

 <p>Manitoba Agriculture and Resource Development</p>	<p>Program: Commercial</p> <p>Guideline Type: Management (Management, Administrative)</p>
<p>Subject:</p> <p>COMMERCIAL NET FISHING LICENCE SUSPENSION</p> <p>Original Approved: June 11, 2007 Revised: May 1, 2021</p>	<p>Date Approved: April 28-21</p> <p><i>Rob Olson</i></p> <hr/> <p>Director, Wildlife, Fisheries and Enforcement Branch</p>

INTENT:

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

BACKGROUND:

This Directive originated out of concern by the Department of an increasing trend over several years of individuals abusing commercial fishing rights. Examples include quantities of walleye and other fish species 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, or 3) fishing without meeting the terms and conditions of a commercial net fishing license or committing an offence under provincial or federal fisheries legislation (ex. exceedance of quota, selling fish without proper records, using illegal mesh sizes, etc.)

Non-administrative enforcement actions and convictions 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, non-administrative enforcement actions alone are ineffective as a deterrent and management tool.

Due to the increase in illegal activity, the Department has undertaken several initiatives designed to close avenues through which illegally and legally caught fish has been marketed as one management tool to protect 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 will be proportionate to the offence / breach and act as an effective deterrent to others who may attempt to participate in similar activities.
- Suspension targets the individual fisher who is involved in illegal activity and temporarily or permanently 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 illegal harvest of fish stocks.

Commercial fishing licence suspensions are authorized under Section 16 of MR 124/97, the Fishing Licensing Regulation made under Manitoba's Fisheries Act. Section 16 allows the Minister (or his/her 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.

SUSPENSION PROCESS:

A commercial fishing licence suspension is determined under Section 16 of MR 124/97, the Fishing Licensing Regulation. The minister (or his/her delegate) may suspend or cancel a licence when the fisher is convicted of an offence under the provincial or federal Fisheries Acts and/or their regulations using the following process.

- 1) Upon a conviction for a **Categories A - C** of Table 1 offence, the Department of Agriculture and Resource Development's Regional Fisheries Manager provides the Director of Wildlife, Fisheries and Resource Enforcement Branch with an Advisory Note, including all pertinent information and documentation, recommending a suspension of the commercial net fishing licence. The Director will consider information provided by the Regional Fisheries Manager, along with the level of severity of previous written warnings, infractions and convictions as part of their review and decision to suspend.

And/Or

2) If a licence holder has breached a term or condition of their licence as outlined under **Category D** of Table 1, the Department of Agriculture and Resource Development's Regional Fisheries Manager will

provide the Director of Wildlife, Fisheries and Resource Enforcement Branch with an Advisory Note, including all pertinent information and documentation, recommending a suspension of the commercial net fishing licence. The Director will consider information provided by the Regional Fisheries Manager, along with the level of severity of previous written warnings, infractions and convictions as part of their review and decision to suspend.

If the Director determines a suspension is warranted, the Director of Wildlife, Fisheries and Resource Enforcement Branch shall advise that person of the suspension in writing. In the letter, the person will be informed of the specific details why a suspension is being issued, the start date and length of the suspension, and be advised that they 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 Assistant Deputy Minister, pursuant to the Directive's Appeal Process set out below, and the person will be notified by personal service or registered mail of the appeal decision.

If **no** written appeal is received within the 30-working day period, the Director of Wildlife, Fisheries and Resource Enforcement Branch shall advise the person with a written notice of their 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 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.

APPEAL PROCESS:

Appeals will be considered if a letter is received from a fisher or their legal representation within 30 working days of the date of the written notice of suspension, complete with identification of the extenuating circumstances requiring consideration. Appeal letters should be sent registered mail or hand delivered to appropriate Departmental staff as identified in the letter from the Director of Wildlife, Fisheries and Resource Enforcement Branch.

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

The Appeal Process consists of the following steps:

1. The appeal letter is received by the Assistant Deputy Minister (ADM), Ecosystem Management Division, for his/her consideration.

2. The ADM will review the appeal by conducting an assessment of the written correspondence submitted by the applicant. The ADM may request materials considered by the Director of Wildlife, Fisheries and Resource Enforcement Branch. In this case, those materials will also be shared with the fisher or their representation.
 - 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 strive to conduct this review within 60-working days of receipt of the appeal letter.
3. The ADM will advise the fisher (and if applicable, copy the fisher's legal representation and/or the appropriate fishery industry representative) with a written notice of the results of their appeal, including reasons for the decision. These written notices will be sent using registered mail or hand delivered by appropriate staff.
4. The ADM will advise the Minister of Agriculture and Resource Development of his/her decision through the submission of an Advisory Note.

Conditions of Suspension:

A Fisher, while serving a 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. For exceedance of quotas situations, the overage will be deducted from the individual or quota in the subsequent year/season.

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 (failing to provide a trade record or sales receipt) ◆ Fishing out of season (not a “few days”) <p>Fishing without authorization (harvest or sale / barter of fish without a proper licence)</p>	<ul style="list-style-type: none"> ◆ Up to 3 year suspension for a single conviction ◆ Up to 5 year suspension for convictions for 2 offences that occurred within 5 years ◆ Up to a lifetime suspension for 3 convictions in 10 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 illegal mesh nets ◆ Possession or marketing of Lake Sturgeon 	<ul style="list-style-type: none"> ◆ Up to 1 year suspension for a single conviction ◆ Up to 2 year suspension for 2 convictions that occurred within 5 years
<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 others to use licence ◆ Incomplete Trade Records or loadslips ◆ Fail to submit trade records or loadslips ◆ Transport fish in contravention of loadslip regulation 	<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 ◆ Failing to meet any licence condition 	<ul style="list-style-type: none"> ◆ Up to 1 year suspension for a single breach ◆ Multiple or further breaches may result in suspensions of a greater length

Note: Multiple or continuous violations beyond the recommended suspension outlined in this table may result in suspensions of greater length.

Acts and Regulations

FAC - Fisheries Act (Canada) F14

MFR - Manitoba Fishery Regulations SOR/87-509

FAM - Fisheries Act (Manitoba) F90

FMR - Fish Marketing Regulation 145/2017

FLR - Fishing Licensing Regulation (124/97)

List of Offences

Illegal Fishing or Illegal Sale

- FAC - 33 – purchase/sell/possess fish caught in contravention of FAC or MFR Manitoba Fishery Regulations (Canada)
- MFR - 39 – sell/trade/barter fish not taken under a commercial licence
- FAM - 9(2) – sell fish other than to licenced fish dealer
- FAM - 10 – sell fish other than directly to a consumer in Manitoba
- FAM - 14.4(2) – acquire or possess fish caught in contravention of FAM or regulations
- FLR - 6 – engage in commercial fishing without a license
- FMR 3 (1) – sell fish without issuing a trade record

Conservation Violations

- FAC – 36.1 (c) no person shall leave decayed or decaying fish in nets
- FAM– 14.3(2) - Commercial fishing out of season
- MFR - 45.1 Use Small or large mesh nets not permitted on a commercial license
- FMR - 30(1) no person shall engage in marketing of sturgeon or channel catfish

Fraudulent or Negligent Reporting / Record Keeping

- FAC - 63 – provide records or documents containing false information
- FMR – 3(2) fail to submit trade records to the department
- FMR – 28(1) transport fish without a loadsip

Breaching Term or condition of a licence

- FAM - 14.3(4) Fail to comply with the terms and conditions, to wit: significantly or persistently exceed allowable quota