



**CFE Business Development
Forum**
PICFI Enterprise Development

**License Utilization:
Commercial License
Considerations, Maximizing
Other Opportunities &
Discussion**

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[Who's in the room?]

- Harvey Eng, PICFI, DFO
- William Leung, Licensing, DFO
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Commercial vs. Communal Commercial

All Communal Commercial Licenses are Party-Based and held by the CFE as an organization
Where as Commercial Licenses, may be either Vessel Based or Party Based:

- Vessel Based – the licence is issued in respect of a vessel (i.e. halibut, crab, salmon)
- Party Based – the licence is issued in respect to an individual, organization or First Nation (i.e. sea urchin, rockfish, communal commercial)

Commercial vs. Communal Commercial

Quota acquired can only be permanently held by commercial licenses in the CFE's name and not communal commercial

Fulfilling conditions of licence (i.e. submitting logbook information) is the responsibility of the licence eligibility holder

[Why Does this Matter?]

Vessel Ownership

- Vessel Based licenses are **permanently** attached to whichever boat they are placed on
- If a CFE makes arrangements to place a commercial licence eligibility on a vessel it does not own, the CFE would not have any association with the licence; As the policy is whomever owns the vessel controls the licence.

[Why Does this Matter?]

Vessel Ownership

Example: OceanLife CFE purchases a new category AG (Salmon by Gillnet) license. The CFE does not own a vessel in its name, so the organization leases the new license to John Doe. This requires the license to be transferred to John Doe's vessel as a **permanent transfer**. As the CFE does not co-own the vessel, this will result in the CFE having no ties or control of this licence.

[Why Does this Matter]

Quota cannot be permanently reallocated to or from a communal commercial licenses; other than what is initially provided by the Department.

As CFEs only hold these licenses for the duration of agreements.

Other Transferability Rules

Length Restrictions

In competitive/non-quota managed fisheries (i.e. salmon, shrimp, crab) licenses must be placed on a vessel of equal length or shorter. If placed on a shorter vessel, future placement of those license(s) is restricted to the length of the shorter vessel.

In quota managed fisheries there are some length flexibilities (i.e. Maximum vessel lengths)

Other Transferability Rules

Length Restrictions

Example: OceanLife CFE purchases a 20ft category R (Crab by Trap) license at \$\$\$\$\$. The CFE does not own a vessel in its name, so the organization leases the new license to Jane Smith as she is a community member with her own 15 ft crab boat. As a result of this permanent vessel replacement, the category R license has now been reduced to 15 ft **permanently**, which may decrease the value at \$\$\$.

Other Transferability Rules

Marriage Restrictions

- Where there are other licenses on a vessel, they are all “married” to one another and many cannot be “divorced” or separated from each other; unless otherwise identified in the applicable Integrated Fisheries Management Plan (IFMP) (i.e. halibut, sablefish, groundfish trawl and geoduck).

Other Transferability Rules

Marriage Restrictions

Example: OceanLife CFE purchases a category AS (Salmon by Seine) license. The CFE does not own a vessel in its name, so the organization leases the new license to Kevin Jones. Kevin is an established community fisher with his own vessel and already holds a Salmon and Prawn license on his vessel. As Kevin's vessel already holds two vessel based licenses, should the Salmon Seine license be permanently placed on the vessel, all three licenses will be considered to be married and may not be separated.

[Why Does this Matter?]

CFEs can **permanently** devalue or lose control of their assets by:

- Leasing out a commercial license and placing it on a vessel not owned by the CFE
- Permanently placing a commercial license on a shorter vessel, permanently devaluing the license
- Unintentionally marrying commercial licenses together that cannot be separated

Other Transferability Rules

Reduced Fee Licenses

- Reduced fee licenses can only be held by status individuals not by indigenous companies (CFEs).

Example: OceanLife CFE is looking to purchase an category AG license (Salmon by Gillnet) from Charlie Smith because he is retiring and neither his son or daughter are interested being fishers. He is willing to give the CFE a great price because he knows it will be fished by the community. Half way through the process, it is discovered that Charlie's license is a reduced fee license and cannot be placed on a vessel owned by OceanLife CFE. The deal cannot go through.

[Scenario 1]

- MV Tie Tanic holds an category AG license (Salmon by Gillnet) and a category W license (Prawn by trap). OceanLife CFE is working on a deal to acquire the:
 - Prawn licence
 - Salmon licence

What needs to be considered?

What ways might make sense for the CFE to mitigate risk in this scenario?

How can CFEs mitigate transferability risk?

1. Fish access with CFE owned vessels

How can CFEs mitigate transferability risk?

2. Partial ownership of vessel/operations
(You can register yourself as an owner with just 1 share of the vessel with Transport Canada)

How can CFEs mitigate transferability risk?

3. Legal trust agreements (Please note DFO does not enforce these)

How can CFEs mitigate transferability risk?

4. Notice and Acknowledgement process (similar to registering liens on mortgages)

Fisheries and Oceans Canada (DFO) has worked with various financial institutions, including the Canadian Bankers Association to develop the Notice and Acknowledgement system for financial agreements entered into by a lender and vessel owners/licence holders. This was done in response to concerns expressed by the fishing and financial service industries relating to the need for access to capital.

The Notice and Acknowledgement system is a system that may be used where financing is arranged with a lender.

The Notice Form, notifies DFO of a financial arrangement between the vessel owner/licence holder and the lender. The Notice and Acknowledgement Forms are considerations that can be taken into account by DFO when determining whether to approve a request submitted by the vessel owner/licence holder.

For vessel based licences in the Pacific Region, a licence holder is a vessel; therefore, financial arrangements are made with the vessel owner(s).

How can CFEs mitigate transferability risk?

The Notice and Acknowledgement process is as follows:

The vessel owner/licence holder or the lender on behalf of the vessel owner/licence holder (with the licence holder's written consent indicated by signature on the **Notice Form**) can notify DFO of a financial arrangement(s) by filing the appropriate **Notice Form** with DFO. The **Notice Form** is located on the DFO web site.

DFO will sign the **Notice Form**, acknowledging its receipt, and return a copy of the document to the vessel owner/licence holder and to the lender.

By filing a **Notice Form**, the vessel owner/licence holder agrees to submit a completed **Acknowledgement Form** (located on DFO's web site), signed by the lender whenever he/she submits a request for the reallocation of quota, to permanently place a vessel based licence to another vessel or to remove the notice altogether

How can CFEs mitigate transferability risk?

5. Apply for exemption to licensing policy with DFO

Should a CFE be denied when submitting a request to the Pacific Fishery Licence Unit (PFLU) in relation to a vessel replacement, nomination or over length designated vessel where an exemption from licensing rules and policies is being requested, a referral will be made to the Pacific Region Licence Appeal Board (PRLAB) in the response letter.

The Minister established the Pacific Region Licence Appeal Board (PRLAB) in 1979 as the last administrative level of appeal for fishers who are dissatisfied with departmental licensing decisions made by Fisheries and Oceans Canada (DFO).

The PRLAB is at arms length from DFO and their mandate is to consider all information provided to:

- determine if the appellant was treated fairly in accordance with DFO licensing policies, practices and procedures;
- determine if extenuating circumstances exist for deviation from established policies, practices and procedures; and
- provide a full rationale with any recommendation where exceptions to licensing policies, practices and procedures are recommended in individual cases

How can CFEs mitigate transferability risk?

The PRLAB then makes a written recommendation to the Minister of Fisheries and Oceans who makes the final decision.

Questions on whether policies are reasonable or appropriate or suggestions for policy changes should be addressed through the fisheries management advisory process.

The PRLAB does not make decisions on licence policy, although if requested, they may provide advice to the Minister on changes to licencing practices and procedures.

How can CFEs mitigate transferability risk?

Additional information regarding the PRLAB process and the Terms of Reference utilized by the Board members can be found on the web under:

<http://www.pac.dfo-mpo.gc.ca/fm-gp/licence-permis/appeal-eng.html>

Or by contacting:

Andria Charette
Pacific Region Licence Appeal Board Liaison
200 – 401 Burrard Street
Vancouver, BC V6C 3S4
Tel: 604-666-1640
Fax: 604-666-5855

[Exercise #1]

Name 1 way to mitigate transferability risk...

Recap: Red Flags & Risk Mitigation

When purchasing Commercial Access (non-Communal Commercial):

1. Party based or Vessel based?
2. Any length restrictions?
3. Will they get married? If married, can they be separated?
4. Reduced fee licenses – only status individuals can hold these licenses (not CFEs)

What to do if applicable:

1. Place licenses on CFE-owned vessels
2. Take partial ownership of vessels that will hold licenses
3. Set up legal trust agreements
4. Notice and Acknowledgement process
5. Request exemption to policy (PRLAB)

[Scenario #2]

- MV Holly Day holds an L (Halibut) license and a W (Prawn) licence. CFE is working on a deal to acquire the:
 - Prawn licence
 - Halibut licence
 - The entire vessel

What needs to be considered?

Other Opportunities

Schedule II Species

- Tuna (via a category CT licence)
- Skate
- Flounder
- Sole
- Lingcod (must have quota)
- Dogfish (must have quota)

The following Canadian registered commercial fishing vessels are eligible to apply for a category CT licence to fish for tuna species in Canadian fisheries waters, and on the high seas (waters of the Pacific Ocean that are not Canadian or United States fisheries waters) under Schedule II, Part II, of the *Pacific Fishery Regulations, 1993*: vessels that hold a vessel based commercial licence eligibility (i.e. salmon, schedule II species, geoduck, sablefish, halibut, crab, shrimp trawl, groundfish trawl or prawn and shrimp by trap), vessels that are designated with an eligible communal commercial licence, or a valid N licence.

Other Opportunities

Non-Limited Entry Fisheries

Definition:

- Special Use Herring (category ZX & ZY)

A Special Use Bait Herring, category ZX or ZY licence is required to commercially harvest special use herring. Special use herring licences are unlimited entry party-based and are issued in the name of an individual or company. A category ZX licence is for herring caught for personal use whereas a category ZY licence is required for fish caught for commercial use.

- Section 68 – High Seas (category SEC68)

A licence issued pursuant to Section 68 of the *Fishery (General) Regulations* to authorise fishing or trans-shipping on the high seas (waters of the Pacific Ocean, other than Canadian and U.S.A. fisheries waters).

[Other Opportunities]

Transporting

Under Section 24 of the Pacific Fishery Regulations, transporting fish harvested during commercial fishing may be permitted if the vessel is licensed to be used in commercial fishing or a transporting, category D licence has been issued in respect of the vessel.

[Other Opportunities]

- Transporting licences are unlimited entry and vessel based. A transporting licence may only be placed on an unlicensed vessel. Transport licences do not allow freezing of fish. Fish may be frozen on the licensed fishing vessel and transhipped to a vessel for transport.
- Any vessel based licence (i.e.) salmon, schedule II species, geoduck, sablefish, halibut, crab, shrimp trawl, groundfish trawl or prawn and shrimp by trap, communal commercial or category N licence allows the transport of roe herring, prawn and shrimp by trap and salmon caught by other vessels.
- Transporting of sablefish, halibut, groundfish trawl, rockfish and schedule II species, eulachon, crab, shrimp trawl and sardine is prohibited, as the licenced fishing vessel must land the harvest. Crab, spiny dogfish and shrimp trawl may be transported after it has been landed by the harvest vessel. Sablefish, halibut, groundfish trawl, rockfish and schedule II species may be transported after it has been landed by the harvest vessel and validated

[Other Opportunities]

- Red Sea Urchin, Green Sea Urchin, Sea Cucumber and Geoduck must be validated prior to being transported.
- A licence is not required and will not be issued to vessels wishing to transport oysters, clams, gooseneck barnacle or aquaculture stock only. Vessels that will be transporting only Paralytic Shellfish Poisoning (PSP) geoduck sampling product or any product that will not be sold commercially are not eligible for a transporting licence.
- PSP geoduck product sampling and transporting must be done under authority of a licence issued under Section 4 (1) of the *Contaminated Fisheries Regulations*. Vessels who will be PSP sampling and also claim to be a back-up transport vessels for geoduck or other harvest vessels must meet all category D transporting licence issue requirements; i.e. must have proof of transporting activity at least once in the previous three years. Applicants should contact the applicable resource manager for a licence issued under Section 4 (1) of the *Contaminated Fisheries Regulations* or an Experimental, Scientific, or Special Access licence, as appropriate.

[Other Opportunities]

Temporarily Transfer Quota

Quota may be transferred from one licence to another if the quota cannot be fished off the originating licence

Example: Halibut vessel #1 leases its quota to halibut vessel #2 for the current season

[Questions?]

[Discussion of Review]

Contact Information

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