

 <p>Wildlife and Fisheries Branch Directive</p>	<p>Program: Commercial</p> <p>Guideline Type: Management (Management, Administrative)</p>
<p>Subject:</p> <p>FISH DEALER AND FISH PROCESSOR LICENCE APPLICATION REJECTION, LICENCE SUSPENSION AND REVOCATION</p>	<p>Date Approved: May 23, 2018</p> <p>Originally signed by James Duncan</p> <hr/> <p>Director, Wildlife and Fisheries Branch</p>

INTENT:

To provide a clear and unified approach to the administration and enforcement of fish dealer and fish processor licence denials, suspensions or revocations for significant dealer and processor issues.

BACKGROUND:

On December 1, 2017, the Province implemented new fish marketing regulations. This legislation gave commercial fishers independence from the monopoly of the Freshwater Fish Marketing Corporation (FFMC). Commercial fishers are now able to sell their catch within the province, and through interprovincial and international markets through a provincially issued fish dealer’s licence. Manitoba commercial fishers can explore new markets and potentially increase their opportunities and income.

When the legislation came into place, applications were received from persons/individuals seeking to obtain a fish dealer’s licence. Some fishers opted to sell their fish to these new fish dealers in the industry instead of signing a contract with FFMC. Furthermore, applications for Fish Dealer licences have been received from commercial fishers who have been convicted under fisheries legislation, which is a consideration for rejecting the licence application under section 7 of the Fish Marketing Regulation (M.R. 145/2017). Direction on how to deal with these applications will be addressed in this Directive.

This Directive originated out of concern by the Department when some fishers were not paid for their catch by one of the new fish dealers and applications were received from commercial fishers who had prior offences under fisheries legislation. Some commercial fishers, delivering fish to four sheds in Manitoba, did not receive payment for their fish after the new flexible fish marketing regulations were established. Fishers demanded that

government take action against these fish dealers. An internal investigation was undertaken with recommendations made by the Special Investigation Unit (SIU) of the Conservation Officers Service of the department. Enforcement action was not initiated, however licence suspension or revocation may be considered.

Due to allegations by fishers, the Department has undertaken several initiatives designed to close venues through which legally caught fish can be marketed.

Guiding Principles:

- Suspension of fish dealer and fish processor licences will be proportionate to the offence and an effective deterrent to others who may attempt to participate.
- Suspension targets the fish dealer or fish processor who is involved in illegal activity and removes them from the fish industry.
- Suspensions will deal with illegal activity of fish dealers or fish processors.
- Suspension of licences can be an effective, administrative response to stop unlawful activities in the industry.

LICENCE REFUSAL CRITERIA:

In accordance with section 7(1) of the Regulation, granting of fish dealer or processor licences may be refused by the Director of Wildlife and Fisheries (hereafter the Director) if:

- a. the applicant has made a false or misleading statement in the application;
- b. the applicant has failed to provide any information required in the application or any additional information which has been requested;
- c. a principal of the applicant has had his or her commercial fishing license or processing facility licence suspended or revoked within the past five years;
- d. the applicant or a principal of the applicant previously held a fish dealer licence or a processing facility licence and that licence was revoked or an application for renewal of that licence was refused; or
- e. the applicant or a principal of the applicant has, within the past five years, been convicted of an offence under the Act, the *Fisheries Act* (Canada), this regulation or the *Manitoba Fishery Regulations, 1987, SOR/87-509*, and the director has reason to believe that the applicant may not comply with the requirements of the Act or this regulation if a new fish dealer licence is issued or an existing licence is renewed.

Table 1 to this Directive sets out the recommended outcomes if an applicant has had a prior conviction or breach of a licence condition. If the director rejects an application for a fish dealer or fish processor licence, the director must give the applicant written notice of the decision. The notice will set out the reasons for the rejection. The applicant may request reconsideration of the decision by filing a written request with the director no later than 14 days after notice of the decision was provided. The applicant must set out the grounds upon which the request is being made.

The Director will consider the request and may confirm or overturn the decision. The Director will inform the applicant whether their appeal has been denied or successful.

SUSPENSION OR REVOCATION CRITERIA:

Fish dealer or processor licence suspensions or revocations are authorized under Section 11 of the Regulation. Section 11 allows the Director of Wildlife and Fisheries to suspend or revoke a licence if the Director determines that the holder of the licence failed to comply with:

- i) the Act, the *Fisheries Act (Manitoba C.C.S.M. c. F90)*,
- ii) the regulation, the *Manitoba Fishery Regulations, 1987, OR/87-509* or
- ii) a term or condition of the licence.

Suspension of fish dealer or processor licences will be reviewed on a case-by-case basis according to the following procedure and guidelines.

SUSPENSION OR REVOCATION PROCESS:

- 1) If a violation occurs under **Categories A - B** of Table 1, then the Department of Sustainable Development lays charges under appropriate legislation and serves notice to the accused, his/her lawyer and judge of its intent to recommend a licence suspension or revocation. Staff would identify potential fish dealers/processors licences who may be suspended or revoked based on prosecution reports from the Conservations Officers Service of the department.
- 2) If a holder has breached a term or condition of a licence under **Category C** of Table 1, a licence suspension will be determined by the Director, depending on the specific circumstances of the case.
- 3) If convicted of a violation under **Categories A – B** and / or the Department determines that a suspension is warranted due to a breach of a term or condition of a licence under **Category C**, the Director of Wildlife and Fisheries shall advise that person in writing of the Department's intent to proceed with the licence suspension. In the letter, the person will be informed of the details why a suspension is being issued and advised that they will have the opportunity to submit a request for reconsideration, **within 14-working days of the date of the letter**, detailing any grounds upon which the request is made.
 - **If a request for reconsideration is received within the 14-working day period, the information will be reviewed by the Director. The Director will make a decision based on the information provided and the person will be notified by personal service or registered mail of the decision.**

If **no** request for reconsideration is received within the 14 working day period, the Director of Wildlife and Fisheries shall advise the person with a written notice of their immediate suspension and prohibition, by personal service or registered mail.

If a fish dealer licence has been issued prior to suspension/revocation taking affect, it must be returned immediately to Wildlife and Fisheries Branch, Box 20, 200 Saulteaux Crescent, Winnipeg, MB R3J 3W3.

Conditions of Suspension:

- A person whose fish dealer or fish processor licence is suspended shall not carry out any activity pursuant to that licence while the suspension is in effect.

RECONSIDERATION OF DECISION:

Reconsiderations of the decision of application rejection, licence suspensions or revocations will be considered if a written request is received from a fish dealer or fish processor licence holder within 14 days after the notice of the decision was provided complete with the grounds upon which the request was provided.

The reconsideration process is intended only to review the appropriateness of a pending suspension or revocation and **not** of any prior conviction.

The Director of Wildlife and Fisheries will review each individual request by assessing the written correspondence submitted by the applicant. As part of conducting his /her due diligence, in accordance with section 12(2) of the Regulation, the Director of Wildlife and Fisheries may:

- a) confirm or overturn the decision; and
- b) in the case of a suspension of a licence
 - i. alter the length of the suspension, or
 - ii. set out terms or conditions to be fulfilled before reinstating the licence.

Rejection, suspension or revocation letters must be sent using registered mail or hand delivered by appropriate Departmental staff.

Table 1: Offence category and recommended application rejections, licence suspensions and revocations

Offence Category Schedules	Recommended Suspension, Revocation or Rejection of Licence Application
<p>A. Illegal Fish Sales, Purchases or Processing</p> <ul style="list-style-type: none"> ◆ Selling or providing fish caught without issuing a trade record ◆ Selling or providing fish without issuing a fish sales record ◆ Purchasing fish without issuing a fish purchase record ◆ Purchase, sell or export fish without a fish dealer licence ◆ Selling or providing fish without a fishing licence or not under the authority of a of a fisher's commercial fishing licence ◆ Operating a fish processing facility without a licence ◆ Engage in marketing of Lake Sturgeon ◆ Exporting from Manitoba or selling Channel Catfish to a non-consumer 	<ul style="list-style-type: none"> ◆ 2 year suspension for single conviction ◆ 5 year suspension and ineligibility to acquire another fish dealer or processor licence for 2 offences that occurred within 5 years ◆ Revocation of licence and future licence ineligibility for 3 offences in 5 years
<p>B. Fraudulent or Negligent Reporting / Record Keeping</p> <ul style="list-style-type: none"> ◆ Provide records with false information ◆ Fail to provide required reports ◆ Alter or allow others to use licence 	<ul style="list-style-type: none"> ◆ 2 year suspension for single conviction ◆ 5 year suspension and ineligibility to acquire another fish dealer or processor licence for 2 offences that occurred within 5 years ◆ Revocation and future licence ineligibility for 3 offences in 5 years
<p>C. Breaching term or condition of a licence</p> <ul style="list-style-type: none"> ◆ Fail to provide mandatory reports ◆ Fail to provide valid licence ◆ Fail to provide required information ◆ Fail to provide list of authorized agents including businesses 	<ul style="list-style-type: none"> ◆ 1 year suspension for first offence ◆ 2 year suspension and ineligibility to acquire another fish dealer licence for 2 offences that occurred within 5 years ◆ Revocation and future licence ineligibility for 3 offences in 5 years

List of Offences

Illegal Fish Sales, Purchases or Processing

The Fisheries Act (Manitoba)

- 8.1(1) – purchase or sell fish without a fish dealer licence, even when exporting fish
- 9(1) – fish purchased must be from a licensed fish dealer
- 9(2) – sell fish to a licensed fish dealer, even when exporting fish
- 10.1(1) – processing facilities require a fish processor licence
- 30

Manitoba Fishery Regulations (Fisheries Act - Canada)

- 39 – sell/trade/barter fish not taken under a commercial licence

Fish Marketing Regulation (145/2017)

Fraudulent or Negligent Reporting / Record Keeping

The Fisheries Act (Manitoba)

- 14.4(4) – alter or allow another person to use licence

Fish Marketing Regulation (145/2017)

- 3(1) – fisher must provide a trade record at the time of the sale of fish
- 8(2) – fish dealer or processor must comply with the all terms and conditions imposed on the licence
- 14(1) – fish dealer buying fish from a fisher must provide a fish purchase record
- 14(1.1) – fish purchase records must be signed by the fisher to be valid
- 15(1) and 22.3(1) – fish dealer/authorized agent must provide a weekly fish purchase summary
- 16(1) – fish dealer must provide a fish sale record
- 17(1) – fish dealer must provide a monthly fish sale summary
- 18(1) – fish dealer must provide a nil report
- 19(1) – no export record
- 20(1) – no monthly export summary
- 21(1) – no export nil report
- 22.1(1) – failure to list all authorized agents, address, and locations where the person will store fish, on licence application
- 26 – no processing report
- 28(1) – no loadslip