

Procedure for Oral Hearings concerning Licence Sanctions under the British Columbia *Fisheries Act* (sections 18 & 19)

All proceedings under sections 18 or 19 of the British Columbia *Fisheries Act* must follow the rules of administrative fairness. Most importantly, the licensee or applicant (the "Licensee") must be told of the case against them and given the opportunity to respond to it.

Even though section 18 of the British Columbia *Fisheries Act* only requires a hearing if the licensee requests one and section 19 is silent about hearings, the better approach in all cases in which licence privileges are in jeopardy under section 18 or section 19 is to proceed by way of hearing, with notice to the Licensee.

If a Fisheries Inspector or Aquaculture Inspector believes a licence suspension or revocation under section 18 of the British Columbia *Fisheries Act* may be warranted, they should provide a copy of an investigation report to the Chief Inspector and the Manager, Licensing and Compliance Branch (the "Manager").

If a Fisheries Inspector or Aquaculture Inspector believes the past conduct of a person or company warrants refusal of licence renewal under section 19 of the British Columbia *Fisheries Act*, they should consult with the Chief Inspector and the Manager.

In either case, if the Manager believes that the allegations can be proven on a balance of probabilities, the Manager should refer the matter to the Minister or Deputy Minister as the Decision-maker. The Manager should specify what action the Manager wishes the Decision-Maker to take and provide the Decision-maker with allegations (the less detail the better) sufficient to persuade the Decision-maker to convene a hearing.

If the Decision-maker does not elect to convene a hearing, the Manager should consider any other actions available in the circumstances.

If the Decision-maker elects to proceed by way of oral hearing in determining whether to suspend, revoke, or refuse to reissue a licence under the British Columbia *Fisheries Act*, the following procedure applies:

1. The Decision-maker should give written notice of the hearing to the subject Licensee and send a copy of that notice to the person who will present the case (the "Presenter") for the provincial government (the "Government") and against the Licensee at the hearing. The Decision-maker should ensure that the Licensee receives the notice at least 45 days in advance of the proposed hearing date. The notice should contain the following:

- 1.1. notice of the Decision-maker's intent to conduct a hearing on a specified date to determine whether to suspend, revoke, or refuse to reissue, as applicable, the Licensee's identified licence. The notice should make it clear that the hearing may proceed even if the Licensee does not attend.
- 1.2. the allegations made by the Presenter against the Licensee.
- 1.3. a reminder that at the hearing the Licensee may be represented by counsel.
- 1.4. the name, address, telephone number and fax number of the Presenter and a request to the Presenter, by copy of the notice, to supply the Licensee with details of the allegations.
- 1.5. a copy of the British Columbia *Fisheries Act* and these procedures.
2. The Decision-maker may set a new hearing date on receipt of a reasonable request for adjournment or if the Decision-maker during the course of a hearing requires additional information.
3. The Manager should arrange for a Presenter to make the case for the Government. This may be a lawyer, Fisheries Inspector, Aquaculture Inspector, or other official from the Government.
4. The Presenter should disclose all relevant documents to the Licensee at least 20 days before the hearing. "Documents" include correspondence, compliance inspection reports, articles, photographs, maps, charts and any other materials such as legislation, policies, or case law that the Presenter plans to present, refer to, or rely on at the hearing.
5. The Presenter should disclose to the Licensee at the same time as all relevant documents a list of witnesses to be called by the Presenter at the hearing.
6. The Presenter should provide three copies of all relevant documents at the time and place of the hearing so that there is one copy available to be entered as a formal exhibit, one copy for the Decision-maker, and one copy for the Licensee.
7. The Decision-maker should arrange to hold a hearing in a community or place most convenient to the Presenter and the Licensee and in a room of sufficient size and in such a way that:
 - 7.1. the Decision-maker is seated at a table facing both participants.
 - 7.2. the Presenter is seated at a table facing the Decision-maker.
 - 7.3. the Licensee is seated at a table facing the Decision-maker.

- 7.4. there is a table with seating for any witnesses.
- 7.5. there is seating in the room for a reasonable number of other interested persons, unless the Decision-maker exercises his or her discretion to conduct a closed hearing.
8. The Decision-maker should arrange for the following:
 - 8.1. the means to create a permanent audio recording of the hearing.
 - 8.2. counsel for the Decision-maker, if the Decision-maker wishes.
9. The Decision-maker should commence the hearing as follows:
 - 9.1. declare that the hearing has started.
 - 9.2. introduce himself or herself and his or her counsel, if applicable.
 - 9.3. ask the Presenter and the Licensee or person representing the Licensee to introduce themselves.
 - 9.4. ask that all statements be made to the Decision-maker (unless a participant is asking questions of a witness), with only one person speaking at a time.
 - 9.5. ask the Presenter and the Licensee in turn to specify the order they are seeking, the names of their witnesses and to estimate how long their case will take.
10. The Decision-maker should then consider advising the participants of the following, as applicable:
 - 10.1. the statutory authority for the Decision-maker to hold the hearing.
 - 10.2. the swearing or affirming of witnesses is required.
 - 10.3. the participants are free to call witnesses or enter documents, subject to rulings on their relevance.
 - 10.4. all documents, if entered, will be recorded with individual exhibit numbers.
 - 10.5. the Presenter will be called upon first.
 - 10.6. once the case for the Government is complete, the Licensee or Licensee's representative will be heard.
 - 10.7. at the conclusion of the direct examination of each witness, the other participant may cross-examine that witness.

- 10.8. the Decision-maker may also question a witness at any time, but should wait until after cross-examination is finished in most cases.
- 10.9. on the request of a participant or on the Decision-maker's initiative, a witness may be requested to wait outside the hearing room prior to giving his or her evidence.
- 10.10. except with leave of the Decision-maker, once a participant's case is made there will be no other opportunity to call evidence.
- 10.11. except with leave of the Decision-maker, once a witness has stood down there will be no further opportunity to question that witness.
- 10.12. after presenting evidence, the Presenter will be first to make argument, followed by the Licensee.
11. The Decision-maker should then hear the case. The following procedural sequence should be followed:
 - 11.1. Government's case
 - 11.1.1. opening remarks, if any.
 - 11.1.2. witnesses:
 - 11.1.2.1. swear or affirm to tell the truth.
 - 11.1.2.2. examination by Presenter.
 - 11.1.2.3. cross-examination by Licensee or representative.
 - 11.1.2.4. any final questions from the Decision-maker.
 - 11.1.2.5. re-examination by Presenter, if applicable (only on points arising out of cross-examination or from Decision-maker's questions).
 - 11.2. Licensee's case
 - 11.2.1. opening remarks, if any.
 - 11.2.2. witnesses:
 - 11.2.2.1. swear or affirm to tell the truth.
 - 11.2.2.2. examination by the Licensee or representative.
 - 11.2.2.3. cross-examination by the Presenter.

11.2.2.4. any final questions from the Decision-maker.

11.2.2.5. re-examination by the Licensee or representative, if applicable (only on points arising out of cross-examination or from the Decision-maker's questions).

11.3. Government's argument.

11.4. Licensee's argument.

12. The Decision-maker is not bound to follow the rules of evidence used in courts.
13. The Decision-maker is not bound by his or her previous decisions or the decisions of other administrative agencies. Each case should be decided on its own merits.
14. Hearings will normally be open to the public. The Decision-maker may, however, exercise his or her discretion to conduct a closed hearing if he or she considers it appropriate.
15. When the hearing is concluded, the Decision-maker may announce his or her decision immediately or may reserve.
16. The Decision-maker should provide the participants with written reasons for his or her decision. The Decision-maker is encouraged to do this in a timely way.
17. If a Licensee does not appear at a hearing, but service of the notice of hearing is established, the Decision-maker may hold the hearing in the Licensee's absence.

Approved by:



**Gordon Macatee
Deputy Minister
Ministry of Agriculture, Food and Fisheries**

Date:

Oct 2 / 2002