining Cubic Number, is the external, maximum horizontal distance measured between perpendiculars erected at the extreme ends of the vessel excluding all operational equipment and appendages.
- (21) **Length Overall (LOA):** means the horizontal distance measured between perpendiculars erected at the extreme ends of the outside of the main hull of a vessel. Transom platforms extending beyond the stern of a vessel for the purposes of this policy will be considered part of the main hull of a vessel.
- (22) **Licensing Authority:** The Minister of Fisheries and Oceans Canada.
- (23) **Limited Entry:** for the purpose of this policy, refers to those fisheries where the total number of licences is limited.
- (24) **Non-core enterprise:** means a fishing unit composed of a fisher (head of enterprise), registered vessel(s) and vessel-based licence(s) only, who does not meet the core or coastal eligibility criteria.
- (25) **Non-vessel based licences:** mean licences other than those identified as vessel-based in Annex I.
- (26) **Person:** for the purpose of this policy, means either an individual, a corporation or an Aboriginal organization.
- (27) **Resident:** means, in respect of a licence, a person who has continuously had his main place of residence in a defined area for a period of not less than six months immediately preceding the time that residence becomes material for the purpose of licensing.

- (28) **Vessel-based licences:** mean those licences specified as such in Annex I.

CHAPTER THREE

GENERAL POLICY GUIDELINES

10. Licensing Strategy

The concept adopted for the inshore sector (vessels less than 19.8m (65') LOA) is that of a "core" group of a maximum number of multi-licensed enterprises. To qualify as member of the core group, a licence holder was required to meet specific criteria as of December 20, 1995.

Under this concept, entry into the "core group" is possible only by replacing an existing enterprise and the new entrant has to be a certified professional fisher. However, until such time as Professionalization is legislated, new entrants will have to meet previous full-time/Bonafide (new entrant) criteria. (Refer to Annex VI).

The Policy promotes the concept of multi-licensed enterprises while recognizing specialized fleets. Fishing enterprises are viewed as businesses with normal responsibilities such as selection of crew and reporting of landings.

11. Coastal Fisheries

Commercial non vessel-based or coastal fishers in the Gulf Region were not targeted when the Bonafide Policy was put into place in the early 1980's. Holders of commercial non vessel-based fisheries licences were categorized as commercial fishers and very few of the policies applicable to Bonafide fishers involved them.

As a result, holders of licences for non vessel-based fisheries did not benefit from the policy directions used in the management of fisheries under the Bonafide Policy. Some of the non vessel-based fisheries were until the mid-90's open access fisheries where anybody without full-time employment could get a licence.

It has thus been extremely difficult to acquire accurate statistical data on commercial non vessel-based fisheries as landings have been consistently misreported. This inaccuracy of data did not help in having the economic importance of these fisheries being recognized, which in turn did not help in having managers focus on these fisheries and the issues facing them, nor in getting biologists to try to assess its resources.

For thousands of licence holders though, commercial non vessel-based fisheries constitute their main source of income. These are the fishers who need a healthy and self-reliant coastal fishing industry, based on environmental sustainability and economic viability. The same is true for the hundreds of core fishers who hold non vessel-based licences and use them to supplement income from core fisheries.

In announcing the new Commercial Fisheries Licensing Policy for Eastern Canada 1996; the Minister of Fisheries and Oceans Canada indicated that in the Gulf Region discussions would be held with holders of commercial non vessel-based licences on how the policy would apply to them. As a result, it has been agreed that the licensing policy's objectives of strengthening conservation efforts and contributing to the prosperity and security for fishers and their communities should also apply to coastal fishers and that commercial non vessel-based licence holders should become a limited group of professional fishers, who are encouraged to hold multiple licences. Licensing policies to that effect have therefore been incorporated into this document.

12. General Policy Guidelines

- (1) The requirements to be licensed to fish for different species of fish are found in the *Fisheries Act* and the regulations made under the Act.
- (2) Except where a fishery is closed for conservation purposes, licence renewal and payment of fees is mandatory on a yearly basis in order to retain the privilege to be issued the licence.
- (3) Subject to any sanction applied against a licence or a licence holder, a licence may only be issued to a person who:
 - (a) held such a licence for a given species in the preceding calendar year and a replacement licence was not issued for that licence to another person; or
 - (b) who is issued such a licence as a replacement licence; or
 - (c) who obtains a new licence through the procedures outlined in section 23 or 24, or
 - (d) who meets the eligibility criteria set out in Annex VI.
- (4) When a species is deemed to have been over-fished, one or more of the following restrictions may be imposed:

- (a) restriction on the issuance of replacement licences to other persons,
 - (b) restriction on the issuance of additional licences,
 - (c) stricter vessel replacement rules,
 - (d) a licence moratorium,
 - (e) non-renewal of licences, or
 - (f) other appropriate measures.
- (5) A *bait-fishing licence* may only be issued to the head of an enterprise who holds a licence to fish commercially by a method which traditionally includes the use of bait in such a fishery, (e.g. lobster, crab, groundfish hook and line, tuna, swordfish longline, shark) subject to restrictions in the fisheries management plans for species used as bait.
- (6) For fisheries restricted to using vessels less than 19.8m (65') LOA, a licence will be issued in the name of an individual fisher. Where such a licence has previously been issued in the name of a corporation, the licence may continue to be issued in the name of that corporation under a Grandfather clause (see Annex V).
- (7) Licence holders restricted to using vessels less than 19.8m (65') LOA must be on board during all fishing operations.
- (8) Licence holders restricted to using vessels less than 19.8m (65') LOA may not hold more than one licence for a given species. Those licences may be validated for more than one gear type (e.g., otter trawl and gillnet).
- (9) *Partnerships* in the lobster fishery may be created where both enterprises hold category A lobster fishing licences for the same Lobster Fishing Area. Under such a partnership arrangement, the following conditions apply:
- (a) both licence holders must be present on the boat during lobster fishing operations;
 - (b) the number of lobster traps permitted to be fished by the partnership cannot be greater than the legal number of traps

authorized for one licence in that Lobster Fishing Area plus 50 percent of that number.

- (10) *Partnerships* in the P.E.I Administrative Area snow crab fishery may be created where both enterprises hold snow crab licences for the same Snow Crab Fishing Area. Under such a partnership arrangement, the following conditions apply:
- (a) both licence holders must be present on the boat during snow crab fishery operation;
 - (b) the first partnership will be for a one year period and each subsequent partnership must be for a two year period; and
 - (c) the number of snow crab traps permitted to be fished by the partnership cannot be greater than the legal number of traps authorized for one licence in the Snow Crab Fishing Area for P.E.I. Fisheries plus 50 percent of that number.
- (11) As provided under the *Fishery (General) Regulations*, where, because of circumstances beyond his control, the holder of a licence or the operator named in a licence is unable to engage in the activity authorized by the licence or is unable to use the vessel specified in the licence, the Licensing Service Centre Staff, a fishery officer or other authorized employee of the Department may, on the request of the licence holder or his agent:
- (a) authorize in writing another person residing in the same Fisheries & Oceans Canada Administrative Area as the licence holder to carry out the activity under the licence; or
 - (b) authorize the use of another vessel under the licence in accordance with the replacement vessel guidelines.
- (12) Where the holder of a licence is affected by an illness which prevents him from fishing, upon request and upon provision of acceptable medical documentation to support his request, he may be permitted to designate a substitute operator residing in the same Fisheries & Oceans Canada Administrative Area and who does not hold a licence for the same species for the term of the licence. When a licence holder is unable to be the operator of his licence(s), he may request his substitute operator as provided under the *Fishery (General) Regulations*, in accordance with Annex VII.
- (13) (a) Upon the approval of a substitute operator, the designation will apply to all licences issued to the licence holder.

- (b) A licence holder who has designated a substitute operator for his licence(s) may not participate in any fishery.
- (14) For the purpose of renewing a licence or for the issuance of other documents, the licence holder must personally sign any related documents. In the case of an estate or medical incapacity, the executor or the legally appointed administrator must sign the documents. As provided under the *Fishery (General) Regulations*, in the case of corporation-held licences, only a designated officer of the corporation may sign on behalf of that corporation.
- (15) Unless provided otherwise in a species management plan, licences will not be issued as replacements for non-renewed licences.
- (16) The downgrading of lobster category “A” licences or the upgrading of lobster category “B” licences is not permitted.
- (17) Unless provided otherwise in a species Management Plan, the splitting of either the gear types or the amount of fishing gear listed on a licence is not permitted.

13. Fisher Registration

- (1) A Fisher’s Registration may not be issued to a person unless that person:
 - (a) is a Canadian citizen; or
 - (b) is a permanent resident who is a landed immigrant; or
 - (c) is a foreign crewmember on a Canadian fishing vessel and holder of a valid employment authorization issued by the Government of Canada.

14. Vessel Registration

- (1) Subject to section 44, where a vessel registration is required, every vessel used in a commercial fishery must be registered in the name of the licence holder using the vessel or for whom the vessel is being used.
- (2) A vessel can only be registered in the name of one licence holder at a given time.

- (3) A vessel may be registered by the Department on application, the payment of the proper fee and the provision of the required data on the vessel characteristics by the applicant.
- (4) Only Canadian vessels may be given a vessel registration number by Fisheries and Oceans Canada. When a vessel is permanently replaced, a separate vessel registration number must be assigned to the new vessel.
- (5) The licence holder is responsible to ensure that the vessel he intends to operate meets approved vessel replacement rules.
- (6) A survey or measurement of the vessel may be required from the licence holder at his expense prior to registration.
- (7) Vessel Registrations may only be issued to persons, who hold a licence which requires the use of a fishing vessel in their fishing operation.
- (8) When a vessel is registered, it must be registered in a licence holder's name for a minimum period of one (1) month.

15. Leasing of a Foreign Registered Vessel

The following provisions apply to the temporary replacement of Canadian fishing vessels with foreign vessels.

- (1) This policy applies when Canadian vessels are permanently removed, or rendered unserviceable (e.g., sinking, fire, collision, stranding) for a minimum period of four months within the preceding 12-month period. The chartering of a foreign vessel is not permitted for the purpose of replacing a Canadian vessel which has been removed from the fishery for financial or commercial reasons (e.g., bankruptcy or sheriff's seizure).
- (2) A maximum period of two years duration (from the date of vessel removal) may be allowed for the lease of a foreign vessel.

- (3) The leased foreign vessel must be crewed by either Canadian citizens or permanent residents, except where the Minister approves a specified number of non-Canadian crew members.
- (4) The leased vessel is to be of similar catching capacity and must operate in accordance with the same fishing plan, and the catch must be delivered to the same plant or plants.
- (5) Freezer trawlers may be leased to replace wetfish trawlers, but the processing (filleting) of traditional groundfish species at sea will not be permitted.
- (6) All foreign vessels will be required to carry an observer approved by the Department at the expense of the licence holder.
- (7) The leasing of foreign vessels requires Ministerial approval.

16. Foreign Ownership

- (1) Subject to subsection (2), if foreign interests acquire over 49 percent of the common (voting) shares of a Canadian owned corporation which holds fishing licences, the licences will not be reissued to that corporation upon expiry of the licences.
- (2) If such a foreign corporation having a subsidiary in Canada which holds fishing licences is taken over by another foreign-owned corporation from the same country, the licences may be reissued to that corporation as part of its continuing Canadian operation (i.e. no net increase in foreign ownership).
- (3) If a foreign interest purchases a minority ownership interest in a Canadian corporation or establishes a jointly-owned subsidiary with a Canadian corporation in which the Canadian corporation owns more than half the voting shares, licence eligibility will not be affected.

17. Fleet Separation Policy

- (1) One of the objectives of the licensing policy is to separate the harvesting and processing sectors of the industry, particularly in the fisheries where licence holders are restricted to using vessels less than 19.8m (65') LOA. This is known as the Fleet Separation Policy.
- (2) Under this policy, new fishing licences for fisheries where only vessels less than 19.8m (65') LOA are permitted to be used may not be issued to corporations, including those involved in the processing sector of the industry.
- (3) Subject to subsection (4), corporations, including those involved in the processing sector, presently holding licences in this fleet sector may continue to do so, but they may not be issued additional licences.
- (4) Notwithstanding section (18), fishing licences for vessels less than 19.8m (65') LOA currently held by corporations that existed and held fishing licences for vessels less than 19.8 m (65') LOA prior to 1979 (referred to as pre-79 corporations) may be issued as replacement licences to another pre-79 corporation who still hold fishing licences for vessels less than 19.8m (65') LOA or to an eligible recipient under section (18). Corporations eligible to be issued replacement licences under this provision are listed in Annex V.
- (5) When all licences held by a pre-79 corporation on the same vessel are issued as replacement licences to a qualified new entrant as per section (18), the new licence holder will be given core status.

18. Change of Licence Holder

- (1) Current legislation provides that licences are not transferable. However, the Minister in “his absolute discretion” may for administrative efficiency prescribe in policy those conditions or requirements under which he will issue a licence to a new licence holder as a “replacement” for an existing licence being relinquished. These prescribed conditions or requirements are specified in this document.
- (2) Subject to subsection (5), a replacement licence may be issued upon request by the current licence holder to an eligible fisher, but this transaction is not reversible.
- (3) Subject to subsection (10) and section (19), nothing in this Policy, except residency requirements, precludes the issuance of a licence to an Aboriginal Organization as a replacement for a licence.
- (4) A licence may only be issued as a replacement licence once in every twelve (12) month period.
- (5) Subject to subsections (10) and (11) licence(s) may be issued as replacement licence(s) as follows:
 - (a) to a qualified new entrant as a package;
 - (b) vessel-based licence(s) to the head of a core enterprise;
 - (c) non vessel-based licence(s) to a coastal fisher or to the head of a core enterprise in the vessel category less than 15.2m (50') LOA with the exception of a core enterprise holding a groundfish ITQ with vessels less than 13.7 (45') LOA.
 - (d) mackerel gill net and herring gill net licences as a unit or package.

- (6) (a) When a fisher relinquishes his privilege to be issued a licence for a particular species, he will not be eligible to be issued a licence for that same species within the next 12 months. However, this restriction does not apply to the swap or exchange through the issuance of replacement licences between two fishers already licensed for the same species and where the conditions attached to those licences are different.
- (b) When a fisher relinquishes his core or coastal status, he will be exempted from meeting the new entrant criteria for a 12 month period.
- (7) The head of a core enterprise or coastal fisher will lose his status immediately upon relinquishing his last key licence.
- (8) Aboriginal individuals qualify as new entrants without having to meet the criteria specified in Annex VI.
- (9) Subject to section (16), where there is a change in the controlling interest of a corporation that holds a licence, Ministerial approval will be required for renewal of the licences upon their expiry.
- (10) The following licences may not be issued as replacement licences to another fisher:
 - (a) category B lobster licences;
 - (b) commercial temporary licences, except in the case of the death of a licence holder where the estate may continue to hold the licence, but cannot have the temporary licence issued as a replacement licence.
 - (c) herring fixed gear licences held by enterprises belonging to the over 15.2m (50') LOA vessel categories;
 - (d) salmon;
 - (e) groundfish licences (including handlines) held by heads of non-core enterprises;
 - (f) bait-fishing licences; except when issued as a replacement licence as part of a full package transaction.

- (g) Communal commercial licences.
 - (h) eel using longline
 - (i) licences for which Fisheries & Oceans Canada's Conservation & Protection Branch has requested a freeze on any licence replacement due to ongoing investigations.
- (11) (a) Unless otherwise stated in a species management plan, vessel based licences may only be issued as replacement licences to a qualified new entrant or to another fisher in the same vessel category as listed below:
- (i) core using vessels less than 15.2m (50') LOA;
 - (ii) core using vessels less than 13.7m (45') LOA and holding an ITQ groundfish quota;
 - (iii) core using vessels 15.2m (50') - 19.8m (64'.9)LOA.
- (b) An enterprise which holds vessel-based licences for more than one vessel category will be deemed to belong to the largest vessel class. In addition, vessel-based licences held by these enterprises may only be reissued as replacement licences to enterprises in the appropriate vessel category.
- (12) In the Kouchibouguac National Park of New Brunswick,
- (a) in order to be eligible to obtain an eel, gaspereau or smelt licence through the issuance of a replacement licence, a fisher must have
 - (i) been the holder of a smelt, eel or gaspereau licence validated for the waters inside the boundaries of the Park in 1967, 1968 or 1969, or
 - (ii) fished from Cape St-Louis or Loggiécroft wharves and been registered as a commercial fisher in 1979.
 - (b) a fisher having relinquished his privilege to be issued an eel, gaspereau or smelt licence to another fisher will not be eligible to obtain another eel, gaspereau or smelt licence for the Park.

- (13) All conditions specified in a licence (i.e. area, gear type, etc.) will be maintained upon the issuance of a replacement licence with the exception of the following:
- (a) Authorized overlaps will, under the Sector Management Policy, expire when:
 - (i) a replacement groundfish licence is issued to an individual residing in an alternate home port division (e.g. 4Vn to 4X); or
 - (ii) the present groundfish licence holder takes up residence in an alternate home port division.
 - (b) Subject to paragraph (c), historical overlap privileges under the Sector Management Policy will expire when:
 - (i) a replacement groundfish licence is issued to another individual;
 - (ii) The vessel is lost through repossession by a lending authority; or
 - (iii) The vessel is replaced.
 - (c) Historical overlap privileges will not expire when a vessel is lost through fire, sinking, through circumstances beyond the licence holder's control, etc.

19. Licence Splits

- (1) The splitting of mobile gear groundfish and mobile gear shrimp licences used on the same vessel is permitted provided the recipient of the shrimp licence combines it with a mobile gear groundfish licence for the same vessel size class.

20. Residency, Home Port or Area of Historical Fishing

- (1) Residency, area of historical fishing or home port may be used as eligibility requirements when new or replacement licences are issued.
- (2) Where residency, area of historical fishing or home port are not used as eligibility requirements of licence issuance, then the proposed recipient of a replacement licence must meet the eligibility requirements for the area of residence of the present licence holder.
- (3) Subject to subsections (4) and (5) and unless provided otherwise in a management plan, a replacement licence may only be issued to an eligible fisher or a qualified new entrant, who is resident of the same DFO Administrative Area where the fisher who is relinquishing that licence was a resident when the licence was originally issued to him.
- (4)
 - (a) Subject to item (b) and subsection 5(a), in the Eastern New Brunswick Administrative Area, replacement licences for species other than mackerel, tuna and snow crab, can only be issued to core enterprises (vessel-based and non vessel-based licences), coastal fishers (non-vessel based licences only) or qualified new entrants:
 - (i) who is resident and whose main place of residence is in the Lobster Fishing Area for which the licence is valid, and
 - (ii) whose area of historical fishing is in the Lobster Fishing Area for which the licence is valid.
 - (b) For licences held by fishers who are not resident and whose main place of residence is not in the Lobster Fishing Area for which the licences are valid, replacement licences can only be issued to core enterprises (vessel-based and non vessel-based licences), coastal fishers (non-vessel based licences only) or qualified new entrants either:

- (i) who is resident and whose main place of residence is in the Lobster Fishing Area for which the licence is valid, or
 - (ii) whose area of historical fishing is in the Lobster Fishing Area for which the licence is valid.
- (5) (a) A swordfish longline replacement licence may be issued to any qualified person on the Atlantic Coast of Canada.
- (b) A lobster licence for Lobster Fishing Area 27 (LFA 27) may be issued as a replacement licence either to the head of a core enterprise from the Maritimes Region or to a Gulf Region head of a core enterprise restricted to using vessels less than 15.2m (50') LOA and have a residence in the lobster fishing area.

21. Disposition of Licence(s) in Case of Death of Licence Holder

- (1) Where the holder of a licence dies, a replacement licence may be issued to the estate up to five years in accordance with the policy on change of licence holder as stipulated under section 18.
- (2) Licences listed under section 18(10) expire upon the death of a licence holder except temporary commercial licences that may be operated by the estate.
- (3) During the five-year period referred to under subsection (1), the licence must be renewed annually and the Department may approve the designation of a substitute operator.
- (4) For the purpose of renewing all licences or issuing of a replacement licence to a new licence holder, the executor or the legally appointed administrator must sign any related documents.
- (5) Upon the death of the holder of a category B lobster licence, a substitute operator will be permitted to continue fishing for the period for which the licence is valid only.

22. Disposition of Licence(s) in Case of Bankruptcy of a Corporation

- (1) Where a corporation that holds a licence is put into receivership, the licence held by the corporation remains valid, but will not be amended.
- (2) Once this licence expires and in the absence of notification from the officers of the corporation that the corporation is continued, the Licensing Authority will either:
 - (a) not renew the licence in question; or
 - (b) issue a replacement licence to an eligible applicant.

23. Issuance of New Regular Licences

- (1) The issuance of new licences requires approval by the Minister except for those listed in Annex II.
- (2)
 - (a) For the issuance of new vessel-based licences for fisheries where only vessels less than 19.8m (65') LOA are permitted to be used, where the number of new licences is limited and where there are more applicants than licences available, licence holders will be selected through a random draw among heads of core enterprises who meet criteria established in consultation with appropriate industry representatives or to Aboriginal organizations.
 - (b) For the issuance of new non vessel-based licences, where the number of new licences is limited and where there are more applicants than licences available, licence holders will be selected through a random draw among coastal fishers and core enterprises who meet criteria established in consultation with appropriate industry representatives or to Aboriginal organizations.
- (3) For the issuance of licences for vessels 19.8m (65') LOA and over, eligibility criteria and applicant selection mechanisms will be developed on a case by case basis.

24. Issuance of Temporary Commercial Licences

- (1) If a fishery is new, developing or underutilized, temporary commercial licences may be issued upon approval of the Minister.
- (2)
 - (a) New temporary commercial vessel-based licences for fisheries using vessels in the 15.2m (50') to 19.8m (64'11") length (LOA) category will be offered only to heads of core enterprises, who are deemed to belong to that vessel length category and/or to Aboriginal groups.
 - (b) New temporary commercial vessel-based licences for fisheries using vessels in the less than 15.2m (50') length (LOA) category will be offered only to heads of core enterprises, who are deemed to belong to that vessel length category and/or to Aboriginal groups.
 - (c) New temporary commercial non vessel-based licences will be offered to fishers, who meet the eligibility criteria as outlined in the Management Plan for that specie.
- (3) The issuance of a temporary commercial licence to a person does not imply any further commitment by the Minister to issue a similar licence to the same person upon expiry of the temporary commercial licence.
- (4) A fisher who is issued a temporary commercial licence will be required to meet established participation requirements and other program requirements to be eligible to be issued a similar licence once that temporary commercial licence expires.
- (5) Holders of temporary commercial licences may be given priority to receive regular licences for the same fishery.

- (6) (a) For the issuance of new vessel-based temporary commercial licences for fisheries where vessels less than 19.8m (65') LOA are permitted, where the number of temporary commercial licences is limited and where there are more applicants than licences available, licence holders will be selected through a random draw among heads of core enterprises who meet criteria established in consultation with appropriate industry representatives.
- (b) For the issuance of new temporary commercial non vessel-based licences, where the number of new licences is limited and where there are more applicants than licences available, licence holders will be selected through a random draw among coastal fishers and core enterprises who meet criteria established in consultation with appropriate industry representatives.
- (7) For vessels 19.8m (65') LOA and over, eligibility criteria and applicant selection mechanisms will be developed on a case by case basis.

25. Vessel Repossession

- (1) Subject to subsection (2), licence(s) remain(s) with a licence holder when his vessel has been repossessed.
- (2) (a) On receipt of written notification from a Government Lending Authority (e.g., Provincial Loan board) of vessel repossession, all fishing licences issued in respect of the vessel involved will remain valid, but will not be amended.
- (b) The Licensing Authority will maintain the eligibility to the fishing licence(s) in the name of the present licence holder for a maximum period of 60 days. This period is intended to enable the licence holder to settle or renegotiate his loan.

- (c) Following the expiry of the 60-day period, and in the absence of notification of a settlement from the Government Lending Authority involved, the licence holder will lose his eligibility to renew the licence(s) held in respect of the vessel repossessed and the Licensing Authority will either:
 - (i) not reissue the licence(s) in question; or
 - (ii) issue a replacement licence(s) to eligible applicant(s).
 - (d) In the case of vessel repossessions involving enterprise allocation,
 - (i) licence holders with one vessel: any licence and enterprise allocations held will revert to the Licensing Authority for possible reallocation.
 - (ii) licence holders with more than one vessel: a portion of the licence holder's enterprise allocations equivalent to the average historical catch of the vessel repossessed will revert to the Licensing Authority for possible reallocation.
- (3) For the purpose of section 25, the expression "Government Lending Authority" includes a governmental authority which provides guarantees for loans granted by private institutions.

CHAPTER FOUR

POLICY FOR COMMERCIAL FISHING LICENCES (OTHER THAN COMMUNAL LICENCES) HELD BY ABORIGINAL ORGANIZATIONS

26. Licensing Policy for Aboriginal Organizations Holding Regular Commercial Fishing Licences

- (1) Aboriginal individuals qualify as new entrants.
- (2) Aboriginal Organizations qualify as members of the core group.
- (3) Subject to Section 18, subsection (10) and Section 19, nothing in this Policy, except residency requirements, precludes the issuance of replacement licences to an Aboriginal Organization.
- (4) Upon issuance of a replacement licence to an Aboriginal Organization and notwithstanding items (a), (b), and (c), that Organization is deemed a regular commercial fishing licence holder for the purpose of the replaced licence and all activities conducted under that licence must meet the requirements set out in this Policy.
 - (a) Upon issuance of a replacement licence to an Aboriginal Organization, the Organization can name an operator for that licence for the period for which the licence is valid. If during that period the operator is unable to fish for reasons as identified in Annex VII, a permit for a substitute operator will be issued as per Annex VII.
 - (b) An Aboriginal Organization holding a regular commercial fishing licence can have that licence converted into a communal commercial fishing licence but this is not reversible.

- (c) Replacement licences for regular commercial fishing licences held by an Aboriginal Organization can be issued:
 - (i) to core enterprises (vessel-based and non vessel-based licences) and to coastal fishers (non vessel-based licences only);
 - (ii) to qualified new entrants as long as a core status or a coastal fisher status (depending if the licences are vessel-based or non vessel-based) is attached to the replacement licences.

CHAPTER FIVE

EMERGING SPECIES POLICY

INTRODUCTION

Unfished or underutilized marine species exist off Canada's coasts. Shifts in world markets, declines in harvests of traditional species, maturing of existing markets and changing harvesting and processing technologies increase the likelihood that some of these resources could be successfully harvested in a sustainable manner. The number of requests received annually for scientific/exploratory licences for new fisheries demonstrate that there is an increasing interest in accessing these fisheries.

In light of this, the Emerging Fisheries Policy was developed in 1996 to clearly lay out the requirements that must be met and the procedures to follow before a new fishery can be initiated. A cornerstone of the new policy is provision for the establishment of a scientific base with which stock responses to new fishing pressures can be assessed. This new policy replaced DFO's "Policy on Underutilized Species" which was no longer adequate in the current environment. Not only does the Emerging Fisheries Policy provide applicants with a transparent process to follow, it also gives DFO managers a procedure that can be applied fairly and consistently. This policy is also precautionary in its approach to the development of new fisheries. The objective is to diversify fisheries and increase economic returns while ensuring conservation of the stocks and realizing the sustainable use of fisheries resources.

This policy applies to all new fisheries undertaken in marine or fresh water areas where the Department of Fisheries and Oceans' manages the fishery. Aboriginal people have the constitutional right to fish for food, social and ceremonial purposes. This right is second only to conservation.

In undertaking new fisheries, DFO will work with appropriate Boards or other bodies established under Land Claims Agreements. Where DFO is responsible for implementing obligations under Land Claims Agreements, this policy will be implemented in a manner consistent with those obligations. In the event this policy is inconsistent with obligations under Land Claims Agreements, the provisions of the Land Claims Agreements will prevail to the extent of the inconsistency.

Since DFO has a policy of promoting increased Aboriginal participation in the management of fisheries, especially through co-management agreements, as well as providing economic development opportunities in existing and new fisheries, applications by Aboriginal communities will be given special consideration.

Management of new fisheries requires an integrated approach that would blend science and business principles and effective involvement of government, industry and other parties to ensure fisheries are ecologically and economically sustainable. It requires decisions on roles and responsibilities with regard to management, enforcement and scientific components within each exploratory harvest plan

DFO continues to foster and develop emerging fisheries in co-operation with Provinces and Territories. *Provinces and Territories have an economic development mandate and, as such, have interest in the development of new fisheries that offer alternatives for the preservation and development of coastal regions and communities.* In this role, Provinces and Territories may provide assistance, financial and otherwise, to corporate and individual proponents throughout the development process. In addition, the licensing and inspection (other than for export) of fish processing facilities, including those involved with emerging fisheries initiatives, are Provincial/Territorial responsibilities.

This document is available to industry so they are aware of the Department's policy on new fisheries, the process by which they can apply for licences for new fisheries, and the obligations of all Parties.

VISION:

“Healthy and abundant fishery resources supporting sustainable uses.”

In achieving this the new fisheries policy will be guided by the following:

- New fisheries must provide for a reasonable scientific basis for their management. The process by which new fisheries will be managed must include the requirement for stock assessment information in the early stages. Proponents will bear responsibility to maximize collection of scientific information from catches and for co-operative work with DFO scientists who will be responsible for analyzing the data/information obtained.
- New fisheries should contribute positively to the economical viability of a fishery enterprise on an ongoing basis.

Under the proposed policy all requests from applicants must include proposals that outline research, management and conservation approaches as well as cost of these approaches.

GUIDING PRINCIPLES:

Conservation will not be compromised - a precautionary approach will guide decision- making. Information on the abundance, distribution, and productivity of the target species is identified as the key scientific requirement for development of precautionary management strategies.

The potential impact or interaction of any new fishery or gear on associated or dependent species, fishing or gear type and on habitat will be assessed.

Based on biological and environmental information, including input from industry, provinces/territories and the public, DFO will establish conservation standards, set conditions for harvest, and monitor their application.

Users are accountable for compliance with conservation standards for meeting harvesting conditions.

In allocating DFO's personnel and financial resources, priority will be given to the research, management and enforcement of established fisheries. Proponents should expect to *ensure the necessary funding to cover cost increases* associated with the development of the fishery. Where programs exist, DFO will identify sources of funding.

DFO Science is responsible for the analysis of data generated and provision of advice.

DFO will uphold Canada's sovereignty concerning the fishery resource.

Users, through partnership arrangements, will participate more in the management of the fishery.

Aboriginal peoples will be provided access to the resource consistent with the law and government's fiduciary responsibilities.

OPERATIONAL GUIDELINES

As a general rule, new fisheries involve three stages:

- i) **STAGE I: The preliminary feasibility stage.** (Scientific Licences) The objective of this stage is to determine if harvestable quantities of the species/stock known to be present in a particular fishing area exist, if the species/stock can be captured by a particular gear type, identify multi-

species and habitat impacts, if markets exist and, the best approach for proceeding further, e.g. to Stage II.

- ii) **STAGE II:** The commercial and stock assessment stage. (Exploratory Licences) The objective of this stage is to determine whether a species/stock can sustain a commercially viable operation and to collect biological data in order to build a preliminary database on stock abundance and distribution.
- iii) **STAGE III:** The commercial fishery stage. (Commercial Licences) This stage is reached once it has been determined that a species/stock can sustain (commercially and biologically) commercial fishing operation. A formal Integrated Fisheries Management Plan is introduced.

The above stages are often not as distinct as illustrated. In many cases it may be advantageous to combine stages I & II. In fact, it may be difficult from a practical perspective in some instances to separate them.

PROCEDURES

1 - THE APPLICATION PROCESS:

Principle: The process decided upon for a given species or stock be publicly released and adhered to.

A) **FOR NEW FISHERIES AT STAGE I - THE PRELIMINARY ASSESSMENT STAGE:** (Feasibility)

Applicants will submit proposals/applications that:

- 1) identify the target species/stock, fishing area and fishing method for which a licence is requested;
- 2) summarize current knowledge about the target species, and provide an indication of how other species and/or the environment might be affected by the proposed activity;
- 3) provide a detailed plan outlining proposed fishing activities, e.g. applicable inspection requirements (CFIA), harvest level by management area, harvesting method to be used, vessels to participate, start-up time, duration of harvesting activity, interactions with other fishing activities, etc.;
- 4) provide information of product use, e.g. product forms, on-board product forms, onshore production if any, likely market distribution, etc.;

- 5) provide proof of public notification/consultations which allows for industry/public review and input;
- 6) successful applicants must, in consultation with DFO, prepare a catch and effort record system. This information will be available to the public;
- 7) identify sources of funding.

NOTA: 1. Applications to access new fisheries (e.g., new species - Atlantic monkfish) for which existing licences have been issued (groundfish licence) and for which no new licences are being issued because they are fully subscribed or where overcapacity will not be considered.

NOTA: 2. All new fisheries for which Stage I activity has been completed and for which applications/proposals are being sought for additional licences for Stage II activities should be communicated publicly by DFO in a regional press release. The names of appropriate DFO contacts should be provided.

B) FOR NEW FISHERIES AT STAGE II - THE COMMERCIAL AND STOCK ASSESSMENT STAGE: (Exploratory)

- 8) an exploratory harvesting strategy for the new fishery, including number of licenses, access criteria, including, where applicable, regional/provincial distribution, catch monitoring and reporting strategy, by-catch limits, seasons, etc., will be developed by DFO or a Committee (whether DFO or a Committee the process should be consistent within a Region); and
- 9) in consultation with DFO Science, prepare a protocol to be used for the stock assessment component of the new fishery broken down as follows: data collection, data analysis, data recording and report preparation.

The following additional information will be required for applications involving new fisheries at the commercial and stock assessment stage (Stage II):

- 10) the proposed processing and marketing strategies, including product forms, plants to be used and market destinations.

Participation criteria should be set, a call for applications issued, applications reviewed and successful applicants licensed after a selection process (e.g., public

draw). In order for this to be effective, all relevant information collected in the technical evaluation or exploratory stage will be made available.

2 - THE APPLICATION REVIEW PROCESS:

Upon the receipt of applications for new fisheries, the Department is responsible for initiating a review of all applications for new fisheries as follows:

- 1) all applications/proposals will be reviewed to determine that they meet all the requirements set out in the call for applications;
- 2) subject to time constraints, incomplete or insufficiently detailed applications/proposals will either be returned with a request for further information or screened out;
- 3) once the review of all applications for a new fishery is complete, if the number of qualified applicants exceeds the number of licences, a selection process will take place; and
- 4) the names of successful applicants will be publicly released.

NOTA: 3. *Regions are expected to use a Review Committee, made up of governments (federal, provincial, territorial), industry and public members, for the review of the design phase of exploratory harvest plans, in developing application criteria and reviewing and evaluating the results of Stage I & II work. (Also see B-8 above)*

NOTA: 4. *Applicants should allow a minimum of two months prior to the planned start of fishing activities for the review of applications.*

NOTA: 5. *Proposals which may be of interest to fishermen from more than one region or DFO Management Area or for a species shared jointly by fishermen from more than one region (or DFO Management Area) must be reviewed inter-regionally. The region (Area) receiving the application is responsible for ensuring this review.*

3 - LICENSING PROCESS:

Once a decision on licensees for a new fishery is made, the Department will initiate new fisheries as follows:

- 1) licence conditions for the new fishery are established, including, fishing areas, season, gear restrictions, licensing period, gear-up deadline, by-catch limits, etc.;
- 2) the responsibilities of the licensee with regard to scientific, enforcement and/or management responsibilities and associated costs, as outlined in the exploratory harvesting plan, are included in a Memorandum of Agreement (MOA) or where appropriate as conditions of licence;
- 3) successful applicants are notified of their selection and advised that issuance of licences is subject to receipt of a signed MOA by the Department; and,
- 4) once signed MOAs are received by the Department, licences are issued to participants as follows: scientific or experimental licences for Stage I new fisheries and exploratory licences for Stage II new fisheries.
- 5) participation requirements will be introduced as a condition of exploratory licence issuance.
- 6) DFO will be responsible for analysis of information received from Stage 1 and 2 in a timely fashion so as to provide information base for assessing progression to further stages.
- 7) Scientific licence holders (Stage I) will be given priority for exploratory licences (Stage II).
- 8) Exploratory licence holders (Stage II) will be given priority for regular licences (Stage III).
- 9) Scientific/experimental or exploratory licences are not reissuable between individuals.
- 10) The names of successful applicants are released.

A) DEFINITIONS:

NEW FISHERIES:

Fisheries involving new species and/or stocks that are not utilized or not fully utilized, and not currently covered by a management plan.

**SCIENTIFIC/
EXPERIMENTAL LICENCE:**

Licence issued under Section 4 of the Fisheries Act or Section 52 of the Fishery General Regulations, the purpose of which is to determine the distribution and abundance of a fish resource as well as to determine if harvestable quantities exist, and if it can be caught.

EXPLORATORY LICENCE:

Licence issued under Section 7 of the Fisheries Act, for a stock we have some idea of the distribution and abundance, the purpose of which is to determine if the stock can sustain a commercially viable operation and to collect additional biological data.

COMMERCIAL LICENCE:

Licence issued under Section 7 of the Fisheries Act, the purpose of which is to allow the holder to generate an annual sustainable revenue.

CHAPTER SIX

VESSEL REPLACEMENT RULES FOR VESSELS LESS THAN 19.8M (65') LOA

33. Vessel Replacement Rules

- (1) The replacement of a vessel utilized in more than one fishery (e.g. groundfish and shrimp) will be governed by the most restrictive vessel replacement rules.
- (2) If a vessel less than 65' (19.8m) LOA in any fishery is replaced with one of a smaller size than the vessel being replaced, a licence holder will retain his eligibility to reenter in the future a vessel as large as the replaced vessel. The vessel attached to a licence held by an enterprise in 1992 will be used to identify the vessel category to which the enterprise belongs for the purpose of licence replacement and to establish the maximum length of the vessel that can be attached to that licence. If no vessel was attached to a licence in 1992, the last vessel attached to the licence prior to 1992 will be used.

A. *Groundfish*

Vessels less than 10.7m (35') LOA

- (3) The holder of a licence authorized to use a vessel less than 10.7m (35') LOA may not have his licence amended to authorize the use of any vessel 10.7m (35') LOA and greater and having a cubic number greater than 71m³ (2500ft³). (Grandfather clause provided) refer to Annex IV.

Vessels 10.7m (35') LOA up to but not including 19.8m (65') LOA

- (4) The holder of a licence authorized to use a vessel within a size class set out in the table below may not have his licence amended to authorize the use of any vessel:
- (a) greater than the upper length limit set out for that class; and
 - (b) with a cubic number that exceeds the cubic number of the vessel being replaced (Refer to Annex IV) (Grandfather clause provided - Refer to Section 35(2)).

VESSEL SIZE CLASSES

SIZE CLASS	LENGTH OVERALL		CUBIC NUMBER maximum
	Meters	(feet)	
A	10.7 – 13.7	(35 – 44.9)	170m ³ (6,004.4 ft ³)
B	13.7 – 19.79	(45 – 64.9)	600m ³ (21,192.0 ft ³)

B. All Species Other Than Groundfish

- (5) The holder of a licence authorized to use a vessel less than 13.7m (45') LOA may not have his licence amended to use a vessel 13.7m (45') LOA or longer.
- (6) The holder of a licence authorized to use a vessel between 13.7m (45') LOA and 15.1m (49.9') LOA may not have his licence amended to use a vessel 15.2m (50') LOA or longer.
- (7) The holder of a licence authorized to use a vessel between 15.2 m (50') LOA and 19.8m (64.9') LOA may not have his licence amended to use a vessel 19.8m (65') LOA or longer.

CHAPTER SEVEN

POLICIES FOR VESSELS 19.8M (65') LOA AND GREATER

34. Processing at Sea Policy

- (1) Licence holders are permitted to process at sea (filleting) only the following non-traditional groundfish species: silver hake, grenadier, argentine.

35. Factory Freezer Trawler Policy – Groundfish -1996-2000

- (1) A maximum of three groundfish factory freezer trawler (FFT) licences may be issued to selected East coast fishing companies.
- (2) One licence each is reserved for National Sea Products and Fishery Products International, while the third licence is reserved for a corporation or consortium from the remaining offshore groundfish corporations.
- (3) At least 50 per cent of a factory freezer trawler's catch must be made up of previously underutilized Enterprise Allocations as identified prior to the licence being issued.
- (4) No more than 6,000t of a corporation's 2J3KL (Northern) cod allocation can be harvested by a FFT in any one year.
- (5) FFTs will not be permitted to operate in the Gulf of St. Lawrence or the Bay of Fundy.

- (6) To operate a FFT, a corporation must retire a vessel from its present fleet in accordance with the existing vessel replacement guidelines under the Enterprise Allocation (EA) program.
- (7) A corporation must outline an acceptable plan to minimize the socio-economic/community impact.
- (8) All information associated with the operation of the FFTs must be made available to the Fisheries and Oceans Canada upon request.
- (9) FFTs must be registered immediately as Canadian vessels and crewed fully by Canadians.
- (10) Canadian Conversion Factors for the purpose of quota monitoring will apply. The provisional factors for cod, redfish, small flatfish and Greenland halibut to the round state are identified in STACAC Standards Documents.
- (11) FFTs should meet Fisheries & Oceans Canada plant certification and regulations subject to adjustments for processing at sea.
- (12) There will be 100 per cent observer coverage required and the cost will be paid by the licence holder. Provisions must be made on board for up to two observers, if required.
- (13) The Department will be charging a licence fee based on a company's individual Enterprise Allocations.

36. Vessel Replacement Rules

- (1) The holder of a groundfish or shrimp licence authorized to use a vessel 19.8m (65') LOA and over but less than 30.5m (100') LOA may not have his licence amended to authorize the use of a vessel:
 - (a) with a LOA greater than 105 percent of the LOA of the original vessel, up to a maximum of 30.5m (100') LOA; and
 - (b) with a hold capacity that exceeds 110 percent of the hold capacity of the original vessel.

- (2) Notwithstanding subsection (1) and subject to section (28), the holder of a groundfish licence participating in the Midshore EA Program may have his licence amended to authorize the use of only one vessel less than 30.5m (100') LOA per vessel authorized on the licence.
- (3) Subject to section (39), the holder of a groundfish licence authorized to use a vessel 30.5m (100') LOA and over may have his licence amended to authorize the use of only one vessel of any length per vessel authorized on the licence.
- (4) A wetfish vessel may be replaced by a freezer vessel.

37. Temporary Vessel Replacement Program

- (1) This program does not apply to vessels or licence holders based in 2J3KLPs.
- (2) The use of vessels less than 19.8m (65') LOA by midshore or offshore EA groundfish licence holders must be for a well-defined period of time. It is not the intent of this policy to permit vessels less than 19.8m (65') LOA to regularly switch between offshore, midshore and inshore sectors. A vessel less than 19.8m (65') LOA will be identified on a midshore or offshore EA groundfish licence for a minimum period of 2 months. The deadline for approving the use of a vessel less than 19.8m (65') LOA under the Program is October 25 of each calendar year.
- (3) A maximum of two vessels less than 19.8m (65') LOA will be permitted to replace one midshore or offshore vessel at any one time, subject to the following exception:

Midshore and offshore companies may replace one offshore or midshore vessel with more than two vessels less than 19.8m (65') LOA providing that the replacement vessels less than 19.8m (65') LOA are licensed for inshore groundfish in the name of the company.
- (4) If the replacement is a “one for one” replacement, then the less than 19.8m (65') LOA vessel would have access to the offshore or midshore competitive quotas.

- (5) If the replacement is “two for one” replacement, then the less than 19.8m (65') LOA vessels would not have access to the offshore or midshore competitive quotas.
- (6) Vessels less than 19.8m (65') LOA participating in the Program will be subject to the same specific licence condition or requirements as the midshore or offshore vessels being replaced, including the use of observers where required, participation into the dockside monitoring program, as well as conforming to all reporting and regulatory requirements.
- (7) While their vessels are fishing for a midshore or offshore EA groundfish licence holder, inshore fishers participating in the program must have these vessels removed from any inshore licence they hold.

CHAPTER EIGHT

SEAL LICENSING POLICY FOR EASTERN CANADA

This Seal Licensing Policy, made under the authority of the *Fisheries Act* and its Regulations, forms part of the Commercial Fisheries Licensing Policy for Eastern Canada and should be interpreted accordingly.

NOTE: In this policy, the expression "hunting for" has the same meaning as the expression "fishing for" as used in the *Marine Mammal Regulations*.

38. Application of the Policy

This policy applies to the registration of fishing vessels and the issuance of licences to all persons hunting (fishing) for, taking, or killing seals or otherwise engaging in sealing operations throughout the Canadian Fisheries Waters on the Atlantic Coast and, more specifically, the Sealing Areas 4 to 33 and the northern Quebec and Labrador portions of Sealing Area 3.

39. Interpretation

In this Policy, expressions have the same meanings as in the Commercial Fisheries Licensing Policy for Gulf Fisheries Management Policy or as defined below:

- (1) "Beneficiary" means a person enrolled as a beneficiary under the James Bay and Northern Quebec Agreement.

- (2) "Sealing" means, for the purpose of the present policy, the hunting (fishing) for, killing and skinning of seals, the handling and transporting of raw seal pelts, meat or carcasses from the place where they are killed to the land and the transporting of persons engaged in sealing to and from the killing area, and includes searching for seals from helicopters and other aircraft.
- (3) "Sealing Licence" means that licence which is issued in respect of hunting (fishing) for seals under the authority of the *Marine Mammal Regulations*.
- (4) "Subsistence" means for personal use or for community use as defined in chapter 24 of the James Bay and Northern Quebec Agreement.

40. Exemptions

- (1) An Indian or Inuk other than a Beneficiary may, without a licence, hunt (fish) for seals for food, social and ceremonial purpose.
- (2) A Beneficiary may, without a licence, hunt (fish) for seals for subsistence purposes within the area covered by the agreement under which he is enrolled.
- (3) A person other than a person referred to in subsection (1) or (2) above, residing immediately adjacent to any of Sealing Areas 1 to 4 may hunt (fish) for seals without a licence in those Sealing Areas for food, clothing and personal utilization purposes.

41. Type of Licence

- (1) Professional sealing licences are those licences issued to persons, who may engage in sealing on their own and who may supervise assistant sealers.
- (2) Assistant sealing licences are those licences issued to persons, who do not meet the eligibility criteria to receive professional sealing licences and who may not engage in sealing except under the supervision of a person who holds a professional sealing licence.

- (3) Personal-use sealing licences are those licences issued to authorize the taking of up to six seals a year for personal use only.

42. Eligibility

- (1) Professional sealing licences may only be issued to persons, who held a professional sealing licence during the previous year.
- (2) Assistant sealing licences may only be issued to persons, who are not eligible to receive a professional sealing licence and who are in possession of a written confirmation from a professional sealer to the effect that the assistant sealer will be hunting (fishing) under the supervision of this professional sealer during the following sealing season. After two years and successful completion of the above, the assistant sealer will be eligible for a professional sealer's licence.
- (3) Notwithstanding section 44(1), professional sealing licences may be issued to persons who meet the following conditions:
 - (a) Are 18 years of age or more; and
 - (b) Have been issued assistant sealing licences and have actively participated in the seal fishery during the two preceding years.
- (4) Notwithstanding sections 44(1) and 44(3), professional sealing licences may be issued to Beneficiaries, Indians or Inuit, who are recognized as commercial hunters by their community or their band. Regarding Beneficiaries, licences must be issued according to article 24.3.18 of the James Bay and Northern Quebec Agreement.
- (5) Licences may specify any one or more of the following conditions:
 - (a) the species and the stage of development of seals and quantities thereof that are permitted to be taken;
 - (b) the waters in which sealing is permitted to be carried out;
 - (c) the period during which sealing is permitted to be carried out;

- (d) the vessel that is permitted to be used;
 - (e) the person or persons permitted to operate the specified vessel;
 - (f) the type and quantity of sealing gear and equipment that is permitted to be used and the manner in which it is to be used;
 - (g) the specific location at which sealing gear is permitted to be set;
 - (h) whether seals taken are for personal use only and may not be sold, bartered or traded;
 - (i) whether seal carcasses are to be landed; and
 - (j) the information that shall be reported to the Fisheries and Oceans Canada.
- (6) The holder of a sealing licence may not be authorized to use a vessel 19.8m (65') LOA or longer.
- (7) Where a vessel is being used in sealing, all members of the vessel crew including the captain/operator must hold valid sealing licences and at least one member of the crew must hold a professional sealing licence.
- (8) Where a vessel longer than 10.7m (35') LOA is used, the vessel must be registered and specified as a condition on the professional sealing licence of a person who is on board the vessel during the sealing operations.
- (9) Personal-use sealing licences may be issued to:
- (a) individuals who held a personal-use sealing licence the previous year and who hold a valid provincial hunting licence for big game or a hunter's capability certificate; or
 - (b) individuals who held or were eligible to hold a professional or assistant sealing licence the previous year and who hold a valid provincial hunting licence for big game or a hunter's capability certificate; or
 - (c) individuals, 18 years of age or older, residing immediately adjacent to established sealing areas throughout

Newfoundland, the Quebec Upper and Lower North Shore, the Gaspé Peninsula and the Magdalen Island, who hold a valid provincial hunting licence for big game or a hunter's capability certificate and have attended a mandatory information session.

CHAPTER NINE

APPEAL PROCESS AND PROCEDURES

43. Non-Renewed Non Vessel-Based Licences

Area Directors or their delegates are authorized to renew a commercial non vessel-based licence, when a fisher has not renewed his licence for a period of two years or less, as a result of personal health reasons.

Commercial non vessel-based licences, which are not renewed for more than two years, require the approval of the Regional Director General based on documented personal health problems.

44. Access to Appeal Process

- (1) Persons who are not satisfied with decisions regarding licensing taken by Fisheries & Oceans Canada officials have the right of appeal. Only eligible inshore fishers, who file a written request within three years of a departmental licensing decision or a change in policy have access to the Fisheries Licence Appeal System.

45. Appeal System (Structure)

- (1) The Departmental Appeal Committee structure is described in Annex II.
- (2) The role of the *Regional Licensing Appeal Committee* is to review all pertinent information and recommend to the Regional Director General that an appellant's request be approved or denied.

- (3) Appellants will be notified in writing of the time and location of their appeal hearing.
- (4) An appellant has the right to appear in person and/or to be represented by another person at all appeal levels.
- (5) An appellant wishing to present information must do so five working days prior to the appeal hearing.
- (6) An appellant will be notified in writing as to the outcome of the appeal hearing.
- (7) If the decision of the Regional Director General is negative, the appellants will be informed of the details respecting how an appeal may be made to the Atlantic Fisheries Licence Appeal Board.
- (8) *The Atlantic Fisheries Licence Appeal Board* will only hear appeals requested by fishers, who have had their appeals rejected following hearings by Regional Licensing Appeal Committees:
 - (a) The Board will consider only those licensing appeals which deal with policies for vessels less than 19.8m (65') LOA.
 - (b) The Board will only hear appeal requests made within three years from the date of a licensing decision or a change in policy.
 - (c) The Board will make recommendations to the Minister on licensing appeals rejected through the Regional Licensing Appeal Structure by:
 - (i) determining if the appellant was treated fairly in accordance with the Department's licensing policies, practices and procedures;
 - (ii) determining if extenuating circumstances exist for deviation from established policies, practices, or procedures;

- (d) Where the Board recommends making an exception to policy, practice or procedure in an individual case, the Board will provide a full rationale for its recommendation to the Minister.
- (e) The Board may make recommendations to the Minister on changes to licensing practices and procedures where, in the opinion of the Board, they are inappropriate or unfair, by:
 - (i) the Chairman advising the Board Administrator of Board concerns;
 - (ii) addressing such concerns at full Board meetings;
 - (iii) providing a written rationale or justification supporting the recommended change;
 - (iv) providing a written assessment of the perceived implications of the proposed change.
- (9) Notwithstanding subsection (7), the Minister may refer to the Board any decision he may wish to have reviewed.

CHAPTER TEN

POLICY AMENDMENTS

46. Amendment Procedures.

- (1) Where the need to change a policy arises, the Regional Director General proposing the change will submit the proposal to the Assistant Deputy Minister, Fisheries Management, for review and approval.

47. Consultations

- (1) The Department recognizes the need to provide opportunities for public review and input in the development of licensing policies.
- (2) It is the policy of the Department to consult the fishing industry and provincial governments on major or controversial licensing issues and on the development of new policies and legislation with respect to licensing wherever possible.
- (3) The Minister may consider all views expressed in arriving at a decision, consistent with the government's stated objectives.

48. Notification of Licensing Policy Amendments

Every reasonable effort will be taken by the Department to inform members of the fishing industry of all changes to licensing policy, through press announcements, regional newsletters and through the existing consultative process, allowing sufficient lead-time for fishers to adjust to the new policy.

ANNEX I

FISHERIES DEEMED EITHER VESSEL-BASED OR NON VESSEL-BASED

A. Vessel-based fisheries

Billfish	Salmon/Char
Capelin	Scallop
Clams (mechanical gear on vessels over 45')	Sea Cucumber
Crab	Sea Urchin
Groundfish	Shark
Hagfish	Shrimp
Herring	Squid
Herring Weir	Swordfish
Lobster	Tuna
Mackerel	Whelk

B. Non vessel-based fisheries

Alewives/Gaspereau
 Clam (Hand tools and mechanical gears - vessel less than 13.7m (45') LOA)
 Eel
 Marine Plants
 Mussels
 Oysters
 Periwinkle(Hand picking and traps)
 Shad
 Silverside
 Smelt
 Striped bass

Any species not listed above are deemed non vessel-based fisheries.

ANNEX II

NEW REGULAR LICENCES

1. **Mussels:** Licences to fish by hand or with hand held tools are available to coastal or core fishers.
2. **Squid:** Open access to fishers using vessels under 19.8m (<65')LOA, except for trap licences, providing applicant is head of a core enterprise and is licensed for the same gear type e.g. groundfish otter trawl may be licensed for squid otter trawl. Jigging licences available for any head of a core enterprise. Licences are available for all groundfish licence holders operating vessels less than 19.8m (65') LOA.
3. **Mackerel:** Limited entry except for fixed gear gill nets licences which may be issued to any head of core enterprises who holds a herring fixed gear gill nets licence for a vessel less than 15.2m (50') LOA and handline licences which may be issued to the head of a core enterprise.
4. **Seal:** Licences issued as per chapter VIII of this document.

ANNEX III

APPEAL COMMITTEE STRUCTURE

FIRST LEVEL

REGION

(1) Committee Composition

Senior DFO Staff

(2) Reports to:

Regional Director General

SECOND LEVEL APPEAL BOARD

ATLANTIC FISHERIES LICENCE

(1) Committee Composition

1 Chairperson and up to six persons from each of the 4 Regions appointed by the Minister
1 Departmental Officer
(non-voting)

(2) Reports to:

Minister of Fisheries and Oceans Canada

ANNEX IV

EQUIVALENT CUBIC NUMBER

LENGTH		CUBIC NUMBER		MAXIMUM CUBIC NO.	
METERS	FEET	CU. METERS.	CU. FEET	CU. METERS	CU. FEET
6.1	20	71			
6.4	21	71			
6.7	22	71			
7.0	23	71			
7.3	24	71			
7.6	25	71			
7.9	26	71			
8.1	27	71			
8.5	28	71			
8.8	29	71			
9.1	30	71			
9.4	31	71			
9.8	32	71			
10.0	33	71			
10.4	34	71			
10.7	35	71	2,500	71	2,500
11.0	36	73	2,578		
11.3	37	76	2,684		
11.6	38	79	2,790		
11.9	39	83	2,931		
12.2	40	87	3,072		
12.5	41	92	3,249		
12.8	42	97	3,426		
13.1	43	102	3,602		
13.4	44	108	3,814		
13.7	45	114	4,026	170	6,004
14.0	46	122	4,309		
14.3	47	132	4,662		
14.6	48	141	4,980		
14.9	49	150	5,298		
15.2	50	161	5,686		
15.5	51	171	6,040		
15.8	52	182	6,428		
16.1	53	194	6,852		
16.5	54	205	7,241		
16.8	55	218	7,700	330	11,655
17.1	56	232	8,194		
17.4	57	245	8,653		
17.7	58	260	9,183		
18.0	59	280	9,890		
18.3	60	300	10,596		
18.6	61	325	11,479		
18.9	62	350	12,362		
19.2	63	370	13,068		
19.5	64	400	14,128		
19.8	65	425	15,011	600	21,192

ANNEX V

REVISION: April 1998

**LIST OF INSHORE LICENCES HELD BY CORPORATIONS SINCE 1978/
LISTE DES PERMIS CÔTIERS DÉTENUS PAR DES COMPAGNIES DEPUIS
1978**

**GULF REGION /
RÉGION DE GESTION DES PÊCHES DU GOLFE**

SPECIES/ESPÈCE	COMPANY/ COMPAGNIE	VESSEL/BATEAU NAME/NOM	LOA/ LHT
Groundfish, snow crab/ Poisson de fond, crabe des neiges	Produits Belle-Baie Ltée	WINDJAMMER	59'
Groundfish, snow crab/ Poisson de fond, crabe des neiges	Pêcheries Jimmy L. Ltée	JIMMY L II	64'

ANNEX VI

CORE NEW ENTRANT CRITERIA

A. For fisheries using vessels less than 15.2m (50') LOA

The criteria to qualify as a new entrant is a person who meets the following three conditions:

- (i) registered as a fisher for each of the last two years;
- (ii) recognized as a commercial fisher within his community;
and
- (iii) fished during the preceding two years a minimum of (ten) 10 weeks each year (this includes contaminated fisheries and the current calendar year can be considered as one of the preceding year provided the fisher has 10 weeks of fishing time).

One (1) fishing week consists of:

**one (1) fishing week for lobster or,
forty (40) hrs. of commercial fishing activities for
any species other than lobster per week or,
four (4) days of commercial fishing activities per
week starting on Sunday and concluding
Saturday**

**B. For fisheries using vessels over 15.2m (50') to less than 19.8m (65')
LOA**

A new entrant is a person who has fished commercially for at least two years out of the last five years, and is recognized as a commercial fisher in his community.

COASTAL ENTERPRISES NEW ENTRANT CRITERIA

The new entrant criteria for the coastal enterprises are:

- I. For the Administrative Areas of Prince Edward Island and Nova Scotia, a new entrant must hold a valid fisher's registration certificate for the current year.
- II. For the Administrative Area of New Brunswick, a new entrant must meet the following criteria:
 - (a) registered as a fisher for the last two years;
 - (b) recognized as a commercial fisher within his/her community; and
 - (c) fished during the preceding two years a minimum of five weeks each year.

ANNEX VII

PERMIT FOR A SUBSTITUTE OPERATOR

The following guidelines are provided as reference for various circumstances where such permits are issued:

Medical Grounds:

For the duration of the period as recommended by the fisher's physician but not longer than two months with support (in writing) of medical documentation. (Approval by LSC).

If the holder of a licence is affected by illness which prevents him from fishing, he may be permitted to designate a substitute operator up to the term of the licence, which designation may be for a period not exceeding a cumulative total of a five year period, upon request and upon provision of acceptable medical documentation to support his request. (Approval by the Area Director). The person nominated by a licence holder to be issued with the substitute operator's permit must be a resident "a person who has continuously had his main place of residence in a defined area for a period of not less than six months immediately preceding the time that residence becomes material for the purpose of licensing" of the same Fisheries & Oceans Canada Administrative Area as the licence holder.

Bereavement (Death in Immediate Family)

Up to (4) four consecutive days, the last of which does not extend beyond the day following the day of the funeral.

- Immediate Family is defined as father, mother (or alternatively stepfather, stepmother, or foster parent), brother, sister, spouse (including common-law spouse resident with the fisher), child (including child of common-law spouse), stepchild or ward of the fisher, father-in-law, mother-in-law, and relative permanently residing in the fisher's household or with whom the fisher permanently resides.
- One (1) day for the purpose related to the death of the fisher's grandparent, grandchild, son-in-law, daughter-in-law, brother-in-law or sister-in law.

Requested by Fisheries & Oceans Canada to participate in consultation meeting

Sufficient time to travel and attend the specific meeting in question.

Court

To be available for jury selection; to serve on a jury by subpoena or summons to attend as a witness.

Other circumstances

Up to a maximum of (5) five days per year. (Approved by LSC)

- Education Purposes

- Writing of exams during fishing season from an accredited provincial educational institute;
- Graduation of self or an immediate family member.

- Family Related Responsibilities

- Medical or dental appointment when the dependent family member is incapable of attending the appointments by himself or herself.
- Up to (2) two consecutive days to provide for the temporary care of a sick member of the fisher's family.
- (1) one day for needs directly related to the birth or to the adoption of the fisher's child.

- Marriage

- To attend a wedding in immediate family (a maximum of one day)

IN CASES OF HARDSHIP WHICH DO NOT FIT THE ABOVE CIRCUMSTANCES, THE AREA DIRECTOR MAY APPROVE PROVIDING SUCH APPROVAL IS CONSISTENT WITH SUBSECTION 23(2) OF THE FISHERY (GENERAL) REGULATIONS.