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NATIONAL ENFORCEMENT POLICY FOR CONSERVATION AND PROTECTION

INTRODUCTION

Purpose Of The Policy

The purpose of this policy is to provide general direction on the compliance and enforcement program administered by the Conservation and Protection Directorate. It is intended for the direction of all Conservation and Protection staff.

This document focuses on providing guidance to Fishery Officers in the exercise of their enforcement powers, and in particular in providing policy guidance on the various courses of action available to officers in securing compliance with the law. The document also brings together the full array of powers and techniques used by Fishery Officers of the department.

The National Enforcement Policy for Conservation and Protection should be considered an over-arching document that focuses on policy rather than procedure. It does not provide detailed policy, operational or procedural guidance for specific enforcement activities (i.e. aboriginal fisheries, special operations, armed boardings, etc) that are the subject of national and regional policy/procedural documents that should be read in concert with this policy.

Scope Of Application

Fishery Officers have a broad range of enforcement responsibilities. The *National Enforcement Policy for Conservation and Protection* relates only to the enforcement of the [Coastal Fisheries Protection Act](#), the [Fisheries Act](#), the [Species at Risk Act](#), the [Oceans Act](#) and regulations made under these Acts. All enforcement activities under these acts are governed by the general principles set out in this document. This policy also relates to those sections of the [Criminal Code](#) that Fishery Officers may enforce while carrying out their duties under the *Fisheries Act*.

In cases involving enforcement authorities based in other statutes (i.e. provincial conservation officer designations) officers should consult the specific legislation, review regional operations manuals and consult their supervisor for further direction.

Department of Fisheries and Oceans Legal Foundation

Federal jurisdiction over fisheries, public harbours and navigation is established by the [Constitution Act, 1867](#).

The [Department of Fisheries and Oceans Act](#) creates the Department of Fisheries and Oceans (DFO) and assigns the Minister responsibility for:

- (a) sea coast and inland fisheries;
- (b) fishing and recreational harbours;
- (c) hydrography and marine sciences; and
- (d) the coordination of the policies and programs of the Government of Canada respecting oceans.

The *Department of Fisheries and Oceans Act* also provides that the Minister may, with the approval of the Governor in Council, enter into agreements with the government of any province or any agency thereof respecting the carrying out of programs for which the Minister is responsible. It is by this mechanism, that responsibility for management and enforcement functions under the *Fisheries Act* have been delegated to a number of provinces and territories.

Table 1 provides an overview of DFO and provincial fisheries, habitat and aquaculture management responsibilities under the *Fisheries Act* across Canada.

TABLE 1: JURISDICTION FOR FISHERIES MANAGEMENT/ENFORCEMENT, HABITAT AND AQUACULTURE RESPONSIBILITIES UNDER THE FISHERIES ACT ¹

Province/ Territory	Fisheries Management / Enforcement		Habitat		Aquaculture	
	DFO	PROVINCE/ TERRITORY	DFO	PROVINCE/ TERRITORY	DFO	PROVINCE/ TERRITORY
British Columbia	salmon & marine fisheries	Freshwater fisheries including steelhead trout, oysters	marine & salmon habitat	inland waters	*	
Alberta		all species	*			*
Saskatchewan		all species	*			*
Manitoba	only marine species	all species	*			*
Ontario	only marine species	all species	*			*
Quebec	Marine fisheries	freshwater, anadromous & catadromous species but does not include Hudson Bay		*		*
Newfoundland & Labrador	all species		*			*
New Brunswick	marine & anadromous/ catadromous species		*		Introductions and transfers (release of fish into waters)	All other with some benthic habitat
Nova Scotia	marine & anadromous/ catadromous species		*			
Prince Edward Island	marine & anadromous/ catadromous species		*		*	*
Yukon	salmon	Sport fishing for Freshwater species	*		Introductions And transfers	*
Northwest Territories	co-managed with advisory boards					No activity
Nunavut	co-managed with advisory boards					No activity

¹ Fishery Officers generally do not have enforcement authority in National Parks. However there are exceptions set out in the [Canada National Parks Act](#) and the [National Parks of Canada Fishing Regulations](#). In addition, Regions may agreements in place for enforcement in specific parks.

GUIDING PRINCIPLES

Conservation And Protection Guiding Principles

The role of Conservation and Protection is to promote and maintain compliance with legislation, regulations and management measures implemented to achieve the conservation and sustainable use of Canada's aquatic resources, and the protection of species at risk, fish habitat and oceans.

Conservation and Protection has developed a broad [National Compliance Framework](#), that sets out eight principles to guide the development and delivery of the Conservation and Protection compliance program: The compliance program will be;

- **Proactive** in promoting voluntary compliance;
- **Collaborative** in building support through partnerships;
- **Problem Solving** with special attention to specific problems;
- **Risk Based** with effort and response proportional to risk;
- **Innovative** in optimizing the use of technology and other tools;
- **Intelligence-led** incorporating an increased role of intelligence and analysis in supporting enforcement operations;
- **Cost efficient/effective** making the best use of resources; and
- **Balanced** to reflect an appropriate mix of activities undertaken to achieve compliance.

Management recognizes that the more traditional monitoring, control and surveillance activities are the backbone of the compliance program but that new technologies and strategies need to be incorporated to make the best use of available resources. There is a need for greater emphasis on promotion of voluntary compliance through education, and engagement of stakeholders.

The Conservation and Protection [Situational Compliance Model](#) is a tool that outlines the various factors that influence compliance and presents the options that department has in addressing non-compliance. The Model recognizes that rather than treating clients with a "one size fits all" approach, compliance is best achieved based on the situational factors associated with the particular compliance problems in the context of a specific fishery or a DFO sector or program.

In applying the Situational Compliance Model, Fishery Officers will carry out their duties in accordance with the following principles:

- compliance with fisheries laws is mandatory;
- in promoting compliance with fisheries laws officers will emphasize preventing violations;
- officers will apply fisheries laws in a manner that is fair, predictable, impartial, and consistent. They will use rules, and processes securely founded in law, in keeping with *the Canadian Charter of Rights and Freedoms*;
- a risk based approach will be applied whereby officers will respond to suspected violations of fisheries laws, giving priority to those that have resulted in the greatest harm, or pose the greatest risk of harm, to the fisheries resource, to fish habitat or to public health; and
- officers will encourage reporting by the public of suspected violations of fisheries laws, and will respond to all such requests in accordance with priorities established within Conservation and Protection.

Defining Compliance And Enforcement:

"**Compliance**" means conformity with the law. Compliance is achieved through two types of activity: proactive measures that promote voluntary compliance, and reactive measures that respond to violations through the use of enforcement powers.

"**Enforcement**" means compelling adherence to the law through the exercise or application of powers granted under law.

Compliance Promotion

Officers shall endeavour, within the limit of their lawful authority, to prevent and control the incidence of violations.

This approach is based on the understanding that the majority of the public is willing to comply with the law, particularly when advised of their responsibilities under the law and when the law is applied in an equitable and responsible manner.

The National Compliance Framework identifies a number of techniques that Fishery Officers will employ to promote compliance with fisheries laws.

Informal/Formal Education: Public support is important to the Department, particularly in securing compliance with sensitive and often controversial fisheries laws. Information about the intent of the law and the rationale behind such a requirement is important to securing this support. Officers will use a combination of communication techniques to promote community and public awareness.

Co-Management/Partnerships: The Department engages in extensive consultation with client groups (including aboriginal, recreational and commercial fishers and processors) and other stakeholders, in the development of integrated fisheries management plans and the associated regulatory mechanisms which support these plans. Conservation and Protection staff are key participants in these consultations.

Enforcement Programs

Conservation and Protection enforcement programs fall in two categories:

Monitoring, control and surveillance (MCS): Monitoring, control and surveillance activities include land, sea and air patrols, routine inspections, audits, and other intelligence gathering activities to verify compliance with fisheries laws; or,

Major Case/Special Investigations: Major Case/Special Investigations represents a planned move to “intelligence-led policing”. It is based on formal intelligence gathering and analysis and retroactive offence detection and investigation

The objective of both programs is to detect non-compliance and respond to it. Officers will be relying on statutory powers of inspection, search, seizure and arrest.

FISHERY OFFICER POWERS, AUTHORITIES AND RELATED RESPONSIBILITIES

Officers will be relying on statutory powers of inspection, search, seizure and arrest. This authority arises from fisheries laws and from the *Criminal Code*. Table 2 outlines the major enforcement officer powers in the fisheries laws under DFO's jurisdiction. This is not an exhaustive list and Fishery Officers must be fully cognizant of the scope and limitations of these authorities prior to initiating any enforcement action.

Specific Enforcement Actions Relating To Investigating Habitat and Pollution Related Violations Under The Fisheries Act

Fishery Officers must be aware that there are a number of habitat and pollution related authorities contained in the Fisheries Act including the authority for the Minister to designate inspectors. The [Fisheries Act Habitat Protection and Pollution Prevention Provisions Compliance and Enforcement Policy](#) has been developed to provide specific direction on officer and inspector authorities and on compliance and enforcement actions relating to habitat and pollution offences. Fishery Officers must consult that policy for guidance in dealing with habitat and pollution issues.

TABLE 2: FISHERY OFFICER AUTHORITIES UNDER LEGISLATION ADMINISTERED BY FISHERIES AND OCEANS

AUTHORITY	Fisheries Act		Coastal Fisheries Protection Act	Species at Risk Act	Oceans Act
	Fishery Officer Section 5	Fishery Inspector Section 38	Protection Officer Section 2	Enforcement Officer Section 85	Enforcement Officer Section 39
Peace officer powers	Criminal Code Section 2	Not available	Criminal Code Section 2	Not available	Section 38.4 & Criminal Code Section 2
Authority to contravene Act in course of duties	Only with designation under Criminal Code 25.1	Not available	Only with designation under Criminal Code 25.1	Minister may authorize. Subsection 85(5) or if CC 25.1 designated	Minister may authorize. Subsection 39(5) or if CC 25.1 designated
Trespass without Liability	Section 52	Section 38(8)	Not available	Section 90	Not available
Inspection of place other than a residence	Section 49- authority for seizures in Section 51	Section 38(3)	Section 7 authority for seizures in Section 9	Section 86 - at a reasonable time -includes authority for seizures	Section 86 - at a reasonable time -includes authority for seizures
Inspection of a residence	Sections 49 (2) & (3) - occupant consent or <u>inspection</u> warrant	Not available	Not addressed – treat in accordance with FA procedure	Section 86(3) ³ - consent of occupant or <u>search</u> warrant	Section 39.1(4) ¹
Search	With warrant under Section 49.1 or 487 Criminal Code	Section 87	With warrant under Section 7.1 or 487 Criminal Code	Only with warrant under Section 487 Criminal Code	Only with warrant under Section 487 Criminal Code-

³ Use of force limited to that set out in the warrant

TABLE 2: FISHERY OFFICER AUTHORITIES (continued)

AUTHORITY	Fisheries Act		Coastal Fisheries Protection Act	Species at Risk Act	Oceans Act
	Fishery Officer Section 5	Fishery Inspector Section 38	Protection Officer Section 2	Enforcement Officer Section 85	Enforcement Officer Section 39
Designation	Section 49.1(4) includes taking samples	Section 38(3.4)	Section 7.1(2)	Not available	Section 39.2 includes seizure
Search (exigent circumstances)	Section 50	Only if authorized in Criminal Code warrant	Section 9	Same as for inspection	Same as for inspection
Seizure	Section 51 and Criminal Code	Not available	Section 8 and Criminal Code	Not available—must rely on Criminal Code	Not available—must rely on Criminal Code
Issue direction to take remedial	Not available	Section 38(6)	Not available	Not available	Not available
Use of Force	Section Criminal Code, Section 25- Peace Officer	No – unless accompanied by peace officer and warrant	Section 8.1	Section 86(7) –only when authorized in warrant	Section Criminal Code, Section 25- Peace Officer
Reproduce records or cause them to be reproduced	49(1.1)(b)	No Not explicit, implied in 38(3) and 38(10)	Section 12 Coastal Fisheries Protection Regulations	Section 86(1)	Section 39.1(c)
Request documents or samples	Section 49(1.2)	No Not explicit, implied in 38(3) and 38(10)	Section 12 Coastal Fisheries Protection Regulations	Section 86(1)	Section 39.1(c)
Take samples	Section 491)(b)	Section 38(3)	Section 12 Coastal Fisheries Protection Regulations	Section 86(1)	Section 39.1(b)
Interim emergency order	Section 37(5) must be designated by Minister	Section 37(5) must be designated by Minister	Not available	Not available	**Section 36(1) order is limited to the creation of an MPA and requires Governor-in-Council Approval

Peace Officer Status and Enforcement Powers Under Other Legislation

Peace officer status pursuant to the *Criminal Code* is only conferred on Fishery Officers while performing duties or functions under the *Fisheries Act* or the *Coastal Fisheries Protection Act*. Fishery Officers do not have peace officer status while enforcing any other legislation.

Unless designated under other legislation, Fishery Officers have no authority to take enforcement action other than under the fisheries laws for which they have been designated or appointed. Their peace officer status under the *Fisheries Act* and the *Coastal Fisheries Protection Act* in no means authorizes or empowers them to take action under any other legislation. Should an officer choose to take enforcement action under any other legislation or under the *Criminal Code* when they are not performing their duties under the *Fisheries Act* or the *Coastal Fisheries Protection Act*, that officer will be considered to be acting as a private citizen.

Assistance To Police

In special circumstances the police may request the assistance of Fishery Officers in enforcing the *Criminal Code*. Section 129(b) of the *Criminal Code* states there is a duty to assist a public officer or a peace officer in the execution of his duty in arresting a person or in preserving the peace. A person who omits, without reasonable excuse, to assist may be found guilty of an offence. If requested to provide assistance, in discharging their duty Fishery Officers will be afforded the protection provided for in Section 25 of the *Criminal Code*, subject to the conditions that the officer act on reasonable grounds, in good faith and within the limitations specified for the use of force.

If called upon to act in their capacity as a Fishery Officer, the [Government Employees Compensation Act](#) and the *Treasury Board Policy on Legal Assistance and Indemnification* would apply to these situations in the same manner as it applies when Fishery Officers are executing their normal duties.

The [Guidelines For Fishery Officers Responding to RCMP Requests For Assistance and For Participating in Joint Enforcement Operations with the RCMP](#) provide specific guidance on requests for assistance from the RCMP.

Conservation and Protection Professional Standards

Officers are required to use common sense and good judgement in responding to violations. The Department's primary interest is not the numbers of prosecutions, but that the quality of the enforcement program is above reproach. Officers are reminded that a successful prosecution is not just about favourable facts and evidence; it is about the credibility of the government, of the Department and of the individual officer.

Officers are expected to act professionally at all times, especially when performing an enforcement function. The Department has adopted a [Code of Conduct for Fishery Officers](#) that establishes standards of behaviour for officers both on and off duty. The Code of Conduct is intended to guide officer behaviour to ensure that their actions do not negatively affect the credibility of the Conservation and Enforcement compliance programs.

Fishery Officers are reminded that the actions taken by the Department will be judged by the reasonableness of the action in the circumstance. Officers' actions must be legal, consistent with policy, and fall within reasonable and acceptable norms.

When investigating incidents or monitoring activities involving fishing by aboriginal people, officers should be fully cognizant and adhere to existing Departmental policies, directives and guidelines relating to fishing by Aboriginal people.

Fishery Officers must be aware that that jurisprudence has established that law enforcement officers cannot break the law in carrying out their enforcement duties. As an example, this means Fishery Officers cannot exceed catch limits or fish in closed areas as part of undercover or plainclothes operations directed at apprehending poachers.

The *Oceans Act* and the *Species At Risk Act* provide that the Minister may authorize an officer to contravene provisions of those Acts while carrying out their duties under that Act. However, even with this authorization, an officer has no authority to breach any other law. The *Fisheries Act* and the *Coastal Fisheries Protection Act* do not provide this type of authority. The department has a process in place to designate a limited number of trained Fishery Officers under the Law Enforcement Provisions of the *Criminal Code*, which provide a mechanism for Officers to contravene fisheries and other laws in the course of their duties. These designations are usually limited to officers in special operations.

Notebooks

Fishery Officers are required to maintain notebooks to officially record details and incidents while on duty. Only notebooks that have been approved and issued by the Conservation and Protection Directorate shall be used. Notebooks are business records and the property of the department and must be returned to the department when completed, or when an officer leaves Conservation and Protection.

DETECTING VIOLATIONS

In delivery of the Conservation and Protection compliance program one of the Fishery Officer's roles is to detect possible violations of fisheries laws.

In this role Fishery Officers must determine if an offence has occurred and if so establish relevant facts and circumstances so that a court can determine guilt or innocence and impose an appropriate penalty. The tools an officer uses to achieve this are briefly described below⁴:

Inspections

Fisheries law is regulatory in nature and fishing is a highly regulated industry. Industry's expectation of privacy is very limited, which enables the department to manage compliance through inspection. The predominant purpose of an inspection is to verify whether an individual is complying with the law. An inspection can be random or targeted. An officer may conduct an inspection when the officer believes on reasonable grounds that there is, in a particular place, any work or undertaking or any fish or other thing in respect of which fisheries laws apply⁵. Without these grounds, the Officer has no power to inspect. Inspections cannot be based on suspicions. In practice, if an officer does not have enough information to obtain a search warrant, the officer can continue in inspection mode. However, a **dwelling-house** may only be inspected with the occupant's consent or (if consent is refused or expected to be refused) under the authority of an entry warrant.

During an inspection an officer may open any container that the officer believes on reasonable grounds contains fish. Officers are also authorized to take samples, consult relevant documents and use computers and photocopiers that are on-site.

Routine inspections are one of the surveillance activities used to manage the resource and to enforce fisheries laws. While exercising the power to inspect, an officer may discover grounds for conducting a search or seizure as provided for in law. If, during an inspection, an officer must shift to the investigative role, he or she will so indicate to the individual, company or government department or agency.

⁴ This is a general overview of inspection and investigation techniques available to Fishery Officers. Officers are responsible for ensuring that they are fully aware of the authorities and limitations on these authorities set out in the specific fisheries laws under which they are carrying out their duties.

⁵ **The provisions relating to inspection differ from statute to statute. Officers conducting inspections must be fully aware of the applicable provisions in the statutes under which they are operating and of specific departmental policy and procedures set out DFO policy manuals.**

INVESTIGATION OF VIOLATIONS

The purpose of an investigation is to gather information and evidence to support the prosecution of a suspected violation. If the enforcement officer reasonably believes that there has been a violation of the law, then they have the authority to conduct an investigation. Once an officer reasonably believes there has been a violation the *Canadian Charter of Rights and Freedoms* guarantees against self-incrimination and unreasonable searches and prohibits officers from conducting an inspection.

The courts have determined that once the character of a the search changes from a routine inspection to ensure compliance with the *Fisheries Act* to an investigation for the purpose of securing evidence, a warrant is required. Consequently, if an enforcement officer discovers reasonable grounds to suspect a violation during an inspection and chooses to move from the inspection to an investigation immediately, the officer must declare that they believe an offence has been committed and they are conducting and investigation of the alleged offence.

Search

A search is permitted in law where a Fishery Officer believes, on reasonable grounds, that there is evidence of the commission of a fisheries violation. Reasonable grounds are established by information received or observations made by the Fishery Officer who intends to conduct the search.

The *Fisheries Act*, the *Coastal Fisheries Protection Act* and the *Criminal Code* include provisions that enable Fishery Officers to obtain a search warrant. A search warrant constitutes prior judicial authorization for the search and the collection of evidence you are seeking.

In the matter of searches, particularly personal searches, the powers of a Fishery Officer are counterbalanced by constitutional guarantees against injudicious application of the law. The *Charter of Rights and Freedoms* has introduced measures which protect individuals against unreasonable search and seizure. Each situation requires careful application of professional judgement and discretion on the part of the Fishery Officer to ensure that the extent of the search is appropriate to the grounds established.

As a general rule, when it is necessary to enter premises to gather evidence of a violation, a search warrant will be obtained⁶. The only occasion where a Fishery Officer will not seek a search warrant is:

- where the search is incidental to the arrest of an individual;
- where exigent circumstances (that is, when the delay necessary to obtain a warrant would result in danger to human life or safety or the loss or destruction of evidence) are present which prevent the officer from obtaining a search warrant; or
- where the consent of the individual to a search has been obtained.

Obtaining a search warrant is the preferred course of action, and it is the policy of the Department to take this course of action where possible and practical.

If during the course of an inspection, an officer discovers a violation and decides that a search or other enforcement response is required, and where exigent circumstances exist, namely the delay necessary to obtain a warrant will result in the loss or destruction of evidence, the Fishery Officer will begin an investigation immediately and, where necessary, exercise the power to search without warrant, and to seize items. In all other circumstances, a search will be done under authority of a search warrant.

The warrantless search remains the exception. This type of search will be presumed to be unreasonable, and the Crown will have to demonstrate that it was not

Seizure

During the course of a search with or without a warrant, officers may seize anything which they reasonably believe was used to commit an offence, is related to the commission of an offence, or will provide evidence of an offence⁷.

Officers use their powers of seizure when they believe that the seizure is necessary and in the public interest. Reasons for seizure and detention may include:

- laws requiring seizure;
- the need to prevent loss or destruction of evidence; or
- there is an intention to seek forfeiture of the property through the courts.

In order to seize personal property for use as evidence or for the purposes of forfeiture, the items must be associated with a contravention of fisheries laws. Items seized should have some evidentiary value.

⁶The provisions relating to search differ from statute to statute. Officers conducting searches must be fully aware of the applicable provisions in the statutes under which they are operating and of specific departmental policy and procedures set out DFO policy manuals.

⁷The provisions relating to seizure differ from statute to statute. Officers conducting seizures must be fully aware of the applicable provisions in the statutes under which they are operating and of specific departmental policy and procedures set out DFO policy manuals.

Officers must also consider if the contravention constitutes a serious violation of the fisheries laws. At times, it may appear sufficient to give a Warning to the offender. In these cases, detention of items seized would only be appropriate where there is a possibility that the Warning may be upgraded to a prosecution and evidence in respect of the contravention may therefore be required. If an officer issues a warning, and is of the opinion that the warning will not be upgraded to a prosecution, items will not be seized.

In order to ensure a rational approach to the use of seizure, officers are advised not to issue a warning in cases where there is a reasonable potential for upgrading to a prosecution. In these circumstances seizures should be made. Where, following further investigation, it is determined that charges will not be laid or that issuance of a Warning is appropriate, the Department's policy is that seized items must be returned to the offender immediately.

Items seized are automatically forfeited under the *Fisheries Act* in only three instances:

- a Fishery Officer may at the time of the seizure order the release of live fish: section 3.2;
- items like illegal fishing gear are also automatically forfeited to the Crown where ownership is not ascertainable: subsection 72(4); and
- upon voluntary paying a ticket.

RESPONSES TO ALLEGED VIOLATIONS

Officer Discretion

"Officer discretion" is essential to the enforcement function. "Discretion" is defined as the ability to make responsible decisions. It is also defined as individual choice or judgement.

While the Department does not want to be viewed as enforcing the law mechanically and without due consideration to the circumstances surrounding the event, on the other hand, the credibility of the Department is at stake if it is generally perceived that the Department cannot, or will not, protect the resource. Officers must maintain public respect for the law at all times.

Criteria For Making Decisions On Appropriate Enforcement Action

Enforcement measures are directed towards ensuring that violators comply with fisheries law within the shortest possible time and that violations are not repeated. Enforcement personnel responding to suspected violations will take into account the harm or risk of harm to fish, fish habitat and/or human use of fish. If they determine that there is sufficient evidence a violation has occurred and there is sufficient evidence to proceed, they will decide on an appropriate action, applying the criteria outlined below.

Nature of the Alleged Violation

Factors considered in assessing the nature of an alleged violation will include:

- the seriousness of the damage or potential damage to fish habitat, the fishery resource, or the risks associated with the human use of fish;
- the intent of the alleged violator;
- whether it is a repeated occurrence; and whether there were attempts by the alleged violator to conceal information or otherwise circumvent the objectives and requirements of fisheries law.

Effectiveness in Achieving the Desired Result with the Alleged Violator

The desired result is compliance with fisheries law in the shortest possible time and with no further occurrence of violations, in order to protect fish and fish habitat and human use of fish. Factors to be considered include:

- the alleged violator's history of compliance with fisheries law;
- the alleged violator's willingness to co-operate with enforcement personnel;
- evidence and extent of corrective action already taken; and
- the existence of enforcement actions by other federal or provincial/territorial authorities

CHOOSING AN ENFORCEMENT RESPONSE

Consistency in Enforcement

Fishery Officers will aim to achieve consistency in their responses to alleged violations. Accordingly, they will consider how similar situations in their Region and across Canada are being or have been handled when deciding what enforcement action to take.

Incidents Involving Children And Young Persons

The *Youth Criminal Justice Act* defines a child as anyone who appears to be under 12 years of age. Section 13 of the *Criminal Code* provides that no person under the age of 12 shall be convicted of an offence in respect of an act or omission on his part. It is Departmental policy that no one under the age of 12 should be charged or arrested. In any incident involving children under the age of 12 their parent/legal guardian must be notified as a soon as possible.

A “young person” is defined as an individual between the ages of 12 and 18. In any enforcement action involving a “young person” officers must pay particular attention to ensure their actions are consistent with the following sections of the *Youth Criminal Justice Act*:

- (26) parental notification upon arrest;
- (25) right to counsel;
- (110) protection of privacy; and
- (146) admissibility of statements.

In order to hold young people accountable for their actions in a fair and meaningful way, the *Youth Criminal Justice Act* encourages the use of measures outside of the formal court system when appropriate. These out-of-court options are called **extrajudicial measures**. They include:

- the police taking no further action;
- the police giving a warning;
- the police or the Crown attorney giving a formal caution;
- the police referring the young person to an agency that can help them to make better choices; and
- extrajudicial sanctions.

Warnings

Fishery Officers may use warnings:

- when they have reasonable grounds to believe that a violation of fisheries law has occurred;
- where the degree of harm or potential harm to the fishery resource, its supporting habitat or to the human use of fish appears to be minimal; and
- where the alleged violator has made reasonable efforts to remedy or mitigate the negative impact of the alleged offences on the fishery resources and its habitat.

In deciding whether to use warnings or another enforcement response, Fishery Officers may also consider:

- whether reasonable efforts have been taken to remedy or mitigate the negative consequences of the alleged offence or further offences;
- whether the alleged violator has a good history of compliance with fisheries law; and
- whether sufficient action has been taken to ensure that future offences are not committed.

Warnings will be confirmed in writing and will contain the following information:

- the section of the Act or regulations involved;
- a description of the alleged offence; and
- a statement that, if the alleged violator does not take necessary action, enforcement personnel will consider taking other steps.

A warning may be upgraded to a prosecution where, subsequent to issuing the warning, previous warnings or convictions for similar offences are discovered or it appears that the accused gave false information to the officer. Where a warning is not complied with and there is a subsequent violation, a prosecution may be initiated for the new offence.

Warnings will always be given in writing and in the form approved by the Department for national use. Warnings should always be communicated directly to the individual or company liable in law for the activity in question. Where a Warning in the form of a letter is given after the fact, it should be accompanied by the National Warning Form. The National Warning Form should always be signed by the officer who witnessed the violation.

Officers should be aware that if a record of previous warnings is to be entered as evidence in a court proceeding, the officer issuing the warning will likely be required to testify in the court proceedings. Officers must record the details and events of incidents when they issue a Warning in their notebooks.

Ticketing

Depending on the offence, either ticketing or a criminal prosecution may be considered. If there is sufficient evidence to support a prosecution, and where the offence appears on a schedule of violations for which tickets may be issued, a Fishery Officer may issue a ticket to the offender at the site of the violation. In addition to reducing court congestion, issuing a ticket for a minor offence usually allows more efficient use of an officer's time, allowing the officer to concentrate on more serious issues. Tickets also provide offenders some certainty as to the level of fine they can expect to pay and give them the choice of paying a fine and avoiding the inconvenience of attending court.

Tickets can only be issued for those offences for which specific regulations have been made under the provisions of the *Fisheries Act* or for offences that are listed in SCHEDULE II.1 of the *Contraventions Act*. There are no ticketable offences under the *Coastal Fisheries Protection Act*, *Oceans Act* or under *the Species at Risk Act*.

If a Fishery Officer does not feel that circumstances warrant issuing a ticket for for a contravention which has been identified as ticketable, prosecution may be undertaken in the courts. In those situations the prosecutor may ask the court to impose a fine as high as the maximum fine set in the enactment creating the offence.

Alternative Measures Or Restorative Justice

Alternative measures often referred to as restorative justice is a relatively new and evolving concept that has been applied in a limited number of fisheries violations.

“Restorative justice approaches crime as an injury or wrong done to another person rather than solely as a matter of breaking the law or offending against the state. Accordingly, it is concerned not only with determining appropriate responses to criminal behavior, but also with reparation - that is, actions that attempt to repair the damage caused by the crime, either materially or symbolically. ... restorative justice is more than just a practice or a program - it is a philosophy, a way of looking at crime and a response to crime based on the following principles:

- Crime is first of all a violation of relationships among people, not just an act against the state. Crime results in harm to victims, communities, and offenders, and they must all be actively involved in the justice process.
- All those affected by crime have roles and responsibilities and need to deal collectively with its impact and consequences.
- Restoration, problem solving, and the prevention of future harm should be emphasized.”⁸

Generally, restorative justice programs may be initiated when;

- Fishery Officers refer matters to alternative measures or other diversion programs before they lay charges; or
- after an accused has been charged, the crown may refer matters to alternative measures programs or community justice committees. If the matter is successfully resolved at this stage, the charges may be suspended.

Fishery Officers shall only refer violations to alternative measures or other diversion programs as part of regionally approved restorative justice program developed in consultation with Department of Justice counsel.

Prosecutions

Prosecution should be considered whenever serious violations of fisheries laws are discovered.

Prosecution is the preferred course of action in cases:

- involving fishing by non-licensed fishers;
- involving illegal sales of fish;
- where the violation resulted in risk of harm to fish or fish habitat;
- where human health was put at risk by the potential consumption of contaminated fish;
- where the alleged violation resulted in harmful alteration, disruption or destruction of fish habitat(not authorised by the Minister of Fisheries and Oceans);
- where the alleged violator had previously received a warning for the activity and did not take all reasonable measures to stop or avoid the violation;
- where the alleged violator had previously been convicted of a similar offence; or
- where there is evidence of a deliberate violation.

⁸ [RESTORATIVE JUSTICE: A NATIONAL CONSULTATION - A Consultation Paper](#)

Prosecution will always be pursued where:

- the alleged violator knowingly provided false or misleading information to an officer or with respect to reporting requirements;
- the alleged violator has assaulted or obstructed an officer in the carrying out of his or her duties or interfered with anything seized by Fishery Officers;
- the alleged violator concealed, attempted to conceal, destroyed, or attempted to destroy information or evidence after the offence occurred; or
- the alleged violator failed to take all reasonable measures to comply with a direction or an order issued pursuant to legislation.

Enforcement personnel will examine each case to determine whether an alternative to criminal proceedings is appropriate. Prosecution may still be the enforcement action chosen, in accordance with the criteria set out in the preceding section on **Criteria For Making Decisions On Appropriate Enforcement Action**.

SECURING A COURT APPEARANCE

There are three methods to secure the appearance of the accused in court:

- issue an appearance notice;
- serve a summons; or
- arrest.

Appearance Notice

Where an officer has determined that there is sufficient evidence to support a prosecution, an appearance notice may be given to the accused, normally at the site of the violation.

Appearance notices are the preferred course of action in securing the appearance of the accused in court. However, appearance notices should not be issued for those violation categories requiring Departmental approval. (See operations manuals). Officers should be familiar with local court schedules and, in assigning court dates, should avoid unnecessary inconvenience to the offender.

Officers must lay an information as soon as practicable and in all cases before the scheduled appearance of the accused.

Summons

The following conditions may preclude the issuance of an appearance notice:

- the officer requires instruction on how to proceed in a particularly sensitive situation;
- the case requires prior Departmental approval in accordance with policy or prosecution approvals (see operations manuals); or
- further investigation is required prior to initiating prosecutions.

In these instances, once a decision is made to proceed with charges, an information should be laid and a summons, compelling the accused to appear in court, obtained.

Arrest

Under the *Fisheries Act*, Fishery Officers, have the power to arrest without warrant. An officer does not have to find the accused committing an offence; it is sufficient to have reasonable grounds to believe that the person has committed an offence or is preparing to commit an offence.¹⁰

The power of arrest, when exercised, constitutes a major curtailment of human liberty, and therefore this power should be used wisely and discretely and only under the following circumstances:

- to prevent the continuation or reoccurrence of an offence;
- to establish the identity of the offender;
- to ensure the appearance of the accused in court;
- to secure and preserve physical evidence; or
- to secure the physical safety of the officer.

Powers of arrest are counterbalanced by legislated guarantees to protect the rights of individuals detained or arrested. The *Charter of Rights and Freedoms* gives individuals the right to counsel when they are detained or arrested. Standard cautions pertaining to detentions and arrests are set out in national enforcement directives. The officer must be sure of his authority to legally affect an arrest as he will be liable both civilly and criminally for false arrest.

The Department encourages investigating officers to rely on the voluntary cooperation of the individual during all phases of an investigation. There are times, however, when the individual will not be cooperative (i.e. will physically resist arrest or will attempt to escape) and the use of force against the individual will become necessary. The use of "as much force as necessary" means the use of as little force as possible and only that amount necessary to overcome resistance and ensure the safety of the arresting officer.

¹⁰*Other statutes administered by DFO do not contain this broad authority. Reference must be made to each statute and to the Criminal Code for specific provisions on the power of arrest.*

FISHERIES PROSECUTION APPROVALS

In determining what charges, if any, are to be laid and against whom, a Fishery Officer shall take into account the advice and instructions of his/her supervisor and any advice of counsel. This general rule does not apply where the Fishery Officer has the authority to initiate legal proceedings, as in the case where a ticket or an appearance notice may be issued. In these instances the officer is governed by general instructions given by supervisors and legal counsel.

The Department has designated officers to review all cases referred for prosecution before turning them over to the Department of Justice. Officers should consult operations manuals to determine which officers are designated and the type of offence each may approve. In addition, a reader system is in place in some regions to ensure consistent high quality case preparation.

It is the role of the Attorney General to approve prosecutions based on evidentiary and public interest considerations. Where there is a choice whether alleged offences can be prosecuted by summary conviction or by indictment, the Crown prosecutor has the prerogative to select the type of prosecution after examining the facts and evidence of the case, and may take into account any recommendation by a Fishery Officer. Summary proceedings under the *Fisheries Act*, the *Oceans Act* and the *Species at Risk Act* may be instituted at any time within two years after the time when the subject matter of the proceedings came to the attention of the Minister of Fisheries and Oceans. Enforcement personnel will bring any charges in as short a time as possible, having regard to the need for proper substantiation of the alleged violation and gathering of sufficient and appropriate evidence. There are no such time limits when legal proceedings are initiated by way of indictment.

RECOMMENDATIONS REGARDING PENALTIES UPON CONVICTION

Recommendations for Sentencing

Upon conviction, enforcement personnel will recommend that Crown prosecutors request penalties that are proportionate to the nature and gravity of the offence. In preparing their recommendations, enforcement personnel will take into account:

- the nature of the violation and the benefit gained as a result;
- potential threats to human health created by the violation;
- the number and nature of previous convictions by the offender;
- the effectiveness of the recommended penalty in deterring the violator from committing similar violations and ensuring compliance with the statute (specific deterrence);

- the prevalence of the same type of violation generally and any trends in the frequency of occurrence;
- sentencing precedents set by other courts in similar cases;
- the effectiveness of the recommended penalty in remediating the area of negative impact; and
- the effectiveness of the recommended penalty in addressing future protection of habitat, conservation of fish and fish habitat, and pollution prevention issues.

In seeking a court sanction, such as a prohibition on fishing, it is imperative that prosecutors and DFO provide sufficient and thorough information and advice to the court in the form of recommendations for sentencing. This advice should include having DFO expert witnesses/scientists testify on stock status and conservation impacts, providing the court with information on previous court decisions in similar cases and having industry representatives testify in support of strong penalties. It is essential that the judiciary be sensitized to the conservation and protection issues and evidence of the impact of the offence on the fishery should be put before the court.

It is the policy of the Department to seek forfeiture of illegal catch and illegal fishing gear and equipment in those cases involving serious harm to the resource or used in harmful alteration of habitat, persistent offenders, or where illegal gains are large relative to expected penalties.

A request to the court for an order of forfeiture would be during normal court proceedings following conviction and prior to sentencing. Crown Counsel should be provided with copies of the national guidelines governing forfeiture and encouraged to view recommended levels of forfeiture as minimum levels.

DEALING WITH THE MEDIA

It is important that Fishery Officers be aware of the [Department's National Media Relations and Spokesperson Policy](#) that has been developed to guide DFO in its public affairs operations, specifically media relations.

This policy states that trained and experienced Communications staff should be the first point of contact for media. When that is not possible, they should be involved at the outset of any media relations activity. The policy also states that designated spokespersons will represent the Department in dealing with the media and that these designated spokespersons will have up-to-date media training.

Officers who are not designated spokespersons will not provide media interviews, however they should not appear to be uncooperative or dismissive if approached by the media. They must refer the media to the designated spokesperson and will provide reasonable assistance to facilitate the media representative contacting the designated spokesperson. "No comment" is not an acceptable response to a media inquiry.

Plans for proactive media relations are to be discussed with Communications Branch before contacting the media.

INQUIRIES

Inquiries regarding clarification of the provisions of this policy should be directed to the appropriate Regional Director of Conservation and Protection or to the Director, Enforcement Branch, Conservation and Protection Directorate, Ottawa.

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