



Fisheries and Oceans
Canada

“WHAT WE HEARD”

Preserving the Independence of the Inshore Fleet on Canada’s Atlantic Coast

Summaries of Public Consultations conducted
by the Atlantic Fisheries Policy Review in
January 2004

Canada

**ATLANTIC FISHERIES POLICY REVIEW PUBLIC CONSULTATIONS on
Preserving the Independence of the Inshore Fleet**

January 2004

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THE ATLANTIC FISHERIES POLICY REVIEW

WHAT WE HEARD on Preserving the Independence of the Inshore Fleet Public Consultations in January 2004

Foreword

This report is a summary of the comments heard at the seven public meetings on preserving the independence of the inshore fleet on Canada’s Atlantic coast held in Atlantic Canada, Quebec and Nunavut in January 2004. Consultations were based on the document “*Preserving the Independence of the Inshore Fleet on Canada’s Atlantic Coast – A Discussion Document*” which was broadly distributed. The purpose of the consultations was to examine the effectiveness of the fleet separation policy with respect to its underlying objectives and to explore other approaches to foster the independence and economic viability of fleets covered by the owner-operator and fleet separation policies.

The summaries herein contain the opinions expressed by those who attended the meetings and do not necessarily reflect the views of the Department of Fisheries and Oceans. We have tried to include all points of view expressed as part of the discussions and the major issues or themes raised in the meetings.

Additional copies of this document and more information about the Atlantic Fisheries Policy Review may be obtained through our web site at www.dfo-mpo.gc.ca/afpr-rppa or by calling our toll free number 1-866-233-6676.

The Atlantic Fisheries Policy Review (AFPR) was established by Fisheries and Oceans Canada to develop a consistent and cohesive policy framework for the management of Canada’s East Coast fish stocks. The work of the AFPR is being done in two phases: Phase I is the completion and release of a comprehensive policy framework; Phase II will establish priorities and begin the practical implementation of the policy framework. The release of the discussion document on preserving the independence of the inshore fleet is an acceleration of a small portion of Phase II of the AFPR.

AFPR Vision and Objectives

The vision for the Atlantic fisheries is of a biologically sustainable resource supporting fisheries that:

- are robust, diverse and self-reliant,
- effectively involve all interests in appropriate fisheries management processes,

- are sustainable and economically viable, contributing to the economic base of coastal communities, and
- provide for the constitutional protection afforded Aboriginal and treaty rights and where Aboriginal and non-Aboriginal resource users work collaboratively.

To make the vision for the Atlantic fisheries a reality, there are two core objectives: conservation and sustainable use (of resources and habitats) and self reliance (for resource users). Two supporting objectives, which are essential to achieve the core objectives are shared stewardship (empowering and engaging participants in fisheries management decision- and policy-making processes) and a stable and transparent access and allocation approach (resource users need the assurance that they will be the primary beneficiaries of their efforts to conserve the resource).

Preserving the Independence of the Inshore Fleet

During the AFPR consultation process it became clear that industry views regarding the owner-operator and fleet separation policies were highly polarized. The inshore fleets expressed widespread concerns that the fleet separation policy is being undermined by “trust agreements” and asked that Fisheries and Oceans Canada close so-called “loopholes” in the policy that allow this to happen

The purpose of the public consultations held in January 2004 was to receive comments and feedback about preserving the independence of the inshore fleet on Canada’s Atlantic coast. The department committed to preserve the independence of the inshore fleet and a discussion document “*Preserving the Independence of the Inshore Fleet on Canada’s Atlantic Coast*” was prepared and released by DFO. The document made this commitment clear, and provided a focus for stakeholder input on how to deal with so called “trust agreements” and the application of the owner-operator and fleet separation policies.

The document was released in early December 2003, and distributed to stakeholder groups and others who had indicated an interest in the Atlantic Fisheries Policy Review process.

The public consultation sessions were open to all and were well attended. The same format was followed at each meeting. The meeting began with a brief discussion about the purpose of the meeting and the agenda for the consultation. This was followed by a short presentation which summarized the discussion document (see Appendix A). Registered speakers who indicated they would like to make formal presentations were next to speak (a list of these presentations can be found at Appendix B). Finally, a round table discussion on the key themes in the document (dealing with “trust agreements” and the owner-operator and fleet separation policies) was held, followed by a brief discussion on next steps including how to provide additional input.

We indicated that written summaries of the public consultation sessions would be provided to those who attended the meeting and who had signed our registration sheet. This report honours that commitment. The summaries are listed chronologically, beginning with the first session in Port Hawkesbury on January 13 and ending with the session in Iqaluit on January 29, 2004. The summaries are divided into three parts. First, an overall summary of the public meeting; second, a more detailed summary of the formal presentations; and third, a more detailed summary of the comments during the round table discussion.

In addition to holding public consultation sessions, we invited groups and individuals to submit written comments on the discussion document (with a deadline of February 29, 2004). An alphabetical listing of those who submitted written comments can be found at Appendix C.

Fisheries and Oceans Canada
March 2004

Preserving the Independence of the Inshore Fleet in Canada’s Atlantic Fisheries

Public Consultations - Port Hawkesbury, NS - January 13, 2004

Draft Summary

Overall Summary of the Session

- The issue of trust agreements is a complicated one and participants urged caution as DFO tries to solve the problem.
- There are strong links between trust agreements and intergenerational transfers of licences – many points were raised with respect to sources of funding; most participants supported some types of agreements as long as they didn’t separate legal title and beneficial use of the licence. Of major concern are issues with respect to young fishers buying into the fishery.
- Many issues were raised with respect to comparative tax treatment with other industries and there were calls for DFO to work more closely with CCRA to find solutions.
- Some other options proposed to deal with problems included property rights, issuing licences to inshore fishermen’s corporations and re-issuing licences to new entrants
- Owner-operator and fleet separation policies – support for *status quo* with some requests for flexibility on owner-operator to deal with designated operators.

Summary of formal written presentations¹

- An appreciation that DFO does endorse “the importance of maintaining an independent and economically viable inshore fleet” and encouragement for the Minister to use his absolute discretion to ensure that the licence holder is the only entity that holds the legal title and the beneficial interest in the licence.
- There is no need to complicate these policies with levels of flexibility; either the two policies get strengthened or they are lost. Losing these policies will do undue harm to the resource and the coastal communities.
- The lack of the owner-operator policy in BC has resulted in fishers having to lease quota from companies and work hard with little reward – rather like feudal system of long ago where properties were owned by lords and run by tenant farmers – we would like to think we are beyond that.
- The resource belongs to the people of Canada – conservation and sustainable use are of paramount importance - who better to grant the privilege to fish than those adjacent to it and who have an interest to care for it for future generations.
- Corporations in the fishing and fish processing industries already control the marketing of what is harvested; their responsibility is to shareholders who do not all live in coastal communities, and their main incentive is profit, not conservation.
- An owner-operator of a fishing enterprise is responsible for the way he fishes, the way he runs his business and provides for his family.
- Economically, it makes sense for licences to benefit the owner-operator; he/she can plan their fishing better, are not burdened by paying large shares, or lease fees, to

¹ A list of presenters can be found on page 77

someone who is not out there fishing. This translates into making the communities more viable, and the inshore fleets retain some level of independence.

- Because the operators of the licences have more responsibility for establishing rules, they are easier to follow; they have more responsibility to follow them and more incentive to conserve. The lobster fishery is an example of this – the most stable of all fisheries and the largest owner-operator fishery where fishermen invest in lobster licences for the long term. Peer pressure helps to enforce the rules; often more effectively and less costly than DFO can.
- Based on past experience, if the processing sector had more control, the fishery would likely become more over-capitalized, less sustainable and offer less to coastal communities.
- Too many times in the past DFO has attempted to rationalize the fishery, with goals of economic viability, and greater flexibility but these attempts have had the opposite effect. Offshore licences were given to large corporations which resulted in over-capitalization of fishing fleets, which were not sustainable. There was over-fishing, TAGS payments; meanwhile the multi-species inshore fleet went on to pursue other fisheries, even after suffering because of over-fishing by the larger fleets.
- Inshore fishers are getting the message that DFO would like to privatize the resource in hands of a few large corporations.
- In the same discussion document which endorses the need to strengthen the owner-operator and fleet separation policies, there is a list of questions asking how to allow for more flexibility – which would simply weaken rather than strengthen these policies. Are these consultations actually looking for ways to undermine the commitment to preserve inshore fleet?
- The owner-operator and fleet separation policies have served the public well for many years and one would hope that DFO is sincere in its intent to preserve these two policies.
- This is not a complicated issue calling for complicated solutions – just plug the loopholes that allow for trust agreements and strengthen the regulations to abolish such practice in the future.

- The fundamentals are clear – viability, self-reliance and prevention of undue concentration of licences. However, the discussion document does not provide definitions of ‘viable’ and ‘self-reliance’.
- Concern is with succession planning, particularly the inability of prospective new entrants to enter the fishery by accessing capital through conventional means.
- Under the current Income Tax Act, a fisher can’t give his/her licence to children or someone else because they will be taxed based on a deemed evaluation at fair market value upon disposition of the licence. This is based on the principle that an asset cannot be undervalued in order to avoid legitimate taxation.
- Both enterprise and licence costs have escalated since the inception of limited entry licensing. Drivers include: inflation in the economy generally, improved economic performance of the lobster fishery, the use of more costly and elaborate vessels, DFO’s entry into the licence market to allow for Aboriginal participation in the fishery, and there are more buyers than sellers.
- The inability of new entrants to access the capital necessary to enter the fishery is in large measure the cause of consolidation of enterprises into the hands of fishing companies or individuals holding more than one licence.
- Banks will not extend financing due to the common property nature of the licence. Consequently, new entrants are entering into contractual arrangements with fishing companies (or others) as the next best option to not being in the fishery.

- A trust agreement, a discretionary trust (or a family trust) between the buyer and the seller is one of the few means for new entrants to obtain the funding necessary to enter the fishery.
- But, DFO should be careful – it is not reasonable or fair to make exceptions for families – all this does is punish the celibate.
- The discussion document goes to some length about trust agreements. The Courts have been clear in numerous cases that trust arrangements are legal and binding instruments in fisheries disputes. This is true in spite of the fact that DFO does not recognize trust agreements and that such arrangements may violate the owner-operator provisions and/or other regulations or policies of DFO and the Fisheries Act and Regulations.
- There is considerable debate around the desirability of the use of trusts to circumvent fisheries policy and it is likely DFO will be impotent with respect to doing something about this. The *Fisheries Act* is very clearly a federal responsibility, while the regulation of business is typically a provincial responsibility.
- There is certainly abuse in the use of trust agreements; but we must be careful that we understand the upside to use of such agreements as an instrument of generating financing for young people. By use of a trust, creating a corporation and divesting preferred shares over time, you can effectively create a mortgage for children or for whomever you sell to. Anything that DFO does should be thought through carefully, to avoid “throwing out the baby with the bath water”.
- The creation of such trust agreements may be perhaps the best mechanism currently available to support intergenerational succession and ought to be allowed to continue unless the Government of Canada is prepared to make a quantum leap with respect to changing the nature of the fishing licence.
- The alternative is to develop a statutory fishing right or property right in the fishery which is assignable to lenders. This would go a long way to levelling the playing field for new entrants.
- Some have argued that creating a property right will mean that licences will end up in the hands of corporations. But right now that is happening, to a greater or lesser degree in different areas, without such a property right. And, it is not just corporations that hold more than one fishing licence – the incidences of fishers owning more than one licence is increasing.
- As DFO moves towards intertwining legal title and beneficial use, they must recognize that this is heading towards a property right system.

- Atlantic Canada’s small boat fishery has been built on the foundation of the family structure. The small boat fishery has been and remains the social and economic backbone of Nova Scotia’s coastal communities. There is an historical family bond within the structure of the inshore fishery.
- Over the past decade, the inshore fishery has changed; the owner-operator policy is but one that raises concern over how our fishery is being managed. Organizations and fish harvesters are realizing that management of the inshore fishery has resulted in more downloading on fish harvesters.
- The questions raised for discussion portray an uncertain future that could cause a change in the way fish harvesters are being recruited into the small boat fishery. The owner-operator policy must be strengthened to reflect that the small boat fishery is controlled by owner-operators.
- DFO must take immediate steps to enact a regulatory solution to the problem of trust agreements by incorporating the owner-operator and fleet separation policies into the General Regulations of the Fisheries Act.

- In particular, the regulations should include provisions to ensure that the legal title and beneficial interest associated with the licence are inseparable. The regulation should also state that if licence transfers occur in the context of financing transactions between fishers and corporate interests, control over the beneficial interest of the licence will remain with the licence holder.
- In addition to regulatory change, DFO should examine administrative measures such as licence conditions to prohibit the use of trust agreements designed to undermine the owner-operator and fleet separation policies. But before adopting such administrative measures, there should be consultations with fish harvester organizations. DFO should only proceed with administrative changes if, following the consultations, broad consensus emerges in support of the proposed measures.
- Elimination of loopholes in both policies is not sufficient to enhance independence and economic viability of inshore fleets. Access to finance and fair fiscal treatment for the owner-operator fleets are critical to enhance their independence and economic viability and are essential for smooth intergenerational transfers of fishing assets.
- Under phase II of the AFPR, DFO should develop a series of measures that the federal government could enact to provide fish harvesters with more equitable tax treatment. Owner-operator fishing enterprises are small businesses in nature and should have same treatment as other small business corporations or family farm operations, i.e. allow the estate to transfer property (in this case, the licence) to a child at a value between costs and fair market value and to allow harvesters the \$500k capital gains tax exemption.
- DFO should examine issuance of licences to corporations wholly owned by professional fish harvesters that qualify for core status. Suggested assessment criteria are if such issuance would improve the fiscal situation of the harvesters without weakening the owner-operator or fleet separation policies. Particular attention should be paid to the possibility of new measures that could be enacted to recognize professional corporations.
- Before introducing any changes, DFO must consult extensively and proceed only when broad consensus for change exists
- DFO should also propose new measures to allow owner-operator fish harvesters to obtain financing from lending institutions or provincial loan boards to lessen dependence on financing from processing companies
- Any adaptation of the owner-operator policy must be constrained by the need to respect its underlying objectives – preserving and fostering a diversified sector of multi-species inshore enterprises headed by independent professional fish harvesters. In no way should any adaptation undermine or weaken the owner-operator policy.
- All must continue to demonstrate our commitment to the independence of the inshore fleet and the coastal communities. The Bonafide policy was introduced in 1982, written by fishermen for fishermen and continues to be the guiding principle for all fish harvesters in the Gulf Region.
- Before all else harvesters must ensure that their enterprise is or could be their children’s future.
- A number of documents were reviewed, and the single, most fundamental observation drawn from the review is that the documentation fails to define the problem clearly enough to effectively comment on what approach DFO should take to deal with it.

- Because the problem has not been clearly defined, if DFO rushes prematurely to put a solution in place it is likely the solution will not protect the independence of the inshore fleet.
- The discussion document, in numerous places, says there is “widespread concern that the fleet separation policy is being undermined by so-called trust agreements”. When you go back to the notes from the 2001 public consultations in Nova Scotia, the issue does surface at most of the meetings held. It is not the only issue raised at all meetings, but there is nothing that explains how trust agreements undermine the owner-operator and fleet separation policies.
- We do understand on one level what the concern is – some measure of control over these licences is being exerted by someone other than the fisherman in whose name the licence is issued. What we do not understand is exactly why this is a problem - what negative impacts it is having on fisheries management, on the viability and self reliance on the individual fisherman, and on coastal communities, etc.
- It is impossible to know the most effective solution for dealing with trust agreements when the problem is not well defined – this is a recipe for a regulation that will have questionable benefit for the fishery and possibly negative or at least unintended and unanticipated repercussions for fishermen.
- The Minister talked about the need to preserve the inshore fleet, to strengthen the viability of inshore fleets and the importance of a vibrant small business community of inshore fleets and the health and prosperity of hundreds of coastal communities. Taking the fishery as a whole, there is a role to play for processors, private investors, fishermen and support and spin-off businesses to contribute to these goals but there is a disconnect between the goals and objectives stated by the Minister and the problem with trust agreements.
- The broad essential elements of a self reliant, economically viable and self sustaining fishery are: effectively controlling access to the fishery, managing resources so as to maximize stability and predictability in quota allocations, and ensuring a reasonable rate of return on investment.
- Trust agreements in the discussion document are generally considered to be agreements between fishermen and processors. But these are not the only kind of trust agreements. There may be trust agreements with silent, private investors who, other than providing the financing, have little or nothing to do with the fishery, or they may involve agreements between or among fishermen sharing in the beneficial interest of the licence, or they may involve agreements or judgements that split the beneficial interest between spouses or former spouses. It is not just as simple as an agreement between processors and inshore harvesters.
- Most fish harvesters at one time or another obtain financing from somewhere other than regular lending institutions, for example local fish buyers, processors, other fish harvesters, family members and other investors, for a variety of reasons. While these financial arrangements were likely not all formalized with specific trust agreements, there was obviously an agreed-upon method of repayment - agreements such as this happen every day in the fishery.
- We need to know how many licences are subject to trust agreements and, of those, how many are between fishermen and processors, fishermen and private investors, fishermen and other fishermen, etc. Nobody at DFO could identify what agreements are out there, so how could DFO regulate and enforce them? This would drive them further underground.
- Tackling trust agreements as a single problem, while failing to recognize their complex nature and widespread application, could be opening a Pandora’s box.

- Parts of the discussion document (pages 5 and 6) provide classic examples of the disconnect between the owner-operator and fleet separation policies, and trust agreements. It is not clear how trust agreements undermine these policies.
- The discussion document refers to a “widespread concern” that the fleet separation policy is being undermined by trust agreements. The evidence of this concern needs to be more clearly and explicitly articulated.
- DFO says it is “intent” on dealing with trust agreements; this sounds similar to ‘weapons of mass destruction’ - how do you deal with something if you don’t even know what is out there?
- DFO will try and find ways in which trust agreements violate some fisheries management principles; it should be obvious that some trust arrangements have a positive impact in the fishery.
- Although the official DFO line is that fishing licences have no value and does not recognize the ‘sale’ of a licence, at the same time DFO purchases licences and quota, and both permanent and temporary access for the exclusive use of Marshall bands. In a number of cases, bands have entered into agreements with outside investors; they have also established corporations to hold licences – will DFO have a separate set of policies and regulations on trust agreements for Aboriginal bands?
- DFO must clearly define the actual problem and show industry specific examples of where the independence of the inshore fleet is being threatened by trust agreements.

- The Issue is more a question of which is the primary fishery – the inshore represents about 10% of the total area fished, has the most people and resources, but has never been established as the primary fishery.
- Canadians have a right of access to the resource; the Marshall case has brought First Nations up to the same level of right to participate.
- The financial part of the owner-operator question has to be separated from licence issuance which must remain a federal jurisdiction - if DFO winds up downloading to provincial governments, some would have 6 different governments to face every morning.
- DFO has to be clear that the licence holder is where the buck stops; whole bureaucracies have been built to try and manage financial implications of licence transfers.
- Every day we see young people trying to buy licences; but ultimately there is only one person who decides how to turn the wheel while out there fishing.
- This is really an evolving circle; government cannot keep economic benefits of the resource as diversified as it currently is, without the benefit of the owner-operator policy. We have to keep this policy, and put the financial implications off to one side.

- When the bonafide policy was created, trust agreements were virtually unheard of. We have to recognize that flexibility is already built into the owner-operator policy which allows a fish harvester to designate a substitute operator in certain circumstances
- Trust agreements result when new entrants are faced with the high cost of licences and no access to traditional funding mechanisms which results in them having to fish to service debt and living expenses.
- It is recognized that a fishing licence is the property of crown and not transferable; however, through licence retirement programs, the amount associated with the retirement of the licences has translated into retirement packages for fishers.
- The next generation will continue to have an insurmountable debt because of the excessive prices of licences.

- DFO could create a fisheries loan board for new entrants and could place a lien on licences if payments defaulted.
- If the inshore is really the backbone of the fishing industry, why have past and present DFO Ministers done nothing to stop the practice of trust agreements?
- Financing the cost of certain fishing licences is virtually impossible; allowing a capital gains tax exemption for fishers would allow them to retire with a pension and let new entrants into the fishery.
- DFO should open the industry up to more fishers instead of making millionaires out of a few; one way of doing this would be to set up a fisheries loan board to provide funding to younger fishers.
- A vibrant inshore fishery will contribute to communities, but DFO Ministers have ignored fishermen’s pleas to conserve the resource and have listened to the large, multi-national corporations who rape the oceans. These large corporations should not be allowed to acquire licences in the inshore.
- The discussion document refers to the argument that the owner-operator and fleet separation policies “impair the ability of the fishing industry to compete in the global market” – DFO should get bureaucrats strong enough to stand up to multi-nationals and preserve the oceans for future generations.
- If the Minister of DFO has absolute discretion under the Fisheries Act, he/she also has sole responsibility for existing trust agreements and is as involved as the two or more signatories of the agreements, which is probably why DFO is unwilling to deal with this in effective manner. It is obvious that courts will consider trust agreements legal because DFO has not taken a stand against them. Laws with stiff penalties are required, and this takes a Minister with backbone.
- The biggest problem facing inshore harvesters is the lack of funding. DFO will have to step in and set up a system where existing fishermen and those wishing to enter the fishery can secure funds. These funds should be made available to fishermen to acquire licences, to upgrade gear and equipment, etc. That way, fishermen would not have to approach processors for funding.
- DFO should stop corporations from wiping the ocean clean and should establish a buffer zone to protect the resource from near shore oil exploration.
- DFO should introduce sanctions and penalties for infractions.
- Fish farming is also a problem – it is growing hand over fist and affecting inshore fisheries; there are no obvious restrictions on location of fish farms and this is having an adverse impact on the inshore harvesters.
- The owner-operator policy should be kept in place to preserve independence of inshore fleet.
- The questions posed in the discussion document are pretty vague and, when you get into trust agreements, you are really in muddy water. DFO should not spend a lot of money trying to deal with trust agreements if the final decision will be that they are loan agreements.
- DFO should still play a strong role in what happens in any fishery and should bring enforcement back to what it was before DFO started scaling back.
- There is also an issue of transparency in DFO. We understand there was a deal made between DFO and small number of fishers that will have negative impact on fishery in general but we were not informed of it. On the question of lobster conservation measures, DFO never told us the biomass estimate and implemented different conservation measures for different areas, without any continuity or fair application of conservation measures. Given this, it is hard to say if the conservation program is helping or not.

Following presentations by registered speakers, a round table discussion of the issues raised in the discussion document was held. The following is a summary of that session.

Open Discussion – Trust Agreements

- Scallop licences are being issued as recreational licences, without any catch restrictions; DFO has to make sure that either restrictions or regulations are put in place to make sure that the commercial fishery is not suffering because of the recreational catch.
- DFO maintains that the Minister has complete control over licences; how then can trust agreements be happening?
- There are no government funds available to assist new entrants. Look at the Marshall agreement - funds were made available (which is fine) but similar funds should be made available to traditional or younger fishermen.
- It has been a tradition that licences are passed from generation to generation; DFO has to make a distinction between these arrangements and others who acquire licences for the purpose of reaping a profit without being on the boat.
- The owner-operator policy should stay in place and if it is tinkered with, it should be for the benefit of traditional fishers
- DFO created this mess and now they come to us to help them solve it. Somewhere there is somebody who knows what is going to happen and they won't tell you, or you won't tell us, and by the time we find out will be too late.
- The price of a licence has increased fivefold over the past few years, making it impossible for young people to enter the fishery; if the Minister was serious he would take steps to ensure that funds were made available to fishermen. There seems to be money for everyone except us.
- DFO takes the position that a licence is a privilege, issued annually, that can be cancelled at any time, but fishers need to make a long term financial commitment. Can DFO recognize that unless there is a conservation issue, the licence holder should be entitled to continuity of licence?
- The loopholes in the fleet separation policy, detailed in the discussion document, refer to agreements that are principally at arm's-length, out of the community. DFO should distinguish between arm's length agreements and those that involve control of a licence.
- All this links to the CCRA regulation that does not allow fishers to take advantage of tax provisions by incorporating.
- We need a firm, clear commitment from DFO on where it stands with respect to maintaining global competitiveness and maintaining viable coastal communities. DFO must be clear on whether or not it believes inshore fisheries owned by small operators can still be globally competitive.
- An interim way of improving a fisherman's tax situation could be to issue inshore licences to professional corporations; this would need to be coordinated with CCRA to afford the same treatment to fishermen as farmers; DFO can't do alone.
- Government can change the nature of the licence; the Fisheries Act is totally outdated with conservation measures being the only reason to cancel a licence.
- Provincial jurisdictions can play a large role to develop vibrant communities, particularly because of their responsibility for the processing sector.
- The requirement for associations to attend more and more meetings called by DFO has become a financial burden. DFO should consider issuing licences to non-profit

organizations who could use the proceeds from the licence to finance their operations. A condition of licence could be that any revenue over and above that need to run the association be given to community organizations (food banks, Lions Club, etc.).

- Since the Minister has ultimate power to issue licences or to take them away, why can't he ensure that when a fisherman wants to leave the fishery, the licence could only be transferred to another individual so a corporation name would never be on licence?
- It would be a step forward if we had allocations to set up a fund to let new entrants get into fishery but this is pretty complicated and not the forum that will solve this problem. We need new, imaginative answers, the suggestion of allocations being used for the good of the community is a good one.
- If we are honest, there is not a fisher out there who could come up with the finances to buy in today. The only reason someone goes into a trust agreement is because financial institutions will not lend money on the value of a licence.
- My generation would love to point finger at DFO and say it's your fault that the cost of a licence is so high, but I don't think it is. It all comes back to fishing is privilege and should we be entitled to make money off that privilege when we transfer to next generation? I think I should be entitled to market value for the boat and gear and should pass the licence on to the next generation for what I paid for it. If we cannot put some money away for retirement, how can we expect the next generation to pay for our retirement, while at the same time paying for their home and family?
- I don't know what answer is, but it is a fisherman's problem. If we don't find the solution, it will be the fishermen who will be eliminating the next generation. Not the banks, not DFO
- Finance is now directing fishery, instead of other way around. When fishing licences were inexpensive, the tax man was not after us. Now that we are dealing with higher prices for licences, the tax man is after us. The Department of Finance and CCRA have escalated problem, and I don't see them coming to the table to help us come up with solutions to save the fishery.
- When we talk about fleet rationalization, it is really a form of licence concentration which drives the price up.
- This appears to be a tax problem. If we had the same treatment as farmers it would certainly help because right now we are being treated like second class citizens, operating under a different set of rules.
- Trust needs to be re-developed between fishermen and government. We are a greedy lot! I didn't buy into the fishery to make a retirement package, I do hope to make a good living out of it and would like to pass it down to son or daughter or someone in the community without being taxed to death.
- Trust agreements would not be necessary if the next generation had access to financing and could afford to buy us out. We shouldn't expect to be millionaires, but we should expect to make a living, put some away for retirement, and get fair market value for our product and our boats and gear.
- DFO is at fault – it has control over licences and allocations. In the crab industry, DFO had the chance to issue more licences and refused to do it because it wanted to make millionaires out of a few fishermen. DFO was warned for years about the cod fishery, about how multi-nationals were raping oceans and should accept that DFO is the sole cause of what is happening to this fishing industry here.
- The failure of DFO to listen to fishermen is the problem; DFO must accept responsibility for its bad decisions and accept the advice of fishers' groups that approach DFO with good data.

- Youth can buy into the fishery; it will take them a number of years to pay off the debt, but it can be done. When I want to retire, I want a decent price for my licence and enterprise because that will be what I have to live on for the rest of my life.
- Not all trust agreements are bad, it is to be accepted that if a processor is funding an enterprise, there will be some provision about landings and fair market value for the catch. And, when the debt is paid, one is free to move on.
- Everybody seems to be against trust agreements, while lawyers make money off fishery. The commitment should be to training our younger generation and by limiting entry into the fishery.
- The value of licences has been blown out of proportion for some reason. The reality is that the fishery cycles up and cycles down; some licences have substantial value while others have none. This is a free-market driven business - “you pays your money, you takes your chances”.
- In reality, this has become a lawyer’s business. When you buy stocks, you sign a trust agreement with the broker; when I tried to get rid of enterprise, my accountant said I couldn’t do it; lawyer said I’ve got to have trust agreement to avoid paying excessive taxes. It is hard to pass the enterprise to the next generation without a trust agreement and these types of agreements should be supported. The ones that should be eliminated are the agreements that are used to concentrate licences.
- Is this a problem across the Atlantic or just in certain areas? I would be totally opposed to the government imposing a cap on the value of a licence or enterprise.
- The basis of this problem is CCRA and tax implications; they are one group not at table that seem to be dictating agenda. The Bonafide policy of 1982 started the process of stabilizing the fishery. If we are going to maintain control over the agenda, government has to maintain status quo over the value of a licence. CCRA has to come to table and let us know how they are going to allow us to sustain ourselves – we need financial solutions, and DFO’s mandate is conservation.
- We’re first generation with disposable income and don’t know what to do with it!

General discussion – Owner-operator and Fleet Separation Policies

- DFO should clarify what is means by “proposals must not result in undue concentration of licences”; as it reads now, it implies there is some due concentration of licences.
- The discussion document refers to a “significant number of licence holders” - what proportion of licence holders is significant? Perhaps it should be broader and we should look at our ability to define region or sub-region. We should also define fleet component, community, or community of interest
- Under vessel replacement, no one got what they wanted, and IPAC went nowhere. We should be able to sell a licence more openly for whatever we want to sell it for. This should not be defined by CCRA. We should look at other ways to solve these problems if we agree they are problems; to go through this murky process to deal with this is not good.
- Whatever road we go down, we can’t undervalue an asset to escape taxation – right or wrong, we are stuck with that.
- In the future, will DFO determine what is a reasonable income for the gear an enterprise head has? If DFO has to step in, instead of giving fishers a higher quota because of biomass, maybe they should be issuing more licences instead; this will drive the cost down and spread the wealth.
- Issuing more licences does not solve the problem

- It is easy to give out licences when the resource is abundant or on the increase, but then the licences have to be rationalized when the resource goes down. There has to be other solutions.
- We should maintain the status quo from a licensing perspective until CCRA comes to table and offers solutions to some of the problems they have created.
- In terms of DFO stepping in to create more licences for the ‘greater good’, it is important for new entrants to understand that when there is a surplus, DFO does not give all increases to existing licence holders, there are also temporary sharing arrangements.
- Right now, under the owner-operator policy, I can put a designated operator on a boat to fish my pre-88 groundfish licence. I believe in inshore fishers owning a licence, but I should be allowed to put a crew onboard one boat while I fish another. This would be the concept of multi-species licences. As long as companies don’t get inshore licences, I’m happy.
- Things vary from region to region, there should not be just one policy for the whole Atlantic.
- The wealth from this public resource should be more evenly distributed.
- How the licence was purchased should be taken into account – for example, if it was purchased under the owner-operator provisions, it should stay that way.
- The owner-operator policy is the only hope for transferring to the next generation; without this policy, the fishery will just become big business and will be a huge problem for communities. If you have two boats, it puts more pressure on a fishery. Shouldn’t be allowed to hold more than one licence of a species, it puts too much pressure on resource.
- It is not clear how DFO will recognize legitimate organizations. A process already exists in the Gulf Region to deal with the whole process of accreditation.
- A working group should be established to deal with a number of these issues and should be involved in reviewing all documentation sent to the Minister.
- We hope DFO has received the message from inshore fishermen to maintain both the owner-operator and fleet separation policies, and the recognition of some flexibility when we talk about designated operators.
- Are things really broken, and if so do we need to fix it? Be careful - in trying to change things for the better, we may erode what we have.

Preserving the Independence of the Inshore Fleet in Canada's Atlantic Fisheries

Public Consultations – Yarmouth, NS - January 15, 2004

Draft Summary

Overall Summary of the Session

- Eliminate the owner-operator and fleet separation policies, treat the fishery like a business which will solve trust agreement problems. DFO should concentrate on conservation, science and fisheries management and leave business financing to others.
- Limited flexibility in the policies, including provisions for some groups to move further away from these policies than others; a belief that the will of one fleet should not be imposed on another. Trust agreements are fine as a source of financing and DFO should not interfere. Issuing licences to inshore corporations is fine as long as those corporations are owned by fishermen.
- Strengthen the owner-operator and fleet separation policies and move quickly to pass a regulation.
- General agreement that undue concentration of licences needs to be avoided.
- Financing for new entrants is a fundamental issue, whether the funding comes from banks, processors or others.
- Fishers need benefits of small business ownership; many issues were raised with respect to comparative tax treatment with other small businesses, particularly agriculture.
- Concern for intergenerational transfers. Some participants called for the creation of a working group with representatives from CCRA, DFO, provinces and industry on the issue of intergenerational transfers and issues related to owner-operator and fleet separation policies, primarily issues around taxes.
- Safety and vessel replacement rules were also issues at this meeting.

Summary of Formal Written Presentations²

- Each sector of the fishery has its own problems, which will likely have a myriad of solutions, and ultimately Canada has to be competitive in the international market.
- The fundamental issue is borrowing money; since you can't borrow against a licence or quota, finance arrangements must be flexible. Trust agreements are only one solution to the problem of financing, particularly for intergenerational transfers, and are in common usage in many industries.
- One potential solution is that licences become more like property – like in New Zealand - where quotas are attachable and financing can come from a bank or other lending institution. This ability to borrow money against the value of a licence helps to preserve the independence of fleet.
- If we translate the owner-operator policy into a gas station example, this would mean that the owner of the gas station must pump every litre of gas - he can't go into the office and manage his business.
- The groundfish sector has the largest number of pre-79 companies – these are small, vertically integrated family businesses – what is wrong with this? These

² A list of presenters can be found on page 77

people live in the community. This is the fundamental issue – by living and working in the community, these people are sensitive to community issues and subject to pressures; absenteeism is the problem.

- The discussion document refers to avoiding undue concentration of licences; we have gone on a cycle where there were too many fishers, then too few – a balance has to be struck, with enforceable, reasonable approaches.
- The fishery is the last Canadian resource that is controlled by Canadians – and must be kept that way - not sold off to the highest international bidder.
- The fisheries sectors must be kept segregated as different problems will require different approaches and different solutions; this will allow each sector to work on its own problems.

- We need to focus on how the fishery should proceed in a more modern context; if you own piece of a big processing company, through mutual funds, you actually own a piece of the company and that isn't bad.
- Processors are part and parcel of the industry; partners with fishermen who have made this area the most lucrative in the country. Trust agreements have been what they have had to resort to, along with their fishermen colleagues, to compete in the international market.
- If we look at the AFPR and its principles – it is too paternalistic. This discussion document on preserving the independence of the inshore fleet seeks to preserve this paternalism, which needs to stop. Fishermen aren't dumb. Trust agreements are used in many ways, for many reasons. This policy initiative will give CCRA just what it wants – more taxes.
- This policy will roll back the value of a lobster licence from \$1M to \$250k; there are many trust agreements in existence and they are important for the overall economic prosperity of the community.
- If we take protecting independent fishermen to its logical conclusion, we would end up with gas powered boats, open dories, no limited entry system, etc. and you would just fish until the last fish was caught. Introduction of the limited entry system created a value for the licence and once you create value, fishermen learn how to grow their businesses (some more than others).
- When the IQ system was introduced into the inshore mobile gear groundfish fleet, the fleet was in a state of chaos, with too many boats and too few fish; illegal fishing was the norm and stealing fish happened daily. With no sympathy in the public and no political will to buy out the dragger fishermen, they turned to the IQ system. This fleet is now one of the best managed fisheries on the coast. It was saved by trust agreements, which allowed market driven consolidation of both quota and effort.
- Does this have to happen in lobster? We have 963 licence holders, boats, captains and crews in District 34. At present there is no quota on lobster and under current regulations and policy it is required that each licence be operated and, by implication, means that there 963 boats, captains and crew participating in the fishery. So far the resource can sustain this but who owns boats is irrelevant. What is wrong with a processor holding a licence.
- If you don't consider getting rid of fleet separation, you are basically interfering with your own principles in the policy review and the need to truly compete in the modern fishery.
- DFO needs to make a clear cut policy statement that will allow certain business relationships out in the open; make these relationships legitimate in policy, as they are in law; we should not yield to some of these notions that we are limiting the

independence of inshore fleet and recognize that there are huge financial implications in keeping the fleet separation policy.

- The owner-operator and fleet separation policies should be removed from the greater than 45 foot fleet.
- The evolution of the scallop fishery in the Bay of Fundy has forced many operators in the scallop fleet to acquire other scallop licences in order to survive; until last year it was not possible to support a 65-foot vessel and its crew on a single scallop quota allocation. The current licensing policy does not allow a fisherman to hold more than one licence, so to survive they have had to buy, rent or lease additional quota allocation. This was often done through trust agreements.
- The owner-operator provision should be removed from those fleets that request it to allow licence holders to designate operators for their vessels (the reference was to the scallop fleet). The current licensing policy has forced a regime of trust agreements and it is in the interest of all parties that the actual owners of the licences be allowed to declare what they own. This policy has prevented processors from securing supply by purchasing licences but has allowed successful fishermen to purchase or open processing plants. The policy has penalized processors and forced them to survive into a legal maze of trust agreements and licence holdings.
- The fleet separation policy is a management tool from another era and should be scrapped all together. The policy, if not changed, will be the death knell of the independent fish plant and the employees they support. The one way street of allowing harvesters to hold processing licences, while not allowing processors to hold harvesting licences will eventually evolve into plants owning licences by default.
- The current policy not only limits a company from purchasing a licence, it also prevents a successful fisherman from expanding his fishing enterprise and obtaining another licence. Once again, he will be driven underground to enter into a trust agreement.

- Much of the value of our seafood is created by processing companies; competition is international, competing against large-scale aquaculture industries, abundant wild fisheries and often cheap labour; not to mention other protein supplies such as beef and pork. Most of our competition comes from countries where vertical integration is allowed.
- In many coastal communities, fish processing plants serve as the principal land-based employer. Many companies are owned and operated by fisherman or ex-fishermen; some companies have pre-1979 licences and some have trust agreements with licence holders.
- In the discussion document, a negative connotation is attached to words like ‘processor’ and ‘corporation’. The long term profitability and viability of the harvesting sector is ultimately dependent on the processing, product development and marketing efforts of processors and exporters. The discussion document seems to focus only on the roots and trunk of the tree and ignores the importance of the limbs and leaves.
- The document refers to harvesters as “resource users” and ignores the fact that thousands of people in Nova Scotia work in processing or packing plants. The owners of these plants have made substantial investments and the thousands of people who work in them are also “resource users”.
- We would like to see DFO policies that promote a viable, profitable processing sector where it makes sense for companies to install the latest processing equipment, to invest in developing new products and new markets. Don’t treat processors as the

“enemy” or as second class citizens through discriminatory policies. We are in favour of competition at all levels of the industry. And, we want better access to our own Canadian raw material.

- The fleet separation and owner-operator policies are out dated, cannot be legally enforced, seem to make illegal what is common business practice in SW Nova today, do not make good business sense and should both be scrapped.
- We share the concerns expressed in the discussion document about undue concentration of licence ownership and the need for viable, profitable fishing enterprises but do not feel that our position on elimination of the owner-operator and fleet separation policies is inconsistent with these objectives because alternative policies may be available that are not so discriminatory and harmful to the processing sector.
- The owner-operator and fleet separation policies have not been effective in preventing vertical integration among harvesters, buyers and processors. While much is made in the discussion document of ‘trust agreements’, the document ignores two other loopholes if the objective of the policy is to keep the two sectors separate. Fishermen have every right to own a provincial buyer’s licence, to own and operate a packing or processing facility. Native fishermen and native communities have the right to harvest and to pack or process for export or sale.
- While we do not begrudge these rights to fishermen or native communities, we object when government policy singles out certain companies or individuals in the industry and denies them the right to grow their business and to seize market opportunities. The industry needs businesses that will reinvest their earnings when it makes good business sense.
- DFO can assist in preventing the undue concentration of licences through legislation that will facilitate the intergenerational transfer of licences by allowing fishermen the same capital gains exemptions that are permitted in the agriculture sector. DFO, with the provinces, can develop sources of capital and a better mechanism for young fishermen to purchase a licence. Fishermen do not have to sell their licences to processors and buyers and if governments provide sources of financing and a capital gains incentive to transfer a licence to a son or daughter, many fishermen will choose to sell to a family member or a crew member.
- We share DFO’s objective of professional fishermen who are well paid for the work they do. DFO should work with industry to establish a training fund for fishermen.
- In order to attract the next generation to the fishing and processing industries, we will have to provide competitive wages, benefits and working conditions. This will only be possible if we are successful with our products in the export marketplace.

- An old English proverb says “Time and Tide Wait for no Man” - missing an appointment for a 4:30 am irish mossing tide or being 30 minutes late for lobster fishing simply meant your day was lost and the income with it. But more is at stake if we turn from our responsibility of preserving the independence of the inshore fleet – and time and tide will not wait for us.
- In the mid 1990s, through the Commercial Fisheries Licensing Policy, DFO set out to provide for the orderly harvest of the resources; it was also the intent of the owner-operator and fleet separation policies to protect the independence of the inshore fleet from control by other interests such as processing companies.
- During the same period, it was apparent to all, including processing companies, that control over the ownership of licences would ensure a constant supply of fish; the processing companies capitalized on this and thus trust agreements were born.

- Independent fishers, on the advice of their accountants, formed companies for tax reasons. Most fishermen in South West Nova today refer to such companies as those who are taking over our fishery!
- A ‘fisherman company’ is usually made up of family members, the president of which is the captain of the vessel, a core licence holder and owner-operator as spelled out in many of his licences.
- A ‘processing company’ structure is very different. These companies usually have a board of directors, do not hold core licences, and will enter into trust agreements with captains to take their enterprise fishing. Usually the wages and shares to the fisherman are lower, as are prices at dockside. The responsibility for the sale of the catch is taken away from the trust agreement captain.
- Another example of a processing company is that of a consortium – a group of people or companies who get together to finance a project too large for any one of them to finance alone. The president and board of directors are usually not fishermen. The power in this instance to control many aspects of the inshore fishery is very clear and a cause for concern.
- I am not here to condemn or lessen the legitimacy or value of processing companies – they are a viable entity, and have achieved their success through hard work. However, in an area such as rural Nova Scotia, the needs and future of communities must be considered of paramount importance; should our situation with the processing companies be left unchallenged, our coastal communities will continue the present downslide until it is too late – the existence of these communities is at stake.
- We have to ask ourselves why would an individual who, as a rule, has a vast knowledge of the sea, years of fishing history, having mastered over many crew members and so much more, get involved with trust agreements and not pursue his operation as an independent fisherman. The answer has one main focus: lack of financial support to purchase a licence. The main difference between the board of directors of processing companies and the individual who signs the trust agreement is the lack of financial lending support to purchase an enterprise with a fishing licence attached. Fisheries policy has failed to address this problem.
- To create a balanced playing field, fishers need tax help. Something as simple as having CCRA tax protection for intergenerational licence and enterprise transfers would be a place to start. This, combined with a major restructuring of the Nova Scotia Fisheries/Aquaculture Loan Board would be a first step. Given the aging population of licence holders, something should be done right away. Banks and other lending institutions also want this issue addressed.
- If trust agreements continue to grow, they will have a number of negative effects on our communities and economic well being. There are pressures on trust agreement captains that do not exist for an independent fisherman, including respect for the Atlantic Ocean and the winter weather some sail in. The pressure of answering to a board of directors will always be greater than to answer to family.
- The outward flow of fishing licences from local communities by trust agreements has a negative effect on coastal communities. The opportunity for young fishermen to purchase and own a family enterprise is almost non-existent.
- The need for a review of the policy is necessary and should consider some flexibility in the owner-operator provision to deal with such matters as: intergenerational transfers; combining licences by pooling quota and sharing licences (with a maximum of 2 lobster licences); by designation of an operator in cases of sickness, personal family matters, etc.; in cases of death, serious illness or major injury to licence holders, guidelines and discretionary power to make decisions should be at

the local or regional level; the decision-making process in general needs to be reviewed, and the process of appointments to DFO advisory boards must follow election terms of reference; the membership at large should be tasked to protect social objectives and the economic well-being of coastal communities.

- The problem with every community outside of major areas is the aging and declining population; these communities were the “backbone of the economy”. Success of this economy depends on independent, family owned enterprises and, if they are not protected, communities will become no more than a place to rent a fisherman.
- We must move quickly to preserve what generations have worked so hard to build – family, community and a sense of pride and purpose, and watch as the ebb tide of our present situation changes to an overflow of renewal in our communities. Perhaps the time has come for Nova Scotia to have jurisdiction over our fishery through a Constitutional amendment.

- Over the years our family business has expanded to include 4 other small companies, all run by family members. While we are primarily a seafood harvesting group, catching groundfish, lobster, red crab, snow crab and a few scallops, we also build and repair groundfish nets; have our own private wharf and provide berthing facilities for approximately 21 vessels.
- When the business began 1980, I purchased all groundfish from independent fishermen; this worked well; fish were plentiful and a good supply could be purchased. In the mid-80’s this changed – fishermen started building processing plants and at about the same time, there were quota reductions and stricter DFO management regulations. This led to a less plentiful supply of groundfish and a change in attitude of fishermen. Some fishermen began to auction off their catch although most of them were only interested in increasing the price of their catch and selling to their regular buyer.
- An auction system would work if it were run by a third party and the results made public but if it is run by harvesters, it won’t work for processors. This fall is a good example of this in the lobster business. Many buyers have ended up sending lobsters to processors at a loss, because of quality issues. More and more buyers are going bankrupt each year; part of the problem is bad management but a part is lack of raw material at a fair market price.
- Over the last 20 years, many processing facilities have either gone bankrupt, voluntarily closed, or in some instances, converted to live lobsters, the main reason being a lack of competitively priced raw product.
- On the question of the fleet separation policy – we cannot have a policy in Canada that so clearly discriminates against one side – harvesters are allowed to own processing licences but a processor cannot hold a harvesting licence. This is clearly discrimination and should be challenged in the courts.
- The owner-operator policy also discriminates against non-core fishermen. Seafood is a Canadian resource, not a core fisherman’s resource; you don’t have to be “core logger” to harvest trees on Crown land.
- Fishermen can compete with anybody at sea and on land and do not need special rights to protect their interest; Ottawa and the media seem to have the opinion that fishermen are poor, uneducated and can’t compete in a free market place. If there was one good thing that Hurricane Juan did, it tore down most of the decrepit fish shanties which the media so like to feature on stories.
- And there is the myth about fishermen being badly paid in company boats - my captains and crew make a very good wage, one that is far better than you can make

in a call centre. The only limiting factors are the abilities of the captain and crew and the amount of quota DFO will provide.

- My company pays its fair share of taxes and we support local businesses and community organizations. We are no less Canadian than fishermen and therefore should have the same right to harvest fish. We agree that an over-concentration of licences in some ports is not good thing.
- The owner-operator and fleet separation policies must be removed at least from Scotia-Fundy, if not Atlantic Canada. For tax reasons, corporations must be allowed to hold harvesting licences.

- Our elected and hired servants who are supposed to protect all aspects of the fishery in Atlantic Canada have failed miserably in the past. Yet, I hope for positive change to protect the lobster fishery in the near future. The future survival and sustainability of our coastal communities depends heavily on the social and economic benefits that arise from the fishery.
- If the lobster fishery is allowed to be further eroded through trust agreements and beneficial use agreements, resulting in a concentration of licences in the control of a few companies, our coastal communities will be devastated.
- In LFA 34 the lobster fishery represents the single most important outside revenue source for our economy. The economic and social sustainability of our communities depend on preserving the independence of the inshore fleet in Atlantic Canada.
- DFO should take immediate action to implement a regulatory solution to eliminate the problem of trust agreements that lead to a concentration of inshore lobster licences. DFO should take regulatory measures that require the owner to be the operator of the vessel to which the lobster licence has been assigned and require that the licence holder remain the only entity to hold the legal title as well as the beneficial interest in the licence; the licence holder must be the owner-operator of the enterprise.
- The integrity of the owner-operator policy must be maintained; flexibility should be limited to special situations (death, illness, injury) where the beneficial use continues to be with the licence holder or his/her estate. Flexibility must not undermine the principles of the owner-operator and fleet separation policies.
- DFO must adopt a more open and transparent decision-making process by involving fish harvester organizations in every level of the process.
- Licences should be issued to owner-operator fishing companies in recognition that each core licence holder operates as a small business; these companies should have the same fiscal rights as other small businesses, i.e. farming.
- Preservation of the independence and viability of the inshore fleet is crucial to maintain the principle of owner-operator individual/company; multi-species licences should be encouraged but limited to, for example, one lobster licence per owner-operator company. The beneficial use of the licence must be bound to the licence holder. Every limited entry licence lost to the corporate sector erodes the independence of the inshore fleet.
- In addition to implementing regulatory measures to enforce the owner-operator and fleet separation policies through condition of licence, DFO should develop approaches to support the application of the fleet separation policy.
- The federal and provincial governments should provide access to financing as alternatives to borrowing from processing companies for crew, for new entrants and to facilitate intergenerational transfer of licences.
- Revenue Canada must recognize fishing enterprises as small businesses and provide fiscal benefits that other small businesses have.

- Fishermen’s committees should be allowed to collect fees from members. Fish harvesters would then have the means to develop better communication processes, science research programs, and to advance professionalization.
- Revenue Canada and DFO must cooperate, through the sharing of information, to tie beneficial use to the owner-operator licence. To preserve the inshore fishing fleets by recognizing and enforcing existing policies does not have to cause undue hardship for those who knowingly ignored the policies
- Investments have been made by corporations with the knowledge that they were undermining existing fisheries policies to gain control of the inshore lobster fishing industry by using trust agreements and they should not be rewarded; these corporations did not lose out on their financial investment.

- DFO must take immediate steps to enact a regulatory solution to the problem of trust agreements by incorporating the owner-operator and fleet separation policies into the Fishery General Regulations. The regulation should include provisions specifically stating that the holder of legal interest of the licence and the related beneficial interest of the licence are one.
- It should be possible for licences to be issued to corporations in the inshore sector if the person to whom the licence is transferred is a core fisher, owns at least 51% of the company and the licence is operated by said individual.
- An appropriate enforcement tool would be to not re-issue a licence the year following the infraction. DFO should not reward flagrant disregard for fisheries policies; this would erode any confidence in future of DFO policies

- Prior to the use of trust agreements in the fishery, the only operating structure that a self-employed fisherman could use was a sole proprietorship. Fishermen did not have access to many of the common business planning and estate planning tools provided for in the Income Tax Act. The most common income tax planning strategy for an individual taxpayer who is considering an investment in a business, is to incorporate, which provides access to lower income tax rates. By using a trust agreement, a fisherman can incorporate his fishing enterprise and avail himself of this strategy
- Trust agreements have also been used to transfer the beneficial interest in a fishing licence to a corporation. This provides the owner of the fishing enterprise with access to the capital gains deduction on the disposition of the corporation that owns the fishing operation. Access to this \$500K capital gains exemption is a cornerstone of succession planning in the owner-managed business environment.
- Other highly regulated industry sectors, for example, the medical community, has been able to develop appropriate and enforceable frameworks that provide the necessary regulatory controls, yet facilitate access to the same business and estate planning tools that the majority of Canadian taxpayers have access to.

- We have seen the undermining of one fleet after another because of the weak application of the owner-operator and fleet separation policies. The only way to effectively preserve the independence of the inshore fleet is to create regulations that intertwine legal title and beneficial use.
- A strengthened owner-operator policy should also be reflected in licensing policy. This policy should prohibit trust agreements, except in cases where such an agreement does not undermine the independence of the inshore fleet, i.e. when an inshore fisherman wholly owns a corporation.

- Key elements of the policy should be to limit licences to one per licence holder, when the licences are for the same species. This would not apply to licences for different species, thus supporting multi-species fisheries.
- Existing trust agreements could be dealt with in a number of ways that would be fair, for example there could be a 3 to 5 year sunset clause on these agreements.
- Provisions for flexibility and local exception could be worked out as long as they do not undermine the independence of the inshore fleet. There is need for flexibility to deal with the issue of intergenerational transfers and the temporary designation of qualified operators who have a long time attachment to the industry. However, this flexibility does not extend to allow enterprise heads to pool their quota share; such a provision would be detrimental both to conservation and economic viability.
- The best way to determine the specific application of the regulations, including local flexibility, would be at the local level, through the recognition of community-based management boards.

- When we say preserving the independence of the inshore fleets we could just as well say preserving the future of viable and sustainable coastal communities, since the inshore fleets are the very lifeblood of most of Nova Scotia’s coastal communities.
- This is not just a question about how to structure a particular industry – this is not the same as talking about the future of the owner operator in the trucking industry. These issues have serious implications for communities, businesses and families in rural Nova Scotia; it is the future of thousands of independent family owned small businesses in Nova Scotia.
- This is a complex issue, and there is only one way to address them – give the owner-operator policy the force of regulation under the Fisheries Act. This is the lynchpin of any genuine strategy that seeks to preserve the independence of the inshore fleet. This regulation should specify that if the licence transfer occurs in the context of financing transactions between fishers and corporate interests, control over the beneficial interest of the licence remains with the licence holder.
- DFO should also make and implement licensing policies that prohibit the use of trust agreements designed to undermine the owner-operator and fleet separation policies.
- The Federal Government should adopt policies that support the intergenerational transfer of licences, including tax regulation similar to those applied to family farms and other small businesses with respect to capital gains tax exemptions, and improve the means for inshore fishermen to obtain capital through lending institutions and provincial loan boards.
- DFO should also recognize community-based management by inshore fishermen’s organizations as legitimate ways to determine the flexibility needed in implementing the policy. Flexibility in the application of the policy should only be allowed if it does not undermine the independence of the inshore fleet.
- In light of the complexity and diversity of many of these issues, DFO should work more closely with inshore organizations. A working group or commission should be established made up of owner-operators, core licence holders, as well as key governmental stakeholders such as CCRA, the provinces and DFO. A more in-depth consultation would provide credibility to the process.

- We are not here to undermine anyone; we are here to protect our right to survive. What was done was necessary to stay in business and was done to fit our fishing practice and to protect our access.

- On reading the document, it was not clear who we should preserve the inshore fishery from, and for who. We are not preserving it for young fishermen because they cannot borrow enough money, and it is not for fishplant owners.
- The Federal Government, through its buying of quota, has driven prices beyond the reach of young, ambitious men and has disrupted community jobs. Who we preserve the fishery from seems to target the entrepreneurs.
- The document talks at great length about trust agreements – what is wrong with an agreement that an old fisherman has with his hired hand who is next in line to have the rig when he retires? And how will young fishers ever be able to operate a boat if they do not seek financial help from someone. Trust agreements should be allowed to exist because they are an important part of the small business in our communities.
- When DFO created core fishers, this meant professional fishermen, the ability to hold more than one licence and thus have year round employment in more than one fishery. To achieve this goal, it was sometimes necessary to have dual purpose boats and now DFO is restricting the inshore fleet by the use of the most restrictive licence. It is impossible to build a boat that suits both fisheries when you have regulations for one fishery that don't suit another. For example, a 45 foot lobster boat with a five foot out of water extension would not suit the second fishery; that 5 foot extension contravenes CSI regulations.
- DFO should not try to control conservation by vessel restriction; the length barrier has nothing to do with conservation, particularly there are no restrictions on the width of the boat or the horsepower. Our fishermen are being placed at risk.
- DFO should conduct a safety review with CSI about overloaded boats in water, versus out of water extensions.
- Lending institutions should be established to provide funding for harvesting licences.
- Trust agreements should be left to the courts.
- DFO should stop buying inshore licences and allocations.
- Whatever new rules are put in place, they should accept what has already taken place and should not target certain individuals.
- Flexibility is the key for the future of our new generation of fishers; conservation, safety and compromise is the best replacement rule.

- In 1979 when Roméo LeBlanc, then Minister of Fisheries and Oceans, decided to separate the processing sector from the harvesting sector, he should have made the fishermen decide what they wanted – processing or harvesting – by allowing fishermen to become processors, he has gone against the fleet separation policy.
- In 1989, DFO established an owner-operator policy which meant that the licence holder has to personally fish the licence. In the groundfish fleet, there were about 4,000 licences, about 1600 of which were allowed to designate an operator. If you have a policy where more than one third of licence holders do not have to follow the policy, it is questionable if it is a policy.
- Since implementation of the ITQ system in the Scotia Fundy mobile gear (<65 foot) fleet, fishermen and processors have been making legal agreements with people to acquire licences in trust agreements with the licence holder not being the beneficial owner of the licence.
- There are many different sectors in the Atlantic fisheries, with different ideas and desires. Some, such as the lobster fishermen, are mostly independent fishermen, while in the groundfish sector in Scotia Fundy, they are mostly attached to a processing operation – either processors acquired harvesting licences, or fishermen got together and bought a plant.

- After the fleet separation policy was implemented, there was a major change in the processing sector. Because fishermen now had access to the resource and started their own processing plants, the plants that they previously supplied were forced to change to other species. The plants that are currently operating are plants that had access to fish from their own vessels or the owners are fishermen holding groundfish licences and quota.
- The owner-operator and fleet separation policies were never implemented in a real way for the groundfish fleet. The changes that have taken place since introduction of the policies are irreversible.
- DFO should remove these two policies from the ITQ sector of the groundfish fishery in the Scotia Fundy region. Removal of these policies from this one fishery would not have a negative impact on other fleets.

- A regulation should be enacted to put the owner-operator policy into legislation. Many things, including the owner-operator policy, have made LFA 34 what it is today; licence holders had a stake in the future of their fishery, and fished accordingly.
- The fleet separation works for the inshore fleets, but not for the offshore.
- Trust agreements are contrary to DFO policy, yet DFO turns a blind eye to what has been going on, and continues to go on; it would be very difficult, if not impossible to deal with all the trust agreements out there.
- A system must be developed to allow new entrants into the fishery; if an above-board system of financing existed, half the trust agreements would disappear overnight and the rest would follow shortly thereafter.
- Fishermen should have the same small business tax advantages that exist for other small businesses; Quebec has exempted fishers from their portion of capital gains tax – why can the Federal Government not do something to help?
- If DFO was going to enforce the owner-operator policy, why didn't it do so from the beginning?
- When DFO talks of flexibility, all I hear is horror stories. And DFO has not said how it will define a fleet – we do not want to end up with the fleet broken up into many little pieces to get the answer they want.
- The only way to solve the problem with trust agreements is to understand why people enter into them – to access funding. If you give young people a way to buy into the fishery, trust agreements will disappear.
- We should move ahead on what we can agree on. DFO should consider what weight will be given to submissions from organized associations versus someone who represents a few. Given that the vast majority of licence holders will support retention and strengthening of both the owner-operator and fleet separation policies, If this is going to be Atlantic wide policy, we had better put our heads together and figure it out.

Following presentations by registered speakers, a round table discussion of the issues raised in the discussion document was held. The following is a summary of that session.

Open Discussion – Trust Agreements

- It is important to understand the differences between fleets; DFO does not act well as the steward of the resource; fishermen are stewards of the lobster resource. If people running boats have long term commitment, and investment in fishery, they tend to operate in a more responsible manner. For example, the operators of

Aboriginal licences purchased for bands have no financial commitment or long term interest in the fishery

- The assertion that you cannot have a viable industry without processor control needs to be challenged.
- There are areas of common ground including recognition of a need to change the capital gains exemption to equate with the agricultural industry – this would provide a big incentive to stop under the table trust agreements but we need DFO support to make this happen as soon as possible.
- There are a number of trust agreements out there, and there is a recognition that they were entered into for a number of purposes; however, where the purpose of the agreement is to circumvent or undermine the policy, these agreements should be cancelled or the policy changed.
- It might be possible to accept some of these agreements if there were provisions to make them legitimate, and for the benefit of the community, rather than to control the industry. The agreements could also provide a way to finance entry into the fishery; one provision of the agreement could be that new entrants would have to make a commitment to be a career captain in the fishery; the agreement should also make re-payment of the loan a condition.
- DFO should recognize that many of the comments they will hear during the course of these consultations are self-serving and perhaps the answer lies somewhere in the middle. But debate of this kind does bring the issues out into the open, does not reward something that was contrary to policy and should not stop licence holders from being licence holders.
- The lines seem to be fairly clearly drawn and it is clear that a trust agreement must be more clearly defined and its purpose articulated (i.e. is it for the purpose of settling an estate).
- We need a way to define and identify what licences can be held in particular fisheries, and by whom.
- It will be important to keep gear sectors separate in order to come to agreement – if there are too many players involved, we won't be successful in reaching consensus.
- With respect to income tax, capital gains equality with other small businesses is essential to move forward.
- A few key changes could be made: capital gains tax exemption should be introduced, sector recognition by species or licence should be initiated; and intergenerational transfers should be dealt with. For some groups, it might be to their advantage to retain trust agreements.
- The main reason we are in this mess is because DFO didn't enforce its policies; in the case of the herring fishery this has been going on for years; people have been entering into agreements to buy vessels.
- Trying to reverse existing agreements or the policy today is impossible; the only way to tackle it would be on a fleet by fleet basis, where the majority want change.
- DFO should use caution if it adds more transparency to the licensing issue; there are not many people who would want DFO going through their private business affairs. DFO should not be involved in private business transactions – it's not their mandate.
- How would DFO impose limits on the concentration of licences? The clock cannot be turned back. Realistically there should be some limits, but there should also be a recognition that processors in the inshore are competing against others, particularly in the offshore and they have a right to survive.
- The basic issue is financing how to get into the fishery; DFO has deemed it necessary not to give banks or any other lending institution effective rights so they can mortgage licences or boats. If a financial institution lends money, it should have

the right to direct that the licence be sold to another party to pay off that debt; this is just good business sense.

- Trust agreements are good. They can provide fishermen with access to funding and an opportunity to enter the fishery. Why should a processor and a fisherman not be able to enter into a straightforward financial agreement, one that, when the loan is repaid, the fisherman regains his financial independence?
- The present regime of trust agreements is achieving the objective of allowing fishermen to sell their licences and giving young fishermen the opportunity to become involved in business. Trust agreements can help young entrants reach their potential; there are hundreds of young men entering the fishery – perhaps they should be surveyed on their views.
- It is evident that the resource is being stretched. Twenty years ago, we fished from small gas boats, with outboard motors; now we are using bigger boats that can stay at sea for longer periods – we are stretching the resource, and like an elastic band it will get tight.

Open Discussion – Owner-operator and Fleet Separation Policies

- Advisory committees should be making the rules, after due deliberation and consideration, because that way they will select what works for them; the problem is the wild card political input that does not consider advice received from the advisory committees.
- In terms of the owner-operator policy, it should be retained for the less than 45' fixed gear fleet and for the lobster fishery.
- There is clearly a common theme, and a consensus on the need for financing; there has to be some security for banks and other lending institutions. DFO must recognize that it needs a mechanism to ensure that the debt of the initial transaction is protected. We also have to recognize that we are here to protect the future of the fishery and to promote this theme.
- A working group of DFO, CCRA, industry and others would be a practical start to solving the financial problems.
- One of the main reasons we have to consolidate is because of the cost of scientific work that is being downloaded by DFO. We have consolidated quota and licences in order to pay for these costs.
- The issue of trust agreements has been widely discussed in LFA 34, but not voted on; representations have been made to the Minister of DFO, we are here because of what started with the Provincial Minister's conference where there was request for financing for new entrants; the lender needs assurance that he will be able to recoup his money through the sale of a licence in case of default by the borrower.
- If you were to ask fishermen what is the most important issue, they would say access to a lending agency to help them buy an enterprise; because of the nature of the licence, and the Minister's absolute discretion, lending institutions will not recognize the licence as collateral. Many others are lined up to pay the debt, but they want the licence in case of default.
- The owner-operator policy was never really implemented in this area; there is no way that it can be reversed now.
- Within LFA 34, the question that arises on owner-operator is does the person under a trust agreement actually own the licence, or is it only on paper? We should not always be picking on processors but control of the licence is maintained by the lender, and could be considered the property of person financing it. That is the area that causes concern, not the financing.

- The problem raised often by fishermen is the amalgamation or grouping of many licences by one group of individuals or corporation or processor and the amassing of multiple licences. The concern is that if the company was sold, outside interests would come in, take over the fishing operations and move away. History shows that such a move would be to the detriment of the community, besides which, no young person could ever purchase a corporation that holds 15-20 licences.
- While it appears that we are beating up on the processors, this is not the case, we are just looking for financing opportunities that do not involve control of the licences.
- It is clear that, in this area, the policies have not kept up with the evolution of the fishery.
- Once you accumulate enough of a share of the resource, or enough licences, you become independent; the reverse is also true, once you get lots of debt, you are under control of someone else, and therefore not independent. Under a trust agreement you become dependent on someone else. We are licence holders and have right of free will to make a choice
- Anything that concentrates ownership puts your will under someone else's; we don't want to do that – we want to be in the community, in our boats with our own, with our own independent lifestyle.
- You have an established rule that requires 963 licences and that the person to whom the licence is issued has to be onboard the boat, with a crew, and has to operate the boat. The question is, what is an independent fisherman – is it one who owes \$1 million to the bank or the same amount to a fish processor?
- Under an IQ system, fishermen can be independent, and until an IQ system is introduced, it will not be possible to rationalize the fleet.
- Under a trust agreement, a fisherman is not his own person anymore but subject to direction from the owner of the licence; if you are not under a trust agreement, you retain your independence.
- There are different kinds of trust agreements; some are good, and can be useful under certain circumstances; the question is how to stop those agreements that are abusing the policies.
- Trust agreements create more fishing effort because of bonuses being offered for landings; this has a negative effect on conservation and on safety as boats are going out in all weather to try and earn the bonuses. Under an owner-operator captain, issues of safety are the captain's responsibility.
- In this day and age when an enterprise can cost \$1 million, the debt cannot be retired by an independent owner-operator; the only way to pay off such a debt is to integrate – the economics just don't work otherwise.
- We have to get away from fisheries management policies that are not designed for today's business environment.
- DFO should be very careful if it tries to make Atlantic-wide policies; fleets should have the right to be treated differently if this contributes to their economic viability.

Preserving the Independence of the Inshore Fleet in Canada’s Atlantic Fisheries

Public Consultations – St. John’s, NL - January 20, 2004

Draft Summary

Overall Summary of the Session

- Strong support for the direction in the discussion document and a regulation that enshrines owner-operator and fleet separation policies and intertwines legal title and beneficial use. Additional support for a licence condition to prohibit trust agreements. Support for CCRA to make changes to tax rules to treat fishermen more like farmers and the use of a “professional corporation” for inshore fish harvesters. Some support for flexibility in the owner-operator and fleet separation policies but no “opting out”.
- Others advocated the continuation of trust agreements and noted that the only way to secure financing on risky loans would be to pledge licence rights. They advocated moving to a more BC-like situation which would better allow for retirement planning and tax advantages. They contend that less than 50% of the vessels between 35’ and 65’ are adhering to owner-operator and fleet separation policies.
- Many believe that trust agreements are harming the industry and that owner operator and fleet separation should be preserved at all cost.
- Many people called for better cooperation between DFO and CCRA and many had positive comments on DFO's policy on combining licences.
- Intergenerational transfers were a major concern of many fishers.

Summary of formal written presentations³

- As rules for residency and training impose restrictions on the ability of individuals to hold particular fishing licences, it has become necessary for licence holders and those desiring to acquire fishing licences to find alternative means to accomplish their commercial objectives. Advisors to fishers have created the means for various commercial objectives to be met by drafting what have become known as trust agreements to allow the acquisition of licences to take place while ensuring compliance with DFO licensing policies relating to residency and training.
- These trust agreements are not the sole purview of non-fishers who are interested in investing in licenses fishing enterprises, they are used as much or more by fishers who own and operate their enterprises and wish to accomplish any number of objectives.
- Many millions of dollars have been invested by fishers and non-fishers alike in the acquisition of licensing rights over the past decade or so. In the years since the ability to obtain new licences has become restricted in every significant commercial fishery, DFO has approved hundreds, if not thousands of licence transfers pursuant to policies formed by DFO.
- DFO has stood silently by while the Courts have given legal effect to commercial agreements, including trust agreements, that were created to allow the transfer of fishing privileges. DFO has known that individuals were using these means to various ends and that the Courts were prepared to give legal effect to these legitimate transactions.

³ A list of presenters can be found on page 77

- For the legitimacy of these agreements and their legal effect to be denied, is unfair to the many people who have relied on the Courts’ enforcement of, DFO’s silent acquiescence to, and CCRA’s acknowledgement and approval of these transfers. Vested rights should not be impacted and notice of any intended change is needed prior to implementation. If not, fisher and non-fisher alike who have invested in those rights will be detrimentally affected by their legitimate reliance on existing judicial interpretations of these agreements and the acknowledgement by DFO and CCRA that these licence ownership practices exist.
- Before any changes take place, careful thought must be given to the consequences of making changes. The practice in place has developed in part as a result of the desire of non-qualified parties to participate in the fish business. But it has also occurred to allow fishers who own and operate their enterprises to become more efficient in carrying on or expanding their businesses.
- For example, there are fishers who control more than one <65 foot enterprise. In many cases, this was a result of the need to involve more of their second or third generation family members in the business. Given the rules on limited entry and residency that exist, this might necessitate going outside their qualified zone to find a second enterprise. It might also occur within a zone with a sibling who does not have core status but otherwise has a desire and need to be involved in the business but further harvesting rights are needed to make for a viable fishing plan. What purpose is served by preventing those worthwhile goals from being accomplished?
- Commercial prospects in the large inshore boat fishery are reasonably good right now. This is solely related to the high price and abundance of snow crab. Ten years ago things were not so good – banks were not making loans to fishers and financing was a huge problem. The only people who were advancing significant resources to finance operations were processors. And, they are not foolhardy – they rightfully demanded security for the high risk loans they made.
- Boats are not the only valuable part of a fishing enterprise; the licence often comprises as much or more value available for security. Traditional funding sources have not been prepared to loan on the value of licences but processors will.
- There are a number of newer, modern vessels in use in today’s inshore fishing fleet – how much of the investment required for the renewal of this fleet would have occurred without the ability to draw on the commercial value of a fishing licence. Without being able to pledge licence rights, in tough times fishers may find no source of capital available to them to finance continuing operations in the fish business. The pledging of harvesting rights are critical to high risk loans being made to fledgling or struggling enterprises.
- Fair and open consideration should be given to allowing corporate entities to hold licences, as is the case in the Pacific fishery and in the >65 foot fleet on the Atlantic coast. This would allow far more efficient retirement and succession planning for fishers and encourage tax effective operations for enterprise owners. Unless we operate efficiently using modern business and tax planning models we will continue to struggle to survive and prosper.
- Licence holders and processors can work well together if trust and good faith are present on both sides.
- Less than 50% of the enterprises going to sea today have at the helm core fishers qualified to hold licences. In most cases, the enterprise owner is too busy conducting other aspects of the business to take the time to actually harvest the fish.
- The operation of harvesting enterprises should be restricted to only skilled and properly trained individuals but there is no reason for the restriction of harvesting licence rights to core qualified individuals resident in a particular place. If the rules

are changed, there will not be fewer people working on individual vessels making their living from the sea. The operation of the vessel requires the crews to participate as they do now, without change in wages and benefits, regardless of who owns the enterprise.

- Implementation of changes that would cause more revenue to flow out of the enterprise to CCRA poses more of a threat to the economic viability of fishing enterprises and to employment in the fishery than simply treating fishers like other business people under the income tax act.
- The fish business is a “tough slog” at the best of times. Inventive operators have found effective means within the rules to operate fishing enterprises profitably.
- If changes are to be considered, we have to acknowledge current practice and what led to it; to ignore history will result in us repeating mistakes. Recent times for owners and operators have been some of the most financially rewarding, we should not seek to limit that success by restricting options available.

- In the discussion document, the “Message from the Minister” identifies the key issue when he refers to not undermining the spirit of the Commercial Fisheries Licensing Policy for Eastern Canada, 1996.
- The discussion document is very clear in confirming that so-called trust agreements between fish harvesters and processing companies (or other third parties) do in fact undermine the spirit and intent of licensing policy. The discussion document is clear why the owner-operator and fleet separation policies were adopted in the first place – to protect the independence of the inshore fleet from control by other interests, such as processing companies.
- Strong support for the owner-operator and fleet separation policies. However, they need to be strengthened to secure the position of existing owner-operators as well as supplementing with additional measures to pave the way for an orderly transition to the next generation of fishing licence holders.
- DFO should move immediately to provide a regulatory solution to the problem of trust agreements by incorporating the owner-operator and fleet separation policies into the General Regulations of the Fisheries Act.
- The new regulation should include specific provisions clearly stating that the legal title to a fishing licence is inseparable from its beneficial use and that control over the beneficial use rests with the licence holder, i.e. the fish harvester.
- DFO should also enact administrative measures such as conditions of licence that would prohibit the use of trust agreements designed to undermine the owner-operator and fleet separation policies.
- The above are consistent with DFO’s conservation mandate. The Commercial Fisheries Licensing Policy for Eastern Canada, 1996, established the independent owner-operator fleet as the cornerstone of the <65 foot fishery. In Newfoundland and Labrador, owner-operators have to meet the requirements of the Professional Fish Harvesters Certification Board. The Board is self-regulating and sets out occupational standards as well as a Code of Ethics for fish harvesters.
- The recommendations above would ensure that control of the beneficial use of fishing licences rests with those who comply with the Certification Board’s standards and the Code of Ethics – the people whom DFO’s licensing policy has identified as the key participants in the inshore fleet of Atlantic Canada.
- There is a propensity for fishing families in Atlantic Canada to transfer fishing enterprises from generation to generation. Many current owner-operators are fifth or sixth generation (or more) skippers who have every intention of passing on their enterprise to the next generation in their family. Who has a greater stake in

conservation than someone who relies on healthy fish stocks not only for his own livelihood today, but also for that of his son or daughter tomorrow?

- The generation to generation tradition associated with inshore fishing enterprises in Atlantic Canada is now under serious threat because of the demographics of the industry, the escalating cost of licences – fuelled in part by the intervention of fish processors determined to circumvent the intent of the fleet separation policy – and the tax implications associated with the transfer of fishing licences.
- In many cases, licence holders wish to pass on their enterprise to a son or daughter only to find that the tax burden associated with deemed fair market value is more than they can manage.
- Under Phase II of the Atlantic Fisheries Policy Review, DFO should develop, in consultation with fish harvester organizations, measures that could be enacted by the Government of Canada with a view to providing fish harvesters with more equitable tax treatment and thereby facilitating inter-generational transfers of licences. These measures should be designed to provide inshore owner-operators similar provisions to those in Section 70, subsection 9 and Section 73, subsection 3 of the Income Tax Act, allowing a farmer or a farmer’s estate to transfer farm property to a child at a value between costs and fair market value.
- The federal government should also extend to inshore owner-operators provisions equivalent to those in Section 110.6, subsection 1 of the Income Tax Act which defines farm property eligible for a \$500K capital gains exemption, including so-called “qualified property” such as milk and egg quotas as well as “real” property, such as land.
- The issue of whether or not corporations should be able to hold inshore licences has come under close scrutiny recently because of the issuance of a draft CCRA directive that would rule out the use by an inshore licence holder of any tax benefits associated with holding his licence(s) in the name of a corporation.
- Some interests sought to exploit this development to make the case for elimination of the fleet separation policy, but the two are quite separate issues. The taxation issue could readily be resolved without jeopardizing the fleet separation policy. The kind of regime that allows professionals such as lawyers and dentists to establish “professional corporations” and to benefit from the tax advantages associated with incorporation has promise and would be a good fit for the self-regulating professional board governing the registration of fish harvesters.
- DFO should work with CCRA and fish harvester organizations to examine options such as professional corporations as a vehicle for ensuring fair tax treatment of inshore licence holders.
- Regulations should make a clear distinction between a corporation owned and controlled by a professional fish harvester and one owned by a fish processor or other third party. A properly structured set of rules should be developed in consultation with fish harvester organizations to allow fish harvester-owned and controlled corporations to hold fishing licences while excluding those owned by fish processing companies and other non-fishermen.
- A clear distinction has to be made between genuine flexibility in the rules if a broad consensus exists for it, and some kind of opt-out provision for those who oppose the intent of the owner-operator and fleet separation policies. ‘Flexibility’ should not be code for ‘loophole’.
- Flexibility should be incorporated into the owner-operator and fleet separation policies only if (a) there is broad consensus among affected owner-operators and (b) the flexibility reinforces the basic intent of the policies. Opting out of the owner-operator and fleet separation rules should not be permitted.

- DFO should move swiftly to stop the erosion of the fleet separation policy that is taking place on a daily basis. A clear public statement of the Department’s intent to put an end to trust agreements, together with the publication of draft regulatory changes would put the public on notice that any subsequent trust agreements might not provide the protection for the interests of the third party that the third party intended.
- DFO should not wait until the details of the Atlantic Fisheries Policy Review process or the full results of the consultations aimed at preserving the independence of the inshore fleet are completed to clarify its intent to prohibit the use of trust agreements that undermine the owner-operator and fleet separation policies. A statement of this intent should be issued immediately.
- In addition to dealing with the current generation of owner-operators, any changes as a result of these consultations will help determine the type of fishery that will be passed on to the next generation.

- DFO licensing rules should be expanded to include an option for individual core fishers to use a Canadian controlled private corporation to own their fishing enterprise. This is an important step in the evolution of the Atlantic fishery.
- Any law which denies a fishing enterprise’s ability to operate with all the rights and privileges afforded other entrepreneurs, demonstrates a significant misunderstanding by DFO of how the right to incorporate serves to stabilize the financial viability of Atlantic fishing enterprises.
- While many older fishers still view fishing as a “way of life”, far more fishers are realizing it has become serious business. The nature of fishing has changed, requiring significant investment in licences, vessels and related technology.
- Young fishers seeking to acquire an enterprise of their own and/or any fisher seeking to upgrade their vessel will quickly realize the financial commitments are significant and, in order to achieve their goals, they must operate as any other business person, and adopt the tools and business practices of other entrepreneurs, including the use of a corporation. A corporation is used because it receives a far more attractive taxation rate than an individual.
- A basic tax principle is the entity shall own or have a beneficial interest in all rights essential to its core business assets, which, in this situation, would include a fishing licence. Many tax rules are based on tests determined in references to all or substantially all of a business’ core assets and so the small business tax rate relief can be matched with/enjoyed by the owner of the key income earning assets.
- A corporation holding its capital asset or eligible capital expenditure, such as a licence, may avail itself of the tax depreciation, which further enhances the amount of after-tax cash retained by the commercial fishing enterprise to make payments on its debt obligations.
- Many fishers have already come to the realization that incorporation is essential for their enterprises. These fishers have developed a variety of ways to use corporations and related tools, such as bare trusts. What DFO should do is develop clear rules to make this a simpler exercise which will be more cost effective for fishers to set up and easier for DFO to govern.
- Most commercial lenders require loans to be paid off much faster than current tax law provides depreciation write-offs. Since loan principle payments are not tax deductible the difference in banking and taxation principles cause cash flow problems. These difficulties can be substantially reduced where the loans are being paid down by a corporation.

- When a fisher is not incorporated, much more of the cash flow from his catch goes to payment of taxation instead of debt reduction. This creates a need for fishers to do supplemental borrowing. Fish processors are often a key source of obtaining the initial capital to acquire a new vessel or licence, the faster a fisherman can pay off the bank and the processor, the faster the fisher becomes in control of his own destiny and removes his dependency on the processor.
- Without changes to clearly allow the incorporation of core enterprises, DFO is forcing fishers to hold these rights personally and pay for significant assets out of profits taxed at the highest personal rate. This would significantly impair and dramatically increase the repayment time and would also become a barrier and deterrent to new persons entering the fishery.
- Any deterrent to new persons entering the fishery would create an adverse impact on the market price of licences and vessels, which could create financial loss to parties who have already made significant investments in licences and vessels.
- The current restrictions on a fisher’s ability to transfer the beneficial interest in licences to a corporation also represent a significant impediment to succession planning for fishers.
- Certain key tax laws do not provide fishers with the tax relief afforded other primary industries, in particular agriculture. Currently agriculture receives two significant advantages not afforded fishers – the farm property capital gains exemption and relief for farm corporation shares.
- Existing enterprises have invested personal and borrowed funds to acquire assets and have entered into contractual obligations with lenders. Lenders and tax authorities have already developed an understanding of the bare trust relationship a fisher may have with his/her own corporation. These fishers and lenders need to understand what will happen to those entities and legal contracts – DFO needs to collaborate with CCRA.
- Until July 2003, CCRA was willing to recognize bare trust as a tool for placing beneficial ownership of a licence with a fisher’s corporate enterprise. CCRA did not find such a structure offensive from a tax policy perspective. Under their new directive, this will change. CCRA needs to indicate what their position will be with respect to agreements in existence before July 2003.
- Throughout the 1990s through to 2003, the commercial marketplace has increasingly recognized the significant value represented by the right to fish and designate the next holder of the licence. A market exists for these licences and DFO has been a significant participant in this market by acquiring licences for the native fishery. These actions by DFO have added credibility to the market and, consequently, other commercial practices were developed around this market. Depending on the quota and authorized fishing zone, some licences attract hundreds of thousands of dollars for the rights represented by the licence. The market is forging ahead and will create a mechanism to achieve its goals. Fishers regularly come to professional advisors requesting advice on incorporation for the tax relief it provides.

Following presentations by registered speakers, a round table discussion of the issues raised in the discussion document was held. The following is a summary of that session.

Open Discussion – Trust Agreements

- It is clear that much of the inshore fleet, (the >35 foot boats) is financed and controlled by the processors; control of the fishery must stay with the licence holder; this would be possible if financing were made available through lending institutions.
- If the terms of financial agreements applied only to re-payment, without control of the licence, the control of the licence would remain with the licence holder.
- The policies must consider who is in control of the licence, who benefits from its use and what are the results. Processor investment in licences inflates licence value so that fishers can not afford them; this in turn leads to unlicensed individuals landing unreported fish - thousands of tons of it – which provides the processor with a supply of raw material. The more control the processors have, the more this illegal activity will continue.
- In granting licences to corporate entities, there needs to be restrictions on the kind of entities who can get licences, and who the shareholders are. Otherwise, as more sectors acquire fishing rights, it will be Industry Canada running the show, not DFO.
- Some corporations are being formed for legitimate reasons and this should be discussed in more detail.
- There needs to be a secure future for the traditional (< 35') inshore fleet. They are the ones whose viability is most threatened. Requirements for these fishers to rationalize and combine licences, and the existence of trust agreements, have allowed the >35 foot sector and the processors to buy up licences.
- Many fishers have incorporated through arrangements acceptable to CCRA. Through our corporations, we pay taxes, EI, workers compensation, etc, and we thought we were doing things right. Now we find out the rules have changed.
- There needs to be a provision whereby the licence can be issued to a company, not to the individual fish harvester. This way the fisher's family can become part of the company; this will facilitate the transfer of the licence to the next generation; the only other alternative for a young fisher who wants to acquire a licence is to approach processing companies to borrow money.
- The status quo is not good enough – trust agreements are essentially eliminating the owner-operator policy. We need a regulation to protect the independence of the inshore fleet. Otherwise Revenue Canada gets their way and the big fish companies will control the licences; Newfoundland and the inshore fishers will have no independence.
- The most devastating move in the fishery is the introduction of trust agreements which will ultimately destroy the fishery. These agreements do not benefit the small boat fleet as they do the bigger boats.
- If the fleet separation policy is eliminated, and trust agreements allowed to flourish, the captains and crew will suffer – they are not protected under a trust agreement, and, since the processor-owner of the companies who hold the trust agreements will want to manage an efficient operation, they will use as few vessels and crew as they have to.
- We need to have an easier means to transfer licences to sons and daughters and we need to ensure that the name on a licence is actually the operator of the vessel.
- We need a common understanding of the rules that would define the types of corporations licence holders can establish. The proposed tax directive stipulates

that a licence holder is not entitled to transfer their licences or associated licence privileges to a corporation using the provisions of section 85 of the Income Tax Act. Because of this, licence holders are losing out on the ability to obtain preferable tax rates.

- Regardless of the size of the vessel, if there is an advantage to incorporating then that option should be available to all. The only restriction is that the corporation must be controlled by owner-operators.
- CCRA has indicated that licence holders cannot incorporate for the purpose of transferring licences or associated privileges and that where this has already taken place, they intend to “examine these transactions on a case-by-case basis”. That will be a huge job. There is an obvious inconsistency in DFO policy and the practice before the CCRA directive. DFO recognition of a professional corporation would remove some of the uncertainty currently being felt by resource users.
- There is DFO’s definition of “inshore” and there is the traditional definition in Newfoundland which refers to the <35 foot fleet. In the 50s and 60s DFO created the <65 foot fleet though massive subsidies and gave them privileged access to what were then considered underutilized species. The small-boat inshore fishery (<35 foot) was left behind. This trend continues today, with resource access dominated by larger vessels, so that those who have harmed the resource the least are the ones most penalized. The larger sector is a much easier sector for accountants, lawyers and policy people to deal with.
- The under 35’ is more habitat based, where fishers fish their own traditional fishing grounds, but DFO has never considered this kind of fishery a priority. DFO needs to establish policies and priorities for the traditional inshore fishery, to respond to their needs, particularly with regard to access.
- DFO has to decide if the fleet separation policy will remain in effect and, if so, they must take action to enforce it and not try to protect those who operate outside the policy. If fleet separation is retained, trust agreements must be fixed.
- The intent of these policies was one man, one licence, one enterprise, on the boat but now trust agreements and tax directives have created a lot of confusion.
- It was straightforward in the past; financing was based on ability to fish and the licence was not worth much - if you had the skills, you could get a loan. With the cost of licences right now, the young fishers are getting pushed out.
- We saw this happening, we saw fish stocks declining, we saw the offshore taking everything, and DFO turned a blind eye. The same thing is happening today. The blame rests with DFO.
- The question is how to fix it; how do we protect the ones that have trust agreements or are incorporated? The youngest person in Trinity Bay who owns a licence is 34 years old. In 10 to 15 years, there will be a lot of people looking to get out of the industry. How can they sell to anyone but a company?
- This consultation should have happened years ago; we have created a big mess; as long as we have crab we are alright but what will happen if that stock collapses.
- We definitely do not want to end up with a BC-type model but we do need a policy change to allow fishers to exit the fishery and the younger generation to enter it. A simple policy would suffice.
- The creation of these problems rests in the hands of the fishers and processors should not be blamed – they are involved but they are not alone. In large part, it was fishers who asked for these trust agreements to be created. Processors are involved but they are not the only “boogey man”. If there was no value to a licence, processors would not fund its acquisition; if secured funding is available, what difference does it make if these funds are received from a processor or a bank.

- There are linkages between these policies and vessel replacement and cubic number. DFO bends the rules for some but not all – it should be treating everyone the same.

General discussion – Owner-operator and Fleet Separation Policies

- The policies we make today will have big ramifications on fishers’ livelihoods. Take the issues of “pocket licences” and the 12-month leasing policy, which stopped Newfoundland fishers from fishing more than one licence on one vessel for a 12 month period, forcing them to buy new vessels. This resulted in too many active vessels.
- Many fishers operate through a company, only holding the licence in the licence holders name. If fishers could combine licences (within reason), and fish two licences from the same vessel, it would be a lot more cost effective to run one vessel.
- Going fishing is expensive and regulations should not interfere with the economic viability of an enterprise. If young fishers cannot enter the fishery, they will move on to other trades, likely out of the community.
- We had a sanctions policy in place a few years ago, helping to control overfishing – we want it back.
- DFO should be making policies that are resource-wise and business-smart.
- Many crab fishers supported the competitive quota system, and everyone with a licence had access to quota. Then, inshore permits were implemented, with non-transferable individual quotas. Today we are talking about how to apply the owner-operator and fleet separation policies.
- The primary beneficiaries of DFOs current licensing policy are the processing sector and the >35’ fleet. We must make sure the <35 foot fleet has the same right to gain access, without the restriction of rules on combining, etc. Though the < 35’ fleet is not involved with trust agreements, they are still under the control of processors, and they are still losing quota through the licencing of “Level 2 fishers”.
- If DFO considers a change to allow inshore corporations to hold licences, these corporations must be owned by fish harvesters.

Preserving the Independence of the Inshore Fleet in Canada’s Atlantic Fisheries

Public Consultations – Moncton, NB - January 21, 2004

Draft Summary

Overall summary of the Session

- Many participants stressed the need to strengthen the owner-operator and fleet separation policies but many also support adapting these policies to current circumstances; processing interests argued for the elimination of these policies.
- Many proposed solutions to the problems associated with trust agreements through the creation of inshore “professional corporations”. Others suggested that inshore corporations that were family based and wholly held within the family would be consistent with the spirit of the fleet separation and owner operator policies.
- Many issues were raised with respect to comparative tax treatment with other industries and the necessity to plan for and manage intergenerational transfers.
- Some participants called on DFO to move more slowly with this issue and to create a working group created with DFO, CRA, lawyers, accountants and the fishing industry.
- Several noted that not all trust agreements are “bad”. Some communities have trust agreements that are beneficial, in others they are detrimental to the community. They wanted a cautious approach that would still allow some use of trust agreements provided they did not interfere with the spirit of the fleet separation policy.
- Discussion also included concerns in the region about the designation of a substitute operator and the period of time associated with the designation.

Summary of formal written presentations⁴

- While the government has an excellent record of supporting entrepreneurship, it has a dismal record in allowing that entrepreneurship from maturing into exploitation. An example of this is the fishing licences that have flowed into the hands of processors, contrary to government policy, and money that used to go to a community now goes to an individual, probably outside the community.
- The fleet separation policy must be preserved and strengthened. DFO-induced and supported actions have seen the groundfish fishery and the full-bay scallop fishery leave southern New Brunswick to move into the hands of Nova Scotia processors; the discussion document says this is contrary to government policy.
- It is pointless to continue this line of discussion because the response is always the same; DFO will not go back and correct the errors that have resulted from policy being flouted; they say they are going to do things better from now on – but how?
- Under the Oceans Act, we have committed to applying the precautionary approach to fishing plans through a process called objectives based management – it would be refreshing to attend a meeting with DFO and hear DFO state an objective without using the word “quota”.

⁴ A list of presenters can be found on page 77

- For DFO to pursue a regulatory solution to the issue of trust agreements is a red herring; the process will bog down in legal arguments and challenges until it is pointless. The discussion document is not clear that a regulatory solution exists.
- The fleet separation policy is closely tied to the owner-operator policy. A strengthening of this policy may accomplish the same thing. We have no problem saying a person must have two years experience before they can obtain a fishing licence; we should be able to say that a licence is not transferable for a minimum of five years. At least the operator must be well treated.
- Another option is to cancel a licence held in a trust agreement. The Minister of Fisheries and Oceans has ultimate discretion to issue or not to issue a licence. One cancellation of a licence of those who consistently ignore policy or conservation rules would give the rules under which we operate a whole new perspective.
- The fleet of independent operators in competitive fisheries is a true democracy. Everyone has the same rules, the same opportunities and the same say in the fishing plan. They survive by their abilities and what is brought to them by the sea. This has changed somewhat because of quota management, however, the lobster fishery still allows us to be equals.
- The mind set that allows a person to be a successful independent generally makes a person a poor team player. Hence, we have a poor record of working together and organizing ourselves. We do have a good record of pushing government on issues of conservation and community benefit.
- The role of the independent fleet must be strengthened; we must be allowed to take on some responsibility and be accountable for what we are given. I see no willingness on the part of DFO to give fishermen any responsibility. The licence conditions in some fisheries are 20 pages long – if you were to give a child a 20-page list of do's and don'ts before they went out for the day, the family would be dysfunctional and if you had failed to communicate family values, there would be little hope of the rules being kept.
- We know that DFO's budget is decreasing; they will not admit that they cannot continue to do all that is necessary to operate a viable, sustainable fishery. We are being told that we must pay DFO for science, that the knowledge gleaned is the property of the Minister and cannot be released without his consent – we are losing responsibility, not gaining it.
- DFO needs to support our independent inshore fleet by allowing them to make decisions and have real responsibility regarding their fishery and actions. Paying someone to do things we are perfectly capable of doing ourselves is the road to poverty, not self-reliance.

- Many crab fishers in Gulf Region have been told by DFO to transfer their licences before the 2004 fishing season. But, since the CCRA directive of July 2003, fishers only have three options open to them: transfer the licence directly to a son or daughter and suffer the tax consequences; or transfer the licence to a company and contest the regulation with CCRA; or enter into a trust agreement.
- DFO should immediately allow the transfer of a licence to a company if the company conforms to certain conditions, such as family owned and operated. DFO should also allow an extension for those fishers who have been told to transfer their licences until CCRA's position is clarified.
- Many of the affected crab fishers have family members involved in their business and wish to leave the business to the next generation (which could be more than one

child). The best way to accomplish this is to form a corporation; this way the whole family benefits.

- DFO will have to work with Revenue Canada and change its policies to allow licences to be issued to corporations and to have Revenue Canada rescind its directive. Whatever a fisher does to try and get a break from taxes, he is going against either DFO or CCRA policies.
- The owner-operator and fleet separation policies are the cornerstones of public policy in Atlantic Canada. DFO should move immediately to provide a regulatory solution to the problem of trust agreements by incorporating the owner-operator and fleet separation policies into the General Regulations of the Fisheries Act and apply them across the Atlantic.
- In addition, DFO should also enact administrative measures such as conditions of licence that would prohibit the use of trust agreements designed to undermine the owner-operator and fleet separation policies.
- Fishermen need access to financing and fair tax treatment; this is particularly important to facilitate intergenerational transfers of licences. In Phase II of the AFPR, DFO, in consultation with industry, should develop a series of measures to provide for equitable tax treatment for fishers.
- DFO must continue to consult with fish harvester organizations and act where there is a broad consensus.
- DFO must not introduce any flexibility that erodes the intent of the fleet separation policy - there can be no “opting out” which we view as the loss of licence and quota to private corporate interests, which in turn undermines communities.
- In the discussion document, the expression “undue concentration” is used; this is worrying as we believe the existing level of concentration is already a problem.
- We believe there should be no flexibility in the owner-operator policy until we agree on what is meant by “flexibility”.
- Today’s discussion is taking place because of a lot of work done by fishermen’s organizations to keep this issue on the table. DFO should enact a regulatory solution to the problem of trust agreements that separate legal title from beneficial use. Control of the licence must remain with the licence holder.
- DFO should work with others to ensure access to funding (e.g., loan boards) to lessen dependence on processing companies; this is particularly important for the younger generation trying to get started in the fishery. DFO should also work with CCRA to seek an exemption to the capital gains tax for fishers, which will also assist in intergenerational transfers.
- Our association is participating in a community-based rock crab fishery which was started in 1997 on a pilot basis. We have three temporary rock crab communal licences. The association takes the names of those core fishermen interested in using their boats to fish the quota and has a draw if there are more than three interested. The association notifies the DFO and the MFU of the names of the fishermen, pays the licence fees, fuel, bait, dockside monitoring, minor repairs and the Receiver General of Canada.
- We are requesting that the rock crab licences that are presently temporary and are held by fishermen who have been active for more than three years in the rock crab fishery and temporary communal licences that respect the same conditions become permanent beginning in 2004, if the biomass warrants it.

- We hope it will become possible for licences to be issued to corporations in the inshore sector. For the fishermen in our association, it has become a necessity for their economic survival, due to the downward trend of the fisheries in our area.
- While we support the owner-operator policy, we believe that under certain conditions incorporated fishermen’s organizations should be able to hold licences in trust for their core members. These conditions are: the association may hold in trust permanent licences for their core members; the proceeds and responsibilities remain with the members themselves; if they choose to have the administration handled by the association, the agreed upon costs will be divided equally among the members; a legitimate and recognized organization is one that represents the fisheries in which only core fishermen have a vote on all matters relating to the regulation, conservation and development of the fishing industry.
- Our membership is divided into two classes: regular and associate members. Regular members are bona fide fishermen who own licenses and vessels and are actively involved in the commercial fishery and whose major source of income is derived from fishing. Associate members are those persons interested in and connected to the fishing industry, including, but not limited to retired fishermen, fishermen’s helpers and fishermen’s spouses.

- We would like to congratulate DFO for its desire to put some order into what many consider a patchwork of often conflicting and ad hoc policies.
- The starting point for any discussion on economic or social viability must be the long-term sustainability of the resource. Economic or social objectives are at odds with conservation only when the period considered is short or when the management regime rewards a disregard for the health of the resource or ecosystem. Only short-term political expediency pits conservation against economic or social objectives.
- If the fishing industry is to gain long-term viability, it must become fully self-reliant rather than being constantly dependent on income support programs. Although politically attractive, short-term economic measures that support the industry foster weak economic units that cannot compete in international markets, stifle innovation, depress incomes and create an overall climate of dependence.
- If DFO burdens itself with the short-term social viability of coastal communities, it will fail in its fisheries conservation and economic viability objectives.
- Greater fleet flexibility is required to increase economic viability. As we develop a better understanding of marine resources and the ecosystems in which they live, and as the market demand for seafood evolves, particular fleet structures or gear types may need to evolve. Overly restrictive allocation policies, based on past social relationships, will not allow this evolution to take place.
- DFO should create a framework where access and allocation decisions can respect historic investment in a fishery while not forcing the industry to operate in outmoded fleet structures or gear restrictions.
- The fleet separation policy works directly against economic viability. By creating an artificial barrier between processing and harvesting, processors have little control over the timing and quality of raw materials. Processors are required to be economically viable in the traditional business sense, while artificial social support programs maintain antiquated social relationships between the harvesting and processing sectors.
- No other resource industry has such an archaic and discriminatory policy against vertical integration for specific groups of industry participants. The lack of security of supply places Canada at a disadvantage in international markets with integrated competitors.

- The fleet separation policy is unique to the Atlantic fisheries. If the Atlantic fishery is to contribute to the government’s broad social and economic objectives, it must be freed from the restrictions that currently hinder a wide range of mid-sized, community-based, often family owned processing companies from moving beyond being simple suppliers of commodity products. These companies have the financial, management and marketing potential to become suppliers of branded, high-value products to international markets. They can develop the type of integration required to provide sustainable, good paying and long-season jobs.
- If there is a future for the processing sector in Canada, it is in producing high-value products targeted to high-end markets around the world. Secure supplies of raw materials are required in order to make the necessary investments in product and market development demanded by distributors and retailers. Small and medium sized processors producing these types of products can pay good wages to plant personnel, lengthen the employment period and pay good prices to harvesters for the raw material.
- The Government of Canada must determine the criteria on which access and allocation decisions will be made, and then allow new structures within the fishery to administer these criteria.
- The industry should play a more direct role in access and allocation decisions, but within a framework where future decisions are predictable. The important criteria are:
 - Provision of access and allocations to the harvester/processor who will actually prosecute the fishery;
 - Recognition of historical development of and participation in, various fisheries;
 - Setting individual allocations, within sustainable limits, sufficiently high to allow economic viability and self-reliance by the fleet sectors;
 - Stabilization of allocations, subject to the use of harvesting practices that continue to contribute to the long term sustainability of the fishery and its environment and ensure the greatest benefit to Canada; and
 - Recognition of access and allocation holders’ investment in sustainability, responsible harvesting, economic self-reliance and understanding of the resource and its ecosystem.
- Artificial and discriminatory limits on the integration of harvesting and processing have greatly reduced Canada’s ability to generate maximum benefits from our natural fisheries resource. Rather than protect the fishery, fleet separation has become one of the major contributors to the less-than-satisfactory state of self reliance we now face.
- Crab fishers feel they are being held hostage, particularly since receiving the letter from DFO advising them to dispose of their licences. It is hard to understand why DFO is forcing this on fishers – maybe they want the licences for some other purpose. A fisher can not fish his licence if he’s too old or too sick. Soon we will be seeing our old people tied to the boat and putting to sea. Is this what DFO wants?
- Fishers incorporate to avoid paying hundreds of thousands of dollars in taxes, and are called “tax evaders”. All they want is to be treated equally because right now, they are only ones who don’t get tax breaks.
- What options are available for licence transfers other than trust agreements? If one looks at the bank’s perspective, how can they possibly loan money if a licence cannot be used as collateral. If there were alternative sources of financing, things might be different. The options are to sell your licence to your children and pay high

taxes, sell to the federal government, or sell to a plant. Fishers can't afford the licence, so both the government and processors have the advantage.

- There is definitely a problem with the owner-operator policy. The only solution, particularly for those who have used designated operators in the past 5 years, was to enter into trust agreements. Incorporation used to be an alternative to allow for inter-generational transfers, but with the CCRA directive this is not possible.
- The CCRA directive is discriminatory as it applies only to the Atlantic. A draft bill – Bill C-463 – would help fishers in transferring licences to their children. We need to support this bill.
- We also need clarity around this “5-year rule” – is this cumulative, consecutive, or five years over the course of a lifetime of fishing? DFO should also be clear about how this “rule” is applied in all the Atlantic Regions.

- The problems of today's fisheries are numerous. Our whole east coast fisheries have changed over the years and the dynamics have taken various shapes. Investments in the family enterprise are enormous and growing. Now, many fishers are approaching retirement age or family members of deceased family members still have the need and the desire to keep the enterprise going.
- DFO licensing policy is creating an unnecessary financial pressure that is more intensive than any other family-oriented business, such as the family farm. Family farm operations have avenues whereby capital gains taxes are not as punishing when transferring inside the family unit, depending on the province in which the operation is located; it is important that the same treatment is offered to family fishing enterprises in Atlantic Canada.
- It is time that the Federal and Provincial Governments, DFO, and Revenue Canada not only look at the problem facing our industry today, and in the future, but take action and resolve these complex problems. It is these small and medium sized family enterprises that have contributed a lot to the \$2 billion fishing industry in Atlantic Canada.

- How is a year calculated in the “five year rule”? Is it one year, or is it one fishing season? Although we have asked DFO for clarification, this has not been forthcoming.
- We need time to consider our options, and allow time for Bill C-463 to be adopted, before being able to offer detailed comments on these two policies. With the Minister's absolute discretion to issue fishing licences, it will be important for us to have clearer indications of the fiscal consequences of our decisions before we should be asked to make them.

- The discussion document poses a number of questions and asks for fishers' views, although we would have liked to see a clear statement in the document of exactly what form a regulation could take, and what it could or could not do. The questions posed are complex, especially when you consider the potential ramifications and impacts they could have on the <65 foot fleet.
- DFO must clarify what is meant by multi-licensed, multi-species enterprises. In the discussion document, it reads that self reliant fishers are multi-licensed, multi-species; now we have the fixed gear fleet using this expression to justify new access. We do not agree with the use of these terms in this context. DFO must specify what it means by multi-species. We prefer the DFO to recognize that certain fleets have specific needs, and that history has forced some to abandon multi licences.

- The management of a fishing enterprise has changed radically in the last decade. The value of licences, particularly those of lobster, crab and shrimp have forced independent fishers to refine their business practices.
- The Supreme Court and DFO have contributed to the increase in value of an enterprise, by accelerating the integration of First Nations into the fishery through the purchase of licences and gear.
- The AFPR is the first major exercise in 20 years to revise fisheries management policies on the Canadian Atlantic coast. It is clear that the increasingly complex management of fishing enterprises has not benefited from a regulatory framework that has evolved at the same time as management measures. We have serious concerns relating to the increased value of fishing businesses, the fiscal and legal challenges, and intergenerational transfers.
- We support the objective of separating the harvesting and processing sectors, in order to maintain the independence of the inshore fleet. Without the fleet separation policy it would be extremely difficult to combat the repeated assaults by large processing companies trying to assure themselves of good raw material.
- For a number of reasons, including business management, good fiscal practices and good sense, on the advice of their financial advisors, many fishers have incorporated. The CCRA directive will have a major impact on the fishery.
- In terms of policies, it is not sufficient just to have fisheries management policies; we also need the mechanisms that will allow us to manage our fishing enterprises to face whatever comes our way.
- Trust agreements can be beneficial if they respect basic policy objectives. We should support trust agreements that give fishers the opportunity to organize themselves. We will support other associations in pushing for capital gains exemptions for fishers. Family fishing is the only business not allowed to incorporate and to gain certain protections granted to other Canadians.
- These issues can not be addressed with a quick fix. DFO can not solve this problem for us. The situation demands an in depth study, and DFO should set up a working group with representatives of CCRA, industry, accountants and lawyers and others to develop a practical solution.

Following presentations by registered speakers, a round table discussion of the issues raised in the discussion document was held. The following is a summary of that session.

Open Discussion – Trust Agreements and the Owner-Operator and Fleet Separation Policies

- Two issues have been raised: the stacking of licences and quota, which involves moves from one community to another; and unfair tax treatment of legitimate licence transfers. It is hard to see how both these issues could be addressed in one regulation that could stand a legal challenge. It is also difficult to see that DFO has the competence to make these regulatory changes.
- The notion of who can have a licence has never been an issue with fishers. If you're in the boat, that was enough for us, as long as we get to fish competitively with others on a fair basis. The issue is how to prevent the stacking of licences and quota - the status quo only allow licences to move between provinces.
- The July 2003 message was that CCRA would not allow individuals to incorporate and to transfer their licences to these new corporations. DFO should take immediate steps to discuss the potential impact of the CCRA regulation; this has to be resolved

before the start of the next fishing season. It is unclear if their directive will be retroactive; and uncertain what happens with existing arrangements.

- We need certain preconditions prior to incorporating, for example, all interests should be owned by family members. Licences should be issued to corporations – this would eliminate the need for trust agreements for tax purposes – provided these family-held corporations held all interests in the licence. This would also mean that the Fisheries Act would not have to be changed.
- For fiscal reasons, and for many other reasons, it is too simple to say “you are either have fleet separation or you do not”. We must be practical which will mean taking the time necessary to consider all the implications of change – this will not be done by spring. We need modern policies, able to respond to the realities of today’s fishery. It is hard to understand why DFO is insisting this be done so quickly.
- While we all want to solve the problem, we have neither the legislative base nor the regulatory framework to make meaningful changes.
- There was a second letter from DFO. The first said “you must transfer your licences”, the second said “we can retire your licence for you”. We suspect that DFO is using the five year rule for other objectives, in particular the Marshall response. This is a very difficult decision that DFO insists must be made; licence holders should be given the necessary time to make the right decision.
- Part of this conflict stems from CCRA; as one of the biggest players, why are they not here? Industry has changed so much; there have been many policy changes and we need to adapt the rules to meet the needs of today. We want to know why we can not transfer licences within the family; we are at a point now when CCRA needs to be here to explain why they are changing the rules.
- There are really two sides to the issue of trust agreements: on one side, the agreements are being used for the benefit of the community and on the other, against it. The community should have some decision making power when something like this comes up, rather than us always having to ask DFO to make the decision. We should be careful as we look at regulation as an option; it is not the only one.
- The document poses some very complex questions. We are not regulation specialists, nor do not have access to specialists in fiscal matters as DFO does. What has DFO done internally to identify the kinds of regulations that could be put in place? The Department of Justice will be involved in drafting any regulation – have they given any indication of what a regulation might look like and how it would be applied? We had hoped that DFO would provide alternatives to regulation; this is not clear from the document. We can talk about objectives to pursue, identify problems, etc, but we can not provide much advice on how to change acts and regulations. The discussion document should have proposed options within DFOs mandate and authority.
- DFO should consider allowing some flexibility in the designated operator provision to allow family members who have inherited a fishing enterprise to carry on the family business.
- A licence should be allowed to stay in the family unit; if this means that they have to incorporate, they should be allowed to do so. There is a complicated issue and will require a tremendous amount of work.

Preserving the Independence of the Inshore Fleet in Canada’s Atlantic Fisheries

Public Consultations – Charlottetown, PEI - January 22, 2004

Draft Summary

Overall Summary of the Session

- Strong support for strengthening owner-operator and fleet separation policies although many remained open to flexibility especially to deal with intergenerational transfers and tax issues.
- Many concerns on individual licensing matters. Some participants wanted to know specifically what DFO would do if it were aware that a licence was part of a “trust agreement”.
- Some noted that “trust agreements” allow for some tax advantages plus sharing of the business with family members. There seemed to be strong support for the creation of “family corporations”.
- Support for equal treatment of fishers with other small businesses in Canada and the need to provide means for fishers to more easily access financing so that “trust agreements’ are not the only option. Some discussion around using a licence as collateral.
- Other issues raised included the need for additional enforcement in PEI, caution against a BC-like model on the East Coast, the need for community management, moving DFO resources out of Ottawa to the regions and some discussion of regional differences within DFO.

Summary of formal written presentations⁵

- This is a critical issue and it is important that those who could be affected by new measures should have every opportunity to put their views forward.
- Inshore fleets contribute to the health and prosperity of rural communities throughout the Province of Prince Edward Island. The fishing industry, as a whole, makes a significant contribution to the provincial economy. There are 1,300 licensed core fishermen and approximately 6,000 others directly involved in the industry. The total value of fish landings was approximately \$170 million in 2002. The fishery contributes approximately \$350 million a year to the provincial economy. With fish products making up about 35% of food exports from the province, this makes a significant contribution to the balance of trade.
- The inshore fleet is the lifeblood of the fishery on PEI. Preserving and protecting the vitality and independence of inshore fleets and the people who own and operate them is of utmost importance to this province.
- We must ensure that the spirit and intent of the existing commercial fisheries licensing policy be protected and strengthened. That spirit and intent is reflected in the owner-operator and fleet separation policies. Taken together, these two policies are the pillars on which the strength and independence of the inshore fleet is based. Anything that erodes these pillars is not acceptable.
- According to the Fisheries Act, and as ruled by the courts, those holding legal title to a fishing licence can also enter into a trust agreement with a third party to confer a beneficial interest. Trust agreements are in contravention of the spirit and intent of

⁵ A list of presenters can be found on page 77

the owner-operator and fleet separation policies as they allow a third party to control the use of the licence. They must be eliminated.

- Trust agreements, in addition to seriously compromising the independence of the inshore fleet, also run counter to a core objective of the Atlantic Fisheries Policy Review – to create the circumstances for inshore fishermen to become more self-reliant, more economically viable and more self-sustaining in the long term - we must ensure that this is fulfilled.
- DFO should pursue a regulatory solution to the issue of trust agreements. No other approaches appear to be evident. In granting a licence, the federal Minister needs to ensure that both the legal title and beneficial interest are being conferred. They should be inseparable and by inter-twining them this will help protect the independence and viability of inshore fishermen.
- The need for trust agreements would be reduced if the purchase of a licence were more within the financial means of new entrants. The PEI Government, in the most recent Speech from the Throne, announced that consideration will be given to the ways and means of helping new entrants become established in the fishery. This would not only reduce the prospect of trust agreements, but also will promote self-reliance and independence among fishermen.
- We support the policies that are currently in place and feel that changes that in any way diminish their intent would be troublesome. Designation of a qualified operator with a long term attachment to the industry would be one such example of changing the intent of the owner-operator policy.
- If we are to truly achieve the objectives of a more independent and self-reliant inshore fleet, we need a fisheries management approach that is fair and equitable to all fishermen. A healthy, well-managed fishery is the foundation of the viability and independence of inshore fishermen.
- Regrettably, management decisions, such as the recently announced tuna fleet quotas, are neither fair nor equitable. They do not provide the basis for the level of confidence that fishermen need if they are to manage their operations more effectively. The sharing of the resource, whether it be shrimp, snow crab, tuna or whatever, must be fair and equitable to all inshore fishermen. Unless and until we have a more fair and equitable management approach in all aspects of the fishery, we will continue to face issues involving the independence of the inshore fleet here in the province.

- We believe the preservation of the owner-operator and fleet separation policies are essential to our survival, and we have taken steps to preserve it. In 1982, the bona fide licensing policy was developed to put fishing licences in the hands of full time fishermen. It has been used as a model in other jurisdictions as they strive towards the new concept of professionalization.
- These concepts are all linked. The concept of an owner-operator is dependent upon a separation of the fleets. The bona fide licensing policy is dependent on having owner-operators. Professionalization is largely a marriage of these ideas with a view to the future.
- These policies ensure the wealth generated from fisheries, a public resource, is widely shared among rural coastal communities which continue to be a vibrant part of the Canadian mosaic. The wealth of the oceans belongs to the people of Canada and the privilege of harvesting it has been granted to those who live next to it, trusting the Department of Fisheries and Oceans to ensure its conservation and sustainability. Atlantic inshore fishermen care about having this wealth continue for generations to come in the same way their fathers and grandfathers cared for them.

- We are not sure why anyone would want to tamper with these policies that have sustained this part of the world for generations. We have heard all the corporate buzz words such as global competitiveness – what does that mean? Does it mean we must harvest every last life from the ocean and destroy future generations of fish and the sea bottom that sustains life – we certainly have the technology to do this now. If this is the point, Canada’s fisheries managers can be proud of what has been done on the West Coast where almost total control of the fisheries resource is in the hands of the corporate sector, communities are being destroyed, as are the livelihoods of the once successful inshore fishermen.
- We are concerned that the preservation of the owner-operator policy is even being questioned as a policy option. It is not an option but rather the least that can be done to preserve this part of the world. We call upon the Minister of Fisheries and Oceans to issue a clear, unambiguous statement to clear the air, such as “I support the owner-operator and fleet separation policies and will take action against those who attempt to tamper with it”.
- Canadians support Atlantic Canada and its people. Canadians want a rich and viable fishery that will last and realize that this will only happen if the political will exists to make this happen. The destruction of the inshore fishery has happened in BC despite the Cruikshank report and others who predicted it.
- The erosion of the owner-operator and fleet separation policies is underway in Atlantic Canada. This erosion is rampant in the Scotia-Fundy Region and is now rearing its head in the Gulf. We only learn about trust agreements when they go bad and roll into court. No one knows how many trust agreements are out there or how many of them are owned by corporate interests.
- We have listened to those to advocate greater flexibility in the owner-operator policy. Some are confusing a valid concern about the cost of intergenerational transfers with opening loopholes to the policy. Let there be no doubt that the fishermen of Atlantic Canada do support both the owner-operator and fleet separation policies and we look to DFO to plug the existing loopholes and enforce these policies.

- There should be no attempt to do away with or water down the owner-operator and fleet separation policies for the <65 foot fleet. The owner-operator policy has enough built-in flexibility, such as the 30-day vacation period and other replacement rules to allow fishermen to meet their enterprise needs.
- The owner-operator and fleet separation policies were put in place to keep fishing licences in the hands of fishermen to make sure that they got a better price for their fish. Allowing processors or other interests to buy up fishing licences will only mean one thing: corporate control and the demise of our coastal fishing communities.
- Instead of trying to eliminate these types of policies, DFO should be plugging the loopholes that allow processors, lawyers and others to buy up lobster, snow crab, tuna and other valuable inshore licences through under-the-table deals. Because of these deals, non-fishermen now own most of the bluefin tuna licences in Scotia-Fundy and processors are buying up and controlling more and more lobster licences.
- If things are left as they are it is only a matter of time before processors control enough licences to start dictating the price of lobster and other species. There will no longer be individual fishermen – there will just be company men – and we will have taken major steps backwards.
- Over the last 30 years independent inshore fishermen have built up their fleets to a point where they are now the most important industries in most coastal communities. This was possible because the owner-operator and fleet separation policies kept more money in the pockets of inshore fishermen and in their communities.

- DFO’s top-down (Ottawa to water) approach, combined with the incestuous relationship between the large corporate fishing fleets and the Department’s political masters has justified the truly deserved distrust of the fishing community.
- Over the years I have called for a community-based cooperative co-management system of fisheries; many of my colleagues share the same sentiments and have called for change.
- I have been consistent in my view that “no one fishes for crab, salmon or lobster in the Rideau Canal” – yet there are 1,600 people working for DFO in Ottawa. These positions must move to the resource as soon as effectively possible.
- The only reason DFO receives \$1.5 billion in taxpayers money is for the protection of fish and fish habitat. To say that the Canadian taxpayer is getting value for money would be questionable at best. There has been a litany of problems in the Department both before and after the merger with Coast Guard, from bureaucratic sycophants to distrust with the scientists in the Department, to a lack of protected areas for fish stocks.
- An example of this is Sable Gully – with more than six years of advocacy work to get this area protected, the Sable Gully has still not been properly designated as a Protected Area, meaning that it should be off-limits to fishery and oil and gas activity. Yet oil and gas leases can be issued within a few months. And allowing seismic testing within the inshore waters to proceed when the test data has been inconclusive – is this not going against DFOs precautionary principle?
- It would be a critical error to withdraw from the fleet separation policy. A change in this policy would see the transfer of a public resource into the hands of fewer and fewer corporations, eventually leading to control of our natural resources from outside our borders.
- If the Department believes that “it is important that the vibrant small business community of inshore fleets continues to contribute to the health and prosperity of hundreds of coastal communities”, then it is imperative that we reverse the move to large corporative stewardship of our fisheries, and we have to act now.
- We must not allow our resource to be drained by the big fish; if we do not move away from this trend, the experience of 22,000 farm families forced to leave their livelihood in 2001 will be the fate facing our independent fishing families. Already we have witnessed over 40,000 people out-migrating from Newfoundland and Labrador, many of them from the fishing industry.
- Our Atlantic fishing industry has sustained First Nations people for thousands of years. This independent management system successfully adapted to the influx of Europeans 400 years ago. Our lobster fishery, historically a great independent industry is facing challenges that many believe will force this industry to follow the way of the family farm.
- Trust agreements, the price and transfer of licences, combined with our current taxation system seem to be designed to break the successful independent spirit that has been the backbone of our Atlantic fisheries communities for so long.
- Independent fishermen deserve to stay in business and continue to sustain this resource for their families as they have for many years. The Federal and Provincial governments must assist individual fishermen wherever possible to maintain their presence within the Canadian fishing industry.

Following presentations by registered speakers, a round table discussion of the issues raised in the discussion document was held. The following is a summary of that session.

Open Discussion – Trust Agreements, Owner-Operator and Fleet Separation Policies

- We always hear the call to “plug the loopholes” – while this is fine as a concept, it is hard to see how DFO can do it – and I don’t hear any suggestions on how it could be done.
- While we are not resource users, but we do represent them; next time it would be nice to get some notification of consultations such as this in advance. DFO did a poor job of advertising this session.
- Prince Edward Island may not be reflective of other areas - here the problem of lawyers and processors controlling licences is not much of a problem. Trust agreements are used here for a number of business reasons, including allowing for capital gains exemptions, income splitting, and estate planning, which makes it logical that fishers want to incorporate for these same reasons. There is nothing wrong with trust agreements as long as they are controlled by fishermen themselves (and their families); restrictions can be put on the agreements with processors to ensure that fishermen retain control of the licence.
- We are all looking for an answer to how to keep people in coastal communities; when the real issue is a declining fish population with too many fishermen chasing too few fish.
- It is no longer viable for old fishermen to stay in the fishery and we need to get fishers out of the fishery soon. We really need policies and programs that allow for fleet rationalization to allow people to exit the fishery and others to enter. Currently, costs of starting a fishing enterprise are prohibitive - the young can’t afford to buy in –so who is going to keep the communities going?
- We need to reverse the trend towards corporate fisheries, and allow families to form family-run fishing corporations.
- ITQs are one way of keeping an independent fishery, but there needs to be a limit on the amount of quota associated with a licence to prevent quota concentration, which is essentially the same as licence concentration.
- Whatever DFO decides to do, it should act quickly and settle this issue.
- If we decide to pursue changes to legislation, because of the process that must be followed, there will be more consultations – has DFO considered the timeline? This will not happen quickly.
- In PEI we have seen major cuts in enforcement, including the loss of the DFO patrol boat. DFO needs to re-consider these decisions and look at all aspects of the fishery. Take the lobster plan for instance - increasing carapace size and releasing females are significant conservation measures which need to be protected by DFO.
- DFO will have to clarify its position on existing trust agreements; and whether or not it will transfer a licence if a trust agreement is already in place. DFO must realize that there are thousands of these agreements out there and, while DFO does not recognize these agreements, they do exist in many forms, and DFO will have to acknowledge the difference between a licence holder and the beneficial owner of a licence.
- While trust agreements are not a problem in PEI, we should keep a close eye on what is happening in Nova Scotia where processors have gone to licence holders, provided funding for the licences and soon began directing the operation. Today

some Nova Scotia processors hold as many as 40-50 licences. First, you find crew members being pirated off owner-operator run vessels then, you will see the price you get for your lobsters going down.

- Trust agreements are good for lawyers and accountants but not for an independent inshore fleet which is why we must retain the owner-operator and fleet separation policies.
- The issue of trust agreements is a valid one, but let's not treat it as a dirty word. You need some control, that's all; as long as the beneficial interest and legal title are inseparable, there is no problem. The licence holder, by signing a trust agreement, to hold the licence in a corporation, will benefit from tax savings, estate planning and the capital gains exemption. This makes sound business sense - the licence holder retains control of the licence and receives the same fiscal treatment as other small businesses.
- There is always bad news from Scotia-Fundy. There are two cases in the Gulf now in court; DFO has interceded where the policy has been contravened so there are things we can do. One solution is to ensure that CCRA allows fishers to be on an equal footing with other small businesses.
- The licence belongs to the Crown; if the Crown is aware that a trust agreement is in place, they can act; DFO should be asking whether or not a licence is under a trust agreement before issuing or transferring it.
- DFO has been acquiring licences for native fishers. In some of these cases, these licences were part of a trust agreement, and in others fishers were advised and encouraged to incorporate and sign a trust agreement with the corporation so that the licence could be transferred and the fisher pay less tax.
- We talk about an Atlantic policy but there are major policy differences among the regions. In the Gulf they discourage trust agreements; in Nova Scotia they almost encourage them. With such profound differences in interpretation and application of policies, how can we ever deal with these issues?
- We could explore partnership agreements between related parties, rather than trust agreements. Many trust agreements have existed for a number of years for a number of good reasons; DFO will have to carefully consider the repercussions of trying to turn back the clock.
- There are many fishers getting ready to retire and others looking to buy into the fishery. Financing of licence purchases is a major issue as the Credit Union is the only financial institution that will take a licence as collateral. It is understandable that a fisher wants to get the best price possible for his licence as he does not have a pension fund – trust agreements can be helpful for intergenerational transfers and as a means for a fisher to exit the fishery with enough money to retire on. This should be taken into consideration in whatever decision DFO makes.
- Getting financing is one thing, getting a loan from a processor is different – the difference being that the processor will direct the use of the licence. If the processor only finances the operation, this should be no different than obtaining money from a bank or credit union. But fish buyers and processors are not into the business of financing without strings attached; when they get involved, it is usually for personal gain.
- The issue of trust agreements all boils down to an issue of financing, and the terms attached to that financing.

Preserving the Independence of the Inshore Fleet in Canada’s Atlantic Fisheries

Public Consultations – Gaspé, QC - January 27, 2004

Draft Summary

Overall Summary of the Session

- Broad support for owner-operator and fleet separation policies to prevent processors from controlling licences and support for a regulation that is adapted to reality.
- Given the resource situation with cod and crab, fishers are looking for some flexibility to combine licenses for the same species on a single vessel. They are also concerned that the downturn in the resource will encourage further control of the inshore fleet through trust agreements.
- Participants wanted governments and departments within the federal government to work more closely together to find a solution to the problems of intergenerational transfer of licences, trust agreements, etc.
- Fairer sharing of the resource will reduce the temptation for fishers to resort to trust agreements with processors. Some called on DFO to be more stringent with the licence transfers rules to stop the flow of licences away from areas like the Lower North Shore.
- Participants wanted the federal government to be more like the Province of Quebec with respect to capital gains tax exemption and financing programs, loan guarantees, for gear, vessels, licenses to fishers to assist intergenerational transfers
- Other issues raised included questions about status of AFPR, how to influence oil and gas exploration, seismic testing and the Beldune, NB incinerator project and the problems with many jurisdictions in this area.

Summary of formal written presentations⁶

- Commercial fishing is an important economic activity in Quebec maritime communities. Over the years, the industry has changed and regulations must now change in consequence.
- In fact, in the communities, a fisher is also a fishing enterprise, an enterprise that hires staff and maintains an infrastructure. Fishing is a business – fishers make investments and take risks to achieve short and long term viability. To succeed, this business needs to know that the resource will be protected and exploited sustainably. It also needs the regulatory and financial arrangements that help its development
- The work being done by the Atlantic Fisheries Policy Review constitutes the occasion to update the policies and regulations and to provide fishers with the tools they need for the 21st century.
- We have not been able to hold extensive consultations on the discussion document, thus my comments today are a first reaction to the document. We would appreciate the opportunity to submit in-depth comments in the coming weeks.
- The objectives of the owner-operator and fleet separation policies should be maintained. These policies strive to protect the inshore fleet from control by other interests, such as processors, by separating the harvesting and processing sectors.

⁶ A list of presenters can be found on page 77

- Fishing licences and beneficial interest must stay with professional fishers. There should be a focus on professional fishers and ways to preserve access of independent, professional fishers to the resource.
 - Fishing licences and beneficial interest must be linked in a way such that those outside the commercial fishing industry cannot become licence holders.
 - Over the last number of years, the fishery has evolved and fishers need the tools necessary to ensure the development of their sector. Maintenance of the owner-operator and fleet separation policies is essential to allow fishers to progress as owners and employers – they need to be able to manage their company.
 - DFO should work with CCRA to put into place a system whereby fishers are treated equally on the question of taxes. DFO must make a distinction between a company owned and controlled by professional fishers and others controlled by a processor or third party (the latter being unacceptable). Professional fishers must be able to legally control their corporations.
 - Fishing enterprises are family operations. Most of the licences will be transferred from father to son or daughter, often for many generations. Because of this, they have strong interest in protecting the resource. We need a mechanism to ensure that these intergenerational transfers can happen.
 - The Federal Government should follow the example set by the Province of Quebec and allow a capital gains tax exemption, similar to that offered in the agricultural sector.
 - Captains should be able to name designated operators, as long as the other captain is a professional fish harvester, but in such a way that it does not encourage licence concentration.
 - The absence of a firm regulation on the practical application of the owner-operator and fleet separation policies has caused many “illegal” situations to develop.
 - DFO should wait until the AFPR is finalized and released before taking decisions that may have negative impacts on fishers. Until then, ways must be found to slow down the proliferation of trust agreements that undermine existing policies.
 - DFO should pay particular attention to existing trust agreements and establish a new policy such that it does not penalise fishers who entered into agreements to further the economic viability of their enterprise.
 - DFO should clearly and publicly state its intentions to reinforce the owner-operator and fleet separation policies to make it easier for fisheries to take decisions that must be taken.
 - We believe that it would be worthwhile to create a working group of DFO, industry and experts to work specifically on this file. The group would be mandated to develop possible scenarios to achieve the stated objectives.
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- A fishing licence should belong to an individual, not a company.
 - If trust agreements are being used only to finance the purchase of a licence or enterprise, without separating beneficial use from legal title, or directing the use of the licence, this should be allowed.
 - The main problem is concentration of licenses; but we need multi-licensed vessels. We should be allowed to “buddy-up” - it is more efficient and economical if two people with two licenses fish off same vessel. Need to be able to have viable operations and this is one way of achieving it.

Following presentations by registered speakers, a round table discussion of the issues raised in the discussion document was held. The following is a summary of that session.

Open Discussion – Trust Agreements

- There are lots of trust agreements and it is important that the fisher remains in control of the licence; some trust agreements should give us cause for concern.
- I have great concerns about trust agreements; it is imperative that fishers control the harvesting of the resource by retaining control of their licences – a third party should not be able to control the use of a licence; we have been clear on this point, and have made our views known on many occasions.
- Trust agreements, owner-operator and fleet separation policies must not destroy the effort being made to conserve the resource.
- We know that in Nova Scotia trust agreements, not harvesters, are controlling the resource. In Quebec the situation is different. In 1983, some corporations had permits and retained licenses, although there were not many in Quebec, and those that existed have gradually transferred to professional owner-operators. In the groundfish sector in particular, trust agreements only exist to make money.
- Many have entered into trust agreements to facilitate intergenerational transfers as the financial implications of a direct transfer are too great. These trust agreements are not damaging because the legal title and beneficial interest remain together. However, the licence continues to belong to the father but is being run by the son. This problem would be lessened if we had the same benefits as the agriculture sector where the family takes over the business without “unreasonable” impacts. This is why we ask Ottawa to adopt capital gains exemption of \$500k.
- It is good to see that DFO acknowledges the importance of preserving the independence of the inshore fleet and its economic viability. One way for fishers to achieve economic viability is a fairer system of distributing the resource – some fishers make millions while others are under the poverty threshold. It is those who have no choice who go to the processors for financing, enter into trust agreements, and become employees of the processor.
- DFO could avoid trust agreements if a fairer percentage of the allocation was given to the inshore fleet, reasonable revenues would mean fishers wouldn't have to get funding from processors.
- Intergenerational transfers – same problem with lobster fishers in the <50 foot fleet. Following the Marshall decision, many licences went to Aboriginal groups which raised the value of the licences, which becomes problematic if a fisher wishes to transfer his licence – they are taxed on the value of the licence. If there was a way that they could find financing elsewhere, they would not need to seek financing from processors. We are lucky in Quebec because the value of a licence can be borrowed against, which allows young fishers into the fishery. We should have the same tax treatment as the agricultural sector.
- One of the main problems is the nature of the resource, because it is a common property, we don't own it, we can just access it; so financing the purchase of a licence through financial institutions becomes an issue.
- The Government of Quebec should play a role in the solution to trust agreements – it is the province that gives processing licences and financing to fishers. Quebec has a

public process for applying for a processing licence, albeit a slow one, if a processor is not persistent with their request for a licence, they could be discouraged.

- Your orientation is clear - to preserve the independence of the inshore fleet - but we need to be more practical. There are all sorts of fisheries problems (cod etc.) and fishers are more likely to come under the influence of others when they are in a financial crisis and others are ready to take advantage of them.
- The focus of the document is good, but we really need to fix the problem quickly because it will proliferate. Licences are already leaving Quebec. This is a large issue and includes capital gains tax exemption; professional fish harvesters, allowance for intergenerational transfers, and there may be other issues too.
- DFO should take steps to amend the regulations to give them the legislative tools required to protect the policies, although there might be other ways to deal with the problem – this should be explored.
- A working group is supported, composed of representatives from the Federal Government, Provinces and industry – it would be good to see what options exist and to take an in-depth look at all the issues. The current direction is definitely excellent.
- When we received the document we were surprised and disappointed that the document was more interrogative than consultative. You present the facts, but it is not clear how you will package the issues. In particular, it is hard to see how to deal with trust agreements, particularly since we do not hear about them until it is too late.
- Maybe we could use the legal experience in the federal government (the Department of Justice), to delve further into the issue. Any changes that are adopted will have to stand the test of time and must be truly appropriate and must protect the inshore fishermen.
- Licences were initially issued to develop a region. As long as it is possible to transfer licences within a whole province, it is difficult to say which region will survive. What we see in the lower north shore is purchasing between regions and we lose out in both transfers. DFO should keep licences in a specific area and only issue licences to people living in that area. This is the way it is done in Labrador, and that policy should be applied across the board. In issuing licences, DFO should consider the needs of the community.
- Trust agreements are used to remain competitive; if funding is not provided by a plant that will keep the enterprise alive, the harvester will pull out of fishing. If government would determine an allocation based on community needs, this might allow for better management of the resource and fishermen would be more involved in the decision-making processes.
- In BC where stacking is allowed, there was double stacking in fishing fleet, salmon, herring and at the end of this process, 50% of inshore fleet disappeared, and the majority of salmon licences are now in the hands of packers. Even if there is a person there fishing the licence, the trust runs the whole thing. This is why we have a really hard time with trust agreements.
- We try to tell people to find alternative sources of financing but when no alternative exists, a fisher has to resort to trust agreements. When he has a choice, he should be allowed a free hand to manage his business as he sees fit, to preserve the long term health of the resource. The fishers we represent are not interested in having a situation where the people who fund a fishing operation have more say than the fisherman. But that is American model and we know what it has done in US, NZ, western Canada - we don't want that model here in Eastern Canada. We will fight against it - we know what happens to the resource when people only motivated by profit.

- Because of these policies, the Government of Quebec set up loan guarantees to allow for licence purchases, etc., that are only available to licence holders. The Government does its best to control under the table agreements but it can only act within the tools it has.
- By setting up loans for fishers, surely the Province is acting similar to a party to a trust agreement – by loaning the money, the licence is given as a guarantee against default.
- While some might interpret the financing this way, it was only introduced to protect fishermen and allow the licences to stay in Quebec.

Open Discussion –Owner-Operator and Fleet Separation Policies

- To allow some fishers to become more economically viable, “buddy-up” should be allowed in certain fisheries. The owner-operator and fleet separation policies should be put into the regulations to ensure that it is the licence owner who fishes the licence; this is particularly important in the lobster fishery.
- The discussion document asks us to consider how other fleets or non-resource users should be consulted. It is unclear who this refers to – are we going to involve Greenpeace in consultations? We have enough trouble among ourselves without adding others to the process. It is unclear if the views of the commercial users will be adequately considered. It is hard to see how this consultation process would work.
- Other issues are equally as important. For example seismic testing – what are the rules? Fishers don’t know what the impact may be on stocks and don’t know where to raise their concerns or what process to follow. If seismic testing is harmful to the fishing grounds - how will they get compensation? It seems that other government departments take decisions that are bad for the resource and do not give fishermen the opportunity to provide their advice – maybe what the government should consider is a “water plan” for management of the oceans. Another issue is the Beldune incinerator – fishermen and their organizations should be given the opportunity to offer their comments.

Preserving the Independence of the Inshore Fleet in Canada’s Atlantic Fisheries

Public Consultations – Iqaluit - January 29, 2004

Draft Summary

Overall Summary of the Session

- Discussion focused on how these policies would apply to Nunavut in the future as Nunavut continues to develop an inshore commercial fishery. All recognized that these policies are not applicable to Nunavut today but have the potential to stifle economic development.
- Nunavut is concerned over how a commercial fishery develops, in particular it needs a licensing policy that is flexible enough to allow for skills development, accommodates some form of joint venture with southern interests without allowing control of the Nunavut fishery by outside interests, and allows for financing arrangements. Concerns were expressed about the lack of consistency between DFO commercial licensing policy, communal fishing regulations, provisions of the land claims settlement and relationship with Hunters and Trappers Organizations (HTOs).
- Although there appeared to be support for the spirit of the owner-operator and fleet separation policies, there was concern that these policies in their present form should not apply to Nunavut as they may stifle the development of an independent commercial fishery in the Nunavut context.
- Trust agreements could be major impediment to development of the Nunavut fishery. Same financing issues exist and joint ventures may be key to developing the fishery. However, need constraints on what would be permissible to prevent the Nunavut fishery from being controlled by southern interests.
- Suggestion that a separate Nunavut fisheries licensing policy be developed because many provisions of the *Commercial Fisheries Licensing Policy for Eastern Canada, 1996 (CFLP)* are counter to the needs of Nunavut. Alternatively, *CFLP* could include an exemption for Nunavut, at least while fisheries develop. Nunavut interests see this as an opportunity to “do things right”.
- Agreement that a full discussion on these issues needs to be held with various Nunavut interests, communities, and Hunters and Trappers Organizations (HTOs).
- Other issues of concern for developing the Nunavut fishery were raised, such as lack of access to financing through DFO Aboriginal programming (AFS, AAROM); lack of science, research, small craft harbour funding, and other infrastructure.

Summary of formal written presentations

No formal presentations were given at this session.

Summary of round table discussion of the issues raised in the discussion document (trust agreements, owner-operator and fleet separation policies)

- It is hard to see how you could prove that a trust agreement exists. Fishers enter into these freely and most often the easiest way to get financing is through a processor – these agreements are not forced on anybody. But that being said, we


know they exist; fishermen may say that they don't want them, that it is the processors who do, but they still sign them.

- How does the owner-operator policy apply to Inuit or Aboriginal people? If I think about the Hunters and Trappers Organizations – would they be able to acquire licences?
- If someone were able to acquire a 65' vessel and licence, they may not be able to skipper it - how does this policy affect these folks - can they hold a licence and hire a skipper? If this is what the policy means, we will have to decide if Nunavut wants these policies.
- I can see a landmine if you set up an Aboriginal individual who wants to get a vessel or licence, and enter the regular commercial fishery and then you say you have to be an operator on that vessel, but not if you're part of a communal licence – this doesn't seem fair.
- So, we are really talking about vessels less than 65 feet in length. We can go out and buy a large enterprise and an offshore licence and there are no regulations to stop us; but to buy an inshore enterprise and licences is a different issue as the Atlantic licensing policy applies today. Is that the policy we want here? Different issues apply to us.
- This is really a hypothetical issue for Nunavut at the moment. There is lots of interest in [Pangnirtung](#) in smaller scale vessels; winter fishing through the ice has been relatively successful, and they now have a processing facility. There is now interest in developing a small scale summer open water fishery. HTOs are often the lead in this kind of proposal - if they come to us for funding, to DFO for licensing a 45' boat, what restrictions would be placed on these organizations? Would this policy restrict them?
- Although there is a lot of interest in developing an inshore fishery, very little capacity exists. Is there the potential for roadblocks if these communities express interest in inshore fisheries?
- There are currently no inshore licenses in Nunavut, but there is no doubt there will be in the future, and we must plan for that. Maybe the Nunavut Wildlife Management Board (NWMB) needs to take a close look at the policy.
- The owner-operator and fleet separation policies, and the Atlantic commercial licensing policy are based on the groundfish collapse; while they may be fine for Atlantic Canada because of overcapacity, we are trying to develop capacity in our fledgling industry. These policies are not in best interest of Nunavut in terms of our development here.
- In Nunavut we have the Land Claims Agreement that gives a definition of inshore which does not recognize the 65' barrier; the inshore here is defined by distance from shore. The inshore here is defined as the fjords and out to 12 nautical miles; these operations are on a smaller scale, with local investment, running 3-4 months per year; there are provisions in Land Claims Agreement that deal with how this should develop.
- There is no doubt there is lots of work to do, but this represents an opportunity to do things right, to do things differently. If we were to make one recommendation, it would be to ask DFO to develop a licensing policy for Nunavut that takes into consideration owner-operator and fleet separation policies but would be a specific policy for Nunavut based on its unique characteristics, (remoteness, Aboriginal culture, community based approach to development, etc.) We should all work together (DFO, Nunavut government, NWMB, NTI and industry) to develop a policy for Nunavut that is in the best interests of Nunavut.

- For whatever reason, it seems people are holding on to these policies; people are complaining about the 65 foot limit, people are building larger vessels, the inshore shrimp fleet is not viable unless it is also fishing crab, etc. There are major issues that don't make sense in the Nunavut context but there are components we can take into consideration. We should look to develop Nunavut policy as a partnership.
- Another component that would have to be taken into consideration is when we expand, develop and extend our fishing season to fish in southern waters, or Nunavut interests acquire a southern licence and prosecute a southern fishery. As we move forward, we will probably have opportunities and the need to partner with southern interests but we will have to guard against takeover by southern interests through trust agreements. On the other side of the coin, if DFO does not allow trust agreements, this could preclude business partnerships with southern interests that could lead to lack of development opportunities. We will obviously need some kind of exit clause.
- We have to be very careful here, particularly on trust agreements, because Nunavut is still trying to figure out where the inshore fishery is going; if we are not careful, our industry could be totally controlled by southern interests. There are already moves underway to do that and we certainly don't want to be taken over by southern interests. The most sexy word today is “joint interest with Nunavut” – we must make sure that it is in Nunavut's interest.
- Maybe we should think about amending current licensing policy to make it more relevant to Nunavut so that it does not hamper economic development.
- Licences held here are communal; we have to recognize community interests. There are many young entrepreneurs who want to get in to the fishery, but have a problem with capacity, how does an individual in Clyde River, for example, get involved? There is no harbour, no marine service centre, no infrastructure in place, even if you had a boat, you would have nowhere to put it and nowhere to service it.
- We really need to discuss this in detail throughout Nunavut. The biggest obstacle we face here is investment and it is likely there will be lots of joint agreements in place, in the form of trust agreements. How do you protect against that? Financing should be based on a viable fishing plan, but when you can get money in 24 hours quickly from down south, what are you to do? No one will lend money to purchase an enterprise if there is no licence attached – it is the licence that is worth the money.
- There is no question, licences are issued on an annual basis, but when was the last time DFO took back a licence? Some banks will lend money based on how long the fisherman has held the licence but not many are willing to take the risk.
- There are some avenues available to finance an enterprise through NTI, and the Nunavut Credit Corporation, and there are some hunter/harvester support programs, but this is on a very small scale. DIAND may have grant programs, but it is very difficult for anyone to invest in the inshore today because of the lack of infrastructure, such as harbours, marine service centres, knowledge of what is out there and then there is the weather. DFO forgot about Nunavut in terms of research and science; we are managed out of Winnipeg and this creates major problems as their interests are not ours. They aren't cutting programs on the Great Lakes and the Prairies – they are cutting small, remote programs and not putting any money into Nunavut. We do not have access to other programs such as the Aboriginal Fisheries Strategy - which is discriminatory to Nunavut Inuit – or to AAROM, which is a great program, with great opportunities, but is not applicable to people with comprehensive land claim agreements.
- Where is DFO support for fisheries development? Take Small Craft Harbours - not one penny has gone into Nunavut - until we get support, we are really talking about

nation building. If you consider the principles outlined in policy framework, all this is related to shared stewardship. Unless and until we get some infrastructure support, it will be difficult to develop our fishery.

- We need a level of flexibility to allow us to develop the fleet that is appropriate to Nunavut. We have not undertaken detailed discussions with communities to develop a vision for the fishery. We have this opportunity to develop a forward looking policy that will be important in the coming years. Flexibility will be key to ensure we can support communities and individuals.
- The fishery has great potential and is one of the bright spots for economic development in Nunavut, but there are very few people in Nunavut who understand the regulations, or even know they exist. It is hard to know whether or not to accept the policies. It is fair to say that the fleet separation policy makes a lot of sense, especially for the inshore, operating smaller boats. We will all have to work together to develop a policy for all vessels that is in the best interest of Nunavut. We will have to be careful or we could stifle the industry before it even gets started.
- It is hard to picture the structure of a regulation, particularly as it would relate to the Land Claims Agreement and the NWMB. We have to keep a level of fluidness and flexibility to use some discretion - we have the best interests of Nunavut at heart and have a process that works (article 5 of LCA).
- Right now, an Aboriginal person (or anyone else) can purchase a 65 foot enterprise and associated licences; all he has to do is find a willing partner, get financing, put a qualified captain on the boat, and go fishing tomorrow. These policies we are talking about only apply to the less than 65 foot fleet.
- In the case of Nunavut, we need to find mechanisms for mentoring and building capacity; professionalization is a barrier to that now. I believe there should be some flexibility to allow for on-board training until the person is qualified to run his own boat - no one will lend money without a person having core skills, but I don't see anything in regulations to prevent that from developing today.
- Under current policy, the obligation is on an individual to be a core fisherman, and licences are only issued to core fishers – we don't have any here. We need either a new licensing policy or a clause stating that Nunavut is exempt to allow it to develop its fishery.
- Regardless of whether we move to a separate licensing policy or an addendum to existing policy, a fair amount of consultation is required. A lot will depend on what sizes and types of enterprises we will have. We are at the right time to do this now - five years from now, the vessels will be there.
- The real issue is whether or not you allow corporations to buy a vessel less than 65 feet and allow people to operate them and the associated licences. We have to be careful that we don't slam the door on entrepreneurs and be careful that southern interests do not take over our fishery.
- This is obviously a very complex issue, with flexibility being the key to whatever is developed. We have to ensure that whatever we do will work for Nunavut.




Atlantic Fisheries Policy Review

Public Consultations on
“Preserving the Independence of the Inshore Fleet
in Canada’s Atlantic Fisheries”

January, 2004

Canada



- 1 Opening Presentation**

Overview of the Discussion Document - Preserving the Independence of the Inshore Fleet in Canada’s Atlantic Fisheries
- 2 Submissions by Pre-registered Speakers**
- 3 Open Sessions on Discussion Document**

key themes:

Preserving the Independence of the Inshore Fleet
“Trust Agreements”
Owner-operator and Fleet Separation Policies
- 4 Wrap-up / Next Steps**

2



Public Consultation - Objectives

Preserving the Independence of the Inshore Fleet

- Objectives:
 - Seek advice on options to preserve the independence of the inshore fleet
 - Hear views on the owner-operator and fleet separation policies and concerns about their erosion by so called “trust agreements”
- The fundamentals
 - DFO endorses the importance of maintaining an independent and economically viable inshore fleet.
 - The owner-operator and fleet separation policies are integral elements of the *Commercial Fisheries Licensing Policy for Eastern Canada, 1996*, and remain in effect

3



These issues are part of the broader Atlantic Fisheries Policy Review (AFPR)

The AFPR is a process to build a modern Policy Framework that provides clear objectives and principles to manage fisheries for the long term

vides the foundation to make the necessary program and other changes to focus on conservation-based fisheries

reates incentives for responsible use of the fisheries resource and supports self reliant and sustainable fisheries.

4



Atlantic Fisheries Policy Review (AFPR)

- Policy Framework is expected to be released later this spring (Phase I).
- Putting the framework into operation (Phase II)
 - Actions will build on work underway to modernize fisheries management e.g. Objective Based Management, co-management, etc.
 - Some work (an acceleration of Phase II) has already begun:
 - Independent Panel on Access Criteria (IPAC)
 - Vessel replacement rules
 - Preserving the Independence of the Inshore Fleet in Canada's Atlantic Fisheries – discussion document

5



Why a Discussion Document on Preserving the Independence of the Inshore Fleet?

Widespread concern from inshore fleets re: “trust agreements” and the erosion of Owner-Operator and Fleet Separation Policies

Others argued that these policies impair the ability of the fishing industry to be competitive

The AFPR process did not resolve these divergent views

6



The Discussion Document

What are “trust agreements”?

- “Trust agreements” are legal instruments entered into by a licence holder and a corporation or other third party.
 - Often times they propose to direct the use of the licence (beneficial interest) by the third party.
 - These private contracts are legal instruments which bind the parties that sign them.
 - DFO is not party to these contracts and is not bound by their provisions

7



“Trust agreements”, although they are not considered illegal by the courts, sometimes contravene the intent of the owner-operator and fleet separation policies.

DFO will examine all options to deal with “trust agreements” and enhance the viability of the inshore fleets

Possible Options from Discussion Document:

Regulation under *Fisheries Act*

To intertwine “legal title” and “beneficial use” (for fisheries management reasons)

Licensing Policy Change

Update to include clear written criteria for licence issuance

Role for others (Provinces/Territory, others)

8



The Discussion Document

Owner-operator and Fleet Separation Policies

(Contained within the Commercial Fisheries Licensing Policy for Eastern Canada, 1996)

- **The owner-operator and fleet separation policies are integral elements of the *Commercial Fisheries Licensing Policy for Eastern Canada, 1996*, and remain in effect**
- Under the owner-operator provision, licence holders (<65 feet) are required to fish their licences personally, unless they have previously designated an operator under a “grandfather clause”.
 - A substitute operator may be designated when the licence holder is prevented, by circumstances beyond his/her control, from engaging in the activity authorized by the licence.


9



Fleet Separation Policy

Under the fleet separation policy, initially adopted in 1979, corporations may not hold new fishing licences (<65 feet); pre-1979 corporations may retain their licences which may be issued as replacement licences to another pre-1979 corporation which holds fishing licences for vessels <65 feet in length.


10



The Discussion Document

- Consultations seek your input on new processes to apply the owner-operator and fleet separation policies
- The AFPR Policy Framework proposes that resource users take a greater role in the decision-making processes that affect their operations.
- This could mean adaptation of the policies, within constraints, to deal with (for example) inter-generational transfers, the pooling of quota shares or designation of qualified operators with a long-term attachment to the industry

11



Proposed constraints

Respecting underlying objectives

- avoiding undue concentration of licences
- preserving and fostering a diversified sector of viable multi-licenced/multi-species independent inshore enterprises headed by professional fish harvesters.

Other constraints include:

- Conservation objectives, Aboriginal and treaty rights, interests of others who may be affected, avoiding imposition of undue costs, maintaining geographic distribution of benefits, etc.

12



The Discussion Document

Some issues from the Discussion Document:

- What process should fleets follow to bring proposals to DFO on the owner-operator and fleet separation policies?
- How will the interests of other fleets or non-resource users be factored in?
 - How will fleets bringing proposals forward be accountable for this?
- How should “a significant proportion of commercial licence holders within a fleet or region” be defined?
- Apart from the set of constraints identified in section 4.1, what other constraints should be considered?

13



Based on what we hear at these consultations, DFO will finalize and adopt an approach to preserving the independence of the inshore fleet.

We will post “*What We Heard on Preserving the Independence of the Inshore Fleet*” on the AFPR web site: www.dfo-mpo.gc.ca/afpr-rppa

If a regulation is found to be the most effective means to preserve the independence of the inshore fleet, DFO will circulate a draft regulation that reflects the results of these consultations, and consult on the proposed change.

DFO will finalize and release “*Guidelines for the Application of the Owner-operator and Fleet Separation Policies*”

14



Next Steps

Please provide us with your comments

- E-mail: afpr-rppa@dfo-mpo.gc.ca
- Regular mail:
Atlantic Fisheries Policy Review
8th Floor, 200 Kent Street
Ottawa, Ontario
K1A 0E6
- Phone: 1-866-233-6676
- Fax: (613) 990-4111

Appendix B

LIST OF REGISTERED SPEAKERS, BY LOCATION

Port Hawkesbury

1. Jeff Brownstein, MFU, Local 6
2. Stuart Beaton
3. Ronnie Heighton, Gulf Nova Scotia Fleet Planning Board
4. Osborne Burke, North of Smokey Fishermen’s Association
5. Cameron MacKenzie, Area 18 Crab
6. Kay Wallace, Gulf Nova Scotia Bonafide Fishermen’s Association
7. Wilfrid Isaac, North Side Fishermen’s Association
8. Michael Newell, Guysborough County Inshore Fishermen’s Association

Yarmouth

1. Brian Giroux, Scotia-Fundy Mobile Gear Fishermen’s Association
2. S. Clifford Hood, QC
3. R.G. Stewart, Full Bay Scallop Association
4. Denny Morrow, Nova Scotia Fish Packers Association
5. Sterling Belliveau, Independent Fisherman
6. Ray Belliveau, Charlesville Fisheries Ltd.
7. Wayne Spinney, West Nova Fishermen Coalition
8. Ashton Spinney, Lobster Fishing Area 34
9. Martin Rutherford, Grant Thornton
10. Terry Farnsworth, Bay of Fundy Inshore Fishermen’s Association
11. Arthur Bull, Coastal Communities Network
12. Frank d’Entremont
13. Claude d’Entremont, Inshore Fisheries Limited

St. John’s

1. Frederick Constantine, Patterson Palmer
2. Earle McCurdy, President, FFAW
3. Allison Saunders, Chartered Accountant

Moncton

1. Greg Thompson, Fundy North Fishermen’s Association
2. André C. Gauvin, KPMG - l’Association des crabiers du Nouveau Brunswick
3. Sandy Siegel, Réginald Comeau, Maritime Fishermen’s Union
4. Donna Murray, Botsford Professional Fishermen’s Association Inc.
5. Angelina Cool, New Brunswick Seafood Producers Association
6. Denis St. Pierre, Evanic, Perreault et Robertson (firme comptable)
7. Peter Noël, Crabbiers du Nord-est
8. Me. Marc Cormier
9. Jean Saint-Cyr, FRAPP

Appendix B

Charlottetown

1. Dave Younker, for the Department of Agriculture, Fisheries, Aquaculture and Forestry, Prince Edward Island
2. Keith Paugh and Rory McLellan, PEI Fishermen’s Association
3. Peter Stoffer, Member of Parliament

Gaspé

1. Sylvain Samuel, Fédération des pêcheurs semi-hauturiers du Québec
2. Jean-Richard Joncas, Pêcheurs polyvalents Old Fort Blanc Sablon

Iqaluit

There were no registered speakers in Iqaluit

Appendix C

ALPHABETICAL LIST OF WRITTEN SUBMISSIONS RECEIVED

1. Eric Atkinson, MacIntosh, MacDonnell & MacDonald, on behalf of the North Smokey Fishermen’s Association and the Area 18 Crab Fishermen’s Association
2. Todd Barr, Rural Communities Impacting Policy (RCIP) Project
3. Craig M. Bradley, ArsenaultBestCameronEllis
4. Gerard Chidley, G&D Fisheries Ltd.
5. Angéline Cool, New Brunswick Seafood Processors Association
6. Andrew Daley, Andrew Daley Ltd.
7. Gary Dedrick, Shelburne County Quota Group
8. Dane Devine, Novi Boat Brokers
9. The Honourable Françoise Gauthier, Ministre de l’Agriculture, des Pêcheries et de l’Alimentation et ministre responsable de la région du Saguenay – Lac-St-Jean
10. Rick Kean, Owner F/V Atlantic Falcon
11. Chris Kennedy, Area 19 Snow Crab Fishermen’s Association
12. Trevor MacInnis, Inverness South Fishermen’s Association
13. Patrick McGuinness, Fisheries Council of Canada
14. Paul Newell, G. M. Newell Ltd.
15. Carl Parsons
16. L. Wayne Spinney, Executive of District LFA 34 Lobster Committee
17. R.C. Stirling, President, Seafood Producers Association of Nova Scotia
18. John Sutcliffe, Canadian Council of Professional Fish Harvesters
19. Don Sweetapple, Fishermen’s Management Services Ltd.
20. Dr. Fred Winsor, Fisheries Recovery Action Committee