

 <p>Manitoba Wildlife and Fisheries Branch Directive</p>	<p>Program: Commercial</p> <p>Guideline Type: Management (Management, Administrative)</p>
<p>Subject:</p> <p>COMMERCIAL NET FISHING LICENCE SUSPENSION</p> <p>Revision Date: April 30, 2019</p>	<p>Date Approved: May 1, 2019</p> <p>Originally signed by Rob Olson</p> <hr/> <p>Director, Wildlife and Fisheries Branch</p>

INTENT:

To provide a clear and unified approach to the administration and enforcement of commercial fishing licence suspensions for significant commercial net fishing issues.

BACKGROUND:

This Directive originated out of concern by the Department of an increasing trend over several years of individuals abusing their commercial fishing privilege and illegally marketing their catch. Examples include large quantities of walleye 1) caught and delivered by unlicensed fishers to be recorded against a licenced fisher's quota, or 2) caught and delivered by a commercial fisher who is licenced for a different lake.

Enforcement actions have been attempted and convictions for illegal sale have been successful, but fines have been small and have not reflected the value of the resource being put at risk and the value of the resource being illegally harvested. Therefore they have been ineffective as a deterrent and management tool.

Due to the increase in illegal activity, the Department has undertaken several initiatives designed to close venues through which illegally caught fish has been marketed and to increase the sustainability of Manitoba's fisheries. One of these initiatives includes the ability to administratively suspend or cancel commercial fishing licences for those found guilty of committing fisheries offenses or those who breach a term or condition of a licence.

Guiding Principles:

- Suspension of commercial fishing licences for this type of activity will be proportionate to the offence and an effective deterrent to others who may attempt to participate.

- Suspension targets the individual fisher who is involved in illegal activity and removes them from the fishery / industry without penalizing lawful fishers.
- Suspensions deal with illegal activity of commercial fishers without limiting or infringing on any Aboriginal rights to fish for food.
- Suspension of commercial fishing licences can be an effective, administrative response to significant illegal harvest of fish stocks.

Commercial fishing licence suspensions are authorized under Section 16 of MR 124/97, the Fishing Licensing Regulation. Section 16 allows the Minister (or his delegate) to suspend or cancel a licence where the holder has been convicted of an offence or breached a term or condition of a licence as follows:

- 16. The Minister may suspend or cancel a licence where*
- (a) the holder has been convicted of an offence under the Act, a regulation under the Act, the Fisheries Act (Canada) or any regulation under that Act; or*
- (b) The Minister determines that the holder has breached a term or condition of a licence*

The department has historically suspended commercial fishing licences for certain offences (see “Conservation Violations in Table 1) under authority of Section 16 and based on operational management agreements with local fisherman's associations or Advisory Boards. For example, commercial fishing licences have been suspended for 30 days to one year for convictions of leaving decayed fish in their nets, using small mesh nets, or fishing out of season.

Initially the authority for suspension of a commercial fishing licence under the Fishing Licensing Regulation had been delegated by Order In Council (No. 132 / 2003) to the Director of Wildlife and Fisheries, Regional Directors, Headquarters Director and Assistant Directors. This has been modified indicating that Regional Directors will make a suspension recommendation, including documentation, to the Director of Fisheries and Wildlife. Suspension of commercial fishing licences will be applied on a case-by-case basis according to the following procedure and guidelines.

SUSPENSION CRITERIA:

A commercial fishing licence suspension is determined under Section 16 of MR 124/97, the Fishing Licensing Regulation. The minister may suspend or cancel a licence where:

- 1) the holder has been convicted of an offence under the Act, any regulation under the Act, the Fisheries Act (Canada) or any regulation under that Act; or,
- 2) the minister determines that the holder has breached a term or condition of a licence.

SUSPENSION PROCESS:

- 1) If a violation occurs under Categories A - C 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. Regional Operations staff would identify potential fishers who may be suspended based on prosecution reports to the Regional

Director. The Department's Regional Director provides the Director of Wildlife and Fisheries with an Advisory Note recommending, including all pertinent information and documentation, a suspension of the commercial net fishing licence.

- 2) If a holder has breached a term or condition of a licence under **Category D** of Table 1, a licence suspension will be determined by the Department of Sustainable Development's Director of Wildlife and Fisheries in consultation with the appropriate Regional Director, depending on the specific circumstances of the case. If written warnings contributed to the pending suspension, the Directors will reasonably consider the level of severity of the warnings and/or frequency of infractions resulting in warnings as part of their review.
- 3) If convicted of a violation under **Categories A - C** and / or the Department(s) determines that a suspension is warranted due to a breach of a term or condition of a licence under **Category D**, the Director of Wildlife and Fisheries shall advise that person in writing of the Department ('s) intent to proceed with licence suspension. In the letter, the person will be informed of all the specific details why a suspension is being considered and advised that they will have the opportunity to submit a written appeal, **within 30-working days of the date of the letter**, detailing any extenuating circumstances beyond their control that may of resulted in the offense/violation.
 - **If a written appeal is received within the 30-working day period identifying extenuating circumstances, the information will be reviewed by the Department, pursuant to the Directive's Appeal Process set out below, and the person will be notified by personal service or registered mail of the decision.**
- 4) If **no** written appeal is received within the 30-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 commercial fishing licence has been issued prior to suspension taking affect, it must be returned immediately to the issuing District office.
 - If commercial fishing nets have been set prior to suspension taking effect they must be removed within a maximum of 3-working days of receipt of the suspension letter. Failure to remove all commercial fishing nets may result in further charges as well as increased penalties and suspensions.

Conditions of Suspension:

A Fisher, while under suspension of their commercial fishing license, cannot:

- 1) participate in the setting, lifting or retrieval of any commercially set fishing net or other equipment associated with any commercial fisher within Manitoba;
- 2) participate as a hired man or helper for another licensed commercial fisher during the term of the suspension;
- 3) participate in the transportation of fish and cannot participate in any activity involving the sale of fish; and

- 4) transport fishing equipment from the location being fished, to the point of landing, to a location where fish are being processed and to a location where fish are sold.

In areas where there are no individual quotas (i.e. a number of commercial fishers fishing a lake quota), the lake quota may be fished by remaining fishers. In all other areas, the suspended commercial fisher's quota allocation will revert to the Crown for the period of suspension and is not eligible for sale or purchase.

APPEAL PROCESS:

Appeals will be considered if a letter is received from a fisher within 30 working days of the date of the written notice of pending suspension, complete with identification of the extenuating circumstances requiring consideration. Appeal letters should be sent registered mail or hand delivered to appropriate Departmental staff.

Note: The appeal process is intended only to review the appropriateness of a pending suspension and **not** of any prior conviction.

The Appeal Process consists of the following steps:

1. The appeal is forwarded to the Assistant Deputy Minister (ADM), Water Stewardship and Biodiversity for his/her consideration.
2. The ADM will review the appeal by conducting an assessment of the written correspondence submitted by the applicant and all material considered by the Director of Wildlife and Fisheries.
 - As part of conducting his/her due diligence the ADM may contact the appropriate fishery industry representative (i.e. local fisher's association, Community Licencing Areas) for their representation on the issue.
 - If written warnings contributed to the pending suspension, the ADM will reasonably consider the level of severity of a warning and/or frequency of infractions resulting in warnings, as part of their review.
 - The ADM will conduct this review within 30-working days of receipt of the appeal letter.
3. The ADM will advise the fisher (and if applicable, cc. the appropriate fishery industry representative) with a written notice of the results of their appeal, including reasons for the decision. These written notices must be sent using registered mail or hand delivered by appropriate Departmental staff.
4. The ADM will advise the Minister of Sustainable Development of his/her decision through the submission of an Advisory Note.

Table 1: Offence category and recommended suspensions.

Offence Category Schedules	Recommended Suspension
<p>A. <i>Illegal Fishing or Illegal Sale</i></p> <ul style="list-style-type: none"> ◆ Illegal sale / barter. ◆ Fishing out of season (not a “few days”). ◆ Fishing without authorization. 	<ul style="list-style-type: none"> ◆ 1-3 year suspension for single conviction. ◆ 5 year suspension and ineligibility to acquire another commercial fishing licence for convictions for 2 offences that occurred within 5 years. ◆ Lifetime cancellation and similar ineligibility for 3 convictions in 5 years.
<p>B. <i>Conservation Violations</i></p> <ul style="list-style-type: none"> ◆ Leaving decayed fish in nets. ◆ Fishing out of season (few days). ◆ Use of small mesh nets. 	<ul style="list-style-type: none"> ◆ Up to 1 year suspension for 1st conviction or up to 2 year suspension for convictions for 2 offences that occurred within 5 years ◆ Provisions of an existing lake management agreement (Lake Winnipeg/Lake Manitoba) would override or compliment suspension criteria.
<p>C. <i>Fraudulent or Negligent Reporting / Record Keeping</i></p> <ul style="list-style-type: none"> ◆ Provide records with false information. ◆ Alter or allow other to use licence. ◆ Incomplete or no Trade Records for fish sold. ◆ <i>Transport fish in contravention of loadslip regulation.</i> 	<ul style="list-style-type: none"> ◆ Up to 1 year suspension for 2 convictions in 5 years.
<p>D. <i>Breaching term or condition of a licence</i></p> <ul style="list-style-type: none"> ◆ Significantly or persistently exceed allowable quota 	<ul style="list-style-type: none"> ◆ Up to 1 year suspension.

List of Offences

Illegal Fishing or Illegal Sale

Fisheries Act (Canada)

- 33 – purchase/sell/possess fish caught in contravention of FAC or MFR Manitoba Fishery Regulations (Canada)

Manitoba Fishery Regulations

- 39 – sell/trade/barter fish not taken under a commercial licence
- 40 – fish during the close time (not related to a day early/late)
- 5(1) - fish without authorization (where related to commercial volumes)
- 14(1) - possess fish in excess of the possession quota (commercial volumes)

Fisheries Act (Manitoba)

- 9(2) – sell fish other than to licenced fish dealer
- 10 – sell fish other than directly to a consumer in Manitoba
- 14.4(2) – acquire or possess fish caught in contravention of FAM or regulations

Fishing Licensing Regulation (124/97)

- 6 – fish for sale, barter or other commercial purpose without a commercial fishing licence (where a licence would not have been issued).

Conservation Violations

- Leaving decayed fish in nets
- Fishing out of season (slightly before or after commercial fishing season a person was licenced for)
- Small mesh nets

Fraudulent or Negligent Reporting / Record Keeping

Fisheries Act (Canada)

- 63 – provide records or documents containing false information

Fisheries Act (Manitoba)

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

Commercial Fishermen's Records Regulation (151/94)

- 3 – complete and submit trade records for all fish not sold to FFMC

Fish Transportation Loadslip Regulation (152/94)

- 3(1) – transport fish without a loadslip
- 5 – acquire or possess fish transported on contravention of loadslip regulation

Breaching Term or condition of a licence

- ◆ significantly or persistently exceed allowable quota