

# Administrative Monetary Penalties and Canadian Maritime Document Actions

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# Review and Explanation of AMPs Regulations

## CSA 2001 – Section 244

The Governor in Council may, on the recommendation of the Minister, make regulations for carrying out the purposes and provisions of this Part, including regulations

- (f) designating as a violation that may be proceeded with in accordance with sections 229 to 242 the contravention of a relevant provision that is an offence under this Act;
- (g) designating violations that, if continued on more than one day, constitute a separate violation for each day on which they are continued;
- (h) designating violations that may be proceeded with by issuing notices of violation and fixing a penalty or a range of penalties in respect of each such violation, up to a maximum of \$25,000 but in any event not greater than the maximum fine if the violation were proceeded with by way of summary conviction;
- (j) respecting the service of documents required or authorized to be served under this Part, including the manner of serving them, the proof of their service and the circumstances under which they are deemed to have been served;



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# Review and Explanation of AMPs Regulations

## AMPs APPLICABILITY

Applies to all commercial vessels and, only in the case of pollution, to pleasure craft. – consequence of “relevant provision”.

## ADMINISTRATIVE MONETARY PENALTY REGULATIONS

### Section 2

Designation section that references Appendix – List of offences and Penalty Ranges

### Section 3

Methods of service of Notices of Violation, Notices of Default and Notices of Compliance

### Section 4

Coming into force – when registered.



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# Procedural Considerations

## Deficiency Notice

The initial document in all enforcement actions

## Role of the Designated Officer (DO)

Coordination and advice – Regional OPI for enforcement

(Manager's position was originally considered for this but it would have intruded on Regional Director's authority to use his people as he sees fit)

## Role of Regional Director (RD)

Final authority on enforcement within the Region

## Headquarters Review

Only to ensure countrywide consistency in the application of enforcement

## Service of Documents

The object is to ensure that the person/vessel is **aware** that enforcement action has been taken against him/her/it. – proven by Affidavit of Service



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# Violations (commonly known as an “AMP”)

## Notice of Violation (NoV) - Form and Content

- How to fill out an NoV
- Violation – Explanation
- Appendix A – Form of Charge

## Notes and Record Keeping

- Detailed notes with time, place and action taken by MSI are essential for possible TATC hearing

## Evidence

- While TATC does not follow the Court’s strict rules of evidence, continuity of possession of real evidence and authenticity of documents or copies of them must be established

## Case Preparation for TATC Hearing

- CPO and MSI must collaborate to ensure that the evidence is delivered logically and establishes all elements of the violation

## Role of the Inspector at the TATC Hearing

- Gives evidence as the “investigating officer” for the case

## Role of the Case Presenting Officer (CPO) at the TATC Hearing

- Acts as the “Crown” for the case. Does not give evidence.



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# Disclosure and Depositions

## Disclosure

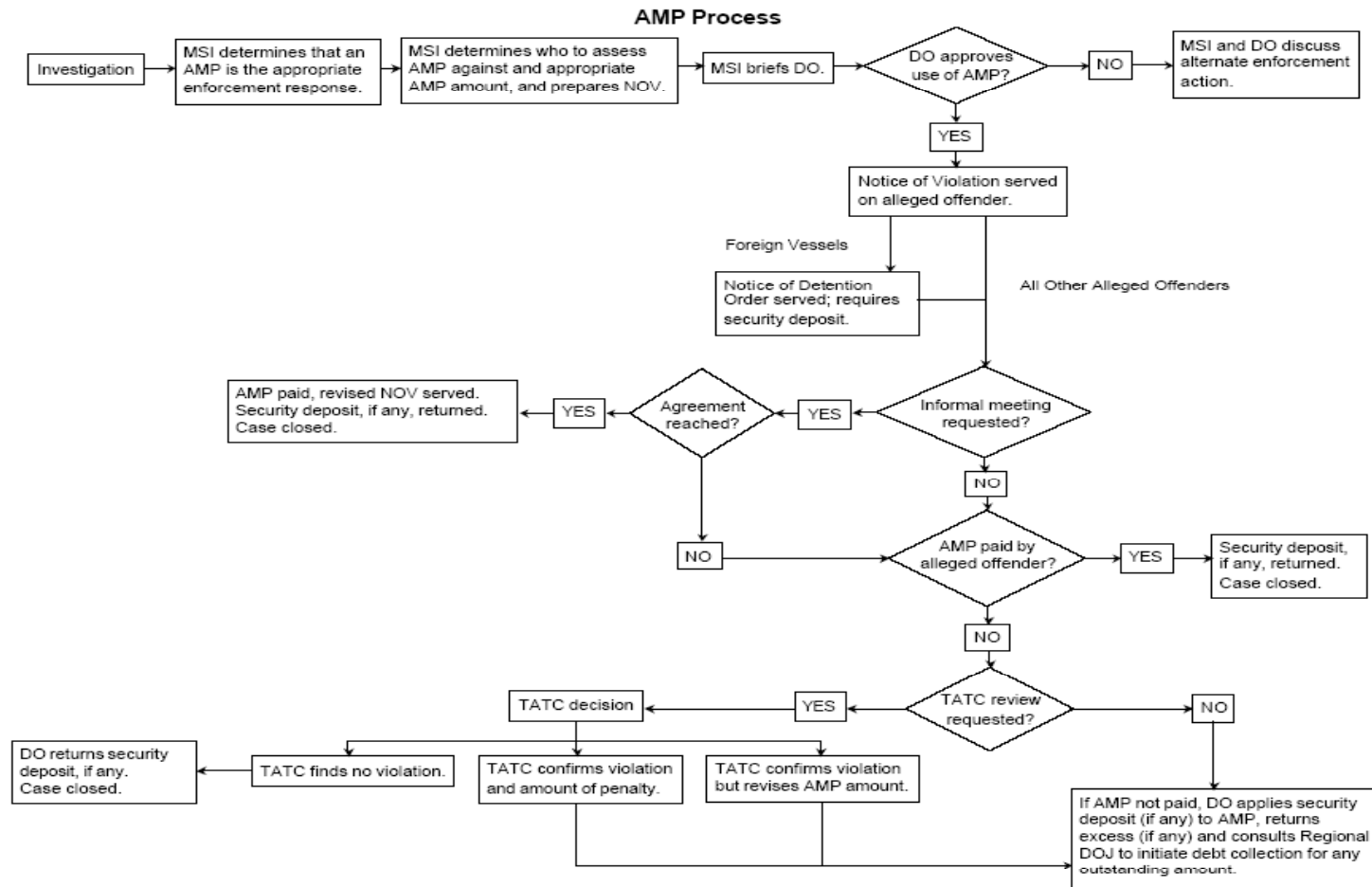
- Compliance and Enforcement Manual Clause 15.6.1.1
  - “TCMS shall disclose to the alleged offender or CMD applicant/holder (or to their representative) all the evidence that the CPO intends to present at the TATC review hearing, plus any other evidence that may assist the alleged offender or CMD applicant/holder even if the CPO does not intend to use it at the hearing, provided the evidence is not inadmissible by reason of any privilege under the law of evidence.”
- Mr. Justice Sopinka and the Stinchcombe case

## Depositions

- CSA, 2001 Section 261 .
  - 261.** (1) A deposition of a witness is admissible in evidence in the course of a proceeding under this Act if
    - (a) the testimony of the witness is required in relation to the subject-matter of the proceeding and the witness cannot be found in Canada;
    - (b) the deposition was made on oath outside Canada in relation to the same subject-matter before a justice or magistrate of another state or before a diplomatic or consular officer of Canada or a person recognized by Her Majesty in right of Canada as a diplomatic or consular officer of another state, and the deposition is signed by the justice, magistrate or officer; and
    - (c) in the case of a criminal proceeding, the deposition was made in the presence of the person accused and that fact is certified by the justice, magistrate or officer.



# AMPs Process



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# Assurance of Compliance (AC)

## Considerations

- Seriousness and nature of violation
- Violator's enforcement history and cooperativeness

## Security

- TCMS policy to require security in all cases

## Assurance of Compliance – Form and Content

- Review of form
- Appendix A – Form of Charge
- Appendix B – Terms and Conditions

## Notice of Compliance – Form and Content

- Minimal reference required

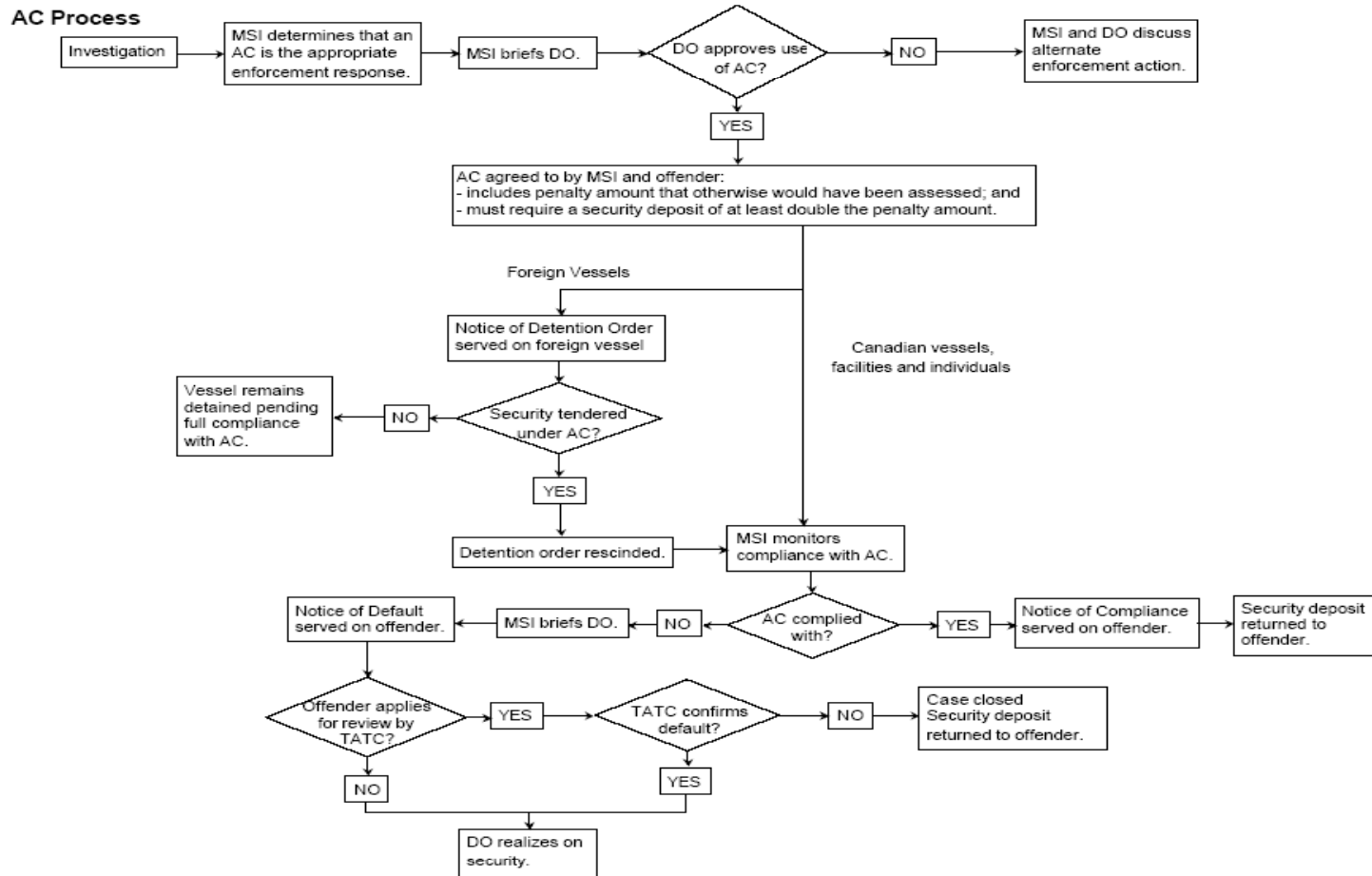
## Notice of Default – Form and Content

- When to use





# AC Process



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# Proposed AMPS Regulations Amendments

## Section 1

- **New name “Administrative Monetary Penalties and Notices (CSA 2001) Regulations”**
  - **Because service of document provisions extended to CMD Notices**

## Section 2

- **Changed to include regulatory as well as statutory offences**

## Section 4

- **CMD notices – how to serve them**

## Schedule

- **Now divided into Parts**
  - **Part 1 - Act**
  - **Part 2 – Cargo**
  - **Part 3 – Collision**
  - **Part 4 – Load Line**
  - **Part 5 – Personnel**
  - **Part 6 – Special-Purpose Vessel**
  - **Part 7 – Vessel Certificates**
  - **Part 8 – Vessel Registration and Tonnage**



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# Proposed AMPS Regulations Amendments

## Vessel Certificates Regulations Section 8

- 8.** (1) The authorized representative of a foreign vessel in Canadian waters shall ensure that
- (a) the documents required to be carried on board by an international convention, protocol or resolution listed in Schedule 1 to the Act are on board; (*AMPS Penalty: \$1,250 to \$25,000*) and
  - (b) the requirements that were to be met for the issuance of those documents are met. (*AMPS Penalty: \$1,250 to \$25,000*)
- (2) The authorized representative of a foreign vessel shall ensure that the vessel is crewed in accordance with the vessel's Safe Manning Document or an equivalent document. (*AMPS Penalty: \$1,250 to \$25,000*)
- (3) The authorized representative of a foreign vessel that holds a document required by subsection (1) shall ensure that the vessel undergoes any periodic inspections required in respect of the document under an international convention, protocol or resolution that is listed in Schedule 1 to the Act and, if the convention, protocol or resolution requires that the document be endorsed following such an inspection, that the document is endorsed as required. (*AMPS Penalty: \$1,250 to \$25,000*)

What does this mean in practical terms?



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# Canadian Maritime Document Actions (All CMD Forms)

## Vessel (Safety) vs Personnel (Accreditation) CMD Actions

- 30 day notice for personnel (Section 20.1) and TATC *ex parte* applications (Section 20.2)
- TATC can only substitute its decision in personnel 'disciplinary' cases (Paras 20(1)(e) and (f)(ii) or (iii))
- Refusal to issue (section 16) and others (section 20)

## Fee / Penalty / Fine vs All Other CMD Actions

- No TATC review (Subsection 20.4(2))

## Medical CMD Actions

- *Marine Personnel Regulations* Part 2, Division 8
- Subject to TATC review

## Procedure and Authorities

- Personal service required
- CSA 2001 CMD provisions carefully made because of Charter and Human Rights implications

## TATC Jurisdiction

- Recommendations of reconsideration and Substitution of Minister's Decisions
- Effects of 'reconsideration' - Civil Aviation experience

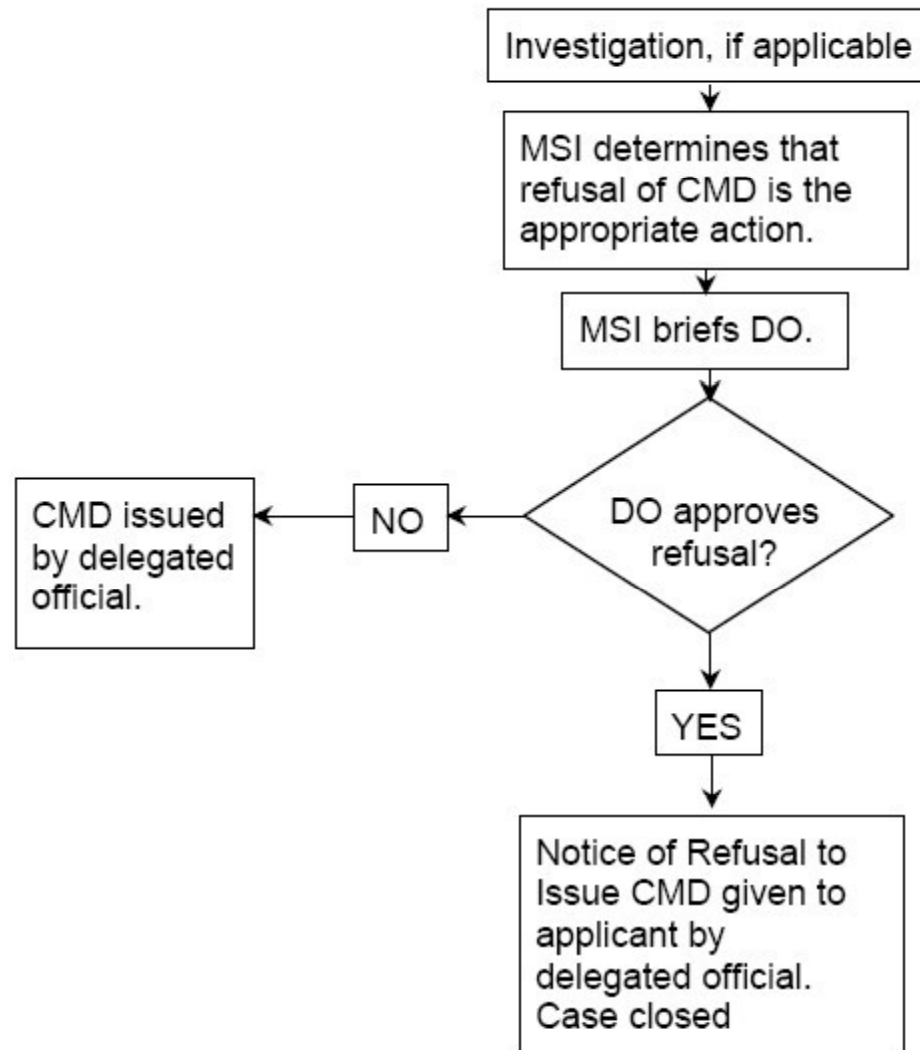


## CMD Actions – Refusal to Issue

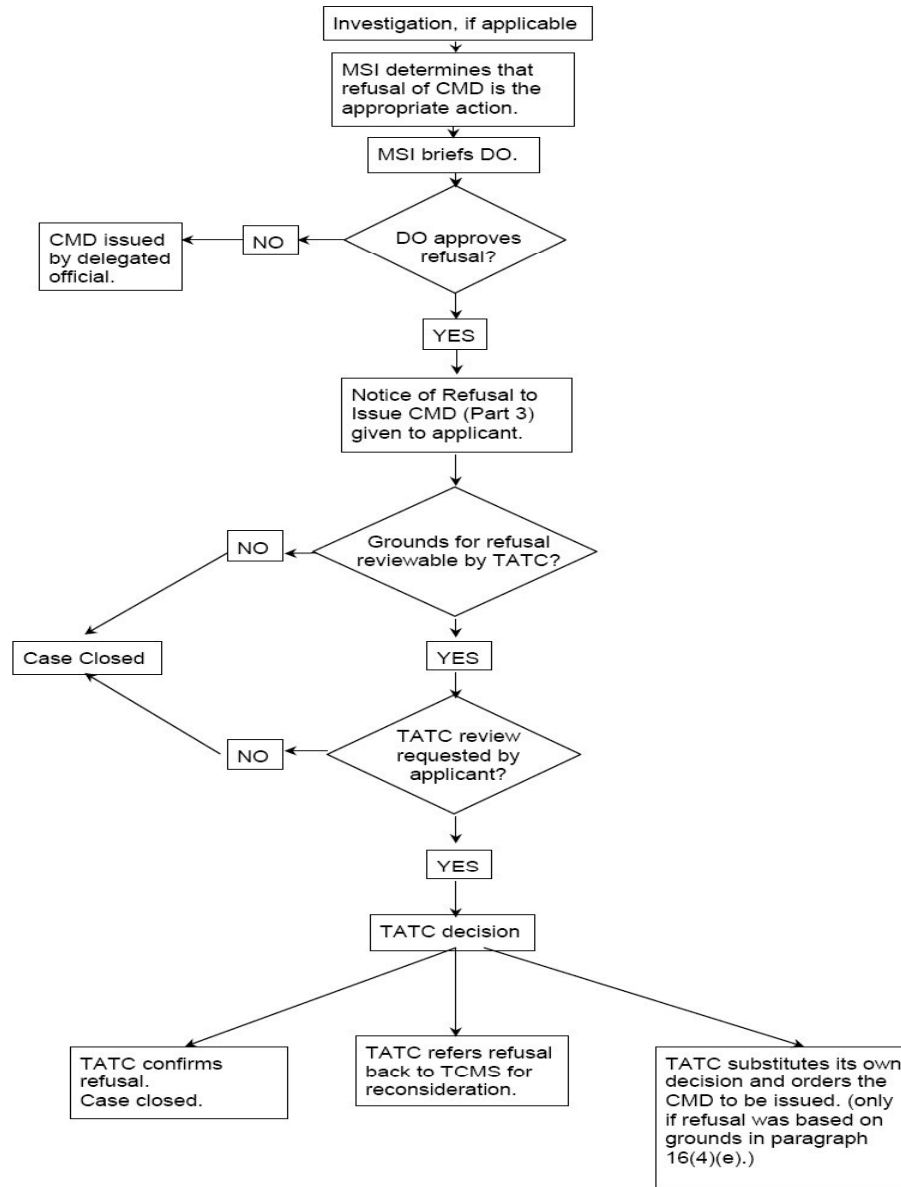
CMD actions under section 16 of CSA 2001 – refusal to issue CMDs		
Grounds for refusal	Refusal reviewable by TATC?	TATC decision-making auth.
Applicant does not meet requirements for issue of CMD	Part 3 CMDs only	TATC can confirm decision or refer it back for reconsideration
Applicant acted fraudulently or improperly or misrepresented a material fact	Part 3 CMDs only	TATC can confirm decision or refer it back for reconsideration
TCMS is of opinion that public interest (especially the record of the applicant) warrants refusal	Part 3 CMDs only	TATC can confirm decision or refer it back for reconsideration
Applicant has not paid a fee, penalty or fine under the CSA 2001	No review by TATC	N/A
Master or crew member applying for a Part 3 CMD was on board a vessel that contravened any of sections 5.3 to 5.5 of the <i>Coastal Fisheries Protection Act</i> and knew that the vessel was committing the contravention, or was found guilty of an offence related to their duties on a vessel or committed a violation in respect of which a Notice of Violation was issued	yes	TATC can confirm TCMS decision or substitute its own (i.e. order the issue of the Part 3 CMD)



## Refusal of vessel certificates and other CMDs not issued under Part 3 of the CSA 2001



### Refusal of CSA 2001 Part 3 certificates



# CMD Actions – Refusal to Renew, Suspension and Cancellation

CMD actions under section 20 of CSA 2001 – refusals to renew, suspensions and cancellations of CMDs		
Grounds for refusal, suspension or cancellation	Reviewable by TATC?	TATC decision-making authority
Requirements for issue of CMD no longer met	yes	TATC can confirm TCMS decision or refer back to TCMS for reconsideration
Term or condition of CMD contravened	yes	TATC can confirm TCMS decision or refer back to TCMS for reconsideration
CMD obtained by a fraudulent or improper act or misrepresentation of a material fact	yes	TATC can confirm TCMS decision or refer back to TCMS for reconsideration
Holder of CMD has not paid a fine or penalty imposed under the CSA 2001	no	N/A
Holder of CMD contravened a provision of the CSA 2001 or regulations	yes	TATC can confirm TCMS decision or substitute its own
Master or crew member holding a Part 3 CMD is incompetent or has committed an act of misconduct	yes	TATC can confirm TCMS decision or refer back to TCMS for reconsideration



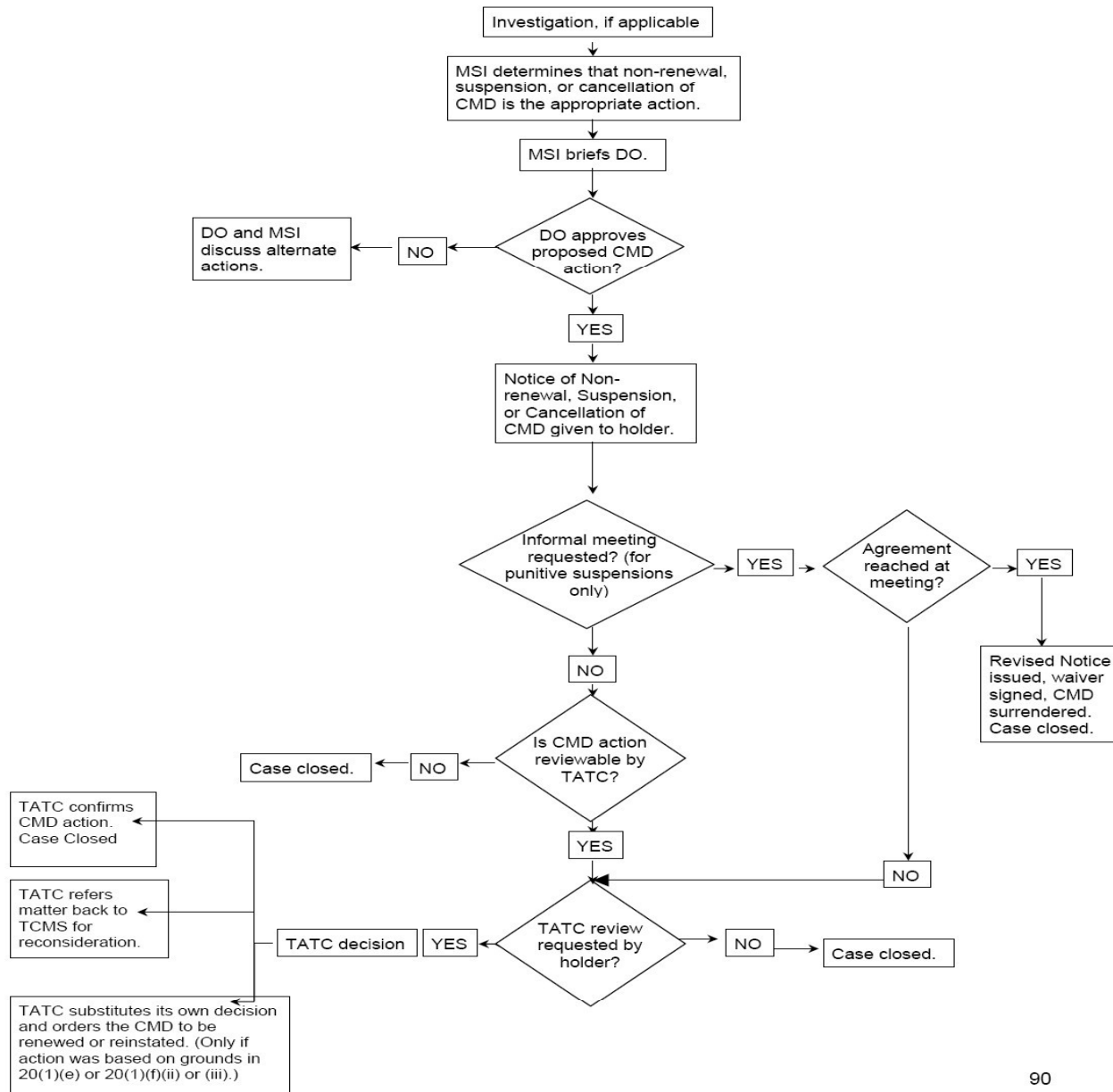


## CMD Actions – Refusal to Renew, Suspension and Cancellation (Continued)

CMD actions under section 20 of CSA 2001 – refusals to renew, suspensions and cancellations of CMDs		
Grounds for refusal, suspension or cancellation	Reviewable by TATC?	TATC decision-making authority
Master or crew member holding a Part 3 CMD was on board a vessel that contravened any of sections 5.3 to 5.5 of the <i>Coastal Fisheries Protection Act</i> and knew that the vessel was committing the contravention, or was found guilty of an offence related to their duties on a vessel	yes	TATC can confirm TCMS decision or substitute its own
Holder applying for renewal of CMD has not paid a fee under the CSA 2001	no	N/A
Minister if of the opinion that it is not in the public interest to renew a CMD, taking into account, in particular, the record of the applicant for renewal	yes	TATC can confirm TCMS decision or refer back to TCMS for reconsideration



Non-renewal, suspension or cancellation of vessel certificates and other CMDs not issued under CSA 2001 Part 3



Non-renewal, suspension or cancellation of CSA 2001 Part 3 certificates

