

FISHERIES

MANAGEMENT

A Proposal

for Reforming

Licensing,

Allocation and

Sanctions

Systems



Fisheries
and Oceans

Pêches
et Océans

Canada

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MINISTER'S FOREWORD

In November 1991, I launched a proposal to reform licensing and allocation in Canada's commercial fisheries. Industry working groups on both the Atlantic and Pacific coasts were formed to consult with departmental officials in developing the proposals into a concrete plan. This document describes the results of their work. It represents the beginning of the next stage in implementing the initiative.

My objective in proceeding with the initiative is to create a more understandable decision-making system, one that is more open to public view, that gives a more direct voice to those involved in the fishing industry. The plan described in the following pages meets this objective. The new system calls for the establishment, through legislation, of two independent Boards, one for the Atlantic and one for the Pacific, that would license fishermen, allocate fish and apply sanctions. Panels of the Boards which could be organized along the lines of DFO regions in the Atlantic and by fish species on the Pacific, will make recommendations on allocations. The Boards would operate at arm's length from the government and would take over responsibility for what are now ministerial decisions on licensing and allocation as well as decisions on violations that are now made by the courts. The Department and the Minister would still set fisheries policies, taking into account the principles in the legislation; applying this policy in individual decisions would be done by the Boards.

This reform of fisheries management is one part of a larger initiative that will result in the redesign of the relationship between government and the fishing industry. Reform will affect all aspects of fisheries management, from stock assessment to enforcement. It is clear to me from my discussions with provincial governments, fishermen's organizations, unions and processors that there is strong support for achieving adjustment, recovery and long-term stability in the fisheries. This requires major changes in the way fisheries management decisions are taken and in the role of those involved in the fisheries in those decisions.

Two principles are guiding this redesign: openness and shared responsibility. For example, in the area of resource conservation on the Atlantic coast, I intend to increase industry involvement and to open up the process of setting science and conservation priorities by establishing a Fisheries Resource Conservation Council, composed of members from both industry and the scientific community, to hold public hearings on resource assessments and conservation measures and to provide

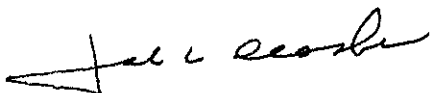
public written advice to me on proposed harvest levels, e.g., total allowable catches and other conservation measures. A similar institutional framework could be considered for the other coastal fisheries.

In the area of licensing policy, there will be an overhaul of the Atlantic coast licensing system designed to limit entry and continued employment in the fisheries to serious, committed fishermen. We must begin the process of bringing about a balance between the resource and fishing capacity. This will allow for full utilization of the resource, without the pressures to over-harvest created by excess capacity. It also holds the prospect of adequate and stable incomes for those earning their livelihood from the fisheries.

The federal government has responsibility for resources and harvesting. Provincial and territorial governments have responsibility for processing. To meet the challenges in the fisheries, governments need to work together, toward common goals, with co-ordinated policies and programs. I want to arrive at agreements with other governments to do this. We all have a stake in planning the fishery of the future.

These changes and others when taken together will create a more participatory process for decision making. People will have a more direct say in how the fisheries are managed. Because of this they will also carry a greater share of the responsibility for those decisions.

When these reforms are complete, we will have effected a profound change in the relationship between DFO and the fishing industry, and better co-ordination between federal and provincial or territorial governments. I believe that these changes are a necessary ingredient to building a newly competitive and sustainable fishing industry.



John C. Crosbie

INTRODUCTION

Over the past several years, Canada's commercial fishing industry has tackled major changes. New technologies have been introduced, and competition has become global. As the resource has come under increasing pressure, industry members on both the Atlantic and Pacific coasts have responded to the challenge of managing for a sustainable harvest. Yet even in this climate of change, the way many fundamental fisheries management decisions are made has stayed the same: the Minister of Fisheries and Oceans and departmental staff make the critical decisions about who gets to fish -- the licensing decision -- and how much -- the allocation decision -- behind closed doors. Lack of information about how and on what basis these decisions are made sometimes makes them seem arbitrary and unfair. Many observers and participants in the fisheries have observed this over the years.

They have noted, for example, that there is no guarantee to those who are affected by allocation decisions of a right to be heard before decisions are made. Nor is there any requirement for decisions to be based on an explicit policy. The Task Force on Atlantic Fisheries in 1983 stated that "the Department of Fisheries and Oceans is sometimes accused of being secretive and arbitrary and of taking decisions without adequate knowledge or advice from knowledgeable sources, that is, processors and fishermen". The Task Force went on to observe that "DFO appears to adopt a paternalistic approach and attempts to do for fishermen what they cannot do for themselves -- that is, represent their own interests. The result is occasionally commendable, sometimes pathetic, and always awkward, if not inappropriate."

While there have been provisions for consultation, in general these have not satisfied the fishing industry. The Commission on Pacific Fisheries Policy in 1982 noted that, "Most commentators are distressingly critical of the consultative process, describing it in such terms as an 'exercise in frustration', 'window dressing' and a 'dialogue of the deaf'."

Recognizing the need for change, an elaborate system of advisory committees has evolved to consult and offer advice on licences, allocations and general fishery management. This consultative system has been designed to give the industry more systematic influence in fisheries management. Yet it is still not known how and why final decisions are made. Many industry members suspect that the

system is somehow failing them and that some groups have gained unfair advantage over others.

Many participants in the industry also argue that the system for enforcing fisheries rules has let them down. Handling fisheries violations -- breaches of the *Fisheries Act*, its regulations and licence terms and conditions -- through the criminal courts has proved slow, time-consuming and expensive. The courts know little about the fisheries, and tend to underrate the seriousness of fisheries violations. The low fines handed down by the courts generally do little to discourage illegal fishing -- in fact, the fines are often viewed as little more than a cost of doing business.

Moreover, the system today gives industry only a small role in enforcement. Fishermen need more say in setting the penalties for failing to respect the rules that govern their fishery. They also need assurances that illegal fishing will be dealt with swiftly and fairly and that the penalties handed down will reflect the severity of the violation.

How can these problems be solved? One part of the solution is to change the way decisions are made -- change that eliminates the appearance of unfair decision making and gives better service to clients on an impartial and equal basis.

Why a Fisheries Board?

The independent quasi-judicial board offers a tested and accepted model. It provides opportunities for users to present their views directly to decision makers. It allows them to obtain consistent decisions that respond to their needs. It provides a formal public structure that enables all users of the resource to be heard in an open forum, under clear and impartial rules. And it provides a mechanism for determining and imposing sanctions in an effective and timely manner.

A fisheries board, made up of individuals knowledgeable about and with experience related to the industry, would hear industry views, make public decisions on allocations and licensing, and apply sanctions. To take account of regional and coastal differences, there would be two boards, one for the Atlantic coast and one for the Pacific coast. The boards would be based in the regions in which they will operate rather than in Ottawa, to increase both the sensitivity and the accessibility of decision makers.

A fisheries board offers advantages that should satisfy industry and government alike:

Openness. A board would hold public hearings, under clear rules of procedure. Decisions, and the reasons for them, would be documented and widely distributed. All policies and other key documents would be open to public view at board and DFO offices.

Fairness. As a quasi-judicial body, a board would be an even-handed arbiter. It could not act in an arbitrary or capricious manner, given its mandate and the fact that it would also face the checks of close public scrutiny.

Consistency. A board would make decisions according to a written and publicly available policy framework. The existence of the formal framework would ensure more consistency in decision making. Over time, the board and the public would be able to refer to the board's own public records of decisions to ensure further continuity.

More effective penalties. Penalties would be levied objectively and consistently by board members who know the fishery and who understand the seriousness of the violation.

In summary, the establishment of a fisheries board should lead to a more open and more effective partnership between the government, as steward of the resource on behalf of all users, and the industry, as the major producer and beneficiary of the economic value flowing from that resource.

WHO WOULD DO WHAT

Overall, the system would work as follows:

The framework would be set by law; thus the mandate and decision-making structure of the boards would be constant over time.

The Minister would guide by setting policy but would have no direct say in specific decisions.

The Boards would decide, within the policy framework set by the Minister, who would get the licences and allocations.

DFO would carry out the Boards' decisions through the day-to-day management of the fishery and routine licence administration.

The Boards would hear appeals on licence decisions taken by DFO staff. There would be no subsequent appeal to the Minister.

The Boards would penalize Canadian commercial fisheries violators brought before it by departmental enforcement personnel.

A. Role and Organization of the Boards

The new boards would take over some key powers currently exercised by the Minister and DFO under the *Fisheries Act*, namely, licensing and allocation of the marine commercial fisheries. The boards would also take over from the criminal courts the application of sanctions for fisheries violations by commercial licence holders.

The Minister of Fisheries and Oceans would remain responsible for conservation and would set the overall levels of harvest for the marine commercial fisheries. The Minister would also retain responsibility for recreational and international fisheries. The Department under the Minister's direction would continue its role of managing the aboriginal food fishery, resolving the fisheries components of land claims, and negotiating and administering co-management agreements with aboriginal groups under the Aboriginal Fisheries Strategy. Where special

management structures are being set up under land-claim settlements to manage fisheries (e.g., under the Tungavik Federation of Nunavut Final Agreement), the boards would have no jurisdiction.

Within the marine commercial fisheries, the Minister would still set the broad policy framework with input from industry and other governments. But the Minister would permanently give up the power to decide *individual* cases. The boards, operating under ministerial policy and conservation directions, and within the limits of the overall harvest would decide exactly who gets the fish and how much. The boards would also assess penalties for breaking the rules. The boards' decisions could not be appealed to the Minister. A judicial review of board decisions by the Federal Court would always be possible, although such a review would not look at the substance of the board decisions: it would consider whether a board had exceeded its jurisdiction or ignored some fundamental principle of natural justice (e.g., procedural fairness).

There would be seven members on the Atlantic Coast Board. The Pacific Coast Board would have five members. Members of both Boards would be knowledgeable about the fisheries but could have no direct or indirect financial stake in it. The Minister of Fisheries and Oceans would be responsible for recommending to the Governor in Council (i.e., the Cabinet) the appointment or reappointment of board members. Members would be appointed for a fixed period. The five or seven members of the board would constitute an Executive Board. Provision would also be made for appointing additional members to a board; they would be appointed on the recommendation of the Minister by the Governor in Council for a fixed period of probably three years. The purpose of having additional members would be to assist the Executive Board in coping with its workload of allocation, licensing and sanctions hearings. These additional members would not be decision makers for allocation and licensing. But they would hold hearings and make recommendations on allocation and licensing to the Executive Board. The additional members would be decision makers on licence appeals or sanctions cases.

To give the boards flexibility in dealing with their workload, the legislation would authorize the creation, in regulations or by the Chair, of panels of the board. Panels would be chaired by a member of the Executive Board and made up of additional members assigned by the Chair. These panels could be organized along the lines of DFO regions in the Atlantic and by fish species on the Pacific coast. Some Pacific industry leaders have suggested that industry should be able to deal directly, through well-established bodies such as the Commercial Fishing Industry Council, with the decision makers on the Board and that a separate tier of panels is not required. The legislation provides this flexibility to both boards.

The panels would hold hearings with interested parties and develop recommendations to the Executive Board on allocations or new licences in each fishery assigned to them. These recommendations would be public. The panel hearings would replace the advisory committee process for reviewing allocation issues every year. The Executive Board alone would make decisions on allocations and new licences.

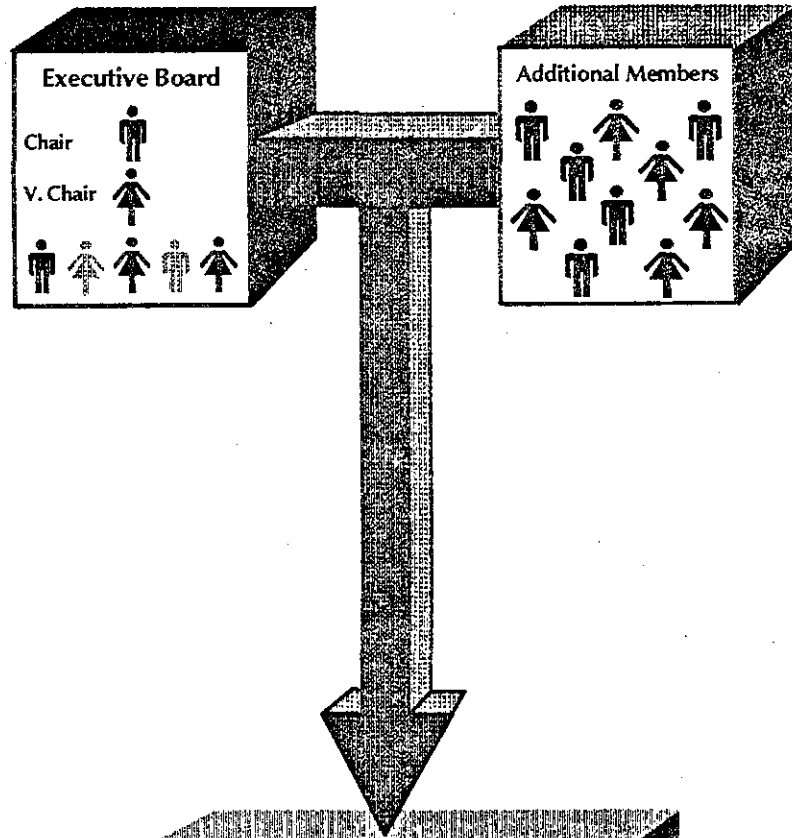
The Atlantic Fisheries Licence Appeal Board and the Pacific Region Licence Appeal Board would disappear. Instead, licence appeals would likely be heard by one or two board members, either executive or additional, depending on their availability. Sanctions cases could also be heard by one or two members. The Chair of the board would assign the caseload.

Northern interests in licensing and allocation issues in the offshore waters of the Eastern Arctic would be addressed by a special northern panel of the Atlantic Fisheries Board, to be established by regulation. The "additional members" chosen for the northern panel would be residents of the North. The panel would make recommendations, to the Executive Board on the awarding of new licences, the allocation of the harvest and the application of sanctions in commercial fisheries in these offshore waters. The northern panel would be a forum for northern residents and their organizations to have input to board decisions on commercial fisheries beyond the direct jurisdiction of the future Nunavut Wildlife Management Board. The panel and the Nunavut Wildlife Management Board would interact closely, following the obligations imposed by the TFN Settlement Agreement.

The board and panel structure is set out in a chart on page 7.

Board and Panel Structure

- Executive Board will consist of a Chair and Vice Chair and 3/5 members
- Executive Board would take decisions on allocations and award new licences
- Executive members would have knowledge and experience related to the fishing industry but no direct or indirect financial stake
- Executive members appointed for up to five years with the possibility of reappointment
- Executive members would serve on a full-time basis
- Executive members chair panels that hold hearings on allocations and licence awards



- Additional members would have knowledge and experience related to the fishing industry but no direct or indirect financial stake
- Additional members appointed for up to three years with the possibility of reappointment
- Additional members would serve on a part-time or full-time basis, as decided at the time of appointment

- Chaired by a member of the Executive Board
- Additional members may be assigned by Board chair to sit on panels
- Panels hold public hearings and
 - recommend allocations
 - recommend the awarding of licences

- Sanctions cases and licence appeals could be heard by one or two members
- Members could be either Executive or additional
- Those accused of a violation would have the right to an oral hearing

B. The Role of the Department - Conservation, Policy, Operations

Departmental staff would continue to assess stock abundance and give advice on appropriate harvest levels. The Department and Minister would continue to set the overall harvest (but not its allocation among commercial groups) and make general rules about how, when, and where the fishery would take place, through regulations establishing gear controls, closed times, and closed areas. On the Atlantic coast, the recently formed Fisheries Resource Conservation Council (FRCC) will review scientific analyses provided by the Department, conduct public hearings and make formal recommendations to the Minister on total allowable catches and conservation measures. The FRCC will focus initially on Atlantic groundfish, and, over time, respond to other species.

Under administrative arrangements with the Boards, the Department would be authorized to issue licences and attach licence terms and conditions. DFO would carry out day-to-day management of the fishery by conducting season openings and closings and monitoring catch levels and quotas.

The Department would continue its roles of managing the Aboriginal food fishery, resolving the fisheries components of land claims, negotiating and administering co-management agreements with Aboriginal groups under the Aboriginal Fisheries Strategy.

The Department would retain its current responsibilities for managing the recreational and international fisheries, negotiating international treaties, regulating foreign fishing under the *Coastal Fisheries Protection Act*, and allocations to foreign fleets. All aspects of recreational fisheries management (licensing, conservation restrictions, enforcement) would remain as is; recreational fishing violations and violations by foreign vessels would continue to be dealt with through the courts.

Departmental staff would continue to develop licensing and allocation policy. The Department would therefore continue consultations on policy issues, conservation and management measures such as gear selectivity and harvesting practices. The existing advisory committees could contribute to policy reviews and conservation matters, such as use of appropriate fishing gear and technology, promotion of underutilized species and the development of aquaculture. Alternatively, industry groups could organize themselves to provide policy advice on an ongoing basis to the Department. The shape of future advisory groups will evolve undoubtedly over time under the new structure.

HOW THE SYSTEM WOULD WORK IN PRACTICE

A. The Policy Framework: Principles and Ministerial Direction

Policy direction to the Boards would be provided in two basic ways:

- through permanent policy principles for allocation, written directly into the legislation setting up the Boards;
- through the written and formal policy framework and directions set by the Minister of Fisheries and Oceans and conveyed to the Boards through ministerial policy directives.

Principles

The allocation principles written into the legislation would be important in giving focus to Board deliberations. They would provide assurance to those affected by allocation decisions that the Boards would make their decisions with a common set of factors in mind. Principles would shape and focus the debate in Board proceedings, in Board decisions, and in the reasons given for those decisions. The following principles have been identified for inclusion in the legislation as being of greatest importance to industry:

- the provision to resource users of a reasonably secure access to the fisheries resources;
- the needs of resource users who are adjacent to a particular fishery resource;
- the relative mobility of fleet sectors and the relative dependence of resource users on a particular fishery resource; and
- the economic viability of users of fishery resources.

Policy Framework

A formal policy framework is needed to serve as the context for Board decisions. Although there are currently many specific departmental rules for licence holders, e.g., vessel replacement rules, there are few clear statements of framework policies for the marine commercial fisheries. Examples of framework policies currently in place would include the limited entry policy for most fisheries; another framework policy example is the individual transferable quota policy. Before the Boards are established, DFO must articulate and codify its policies on marine commercial fisheries. In many instances, particularly in the area of licensing, this could entail developing general statements of policy where none exists today.

The process of codification would involve clarifying existing policies, documenting current informal policies, reviewing the rationale for these policies, and identifying areas where new policies may need to be developed. The codification of policy would not be a cover for major change to the existing policies. However, with a clearer policy framework, the areas requiring change would become evident. Industry would be involved in the exercise of reviewing the policy framework, particularly in the key area of licensing.

Ministerial Directives

The policy framework would be transmitted to the Boards through ministerial policy directives. The Minister would also have the power to issue general policy directives to set or alter the management framework, e.g., licence transferability. The Minister could direct more specifically that the number of licences in a fishery be increased or that an exploratory fishery be opened. These policy directives would be binding on the Boards. But the legislation would restrict the Minister's ability to intervene by policy directive in Board decisions. The Minister could not determine individual cases or intervene on cases already before the Boards for decision. And all policy directives would have regard to the allocation principles set out in legislation.

The Minister would set specific harvesting targets annually, through the use of such tools as the setting of harvest levels, e.g., escapement targets or total allowable catch and would provide these to the Boards through a directive. The Minister would also have the power to issue binding conservation directives to the Boards, to ensure the conservation and protection of fisheries resources. For example, it may become necessary to change an allocation after the Board has ordered it because of a decrease in the resource. The Board would be compelled to make this change.

B. Awarding and Issuing Licences:

At present, the Minister and Department set the licensing rules, issue the licences and attach terms and conditions, enforce compliance with the terms and conditions, and keep all the records. Licensing decision appeals (for vessels under 65 feet only) are heard by the Atlantic Fisheries Licence Appeal Board in the Atlantic. In the Pacific, appeals are heard by the Pacific Region Licence Appeal Board. Both appeal boards have a provision for final appeal to the Minister.

In future, under the Minister's policy framework, which would be clear and accessible to all, the Boards would have authority to issue licences in established fisheries; to award new and additional licences; to set and amend licensing rules; to attach terms and conditions; to amend, suspend, or cancel licences for cause; and to hear appeals, with no provision for further appeal to the Minister.

A large part of licensing is routine, day-to-day administration: overseeing the administration of the more than 200,000 licences of various types now issued in Canadian fisheries. Since DFO has a well-developed system of administration and personnel already in place, there would be no reason for the Boards to set up a new structure. Administrative arrangements between the Boards and DFO would authorize departmental officials to continue to process annual licences in established fisheries, to process routine re-issuances under rules set by the Boards, to issue licence documents to new entrants, to collect fees and so on, on behalf of the Boards. As a result, the industry would see very little change in licence administration. If difficulties arose in individual cases, there would be a specific process of appeal within the Boards' organization, replacing the existing Atlantic Fisheries Licence Appeal Board and the Pacific Region Licence Appeal Board.

Besides issuing and processing licences on behalf of the Boards, the Department would enforce their terms and conditions, document their use, and maintain licensing records.

Licensing policy itself would continue to be made by the Minister. The Minister would establish the policy framework for Board licensing decisions, i.e., the general directions and goals for commercial licensing, through the policy directives.

Under the transitional provisions for starting up the Boards, the current licensing rules would be "rolled over" to the Boards. The Boards would then be free to amend these licensing rules, if necessary, based on public consultations and subject to the proviso that rules must remain consistent with the Minister's policy

framework. Substantive changes to the rules would be made on the basis of public hearings, likely held by the Board panels. Consistency across regions would be ensured by the requirement that the Boards make the orders that enshrine any amendments.

Some examples

These examples, without defining specific policy, demonstrate how the Boards and DFO would work together in future under various circumstances.

Licences in an existing, limited-entry fishery: Little would change in this fishery unless there is a policy change. The individual fisherman or enterprise would receive licences from the Department as before, under the Board's authority. Any specific disputes about access to a licence would go to the Board. The Board would have the responsibility for developing and updating licensing rules but these would have to be consistent with the Minister's broad licensing policies.

New licences in an existing fishery: The Minister would make the basic decision to create new licences or to introduce a new licensing regime in an existing fishery, on economic, social and conservation grounds. Recent examples are the new bluefin tuna licences on the Atlantic coast and the new limited-entry categories introduced on the Pacific coast to limit effort for existing fisheries such as crab, sea cucumber, sea urchin, prawns, rockfish and euphausiids.

In awarding the licences, the Board could seek advice from the industry, probably through panel hearings. It would then consider requests to obtain a licence and make decisions accordingly. While the Board would make the final decision on who gets a licence, the Minister would provide conservation and policy directives to the Board to guide that decision. The actual issuing of the licence document would be done by DFO.

New licenses in an exploratory fishery: Again, the Minister would make the decision to pursue a developmental or exploratory fishery and would set the policy from which specific performance and eligibility criteria would be developed by the Board. The Board, following public hearings, would make decisions as to who gets a licence, based on eligibility criteria and performance requirements developed by the Board.

C. Allocations

While licences specify "who gets a chance to fish", allocations specify "how much fish you can take". Allocations -- what each group or gear type or vessel

class gets to fish -- are an important feature of the Fishing Plan for various stocks.

The Minister would set the harvest levels, e.g., a total allowable catch or escapement targets as appropriate for each fishery. The Minister could also provide broad policy direction consistent with the principles on the allocation of the resource. The Board would then specify the shares going to the various users in the marine commercial fishery, whether by fleet, gear type, vessel size, area, or individual enterprise. For migratory stocks such as salmon, the Board, in conjunction with DFO, could develop decision rules for achieving allocation outcomes under a variety of scenarios.

The cycle would be as follows:

As before, the Department would gather data on catches, landings and stock abundance. In relevant fisheries on the Atlantic coast, the Fisheries Resource Conservation Council, the industry/science management body, would provide its public, written advice to the Minister. In other fisheries, departmental scientists would continue to provide stock assessment advice. The Minister would then set the harvest level. The Department would provide an analysis of its data to the Board to assist it in making the allocation decisions.

Taking account of harvest levels, allocation principles set out in legislation, and ministerial policies, the panels of the Board would hold hearings with the fishing industry at the beginning of the cycle.

Typically, hearings would take place well before fisheries open. The panel would make a recommendation as to what licence holders get what share of the fish or what decision rules would be used to manage the allocations during the season. All panel hearings would be open, and the rationale for their advice would be publicly available. Panel allocation recommendations would have to respect the Department's conservation decisions, including such things as closed times and seasons. The Board would then make a final decision before the fishing season opened and publish its decisions.

In fisheries where stocks were declining or expanding, or in new fisheries, the panels would recommend how the allocations would change. Where stocks are stable, with shares already fixed, there would be no change in patterns of allocations.

For examples, please refer to Annex A.

D. Administering Sanctions

Traditionally, fisheries violations (breaches of the *Fisheries Act*, its regulations, and licence terms and conditions) have been handled through the criminal courts. This has been unsatisfactory for DFO and the industry alike. The courts are often slow and know little about the fishery.

The new Boards could address the shortcomings of the criminal justice system. Appropriate penalties, providing an effective deterrent to illegal fishing, would be handed down swiftly and fairly by a knowledgeable "fisheries court". In particular, retention of a licence would now be linked with the individual fisherman's willingness to abide by the rules of the fishery. Industry would help set these more effective penalties.

Under the proposed system:

- The *Fisheries Act* would be amended so that breaches of conditions of licence and regulations by licensed commercial fishermen would be taken out of the criminal courts and handled by the Boards as administrative matters. [Note: other "true crimes" under the Act (e.g., obstruction, habitat destruction) and *Criminal Code* offences (e.g., fraud, assault) would still be dealt with through the courts, as would unlicensed fishing].
- The Boards would apply a range of administrative sanctions. These would include one or more of: forfeiture of fish, gear and vessel used in the violation; quota reduction; licence suspension, non-renewal or cancellation; or financial penalties of up to \$10,000.
- Persons accused of an infraction would have the right to an oral hearing before a Board.
- The burden of proof would be lower than in criminal cases. In criminal cases, proof must be established beyond a reasonable doubt. Under the Boards, proof would be established on the balance of probabilities.
- Minor violations would be made ticketable violations. Tickets would result in financial penalties to a maximum of \$2,000. Contested tickets would lead to a hearing before a Board. More serious violations would be brought directly before the Board, which could impose more serious sanctions (e.g., larger financial penalties, loss of licence).

The proposed system is set out in the chart on page 16.

E. Licence Appeals

Every year, thousands of licensing decisions are made: routine licence issuance and re-issuances, issuance of licences to new licence holders, vessel replacements, and categorization of fishermen. These decisions are currently made according to departmental licensing rules covering such matters as eligibility requirements for current licence holders and new participants, categorization of fishermen, vessel replacement criteria, and special employment or participation requirements.

There are times, however, when disputes arise in the application of the licensing rules, so a licensing appeal mechanism is needed. The existing Atlantic appeal system has two levels, and the Pacific system has one. At its final stage, the current appeal system provides an opportunity to appeal to the Minister.

Under the proposed system, routine licensing activities would be carried out on behalf of the Boards by DFO staff, within an established set of licensing policies. Appeals against these decisions would be made to a Board. An appeal would probably be heard by one or two members of a Board.

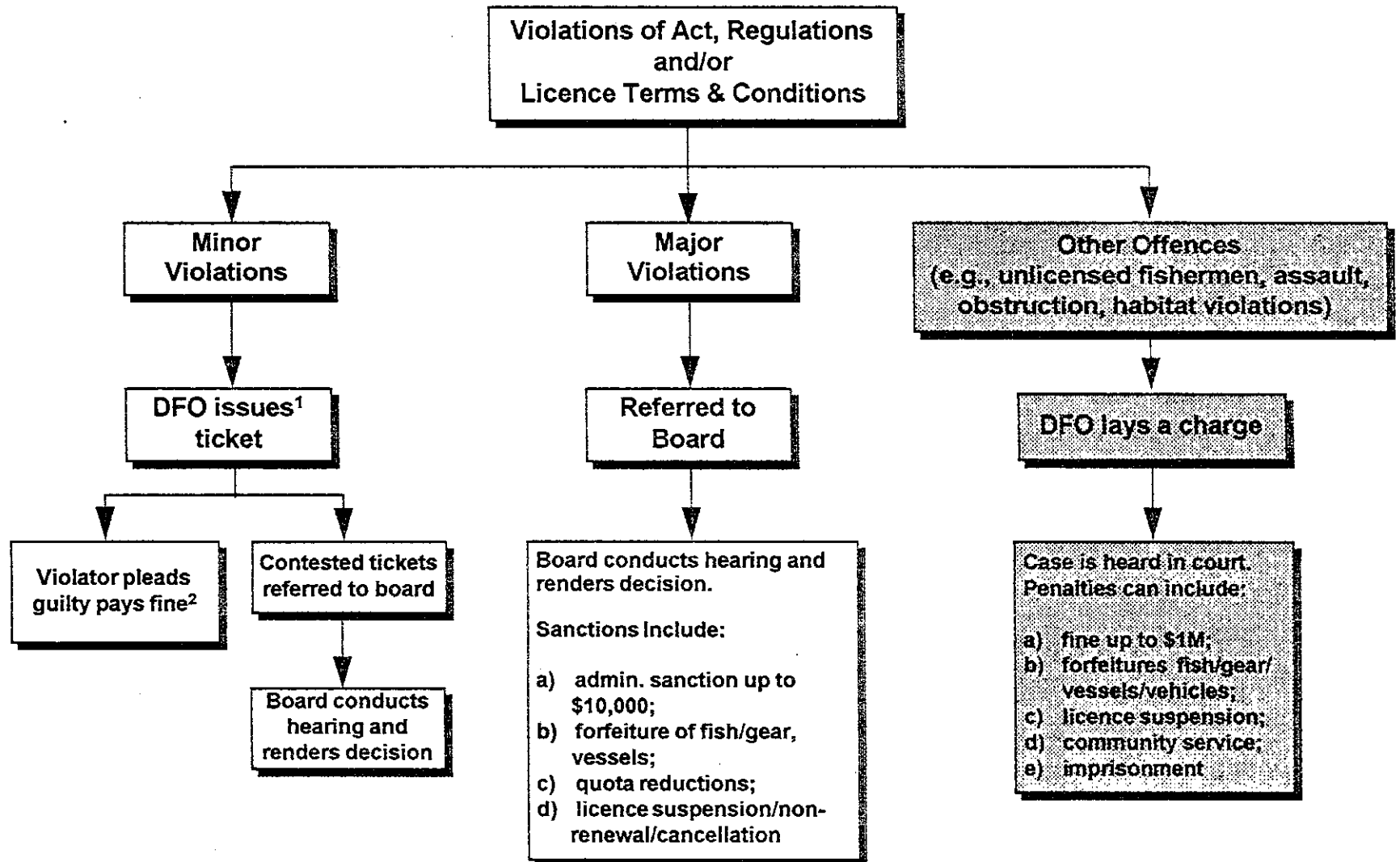
If necessary there could still be a judicial review, by the Federal Court, of Board licence appeal decisions; this provision for judicial review, which is guaranteed under the *Federal Court Act*, would apply as well to allocation decisions and sanction decisions. There would be no appeal to the Minister.

To check documentation and assemble the case files required by a Board to hear an appeal, there would be an Appeals Branch within the Board secretariat. The appellant would submit an appeal to the Board. The licensing officer who made the decision under appeal would submit the case documentation to the Board Appeals Branch. That documentation would be placed before the Board and could result in:

A positive or negative decision by the Board, following consideration of the appeal case.

Withdrawal of the appeal. In some cases, the appellant may decide to abandon the appeal on the basis of facts collected in the detailed review.

DFO REFORM: SANCTION PROPOSAL



1. Tickets for minor offences would be up to \$2,000.
The sanctions for ticketable offences would be laid out in regulations.
2. Could include forfeiture of fish.

Criminal Process
 Fisheries Board Process

STARTING UP THE NEW SYSTEM

Consultation Process

The consultation process began with the release of the document entitled "A Proposal for Reforming Licensing and Allocation Systems" in November of 1991. This document introduced the concept of creating an administrative agency to make licensing and allocation decisions in a fair and open manner. DFO formed two working groups, one on the Atlantic and one on the Pacific coast, made up of knowledgeable industry people who provided advice as the details of the proposal were developed. The release of this second public document is the culmination of many months of discussions with these working groups, provincial governments and other knowledgeable people in the industry. In the next phase, this document and the legislation will form the basis of a broader consultation exercise with industry and the provinces.

The Legislation

The new system must be established through legislation. A bill establishing the organization and mandate of the two new Boards would be brought forward to Parliament by the Minister. Along with enabling legislation establishing the Boards, some consequential amendments to the *Fisheries Act* and regulations would be required. If Parliament approves the legislation, the Department would begin the work of codifying the policy framework, writing necessary new regulations, and planning for transition to the new system.

Clarifying and Codifying the Policies

Throughout 1993, the Department will work on producing a written or codified policy framework for the marine commercial fisheries, which will form a context for subsequent decisions by the Boards. This process will involve identifying and articulating existing policies and documenting current informal policies. By 1994, a detailed registry of all policies and practices will be available in Board and DFO offices.

Appointment of the Boards

The Boards could not begin operations until legislation has been proclaimed and transition planning has been completed. The Governor in Council could appoint a Chair for each Board to assist in the transition planning, but Board members would likely not be appointed until the Boards are ready to undertake their mandate. The Minister of Fisheries and Oceans would invite industry, provincial and territorial governments' suggestions on Board appointments prior to making a recommendation to the Governor in Council. For appointments to the Executive Board, the Act would specifically authorize provincial governments to submit lists of names.

Transitional Phase

If legislation is passed there will be a transition period before the bill is proclaimed law. DFO has extensive field staff and offices along both coasts, and their work in respect of licences, allocations, and sanctions needs to be coordinated with the work of the Boards. The operational linkages between the Boards and DFO will take shape in close consultation with industry. During this period details will be finalized on how DFO will carry out its operational responsibilities under the new system. There will also be a need to allocate resources, announce appointments, finalize staffing, train DFO's current staff for new roles, and familiarize the public with the new process.

Commercial fishing licences, quotas, annual or multi-year fishing plans or allocations in effect at the time of the Boards' inception would continue to the end of their terms. (These licences could be amended, however, on conservation grounds or suspended or revoked in the manner provided in the Boards' new legislation.) Any licensing proceedings pending when the Boards start operating would be continued by DFO.

Changing Over

A formal policy framework will be provided to serve as the context for Board decisions. The Minister will issue transitional directions to the Boards, to continue the existing rules on licensing and allocations. These will remain in effect until the Boards, in the course of performing their duties, make decisions that vary them.

ANNEX A

Examples

These examples, without defining specific policy, show future operations under the proposed Boards.

Atlantic Groundfish

For illustration, the process of managing the 4VsW cod fishery is described.

DFO scientists would conduct stock assessments and present their preliminary scientific advice to the Fisheries Resource Conservation Council (FRCC) in the early spring. The FRCC could hold public hearings on non-allocative management measures (such as gear restrictions, size limits, closed times and areas). The FRCC would then make its written recommendations to the Minister.

Having considered the FRCC recommendations, the Minister would give direction on the harvest level:

- the overall harvest level (Total Allowable Catch) for cod in 4VsW; and
- all conservation decisions (i.e., mesh size, closed areas and times) and management measures.

The Board Chair would assign an Executive member and additional members to a regional panel at the beginning of the summer. This panel would have a number of stocks to consider, including 4VsW cod. The panel would divide the harvest on the basis of the Minister's conservation decisions and relevant policy directives. Throughout late summer and early fall, the panel would hold public hearings on the proposed allocations. Panel advice to the Executive Board would include such provisions as fleet quotas, access to specific areas/stocks, vessel restrictions and overall allocations to IQ and EA fisheries.

In the specific case of 4VsW cod, where a TAC reduction has been decided by the Minister, the panel would, subject to ministerial policy directions, provide advice to the Board on how that TAC reduction should be shared by the fleet sectors fishing the 4VsW stock.

The panel would prepare its advice and submit findings and recommendations to the Board in the fall; these would be made public. The panel would normally provide an explanatory rationale for its recommendations, particularly in cases where divergent industry views are presented to the panel.

The Board would review the panel's allocation advice. The Board might, in unusual circumstances, decide to hold further public hearings. The Board would make the final decision on how the TAC (or any TAC reduction) in the 4VsW cod fishery would be shared among the various fleet sectors in that fishery.

The Board's allocation decisions for the next year's fishery would be released, with reasons for decisions, at the end of the year to industry and the public, through Board offices, DFO and the media. Industry would receive a record of the Board's 4VsW allocation decisions from the Board, but DFO would also have copies available.

The Board's allocation decisions would be implemented by DFO. Fishermen would continue to receive their licences through DFO offices; DFO would monitor quotas and administer the season openings and closings. Fishermen could contact these offices for information on fleet quotas and season openings and closings.

The Department would enforce the *Fisheries Act*, regulations, and licence terms and conditions. The Board would deal with sanctions for breaches of these rules. Once the management plan is in place, fishermen would deal with DFO on the day-to-day aspects of the fishery, as they do now.

Pacific Salmon

Some Pacific industry leaders have suggested that a separate tier of panels is not required. However, for illustrative purposes, the process of managing the Barkley Sound sockeye fishery under a panel scenario is described.

In January, the job of predicting run strength and identifying the harvestable surplus for Barkley Sound sockeye by studying salinity and temperature levels during smolt migration and completing sibling age-class analyses would begin.

Initial stock projections for Great Central, Sproat and Henderson Lakes would be sent to all sectors of the fishing industry. In early May, a management plan for Barkley Sound would be drafted setting out conservation measures and allocations for the Aboriginal, recreational and commercial sectors.

The Board would then take the commercial allocation and divide it among the various gear types. The Board's eventual decision would take into account previous sector allocations, traditional fishing patterns, strength or weakness of various stocks and other relevant factors, as reflected in legislated principles, the policy framework, and policy directives.

During this period, a panel of the Board could be assigned responsibility for allocating the commercial catch for Barkley Sound sockeye. The panel would hold public hearings to which interested parties would contribute.

In May and June, DFO, the panel and industry would consider decision rules for in-season management of the Barkley Sound sockeye fishery, stating criteria for decisions and how those criteria would be applied as run strengths, timings, migration routes or other factors change, to provide as much guidance as possible to fisheries management. The more that can be achieved through pre-season determination of in-season management actions, the more conflict over access to the resource can be avoided. The panel could hold hearings to develop "catch-up/make-up" provisions for situations where commercial allocations could not be met through in-season adjustments.

The panel would make public recommendations to the Board. The Executive Board would be responsible for reviewing the panel's recommendations and integrating the proposed allocations for the Barkley Sound fishery with those made for other areas. The Board would then make a final decision on commercial allocations for Barkley Sound sockeye. In June, the Board would forward the allocation decisions to DFO. They would then be released to industry and the public, through Board offices, DFO, and the media.

DFO would continue to issue licences through its Vancouver and Prince Rupert offices. During the season, the DFO's Barkley Sound Working Group would meet weekly to verify its forecasts through a variety of methods, including Barkley Sound test fisheries, commercial catch monitoring and escapement enumeration of Henderson, Sproat and Central Lakes. Pre-season expectations would continue to guide management actions until updated forecasts were prepared in early July. It is not statistically valid to reforecast run strengths prior to early July or until half of the returns have arrived in the terminal area of Barkley Sound. DFO staff would continue to use age, tissue and parasite analyses to determine stock composition. If actual run size varied from

projections, DFO could adjust the management framework, using predetermined decision rules and traditional means such as changes to area and timing of fisheries. DFO would strive to achieve allocation targets but, when prevented from doing so by conservation or unusual fishery conditions, would rely on catch-up/make-up provisions. Panel activity would be minimal once the season was in full swing.

The Department would enforce the Act, its regulations, and licence terms and conditions. The Board would deal with sanctions for breaches of these rules.

The Department would monitor runs, catches, and escapement of Barkley Sound sockeye stocks. At the end of the season, it would compile the final data and hold public meetings, usually in mid to late November, to evaluate the Barkley Sound fishery in the light of past experience and begin preparing assessments and advice for the coming year. The Board would be involved in reviewing variations from pre-season allocation targets and any required changes to decision rules for the following season.

QUESTIONS AND ANSWERS

These questions and answers deal with setting up the system and how it would work.

Setting up the System

- Q. How different will the Pacific and Atlantic systems be?
- A. The concept is the same: an impartial Board to provide more openness, fairness, consistency and proper penalties. In practice, the legislation will provide a good deal of flexibility. For example, Board Chairs will have flexibility in setting up panels and in assigning the workload to members and panels.
- Q. If the panels are to hold hearings with industry, what happens to the existing DFO advisory committees?
- A. There is likely to be a significant change in the role of Advisory Committees. While allocation decisions will now be made by the Boards, Advisory Committees established by DFO, or those that are industry led, could continue to contribute to policy reviews and conservation matters, such as use of appropriate gear technology, economic development of the industry, and so on. Alternatively, industry groups could organize themselves to provide policy advice on an ongoing basis to the Minister. The shape of future advisory groups will evolve over time under the new structure.
- Q. Are the Boards going to be phased in?
- A. Instead of assuming all of their new responsibilities on one day, the Boards could take on new activities over a prescribed period of time. Different sections of the legislation (e.g., sanctions, allocations) could be proclaimed at different times for a smooth transition.
- Q. What happens to existing licences and allocations in the year that the Boards start their operations?
- A. Commercial fishing licences, quotas, annual or multi-year fishing plans in effect at the time of the Boards' inception will continue to the end of their terms. (These licences could be amended, however, on conservation

grounds or suspended or revoked in the manner provided in the Boards' new legislation.) Any licensing proceedings pending when the Boards start operating will be continued by DFO.

- Q. Who will be consulted on Board appointments?
- A. The Minister would invite industry, provincial and territorial governments' suggestions on Board appointments prior to making a recommendation to the Governor in Council. For appointments to the Executive Board, the Act would specifically authorize provincial governments to submit lists of names.

General Operations

- Q. When would I as a fisherman deal directly with the Board?
- A. Most likely, your direct dealings with the Board would be on questions affecting you as an individual, such as a licence appeal or a sanctions case. If you are making an appeal or facing a sanction, you would be dealing directly with a panel (possibly a one-person panel) set up to hear your case.

The Board or its allocation panels would hold public hearings on allocations and make public the results. You would be free to attend these hearings, if you wish, and to appear before it, or have your views presented for you by an association or spokesperson.

- Q. When would I make representations to the Minister?
- A. You can write to the Minister about anything at any time. But if you wrote to the Minister regarding a specific decision to be taken in the area of licence award or allocations, your representation would be referred to the Board.
- Q. Could DFO advisory committees present themselves to the panels?
- A. Boards and their panels will determine the eligibility of interested parties for participation in a given public hearing.
- Q. Could DFO officials make recommendations to a Board and panels on a licensing or allocation question?
- A. DFO officials could be called to testify publicly before a Board or a panel and to produce relevant documentation on a licensing or allocation matter. The participation of DFO officials in a Board's decision making will be limited to this public process.

- Q. Suppose the industry at panel hearings is totally divided on an issue. What happens?
- A. The panel will present its recommendations to the Executive Board, which will take into account the differences in public views expressed at the panel hearings as reflected in the panel report. The Board could also hear directly from industry. Any such interventions would be made public. The Board would then make a final decision.
- Q. Would the Boards give policy advice to the Minister?
- A. No. Boards will apply policy as set by the Minister.
- Q. What if a Board decision on licences or allocations meant putting a major plant or community out of business?
- A. The Board's job is to ensure fair and just application of policy *under legislated principles and ministerial policies*. In doing so, a Board may indeed help or hurt a particular plant or community, without in any way showing prejudice against it. But the Minister would be unable to intervene with the Board to make an exception for a particular plant or community; the Minister's actions would be limited to changing the larger policy framework.
- Q. Could the Board make licensing or allocation decisions that involved more costs or more work for the Department? Could these costs be passed back to the industry?
- A. The Boards and the Department would work co-operatively to identify the operational implications, e.g., the practicability or enforceability of licensing and allocation decisions that DFO must implement in the field. Thus, the cost impact of decisions would be taken into account.
- Q. How formal will the process be? Will I need a lawyer if I want to appear before the Board or a panel?
- A. The objective is to achieve a balance between accessibility to the public and a process that will protect the individual's rights. No one will be obliged to hire a lawyer. However, where personal interests are at stake, e.g., a sanctions hearing, the individual would always have the right to representation by counsel.
- Q. How can we be sure that the Board and panel structure will not be so rigid that the management of the fisheries will be made less efficient or less timely?
- A. It is possible for the Board to act immediately on allocation decisions if conservation concerns are a factor. The Board, in performing its functions,

will have to take the cycles of fisheries management into account. Timely decisions will ensure that fisheries can operate as efficiently as possible.

- Q. Where do the provinces/territories fit into the new system?
- A. Jurisdiction over sea coast and inland fisheries resides with the federal government. In Ontario, parts of Quebec, B.C. and Yukon, and the prairie provinces, the provincial/territorial governments administer freshwater fisheries under authority of the federal *Fisheries Act*. In all provinces, the provincial government rather than the federal government licenses on-shore processing facilities.

The Boards would deal with key aspects of federal fisheries management on the coasts, taking decisions under policy direction. There will continue to be co-operation on policy-setting for these fisheries between federal and provincial/territorial governments through such bodies as the Atlantic Council of Fisheries Ministers and other mechanisms such as Memoranda of Understanding and General Fisheries Agreements.

- Q. How will Northern interests in Atlantic fishery resources be protected under an Atlantic Fisheries Board?
- A. The Tungavik Federation of Nunavut land claim settlement agreement, already ratified by Eastern Arctic residents, gives substantive management authority over inshore stocks, i.e., within the 12-mile territorial seas. Beyond this zone in offshore waters, the agreement creates further specific guarantees, e.g., respecting consultation with the Nunavut Wildlife Management Board. As well, residents adjacent to the resource are guaranteed special consideration for new licences and allocations. Once passed into legislation, this agreement will be constitutionally entrenched and therefore binding on all federal bodies.

While the bulk of the Atlantic Board's work will deal with fisheries in southern waters, a special voice will be given to northern concerns by creating a northern panel, to be established by regulation. This panel, on which northern residents will sit, would recommend licences and harvest allocations; it could also hear licence appeals and apply sanctions in the eastern Arctic offshore commercial fisheries.

- Q. Will the northern panel established under the Atlantic Fisheries Board deal with fishing in the western Arctic?
- A. No. The Atlantic Fisheries Board will not deal with any western Arctic fisheries. The Inuvialuit settlement agreement and the fisheries management responsibilities of the Department in the western Arctic are unaltered.

- Q. What stocks or species will be assigned to the northern panel?
- A. The regulation establishing the northern panel would probably assign to the panel all offshore commercial fisheries in sub-area 0. At present the only commercial species fished in this sub-area are shrimp and Greenland halibut.
- Q. Will the creation of the Boards add to the overall cost of fisheries management?
- A. No additional funds will be required, since funding for the Boards will be found from existing departmental resources.

Licensing

- Q. How do I get my licence under this new system?
- A. Through departmental offices as usual, which will act on behalf of the Boards in this function. You would deal with the Board mainly when you as an individual have a licensing problem (either an infraction or an appeal against an administrative decision).
- Q. Will Aboriginal commercial fishing licences (e.g., reduced fee licences on the Pacific coast) be issued by the Board?
- A. Yes, the Board will be responsible for issuing all marine commercial fishing licences. Communal licences provided to bands under the Aboriginal Fisheries Strategy will be issued by DFO.
- Q. I have to carry three types of documentation: fisherman's registration, vessel registration, and limited entry fishery licence. Can the Board simplify this?
- A. The Board cannot combine or discontinue or otherwise adjust the different types of licences unless the Minister directs such a change.
- Q. Would the Board be able to force a sudden change by licensing only one particular gear type or technology?
- A. Any such change would come through a policy change, and such a change would involve public discussion and ample notice. Furthermore, the principles of the legislation will provide protection for existing interests.
- Q. Could the Board radically restructure the licensing in a given fishery?
- A. No. The Minister will control the direction and pace of change through policy directives that establish the licensing policy framework. Existing licensing rules will be rolled over to the Board.

Q. Does this mean that the new system will actually hold back progressive change?

A. No, the Minister and the Department will be evaluating and making policy changes on a continuing basis to adapt to a changing industry environment.

The intent is to allow for a reasonable balance of continuity and change. A greater degree of openness, fairness, and consistency in the system should make a better foundation for progressive change over time.

Q. How can I be sure the individual hearing my licence appeal is familiar with the fishery and well-versed on the appropriate rules and regulations?

A. Both Executive and additional members will be knowledgeable and have experience related to the fishery. Furthermore, members who develop an expertise in licensing appeals and sanctions panels will likely be allowed to concentrate on this function, to maintain a consistency in these key decisions.

Q. Who will establish licence terms and conditions?

A. The Minister maintains responsibility for conservation and for operations and enforcement. Therefore, the Minister can order the Board to attach terms and conditions required for conservation and protection of the resource and proper management of the fishery, e.g., trip limits, gear restrictions. The Board can attach terms and conditions of an allocative nature, e.g., individual quotas.

Allocations

Q. Under this new system, where do I get information about allocations?

A. The final announcements of decisions on allocations will come from the Board. Through Department offices, its own offices, and the media, the Board will publish its decisions on particular allocations, the details of those allocations, and the reasons for its decisions.

Q. Where can I see all the policies and rules about allocations?

A. In the Board's public registry, available at Department or Board offices.

Q. How will an annual decision-making framework fit in with a multi-year allocation?

A. Where multi-year plans are developed, in second and subsequent years the Board will review the plan to determine whether there is a valid reason for

departing from the allocations set out in the multi-year plan. If not, the plan will be implemented for that year.

- Q. How will the Board make meaningful allocation decisions for the commercial salmon fishery, which is a species prone to wide annual variations in stock size, migration routes, etc.?
- A. Wherever possible, pre-season plans should be made more detailed and precise through the development of decision rules. These decision rules, or "clockwork" provisions, would establish commercial allocations under a variety of run sizes. Also, they would specify the management actions that will be taken to achieve conservation requirements and allocations to other users in response to varying run strengths, timing, migration routes or any other relevant factor, in order to provide as much guidance as possible to managers. The Board could also develop "catch-up/make-up" provisions for situations where allocations could not be met through in-season adjustments of fishing plans.

Sanctions

- Q. Will I continue to have the same protections as I currently have before the courts?
- A. Everyone brought before the Board has the right to be represented by counsel and the right to a hearing where sworn evidence is taken, with a right to cross examine. There are, however, important differences between an administrative law system of the type proposed here and the criminal courts. For example, the burden of proof is less under the administrative law system, and administrative penalties are less severe because they are intended to be remedial rather than punitive.

DETAILS OF LEGISLATION

Board Organization

- The Atlantic Coast Fisheries Board would consist of a Chair, a Vice-Chair and not more than five other full-time members ordinarily resident in the Atlantic region. These would constitute the Executive Board. The Board would offer services in both official languages. Its head office would be in the Atlantic region.
- The Pacific Coast Fisheries Board would consist of a Chair, a Vice-Chair and not more than three other full-time members ordinarily resident in the Pacific region. These would constitute the Executive Board. The head office would be in British Columbia.
- Additional members would be appointed, principally to serve on Board panels. Panels developing recommendations on licensing and allocations would be chaired by a member of the Executive Board.
- Members of both Boards, to be appointed by Governor in Council on the recommendation of the Minister, will be persons knowledgeable about and with experience related to the fishing industry.
- Members would be appointed for a term not exceeding five years (three years for additional members) but could be removed at any time for cause. Members would be eligible for reappointment.
- The Chair would be the Chief Executive Officer of the Board, with full power over its internal affairs.
- A member could not, directly or indirectly, be engaged in a fisheries business.
- Employees of the Board would be appointed in accordance with the *Public Service Employment Act* and be accorded all applicable rights.

Administrative Procedures

- Boards would be given the full procedural powers necessary for their quasi-judicial function.
- Boards could hold a public hearing in respect of any matter, and the Chair could direct the holding of a hearing by a panel. Where a hearing was held, the Board or panel would be empowered to hear interested parties.
- All ministerial directions, decisions or orders of a Board and all licences would be made available for free public examination. Boards would maintain a registry to facilitate public access.

Ministerial Powers

- The Minister would have the power to issue binding directives to the Boards respecting the conservation and protection of fisheries resources.
- The Minister would also have the power to issue broad policy directives on licensing and allocation that would be binding on the Boards.

Policy Principles

- Policy principles in the legislation will provide a framework for the licensing and allocation decisions made by the Boards. Principles would provide stability, certainty and continuity with current patterns of fisheries licensing and allocation. These principles would ensure that decisions of the Boards respect the fishing industry's historical values and objectives.
- The legislation will specify that allocation orders of the Boards shall take into account:
 - the provision to resource users of reasonably secure access to fisheries resources;
 - the needs of resource users who are adjacent to a particular fishery resource;

- the relative mobility of fleet sectors and the relative dependence of resource users on a particular fishery resource; and
- the economic viability of users of fishery resources.

Licensing

- Subject to the regulations and any policy or conservation directives of the Minister, the Boards would issue or authorize to be issued licences for fisheries or fishing.
- The Boards would assign to DFO routine day-to-day licence administration and the collection of fees.
- The Boards would develop licensing rules and eligibility criteria on the basis of the Minister's broad licensing policy directives and the regulations.
- The Minister could direct the Boards to attach to those licences such terms and conditions as are required for the conservation and protection of the resource and the management of the fishery.

Appeals

- Decisions made by DFO licensing staff charged with applying the licensing rules (e.g., refusal to issue fishing licence or registration of vessels or fishermen) would be appealable to the Boards.
- The process for appeals of such decisions would be as follows:

The appellant would submit an appeal to the Board following a decision by licensing staff. The officer who made the decision would submit the case documentation to the Appeals Branch of the Board. Following consideration of the case, the Board would render its decision.
- Decisions of the Boards (for both licence awards and allocations) could be reconsidered by the Board but would not be appealable, outside of normal judicial review.

Allocation

- The Boards would be required, for each fishing season, to develop allocations in advance, in consultation with affected parties, for commercial fisheries under their jurisdiction.
- Panels of the Boards could be established by regulations or by the Chair to hold public hearings as a basis for developing these allocations.
- Panels would make recommendations on allocations to the Executive Board, which would take the final decision.

Sanctions

- Breaches of conditions of licences and regulations under the new Act by licensed commercial fishermen would be handled by the Boards rather than the criminal court system.
- Other crimes under the *Fisheries Act* (e.g., habitat destruction) and *Criminal Code* offences (e.g., fraud, assault) would continue to be handled by the criminal courts, as would unlicensed fishing.
- A range of administrative sanctions could be applied by the Boards. These include forfeiture, quota reduction, suspension, non-renewal, cancellation of a licence or financial penalties.
- The onus of proof would become the balance of probabilities, instead of the criminal law requirement for proof beyond a reasonable doubt.
- Minor violations would be made ticketable offences under the new Act. Tickets would lead to the imposition of financial penalties. Contested tickets could lead to an oral or a paper hearing at the option of the violator. More serious offences would be brought directly before the Boards, which could impose more serious sanctions, e.g., larger financial penalties, loss of licence.

Transitional Provisions

- Every commercial fishing licence, quota, fishing plan or allocation in effect at the time of the Boards' inception would continue to the end of its term.
- Licences could be amended, however, on conservation grounds or suspended or revoked for cause, in the manner provided in the Boards' new legislation.
- Any licensing proceedings pending when the Boards start operating would be continued by DFO.
- The Minister would transmit the current policy framework to the Boards in the form of a policy directive to ensure that existing policies remain in force during the transitional phase. Current policies would continue until such time as the Boards received new policy direction from the Minister.
- Current licensing rules would also be "rolled over" to the Boards by being deemed to have been made by the Boards.
- The *Fisheries Act* will have to be amended to reflect the transfer of functions to the new Boards.

GLOSSARY OF TERMS

Advisory Committees - Consultative committees, usually fishery-specific, that provide advice on fisheries policy and fishing plans. Committees comprise fishing industry representatives, fishing union and association representatives, and federal and provincial fisheries department representatives.

Allocation (quota) - That portion of the Total Allowable Catch (TAC) allocated to a particular individual, fleet, company, or area for harvesting purposes.

Individual Quota - The assigned catch level for an individual licence holder expressed in tonnes or as a percentage of the TAC and included as a licence condition.

Fleet Quota - The assigned catch level for a fleet based on defined vessel and/or gear characteristics.

Enterprise Allocation - The assigned catch level for an individual enterprise expressed in tonnes or as a percentage of the TAC and included as a licence condition.

Geographic Quota - The assigned catch level defined by geographic boundaries but not specific to any particular fleet.

Closed Time - A period when fishing is not permitted; usually closed times are established for conservation and protection of fish stocks (e.g., closed times for protection of soft-shelled or moulting lobster and crab).

Closed Area - A defined area where fishing is not permitted, usually for conservation and protection of fish stocks (e.g., closure of haddock nursery areas on Scotian Shelf).

Conservation - That aspect of renewable resource management that ensures that use is sustainable and safeguards ecological processes and genetic diversity for the maintenance of the resource concerned. Conservation ensures that the fullest sustainable advantage is derived from the living resource base and that facilities are so located and conducted that the resource base is maintained. (Note: This definition was developed in 1980 by the United Nations Environment Program)

and is based on the United Nations World Conservation Strategy. The definition was reviewed and adopted by Canada in 1981.)

Decision Rules - Decision rules define what actions will be taken under a given set of conditions, e.g., run strengths, migration routes. Specifically, these rules would fix user allocations and management actions to be taken in response to conservation requirements determined by DFO and varying relevant factors. For example, a decision rule for the Barkley Sound sockeye fishery may be that a commercial fishery will occur if total run size is greater than a predetermined number of pieces.

Eligibility Criteria - In limited-entry fisheries, criteria (e.g., commercial fisherman status, employment status, etc.) determine whether an individual or enterprise is eligible to acquire an existing commercial fishing licence upon withdrawal of the current licence holder. For exploratory fisheries, eligibility criteria to gain access to the fishery may be broader and could include performance commitments. Such additional provisions could include the ability to market the product, a commitment to a specific percentage of Canadian processing, or a commitment to generate a specific level of employment.

Escapement Target - The number of spawning fish required to escape capture in all fisheries and reach the spawning grounds to ensure a minimum egg deposition density for reproduction in a river system.

Exploratory Fishery - A fishery for a species/stock of known or unknown quantities that has the potential to be exploited more fully by Canadians. Where quantities, location, and technologies are known, exploratory fisheries are conducted to allow Canadian enterprises to exploit their commercial and marketable potential more fully. Where quantities, location, or technologies are unknown, exploratory fishing operations can establish whether there are commercially harvestable and marketable quantities and whether there are impacts on other species.

Fish Stock - Within one species, a population of fish that is genetically distinct. For biological and management purposes, stocks may also be distinguished on the basis of their migration patterns and morphological characteristics.

Harvesting Rate - The percentage of a stock removed by the fisher.

Licence Terms and Conditions - Specific conditions attached to commercial fishing licence for the administration of catch and effort controls. Licence conditions may include the species and quantity to be fished, fishing area and time, gear and vessel specifications, and reporting and unloading requirements.

Licence Sanction - Under the proposed administrative penalty system, a penalty applied for breaches of licence conditions or general rules by commercial licence holder. Licences may be suspended, cancelled, revoked or amended (i.e., individual quotas or enterprise allocations adjusted) under a licence sanction program.

Limited-Entry Fishery - A fishery where the total number of licences is limited. Most commercial fisheries on the east and west coasts are limited-entry fisheries.

Policy - A principle or course of action adopted by the government to guide present and future decisions in the commercial fishery. Policies are broad in scope and embrace the overall directions and goals for the commercial fishery.

Regulation - A federal law authorized by an Act of Parliament and enacted by the Governor in Council.

Rule - Administrative guideline, by-law, or specific standard controlling procedure or conduct, consistent with the policies set down by the government.

Season - A period of fishing time.

Total Allowable Catch (TAC) - The annual target level for catch mortality in the commercial harvest set by fish stock area; the portion of the available biomass that may be harvested in a commercial fishery.