

POLICY FOR EXPORT DEALERS LICENCES

April 20, 2010
[Schedule "A"]

Section I - Background

Mandate of FFMC

The Freshwater Fish Marketing Corporation ("FFMC") was established under the federal *Freshwater Fish Marketing Act* (the "Act") with the mandate under section 22 of the Act to:

- (a) purchase all legally caught freshwater fish offered for sale;
- (b) create an orderly market;
- (c) promote international markets;
- (d) increase the fish trade; and
- (e) increase returns to fishers.

Exclusive Right

In order to fulfill this mandate, FFMC was granted under section 22 of the Act, the exclusive right to inter-provincial and export trade of freshwater fish harvested in Manitoba, Saskatchewan, Alberta, Northwest Ontario and the Northwest Territories, subject to the federal government regulating exemptions to this exclusive right under section 21 of the Act.

Authority for Export Dealer Licence

Section 20 of the Act permits the Board of Directors of FFMC to set terms and conditions by by-law in issuing licences (an "Export Dealer Licence" or "EDL") to persons as an exception to FFMC's exclusive right. There are no restrictions on the type of licence that the Board may grant under this provision.

Provincial Trade

This policy and the exceptions and exemptions provided under sections 20 and 21 of the Act do not affect trade of products within a province.

Special Dealer Licences

This policy affects renewals of any existing Special Dealer Licences, but not the terms of any Special Dealer Licences that are in effect.

Section II – Policy Objective

When reviewing an application for a licence, the overriding consideration will be whether granting that licence will result in increased aggregate returns to all fishers. More specifically, no licence will be granted that could cause a decrease in aggregate returns to all fishers. Aggregate returns to fishers mean the initial and final payments net of freight to all fishers.

Section III - Export Dealer Licence Categories

An application for an EDL will only be considered if it pertains to one or more of the following categories:

1. **An Underutilized Species** is a freshwater fish species for which FFMC:
 - (a) has imposed, in writing, for a full fiscal year at the time of the application, a purchase volume restriction; or
 - (b) offers to buy at less than \$0.50 per kg f.o.b. Winnipeg loose, headless or dressed, or the equivalent in round form or such other price as may be set by FFMC's Board of Directors by resolution from time to time.
2. **A New Product** is a fish product or fish by-product (collectively, "product") which FFMC does not directly or indirectly:
 - (a) produce currently; or
 - (b) plan to produce within the next 12 months at the time of the application.
3. **A New Market** is a market in which FFMC or its agents ("agents"), brokers or distributors have not sold any fish or product to a customer for consumption in the 18 months preceding the time of the application or are presently negotiating with for future sales.

Section IV – Restrictions on Applicants for an Export Dealer Licence

1. An applicant may not be:
 - (a) an agent of FFMC;
 - (b) a member of a partnership which is an agent, or
 - (c) a person who directly or indirectly controls an agent;
2. If an applicant is an individual, the applicant may not be:
 - (a) directly related (that is, husband, wife, brother, sister, son, daughter, mother or father) to an agent;
 - (b) a member of a partnership which is an agent,
 - (c) any person who directly or indirectly controls an agent;
 - (d) an officer or director of a cooperative which is an agent; or
 - (e) an employee, officer or director of FFMC.

3. If the applicant is not an individual (that is, if the applicant is a corporation, cooperative, partnership, or other legal entity), the applicant may not be controlled directly or indirectly:
 - (a) by an agent; or
 - (b) by a person who :
 - i. is directly related to an agent;
 - ii. directly or indirectly controls an agent;
 - iii. is a director or officer of a cooperative which is an agent; or
 - iv. is an employee, officer or director of FFMC.

Section V – Requirements of a Successful Export Dealer Licence Applicant

1. A successful EDL applicant (“licence holder”) and its agents:

- (a) must pay fishers on a weekly basis for all deliveries made to the licence holder or its agents the greater of:
 - (i) the price per species as set forth in the Export Dealer Licence; and
 - (ii) the current initial price per species paid by FFMC to fishers on an equivalent basis.

FFMC will provide written notice to all licence holders of any change in the initial price paid by FFMC within 10 business days after the change in the initial price.

- (b) must remit all deductions from fishers required under federal and provincial law to the appropriate governmental authorities.
- (c) must ensure that each facility used for processing fish has all the required permits and licences and it:
 - (i) operates and is inspected under a quality management program that incorporates the international standard of Hazard Analysis Critical Control Point (HACCP); and
 - (ii) complies with all laws regarding the processing of fish in the jurisdiction in which the facility is located.
- (d) must not:
 - (i) use FFMC’s name, logo or goodwill; nor
 - (ii) represent itself as an agent, employee or affiliate of FFMC in any of its dealings with third parties.
- (e) must limit its activities to those as described in the application subject to any terms or conditions imposed by FFMC.
- (f) must comply with all:
 - (i) import laws in the jurisdiction to which the licence holder will be shipping the

- fish or products; and
- (ii) shipping laws in each jurisdiction through which the fish or products must travel.

This includes, but is not limited to, obtaining all necessary permits and licences.

- (g) must, if requested by FFMC, provide proof of compliance with the terms and conditions of the EDL. To ensure confidentiality, such proof could be disclosed to an acceptable third party (e.g. chartered accountants) for verification.
- (h) must buy fish directly from fishers and set up their own infrastructure in handling the fish unless,
 - (i) otherwise exempted in writing by FFMC acting in its sole discretion; and
 - (ii) the licence holder has the written consent of an agent to use the agent's infrastructure.

Neither an agent nor a licence holder may use any of FFMC's property, including, but not limited to, pallets, software, containers, and documents in handling fish under the EDL.

- (i) will not be permitted to buy fish from FFMC or an agent, unless otherwise exempted in writing by FFMC acting in its sole discretion.
- (j) must demonstrate best efforts were made to purchase the stated volumes of each species set forth in the EDL during each year of the EDL.
- (k) must provide monthly reports (including nil reports) to FFMC that include:
 - (i) purchases and returns to fishers by species and lake of origin;
 - (ii) copies of all bills of lading; and
 - (iii) copies of the EDL stamped at port of exit, if any fish or product is permitted under the EDL to be exported from Canada.

The reports covering the previous month shall be submitted to FFMC no later than the 15th day of the month following the end of the previous month. Records of fish purchased will be corroborated by records submitted to and confirmed by the appropriate provincial authority.

- (l) must have a copy of the EDL accompany every shipment of fish or product.
- (m) must comply with all requests for information from the government of the province in which the fish were harvested regarding purchase and transportation of fish.
- (n) shall not transfer or assign the EDL.

- (o) pay any fees required by FFMC upon approval of an application and during the term of the EDL as set by FFMC from time to time.
- 3. Failure to comply with any of the terms of this policy may result in cancellation of the EDL if the licence holder does not correct the lack of compliance within the time set forth in the written notice provided to the licence holder.
- 4. All requirements of the licence holder are the sole responsibility of the licence holder. FFMC is not responsible to anyone for a licence holder not meeting its requirements under the EDL.

Section VI - Documentation Required for Application for an Export Dealer Licence

FFMC will treat the application on a confidential basis and will not use the information in the application to the detriment of the applicant.

An applicant must provide the following information and documentation in sufficient detail satisfactory to FFMC:

- 1. The legal name and address of the applicant. If the applicant is not an individual, the applicant must also provide a certified copy of a document showing that it is in good standing in the jurisdiction in which it was registered or incorporated.
- 2. The number of years requested for the EDL (to a maximum of five years).
- 3. A plan for each year of the term of the EDL setting out the:
 - (a) volumes and species of fish to be purchased;
 - (b) product or products to be produced; and
 - (c) the purchase price by species to be paid to fishers.
- 4. Financial information that will show the applicant's ability to pay fishers and all other stakeholders affected by the application.
- 5. Information regarding how deductions from fishers required under federal and provincial law will be remitted to the appropriate governmental authorities.
- 6. If the application is for a new product:
 - (a) the legal name and address of the owner of each facility; and
 - (b) the address of the physical location of each facility that would be used to process the fish or product.
- 7. The names and addresses of all customers (other than retailers and wholesalers) who will process or resell the applicant's fish or product under the EDL.

8. If a licence holder:

(a) is selling fish caught only by the licence holder; and

(b) signs a statutory declaration in the form required by FFMC that the fish sold under the EDL has been caught only by the licence holder;

the licence holder need not comply with the provisions of:

(c) Section V(1)(a);

(d) Section V(1)(b);

(e) Section VI(4); and

(f) Section VI(5).

Section VII - Application Process

1. An applicant must submit all the information required under this policy to FFMC at least ten business days before the next regularly scheduled meeting of FFMC's Board of Directors. Incomplete applications will not be considered. The management of FFMC will provide reasonable assistance to the applicant as may be requested.
2. The Board of Directors of FFMC, at its next regularly scheduled meeting, will review and decide upon the application. An EDL and any renewals of it that may be granted, will be valid for a period of time determined in FFMC's sole discretion with the term to expire at the end of a fiscal year for FFMC. The applicant will be informed in writing by registered mail whether the licence was granted. If the application is refused, the Board will provide reasons in writing.
3. A licence holder may apply to the President of FFMC in writing to vary any term or condition of an EDL. Any approval granted by the President is subject to approval by the Board of Directors at its next regularly scheduled meeting.
4. A licence holder may apply for a renewal anytime during the last year of the term of the EDL, if the term is greater than one year. If the term of the EDL is one year, a licence holder may reapply within the last four months of the term of the EDL.
5. A licence holder may not reapply if the most recent EDL had been cancelled by FFMC for non-compliance with the terms of that EDL.
6. If the application is not granted by FFMC and all the information required under this policy has been submitted to FFMC, the applicant may apply for arbitration under the rules set out in Schedule "A".

7. A licence holder may apply for arbitration under the rules set out in Schedule "A" regarding cancellation or non-renewal of a licence, if all the information required under this policy has been submitted to FFMC.
8. All notices to be sent to an applicant or a licence holder will be sent to the address provided in the application.

SCHEDULE "A"

RULES OF PROCEDURE OF ARBITRATION

Rules from the Arbitration and Mediation Institute of Canada Inc. apply, subject to the following:

- (a) one commercial arbitrator (as opposed to the usual panel of three) will be selected, preferably from a list of arbitrators provided by a third party such as the Arbitration and Mediation Institute of Canada and who are experienced in commercial arbitration.
- (b) the arbitration is restricted to reviewing the application, the material forwarded with the application, this policy and the Act.
- (c) the cost of arbitration will be borne by the unsuccessful party .
- (d) the arbitration is binding.
- (e) the arbitration is restricted to determining that FFMC has acted reasonably in applying this policy to the application. The arbitrator cannot review the merits of the application or assess any damages.