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DE LA VÉRIFICATION  
ET DE L'ÉVALUATION

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VALUE FOR MONEY AUDIT OF THE  
FISHERIES ACCESS PROGRAM  
PROJECT # 2004-60250  
FINAL REPORT  
SEPTEMBER 30, 2005



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## **1.0 EXECUTIVE SUMMARY**

### **1.1 INTRODUCTION**

In its decision of September 17, 1999 in *Regina v. Marshall*, the Supreme Court of Canada (SCC) affirmed a treaty right to hunt, fish and gather in pursuit of a “moderate livelihood” under Peace and Friendship Treaties of 1760-61. The decision affected 34 Mi’kmaq and Maliseet First Nations in New Brunswick, Prince Edward Island, Nova Scotia, and the Gaspé region of Quebec.

In response to the SCC decision, Fisheries and Oceans Canada (DFO) implemented the Initial *Marshall* Response Initiative (Initial MRI), a one year program approved on January 25, 2000, to negotiate Interim Fisheries Agreements (IFAs) that provided increased First Nation access to the commercial fisheries on an immediate basis. The Fisheries Access Program (FAP) component of the Initial MRI relied on an approach of voluntary retirement of commercial licenses. It emphasized providing First Nations with access to the fishery through the retirement and issuance of licences and quotas, and facilitating the transfer of vessels and equipment to First Nations groups.

The Long Term *Marshall* Response Initiative (MRI) built upon the initial phase, with total program funding of \$430.2M (including \$298M for the FAP component). This second phase provided for the negotiation of long-term Fisheries Agreements with the First Nations and provided the Department until March 31, 2004 to negotiate these agreements. In January 2004, DFO received approval for a two-year extension to this original timeframe. The term of the Fisheries Agreements could be until March 31, 2006 and provided the Department with additional time to issue communal licences for the fisheries access identified in the Fisheries Agreements.

DFO devoted considerable effort in a relatively short period of time to design procedures for the administration of this program and to initiate the acquisition of the required assets.

As of March 31, 2004, DFO had signed 31 Fisheries Agreements under the MRI and over 470 fishery enterprises and more than 296 vessels had been transferred or were to be transferred to Aboriginal communities, with a potential for an estimated landed value of close to \$56M.

### **1.2 OBJECTIVE AND SCOPE**

The objectives of the audit were as follows:

1. to assess the management practices, controls and reporting systems in place for the FAP;
2. to assess if the FAP was implemented and managed economically and efficiently;
3. to determine if there were mechanisms in place to measure the effectiveness of the FAP; and
4. to determine whether the Terms and Conditions for payments made under FAP were complied with and value for money was obtained in all transactions.

The scope of the audit was the delivery of the FAP component of the MRI and covered the fiscal years 1999-2000 to September 30, 2004.

### **1.3 OVERALL ASSESSMENT**

At the time the Initial MRI was introduced, the regions had to react swiftly to address the SCC decision. Staff responded by establishing a program in a very short period of time to facilitate the retirement of commercial licences and issuance of communal licences to First Nations and to facilitate the transfer of vessels and equipment to First Nations. There were few policies and procedures in place to guide staff in delivering the Initial *Marshall* Response Initiative.

In response to the recommendations of a 2001 internal audit conducted by the Department, and to meet the operational needs of the program, the Department established a FAP Handbook to provide guidance and direction on how the FAP component of MRI was to be administered. The handbook included a Management Control Framework (MCF) and policies and procedures to provide Department officials with the tools and policies needed to manage the delivery of the program. The audit found the MCF and the handbook should have contributed to the efficiency and effectiveness of program management.

In considering value for money in the retirement of licences and transfer of vessels and gear, the audit found that the program as designed provided some key elements to help ensure that value for money was obtained by the Department. However, despite the improvements in the overall design of the program and the policies and procedures that were established, the audit found that not all Departmental policies and procedures were followed. This in turn reduced the effectiveness of the program in ensuring value for money in all transactions.

### **1.4 OBSERVATIONS**

#### ***Objective 1: Management Practices, Controls and Reporting Systems***

- The Oversight Committee, which was responsible for establishing and overseeing payment limits related to licence retirement and providing general direction on issues of program improvements, became “inactive” in December 2000. Alternate measures were established in place of the Oversight Committee.
- The Maritimes region operated without a regional bid review committee, a requirement defined in the FAP Handbook. Maritimes regional staff viewed the application of the FAP Handbook as a guide that had to be adapted to regional circumstances. The region relied on the use of a professional broker/appraiser as a substitute for the Review committee, which had subsequently been recognized by the Fisheries and Aquaculture Management Sector as an effective alternative to the bid review committee.
- Retirement files within each region did not always include documentary evidence in support of the payment to a fisher related to the retirement of licence(s) held by the fisher and/or transfer of his/her vessels and gear to allow the Regional Director General or his/her nominee to authorize payment and to execute the contribution agreement.
- The processes in place with respect to Section 33 and 34 of the Financial Administration Act were insufficient.

***Objective 2: Efficiency and Economy of the FAP Program***

- Regional offices took different approaches to determining the payments related to licence retirement that they expected to pay.
- The lack of a bid review committee in the Maritimes region represents a lack of adherence to FAP policies and directives. As an alternate measure to the bid review committee, the region used the services of a professional broker/appraiser to provide advice on values of licences, vessels and equipment.

***Objective 3: Mechanisms to Measure the Effectiveness of the FAP***

- A MCF was designed with program effectiveness in mind.
- A Results-Based Management and Accountability Framework (RMAF) was developed for the program in 2002. An interim evaluation is currently being conducted.
- These tools will be considered during the subsequent evaluation of the *Marshall* Response Initiative.

***Objective 4: Compliance and Value for Money***

- The audit observed a number of improvements in the area of compliance since program inception. Despite these improvements, certain compliance issues were still observed. They included matters such as, the extent of file documentation in support of payments related to licence retirements and the approval of transactions.
- Circumstances created as a result of the *Marshall* decision resulted in the Department having to retire certain licences for amounts that exceeded their economic value.
- The FAP Handbook, and more particularly the MCF, developed by the Department in 2001 provided some key elements towards ensuring that value for money was received in retirement transactions. However, the audit found that not all Departmental policies and procedures were followed, thereby reducing the effectiveness of these program elements in ensuring that value for money was received.

**1.5 MANAGEMENT RESPONSE**

The Department faced many challenges as a result of the considerable amount of access that had to be retired and transferred to First Nations. Factors such as the requirement for voluntary retirement, unwillingness of fishers to relinquish their lifestyle, the desire to provide First Nations with access in close proximity to their geographic location, the changing market prices for certain species, variations in landings and landed values, and the commitments made to the First Nations under the Fisheries Agreements all had an impact on the payments the regions were required to make in order to provide the First Nations with fisheries access.

As indicated in the audit report, despite some deviations in their application, measures were taken that were effective in helping to ensure that value for money was obtained. These measures included the development and implementation of the Fisheries Access Program (FAP) Handbook to assist in the administration of the program.

The findings in the report concerning the implementation of processes and policies will be addressed by the Fisheries and Aquaculture Management Sector in collaboration with the Human Resources and Corporate Services (HR&CS) Sector. Actions that will be taken to address the findings include:

- Follow-up action will be undertaken in collaboration with the Assistant Deputy Minister, HR&CS to ensure appropriate documentation is in files for future transactions to ensure that authorities under Sections 33 and 34 of the Financial Administration Act (FAA) are exercised;
- The FAP Handbook will be up dated to clarify that the use of a professional broker/appraiser is permitted as an effective alternative to a bid review committee;
- Presentations and discussions on best practices in the delivery of the FAP, and other Aboriginal programs, will be formally included on the agendas of annual national Aboriginal Policy and Governance staff meetings and bi-weekly *Marshall* program coordinators teleconferences;
- The Results-based Management and Accountability Framework (RMAF) will be updated to reflect recent amendments to the FAP terms and conditions submitted to Treasury Board; and
- Follow-up will be initiated to ensure file documentation is maintained in line with the FAP Handbook checklist created for this purpose.

## 2.0 INTRODUCTION

At the request of the Treasury Board Secretariat, Fisheries and Oceans Canada's (DFO) Audit and Evaluation Directorate undertook a value for money audit of the Fisheries Access Program (FAP) component of the Longer Term *Marshall* Response Initiative (MRI). Fisheries access involves the retirement of existing commercial fishing licences and/or transfer of vessels and gear, and the construction or purchase of new vessels and gear. The MRI was established in response to the Supreme Court of Canada (SCC) decision of 1999 which affirmed a treaty right to fish (hunt and gather) in pursuit of a "moderate livelihood" through access to the commercial fisheries. While the MRI has various components, total funding allocated to the FAP component was \$298 million.

## 2.1 BACKGROUND

The Supreme Court of Canada (SCC), in the September 17, 1999 *Marshall* decision, affirmed a treaty right to hunt, gather and fish in pursuit of a moderate livelihood under Peace and Friendship Treaties of 1760 and 1761. In addition to affirming a treaty right, the SCC affirmed the Minister of Fisheries Oceans ability to regulate the exercise of the treaty right subject to the requirement that any infringement of the treaty right be justified. The decision affected 34 Mi'kmaq and Maliseet First Nations in New Brunswick, Prince Edward Island, Nova Scotia, and the Gaspé region of Quebec.

In response to the SCC decision, DFO implemented the Initial *Marshall* Response Initiative (Initial MRI), a one year program approved on January 25, 2000, to negotiate Interim Fisheries Agreements (IFAs) that provided increased First Nation access to the fishery on an immediate basis. The Fisheries Access Program (FAP) component of the Initial MRI relied on an approach of voluntary retirement of commercial licenses. It emphasized the delivery of access to the fishery to First Nations through the retirement and issuance of licences and quotas, and transfer of vessels and equipment to First Nations.

The SCC decision required the Department to immediately begin the process of acquiring and transferring access to the First Nation communities. The decision did not include an implementation period in which the Department could develop a long term strategy for the acquisition of access. Considerable effort was required by DFO to quickly develop and establish the FAP in a manner that responded appropriately to the SCC decision. Within a few months, the Department had to establish appropriate program management procedures, establish initial payment limits for the retirement of licences and vessels, and begin the process of locating, negotiating and acquiring the required assets. In addition, they were required to provide information and assistance with regard to the negotiation of Interim Fisheries Agreements with the First Nation communities affected by the decision.

The First Nation communities viewed the SCC decision as a confirmation of their right to fish, however DFO was still responsible for maintaining the proper management and regulation of the fishery. The First Nation communities intended to fish when the spring fisheries opened whether they had been provided access or not. To prevent conflicts on the water between First Nation and non-First Nation fishers that would result if First Nation fishers were fishing without valid licences and the possible negative impacts on the resource that could result from over fishing, it

was essential that negotiated settlements that provided access be put in place. Once these settlements were reached, the Department had an obligation to obtain and transfer the access that had been included in the fisheries agreements negotiated with the First Nations.

The Department faced many challenges as a result of the considerable amount of access that had to be acquired and transferred to the First Nations. Factors such as the requirement for voluntary retirement, unwillingness of fishers to relinquish their lifestyle, the desire to provide First Nations with access in close proximity to their geographic location, the changing market prices for certain species, the variations in certain landings, and the commitments made to the First Nations under the Fisheries Agreements all had an impact on the payments the regions were required to make in order to provide the First Nations with fisheries access.

During the Initial MRI, DFO also developed the Long Term *Marshall* Response Initiative to increase First Nations access to commercial fisheries and to negotiate capacity building, training and other measures to maximize their benefits from that increased access. DFO also worked with non-First Nations commercial fishers who wanted to voluntarily retire their licences, making room for new Aboriginal entrants without putting more pressure on the fishery resource.

MRI built upon the initial phase, with total program funding increasing to \$430.2M (including the FAP component). This second phase required the negotiation of long-term Fisheries Agreements with the First Nations and provided the Department until March 31, 2004 to negotiate these agreements. In January 2004, DFO received approval for a two-year extension to this original timeframe. The term of the Fisheries Agreements could be until March 31, 2006 and provide the Department with additional time to issue communal licences for the fisheries access identified in the Fisheries Agreements.

As of March 31, 2004, DFO had signed 31 Fisheries Agreements under the MRI and over 470 fishery enterprises and more than 296 vessels had been transferred or were to be transferred to Aboriginal communities, with a potential for an estimated landed value of close to \$56M.

In 2001, the Audit and Evaluation Directorate (AED) conducted an audit of the Contributions under the Fisheries Access Program (FAP) and the Fisheries Co-Management Arrangements for the Initial *Marshall* Response Initiative. The audit observed that there were a number of risk areas in the delivery of the program. To address the recommendations in the report, the Department developed policies, directives and procedures to enhance program management and control. The AED also conducted a follow-up to the 2001 audit in 2003 to provide assurance that appropriate actions had been taken as they related to the recommendations and to MRI.

## **2.2 OBJECTIVES AND SCOPE**

This audit was conducted at the request of Treasury Board Secretariat. The objectives of the audit were as follows:

1. to assess the management practices, controls and reporting systems in place for the FAP;
2. to assess if the FAP was implemented and managed economically and efficiently;



3. to determine if there were mechanisms in place to measure the effectiveness of the FAP; and
4. to determine whether the Terms and Conditions for payments made under FAP were complied with and value for money was obtained in all transactions.

The scope of the audit was the delivery of the FAP component of the MRI. This component involved the retirement of commercial fishing licences and/or transfer of vessels and gear, and the construction or purchase of new vessels and gear. While certain examination took place at national headquarters, the majority of the audit work performed under the audit took place at the regional offices in Quebec, Gulf and Maritimes regions. The period covered by the audit included fiscal years 1999-2000 to September 30, 2004.

The MCF, identified in the FAP Handbook was to be an essential component for consideration during this audit.

In conducting the audit, a judgemental sample of retirement files was selected within each region for review. The table below provides particulars of the size of the sample selected within each region. In addition, a sample of new vessel construction files was also reviewed.

<b>Region</b>	<b>Number of Files Reviewed</b>	<b>Total Dollar Value</b>
Maritimes	68	\$66,649,987
Gulf	36	\$25,351,441
Quebec	24	\$37,877,747

Finally, as noted in the background section above, a previous audit of contributions under FAP and the Fisheries Co-Management Arrangements was conducted in 2001 for the Initial MRI. A follow-up to that audit was also completed in 2003. To the extent that issues identified under these audits have been addressed and resolved, no further reference will be made to them in this report. However, issues that were identified that remain unresolved will be commented on.

### **2.3 METHODOLOGY**

The following methodology was used by the audit team:

- Audit criteria were established in relation to each of the audit objectives;
- Interviews were conducted of officials at national headquarters, and in each of the Quebec, Gulf and Maritimes regions, and of other key stakeholders;
- Various documentation in relation to the responsibility and accountability framework for the FAP component of the program was reviewed and analyzed, including policies and directives established for the program and the minutes of various committees established to manage the program;
- Other relevant documentation including Treasury Board submissions in relation to MRI and past audit reports was reviewed and analyzed;

- National and regional databases with respect to licence retired and/or vessels and gear transferred under the program were reviewed and analyzed;
- Procedures within the regions for the identification and selection of licences to be retired and vessels, and gear to be transferred were examined; and
- A judgemental sample of licence and/or vessel and gear retirement files, as well as documentation in support of a sample of new vessel constructions, were reviewed and analyzed.

### **3.0 OBSERVATIONS AND RECOMMENDATIONS**

Observations and recommendations with respect to each of the audit objectives are provided in the subsections of this report. To provide some context to the program and its implementation, we first provide some general information about the environment within which the program has evolved and the challenges that the Department has faced in achieving the objectives of FAP.

As mentioned in the background section of this report, considerable effort was required by DFO to quickly develop and establish the FAP program in a manner that responded appropriately to the SCC decision. Within a few months, the Department had to establish and implement appropriate program management procedures, establish initial payment values for licences and vessels, and to begin the process of locating, negotiating and retiring the required licences and facilitating the transfer of vessels and gear. In addition, they were required to provide information and assistance with regard to the negotiation of Interim Fisheries Agreements.

The FAP component of MRI was highly decentralized. While the audit observed that national headquarters was responsible for providing program oversight and overall management, much of the operational activities that occurred under the program took place within the regions. It was explained to the audit team that headquarters was responsible for the strategic management of the program, while the regional offices were responsible for the implementation of the retirement process.

DFO used voluntary licence retirement to provide the First Nations with the fishery access that had been committed to them in the fisheries agreements. The regions had been involved in voluntary retirement programs prior to MRI, the most prominent being the Allocation Transfer Program (ATP) under the Aboriginal Fisheries Strategy (AFS). However, the extent of retirement activities under these previous programs was minimal in comparison to the requirement of MRI. In response to the *Marshall* decision, there was a need to establish a much more complete program with an appropriate framework in place to address the SCC decision in a fair and equitable manner.

The considerable amount of access that had to be retired and provided to the First Nations since 1999 created many challenges for the Department. Factors such as the requirement for voluntary retirement, the desire to provide First Nations with access in close proximity to their geographic location, the changing market prices for certain species, the variations in certain landings, and the commitments made to the First Nations under the Fisheries Agreements all had an impact on the payments related to providing the First Nations with fisheries access.

It is against this background and achieved outputs that the audit findings should be considered.

#### **3.1 MANAGEMENT PRACTICES, CONTROLS AND REPORTING SYSTEMS**

Previous AED audits noted that FAP Regional Aboriginal Fisheries staff had been successful in acquiring most of the access required by the First Nations and that they had done so within budget (the Initial *Marshall* Response Initiative). It was noted that the FAP program would benefit from more clearly defined policies, directives and procedures with regard to the acquisition of licences, vessels and gear.

In response to the 2001 audit recommendations of AED, and the operational needs of the program, numerous policies and procedures were established to provide direction on how the MRI should be administered. Of primary note was the establishment of the FAP Handbook. The Handbook was prepared in 2001 to provide Department officials with the tools and policies needed to manage the delivery of the program. By way of example, the handbook outlined the policies and procedures to be followed by the regions in the evaluation of bids from existing licence holders and the process to be followed for the construction of new vessels and gear for the First Nations.

The FAP Handbook also detailed the Management Control Framework (MCF) that had been developed by the Department to support the management of the program. Although the MCF provided a sound framework for Longer Term *Marshall* Response Initiative MRI, the audit observed that various components of the MCF were not adhered to.

### 3.1.1 Key Elements of the MCF

The MCF had three key elements, each with its own components to support program management. The elements of the MCF, as documented in the handbook, are provided in the table below.

Key Elements of the MCF	Components of Each Element of the MCF
<ul style="list-style-type: none"> <li>• Effective program support and delivery by providing tools to manage the program</li> </ul>	<ul style="list-style-type: none"> <li>• policies and procedures</li> <li>• a Fisheries Management Program</li> <li>• regional bid review committees</li> <li>• financial control procedures</li> </ul>
<ul style="list-style-type: none"> <li>• External stakeholders to assist DFO in the management of the program</li> </ul>	<ul style="list-style-type: none"> <li>• Oversight Committee</li> <li>• Industry Advisory Committee</li> <li>• Audit Review and Evaluation</li> </ul>
<ul style="list-style-type: none"> <li>• Policy and Decision making process to ensure proper management of the program</li> </ul>	<ul style="list-style-type: none"> <li>• Senior Management Policy Review Committee</li> <li>• Policy and Coordination Committee</li> </ul>

While the FAP Handbook and the MCF were designed to ensure due diligence, sound program administration, and effective program delivery, the audit noted a number of deficiencies in the implementation of the FAP Handbook. The deficiencies are noted in the subsections that follow.

#### *The Oversight Committee*

The Oversight Committee (OSC) was in existence prior to the establishment of the FAP Handbook. It was created as part of the Department's response to the Initial MRI. The OSC was a committee composed of senior officials from DFO and Central Agencies (such as Treasury Board, Privy Council Office, and Finance Canada) and the private sector. Its primary responsibilities were to:

- 1) approve general financial limits by species and region, with respect to payments related to the retirement of licences and transfer of vessels;
- 2) to review, on a case by case basis, regional requests to make payments for licences above the set limits for the program; and
- 3) to provide general direction on issues and program improvements for the program and DFO.

Program documentation states that the OSC became 'inactive' in December 2000. The OSC was a key component of the MCF established for FAP. According to the various minutes of the committee from 2000 and the significance of the committee as depicted by regional staff, the OSC played an important role in ensuring that the Department took a consistent and structured approach to decisions in relation to the payments related to the retirement of licences.

The lack of a functioning OSC reduced the effectiveness of the MCF as established for FAP. However, it should be noted that alternative measures were put in place of the OSC. Weekly teleconferences were held with regional and headquarter officials to discuss issues related to the implementation of the MRI. In addition, the Senior Management Policy Review Committee (SMPRC) addressed issues related to the payments related to the retirement of licences. The first meeting of the SMPRC was held in October 2001.

Despite the OSC's status subsequent to December 2000, a number of financial limits were increased without committee approval. This is evidenced in a letter sent by the ADM, Fisheries and Aquaculture Management to all OSC committee members of record in August 2004. The letter provided an update of the Department's progress under MRI, as well as an update of the financial limits under the licence retirement component of the program. A status report was attached to the letter which provided particulars of financial limit increases with respect to four separate species:

- Lobster – it stated that in 2002 the price of lobster in Lobster Fishing Area (LFA) 34 increased from \$250,000 to \$510,000 and that it again increased in 2004 to \$850,000.
- Snow crab – that the average cost of retiring a snow crab licence in Crab Fishing Area (CFA) 12 had increased from \$1.6M in 1999 to \$2.2M.
- Tuna – that a SouthWest Nova Scotia tuna licence had increased in cost from \$160,000 to \$500,000.
- Groundfish – that three sets of groundfish quota had been retired in the Maritimes region, the first set at \$2.10 per pound, the second at \$3.75 per pound, and the third at \$4.50 per pound.

While the letter and its attached status report provided an explanation of various factors that contributed to the significant increase in the payments required to retire licences, it provided no explanation as to why the committee had ceased to operate or how the payment limits referenced above had been approved without the involvement of the committee. The audit team found no evidence that members of the OSC had responded to the letter sent to them or that they had any concerns about the inactivity of the committee. It was explained by senior regional management

that OSC members themselves questioned the need to meet to discuss elements of the MRI when they could be dealt by DFO officials internally.

### ***Regional Bid Review Committee***

The MCF as detailed in the FAP Handbook required that each region establish an internal bid review, or bid evaluation, committee. This committee was responsible for evaluating individual bids and making recommendations to the Regional Director General regarding acceptance of these bids. The members of these bid review committees were to include representatives from Aboriginal Programs, Fisheries Management, and Economic Analysis within the region. The committee could also include an outside expert to assist DFO officials. The committee was to review bid submissions from fishers, taking into consideration such factors as landed values in the district, proximity of the fishing area to the First Nations, the payments sought by the fisher in comparison to the committee's evaluation, and the availability of licences in the fishing area. These factors were to be considered in support of the committee's recommendation.

While the audit found that both the Gulf and Quebec regions maintained regional bid review committees to evaluate and prioritize offers from fishers, the Maritimes region operated without such a committee. The lack of a regional bid review committee in the Maritimes represented a departure from Departmental policies and procedures..

Maritimes regional staff explained that they did not consider the MCF outlined in the FAP Handbook to be a mandatory requirement that had to be adhered to. They viewed the use of the FAP Handbook to be discretionary and adaptable to regional circumstances. In place of a regional bid review committee, the region relied on the services of a professional broker/appraiser to provide expert advice on the appropriateness of payments.

### **3.1.2 Financial Reporting Systems**

As part of the MCF designed for FAP, a web-based electronic application was created by the Department to monitor retirement activities in an efficient and effective manner. The application, referred to as the Licence Retirement Application (LRA), includes information on all expressions of interest received from fishers and all licences retired and vessels, and gear transferred under the program. The information in LRA is entered by staff within the regional offices. The objectives of the Department in developing this application included, but were not limited to, the following:

- To provide timely reporting;
- To ensure accuracy/compliance/integrity of financial information; and
- To support future licence retirement programs.

The LRA system was in the design stage at the time the Handbook was prepared (2001). Despite the fact that the system is now operational and staff have received training, each of the regional offices continue to maintain their individual databases that they established at the

commencement of the Initial MRI. Management explained that they wished to maintain the regional systems as a safeguard in the event of a potential failure of the LRA.

The audit team observed that certain financial information in LRA (as well as the regional databases) was not accurate. The licence retirement payments made to fishers was verified against the information in the regional databases and in LRA. These systems were not always found to be accurate. Premiums payments for licence packages in the Gulf region, were arbitrarily allocated to individual licences resulting in significant variances in payment amounts for some species. The lack of accurate data within the LRA system could limit the usefulness of the system to support decision-making for the program and to support future licence retirement programs.

The audit noted that LRA did not provide a mechanism to record premiums paid to a fisher in the retirement of his/her licence package, such as when a fisher was paid a premium to keep his/her vessel. In these instances, the premium was allocated across all licences retired from the fisher. The lack of a mechanism for recording premiums paid to fishers impacts the accuracy of the information in LRA and could reduce its effectiveness in supporting future licence retirement programs.

Shortcomings were also noted in the usefulness and accuracy of the regional databases. In the case of the Gulf region, similar observations were made with respect to the allocation of premium paid in the retirement of licence packages as was noted in LRA. In the Maritimes region, the information in the database (an excel spreadsheet) was not always found to be complete, nor did it allow for financial analysis.

Given the uniqueness of the regional databases and the limitations of LRA, the ability of program staff to analyze financial information for decision-making was not evident.

### **3.1.3 Financial Controls**

Treasury Board's Policy on Transfer Payments emphasizes accountability and transparency through sound management practices, responsible spending, and effective controls. In this regard, the FAP handbook refers to the need for the department to employ procedures that ensure:

- Proper program and accounting records and other relevant documents are maintained to provide documentary evidence of decisions made and results achieved; and
- The senior financial officer in conjunction with senior program managers are able to develop efficient and effective accounting and other procedures to ensure payment requests meet the requirements of the policy on account verification relating to section 33 and 34 of the *Financial Administration Act (FAA)* and the requirements of the Payment Requisition Regulations.

### *Completeness of Documentation*

A review of retirement files within each region noted numerous instances where documentary evidence in support of the payment to a fisher related to the retirement of licence(s) held by the fisher and/or transfer of his/her vessels and gear was not found. While regional staff were often able to locate additional documentation in support of the payment, this documentation was often not found in the retirement files. In addition, discussions with regional staff from the Finance and Administration Branch advised that they were relying on the certification by program staff to sign under Section 33 of the FAA.

Complete file documentation, including an evaluation in support of the payments to a fisher related to the retirement of a licence package held by the fisher, is necessary in order for the Regional Director General or his/her nominee to authorize payment and to execute the contribution agreement. In addition, given that the audit observed that Finance and Administration Branch was relying on the verification and certification of accounts by Aboriginal Fisheries staff, finance officers must ensure that the system of account verification and related financial controls are adequate and are being consistently followed by those carrying out Section 34 authority. As Section 34 processes were found to be incomplete, Finance and Administration Branch staff should not have relied on the certification by program staff. The absence of supporting documentation puts into question the due diligence of Departmental staff when exercising their authority under the FAA when they are approving transactions without all information being available.

### *New Vessels*

In addition to the retirement of commercial licences, and/or the transfer of vessels and gear, FAP also included the construction or purchase of new vessels, equipment and gear. The FAP Handbook provides a specific policy directive in this regard. The policy states that vessel construction contracts must be awarded under a competitive process, and therefore quotes from multiple builders are required. The policy also refers to the requirement for the First Nations to provide proof that the proposed price does not exceed fair market value and that the value for money principle is adhered to. The policy also states that payments must be made based on the schedules in the contracts and that the department must keep a 10% holdback until it receives: 1) a signed certificate of acceptance by the First Nations; 2) a report from a third party vessel inspector certifying that all terms and conditions of the contract have been respected; and 3) a signed copy of the registration documents sent to Transport Canada.

The follow-up audit conducted by AED in 2003 identified a number of issues with respect to the construction of new vessels and gear, such as a lack of evidence in some instances of more than one quote having been obtained for construction. The current audit noted improvements in the processes surrounding new vessel construction. For example, the initial practice in the Maritimes region of advancing the entire amount of the contribution to a lawyer “in trust” contravened the policy directives of the program, the FAA, and the Treasury Board Policy on Transfer Payments. This process was later changed, and payments were found to have been advanced as per schedules contained in the contracts with builders.



### **3.2 EFFICIENCY AND ECONOMY OF THE FAP PROGRAM**

Various processes were put in place by the Department in an effort to ensure the efficient and economic retirement of commercial licences and transfer of vessels and gear. Although many of these processes were established at the request of headquarters, implementation was carried out in the regions. Since the commencement of the program, the following primary activities have taken place:

- the initial establishment of payments related to the retirement of licences;
- the identification of potential licence holders interested in retiring commercial licences they hold;
- the evaluation and negotiation of the bids received;
- the retirement of commercial licences, and/or vessels and gear; and
- the purchase/construction of new vessels and gear.

With the establishment of the FAP Handbook, policies and directives were provided to the regions to support many of these retirement activities. In our opinion, these policies and directives were meant to ensure the efficient and economic retirement of existing licences, vessels and gear. By way of example, the audit found the use of Expression of Interest Information Sheets to be an effective tool for the identification of potential licence holders interested in retiring licences held by them.

Despite the improvements that resulted from the creation of policies and directives within the FAP Handbook, the audit noted a lack of consistency with respect to certain retirement processes that took place in the regions.

Observations with respect to the efficiency and economy of the FAP component of MRI are provided in the subsections that follow. To the extent that observations with respect to economy are more appropriately addressed under the value for money objective, the observations are recorded within section 3.4 of this report.

#### **3.2.1 Establishment of Initial Payments Related to Licence Retirements**

Under the Initial *Marshall* Response Initiative, one of the first requirements was to establish estimates of the payments related to the retirement of licences within each region. This information was required to allow the Department to estimate the likely cost of the program. Payment estimates were completed by each of the regions, by species, and forwarded to headquarters. These amounts were later used to establish payment limits by the OSC for each of the regions. The audit found that each region took a different approach to determining these payments. There was no evidence provided as to what was requested by headquarters, or whether any direction was provided by them in the methodology to be employed.

The process employed by the Maritimes region was found to be complete as it was based on an economic valuation of key licences. Initial payment limits were based on a net present value calculation completed by the Policy and Economics Branch (P&E). Revenue was estimated from landed value information accumulated by the Department and cost information was

estimated from past departmental data and the analysis of P&E staff. A discount rate was then applied to determine the net present value of a 20 year stream of income. Finally, a review was conducted of expected payments related to licence retirements as advertised in the newspaper and as provided by a broker in order to assess the reasonableness of the economic values calculated by P&E.

The Gulf and Quebec regions established their initial payments based on payments related to the retirement of commercial licences under the ATP. Regional staff considered the ATP payments to reflect the current market value commercial licence retirements. They also took into consideration the most recent landed values in relation to the key species for retirement. One exception was the payments related to the retirement for lobster licences in the Quebec region. In the Quebec region, staff advised that the payment that was established for lobster licences also took into consideration the expected impact on licence retirement costs as a result of the *Marshall* decision. At the same time, the Quebec region was also acquiring common crab licences which had considerable value.

The circumstances created as a consequence of the *Marshall* decision resulted in the establishment of a sellers market for certain species. With the need to retire significantly more licences than might have otherwise been available for sale in the market, the payment that was demanded by certain fishers exceeded the economic value of the licences they held.

A consistent approach to establishing payments related to licence retirements, in the auditors' opinion, would have been beneficial and may have limited some of the problems encountered by the regions with respect to the feasibility of the OSC payment limits. To the extent that the Department believed that these initial payment limits should have taken into consideration the expected impact on payments required to retire licences following the *Marshall* decision, this should have been documented and the decision communicated to each region. At a minimum, each region should have established the economic values of primary licences. This would have allowed the Department to better identify and monitor the impact of the *Marshall* decision on retirement costs.

Senior management in the regions hold the view that a consistent approach was not possible for establishing initial payments related to the retirement of licences. The payments varied by area and even within the same areas. Licences had to be retired based on factors such as the proximity of the First Nations to the fishing area, their home ports and the timing of the requirement for the licences. This affected the determination of the payment that had to be paid to retire licences. Given the variability of the requirements and the availability of the licences for retirement consistency in establishing payments would not have been practical.

### **3.2.2 Evaluation and Negotiation of Bids Received**

Due diligence with respect to the selection and approval of recipients was observed in the documentation and information provided by both the Gulf and Quebec regions. Both regions established a regional bid review committee to analyze and compare bids received from fishers. In both regions, evidence was provided of the process used to compare and evaluate bids for licences of the same species, within the same fishing area, and in similar proximity to the First Nations (homeport). However, documentation was not always found within the individual

retirement files. In addition, the Gulf region provided evidence that they obtained the assistance of their area offices to prioritize the bids they received (no payment information was provided to the area office to ensure confidentiality). This process was designed to assist the regional office in the identification of the most legitimate licence holders interested in retiring commercial licences they held.

With the exception of a short period in the year 2000, the Maritimes region operated without a regional bid review committee. While staff within the Maritimes region indicated that Expressions of Interest were used to identify and compare similar bids, no committee of regional staff were involved in the identification of the most appropriate bids for retirement.

The lack of a bid review committee to assess bid submissions and provide direction to the regional staff member responsible for the negotiation of offers represents a lack of adherence to FAP policies and directives.

As mentioned previously in this report, staff in the Maritimes region did not consider the FAP Handbook to be a strict policy or directive but rather a tool that was flexible to adapt to regional circumstances. Consequently, the Maritimes region used an alternative to the bid review committee, that being an independent professional broker and appraiser.

### **3.3 MECHANISMS TO MEASURE THE EFFECTIVENESS OF THE FAP**

The third objective of the audit was to determine if mechanisms were put in place by the Department to measure the effectiveness of FAP. In this regard, the audit found that a Results-Based Management and Accountability Framework (RMAF) was developed for the program in 2002. The RMAF is discussed in greater detail in section 3.3.1 that follows.

In addition to the RMAF, the audit observed various components of the MCF that were designed with program effectiveness in mind. While the primary purpose of the framework was to ensure effectiveness, rather than measure it, it did provide a means of gathering feedback on program activities and assessing program effectiveness. However, as noted in previous sections of this report, not all of the components that were established for the MCF were implemented or maintained, which limited the usefulness of the MCF in assessing effectiveness.

#### **3.3.1 Results-Based Management and Accountability Framework**

The Results-based Management and Accountability Framework (RMAF) established for MRI was completed in 2002. It was completed by the Fisheries and Aquaculture Management Sector in collaboration with the Audit and Evaluation Directorate.

The intent of the RMAF was to strengthen the effective and efficient delivery of MRI and was designed to facilitate tracking, reporting and monitoring of activity in relation to this initiative. The usefulness of the RMAF as a mechanism for measuring the effectiveness of MRI (and therefore FAP) is part of the evaluation strategy outlined in the RMAF document. AED is in the process of completing an interim evaluation of the MRI. In addition, a full evaluation of the

MRI will be conducted at the termination of the program. However, the following components of the RMAF should act as mechanisms to measure program effectiveness:

- Performance Measurement Strategy – a plan for the ongoing measurement of performance, including the identification of indicators for the outputs and outcomes in the logic model and a data collection strategy describing how data will be collected and how often.
- Evaluation Strategy – a plan for the evaluation of the initiative, including the identification of formative and summative evaluation issues and questions, and the identification of associated data requirements.
- Reporting Strategy – a plan to ensure the systematic reporting of the results of ongoing performance measurement to ensure that all reporting requirements are met, and that the data is then available for evaluation purposes.

### **3.4 COMPLIANCE AND VALUE FOR MONEY**

The fourth objective of the audit had two components:

- To determine whether the Terms and Conditions for payments made under the FAP component of MRI were complied with; and
- To assess whether value for money was obtained in all transactions.

In order to address these issues, an extensive review was conducted of the individual retirement files within each of the regional offices. In certain cases, additional documentation and information was provided by regional staff in order to allow for the assessment.

The subsections that follow detail the results of our audit testing to determine whether payments made under FAP were in accordance with required terms and conditions and whether value for money was obtained in all transactions.

#### **3.4.1 Compliance of Contribution Agreements**

The retirement of commercial licences and transfer of vessels and gear was completed through the use of contribution agreements. As such, all payments are subject to the terms and conditions of the Treasury Board Policy on Transfer Payments and the FAA. In addition, all payments are subject to the terms and conditions as specified in the FAP Handbook and in the Treasury Board submissions for the program.

The audit observed a number of improvements in the area of compliance since the follow-up audit conducted in 2003. For example, in the Maritimes and Gulf Regions, cheques are now being sent directly to the recipients. This remains to be an issue in the Quebec Region. It was also noted that controls over the construction of vessels and equipment have improved. The more recent construction contracts that were reviewed had been awarded on a competitive basis, the entire contract amounts were no longer being paid up front to a lawyer “in trust”, and, in general, payments were being issued in accordance with the schedule of payments in the contracts.

Despite the improvements noted, certain compliance issues were still observed. These observations are provided in the paragraphs that follow. To the extent that a compliance issue has been addressed in a previous section of this report, the issue has not been restated below.

### ***Documentation***

Previous audits recommended that all purchase files be reviewed for completeness so as to confirm that all transactions were 100% finalized and that prior to any payments being made, the program officer ensure that there was evidence that fair market value had been obtained. The files that were reviewed by the audit team confirmed that this continues to be a problem. At the time of the audit, very few files in the Maritimes region contained sufficient documentation to allow the audit team to ensure that fair market value was obtained. In the Gulf Region, while the files often contained evidence of the evaluation that was conducted, supporting documentation for premiums paid to retire licences was not always found in the files.

### ***File Checklist***

Previous audits recommended that regions complete the checklist provided to them in the FAP Handbook which outlined the documentation required for the acquisition and transfer of vessels and equipment. The audit team noted that although the files contained the checklist provided in the handbook, the checklist could not always be completed, as the supporting document was not available.

## **3.4.2 Value for Money**

The primary objective of the audit was to determine if value for money was obtained in all transactions. The audit evaluated the processes and related controls applied by headquarters and by each region to help ensure value for money was obtained. It also reviewed a sample of transactions (retirement files) in order to assess the process that was conducted in arriving at a payment related to the retirement of specific licences and to ensure that the payment was within the program parameters established.

### ***Context: Economic Value vs. Market Value***

The audit addressed whether or not the Department retired licences at prices that were consistent with value for money. Generally, in a stable market in which supply is equal to demand, the market value of a licence is a reflection of the potential income that the licence can generate in the future. This would be consistent with the concept of 'economic value' as referenced in section 3.2.1 of this report. The economic value is considered to be the net present value of the future stream of income that can be generated from the licence.

In a situation where supply equals demand, or even where supply exceeds demand (a buyers market), it would seem reasonable that the payment required to retire a licence would be equivalent to the economic value of the licence as determined through a net present value calculation.

Under MRI, there was a need to retire a significant number of certain licences (in order to meet commitments to the First Nations), over a short period of time. As noted previously in this report, over 470 fishing enterprises (some of which include multiple licences) were retired by the Department over roughly a 4 year period (from early 2000 to March 31, 2004). In addition, further licences were retired in 2004-05. The need to retire licences was directly linked to the commitments made in the Fisheries Agreements between DFO and the First Nations. The timing of the licences was dictated by the commitments in the agreements.

In addition, there was the requirement to retire certain licences in close geographical proximity to the First Nations. This meant that the regions had to retire licences operating out of specific homeports. This reduced the number of licences eligible for retirement in a particular fishing area. According to regional staff, the requirement to retire licences within specific homeports had a significant impact of the payments related to the retirement of licences under the program.

The circumstances following the *Marshall* decision resulted in the establishment of a sellers market for certain species. With the need to retire significantly more licences than might have otherwise been available, the payment that was sought by certain fishers exceeded the economic value of the licences they held. Notwithstanding, there remained a need for the Department to proceed to retire these licences to meet the obligations that had been established under the Fisheries Agreements.

It was in this context that the regional offices were required to retire certain licences and that the issue of value for money must be considered.

### ***FAP Elements to Help Ensure Value for Money***

In the context of the *Marshall* decision, and the Department's obligations under the Fisheries Agreements, the MCF established for FAP provided a two-tier approach to help ensure value for money in retirement transactions. This two-tiered approach involved both headquarters and the regional offices of DFO. It included the following:

1. At headquarters level: Payment limits were established for the licences to be retired and a policy was established requiring that any payments that exceed these limits had to be approved by the OSC.
2. At the regional level: An evaluation process (as defined in the FAP Handbook) was employed to ensure that offers from fishers were properly assessed and compared to like bids to ensure that the most appropriate offers were accepted.

Each of these components of the approach is discussed below.

#### ***At the Headquarters Level***

Payment limits were defined by the OSC for licences to be retired. These payment limits were meant to provide headquarters with a control mechanism to help ensure that value for money principals were adhered to in the regions. While the audit found that the regions generally abided by these limits, the audit noted:

- that there was a lack of consistency in how these limits were initially established; and

- that payment limits did not exist for all types of licences retired.

The audit noted that while some payment limits were based on the economic value of the licences in question, others included the expected payments as a result of the *Marshall* decision. The lack of consistency in the approach used to establish these payments limited the reliance that the Department could place on these payment limits as a mechanism to help ensure value for money was obtained.

Despite the establishment of limits for most core species, the audit noted that there were no financial limits established for some core species and virtually all secondary licences. In terms of the Quebec Region, mobile groundfish licences were retired with no OSC payment limit having been established. The region advised that these licences were valued at a maximum of \$275,000 based on a previous groundfish retirement program. In the Gulf region, an entire table of secondary licence payment amounts were established. The payment amounts assigned to certain of these species exceeded \$50,000. It was not uncommon for the Gulf region to retire a package of licences from a fisher which included as many as five secondary licences. In each case, the Gulf included the payment amounts of the secondary licences in the calculation of the maximum amount that they would pay for the package. Without established payment limits for certain core and secondary species, headquarters could not properly monitor the payments being requested and paid to retire these licences.

The Department established a policy that payments that exceeded the OSC limits could not be accepted unless first approved by the committee. This policy provided headquarters with a second control mechanism for ensuring value for money in retirement transactions. It provided the Department with a mechanism to identify potential payment increases in the market, and to ensure that any payment increases that were accepted were properly understood, supported and approved. It also allowed headquarters to monitor payment increases and to make informed decision as to whether these increases were appropriate. While the audit noted that numerous price increases were approved by the OSC, and subsequently the SMPRC, not all licences that were retired that exceeded the original OSC limits were approved by the committee.

It was the responsibility of headquarters to monitor to ensure that the mechanisms that they had established to ensure value for money were operating as intended and were comprehensive and complete. As noted, the audit found that not all mechanisms as established were operating as intended. This reduced the effectiveness of these mechanisms in ensuring that value for money was received.

### ***At the Regional Level***

The establishment of a sound evaluation process was critical to ensuring that processes within the regions supported the principle of value for money. Not all licences retired were subject to the same market conditions. The audit noted that in certain cases, the payments for licences remained consistent with the economic value of the licences. In other cases, payments exceeded the economic values, due in part to circumstances created as a result of the *Marshall* decision. This was the case with certain lobster licences. What was of particular importance in the evaluation process was that:

- that the payment being requested by a fisher be thoroughly and appropriately evaluated; and
- that payment being requested be adequately assessed and compared to similar offers received.

By conducting a thorough evaluation of offers received from fishers, beginning with consideration of the economic value of the licences being offered for retirement, a baseline value is established against which bids can be considered. To the extent that the bid payment request exceeds the economic value as calculated, other factors must be considered to determine whether the retirement should proceed. Some of the factors that were considered included: the availability of other similar bids; the proximity of the fisher's homeport to the First Nations; whether the acquisition would allow the Department to meet an overdue commitment to a First Nations; and whether the purchase might allow the Department to avoid a potential conflict with the First Nations.

The evaluation process as defined in the FAP Handbook was considered to be complete. It describes the use of an evaluation grid to incorporate various factors to be considered by the bid evaluation committee "in support of their recommendations on value for money". The first factor for consideration was the income that the licence might be expected to produce.

While the evaluation policies within the FAP Handbook provided a framework to help ensure that the regions retired licence packages within the principle of value for money, not all regions followed the processes as defined in the Handbook. As a result, the process employed within the regions to ensure value for money was not always evident. The Quebec region demonstrated a thorough bid evaluation process. Files in the region indicated that an economic evaluation was conducted for most licences retired; however the process was limited in the case of lobster, as a fixed price approach was adopted rather than a more complete calculation taking into consideration landed values. The process they employed also compared like bids to ensure that the most appropriate offers were accepted.

The Gulf region's processes were considered to be similarly complete. The evaluation process they conducted took into consideration the landed values of the fisher over the past 5 years, and applied a priority ranking process to incorporate the proximity of the fishers' homeport to the First Nations. The region also completed a comparison of all similar bids to ensure that the most appropriate offer was accepted. Although the Gulf region applied fixed prices for all secondary licences retired, it appeared that most of these values had been established after due consideration by the Policy and Economics branch.

At the time of the audit, retirement files in the Maritimes region provided little documentary evidence of the evaluation process employed to retire licences. As a result, value for money could not always be assessed. Without supporting documentation, there was limited evidence that the process employed by the region ensured that similar bids were appropriately compared and analyzed, and that the most appropriate offers were accepted. In addition, instances were noted where the payments to retire a licence exceeded the approved OSC limit.

While certain payments that were paid to retire licences in the Gulf and Quebec regions exceeded the economic value of the licences, the process that was adopted to evaluate offers and



to compare them to similar bids helped ensure that value for money was received (that the licences were retired at the best possible price at that time). However, the lack of documentation on files in the Maritimes region at the time of the audit does not allow for the same conclusion to be made. Subsequent to the audit work being carried out in the Maritimes region, the audit team was informed that some information relating to the licence retirements were maintained at the business premises of the broker used by the region. The region is currently proceeding to update its files and is ensuring that future transactions will be fully documented.

## **Conclusion**

The FAP Handbook provided key elements of the Management Control Framework to help ensure that value for money was obtained by the Department on all transactions. The MCF was an integral component of the basis to conduct this audit. However, the audit found that not all elements of the MCF were adhered to. This reduced the effectiveness of the program in ensuring value for money in all transactions and limits the audit team's ability to provide an opinion on whether value for money was obtained.